The state of China’s collective rights management in the context of the United States and Japan

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Abstract
With the rapid expansion of China’s economy, China’s music industries have shown rapid growth, and new companies have entered the marketplace. As these companies have had little pre-existing experience with the music industry—not to mention that music industry is a relatively new concept in China—the expansion has been not only rapid but also disordered and chaotic. One component of a mature music industry are collective rights management or performing rights organizations, which are independent non-profit social organizations that collect license fees on behalf of copyright holders (songwriters, composers, music publishers) and distribute these fees as royalties to members whose works have been performed. In this “In Focus” report, we compare and contrast the state of collective rights management in China, the United States, and Japan. Recognizing that China’s representative, the Music Copyright Society of China, is new to the scene, we should not be terribly surprised that it is lagging behind the other countries. Herein, we cite various areas where improvement is necessary so that China’s collective rights management can be in part with its international peers.

Keywords
Collective rights management, industry competition, non-profit organization, performing rights organizations

Introduction
In the West, non-profit organizations (NPOs) have a long history and play a very important role. In the United States, 1.5 million NPOs account for 6% of all industry organizations (Hou, 2001). The number of NPOs in Japan reached more than 50,000 (Japan NPO Center, 2017b). In the early days
of China’s reform and opening up, there were only 6000 NPOs. However, with the development of its market economy, NPOs in China have been increasingly valued (Xie, 1996).

The Decision of The Communist Party of China (CPC) Central Committee on “Some Issues Concerning the Establishment of a Socialist Market Economic Structure” cites the need for “industry associations” to establish self-regulatory industry management organizations, including “sound industry coordination intermediary services” (“Decision of the CPC Central Committee,” 2013). This builds upon issues raised and guiding principles adopted in the ninth 5-Year Plan (1996–2000) and the 2010 vision of the tenth 5-Year Plan (2001–2005; Implementation of the 10th Five-Year Plan, 2017; Review of National Economic and Social Development, 2017).

Today, there are 230,000 social organizations, 182,000 private non-enterprises, and 1597 foundations in China. NPOs have increased by 96.2% from 217,000 to 414,000 (Li, 2009). In Beijing alone, there are 32 NPOs containing “music” in their names (Beijing Public Service Platform, 2015). Major music-related NPOs include the Music Copyright Society of China (MCSC), China Audio-Video Copyright Association (CAVCA), China Audio and Video Association (CAVA), and the Chinese Music Literature Association.

The Chinese music industry has low production value and relatively weak influence in the world. Conversely, the United States and Japan have high production value, with each of their musical output influencing world music trends. There are many reasons that account for China’s lagging behind in influencing the world’s music industry. One major reason is the important role created by a healthy environment for NPOs towards developing and promoting their respective music industries, such as that found in the United States and increasingly in and around Japan. Vigorous copyright protection and collective rights management are key features of a mature music industry.

In this report, I introduce and compare the functionality of collective rights management (and performing rights organizations (PROs)) in the United States, Japan, and China, and comment on the reasons for China’s lagging behind in comparison. The extent to which the Chinese music industry can compete and even influence world trends is directly related to its management of copyright and performance rights.

The gap between collective rights management organizations in China, United States, and Japan

The American Society of Composers, Authors, and Publishers (ASCAP) founded in 1914 was the first non-profit performing rights management organization in the United States. Its mission is to protect its members’ performing rights and to collect income from activities, such as performances by radio stations and in public places. In addition to ASCAP in the United States, there is Broadcast Music, Inc. (BMI), founded in 1939, which bills itself as “a global leader in music rights management … the bridge between songwriters and the businesses and organizations that want to play their music publicly” (BMI, 2017); and Society of European Stage Authors and Composers (SESAC), established in 1930, originally as the “Society of European Stage Authors and Composers” to help European publishers with their American performance royalties, and soon after focused its attention on American music in the later 1930s (SESAC, 2017).

According to ASCAP official statistics, in 2015 ASCAP has 550,000 US composers, songwriters, and music publishers. In 2014, the royalties of its members broadcasting rights, performance rights, and the rights of its information network amounted to more than $1 billion, ranking first in the world.
The royalties distributed to its rights holders (its members) equaled to more than $883 million, with the management costs equaling approximately 12.6% of revenue collected (ASCAP, 2015).

The Japanese Society for Rights of Authors, Composers, and Publishers (JASRAC) was founded in 1939, and is the first organization in Asia to protect the creators and publishers of music in Asia. As of April 2014, JASRAC has a membership of 16,717. The total royalties collected in 2014 was $924.75 million, and these were distributed to its copyright holders amounted to $917.28 million (JASRAC, 2014).

The MCSC was established in 1992 and is the only music collective rights management organization in China. Its purpose, similar to that of ASCAP and JASRAC, was to protect the legitimate rights and interests of composers, lyricists, and other copyright owners. According to the annual report released by MCSC in 2013, the number of members and collected revenue had reached its highest total, to date: 8101 members and 170 million yuan (approximately US$25 million).

The rights that JASRAC manages not only includes mechanical rights, broadcasting rights, performing rights, and digital transmission rights but also leasing film authorization, videocassette authorization, music box authorization, private recording, and video recording compensation. So, in order to ensure a reasonable comparison with MCSC, JASRAC’s performance has been shown in Table 1 (based on JASRAC’s 2013 annual report). We present data related to both JASRAC’s and MCSC’s broadcast reproduction, performing rights, and information network communication rights. The data presented from the US organizations (ASCAP, BMI, and SESAC) are all based on the collective management of broadcast rights, small performance rights, and information network communication rights. Since neither the Harry Fox Agency (HFA) nor SESAC collects mechanical reproduction rights as NPOs, this report was not able to obtain their specific data; therefore, the values in Table 1 for the United States are not inclusive of SESAC’s revenues. However, this does not diminish the main point of Table 1, that is, there are huge disparities among the collecting rights management organizations within the three countries, with China lagging far behind Japan and the United States.

For example, in 2015, the total revenue of ASCAP and BMI in the United States was 13.6 billion yuan, while that of JASRAC in Japan was nearly 7 billion yuan. The revenue of MCSC was 170 million yuan, only 1.25% that of the United States and 2.43% that of Japan. In terms of total members, ASCAP and BMI together have 1.265 million; JASRAC, 16,977; and MCSC, 8101, only 0.64% of the United States and 47.71% of Japan. These totals are greatly disproportionate for a country with the largest population in the world and the world’s second largest GDP.

**Issues holding back China’s collective rights management**

The revenue collected by MCSC is a barometer of China’s copyright owner’s total income, and it is extremely low in comparison to the United States and Japan; it is also a reflection point on the state of maturity of China’ music industry ecosystem. The data above suggest that MCSC, China’s only music collective rights management organization, is in desperate need for reform after its 24-year history. Below we attempt to identify its current constraints, and reflect on how China should rethink its collective rights management development and function.

**A thin line between social responsibility and government control**

Nonprofit social organizations within market economies are supposed to help their members carry out social matters, such as negotiation, government lobbying, and to review and promote
legislation that benefits its membership. However, non-profit social organizations in China are brought into being via heavy influence of Chinese government. In October 1998, the Chinese State Council enacted the *Regulations on the Registration and Management of Social Organizations*. In it, articles 11 and 14 illustrate that when applying for the establishment of a social organization, applicants should submit several documents to and require the “approval” of the “registration management bureau” (Congressional-Executive Commission on China, 1998). Non-profit social organizations are thus deprived of basic autonomy and the right to appoint its own personnel. It is common practice for the Chinese government to appoint its own officials to be in charge of social organizations; as a result, these officials are expected to play both governmental and civil roles.

Take MCSC, for example, of its current 18 chairmen, vice chairmen, and standing directors, nearly half were once deputies to the National People’s Congress (NPC) and a member of the Chinese People’s Political Consultative Conference (CPPCC). Due to the government’s strict control over such institutions and its director appointments, together with their inability to operate independently and commercially, many non-profit social organizations actually become government-affiliated organizations, whose real role is to help the government regulate the industry although in the name of representing and benefiting organization members. As a result, many non-profit social organizations become representatives of the government for the sake of controlling, supervising, and restricting their members, often persuading them out of their individual rights, instead of fighting for the protection and promotion of their individual rights. Similarly, many leaders of social organizations with government backgrounds inevitably carry harsh and commanding attitudes when communicating with members, instead of managing in service of its membership. Some organizations even channel revenue distribution to their administrative offices instead of to

| Authorized content | Name         | National population⁴ | Total members | Total revenue⁵ (million RMB) | Distribution (million RMB) | Overseas earnings (million RMB) | Management costs rate (%) |
|-------------------|--------------|-----------------------|---------------|-------------------------------|---------------------------|---------------------------------|---------------------------|
| Mechanical, broadcasting, performing, and digital transmission rights | MCSC 1.37 billion | 8101 | 170 | 139.6 | 6.36 | 17.88 |
| Broadcasting, performing, and digital transmission rights | ASCAP 323.9 million | 565,000 | 6825 | 5834 | 2004 | 14.46 |
| Mechanical, broadcasting, performing, and digital transmission rights | BMI 700,000 | 6813 | 5899 | 1964 | 13.4 |
| Mechanical, broadcasting, performing, and digital transmission rights | JASRAC 126.7 million | 16,977 | 6991 | 7253 | 32.9 | 0.07 |

ASCAP: The American Society of Composers, Authors, and Publishers; BMI: Broadcast Music, Inc.; JASRAC: The Japanese Society for Rights of Authors, Composers, and Publishers; MCSC: the Music Copyright Society of China.
their members, and this abuse of power and sluggish working attitude in the service of their rights holders render their members passive and without recourse.

It is in part for these reasons that President Xi Jinping has instituted a far-reaching campaign against corruption within China following the conclusion of the 18th National Congress of the CPC in 2012 (*Can Xi Jinping’s Anti-corruption Campaign Succeed?* 2017). However, at least with respect to China’s collective rights management, the effectiveness of this initiative remains to be seen.

**Lack of manpower and capital—the need for new legislation**

In contemporary China, the legal system devised to protect its content creators (e.g. composers, songwriters) has not kept pace with China’s economic expansion; as a result, the protection of intellectual property, copyright, and the royalties to be collected on the uses of creators’ works is very low. Although 1998 legislation of the China State Council decreed “Regulations on the Registration and Management of Social Organizations” and “Interim Regulations on Registration Administration of Private Non-enterprise Units” (Interim Regulations, 1998), these decrees were not accompanied with an effective plan for implementation. Without a practical system of accountability and supervision, the effectiveness of China’s current collective rights management system is sluggish. In addition, those that abuse the fundamental rights of copyright holders go without appropriate punishment under the law, rendering the entire system impotent. Ultimately, collective rights management organization does not generate profits for redistribution to its members, and without the transparency of operation details, the system has a whole loses credibility.

In March 1998, Japan’s National Parliament passed new NPO Law (“Law to Promote Specified Nonprofit Activities”), which has helped to establish order for Japan’s NPOs through institutionalizing a standard non-profit management system and relaxing some of the strict controls from its government (Japan NPO Center, 2017a; Okabe, 2017). (Japan’s “public benefit corporations” at that time, similar to China today, were criticized for being too heavily controlled by the government and for frequently accepting retired government officials as management personnel.) These steps have supported fair competition among NPOs. There is now a simpler application process to make it easier to establish a NPO, fostering an environment of self-responsibility. Increasingly, the interests of Japan’s NPOs are closely tied to those of its members. In addition, the Japanese government has taken various measures to encourage its businesses to donate to NPOs. As in the United States, if corporations donate to a NPO or engage in cooperation that benefits the public at large, they can enjoy a tax exemption. Now nearly 90% of Japanese companies have relationships with non-profit social organizations, which helps to insure the basic health of all organizations (Liao, Shi, & Zhu, 2011).

The manpower and financial health of American NPOs largely come from its culture of broad social participation and fervent donations. Since the 1930s, under President Franklin D. Roosevelt, the US government has been encouraging volunteers to contribute their efforts to society.

**A poor environment for competition hinders motivation for development**

Competition is a strong booster of potential. For China’s collective management organization, in its initial stages, a monopolistic approach helped it to grow fast, enforce new legislation and institute new practices. However, eventually, the lack of appropriate competition deprives organizations the
motivation to develop and improve their function. Hence, many countries that used to have a monopolistic approach to collective rights management (such as the United States and Japan) have made changes. Unfortunately, China is among the very few countries that still allows a monopolistic approach toward collective rights management.

In the United States, from 1913–1940, ASCAP monopolized the market and ignored country music, rock music, and R&B. Since the establishment of BMI, the competition between the two not only enabled BMI to generate revenue for its members but also helped promote music genres once discriminated against by ASCAP. In fact, the worldwide influence of rock music and black music is, in part, credited in part to the competitive structure at that time. Including SESAC, the competitive environment in the United States has moved the three organizations to work toward perfecting their services in order to attract members. This includes use of random sampling surveys, sending supervisors to performance locations, tracking broadcasting and TV stations, including working with the Nielsen Broadcast Data System (BDS), a service that tracks monitored radio, television, and Internet airplay of songs.

The US organizations also make use of accurate statistics of various kinds of performance revenue through precise methods of calculation to fight for more revenue based on the usage of their members’ copyrights. This energy and commitment to identifying sources of revenue and royalty payment redistribution gain the trust of their respective memberships. ASCAP, BMI, and SESAC have over 1.2 million members combined. All three US PROs offer their services for free to songwriters and composers (ASCAP does charge a one-time membership fee of $35).

Although it may appear that a monopolistic system would carry a higher level of efficiency with respect to management and operations, in fact, the opposite is true. From 1939 to 2000, JASRAC is the only PRO in Japan; however, its growth and scale during this time were disappointing. Thus, in 2000, JASRAC’s role as the sole collective management organization in Japan was abolished, allowing for a system of competition.

According to Shinichi Uehara, Professor of intellectual property law at Kokushikan University in Tokyo, the Japanese government profoundly realized the importance of competition in the market economy (S. Uehara, personal communication, 1 April 2015). In 2001, the Japanese government fully withdrew JASRAC’s exclusive right of agency as the copyright management organization in Japan, allowing for competition for collective rights management. Three new PROs have since been established: E-license,6 Daiki Sound,7 and Japan Rights Clearance, Inc. (JRC—Japan Rights Clearance Inc., 2015).8 These new PROs provided competitive pressure on JASRAC to accelerate its institutional reform process and resulted in JASRAC adopting advanced technologies for more efficient tracking and revenue collection (Kikuchi, 2015; McClure, 2001). In 2004–2005, JASRAC introduced an “interactive transmission administrations system” called “Networchestra” (Japanese Society for Rights of Authors, Composers and Publishers, 2017) with an Electronic Data Interface (EDI). Networchestra (Figure 1) consisting of:

“Through proactive efforts, including the incorporation of information technology, JASRAC is developing new administration systems to make license application, royalty payment and other procedures easier” (JASRAC, 2017).

In 2009, JASRAC, together with other collective management organizations and digital service providers, established the Copyright Data Clearinghouse (CDC) Center to regulate the content management and royalty distribution of the digital music industry. CDC is a third-party institution independent of the copyright owner and user. Through database research, aggregation, and statistical analysis, CDC not only reduces the cost of information processing but also provides users (including copyright owners) detailed and credible reports, promoting the convenience, efficiency, and rationality of music circulation and royalty payment (JASRAC, 2009).
In April 2010, CDC began to apply the “Fluzo” system and began to place greater emphasis on the use of fingerprint identification and other scientific means to improve the efficiency of music piece identification and music usage report generation (Xue, 2014; JASRAC, 2017). “Fluzo” ... functions as a copyright information hub to help report the usage of musical works.
It makes the centralization of these tasks possible for the purpose of reducing the burden on both operators of management businesses and music distributors” (Gervais, 2010).

JASRAC has seen impressive growth in recent years. In 2015, it allocated royalties of 11.1 billion YEN (about 7.2 billion RMB) to the right owners, while also reducing management costs. JASRAC, in an environment with healthy competition, does not rest on its laurels and seeks to constantly improve; today, it collects over 90% copyright revenue market share in Japan (JASRAC, 2015).

**Inefficient management and poor systems lead to poor credibility**

MCSC’s low operating efficiency is a result of inefficient management and poor technological infrastructure. Compared with the majority of foreign collective rights management organizations, China does not apply effective cross-referencing databases (resulting in information errors and deviations often leading to unnecessary lawsuits); it mainly relies on capturing performance publicity of the information found on government platforms; and *manual* scanning for online performances videos in order to detect piracy—the technology of these systems are not sophisticated. Despite its staff of 70, rights holders often raise questions about their royalty income. Liu Huan, a Chinese singer and songwriter, often considered China’s “King of Pop” once complained that the average royalty he earned per month from MCSC was less than 400 RMB, lower than the minimum wage in Beijing (“Interview With Liu Huan,” 2013).

In contrast, ASCAP and BMI in the United States, and JASRAC in Japan, are more efficient in their services and more transparent. Each of these organizations distribute royalties to their rights holders on a quarterly basis, and for those whose living is based on creating works, the more frequent the distribution, the more secure the source of livelihood. Even on those occasions where revenue income is delayed for some reason, ASCAP and BMI distribute royalties to their rights holders in advance, so that they are held harmless. And JASRAC regularly discloses its financial reports to its members to help minimize the possibility of misunderstandings.

**Suggested measures to improve China’s collective rights management**

In order for China to improve the current state of its collective rights management, and in turn support a healthy environment for creativity and innovation within its media and entertainment industry, it must aspire to achieve several changes:

First, China should seek to separate its political agenda and strict government control from impeding the success of its non-profit social organizations. The Chinese government should abolish the legal monopoly position of its single collective rights management organization, MCSC, and allow for the creation of, and competition from, similar organizations. This kind of administrative transformation would result in the reduction of high management fees; would lower the barriers to registration, application, and approval of new members; and enable collective rights management organizations to enhance its ability to promote and protect the interests of its members.

Second, China should seek to establish mechanisms for holding its collective rights management organizations (and its leadership) accountable, including allowing for third-party regulators. This would require a much greater level of transparency and financial reporting on the flow of
funds with respect to service fees, revenue collection, and distribution. Greater transparency would breed faith in the system, which would encourage growth to its membership.

Third, China should seek to improve its systems to simply enhance its performing rights management functions. Although newer legislation, such as China’s “Copyright Collective Management Regulations Decree of the State Council” (Ministry of Commerce People’s Republic of China, 2005), called for the regulation of fees charged for usage, this process of necessary reform has only begun; much more needs to be done. China should learn from the United States’ SoundExchange, an independent non-profit collective management organization that collects and distributes digital performance royalties to artists and copyright holders. Working closely with the US Copyright Royalty Board (CRB), SoundExchange has greatly simplified the procedures, applications costs, and distribution of royalties for digital music, which has, in turn, reduced unnecessary legal proceedings.9

Finally, China must seek professionals with performing rights management experience to improve the level of its personnel, and must update the technology of its current systems to improve data collection and storage, royalty distribution, and the reduction of administrative costs.

In conclusion, this “In Focus” report sheds light on China’s current practices toward non-profit social organizations and, specifically, its approach to collective rights management, and highlights several areas that need significant improvement. This report cites some best practices found in the United States, suggests that China should use these practices as a model for its own development, and reflects upon Japan as a country that itself, not long ago, faced similar issues to its non-profit social organizations that China has today. This report calls upon China to reform its approach to collective rights management, so that it can sit side by side with the world leaders in the media and entertainment industry.

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**Notes**

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