



Recalibrating the contractual balance in copyright 著作权合约的再平衡

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Different approaches to ensure balance between authors, performers and publishers, producers | 平衡作者、表演者与出版商、唱片公司的不同方法

- Authors and performers are in a weaker position than their counterparts | 作者和表演者相较对手方处于弱势地位
- Written agreement required for assignments and exclusive licenses (most common law countries and many civil law countries) | (在大多数普通法系国家和许多民法法系国家) 书面协议是转让和独占许可的必要条件
- Principle of narrow interpretation of the scope of rights transferred | 权利转让范围的狭义解释原则
- Mandatory limitation of contracts in time, fallback of rights (ex. USA) | 合约期限的强制限制, 权利的归复 (除美国外)
- Minimum remuneration rules (formerly seen in Central and Eastern Europe) | 最低报酬规则 (曾见于中欧、东欧)
- Specific statutory provisions governing publishing contracts: | 关于出版合约的具体法定条款:
 - Presumption regarding scope of rights transferred | 关于转让权利范围的推定
 - Provisions on duty to exploit | 关于行使著作权义务的规定
 - Fallback of rights after sale of printed edition is terminated | 出版物停止销售后的权利归复

The European Directive on copyright in the digital single market: Ensuring appropriate balance in contracts | 单一数字市场版权指令：确保合约合理平衡

- Authors and performers are granted protection under EU law | 欧盟法保护作者和表演者权利
 - Must be ensured that they benefit from that protection | 必须确保作者和表演者从该等保护中获益
 - General distinction between those who contract on their own and those who benefit from collectively negotiated contracts, or from collective management of their rights | 对自行订立合约、集体谈判、集体管理作出区分
 - Causes preventing compliance with contract regulation provisions unenforceable | 导致无法遵守合约规定条款的原因，执行不能
- Principle of appropriate and proportionate remuneration (Article 18) | 合理适当报酬原则（第18条）
 - Freedom of implementation in national law; principles of contractual freedom and fair balance of rights and interests must be observed | 根据成员国法自由实施；必须遵循契约自由原则和权利与利益的公平平衡
 - Depending on, inter alia, economic value, author's contribution, market practices, extent of exploitation and all other circumstances | 综合考虑经济价值、作者贡献、市场惯例、开发利用程度在内的所有情况
 - Dependent on all circumstances, such as market practices and actual exploitation | 视所有情况而定，例如市场惯例和实际开发利用程度
 - Lump sum remuneration should not be the rule, may depend on the sectors | 取决于具体领域，不应以一次性报酬为定规
 - Implementation through existing or new mechanisms, including collective bargaining | 通过现有机制或新机制（包括集体谈判）进行实施

The European Directive on copyright in the digital single market: Transparency | 单一数字市场版权指令：透明度义务

- Transparency obligation (Article 19) | 透明度义务 (第19条)
 - At least annually up to date, relevant and comprehensive information on all modes of exploitation, all revenues generated and remuneration due | 提供关于所有开发利用模式、收益及应付报酬的最新、相关和全面信息，至少一年更新一次
 - Shall allow effective assessment of the value of the copyright relevant rights | 允许对著作权相关权利价值进行有效评估
 - Confidentiality clauses may be agreed on if they do not prevent the assessment | 允许约定不妨碍权利价值评估的保密条款
 - From both licensees and sub-licensees; obligation to inform about sub-licensees | 适用于被许可人和分许可人；对分许可人的告知义务
 - Proportionality regarding the burden of information vs. the economic interests and the significance of the individual contribution | 信息披露义务、经济利益及个体贡献重要性之间的相称原则
 - Specific provisions may be replaced by reference to similar collective agreements and do not apply when transparency obligations for collective management organizations apply | 具体条款可以由同类集体协议替代；优先适用集体管理组织透明度义务
 - Specific conditions in different sectors (music; audiovisual, etc.) and further safeguards may be considered when implementing the obligation in national law | 成员国法实施透明度义务时，可考虑不同领域（音乐作品、视听作品等）的具体适用条件和进一步保障措施

The European Directive on copyright in the digital single market: Contract adjustment mechanism (Article 20)

单一数字市场版权指令：合约调整机制（第20条）

- Entitlement to claim additional, appropriate and fair remuneration (Article 20) | 有权主张额外的合理公平报酬（第20条）
 - Adjustment of existing contracts | 现有合约的调整
 - Applies when remuneration originally agreed on turns out to be disproportionately low compared to all the subsequent relevant revenues derived from the exploitation | 最初约定的报酬远少于后续开发利用所得的，适用合约调整机制
 - Only applies in the absence of collective bargaining agreement or when agreement is made by collective management organization | 集体谈判协议或集体管理组织达成的协议不适用该机制
 - Applies both to the original contractor and the successors in title | 适用于原合约方及其受让人
 - Without prejudice to law on contracts in Member States | 以不减损成员国合同法为前提
 - Assessment based on specific circumstances of each case as well as specificities and remuneration practices in the different content sectors | 依据个案具体情况，针对不同领域独特性及其报酬惯例进行评估
 - Duly mandated representatives of authors or performers may assist in bringing claims | 作者或表演者授权的代理人可以协助提出主张
 - Authors or performers may bring unresolved claims before court or other authority | 未就主张达成一致的，作者或表演者可以向法院或其他机构提出申诉

The European Directive on copyright in the digital single market: Alternative dispute resolution (Article 21) | 单一数字市场版权指令：替代性纠纷解决（第21条）

- Applies to disputes concerning the transparency obligation (Article 19) and the contract adjustment mechanism (Article 20) | 适用关于透明度义务（第19条）和合约调整机制（第20条）的纠纷
- Establishment of ADR procedure in national law is obligatory | 必须在成员国法律框架内建立替代性纠纷解决程序
- Use of the procedure to resolve conflicts is voluntary | 自愿使用
- Must be possible for representative organizations to initiate procedure at the specific request of one or more authors or performers | 代理组织可以应一名或多名作者、表演者的明确请求发起程序
- The ADR body may be new or already existing, public or private, or part of the judiciary | 受理机构可以是新增或现有机构、政府或民间机构，也可以隶属于司法体系
- National flexibility regarding allocation of costs | 替代性纠纷解决的成本由成员国灵活制定分担方案
- Without prejudice to the possibility of bringing action before the courts | 以不影响向法院另行申诉为前提

The European Directive on copyright in the digital single market: Right of revocation | 单一数字市场版权指令：撤销权

- Right to revoke transfers or exclusive licenses when rights are not exploited (Article 22) | 权利受保护内容未被开发利用的，权利人可以撤销权利之转让或独占许可（第22条）
 - Reasonable time must pass after conclusion of contract; notice must be served giving reasonable time to start the exploitation | 必须为合约订立、经过合理时间之后；必须告知并给予开发利用所需的合理时间
 - Revocation may concern exclusivity only, or the licence or transfer as such | 撤销可以仅涉及许可的独占性，也可以仅涉及许可或转让
 - The right does not apply if non-exploitation is due to factors the author or performer can reasonably be expected to remedy | 导致未开发利用的原因是可以合理期望由作者或表演者解决的，不适用撤销权
 - The right to revoke is obligatory for national law, the specific details are voluntary; specific provisions may take into account: | 成员国法应承认撤销权。可以自行制定具体规定细节，酌情考虑：
 - Specificities of different sectors and types of content | 不同领域和内容类型的独特性
 - Cases about particular contributions to content with several or many contributors | 多个贡献者（如有）的具体贡献情况
 - Derogation from the right to revoke is only valid if it is based on a collectively bargained agreement | 减损撤销权的条款必须基于集体谈判协议。

**Thank you for your
attention!
感谢聆听!**