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# MUSIC WITHOUT BORDERS:

Hot Legal Topics in the Music Business After the  
First Quarter of the 21st Century

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## Music Distribution in China: Dos and Don'ts



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# Music Distribution in China: Dos and Don'ts



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Twenty years ago, China was known to be a market dominated by music piracy.

Bootleg CDs were a common sight in both roadside stalls and reputable high street stores, while illicit MP3s were openly offered for download, even on sites operated by dominant Internet giants.

Today, China is one of the world's largest music markets, with a pervasive ecosystem and a huge cohort of tech-savvy consumers.

In this article, we will explore music distribution business in China in 2025 and offer some insights into some of its specific quirks. We will also look into some issues that artists, labels and publishers should consider when looking to enter the China market.

## » China's Music Landscape

For decades, China's music industry was dominated by piracy.

According to a report by the International Federation for the Phonographic Industry ("IFPI") in 2008, 99% of digital music files distributed in China were pirated<sup>[1]</sup>, with international labels suing leading China's internet service providers Baidu and Sohu for allegedly distributing pirated music files on their websites<sup>[2]</sup>.

This changed in July 2015 when the National Copyright Administration of China ("NCAC") issued an order cracking

down on music piracy and directing all Chinese Internet service providers to immediately remove pirated music from their platforms.

While this “order” did not have any formal legal effect and nothing in the law was changed, its effect was immediate.

Millions of illicit music files were taken down overnight, and Internet companies quickly pivoted into developing a legitimate music distribution business, which was close to non-existent at that point.

To say this order transformed China’s music landscape would be an understatement.

As the same Internet companies (e.g. Tencent, Alibaba) were also developing all-encompassing e-commerce and electronic payment systems around the same time, digital music distribution quickly became a part of this scene.

A new digital ecosystem emerged, where it was easier and more convenient to pay a relatively low fee to access legitimate licensed content rather than spend the time and take the risk of finding pirated versions.

As of 2023, the IFPI reported that 96% of Chinese users consume music using licensed streaming services, spending an average of 27.9 hours per week listening to music[3]. China is now the fifth largest music market by revenue in the world, and the second largest in Asia, just behind Japan[4].

With the rise of legitimate music distribution coinciding with the rise of the Internet ecosystem, China’s music market is now dominated by digital distribution (digital download and streaming), which accounts for roughly 90% of all recorded music revenue[5]. Physical sales only account for 10%[6].

Of the major international music streaming platforms, only Apple Music officially

operates in China. Spotify, YouTube Music, Deezer are all blocked and not accessible without a VPN (Virtual Private Network).

As Apple Music is not a significant player in China, music streaming is a de-facto duopoly dominated by Chinese Internet giants Tencent (腾讯) and NetEase (网易).

For some time, Tencent has effectively monopolized international music distribution in China, owning and operating the top three music streaming apps, QQ Music, Kugou (酷狗音乐) and Kuwo (酷我音乐), which together have roughly a 60% market share.

NetEase is arguably Tencent's biggest, and perhaps last remaining competitor in China. It owns and operates NetEase Cloud (网易云音乐), the 4th most popular music streaming app in China with a stronger focus on local indie artists and it is more popular in second and third tier cities in China.

### » Collective Rights Management

Collective rights management is a relatively recent phenomenon in China. In 2001, Article 8 of the Chinese Copyright Law (中华人民共和国著作权法) was amended as follows:

*“Copyright owners and the right owners may authorize a collective management organization of copyright to exercise the copyright or the rights related to copyright. The collective management organization of copyright may, after being authorized, claim rights in its own name for the copyright owners and the obligees related to copyright, and may, as a party concerned, participate in the litigation and arbitration activities involved with copyright or the rights related to copyright.*

*A collective management organization of copyright shall be a non-profit organization, and the method of its establishment, its rights and obligations, the collection and distribution of the royalty for copyright licensing, as well as the supervision and management over it shall be separately provided by the State Council.” (emphasis added)[7]*

Further subsidiary legislation of the Regulations on Collective Administration of Copyright (著作权集体管理条例) was issued in 2005 to regulate the operation of collective rights organizations.

As apparent from the above legislation, collective rights management is heavily regulated by the Chinese Government. In practice, collective rights organizations in

China are quasi-governmental bodies established or co-established by government departments. They are also arguably state-sanctioned monopolies.

For music, two collective rights organizations (CMO) have been established:

- The Music Copyright Society of China (“MCSC”, 中国音乐著作权协会, commonly known as 音著协), co-established by the National Copyright Administration and the China Musicians Association in 1992[8], responsible for collective management of music compositions; and
- The China Audio-Visual Copyright Association (“CAVCA”, 中国音像著作权集体管理协会, commonly known as 音集协), established with the approval of the NCAC in 2008, responsible for collective management of audio-visual works.

It should also be noted that, based on the legal provision above, collective rights management is NOT mandatory in China (note the emphasis on “may” in the quote above). Copyright owners are not obliged to have their work managed by and licensed through CMOs.

To put it bluntly, the collective management system has not, to date, worked well in China. There have been numerous complaints lodged against the CMOs. Common complaints are:

- CMOs in China are largely viewed as a state regulatory apparatus rather than rights advocacy bodies for their members/musicians. CMOs are accused of being operating overtly bureaucratically and prioritizing protecting government interests over members’ interests.
- There are no effective mechanisms for members to influence decision making at CMOs, with royalty rates and licensing terms being the most common complaint.
- There are questions over the effectiveness of CMOs in collecting royalties for their members. In 2024, MCSC reported having collected a historical high of 477 million RMB (approx. US\$65 million) in royalties. While impressive, this figure pales when compared to US\$1.98 billion (around 3.2%) collected by ASCAP in the US, or 142 trillion JPY (approx. US\$1 billion, around 6.5%) collected by JASRAC in Japan, particularly since China’s music industry is only slightly behind Japan’s.

- There are allegations of mismanagement, for instance claims that CMOs put up unreasonable barriers to stop members leaving or complaints that CMOs are continuing to collect royalties for members who have already left. CMOs have also been accused of overstepping their mandate, e.g. by offering blanket licences which cover the works of non-members and by inserting themselves between platforms and copyright owners.

- Being state-sanctioned monopolies, there is no effective competition for CMOs. CMOs have also been accused of abusing their dominant market position. In fact, in 2020, several karaoke establishments brought CAVCA to court over alleged competition law violations, claims which were ultimately rejected by the Supreme Court in 2022.

- Up until the copyright law reform in 2020, there had been no separate royalties adjudication mechanism in China (similar to the Copyright Tribunal in the UK and Copyright Royalty Judges in the US), which means CMOs have often had to resort to filing copyright infringement lawsuits in Chinese courts and seek damages over royalty claims. These proceedings are frequently time consuming and disproportionate in costs, particularly given the low damages awarded by Chinese courts. By way of example:

- In 2016, the MCSC commenced copyright infringement proceedings against two restaurants for unauthorized broadcasting of MCSC members' music as background music. The MCSC won in Court but was only awarded RMB8,000 (US\$1,100 approx.) and RMB7,400 (US\$1,017 approx.) in damages respectively.

- In 2023, the MCSC commenced copyright infringement proceedings against Kuou (one of the three music streaming platforms operated by Tencent) for unauthorized distribution of MCSC members' music. The MCSC ultimately prevailed but was only awarded RMB120,000 (approx. US\$16,500) in damages.

These awards are unlikely to have covered MCSC's legal costs, let alone have left anything for distribution to members.

- CMOs in China, being quasi-governmental bodies, do not have the level of resources, manpower and influence available to private companies, which means (i) CMOs quite often have problems taking on the massive Internet

platforms; and (ii) Internet platforms, which are usually also licensees or exclusive licensees to music works, are often preferred by rights owners for rights enforcement.

## » The Age of Exclusivity

As collective rights management is not mandatory in China, labels and publishing companies frequently simply bypass CMOs and deal with the Internet platforms directly.

For a long time, China's music market was characterised by exclusive licensing deals between labels/publishers and Internet companies.

After the 2015 piracy crackdown order, music distribution platforms entered into a period of “warring states”, with platforms trying to out-compete each other. Platforms backed or owned by Internet giants paid labels/publishers huge advances or minimum guarantees in exchange for exclusivity, both to drive audiences to their platforms and to keep the rights out of the hands of competitors. This led to an increasingly expensive “arms race”, with platforms trying to outbid each other to sign exclusive deals for catalogues of popular artists. The effects of this arms race were as follows:

- The market was characterized by a period of fierce competition followed by consolidation and/or closure of smaller platforms, ultimately resulting in a de facto duopoly of Tencent and NetEase through the number of platforms they operate or acquired[9];
- For a time, Tencent secured exclusive licensing deals with all “Big Three” international record labels Sony, Warner and Universal, effectively monopolizing distribution of international music in China[10];
- The market became highly fragmented, with users having to take multiple subscriptions to listen to their favourite artists[11];
- The high fees platforms paid to copyright owners in effect barred new entrants from the market.

“ After the 2015 piracy crackdown order, music distribution platforms entered into a period of “warring states”, with platforms trying to out-compete each other ”

This also led to high profile lawsuits amongst the competing music platforms.

In 2019, Tencent sued NetEase for copyright infringement over the music catalogue of famous Taiwanese singer Jay Chou, with Tencent accusing its rival of continuing to host Jay Chou's music on its platform even after NetEase's licensing deal with Jay Chou's label had expired.

NetEase was ultimately ordered by a Shenzhen court to pay Tencent damages in the sum of RMB850,000 (US\$116,900 approx.). Note the damages awarded by the Court were still substantially lower than the licence fees NetEase was paying to Jay Chou's label, which reportedly amounted to over RMB18 million (US\$ 2.5million approx.) per year.

The era of exclusive licences, however, came to an abrupt end in the early 2020s, occasioned, perhaps unsurprisingly, once again by government intervention.

In July 2021, the State Administration for Market Regulation ("SAMR") issued an administrative sanction order against Tencent, the undisputed market leader, finding it to have contravened China's Anti-Monopoly Law (反垄断法) in its acquisition of its competitor's music platforms Kugou and Kuwo in 2016.

“The era of exclusive licences came to an abrupt end in the early 2020s, occasioned, perhaps unsurprisingly, once again by government intervention ”

The SAMR found the transaction led to competition concerns as (i) Tencent had removed a major competitor from the market; (ii) the combined entity was able to lock up a significant amount of music copyright through expensive exclusive

licensing arrangements, which other entrants were unlikely to be able to afford<sup>[12]</sup>.

Interestingly, rather than the usual remedy of unwinding the offending transactions (i.e. by ordering Tencent to spin off Kugou and Kuwo or sell them to third parties), the SAMR instead ordered Tencent and its affiliates to (i) terminate its exclusive copyright agreements with upstream copyright owners within 30 days<sup>[13]</sup>; (ii) be barred from preventing its competitors from acquiring catalogues through high licence fees/advances; (iii) be barred from demanding more favourable terms from upstream copyright owners than its competitors; and (iv) pay a modest fine of RMB500,000<sup>[14]</sup>.

Shortly after the ruling, Tencent announced it had ended all exclusive copyright

licences, with its main competitor NetEase voluntarily following suit a month afterwards.

Further, in January 2022, the NCSC held a meeting with leading Chinese music platforms, Internet companies, music labels and publishing companies, where it in effect “banned” (i) exclusive licensing agreements except for exceptional circumstances; and (ii) excessive licence fees/advances.

## » Life After Exclusivity

Since the early 2020s, the “Big Three” international labels of Sony, Warner and Universal have entered into non-exclusive licensing agreements with both Tencent and NetEase to distribute their catalogues in China.

The end of exclusivity is certainly beneficial to smaller platforms and new entrants. Without exclusivity, the licence fees payable to copyright owners dropped, which (in theory at least) should open the market.

One immediate benefactor was NetEase, which, notwithstanding its status as the second largest music distributor in China, had for years been crippled by high licence fees. In fact, NetEase’s music business only reported its first ever full year net profit in 2023, after the end of the exclusivity era.

Still, Tencent’s market dominance appears to be unaffected: its QQ, Kugou and Kuwo platforms remain the top three most popular music platforms in China with the userbase and revenue generated by them growing steadily from 2022 to 2024<sup>[15]</sup>.

Tencent remains the largest Chinese company by market capitalization and the largest music copyright user in China.

The music infrastructure and market scale Tencent has built could hardly be replicated by its competitors without substantial investment.

Other Chinese Internet giants such as Alibaba and Baidu (who shut down their respective music streaming apps) do not appear keen to return to the music streaming market. For now, it seems the “warring states period” of music streaming will not return.

In fact, some analysts believe the biggest benefactors of the end of exclusivity are “alternate” apps such as Douyin (抖音, the Chinese version of TikTok) owned by

Bytedance<sup>[16]</sup>, which released its music streaming app Qishui Music (汽水音乐) in June 2022, and is looking to compete with Tencent through its integrated Douyin ecosystem.

The biggest “loser” of the end of exclusivity may be copyright owners, who lost access to the high licence fees/advances guaranteed by exclusive deals<sup>[17]</sup>.

Instead, they may only be paid based on a traditional revenue-share model (similar to those in Western platforms such as Spotify), which in turn has brought into the spotlight various issues such as streaming figure transparency, and the prevalence of “botting”.

International labels may also lose access to local copyright enforcement mechanism platforms traditionally provided for their exclusive content.

### » Cultural and Commercial Landscape in China

While the music and entertainment scene in China is highly commercialised and market-driven, the Chinese Government still maintains very tight control over the industry through various official and unofficial means.

Officially, censorship authorities such as the State Administration of Radio, Film and Television (“SARFT”) can order content to be taken off air; artists can be denied visas or denied entry into China, with or without reason.

Unofficially, the authorities can direct media outlets and platforms not to publicly broadcast certain types of content or certain “blacklisted” artists. Media outlets and platforms also routinely perform self-censorship to prevent “controversial” content from being aired and to avoid regulatory action.

What is and is not blacklisted in China has always been a volatile and unpredictable matter. The “guidelines” and “directives” issued by official bodies are often broad and ambiguous, employing vague language such as “incorrect political value”, “low quality content”, “improper moral norms”. Content/artists may also be backlisted with no official explanation at all.

Some examples of issues that have drawn the ire of Chinese regulators include:

#### **Sensitive Political Subject Matter**

It is widely understood territorial sovereignty and integrity is of the utmost importance to the Chinese Government. Any real or perceived threats to this are strictly prohibited.

“The Chinese Government denies there was ever an ‘official’ ‘Anti-Korea Order’, claiming Chinese media voluntarily decided to suspend Korean media due to the prevailing public sentiment in China.”

As such, anything touching upon Taiwan statehood, Tibet independence, and the Hong Kong pro-democracy movement of 2019/2020 are strictly no-go areas and any artists/companies/content perceived to be “supporting” these causes is swiftly banned. Even the use of the word “Taiwan (台灣)” is a delicate matter as certain form usage can be viewed as supporting Taiwan statehood.

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The minefield surrounding political matters can manifest itself in unexpected ways. For example, Katy Perry was denied entry into China in 2017 to perform at the Victoria’s Secret Fashion Show in Shanghai. No official reason was given but the denial was widely attributed to the fact Perry wore the Taiwanese flag as a cape and a dress prominently featuring sunflowers in her performance in Taipei in 2015 – when sunflowers were regarded as a symbol of anti-China protests in Taiwan at that time. It should however be noted the ban has apparently now been lifted and Perry is slated to hold concerts in Hangzhou in November 2025.

### **Korean Content**

Perhaps one of the most widely known cases of censorship is the so-called “Anti-Korea Order (限韩令)”, which stemmed from a diplomatic row between China and South Korea over the latter’s deployment of an American THAAD missile defence system in South Korea in 2016.

Due to the diplomatic tensions between the two countries and purported anti-Korean sentiment in China, Chinese media stopped all import of South Korean media content – K-Pop concerts in China were cancelled; Korean drama and variety TV shows were taken off the air; tourism to Korea was restricted; even advertisements in China featuring Korean stars were replaced.

However, the Chinese Government denies there was ever an “official” “Anti-Korea Order”, claiming Chinese media voluntarily decided to suspend Korean media due to the prevailing public sentiment in China. Chinese officials also accused Korean media of allegedly twisting and exaggerating the purported “Anti-Korea Order”.

The “Anti-Korea Order” has never been officially ended (given China's stance it never existed in the first place). The public and the media still refer to the “Anti-Korea Order” today in 2025, although Korean media gradually returned to China as of 2021.

### Hip-Hop Subculture

Chinese Hip-Hop (called 嘻哈 (*xixia*) in Chinese) and rap exploded in popularity amongst Chinese youth in the early 2000s. Hip-Hop talent shows were hosted, and several prominent Chinese Hip-Hop artists became household names. Chinese Hip-Hop is modelled heavily after American Hip-Hop, with prominent themes of anti-establishment, anti-authority, vulgarity, tattoos or even gang affiliation, prostitution and drug use.

Perhaps unsurprisingly, these themes drew the ire of more puritan elements of the Chinese Communist Party, who claimed Hip-Hop culture encouraged obscenity, violent crime and immorality. In 2018, a spat between the Communist Youth League and a famous Chinese Hip-Hop artist named PGOne developed into a full-fledged “scandal”, resulting in the SARFT notifying Chinese TV stations that “*TV programmes should not feature actors with tattoos (纹身艺人) or depict hip hop culture (嘻哈文化), sub-culture (亚文化) and decadent culture (丧文化)*”. Hip-Hop artists were quickly de-platformed and removed from public view, with prominent Hip-Hop artists having to self-censor (e.g. by concealing their tattoos) and tone down their anti-establishment mannerisms to survive the purge.

### Effeminate Male Style

Perhaps the most vivid demonstration of the volatility of the Chinese censor is the “anti-sissy men campaign” of 2021.

In recent years, Chinese authorities became increasingly concerned about the growing popularity of the depictions of androgenous/effeminate men (itself a product of K-Pop and Korean male idol culture). Effeminate men, derogatorily called “*nianpiao*” (娘炮, literally meaning “girly gun” or “girlish cannon”) is seen to be a challenge to traditional masculine gender roles. There are also concerns effeminate men would be too cowardly or weak to fight to protect China in the event of a war. In September 2021, the SAFT held a seminar condemning “*nianpiao*” and directed media to “resolutely put an end to *nianpiao* and other abnormal aesthetics”, effectively banning depiction of effeminate men in Chinese media. This is also related to ongoing crackdowns on the depiction of “non-traditional views on marriage and love”, most notably on “*danmei* (耽美)” (commonly known as ‘boys’ love’ in the West) - a genre of fiction depicting (or suggestive of) homosexual relationships between men, targeted primarily towards a female audience, with “*danmei*” work banned and a number of writers arrested and sentenced to lengthy jail time.

With all these seemingly arbitrary bans and restrictions (whether official or not), it is quite common to see broad and vague “morality clauses” in Chinese contracts, where platforms would be entitled to terminate distribution agreements, take down content, or even obtain substantial damages from artists/labels/publishers in the event they or their work are found to contravene “public order and morals”.

Here are some examples of actual break clauses we have come across in Chinese contracts:

- “publishing inappropriate remarks in breach of Chinese laws and regulations”;
- “committing acts in breach of public morals”;
- “being involved in other events affecting the reputation of [the artist], causing serious adverse impact of the public opinion of or boycott against [the artist]”;
- “if the [licensed work] cannot be broadcasted due to policies, public opinion, probation by the competent authority, or the continued broadcasting of [licensed work] would cause adverse impact to the reputation or interest of [platform]”;
- “[the licensed work] shall not contain any content that violates national laws, regulations, policies, or public order and morals”;
- “[the licensed work] shall not include incorrect values such as excessive sensationalism, inappropriate views on money, over dramatization, or content inconsistent with scientific knowledge”;
- “indecent private life or other behaviour violating socially accepted moral standards, including but not limited to extramarital affairs, improper relationships, frequenting nightclubs, alcoholism, domestic violence, or other actions contrary to public order and good customs”;
- “extreme or inappropriate remarks or actions targeting national sovereignty, the government, historical culture, religious beliefs, the public, media, regulatory authorities, or related personnel, including but not limited to supporting or endorsing separatist movements (e.g., Taiwan independence, Tibet independence, Hong Kong independence), cult organizations, or participation in related organizations/activities, as well as other statements or actions contrary to policy direction”;
- “failing to promptly and effectively address inappropriate remarks or actions made by individuals associated with [the artist] (including but not limited to companies associated with key creative personnel and their staff, brands endorsed by [the artist], event organizers of activities they participate in, their close relatives, fan groups, members of their artist groups, studios

and their staff, if any, agents, etc.), such as failing to restrain, clarify, or take other positive measures”;

- “[the licensed work] shall adhere to the correct political direction, value orientation, and aesthetic standards”;
- “[the licensed work] shall respect and honour Chinese traditional culture, avoiding arbitrary adaptations or imitations of foreign styles”;
- “During the preparation and production of the [licensed work], excessive makeup and filters shall not be used.”

Chinese parties are normally extremely reluctant to clarify or remove such “morality clauses”. It may be more productive to try to limit the scope, for example by imposing time limits or the effect by limiting damages that can be claimed of such clauses instead.

### » Branding Concerns for Artists

Trade marks are central to any artist's branding and IP strategy. China's trade mark laws, however, have their own unique quirks and pitfalls:

- (1) When it comes to registering trade marks, China is a first-to-file jurisdiction, meaning whoever registers a mark first will have rights, regardless of whether another trader has used the mark first.

China also suffers from a rampant trade mark squatter problem, where trade mark squatters register third parties' trade marks (commonly marks/names of foreign brands) en masse<sup>[18]</sup> and hold legitimate brand owners to ransom when they try to enter the Chinese market (for example by seizing official goods at the border and demanding a substantial fee to assign the marks).

Once a trade mark has been registered in China, the avenues to invalidate the mark are very limited, frequently requiring evidence of substantial fame or substantial prior use within China – foreign use is generally of very little value.

Also, once a trade mark has been registered in China for more than five years, it is generally invulnerable to invalidation challenges unless the challenger can prove the mark was registered in bad faith or the challenger owns a well-known trade mark within the meaning of the Paris Convention, which threshold is quite high.

This means famous artists/brands often run the risk of their trade marks/ names being registered by squatters before they even think of entering into the Chinese market<sup>[19]</sup>. It is also sadly quite common for Chinese agents/ sub-distributors to do the same to their principals' trade marks (e.g. register their principals' trade marks in their own name and refuse to hand over the marks upon termination of the agency relationship). Special care should therefore be paid to ensure agents/sub-distributors do not have any rights in those marks.

(2) While China adopts the international Nice Classification (dividing goods/ services protected by a trade mark into 45 different classes) in its trade mark system, it also operates a rather unique “sub-classification system” where goods/services under an international Nice Classification class are further sub-divided into different sub-classes, and goods/services in different sub-classes are generally considered to be dissimilar to one another.

For example, whilst “clothing” and “shoes” both fall under Class 25 under the Nice Classification, they fall under different sub-classes under China's sub-classification system

(clothing falls under sub-class 2501; shoes under sub-class 2506). This means having a trade mark registration for “clothing” generally does not accord protection for “shoes” (i.e. the trade mark owner for clothing cannot stop others from using the same mark on shoes). It is in fact quite common for goods/services in different sub-classes to be owned by different proprietors. We have also encountered many cases where companies believe they have already secured the necessary trade mark registration in China, only to find out their registrations only cover unrelated goods/services.

It is therefore advisable for artists to engage Chinese IP lawyers to audit their trade Chinese trade mark portfolio and see if there are any gaps to fill in.

(3) Marks in the Chinese language and marks in foreign languages are generally considered different marks, i.e. having a registration for an English language mark generally does not accord protection for its

“Famous artists/brands often run the risk of their trade marks/ names being registered by squatters before they even think of entering into the Chinese market”

Chinese counterpart (note there are some exceptions). Separate trade mark registrations are generally required.

It is also quite common for Chinese consumers to come up with “unofficial” Chinese names for foreign brands/foreign artists before said brand/artist enters into the Chinese market. Artists are therefore encouraged to conduct some investigation as to their presence and fame in China in deciding their PR strategies.

(4) Social media is the most ubiquitous form of communication/promotion in China but traditional Western social media platforms such as Instagram, Facebook, X (formerly Twitter) are generally blocked and inaccessible. China netizens overwhelmingly use their own Chinese social media platforms such as Weibo (微博), Weixin/WeChat (微信), RedNote/Xiaohongshu (小红书). There is also substantial integration/overlap between Chinese social media platforms and e-commerce platforms[20]. Suffice to say Chinese social media is a critical part of an artist's branding strategy. There are plenty of marketing agencies which specialise in marketing in China, which normally includes opening and operating Chinese social media accounts. Again, special care should be paid as to the rights and ownership of the social media accounts and the content published thereon.

(5) The Greater China Region consists of mainland China, Taiwan, Hong Kong and Macau, which are actually four separate and distinct jurisdictions with four sets of laws. Each jurisdiction also has its own trade mark registration system. Trade mark registered in one jurisdiction does not render protection in the other three jurisdictions.

“China netizens overwhelmingly use their own Chinese social media platforms such as Weibo, Weixin/WeChat, RedNote/Xiaohongshu”

### » Generative Artificial Intelligence (AI) Consideration

When it comes to AI, there have been some rather unique legal developments in China which may be of interest to artists and music companies. Note however the developments outlined below are all the result of low-level Court decisions, which nominally do not have precedential or probative value (i.e. other Chinese courts are not obliged to follow them and are in fact free to reach the opposite conclusion). There have not yet been any high level AI judicial decisions in China comparable in scope to

the OpenAI lawsuits in the US. Still, the low-level court decision may be a good early indication as to how China would approach AI issues.

### **AI-Generated Output Can Be Protected by Copyright**

As AI algorithms are not natural persons, most jurisdictions find AI-generated works do not qualify for copyright protection. There are cases in the US and the UK expressly denying copyright protection to AI-generated works.

In China, however, there are at least two court cases that buck this trend. Two different courts in China have, in 2023 and 2024 respectively, ruled AI-generated images are protected by copyright under PRC Copyright Law. In both cases, AI users (both of which had generated images using the popular AI image generation tool MidJourney) succeeded in their copyright infringement claims against third parties who used their AI-generated images without licence.

In both cases the courts ruled the AI-generated images reflected the creative effort of the AI users (by the AI users' selection and adjustment of prompts) and thus the AI users were considered owners of the copyright in the AI-generated images, and any third party wishing to use the images would need to obtain consent/licence from the AI users.

China is perhaps one of the few countries where courts have acknowledged that AI-generated works can be exploited and monetized just like any other human-created works. Artists and companies should therefore be aware AI-generated works cannot be freely copied and used in China.

### **AI Platforms Can Be Held Liable for Copyright Infringement**

In February 2024, the Guangzhou Internet Court issued China's first reported decision on an AI service provider's liability for work generated with its AI services.

The Plaintiff in the case was the Chinese exclusive licensee of the famous Japanese franchise Ultraman; the Defendant was a Chinese AI platform which provided text-to-image generation services. The Plaintiff found that by inputting Ultraman-related prompts into the Defendant's AI tools, images identical or substantially similar to works of the Japanese Ultraman series would be generated. The Plaintiff thus sued the Defendant for copyright infringement and was successful in the action.

What sets this case apart is an AI service provider/platform – not the user - was held liable for works third parties could generate using the service provider's AI tools. The AI service provider in question did not create the prompts to generate the infringing imagery. In fact the Plaintiff did not produce sufficient evidence that any infringing

acts by third party had taken place. The evidence the Plaintiff provided only showed the Plaintiff itself was able to produce infringing imagery using the Defendant's tools. Nor was the Defendant responsible for AI training. The Defendant used a third party AI modules for its tools, it was nonetheless held liable for "not exercising reasonable duty of care" in relation to the outputs its tools could generate. It would seem the Defendant was found to be at fault for not implementing adequate safeguards to prevent the generation of infringing works, but, given the nature of generative AI and the countless potential for infringement, one must wonder how far AI platforms would need to go to show they have exercised "reasonable duty of care".

### **AI-Generated Voice Infringes Personality Rights**

In April 2024, the Beijing Internet Court issued China's first reported decision on AI-generated voices.

The Plaintiff was a professional voice actor. The five Defendants were a recording studio that recorded the plaintiff's voice; a software developer who used the Plaintiff's voice recording, without the Plaintiff's knowledge or consent, in developing a commercial AI text-to-speech (TTS) software (i.e. when a user types a text prompt into the TTS software, the software will read out the text prompts with an AI-generated version of the Plaintiff's voice); the seller of the TTS software and a commercial user which used the said TTS software in its commercial operation.

The Plaintiff claimed the Defendants' unauthorized use of her voice in the AI software infringed her personality rights, which is recognized as a separate class of rights under Chinese law.

The court found a person's voice is protected by personality rights so long as the voice can be associated with a specific individual, and the Defendants' use of the Plaintiff's voice/the TTS software did infringe the Plaintiff's personality rights.

This case is particularly interesting as (i) even a user of the TTS software, who was not involved in its development and had no knowledge of the lack of authorization from the Plaintiff, was found to be liable; (ii) the court ordered the Defendants to pay to the Plaintiff RMB250,000 (US\$34,600 approx.) in damages, which is quite high by China's standards.

These decisions are a clear indication that Chinese authorities will likely step in to protect IP rights and personality rights against infringement using AI technologies, which will no doubt be welcomed by artists and copyright owners.

- [1] <https://www.reuters.com/article/idUSTRE52T22P20090330/>
- [2] <https://economictimes.indiatimes.com/news/international/global-music-companies-in-fresh-china-piracy-suit/articleshow/2759762.cms?from=mdr>
- [3] [https://www.ifpi.org/wp-content/uploads/2023/12/IFPI-Engaging-With-Music-2023\\_full-report.pdf](https://www.ifpi.org/wp-content/uploads/2023/12/IFPI-Engaging-With-Music-2023_full-report.pdf)
- [4] [https://www.ifpi.org/wp-content/uploads/2024/03/GMR2025\\_SOTI.pdf](https://www.ifpi.org/wp-content/uploads/2024/03/GMR2025_SOTI.pdf)
- [5] *By way of comparison, the global music industry is around 67% digital; South Korea is around 62% digital. Notably, Japan bucks the trend and is still majority driven by physical sales, with digital sales only accounting for around 34% (Source: <https://www.slideshare.net/slideshow/south-korea-recorded-music-market-overview/253429628>; <https://soundcharts.com/blog/japan-music-market-overview>)*
- [6] <https://musicinfo.io/blog/music-copyright-in-china-then-and-now>
- [7] *Article 8 has been further revised in 2020. The current version reads as follows:*  
*“Copyright holders and the holders of copyright-related rights may authorize collective copyright management organizations to exercise the copyrights or copyright-related rights. Lawfully established collective copyright management organizations are non-profit legal persons and after being authorized may claim rights for copyright holders and holders of copyright-related rights in its own name, and may act as a party in litigation, arbitration, and mediation activities involving copyrights or copyright-related rights.*
- Collective copyright management organizations are to collect royalties from users based on their authorization. The standards for the collection of royalties are to be determined by negotiation between the collective copyright management organizations and user representatives, and where negotiation is unsuccessful, they may apply to the national department for copyright to make a ruling, and those not satisfied with the ruling may initiate proceedings in the people’s courts; or parties may also directly initiate proceedings in the people’s courts.*
- Collective copyright management organizations shall periodically publicly disclose the general situation of the collection and transfer of royalties, the extraction and use of management fees, and the unallocated portion of royalties; and shall establish a system for making inquiries into rights information, for rights holders and users to make inquiries. The national departments for copyright shall conduct oversight and management of collective copyright management organizations in accordance with the law.*
- [8] *The MCSC was established based on the Implementation Regulations of the Copyright Law in 1991, 10 years before the Copyright Law itself was amended to formalize collective right management.*
- [9] *The 5th most popular music streaming app in China, Xiami Music (虾米音乐) owned by Alibaba, shut down in February 2021.*
- [10] *Though this effect has been mitigated to a certain degree by the NCAC mediating a cross sub-licensing deal between Tencent and NetEase in February 2018, with each operator sub-licensing 99% of their exclusive catalogue to the other, Tencent withheld exclusivity of its “1%” most popular catalogue, including the repertoire of hit artists such as Jay Chou and Mayday.*

- [11] *Again, this effect has been partially mitigated due to the cross sub-licensing deal mentioned in note 10 above.*
- [12] [https://www.gov.cn/xinwen/2021-07/24/content\\_5627058.htm](https://www.gov.cn/xinwen/2021-07/24/content_5627058.htm) (in Chinese)
- [13] *Certain exemptions apply. Most notably, exclusive agreements with indie artists and 30-day timed exclusive arrangements for new releases were exempted.*
- [14] *It is noteworthy the SAMR did not order relinquishment of profit from Tencent, nor did it fine Tencent a percentage of its income, which the SAMR is entitled to do.*
- [15] <https://www.musicbusinessworldwide.com/tencent-music-now-generates-over-2b-from-music-streaming-subscriptions-annually/>
- [16] <https://www.21jingji.com/article/20240708/herald/91195801d4ffff3a184277f64226d092.html> (in Chinese)
- [17] [https://www.sznews.com/content/mb/2021-07/27/content\\_24429881.htm](https://www.sznews.com/content/mb/2021-07/27/content_24429881.htm) (in Chinese)
- [18] *According to WIPO data (<https://www.wipo.int/web-publications/ip-facts-and-figures-2024/en/trademarks.html>), over seven million trade mark applications were filed in China alone in 2023, representing over 47% of total trade marks filed worldwide, nearly tenfold that of the second country (the United States at 739,000).*
- [19] *Perhaps the most famous example is the “(Michael) Jordan v Qiaodan” saga, which lasted over 20 years. “Qiaodan (乔丹)” is the commonly known Chinese transliteration of the former NBA superstar Michael Jordan. A Chinese sportswear company had registered a series of Michael Jordan-adjacent trade marks in China, including the “Qiaodan (乔丹)” word, a silhouette of Michael Jordan ( ). The company then started to manufacture and sell Qiaodan branded sneakers and sportswear and the “Qiaodan” brand had actually grown quite significantly. What followed was 20 years of lawsuits and countersuits between Michael Jordan, Nike (which owns the “Air Jordan” brand) and this Chinese Qiaodan company. This saga only ended in 2020 with the Chinese Supreme People’s Court ordering Qiaodan to rebrand.*
- [20] *For example, Weixin/WeChat (owned by Tencent), which started as an instant messaging software in 2011, has now developed into a social media platform, electronic payment system, software distribution platform as well as an e-commerce platform.*