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CREATE Working Paper 2019-04 (March 2019)

Online Music in China

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Convergence or differentiation in IP protection? A case study of new models for digital film, music and e-fiction production and distribution in China

An Introductory Note

These CREATE working papers comprise three reports, Online Music in China, Online Literature in China and Online Film in China. They are part of the deliverables from the most exciting research project I have conducted in the last nearly thirty years, “Convergence or differentiation in IP protection? A case study of new models for digital film, music and e-fiction production and distribution in China”.¹

I was very fortunate to have a strong team of passionate colleagues in China and in the UK to work with me. There were two AHRC research grants - (1) the AHRC China Digital Copyright Centre and Newton Fund (RGS 116357) and (2) the RCUK Research Centre for Copyright and New Business Models in the Creative Economy (CREATE) (AH/K000179/1) that enabled us to conduct the field investigation in China during the period from December 2015 to April 2017.

To describe the research as “the most exciting project” is not, to whichever extent, an overstatement. While testing the interests of local players to the research topic for preparing the research proposal, we had already had some understandings for interview with potential respondents from Internet intermediaries and IP professionals in China. Our original plan proposed in the research application was to have around 35 semi-structured interviews with Internet business platforms, IP practitioners, government officials and academics, which finally ended with the number up to 59. If including informal conversations with friends, relatives and taxi drivers, and also with the interviewed respondents on other occasions such

¹ For details of the research method adopted for this project, please see our paper Shen, Xiaobai, Williams, R., Zheng, Z., Liu, Y., Gerst, M. (2019) ‘Digital online music in China – A “laboratory” for business experiment’, published in *Technological Forecasting and Social Change*, Volume 139, February 2019, Pages 235-249. A pre-print is available in this CREATE working paper series.

as at a casual dinner table, WeChat² conversation platform, etc. the number would be lot higher.

During the process of the project, to share our interview results, we created a shared folder in Jianguoyun.com, which offers similar functions as those of Dropbox.³ Team members were able to view each other's interview notes and listen to voice recordings. Regular research meetings were held during my (PI) field trips in China. Otherwise, using WeChat's group conference feature, we met online discussing various issues. What did inspire and impel us the most during our investigation were the outpouring of fresh new materials, which amazed us with the constant changes taking place in China. According to the research plan, we should have stopped the field work at the end of September 2016. However, we could not and did not close the investigation until the end of the project. There are still materials un-transcribed, and they are not included in the reports.

The three reports are composed following the template, which, resulted from the team consensus, consists of main components as follows:

- 1) the background that helps understanding the Chinese contexts and the development of music, literature or film, since digital technology became available;
- 2) the cases that illustrate emerging online services provided by internet giants, especially the so-called BAT (Baidu, Alibaba, Tencent), inclusive of everything about the dynamics in the field, new or old models, from production to distribution/consumption;
- 3) the changes and the development of the IP protection regime, its role in contributing or constraining the evolution of the Chinese creative cultural sector;
- 4) the challenges and/or potential trends.

Our team members residing in China took on the tasks of compiling the reports. The part - Online Music in China was drafted by Yixiao Li and completed by Shufeng Zheng; Yixiao

² WeChat is a Chinese multi-purpose messaging and social media app operated by Tencent.

³ Dropbox is not available in China.

Li⁴ was also the author of Online Literature in China; Martina Gerst⁵ is the author of Online Film in China. Both Yixiao Li and Shufeng Zheng⁶ were the post-graduate students of Professor Yinliang Liu, also our team member, in Peking University Law School. Martina Gerst graduated from the University of Edinburgh with a PhD having worked in China for many years being affiliated with Tsinghua University Business School. As each author came from their own educational, disciplinary and cultural backgrounds, readers may still detect somewhat different stances, perspectives and lenses deployed in the papers even after moderation during the circulation amongst the team members.

For those who are interested in the Chinese online business services offered for film, music and literature production and distribution, the most interesting readings provided by the reports are the details, manifests, phenomenon, and activities which were taking place in China at that time and the social space. Some of these activities are seemingly the copy of the others in the US and Europe, albeit, tracing the strings of the development during the process shows how they have been shaped and moulded particularly by the players within the social and material contexts in China. The details reflect vividly a different philosophy and the cultural and socialist tradition of China, which once guided and is perhaps still dominating the guiding principle of the state in developing the music, literature and film sectors.

Although in each report, the music, or literature, or film sector is referred to as an “industry”, they are not an “industry” with the production and distribution for commerce and profit-making businesses, in the sense of market economies in the developed world. Music, literature and films (because of modern technology) in China’s past were associated with entertainment for the general public, and/or later on, the arts since the introduction of Western systems of music, literature and film education.

Before the economic reforms, China did not have separate music, literature, and film industries. If we regard them as a system, then it was the system of culture, being created and supported by the state to serve the society. In socialist China, the whole purposes of the

⁴ Dr Yixiao Li is now Legal Counsel, at Beijing Life Insurance Company.

⁵ Dr Martina Gerst, Senior Manager at BMW Financial Service in Beijing.

⁶ Shufeng Zhen, a PhD student in Peking University Law School

system of culture including music, literature and film were nothing but to reflect peoples' lives while to create content that would uplift peoples' spirit for constructing socialist China through entertainment. It is unlike North America and Western Europe where the markets for music, literature and film have long been established forming the individual industries for business players to compete for domination and pursue economic gains. For example, there have been big labels dominating the music industry, and Hollywood (the nexus) in movies, which are entrenched in these industries even today operating solely for commercial purposes. One may wonder whether these are the features of cultural creativity, distinctive from other human activities of our societies.

One may find interesting to see the different dynamics in China in comparison with North America and Europe. Instead of the record companies and publishers like big labels, in the Chinese online creative cultural sector, the dominance is held by the internet intermediaries, such as BAT. With their integrated service platforms (for details, please see Shen et al. 2018)⁷, their economic pursuits have become highly diversified through a wide range of business channels. For example, the music services are merely one type of the services, like literature, film, e-commerce, e-payment, and other services, which are vertically and horizontally integrated enhancing each other operating through various cross-over values chains simultaneously on the cross-platform business infrastructures. The reports of Online Literature in China and Online Music in China would be an interesting read, which provides many detailed cases on points.

For those who are interested in the IP development in China, the report – Online Film in China provides a systematic overview of the changes in copyright protection in China. It describes an arduous process, from China's desire initially to placate international trading partners under pressure from the US administration and international organisations, to the recent complex stance having domestic industries' self-interests in mind in pursuing economic goals. Many readers may find more comfortable to identify themselves with the

⁷ See note 1.

position of Priest,⁸ who expects the IP protection in China would follow suit that of in the US. With the process unfolding, Chinese key players would eventually see sense for strong protection of IP. From that lens, the paper shows how the Chinese government has made efforts to improve the IP protection legal services and enforcement mechanisms providing not only regulations but also detailed guidelines to ensure the interests of the right holders are protected in the entertainment industry. Despite this, the paper reminds us of the reality of the distinctive Chinese characteristics that are deeply rooted and cannot be ignored. In the Chinese tradition, the contents of cultural creativity are regarded as “a common cultural heritage” of the society. With socialist core ideology, the public interest takes high priority. One shall wait and see how the development in the online creative culture sector and the IP protection in China is to keep the balance between different interests.

Back to the question, “convergence or differentiation” that this research set out to seek the answer, hopefully, different readers will find the answers of their favourite. However, as discussed in *Online Music in China*, the problems encountered in online music to keep the balance between the interests of private and the public are not resolvable in the frame of the current IP protection regime. The relation between the developments of online business models in the creative culture sector and the IP protection in China is unequivocal, closely connected, which is illustrated vividly in these reports. The latter has always served as a barometer of the political and trade relations between China and the US, which is not the place to find the “convergence”.

We know, the IP protection regime based on the conception of “intellectual property” was derived in the West and was later introduced to China⁹ especially in the recent past. In this distant new environment, it is, at best, a “tool” with the utilities defined by the West, however it is up for Chinese users to explore. In today’s globalisation and in the digital age, where

⁸ Priest E. (2008) *Why Emerging Business Models and Not Copyright Law Are the Key to Monetising Content Online*, in Fitzgerald, B. Et al (2008) *Copyright Law, Digital Content and the Internet in Asia-Pacific*. Sydney University Press: Sydney. For further references, see the report: *Online Film in China*.

⁹ Alford, W. P. (1995) *To Steal a Book Is an Elegant Offense*. Stanford: Stanford University Press.

emerges a set of new norms for the connected society¹⁰, the current IP regime at home in the developed world is facing challenges. China is rendered different, with its tradition and past, from the West and has become an exciting place for studying, not only the development of the IP regime with its Chinese flavours, but also the rapidly changing creative cultural sector built on its distinctive digital cross-platform infrastructures.

After completing the project, we have also published a journal paper “Digital online music in China - a laboratory for business experiment”.¹¹ The paper focuses mainly on online music, most case materials of which can be found in the three reports. There are also additional data collected after the project through personal contacts in China that were established during the fieldwork. For convenience, the paper was written by the team members, Xiaobai Shen and Robin Williams, in the UK, which may inevitably reflect their viewpoints. These reports have not been published until now. For this, we have to thank the director of CREATE, Professor Martin Kretschmer, and his colleagues in the University of Glasgow for their encouragement. The reports were edited for the CREATE working paper series by Dr Inge Sørensen and Amy Thomas.

¹⁰ Castells, M. (1996) *The Rise of the Network Society. The Information Age: Economy, Society and Culture* Vol. I, 2nd ed. 2000. Oxford: Blackwell.

¹¹ See note 1.



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Online Music in China

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Music industry in China – traditional and digitalized?

Nowadays Internet technology allows for music that can either be listened to via streaming or via download on a mobile device. Online music in this report refers to music distributed via Internet or mobile communication. Online music can be divided into two types: the first is music digitalized from traditional albums which is made by professional album companies, and; the second is music directly made in digital form and spread through the Internet. It needs to be pointed out that the majority of Internet music that is listened to is still music made by traditional album companies, and that is also what most websites provide to users. Thus, in this music part, these two types of music will be addressed. From the musicians' side, the discussion is more about original Internet music; from the users' side, unless pointed out otherwise, the user experience focusses on both types.

Digital music emerged at the beginning of the 21st century, along with the development of the Internet. Some music enthusiasts put their original music on websites and were immediately popular. For example, *Northeast people are Living Lei-Feng* (东北人都是活雷锋) and *Mice Love Rice* (老鼠爱大米) became big hits. Through the Internet, music artists can release their music works without the support of album companies and thus have more chances to put their music to the public with success. At the same time, the combination of the Internet and music facilitated the change of an audience's way of listening. Music websites digitalized music from albums published by album companies and put them on websites or apps. Users can listen to music online or download it to their computers, mobile phones or iPads at low prices (most of them are free). Compared with albums, listeners prefer to listen to music on websites since it can be cheaper and more portable. Noted websites like Kugou (酷狗音乐, <http://www.kugou.com>), QQ music (QQ 音乐, <http://y.qq.com>), Xiami (虾米音乐,

¹ In this report, songs and pure music are collectively called "music", and singers and songwriters are collectively called "musicians". This is a normal classification in China.

<http://www.xiami.com>), and Yinyue Tai (音悦台, <http://www.yinyuetai.com>) all provide such services to their users, and most of them also provide apps for mobiles and PCs.

According to the statistics of the International Federation of the Phonographic Industry (IFPI), the scale of global digital music was \$6.7 billion in 2015.² By the end of June 2016, the number of Internet music users in Mainland China has risen to 502 million, accounting for 70.8 percent of the total Internet users; among this, the number of music mobile users was 443 million, and the figures are still growing, which indicates the potential of the Internet music market.³

Historical development of Internet Music

Early stages

Internet music emerged in 2001. At that time, the Internet and PCs came to ordinary Chinese families, and people turned to the Internet to seek entertainment. New software and equipment for recording and making music on computers, such as Cakewalk, Encore, and Giga Studio, enabled ordinary people to make digital music and put this on the Internet without the help of professional companies. These factors all laid the foundation for the popularity of Internet music.

The first popular Internet singer was Xuecun (雪村), an ordinary person without any professional music training. He wrote the song *Northeast People are Living Lei-Feng* (东北人都是活雷锋) in 1995. The song was not popular until he put it on a website in 2001. Someone made a flash animation out of the story of *Northeast People are Living Lei-Feng* (东北人都是活雷锋) and used the song as the background music. The flash

² IFPI (2016) Global Music Report, [online] available at: <http://www.ifpi.org/news/IFPI-GLOBAL-MUSIC-REPORT-2016> [last accessed June 1st 2017].

³ China Internet Network Information Center (2016) China Internet Network Development Statistic Report, [online] available at: <http://www.cnnic.cn/gywm/xwzx/rdxw/2016/201608/W020160803204144417902.pdf> [last accessed June 1st 2017].

work became very popular on the Internet, as well as the song. It marked the beginning of original Internet music. A famous Chinese Director Ying Da even used the song as the theme song for his TV series *A Family in Northeast*.

This is a good example of how the Internet became a highly efficient way of promotion, and helped *Northeast People are Living Lei-Feng* (东北人都是活雷锋) rise to fame overnight without a company's promotion.⁴ After that, many songs became successful as background music for flash, for example, *When I Love You Again* (当我再爱你的时候) by Xiao Ming (小鸣), *University Study* (大学自习教室) by Hao Yu (郝雨) and *Lilac* (丁香花) by Tang Lei (唐磊).

None of the musicians noted above are professionals. Their songs achieved popularity with simple rhythm and daily life-related contents, with some of them becoming successful with the help of flash. Compared with the traditional music industry, where singers need professional training and companies' promotion combined with a lot of time and financial cost, the Internet music industry offers every single person the chance to release their music on the Internet freely and expand the music market.

Digital music online

Internet music has been booming in China since 2004, and numerous songs were already produced at this point of time. Many songs are well-known, such as *Mice Love Rice* (老鼠爱大米) by Yang Chengang (杨臣刚), *Two Butterflies* (两只蝴蝶) by Pang Long (庞龙), *Who would You Remind when You Alone* (当你孤单你会想起谁) by Zhang Dongliang (张栋梁), *Secret Agent Jack Bauer* (特务小强) by Shun Wenqi (舜文齐), *Excite 2005* (刺激 2005) by Zhao Yingjun (赵英俊), *Song of Pig* (猪之歌) by Xiangxiang (香香) and *Poisonous Perfume* (香水有毒) by Hu Yanglin (胡杨林) etc.

⁴ Music Juyi hall (2001) The Story of *Northeast people are Living Lei Fengs* [online] available at: <http://www.yesky.com/237/188737.shtml> [last accessed May 26th 2017].

In 2006, the program “Abu Shuo” (阿布说) of Chinese International Broadcast Station made a ranking list of Top Online Music 2005, and it was also the first time that national media recognized Internet music.⁵

In the meantime, record companies who had been adversely affected started to embrace Internet music. Their services contributed to the quality of Internet music. *Mooring by Maple Bridge at Night* (枫桥夜泊) successfully combined Chinese traditional factors with popular rap, as did *Come into My Dream* (我的歌声里) and *Di Da* (滴答). Songs produced by professional album companies, *the Little Apple* (小苹果), and *the Coolest Chinese Folk Style Song* (最炫民族风), also achieved fame with the help of the Internet.

Music websites like QQ music and Xiami started to provide professional platforms for independent musicians to upload their music. Thus, many Internet singers or songwriters became famous through the Internet, where they have established careers without the help of professional record companies. Outstanding examples are Xu Song (许嵩), Xu Liang (徐良) and Wang Sulong (汪苏泷), who are called the “three giants of QQ music”. These musicians may later sign contracts with album companies and become professional singers or songwriters. Musicians also started participating in the creation of background music for online games and videos, making online music the source of other Internet entertainment industry’s music material.⁶

⁵ Baidu Baike (2012) Internet Music [online] available at: http://baike.baidu.com/link?url=lzjOqh1N-c9eTdG5GAboQ4GCgcaasmLM0x6-iU8YGGUp_7TvYMITNTL8jfGBN1mwWIY1RI-nskRUdGEIqQuHV_ [last accessed May 25th 2017].

⁶ China Internet Network Information Center (2016) China Internet Network Development Statistic Report, July 2016 [online] available at: <http://www.cnnic.cn/gywm/xwzx/rdxw/2016/201608/W020160803204144417902.pdf> [last accessed May 25th 2017].

The context - the Chinese music industry and its players

China's music industry includes national and international players, real and digital content providers as well as Internet Service Providers (ISPs). In terms of mobile music services, there are three main Chinese telecoms: China Mobile, China Unicom, and China Telecom, all of which control the distribution of mobile music to 1.28 billion subscribers.⁷

The emergence of online platforms specialized in music

Between 2011 and 2013, the number of Chinese music websites increased from 452 to 695, and the number is still growing,⁸ showing the huge potential of the Internet music market. Apart from providing services through websites, Internet music companies also provide apps for mobiles and PCs, offering services including listening online or downloading music, fan interaction, user comments and a platform for musicians. Meanwhile, traditional album companies also sell their digitalized albums online and promote them through music websites.⁹

The iResearch Academy made a survey of music websites based on statistics collected from January to August 2015. In the PC client market, Kugou has the most daily clients of 14,79 million, followed by Kuwo (9,802 million) and QQ music (8,295 million). As to the apps market, Kugou and QQ music are the winners, with daily coverage (from January to August 2015) achieving 16,065 million and 11,490 million clients

⁷ Ministry of Industry and Information Technology of the People's Republic of China (2016) Economic operation of telecommunication industry in January 2016 [online] available at: <http://www.miit.gov.cn/n1146285/n1146352/n3054355/n3057511/n3057518/c4652953/content.html> [last accessed May 28th 2017].

⁸ Ministry of Culture of the People's Republic of China, 《2013 中国网络音乐市场年度报告》 (China's online music market annual report of 2013), <http://www.100ec.cn/detail--6166433.html>

⁹ Xiaoxia, W. (2015) Overview of Chinese internet music industry, in China Publishing Journal, 9th edition, May 2015.王小夏, 中国网络音乐产业发展概览【J】.中国出版, 2015年5月上, 第09期。

respectively.¹⁰

To adapt to the intense competition, websites started to merge and reorganize in recent years. In 2014, two websites with the highest market shares – Kugou (酷狗音乐) and Kuwo (酷我音乐) - merged to establish China Music Corporation (CMC 中国音乐集团).¹¹

Alibaba Group acquired Ttpod (天天动听) and Xiami music (虾米音乐) and established Ali music (阿里音乐) in 2015, aiming to build a music ecosystem.¹² On July 15, 2016, CMC and QQ music announced a collaboration.¹³ According to iResearch, CMC, Ali music and QQ music are now the biggest music companies in the field of digital music in China.¹⁴

Xiami.com

Xiami.com is an exemplar of online music website in China. It was established in 2006 and available in 2008. Its original name was EMUMO, meaning to get music and money with the aim to provide an authorized music distribution platform. According to the platform, Xiami explored business models to help musicians earn money from their

¹⁰ Iresearch (2015) 2015 Online Music Industry Report [online] available at <http://www.iresearch.com.cn/report/2498.html> [last accessed June 1st 2015].

¹¹ Yu S. (2016), China music group and tencent announced: "Kugou Kuwo merge with QQ music but the big three remain independent [online] available at: <http://jiasuhui.com/archives/88347> [last accessed May 28th 2017].

¹² Jianping L. (2015), Ttpod and Xiami music will assembled together as Ali Music [online] available at: <http://tech.qq.com/a/20150316/000381.html> [last accessed May 28th 2017].

¹³ Hu Po (2016) QQ music and CMC music business merge, copyright battle curtain, what next chance? [online] available at: <http://business.sohu.com/20160730/n461764825.shtml> [last accessed May 28th 2017].

¹⁴ iResearch (2016) 2016 Online Music Industry Report [online] available at <http://www.iresearch.com.cn/report/2617.html>

works and provide users with good music online.¹⁵ Xiami has thus set up a system catering to the needs of copyright owners, writers' welfare and listeners' communication. For musicians, Xiami provides "Xiami Musicians" (虾米音乐人) with a platform to upload their works. Xiami's "looking for unseen originality" (寻光计划) program helped 19 musicians to publish their first Internet album in China in July 2014. For listeners, Xiami established a community for music fans, providing individualized music configuration and various interpersonal interactions. After several years of development, Xiami has become one of the biggest music websites and provides multi-terminal cloud services including a website, desktop software and an app for mobile phones.

The platform provides different functionalities for listeners and musicians:

1. For listeners

Listeners need to register on Xiami for a membership to enjoy free listening and downloading services; IP addresses of the listeners are limited in Mainland China. Non-fee-paying users can only download music with standard quality. Users can pay to become VIP members for 10 yuan per month or 98 yuan per year. With a VIP membership, users can listen to or download high-quality music without geographic limits.¹⁶

Like other music websites, Xiami offers a current music billboard and users can collect favourite songs or albums, give comments, or rank singers or songs. It also keeps a record of users' appetite for music, and recommends songs that users may be interested in. Moreover, Xiami has unique functions like *Sharing the Same Taste* (臭味相投) and *Xiami Loop* (虾米 Loop). Each user in Xiami has a homepage where users can show their list of favourite songs. By using the *Sharing the Same Taste* function, users can

¹⁵ Summarized according to the introduction of the official website: Xiami (date unknown) Introduction [online] available at: <http://www.xiami.com/about?spm=a1z1s.6843761.1110930425.1.PO1EWz> [last accessed June 1st 2017].

¹⁶ Summarized according to the introduction of VIP service on Xiami official website: Xiami (date unknown) Introduction to VIP Service [online] available at: <http://www.xiami.com/vip?spm=a1z1s.6843761.1110925385.12.ZJqPbR> [last accessed June 1st 2017].

find other people who like the same style of music and have a look at other users' collections to find music that interests them. *Xiami Loop* provides a virtual space (like online games) where users can have their own avatar. The space is divided into several parts according to different styles of music. The users can choose to go into different parts and host an event like a DJ.

2. For musicians

Musicians can apply for the “Xiami Musicians” (虾米音乐人) program to share original music work. Xiami equips every musician in this program with independent domain names and personal homepages to upload demos or release albums and communicate with fans. Musician's work can also be put in Xiami's Genuine Music Collection for members listen or download.

To join the Xiami musician program, an account at Xiami is required. Afterwards, the musician can use the account to apply through the official website. The musicians need to fill in information, including their real name and email address, as well as uploading a demo. The demo should be in MP3 format and within 50 MB. Editors of Xiami will check and inform musicians of the result by email within seven workdays.

According to Xiami's formal agreement, uploading of content automatically authorizes Xiami to disseminate this through Internet (including but not limited to the right to perform, broadcasting and the copyright of the lyrics). The authorization here is not exclusive, and the musician still owns the copyright of the music and is free to authorize other websites to do the same. The authorization to other websites should not interfere with the use by Xiami.

Musicians should ensure that all music (including demos, albums and extended plays) released in Xiami are not infringing any third party's intellectual property rights (IPR) or other legal rights or interests. These rights include copyrights, broadcasting rights, performer's rights and other related rights. If musicians upload the music on behalf of a team or other copyright owners released music, they should have the consent of the other team members or copyright owners. Musicians are supposed to ensure a music albums' extended play record (EP) of the music is in the demo area. It has to be clear

whether it is original music or a cover song, of which the rights of related copyright have been obtained.

Xiami promises not to participate in the distribution of music revenue. Thus, musicians can get up to 100 percent of the total amount of net income. The interest will be allocated among lyricists (about 10 percent), composers (about 10 percent) and the recorders (about 80 percent, including the performers' revenue). If the uploader is only a performer, Xiami will give the relevant part of revenue to other copyright holders. Xiami has the right to adjust the allocation proportion, but will inform the musicians in advance.¹⁷

Ali Planet

Ali planet (阿里星球, <https://society.ttpod.com>) prototypes for TTPod (which was acquired by Alibaba) and was officially launched in May 2015. Different from traditional websites that mainly provide play or download services, Ali Planet is a comprehensive platform for fans, live shows, music, and offstage work. It covers the whole trading process from music production to consumption (including searching for original songs, offstage production, online promotion, sale of related products, live income etc.). Ali Planet extends its vision to the whole entertainment industry and is enabling fans to interact with stars, but also connecting them with a merchant in a backstage trading system.¹⁸

Ali Planet can be divided into three parts “Fan Amusement”(粉丝游乐), “Daily Audio & Visual”(天天视听), and “Offstage Hero”(幕后英雄) which involve fields like fan clubs involving some musicians' accounts, entertainment consumption and backstage

¹⁷ Summarized according to Xiami Musicians Platform Service Description and Agreement, at Xiami official website: Xiami (date unknown) Xiami Musicians Platform Service Description and Agreement [online] available at: <http://i.xiami.com/musician/pr?spm=a1z1s.7400858.1110930425.3.hFuwRJ> [last accessed June 1st 2017].

¹⁸ Feiya, W. (2016) Ali Ecological Business Practice in Ali Planet [online] available at: <http://www.woshipm.com/evaluating/333468.html> [last accessed June 1st 2017].

trading.¹⁹ Apart from the website, Ali Planet also offers apps for mobile devices. An app user should get an ID or login with Taobao's account first. Users can then choose to join different fan clubs, take part in support activities, check their favourite star's schedule or launch an online discussion. Ali Planet includes a live show broadcasting and music playing function. In the live show, users can watch stars or musicians live their daily life, or play in a concert. As for the music part, users can enjoy an online listening or downloading service and buy a digital album on the online store. As far as business is concerned, this was also opened for offstage staff and companies in the entertainment industry including professionals, agencies, and operators related to music performance, as well as music organizations and bands that want to cooperate with musicians. People or companies who want to participate can log in through the Ali Planet website (<https://www.ttpod.com>), and select the corresponding roles among the list provided on the site. Necessary information and consent to the agreement are also needed. With the support of Ali Planet, people and companies can find the partnerships required in a very short time enabling them to start negotiations and cooperation, which will save the cost of an information search.

The functions introduced show that Ali Planet offers more services than traditional music websites, and is part of the whole industry chain of Internet music. The China Internet Network Information Center considers it a significant organisation for the Internet music industry.²⁰

Netease Cloud Music

Netease Cloud Music (NCM), which is affiliated with Netease, is another player in the industry. Its product is user-friendly and specialized to serve non-mainstream music. Users can find lyrics for many pieces of non-mainstream music, which is welcome news

¹⁹ Summarized according to the introduction from Alibaba Planet's official website, available at Alibaba Planet (date unknown) Introduction [online] available at: <https://member.ttpod.com/about/join?spm=a2o0b.7947693.0.0.PoppGa> [last accessed June 1st 2017].

²⁰ China Internet Network Information Center (2016) China Internet Network Development Statistic Report, July 2016 [online] available at: <http://www.cnnic.cn/guym/xwzx/rdxw/2016/201608/W020160803204144417902.pdf> [last accessed June 1st 2017].

for music listeners, earning NCM a good reputation among users.

Netease is a forerunner in the Chinese Internet industry and is very successful. It is said that the founder of NetEase, Inc. (网易公司), Ding Lei (丁磊) is a huge music lover, and as such this is why Netease has invested a lot of money in their platform. Netease has two main business parts. Besides the traditional music listening service, NCM has also released an individual musician-fostering project. It plans to invest 0.2 billion RMB in musicians' albums, tour performances and other activities. NCM has attracted more than 0.2 billion users, and more than 20 thousand active individual musicians, who have uploaded more than 0.4 million pieces of original music according to the statistics in July 2016.²¹

Emergence of the big online players: Baidu, Alibaba and Tencent (BAT)

The music industry has significantly changed with the development of Internet technologies. The way people listen to music has almost completely changed from cassettes or CDs to digital music (except those who prefer the classic style). With the growing music market, the Chinese Internet music industry has seen many developments in the last few years. The most important ones are, for example, websites fostering individual musicians/singers, new profit modes, the competition and development of apps, and the rise of online karaoke. In addition, some websites have produced hardware, like earphones, loudspeaker boxes, etc. In the context of the unique characteristics of online music, it needs to be pointed out that music is relatively short and contains much less content than videos or literary works. Since music is relatively short and the content is much less than novels, it actually does not have as many derivative products as literature. It is rare to find TV dramas, films or games adapted from songs, except some created from the ideas in the music. For example, Xuecun (雪村) has announced that a movie, a game and a TV drama would be made based on the ideas from *Northeast*

²¹ Li, Z. (2016) How do Netease cloud music become the black horse of music online? [online] available at: <http://tech.163.com/16/1202/16/C79TE6MD00097U88.html> [last accessed June 1st 2017].

people are Living Lei-Feng (东北人都是活雷锋) which was a big hit in 2000.²²

However, big companies like BAT still want to get into the industry. The reasons are manifold.

- The Internet music industry is in a constant change these days, and there is still no real giant in this industry. Thus, the players want to develop their own brand to get as much market share in the industry as possible.
- As it has been analysed in the literature part, it is still a time of warring states - competition among BAT is tough, and they all want to make their business scale as large as possible. The objective is to get a comprehensive business in the entertainment industry in order to build an empire, and music is an important part of this empire.
- The online music industry is not profitable today. However, profits are expected in the near future. At this stage, platforms fight for more users and market share so they can get more influence and be prepared for future profit.

BAT have developed their own music parts since early 2000s, and have paid attention to their respective development. Their operation styles were originally related to their respective main key business operations such as searching, purchasing or financing; however, they have since developed into a more comprehensive operation. Meanwhile, they have all started to acquire already successful companies in the market to extend their market share.

Tencent

Tencent started its service from the instant chatting tool QQ, which is one of the most popular chatting tools in China. Thus, music was firstly a value-added service for QQ users. Nowadays, QQ music is still a part of the Social Network Group (SNG, 社交事

²² Yan. H. (2016) Sell feelings? Xue Cun make the movie "Northeast people are living Lei Fengs", [online] available at: <http://ent.163.com/16/1213/08/C85EVQ5F00038FO9.html> [last accessed June 1st 2017].

业群) of the Tencent Group, unlike the film and video part in the Interactive Entertainment Group (IEG, 互动娱乐事业群).

The music business of Tencent dates already back to 2005, when it began a QQ 'Green Diamond' (绿钻) service. It provides high-quality music services for QQ users, and users pay for this service. For example, they can use music as background music from Qzone (www.qzone.qq.com)²³ which provides a large music collection.

In 2013, QQ music began its subscription service. Users can subscribe to the music service by paying quite low fees (about 10 RMB yuan) monthly. According to our interview with QQ music, the success of QQ music is based on Wechat and QQ, Tencent's two popular chatting tools. In addition, user loyalty and QQ music's large music collection are also important factors.

Tencent has also completed major Mergers and Acquisitions (M&A). On July 15, 2016, Tencent became the major shareholder of CMC by way of asset exchange for shares. QQ Music also became a part of CMC. CMC originally owned famous online music platforms – Kugou Music (酷狗音乐, <http://www.kugou.com>), Kuwo Music (酷我音乐, <http://www.kuwo.cn>) and Rainbow Music (彩虹音乐, <http://www.m-rainbow.com>). QQ Music, Kugou Music, Kuwo Music and other brands developed independently after the merger.²⁴ Kugou Music and Kuwo Music are very popular music websites in China. After the deal, CMC got more than 50 percent of the market share, and its major shareholder Tencent became a big leader in the market indirectly.

In this context, it needs to be noted that Tencent defines its role as a communicator. It mainly wants to provide a music listening service. The social products of Tencent have made it a competitive player in the market. Users want to share their taste for music, and show their mood through music, so music is maybe more connected to

²³ Qzone is a homepage for each QQ user to post articles and photos, much like Facebook or blogs. It was once very popular among youngsters.

²⁴ Cao, X. (2016) QQ music merge with CMC and Kugou music and other brands develops independently, [online] available at: http://www.sohu.com/a/106124228_431094 [last accessed June 1st 2017].

social contact than literature or films. The easy social sharing between music apps and chatting tools, convenient payment tools - like Wechat Pay - and products like QQ, Qzone, Wechat and Tencent videos, has made Tencent's music product more and more widespread in China. In a media sharing meeting in the music industry in 2016, a senior executive of Tencent told the media that QQ Music was beginning to be profitable.²⁵

Alibaba

Alibaba's music part is now operated by Alibaba Music Group (阿里音乐集团). Alibaba Music Group was established on July 15, 2015, with famous composers Gao Xiaosong (高晓松) as the chairman and Song Ke (宋柯) as CEO. Alibaba Music wanted to focus on music and integrated Xiami (虾米), TTPod (天天动听) and all other former separately operating music businesses of the Alibaba group.

Alibaba's music part can be divided into three parts: traditional music listening services, individual musician fostering projects, and the so-called "fan economy" related services. Important to note is Alibaba's way of exploring another way to build its music services. It wants to propel its own artists in Xiami (虾米), whilst Tencent's QQ music is focused on the communication of music. Xiami was established in 2006, focusing on a music listening platform, and was merged by Alibaba in early 2013.²⁶ After the merger, Xiami introduced a new channel called "Xiami Musician" (虾米音乐人) in July 2013 which aims to promote new musicians. Individual musicians or singers can apply for a homepage, put their works on their homepage, and users can pay to download it. Xiami Musician launched a "looking for unseen originality" (寻光计划) programme in

²⁵ Longjuan, W. (2016) The giant has divided 100 billion music market : Tencent, Baidu and Ali, capital competition 2016 industrial storm series [online] available at: <http://business.sohu.com/20161010/n469887776.shtml> [last accessed June 1st 2017].

²⁶ Kexin, W. (2013) Alibaba group has acquired the music division of Xiami [online] available at: <http://tech.qq.com/a/20130110/000156.htm> [last accessed June 1st 2017].

2014—deliberately designed to help unknown, amateur or new musicians bring out their debut albums to a wide audience. The project collected the musicians' album plans, and after the voting of netizens and professionals, Xiami Musician helped the chosen ones to release their albums.²⁷

Alibaba also operates an online music platform - Alibaba Planet (阿里星球). Alibaba Planet is like an online community, connecting fans, artists and other music industry participants.²⁸ Each music star in the community has a circle (圈子), much like different forums, where fans can post messages about the events of the idols and ways to buy things to support the idols. Alibaba Planet provides fans of music stars with an offer to purchase their products, tickets, and products that relate to the idols. One of Alibaba's goals is to sell things connected to the fan economy. In actuality, it wants to do business like Taobao, the biggest Chinese online e-commerce platform operated by Alibaba, the so-called is called "e-commerce thinking". The app of Alibaba Planet was originally TTPod (天天动听), which was well-known as a music playing app, and Alibaba Planet provided a music listening platform at the beginning of the name change. On December 2016, Alibaba Planet announced the closure of the music listening service, now focusing on fans community service.²⁹ Thus, in the Alibaba music system, only Xiami Music will continue to provide a music listening service. Alibaba's strategy is thus different from the one of Tencent, which operates several independent music listening service platforms. However, the result of this business remains to be seen as the reliability of the phenomenon of 'fan economy' is still questionable.

²⁷ The homepage for the 2014 Light-searching Project is Xiami (date unknown) Light-Searching Project [online] available at: <http://www.xiami.com/market/music/act/xunguang-jihua201402.php?spm=a2z03.1301531.1998274401.1.5VUI4n> [last accessed June 1st 2017].

²⁸ Alibaba Group Holding Limited's annual report for the fiscal year ended on March 31 2016, see Alibaba Group Holding Limited (date unknown) Form 20-F [online] available at: http://www.alibabagroup.com/en/ir/pdf/form20F_160525.pdf (last accessed December 24th 2018) at p 73

²⁹ Tai Media (2016) After shutdown TTPod, Ali Planet announced that it would stop its music service [online] available at: <http://news.zol.com.cn/619/6192598.html> [last accessed June 1st 2017].

Baidu

Baidu's ambition in the music industry was revealed when it merged with Qianqian Jingting (千千静听) in June, 2006. Qianqian Jingting was a well-known music playing website in the early 2000s. However, at this point it was merely a music playing service and did not have other functions. Baidu wanted to make a client software with an online music search mode, but failed to integrate it with Baidu's original MP3 business. Qianqian Jingting then gradually lost its dominant position in the market. Baidu changed its music platform "ting" into Baidu Music in 2012. In July 2013, the client software Qianqian Jingting was renamed as Client Software of Baidu Music. It provides users with free downloading and online music services.

In December 2015, Baidu declared that Baidu Music was merged with Taihe Music (太合音乐) to make a new Internet music organization.³⁰ Taihe Music is an original music service company, which is a recombination of Taihe Maitian (原太合麦田), Haidie Music (海蝶音乐) and Touch Copyright (大石版权). Baidu music operates individually after the merger, aiming to develop the fan economy and bring up multiple online services, along with intellectual big-data technologies. Taihe Music wants to take advantage of its resources in copyright, as well as musicians from the former original music companies, Taihe Maitian and Haidie Music. They want to integrate the resource in the whole music industry chain and make a platform centred in copyright and musicians.³¹

The merger is believed to be the result of a notice from the National Copyright Administration of China (NCAC) requiring that Internet music service providers stop communicating unauthorized music (《关于责令网络音乐服务商停止未经授权传播音乐的通知》) as announced on July 9, 2015. The notice required Internet music service

³⁰ Gen, L. (2015) Baidu music merge with Taihe music [online] available at:

<http://tech.sina.com.cn/i/2015-12-03/doc-ifxmifzh4320208.shtml> [last accessed June 1st 2017].

³¹ Xiabai, Z. (2015) Baidu announced that the music business has merged with Taihe music and remained unchanged service [online] available at: <http://www.techweb.com.cn/tele/2015-12-03/2235576.shtml> [last accessed June 1st 2017].

providers to stop communicating unauthorized music and put all unauthorized music offline before October 31, 2015. It was a big shock to the Internet music service providers since the prosperity of the Internet music industry was totally based on the negligence of copyright. Similarly, Baidu wanted to use the copyright of the song collection owned by Taihe Music. Users now cannot simply search for a piece of music in the Baidu search engine and download it directly from the search result page. However, with the development of Tencent music and Netease Cloud Music, the market share of Baidu Music has gradually weakened.

The international music industry and their role in the Chinese market

A difficult copyright environment combined with the Chinese government's continuing power over key distribution and promotion channels, including radio, television, publishing and concerts, have been key factors in the failure of international labels to secure a dominant position in China's rapidly developing domestic music market.³²

Montgomery argues that cultural policies made it harder to publish foreign content, and strict regulations governing foreign investment in content industries. In addition, low levels of copyright enforcement have worked together to provide Chinese media businesses with space to develop effectively. Although groups such as the IFPI have focused heavily on the need to increase levels of copyright protection to ensure commercial developments in China's music industry, copyright has not been the key impediment to the success of international artists and labels in the Chinese market.³³ Rather, this is due to the combination of the success of new music distribution technologies and a growing capacity to provide local content in forms that local users like.

This argument was confirmed by an interviewee representing a big foreign label. Chinese pop music culture is very much influenced by TV shows like Pop Idol and not so much by a band culture like in the West. Big local media companies running these TV shows sign the artist who wins the prize, and the artist stays with the local media company and its local management. Big foreign labels struggle to get big stars signed up

³² Montgomery L. (2009) Space to grow: copyright, cultural policy and commercially-focused music in China, in Chinese Journal of Communication, 2(1), pp 36-49.

³³ Ibid.

for deals on the ground.

Rights management of online music in China

The Music Copyright Society of China (MCSC)³⁴

Under the People's Republic of China Copyright Law, any music related audio-visual product may be administered by the Music Copyright Society of China (MCSC)³⁵. Currently, MCSC mainly focuses on the following rights:

- a) Right of reproduction
- b) Right of distribution
- c) Right of performance
- d) Right of broadcasting
- e) Right of communication through information network.

Under the Regulations of Administration of Collective Management of Copyright (promulgated by the People's Republic of China State Council), the business scope of a Collective Society should not overlap or mix with the business scope of an existing Collective Society. The MCSC and the China Audio-Video Copyright Association (CAVCA) both issue licenses for the reproduction and distribution of audio-visual products, but for different subject matters – MCSC collects royalties for “music works”, while CAVCA collects royalties for “audio-visual recordings”.

MCSC was established in December 17, 1992, as a non-profit social organization with the status of a legal organization in whose name the Chinese owners of music copyright exercise their rights by way of collective administration.³⁶ MCSC is subject

³⁴ MCSC (2010) 23 年音著协词曲著作权使用费收费总额突破 10 亿元 [online] available at:

<http://www.mcsc.com.cn/imS-13-1471.html> [last accessed May 28th 2017].

³⁵ Collecting Societies Handbook (date unknown) MCSC-Music Copyright Society of China [online] available at: <http://www.collectingsocietieshb.com/CollectingSocieties/DisplayCollectingSocieties?societyfk=184> [last accessed May 28th 2017].

³⁶ Official Website of Music Copyright Society of China (date unknown) Introduction, [online] available at: <http://www.mcsc.com.cn/mIL-5.html> [last accessed May 28th 2017].

to the vocational guidance, supervision and management of the Press and Publication of China (NCAC), the Musician Association of China, and the Ministry of Civil Affairs. The licensing fees of MCSC amounted to RMB 0.17 billion in 2015. In that year, the percentage of license fees for reproduction rights, performance rights, broadcasting rights and the right of dissemination via information network were 5 percent、41 percent、23 percent、27 percent respectively, with 4 percent collected by overseas collective societies.³⁷ The amounts of license royalties that MCSC collected in the past 23 years (unit: 10 thousand RMB yuan) are shown in Figure 1 below:

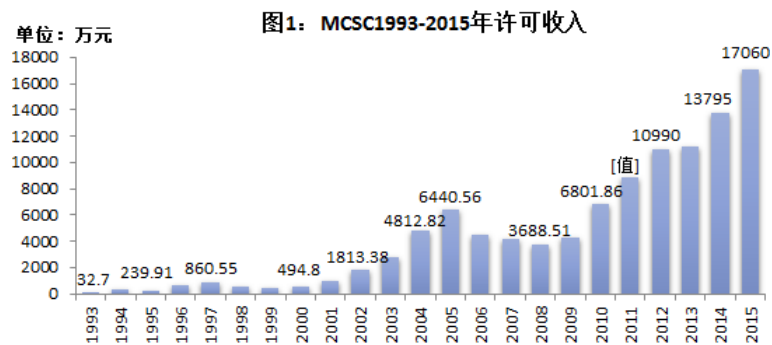


Figure 1: MCSC’s royalties in the past 23 years

MCSC’s income is distributed in four parts: royalties to individual members (30 percent); royalties to publishing companies (28 percent); royalties to overseas collective societies (25 percent), and; managing fees (17 percent). The portions of distribution in 2015 are displayed in Figure 2 below:

³⁷ Music Copyright Society of China (2016) 音著协收取作品著作权使用费累计 10.6 亿元 [online] available at: http://blog.sina.com.cn/s/blog_ad4520c60102wn55.html [last accessed May 28th 2017].

图2: MCSC著作权使用费分配比例 (此处数字取整)

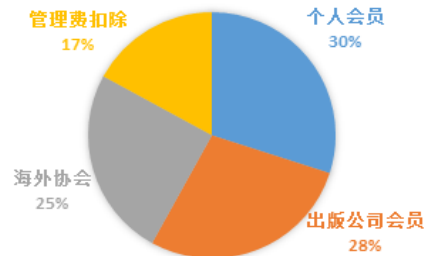


Figure 2: Distribution of royalties collected by MCSC

The China Audio-Video Copyright Association (CAVCA)

As the only collective management organization in the field of audio-video works in China approved by the NCAC, and registered in the Ministry of Civil Affairs, CAVCA collectively manages the copyright and related rights of audio-video programs according to the law, mainly in the licensing of karaoke (KTV). With the purpose of providing service, reflecting aspirations and regulating behaviour, CAVCA aims officially to safeguard the legal rights of its members, regulate the legal use of audio-video programs and enhance the development of the audio-video industry and the market in China according to Chinese laws, regulations and the international copyright treaties China has acceded to.

In 2014, CAVCA licensed 6000 KTV to use music televisions (MTV)³⁸ and collected license royalties of 0.139 billion RMB.³⁹ The latest license royalty for using audio-video music in KTV in different provinces are detailed in Figure 3 below (unit: RMB

³⁸ MTV refers to music audio-videos played in KTV which involves composers' copyrights, singers' rights, producer of the sound recording rights, and lyricists' copyrights.

³⁹ Ren, L. and Wei, H (2015) How can Japan promote users pay for music? [online] available at: <http://www.gapp.gov.cn/chinacopyright/contents/519/265861.html> [last accessed May 25th 2017].

yuan/day/terminal device)⁴⁰:

2015 Charging Standards for royalties of Karaoke copyright in different regions (unit: yuan/day/terminal)			
Region	Charging standard	Region	Charging standard
Shanghai	11.0	Henan	8.3
Beijing	11.0	Hubei	8.3
Zhejiang	10.0	Hainan	8.2
Tianjin	10.0	Guangxi	8.2
Guangdong	10.0	Shaanxi	8.2
Jiangsu	9.6	Anhui	8.2
Fujian	9.3	Jiangxi	8.2
Shandong	9.2	Yunnan	8.2
Liaoning	9.2	Sichuan	8.0
Inner Mongolia	8.7	Ningxia	8.0
Hebei	8.6	Xinjiang	8.0
Chongqing	8.6	Qinghai	8.0
Jilin	8.4	Tibet	8.0
Shanxi	8.3	Gansu	8.0
Hunan	8.3	Guizhou	8.0
Heilongjiang	8.3		

Figure 3: 2015 Standard for royalties of Karaoke copyright in different regions

Challenges and recent developments

The following part will discuss some challenges in the industry, like piracy, content competition, and profit gaining issues.

In general, Internet music is facing a lot of challenges. As mentioned before, many users are still only using apps as MP3-players. Questions remain regarding the development of better apps and guiding users to fully use their functionality. As for creativity, whilst NCM claims that individual musicians have uploaded more than 0.4 million pieces of original music as of July 2016, only a few have become popular.

⁴⁰ CAVCA (2016) Announcement of China Audio-Video Copyright Association [online] available at: http://www.cavca.org/news_show.php?un=xhgg&id=898 [last accessed May 25th 2017].

Piracy and digital music copyright protection

In 2010, although IFPI said that 99 percent of the music in China was pirated (a record tailspin in the music industry in 2012), more than 70 percent of the revenue from China's music companies came from digital music sales.⁴¹

Piracy is still the biggest problem facing the entire music industry. Some believe that pirated works have attracted a lot of listeners and thus enlarged the scale of the market, leading to prosperity of the entire industry. Others assert that if listeners do not pay, it is hard for a platform to survive in the market by only generating revenue from advertisements. In addition, it will negatively affect the life and creativity of composers, musicians and singers. According to a report about IPR protection in the creative industries, particularly in digital music, online piracy causes a loss of about 10 billion RMB annually.⁴²

Music platforms are dealing with many piracy cases every year. The costs for such cases are enormous due to the evidence-collecting, lawyer hiring, and notarization, which all require money. However, recovering costs from court cases is still quite rare. Depending on the popularity of the song, sometimes only several hundred RMB of compensation is conferred for one case.

The government is taking action against piracy in the area of music. The "Net Sword Campaign" in 2015 launched by the NCAC created an anti-piracy campaign which aims to improve online copyright management, better protect royalty holders and restore confidence in the copyright system.⁴³ It has particularly actioned for the legitimization of online music, requiring online streaming services to stop providing unlicensed music to users. Service providers are required to remove unlicensed music, and those who do not follow the order are seriously punished. The anti-piracy campaign also established

⁴¹ Guo, Y. and Hu, W. (2017) Digital Music Copyright Protection Dilemma: A Discussion on Draft Amendments of China's Copyright Law. Research on Selected China's Legal Issues of E-Business, pp 239-245

⁴² Kaiguang, W. (2016) Digital music industry suffering ten billion damages and video piracy occupy nearly 90 percent of the market [online] available at: http://www.legaldaily.com.cn/legal_case/content/2016-04/26/content_6603071.htm?node=33834 [last accessed May 25th 2017].

⁴³ Mingfang, L (2015): Net sword campaign 2015 summary [online] available at: <http://www.gapp.gov.cn/chinacopyright/contents/6241/274576.html> [last accessed May 25th 2017].

a deadline for all Chinese music services to take down their catalogues of unlicensed songs. Thus, 2.2 million unlicensed songs were removed.

On 11 July 2015, some of China's most popular video streaming platforms (including Sohu, Tencent, Youku and Tudou) established the 'Alliance for Licensed Video Streaming' at the seminar on protection of copyright in cloud storage, organized by the China Copyright Society. The members of the Alliance pledged to provide only licensed content on their platforms. They moreover agreed to cooperate closely in taking-down infringing disseminations.

The video streaming alliance follows the footsteps of a similar alliance between several online music streaming platforms. The first alliance was named the China Online Licensed Music Facilitation Alliance, established in Beijing on 29 January 2015. Members of this alliance (including big shots Baidu, Sohu, Tencent, Youku, Duomi and Alibaba) entered into the Self-Discipline Convention, by which the members promise to provide only licensed music on their platforms, and to take-down or block all unlicensed content.

In addition, China's major online music platforms such as Baidu, Sohu, Tencent, Youku, Duomi and Alibaba also signed the Self-Discipline Declaration for Protection of Copyrights in Online Music on 15 July 2015 in response to the NCAC's Notice to Online Music Service Providers Regarding Ceasing Dissemination of Musical Works without Authorization. According to the Notice, online music service providers had to remove all unlicensed musical works from their platforms by 31 July 2015. Any online music service provider found to be continuing disseminating unlicensed music, ignoring the date, would be punished with administrative penalties.

With 2.2 million unlicensed songs taken down, the Declarations and Conventions discussed above claims officially a success and a step in the right direction. These developments may lead to the launch of more streaming platforms, following the lead of Spotify, where music can be listened to both for free (with advertisements) and for a fee (without advertisements). The Declarations and Conventions expect to result in swifter decisions in notice-and-take-down procedures with the members of the alliances. However, the results depend on how much the government will watch over the signatories' shoulders, for example with anti-pirate campaigns like the Net-Sword

Campaign (剑网行动) that launched on 21 July 2010.

Apart from the above initiatives in the audiovisual industry, piracy still remains on several mobile applications and social media. It is expected that piracy will soon catch more attention from the government's (and industry's) turn to piracy via applications and social media (e.g. via sharing or forwarding) relatively soon.⁴⁴

On March 31, 2012, the NCAC published the Draft Amendment to the Copyright Law. Some articles in the current Draft Amendments, such as Articles 46 and 48, have attracted the most attention from the public, especially the music industry, because they involve unauthorized use of copyrighted material. Under the Draft Amendments, some governmental organizations would be responsible for authorizing the use of copyrighted works. Chinese television broadcasters, in particular, do not want to see changes proposed by the music industry because those changes would require the payment of royalties.⁴⁵

Such Draft Amendments also have led to a great controversy among famous local songwriters. Among them, Gao Xiaosong, a famous singer–songwriter indicated that “the Draft clearly favoured Internet.” Meanwhile, many people felt disappointed that Paragraph 1, Article 69, provides that ISPs which provide pure technical services have no examination obligation.⁴⁶ When settled, the NCAC draft will go to the Legislative Affairs Office of the State Council, which will prepare its own draft for submission to the National People’s Congress.

Legal cases and outcomes

Music has been an enormous challenge in IPR related court cases and enforcement, particularly while being involved with digital technology and Internet services. On the

⁴⁴ Unpublished document of a law firm the authors had access to.

⁴⁵ Alderson, M. (2015) China Music copyrights, [online] available at: <http://www.chinalawblog.com/2015/01/china-music-copyrights.html> [last accessed May 20th 2017].

⁴⁶ Guo, Y. And Hu, W. (2015) Digital Music Copyright Protection Dilemma: A Discussion on Draft Amendments of China’s Copyright Law, in Yimeei Guo (ed.) Research on Selected China’s Legal Issues of E-Business, Springer-Verlag Berlin Heidelberg .

one hand, there are people who have been traditionally enjoying cultural products such as music freely or at a low cost. On the other, a huge range of newly emerging enterprises, online or offline, are still seeking for directions to head towards to. Many consider the country still a backwater in IPR protection. Compare the cases of Napster in the United States with the case of Chinese search engine giant Baidu. Napster, a social network launched in 1999, offered users the ability to share unlicensed content through peer-to-peer (P2P) networking. Soon after the service was launched, A&M Records and seventeen other record labels sued Napster for copyright infringement. Only one year later, a California court granted the plaintiff's motion for a preliminary injunction against Napster, and Napster eventually filed for bankruptcy and shut down in 2002⁴⁷. In contrast, Baidu provided "deep links," that is, direct links to downloadable unlicensed MP3 files, via their music search service "Baidu MP3" (the predecessor of Baidu Music, which launched in 2002), enabling users to download pirated content from the third-party websites. Since 2005, several different organizations have sued Baidu for copyright infringement (IFPI versus Baidu, 2005; Music Copyright Society of China versus Baidu, 2008; Universal, Sony BMG, and Warner versus Baidu 2008).⁴⁸ Three of these lawsuits ended in Baidu's favour or attracted only minimal penalties. Baidu continued to offer unlicensed content until the company made a licensing deal with the major labels in 2011⁴⁹. This was seen by many as significant evidence that ISPs have to account for taking responsibility in IPR protection. Respect for music copyright is now increasing, incentivized by the competition between ISPs, who are pursuing their own exclusive music licensing deals, as mentioned above. Now that their businesses depend upon their music catalogues, they have a greater stake in a stable IPR environment.

⁴⁷ Carrier, M. A. (2012). Copyright and innovation: The untold story. *Wisconsin Law Review* 891.

⁴⁸ Civil Judgment of Haidian District People's Court of Beijing (2008) no. 7404 (北京市海淀区人民法院民事判决书 (2008) 海民初字第 7404 号), Civil Conciliation Statement of Beijing Higher People's Court no. 1694, 1700, 1699 (北京市高级人民法院高民终字第 1694、1700、1699 号民事调解书), Civil Judgments of Beijing No. 1 Intermediate People's Court (2008) no. 5043, 5026, 5154 (北京市第一中级人民法院 (2008) 一中民初字第 5043、5026、5154 号民事判决书)

⁴⁹ Dong, X., and Jayakar, K. (2013). The Baidu music settlement: A turning point for copyright reform in China? *Journal of Information Policy*, 3, pp 77–103. doi:10.5325/jinfopoli.3.2013.0077

Changes in online music market

The Internet does not only change the way music habits form, but also leads to changes in people's preferences and perspectives. Some changes identified are:

1. From "hot" music to diversified music

Before the Internet, an album was the main way of listening to music, and people could only buy a few albums to listen to. In this situation, audience's access to music was limited and only a few hits made it to the market. Preferences have changed with the emergence of the Internet. Music is being digitalized on the Internet and digital retailers have almost no costs for copying and distributing, which is benefiting online services. The Internet has opened up larger territories to sell and provide digital products without being confined to just the "local markets". All of these changes help the Internet offer more music choices to audiences with relatively little cost, and people can access a huge amount of diverse music with opportunities to try different music styles. Thus the public's interest is no longer limited to popular music. And they demand more and more diverse music like jazz, rap, and folk. At the same time, a wide variety of personalized music is gradually becoming the mainstream. Emerging concepts such as "mass-clusivity", "silver casting", and "mass customization" indicate that the influence of the traditional minority culture is expanding.

This change can be explained by the "Long Tail Theory".⁵⁰ Products in long tail which originally do not have economic value are becoming more and more important. Marginal cost reduction under the network environment helps to enhance the efficiency of production and marketing, providing the public with a wider variety of products and a wider range of choice. Previously overlooked niche products have gained public attention, and traditionally "non-hot" work is taking up more and more of the market. Previously unprofitable customers, products and markets have now become profitable.

2. From professional industry (high-entrance requirement) to public-participative entertainment

⁵⁰Chris Anderson (2006) *The Long Tail: Why the Future of Business Is Selling Less of More*. New York, N.Y.: Hyperion.

Copyright law before the Internet age was a law designed for a “minority” under which the right holders were professional creators, singers or disseminators. Nowadays, with the support of Internet technology, the cost of music production and dissemination are relatively low, which enables ordinary netizens to get a chance to step into the music industry. Represented by the spring of “Grassroots Culture”, more and more ordinary people write and sing songs to spread through Internet. The number of music copyright owners expands, and the music copyright system therefore turns into a law regulating "majority" ordinary people.

3. Emergence of mobile apps

During the ‘album age’ and in the early ‘Internet age’, people who listened to music needed a Walkman or a computer, which could be inconvenient. With the popularity of smart phones, music apps are becoming more and more important; users are carrying their mobile phones every day. If they want to listen to music, they can simply open an app in the phone. Thus, smart phones have gradually overtaken the place of former portable music devices. Listening to music does not require a big portion of the devices’ storage. Music platforms are striving to make better music apps according to users’ requirements taking into account, for example, the convenience of use, collection of music, matching of lyrics, etc. Music platforms are trying hard to make user-friendly apps, which will bring users a better user experience.⁵¹

Content competition

Unlike disseminators under the traditional music publishing industry, who make profit from selling albums, Internet disseminators (mainly ISPs) provide a variety of musical works for free (or at a relatively low price) to accumulate a large number of users and then provide peripheral services based on these users for profits. This business model aims to profit based on user volume and is also called “attention economy”, which means the more users you can attract the more profit you will earn. Music content, as an important resource to attract users, becomes an important source of profit-making.

⁵¹ The Netease Music app provides personal recommendations, and the QQ Music app provides a quick login function connected with the QQ chat software.

That can explain the phenomenon which is frequently mentioned in the Internet era that “Content is the King”. The acquisition and provision of high-quality content is understood to be the decisive factor to succeed in the music market. Based on the reasons above, platforms have fierce content competition. Instead of choosing a general license (which allows multiple licensees to disseminate the music), the platforms always select to exclusively license with high royalties to exclude others from using the same music. Unlike the content situation among video or literature websites, the content in these websites differs according to the copyright holders’ authorization. Many platforms have their own exclusive authorization of some song collections. For example, QQ Music has the exclusive authorization of music from Warner Music (华纳唱片), Sony Music (索尼音乐), YG, LOEN and other famous music companies.⁵² This structure may also change in the next few years when the authorization expires and big companies will bid again for new authorization.

Content competition leads users only to listen to and download some music from particular websites. The downloaded pieces are even difficult to be exported and played in other players or apps. Thus, users have to download several different apps to listen to music. This has caused a lot of inconvenience for users. Users are complaining about the situation and are looking for an app or platform that provides all sorts of services in one format.

On the one hand, many competitors in the industry want to get exclusive authorization to attract users. Thus, they will try their best to acquire unique content. However currently, none of the companies are powerful enough to obtain all the exclusive authorizations, or to stop copyright holders giving exclusive authorization to other companies. As a result, users have to use at least two apps to find songs they like and the license fees are quite high. Recently, to distribute the economic pressure, platforms in practice have started to sublicense the exclusive license right to other platforms, like QQ Music and Netease Music (网易云音乐). These companies cooperated, and the former

⁵² Longjuan, W. (2016) The giant has divided 100 billion music market: Tencent, Baidu and Ali, capital competition 2016 industrial storm series [online] available at: <http://business.sohu.com/20161010/n469887776.shtml> [last accessed June 1st 2017].

transferred a 1.5 million music license right to Netease, including the copyright of music from Warner Music (华纳音乐), Sony Music (索尼音乐), and JVR (杰威尔音乐).⁵³ This practice will help promote the platforms to share music resources and offer more convenience to audiences. Hopefully, this will reduce exclusive licenses in the future and encourage more non-exclusive licenses (i.e. one license that allows for multiple licensees).

Profit problems - huge cost and low revenue

Apart from piracy, platforms still face the challenge of revenue making. Although most platforms invest huge amounts of money on the Internet music market, most of them cannot achieve profit-earning goals. Up until now, only QQ Music declared that it had made profits.⁵⁴ Profit-earning has been a big problem in the Internet music market, and we try to explain the reasons behind this below.

1. Higher costs of using the Internet: new features of the music market brought by the Internet leads to higher costs of copyright licensing.

In contrast to the traditional music era when music was spread by a physical carrier (like cassettes or CDs), music is now digitalized and put online. The change of the carrier of music and the Internet environment provides new features to the music market. Those features lead to higher licensing costs. These features are as follows:

- (1) Diversity of music needs a scale license

As mentioned before, under the Internet music market the public interest turns from “hot” music to diversified and numerous music. New market features mean network music licensing is no longer determined by a handful of popular hits. To meet the audiences’ demand, distributors need to provide a wide range and variety of music which leads to a scale license.

⁵³ Why does the network music service start sublicense? [online] available at: http://news.xinhuanet.com/newmedia/2015-10/15/c_134716574.htm [last accessed March 25th 2017].

⁵⁴ Xianjiang, C. (2016) QQ music finally admit that it has made profit [online] available at: <http://ent.qq.com/a/20160729/026904.htm> [last accessed March 25th 2017].

The problems brought by a scale license is additional search and negotiation costs. To get numerous licenses, music platforms have to find the numerous copyright holders of these works and negotiate with them to get authorization one-by-one. Even with the help of collective management organizations and album companies, platforms still need to negotiate with them, leading generally to high licensing costs.

(2) Complicated copyright holders

Unlike in literature or movies, whose copyright holders are limited to the author or producer, a music work can have many copyright holders including lyricists, composers and other right holders like singers and recording producers. The diversity in right holders complicates the music license. Disseminators (mainly music platforms) on the Internet often need multiple licenses from the lyricists, composers, producers of the sound recording, and even performers. But under the traditional music industry, music companies always buy these diverse copyrights and collect them together to make albums and spread them. That means music companies are not only recording producers but also disseminators, and this identity overlap simplifies license procedures. However, in the Internet music era, music disseminators are mainly platforms, not album companies (recording producers), and this makes the identification of the music right holders complicated. This situation is increasing the cost of licensing (including negotiation costs) and decreases the efficiency of dissemination.

(3) Public-participation leads to high search costs

As discussed above, copyright before the Internet age was a law designed for a “minority” under which the right holders are professional creators or disseminators. In the Internet age, the music copyright system turned into a law aiming to regulate a "majority". This means platforms need to get licenses from many authors, who are also very different in their character. Especially, to deal with ordinary people writing music, platforms need a higher budget to search and find them, which in turn is leading to higher search costs.

2. Less revenue: Online platforms struggle to get revenue from users to cover their costs

The business model of a traditional music platform is: "free to appreciate most music + pay for high quality or minority music + advertising income". What needs to be noted

is that, unlike the online video market using advertisement as the main source of income, advertising space in the music arena is very limited due to the shorter length of music. It is impossible for platforms to use advertisement as a main source of profit. Due to piracy, enjoying music for free has become the habit of Chinese consumers. Consequently, the revenue from users' payments is limited. Meanwhile, although users are still only partly willing to pay, the number of subscribing users is growing. In recent years, the public audience gradually realizes the importance of respect for copyright. Surveys are showing that more and more music users are willing to pay for music,⁵⁵ However, for the majority of users, they still need longer time to cultivate "pay for music" habits. Thus, in recent years, platforms could not completely rely on users to pay for the appreciation of music. Accordingly, traditional business models cannot meet the requirements of current platforms, such as Pandora, iTunes, or others. They have all developed diverse services, such as radio stations, subscription services, and a music community service in order to make profit. The numerous platforms in China such as Ali Planet (阿里星球), and Xiami Music (虾米音乐) have begun to explore the new profit models, but the formation and development of new profitable models needs more time than expected.

Analysing the profit-earning issues of music platforms, licensing costs have increased the overall costs to music platforms. At the same time, platforms cannot get sufficient revenue from users to cover this cost, and this is currently the main reason behind troubles in earning money.

With the strengthening of copyright, music copyright licensing costs are increasing and platforms fail to share the cost with their final consumers (due to users' habits in getting everything for free). The platforms costs and the difficulty of making profit apparently discourage the music industry's development. To solve this problem, we investigate various ways to optimize the digital music licensing mechanism to reduce the high cost

Iresearch (2016) 2016 Online Music Industry Report, [online] available at: <http://www.iresearch.com.cn/report/2617.html> [last accessed May 29th 2017].

⁵⁵ Summarized according to the introduction of Xiami Music official website: Xiami (date unknown) Introduction. [online] available at: <http://www.xiami.com/about?spm=a1z1s.6843761.1110930425.1.PO1EWz> [last accessed May 29th 2017].

(mainly from numerous licensing links and scale licenses), and at the same time examine emerging profit-making models that are sought by music platforms, for cost-saving (new license models) and income-generation (new business models).

Ways of licensing

With the development of technology, the marginal cost for copying digital copies is greatly reduced. However, in the area of music, due to the complexity of the music copyright right holders structure, the network platform needs to negotiate with multiple copyright holders to get a music license; this takes time and requires a high budget. At the same time, platforms need to provide a huge number of music titles to meet the public's diversified needs. Therefore, under the network environment, large-scale use of digital recording products becomes a business practice. The involvement of multiple authorities and large-scale license requirements together raise costs enormously.⁵⁶ In addition, it requires establishing a mature licensing mechanism to coordinate the licensing process between the various entities and increase the efficiency of the license. This part discussed the problem of dispersed music copyright owners, how to improve the existing licensing mechanism to simplify license procedure, and how to decrease the intermediate operation links and cut unnecessary costs (negotiation costs). The following section explores three possible licensing models, discusses the possibilities of their applicability, and offers improvement suggestions.

1. Potential choices of license models—Concentrated Licenses

A concentrated license requires a copyright administrative organization to gather copyrights from a diverse range of rights holders, and license those rights to a third party collectively. This model has been widely used by many famous organizations like MCSC, ASCAP, and BMI.

Through collective management organizations, concentrated licenses can achieve collective licensing and avoid one-by-one negotiations, simplifying the procedure and

⁵⁶ Music Licensing Reform: Hearing before the Subcomm. on Intellectual Property of the S. Comm. on the Judiciary, 109th Cong. (2005) (statement of Marybeth Peters, Register of Copyrights, U.S. Copyright Office).

saving search and negotiation costs. However, disadvantages still exist. Under a concentrated license, license prices are fixed by an organization instead of by a negotiation between the copyright holder and user, which cannot reflect a real market supply-demand relationship. Pricing for collective music cannot reflect the market for every single piece of music. What is more important is that this licensing model gives a right to the collective organization which may lead to monopoly risk. The organizations may fix high license fees which damage users' interest. Despite the ability to increase efficiency, it cannot provide enough flexibility. Here we suggest that the collective organization provides members with a variety of license types (through-to-the-audience license, pre-use license, per-segment license) and allow members to license outside separately, enhancing the control of the works of the copyright owner. Taking all of these actions makes concentrated licenses more flexible.

Obviously, due to a lack of price-making ability, right holders with high-quality works tend not to join the collective management organization. However, it has to be pointed out that there is no perfect licensing model, but multiple licensing models applied in different situations are required.

2. Potential choices of license models——Statutory Licenses

A statutory license means that the use of works is not subject to consent by the author. This licensing model does not require negotiation with all right holders, which might save negotiation costs.

Through the statutory licensing system, users do not need to negotiate with right holders. This can help to reduce licensing costs and improve the transmission efficiency. At the same time, statutory licensing gives users the equal opportunity to use music works, avoiding the possibility that one user gets an exclusive license for most music and ergo monopoly status. Thus, statutory licensing can help to avoid a possible monopoly and encourage widely spread actions.

However, there are certain issues with statutory licenses, especially in the calculation of licensing fees. The remuneration standard of statutory licenses is set by the specific institutions. Although the specific institutions will consider market conditions when determining the license fee, compared with free negotiation, the price still cannot accurately and timely reflect the market supply-demand situation and also lacks adequate

flexibility. At the same time, legal licenses deprive copyright owners the freedom of deciding whether to license or not.

China currently has no statutory license system for music network transmission. If applied, it may lead to massive costs of formulation and implementation. At the same time, the Internet music market in China is still in its infancy, and emerging business models are still growing. Excessive intervention of the law against licensing is not conducive to the development of new business models and may go against their development.

3. Potential choices of license models——Musician Platform Model

Disseminators (i.e. ISPs) provide communication platforms for original music on their websites. After clicking to agree to the dissemination contract, musicians can put their works on the website for users to pay for listening or downloading. The profit of the works belongs to the authors and the ISPs gets a cut for their service. The contract concerned contains the terms of the license.

With the development of technology, ordinary people can record music by themselves. This change has led to the development of a lot of independent musicians who write lyrics, sing songs and record by themselves. In this field, the copyright owner, producers of sound recordings, and performers can be one person, and we call these kinds of musicians “original musicians”.

For such original musicians, music platforms develop a musician plan, providing communication platforms for such original musicians. Through signing a contract, musicians license the platforms to spread their music. This skips the intermediate links like collective organizations, and reduces the intermediate cost. Alibaba's Xiami Music "Xiami musician" (虾米音乐人) program provides such musicians with an independent domain name and homepage to upload their demo and album. Once musicians sign the agreement, the upload action automatically authorizes platforms with the information network transmission right (including but not limited to, the performer's right, the producer of the sound recording right, copyright in lyrics etc.), but as the authorization is non-exclusive, musicians still reserve the right to authorize any other music services. Kugou musician and Netease musician programs also provide exclusive home pages for musicians to release music and communicate with fans.

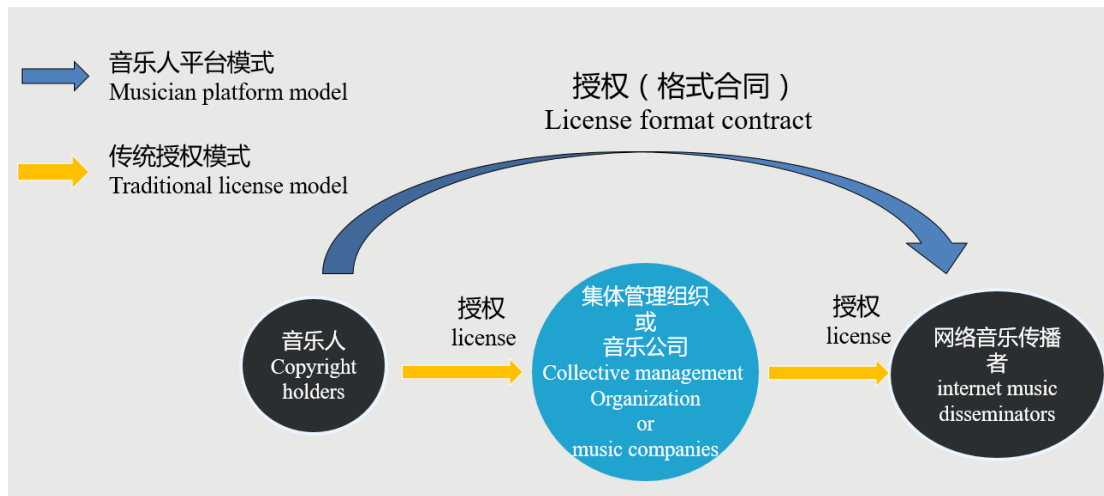


Figure 4: Comparison between traditional license model and musician platform model

This model skips the middle stage detailed in Figure 4 above, and saves the cost of the intermediate links (e.g. of statutory licenses and the cost of collective management organizations), directly connecting copyright owners and the network disseminators for cooperation. At the same time, right holders still have control of their works to decide whether to license to an independent pricing power (contracts provide options about license fee and scope of choice in a format contract which contains flexibility), and the market can fully take the role of mediator. At the same time, according to the current agreement of musician programs, network communicators often charge less or no fee at all, and the author can win sufficient rewards for their work, increasing incentives, and promoting the generation of original works and rich content in the music market. Many musicians appeal for public attention through the Internet, like Zhao Lei, Li Zhi, and Chen Li.

Supported by such musician programs, quality music works can spread rapidly and the quality of the content becomes a fundamental power. The music platform is also gradually replacing traditional record companies with the development of new content and songs. As a result, the construction of the online musician platform is of great significance.

However, this model only applies to musicians who write songs and sing by themselves;

it does not work for musicians who rely on professional album companies. Current practice shows that, for example, singer Zheng Jun and others who have joined this type of platform, have achieved good results, demonstrating that for a singer-songwriter, a musician platform still has the development prospects of a business model.

Together with online trading platforms and the popularity of online payment tools, a construction of online license trading platforms is feasible. Following the tendency of disintermediation, a combination of private licenses and digital techniques may work. Through the online platform, ISPs provide licensed content (with options about license fee and scope of license) to the public directly, without a license through the collective copyright institutions and publishing companies. Copyright holders can select the appropriate licensing fees and scope, and finish authorization automatically after signing the contract. Although this is still an optional plan which has not been put in practice, this model can solve many of the problems of licensing and save costs for music users.

New business models

Besides music licensing reform to improve the efficiency of licensing and reduce costs, the online music platforms can also extend the type of service provided and cultivate users' pay habits. Essentially, this solves the profit-earning problems from the perspective of increasing income by developing innovative new business models.

China is exploring new business models based on current music platforms and profiting from the experiences of foreign music platform models. Some websites have found new opportunities using the phenomenon of fan economics, which seem to have some untapped potential. To sum up, online music websites still need to find new ways to finance content distribution and to get profitable. Chinese online platforms came up with new business models taking into consideration Chinese user habits and governmental requirements. Big companies like Alibaba and Netease are aiming to strengthen and support individual musicians. Alibaba made the Xiami Musician Channel and released the Light-searching Project. Netease also spent a lot of money in helping individual musicians.

The reasons why online websites support musicians are manifold:

- Even though they may not make money immediately, they may attract advertisements when the platform becomes well known, and;
- Individual musicians have their own fan base, and sales of derivative products could become a source of income or even profit.

Thanks to the huge population, China has a huge market which helps new business models find their own audience and develop. From this perspective, China has become a laboratory for new service delivery. Some new business models have occurred:

1. Providing diverse characteristic services to attract users based on group background

In the given environment, a pre-requisite is that the platform has enough users. In contrast from the early age when competition between platforms was mainly through providing abundant music, platforms now attract users by providing differentiated services. Different platforms use their resources to provide differentiated services: Ali group use their advantage of an e-commerce background (Taobao, Tmall) to constitute a platform (Ali Planet 阿里星球) not only for music appreciation but also for backstage equipment renting, and peripheral products trading; Tencent QQ music relies on its social software (QQ and WeChat) to develop share functions (attracting original users to share music on their social circles); Xiami Music (虾米音乐) uses its professional background to create a community of musicians, providing peripheral services. There are also examples like the collaboration between Apple's iPod and iTunes. The mode of providing different services for cross-industry cooperation based on group background has been gradually formed.

2. The profitable model for the upstream industry: digital albums, musician programs, fan economies

Compared to a traditional music platform which mainly provides online listening and downloading services, music platforms now start their services towards upstream and downstream industries by expanding the ways and methods of spread, developing digital albums, exploring musicians' programs, and fan economies. All of these efforts have already made some achievements. For example, by participating in an album release which digitalizes a traditional entity into a digital album to release and sell on

platforms, Lay's (张艺兴) digital album successfully broke through a million units. Jay Chou (周杰伦), Li Yuchun (李宇春), and Lu Han's (鹿晗) new albums sold for a total of more than ten million yuan. QQ Music's digital music albums accumulative sales exceed 100 million yuan.⁵⁷

3. Online KTV apps

KTV is very popular in China. Thus, it is not surprising that the growth of online KTV is also a very important part of the growth of online music. Online KTV are mobile phone apps designed for people to sing songs and share with other people. It satisfies people's performance desire. In the legal context, the platforms are being authorized with the relative copyrights of the songs that they provide to users. These KTV platforms are making profits primarily from advertisement.

Changba (唱吧) is a famous free KTV mobile phone app (icon displayed in Figure 5). Users can use it to record their own songs, or the most famous popular songs. The app will provide accompanying music and lyrics. It can modify the sound of singing by its inbuilt reverberating and echo effect. Singing can be rated by a rating system and the scores can be shared and compared with other users. Changba cooperated with Wechat to hold a KTV competition in July 2012. Users could share their singing from the app of Changba to Wechat to participate in the competition. The cooperation was understood as a sign of Tencent's later acquisition of Changba.⁵⁸

However, in 2014, Tencent made its own online KTV app called Quanmin Kge (全民K歌) (icon displayed in Figure 5). Each user can create a homepage and post their own singing. Other people can send them virtual gifts to praise their performances. The

⁵⁷ QQ music announced its digital album sales have been more than a hundred million, see: QQ Tech (2016) QQ 音乐宣布数字专辑总销售额破亿 [online] available at:

<http://tech.qq.com/a/20160707/041207.htm> [last accessed June 1st 2017].

⁵⁸ Siliang, Y. (2012) Sing collaborate with WeChat, suspected acquisition by Tencent? [online] available at: <http://www.ebrun.com/20120731/52370.shtml> [last accessed June 1st 2017].

virtual gifts are purchased

with real money and the ones who receive it can cash-in that money. The platform and users will share the income from the virtual gifts. The users of the platform have reached 0.3 billion, and some popular users have their own fan base.⁵⁹ The model is much like Changba. There are differences by offering different ways of singing, as well as the publishing system. Tencent's social communication system helps in the development of Quanmin Kge because people can ask others to participate in singing through the chatting tools of Tencent. Quanmin Kge may also be highly recommended by Tencent.

Singing using these KTV apps is actually quite like real KTV. Users always sing popular songs and the creativity of the singing is not enough to make it a new piece of work per the definition of copyright law. It is much more about the social community than a talent show. The platforms pay license fees for the lyrics and the song music.

With the booming of new business models and more diverse ways of using copyright, a more liberal legal environment is required for the development of new business models which maintain the flexibility of a license system. Allowing new ways of licensing should be encouraged.

⁵⁹ Liao, M. (2016) From 0 to 300 million, the management way of Quanmin Kge [online] available at: <http://mt.sohu.com/20161228/n477151986.shtml> [last accessed June 1st 2017].



Figure 5: Changba and Quanmin Kge icons

Cultivating the music industry

As it can be seen from the new business models, there is a huge difference between the business model of the music market and the business model of the traditional music industry. The traditional recording industry directly benefits from the music carrier distribution business model. However, in the Internet economy the business objective is to seek for consumers to directly pay for IPRs under new business models. Under the Internet environment, the music content has to be attractive for users. In this case, the network service provider is emphasizing the sharing of more music resources, and improves the transmission efficiency.

In developing new business models, network communicators of music should use licensing in a flexible way. But this flexible operation of IPRs may also pose many challenges for the rights of traditional copyright, the type of work and the licensing mechanism. We should see IPRs as the continuous development of law, the adjustment of objects, and a way which will develop with the emergence of new products and new technology. Legislation has its limitations when there is an arising business model in the exploration stage, and the existing law cannot always cover and regulate all the trading processes. Most of the new model of exploration will be built through the freedom of contract and the use of the existing strong IPR legislation, instead of possibly risking hindering the development of a new business model.

In order to promote the development of new business models, regulation including serious punishment should be only applied for serious infringement. Thus, this leaves more room for market meditation by using and admitting the legal status of contract. Therefore, the use of contract law should be highlighted, especially for the use of contract under the existing copyright law system to explore new licensing types. In order to promote the development of a new business model, the excessive involvement of IPRs should be avoided, leaving more room for market parties by encouraging the use

of contract. By strengthening the integration of copyright law and contract law, we will enhance flexibility to ensure the development of new models.



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