

A Study on Collective Management of Copyright in China: Needing Change

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Abstract: China's Copyright Law introduced an extended collective management system in which collective management organizations can represent non-member rights holders. The new revision adds that organizations can claim rights for copyright and copyright-related rights holders in their own names, and engage in litigation, arbitration and mediation activities involving copyright or copyright-related rights as parties concerned. And the rights and obligations of copyright collective management organizations don't collect royalties. In view of the low representativeness of Chinese copyright collective management organizations and the difficulties they face in their actual operation, all the rights that copyright owners themselves are difficult to effectively exercise can be extended collective management to improve the representativeness of copyright collective management organizations.

Keywords: Copyright; Copyright collective management; Copyright collective management regulations

1. Overview of collective management system of copyright

1.1 The definition of collective management system of copyright

Because of the short history of copyright in China and the different situations in different countries, there has never been a unified definition of copyright collective management organizations in academic circles. From the perspective of laws and regulations: The Collective Management Organization of our country's works is for the benefit of the copyright owner, according to the owner's license, the owner's copyright or the rights related to the copyright, a non-profit social organization established according to law for collective management^[1]. The copyright collective management organization is to obtain the approval of the right holder, negotiate with the user and issue the license to use, so as to supervise the use of the right holder's works and collect and distribute the royalties. The collective management of copyright should include not only the copyright of the author, but also the relevant rights in the right of reception. It should contain a clear meaning that the purpose of the organization is for the benefit of the obligee, who may voluntarily join the organization, the obligee should transfer the right to the organization by means of similar trust.

1.2 The present situation of the collective management system of copyright in China

China's first law on copyright, The Copyright Law in China, was promulgated in June 1991. At that time, no one had systematically studied the collective management system of copyright protection, and copyright was only in the preliminary stage of legislation, so it was abandoned in the law^[2]. In 2001, the "Copyright law" was revised. Based on this revision, the copyright collective management system is the first time in the form of law in the public view. In this version, the provisions on the collective administration of copyright have been added. It is known that the government has developed the awareness of the collective management of copyright organizations, but unfortunately did not really take effective practical measures. This revision further established the legal status of the collective management system of copyright. These simple articles provide the only legal basis for the operation of the collective management organization of copyright established for 10 years. On December 22, 2004, the State Council adopted Regulations on the Collective Management of copyright, this regulation marks the formal establishment of the collective management system of copyright in China^[3]. This regulation, although it has a rather rough framework for the regulation of collective management organizations, does not specify in detail, such as the charging method and the charging standards, how to confirm the amount of user's fee under the legal license, whether the user has transferred the right to extend its management^[4], and part of the content is still in dispute. In 2020, the Copyright Law in China has been amended for the third time. In the revised version of the copyright law and the revised explanation,

there are many changes in the provisions on the collective management system of copyright, which will set up, liability and obligation for the collective management of copyright, rights have risen to the level established by law, but in the final act of the Copyright Act, compared with the 2012 version, only the organizations can claim the rights in their own names for the copyright owners and the copyright-related rights holders, it may act as a party to litigation, arbitration and mediation concerning copyright or rights related to copyright, as well as the rights and obligations of copyright collective management organizations to collect royalties.

2. The practice of collective management of copyright

At present, the copyright collective management organization does not have a sufficient degree of social recognition. The number of members of the organization is small, many copyright owners do not intend to entrust their rights to the form of collective management organizations, leading to the lack of collective management organizations set up their original intention. For example, when the writers association defended its rights to the Google Library, some of the authors claimed that they were willing to let their works be included, causing a huge public outcry. If the collective management organization can not represent the will of the authors and can not be recognized by the authors, its utility can not be compared with the original intention. In many years of practice there is also a matter of intellectual property has become a focus of the academic community. Shenzhen Sound Film Network Technology Co. Ltd. v. Defendant Chen Fengming for infringement of the right to copy works, performance rights dispute, whether the plaintiff is qualified as the subject, as well as the plaintiff obtained the content of the license has a larger dispute. The imperfection of the current law brings many difficulties to the judicial trial, and the occurrence of such events will undoubtedly reduce the credibility of the judiciary^[7].

3. Based on our current copyright collective management system under the law to improve

3.1 Amending the Law

The new revision of copyright law is exactly ten years since the last revision. After the amendment of the copyright law, the copyright collective management system has been optimized and improved, and the responsibility of social supervision and government supervision has been strengthened^[5]. “Copyright law” clearly the nature of the collective management of copyright organizations, rights and obligations, the exercise of rights and so on. As a non-profit legal person, the copyright collective management organization is entitled by law to manage and maintain the copyright and related rights, and to regulate the standards and management of the royalties involved, the present judicial practice has been solved, and the judgment has legal basis. However, the copyright law does not specify the establishment, scope of business, alteration, cancellation and examination, approval, supervision and administration of other registered matters of copyright collective management organizations and collective management organizations, it is authorized to be enacted separately by the State Council, which means that after the revision and promulgation of the copyright law, a large number of regulations will be involved in the formulation and revision, so that the copyright law can be effectively implemented.

3.2 Introduce Limited Competition

The existing copyright collective management organizations have obvious defects in maintaining the enthusiasm of their members’ rights, and the rights of the obligee are still difficult to be effectively protected, nor does the author give a high degree of recognition to collective organizations. If the Japanese approach, the appropriate introduction of collective management organizations of competition, to promote the healthy development of the market, the above-mentioned problems also benefit from the solution. In the era of digital copyright, if an effective unified registration management platform is established, the management of the complex situation such as cross-licensing confusion will no longer exist^[6]. When the collective management organization mediates, all the organizations must depend on the platform to run, which can not only avoid the information conflict but also promote the market vitality. The semi-official nature can also guarantee the authority of the copyright collective management organization. In the supporting regulations on the collective administration of copyright, the standards for its establishment shall be clearly defined, and competition shall be gradually liberalized with restrictions. Therefore, in the environment of limited competition, the collective management of copyright will be able to bring benign development.

3.3 Establish a Diversified Licensing Model

The legal relationship of principal-agent should be adopted in collective management. The obligee has guaranteed the right of ownership and disposition of the work, and can entrust the organization to take custody of the work according to his will. Under the existing technical conditions, the will to entrust can be changed and transmitted in a low cost and high efficiency, and will not reduce

the efficiency of the copyright collective management organization. Second, the copyright collective management organizations prefer to manage through the package licensing model, but this not only increases user costs, but also is not conducive to the distribution of the interests of the right holders. Under the current technology level, through centralized information management platform, electronic signature technology and other ways to manage big data, not only to protect the interests of copyright owners can balance the user's feelings. Through legislation to join the construction of the copyright information system platform, clear the above-mentioned relationship.

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