

6. Use of the Works under the Digital Environment and Collective Management of Copyright

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Use of the Works under the Digital Environment and the Collective Management of Copyright

- What can the copyright industry do in a digital technology environment?
- The need for copyrights to be managed by a third party
- "Rights" that utilize collective management
- "Entrusting," "representation," licensing and assignment of copyright
- The problems that may be present when China pursues collective management
- Collective management of copyrights in a network environment

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What Can the Copyright Industry Do in a Digital Technology Environment?

- Use digital technology to disseminate, including promoting the dissemination of traditional copies
- Use digital technology to protect copyrights and neighboring rights
- Use digital technology to serve society (guarantee reasonable use, do not leave parties engaged in illegal dissemination any excuse)
- Fight shoulder to shoulder with rights holders, attack rights infringement activities
- Promoting perfection of the legal system

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The Need for Copyrights to Be Administered by a Third Party

- Limits on the ability of individual copyright holder to exercise his or her copyright
- When the users of a work are numerous, it is hard for a copyright holder to ascertain the situation and control it
- Under the circumstances of legal licensing, the copyright holder has no opportunity for direct contact with the users, and it is hard for the former to collect licensing fees
- This makes it easy for users to acquire authorization


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"Rights" that Utilize Collective Management

- Performance rights
- Mechanical reproduction rights
- Artist's extension of copyrights for works of art
- Photocopying rights
- Public lending right
- Right of transmission to the public (cable transmission and retransmission)
- Home taping rights
- Neighboring rights of performers and record producers


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"Entrusting," "Representation," Licensing and Assignment of Copyright

- There is no single model for collective management
- Different administrative models can be utilized respectively for different rights
- Collective "representation" may be more effective
- A membership-based "licensing" model will be accepted more readily by right holders
- The "assignment" model can raise the work initiative of the administrative organization, but it requires accumulation on the capital, experience and institutional fronts


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The Problems that May Be Present When China Pursues Collective Management

1. If the administrative characteristics are too pronounced, and is tinged with coercive features
2. If the system is not perfected, it will be difficult to guarantee the benefits of right holders
3. If the operation lacks transparency, it will be difficult to obtain the trust of right holders
4. If a competitive mechanism is not introduced, there is no guarantee of work initiative
5. If the number of right holders is too great, there is no way to allocate the fees received

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Collective Management of Copyrights in a Network Environment

1. The right of transmission to the public is suited to collective management
2. There is already a realistic possibility of utilizing collective management for network transmission of video and audio works
3. Network transmission of literary works awaits the perfection of a related collective management system
4. Collective management is not equivalent to a legal license
5. Collective management means that the likelihood that lawsuits will be filed against illegal transmission will increase

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Thanks !

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(Original Text in Chinese)

Questions from the participants to Prof. TANG

[Background]

During his remarks, Prof. TANG quoted the following comment by an official from the National Copyright Administration of China (NCAC): "Operating through copyright agencies to exercise a disguised form of copyright collective management is illegal, and the NCAC will put a stop to it in accordance with the law." Professor TANG opposed this view, and argued that it lacked any statutory basis. In addition, Prof. TANG also said that administrative agencies wrongly overstep their authority and encourage monopoly by limiting the collective management organizations as set forth in China's Copyright Collective Management Act to only one operating in any given field. After Prof. TANG finished his remarks, most of the questions from NCAC officials focused on these two views.

Q. The problem encountered now in copyright collective management is too many right holders, which makes it difficult for collective management organizations to collect royalties and redistribute them reasonably. Could you comment on how to resolve this problem?

A. That is indeed the situation. And that's why I feel we need to establish multiple collective management organizations and allow for competition amongst them, so that right holders can choose among management organizations, and vice-versa.

Q. Do the distributions that you refer to include equal distributions?

A. What I'm referring to can in theory involve one of two types of distribution methods: (1) distribution according to usage rates; or (2) equal distributions to all right holders. The problem now is that only one collective management organization operates in any one field, whereas right holders are too numerous to count. Under these circumstances, how can royalties be distributed on the basis of usage rates? I'm afraid it's not possible.

(Comment from the questioner) It's my understanding that distributions are based on fee rates. A certain percentage of the money collected from an end user is paid as compensation to the right holder. What I mean to say is that we most certainly cannot divide distributions equally among all right holders. That wouldn't be fair.

(Comment from Prof. TANG) I agree. Actually, collecting royalties on the basis of usage rates or click rates is the final goal. At this point we could devote more discussion to the question of royalties and how to distribute them.

Q. Legal provisions governing reuse of content by online media are currently in a bit of disarray. Article 22 of the PRC Copyright Law provides that traditional media are allowed to reuse each other's published written works, but it does not accord this right to online media. Rules of the PRC Supreme Court governing the reuse rights of online media were changed a number of times. In the end, Article 3 of the "Interpretation (Amended) of Several Questions Concerning the Application of Law When Hearing Cases Involving Computer Network Copyright Disputes" affirmed that online media are allowed to reuse written works. However, the above rule does not clearly set forth any method of paying royalties for reused works. How do we handle this? Also, can right holders press their rights by citing international conventions?

A. The provision in Article 22 of the PRC Copyright Law allowing reuse of a published work in the print media is actually subject to lots of restrictions. You can't just reprint anything and everything in its entirety. Subparagraph (3) of Article 22 allows the reuse or citation, for any unavoidable reason, of a published work in newspapers, periodicals, at radio stations, television stations or any other media for the purpose of reporting current events. And subparagraph (4) allows reprinting by newspapers or periodicals, or rebroadcasting by radio stations, television stations, or any other media, of articles on current issues relating to politics, economics or religion published by other newspapers, periodicals, or broadcast by other radio stations, television stations or any other media, except where the author has declared that the reprinting and rebroadcasting is not permitted. You can thus see that the law limits the reuse rights of the print media. In general, only content pertaining to current events can be reused, while other works can only be reused with the permission of the author. Online media are among the media set out in the PRC Copyright Law. There shouldn't be any discrimination against online media. Article 6 of the just-issued Regulation Governing the Right of Communication to the Public provides that, in a number of occasions, providing a published work via the information network constitutes fair-use. In other words, this Regulation extends the scope of fair-use provided for in the PRC Copyright Law to the new public media--Internet.

As for your second question, it is true that Article 142 of the General Principles of the PRC Civil Code provides for priority application of international conventions, but this provision appears in the chapter dealing with civil matters involving foreign parties, so it is generally felt that the Berne Convention, the Rome Convention, and other international conventions that China has joined are only applicable to copyright disputes involving a foreign party. And in actual practice, the most frequent copyright disputes are definitely domestic cases, which are subject to the provisions of the PRC Copyright Law and related laws.