Copyright Collective Management in China
--My Personal Perspectives

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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)

Image Copyright Society of China (ICSC)
Esb. 2008

China Film Copyright Association (CFCA)
Est. 2009
1.2 CMOs in Practice—MCSC

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

![Diagram showing the process of Members, Licensing revenue, and Distribution]
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

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

<table>
<thead>
<tr>
<th>Source of Revenue</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Performing rights</td>
<td>5288.84</td>
</tr>
<tr>
<td>Broadcasting rights</td>
<td>3474.30</td>
</tr>
<tr>
<td>Mechanical rights</td>
<td>457.03</td>
</tr>
<tr>
<td>Internet revenue</td>
<td>1472.57</td>
</tr>
<tr>
<td>Revenue from Overseas</td>
<td>533.56</td>
</tr>
</tbody>
</table>

*Source: Annual Report of MCSC (2013)*
Source of licensing revenue

Revenue

- Performing rights
- Broadcasting rights
- Mechanical rights
- Internet revenue
- Overseas
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)
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

<table>
<thead>
<tr>
<th>China’s Copyright Law</th>
<th>1990 Revised: 2001</th>
<th>no provisions on CMO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Implementing Regulations of Copyright law</td>
<td>2002</td>
<td>no provisions on CMO</td>
</tr>
<tr>
<td>Regulations on Copyright Collective Management</td>
<td>2004 Entered into force: 1, Mar. 2005</td>
<td>Art. 1-48</td>
</tr>
</tbody>
</table>
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

- Paying users: 27,000 (11%)
- Non-paying: 503,000 (89%)
Percentage by number of OK rooms

83,749 rooms paid, CAVCA, 2013

- Paying: 16%
- Non-paying: 84%
Different business models: free

MCSC managed to sign a deal with Baidu
2.2 “Unfair” treatment in litigation

Compensation awarded by courts

Individual copyright holders

CMOs
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)?
3.1 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**
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

1\textsuperscript{st} Draft
All right holders

2\textsuperscript{nd} Draft
Narrower: 2 types

3\textsuperscript{rd} 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.
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
Thank You!