



EU-CHINA ROUNDTABLE ON COPYRIGHT PROTECTION AND DEVELOPMENT OF COPYRIGHT INDUSTRIES

中欧版权保护和产业发展研讨会

This roundtable serves as a platform for Chinese and European stakeholders to discuss the legislative updates, licensing models as well as copyright enforcements in the digital era.

研讨会为中欧利益相关方提供一个交流平台，共同探讨著作权法立法进程、版权授权机制和数字环境下的版权执法等议题。

Jin Jiang Tower Hotel
No. 161, Changle Road, Huangpu District, Shanghai

新锦江大酒店
上海市黄浦区长乐路 161 号

2 December 2015
2015 年 12 月 2 日

IPKey



This Roundtable meeting has been organised by IP Key and
National Copyright Administration of China

研讨会由中国国家版权局和中欧知识产权合作项目共同主办

WWW.IPKEY.ORG

日程

08:30 – 09:00 报到

上午环节

主持人：中国国家版权局版权管理司副司长汤兆志

09:00 – 09:20 开幕致辞

- 阎晓宏，中国国家版权局副局长
- 罗本诺（Benoît Lory），欧盟驻中国和蒙古代表团贸易处知识产权政策公使衔参赞
- 徐炯，上海市版权局局长

09:20 – 12:30 第一部分

中国著作权法第三次修订最新进展

09:20 – 10:30 主题演讲：中国著作权法第三次修改最新进展

- 高思，中国国家版权局政策法规司副司长
- 点评和互动讨论

10:30 – 10:45 茶歇

10:45 – 11:10 追续权

- 迈哈利·菲彻尔 (Mihály Ficsor)，匈牙利版权协会会长，前世界知识产权组织助理总干事
- 点评和互动讨论

11:10 – 11:35 私人复制补偿金制度

- 洪伟典，国际唱片业协会亚太地区总裁
- 点评和互动讨论

11:35 – 12:00 推动文化遗产的传播：孤儿作品和绝版作品

- Olav Stokkmo，国际复制权组织联合会首席执行官
- 点评和互动讨论

12:00 – 12:15 广播权和公开表演权

- 点评：洪伟典，国际唱片业协会亚太地区总裁
- 就其他共同关注领域开展讨论

12:30 – 14:00 午餐

下午环节

主持人：欧盟驻中国和蒙古代表团贸易处知识产权政策公使衔参赞罗本诺

14:00 – 15:15 第二部分

著作权授权机制和技术进步对产业的影响

14:00 – 14:20 数字时代中国音乐著作权的保护

- 刘平，中国音乐著作权协会副总干事

14:20 – 14:40 高校、研究机构和图书馆已出版作品的获取和使用

- Olav Stokkmo，国际复制权组织联合会首席执行官

14:40 – 15:15 点评和互动讨论

- 国际复制权组织联合会首席执行官 Olav Stokkmo 点评“互联内容融合(LCC)”

15:15 – 15:30 茶歇

15:30 – 18:00 第三部分

著作权执法（侧重于数字环境）

15:30 – 16:30 网络服务商责任的最新发展状况

网络服务商的责任

- 王迁，华东政法大学教授
- 版权执法
- 迈哈利·菲彻尔 (Mihály Ficsor)，匈牙利版权协会会长，前世界知识产权组织助理总干事
- 点评和互动讨论

16:30 – 17:45 程序方面的举证责任、现行法律的侵权赔偿金额

互联网环境下著作权保护的新问题

- 丁文联，上海市高级人民法院知识产权庭副庭长
- 数字环境下的版权管理与执法：上海探索
- 蔡纪万，上海市版权局副局长
- 著作权侵权执法程序
- 洪伟典，国际唱片业协会亚太地区总裁
- 点评和互动讨论

17:45 就其他共同关注领域开展讨论

18:00 总结致辞

- 于慈珂，中国国家版权局版权管理司司长
- 米默勤，中欧知识产权合作技术专家组组长

AGENDA

08:30 – 09:00 Registration

MORNING SESSION

Moderator: Tang Zhaozhi, Deputy Director-General, Copyright Department of NCAC

09:00 – 09:20 Opening remarks

- Mr. Yan Xiaohong, Vice Minister, National Copyright Administration of China
- Mr. Benoît Lory, Minister Counsellor, IP Policy, Trade Section, EU Delegation to China and Mongolia
- Mr Xu Jiong, Director-General, Shanghai Copyright Administration

09:20 – 12:30 Session 1: Open Issues Arising from the 3rd Revision

09:20 – 10:30 Keynote Speech on the Latest Development of the 3rd Revision of the Copyright Law of China

- Ms. Gao Si, Deputy Director-General, Department of Policy and Regulation, NCAC
- Commentary and moderated discussions

10:30 – 10:45 Coffee break

10:45 – 11:10 Resale Rights

- Mihály Ficsor, President of Hungarian Copyright Council, Former Assistant Director General of WIPO
- Commentary and moderated discussions

11:10 – 11:35 Private Copying Levy

- Mr. Ang Kwee Tiang, Regional Director Asia Pacific, IFPI
- Commentary and moderated discussion

11:35 – 12:00 Making Cultural Heritage Available: Orphan Works and Out-of-Commerce Works

- Olav Stokkmo, CEO, IFRRO
- Commentary and moderated discussion

12:00 – 12:15 Discussion on broadcast and public performance

- Commentary by Mr. Ang Kwee Tiang, Regional Director Asia Pacific, IFPI
- Further discussions on other areas of interest

12:30 – 14:00 Lunch break

AFTERNOON SESSION

Moderator: Benoît Lory, Minister Counsellor, IP Policy, Trade Section, EU Delegation to China and Mongolia

14:00 – 15:15 Session 2: Licensing Mechanism and Impact of Technology Development to Copyright Industry

14:00 – 14:20 China's Copyright Protection for Music in the Digital Era

- Liu Ping, Deputy Director-General, Music Copyright Society of China

14:20 – 14:40 Access to and Usage of Published Copyright Works in Education, Research and Libraries

- Olav Stokkmo, CEO, IFRRO

14:40 – 15:15 Commentary and Moderated Discussions

- Commentary on Linked Content Coalition (LCC) by Olav Stokkmo, IFRRO

15:15 – 15:30 Coffee break

15:30 – 18:00 Session 3: Enforcement of Copyrights (with a Particular Emphasis on Digital Era)

15:30 – 16:30 Latest Updates on ISP Liability
ISP Liability

- Prof. Wang Qian, East China University of Political Science and Law
Enforcement of Copyright
- Mihály Ficsor, President of Hungarian Copyright Council, Former Assistant Director-General of WIPO
- Commentary and moderated discussions

16:30 – 17:45 Procedural Aspects: Burden of Proof, Current Amount of Infringing Compensation

16:30 – 16:50 Emerging Issues Arising from Copyright Protection in the Digital Era

- Ding Wenlian, Associate Chief Judge, Shanghai Higher People's Court

16:50 – 17:10 Administrative Management and Enforcement of Copyright – Shanghai Experience

- Cai Jiwan, Deputy Director-General, Shanghai Copyright Administration
Procedural Aspects for Enforcement of Copyright Infringement
- Ang Kwee Tiang, Regional Director Asia Pacific, IFPI
- Commentary and moderated discussions

17:45 Further Discussions on Other Areas of Interest

18:00 Closing Remarks

- Mr. Yu Cike, Director-General, Copyright Department, NCAC
- Mr. Benoît Misonne, Technical Experts Team Leader

发言人/ SPEAKERS



于慈珂

中国国家版权局版权司司长

Yu Cike

Director-General, Copyright
Department, NCAC

于慈珂，毕业于北京大学法律系。曾在中国政法大学担任教师，1990年起长期从事新闻出版法制工作。曾任国家版权局法规司司长，主持《著作权法》第二次修订工作，以及《出版管理条例》《音像制品管理条例》《印刷业管理条例》《广播电台电视台播放录音制品支付报酬暂行办法》等多部著作权、新闻出版法律法规的修订工作。自2011年6月起至今，担任国家版权局版权管理司司长。

Mr. Yu Cike graduated from the Law School of Peking University. He has worked as a teacher at the China University of Political Science and Law. He has been engaged in press and publication legal work for a long time since 1990. Mr. Yu was the former Director General of Law and Regulation Department, National Copyright Administration of China (NCAC), and has presided over the second amendment of the Copyright Law, as well as revisions of multiple laws and regulations on copyright, press and publication, such as "Regulations on Publication Administration", "Regulations on the Administration of Audio-video Products", "Regulations on the Administration of Printing Industry", and "Interim Measures on Payment of Remuneration for Radio & Television Stations Playing Sound Recordings". Mr. Yu has been being the Director General of Copyright Department, NCAC, since June, 2011.



汤兆志

中国国家版权局版权司副司长

Tang Zhaozhi

Deputy Director-General, Copyright
Department, NCAC

汤兆志，毕业于北京大学法律系，研究生学历。曾在中华版权代理总公司、中国版权保护中心工作，历任中心法律部主任、中心副主任。现任国家新闻出版广电总局（国家版权局）版权管理司副司长。长期从事版权代理、版权贸易及著作权法律实务工作。曾获“全国新闻出版业有突出贡献的中青年专家”、“全国新闻出版行业领军人才”、“百名有突出贡献的新闻出版专业技术人员”等荣誉称号。著有《著作权案例评析》等著作，并在专业报刊上发表了《网络传输的著作权保护》、《摄影作品的著作权保护与权利实现》、《侵权作品是否受著作权法保护》、《计算机软件的法律保护》等论文和文章。

Tang Zhaozhi obtained his graduate degree from the School of Law, Peking University. He has worked in Copyright Agency of China (CAC) and Copyright Protection Center of China (CPCC) as Director of Legal Affairs Department and Deputy Director of the Center respectively. Mr. Tang is now Deputy Director-General of the Copyright Department of State Administration of Press, Publication, Radio, Film and Television of China (National Copyright Administration of China).

Mr. Tang has engaged in the fields of copyright agent, copyright trade and copyright-related practical work for many years. He has won a number of honorary titles, including "National Young and Middle-Aged Expert with Outstanding Contributions for Press and Publication", "National Leading Talent in the Press and Publication Industry" and "100 Specialized Press and Publication Technical Talents with Outstanding Contributions", amongst others. He published a number of books, including Review and Analysis of Some Copyright Cases, and some papers and articles on professional newspapers, including "Copyright Protection in Network Transmission", "Copyright Protection and Rights Realization of Photography Works", "Are Infringing Works Protected under the Copyright Law?" and "Legal Protection of Computer Software", among many others.



高思

中国国家版权局政策法规司副司长

Gao Si

Deputy Director-General,
Department of Policy and Regulation,
NCAC

高思，1989年毕业于中国人民大学法律系知识产权法专业。1989年入职国家新闻出版署（国家版权局）版权司工作，现担任国家新闻出版广电总局（国家版权局）政策法规司副司长。长期从事版权、新闻出版的立法工作，曾参与国际版权事务的多双边谈判。

Gao Si graduated from Law School of Renmin University specializing in Intellectual Property Law in 1989 and joined in the same year the then General Administration of Press and Publication. She holds the position of Deputy-Director of Department of Policy and Regulation of NCAC. She has long been working on legislative affairs related to copyright, press and publication and she has participated in many copyright bilateral and multilateral negotiations.



蔡纪万

上海市版权局副局长

Cai Jiwan

Deputy Director-General, Shanghai
Copyright Administration

蔡纪万，男，1964年出生，1990年9月参加工作，大学，公共管理硕士，副编审。现任市新闻出版局副局长、市版权局副局长。曾任福建省新闻出版局版权处处长。

Cai Jiwan, born in 1964, holds a Master degree in Public Administration. He started his career in 1990 and currently holds the position of Deputy Director-General of Shanghai Municipal Press and Publication Bureau and Shanghai Copyright Administration. Before that, he was the Director of Copyright Division of Fujian Provincial Press and Publication Bureau.



丁文联

上海市高级人民法院知识产权庭副庭长

Ding Wenlian

Associate Chief Judge, IP Tribunal,
Shanghai Higher People's Court

丁文联，法学博士，现任上海市高级人民法院知识产权庭副庭长。长期从事民商事、知识产权审判，主审“强生公司纵向垄断协议纠纷案”、“数字电表集成电路布图设计侵权纠纷案”、“精雕计算机软件著作权侵权纠纷案”等知名案件，多起案件被作为示范案例发布于《最高人民法院公报》，或被最高法院确定为指导性案例。2013年被最高人民法院授予“全国审判业务专家”称号，2015年3月，被最高人民法院知识产权司法保护研究中心聘为首批研究员。丁文联法官专注于商法、知识产权法和反垄断法研究，任上海交通大学、华东政法大学兼职教授，中国法学会知识产权研究会理事，上海市法学会竞争法研究会副会长。

Ding Wenlian, Doctor of Judicial Science, associate chief judge of the IP Court, Shanghai Higher People's Court. For many years Ding has been engaged in the trial of civil and commercial cases and intellectual property cases. He was the presiding judge for a number of well-known cases, such as the "Johnson & Johnson Vertical Monopoly Dispute Case", the "Infringement Dispute Case on the Integrated Circuit Layout Design of the Digital Electric Meter", and the "Engraving Software Copyright Infringement Dispute Case". Many cases are published as exemplary cases on the Bulletin of the Supreme People's Court or designated as guiding cases by the Supreme People's Court. In 2013, the Supreme People's Court conferred on Ding the title of "National Judicial Expert". In March 2015, he was appointed as one of the first batch of researchers by the Research Centre for Judicial Protection of Intellectual Property Rights, the Supreme People's Court. Ding is dedicated to commercial laws, IP laws and anti-monopoly laws research. He currently works as part-time professor at Shanghai Jiaotong University and East China University of Political Science and Law, director of the Intellectual Property Law Association of China Law Society, and vice chairman of Competition Law Association of Shanghai Law Society.



刘平

中国音乐著作权协会副总干事

Liu Ping

Deputy Director-General, Music
Copyright Society of China (MCSC)

刘平，中国人民大学民商法硕士，1994年取得律师资格。1995年到2000年在中国法律事务中心任专职律师，2000年到2006年任北京市天为律师事务所和北京市德君律师事务所合伙人律师。从2006年起担任中国音乐著作权协会副总干事和法律总顾问。

在刘平的律师生涯中代理从事了大量知识产权诉讼法律业务，在知识产权司法实践中具备丰富经验。加入音著协以来，致力开拓中国的著作权集体管理事业，取得斐然成绩，领导协会法务工作并取得了诸多知识产权维权胜诉著名案例，例如音著协针对“百度”和“腾讯”网站在线音乐的维权胜诉案例。

刘平还经常作为法律事务专家参与中国知识产权相关立法、司法和行政管理部门举办的关于知识产权立法、司法及行政管理的意见征询会，是中国知识产权法律界的高度专业人士。

Liu Ping holds a L.L.M in Civil and Commercial Law from Renmin University. He is qualified as a lawyer in 1994. From 1995 to 2000, he was a full-time lawyer in China Legal Affairs Center. From 2000 to 2006 he was partner of Beijing Tian Wei Law Firm and the Beijing De Jun Law Firm. From 2006 he joined the Music Copyright Society of China and took the position of Deputy Director-General and General Counsel. In his career as a lawyer, Liu Ping handled a lot of intellectual property litigations and has rich experience in intellectual property judicial practice. After joining in MCSC, he has been committed to developing China's copyright collective management business and has made significant achievements. Under his leadership MCSC has won a number of famous lawsuits, such as MCSC vs."Baidu" and "Tencent" online music.

As a highly professional Chinese legal expert in the IP field, Liu Ping is often invited to participate in expert consultation meetings of IP legislation, judicial and administrative management.



王迁

华东政法大学教授

Wang Qian

Professor, East China University of
Political Science and Law

王迁，华东政法大学教授、博士生导师。任中国知识产权法学研究会常务理事、中国版权协会常务理事、中国文字著作权协会常务理事、上海 2010 年世博会知识产权咨询专家、北京市高级人民法院、上海知识产权法院等多家法院和检察院咨询专家。所获奖项和荣誉称号包括“全国知识产权保护最具影响力人物”、“第四届上海市优秀中青年法学家”、“全国知识产权领军人才”和“中国版权产业风云人物”。参与了《信息网络传播权保护条例》的起草工作，是《著作权法》第三次修改专家委员会成员。在 2012 年世界知识产权组织为缔结《视听表演北京条约》而召开的北京外交会议和 2013 年为缔结《马拉喀什条约》而召开的马拉喀什外交会议中，任“起草委员会”成员和中国代表团成员。出版《网络环境中的著作权保护研究》等专著，独著教材《知识产权法教程》（1-4 版）和《著作权法》。主持过国家社科基金重大项目、青年项目，以及司法部、教育部、文化部和国家版权局课题和大量横向课题。

Wang Qian, a professor at East China University of Political Science and Law and Doctoral Adviser. He is executive member of China Intellectual Property Law Association, Copyright Society of China and China Written Works Copyright Society. He is also IP consultant to Shanghai 2010 World Expo, Beijing Higher People's Court, Shanghai Intellectual Property Court and other courts and procuratorates. He has been awarded honors of "Most Influential People for National IP Protection", "Fourth Shanghai Outstanding Young Jurists", "National IPR Leading Talent" and "Man of China's Copyright Industry."

Wang Qian participated in the drafting of "Regulation on the Protection of the Right to Communicate Works to the Public over Information Networks". He is member of the Expert Advisory Committee of the third revision of Chinese Copyright Law. He was a member of the "drafting committee" and member of Chinese delegation during the WIPO diplomatic conference in Beijing and Marrakesh. He published book "Copyright Protection in Network Environment" and other monograph and authored textbooks "Intellectual Property Law Guide" (version 1-4) and "Copyright Law." He coordinated a large number of

research projects including big projects funded by the National Social Science Fund of China, youth projects, as well as research projects entrusted by the Ministry of Justice, Ministry of Education, Ministry of Culture and the National Copyright Administration of China.



Benoît Lory
*Minister Counsellor, IP Policy, EU
Delegation to China and Mongolia*

罗本诺

欧盟驻中国和蒙古代表团贸易处知识产权
事务公使衔参赞

Benoît Lory, 53 years old, is currently Minister Counsellor – IP Attaché at the European Union Delegation. Previously he was working at the European Commission, in Directorate General for Trade, as Policy Officer responsible for intellectual property issues with China, Hong Kong, Macao, Taiwan and Mongolia. He was also responsible for IPR enforcement issues in third countries and was a member of the EU Observatory on infringement of intellectual property rights. From 2006 to 2010 he was Policy Officer at the European Commission, in Directorate General for Internal Market, in charge of the legislative aspects of the enforcement of IPR in the EU and was the first chair of the Legal Group of the EU Observatory on infringement of IPR. He has also worked for 14 years for the European Trademarks Office (OHIM) and the French IP Office (INPI). He is a lawyer graduated from the “College of Europe” in Belgium and from the University of Rennes in France.

罗本诺，53岁，欧盟驻华代表团负责知识产权事务公使衔参赞。在派驻中国之前，他就职于欧盟委员会贸易总司，负责欧盟对中国、香港、澳门、台湾及蒙古等地区国家的知识产权政策。他也负责欧盟第三方国家的知识产权保护执法相关事务，是欧洲知识产权观察组织知识产权侵权观察组的成员。2006年到2010年他在欧盟委员会内部市场总司负责欧盟知识产权执法的立法工作，曾任欧洲知识产权观察组织知识产权侵权法律工作组的第一任主席。加入欧盟委员会之前他为法国商标局和欧盟商标局服务了14年。罗本诺毕业于法国的雷恩大学和比利时的欧洲学院，具有律师资格。



Benoît Misonne
Technical Experts Team Leader - IP Key

米默勤

中欧知识产权合作技术专家组组长

Benoît Misonne heads the Technical Experts' Team of IP Key (2013-2016), appointed by the Office for Harmonisation in the Internal Market, OHIM. For over a decade, he has contributed to the development and implementation of hundreds of cooperation initiatives in areas such as innovation and IP related policy drafting and law-making, IP management strategies as well as civil, criminal and administrative enforcement of IP rights. He has extensive and insightful knowledge of sector specific IP related issues, from information and communication technologies to consumer products (pharmaceuticals, foods and beverages, etc), through online service industries. Benoît holds master degrees in International Business Studies (E.M.B.Sc.) from Herriot-Watt University, Edinburgh and Political Sciences from the College of Europe. He has co-authored a number of studies and articles and gives regular talks and lectures in the field of IP protection.

米默勤由欧洲内部市场协调局任命，担任IP Key（2013至2016年）的技术专家组组长。过去十多年以来，他一直致力于中国-欧盟知识产权合作，参与了创新和知识产权相关政策的起草和法律制定、知识产权管理战略以及知识产权民事、刑事和行政执法领域数百个合作项目活动的设计和和实施。他对多个行业的知识产权问题有深入见解，这些行业包括信息和通信技术、消费类产品（药品，食品和饮料等）乃至网络服务行业。

米默勤拥有爱丁堡赫里奥特-瓦特大学国际商学硕士学位和欧洲学院的政治学硕士学位。他与人合著发表了多个研究报告和文章，并经常受邀就知识产权保护发表演讲和授课。



Mihály Ficsor
President of Hungarian Copyright Council, Former Assistant Director General of WIPO

迈哈利·菲彻尔

匈牙利版权协会会长，前世界知识产权组织助理总干事

Between 1985 and 1999, Mihály Ficsor – a citizen of Hungary – was working as Director and then as Assistant Director General of the World Intellectual Property Organization (WIPO). He played a decisive role in the preparation, negotiation and adoption of the so-called „Internet treaties:” the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). At present, he is a member of the Board and the Honorary President Hungarian Copyright Council and Chairman of the Central and Eastern European Copyright Alliance (CEECA) with permanent observer status at WIPO.

Dr. Ficsor has written numerous articles and books on various copyright issues, particularly on the impact of digital technology and the Internet on copyright and on collective management of copyright and he is the speaker at number of seminars, symposiums, workshops, university lecture programs throughout the world.

迈哈利·菲彻尔 (Mihály Ficsor) 先生是匈牙利公民，1985年至1999年间，先后在世界知识产权组织 (WIPO) 任干事和助理总干事职位。他在著名的“互联网条约”：《世界知识产权组织版权公约 (WCT)》和《世界知识产权组织表演和录音制品条约 (WPPT)》的制定、协商和通过中起到了决定性的作用。目前他担任匈牙利版权协会的理事会成员和荣誉主席、中东欧版权联盟 (CEECA) 主席，同时还是世界知识产权组织永久观察员。

菲彻尔博士撰写过多篇文章和多部著作，阐述各种版权问题，特别是数字技术与互联网对于版权以及版权的集体管理所产生的影响。他还在世界各地的许多研讨会、专题讨论会、研习会和大学讲座中做过演讲。

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Olav Stokkmo
CEO, International Federation of Reproduction Rights Organisation (IFRRO)

奥拉夫·斯托克莫

国际复制权组织联合会首席执行官

Olav Stokkmo is Chief Executive Officer of the International Federation of Reproduction Rights Organisations (IFRRO). He has also served 8 years as Deputy Executive Director of Kopinor, the Norwegian RRO, and 5 years as Commercial Director of the Norwegian publishing house, Det Norske Samlaget.

Currently involved in European Commission (EC) and other Digital Libraries initiatives. Stokkmo is also engaged in work on technical standards and identifiers to enhance interoperability, as a member of the boards of ISNI, which he chairs, ISTC and EDItEUR, and on enhanced access to published works for persons who are blind or print disabled, inter alia as a Board member of the WIPO initiated Accessible Book Consortium.

Stokkmo has a Graduate degree in modern history from the University of Oslo and a University College Candidate degree from the Norwegian Business School BI. He is author of management literature and articles on copyright and collective management, and a guest lecturer at the University of Buenos Aires.

奥拉夫·斯托克莫 (Olav Stokkmo) 是国际复制权组织联合会的首席执行官。他曾在挪威的复制权组织 Kopinor 中工作八年，担任副执行主任，在挪威出版社 Det Norske Samlaget 工作五年，担任商务总监。

目前斯托克莫先生参与了欧洲委员会 (EC) 的工作以及其它数字图书馆项目。他还作为国际标准名称标识符 (ISNI) 委员会委员参与了旨在加强互用性的技术标准和标识工作。此外，他还是世界知识产权组织 (WIPO) 发起的易读书联盟的理事会成员。

斯托克莫先生拥有奥斯陆大学当代历史学的硕士学位，以及挪威商学院商业智能专业的大学学院候选人学位。他出版过管理文献，撰写了多篇关于版权和集体管理的文章，并担任布宜诺斯艾利斯大学的客座讲师。



Ang Kwee Tiang
Regional Director Asia Pacific, IFPI

洪伟典
国际唱片业协会亚太区总裁

ANG Kwee Tiang (KT Ang) is the Regional Director for Asia of IFPI, the organization representing the music industry worldwide with more than 1,300 record producers and distributors from over 66 countries.

Prior to his IFPI appointment in January 2013, KT Ang was the Asia Pacific Regional Director of CISAC (The International Confederation of Societies of Authors and Composers) for 24 years. He had also served as a director or advisor on the boards of many of those organizations and continues to serve as a director of the Copyright Licensing and Administration Society of Singapore (CLASS) Ltd.

KT Ang has a first degree in law from the National University of Singapore, a Masters of Law and a Postgraduate Diploma in UK, US and EU Copyright Laws from King's College, University of London. He has undertaken more than 100 expert advisory missions and speaking engagements on behalf of the World Intellectual Property Organization (WIPO) to developing countries in Asia, on copyright law and the creation of copyright societies. He has also been invited to speak at the International Copyright Institute of the US Copyright Office on numerous occasions.

KT Ang has authored the chapter on Asia in Kluwer's Collective Management of Copyright and Related Rights edited by Professor Daniel Gervais.

洪伟典先生是国际唱片业协会是亚洲区总裁。国际唱片业协会代表全球音乐行业来自66个国家的1300多家唱片制造商和分销商的组织。2013年1月洪伟典先生加盟之前，他曾经担任作者和作曲家国际联盟（CISAC）亚太区总裁长达24年。他还曾担任过多个这类组织的董事会董事或顾问，现在仍担任新加坡版权特许及管理机构（CLASS）的董事。

洪先生在新加坡国立大学学习法律，之后在伦敦大学国王学院学习美国和欧盟著作权法，在英国获得法律硕士研究生文凭。他代表世界知识产权组织（WIPO）为亚洲发展中国家就著作权法和著作权集体管理组织的成立提供了100多次专家咨询并发表演讲。他还应邀在美国版权局的国际版权学会多次发言。

洪先生参与撰写了由丹尼尔·热维斯教授主编威科集团出版的著作权及相关权利集体管理一书中亚洲部分。

<p>Science Technology</p>	
<p style="text-align: center;">中国著作权法第三次修改最新进展 Latest Development on the Third Revision of the Copyright Law of China 中欧版权保护和产业发展研讨会 China-EU Seminar on Copyright Protection and Industry Development 2015年12月 上海 Shanghai, December 2015 国家版权局政策法规司 高思 Gao Si, Department of Policy and Legal Affairs of the National Copyright Administration</p>	
<p style="text-align: center;">Science And Technology</p>	

	<p>几方面情况 Outline</p>	
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Science And Technology</p>	<ul style="list-style-type: none"> ■ 一、著作权法修改的必要性及对现行法的评价 ■ I. Necessity for revision of the Copyright Law and remarks on the current legislation ■ 二、《著作权法修订草案送审稿》的主要内容 ■ II. Major points of the Draft Amendment to the Copyright Law for Examination and Approval ■ 三、关于完善配套法规中立改废的考虑 ■ III. Considerations on Formulation, Modification or Abolishment of the Supplementary Regulations ■ 四、关于配合法制办审议送审稿开展的相关工作 ■ IV. Efforts for facilitating the examination by the Legislative Affairs Office of the State Council (the SCLAO) 	

一、著作权法修改的必要性及对现行法的评价	
I. Necessity for revision of the Copyright Law and remarks on the current legislation	
Science And Technology	<ul style="list-style-type: none"> ■ 1、中国改革开放以来确立的社会主义市场经济制度，需要进一步尊重著作权； ■ 1. China has established socialist market economy system since the Reform and Opening-up, which calls for further respect of copyright. ■ 2、新技术改变了作品的创作与传播方式，著作权传统保护制度面临新挑战； ■ 2. New technologies have changed the way for the creation and dissemination of works, thereby bringing new challenges to the traditional copyright protection system. ■ 3、在全球经济贸易关系中，著作权保护已经成为不可避免的问题； ■ 3. Copyright has become an inevitable issue in the global economic and trade relations. ■ 4、进入新世纪以来，我国改革开放的发展理念发生了根本改变：坚持科学发展观、建设创新型国家、推进文化大发展大繁荣等国家战略的要求。 ■ 4. Since the entering into the new century, the conception of development for Reform and Opening-up has undergone a fundamental change to require insistence on the scientific development view, the construction of an innovative nation, and the promotion of prosperous cultural development, among other national strategies.

对现行著作权法的基本评价	
Remarks on the Current Copyright Law	
Science And Technology	<ul style="list-style-type: none"> ■ 一是对著作权的保护不够，难以有效遏制侵权行为，不足以激励创作者的积极性； ■ Insufficient protection for copyright, leading to inability to effectively curb infringements or motivate the authors. ■ 二是著作权授权机制和交易规则不畅，难以保障使用者合法、便捷、有效的取得授权和传播使用作品。 ■ Flawed copyright authorization and transaction rules, hampering the lawful, convenient and efficient obtainment of authorization and dissemination and exploitation of works.

二、《著作权法修订草案送审稿》的主要内容 (国家版权局2012年12月报请国务院审议)	
II. Major points of the Draft Amendment to the Copyright Law for Examination and Approval submitted by the National Copyright Administration to the State Council for examination in December 2012.	
Science And Technology	<ul style="list-style-type: none"> ■ (一) 调整的内容 ■ (I) What are amended: ■ 1、篇章结构和体例; ■ 1. Structure and style of the chapters and sections. ■ 2、作品定义及种类: 9项调为16项, 种类基本无实质增加; ■ 2. Definition and categories of "works": from 9 categories to 16, without substantive expansion. ■ 3、著作权权项划分: 17项调为13项, 但权利无增减。 ■ 3. Content of copyrights: from 17 categories to 13, without substantive change to the scope of the rights. ■ 分别归并了修改权、放映权、摄制权、汇编权; ■ The right of alteration, the right of projection, the right of cinematography and the right of compilation are incorporated into other rights. ■ 4、职务作品和视听作品概念、权利归属及权利行使; ■ 4. Definition, ownership and exercise of copyright for service works and audiovisual works. ■ 5、著作权集体管理制度: 从一条扩大到一章加两条; ■ 5. Collective management of copyright: from 1 article to 1 chapter and 2 additional articles. ■ 6、著作权法定许可制度: 调整适用条件; ■ 6. Statutory license of copyright: adjustment of the conditions for application. ■ 7、著作权合理使用制度: “三步法”从条例上升为法, 微调部分内容; ■ 7. Fair use of copyright: the "three-step approach" provided in regulation is recognized by legislation, with slight changes. ■ 8、技术保护措施和权利管理信息: 从网上扩大到网下; ■ 8. Technical measures and electronic information on the management of the rights on the works: expansion from online protection to protection in general. ■ 9、民事责任 ■ 9. Civil liabilities ■ 10、其他 ■ 10. Others

篇章体例结构对照表 Comparison of the text structure		
Science And Technology	<ul style="list-style-type: none"> ■ 第一章 总则 ■ Chapter I General Provisions ■ 第二章 著作权 ■ Chapter II Copyright ■ 第一节 著作权人及其权利 ■ Section 1 Copyright Owners and Their Rights ■ 第二节 著作权归属 ■ Section 2 Ownership of Copyright ■ 第三节 权利的保护期 ■ Section 3 Term of Protection ■ 第四节 权利的限制 ■ Section 4 Limitations on Rights ■ 第三章 著作权许可使用和转让合同 ■ Chapter III Contracts of Copyright Licensing and Contracts of Copyright Transfer ■ 第四章 出版、表演、录音录像、播放 ■ Chapter IV Publication, Performance, Sound Recording, Video Recording and Broadcasting ■ 第一节 图书、报刊的出版 ■ Section 1 Publication of Books, Newspapers and Periodicals ■ 第二节 表演 ■ Section 2 Performance ■ 第三节 录音录像 ■ Section 3 Sound Recording and Video Recording ■ 第四节 广播电台、电视台播放 ■ Section 4 Broadcasting by a Radio Station or Television Station ■ 第五章 法律责任和执法措施 ■ Chapter V Legal Liabilities and Law Enforcement Measures ■ 第六章 附则 ■ Chapter VI Supplementary Provisions ■ 共61条 Altogether 61 articles 	<ul style="list-style-type: none"> ■ 第一章 总则 ■ Chapter I General Provisions ■ 第二章 著作权 ■ Chapter II Copyright ■ 第一节 著作权人及其权利 ■ Section 1 Copyright Owners and Their Rights ■ 第二节 著作权的归属 ■ Section 2 Ownership of Copyright ■ 第三节 著作权的保护期 ■ Section 3 Term of Protection ■ 第三章 相关权 ■ Chapter III Related Rights ■ 第一节 出版者 ■ Section 1 Publishers ■ 第二节 表演者 ■ Section 2 Performers ■ 第三节 录音制作者 ■ Section 3 Producers of sound recordings ■ 第四节 广播电台、电视台 ■ Section 4 Radio stations and television stations ■ 第四章 权利的限制 ■ Chapter IV Limitations on Rights ■ 第五章 权利行使 ■ Chapter V Exercise of Rights ■ 第一节 著作权和相关权合同 ■ Section 1 Contracts of copyright and related rights ■ 第二节 著作权集体管理 ■ Section 2 Collective management of copyright ■ 第六章 技术保护措施和权利管理信息 ■ Chapter VI Technical measures and electronic information on the management of rights ■ 第七章 权利的保护 ■ Chapter VII Protection of rights ■ 第八章 附则 ■ Chapter VIII Supplementary Provisions ■ 共90条 Altogether 90 articles

	二、《著作权法修订草案送审稿》的主要内容 (国家版权局2012年12月报请国务院审议) II. Major points of the Draft Amendment to the Copyright Law for Examination and Approval submitted by the National Copyright Administration to the State Council for examination in December 2012.	
Science And Technology	<ul style="list-style-type: none"> ■ (二) 增加的内容 ■ (II) What are added ■ 1、延伸的集体管理制度; ■ 1. Extended collective management ■ 2、实用艺术作品; ■ 2. Works of applied art ■ 3、孤儿作品制度; ■ 3. Orphan works ■ 4、追续权制度; ■ 4. Droit de suite ■ 5、表演者范围扩大, 包含表演民间文学艺术作品的人; ■ 5. Expansion of the scope of performers to include those performing folklore ■ 6、表演者出租权; ■ 6. The right of lease for performers ■ 7、视听表演者的获酬权; ■ 7. The right of obtaining remuneration for audiovisual performers ■ 8、表演者和录音制作者的播放权; ■ 8. Right of broadcasting for performers and producers of sound recordings ■ 9、著作权和相关权登记; ■ 9. Registration of copyright and related rights ■ 10、著作权和相关权专有许可合同与转让合同登记制度; ■ 10. Registration of contracts of exclusive licensing and transfer of copyright and related rights ■ 11、其他 ■ 11. Others 	

	三、关于完善配套法规中立改废的考虑 III. Considerations on Formulation, Modification or Abolishment of the Supplementary Regulations	
Science And Technology	<ul style="list-style-type: none"> ■ 1、《著作权法实施条例》: 保留并修改 ■ 1. Regulations for the Implementation of the Copyright Law: to be kept and modified ■ 2、《著作权集体管理条例》: 保留并修改 ■ 2. Regulations on the Collective Management of Copyright: to be kept and modified ■ 3、《信息网络传播权保护条例》: 保留并修改 ■ 3. Regulations on the Protection of the Right to Communicate Works to the Public over Information Networks: to be kept and modified ■ 4、《广播电台电视台播放录音制品支付报酬暂行办法》: 保留 ■ 4. Interim Measures for the Payment of Remuneration for Audio Products Played by Radio and TV Stations: to be kept ■ 5、《计算机软件保护条例》: 废止(相关规定吸收入法) ■ 5. Regulations on Computers Software Protection: to be abolished (with relevant provisions incorporated into legislation) ■ 6、《实施国际著作权条约的规定》: 废止(相关规定在法律中调整) ■ 6. Provisions on the Implementation of the International Copyright Treaties: to be abolished (with the relevant issues regulated by legislation) 	

	三、关于完善配套法规中的立改废考虑 III. Considerations on Formulation, Modification or Abolishment of the Supplementary Regulations	
Science And Technology	<ul style="list-style-type: none"> ■ 1、建立追续权保护制度； ■ 1. The establishment of droit de suite protection system ■ 2、建立孤儿作品保护制度； ■ 2. The establishment of orphan works protection system ■ 3、与新的国际条约的衔接； ■ 3. Adaption to the new international treaties: <ul style="list-style-type: none"> ■ - 《视听表演北京条约》； ■ - Beijing Treaty on Audiovisual Performances ■ - 《便利失明、视力障碍或阅读失能者利用已出版作品的马拉喀什条约》 ■ - Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled 	

	四、关于配合法制办审议送审稿开展的相关工作 IV. Efforts for facilitating the examination by the Legislative Affairs Office of the State Council	
Science And Technology	<ul style="list-style-type: none"> ■ 法制办开展的主要工作； ■ Work conducted by the Legislative Affairs Office of the State Council: ■ 1、两次征求意见（相关单位、全社会）并梳理、汇总； ■ 1. Call for comments twice (of relevant entities and of the general public) and the collection and organization of information thereof. ■ 2、审议与已经、及将要加入的国际公约的一致性； ■ 2. Examination as to the compliance with international treaties already accessed or to be joined. ■ 3、审议与相关法（上位、横向）及其他法律和行政法规的关系； ■ 3. Examination as to the relationship with the relevant laws (both superior and horizontal), as well as other laws and administrative regulations. ■ 4、审议著作权法与自身配套法规的制度安排； ■ 4. Examination as to the consistency of the Copyright Law with its own supplementary regulations. ■ 5、逐条全面审议送审稿； ■ 5. Examination of the Draft Amendment article by article ■ 6、到有关机构、单位实地调研； ■ 6. Conduction of field research to relevant agencies or entities ■ 7、当面质询国家版权局，并提出问题单； ■ -- 要求提供包括数据、案例、相关国家的立法及实施情况、国内的实施情况、集体管理组织的运行情况与存在的问题、分析与论证材料等。 ■ 7. Inquiry to the National Copyright Administration with a question list ■ -- Request of data, cases, legislation of relevant foreign countries and the implementation thereof, domestic implementation, functioning of the copyright collective management organizations and the existing problems, and materials for analysis and discussion. 	

	四、配合法制办审议送审稿开展的相关工作 IV. Efforts for facilitating the examination by the Legislative Affairs Office of the State Council	
Science And Technology	<ul style="list-style-type: none"> ■ 国家版权局配合法制办开展的主要工作: ■ The National Copyright Administration has conducted work to cooperate with the Legislative Affairs Office of the State Council: ■ 1、按要求提交书面报告; ■ 1. submission of written reports as requested. ■ 2、接受当面质询, 回答问题; ■ 2. acceptance of inquiry and answering to questions raised. ■ 3、继续开展委托课题研究; ■ 3. continuance of the researches into the projects. ■ 4、请专家重新翻译已加入、未加入的国际著作权条约(14部), 翻译欧盟关于著作权集体管理的指令; ■ 4. contracting of experts for the translation of the international copyright treaties already accessed or to be joined by China (14 in total), and the EU Directive on copyright collective management. ■ 5、整理相关材料: 现行法与各次草案对照表; 历次著作权法对照表等; ■ 5. preparation of relevant materials: schemas comparing the current law and its previous drafts, as well the historical versions of the Copyright Law. ■ 6、向著作权集体管理组织进行问卷调查; ■ 6. conduction of questionnaire surveys to copyright collective management organizations. ■ 7、出访有关国家进行专门问题调研; ■ 7. visiting to relevant countries for research on certain issues. ■ 8、正在梳理法制办的问题单。 ■ 8. sorting out the question list raised by the Legislative Affairs Office of the State Council. 	

	四、关于配合法制办审议送审稿开展的相关工作 IV. Efforts for facilitating the examination by the Legislative Affairs Office of the State Council	Legislative Affairs Office of the State Council
Science And Technology	<ul style="list-style-type: none"> ■ 开展研究论证的重点领域: ■ Key areas to be studied and discussed: ■ 1、著作权集体管理制度 ■ 1. Collective management of copyright ■ 2、著作权登记制度 ■ 2. Copyright registration ■ 3、追续权制度 ■ 3. Droit de suite ■ 4、孤儿作品制度 ■ 4. Orphan works ■ 5、实用艺术作品保护 ■ 5. Protection of works of applied art ■ 6、著作权限制与例外制度 ■ 6. Limitations of copyright and exceptions ■ 7、马拉喀什条约 ■ 7. The Marrakesh Treaty ■ 8、其他 ■ 8. Others 	

<p>Science And Technology</p>	<p>感谢各位! Thank you for your attention!</p>	

**EU-CHINA ROUNDTABLE ON COPYRIGHT PROTECTION AND
DEVELOPMENT OF COPYRIGHT INDUSTRIES**

中欧版权保护和产业发展研讨会

organized by IP Key project in cooperation with
the National Copyright Administration of China (NCAC)
欧盟IP Key项目与中国国家版权局联合举办

Shanghai, December 2, 2015

上海，2015年12月2日

RESALE RIGHT

追续权

Dr. Mihály Ficsor,
President, Hungarian Copyright Council,
former Assistant Director General of WIPO

Mihály Ficsor 博士，
匈牙利版权协会会长，
前世界知识产权组织助理总干事

**I. RESALE RIGHT (DROIT DE
SUITE) - FIRTS
RECOGNITION IN FRANCE
FOLLOWED BY OTHER
COUNTRIES**

**I. 追续权（追续权）- 最先由法国
认可，之后其他国家也相继认
可**

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海，2015年12月2日

2

The emergence of resale right (as „droit de suite”) (1) 追续权的兴起(1)

The justification for the resale right: without this, many people may get rich on the basis of artists' works – except the artists.

设立追续权的正当理由：没有追续权，许多人能靠艺术家的作品致富——除了艺术家。



M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

3

The emergence of resale right (as „droit de suite”) (2) 追续权的兴起(2)

Examples of artists who died poor and the value of whose paintings increased tremendously after their death:

艺术家死于贫穷，而其死后绘画作品大幅增值的例子：



J.-F. Millet (1814-1875)
让·弗朗索瓦·米勒 (1814-1875)



E. Degas (1834-1917)
埃德加·德加 (1834-1917)



V. van Gogh (1853-1890)
文森特·威廉·梵高 (1853-1890)

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

4

The emergence of resale right (as „droit de suite”) (3) 追续权的兴起(3)

The fate of Millet's „Angelus” triggering out the movement for the recognition of the resale right („droit de suite”)
米勒作品《晚钟》的命运引发了追续权的认可运动。



The „Angelus” was sold by Millet for 1,000 francs in 1865, but just 14 years after Millet's death in 1889 it was sold by the copper merchant Secretan for 553,000 francs.

1865年米勒以1,000法郎出售《晚钟》，而1889年，即米勒逝世后14年，铜商Secretan却售出了553,000法郎。

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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The emergence of resale right (as „droit de suite”) (4) 追续权（追续权）的兴起(4)



Auction where the price of paintings suddenly increased.
绘画作品价格突然增长的拍卖会

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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**The emergence of resale right
(as „droit de suite”) (5)
追续权的兴起(5)**

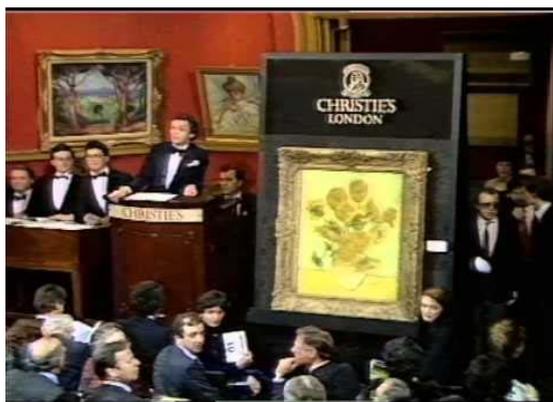


**Dégas auction at Sotheby's
索斯比拍卖行举办的德加作品拍卖会**

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor. 上海, 2015年12月2日

7

**The emergence of resale right (as „droit de suite”) (6)
追续权的兴起(6)**



**van Gogh auction at Christie's
佳士得拍卖行举办的梵高作品拍卖会**

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor. 上海, 2015年12月2日

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Christie's International and Sotheby's reported record sales for 2014 as purchases of contemporary works surged and new buyers entered the market.

由于当代作品的购买量飙升，新买家进入市场，**2014年佳士得拍卖行的国际销售量及索斯比拍卖行的报道销售量创历史纪录。**

Sales of art and collectibles at Christie's **rose to 5.1 billion pounds (\$7.7 billion), a 12 percent increase from 2013**, the world's largest art broker said in a statement. **Sotheby's auction sales rose 18 percent to \$6 billion.**

世界上最大的艺术经纪商在一份声明中称，佳士得拍卖行的艺术品和收藏品的销量增长到**51亿英镑（77亿美元）**，比**2013年增长12%**。索斯比拍卖行的拍卖销量增长**18%**，达到**60亿美元**。

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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The emergence of resale right (as „droit de suite”) (7) 追续权的兴起(7)



**The share of artists without resale right:
无追续权时艺术家的分成:**

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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0 %

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor. 上海, 2015年12月2日

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The emergence of resale right (as „droit de suite”) (8) 追续权的兴起(8)



J.-L. Forain (1852-1931)
J.-L. Forain (1852-1931)

Jean-Louis Forrain's satirical drawings contributed to the campaign for the recognition of a „droit de suite”.

Jean-Louis Forrain的讽刺作品推动了“追续权”认可运动的发展。



M. Ficsor, Shanghai, December 2, 2015
M. Ficsor. 上海, 2015年12月2日

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The emergence of resale right (as „droit de suite”) (9) 追续权的兴起(9)

In the campaign, certain cases were referred to where the **children of painters** whose paintings were sold for huge amounts were **reduced to beggary**, and the **fates of Millet, Degas and others** were invoked.

在“追续权”认可运动中，提到了绘画作品售价不菲的**画家的子女沦为乞丐**的例子，并引用了**米勒、德加和其他画家的命运**。

The idea of a *droit de suite* was **introduced** by Albert Vaunois in an article in the *Chronique de Paris* in 1893.

1893年，Albert Vaunois在《巴黎纪事》一篇文章中引进了“追续权”的概念。

Finally, a laws was adopted in in France 1920 granting and inalienable right to artists to claim a share – depending on the sale price – of 3%, 2% or 1% percent of the gross sales price on each public sale of their „original” works of art. („Original” meant the concrete works as created, excluding such works as copies made of engravings, lithographs and the like.)

最终，在1920年，法国通过了一部法律，授予艺术家要求份额的不可剥夺的权利—艺术家可根据销售价格，在每次公开出售其“原创”艺术作品时，要求获得总销售价格的3%、2%或1%。（“原创”指创建的具体作品，雕刻、石印画等类似作品除外。）

M. Ficsor, Shanghai, December 2, 2015

M. Ficsor, 上海, 2015年12月2日

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The spreading of legislation on the resale right 关于追续权立法的普及

The French example became spreading; legislation was adopted on the „droit de suite” in Belgium in 1921, in Czechoslovakia, in 1926 in Poland, in Uruguay in 1937, in Italy in 1941. At the end of World War II the number of countries was 15, in 1992 (on the basis of US Copyright Study) 36, and now the number is 75 (and with draft legislation in China, Switherland and the US):

法国的例子广为传播：比利时在1921年，捷克斯洛伐克在1926年，波兰，拉圭在1937年，意大利在1941年纷纷通过了“追续权”立法。第二次世界大战结束后，通过“追续权”立法的国家数量为15个；1992年（根据美国版权研究数据）为36个；如今，这一数字为75（包括中国、瑞士和美国的草拟法例）：

Algeria, Austria, Australia, Azerbaijan, Belarus, Belgium, Bolivia, Brazil, Bulgaria, Burkina Faso, Chile, Colombia, Congo, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Gabon, Germany, Georgia, Greece, Guatemala, Guinea, Honduras, Hungary, Iceland, India, Iraq, Ireland, Italy, Ivory Coast, Kazakhstan, Kyrgyzstan, Laos, Latvia, Lichtenstein, Lithuania, Luxembourg, Madagascar, Mali, Malta, Mexico, Monaco, Montenegro, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Senegal, Serbia, Slovakia, Slovenia, Spain, Sweden, Tunisia, Turkey, Ukraine, United Kingdom, Uruguay, Venezuela.

阿尔及利亚、奥地利、澳大利亚、阿塞拜疆、白俄罗斯、比利时、玻利维亚、巴西、保加利亚、布基纳法索、智利、哥伦比亚、刚果、哥斯达黎加、克罗地亚、塞浦路斯、捷克共和国、丹麦、厄瓜多尔、爱沙尼亚、芬兰、法国、加蓬、德国、格鲁吉亚、希腊、危地马拉、几内亚、洪都拉斯、匈牙利、冰岛、印度、伊拉克、爱尔兰、意大利、科特迪瓦、哈萨克斯坦、吉尔吉斯斯坦、老挝、拉脱维亚、列支敦士登、立陶宛、卢森堡、马达加斯加、马里、马尔他、墨西哥、摩纳哥、黑山共和国、摩洛哥、荷兰、新西兰、尼加拉瓜、挪威、巴拿马、巴拉圭、秘鲁、菲律宾、波兰、葡萄牙、罗马尼亚、俄罗斯联邦、塞内加尔、塞尔维亚、斯洛伐克、斯洛文尼亚、西班牙、瑞典、突尼斯、土耳其、乌克兰、英国、乌拉圭、委内瑞拉。

M. Ficsor, Shanghai, December 2, 2015

M. Ficsor, 上海, 2015年12月2日

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II. THE BERNE CONVENTION ON THE RESALE RIGHT („DROIT DE SUITE”) II.伯尔尼公约 追续权

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

15

The idea of the *droit de suite* at the Rome Conference to revise the Berne Convention 罗马会议提出“追续权”理念修改《伯尔尼公约》

In 1928, at the Rome Conference, the following ‘voeu’ was proposed by the French Delegation:
1928年, 在罗马会议上, 法国代表团提出了以下“誓约”:

„It is desirable that the inalienable *droit de suite*, established in France by the law of 20 May 1920 and in Belgium by that of 25 June 1921, to the profit of artists, in their original works which are publicly sold, should be the object of similar legislative dispositions in other countries, on condition of reciprocity, in each of them, between their nationals and those of countries which have already adopted this measure.” (Emphasis added.)

“希望: 于1920年5月20日依法在法国建立, 1921年6月25日依法在比利时建立的, 授予艺术家享有在按照互惠原则在其国民及已通过该项措施的国家国民之间公开出售的其原创作品中的利润的不可剥夺的追续权应作为其他国家类似立法的目标。” (添加了强调)

However, for the majority of the Delegations, the idea was still too new. Thus, only the following text was adopted:

但是, 对于大多数代表团来说, 这仍是一个全新的理念。因此, 会议仅通过了以下内容:

„The Conference expresses the desire that those countries of the Union which have not yet adopted legislative provisions guaranteeing to the benefit of artists an inalienable right to a share in the proceeds of successive public sales of their original works should take into account the possibility of considering such provisions.”

“会议希望未通过为艺术家的利益授予其收取多次连续公开出售其原创作品所得份额的不可剥夺权利立法的欧盟成员国应考虑该等规定的可能性。”

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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**Article 14^{ter} of the Berne Convention adopted at the 1948
Brussels Diplomatic Conference**
1948年布鲁塞尔外交会议通过的《伯尔尼公约》第14条之三

Article 14^{ter}

第14条之三

(1) **The author, or after his death, the persons or institutions authorized by national legislation, shall, in respect of original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first disposal of the work by the author.**

(1) 对于作家和作曲家的艺术原著和原稿，作者或作者死后由国家法律授权的人或机构，享有从作者第一次转让作品之后对作品的每次销售中分取盈利的不可剥夺的权利。

(2) **The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the degree permitted by the country where this protection is claimed.**

(2) 只有在作者国籍所属国法律允许的情况下，才可对本联盟某一成员国要求前款所规定的保护，而且保护的程度应限于向之提出保护要求的国家的法律所规定的程度。

(3) **The procedure for collection and the amounts shall be a matter for determination by national legislation.** (Emphasis added.)

(3) 征税的程序和税额由各国法律决定。（添加了强调）

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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**Comments on Article 14^{ter}
in the WIPO Guide (1)**
《世界知识产权组织指南》对第14条之三的评论（1）

„Guide to the Copyright and Related Rights Treaties Administered by WIPO”, 2002, WIPO publication No. 891 (E):

《世界知识产权组织管理的版权及相关权条约指南》，2002年，世界知识产权组织出版号891 (E):

BC-14^{ter}.1. This right... as it turns out from paragraph (2) of the Article, **it is optional, and is subject to material reciprocity.** In the latter aspect, it represents **an exception to the obligation to grant national treatment** under Article 5(1) of the Convention...

《伯尔尼公约》第14条之三1.这一权利.....正如这一条第(2)款所表明的，它具有选择性，并取决于实质性互惠。就实质性互惠而言，它意味着公约第5条第(1)款规定的给予国民待遇的义务的一种例外。

BC-14^{ter}.3. [T]he **inalienable nature of the right deserves some remarks...** [I]n general, economic rights are construed as transferable rights under the Convention. The exclusion of the transferability of this resale right is an example to this general principle. Inalienability **seems to serve the interests of the authors and their heirs. In the absence of it, the counter-value of the transfer of this right would be a simple element of the original price, and the objective** – that the authors and his heirs may enjoy the increase of the value of such works in the course of the subsequent sales – **could not be achieved.**

《伯尔尼公约》第14条之三3.这一权利的不可转让性仍值得稍加说明。...经济权利通常被解释为公约规定的可转让的权利。排除这一转授权的不可转让性是这一一般原则的一种例外。不可转让性似乎符合作者及其继承人的利益。如果没有这一属性，这一权利转让的等值就只有原价一种成分，作者及其继承人可以享受这种作品在以后各次销售中的增值的目标就无法实现。

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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**Comments on Article 14ter
in the WIPO Guide (2)**
《世界知识产权组织指南》对第14条之三的评论（2）

The WIPO Guide:

《世界知识产权组织指南》：

Bc-14ter.4. Considering the optional nature of the right, **the freedom granted in paragraph (3) is logical**. It is up to national legislation **to determine not only the percentage or to fix the amount of the interest, but also such aspects as to whether the interest should be calculated on the basis of the resale price or on the difference between it and the previous price; who should pay it (whether the seller or the buyer); in the case of what kinds of resales it should be paid (in general, uncontrollable resales between private persons, rather than through professional intermediaries, are excluded); and whether the right may be exercised on an individual basis or only through a collective management system.** (Emphasis added.)

《伯尔尼公约》第14条之三4.考虑到该权利的任择性，**第(3)款给予成员国的自由是可想而知的**。国内立法不仅可以确定收益分成比例或数额，而且可以在以下方面作出规定：**这种收益应按转售价格还是按前后两次销售价格差额计算；由谁（卖主还是买主）支付；应在何种转售情况下支付（私人之间的不可控制的转售——而不是通过职业中介的转售——被排除在外）；这一权利是各自行使还是只能通过集体管理制度来行使。**（添加了强调）

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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**III. THE RESALE RIGHT
DIRECTIVE
III. 追续权指令**

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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Resale Right Directive: basic provisions 追续权指令：基本规定

Official title: **Directive 2001/84/EC** of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art. **Basic provisions:**

正式名称：**2001年9月27日**欧洲议会和欧洲理事会关于原创艺术作品作者权益追续权的**2001/84/EC号指令**。**基本规定：**

Article 1. Member States shall provide, for the benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.

第1条 成员国应，为了原创艺术作品作者的利益，授予追续权（定义为不可剥夺的权利，不可放弃，也不得事先放弃），作者可对其首次转让作品后的后续转售获得的销售价格收取版税。

2. The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.

2.第1段提及的权利应适用于**卖方、买方或中间商艺术品市场专业机构的转售活动**，例如拍卖场、艺术画廊，一般而言，还包括艺术作品任何经销商。

3. Member States may provide that the right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed EUR 10000.

3.成员国可规定第1段提及的权利不得适用于**卖方在转售前三年内直接从作者处获得作品，且转售价格不超过10000欧元的转售行为**。

4. The royalty shall be payable by the seller. Member States may provide that one of the natural or legal persons referred to in paragraph 2 other than the seller shall alone be liable or shall share liability with the seller for payment of the royalty.

4.卖方应支付版税。成员国可规定第2段提及的**卖方以外的一位自然人或法人单独负责或与卖方分摊版税**。

M. Ficsor, Shanghai, December 2, 2015

M. Ficsor, 上海, 2015年12月2日

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Resale Right Directive: works covered 追续权指令：涵盖的作品

Works covered

涵盖的作品

Art 2. 1. For the purpose of this Directive, "original work of art" means works of graphic or plastic art such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware and photographs, **provided they are made by the artist himself or are copies considered to be original works of art.**

第2条 1.在本指令下，“原创艺术作品”指绘画作品、造型作品，例如图画、抽象拼贴画、油画、素描画、雕刻品、印刷品、石印画、雕塑、挂毯画、陶瓷、玻璃制品及照片，**但规定：该等作品由艺术家亲自创作或是被视为原创作品的副本。**

2. Copies of works of art covered by this Directive, **which have been made in limited numbers by the artist himself or under his authority, shall be considered to be original works of art** for the purposes of this Directive. Such copies will normally have been numbered, signed or otherwise duly authorised by the artist.

2.在本指令下，本指令范围内的作品副本（由艺术家本人或经其授权创作，数量有限），**应被视为原创作品的副本。该等副本通常由艺术家编号、签署或以其他方式正式授权。**

M. Ficsor, Shanghai, December 2, 2015

M. Ficsor, 上海, 2015年12月2日

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Resale Right Directive: threshold and rates 追续权指令：征收起点与费率

Threshold

征收起点

Article 3. 1. It shall be for the Member States to set a minimum sale price from which the sales referred to in Article 1 shall be subject to resale right.

第3条 1. 成员国负责设定第1条所指受限于追续权的销售的最低销售价格。

2. This minimum sale price may not under any circumstances exceed EUR 3000.

2. 在任何情况下，最低销售价格不得超过3000欧元。

Rates

版权率

Article 4.1. The royalty provided for in Article 1 shall be set at the following rates:

第4条 1. 第1条规定的版权应按照以下费率规定：

(a) 4 % for the portion of the sale price up to EUR 50000;

(a) 50000欧元以下的部分，4%；

(b) 3 % for the portion of the sale price from EUR 50000,01 to EUR 200000;

(b) 50000,01欧元至200000欧元的部分，3%；

(c) 1 % for the portion of the sale price from EUR 200000,01 to EUR 350000;

(c) 200000,01欧元至350000欧元的部分，1%；

(d) 0,5 % for the portion of the sale price from EUR 350000,01 to EUR 500000;

(d) 350000,01欧元至500000欧元的部分，0.5%；

(e) 0,25 % for the portion of the sale price exceeding EUR 500000.

(e) 超过500000欧元的部分，0.25%。

However, the total amount of the royalty may not exceed EUR 12500.

但是，总版权不得超过12500欧元。

2. By way of derogation from paragraph 1, Member States may apply a rate of 5 % for the portion of the sale price referred to in paragraph 1(a).

2. 通过第1段规定的扣减，成员国可对第1(a)段提及的部分销售价格适用5%的费率。

3. If the minimum sale price set should be lower than EUR 3000, the Member State shall also determine the rate applicable to the portion of the sale price up to EUR 3000; this rate may not be lower than 4 %.

3. 如规定的最低销售价格低于3000欧元，成员国也可确定适用于3000欧元以下的部分销售价格的费率；此费率不得低于4%。

M. Ficsor, Shanghai, December 2, 2015

M. Ficsor, 上海, 2015年12月2日

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Resale Right Directive: calculation, persons entitled, third countries

追续权指令：计算、有权人士、第三国

Calculation basis

计算依据

Article 5. The sale prices referred to in Articles 3 and 4 are net of tax.

第5条 第3条和第4条所指销售价格为税后净额。

Persons entitled to receive royalties

有权收取版权的人士

Article 6. 1. The royalty provided for under Article 1 shall be payable to the author of the work and... after his death to those entitled under him/her.

第6条 1. 第1条规定的版权可支付给作品的作者，以及作者逝世后有权收取的人士。

2. Member States may provide for compulsory or optional collective management of the royalty provided for under Article 1.

2. 成员国应规定强制性或选择性收取第1条规定版权的管理制度。

Third-country nationals entitled to receive royalties

有权收取版权的第三国国民

Article 7. Member States shall provide that authors who are nationals of third countries and... their successors in title shall enjoy the resale right in accordance with this Directive and the legislation of the Member State concerned only if legislation in the country of which the author or his/her successor in title is a national permits resale right protection in that country for authors from the Member States and their successors in title. (Emphasis added.)

第7条 成员国应规定属于第三国国民的作者及其所有继承人应根据本指令和相关成员国的立法享有追续权，但前提是：作者或其所有继承人国籍所在国家的立法允许在该国对来自成员国的作者及其所有继承人予以追续权保护。（添加了强调）

M. Ficsor, Shanghai, December 2, 2015

M. Ficsor, 上海, 2015年12月2日

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European Commission report (1) 欧盟委员会报告 (1)

Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee (14 of December 2011; COM(2011) 878 final):

欧盟委员会向欧洲议会、欧洲理事会和欧洲经济和社会委员会提交的报告（2011年12月14日；COM (2011) 878最终版）：

„The global art and antiques market, including both fine and decorative art, was worth €43 billion in 2010, a year when it returned to its 2008 level after a year of "crisis" in 2009 (when sales contracted to €28 billion). The EU had a global market share of 37% by value in 2010, followed by the US (34%), and China (23%). The most marked trend in the global art and antiques market over the last six years is the dramatic rise in the Chinese market share from 5% in 2006, and the concomitant drop in market shares of the US and the EU”.

“全球艺术品和古董市场（包括美术和装饰艺术），在2010年价值430亿欧元，在经历了2009年“危机”（销售额收缩至280亿欧元）后一年恢复到了2008年的水平。2010年欧盟全球市场份额为37%，其次是美国(34%)和中国(23%)。过去六年间全球艺术品和古董市场最明显的趋势是中国市场份额从2006年的5%飞速增长，美国和欧盟市场份额的同步下降。”

„Works subject to the resale right accounted for around €2.1 billion in auction sales in 2010 globally. In the EU these works accounted for 50% of the value of fine art auction sales in 2010, compared with 35% of sales in the US, 25% in Switzerland and 3% of sales in the rest of the world.”

“2010年，具有追续权的作品在全球拍卖销售中约为21亿欧元。在欧盟，该等作品占2010年艺术品拍卖销量的50%，美国为35%，瑞士25%，其他国家3%。”

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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European Commission report (2) 欧盟委员会报告 (2)

„Global fine art auction sales of the works of all living artists in 2010 amounted to around €1 billion, with the EU accounting for almost a third of these sales. Global auction sales of the works of living EU artists accounted for one third of the value of sales of works of living artists in 2010 (€340 million).

“2010年，所有在世艺术家的艺术品全球销量约达到10亿欧元，其中，欧盟占三分之一。2010年，所有在世欧盟艺术家作品全球拍卖额约占在世艺术家作品销售额的三分之一（3.4亿欧元）。”

„Fine art auction sales of the works of all living artists grew by 136% in value over 2005-2010. US and EU growth was below the average (60% and 92% respectively) while Switzerland and China both recorded high growth rates of 334% and 646% respectively.”

“在2005年到2010年间，所有在世艺术家的艺术品拍卖量价值增加了136%。美国和欧盟的增长率低于平均水平（分别为60%和92%），而瑞士和中国均具有超高的增长率，分别为334%和646%。”

„Global fine art auction sales of "Modern" art works (artists born between 1875 and 1945) amounted to around €3.5 billion in 2010. The EU "heirs" market (works of artists deceased within 70 years of the date of sale) accounted for €1 billion of this.

“2010年，“现代”艺术作品（艺术家出生于1875年到1945年）的全球拍卖额约为35亿欧元。欧盟的“继承人”市场（销售日期前70年内逝世的艺术家的作品）约为10亿欧元。”

Overall, the market grew by 126% over the period 2005-2010. Switzerland, the US and the EU sales grew by 25%, 69% and 85% respectively against the very high growth rate in China account of over 1300%. The EU lost global market share, again largely as a result of the UK losing market share (from 27% to 20%), as did the US and Switzerland. China's market share gained dramatically from 4% to 23%.

总之，在2005年到2010年间，市场价值增长了126%。瑞士、美国和欧盟的销量分别增加了25%、69%和85%，中国具有超过1300%的超高增长率。由于英国损失了市场份额（从27%降到20%），欧盟再次大幅损失了全球市场份额，美国和瑞士也是如此，而中国的市场份额从4%大幅增长到了23%。

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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European Parliament Resolution (1) 欧洲议会决议(1)

European Parliament resolution of 20 November 2012 on the Report on the Implementation and Effect of the Resale Right Directive

2012年11月20日欧洲议会关于追续权指令的实施与效力报告的决议

Conclusions

结论

„13. Notes that the art market was valued at USD 10 billion in 2010 and almost USD 12 billion in 2012 and that the resale right accounts for only 0,03 % of those sums; considers this to be an important market from which artists and their heirs should receive fair remuneration;

“13.请注意：2010年艺术品市场价值为100亿美元，2012年为120亿美元，追续权仅占价值的0.03%；此为艺术家及其继承人收取公平报酬的重要市场；

14. Notes that art market studies and statistics do not suggest that the resale right has a detrimental impact on the location of the art market or its turnover;

14.请注意：对艺术品市场的研究及统计数据并未表明追续权对艺术品市场或其营业额的情况具有不利影响；

15. Notes that the Directive was only implemented in full in all Member States on 1 January 2012, although a resale right has been recognised in many Member States for several decades;

15.请注意：尽管许多成员国在几十年前已认可追续权，但本指令自2012年1月1日方在所有成员国全面实施；

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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European Parliament Resolution (2) 欧洲议会决议(2)

European Parliament Resolution:

欧洲议会决议：

19. Calls on the Commission to work closely with stakeholders to strengthen the European art market's position and to address problems such as the 'cascade effect' and the administrative difficulties faced by smaller and specialist auction houses and dealers;

19.请求委员会与利益相关者紧密合作，巩固欧洲艺术品市场的地位，解决小型专业拍卖行和经销商面临的“瀑布效应”和管理困难；

20. Welcomes the initiatives taken by third countries to introduce the resale right and urges the Commission to continue its efforts in multilateral fora;

20.引进第三方引入追续权的倡议，督促委员会在多边论坛上继续努力；

21. Highlights the importance of giving proactive support to local artists, including the youngest artists.

21.强调积极支持当地艺术家，包括年轻艺术家的重要性。”

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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IV. MANAGEMENT OF THE RESALE RIGHT IV.追续权的管理

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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Key principles and recommendations on the management of the resale right (1) 追续权管理的关键原则与建议(1)

On **17 February 2014** representatives of **collecting management organisations, authors and art market professionals** (art dealers, galleries, auctioneers) **signed up to “Key Principles and Recommendations on the management of the Author Resale Right”, under the auspices of Commissioner Barnier**. The document is the result of the stakeholder dialogue proposed by the Commission in its Report of 2011.

2014年2月17日, 在委员Barnier的主持下, 收费管理组织的代表、作者及艺术品市场专家 (艺术品经销商、艺术画廊、拍卖人) 签署了“**追续权管理的关键原则与建议**”。本文是委员会在其2011年报告中提议的利益相关者对话记录。

The following organisations participated in the Dialogue: Artists' Collecting Society (ACS), Société des Auteurs dans les Arts Graphiques et Plastiques (ADAGP), Confédération Internationale des Négociants en Œuvres d'Art (CINOA), Confédération Internationale des Sociétés d'Auteurs et Compositeurs (CISAC), Copydan Billedkunst, Christie's, Design and Artists Copyright Society (DACS), European Council of Artists- Scottish Artists Union (ECA-SAU), European Federation of Auctioneers (EFA), European Visual Artists (EVA), Federation of European Art Galleries Association (FEAGA), Groupement Européen des Sociétés d'Auteurs et Compositeurs (GESAC), Sotheby's, The Association of Art and Antique Dealers (LAPADA), The British Antique Dealers' Association, The Society of London Art Dealers (SLAD), VG Bild-Kunst.

下列组织参与了对话: 艺术家收费协会 (ACS)、法国图像及造型艺术著作人协会 (ADAGP)、艺术品和古董经销商协会国际联合会 (CINOA)、国际作者和作曲家协会联合会 (CISAC)、Copydan Billedkunst、佳士得、设计和艺术家版权协会 (DACS)、欧洲艺术家理事会-苏格兰艺术家联盟 (ECA-SAU)、欧洲拍卖商联合会 (EFA)、欧洲视觉艺术家协会 (EVA)、欧洲艺术画廊协会联合会 (FEAGA)、Groupement Européen des Sociétés d'Auteurs et Compositeurs (GESAC)、索斯比、艺术品与古董商协会 (LAPADA)、英国古董商协会、伦敦艺术商协会 (SLAD)、VG Bild-Kunst。

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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Key principles and recommendations on the management of the resale right (2)

追续权管理的关键原则与建议(2)

1. Recommendations on Transparency and Administration

1. 透明度与管理建议

1. CMOs undertake to make available to the AMPs (online and in print) **comprehensive registers of Artists represented.**
1. 集体管理组织承诺向拍卖行、艺术品交易商和画廊提供（在线和打印）**艺术家代表完整登记册。**
2. CMOs undertake to **declare which mandates they hold** and to provide proof of them in case of justified doubt.
2. 集体管理组织承诺在正当怀疑时声明**其持有的授权**并提供证据。
3. **CMOs operating under a system of compulsory collective management agree to use all reasonable efforts to identify and trace Artists who are not their members.**
3. **集体管理组织运营强制性收费管理系统，同意尽其所有合理努力确定并追踪非其成员的艺术家的。**
4. In line with Article 9 of the Directive, AMPs are urged to **provide CMOs with all the necessary information on the relevant sales of art works** (minimum: name of the artist, price and date of the sale) **in an agreed upon time frame.**
4. 根据指令第9条，**拍卖行、艺术品交易商和画廊需按照约定的时间表向集体管理组织供有关艺术品相关销售的所有必要信息**（最低要求：艺术家的名称、销售价格及日期）。
5. Trade Associations and CMOs are urged to promote a **high level of transparency and accountability** with the mutual aim of encouraging all parties to adhere to the rights and obligations set out in the Directive.
5. 贸易协会和集体管理组织需促进**高水平的透明度及问责制**，共同鼓励所有相关方遵守指令规定的权利与义务。

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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Key principles and recommendations on the management of the resale right (3)

追续权管理的关键原则与建议(3)

CMO and AMPs should so far as possible:

集体管理组织和拍卖行、艺术品交易商和画廊应尽可能地:

6. Work to **develop streamlined reporting systems** which take into account each party's workflow (electronic and/or manual reporting) and which are suited to different volumes of transactions.
6. 合作**建立精简的汇报系统**，该汇报系统应考虑各方的工作流（电子及/或人工汇报），并适合不同的交易量。
7. Agree on **how to achieve collection of resale right in a timely manner.**
7. 达成**如何及时实现追续权的收费。**
8. Establish a **mechanism for agreeing solutions to common and/or frequently occurring issues, e.g. eligibility of works, undistributed resale right remuneration and other issues.**
8. 建立一种**常见及/或频繁出现的的问题的解决方案达成机制**，例如作品的合格性、未分配的追续权报酬及其他问题。
9. **Define, collect and evaluate data on the relevant market in order to be able to provide measurable data for future purposes/international discussions.**
9. **定义、收集和评估相关市场的数据，为日后/国际讨论提供可测量的数据。**

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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Key principles and recommendations on the management of the resale right (4)

追续权管理的关键原则与建议(4)

2. Recommendations on Increasing Knowledge of the Resale Right

2.提高追续权认知的建议

10. CMOs commit to publish clear guidance and FAQs for Artists, to be widely disseminated and published on CMO and Artist Organisation websites, clearly explaining how the resale right works and how an Artist can register with a CMO.
10. 集体管理组织承诺为艺术家发布明确的指南和疑问解答, 在集体管理组织和艺术家组织网站上广泛传播与发布, 清楚地解释追续权如何发挥作用以及艺术家如何在集体管理组织上注册。
11. CMO and Artist Organisations commit to working in partnership, to promote and explain the resale right in an engaging and accessible manner (including the use of case studies and artist-led formats).
11. 集体管理组织和艺术家组织承诺合作, 以有趣易懂的方式(包括使用案例研究和艺术家导向的格式)解释追续权。
- CMOs and Trade Associations are encouraged to work together:
鼓励集体管理组织与贸易协会合作:
13. To organise practical seminars or workshops to help AMPs and CMOs understand and fulfill their legal obligations under resale right legislation...
13. 组织实践研讨会或研讨会, 帮助拍卖行、艺术品交易商和画廊和集体管理组织理解并履行其在追续权立法下的法定义务。
16. To meet to discuss successful events, common concerns, share training materials, and models of best practice, across sectors, where appropriate.
16. 会面讨论成功事件、共同关注的事宜、分享培训材料、最佳实践和跨部门模型, 视情况而定。
17. To ensure Trade Association members are urged to meet their legal obligations under the resale right...
17. 确保督促贸易协会会员履行其在追续权下的法定义务。
19. To resolve compliance issues as much as reasonably possible through dialogue and agreement with the AMPs.
19. 与拍卖行、艺术品交易商和画廊对话、达成协议, 尽可能合理地解决合规事宜。

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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Key principles and recommendations on the management of the resale right (4)

追续权管理的关键原则与建议(4)

3. Cascade Effect and problems concerning resale right payment

3.瀑布效应和追续权支付相关问题

21. When an art work is sold several times between different AMPs, the resale right is legally due on each of these sales as well as on the sale to a non-professional buyer. The undersigned parties acknowledge that this situation (the so called "cascade effect") is in accordance with the resale right as provided by the Directive and may arise within one Member State or across borders.
21. 一件艺术作品在不同的拍卖行、艺术品交易商和画廊之间销售多次时, 每次销售及向非专业买方进行的销售均需依法支付追续权款项。以下签署各方确认该等情况(所谓的“瀑布效应”)符合指令规定的追续权, 并且可能在成员国境内或边境出现。
- In Member States where the seller shares liability for paying the resale right with the dealer, or where commercial law allows buyers to be charged for it, dealers can potentially end up paying the resale right twice (in two resales of the same art work), both when they buy and when they sell.
- 在卖方与经销商分摊销售权付款责任的成员国内, 或在商业法允许向买方征收销售权款项的成员国内, 经销商在买进和卖出时, 可能需要支付两次追续权款项(在同一艺术作品两次销售中)。
22. In the next report on the implementation and the effect of the Directive, the Commission studies among other issues
22. 在下个关于指令的实施与效力的报告中, 委员会研究了其他问题
- the extent to which successive sales occur between AMPs and,
 - 在拍卖行、艺术品交易商和画廊之间出现多次连续销售的范围内, 以及
 - the frequency with which AMPs pay the resale right twice in respect of the same art work and the amounts of the resale right paid by the AMPs as a consequence of this.
 - 拍卖行、艺术品交易商和画廊就同一艺术作品支付两次追续权款项的频率, 以及拍卖行、艺术品交易商和画廊因此支付的金额。

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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**THANK YOU FOR YOUR
ATTENTION**

感谢您的关注

谢谢 XIE XIE

谢谢

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M. Ficsor, Shanghai, December 2, 2015
M. Ficsor. 上海, 2015年12月2日

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Private Copying Levy 私人复制补偿金

EU-China Roundtable on Copyright Protection
and Development of Copyright Industries
中欧版权保护和产业发展研讨会

2 December 2015, Shanghai
上海 2015年12月2日

KT Ang
IFPI Regional Director Asia Pacific
洪伟典
国际唱片业协会亚太区总裁



Private Copying 私人复制

- Private copying exceptions exist in the laws of a majority of European Member States; Many other countries also have private copying or format shifting exceptions
- 私人复制例外存在于大多数欧盟成员国的法律之中；许多其他国家也有私人复制或格式转换例外
 - E.g. Brazil, Mexico, China, Japan, Korea, Australia, New Zealand, Canada and USA
 - 如巴西、墨西哥、中国、日本、韩国、澳大利亚、新西兰、加拿大和美国
- In Europe, private copying exceptions are accompanied by a levy scheme (except the UK and Luxembourg)
- 在欧洲，私人复制例外伴随着一个征税制度（除英国和卢森堡之外）
- European case law and legislation require that right holders be compensated for the harm caused by private copying (Article 5(2)(a) Directive 2001/29 EC)
- 欧洲案例法和法律规定，权利人应因私人复制造成的伤害而获得补偿（欧盟指令2001/29 第5（2）（a）条）
- Levies should cover not only the actual “harm”, but also the “possible” harm caused to right holders by unauthorized copying (CJEU decision in the *Padawan*)
- 征税应不仅包括实际“伤害”，同时也包括未经授权的复制给权利人造成的“潜在”伤害（欧盟法院*Padawan*案件裁决）
- Harm includes the missed licensing opportunities for right holders when copies cannot be licensed
- 伤害包括因复制品不能获得许可而对权利人造成的许可机会错失



Process of setting levies 征税确定过程

- Levies are fixed by law or secondary legislation; usually, following consultations or negotiations with interested parties
- 征税由法律或次级立法规定；通常情况下，经与有关方协商或谈判
- Very flexible system France, where an administrative Commission (Commission Hadas-Lebel) has been set up including all parties (½ right holders, ¼ manufacturers and ¼ consumers) to determine the levy. This is a permanent Commission & is able to revise tariffs regularly
- 法国的制度非常灵活，建立了一个包含各方（½的权利人、¼的厂商和¼的消费者）的管理委员会（哈达斯——勒贝尔委员会）来确定征税。这是一个永久委员会，能够定期修订税率
- The main references are previous rates (Austria), comparison with other countries (Belgium), economic value or impact of copying (Austria, France), “fairness” or “equity” (Finland)
- 主要参考包括以前的税率（奥地利）、与其他国家比较（比利时）、经济价值或复制的影响（奥地利、法国），“公平”或“公正”（芬兰）



Process of setting levies 征税确定过程

- The individual rates vary depending on the price of devices, their storage capacity (hours/bytes).
- 各项税率取决于设备的价格及存储容量（小时/字节）。
- In some EU countries, the rate of the levies is a percentage of the sales price of carriers or equipment set either by law or in secondary legislation.
- 在部分欧盟国家，税率为法律或次级立法中规定的载体或设备销售价格的百分比。
- Hungary and Latvia have variable tariffs but they are fixed by Decree (HU) or law (LV).
- 匈牙利和拉脱维亚的税率是可变的，但由法令（匈牙利）或法律（拉脱维亚）确定。
- Portugal and Greece also have percentages of sales price.
- 葡萄牙和希腊也采用销售价格的百分比。
- However, this method of calculation is not favourable to right holders as the price of equipment tends to decrease while recording capacity has been increasing.
- 但这种计算方式不利于权利人，因为在录制容量不断增加的同时，设备的价格却在下降。



Criteria to apply levies 征税标准

- Levies are payable on devices and media that could be used for storing private copies
- 征税针对可用于存储私人复制品的设备和媒体
- The law traditionally define broadly the carriers on which levies can be applied as media “making it possible to copy” or “usually used for private copying”
- 传统上法律将可征税的载体广泛定义为“能够复制”或“通常用于私人复制”的媒体
- According to existing EU law, it is legitimate to collect a levy for all devices and equipment making it possible to copy.
- 根据欧盟现行法律，对所有能够进行复制的装置和设备征税是合法的。
- Recently, due to the strong lobby of the manufacturers, some copyright laws have introduced stricter criteria:
- 最近，由于厂商的大力游说，部分版权法律已采纳了更严格的标准：
 - devices “obviously used” (Belgium)
 - “被明显使用了”的设备（比利时）
 - “if they are used for private copying” (Germany), or
 - “如其用于私人复制”（德国），或
 - “especially suitable” (Sweden) for making private copies.
 - “特别适合”（瑞典）进行私人复制。
 - “information carrier and devices intended predominantly for reproducing works for private use” (Bulgaria)
 - “主要出于私人用途复制作品的信息载体和设备”（保加利亚）



Collection and Distribution of Levies 征税与分配

- Collection is made in most countries at the manufacture or importation level
- 大多数国家征收生产或进口税
- A number of countries including Austria, Hungary and the Netherlands have established a joint responsibility of retailers:
- 奥地利、匈牙利和荷兰等多个国家已确立了零售商连带责任：
 - **Austria:** retailers are liable as guarantors of the payments of manufacturers or importers
 - **奥地利:** 零售商作为厂商或进口商的付款担保人
 - **Hungary:** retailers and importers bear joint responsibility, under the terms and tariffs set out by authors’ collecting society Artisjus
 - **匈牙利:** 根据作者征税机构ARTISJUS制定的条款和税率，零售商和进口商承担连带责任
 - **The Netherlands:** If no levy has been paid on certain goods, the retailer is liable for the payment of levies if she cannot provide the name and/or proof of whom the first importer was.
 - **荷兰:** 如特定商品未征税，且零售商无法提供第一进口商名称和/或证明，其有责任支付税款。



Collection and Distribution of Levies 征税与分配

- Local manufacturers or importers pay the levies to one or several collecting societies.
- 本地厂商或进口商向一个或若干征税机构支付版税。
- In most countries a central collecting society collects on behalf of all right holders (authors, performers, producers), in most cases both for music and video .
- 在大多数国家，中央征税机构代表全体权利人（作者、演员、制片人），在大多数情况下针对音乐和视频进行征税。
- The central society distributes the amounts collected to the different collecting societies representing each category of right holders, who re-distribute to their members.
- 中央征税机构将征收的版税分配给代表各类权利人的不同征税机构，由该等机构再分配给各自成员。



Sharing of Levies among Right Holders 权利人间税费分享

- Split of levies between audio and audio-visual sectors:
- 音频与视听领域征税分配：
 - Usually calculated on the basis of market reviews
 - 通常基于市场分析计算
 - Usually results in a 50/50 sharing
 - 通常结果为按50/50比例分享
- In the music field:
- 在音乐领域：
 - In a number of EU countries, authors receive around 50%, while producers and performers share the remaining 50%.
 - 在许多欧盟国家，作者收取50%左右，而制作人和表演者分享剩余的50%。
 - In some countries (Belgium, Denmark, Estonia, Lithuania, Norway, Romania and Sweden), equal split between the 3 categories of right holders.
 - 在某些国家（比利时、丹麦、爱沙尼亚、立陶宛、挪威、罗马尼亚和瑞典），在3类权利人间进行平均分配。



Cultural Funds 文化基金

- In some countries, a percentage of the levies (between 15 and 35% for all right holders) collected by the societies must be used for “cultural activities” or “collective purposes” (e.g. Bulgaria, Denmark)
- 在一些国家，由征税机构征收的一定比例的税费（全部权利人的15%至35%）必须用于“文化活动”或“集体用途”（如：保加利亚、丹麦）
- These activities usually relate to the promotion of music, of artists and authors
这些活动通常涉及艺术家和作者的音乐推广
- The funds (or part of them) are also used to fight piracy in some countries (e.g. Austria, Estonia, Hungary).
- 在某些国家（如奥地利、爱沙尼亚、匈牙利），这些资金（或其中一部分）也用于打击盗版。



Professional Use 专业用途

- CJEU ruled that the indiscriminate application of levies on devices *clearly reserved* for professional uses fell outside the scope of the private copying compensation scheme (*Padawan*)
- 欧洲法院裁定，对明确用于专业用途的设备任意征收的税费不属于私人复制补偿制度的范畴（*Padawan*案件）
- This judgment led to changes in a number of EU countries, e.g. Spain and France.
- 这一判决在某些欧盟国家引起了一些变化，如西班牙和法国。
- However, it overall created legal uncertainty across the EU due to diverging interpretations of the application of levies to professional equipment.
- 然而，因对专业设备征税的解释有歧义，整体上其在整个欧盟造成了法律的不确定性。
- Currently 8 countries in EU have a system of exemptions for professional users, either by upfront exemptions or by a refund of the levies paid.
- 目前，欧盟有8个国家存在专业用户免税制度，或是预先免税，或是退还税款。
- Some countries provide for refund or exemption mechanisms in specific cases.
- 有些国家规定了特定情况下的退税或免税机制。



Professional Use 专业用途

- Other EU countries take professional users into account in a system of mutualisation, i.e. by reducing the overall rate applicable to all products, to take into account the percentage of professional users of such equipment.
- 其他欧盟国家在共担制度中考虑到了专业用户，即通过降低适用于所有作品的总体税率，考虑专业用户在此类设备中的百分比。
- The reduction may be explicit or implicit.
- 税率降低可能是明确的，也可能不明确。
- Some countries do not distinguish between professional and private use when applying levies.
- 有些国家征税时不区分专业和个人用途。



Cloud Services 云服务

- Most cloud services have additional functionality, e.g. making available stored content across users' devices, or enabling users to stream music from the cloud
- 大多数云服务都有附加功能，如：使存储内容跨用户设备成为可能，或使用户可以从云端传输音乐
- Where music is involved, they should be licensed by record companies to carry out these restricted acts
- 凡涉及音乐的，应在获得唱片公司许可后方可执行这些受限行为
- Private copying exceptions should not apply as commercial services should not be the beneficiaries of private copying exceptions
- 私人复制例外不适用，因为商业服务不应通过私人复制例外受益



Cloud Services 云服务

- Recital 44 of the EU Copyright Directive:
- 欧盟版权指令序言第44段:

“The provisions of such exceptions or limitations by Member States should, in particular, duly reflect the increased economic impact that such exception or limitations may have in the context of the new electronic environment. Therefore, the scope of certain exceptions or limitations may have to be even more limited when it comes to certain new uses of copyright works.”

“成员国提供此类例外或限制，尤其应充分反映此类例外或限制可能新的电子环境背景下对经济带来的日益增长的影响。因此，在对版权作品出现某种新的利用方式时，应当进一步缩小某些例外或限制的范围。”
- Cloud service providers are in a fundamentally different position to manufacturers of hardware devices
- 云服务提供商与硬件设备厂商相比处于完全不同的地位
- No justification for extending private copying exceptions to them
- 没有理由给予其私人复制例外



IFPI's Position 国际唱片业协会的立场

- While IFPI does not object to exceptions that allow private individuals to make copies of lawfully acquired sound recordings for their own personal use onto storage media owned by them
- 虽然国际唱片业协会并不反对以下例外，即允许个人拷贝合法取得的录音/唱片至其拥有的存储介质上，用于个人用途
 - E.g. blank CD, PC hard drives, mobiles and tablets
 - 如空白光盘、电脑硬盘、手机和平板电脑
- We do not consider private copying exceptions to be necessary
- 我们并不认为私人复制例外是必要的
 - Record companies already permit consumers to make copies of the downloads they purchase (an exception would disrupt the business model)
 - 唱片公司已允许消费者拷贝他们所购买的下载产品（例外会破坏商业模式）
 - Record companies do not take action to prevent limited private copying in practice
 - 唱片公司没有采取实际行动避免有限的私人复制
 - The digital market is moving to an access model (streaming)
 - 数码市场正转向读取模式（流媒体）



IFPI's Position 国际唱片业协会的立场

- If there is a private copying exception, the appropriate scope:
- 如存在私人复制例外，适当的范围为：
 - Must comply with the three-step test
 - 必须符合三步监测法
 - Must only apply to content that is lawfully acquired by, and is in the possession of the consumer
 - 必须仅用于合法取得的、由消费者拥有的内容
 - Freedom to override exceptions by contract
 - 根据合同超出例外权限
 - All copies are for the sole use of the lawful owner of the original or family members living in the same household (but should not permit the beneficiary to transfer ownership of a private copy)
 - 所有复制品仅由合法拥有者本人或居住在同一家庭的家庭成员使用（但不允许受益人转让私人复制品的所有权）
 - All copies must be made to physical media owned by the beneficiary of the exception (i.e. not to the cloud)
 - 所有复制品都为实体媒介，由例外受益人所有（即不放置于云端）
 - The copies must not be made or used for any direct or indirect commercial purposes
 - 复制品不能用于任何直接或间接商业用途
 - Private copying should be carried out by the individual beneficiary
 - 个人受益人可进行私人复制



IFPI's Position 国际唱片业协会的立场

- Any new exception should require the payment of compensation for the copying, i.e. the introduction of a levy scheme
- 任何新例外均应要求支付复制报酬，即引入征税制度
- Private copying exception/levies must only apply to reproductions from lawful sources (confirmed by CJEU in the case Stichting de Thuiskopie)
- 私人复制例外/征税必须只能适用于合法来源的复制品（经欧盟法院在Stichting de Thuiskopie案件中确认）
- We do not support any attempts to broaden the interpretation of the private copying exception with a view to bypassing the licensing process
- 我们不支持任何通过对私人复制例外的解释进行扩展以此规避许可程序的做法



IFPI's Position 国际唱片业协会的立场

- Levies should be collected from importers or distributors; shifting the liability for payment to an almost limitless number of retailers would make the collection more cumbersome, expensive and could give rise to fraud.
- 应向进口商或分销商征税；将支付责任转移到大量的零售商身上会使征收更为繁琐、成本更高并可能会引起欺诈。
- Exemption from the obligation to pay the levy should be based on the use made of a particular media or device, and not on the nature of the user (professional uses, not professional users)
- 纳税义务豁免应基于特定媒体或设备的使用，而不是用户的性质（专业用途，不是专业用户）



IFPI's Position 国际唱片业协会的立场

- We do not support exceptions that would extend to private copying in the cloud
- 我们不支持延伸到云端的私人复制例外
- Cloud services involve the setting up of a database and the making available of the copies to consumers, which require a license from right holders
- 云服务包括建立数据库并使消费者获得复制品，这些需要获得权利人的许可
- Copies made “in the cloud” within these services do not fall under the scope of private copying and levies
- “在云端”服务之内产生的复制品不属于私人复制和征税的范围
- Levies should not substitute licensing of rights for cloud services
- 征税不应取代云服务的权利许可



Thank you

谢谢

Kweetiang.ang@ifpi.org

www.pro-music.org for most comprehensive directory
of world's legal music services

www.pro-music.org 最全的全球合法音乐服务目录





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IFRRO

Making Cultural Heritage available
推动文化遗产的传播
Orphan Works and Out-of-Commerce Works
孤儿作品和绝版作品

Olav Stokkmo, CEO of IFRRO
国际复制权组织联合会 (IFRRO)
Olav Stokkmo

NCAC-EC/IP Key seminar
中国国家版权局——欧洲委员会/IP Key研讨会

2 December 2015
2015年12月2日

Shanghai
上海



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International Federation of Reproduction Rights Organisations
国际复制权组织联合会

**Provider of reliable information on copyright-led
solutions in the text and image based sector**
文本和图像作品版权问题解决方案的可靠信息提供者

International Federation of Reproduction Rights Organisations



The global network 145 members in 80 countries
来自80个国家的145个会员构成的全球性网络

International Federation of Reproduction Rights Organisations
国际复制权组织联合会

90 RROs
90个复制权组织

55 Creator & Publisher Bodies
55个创作人与出版商



IFRRO Key Activities
IFRRO核心活动

- Communications / Information
• 沟通/信息传递
- Business Approaches
• 商业模式
- Regional Development
• 区域发展

Cooperates with
合作对象:

- WIPO 世界知识产权组织
- UNESCO 联合国教科文组织
- EU 欧盟
- OAPI, ARIPO, LAS APEC, CERLALC
- 非洲知识产权组织, 非洲地区工业产权组织, 阿拉伯国家联盟, 亚太经合组织, 拉丁美洲及加勒比地区图书发展中心
- CISAC, SAA, etc.
- 国际作者和作曲者协会联合会, 美国档案工作者学会等
- IFLA, EBLIDA
- 国际图书馆协会和机构联合会, 欧洲图书馆、信息与文献协会

International Federation of Reproduction Rights Organisations



90 RROs in 80 countries
Around the world – on all continents
80个国家的90个复制权管理组织 (RRO),
遍布全球, 覆盖各个大洲



ABDR| Access Copyright| AGECOP| AMCOS| AUTOR| B-COPY| BBDA| BECLA| BESAM| Bonus Copyright| BURIDA| CADRA| CCC| CDR| CEDRO| CeMP| CFC| CLA| CLASS| CLNZ| COPIBEC| Copydan| CopyGhana| Copyright Agency| CopyRo| Copyright Polska| CopyRus| COSOMA| CWWCS| DALRO| DHK| DILIA| ECCLA| EDISER| FILCOLS| Fjölís| FJÖLRIT| GCA| HARR| HKRRRLS| ICLA| IPRO| IRRO| JAC| JAMCOPY| JRRRC| Kopiken| Kopinor| KOPIOSTO| KOPIPOL| KOPITAN| KORRA| LATGA-A| LIBRIUS| LITA| Literar-Mechana| Luxorr| MASA| MCSC| NLA| NLI| OSDEL| ProLitteris| REPROBG| REPROBEL| R · PROMOLD| REPRONIG| SADEL| Sámikopijja| SDADV| SOCILADRA| Stemra| TTRRO| URRO| VG Bild-Kunst| VG MUSIKEDITION| VG WORT| VIETRRO| YAYBIRI| YRCII| ZANA| ZARRSOI| ZIMCOPY



Making cultural heritage available legally
合法推动文化遗产的传播

ORPHAN WORKS
孤儿作品



Orphan Works
孤儿作品

Definition EU OW Directive
欧盟孤儿作品指令中的定义

A work shall be considered an orphan work if
下列作品应视为孤儿作品

- none of the rightholders in the work is
- 作品的权利人无法
 - identified; or
 - 认定; 或
 - Located
 - 确定位置

Condition
条件

- diligent search for the rightholders must be carried out
- 必须对权利人实施尽职搜索



Orphan Works 孤儿作品
Collective Management 集体管理

Canada 加拿大

- > RRO performs diligent search
- > 复制权组织实施尽职搜索
- > Copyright Board issues licences
- > 版权委员会签发许可

UK 英国

- > User performs diligent search
- > 用户实施尽职搜索
- > IPO issues licences
- > 知识产权局签发许可
- > Register of Orphan Works
- > 孤儿作品登记簿

Nordic Countries 北欧国家

- > Extended Collective Licence
- > 延伸性集体许可



Making cultural heritage available legally
合法推动文化遗产的传播

绝版作品谅解备忘录



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Out – of – Commerce Work

绝版作品

Definition agreed by stakeholder

利益相关者商定的定义

A work which the author and / or the publisher declares will no longer be commercialised

作者和/或出版商宣布不再投入商业化的作品

- Unilateral declaration of the pertinent Rightholder
- 相关权利人单方面宣布
- Independent of existing tangible copies of the work
- 与作品现有的有形拷贝不相关



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Europe

欧洲

Stakeholder developed tools

利益相关者开发的工具

- **Licensing**
- **许可**
 - Out-of-Commerce MoU
 - 绝版作品的谅解备忘录
 - Criteria for Rights Clearance Centres
 - 版权决算中心的标准
 - Model Licences
 - 典型许可
 - Secure Networks
 - 安全网络
 - On-Line access
 - 在线访问
- **Registries**
- **登记处**
 - Criteria for Databases of Orphan works Criteria
 - 孤儿作品数据库的标准 标准
 - Criteria for Databases of Out-of-Commerce works
 - 绝版作品数据库的标准
- **Diligent Search**
- **尽职搜索**
 - Guidelines Diligent search for rightholders
 - 权利人尽职搜索指南
 - Sector specific
 - 按具体领域





<http://www.ifrro.org/content/i2010-digital-libraries>

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Out of Commerce Works (OOC) 绝版作品

Principles in Stakeholder MoU 利益相关者谅解备忘录中的原则

1. Selection: Agree on what to make available/digitise
选择：约定开放/数字化的内容
2. Voluntary Collective Licensing; Remuneration
自愿性集体许可；报酬
3. Possible inclusion of works of authors and publishers not in the RRO catalogue; Right of withdrawal
可能纳入复制权组织目录中未包含的作者和出版商的作品；退出权
4. Libraries observe agreed conditions
图书馆遵守约定的条件
5. Cross-border accessibility
跨境访问

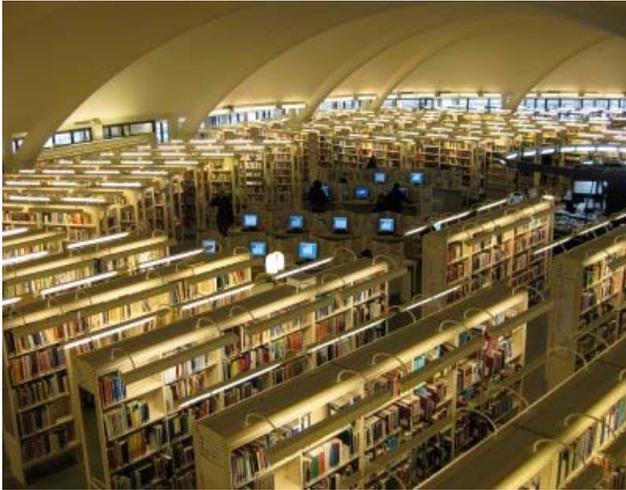


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Selection from Library Collection 从图书馆集体作品系列中选择

Agree what to include 约定纳入的内容

1. SELECTION FROM LIBRARY COLLECTION 从图书馆集体作品系列中选择



Roman Alapage

Works/Materials 作品/材料

- Public domain
公共领域
- In copyright
版权
 - In commerce
商业内作品
 - OOC (Majority)
绝版作品（大多数）
 - Orphan (some)
孤儿作品（部分）



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Selecting - Identifying

选择—认定

Works, Authors, Publishers, Status

作品、作者、出版商、状态

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- Public Domain 公共领域
 - No need to clear rights
 - 版权无需结算



- Known author/publisher
- 已知作者/出版商
 - In Commerce
 - 商业内作品
 - Out of Commerce
 - 绝版作品
- Rights can be cleared
- 版权可以结算
 - Directly / RRO
 - 直接/复制权组织




- Unknown/id Author/Publisher: Orphan
- 不知道/无法认定作者/出版商：孤儿作品





- Legislation to clear rights – by CMO
- 通过立法对版权进行结算—通过集体管理组织



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OOC in digitisation projects

数字化项目中的绝版作品

RROs the natural one stop shop

复制权组织—一站式机构

2. VOLUNTARY COLLECTIVE LICENSING

自愿性集体许可

Rights in OOC may be with

绝版作品中的版权可能属于

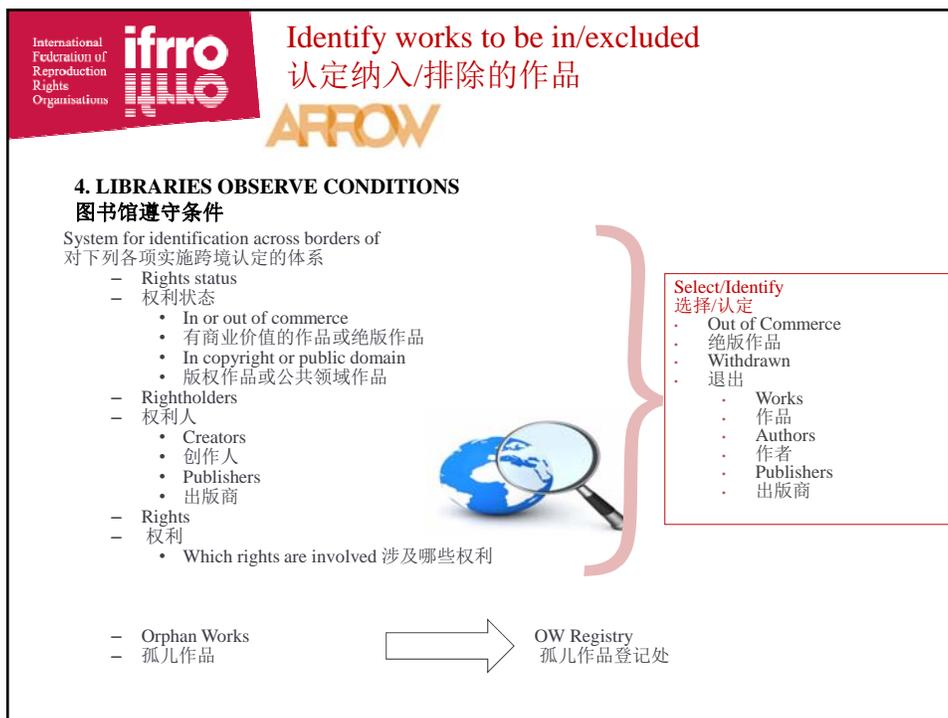
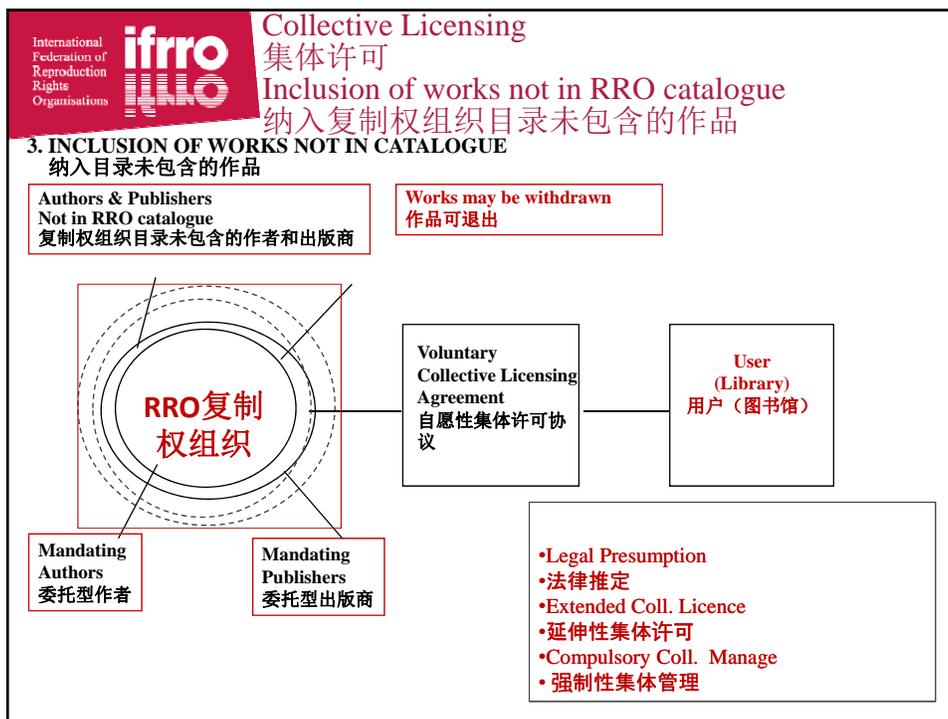
- Authors 作者
- Publishers 出版商

RROs 复制权组织

- Mandated
- 委托
- Established
- 建立
- Owned jointly by
- 拥有 由其联合
- Governed
- 管理
- Licence collectively on behalf of
- 集体授予许可 代表其实施

Authors & Publishers

作者与出版商



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OOO in digitisation projects 数字化项目中的绝版作品

5. CROSS-BORDER ACCESIBILITY 跨境访问

**Requires
需要**



**Mandates
委托**

For Not in catalogue & Orphan
对于目录未包含作品和孤儿作品

- Mechanisms
· 机制
 - Agreements
· 协议
 - Legislation
· 立法
 - Mutual recognition
· 相互认可
 - Other?
· 其他?

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Making cultural heritage available legally 合法推动文化遗产的传播

BEST PRACTICES 最佳实践



International Federation of Reproduction Rights Organisations

Library Digitising Project

图书馆数字化项目

“Bookshelf” (Norway)

“书架” (挪威)

Contract National Library – RRO (Kopinor)
与国家图书馆签约——复制权组织 (Kopinor)

- Mandate from authors and publishers
- 受作者和出版商委托
- Extended Collective Licence
- 延伸性集体许可

- Digitise and make available 250,000 books
- 将250,000本书数字化并开放
- Published before 2001
- 2001年之前出版
- Includes orphan works and out of commerce works
- 包括孤儿作品和绝版作品
- Fee per page made available to public per year
- 向公众开放的每一页的年收费

- User access
- 用户访问
- Registered library users
- 图书馆注册用户
- Norwegian IP addresses
- 挪威IP地址
- View; No download, print-out or copying
- 可查看; 不可下载、打印或复制
- Purchase opportunities
- 购买机会

<http://www.arrow-net.eu/news/rightsholders-and-national-library-norway-agreed-digital-library-project.html>

<http://www.arrow-net.eu/news/bookshelf-project-contract.html>







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Library Digitising project

图书馆数字化项目

Some examples

实例

20

FRANCE (ReLire)
法国 (ReLire)

- Out-of-Commerce Books published in France < 2001
- 2001年之前出版的绝版书籍
- Compulsory Collective Management by RRO
- 复制权组织实施强制性集体管理
- Right of withdrawal
- 退出权



GERMANY
德国

- Out-of-Commerce Books published in Germany < 1966
- 1966年之前出版的绝版书籍
- Licensing by RROs (VG Wort and VG Bildkunst)
- 复制权组织 (德国文字作品管理协会和表演艺术家集体管理公司) 授予许可
- Legal Presumption
- 法律推定
- Right of withdrawal
- 退出权



Thank you!

谢谢!

Olav.Stokkmo@ifrro.org



Sound Recording Broadcast & Performance Rights

录音制品的表演与广播权

—

Background, Importance and Management

背景、重要性以及权利的管理

2 December 2015
2015年12月2日 上海

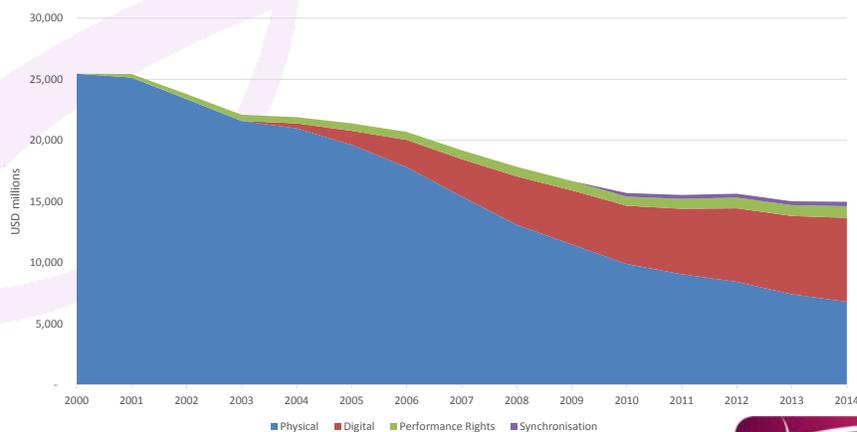
KT Ang
国际唱片业协会



Performance & Broadcast Rights– Background

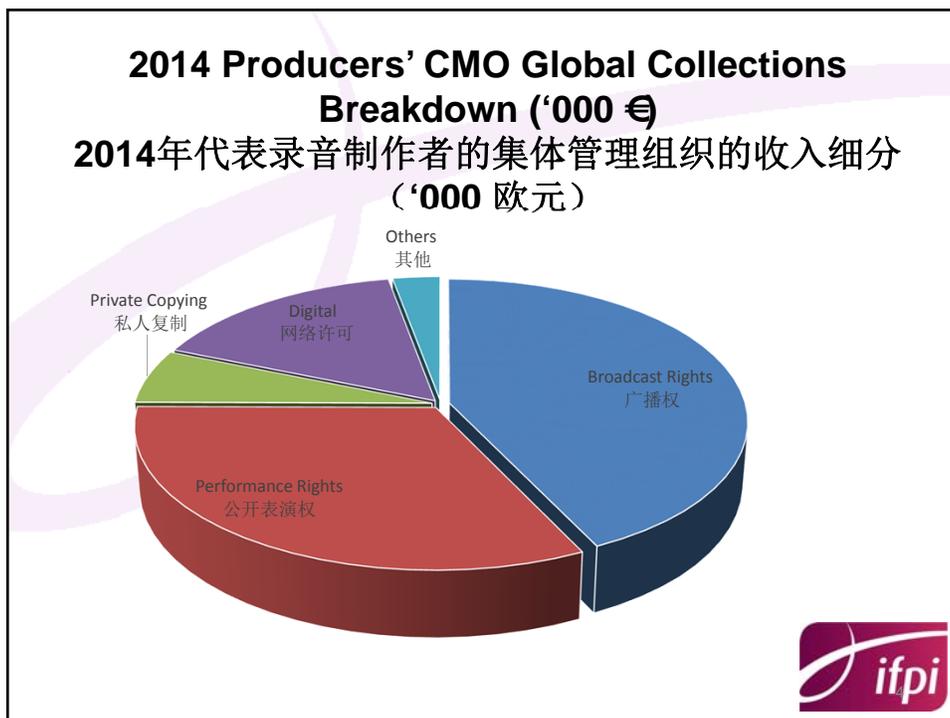
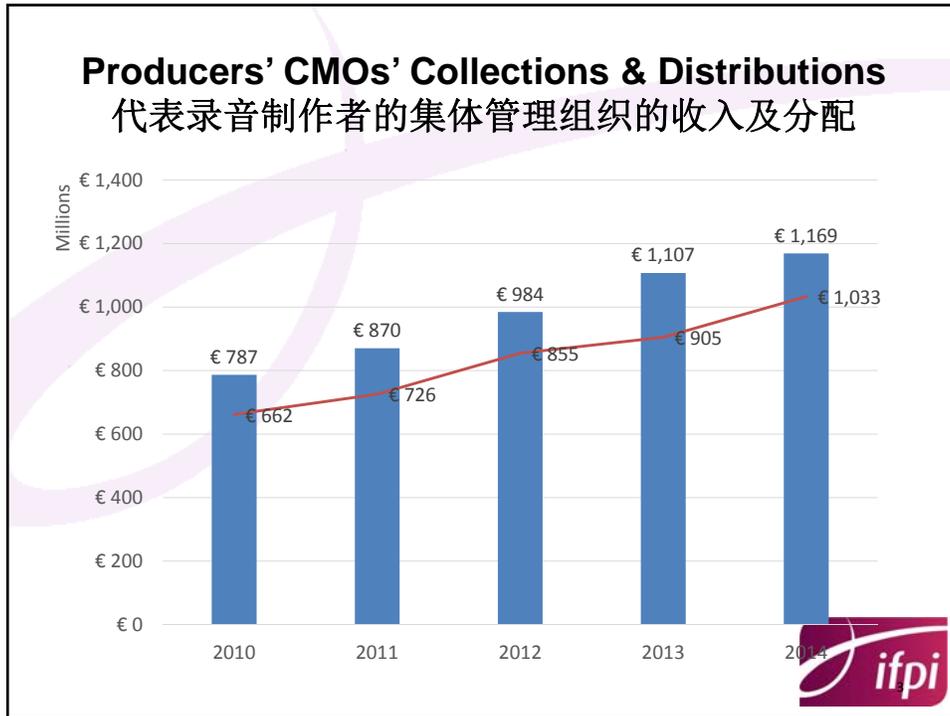
表演与广播权-背景

Recorded Music Industry Revenue Mix (2000-2014)
录制音乐行业收入总和 (2000-2014)



Source: IFPI. In USD millions at 2013 fixed exchange rates
来源: IFPI, 单位: 百万美元, 汇率为2013年的固定汇率





Performance & Broadcast Rights – Background 表演与广播权-背景

- Broadcasting and public performance rights for sound recordings have been an international standard and widely introduced at national and international level since the 1961 Rome Convention
自罗马公约(1961)开始到现在, 录音制品的广播和公开表演权已经成为国际标准, 被引入到了各国法律和国际公约当中。
- “Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms for commercial purposes for broadcasting or for any communication to the public.” (Art 15(1), WPPT)
“对于将为商业目的发行的录音制品直接或间接地用于广播或用于对公众的任何传播, 表演者和录音制品制作者应享有获得一次性合理报酬的权利。” (WPPT第15(1)条)
- “Member States shall provide a right in order to ensure that a single equitable remuneration is paid by the user, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public...” EU rental directive 2006/115/EC, Art 8(2)
“成员国应提供相应的权利来确保当为商业目的发行的录音制品或这类录音制品的副本被用于无线形式的广播或任何的向公众传播时, 用户能够支付一次性的合理报酬.....” 欧盟租赁指令 2006/115/EC, 第 8(2) 条



Exclusive right for broadcasting/广播的专有权	Remuneration right for broadcasting/广播的获酬权
Antigua and Barbuda	Albania
Argentina	Algeria
Bahamas	Armenia
Bangladesh	Australia
Barbados	Austria
Belize	Azerbaijan
Bolivia	Belarus
Brazil	Belgium
Brunei	Benin
Bulgaria	Bhutan
Chile	Bolivia
Chinese Taipei	Botswana
Cyprus	Burkina Faso
Czech Republic	Burundi
Egypt	Cambodia
Fiji	Cameroon
Grenada	Canada
Guatemala	Chad*
Guyana	Colombia
Hong Kong	Cote D'Ivoire
India	Costa Rica
Iraq	Croatia
Israel	Denmark
Jordan	Dominica
Kenya	Dominican Republic
Malaysia	Ecuador
Mali	El Salvador
Mongolia	Estonia
Myanmar	Ethiopia
New Zealand	European Union (Member States are free to grant stronger protection : exclusive rights)
Namibia	Finland
Nicaragua	France
Nigeria	Gambia
Oman	Georgia
Pakistan	Germany
Portugal*	Ghana
Romania	Greece
Saint Kitts and Nevis	Guinea
Saint Lucia	Honduras
Saint Vincent and the Grenadines	Hungary
San Marino	Iceland
Sierra Leone	Indonesia
Slovakia	Ireland
South Africa	Italy
Spain	Jamaica
Thailand	Japan
Turkey	Kazakhstan
UAE	Korea (South)
United Kingdom	Kyrgyzstan
Zambia	Laos
	Latvia



Broadcast Rights – Background

广播权-背景

- Recognised in more than 150 countries, most recently in Indonesia. 已经得到全球150多个国家的承认，包括最近引入广播权的印度尼西亚
- Why? 为什么? Because: 原因:
 1. It is fair: “Music sells radio...” -- music is the #1 success factor for radios, “... but radio does not necessarily sell music” -- radio is the most popular way to consume and access music. 公平: “音乐助销广播...” – 音乐是广播节目的第一成功因素 “... 但广播却不必然助销音乐” – 广播是消费和使用音乐的常用方式。
 2. It is sensible economic policy: growth in copyright industries has outpaced rest of the economy in most countries (copyright industries represent 6.67 % of China's GDP, http://usa.chinadaily.com.cn/china/2014-09/15/content_18602023.htm). Broadcast & performance royalties are an increasingly important part of the music industry revenue mix; without this income, local producers have less money to invest in new talents. 一项明智的产业政策: 在很多国家, 版权产业的发展都超出了经济的总体发展速度(版权产业在中国 GDP 中占到了 6.67 %, http://usa.chinadaily.com.cn/china/2014-09/15/content_18602023.htm). 表演与广播权收入越来越成为产业一项重要的收入来源, 没有这项收入, 本地制作者就没有足够的资金投入新艺人的开发。
 3. Reciprocity: No overseas income without domestic protection. National artists and record companies will not be paid when their music is broadcast overseas until rights are granted domestically. 互惠: 若国内不保护, 在国外就无法获得收入。
中国艺人和唱片公司只有在国内拥有了广播权, 才能从其音乐在国外的使用中
获得收入。



Broadcast Rights – Background

广播权-背景

- Can the Chinese broadcast industry afford to pay broadcast royalties? 中国的广电产业是否有能力支付广播版权税?

5 Largest TV markets – 2013
2013年全球五大电视市场

Country	Total Value
USA	65,809
Japan	13,815
Brazil	7,094
China	6,228
UK	5,652

5 Largest radio markets – 2013
2013年全球五大广播市场

Country	Total Value
USA	19,993
Germany	4,577
China	1,957
Canada	1,864
France	1,716

- Combined value (advertising revenue) of Chinese radio and TV industries ca. **US\$ 8 bn**, value of Chinese recording industry **US\$ 65 m**. 中国广播电台和电视台二者的合并收入(广告收入)高达80亿美元, 而中国的唱片业产值只有6500万美元。
- The Chinese broadcasting industry is 3rd largest in the world, whereas the recording industry ranked 21st.
2013年, 中国的广播产业世界排名第三, 而中国的唱片产业则屈居全球排名21位。



Broadcast Rights – Background

广播权-背景

- The Chinese broadcasting industry is estimated to grow strongly over the next 5 years to US\$ 11.5 bn! 据估计，中国的广电产业在未来5年还会快速增长，有望超过115亿美元！

Chinese TV Markets – 2010-2018

Note: - total is a combination of Multichannel and Terrestrial Broadcasting Advertising

中国的电视市场 – 2010-2018

备注: - 总计中包括多频道以及陆地广播广告收入

	2010	2011	2012	2013	2014	2015	2016	2017	2018
Total	4,886	5,522	5,875	6,228	6,695	7,096	7,664	8,124	8,733

Chinese Radio Markets – 2010-2018

Note: - figures given are for Traditional radio advertising only

中国的广播市场 – 2010-2018

备注: - 给出的数字仅限于传统的电台广告

	2010	2011	2012	2013	2014	2015	2016	2017	2018
Total	1,477	1,658	1,802	1,957	2,125	2,308	2,507	2,727	2,967

Source PwC

来源: 普华永道

- There is a significant and growing imbalance between the stages of development of the industries, Chinese broadcasting industry can well afford to pay artists and record companies. 广电和音乐产业的发展水平存在明显的不对等，中国的广电产业完全有能力向艺人和唱片公司付费。

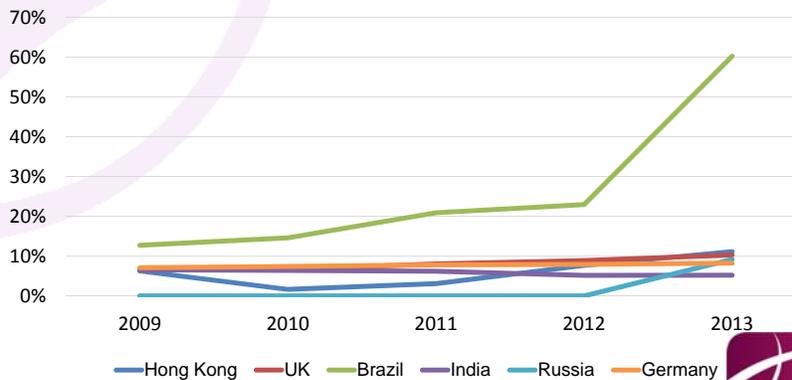


Broadcast Rights – Importance

广播权-重要性

Sound recording broadcast rights income as % of Music Sales

录音制品的广播权收入在音乐销售中的百分比 %



Broadcast Rights – Scope & Management

广播权-范围及管理

- All forms of linear “point to multipoint” transmissions covered regardless of technology or business model: 涵盖所有形式的“点到多点”传播，与技术或业务模式无关
 - Terrestrial broadcasting, cable transmissions and re-transmissions, satellite broadcasting 陆地广播、有线传播和再播，卫星广播
 - Free-to-air, encrypted subscription based 基于免费以及加密的订阅
 - Note, interactive one-to-one transmissions fall under the exclusive making available right (under WPPT Art 10 and 14 respectively)! 备注：交互的点到点传播属于专有的向公众提供权的范畴（WPPT的第10和14条）！
- Performance rights typically managed collectively by recording industry CMOs (or MLCs): 表演权通常都是由唱片行业的集体管理组织（即音乐许可公司MLC）管理的
 - Based either on voluntary mandates or mandatory collective management 可以是自愿授权或强制集体管理
 - Either way in most countries only one MLC representing and collecting for record producers' rights 不管哪种方式，在很多国家，代表录音制作者收费的只有一个MLC
 - Performance rights markets are “naturally monopolistic”, i.e. the service is produced most effectively when the MLCs represent all rights and right holders. 表演权市场基本上是“自然垄断”的，即当MLC代表了所有的权利和权利人时，所提供的服务是最有效的
 - In some but not the majority of markets, MLCs may seek an authorisation to license under Extended Collective Licensing (ECL) 在有些但不是大多数市场，MLC可以按延伸集体管理（ECL）的规定寻求许可授权
- General approach to collective rights management 对权利进行集体管理的常见方式
 - Right holders should have be free to determine what rights, where, when, and by whom are managed collectively (c.f. EU Collective Rights Management Directive 2014/26/EU (CRMD) Art 5, WIPO TAG compendium) 权利人有权自由决定哪些权利在哪里在何时由谁进行集体管理（比如 欧盟集体管理指令CRMD 2014/26/EU第5条，WIPO TAG 纲要）



Broadcast Rights – Scope & Management

广播权-范围及管理

- Tariffs: 收费标准
 - Radio / TV, commercial / public 分电台/电视台，商业/公共
 - For commercial radio and TV: typically % of revenue varying based on turnover and/or amount of music used 对于商业电台和电视台：通常按收入的百分比，根据营业额和/或使用音乐的数量有所变化
 - For public service radio / TV: per minute / hour rate, % of license fee and other income, lumpsums. 对于公共电台/电视台：可以是每分钟/小时的费率、许可费以及其他收入的百分比，一揽子
 - Tariff setting: established following negotiations between the CMO and users (or organisations representing users), dispute resolution available in case no agreement is reached or to challenge published tariffs. 收费标准的设立：CMO和使用者（或者代表使用者的组织）之间协商确定，若协商不成或是对标准有争议的，有争议解决机制
 - Competition law: non-discrimination, prohibition against abuse of dominant position 竞争法：不得有歧视，禁止滥用垄断地位
 - Preferred rate setting criteria, “willing buyer, willing seller” (USCA, Sec. 114), or “value of the use of the rights in trade” (EU CRMD Art. 16) 建议的收费标准设置条件：“愿买愿卖”（USCA第114条）或“权利的商业使用价值”（EU CRMD 第16条）
- Reporting: 报告
 - Radios and TVs report using agreed standard reporting formats the sound recordings they have used, or parties agree on the use content monitoring technologies (digital fingerprinting). 电台、电视台可使用双方同意的报告格式向CMO报告其所使用的录音制品情况，或双方同意使用内容监测技术（数字指纹）
 - Essential to ensure accurate and timely distributions (c.f. EU CRMD Art 17) 确保及时和准确的分配至关重要（参看EU CRMD 第17条）



Broadcast Rights – Scope & Management 广播权-范围及管理

- France:法国
 - Commercial and public radio 4 – 7 % of gross income 商业和公共电台：总收入的4 – 7 %
 - Commercial and public TV 2 % of revenue 商业和公共电视台：收入的2 %
- Germany (producers and performers):德国（制作者和表演者）
 - Public radio and TV: 1.4 公共电台和电视：1.4
 - Commercial radio 5.58 % of gross income, when music > 50% of airtime, 2.79 % of gross income, when music < 50 % of airtime 商业电台：音乐时间 >总广播时间的 50%时，总收入的 5.58 %，音乐时间 <总广播时间的 50%时，总收入的 2.79 %
- UK (producers and performers)英国（制作者和表演者）
 - Commercial radio: 3 – 5 % of net income, depending of turnover. 1 % for radios using music < 1 % of airtime 商业电台：净收入的3 – 5 %，取决于营业额。对于使用音乐<总播放时间 1 % 的电台，比例为 1 %
 - Commercial TV & Public radio and TV, lumpsum arrangements.商业电视以及公共电台和电视，一揽子协议
- Hong Kong (producers only):香港（只制作者）：
 - Commercial radio: 4.5 % of gross income 商业电台：总收入的 4.5 %
- India (producers only):印度（只制作者）
 - Commercial radio: 2 % of net income (subject to appeal, PPL original tariff was 7 – 8 % of net income. Net income = gross income – agreed advertising agency deduction)商业电台：净收入的 2 %（取决于上诉与否，PPL 最初的收费标准是净收入的7 – 8 %。净收入=总收入-广告公司的扣除额）



Extended Collective Licensing (ECL) 延伸集体管理（ECL）

- Allows for licensing of rights without the consent of individual non-represented right owners. 允许不经非会员权利人同意就可以代其进行其权利的许可
- Guarantees -- in theory -- compensation for non-represented right holders. Deprives individual right holders the ability to determine the terms of use and sometimes also the right to prohibit the use of a work. 担保金-理论上-对非会员权利人的补偿。剥夺了权利人对其权利使用条件的决定权，以及禁止其作品使用的权利
- Amounts to a limitation of exclusive rights (as a result provisions dealing with ECL normally found in chapters on limitations and exceptions of rights). 只限于有限的专有权（其结果是：有关延伸集体管理的规定一般都在权利的限制和例外的章节中出现）
- Great care should be exercised when appointing ECL CMOs 在指定延伸集体管理的CMO时应加倍小心
 - Only truly representative CMOs should be eligible. 只有能真正代表权利人的CMO才合格
 - ECL CMOs must meet high standards of "corporate governance". 必须满足“企业管治”的高标准
 - Only one CMO at a time can benefit from the ECL in a given sector and for given rights. 在某领域、针对某些权利一次只有一个CMO可以从事延伸集体管理。
- Right holders should always retain the option to opt out and prohibit use 权利人应该永远保留退出和禁止使用的权利
 - Right holders that do not wish to have their rights licensed by an ECL CMO should have the right to opt out from collective licensing. 没有意愿将自己的权利授权ECL CMO管理的权利人应该拥有退出集体管理的权利。



ECL – Conditions of Use

延伸集体管理-使用条件

- ECL should never be used where individual licensing is feasible 当单独许可可行时，应该禁止延伸集体管理
 - Digital technology and use of standard identifiers has made individual licensing and identification of individual right holders and works possible also in mass use situations (c.f. music streaming services). 数字技术以及标准识别符的使用使单独许可以及具体权利人和作品的识别即便在大量使用的情况下也能实现（参照音乐流媒体服务的情况）
 - Three-step-test limits to the use ECL. 使用ECL应该遵循三步测试的限制
- ECL provisions should always be limited to “certain specific cases”, i.e. well-defined uses and rights 有关延伸集体管理的规定必须被限制为“某些特定情况”，即明确定义的使用和权利
 - E.g. “The making available and reproduction of works incorporated in radio- or TV programs in broadcasters’ archives and produced or commissioned by broadcasting organisations before [1.1.2002] for their exclusive use”. 例如“提供和复制广播组织归档的、由广播组织在2002年1月1日前制作或委托制作供其专有使用的广播或电视节目中使用作品”



ECL – Benefits & Drawbacks

延伸集体管理-利与弊

- + Provides a higher degree of certainty **for users** than e.g. contractual indemnities; enables users to obtain all rights from a single point. 与协议赔偿相比，**为用户**提供了更高级别的确定性；让使用者可以从一个地方获得所有权利的授权
- + Increases **CMOs’ bargaining power** towards users; CMOs are at the outset able to claim to represent 100 % of rights and repertoire (but that power is curbed by competition / antitrust laws or tariff setting tribunals). 提升了**CMO对使用者的议价能力**；CMO一开始就可以宣称自己代表了100%的权利和曲库（但该能力也要受竞争/反垄断法或收费标准设置法庭的限制）
- + CMOs’ ability to **license rights effectively** should benefit right holders – provided they can control the societies and the way they operate. CMO对权利可以进行**高效许可**的能力将会让权利人受益——前提是权利人要能控制CMO及其运营的方式。
- **Limits the available options** and renders the markets more rigid; **减少了选择**，让市场更为僵化
 - individual licensing becomes the exception or might even be excluded with respect to the uses covered. 单独许可成为了例外，甚至就所涵盖的使用情况而言被排除
- Could **remove incentives** to improve CMO services; **消除了CMO改善服务的动力**
 - ECL requires a high level of efficiency, transparency and accountability and high standards of “corporate governance” of the CMOs. 延伸集体管理要求CMO要有更高级别的效率、透明度、可靠度和“企业管治”标准
 - Places the **burden on right holders to monitor** whether their rights have been licensed, where and by whom; **为权利人带来负担**，要随时监测其权利是否被许可、在哪里许可，被许可给谁。
- Substitutes “opt out” for exclusive rights. 替代了专有权的“退出”



Conclusions

结论

- Sound recording broadcast & performance rights are the international norm, China should belong to the vast majority of countries that recognise sound recording broadcast & performance rights. 录音制品的表演与广播权是国际标准，中国应该加入世界上赋予了录音制品表演与广播权的大多数国家的阵营
- Granting sound recording broadcast & performance rights makes sense; royalties help the Chinese recording industry to grow and invest. Through reciprocity, granting broadcast & performance rights enable the Chinese industry receive revenues from overseas. 赋予录音制品表演与广播权对产业发展意义重大：版税将有助于中国唱片产业的发展和投资。基于互惠原则，赋予表演与广播权可以让中国产业在国外获得收入
- Chinese broadcast industry can well afford to pay fair and reasonable royalties to sound recording producers; it has grown over the years and is estimate to continue to grow strongly in the future. 中国广电产业已经发展多年，在未来会继续强劲增长，完全有能力为录音制品广播权支付合理的版税
- Sound recording rights and royalties have not been an impediment to healthy and profitable broadcast industry anywhere in the world. 录音制品广播权及其版税在世界任何地方都从未阻碍过广电行业的盈利和健康发展。



Thank you!

谢谢!



数字时代中国音乐著作权的保护
China's Copyright Protection for Music in the Digital Era

中国音乐著作权协会 刘平
Liu Ping, Music Copyright Society of China

2015年12月2日
2 December 2015

主要内容

Main Contents

- 中国音乐著作权协会基本情况
 - Basic information of the Music Copyright Society of China
 - 国内数字环境下的音乐著作权保护情况
 - Protection of music copyright in China in the digital context
 - “一揽子”主渠道合作模式的基础
 - Basis for the “package” mainstream cooperation mode
 - 前景和展望
 - Prospect and outlook
-

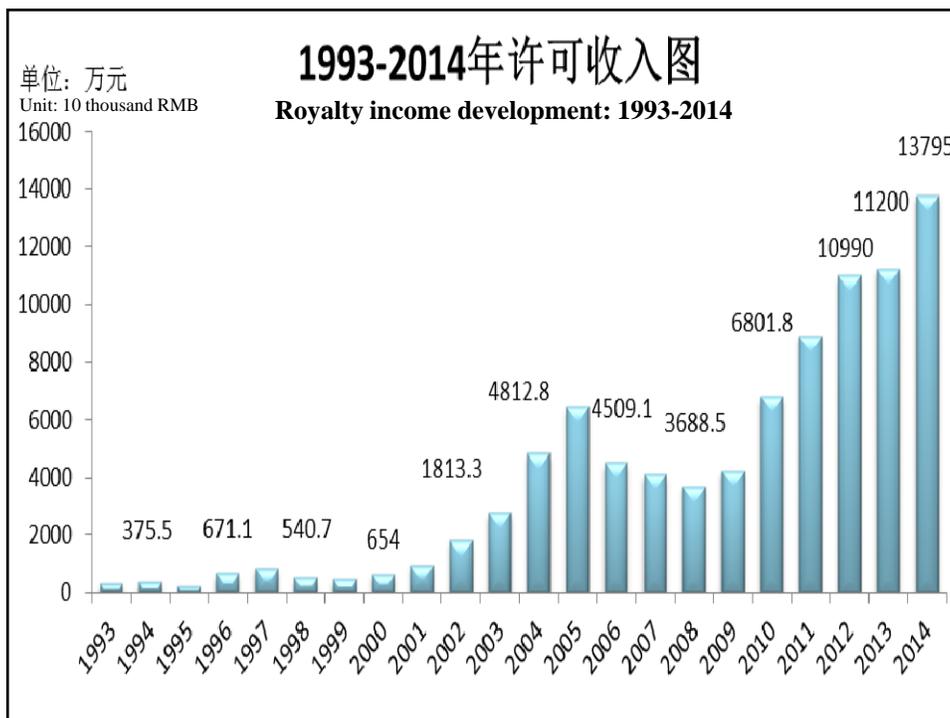
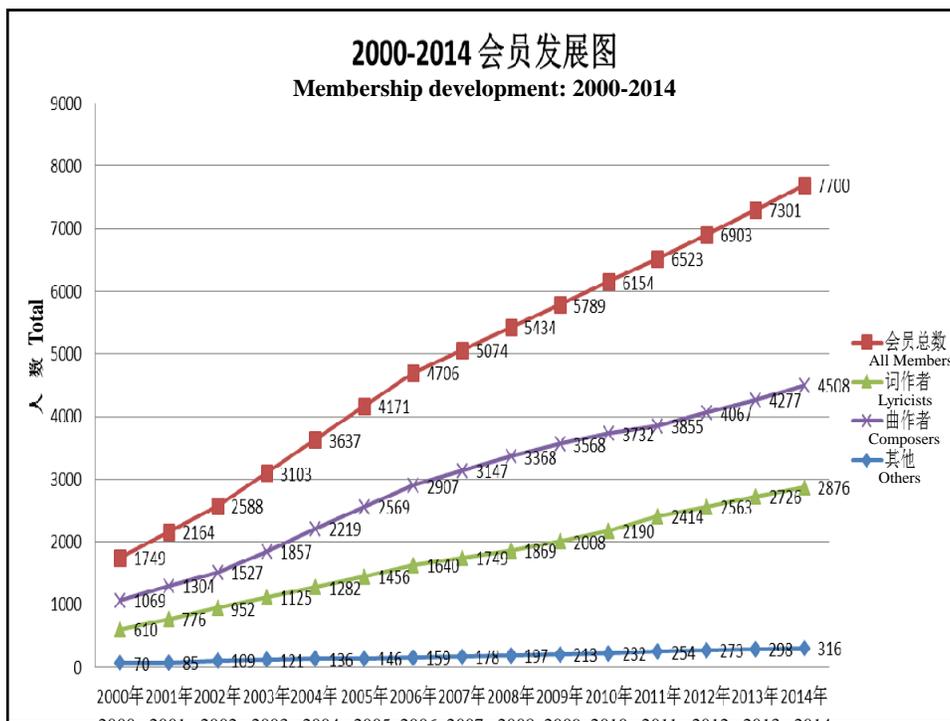
一. 音著协基本情况

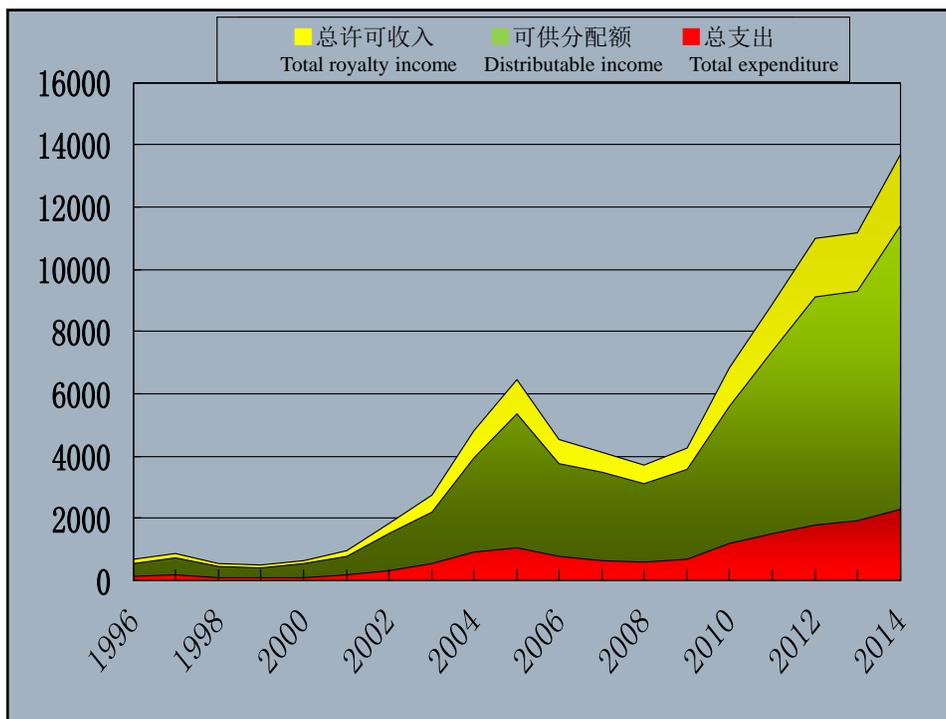
I. Basic Information of the Music Copyright Society of China

- 成立: 1992年12月17日
- **Founded on:** December 17, 1992
- 职能: 专门维护音乐词曲著作权人的合法权益
- **Functions:** Protecting lawful rights and interests of copyright owners of musical composition
- 会员: 超过7700人 (2014年国内会员人数)
- **Members:** More than 7,700 (domestic members in 2014)
- 年收费最高: 1.37亿RMB (2014年)
- **Maximum annual royalties:** RMB137 million (2014)
- 资料及分配: DIVA作品作者信息管理数据库, ISWC国际标准音乐编码中国唯一代理
- **Materials and distribution:** DIVA Database for the Management of Information on Works and Authors, sole Chinese agent for the International Standard Musical Work Code (ISWC)

- 国际合作:
1994年加入国际作者作曲者协会联合会 (CISAC), 目前与63个海外协会签署了相互代表协议。
- **International Cooperation**
Acceded to the *International Confederation of Societies of Authors and Composers (CISAC)* in 1994; currently has concluded mutual representing agreements with 63 overseas associations.
- 管理作品:
在CISAC框架下, 管理全球约300万词曲作者的1400多万首音乐作品。
- **Management of Works:**
Within the framework of CISAC, it manages more than 14 million musical works for about 3 million lyricists and composers.
- 管理权利: 著作权人个体难于行使的权利
复制权、表演权、广播权、信息网络传播权
- **Management of Rights:** Rights that are hard to be exercised by individual copyright owners
Rights of reproduction, performance, broadcasting, and dissemination through information network







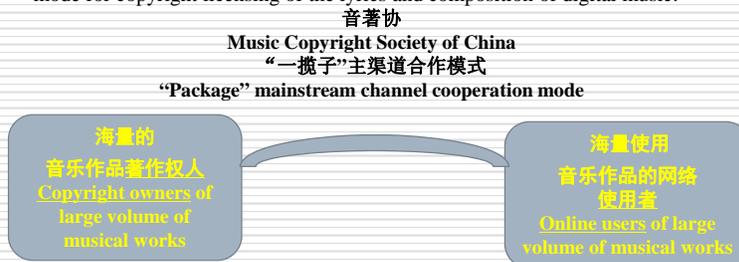
二. 国内数字环境下的音乐著作权保护

II. Protection of Music Copyright in China in the Digital Context

- 市场规模：
根据不完全统计，2013年中国网络数字音乐用户数量达到**4.53亿人**，数字音乐的体验、传播、消费模式日新月异，具有巨大的市场发展潜力。
- **Market size:**
According to an incomplete statistic, there were **453 million** users of online digital music in China in 2013. The experience, dissemination, and consumption modes of digital music change rapidly, with huge market potential.
- 权利实现的障碍：
网上音乐传播具有**海量、零散、权利人维权不便和行使权利成本过高等**特征，权利人对其作品网上传播的控制和主张权利的能力远比在传统媒介中更弱。
- **Obstacles to the realization of rights:**
The dissemination of online music features **large volume, fragmentation of scale, inconvenience for rights safeguarding by right owners and high costs for rights exercise**. Copyright owners enjoy far less control over online dissemination of their works than over traditional media, as well as notably weaker ability to claim for the rights.

中国著作权集体管理组织如何应对数字化环境的挑战 How to cope with challenge imposed by digital context by Chinese copyright collective management organizations

- 2011年起音著协开创出数字音乐词曲著作权主流许可模式:
- Since 2011, the Music Copyright Society of China has employed a mainstream license mode for copyright licensing of the lyrics and composition of digital music:



已有合作成功范例：百度音乐、腾讯音乐、网易音乐、阿里音乐……
Successful cases: Baidu Music, Tencent Music, NetEase Music, Ali Music…

三. “一揽子”主渠道合作模式的基础 III. Basis for the “Package” Mainstream Cooperation Mode

- 在数字网络环境下，先逐一获得作品授权然后再使用的传统授权模式，因其时效性和操作性太差而被互联网企业广泛摒弃。
- In the digital network context, the conventional license mode that usage of works comes only after obtaining of license of each individual work is widely abandoned by Internet-based enterprises due to its poor timeliness and operability.
- 某些特定种类的作品的某些使用方式(如音乐词曲作品的海量在线播放)，在数字网络环境下已经被验证为权利人个体确实难于行使的权利。
- Some use modes of certain categories of works (such as the online play of a large volume of musical works) have been proven to be inconvenient for the realization of rights by individual copyright owners in the digital network context.

权利分散/单位使用价值不高; 技术/成本/谈判地位

Rights decentralization/low usage value per unit; technology/cost/position in negotiation;

- 即便能在技术上解决了海量作品使用的谈判对价和交易问题，但是依然存在海量作品网络使用者无法通过自身能力来解决的问题:
- Even if the negotiation consideration and transaction of the use of large volume of works are solved technically, there are still many issues that cannot be solved by the online users of large volume of works in their capacity:
 - (1) 如何确认权利人真实身份?
(1) How would the real identity of the right owner be identified?
 - (2) 如何辨识版权信息的真确性?
(2) How would the veracity of copyright information be identified?

四. 前景和展望 IV. Prospect and Outlook

□实践证明数字环境下某些著作权种类和使用方式更加适合通过著作权集体管理制度来使广大著作权人兑现其著作权利。

□It has been proven in practice that it is more suitable to realize the rights of the vast number of copyright owners by the copyright collective management system for certain categories of copyrights and usage in the digital context.

□著作权集体管理组织不仅仅是著作权维权组织，还是平衡著作权人和使用者利益的“社会公器”，更是维护广大原创作者著作权益的坚强柱石。

□The copyright collective management organizations are not only copyright protecting organizations, but also “public instruments” to balance the interests of copyright owners and users and the solid pillar to protect the rights and interests of the vast number of original songwriters.

□数字时代更应发挥著作权集体管理制度的优势：

□In the digital era, it should consider the advantages of the copyright collective management system even more:

效率\平衡 Efficiency/Balance

谢 谢！
Thank you!

刘 平
Liu Ping
中国音乐著作权协会
Music Copyright Society of China
2015年12月
December 2015
Lp001@yeah.net

International
Federation of
Reproduction
Rights
Organisations



Access to and usages of copyright published
works in education, research and libraries
教育机构、研究机构与图书馆对已出版作
品的获取与使用

Olav Stokkmo, CEO of IFRRO
国际复制权组织联合会 (IFRRO) 首席执行官
Olav Stokkmo

NCAC-EC/IP Key seminar
国家版权局-欧盟委员会/IP Key 研讨会

2 December 2015
2015年12月2日

Shanghai
上海

International
Federation of
Reproduction
Rights
Organisations



IFRRO

International Federation of Reproduction Rights Organisations
国际复制权组织联合会

Provider of reliable information on copyright-led
solutions in the text and image based sector
文本和图像作品版权问题解决方案的可靠信
息提供者

International Federation of Reproduction Rights Organisations



The global network 145 members in 80 countries
来自80个国家的145个会员构成的全球性网络

International Federation of Reproduction Rights Organisations
国际复制权组织联合会

90 RROs
90个复制权组织

55 Creator & Publisher Bodies
55个创作人与出版商



IFRRO Key Activities
IFRRO核心活动

- Communications / Information
• 沟通/信息传递
- Business Approaches
• 商业模式
- Regional Development
• 区域发展

Cooperates with
合作对象:

- WIPO 世界知识产权组织
- UNESCO 联合国教科文组织
- EU 欧盟
- OAPI, ARIPO, LAS APEC, CERLALC
- 非洲知识产权组织, 非洲地区工业产权组织, 阿拉伯国家联盟, 亚太经合组织, 拉丁美洲及加勒比地区图书发展中心
- CISAC, SAA, etc.
- 国际作者和作曲者协会联合会, 美国档案工作者学会等
- IFLA, EBLIDA
- 国际图书馆协会和机构联合会, 欧洲图书馆、信息与文献协会

International Federation of Reproduction Rights Organisations



90 RROs in 80 countries
Around the world – on all continents
80个国家的90个复制权管理组织 (RRO),
遍布全球, 覆盖各个大洲



ABDR| Access Copyright| AGECOP| AMCOS| AUTOR| B-COPY| BBDA| BECLA| BESAM| Bonus Copyright| BURIDA| CADRA| CCC| CDR| CEDRO| CeMP| CFC| CLA| CLASS| CLNZ| COPIBEC| Copydan| CopyGhana| Copyright Agency| CopyRo| Copyright Polska| CopyRus| COSOMA| CWWCS| DALRO| DHK| DILIA| ECCLA| EDISER| FILCOLS| Fjölís| FJÖLRIT| GCA| HARR| HKRRRLS| ICLA| IPRO| IRRO| JAC| JAMCOPY| JRRRC| Kopiken| Kopinor| KOPIOSTO| KOPIPOL| KOPITAN| KORRA| LATGA-A| LIBRIUS| LITA| Literar-Mechana| Luxor| MASA| MCSC| NLA| NLI| OSDEL| ProLitteris| REPROBG| REPROBEL| R'PROMOLD| REPRONIG| SADEL| Sámikopijja| SDADV| SOCILADRA| Stemra| TTRRO| URRO| VG Bild-Kunst| VG MUSIKEDITION| VG WORT| VIETRRO| YAYBIRI| YRCII| ZANA| ZARRSOI| ZIMCOPY

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Copyright is a fundamental Human Right

Universal Declaration of Human Rights, Art 27.2

著作权为一项基本人权

《世界人权宣言》第二十七（二）条

International Federation of Reproduction Rights Organisations **ifrrro**

Copyright: The Basics Exclusive Rights - their Limitations

著作权：基础专有权利-及其限制

- Exclusive Rights (Berne Convention 9.1; WCT)
- 专有权利（《伯尔尼公约》第9.1条；《世界知识产权组织版权条约》）
 - Reproduction 复制权
 - Making available/communication to the public 向公众提供/传播的权利
 - Distribution 发行权
- Exceptions/limitations to the Exclusive right (BC 9.2)
- 专有权利之例外/限制（《伯尔尼公约》第9.2条）
 - Certain special cases 某些特殊情形
 - Not conflict with normal exploitation of the work
 - 复制不损害作品的正常使用
 - Not unreasonably prejudice legitimate interest of RH
 - 不致无故侵害作者的合法利益

Creates appropriate balance between right of rightholders and user needs
寻求权利人权利与使用者需求间的合理平衡



International Federation of Reproduction Rights Organisations **ifrrro**

Valuing copyright allows investment in creativity, knowledge and culture
 著作权的价值评估有利于对创造力、知识与文化的投资

Primary market
初级市场

Secondary market
二级市场

Exceptions
例外

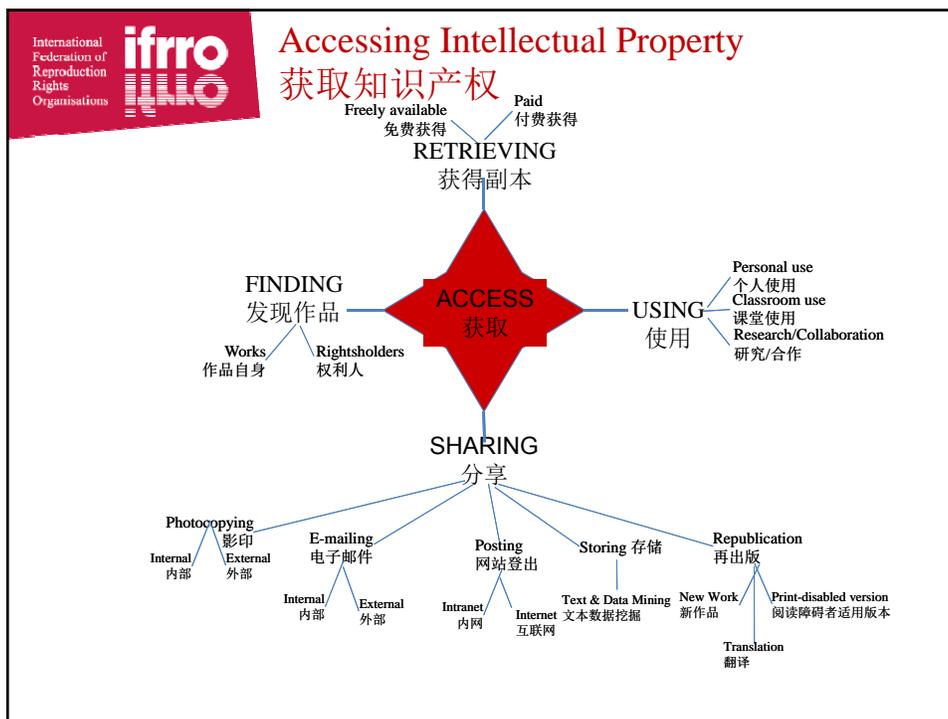
exceptions are important; unremunerated exceptions should be limited to instances where primary and secondary markets cannot fulfil a market need efficiently
 例外十分重要：未获酬的例外应仅限于初级市场与二级市场不能有效满足市场需求的情形

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Collective Rights Management
 权利集体管理

Provides easy solutions when direct licensing is not practicable
 直接许可不具可行性时的便捷方案



International Federation of Reproduction Rights Organisations

RRO repertoire agreement

RRO整体协议

Primary market
初级市场

Secondary market
二级市场

Exceptions
例外

- **Authorised users**
- 经授权的使用者
- **Limited extracts**
- 有限复制
- **Permitted uses**
- 允许的使用

- **Terms**
- 使用期限

- ✓ Personal and Internal use
- ✓ 个人及内部使用
- ✓ 10-15%; chapter; article
- ✓ 10-15%; 整个章节; 整篇文章
- ✓ Photocopying; Scanning; Internet download
- ✓ 影印, 扫描, 因特网下载
- ✓ Copying from e-carriers; DB
- ✓ 从电子版本复制; 数据库
- ✓ Store; **Intranet; VLE;**
- ✓ 存储; 内网; 虚拟学习环境
- ✓ PPT; Smart Board;
- ✓ PPT; 智能白板
- ✓ Print 打印
- ✓ External dissemination; Document delivery
- ✓ 外部传播; 文件递送
- ✓ Fees 费用
- ✓ Compliance awareness 遵守意识
- ✓ Usage reporting requirements 使用报告要求

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Income from secondary uses Fundamental to the author & development 二次使用的收入对作者及创作均至关重要

**Authors
作者**

- 25% of authors derive 60% + of their income from secondary uses
- 25%的作者超过60%的收入来自二次授权
- 20% decline in income from secondary uses = 29% (2,870) less new works per year.
- 源自二次使用的收入下滑20%=每年作品量减少29% (2870部)

**Publishers
出版商**

- 12% of their earnings
- 12%的收入
- 19% of their investment in new works
- 对新作品投入的19%
- Vital to the transition to digital
- 对向数字时代的过渡极为重要

Provision of easy legal access to copyright works; Protects both content creators and consumers
提供合法获得版权作品的便捷方式；保护内容创作者与消费者

Source Pricewaterhousecooper (PwC). An economic analysis of education exceptions in copyright
资料来源：普华永道 (PwC)，对著作权教育例外的经济分析。
http://www.pwc.co.uk/en_UK/uk/assets/pdf/an-economic-analysis-of-education-exceptions-in-copyright.pdf

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Collective Rights Management 权利集体管理

Contributes to seamless access in education
促进教育领域的无缝使用



PURPOSE 目的

Exceptions/Limitations
Illustration for teaching
例外/限制
教学说明

ILLUSTRATE 说明

- teacher writing on black / whiteboard
- 教师在黑/白板上书写
- student copy passage for revision or exam
- 学生为复习或考试而复述某个片段

NARROW 范围狭窄

- ✓ Brevity 简短
- ✓ Minor acts of copying 轻微复制
- ✓ Spontaneous 自发性

NOT PURPOSE
不符目的

Multiple copying for classroom use
为课堂使用而多次复制

- ✓ Not substitute purchase
- ✓ 不取代购买
- ✓ Not planned production of teaching material
- ✓ 不构成教学材料的有计划制作



RRO Licensing / Rights Admin in Education
RRO 在教育领域的许可/权利管理

	Schools 学校	University Higher Ed 大学高等教育	Virtual Learning Environm 虚拟学习环境	Distance Learning 远程教学	MOOC 大规模 在线开 放课程	TDM 文本数 据挖掘
EU 28 欧盟28成员国	24	24	12	12	4	2
EEA 欧洲经济区国家	3 (all)	3 (all)	2	3 (all)		
Switzer-land 瑞士	Yes	Yes	Yes	Yes		
USA 美国	1)	Yes	Yes	Yes	Yes	Yes
CANADA 加拿大	Yes	Yes	Yes	Yes	Yes	Yes
AUS 澳大利亚	Yes	Yes	Yes	Yes	Yes	Yes



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CLA (UK) – voluntary system

版权授权代理公司（英国）—自愿制度



- Photocopy & digital licences;
- 影印及数字化许可
 - CLA indemnity to licensees
 - 对被许可人的补偿
- Licences the whole educational sector (– and beyond)
- 对整个教育（及更广）领域的许可
 - VLE & Distance Learning
 - 虚拟学习环境及远程教学
 - Obligation to take up licence if available
 - 符合条件时，进行许可的义务
- International Document Delivery licence to document suppliers
- 针对文献提供商的国际文献传递（IDD）许可



What can I do with this content?





Example France CFC global activities

法国版权中心全球性活动举例



- **REPROGRAPHIC REPRODUCTION RIGHTS MANAGEMENT 影印复制权管理**
 - Compulsory collective management : CFC represents all rights holders by effect of the law
 - 强制集体管理：CFC依法代理所有权利人
 - CFC licence Education, businesses and government
 - 许可教育、商业及政府使用
 - Royalties allocated to works reproduced according to reports from users and distributed to rights holders
 - 许可收入依使用者对作品复制情况的报告进行分配，并分发给权利人
- **DIGITAL RIGHTS MANAGEMENT IN THE EDUCATION SECTOR 教育领域数字使用权管理**
 - Legal exception introduced in French law in 2006
 - 法国立法2006年引入例外规定
 - CFC negotiated an agreement with Ministry of education, who pays a lump sum
 - CFC与教育部达成协议，后者支付一次性费用
 - CFC receive mandates from publishers to distribute the royalties
 - CFC受出版商委托分配许可收入
 - Publisher's mandates allow CFC 出版商委托CFC:
 - to authorize digital reproduction of works, which are excluded from the legal exception, as for example school books
 - 对于学校教科书等排除在法定例外范围之外的作品，授权作品的数字化复制
 - To authorize educational establishments, which are not covered by the agreement with the Ministry of Education
 - 对于教育部协议覆盖范围外的教育机构，授权其对作品的使用

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ProLitteris (Switzerland) – legal licence

ProLitteris (瑞士) —法定许可



- Licences whole educational sector and other sectors
- 许可整个教育领域及其他领域的使用
- Legal Licence/Remuneration rights; The law
- 法定许可/获酬权；法律
 - Authorises the user to make certain copies
 - 授权使用者进行特定复制
 - Obliges the user to pay remuneration for the use to RRO
 - 要求使用者就使用行为向RRO支付报酬
- Mandate may include voluntary licensing
- 委托可能包括自愿许可



International Federation of Reproduction Rights Organisations

Levy – text and image based works – Examples

Germany and Hungary

征税—文本和图像作品—以德国与匈牙利为例

- ❑ **Germany 德国**
 - ❑ Law authorises reproduction 法律允许复制：
 - ❑ Single copies for Private use 为私人使用进行单次复制
 - ❑ Copies of single works for Own scientific or archival use 为自身科学或存档使用，复制单部作品
 - ❑ Copies of out-of-print works 复制已绝版的作品
 - ❑ Copies of small parts of works other than text books for teaching 对教科书之外的其他作品的小部分进行复制
 - ❑ Copies may be in analogue or digital formats 副本可能是类比或数字形式
 - ❑ Equipment levy and Operator fee 设备税与操作者税
- ❑ **Hungary 匈牙利**
 - ❑ Individual allowed to copy for private purposes 个人可就私人目的进行复制
 - ❑ May copy for others: Educational and cultural institutions; retail, copy shops and others charging for copies 可以为他人复制：教育与文化机构；零售店、复印店及其他为副本收费的机构
 - ❑ Equipment levy and Operator fee 设备税与操作者税









International Federation of Reproduction Rights Organisations

RROs

Make Copyright Work for Everybody

让著作权服务于所有人

Best Practices on new development- Education

新发展的最佳实践：教育领域



International Federation of Reproduction Rights Organisations

Spain. Seamless access with Conlincencia.com

西班牙 Conlincencia.com 所实现的无缝获取

conlincencia.com

INICIO LICENCIA DE PAGO POR USO LICENCIA ANUAL SOBRE NOSOTROS

La solución para fotocopiar y digitalizar libros, revistas y periódicos

Su autorización a un clic / Busque su licencia de pago por uso

Titulo, ISBN, ISMN, ISSN, DL, Autor (introduzca uno de estos datos)

Seleccione tipo de obra:

- Libro
- Publicación periódica
- Blog
- Música impresa

Repertorio Preguntas frecuentes Descubra quién tiene una licencia CEDRO

CCC (U.S.A.)

Get It Now

版权结算中心（美国）的Get It Now系统

- Provides just-in-time fulfillment of high-quality, full-color PDF articles
- 高质量、全彩色、PDF格式文章的及时获取
- Complements inter-library loan and integrated in library workflow
- 与馆际互借形成补充，整合进图书馆工作流程
- Developed in cooperation with US universities and rightsholders
- 开发过程基于与美国大学与权利人合作
- Mediated and unmediated workflow options with abuse safeguards
- 中介方式与无中介方式可选，滥用防止措施
- 24 x 7 article requests & delivery
- 24×7 文章请求及传递服务
- Real-time, transparent royalty reports
- 即时、透明的版权费报告



International Federation of Reproduction Rights Organisations

ifrrro

learningfield

TEACH | INSPIRE | GROW .com.au



A better way to get digital textbooks

An initiative of COPYRIGHTAGENCY

Supported by leading Australian educational publishers.


 CAMBRIDGE
UNIVERSITY PRESS


 jacaranda


 OXFORD
UNIVERSITY PRESS
OXFORD & NEW ZEALAND


 PEARSON


 HEADMAN BOOKS


 macmillan
education


 NELSON
CENGAGE Learning


 insight.


 parr publishing

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Kopinor (Norway) – Licensing content
Kopinor (挪威) —内容许可



- Extended Collective Licence
- 拓展的集体许可
- Licences whole educational sector (- and beyond)
- 对整个教育（及更广）领域的许可
 - Blanket
 - 一揽子许可
 - Transactional
 - 事项许可
 - Content
 - 内容许可

→ **:bolk**

DIGITAL COURSEPACKS ON DEMAND A SERVICE FROM Kopinor

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RROs

Make Copyright Work for Everybody

RRO

让著作权服务于所有人

Best Practices on new development- Licensing of library uses

新发展的最佳实践：图书馆使用的许可

International Federation of Reproduction Rights Organisations **ifrrro** **ILLRO**

Library Exceptions 图书馆例外

- ✓ Preservation purposes
✓ 保存目的
- ✓ Display on library premises
✓ 馆内展览
- ✓ Library lending
✓ 图书馆借阅
- ✓ Providing patrons with copies under certain conditions
✓ 特定情形下向读者提供副本



Roman Alapage

Digital电子书

- Acquiring access rights vs. purchasing copies
- 取得权限vs.购买副本
- E-lending: A publisher business model
- 电子借阅：出版商商业模式

International Federation of Reproduction Rights Organisations **ifrrro** **ILLRO**

E-Lending 电子借阅 Lending models: 借阅模式:

A. "Pretend its print"; Download “类似纸质版”；下载

- “1 copy – 1 loan”: Check out one e-book at the time
- “一本一借”：借出一本电子书
- e-book automatically expires (normally after 8 - 28 days)
- 电子书超时自动归还（通常经8-28天）
- Robust, secure membership
- 稳定、安全的会员制度
- Limitations: geographical; “26 use model”
- 限制：地理限制；“26次使用模式”
- DRM
- 数字权利管理

B. Streaming (“Bloomsbury model”) 流媒体（Bloomsbury模式）

- Online access; No download
- 在线获取，无法下载
- Concurrent user and/or site licence
- 并行用户与/或站点许可
- DRM (allows or suppresses copy/paste/print/share)
- 数字权利管理（允许或不许复制/粘贴/打印/分享）

C. Patron Driven 读者决策

- Full catalogue available with a licence paid on usage
- 读者获取完整目录，为使用许可付费

Basis: 基础:
Licence to licence
 授权进行许可的许可

- w/authors
- 与作者
- w/publishers
- 与出版商

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Digital Lending 电子借阅

1. Book store model 1. 书店模式

<http://Lendle.me> Kindle BookLending.com

Book Club 图书俱乐部

- **Lender** (lends book)
- 出借人 (借出图书)
- tells Amazon to send book
- 告知Amazon送出图书
- **Borrower**
- 借书人
- Joins website
- 加入网站
- Borrows book 14 days
- 借阅14天

HOW TO SHARE KINDLE BOOKS FOR KINDLE DUMMIES

* Images from Shutterstock.com

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Public E-Lending 公共电子借阅

2. Library model 2. 图书馆模式

OverDrive: Digital lending from 30,000 libraries, schools and retailers
OverDrive: 从超过30,000家图书馆、学校与零售商进行数字借阅

Books & journals 图书和期刊

- > 5,000 publishers
- 超过5,000家出版商
- > 1 million titles
- 超过1百万书刊
- > 50 languages
- 超过50种语言

library users with lending card 持卡借书人

Public Libraries 公共图书馆 **Schools 学校** **Universities 大学** **Corporate 公司**



International Federation of Reproduction Rights Organisations

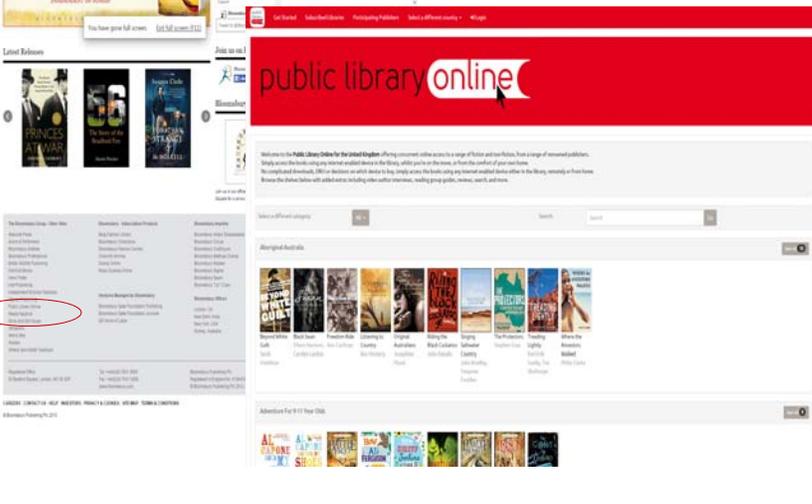
Digital Lending 电子借阅

3 – Publisher model

3-出版商模式

Bloomsbury public library online

Bloomsbury 在线公共图书馆





International Federation of Reproduction Rights Organisations

E- lending by libraries

图书馆的电子借阅

Contracts with Authors and Publishers, or CMOs

与作者、出版商或集体管理组织订立合同

- USA: 94% of public libraries (http://en.wikipedia.org/wiki/E-book_lending)
- 美国: 94% 的公共图书馆
- Germany 德国 (www.divibib.com)
 - 1,940 libraries
 - 1,940家图书馆
- Sweden (<http://www2.elib.se/>)
- 瑞典
- Denmark (<https://ereolen.dk/>)
- 丹麦
- UK
- 英国
 - 4 pilots
 - 试运行4项系统
 - Limited e-Lending under PLR scheme
 - 公共借阅权 (PLR) 计划下有限的电子借阅
 - <http://www.lmba.lt/sites/default/files/Rapporten-Public-Library-e-Lending-Models.pdf>



Business Models

商业模式

- Pay per use
- 按次付费
 - Unlimited loans
 - 无限借阅
 - Limited loans
 - 有限借阅
 - Standard price
 - 标准价格
 - Variable tariffs
 - 可变收费
- Subscription
- 订阅



International Federation of Reproduction Rights Organisations

International document delivery (IDD)

国际文献传递 (IDD)



- When there's a need...
- 当有需求时……



- IFRRO Principles of IDD
- IFRRO国际文献传递原则





International Federation of Reproduction Rights Organisations

CCC

Institution-Wide Workflow Integration

CCC 机构性工作流程整合

Electronic Reserves 电子存储

- Docutek Eres
- Atlas Systems Ares

Interlibrary Loan 馆际互借

- OCLC ILLiad
- OCLC WorldCat
- Atlas Odyssey

Content Search & Acquisition

内容检索与获取

- Ex Libris SFX
- HighWire Press
- JSTOR

Coursepack Production

课程资料生成

- Alto Digital Publishing
- Shared Book Academic Pub
- XanEdu & other NCPs



Integration Tools

整合工具

- Permissions
- RightsLink Basic
- Get It Now



User Workflow Services

用户工作流程服务

- Pay Per Use Permissions
- 按次付费许可
- Annual License Title Search & Usage Reporting
- 年度许可, 标题检索与使用报告
- Article Purchase and Delivery
- 文章购买与传递

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**Strengthening copyright &
collective management
加强著作权与集体管理**

**Helps create wealth, employment and
economic growth
有助于创造财富、实现就业、促进经济增长**

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Create or Be Created! 创作或被创作!
(We do not live in isolation) (我们并不独立存在)

did you
create?
today!

OR
或



Disrupt or Be Disrupted!
扰动或被扰动



International Federation of Reproduction Rights Organisations **ifrro**

Thank you!
多谢各位!

Olav.Stokkmo@ifrro.org

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**EU-CHINA ROUNDTABLE ON COPYRIGHT PROTECTION AND
DEVELOPMENT OF COPYRIGHT INDUSTRIES
中欧版权保护和产业发展圆桌会议**

organized by the European Union's IPKey project in cooperation with
the National Copyright Administration of China (NCAC)
欧盟IPKey项目与中国国家版权局联合主办

Shanghai, 2 December 2015
2015年12月2日, 上海

**ENFORCEMENT OF COPYRIGHT
(WITH A PARTICULAR EMPHASIS ON DIGITAL ERA)
版权执法 (着重讨论数字时代的相关问题)**

Dr. Mihály Ficsor,
President, Hungarian Copyright Council,
former Assistant Director General of WIPO
Mihály Ficsor 博士
现任匈牙利版权协会会长, 曾任世界知识产权组织助理总干事

I. INTRODUCTION

一、引言

Advice to guide us in the application of copyright in the online environment

关于指导我们在互联网环境下适用版权的建议



Francis Gurry, Director General of WIPO
世界知识产权组织总干事, **Francis Gurry**

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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Francis Gurry on copyright in the online environment (1)

Francis Gurry论互联网环境下的版权 (1)

Francis Gurry, Director General of WIPO, **on the future of copyright on the Internet** at the „Blue Sky Conference” in Sidney in February 2011, about the tasks of balancing:

世界知识产权组织总干事**Francis Gurry**在2011年2月举行的“蓝天会议”上在论及**互联网版权的未来**时, 谈到了多个平衡:

„It is a question that **implies a series of balances**: [1] between **availability**, on the one hand, **and control of the distribution of works** as a means of extracting value, on the other hand; [2] between **consumers and producers**; [3] between **the interests of society and those of the individual creator**; and [4] between the **short-term gratification of immediate consumption** and the long-term process of **providing economic incentives** that reward creativity and foster a dynamic culture.” (Emphasis and inner numbering added.)

“这一问题**涉及一系列的平衡**: [1] **可获取性** 与 作为获取价值手段的**作品分发的控制权**; [2] **消费者与生产者**; [3] **社会利益与个体创作者的利益**; [4] **即时消费的短期满足感** 与 **提供奖励创作、培育活跃文化的经济激励的长期过程**。” (加粗、下划线和序号为演讲者所加。)

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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**Francis Gurry on copyright
in the online environment (2)**
Francis Gurry论互联网环境下的版权 (2)

Francis Gurry in his „Blue Sky” speech on the future of copyright concerning the **adaptation of copyright to the conditions of the online environment**:

Francis Gurry在其论及版权未来的“蓝天”讲话中提到了**版权对互联网环境的适应**:

„**Adaptation** in this instance **requires**, in my view, **activism**. I am firmly of the view that a **passive and reactive approach** to copyright and the digital revolution **entails the major risk that policy outcomes will be determined by a Darwinian process of the survival of the fittest business model**. The fittest business model may turn out to be the one that achieves or respects the right social balances in cultural policy. It **may** also, however, **turn out not to respect** those **balances. The balances should not**, in other words, **be left to the chances of technological possibility and business evolution. They should**, rather, **be established through a conscious policy response**.” (Emphasis added.)

“我认为，在这种情况下，**适应要有主动性**。我坚定地认为，对待版权和数字革命的**消极和被动的应对策略会催生巨大风险，即政策结果将由筛选最优商业模式的优胜劣汰过程决定**。最优商业模式可能会达到或尊重文化政策中多个适当的社会平衡。不过，它也可能并不尊重这些平衡。换言之，**不应将这些平衡交由技术可能性和商业演变来解决，而应通过达成共识的政策回应来确立**。”（加粗和下划线为演讲者所加。）

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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**Francis Gurry on copyright
in the online environment (3)**
Francis Gurry论互联网环境下的版权 (3)

Francis Gurry in his „Blue Sky” speech on the future of copyright **warning against the idea of trying to waiting for a single solution**:

Francis Gurry在其论及版权未来的“蓝天”讲话中对期待单一解决方案的想法发出了警告：

„**I do not think that there is any single magical answer**. Rather, an adequate response is **more likely to come from a combination of [1] law,**

[2] infrastructure, [3] cultural change, [4] institutional collaboration and [5] better business models...

“**我不认为存在单一的神奇解决方法**。相反，全面的对策**更有可能在综合以下因素的基础上产生**：[1] **法律**、[2] **基础设施**、[3] **文化变动**、[4] **机构合作**以及[5] **更佳商业模式**……”

„Recognizing the limitation of law, and its inability to provide a comprehensive answer, should not mean that we abandon it...”

“承认法律有局限性且无法提供综合性解决方法，并不意味我们要舍弃它……”

(Emphasis and inner numbering added.)

(加粗、下划线和序号为演讲者所加。)

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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**Francis Gurry on copyright
in the online environment (4)
Francis Gurry论互联网环境下的版权（4）**

Francis Gurry in his „Blue Sky” speech on the future of copyright **about the need for new approaches:**

Francis Gurry在其论及版权未来的“蓝天”讲话中，谈到了**新策略的必要性**：

„In order to effect a change in attitude, I believe that **we need to re-formulate the question** that most people see or hear **about copyright and the Internet. People do not respond to being called pirates.** Indeed, some, as we have seen, even make a pride of it. **They would respond,** I believe, **to a challenge to sharing responsibility for cultural policy...**

“为了实现态度转变，我认为，**我们需要重新描述**大多数人看到或听到的**关于版权和互联网的问题**。人们**对于被戴上盗版者的名号表现得无动于衷**。相反，我们看到有些人甚至引以为傲。我认为，**对于共同负有的文化政策责任面临的挑战，人们应作出回应……”**

„**The final element** of a comprehensive and coherent design **is better business models.** This is undoubtedly happening now. But the story is not over.” (Emphasis added.)

“综合性的、协调的制度设计的**最终要素是更好的商业模式**。毫无疑问，这一要素正在发展，但尚成形。”（加粗、下划线为演讲者所加。）

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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**Francis Gurry on copyright
in the online environment (5)
Francis Gurry论互联网环境下的版权（5）**

Francis Gurry in his „Blue Sky” speech on the future of copyright **about the decisive role of online intermediaries:**

Francis Gurry在其论及版权未来的“蓝天”讲话中谈到了**互联网中间商的决定性作用**：

„I believe that **the question of... the responsibility of intermediaries is paramount. The position of intermediaries is key.** They are at once, service providers to, as well as partners, competitors and even clones of creators, performers and their business associates; hence the difficulty that we have in coming to a clear position on the role of intermediaries.” (Emphasis added.)

“我认为，**.....的问题，中间商的责任是首要的。中间商的地位是关键**的。他们既是创作者、表演者及其行业协会的服务提供商，也是合作伙伴、竞争对手，甚至模仿者；因此，要想对中间商进行明确定位，存在困难。”（加粗和下划线为演讲者所加。）

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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II. CLASSICAL COURT DECISIONS AGAINST CONTRIBUTORY INFRINGERS

二、辅助侵权的经典判例

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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Case law: „classical” cases (1)

判例法: “经典” 案例 (1)

„Classical” cases:

▪ “经典” 案例

Napster (A&M Records, Inc v. Napster 239 F. 3d 1004 (9th Cir. 2001). Napster, the first popular p2p music “file sharing” system, had a **central database** that allowed users to find each other and to copy MP3 files from each other’s shared libraries on their hard drives. Napster has been found **liable for contributory infringement since it could have blocked access to infringing files and it did not do so** and even encouraged infringements.

Napster (A&M Records, Inc v. Napster 239 F. 3d 1004 (9th Cir. 2001).

第一个点对点 (p2p) 音乐 “文件共享” 系统Napster设有**中央数据库**, 允许用户找到彼此, 并从各自硬盘上共享文件夹里拷贝MP3文件。Napster被判定**构成辅助侵权**, **因为其本应阻断对侵权文件的获得, 而未能这样做**, 甚至还鼓励侵权行为。

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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Case law: „classical” cases (2)

判例法：“经典”案例（2）

„Classical” cases:

“经典”案例

Grokster (Streamcast, Morpheus) (MGM Studios, Inc. v. Grokster Ltd. 125 S. Ct. 2764 (2005). This new generation of p2p systems **did not have centralized directory**; the information necessary for “file sharing” was dispersed among the users of the system. Their **business profits from advertisement depended on the volume of infringing copies transmitted** with the use of their software. The US Supreme Court found that **they actively induced infringements**.

Grokster (Streamcast, Morpheus) (MGM Studios, Inc. v. Grokster Ltd. 125 S. Ct. 2764 (2005). 此案中的新一代点对点（p2p）系统没有中央数据目录；“文件共享”所必需的信息散布于系统用户之中。他们的**广告收入取决于通过其软件所传送的侵权作品的量的大小**。美国最高法院判定其**积极教唆了侵权**。

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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Case law: „classical” cases (3)

判例法：“经典”案例（3）

„Classical” cases

“经典”案例

KaZaa (Universal Music Australia Pty Ltd v. Sharman License Holding Ltd (2005) FCA 183.) The Federal Court of Australia has found the company operating the KaZaa **decentralized “file sharing” system** for reasons similar to those identified by the US Supreme Court in the Grokster case. The decision pointed out **that no measures had been applied to prevent infringements although they were available** (but their application would have been against the company’s financial interests). The defendants also **actively promoted infringements under the populist slogan of “KaZaa revolution.”**

KaZaa (Universal Music Australia Pty Ltd v. Sharman License Holding Ltd (2005) FCA 183.) 澳大利亚联邦法院判定KaZaa的运营公司构建了**去中心化的“文件共享”体系**，原因与美国最高法院在Grokster案中认定的类似。判决认为KaZaa并未采取任何**措施防范侵权，而此类措施完全能够实施**（但这些措施的实施有悖于公司经济利益）。同样，打着**“KaZaa革命”这一平民主义口号**，被告**积极促进了侵权行为**。

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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III. CRIMINAL ACTIONS AGAINST MAJOR ONLINE INFRINGEMENTERS

三、严重网络侵权行为的刑事责任

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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TRIPS Agreement, Article 61 (1) 与贸易有关的知识产权协议（TRIPS协议）第61(1)条

SECTION 5: CRIMINAL PROCEDURES

第5节 刑事程序

Article 61

第61条

Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

成员方应规定刑事程序和惩罚，至少适用于具有商业规模的故意的商标仿冒或盗版案件。可资利用的补救措施应包括足以构成一种威慑的与对相应程度的刑事犯罪适用的处罚水平相同的监禁和/或罚款措施。在适当的案件中，可资利用的补救措施还包括对侵犯货物及在从事此种违法行为时主要使用的材料和工具予以扣押、没收和销毁。成员方可规定适用于其他侵犯知识产权案件的刑事程序和惩罚，特别是对于故意和具有商业规模的侵权案件。

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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TRIPS Agreement, Article 61 (2)

与贸易有关的知识产权协议（TRIPS协议）第61(2)条

- To be noted: „**criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale**”. **Piracy on a commercial scale does not only mean piracy for commercial purposes.**
- 应当注意“**成员方应规定刑事程序和惩罚，至少适用于具有商业规模的故意的商标仿冒或盗版案件**”。**商业规模的盗版并不仅指出于商业目的。**”
- **From the viewpoint of owners of copyright and related rights, it is irrelevant whether the infringers violate their rights for profit or without profit-making purposes** (for example, for ideological reasons as matter of anarchist opposition to property in general and to copyright in particular).
- **从版权及相关权利权利人的角度，侵权人是否以获利为目的实施侵权行为并无影响**（例如，出于意识形态原因，无政府主义一般性地反对财产权，以及专门性地反对版权）。
- **Nevertheless, under many criminal laws, profit-making purposes are relevant.**
- **然而，许多国家刑法下，获利与否有不同影响。**

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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TRIPS Agreement, Article 61 (3)

与贸易有关的知识产权协议（TRIPS协议）第61(3)条

- „**Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity.**
- “**可资利用的补救措施应包括足以构成一种威慑的与对相应程度的刑事犯罪适用的处罚水平相同的监禁和/或罚款措施。**”
- **Generally, it is believed that imprisonment and/or monetary fines applied for theft should be regarded as being of a „corresponding gravity.”**
- **通常而言，适用于盗窃行为的监禁以及/或者罚金被认为属于“与对相应程度的刑事犯罪适用的处罚水平相同”。**
- **Nevertheless, the intangible nature of intellectual property right – including copyright – has an impact on the thinking and attitude of both the general public and those who have the task and competence to apply criminal sanctions.**
- **然而，无论是一般公众，还是负有实施刑事制裁职责的人员，其想法及态度均受到包括版权在内的知识产权的非实体性的影响。**

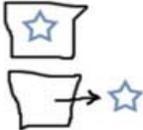
M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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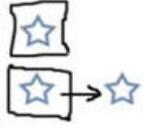
Piracy and theft (1)
盗版与盗窃 (1)

„Copyleft” ideologues’ theory
“公共版权” 宣扬者的理论

Piracy Is Not Theft
It's Piracy
盗版不是盗窃。盗版就是盗版
a handy guide
简易说明



Theft removes the original
盗窃取走原物



Piracy makes a copy
盗版制作副本

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

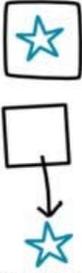
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Piracy and theft (2)
盗版与盗窃 (2)

„Copyleft” ideologues’ theory
“公共版权” 宣扬者的理论

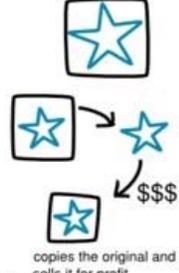
File sharing is not piracy
a handy guide.
大规模商业侵权 文件共享不是盗版 简易说明
Copyright Infringement 文件共享

Theft
盗窃



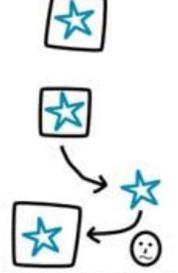
Theft removes the original
盗窃取走原物

Gross Commercial Copyright Infringement



copies the original and sells it for profit
复制原件并出售
获取利润

File Sharing



File sharing copies the original and gives it away for free
文件共享复制原件
并免费送出

Piracy
海盗行为



Stealing shit on the high seas
公海上的偷盗行为

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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Piracy and theft (3)

盗版与盗窃 (3)

Reality as pointed out by copyright owners
版权权利人指出的现实

Piracy Is Theft

a handy guide
盗版就是盗窃 简易说明

Theft removes the original
盗窃取走原物

Piracy steals income
盗版窃走收入

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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Piracy and theft (4)

盗版与盗窃 (4)

Reality as pointed out by copyright owners
版权权利人指出的现实

Piracy Is Not Theft

It's Worse

a handy guide 简易说明
盗版不是盗窃，盗版比盗窃更糟

Theft removes the original
盗窃取走原物

Piracy makes a copy
盗版制作副本

Which can spawn an infinite number of copies
进而可能涌现无数个副本

Which means nobody has to pay for it
从而意味着没有人需要付费

And artists lose money
创作者因而受到损失

Meaning small artists find it difficult to exist
意味着创作者因而难以生存
 Meaning only the big companies everyone loves so much can afford to be in business
意味着只有那些广受爱戴的大公司才能维持经营
Support the artists you like or lose them.
支持你喜爱的创作者，不然就会失掉他们

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Case law: rogue anti-copyright websites (1)
判例法：流氓反版权网站（1）



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Case law: rogue anti-copyright websites (2)
判例法：流氓反版权网站（2）



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Case law: rogue anti-copyright websites (3)

判例法：流氓反版权网站（3）

Extremist anti-copyright websites

极端主义的反版权网站

Pirate Bay (Sony Music et al. v. Fredrik Neij, Gottfrid Swartholm Warg, Peter Sunde Kolmisoppi and Carl Ulf Sture Lunds Sure Lundström, decision No. B 13301-06 of April 17, 2009, of the Stockholm District Court). The Stockholm District sentenced each of the four defendants – the operators of Pirate Bay one of the biggest BitTorrent “file-sharing” systems – to **imprisonment for complicity (aiding and abetting) in copyright infringements**. By providing a website with highly-developed search functions, simple uploading and downloading procedures, and by linking a tracker to the website, the defendants **abetted the offences which the “file-sharers” were objectively guilty of**. The District Court has also obligated the defendants to pay compensation for damages to the plaintiff owners of rights in an amount over 30 million Swedish crowns.

Pirate Bay (Sony Music et al. v. Fredrik Neij, Gottfrid Swartholm Warg, Peter Sunde Kolmisoppi and Carl Ulf Sture Lunds Sure Lundström, decision No. B 13301-06 of April 17, 2009, of the Stockholm District Court). 斯德哥尔摩地方法院判决四被告**构成侵犯版权从犯（帮助与教唆）**，并分别判处**监禁**。此四人是世界最大的比特洪流（BitTorrent）文件共享系统之一的Pirate Bay（海盗/盗版港湾）的经营者。四被告建设的网站有高度发达的搜索功能，简单易用的上传与下载程序，并设有追踪程序。他们因此**构成教唆侵权，而文件共享者则客观上构成侵权**。地区法院还判定被告有义务赔偿原告权利人的损失，数额超过3000万瑞典克朗。

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Case law: rogue anti-copyright websites (4)

判例法：流氓反版权网站（4）

Extremist anti-copyright websites

极端主义的反版权网站

Megaupload Ltd had websites which included the illegal file hosting service **megaupload.com allowing massive unauthorized file storage and viewing**. Its domain names were **seized** and the sites were **shut down** by the US Department of Justice on **January 19, 2012**, following the **indictment of the ultrarich owner „Kim Dotcom”** (Kim Schmitz) as an organization dealing with copyright infringement. The New Zealand Police placed „Kim Dotcom” (Kim Schmitz) in custody in response to US charges of **criminal copyright infringement**. Dotcom had cost the entertainment industry **at least 500 million US Dollars** through pirated content uploaded to his file-sharing site, which had 150 million registered users. Dotcom has been fighting the attempt to extradite him to the United States.

Megaupload公司的网站megaupload.com提供非法文件存储服务，允许大量未经授权文件的存储与浏览。该公司的所有人，号称“**Kim Dotcom**”（Kim Schmitz）的**超级富豪被起诉**之后，该网站域名于**2012年1月9日**被美国版权侵权执法机构司法部**查封**，网站也因此**关闭**。美国提起**版权侵权刑事指控**后，新西兰警方拘留了“Kim Dotcom”（Kim Schmitz）。Dotcom允许盗版作品上传至其拥有1.5亿注册用户文件共享网站，并因此给娱乐业造成了至少**5亿美元**的损失。Dotcom正在对抗与美国将其引渡回国的计划。

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Case law: rogue anti-copyright websites (5) 判例法：流氓反版权网站（5）



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The hero of „free access” activists: „Kim Dotcom” (1) “免费权限”运动的英雄 “Kim Dotcom” (1)



**With one of his helicopters and cars bought by money stolen from copyright owners
购买直升机和汽车的钱都是用从版权人那里偷来的钱**

M. Ficsor, Shanghai, December 2, 2015
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The hero of „free access” activists:
„Kim Dotcom” (2)
“免费权限”运动的英雄 “Kim Dotcom” (2)

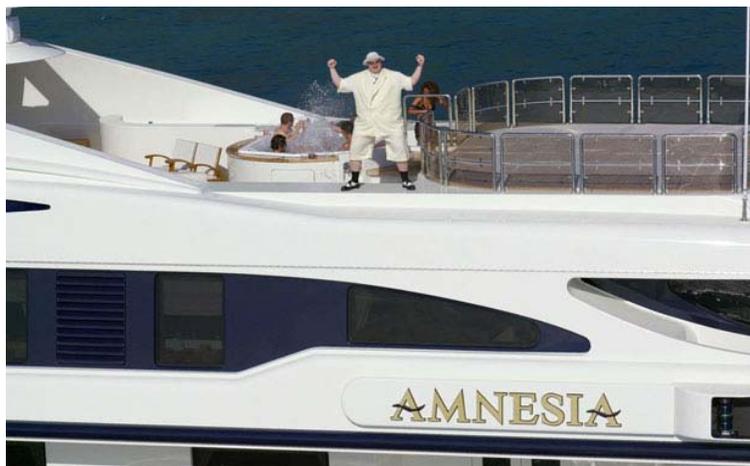


One of his castles built from the money stolen from copyright owners
建造这个城堡的钱是从版权人那里偷来的

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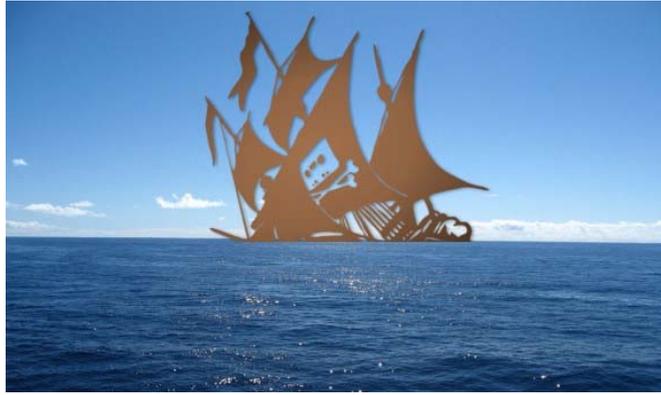
The hero of „free access” activists:
„Kim Dotcom” (3)
“免费权限”运动的英雄 “Kim Dotcom” (3)



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Rogue websites: are they eliminated?
流氓网站：他们已经被清理干净了吗？



Is the pirates' boat sinking?
这艘海盗船是不是在渐渐下沉？

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Not yet...
还没有.....



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... but...
.....但是.....

.. **his extradition procedure is close now to the end** in New Zealand.
.....新西兰方面，Dotcom的引渡程序已经接近尾声。

And, **in February 2015, US federal prosecutors achieved their first guilty plea and prison sentence in the Megaupload criminal case.**

2015年2月，美国联邦检察官获得了Megaupload案的第一份认罪协议与服刑判决

Andrus Nõmm—who was arrested in Virginia after years of fighting extradition in the **Netherlands—pleaded guilty to felony copyright infringement. He was sentenced to a year and a day in federal prison.**

Andrus Nõmm—在荷兰抗拒引渡多年之后，最终在弗吉尼亚州被逮捕，承认犯有版权侵权重罪。他被判在联邦监狱服刑一年零一天。

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IV. GENERAL PROVISIONS ON THE LIABILITY OF INTERNET SERVICE PROVIDERS; NOTICE-AND-TAKE DOWN

**四、网络服务提供者责任的一般规定
；通知-移除制度**

M. Ficsor, Shanghai, December 2, 2015
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What may still be a solution against such kinds of aggressive and massive infringers ? 面对这样大规模的严重侵权行为，能采取何种措施？

Francis Gurry, Director General of WIPO, about the future of copyright on the Internet at the „Blue Sky Conference” in Sidney in February 2011:

2011年2月，世界知识产权组织（WIPO）总干事Francis Gurry在悉尼蓝天会议上的发言谈到版权网络保护的将来：



„I believe that the question of... the responsibility of intermediaries is paramount.
The position of intermediaries is key.
“我认为.....的问题，中间商的责任是首要的。
中间商的地位是关键。”

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Notice and take down (1) 通知-移除（1）

US Copyright Act, Section 512(c)
美国版权法 第512(c)条

The section applies to **online service providers that store copyright infringing material. It requires that the online service providers:** 1) do not receive a financial benefit directly attributable to the infringing activity, 2) are not be aware of the presence of infringing material or know any facts or circumstances that would make infringing material apparent, and 3) **upon receiving notice from copyright owners or their agents, act expeditiously to remove the allegedly copyright infringing material.**

A online service provider **can be notified through the copyright owner's written notification** of claimed infringement. The online service provider **must expeditiously remove or disable access** to the allegedly infringing material, otherwise the provider is exposed to possible liability. (Continues.)

此条应用于**存储侵权内容**的网络服务提供者，要求网络服务提供者：1）不接受直接源于侵权行为的经济利益；2）并不明知系统或网络中有关内容或使侵权行为变得明显的事实或情况；3）**获得版权人或其代理人的通知后，迅速删除被控侵权的内容。**
网络服务提供者能够以**版权人书面主张侵权通知的方式被通知**。网络服务提供者**必须迅速删除被控侵权的内容或使之不能被访问**，否则将承担责任。（待续）。

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Notice and take down (2) 通知-移除 (2)

US Copyright Act, Section 512(c) (continued)
美国版权法 第512(c)条 (待续)

Following removing, or disabling access to, the infringing material, the online service provider **must promptly notify the alleged infringer of the action**. If there is a **counter notification** from the alleged infringer, the online service provider **must then promptly notify the claiming party** of the individual's objection. **If the copyright owner does not bring a lawsuit** in district court **within 14 days, the service provider must restore the material** to its location on its network.

删除被控侵权内容或使之不能访问之后，网络服务提供者**必须及时通知被控侵权人**。若被控侵权人有**反诉求**，网络服务提供者**须及时将反对意见通知主张权利的一方**。如果版权人**未在14天内向地区法院起诉**，网络服务提供者**必须在网络上恢复被删除的内容**。

If the court determines that the copyright owner misrepresented the claim of copyright infringement, the copyright owner **becomes liable for** any **damages** that resulted to the online service provider from the improper removal of the material. (Emphasis added.)

如果法院判决版权人版权侵权主张有误，版权人**有责任赔偿**网络服务提供者因不当移除该内容而遭受的**损失**。（加粗、下划线为演讲者所加。）

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Notice and take down (3) 通知-移除 (3)

In January 2012 the European Commission announced an initiative on “notice-and-action” procedures in the Communication on e-Commerce and other online services. It was explained that „Notice-and-action” procedures begin when someone notifies a hosting service provider – for instance a social network, an e-commerce platform or a company that hosts websites – about illegal content on the internet; **not only as regards copyright; reference was made also to racist content, child abuse content or spam**.

2012年1月，**欧盟委员会**在其关于电子商务及其他网络服务的通报中**宣布，将设立“通知-移除”程序**。该程序启动于某人通知存储服务提供者——如社交网络、电子商务平台或网站托管公司等——其网络上存在违法内容。这不仅适用于**著作权，还包括种族歧视、虐童或诈骗等内容**。

Article 14 of the Electronic Commerce Directive, in respect of any violations of law, **provides a basis** for the development of these procedures, **but does not regulate** them **in detail**. In response to a public communication consultation in 2010, stakeholders indicated that these procedures **should lead to a quicker takedown of illegal content, should better respect fundamental rights** (in particular the freedom of expression) **and should increase legal certainty for online intermediaries**.

对于违法行为，《**电子商务指令**》**第14条**为此类程序**设定了基础，但并未进行详细规范**。根据2010年的一次公众沟通咨询中，利害关系人认为这些程序**应能更快移除违法内容，更好地尊重基本权利**（尤其是表达自由）**并提升网络中间商法律规定的确定性**。

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Notice and take down (4) 通知-移除 (4)

Hungarian „notice and take down” system: 匈牙利的“通知-移除”制度

- **The Electronic Commerce Act contain (Act CVIII of 2001) “horizontal” rules** (covering violations of different laws) **limiting service providers’ civil liability, but it also provides for a “notice and takedown” procedure exclusively with respect to claims concerning the infringement of copyright or neighboring rights.**
- **《电子商务法》(Act CVIII of 2001) 规定有“水平”规则** (涵盖违反不同法律的行为), **限制服务提供者的民事责任。但同时, 针对被控侵犯版权及邻接权的行为, 该法规定有通知-移除程序。**
- **If the owner of such a right claims that a service provider is making accessible any information that infringes its right, that owner may serve a notice, with full evidentiary effect, on the service provider to demand the latter to remove, or to disable access to, the information in question.** This notice must specify the following: (a) the right-owner with its name, telephone number, main postal address, and electronic-mail address; (b) in what work or other media production the pertinent right is claimed and facts probative of the infringement; and (c) data identifying the information in question.
- **若权利人认为服务提供者正在提供侵犯其权利的内容, 权利人得对服务提供者发出通知, 要求移除侵权内容或使之不能访问。** 该通知有全面证据效力, 须列明如下内容: (a) 权利人姓名、电话、主要邮件地址及电子邮件地址; (b) 基于何部作品或其他媒介主张权利, 以及主张侵权的相关事实; 以及 (c) 确定侵权内容的相关信息。

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Notice and take down (5) 通知-移除 (5)

Notice and take down system under the Hungarian Electronic Commerce Act (continued): 匈牙利《电子商务法》下的“通知-移除”制度 (待续):

- **Within 12 hours from the receipt of the notice, the service provider must remove or disable access to the information identified in the notice.**
- **服务提供者须于收到通知后12小时内移除被控侵权内容或使之不能访问。**
- **Within 3 days, it must inform the user of its service, who has provided the information in question, of the terms of the notice requesting removal or disablement of access.**
- **服务提供者须于3日内, 将要求移除内容或断开连接的通知, 告知提供该内容的用户。**
- **Within 8 days from the user’s receipt of such notification of the removal or disablement of access, the user of the service may request, in a notice with full evidentiary effect, that the information be restored to the system.** Such a counter-notice must specify (a) the user of the service with the requisite contact information set out above for the right-owner, (b) the information claimed to be infringing, and (c) the prior network location of this information. Further, the counter-notice must include a statement that, with appropriate justification, explains why the information in question is not infringing. **The service provider, must also inform the right-owner of the terms of the counter-notice and the restoration of the information.**
- **服务用户收到要求移除内容或断开连接的通知后, 得于8日内通知服务提供者在网络上恢复该内容。** 此反通知具有全面证据效力, 且须列明: (a) 如前文权利人通知的规定所列的, 服务用户的相关联系信息; (b) 被控侵权的内容; 以及 (c) 该内容之前所在位置。反通知还须包含一项声明, 解释该内容为何不构成侵权并提供合理依据。服务提供者须将反通知的内容告知权利人, 并在网络上恢复该内容。

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Notice and take down (6) 通知-移除 (6)

Notice and take down system under the Hungarian law (continued):
匈牙利《电子商务法》下的“通知-移除”制度 (待续)

- **Within 10 days of the receipt of a counter-notice, the rightowner has the options of filing a civil suit** to obtain a temporary injunction and ultimately a permanent injunction to restrain the infringement **or of initiating a criminal proceeding.**
- **收到反通知后的10日内, 权利人有权选择提起民事诉讼,** 请求发出临时禁止令, 以及最终永久禁止令, 以制止侵权行为, **或选择启动刑事程序。**
- **Within 3 days of filing a civil suit or starting a criminal proceeding, the right-owner must send the service provider a copy of the pleadings or process commencing** the pertinent action.
提起民事诉讼或启动刑事程序后3日内, 权利人须将起诉状或程序启动文书副本发送给服务提供者。
- **The rightowner has to notify the service provider of any temporary injunction or final judicial decision** on the merits issued in the case. The service provider, depending on the judicial outcome, must either restore the information in question or maintain its removal or disablement of access.
- **权利人须将临时禁止令或对案件实体争议的最终判决通知服务提供者。** 服务提供者须依据司法程序的最终结果, 恢复该内容, 或确保其被移除或不能访问。
- **The service provider is not liable for removing or disabling access** to the information in question, **provided that it has acted in good faith** and in harmony with the pertinent provisions of the Electronic Commerce Act.
- **服务提供者若行动出于善意且符合《电子商务法》的规定, 即无需为移除相关内容或使之不能访问的行为承担责任。**
- **The owners of rights, in case of false notices, are liable for damages.**
- 权利人须**就错误通知承担赔偿责任。**

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V. MONITORING, FILTERING; „NOTICE AND STAY DOWN” 五、监控, 过滤; “通知且保持移除”

M. Ficsor, Shanghai, December 2, 2015
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No general monitoring obligations, but... (1) 并无一般性监控义务，然而..... (1)

US Copyright Act, section 512(m)

美国版权法，第512(m)条

(m) Protection of Privacy. – **Nothing in this section shall be construed to condition** the applicability of subsections (a) through (d) **on**–

(m) 隐私保护。——**本条任何内容都不得解释为第(a)至(d)款适用于以下情形——**

(1) **a service provider monitoring its service or affirmatively seeking facts indicating infringing activity, except to the extent consistent with a standard technical measure** complying with the provisions of subsection (i); or

(2) a service provider gaining access to, removing, or disabling access to material in cases in which such conduct is prohibited by law.

(1) 服务提供者**监控其所提供服务，或积极发现显示侵权行为存在的事实，除非符合第(i)款所规定的标准拒绝技术措施；或**

(2) 服务提供者采取违反法律的行为取得内容、移除内容或断开内容链接。

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No general monitoring obligations, but... (2) 并无一般性监控义务，然而..... (2)

Electronic Commerce Directive of 2000 of the EU

欧盟2000年《电子商务指令》

Article 15.1. No general obligation to monitor

第15.1条 无一般性监控义务

1. Member States **shall not impose a general obligation on providers**, when providing the services covered by Articles 12, 13 and 14, **to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.**

1、在服务提供者提供本指令第12条、第13条以及第14条规定的服务时，成员国**不应当要求服务提供者承担监督其传输和存储的信息的一般性义务，也不应当要求服务提供者承担主动收集表明违法活动的事实或情况的一般性义务。**

Recital (47)

鉴于 (47)

Member States are prevented from imposing a monitoring obligation on service providers only with respect to obligations of a general nature; **this does not concern monitoring obligations in a specific case and, in particular, does not affect orders by national authorities in accordance with national legislation.**

成员国**不应当对服务提供者强加监督义务，所规定的义务应当为一般性的；但是此规定不涉及特殊情况下的监督义务，特别是，不得影响各成员国官方根据国内立法发布的命令。**

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M. Ficsor, 上海, 2015年12月2日

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Filtering; „notice and stay down” (1) 过滤; “通知且保持移除” (1)

Obligation of non-general monitoring (filtering) and of preventing future infringements: what is taken down must stay down

非一般性监控（过滤）及防范后续侵权的义务：被移除的须保持移除

GEMA v. YouTube (Hamburg Regional Court (*G Hamburg*) 310 O 461/10). YouTube has **intermediary “disturber” liability** (“*Störerhaftung*”) by providing its platform and thus contributing to the infringing acts.

GEMA v. YouTube (Hamburg Regional Court (*G Hamburg*) 310 O 461/10). 作为平台提供者，YouTube 负有中间商的“干扰人”责任（“*Störerhaftung*”），其行为构成辅助侵权。

➤ When notified of an infringement, YouTube has the **obligation not only to remove or block access to the video without delay but also to take measures to prevent further infringements**. (This duty does not extend to those videos that had already been uploaded to the platform.)

➤ 收到侵权通知后，YouTube 不仅有义务毫无延迟地移除相关视频或切断访问，还须采取措施防范后续侵权。（此义务不延伸至已上传到平台的视频。）

➤ **No disproportionate duties may be imposed on YouTube**. Nevertheless, **it is a reasonably proportionate obligation to prevent future illegal uploads of the same musical works on the same recording by using filtering software**. YouTube should use the software itself and **could not leave this to its users**.

➤ YouTube 所承担的义务不应违反比例原则。然而，**利用过滤软件，防止对同一音乐作品同一版本的再次非法上传是一项完全合乎比例的义务**。YouTube 自己应使用这类软件，而非将其留给用户使用。

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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Filtering; „notice and stay down” (2) 过滤; “通知且保持移除” (2)

Obligation of non-general monitoring (filtering) and of preventing future infringements: what is taken down must stay down

非一般性监控（过滤）及防范后续侵权的义务：被移除的须保持移除

In **Atari v. RapidShare**, the **locker provider**, first, seemed to be the winner. The **Regional Court (LG) of Düsseldorf found against it**. However, the **Higher Regional Court (OLG) reversed the ruling in favor of RapidShare**. The OLG did not find it justified to obligate RapidShare, in addition to take down illegal copies when duly notified, also to prevent, through a filtering system, repeated uploading of illegal copies of the same works.

Atari v. RapidShare 案中，起初后者似乎将会胜诉。然而Düsseldorf州法院（LG）判其败诉。但Düsseldorf州高等法院（OLG）推翻了该判决，RapidShare最终胜诉。OLG认为RapidShare在被恰当通知后移除非法内容之外，若还要求其通过过滤系统防范对同一非法内容的再次上传，这种义务是不合理的。

The **German Federal Court of Justice (BGH) reversed the ruling of the Düsseldorf OLG**. (BGH, I ZR 18/11, LG Düsseldorf – 12 O 40/09). Although it stated that, in principle, **file hosting services are to be recognized as an appropriate business model, they should duly cooperate with copyright owners not only by removing illegal copies from their system but also by preventing their inclusion** (that is, if illegal copies of a work are taken down, they should stay down and not uploaded again). **If RapidShare does not apply a reasonable filtering system for this purpose, it will be liable for the infringements**.

德国联邦最高法院（BGH）推翻了Düsseldorf OLG的判决。（BGH, I ZR 18/11, LG Düsseldorf – 12 O 40/09）。尽管文件存储服务一般被认为是一项合法商业模式，此服务的提供商应充分配合版权人的权利保护需求，不仅应从系统内移除非法内容，还应防范同样非法内容再次进入系统（亦即，如果非法内容被移除，应保持其移除状态，不得被再次上传）。若RapidShare不为此目的建立起有效的过滤系统，其将承担侵权责任。

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VI. BLOCKING ACCESS TO ROGUE WEBSITES

六、封锁对流氓网站的访问

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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Intermediaries' obligation to fulfill injunctions (including blocking infringing websites) 中间商履行禁止令（包括封锁侵权网站）的义务

Recital (45) of the EU Electronic Commerce Directive of 2000

鉴于(45) 欧盟2000年《电子商务指令》

(45) The limitations of the liability of intermediary service providers established in this Directive **do not affect the possibility of injunctions** of different kinds; such injunctions can **in particular** consist of orders by courts or administrative authorities **requiring the termination or prevention of any infringement**, including the removal of illegal information or the disabling of access to it. (Emphasis added.)

鉴于(45) 本指令关于中间商责任的限制的条款**不得影响**实施各类**禁止令的可能性**；此种禁止令**尤其**包括法院或行政机构发布的**要求终止或防止任何侵权行为**，包括删除非法资讯或阻止他人访问非法资讯的命令。（加粗、下划线为演讲者所加。）

Article 8(3) of the Information Society Directive of 2001

欧盟2001年《信息社会指令》第8(3)条

3. Member States **shall ensure that rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right**. (Emphasis added.)

3. 成员国**应保证权利人有资格申请禁止令**制止中间商因第三方利用其服务侵犯版权或相关权利。（加粗、下划线为演讲者所加。）

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Blocking injunctions (1) 封锁禁止令（1）

▪ **Tele2 A/S (decision October 25, 2006, of the Copenhagen City Court)**. At the demand of IFPI Denmark, the court issued an **injunction requiring the ISP to block access to the Russian pirate site allofmp3.com**.

▪ **Tele2 A/S (decision October 25, 2006, of the Copenhagen City Court)**. 依据丹麦国际唱片业协会（IFPI）的请求，法院发出**禁止令**，要求ISP封锁对俄国盗版网站allofmp3.com的访问。

▪ **Pirate Bay (decision February 2, 2010, of the Tribunal of Bergamo)** The court has found that it is an **obligation of the Italian Internet service and access providers to block access to the pirate website**.

▪ **Pirate Bay (decision February 2, 2010, of the Tribunal of Bergamo)** 法院认为**意大利网络服务与访问提供者有义务封锁对盗版网站的访问**。

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Blocking injunctions (2) 封锁禁止令（2）

▪ **British Telecom (High Court of Justice, London, July 28, 2011)**. The Court has found in favor of Twentieth Century Fox, Universal Film Studios, Warner Bros. Entertainment, Paramount Pictures, Disney Enterprises and Columbia Pictures against the British Telecom.

▪ **British Telecom (High Court of Justice, London, July 28, 2011)**. 法院判决二十世纪福克斯、环球电影公司、华纳兄弟、派拉蒙电影公司、迪斯尼公司与哥伦比亚电影公司胜诉，英国电信败诉。

The High Court judge has ruled that **BT must block access to a website which provides links to pirated movies**. The case has concentrated on **Newzbin 2**, a site aggregating a large amount of illegal copies of movies on its Usenet „discussion” forums.

高等法院法官判决**英国电信必须封锁对提供盗版链接的网站的访问**。该案涉及的是**Newzbin 2**，其网络新闻“讨论”版上汇集有大量不合法电影。

A landmark decision since it was the first time in the UK that a service provider – one of the biggest ones – has been ordered to block access to such a site. It opened the way **to block other similar illegal sites (such as Pirate Bay)**.

• 该案为此领域的标志性案例，因为这是英国首次有服务提供者——而且是最大的服务提供者之一——被判令封锁对此类网站的访问。由此开启了对**类似非法网站（如Pirate Bay）采取封锁措施**的可能性。

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Blocking injunctions (3) 封锁禁止令（3）

- On 22 October 2013 in a case against the Pirate Bay, the Belgian Court of Cassation (Belgium's Supreme Court) confirmed the lawfulness of a far-reaching injunction order against all national Internet service providers. According to this judgment, the examining magistrate (*juge d'instruction*) is entitled to order, **in a single injunction, all national Internet service providers to block access** to IP rights-infringing content which is hosted by a server, linked to a specific main domain name, and such by employing all possible technical means at their disposal or at least by blocking all domain names that refer to a specified main domain name ("thepiratebay.org").
- 2013年10月22号，比利时最高法院审理了Pirate Bay为被告的案件。比利时上诉法院（比利时最高法院）判决确认了适用于全国所有网络服务提供者的广泛禁止令的合法性。依据该判决，预审法官有权签发**单项禁止令**，要求**全国所有所有网络服务提供者**，采取一切可能的技术手段，**封锁**对存储于服务器上、链接到特定域名的侵犯知识产权的内容的访问，至少应封锁对一切含有特定主域名（"thepiratebay.org"）的域名的访问。
- There have been blocking injunctions also in other EU Member States (France, Germany, Spain), etc. as well, for example, in Russia and India.
- 其他欧盟成员国（法国、德国、西班牙），以及俄国、印度等也有发出封网禁止令的案例。

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Blocking injunctions (4) 封锁禁止令（4）

CJEU: in the UPC Telekabel v Constantin and Wega (C-314/12) the judgment of the Court of Justice of the European Union adopted on March 27, 2014, found that **an internet access provider can be required to block access by its customers to a website which infringes copyright**.

欧洲联盟法院：在2014年3月27日就UPC Telekabel v Constantin and Wega 案（C-314/12）作出的判决中，欧洲联盟法院认为**用户有权要求网络访问提供者封锁对侵犯版权的网站的访问**。

A **specific blocking measure** imposed on a provider relating to a specific website **is not, in principle, disproportionate** only because it entails not inconsiderable costs but can easily be circumvented without any special technical knowledge. It is for the national courts, in the particular case, taking into account all relevant circumstances, to weigh the fundamental rights of the parties against each other and thus strike a fair balance between those fundamental rights

一般而言，要求服务提供者对特定网站采取**特定封锁措施**并不仅仅因为其影响广泛而无须特殊技术知识便能够轻易被绕开而**有失比例**。相关国内法院应依据案件的具体状况，综合考虑各种相关情形，衡量案件双方的基本权利、以达到彼此的平衡。

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VII. „GRADUATED RESPONSE” TO REPEAT INFRINGERS

七、“分级响应体系” 应对反复侵权者

M. Ficsor, Shanghai, December 2, 2015
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Graduated response systems (1)

分级响应体系 (1)

Best known systems (also others in Ireland, Italy, R. of Korea; New Zealand) to suspend or reduce the capacity of internet connection
目前最知名的暂停或降低网络连接的方式 (爱尔兰、意大利、韩国、新西兰等国家也有其他此类系统)。

•France

•法国

- **HADOPI three-strike system:** combining enforcement with education; co-operation between government authorities, owners of rights and internet service providers; reducing the application of tough criminal and administrative measures;
- **HADOPI三方位体系:** 执法与教育相结合; 政府部门、权利人与网络服务提供者的合作; 减少强硬的刑法与行政措施的使用
- **different status** under the Hollande administration than under the Sarkozy administration.
- **奥朗德与萨科齐** 治下对HADOPI的**重视并不相同**

•Spain:

•西班牙

- „Ley Sinde” - Law 2/2011, of March 4; „Ley Sinde Wert” (2012);
- “Ley Sinde” -法律2/2011年3月4日; “Ley Sinde Wert” (2012年);
- „Ley Lasalle” (2013))
- “Ley Lasalle” (2013年)

•US:

•美国

- service providers’ obligation to apply policy against repeat infringers/ suspension of accounts (section 512 of the Copyright Act);
- 服务提供者有义务对**多次侵权者采取措施/冻结账号** (《版权法》第512条)
- **six-strike system** (Copyright Alert System; Center for Copyright Information)
- **六振出局制度** (版权警报系统; 版权信息中心)

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Graduated response systems (2) 分级响应体系 (2)

General opinion of owners of rights about the broadly disputed French HADOPI system:

权利人对广受争议的HADOPI系统的普遍看法:

If it has not been truly efficient (it could have been), it is because it has not been truly applied.

它并不真的有效（本可以有效），因为它从未被真正运行。

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VIII. COMPLEX CROSS-INDUSTRY COOPERATION 八、复杂的跨行业合作

M. Ficsor, Shanghai, December 2, 2015
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Cross-industry co-operation (1)

跨行业合作 (1)

An example: the „UGC principles:” www.ugcprinciples.com. Key elements:

实例：“用户创制内容 (UGC) 原则”：www.ugcprinciples.com 要件：

- **UGC Services should use effective content identification technology** (“Identification Technology”) **with the goal of eliminating** from their services **all infringing user-uploaded audio and video content** for which Copyright Owners have provided Reference Material. To that end..., UGC Services **should fully implement commercially reasonable Identification Technology** that is highly effective,...in achieving the goal of eliminating infringing content.
- **UGC 服务商应使用有效的内容识别技术** (“识别技术”)，**用以在版权所有人提供对比材料的情况下，消除其服务中所有侵权用户上传的音视频内容。**为此.....，UGC 服务商应全面地实施高效的具有商业合理性的识别技术.....以消除侵权内容。
- **If a Copyright Owner has provided:** (1) **the reference data** for content **required to establish a match with user-uploaded content;** (2) **instructions regarding how matches should be treated;** and (3) **representations** made in good faith **that it possesses the appropriate rights** regarding the content (collectively, “Reference Material”), then **the UGC Service should apply the Identification Technology to implement a Filtering System.**
- **如果版权所有人提供了：**(1) **用于与用户上传内容进行匹配的内容对比数据；**(2) **匹配成功后如何处理**的指示；**以及**(3) **善意作出的关于它对该内容具有相关权利的声明**（统称“对比资料”），**UGC 服务商应采用识别技术实施过滤机制。**

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Cross-industry co-operation (2)

跨行业合作 (2)

UGC principles (continued):

UGC原则（待续）：

- **UGC Services and Copyright Owners should work together to identify sites that are clearly dedicated to, and predominantly used for, the dissemination of infringing content or the facilitation of such dissemination.** Upon determination by a UGC Service that a site is so dedicated and used, **the UGC Service should remove or block the links to such sites.** If the UGC Service is able to identify specific links that solely direct users to particular non-infringing content on such sites, the UGC Service may allow those links while blocking all other links.
- **UGC 服务商和版权所有人应通力合作，识别出明显是专门用于和主要用于传播侵权内容或为此类传播提供便利的站点。**一旦UGC服务提供商判定某一站点存在此类问题，**UGC 服务商应移除或屏蔽指向此类站点的链接。**如果UGC服务商能够识别出此类站点上只是将用户导向至特定非侵权内容的具体链接，UGC服务商可放行这些链接而屏蔽其它链接。
- **UGC Services should use reasonable efforts to track infringing uploads** of copyrighted content **by the same user and should use such information in the reasonable implementation of a repeat infringer termination policy.** UGC Services **should use reasonable efforts to prevent a terminated user from uploading audio and/or video content following termination**, such as blocking re-use of verified email addresses.
- **UGC 服务商应尽合理的努力追踪同一用户上传的侵犯版权的内容，并将此类信息合理地应用于累犯终止服务政策。**UGC 服务商应尽合理的努力阻止被终止服务的用户在被终止服务后上传音视频内容，例如禁止再次使用经验证的邮箱。

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Cross-industry cooperation (3)

跨行业合作 (3)

UGC principles (continued):

UGC原则 (待续):

- The **Identification Technology** should use Reference Material to identify user-uploaded audio and video content that matches the reference data and **should permit Copyright Owners to indicate how matches should be treated**.
- 识别技术应使用对比材料识别用户上传的音视频内容。如与对比数据匹配成功，应允许由版权所有人指明如何处理匹配成功的情况。
- **If the Copyright Owner indicates in the applicable Reference Material that it wishes to block user-uploaded content that matches the reference data, the UGC Service should use the Identification Technology to block such matching content before that content would otherwise be made available on its service ("Filtering Process"). The Copyright Owner may indicate in the applicable Reference Material that it wishes to exercise an alternative to blocking (such as allowing the content to be uploaded, licensing use of the content or other options), in which case, the UGC Service may follow those instructions or block the content, in its discretion.**
- 如果版权所有人在相关对比材料中指明，它希望屏蔽与对比材料数据的用户上传内容，UGC服务商应使用识别技术在此类匹配成功的内容以任何方式公布于其服务之前屏蔽此类内容（“过滤流程”）。版权所有人可在相关对比材料中指明，它希望使用屏蔽以外的方法（例如允许该内容的上传、内容的许可使用或其它处理方法），在每一情况下，UGC服务商可自行决定进行这些指示或屏蔽该内容。

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Cross-industry cooperation (4)

跨行业合作 (4)

YouTube's audio and video identification system:

YouTube的音视频识别系统:

- Rights holders deliver YouTube **reference files** (audio-only or video) of their **protected content**, **metadata** describing that content, **and policies on what they want YouTube to do when it finds a „match.“**
- 权利人向YouTube提交其受保护内容的对比文件（纯音频文件或视频文件）、该内容的元数据以及在“匹配成功”的情况下YouTube的处理政策。
- **YouTube compare content uploaded to YouTube against those reference files, and its identification technology (with filtering function) automatically identifies the protected content .**
- YouTube将上传至YouTube的内容与这些对比文件进行比较，YouTube的（带有过滤功能的）识别技术自动识别出受保护内容。
- In case of a „match,“ **YouTube and applies the rights owner's preferred policy:** (i) **authorizing and monetizing**, (ii) only **tracking**, or (iii) removing or **blocking access (taking down)**.
- 如果“匹配成功”，**YouTube将实施权利人选定的政策:** (i) **进行授权和货币化;** (ii) **仅进行追踪;** 或者 (iii) **移除或屏蔽访问权限(下架)。**

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IX. EU ACTION PLAN

九、欧盟行动计划

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EU Action Plan

欧盟行动计划

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE Towards a renewed consensus on the enforcement of Intellectual Property Rights: An EU Action Plan /* COM/2014/0392 final */

《欧洲委员会发给欧洲议会、欧盟理事会和欧洲经济及社会委员会的通告：迈向知识产权执法的新共识——欧盟行动计划》/* COM/2014/0392 终稿 */

Action 3: "Follow the money": industry Stakeholder Dialogues to keep infringing products off the internet

行动3：“追踪获利来源”：行业利益相关方对话，使侵权制品远离互联网

M. Ficsor, Shanghai, December 2, 2015
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Follow the money (1) 追踪获利来源 (1)

„**Agreements between rights-holders and the business partners** on whom they rely to source, promote, distribute and sell their products **are important to meet the dual goals of rapid detection and interruption of commercial scale IP-infringing activities**

“**权利人**与供应原料、宣传、分发和出售其制品的**业务合作伙伴**签订的协议，对于实现快速检测和制止商业性知识产权侵权活动的双重目标十分重要。

„Such agreements when applied are a rapid response mechanism to the IP infringement problem. Stakeholder Dialogues leading to such agreements involve meetings between a representative group of relevant stakeholders focusing on concrete problems and seeking practical solutions that are realistic, balanced, proportionate and fair for all concerned. They have been initiated by the Commission and seek to facilitate the development of Memoranda of Understanding (MoUs) that establish the principles that signatories can apply in bilateral contractual agreements. **The goal is to deprive IP infringers of their revenue streams.**”

“如能适用此类协议，将形成对知识产权侵权问题的快速反应机制。引导达成此类协议的利益相关方对话涉及利益相关方的代表性团体间的会议，会议关注于具体问题并寻找实际的、平衡的、按比例的对各方均公平的实用解决方案。欧洲委员会已多次发起此类会议，试图创造条件，制定确立签约方可应用于双边合约性协议的原则的备忘录。**目标是根除知识产权侵权者的收入来源。**”

M. Ficsor, Shanghai, December 2, 2015
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Follow the money (2) 追踪获利来源 (2)

„**The first dialogue, on limiting the sale of counterfeit items via online platforms, resulted in a MoU in 2011**[ec.europa.eu/internal_market/iprenforcement]. **An evaluation report in April 2013**[COM(2013)209 of 18.4.2013.] concluded that it could usefully be extended to include new parties. Taking account of all relevant developments, the Commission will establish **new Stakeholder Dialogues... comprising advertising service providers, payment services and shippers, with the objective of achieving in the course of... further Memoranda of Understanding that will help keep IP-infringing products off the Internet.**

2011年举行的第一次对话涉及限制通过互联网平台进行的假货销售，并达成了备忘录 [ec.europa.eu/internal_market/iprenforcement]。2013年4月的评估报告 [COM(2013)209, 2013年4月18日] 的结论认为，吸收新的缔约方会有好处。考虑到所有相关的发展，欧洲委员会将举行新的利益相关方对话……参会者包括广告服务提供商、支付服务商和运输商，以期在这一过程中达成有助于使知识产权侵犯产品远离互联网的进一步备忘录。

„**Action 3: The Commission will facilitate the development of further voluntary Memoranda of Understanding to reduce the profits of commercial scale IP infringements in the online environment, following Stakeholder Dialogues involving advertising service providers, payment services and shippers.**” (Emphasis added.)

“**行动3：欧洲委员会将在广告服务提供商、支付服务商和运输商参加的利益相关方对话后，创造条件，制定进一步的自愿性备忘录，以降低互联网环境下商业性知识产权侵权获得的利润。**”（加粗和下划线为演讲者所加。）

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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**THANK YOU FOR YOUR
ATTENTION**
谢谢 XIE XIE

ceeca@t-online.hu
www.copyrightseesaw.net

M. Ficsor, Shanghai, December 2, 2015
M. Ficsor, 上海, 2015年12月2日

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Procedural Aspects for Enforcement of Copyright Infringements

关于版权侵权执法程序

EU-China Roundtable on Copyright Protection and Development of Copyright Industries
 中欧版权保护和产业发展圆桌会议

2 December 2015, Shanghai
 上海, 2015年12月2日

KT Ang
 IFPI Regional Director Asia Pacific
 洪伟典
 国际唱片业协会亚太区域总裁



Enforcement Actions Taken by IFPI

国际唱片业协会执法行动

- Notice and Takedowns - As of 17th November 2015, IFPI has sent 67,540 C&D notices involving 529,467 infringement links to sites in China, with takedown rate of 89.6%
- 通知与撤除 - 截至2015年11月17日国际唱片业协会先后发出涉及529,467个侵权链接、共67,540个C&D通知给中国网站, 撤除率89.6%

Month 月	Jan 一月	Feb 二月	Mar 三月	Apr 四月	May 五月	Jun 六月	Jul 七月	Aug 八月	Sep 九月	Oct 十月	Nov 十一月	Total 总计
Total number of infringement links(Including 1 st and 2 nd notice) 侵权链接总数(包括第1次和第2次通知)	34140	38962	58488	55950	48482	136674	27649	40108	35312	30055	25647	529467
No. of unique infringement links 侵权链接撤除数量	17840	21427	41015	27975	24241	68337	14984	21850	21094	22469	11839	293071
No. of unique infringement links Takedown 侵权链接撤除数量	17408	19409	34453	21189	19110	66336	12688	20547	21086	19280	11808	263314
Takedown Rate by infringement links (%) 侵权链接撤除率(百分比)	97.58%	90.58%	84.00%	75.74%	78.83%	97.07%	84.68%	94.04%	99.96%	85.81%	99.74%	89.83%
Total No. of Notices(Including 1 st and 2 nd notice) 通知总数(包括第1次和第2次通知)	4244	4906	7336	7104	6096	17194	3996	5037	4433	3817	3377	67540
No. of 1 st C&D Notice Sent 第1次“立即停止”通知发送数量	2203	2699	5147	3552	3048	8597	2158	2750	2649	2868	1691	37362
No. of 1 st C&D Notice Takedown 第1次“立即停止”通知撤除数量	2149	2443	4316	2681	2403	8346	1837	2574	2646	2407	1686	33488
Takedown Rate by C&D (%) “立即停止”撤除率(百分比)	97.55%	90.52%	83.85%	75.48%	78.84%	97.08%	85.13%	93.60%	99.89%	83.93%	99.70%	89.63%

- A total of 33,782 C&Ds covering 224,980 infringing links were sent in 2014, representing a 125% growth over 2013
- 2014年共发送涉及 224,980 个侵权链接、33,782 个C&D通知, 比 2013 年增长 125%



Mobile Apps & Geo-Blocking 移动应用程序和地理阻隔

- 235 mobile apps were reported to either Apple or Google for infringements so far in 2015, with 90% taken down
- 截止 2015 年，向苹果或谷歌报告了 235 个侵权移动应用程序，90% 已撤下
- Licences given to China-based music portals only for China; licensees are contractually obligated to geo-block against access from outside of China. IFPI monitors situation with our national groups to enforce this – success rate of 84% so far this year
- 授予中国音乐门户网站的许可仅用于中国，被许可人有合约义务阻止来自中国境外的访问。国际唱片业协会与我国国内团体监测执行情况——截止今年成功率为 84%



Administrative Complaint Procedures 行政投诉程序

- Where the websites ignore our takedown notices, an administrative complaint will be submitted to NCAC
- 如网站忽视我们的撤除通知，将向国家版权局提交行政投诉
- Administrative enforcement is available where the infringement causes “damage to the public interest”
- 当侵权行为“损害公共利益”时，可采取行政执法措施
- Serious cases may be filed centrally with NCAC, who will typically delegate enforcement to a local department
- 重大案件可集中提交至国家版权局，国家版权局通常委托地方部门进行执法
- In general, rights owners file a written complaint with local government Cultural Enforcement Departments (CED) or Copyright Bureaus where the alleged infringer is located or where the infringement has occurred, with the enforcement generally being conducted by the CED
- 一般情况下，权利人会将书面投诉提交给被指控侵权人所在地或侵权行为发生地的当地政府文化执法部门或版权局，通常由文化执法部门执法
- Complaints can be filed directly by copyright owner or by an agent (need not be lawyers) with a Power of Attorney
- 著作权人或委托代理人（不一定是律师）可直接提交投诉



Administrative Complaint Procedures 行政投诉程序

- Written complaint submitted includes information of infringement and the infringer, examples of infringing music, copyright verification report and screenshot of infringements
- 提交的书面投诉包括侵权行为和侵权人信息、侵权音乐举例、版权认证报告和侵权截图

Example of copyright verification report 版权认证报告举例

6 October 2015
2015年10月16日
Ministry of Culture, Sports and Tourism of Vietnam
越南文化体育与旅游部
Copyright Office of Vietnam
越南版权局
Ministry of Information and Communications of Vietnam
越南信息通信部



Dear Sirs,
敬启者:

Confirmation of Copyright or Related Rights in Sound Recordings 录音制品著作权或相关权利确认书

I am Regional Counsel of Sony Music Entertainment, overseeing legal & business affairs matters in Asia (including Vietnam).
我是索尼音乐娱乐的区域法律顾问，负责亚洲（包括越南）的法律和商务事务。

We hereby verify and confirm that as of the date of this letter the copyright or related rights in the sound recordings listed below are owned and/or controlled by Sony Music Entertainment and its group members ("Sony Music Group Member").
在此，我们证明并确认截止本函之日，下列录音制品的版权或相关权利由索尼音乐娱乐公司及其集团成员（“索尼音乐集团成员”）拥有或控制。

No. 序号	Track Title 曲目名称	Artist 艺术家	Share of Sony Music Group Member which owns and/or controls the track. 拥有或控制该曲目的索尼音乐集团成员名称
1	March Ma Ananda Da Oudara 玛里安那达奥达拉	阮玲玉 Ruan Lingyu	Sony Music 索尼音乐
2	Adieu You 再见你	阮玲玉 Ruan Lingyu	Sony Music 索尼音乐
3	All Out of Love 全情付出	阿黛尔 Adele	Sony Music 索尼音乐
4	Always Be My Baby 永远做我的宝贝	玛丽亚凯莉 Mariah Carey	Sony Music 索尼音乐
5	Amazing 神奇	玛丽亚凯莉 Mariah Carey	Sony Music 索尼音乐
6	Only One Man Time 只有男人的时间	玛丽亚凯莉 Mariah Carey	Sony Music 索尼音乐

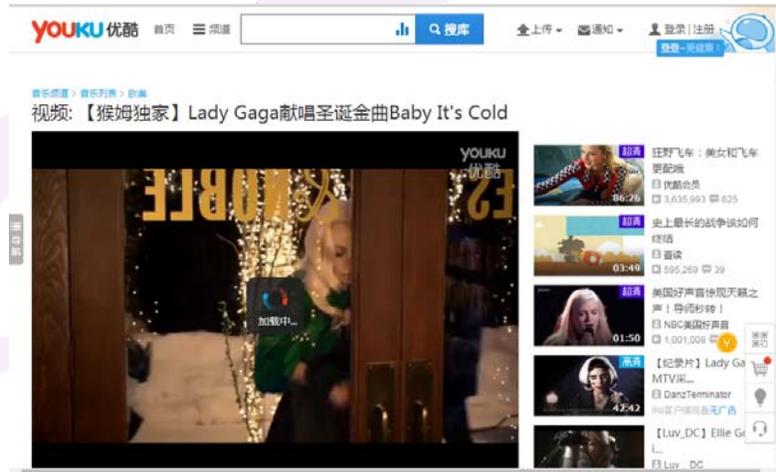


Screenshots of infringements 侵权截图 (Cyberlocker) (网盘)



Screenshots of infringements

侵权截图
(Streaming)
(流媒体)



Screenshots of infringements

侵权截图
(Music Portal)
(音乐门户)



Administrative Complaint Procedures

行政投诉程序

- After verification by NCAC, the complaint cases are sent to local enforcement agencies for action. IFPI will submit more evidence as required
- 经国家版权局核查后，投诉会发给当地执法部门以采取行动。国际唱片业协会将按照要求提交更多的证据
- If the authorities conclude that infringement of a sufficiently serious scale has occurred, it may issue a “Punishment Decision” including an order to cease the infringement and a fine, which is limited to three times the infringer’s illegal income, up to a maximum of RMB150,000; if income is difficult to prove, fines will be below RMB100,000
- 如当局认为已发生严重侵权，其可能会发出“处罚决定书”，责令停止侵权行为并处以非法经营额3倍以下的罚款，最高可达15万元人民币。非法经营额难以计算的，可以处10万元以下的罚款。
- If the scale of infringement is small, the authority may issue a “Rectification Order” to cease infringement but with no fine
- 如侵权规模小，当局可能发出“整改令”，以终止侵权行为，但不处以罚款
- No compensation for the rights owner is available through administrative enforcement
- 通过行政执法，权利人无法获得赔偿



Administrative Complaint Procedures

行政投诉程序

- QingtingFM (蜻蜓FM) was fined RMB28,000 by the Shanghai cultural law enforcement department
- 上海文化执法部门对QingtingFM (蜻蜓FM) 罚款28,000元人民币
- Youshiw.net(<http://www.youshiw.net>) (游视网): Local enforcement department of Changzhi City, Shangxi confiscated its illegal income and servers and imposed administrative penalty of RMB11,000
- 山西长治市地方执法部门没收Youshiw.net (<http://www.youshiw.net>) (游视网) 违法所得和服务器，并处11,000元人民币的行政罚款
- Remenshipin.net(<http://www.remenshipin.net>) was shut down by the Jiangsu Copyright Bureau
- 江苏省版权局关闭了Remenshipin.net (<http://www.remenshipin.net>)



Criminal Complaints

刑事诉讼

- If the infringements persist, IFPI will apply for the case to be delivered to the Public Security Bureau for criminal action to be taken. Once the PSB has completed its examination, the case will be delivered to the Supreme People's Procuratorate for prosecution
- 如果侵权行为依然存在，国际唱片业协会将申请将案件提交公安局采取刑事措施。一旦公安局完成审查，案件将移交最高人民检察院提起诉讼



Administrative/Criminal Actions filed by IFPI from 2013-2015

从2013- 2015年国际唱片业协会提起的行政/刑事诉讼

Year年	Amount数量	Administrative Complaint case 行政投诉案件	Reference to criminal actions 采取刑事诉讼	Settlement rate 结案率
June 2013 to June 2014 2013年6月至 2014年6月	438	370	2	85%
June 2014 to June 2015 2014年6月至 2015年6月	298	200	3	67%
June 2015 to November 2015 2015年6月至 2015年11月	304	Up to now 56 截止目前56件	Up to Now 0 截至目前无	13%



Value Gap 价值差异

- Our industry has turned itself around but a “value gap” is stopping sustainable growth
- 我们的行业已经好转，但“价值差异”正在阻止其可持续增长

- The “Value Gap” refers to the unfair difference between the value some digital services extract for their use of music and what they pay to rights holders in return
- “价值差异”指某些数字服务从音乐使用中获取的价值与其支付给权利人的回报之间的不公平差异

- It is a problem created by legislation:
- 这属于立法引起的问题：
 - Over broad “safe harbours” legislative provisions contained in copyright laws to ‘protect’ ISPs
 - 版权法中“保护”互联网服务供应商的“安全港”规定过于宽泛
 - Ineffective notice and take down procedures
 - 无效的通知和撤除程序
 - Narrowly interpreted making available rights
 - 对“使权利可得”的狭义解释



Impact of the Value Gap 价值差异的影响

- Digital platforms that claim to benefit from safe harbours have an unfair negotiating advantage – rights holders have to accept their licensing terms or rely on notice & takedowns
- 声称从安全港受益的数字平台具有不公平的谈判优势—权利人不得不接受他们的许可条款或依赖于通知与撤除

- Therefore rights owners are unable to negotiate fair commercial terms and are deprived of fair payment for the use of their works
- 因此，权利人无法通过谈判获得公正的商业条款，被剥夺了因其作品得到使用而应得的公平报酬

- Competing music services are undermined by unfair competition
- 同类音乐服务因不正当竞争而受损

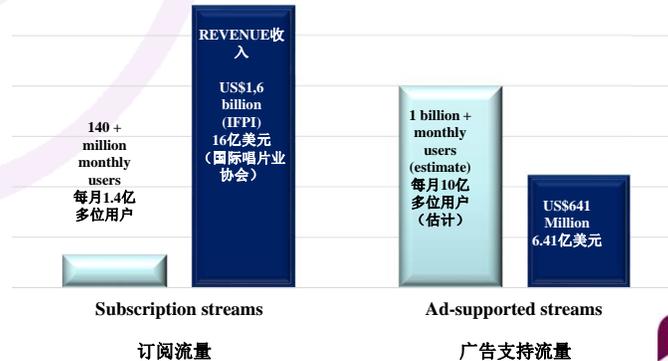


How much damage is it doing? 损害有多大?

Subscription services generate well over double the income of ad supported services, with a significantly smaller user base

订阅服务产生的收入超过广告支持服务的两倍以上，用户群明显偏少

Subscription and ad-supported revenues versus users
订阅和广告支持收入与用户量对比（2014）



Source: IFPI来源：国际唱片业协会



To redress the value gap 纠正价值差异

- To restore balance in digital music market place
- 要恢复数字音乐市场上的平衡
 - Only true passive and neutral on-line intermediaries are eligible for copyright liability safe harbours, where such exist; in other words, safe harbours should be available only to those intermediaries that are “*technical, passive and automatic*”; therefore, if an intermediary derives billions of dollars from advertisements placed on content that is posted by others, it should not be permitted to benefit from safe harbours
 - 只有真正的被动与中立在线中间商有资格获得版权责任安全港（如果存在）；换言之，安全港应只向“*技术性、被动与自动*”中间商提供；因此，如中间商从其他用户发布内容的附加广告中获得数十亿美元，则其不得再从安全港中获益
 - Eligible on-line intermediaries shall comply with “*notice and stay down*” as a condition for the safe harbour; “notice & takedown” is insufficient
 - 作为安全港的条件，符合条件的在线中间商应遵守“*通知与保留*”程序；仅“通知与撤除”程序是不够的
 - The exclusive communication to the public or making available rights must be defined to cover all interactive transmissions and active participation or intervention in the communication chain, eg: search, pause, etc
- 向公众独家传播或使权利可得须定义为涵盖所有交互式传输以及对传播链的积极参与或干预，如：搜索、暂停等



Safe Harbour in China 中国安全港

- There are safe harbour legislative provisions for hosting services in China which are currently being applied quite loosely, eg: case law (Hudong/Baidu case) that 9 days is an acceptable period in which to respond to a notice and takedown!
- 目前针对中国主机托管服务的若干安全港法规在应用层面比较松散，例如：判例法（互动/百度案），针对通知与撤除程序的回应时间竟可长达9天！
- Another unique problem in China is that many music services, although licensed, make available copyright content free of charge. This is largely due to the prevalence of piracy so the licensed services have to offer the content for free in order to compete
- 在中国，另一个特殊问题是许多音乐服务（虽已获得许可）可免费提供版权内容。这主要是由于盗版的盛行使特许服务商为参与竞争而免费提供内容
- This devalues copyright content; thus very little revenue is paid to rights holders
- 这造成版权内容贬值，因此向权利人支付的报酬非常低
- To turn the digital music industry in China into a sustainable market, the “value gap” & piracy must be addressed
- 要将中国数字音乐行业变为一个可持续的市场，必须解决“价值差异”和盗版问题



Thank you

谢谢

Kweetiang.ang@ifpi.org

www.pro-music.org for most comprehensive
directory of world's legal music services

www.pro-music.org 最全的全球合法音乐服务目录



IPKey

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Intellectual Property: A Key to Sustainable Competitiveness

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IP Key is co-financed by the European Union and the Office for Harmonization in the Internal Market (OHIM) under the framework of the new EU-China Cooperation. It is implemented by the Office for Harmonization in the Internal Market (OHIM) in cooperation with the European Patent Office (EPO). The contents of this publication are the sole responsibility of the project implementation team and can in no way be taken to reflect the views of the European Union.

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IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)



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