

**China-EU Roundtable Meeting on Collective Rights Management 2014**  
**Copyright Collective Management in China: Expecting the**  
**“APEC Blue”**

---

**Zhang Hongbo**

**Secretary-General, China Written Works**  
**Copyright Society**

**Nov.26-27, 2014, Beijing**



# Copyright Collective Management in China: Expecting the “APEC Blue”

---

- ❑ Advantages and necessity of copyright collective management
- ❑ Issues faced by Chinese copyright CMOs and their causes
- ❑ “Hot” topics with the most social attention in the field of copyright collective management
- ❑ International exchanges and explorations of China Written Works Copyright Society
- ❑ Experiences of Chinese CMOs from international exchanges



# Advantages and necessity of copyright collective management

---

- ❑ Facilitating the vast ordinary copyright holders to execute, realize and maintain their “small rights” hard for them to execute or effectively control.
- ❑ Assisting users and disseminators to gain authorization of huge amounts of works, hence promoting the development of the industry.
- ❑ Changing the unequal and disadvantageous position of individual copyright holder in face of powerful and a vast number of users and disseminators.
- ❑ Saving social resources and lowering social transaction costs and rightholders’ rights protection costs.
- ❑ Effectively promoting the dissemination and uses of works in a wider area and meeting the demands of the public.



# Issues faced by Chinese copyright CMOs and their causes

---

## □ Difficulties in collecting fees:

(1) Difficulty in collecting statutory licensing fees: despite the fact that newspaper reprints and textbook fall in the category of statutory licensing, many digest newspapers and textbook carry reprinted copyrighted materials freely, in most cases without paying the statutory remunerations. Few has so far been taken to court, which therefore causes a lot of complaints among rightholders. As there is currently no remedy and safeguard mechanism for ensuring rightholders' legitimate right of remuneration from statutory licensing, neither was there a mechanism in place for punishing the users, who will we be looking to for rightholders' right of remuneration from statutory licensing?

(2) The rights of photocopy reproduction and digital reproduction are left unattended. In many cases, parts of or the whole article, photo and book, particularly textbook (including original foreign textbook), are photocopied recklessly in universities and society, or even distributed over the university LAN freely.



# Issues faced by Chinese copyright CMOs and their causes

---

Many authors, newspapers and publishing houses are not very clear about the fact that the rights of photocopy reproduction and digital reproduction are essential rights of rightholders. As such, there is virtually no regulation on photocopy reproduction and digital reproduction of newspaper articles and book segments. The chaotic situation has seriously impacted the legitimate rights and interests of the vast authors, publishers and newspapers.



# Issues faced by Chinese copyright CMOs and their causes

---

(3) Many new problems are emerging as well: illegal and unauthorized reprints of literacy works between traditional newspaper and network media, as well as among network media, are very serious. For example, a lot of audio materials are freely distributed without proper authorization over the Internet; and huge amounts of literacy, art, photography and audio-video works are freely distributed through WeChat public accounts. Many classical picture-story books may be found, free of any charge, on the Internet and the WeChat platform. How are traditional and new media to be integrated? And when will network infringement be stopped? These are the areas of concern for the vast rightholders and traditional media.



# Issues faced by Chinese copyright CMOs and their causes

---

- A full understanding of the roles and functions of CMOs is yet to be achieved by the society. People generally lack a sense of awareness and recognition towards CMOs, or in some cases, hold a misconception or skepticism about them, which they call “the secondary government.”

Collective management is no administrative management. It is as a matter of fact centralized management, social governance and self-regulation of the society. The approval, establishment and regulation of CMOs by the Chinese government present some Chinese characteristics. Without government guidance and supervision, the Chinese rightholders may not exercise autonomy management as their counterparts do in western developed countries.



# Issues faced by Chinese copyright CMOs and their causes

---

## □ Causes :

- (1) The micro social environment, transition towards market economy, social integrity crisis, hatred to government officials, wealthy people, the Red Cross Society of China and all other societies, as well as the social ethos of seeking quick success, all contribute to the aforementioned problems.
- (2) Many users and disseminators do not act in accordance with the law. And many infringers get away without being punished.
- (3) Efforts still need to be made to learn from the practical experiences and practices of overseas CMOs. “Localization” efforts are yet to be further strengthened.



# Issues faced by Chinese copyright CMOs and their causes

---

- (4) Problems related to the self construction of CMOs. There are still room for improvement with regard to their service capacities and quality. Publicity efforts are insufficient.
- (5) The copyright awareness of rightholders are low. They may hold some misunderstanding or misconception about the societies, while complaining about getting too little royalties and attributing failures in collecting the royalties to the CMOs.
- (6) People generally lack an adequate understanding about the actual operating situations and the difficulties faced by the CMOs, as well as the reasons behind. Some opinions and views are not realistic in the Chinese context.



# Issues faced by Chinese copyright CMOs and their causes

---

Some of such opinions and views are even misunderstood and result in misconception among the general public: for example, a CMO is intended for commercialized and corporatized operations. It is meant for competition, not for monopolization. It collects the fees on behalf of “the government.”

(7) Laws and regulations are incomplete and yet to be further improved.

(8) What regulatory measures and support should the government provide to make up for the gap? Should administrative departments provide safeguard to statutory licensing behaviors? Is it necessary to introduce the codes of conduct from overseas CMOs?



# “Hot” topics with the most social attention in the field of copyright collective management

---

- “Commercialization” and “non-profit” : CWWCS entrusts a company to collect fees from karaoke operators. Some scholars are calling on all-round corporatization of CMO operations. The operation (e.g. collecting fees) of a CMO is bound to incur expenses, regardless of whether the relationship between input and output is reasonable, or whether it complies with the Association Constitution and relevant laws, or whether it is legally adopted in a member meeting. In any case, a CMO is a non-profit organization, working for the benefits of its members. While corporatization is not desirable in the case of CMO, it might be a good idea to introduce some business operating models and concepts.



# “Hot” topics with the most social attention in the field of copyright collective management

---

- **“Transparency” and “openness”** : The Regulations on Copyright Collective Management and all CMO Constitutions provide that: a CMO shall be responsible to its member assembly or member representative meeting. The royalty a member receives from the CMO is a personal privacy or business secret. It is up to the member himself to disclose such information. The CMO has no right whatsoever to disclose it. The contents and scope of disclosure must conform to the provisions of its Constitution.
- **“Monopoly” and “competition”**: (1) The Regulations provide that one type of works shall be managed by one CMO – which is commensurate with the actual Chinese conditions; (2) practices in many countries: competition first, monopoly later – de facto monopoly.



# “Hot” topics with the most social attention in the field of copyright collective management

---

In making a judgment on monopoly and competition, the key lies on the attitude of rightholders and users. If an author entrusts the same right to be managed by different organizations, then no doubt there would be extra authorization costs for users and additional costs for a member to deal with different CMOs and a user to deal with different CMOs at various levels, which raises the overall social transaction costs and at the same time, gains no necessarily more benefits. This would be contradictory to the mission of the CM system. Based on the Chinese actual conditions, monopoly is conducive to reducing transaction costs and maximizing the chance of right realization and protection.



# “Hot” topics with the most social attention in the field of copyright collective management

---

- **Management fee:** The member assembly decides on whether to withdraw management fee as well as the ratio of withdrawal, which are then submitted to NCAC. NCAC will make a public announcement concerning the matter in accordance with the legal procedures before it takes into effect. In case of unreasonable standard, the government will not adopt it. In addition, is it true that criticism about the management fee being high is based on what is felt by the criticizer himself?

The key is: whether it is adopted at the member assembly as per relevant provisions? The global experience is: it is not uncommon that during the first three to eight years, royalties collected are not distributed.



# International exchanges and explorations of China Written Works Copyright Society

---

- **Support from the government and international organizations:** NCAC and IFRRO provides regular support for us to participate in some international seminars and overseas training missions. They receive international visitors as well. CWWCS maintained very good relationships with IPR I and II.
- **Rights protection – the starting point of international exchange for CWWCS:** For example, the Google digital library case and the apple case. The key to the success in obtaining the preliminary results in the Google digital library rights protection case lies in timely communication with IFRRO and good interaction with members and media. The results: Google narrowed the scope of the settlement agreement by submitting a book list containing 21 types of Chinese books of which the copyright was infringed, and made a public apology to Chinese writers through CWWCS.



# International exchanges and explorations of China Written Works Copyright Society

---

Apple online app store infringement case: CWWCS was involved in three rounds of negotiations and participated in the IPR roundtable meeting of China-US Joint Commission on Commerce and Trade. It asserts a claim to the US government. As a result, Apple voluntarily responded to the NCAC investigation.

- **International communication platform:** IFRRO's annual conference and overseas training provides a good platform for learning from and communicating with global counterparts.
- **The 1<sup>st</sup> international cooperation agreement of CWWCS:** CWWCS has signed a unilateral agreement with CLA. Currently, both sides are discussing cooperation details, including for example, training, distribution, and creating a database, etc.



# International exchanges and explorations of China Written Works Copyright Society

---

- **International exchange arrangement for the next stage:** (1) Talks between CWWCS and reproduction right CMOs in HK, Singapore, South Korea, Norway, Denmark, Sweden, Finland, Italy, Romania, Vietnam and Russia are going very smoothly. It is expected that a few agreements will be reached soon. (2) CWWCS is discussing possible cooperation programs with organizations of relevant countries and is poised to collect overseas authorization & licensing fees on Chinese e-books and e-textbooks.
- **The effects of international exchanges :**  
(1) Helps us learn from the practical experiences and practices of international CMOs, identify gaps and areas of improvement, smoothen business procedures and internal management systems, and improve our work capabilities and levels.



# International exchanges and explorations of China Written Works Copyright Society

---

(2) Helps to improve the Chinese Copyright Law and CM systems. CWWCS conducts regular exchanges with IFRRO and relevant national reproduction organizations and provides information on China's progress in revising the Law. Professional opinions and suggestions of overseas organizations may reach the desk of NCAC and the Legal Affairs Office of the State Council directly. The practices and exploration efforts of overseas CMOs in the fields of rate dispute arbitration mechanism, code of conduct for CMOs, resale right, establishment conditions, meaning and government regulation concerning extended collective licensing, as well as collective management of orphan works, may provide very useful reference for China.



# International exchanges and explorations of China Written Works Copyright Society

---

(3) Conducting joint workshops and exchange activities, as well as in-depth research on collective management, helps us create a closer cooperation relationship with CMOs both at home and abroad, deepen the understanding of Chinese academic and business communities about national CMOs, avoid unnecessary misunderstanding and enhance the social credibility of CMOs.

(4) CWWCS is different from other RROs (Reproduction Rights Organizations) of other countries in that, aside from the rights of photocopies and digital reproduction, it is also responsible for collecting and transferring payments of newspaper and textbook statutory licensing & exploitation fees, digital copyright licensing and fee collection of whole books and articles and international copyright trading activities. In terms of foreign exchanges, CWWCS has a lot of room for development amidst the “Going Out” strategy for Chinese culture. In the meanwhile, statutory licensing is also helpful for ensuring the legitimate rights and interests of overseas rightholders.

---



# International exchanges and explorations of China Written Works Copyright Society

---

(5) Helpful to boost Sino-foreign cultural exchanges.

(6) China has huge market potentials and has become a prospective market source of revenue for overseas CMOs. In gradually carrying out licensing and fee collection activities in the fields of overseas photocopy and digital reproduction rights for Chinese works, CWWCS will help to realize mutual representation and win-win situations for involved parties.



# Experiences of Chinese CMOs from international exchanges

---

- In carrying out international exchanges, Chinese CMOs need to take account, in the first place, of the overall picture of Chinese diplomacy, and focus their efforts on strengthening international exchanges with APEC, BRICS and ASEAN, and on deepening the Sino-US, Sino-Russia, Sino-UK relationships and the "One Belt and One Road" (which refers to the "Silk Road Economic Belt" and the "21st Century Maritime Silk Road" ).
- China's unique "copyright ecological environment" gives rise to the Chinese CMOs, which should therefore take account of China's own national conditions and realities in international exchanges and draw on the international experiences in order to solve our (unique) issues.



# Experiences of Chinese CMOs from international exchanges

---

- Collective management is an “imported thing” by itself. International exchanges are conducive to promoting the development of Chinese CMOs and creating an “APEC Blue”-style environment!
- While the task remains as daunting as it should be, the future is very bright! Let’s join our hands together to achieve it!



# China Written Works Copyright Society

---

**Thank you !**

No.35-A, Fuchengmenwai Road, Xicheng District, Beijing

Tel.: 010-65978908 Fax: 010-65978926

Email: [olegzhang@126.com](mailto:olegzhang@126.com) [wenzhuxie@126.com](mailto:wenzhuxie@126.com)

Sina Weibo account: @洪波维奇 (liuhongweiqi)

Official Weibo account: @中国文字著作权协会 (China Written Works Copyright Society)

