

*ifpi* representing the  
recording industry  
worldwide

# 互联网音乐内容保 护和音乐产业发展

## Internet Music Content Protection and Music Industry Development

IFPI Beijing Office

Dec 2023



# 国际唱片业协会 (IFPI) 简介

## About IFPI

国际唱片业协会 (IFPI) 成立于1933年，是代表全球唱片业的国际性组织，其会员是来自全球70多个国家和地区的8000多家唱片公司。国际唱片业协会在瑞士注册，秘书处设在伦敦，协会致力于在全球范围内增进录制音乐的价值、保护录音制作者的合法权益、拓展录制音乐的商业使用。

Founded in 1933, the International Federation of the Phonographic Industry (IFPI) is an international organization representing the global recording industry, with more than 8,000 record labels from over 70 countries and territories. Registered in Switzerland and with a secretariat in London, IFPI is committed to promoting the value of recorded music, protecting the legal rights of producers of sound recordings, and expanding the commercial use of recorded music on a global scale.

国际唱片业协会北京代表处成立于1994年，国际唱片业协会大中国区办公室成立于2017年，办公室设在北京。主要负责有关录音制品的版权认证、版权保护；就有关会员公司的版权事宜提出建议和提供咨询；对会员公司侵权问题采取维权行动；进行有关版权保护、反盗版方面的教育和培训。

IFPI Beijing Representative Office established in 1994, IFPI Greater China office was established in 2017 and is based in Beijing. We is responsible for copyright certification and protection of sound recordings; advising and consulting on copyright matters relating to member companies; taking action against infringement on members' legitimate rights; and providing education and training on copyright protection and anti-piracy.

# 全球及中国音乐产业概览

## Overview of global and Chinese music industry

### 1. 2022年全球音乐市场

全球录制音乐收入总计262亿美元

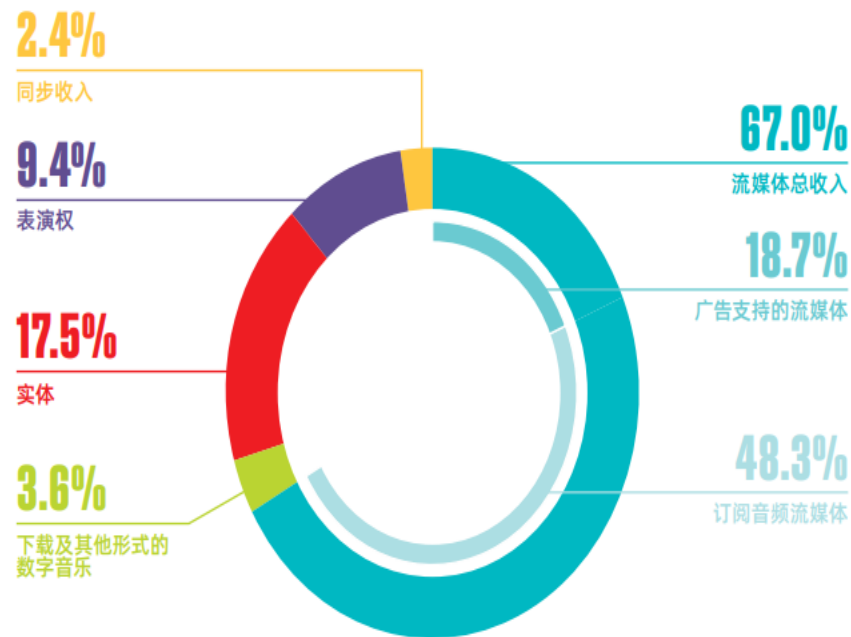
- 流媒体总收入在全球收入中占比 67%，共计175亿美元。
- 实体唱片收入占17.5%，共计45亿美元。

### 1. Global recorded music industry revenues in 2022

In 2022, Global recorded music revenues US\$26.2 billion in total.

- Streaming revenue accounted for 67% of global revenue, totaling US\$17.5 billion.
- Physical music accounted for 17.5% of global revenue, totaling US\$4.5 billion.

2022年全球录制音乐收入的细分



# 全球及中国音乐产业概览

## Overview of global and Chinese music industry

### 2. 国内录制音乐产业收入

2022年，中国音乐市场大幅增长28.4%，首次跻身全球前五大市场。录制音乐产业的总收入为 12亿美元，即94亿元人民币。

- 流媒体的收入占国内整体产业收入的 89%;
- 实体唱片收入占比为4.1%。

### 2. Chinese recorded music industry revenues in 2022

In 2022, China recorded music market grows significantly by 28.4%, ranking among the top five global markets for the first time. The total revenue of the recorded music industry in China in 2022 was US\$1.2 billion ( RMB 9.4 billion).

- Revenues from streaming accounted for 89% of overall industry revenues;
- Revenues from physical accounted for 4.1 % of the overall industry revenues.

# 数字音乐产业发展历程及现状

## Development history and status quo of the digital music industry

- **2015年7月，国家版权局下发《关于责令网络音乐服务商停止未经授权传播音乐作品的通知》，要求各网络音乐服务商于2015年7月31日前将未经授权传播的音乐作品全部下架。随后，16家音乐服务商下线未经授权的音乐作品220余万首，并开始探索收费模式。**

In July 2015, NCAC issued the Notice on Ordering Online Music Service Providers to Stop Unlicensed Dissemination of Music works. Subsequently, 16 music service providers took down more than 2.2 million unlicensed songs and began to explore the charging mode.

- **2016年前后各大传统音乐平台得到合法授权，包括QQ音乐、酷我、酷狗、网易音乐。开启付费时代。**

In 2016, major traditional music platforms were legally authorised, including QQ Music, Kuwo, Kugou and NetEase Music. Opening the era of payment mode.

- **2018年至2022短视频平台和直播平台进入从快速增长期进入成熟期，逐步与唱片公司进行授权。**

2018 to 2022, short video platforms and live streaming platforms enter a period of maturity from a period of rapid growth, gradually obtain licenses from record labels.

# 数字音乐产业发展历程及现状



## Development history and status quo of the digital music industry

当前，据第三方数据统计，网络音乐用户规模达到7亿多，主流数字音乐平台的付费用户保持稳定。但是问题依然存在，主流视频、短视频平台利用避风港原则规避版权责任，视频、音频解析下载软件（Steam ripping）通过破坏技术措施的网站或者应用盗取平台内容越来越普遍，拉低了合法数字音乐和视频平台付费价格，使得唱片公司无法获得合理收益。

Currently, according to third-party statistics, the scale of online music users has reached more than 700 million, and the paid users on mainstream digital music platforms have remained stable. However, the problem still exists that some mainstream video and short video platforms use the safe harbour principle to avoid copyright liability, It is becoming increasingly common for steam ripping service platforms to steal platform content through websites or applications that undermine technical measures, which lowers the price paid by legitimate digital music and video platforms, making it difficult for rights holders to obtain reasonable returns.

# 数字音乐市场主要侵权形式

## Forms of digital music infringement

数字音乐市场主要侵权形式(Digital)

短视频平台(short video)

视频平台(video )

网络直播 (Living)

破坏技术措施 (Steam ripping)

音乐论坛 (Forum)

在线存储平台(online storage)

其他线上侵权(Other)

实体盗版主要侵权形式(Phsical)

音乐USB(Usb storage)

黑胶唱片(Vinyl)

CD/DVD

卡带(Tape)

# 打击侵权音乐的措施

## Measures against infringing music

### 1. 打击侵权音乐的措施 Measures against infringing music

#### 民事、行政投诉、刑事诉讼主要措施

Major measures of civil cases, administrative complaints and criminal proceedings

- 民事、行政投诉和刑事诉讼的目的
  - 停止相关侵权
  - 追究相关责任人的民行政投诉事、刑事责任（侵权严重，达到刑法量刑标准）
- 民事投诉目的地
  - 法院
- 行政投诉的目的地
  - 各地方版权执法部门
- 刑事诉讼的目的地
  - 各地方公安机关
  - 检察院



# 行政处罚依据

## Legal basis for Administrative cases



《中华人民共和国著作权法》 Copyright Law of the People' s Republic of China

《著作权行政处罚实施办法》 Implementation Measures for Copyright Administrative Sanctions

《中华人民共和国行政处罚法》 Regulation on Administrative Sanction of the People' s Republic of China

《信息网络传播权保护条例》 Regulation on the Protection of the Right of Communication to the Public on Information Networks

地方著作权保护条例 provisions on the copyright protection issued by local governments

# 刑事打击依据



## Legal basis of Criminal cases

### 刑事打击依据 Legal basis of criminal cases

《中华人民共和国刑法》 Criminal Law of the People's Republic of China

《最高人民法院、最高人民检察院关于办理侵犯知识产权刑事案件具体应用法律若干问题的解释》 (2004)

Interpretation of the Supreme People's Court and the Supreme People's Procuratorate of the Issues concerning the Specific Application of Law in Handling Criminal Cases of Infringement of Intellectual Property Rights (2004)

《最高人民法院、最高人民检察院关于办理侵犯知识产权刑事案件具体应用法律若干问题的解释 (二) 》 (2007)

Interpretation II of the Supreme People's Court and the Supreme People's Procuratorate of the Issues concerning the Specific Application of Law in Handling Criminal Cases of Infringement of Intellectual Property Rights (2007)

《最高人民法院、最高人民检察院、公安部、司法部关于办理侵犯知识产权刑事案件适用法律若干问题的意见》

(2011) The Opinions on Several Issues concerning the Application of Law in Handling Intellectual Property Right Infringement Criminal Cases issued by the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security (2011)

# 刑事打击依据

## Legal basis of criminal cases



《中华人民共和国刑法》第二百一十七条

### Art. 217 of Criminal Law of the People's Republic of China

以营利为目的，有下列侵犯著作权或者与著作权有关的权利的情形之一，违法所得数额较大或者有其他严重情节的，**处三年以下有期徒刑，并处或者单处罚金**；违法所得数额巨大或者有其他特别严重情节的，**处三年以上十年以下有期徒刑，并处罚金**：

- (一) 未经著作权人许可，复制发行、通过信息网络向公众传播其文字作品、音乐、美术、视听作品、计算机软件及法律、行政法规规定的其他作品的；
- (二) 出版他人享有专有出版权的图书的；
- (三) 未经录音录像制作者许可，复制发行、通过信息网络向公众传播其制作的录音录像的；
- (四) 未经表演者许可，复制发行录有其表演的录音录像制品，或者通过信息网络向公众传播其表演的；
- (五) 制作、出售假冒他人署名的美术作品的；
- (六) 未经著作权人或者与著作权有关的权利人许可，故意避开或者破坏权利人为其作品、录音录像制品等采取的保护著作权或者与著作权有关的权利的技术措施的。”

## 1. vovouo.com无损音乐网 (行政案件) vovouo.com (Administrative case)

### (1) 案件过程

- 利用用户上传音乐内容 (UGC) 的音乐网站, IFPI北京通知平台管理员及时移除侵权内容, 平台未回复和移除。  
Vovouo.com was a music piracy site that allowed users to download music content. IFPI Beijing Office sent notifications to administrators of the website, demanding them to take down the infringing content. The website didn't reply or took down any content.
- 2021年10月, 向国家版权剑网行动投诉, 立案后移交湖南地方文化执法处理。  
In October 2021, GCO filed a complaint with NCAC Action Sword Net. The case was filed and transferred to Hunan Ningyuan Cultural Law Enforcement Detachment.
- IFPI北京提供了包括: 协会登记证书, 权利认证书, IFPI会员委托书, 举报函, 侵权作品歌单。  
IFPI Beijing Office submitted to the enforcement: Registration Certificate, Right Verification Certificate, IFPI Members' Mandate, Complaint Letter, Infringed Tracks List.
- 2022年3月, 宁远县文化执法行政处罚如下: 1、警告; 2、没收违法所得1108元; 3、罚款肆万元整 (40,000元) 的行政处罚。  
In March 2022, Ningyuan city culture law enforcement agency confirmed that Vovouo.com, a UUC music forum, was closed and an administrative penalty RMB 40,000 was issued to the operator.

### (2) 办案依据:

《中华人民共和国著作权法》第五十三条 Art. 53 of PRC Copyright Law

## 2. (CJEU C-324/09 – L’ Oreal vs Ebay) (欧盟法院案例)

### • A stay down obligation can be based on EU law

#### Stay down义务在欧盟法律中得到支持

- The EU Court confirmed that the safe harbours in the EU E-Commerce Directive cannot apply if a service provider is aware of facts or circumstances from which illegal activity or information is apparent. 欧盟法院认为，当服务商明知侵权行为存在或侵权行为/信息明显的，欧盟《电子商务指令》中所规定的避风港不适用。
- In this respect, it is sufficient if the service **has been aware of facts** or circumstances of which a diligent economic operator should have identified the illegality in question (CJEU C-324/09 – L’Oreal vs Ebay). 就此来说，勤勉的服务商应在**认识到侵权事实存在**的情况下识别案涉不法行为，因此，前述条件已满足，该规则可适用。

### • A Stay down obligation has also been confirmed by courts in Italy and Germany. 服务商的Stay down 义务同样得到了意大利和德国法院的支持

### Article 17 – DSM Directive 《数字单一市场指令》第17条解读

#### • 确立线上内容分享服务提供商（OCSSPs）责任机制 Imposes liability regime for Online Content Sharing Service Providers (OCSSPs)

#### • Liable unless: 免责情形:

- 已经尽最大努力获取授权 (17(4)(a)) Made best efforts to obtain licence (17(4)(a))
- 在提供相关信息的情况下，**尽最大努力实施措施**，以防止获取作品 (17(4)(b)) **Best efforts to implement measures** to prevent availability of works if given relevant information (17(4)(b))
- 保证被通知内容 **保持移除状态** (17(4)(c)) Secure **stay down** of notified content (17(4)(c))
- 如果被发现向公众传播，则不符合受避风港保护的资格 **ineligible for the hosting safe harbour** if found to be communicating to the public

# 案例分享 cases sharing



## 3. 比较研究 Contrast

“保持移除”有效防止对内容的重复侵权，为权利人提供更高水平的保障

*Stay Down to prevent repeated infringement: higher-level protection*

■ UUC平台中同一作品的重复侵权是著作权保护的一大难题，IFPI北京办公室在反盗版工作深感困扰 Copyrighted content being repeatedly infringed is a major problem faced by right holders when it comes to UUC platforms; IFPI Beijing office is also deeply troubled by this in our anti-piracy :

□ IFPI Beijing通知UUC侵权平台删除侵权内容，如删除，投诉终止；

Notifications to the platforms to take down the infringing content. If the infringing content is taken down, we stop sending notices ;but

□ 但其他用户再次上传，需要不断重复通知删除。

If the content is uploaded again by other users, repeated notification will be needed, which is time-consuming and annoying.

# 案例分享 cases sharing

## 3. 比较研究 Contrast

“保持移除”有效防止对内容的重复侵权，为权利人提供更高水平的保障

*Stay Down to prevent repeated infringement: higher-level protection*

■学习欧盟立法及法律实践经验，为平台附加“保持移除”侵权内容义务，能有效防止上述重复性侵权的出现，提高权利保护效率及水平 Learning from the advanced experience of the EU legislation and legal practice, to introduce Stay Down obligation to the UUC platforms, is better way to prevent such repeated infringement regarding the same content, which will help to enhance efficiency and level of the protection for copyright holders.

- 收到权利人侵权通知后，平台商应**立即**下架侵权内容 Upon receiving notification from the right holder, platforms shall **expeditiously** take action to take down the infringing content;
- 平台商也应保证被通知内容在其平台上始终处于**被移除状态**；若有违反，则不应主张受“避风港”规则保护。 Platforms also shall secure **stay down** of the notified content. Failure to keep the reported infringed content *stay down* will lead to ineligibility of protection by safe harbour.

# 案例分享 cases sharing



## 重庆“树下音乐论坛”侵犯音乐作品著作权案

### Chong Qing: “Under the Tree Music Forum” infringing upon copyright of music works

该案为全国“扫黄打非”办公室、中宣部版权管理局、公安部、文化和旅游部、最高人民检察院等部门联合挂牌督办案件。

2014年2月至2021年9月期间，黄某以牟利为目的，租用他人服务器违规搭建“某某音乐论坛”音乐下载网站。运营期间，黄某通过从境外网站购买、免费网站下载、数字化黑胶唱片等方式，获取国内外高品质知名音乐作品10万余首，上传网盘后供网站会员充值付费下载。

据统计，该网站运营期间，累计注册会员人数6.37万余人，充值会员人数2386人，支付总金额51.62万余元。同时，黄某以个人名义发布的音乐主题帖子2.53万余条，购买记录8.07万余条，收取网站会员捐助款、充值款共计121万余元。

### 判罚结果：

经重庆市渝中区人民法院审理，犯罪嫌疑人黄某因犯侵犯著作权罪，被判处有期徒刑3年，缓刑4年，并处罚金55万元，退缴在案违法所得516237元，收缴作案工具若干。

### 认定依据：

《最高人民法院、最高人民检察院、公安部、司法部关于办理侵犯知识产权刑事案件适用法律若干问题的意见》

第十三条 Art. 13

关于通过信息网络传播侵权作品行为的定罪处罚标准问题



# 案例分享 cases sharing



## 江西南昌“0791DJ音乐网”侵犯音乐作品著作权案

### Nan Chang: “0791DJ Music Website” infringing upon copyright of music works

2017年非法建立了此音乐网站，向公众提供在线音乐播放和音乐下载服务。2019年IFPI通过国家版权局的剑网行动进行了投诉后该案件被移交到南昌市文化广电新闻出版局，因满足刑事案件标准被移送到南昌市公安局，经南昌市文化广电新闻出版局统计，该音乐网站共计在线播放传播音乐作品312部，被点击数达到18812282次，注册会员640人，非法获利33691元。

### 审判结果

在2020年5月12日，站长因涉嫌侵犯他人著作权罪被公安机关拘留。2020年11月江西省南昌市青山湖区人民法院以侵犯著作权罪判处龚某某有期徒刑三年，并处罚金6万元。

### 认定依据：

《最高人民法院、最高人民检察院、公安部、司法部关于办理侵犯知识产权刑事案件适用法律若干问题的意见》

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关于通过信息网络传播侵权作品行为的定罪处罚标准问题

## 挑战

1. 数字服务平台没有音乐作品的移除保持机制（Stay down）。
2. 平台雇佣大量律师进行辩护，以逃避责任。大多数平台设置了非常复杂的投诉程序，故意拖延下架进度。
3. 同一用户的重复侵权行为不易认定。
4. 侵权服务器迁移到海外，使得调查和投诉侵权音乐更加困难。
5. 利用新技术的侵权，例如AI模拟成名艺人翻唱作品。

## Challenges

1. No stay down obligation in digital service platforms for music works.
2. The platforms hire a great number of lawyers to defend to avoid accountability. Most of platforms set up very complicated complaining procedure to intentionally delay take down process.
3. It is not easy to identify repeated infringement of the same user.
4. The infringing servers are migrated overseas, making it more difficult to investigate and complain about infringing music.
5. The infringement using new technologies, such as AI simulating famous artists covers existed music works.

## 优先事项

1. 在未来推动建立移除保持机制。
2. 调查同一用户的重复侵权行为。
3. 向平台举报重复侵权者，责令其移除。如果不采取行动，我们将向国内执法部门提出行政投诉。
4. 继续向国家版权局，文旅部和扫黄打非办和地方执法部门进行行政投诉。
5. AI生成的侵权音乐作品在著作权中的处罚依据。

## IFPI Beijing priorities

1. Lobby for the build of stay down in the future.
2. Investigate repeated infringements of the same user.
3. Report the repeated infringers to platforms for take-down; in case it does not take action, we will file administrative complaints at Chinese enforcement authorities.
4. Keep filing complaints for NCAC, MOCT, NAPP and local enforcement agency.
5. Study the basis for administrative sanctions against using AI to infringe upon copyright of music works.

# 展望 expectation



- **打击侵犯知识产权（版权）违法犯罪是一项长期而艰巨的任务。**
  - **随着新修订的著作权法顺利实施，相关立法应进一步完善。**
  - **国际唱片业协会与国家版权局、扫黄打非办和文旅部始终保持良好的合作关系，旨在将保护音乐产业（版权）的合作推上新的台阶，助力中国音乐产业发展。**
- 
- **It will be a long-term and challenging task to combat against the illegal acts and crimes of IP/ Copyright infringement.**
  - **Following the implementation of the new PRC Copyright Law, a series of regulations should be accordingly amended and introduced.**
  - **Cooperative relations between IFPI and NCAC, MOCT and NAPP have been well built and will grow stronger to safeguard the copyright and develop the music industry.**

**Thank you!**