



Copyright Protection of Creators in the Digital Environment: Transfer of Value

数字环境中创作者的版权保护：价值转移

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CISAC Overview 简介

- **Confédération Internationale des Sociétés d'Auteurs et Compositeurs (CISAC)**
International Confederation of Societies of Authors and Composers
国际作者和作曲者协会联合会
- **Established in 1926**
成立于1926年
- **Secretariat is located in Paris**
总部设于法国巴黎
- **Asia Pacific Regional Office is located in Beijing**
亚太区总部位于北京

Repertoire Managed by CISAC Members

CISAC成员管理的作品

MUSIC
音乐

AUDIOVISUAL
视听作品

DRAMA
戏剧

LITERATURE
文学作品

VISUAL ARTS
美术作品



- Worldwide network of CMOs
 - 232 authors societies
 - 120 countries/territories
 - Over 4 million creators and publishers

CISAC的成员是来自120个国家/地区的232个创作者协会，代表超过400万文学及艺术创作者和出版者，涵盖了音乐、戏剧、文学、音像、摄影和视觉艺术等全部领域

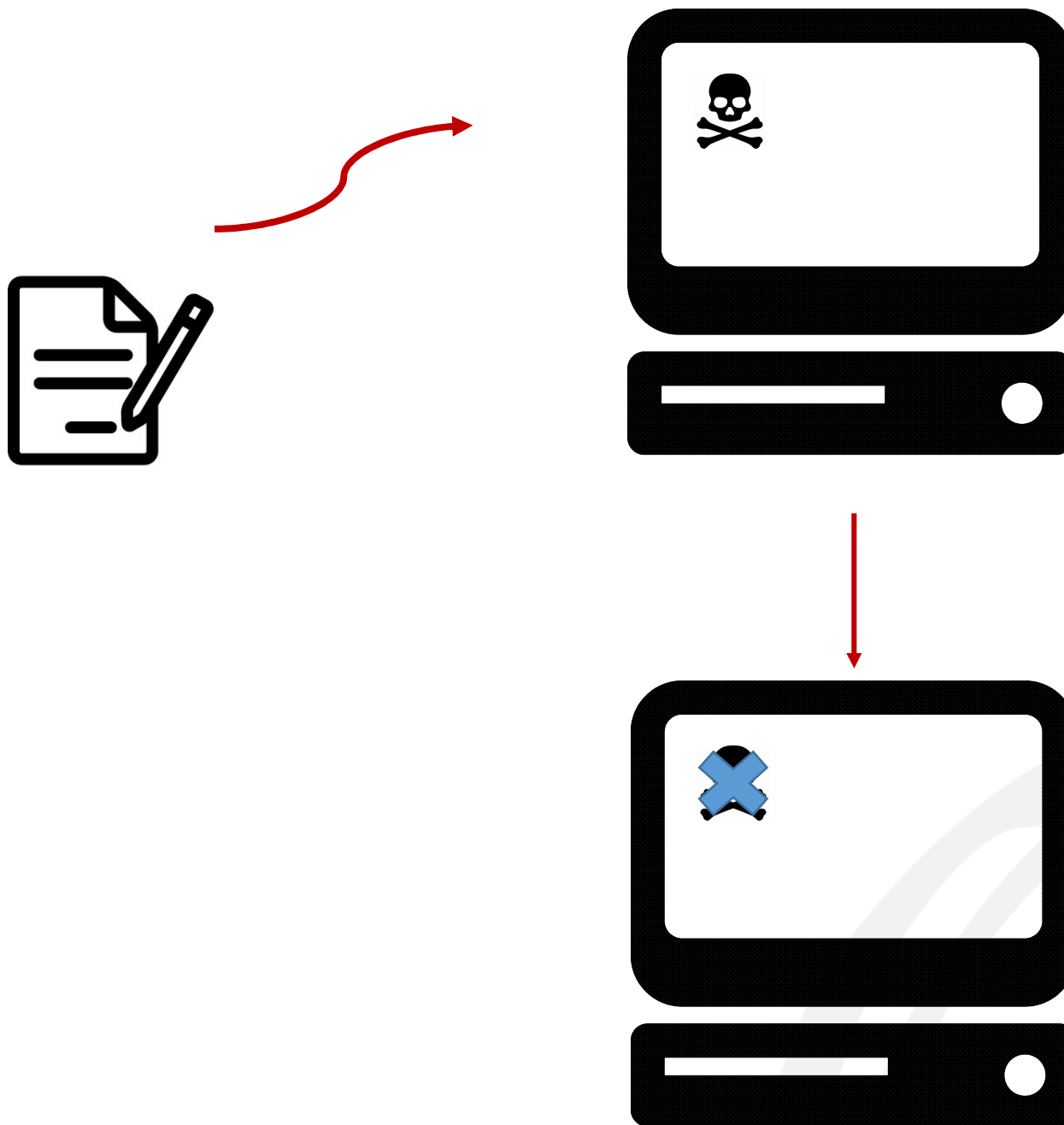
CISAC 代表性 Worldwide Presence

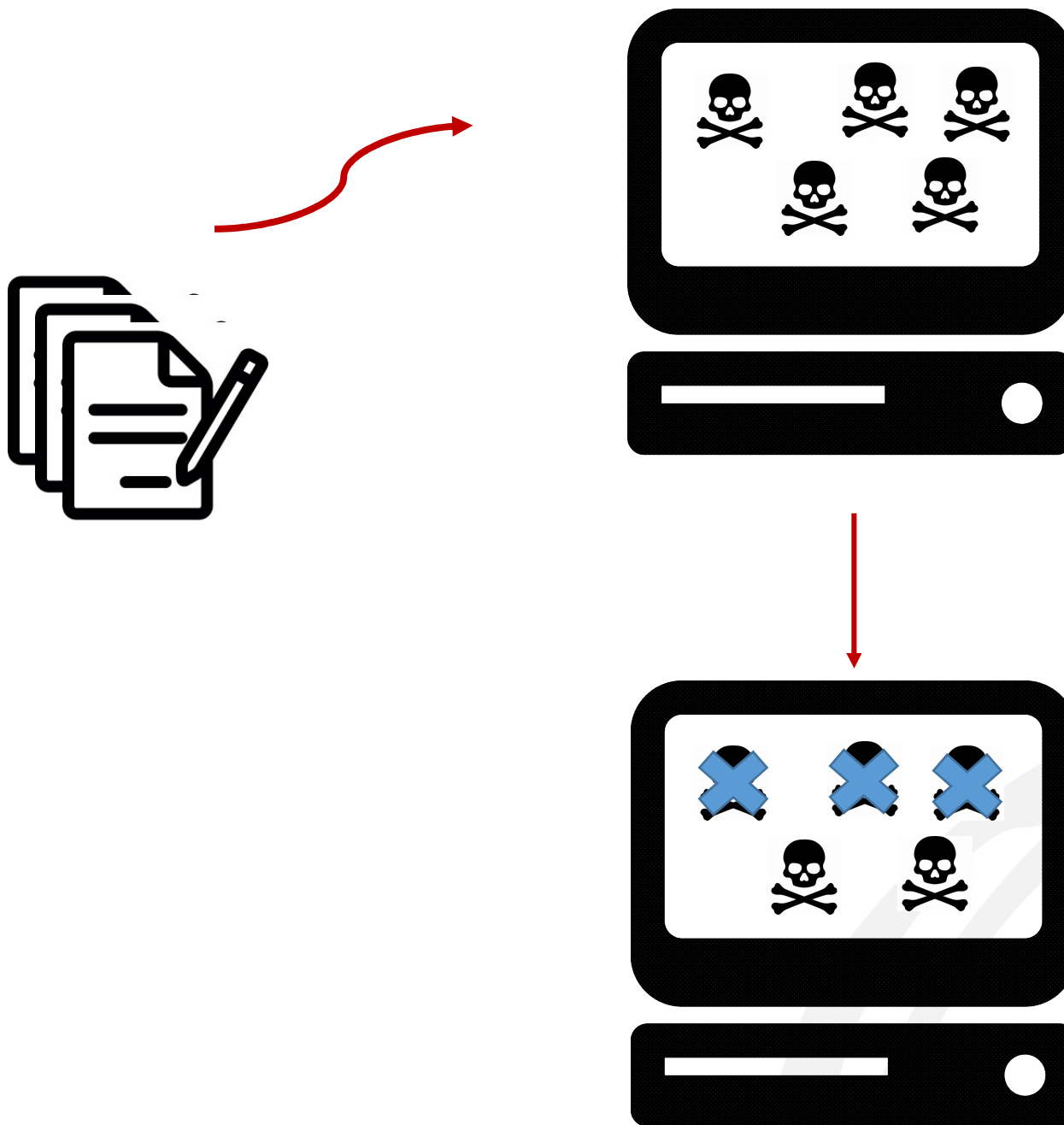


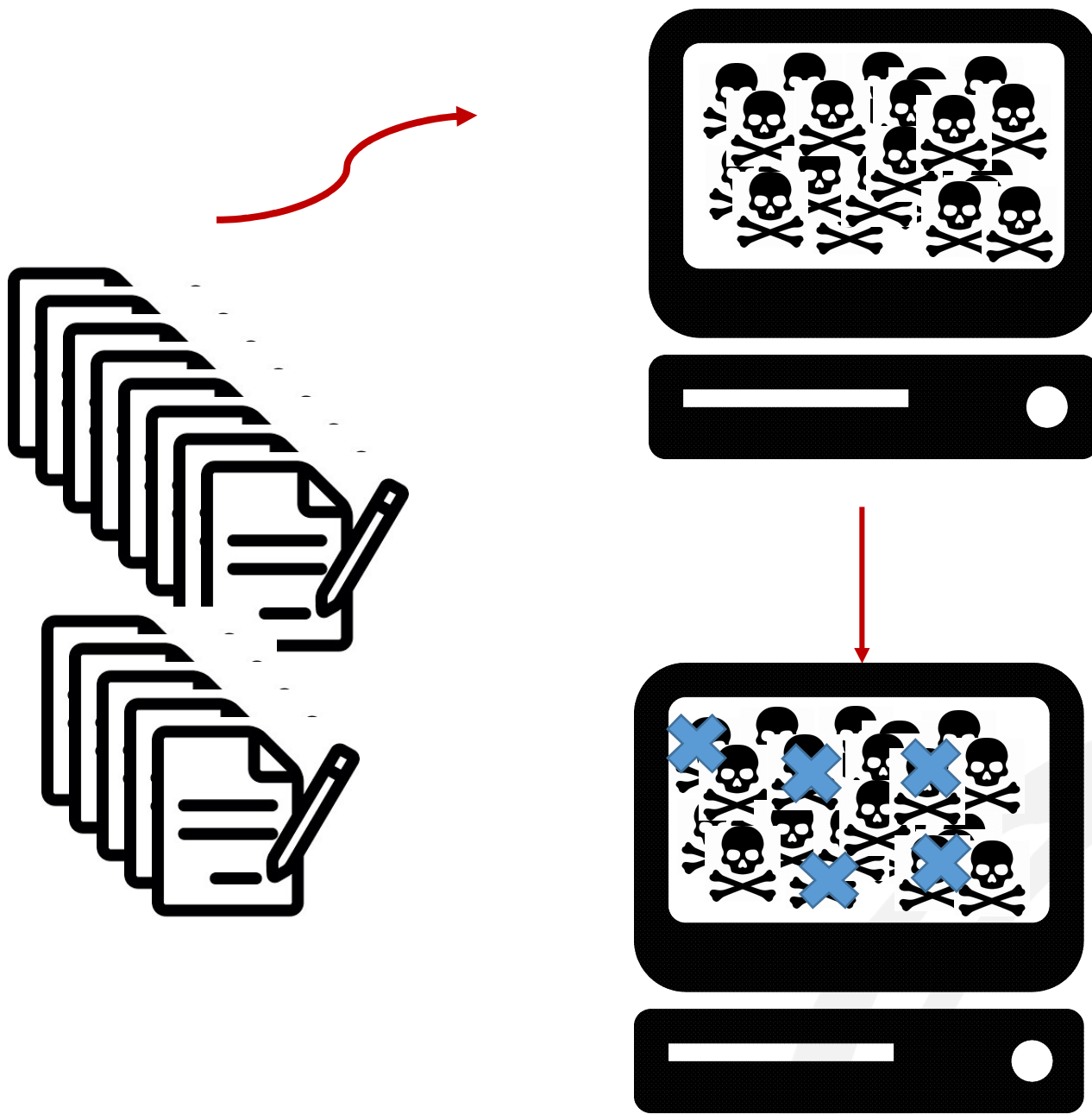
The president of CISAC is electronic music pioneer **Jean-Michel Jarre** and vice-presidents are: Argentinean film director **Marcelo Piñeyro**, Beninese singer **Angélique Kidjo**, Chinese film director, scriptwriter and producer **Jia Zhang-ke** and Spanish painter **Miquel Barceló**.

CISAC主席是电子音乐先驱**让-米歇尔·雅尔**，副主席分别为：阿根廷电影导演**马西路·品尼路**、贝宁歌手**安热利克·基霍**、中国电影导演、编剧、制片人**贾樟柯**和西班牙画家**米格尔·巴塞洛**。









Digital Licensing 数字授权



Transfer of Value: Overview

价值转移：概述

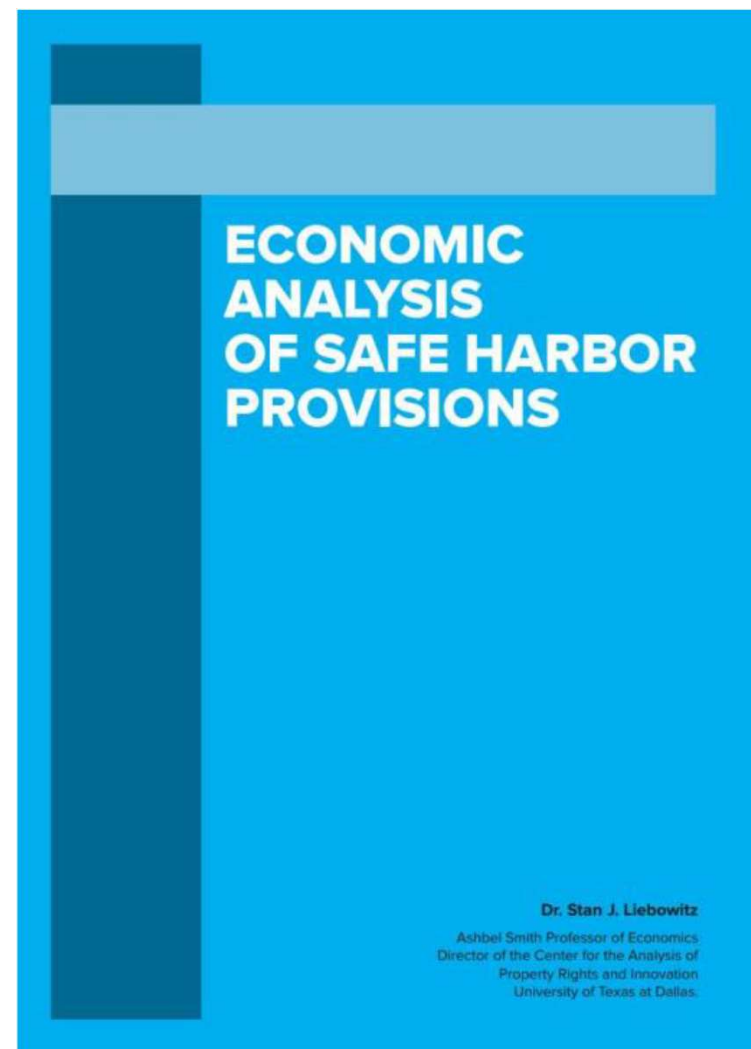
The value of cultural and creative works is being retained by many digital services instead of being passed along to the creators

文化及创意作品的经济价值多为数字服务商所存留，而非将其交给创作者

- Two key legislative issues:
- 立法中的两个关键问题：
 - Misinterpretation of the scope of “communication to the public”
误解 “对公众传播” 之范围
 - Abusive application of Safe harbour legislation
滥用避风港

“Economic Analysis of Safe Harbour Provisions”, by Ashbel Smith Professor Stan Liebowitz of the University of Texas, an economic examination showing how copyright owners have been damaged by “safe harbour” rules in copyright law

“避风港条款對经济影响的分析”
德克萨斯大学的Stan Liebowitz教授进行一项经济研究，表明版权法中“避风港”原則如何损害了著作权人



Key Findings 主要结论

- Because of the safe harbours, User Upload Content services have “an unfair advantage” when they negotiate rates for permission to use copyrighted works on their sites.

由于避风港关系，用户上传内容服务商(UUC)在协商授权使用受版权保护作品时，具有“不公平的优势”。

- As a result, UUCs either do not pay for copyright permissions or, if they pay something, they pay less than the market rate.

结果，UUC不愿支付版权许可费，或者，就算支付费用，则其支付金额为低于市场价格。

Key Findings 主要结论

- Other online services (such as subscription services) are at a competitive disadvantage when competing with UUC platforms. These services generate lower revenues and have a reduced user base, because of the distorting impact of safe harbours.

与UUC平台竞争时，其他在线服务（例如订阅服务）处于竞争劣势。由于避风港的扭曲影响，这些服务只有较低的收入并减少了基础用户。

- As a result, because of the distorting knock-on effect of safe harbours on the wider market for creative content, copyright owners are seeing reduced copyright payments from both UUC and other services. These reductions would appear to be “very substantial”.

结果，由于避风港影响在广泛的创意内容市场，並产生了扭曲连锁效应，著作权人发现UUC和其他服务的版权费用都有所减少。这些减少似乎“非常可观”。

Transfer of Value: Solution

价值转移：方案



Transfer of Value: Solution

价值转移：方案



- Article 17 第十七条:
 - **Online Content Sharing Service provider (OCSSP)** – an information society service whose principle or one of its principle purposes is to store and give the public access to a large amount of copyright-protected works or other protected subject-matters uploaded by its users, which it organises and promotes for profit-making purposes (article 2.6): e.g. UUC services : such as YouTube or SoundCloud
在线内容共享服务提供商是指，主要目的或主要目的之一是储存、提供由其用户上传的大量受版权保护的作品与其他受版权保护内容，且为营利目的组织和推广上述内容的信息社会服务提供者（第2.6条）。例如YouTube或SoundCloud等UUC服务
 - The Directive clarifies that OCCSPs 指令清楚指明，OCCPS :
 - **undertake an act of communication to the public** (article 17.1);
 - **实施了向公众传播行为**(article 17.1);
 - cannot benefit from the host status provided by the Art 14 of the E-Commerce Directive (Directive 2000/31/EC of 8 June 2000), (article 17.3);
 - 电子商务指令第14条规定的责任限制不适用于本条所涵盖的情况;
 - shall provide rightsholders with adequate information on the functioning of their practices both for licensing and enforcement (article 17.7).
 - 应向权利人提供有关其许可和执行的充分信息（第17.7条）。
 - License given to OCCSPs by rightsholders will cover the acts of individual users, the new regulation provides greater legal security for users who will be able to continue uploading and sharing videos including music and other protected content (article 17.2).
 - 权利人授予OCCSP的许可将涵盖个人行为，新法规为用户提供了更大的法律保障，使其能够继续上传和共享包括音乐和其他受保护内容的视频（第17.2条）。

Transfer of Value: Solution

价值转移：方案



- **Balanced Mitigation measures** (article 17.4). 平衡缓解措施

OCSSPs shall not be liable if they demonstrate 除非OCSSPs能证明其有以下行为，方可免责：

- Their best efforts to obtain a licence from rightsholders, and
- Their best effort to prevent the availability of content for which rightsholders have given necessary and relevant information (ex-ante control), and in any case;
- They act expeditiously to remove the content that is noticed and prevent its future availability (ex post control – notice and stay down obligation).
- 其已尽最大努力寻求权利人之授权，且
- 其已尽全力来确保权利人已提桶必要相关信息的作品，不会被提供（事前控制），且无论如何
- 其已迅速采取行动，删除权利人通知中的内容，并阻止该内容未来被上传之可能性（事后控制——通知并保留责任）。

Article 17.5 (a) provides that these measures should be adapted to the size, audience and type of work that OCSSPs give access to.

第17.5（a）条规定，这些措施应与OCSSP之类型、受众和规模相称。