

# Copyright Directive 2019: Addressing the Value Gap 版权指令2019：解决价 值差距问题

EU-China Roundtable on Copyright  
Protection in the Digital Environment

中欧数字环境下版权保护研讨会

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# DSM Copyright Directive: The Process

## 《数字化单一市场版权指令》：修订历程

- **September 2016:** Commission proposal following a 2013/2014 public consultation and 2.5 years of economic impact assessment studies: 2016年9月：在经过2013/2014年公开征求意见和长达两年半的经济影响评估研究后，欧盟委员会提案：

Targeted revision of exceptions to copyright – some new exceptions (e.g. preservation of cultural heritage) and rejection of some suggested exceptions (e.g. UGC)

有针对性地修订版权例外条款——加入一些新的例外情形（如文化遗产保护），并拒绝了一些提议加入的例外（如UGC）

Distortion in the market for music rights online – the “Value Gap” problem

在线音乐版权市场的扭曲——“价值差距”问题

Distortion in the market for news articles online

网络新闻报道市场的扭曲

Other revisions (e.g. artists’ related provisions, no new rights)

其他修订（如艺术家的相关条款，无新权利）

## DSM Copyright Directive: The Process

### 《数字化单一市场版权指令》：修订历程

- **March 2019:** EU Parliament approves the joint text agreed with the Council and the Commission 2019年3月：欧盟议会批准了与欧盟理事会和欧盟委员会达成的联合文本
- [New York Times – “Europe Adopts Tough New Copyright Rules over Tech Industry Protests”](#)  
《纽约时报》——“面对科技行业的抗议欧洲仍然采纳了严格的版权新规则”
- [Financial Times – “EU copyright reforms are harsh but necessary”](#) 《金融时报》——“欧盟版权改革虽然严苛但是必要”
- **7 June 2019:** Directive enters into force & 2-year implementation period starts 2019年6月7日：《指令》生效，2年的执行期开始

# Online Market Distortion: The Value Gap

## 网络市场扭曲：价值差距

The “Value Gap” is the mismatch between the value of music to certain online platforms and what they pay content owners and creators. “价值差距”是指一些网络服务提供者（平台）从音乐中获取的价值与他们向音乐权利人支付的费用之间存在巨大的差异。

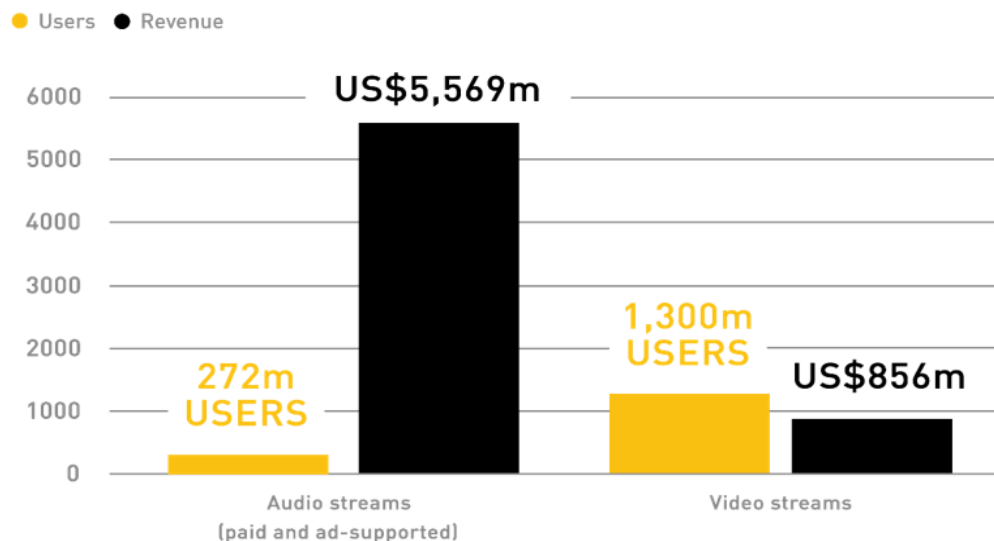
- Most online music services negotiate licenses prior to launching a service = normal, given the exclusive nature of copyright online (WIPO treaties: Art.8 WCT and Art.10 and 14 WPPT). 鉴于版权在信息网络中的专有性（参见WIPO条约：WCT第八条，WPPT第十条、第十四条），正常情况下大部分网络音乐服务提供者在提供音乐服务前都需要与权利人协商获得许可。
- Yet, some online music services claim to be mere “hosting services” and either refuse to enter into licence agreements or offer “take it or leave it” terms that vastly undervalue music rights. 然而，有部分网络音乐服务提供者声称他们仅提供“宿主服务”，或拒绝签订许可协议，或只给出“不接受就免谈”的条款，而这些情况下音乐版权的价值遭到了严重的低估。

# Online Market Distortion: The Value Gap

## 网络市场扭曲：价值差距

### AUDIO AND MUSIC VIDEO USERS VS REVENUES 2017

2017年音乐音频及视频使用者与收益对比



User upload services, seeking to benefit from inconsistent applications of online liability laws, comprise the vast majority of video streaming activity. They have the world's largest on-demand music audience, conservatively estimated at more than 1,300 million users.\* The revenue returning to rights holders through video streaming services in 2017 amounted to US\$856 million. By contrast, a much smaller user base of 272 million users of audio subscription services (both paid and ad-supported), that have negotiated licences on fair terms, contributed US\$5.6 billion.\*\*

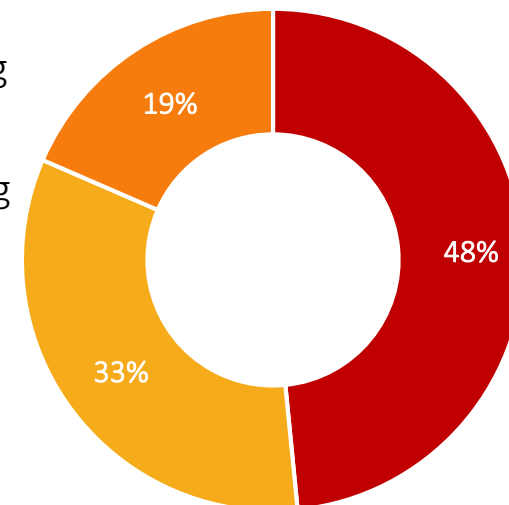
在视频流媒体服务中，使用者上传服务占绝大多数，他们有意规避网络服务提供者的责任。他们拥有世界上数量最庞大的点播音乐用户，保守估计超过13亿用户。2017年，权利人通过视频流媒体服务取得的收入却仅仅为8.56亿美元。相比之下，以公平谈判获得许可的音频订阅服务（含付费和广告支持）用户基数则小得多，为2.72亿用户，却为权利人带来了56亿美元的收入。

### AUDIO AND MUSIC VIDEO ON-DEMAND STREAMING TIME 2019

2019年音乐音频及视频流媒体点播时长

Top 4 Asian markets  
(Japan, South Korea, China, India)  
前四大亚洲音乐市场  
(日本、韩国、中国、印度)

- Video streaming  
视频流媒体
- Paid audio streaming  
付费音频流媒体
- Free audio streaming  
免费音频流媒体



# The EU Directive's Solution to the Value Gap

## 欧盟指令如何解决价值差距的问题

1

Art.17 **clarifies the liability** of Online Content Sharing Service Providers (OCSSPs), while the 2001 Copyright Directive continues to apply to all other services or users (Art.1(2) and Recital 65).

第17条规定了网络内容共享服务提供者（**OCSSP**）应承担的责任，而2001版权指令则继续适用于所有其他的网络服务提供者或用户（参见第1条第2款和序言第65条）。

2

Art.2.6 **Online Content Sharing Service Provider (OCCSP)** is a service that:

- As its main or one of its main purposes stores and gives the public access to a large amount of copyright-protected content uploaded by its users (Recital 63); and
- Organises that content (Recital 62); and
- Promotes that content for direct or indirect profit-making purposes (Recital 63)

第2条第6款网络内容共享服务提供者（**OCCSP**）提供的服务是：

- 存储并允许公众访问其用户上传的大量受版权保护的内容，并以此作为其主营业务或主营业务之一（序言第63条）；以及
- 对该等内容进行组织（序言第62条）；以及
- 以直接或间接盈利为目的对该等内容进行推广（序言第63条）。



# The EU Directive's Solution to the Value Gap

## 欧盟指令如何解决价值差距的问题

3

**Confirms that OCSSPs “communicate to the public” or “make available to the public” - i.e. engage in copyright-restricted acts - and must therefore obtain authorisation from right holders (Art.17 and Recital 61). Contractual freedom remains unaffected.**

确认OCSSP“向公众传播”或“向公众提供”即为实施版权受限行为，因此须获得权利人的授权（第17条和序言第61条）。契约自由不受影响。

4

**Confirms that OCSSPs do not qualify for the “hosting service” liability limitation under Art.14 of the EU E-Commerce Directive (Art.17.3 and Recital 65).**

**If an OCSSP has not been licensed, Art.17.4 liability limitation rules apply.**

确认OCSSP不适用欧盟电子商务指令第14条中规定的“宿主服务”免责条款（第17.3条和序言第65条）。如果OCSSP未获得权利人的授权，则适用第17条第4款中的责任限制规则。

# Essential framework conditions for a positive development of the digital music market:

## 数字音乐市场良性发展的基本框架条件：

- Freedom of contract while respecting applicable laws 在符合法律法规规定的情况下享有契约自由
- All digital content services, including user-upload content (UUC) services must be subject to the same basic rules respecting the exclusive nature of copyright: 基于版权的专有性质，所有数字内容服务提供者，包括使用者上传内容（UUC）服务提供者，必须遵守相同的基本规则：

Services must either negotiate and secure licences from right holders 服务提供者须与权利人进行磋商并获得授权

OR  
或

Must not make unlicensed content available on their online platforms 不得在其平台向公众提供未经授权的内容



# Essential framework conditions for a positive development of the digital music market:

## 数字音乐市场良性发展的基本框架条件

- ISP liability “safe harbours”, if present, should only apply to technical, automatic and passive services and should include a stay-down obligation ISP的“避风港”责任（如果存在）应仅适用于那些纯技术的、自动(automatic)和被动(passive)的网络服务，并应包括“保持删除”的义务
- Adequate legal remedies must be available - in law and in practice - to limit unlicensed online distribution of protected works and sound recordings:在法律上和实践中，必须有足够的法律救济措施来限制未经许可地在线传播受保护作品和录音制品：
  - Orders blocking access to copyright-infringing services at IP & DNS level and “dynamic” orders to address the domain-name hopping problem 在IP和DNS级别上屏蔽对侵权服务访问的禁令以及解决域名跳跃问题的“动态”禁令
  - Active law enforcement by the authorities 政府的积极执法
  - Duties of care of third-party intermediaries 第三方的注意义务

Copyright framework step-  
by-step:  
版权框架的分步完善:

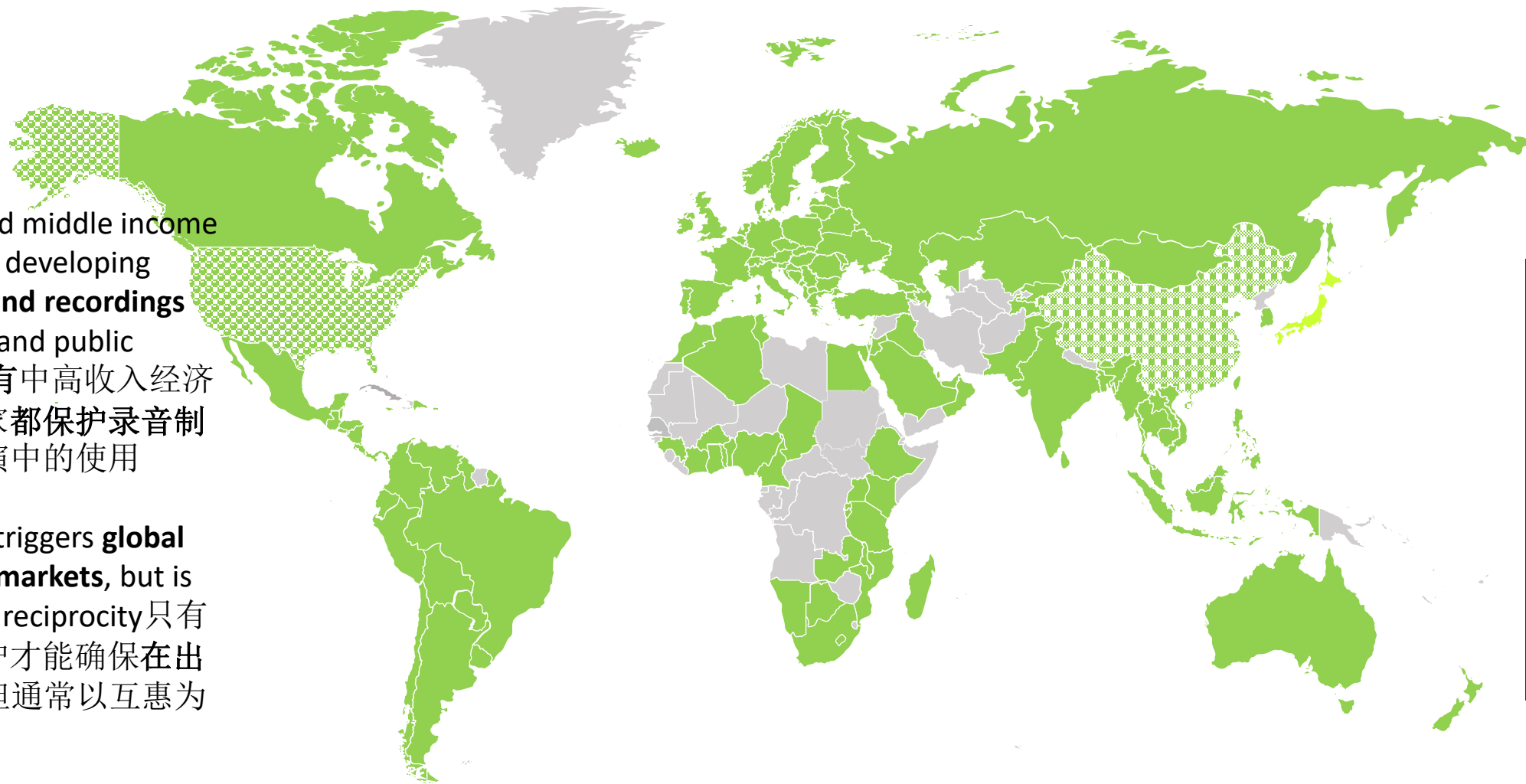
The Importance of  
Broadcasting and Public  
Performance Rights in  
Sound Recordings

录音制品广播权和公开  
表演权的重要性



# Global Standard of Protection 全球的保护标准:

- **Virtually all** upper and middle income economies and many developing countries **protect sound recordings** used in broadcasting and public performance 几乎所有中高收入经济体和许多发展中国家都保护录音制品在广播和公开表演中的使用
- Domestic protection triggers **global protection in export markets**, but is often conditioned on reciprocity 只有国内法有相应的保护才能确保在出口市场也获保护，但通常以互惠为前提




# Key rights for the music industry's development in China: 两权对中国音乐产业发展至关重要

- These rights are an essential part of the modern music industry revenue mix. Most countries (over 150) already grant these rights to producers. 这两项权利是现代音乐产业的一项关键的收入来源。世界上大多数国家(超过150个)已经将这些权利赋予了制作者。
- Broadcast and public performance rights add essential stability to the music investment cycle: generate 14% of industry revenue globally (2018) 广播权和公开表演权为音乐投资周期增加了必不可少的稳定性：在全球范围内为产业创造了14%的收入（2018年）
- Stability is essential for local music industry and newly established producers, especially when operating in markets affected by piracy (reducing physical sales and online licensing potential) or market failures such as the Value Gap (reducing online licensing revenues) 稳定性对于本地音乐产业和新成立的音乐制作公司至关重要，尤其是在受盗版（实物销售和网络授权潜力受损）或市场扭曲（如存在价值差距问题，网络授权收入受损）影响的国家中尤其如此
- Bring balance and fairness to the music sector by extending to producers and performers the rights enjoyed by authors who already enjoy broadcasting and public performance protection for their works 词曲作者已经享有广播权和公开表演权，将这种保护扩展至制作者和表演者，可以为音乐界带来平衡和公平



# Rights bringing balance to the economy: 两权可以为经济带来平衡:

- The Chinese broadcast industry can well afford to pay for music: it is amongst the **world's top 5 markets** by revenue and is forecast to **continue to grow** over the next 5 years. 中国的广电行业完全有能力为音乐付费：该行业的收入已经跻身世界前5，并且预计在未来5年内还将继续增长

 Global Entertainment & Media Outlook 2019 - 2023

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2018 - 2023 CAGR
Music, radio and podcasts in China	2,461	2,600	2,820	3,111	3,396	3,704	4,023	4,345	4,602	4,794	7.14%
Music	357	433	540	690	832	977	1,130	1,269	1,370	1,428	11.43%
Live music	184	198	213	228	244	260	275	289	303	317	5.4%
Recorded music	173	235	328	462	588	718	855	980	1,067	1,111	13.58%
Radio	2,097	2,153	2,243	2,342	2,436	2,528	2,619	2,708	2,770	2,801	2.83%
Public radio licence fees	-	-	-	-	-	-	-	-	-	-	-
Radio advertising	2,097	2,153	2,243	2,342	2,436	2,528	2,619	2,708	2,770	2,801	2.83%
TV advertising in China	15,148	14,406	13,882	14,128	14,253	14,189	14,361	14,492	14,684	14,645	0.54%
Broadcast TV advertising	15,137	14,386	13,851	14,083	14,194	14,114	14,267	14,380	14,551	14,490	0.41%
Multichannel TV advertising	647	587	593	632	657	672	694	714	738	760	2.96%
Terrestrial TV advertising	14,490	13,799	13,257	13,451	13,537	13,441	13,573	13,665	13,813	13,730	0.28%
Online TV advertising	10	19	31	45	59	76	93	112	133	155	21.3%

- Millions of venues use recorded music for public performance. In many developed markets these rights already **generate more revenue** than the broadcasting rights (e.g. in France, Belgium, Italy, Spain, Argentina) and present great further growth potential. 数百万的场所将录制音乐用于公开表演。在许多发达市场中，这些权利已经比广播权产生的收入还要多（例如法国、比利时、意大利、西班牙和阿根廷），并且呈现出巨大的增长潜力。

谢谢！

