Individual vs. collective management - legal and economic aspects

从法律和经济角度看著作权的 单独管理与集体管理

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Nature of the rights 不同性质的权利

- Private, individual rights 私人、个人权利
- Economic rights/moral rights 经济权利 / 道德权利
- Exclusive rights/rights of equitable remuneration/obligatory collective management/extended collective licenses 专有权 / 公平补偿权 / 强制性集体管理 / 延伸性集 体许可

Nature of the use and pricing 不同性质的使用和定价原则

- Uses that are easy/difficult to monitor 容易 / 难以监控的使用
- Mass exploitation/individual exploitation 大规模利用 / 单独利用
- Individual or blanket licensing 单独或总许可
- Individual/collective pricing 单独 / 集体定价

Collective management Pro & contra 集体管理的利弊

- Lower transaction costs 交易成本更低
- Better monitoring of market 更好的市场 监督
- Stronger bargaining power 更强的议价 能力
- Standards for author/publisher relations 标准的著作人 / 发行人关系
- International network 国际网络

- No individual pricing 无单独定价
- No direct deals (cherry-picking)
 无直接交易(择优交易)
- Collection-distribution delay 使用费收取、分配延迟
- Complex structure, less transparent and less direct, personal influence
 结构复杂、透明度较低、缺乏直接 的个人影响力
- Possibly collective distribution 使用费可能集体分配

Examples of individual rights management 单独权利管理示例

- Book printing rights 书籍印刷权
- Music publishing contracts; recording contracts 音乐发布合同、录制合同
- Rights to transform works into films, drama, etc. 作品转换为影视剧的权利
- Rights to show film in cinemas or TV 在影院、电视播放电影的权利
- Theater performance rights (grand rights) 剧院表演权 ("大权利")

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(France, etc.: CMOs, agencies or theatre publishers)
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(法国等国家的:集体管理组织、代理机构或戏剧发行商)

- Rights to reproduce, distribute and use computer programs 复制、分发和使用电脑程序的权利
- All matters involving moral rights 一切涉及道德权利的事宜
- Etc. ... 等等......

Different collective management formats不同的集体管理模式

- Full documentation of repertoire全面曲目归档
 - Management of individual rights (theatre; illustration rights)
 单独权利(戏剧、插图权)的管理
 - Management of repertoire with complete logging of use (mechanical rights in music; artists' resale rights)
 - 曲目管理中对使用进行全面的日志记录(音乐复制权;艺人的重售权)
 - Management of repertoire with partial logging of use (performing rights; reprographic reproduction rights)
 - 曲目管理中对使用进行部分日志记录(表演权;底片再制权)

Different collective management formats不同的集体管理模式

- Limited or no documentation of repertoire有限曲目归档或无曲目归档
- Management of complete package of different rights with incomplete or no logging (cable retransmission of broadcasts; blank recording media royalties)
 在管理一揽子不同权利时,进行不全面的日志记录或不使用日志记录(广播有线转播;空白录制媒体使用费)
- Management of repertoires with little documentation or logging and/or very small amounts (London principles)
 曲目管理中很少进行归档或进行日志记录,及/或进行少量的归档和日志记录(伦敦原则)

New developments 新发展

- Market developments, such as sales of copies vs. streaming and performance 市场新的 发展趋势,如复制件销售 vs. 媒体流和表演的销售
- Block chain technology 区块链技术
 - Web-based licensing, based on secure system where all previous transactions are included in license

网络许可,一种建立在安全系统之上的许可模式,许可中涵盖所有之前的交易信息

- Very data processing-heavy and therefore perhaps not immediately suited for the purpose 需要大量的数据处理,因此可能目前并不能满足目的
- Management in the digital environment 数字环境中的权利管理
 - Do-it-yourself possible, but not likely for small individual rights owners; increasingly interesting for e.g. music publishers and other owners of large repertoires

自主运营是有可能的,但对于小型个体权利人来说可能性不大;对于音乐发布商和其他大型曲目权利人来说越来越有吸引力

New developments 新发展

- Increased competition among CMOs 集体管理组织间的竞争加剧
 - Unease among societies representing smaller cultural communities; retain performing rights, etc., but may lose important turnover

不同组织间的紧张关系体现了文化社群小众化的趋势;可通过保留表演权等方式,但可能会丧失重要收入

• Orphan works, cultural heritage 孤儿作品、文化遗产

Thank you 非常感谢

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