

# 著作权集体管理的规范化

## Standardization of Collective Management of Copyright

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# 引言

## Introduction

最近，中国音像著作权集体管理协会发布《关于停止使用部分涉诉歌曲的公告》，要求KTV终端生产管理商和卡拉OK经营者在2018年10月31日前，删除或者不向消费者提供6609部音乐电视作品。此外，中国音像著作权集体管理协会终止委托天合文化集团著作权许可收费资格。这个事件折射出了著作权集体管理的规范性问题。

Recently, the China Audio-Video Copyright Association (CAVCA) issued the “Announcement on Stopping the Use of Litigation-related Songs,” requiring karaoke terminal production managers and operators to delete or withhold 6609 music videos from consumers by October 31, 2018. In addition, the CAVCA terminated Excellent Union Group’s license to collect fees for copyrighted content. This incident reflects the issue of standardization in the collective management of copyright.

# 需要思考的问题

Issues to be considered :

1. 著作权集体管理的权利范围是什么，能否在实践中适用延伸集体管理？

What are the rights of copyright collective management and can they be applied in practice to extend collective management?

2. 著作权集体管理组织能否委托营利性组织收费，如何保证著作权集体管理组织的非营利性？

Can a copyright collective management organization (CMO) entrust a for-profit organization to collect payments and ensure the non-profitability of the CMO?

3. 收费标准和收费技术是否有改善的途径？

Are there ways to improve the charging standards and technologies?

4. 如何加强对著作权集体管理组织的监管？

How to strengthen supervision of CMOs?

# 建立规范化的著作权集体管理制度的意义

## The Significance of Establishing a Standardized Copyright Collective Management System

著作权集体管理，是指著作权集体管理组织经权利人授权，集中行使权利人的有关权利并以自己的名义进行著作权权利行使及保护的活動。

Collective management of copyright refers to the use of CMOs to manage licenses for copyrighted material authorized by the copyright owner, exercise the rights granted by the copyright owner, and protect the copyright itself.

著作权集体管理组织，是指为权利人的利益依法设立，根据权利人授权、对权利人的著作权或者与著作权有关的权利进行集体管理的社会团体。

A CMO refers to a social group that is legally established for the benefit of the copyright owner to collectively manage the copyright and related rights of the owner upon authorization from the owner.

建立规范的著作权集体管理制度是保护著作权人利益的关键。

Establishing a standardized copyright collective management system is the key to protecting the interests of the copyright owner.

# 规范著作权集体管理的思路

## Ideas in Standardization of Collective Management of Copyright

### 1. 规范著作权集体管理组织的设立。

To standardize the establishment of CMOs.

(1) 强调著作权集体管理的依法设立，不允许其他未经批准的组织非法实施著作权集体管理活动。

Emphasis is to be placed on the legal establishment of CMOs; it is illegal for other unauthorized organizations to implement copyright collective management activities.

(2) 保障会员参会和退会的自由，在条件成熟时可以考虑设立竞争性集体管理组织，即同一类权利允许有两个以上的集体管理组织来管理。

Members shall be free to participate in and withdraw from the CMO as they see fit. A competitive CMO system may be considered when certain conditions are met. That is, it is allowed to have more than two CMOs to manage the same type of rights.

## 2. 规范著作权集体管理行为。

To standardize the conduct of CMOs.

( 1 ) 应强调著作权集体管理组织的非营利性。( 该组织能否委托天合文化集团来管理? )

The non-profit nature of CMOs should be emphasized. (Is it okay to entrust Excellent Union Group for management?)

( 2 ) 应强调管理的合法性，只对被授权的权利进行管理。

Emphasis should be placed on the legality of management and only towards the rights that are authorized.

在法律未规定的情况下不允许事实上的延伸集体管理行为。

De facto extended collective management activities are not allowed beyond the reach of law.

( 3 ) 制定的收费标准应当符合广大权利人的利益，特别应当根据新技术发展的要求制定精确的收费标准。

Charging standards should be in line with the interests of the majority of copyright owners, and in particular, precise charging standards should be established in accordance with development of new technology.

大数据、云计算、人工智能、区块链技术的运用。

The use of big data, cloud computing, AI, and blockchain technology.

# 事实上的延伸集体管理案例

## De facto extended collective management case

中国音像著作权集体管理协会在针对卡拉OK厅使用作品行为收费的工作中，对歌厅所使用的所有作品都发放了一揽子使用许可，被许可的作品包括了非会员的作品。中国音乐著作权协会在发放背景音乐的一揽子许可时也采取了同样的做法。

The CAVCA issued a package license for all works used in karaoke establishments. The licensed works include works of non-members. The Music Copyright Society of China has taken the same approach when issuing a package of licenses for background music.

在2012年宁波市中级人民法院审理的上海水田商务信息咨询有限公司诉嘉乐迪量贩KTV一案中，法院认为，“音集协”虽然是著作权集体管理组织，但其向使用者收取的版权使用费仅以得到会员的明确授权为限。“音集协”未经授权，擅自许可，侵犯了合法权利人的著作权，应予赔偿。

In the case of Shanghai Shuitian Business Information Consulting Co., Ltd. v. Jialedi KTV brought to the Ningbo Intermediate People's Court in 2012, the Court held that the CAVCA is a CMO, but the fees it collects should be limited to the authorized works from its members. The CAVCA infringed the copyright of the legal copyright owners without authorization and is liable for compensation.

### 3. 加强对于著作权集体管理组织的监督。

To strengthen the supervision on CMOs.

( 1 ) 账目应当清楚，准确。

Accounts should be clear and accurate.

( 2 ) 管理费用的提取应当合理、公开。

Management expenses should be of reasonable use and made public.

( 3 ) 加强对著作权集体管理组织负责人的监督，会员大会或者理事会可以依法罢免或者解聘负责人。

Strengthening the supervision of the person in charge of the CMO. The general assembly or the council has the power to remove or dismiss the person in charge according to law.

负责人负有竞业禁止的义务。

The person in charge has the obligation to prohibit competition.

( 4 ) 著作权集体管理组织负责人的行为构成犯罪的，应依法追究刑事责任。

In cases of criminal activity conducted by the person in charge of a CMO, criminal responsibility shall be investigated to the fullest extent of the law.

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谢谢大家!

Thank you!

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