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Copyright Collective Management in China --My Personal Perspectives

Prof. Dr. Lin Xiuqin

Intellectual Property Research Institute, School of Law
Xiamen University, PR China

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State Intellectual Property Training(Fujian) Base

Intellectual Property Research Institute of Xiamen University





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Outline

- ❖ **1. Brief Introduction to China's CMO and Legislations**
- ❖ **2. Problems faced by CMOs in China**
- ❖ **3. Key Issues in Revising China's Regulations on Copyright Collective Management**
- ❖ **4. Conclusions**





1. Brief Introduction to China's CMO and Legislations

- **1.1 CMOs exist in China**
 - **Music Copyright Society of China (MCSC)**
 - **China Audio-Video Copyright Association (CAVCA)**
 - **China Film Copyright Association (CFCA)**
 - **China Written Works Copyright Society (CWWCS)**
 - **Images Copyright Society of China (ICSC)**
 - **Music Copyright Society of China (MCSC) founded in 1992, is the largest CMO in China**





BRIEF Introduction to China's CMOs

Music Copyright Society of China (MCSC), Est. Dec. 1992
7000 MBs in China, agreement with 50 states

China Audio-Video Copyright Association (CAVCA)
Est. Dec. 2005

China Written Works Copyright Society (CWWCS)
Est. Oct. 2008

Image Copyright Society of China (ICSC)
Est. 2008

China Film Copyright Association (CFCA)
Est. 2009





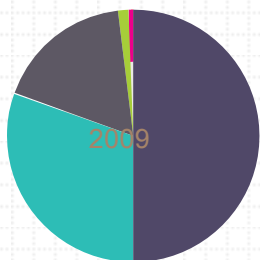
1.2 CMOs in Practice--MCSC

- ❖ **Eg. MCSC—for music**
- ❖ **The most active CMO in China**

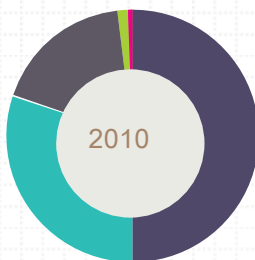




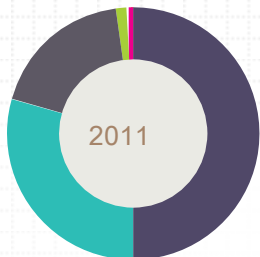
Membership of MCSC



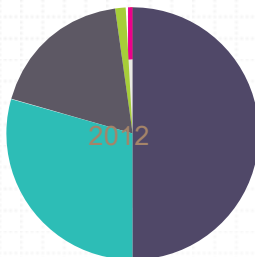
Total Members
5789
Composer **3568**
Author **2008**
Successor **166**
Publisher **45**
Other **2**



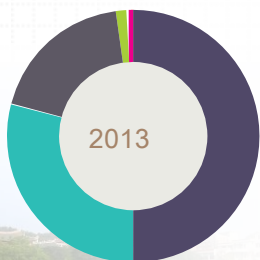
Total Members
6154
Composer **3732**
Author **2190**
Successor **176**
Publisher **53**
Other **3**



Total Members
6523
Composer **3855**
Author **2414**
Successor **194**
Publisher **57**
Other **3**



Total Members
6903
Composer **4067**
Author **2563**
Successor **211**
Publisher **59**
Other **3**



Total Members
7301
Composer **4277**
Author **2726**
Successor **231**
Publisher **62**
Other **5**

Source : Annual Report of MCSC(2013)





Licensing Revenue of MCSC

MCSC's licensing revenue **112** million yuan RMB in 2013; 109 million, 2012

Source of revenue (by rights): 10,000

Performing rights	5288.84
Broadcasting rights	3474.30
Mechanical rights	457.03
Internet revenue	1472.57
Revenue from Overseas	533.56

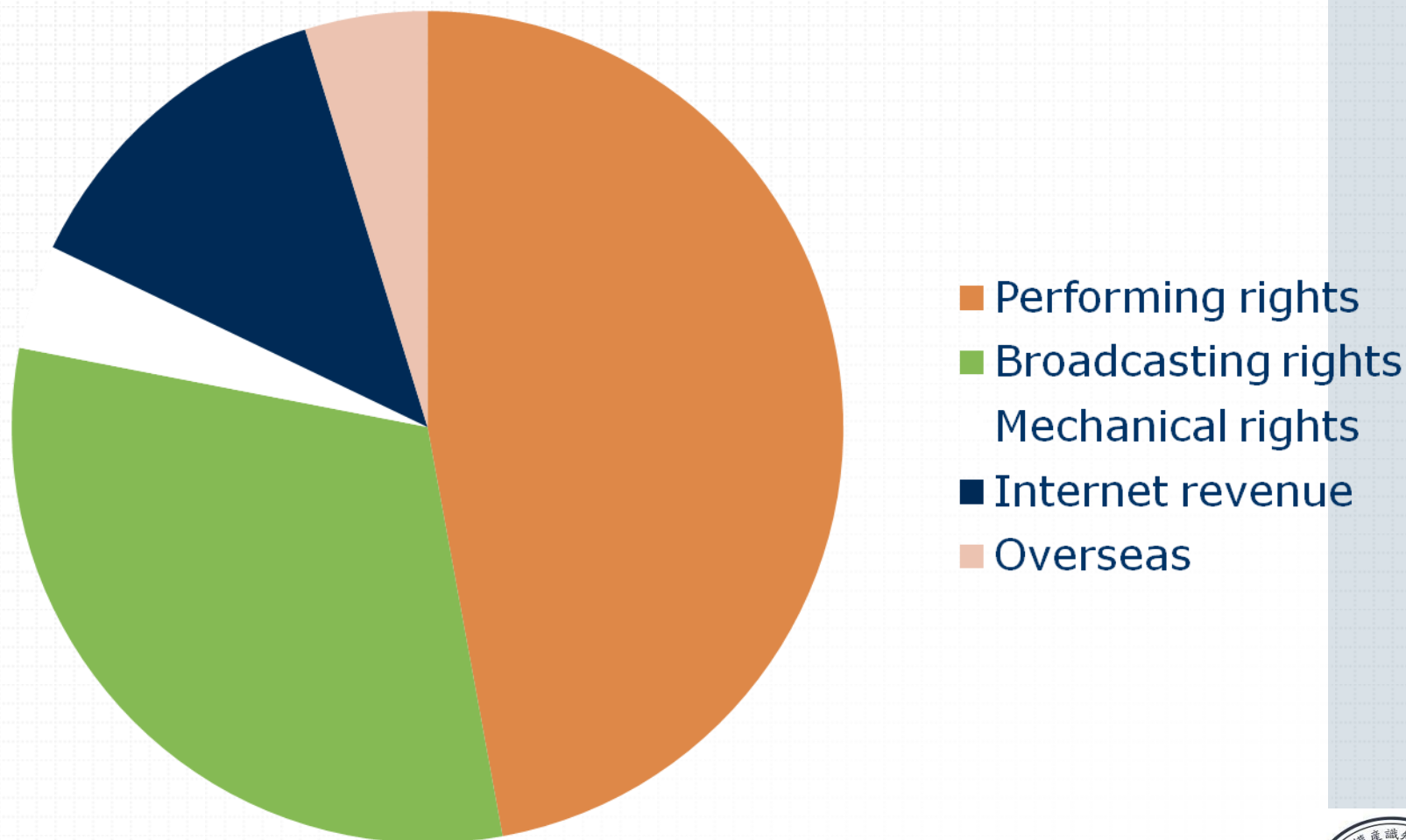
Source : Annual Report of MCSC(2013)





Source of licensing revenue

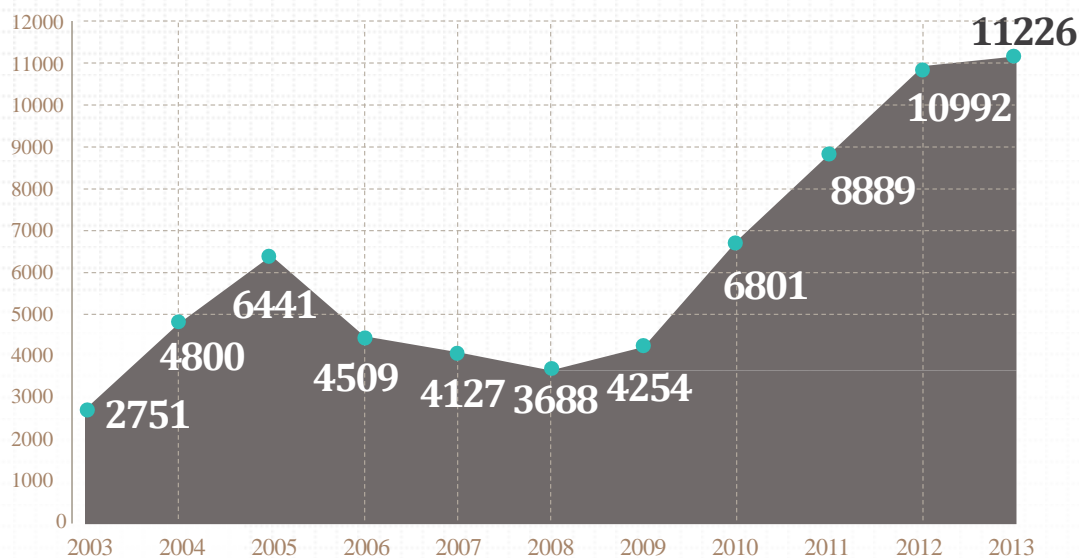
Revenue





Growing Licensing Revenue of MCSC 2003-2013

Diagram of Licensing Revenue from 2003-2013 (Unit:10,000 yuan RMB)



Source : Annual Report of MCSC(2013)

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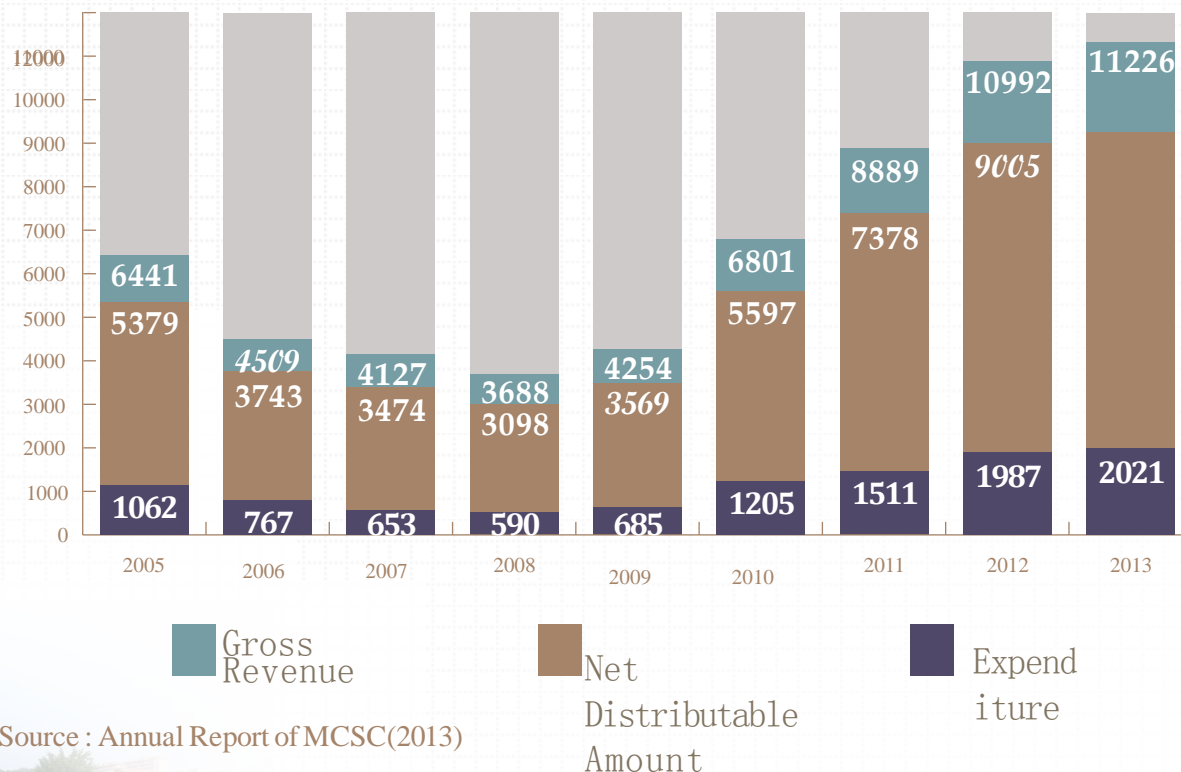
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Distribution

Annual Gross Revenue, Net Distributable Amount and Expenditure from 2005-2013 (Unit 10,000 yuan RMB)



Source : Annual Report of MCSC(2013)





1.3 Legislation on CMOs

China's Copyright Law	1990 Revised: 2001	no provisions on CMO
Implementing Regulations of Copyright law	2002	no provisions on CMO
Regulations on Copyright Collective Management	2004 Entered into force: 1, Mar. 2005	Art. 1-48





2. Problems faced by CMOs

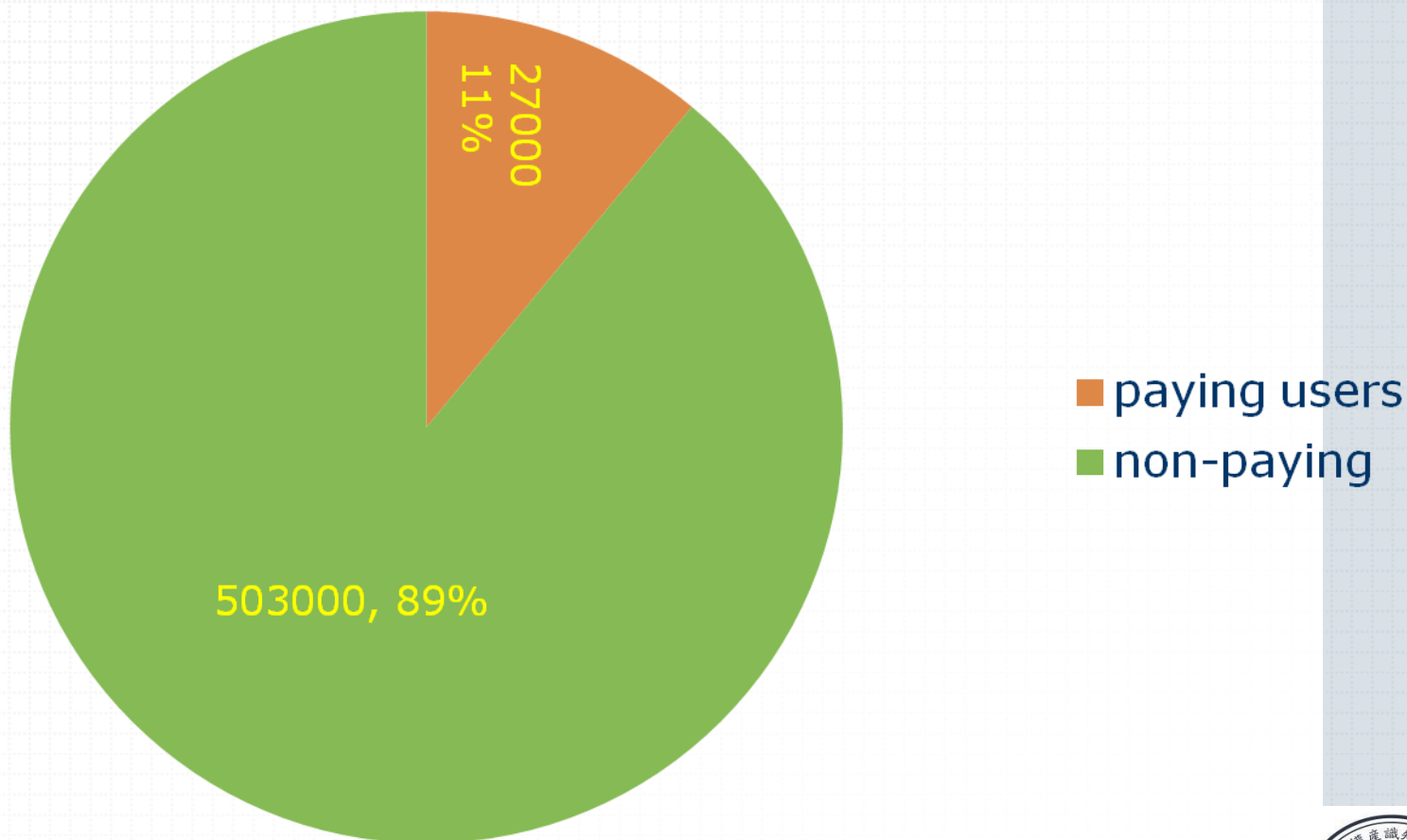
- ❖ **2.1 Difficult to collect fees**
- ❖ **2.2 “unfair” treatment in litigation**
- ❖ **2.3 Credibility is under critical challenge**





2.1 Problem 1: difficult to collect fees

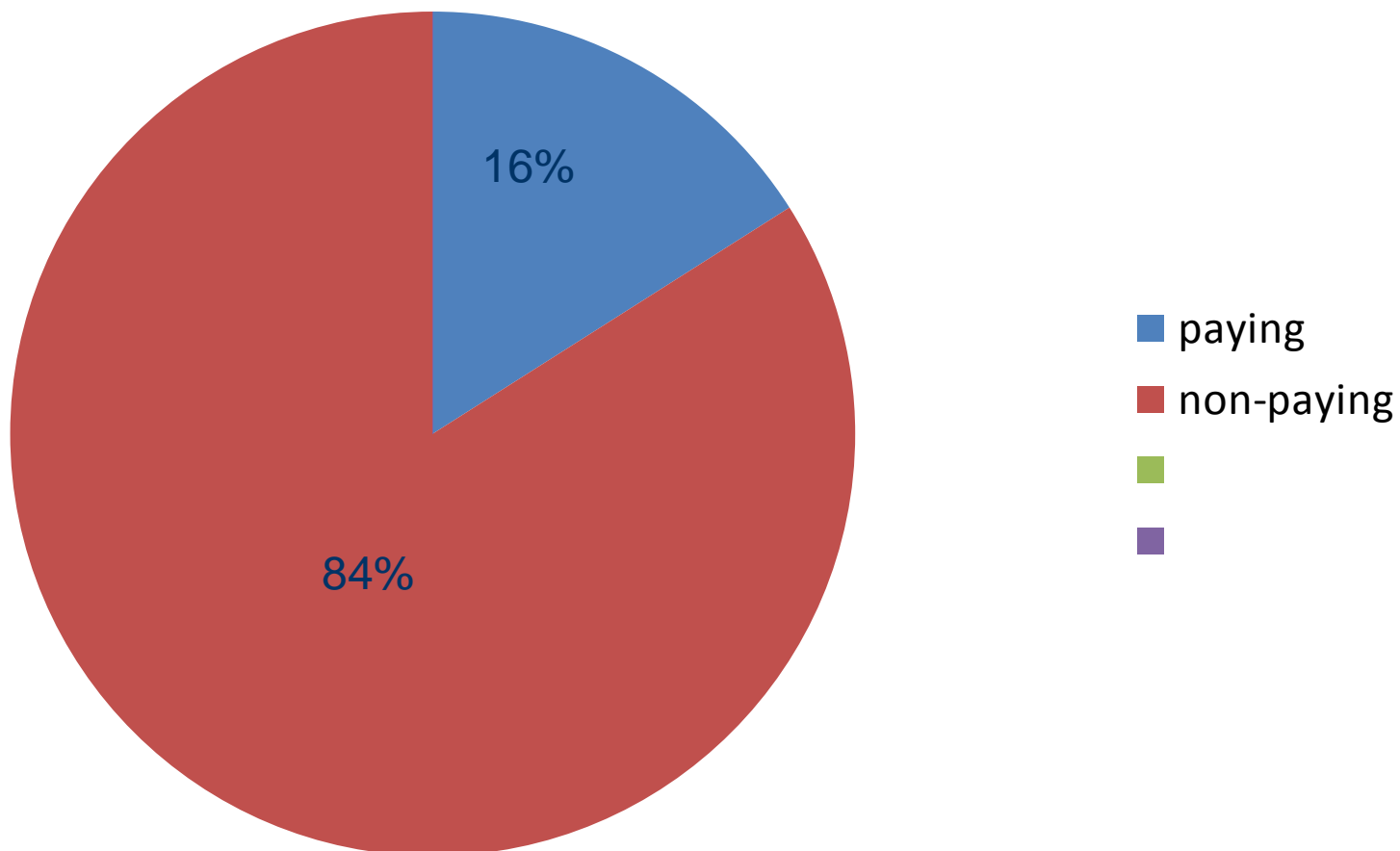
Percentage by number of OK shops: CAVCA, 2013





Percentage by number of OK rooms

83749 rooms paid, **CAVCA, 2013**





Use on internet

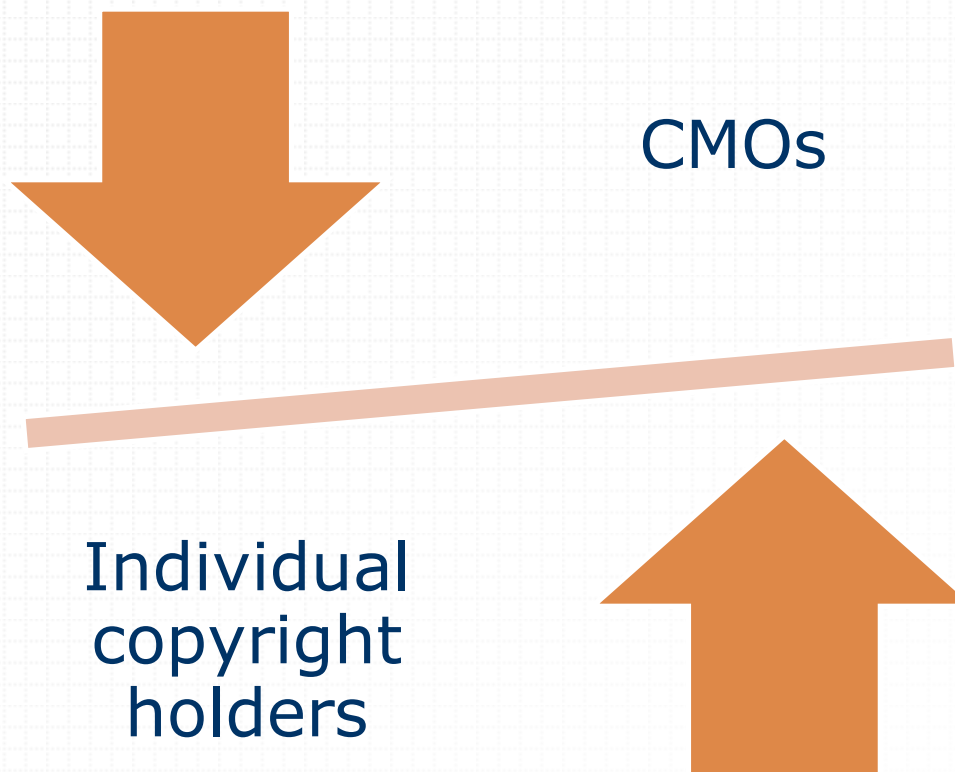
- ❖ **Different business models: free**
- ❖ **MCSC managed to sign a deal with Baidu**





2.2 “Unfair” treatment in litigation

Compensation awarded by courts





Case Study: “unfair” treatment

Individual right holders

- ❖ “Flying Song of Time” 《岁月飞歌》
- ❖ Awarded 6890+25000

CMOs

- ❖ “Flying Song of Time”
- ❖ 1000+8000
- ❖ MCSC v. X Supermarket
- ❖ 500/ 1 song+
- ❖ 1200 expense





2.3 Problem:3

The accountability and credibility of CMOs are under challenge:

- ❖ High management fees
- ❖ Monopolistic
- ❖ Lack transparency, eg. setting fees, distribution of fees





3. Key Issues

- ❖ **3.1 Structure framework of CMOs: Monopolistic or Competitive?**
- ❖ **3.2 Whether China should adopt extended collective licensing scheme (ECL)?**





Structure framework of CMOs: Monopolistic or Competitive?

Current Law

❖ **Monopolistic**

- ❖ **1 CMOs for 1 type of work (Regulations, Art. 7(2))**

My suggestion

- ❖ **Limited competition**
- ❖ **2-3 CMOs for 1 type of work, reasons:**
 - ❖ **Efficiency**
 - ❖ **To reduce or avoid monopoly**
 - ❖ **Simplified**
 - ❖ **Not to confuse users**





3.2 Extended collective licensing: non-members--controversies

Reasons for ECL

- ❖ **Economic efficiency**
- ❖ Lin and Li: 2014 “Political science and Law”
- ❖ **Success in other states, Nordic countries**
- ❖ **facilitates uses of the works**
- ❖ **Reduce infringement**

Reasons against ECL

- ❖ **Private right**
- ❖ **Natural right theory**
- ❖ **Fail to respect the will of rightholders**
- ❖ **“be represented”**
- ❖ **Unsuitable for China: immature CMOs, market, awareness**





Meaning of ECL

- ❖ **A CMO is capable of representing the interests of an adequate number of right holders nationwide**
- ❖ **Existing authorization from members**
- ❖ **representing non-members**





Provisions on ECL in drafted Copyright Law

1st Draft
All right
holders

2nd Draft
Narrower: 2
types

3rd Draft
narrower





Provisions on ECL in drafted Copyright Law

- ❖ **Article 60 of China Copyright Law (1st Draft)**
- ❖ **Where an organization for collective administration of copyright can represent the interests of relevant right holders throughout the country as authorized by the right holders, it may apply to the copyright administrative department under the State Council for **exercising the copyright or related rights on behalf of all the right holders**, except where the right holders have declared in writing that the collective administration is not authorized.**





ECL Clause in China Copyright Act

Article 60 of China Copyright Law (2nd Draft)

Where an organization for collective administration of copyright can represent the interests of relevant right holders throughout the country as authorized by the right holders, it may exercise the copyright or related rights on behalf of all the right holders against the use of their works in the following ways, except where the right holders have declared in writing that the collective administration is not authorized.

(1) Broadcasting or telecasting published written, musical, artistic or photographic works by radio stations or television stations; or;

(2) Disseminating published musical or audio & video works to the public by self-service karaoke operators through self-service karaoke systems.

An organization for collective administration of copyright shall fairly treat all right owners in the transfer of relevant royalties.





ECL Clause in China Copyright Act

Article 63 of the China Copyright Law (3rd Draft for Examination)

Where an organization for collective administration of copyright can represent the interests of relevant right holders throughout the country as authorized by the right holders, it may exercise the copyright or related rights on behalf of all the right holders when their published musical or audio & video works are disseminated to the public through self-service karaoke systems and when their works are otherwise used, except where the right holders have declared in writing that the collective administration is not authorized.

An organization for collective administration of copyright shall fairly treat all right owners in the transfer of relevant royalties.





ECL Clause in China Copyright Act

In June 2014, the Chinese Legislative Affairs Office of the State Council has decided to promulgate for public comments the full texts of the Copyright Law of the People's Republic of China (3rd Draft for Examination) submitted by the National Copyright Administration to the State Council for examination and its revision notes.





4. Conclusion

- ❖ **China's CMO system is playing a more and more important role in the digital age, esp. for mass use;**
- ❖ **The Regulations on CMO should be revised to accommodate new tech**
- ❖ **China should create an environment for CMOs to compete to improve efficiency**
- ❖ **ECL is desirable for China, grounds:**
 - Private right is not absolute**
 - Rightholders may opt out, or being paid**
 - Efficiency**
 - Beneficial for users, or society as a whole**
 - Easy to use orphan works**
 - Scope of ECL be extended**





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