CHALLENGES AND OPPORTUNITIES OF CHINA'S COPYRIGHT COLLECTIVE MANAGEMENT IN THE NEW ERA

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I. INTRODUCTION

The copyright collective management system in China started at the end of the twentieth century, although its Copyright Law, which was first promulgated in 1990, did not mention copyright collective management. The legal basis of collective management finds its legislative origin in the Implementation Regulations of the Copyright Law approved by the State Council in 1991.[1] When China's Copyright Law was revised in 2001, the basic legal framework of copyright collective management was established.[2] It was not until 2004 when the State Council promulgated the Regulations on Copyright Collective Administration ("RCCA") that a more comprehensive regulation on copyright collective management was made.[3]

In 2020, the Copyright Law was revised for the third time, and Article 8 on copyright collective management was substantively revised. Among others, the major changes to the provision include the following: the legal

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[1] Regulations for the Implementation of the Copyright Law of the People's Republic of China (promulgated by the State Council, May 24, 1991, effective June 1, 1991). Article 7(3) provided that the scope of responsibilities of the National Copyright Administration included the approval of the establishment of copyright collective management organizations. Article 54 stated that copyright holders might exercise their copyrights through collective management.

[2] Article 8 of the Copyright Law provides: The holders of copyright and neighboring rights may authorize CMOs to exercise their copyrights or neighboring rights. Upon authorization, a copyright CMO may assert rights — in its own name, for a copyright owner, or for an owner of neighboring rights — and act as a party in litigation or arbitration involving copyrights or neighboring rights. A copyright CMO is a non-profit organization. The State Council shall separately formulate provisions concerning the method of establishing such an organization, the organization's rights and obligations, the collection and distribution of copyright royalties by such an organization, and the supervision and administration of the organization.

[3] Some minor changes were made to the RCCA in 2010 and 2013 to align the regulations with the amended Copyright Law and its implementing regulations, but the substantive content has not been revised.

nature of collective management organizations ("CMOs") is defined as a "non-profit legal person;"[4] mediation is added as an alternative mechanism to resolve legal disputes involving collective management; the negotiation and dispute resolution mechanisms are required to facilitate the determination of royalty standards for CMOs; the transparency requirements for CMOs to disclose the information regarding their financial matters and managed rights are added to enhance the CMOs' transparency; and the supervisory authority and responsibility of the National Copyright Administration ("NCAC") on collective management are clarified. These changes are of great significance, but these new rules are expressed in an abstract manner and need to be further clarified and expanded. Recently, efforts to revise the RCCA have been launched, and it is expected that the revised regulation will introduce more detailed rules to implement the above changes to the Copyright Law.

This Article analyzes the four main issues identified above in the context of the newly revised Copyright Law and makes proposals for the coming revision of the RCCA. First, in terms of setting copyright royalty standards, we propose that the negotiation mechanism between CMOs and user representatives be detailed and that the dispute resolution mechanism, either administrative or judicial, be clarified. Second, this Article proposes that a certain degree of competition be brought in to rectify the problems resulting from the widely criticized "de jure monopoly" model of CMOs.[5] Third, the problem of "illegal copyright management" has generated serious concerns in recent years when a large number of entities, with authorization from copyright holders who are not members of the CMOs ("non-member copyright holders"), initiate lawsuits against commercial users of copyright works such as karaoke operators and equipment providers even when these users have already paid royalties to the relevant CMOs. Chinese courts remain divided on these cases, and the licensing market suffers as a result. We propose a few changes such as compulsory collective management to address the issue. Fourth, to improve the accountability of CMOs and to increase public confidence in them, this Article proposes that the new RCCA should adopt the principle of transparency and introduce rules to implement this principle. Some of the above issues are common challenges faced by copyright collective manage-

[4] The non-profit legal person is a type of legal subject specified by the newly adopted Civil Code, a fundamental law under China's legal framework.

[5] The monopoly issues involving China's CMOs are quite different. The monopoly status of these organizations is derived from Article 7 of the RCCA which stipulates that, as a condition for establishing a CMO, "there is no duplication or repetition of the scope of business with the existing collective administrations of copyrights established in accordance with the law."

ment in most jurisdictions in the digital age,[6] while others are particularly acute in the Chinese market.

II. RULES OF SETTING TARIFFS

The tariffs are standard royalties copyright CMOs collect from users under a blanket license. Many countries require copyright CMOs to establish a reasonable tariff-setting mechanism.[7] In China, the 2020 amendment of the Copyright Law makes substantial changes to the tariff-setting mechanism, which shifts from unilateral decisions by the relevant CMOs to a joint negotiation involving multiple parties.[8] By giving right holders leverage to push for reasonable remuneration, such changes reflect tremendous progress in copyright protection.

A. Current Practice: Unilaterally Determined by CMOs

Pursuant to the current RCCA, to establish a CMO, the organization shall file a draft articles of association with provisions on the tariffs,[9] and the NCAC should announce the tariffs when the establishment is approved.[10] Subsequently, the general assembly of the CMO has the power to make and modify these tariffs.[11] Then, it is up to the CMOs and their users to figure out the specific usage fees based on the tariffs announced by the NCAC.[12] Some scholars argue that the main role of the NCAC in

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[6] From a global perspective, the collective management systems in many countries are facing the challenge of fragmentation, especially in the digital age. Both the EU Directive 2014/26 on Collective Rights Management and Multi-Territorial Licensing of Rights in Musical Works for Online Uses and the Music Modernization Act in the United States, adopted in 2018, pay great attention to the issue of transparency. These legislative efforts reflect the hope of major countries to respond to the challenges of quantification of rights holders and users and the fragmentation of rights in copyright licensing in the digital age by strengthening the informatization construction and management efficiency of CMOs.

[7] World Intell. Prop. Org., WIPO Good Practice Toolkit for Collective Management Organizations ¶ 8.3 (2021).

[8] Because the tariff draft of the CMO is decided by the general assembly, the CMO, with assembly's authorization, negotiates this mechanism with users.

[9] Article 7(4) of the RCCA stipulates the requirements for the draft articles of association of the copyright CMO, the draft measures on the rates for collecting license fees, and the draft measures on the transfer of license fees.

[10] Article 11 of the RCCA provides that the copyright administration department under the State Council shall announce the archived counterpart of the registration certificate, the articles of association of the organization for collective administration of copyright, the royalty charging rates, and the royalty transfer measures.

[11] Article 17(2) of the RCCA provides that the general assembly may exercise the power of formulating and amending the royalty rates.

[12] Article 17(2) of the RCCA provides that a CMO shall negotiate with the users according to the royalty rates announced by the NCAC, so as to stipulate the specific amount of royalties to be paid by users.

the tariff-setting process seems to be simply announcing the tariffs set by the CMOs and that the NCAC has not carried out meaningful supervision over the CMOs' formulation of tariffs.[13]

For instance, the tariffs of the China Audio-Video Copyright Association (CAVCA) in the field of karaoke have remained the same for more than ten years.[14] This phenomenon is strongly criticized by CMO members and users. Right holders claim that the unchanged royalties collected by CMOs do not reflect the level of economic development and the value of their works, while users complain that they, as royalty payers, have no right to participate in the formulation of royalty standards. The unilateral tariff-setting system is considered to be inconsistent with the basic principles governing market transactions.[15]

It is worth noting that the critics are mainly concerned about the arbitrariness of CMOs in setting tariffs. They pay little attention to the rationality of Article 13 of the RCCA, which delineates factors for determining tariffs.[16] As stated in the public announcement of the CAVCA, different royalty rates have been set for different provinces to reflect varying levels of development. Such efforts, however, are considered to be far from sufficient and effective.[17]

B. The Future: Negotiation Between CMOs and Representative Users

The new Copyright Law specifically stipulates the mechanism for setting royalty standards. Article 8, Paragraph 2, stipulates that the royalty standards shall be negotiated and determined by the CMOs and their representative users. Where the negotiation is unsuccessful, an application may be filed with the NCAC for a ruling. Any party who disagrees with the ruling may file a lawsuit. In the alternative, the party concerned may file a lawsuit directly. This provision is of great significance, as it ushers in

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[13] Fuxiao Jiang & Daniel Gervais, *Collective Management Organizations in China: Practice, Problems and Possible Solutions*, 15 J. WORLD INTELL. PROP. 221 (2012).

[14] *The CAVCA Announces the 2021 Karaoke Copyright Tariff, Which Has Kept Unchanged for More Than Ten Years*, CHINA ECON. NET (Jan. 18, 2021), http://www.ce.cn/culture/gd/202101/18/t20210118_36233466.shtml (in Chinese) [hereinafter *CAVCA Announcement*].

[15] Tao Li, *Suggestions for Article 8, Paragraph 2 of the Copyright Law (Draft Amendment)*, CHINAXWCB (July 9, 2020) (in Chinese).

[16] Article 13 of the RCCA provides that CMOs shall formulate royalty rates based on the following factors: (1) time, method, and geographical territory for use of works, audio and video recordings etc.; (2) types of rights; and (3) complexity of tasks for concluding licensing contracts and collecting license fees.

[17] In the 2021 announcement, the tariff for Shanghai, Beijing, and other developed areas is RMB 11 per day per terminal, while the tariff for less developed areas, such as Tibet, Gansu, and Guizhou, is RMB 8.3 per day per terminal. *See CAVCA Announcement*, *supra* note 14.

a system of multi-party negotiation on tariffs to replace the unilateral tariff-setting mechanism the CMOs have used historically. When negotiations fail, the provision also regulates the dispute resolution mechanism.

However, the tariff-setting mechanism as prescribed by the new Copyright Law is far from clear. First, regarding the determination of representative users, the Copyright Law does not mention how to select those users and how they operate. Considering the costs, function, and other factors involved, we believe that representative users should be, at least, selected from the following: national and regional associations and major platform companies that widely use copyrighted works and audio and video products. The NCAC should also establish a list of industry representatives and update it regularly by extensively soliciting opinions from the parties concerned. Second, the nature of the ruling by the NCAC is not clear; it does not state whether the ruling will be administrative or arbitration-like. Nor is the law clear on the composition or procedure of the adjudicatory agency of the NCAC. Furthermore, the law does not lay down the standard for temporary royalties when the dispute resolution procedure is pending.

Fortunately, as a latecomer to the development of copyright collective management systems, China has the privilege of learning from good practices in other jurisdictions.[18] Moreover, the accumulated experience in China on administrative adjudication in the invalidation and reexamination of trademarks and patents can provide some guidance on copyright royalty standard-setting mechanisms.

As to the rulings the NCAC is to issue when tariff negotiations break down, the German model is referential for China.[19] Thus, when China revises the RCCA, it is advisable to set rules on the composition of the adjudicatory agency under the NCAC, the period for filing the dispute, the procedure used by the adjudication, the standard for temporary royalties, and the period in which no repeating objection to the tariffs set by the same CMO may be filed.

Regarding the judicial settlement of disputes over tariffs, it is essential to consider efficiency and to prevent the litigation procedure from being used to evade the payment of copyright royalties. Considering that the setting of proper tariffs involves the knowledge of multiple disciplines, such as law, economics, and management, it is advisable to bring profes-

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[18] Jiang & Gervais, *supra* note 13, at 232.

[19] Gesetz über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten durch Verwertungsgesellschaften [Act on the Management of Copyright and Related Rights by Collecting Societies of Germany], pt. 5, http://www.gesetze-im-internet.de/englisch_vgg (Ger.) (arbitration board and assertion of claims in court).

sional experts into the trials and to adopt a system where judges are regularly selected on a rotating basis.

III. MODEL FOR THE ESTABLISHMENT OF THE CMO

In China, CMOs have developed rapidly in just two decades, and copyright collective management has become an important method of copyright protection. For example, the Music Copyright Society of China ("MCSC") was established in 1992. In 2020, the total amount of copyright royalties collected by the MCSC for the copyright holders of lyrics and music has reached RMB 2.586 billion, and the cumulative distributable amount was approximately RMB 2.133 billion.[20] However, some critics argued that the performance of China's CMOs is unsatisfactory, due partly to its de jure monopoly model. Thus, there are controversies among academics and practitioners over whether that model should be replaced by a free competition model.

A. Controversies over the De Jure Monopoly Model

Article 6 of the RCCA stipulates that except for CMOs established in accordance with the regulations, no organization or individual may engage in copyright collective management activities. Article 7 further stipulates that when a new CMO is applied for its establishment, its business scope shall not overlap with that of an existing legally registered CMO. These regulations are considered the source of law for creating a de jure monopoly model for CMOs in China.[21]

In China, there are two diametrically opposed views on this model. The critics maintain that the de jure monopoly model in which only one CMO is in charge of one type of work may lead to low efficiency. This defect may be exacerbated when CMOs are mostly established by personnel with government background instead of right holders. According to these critics, current CMOs in China can hardly reflect the true wishes of right holders,[22] and the operation of these CMOs lacks transparency. Moreover, the competent authorities have insufficient supervision over the abuse of market dominance by CMOs.[23] The critics believe that

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[20] *408 Million Yuan! MCMC's Licensing Revenue in 2020 Slightly Increases*, MUSIC COPYRIGHT SOC'Y OF CHINA (Jan. 15, 2021), http://www.mcsc.com.cn/publicity/trends_676.html (in Chinese).

[21] Xiuqin Lin & Qianxin Huang, *The CMO Model That China Should Adopt*, INTELL. PROP., no. 9, 2016, at 53 (in Chinese).

[22] Haijun Lu, *Chinese Collective Management of Copyright: The Need for Extensive Changes*, 6 QUEEN MARY J. INTELL. PROP. 175 (2016).

[23] Zonghui Li & Wenting Cheng, *Practices of Collective Management of Copyright on Musical Works and Related Rights on Audio-Video Products in China*, 8 INT'L J. INTELL. PROP. MGMT. 78 (2015).

China's CMOs should adopt a market-oriented model to bring in free competition, and the government should reduce its intervention, considering the general norms in the international community and the government's poor record in the governance of monopoly.[24]

By contrast, the supporters of the de jure monopoly model tend to give more weight to the advantage of centralized copyright collective management. For example, the legislators involved in drafting the RCCA expressed preference for a centralized CMO model, which disallows the overlapping of CMOs in business scope.[25] Some scholars argue the de jure monopoly model may be justified by the efficiency provided by economic scale, and they believe that multiple CMOs under the free competition model will lead to increased search and negotiation costs for users.[26] Some academics further argue that the current model is suitable for the actual conditions of copyright protection in China, which needs to be further enhanced.[27]

In addition, the opponents of the free competition model point out that even in countries with well-functioning copyright collective management systems, the high costs of running CMOs show the disadvantages of that model. For example, the leading scholars from the Max Planck Institute for Innovation and Competition believe that the operation of CMOs has relatively high fixed costs and relatively low marginal costs, which means economies of scale make larger CMOs run better. Therefore, the natural monopoly of CMOs can be rationalized by improved efficiencies.[28] However, some scholars concede: "We cannot, in the name of lowering transaction costs, completely sidestep transactions and sidestep the market

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[24] Guobin Cui, Qi Xiong, Haijun Lu, and other scholars criticized the monopoly generated by the establishment of CMOs and believe that a free competition mechanism should be introduced. *See* Guobin Cui, *Anti-Monopoly Control of CMOs*, 2005 TSINGHUA U. L.J. 110 (in Chinese); Lu, *supra* note 22; Qi Xiong, *Reshaping the Local Value of the Copyright Collective Management System*, L. & SOC. DEV., no. 3, 2016 at 96 (in Chinese).

[25] Wuwei Jing, *Comment on the Main Issues of the Regulations on Copyright Collective Management*, ELEC. INTELL. PROP., Feb. 2005, at 20 (in Chinese).

[26] Qing Chang, *On Collective Management System of Copyright: From an Economic Viewpoint*, L. SCI., no. 6, 2006, at 103 (in Chinese).

[27] MINGDE LI & CHAO XU, COPYRIGHT LAW 207 (2003) (in Chinese).

[28] Josef Drexl et al., *Comments of the Max Planck Institute for Intellectual Property and Competition Law on the Proposal for a Directive of the European Parliament and of the Council on Collective Management of Copyright and Related Rights and Multi-Territorial Licensing of Rights in Musical Works for Online Uses in the Internal Market COM (2012)372*, 44 INT'L REV. INTELL. PROP. & COMPETITION L. 325 (2013).

as the principal mechanism to allocate social resources for intellectual creation."[29]

B. Towards a Limited Competition Model?

The different views discussed above demonstrate the advantages and disadvantages of a de jure monopoly model and a free competition model. Is there a middle approach? What factors should be weighed to devise an appropriate CMO system for China? So far, there are no conclusive evidence to prove that the monopoly model is better than the free competition model, or vice versa.[30] To develop a practical and workable CMO model for China, consideration should be given to China's particular legal and institutional background, the fundamental function of CMOs, and transaction costs. In light of these considerations, a limited competition model is perhaps a proper model for the establishment of China's CMOs in the long run.[31]

For example, in the music field, allowing two to three competing CMOs to be established may be appropriate. First, considering China's huge market, this model would bring a certain degree of competition into the management of music copyrights without substantially sacrificing the benefit of lower transaction costs under the de jure monopoly model. Second, this model would avoid the problem of "irrational establishment" of CMOs. Once occurred in Japan, this problem would lead to improper operation and successive bankruptcies. Generally, too many "overlapping houses" in rights management would increase the management costs, which would ultimately burden right holders and users, thereby increasing social costs. In addition, a limited competition model can, in theory, avoid a serious deviation from the main purpose of copyright collective management in reducing transaction costs while also improving utilization efficiency and the protection of right holders. However, it is yet to be seen whether the timing is right to adopt a limited competition model.

IV. "ILLEGAL COPYRIGHT COLLECTIVE MANAGEMENT"

In recent years, CMOs in China face the problem of "illegal collective management," especially in the karaoke industry in which business owners provide audiovisual equipment (including large music databases) and on-site singing space. Karaoke is highly popular in China. In this field, there are frequent disputes over copyright royalties or copyright infringement among CMOs, non-member rights holders, and commercial users. It is not

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[29] Jiarui Liu, *Copyright Reform and Copyright Market: A Cross-Pacific Perspective*, 31 BERKELEY TECH. L.J. 1461 (2016).
[30] Lu, *supra* note 22, at 188.
[31] Lin & Huang, *supra* note 21, at 59.

uncommon that commercial entities or their lawyers, with authorization from non-member copyrights holders, initiate lawsuits against karaoke operators and equipment providers ("commercial users") on the ground of copyright infringement even when those commercial users have already paid royalties to the relevant CMOs such as CAVCA. It is controversial whether the acts of the commercial entities constitute illegal collective management, and the courts remain divided on this issue. This problem is unique to China and will be further explored below.

A. Definition of "Illegal Collective Management"

The "illegal collective management" issue usually occurs when a commercial entity, authorized by non-member right holders, claims royalties or initiates lawsuits against commercial users of copyrighted works. China's courts have decided these cases differently. Some courts ruled against the commercial entity in accordance with Article 6 of the RCCA, on the ground that such commercial entity has not been legally established as a CMO and is thus not qualified to collect royalties on behalf of the right holders. The number of such cases remains small.[32] By contrast, other courts have ruled in favor of such commercial entities on the ground that their acts, which are merely civil acts of authorized agents, do not fall within the definition of collective management.[33]

For instance, the Jiangsu High People's Court held that the acts of the commercial entity constitutes "illegal collective management" in *Shenzhen Shengying Network Technology Co. v. Wuxi Qiaosheng Entertainment Co.*[34] The court believed that the acts, such as charging royalties and filing a lawsuit against karaoke operators based on the authorization of non-member right holders, violated Article 6 of the RCCA. However, in *Fuzhou Dade Culture Communication Co. v. Ningxiang County Royal Noble Concert Hall*,[35] the Supreme People's Court held that the acts of the commercial entity do not fall within "illegal collective management." The lack of consensus in the judiciary casts serious doubts on the copyright

[32] Cases with large impact mainly include the following: Shenzhen Shengying Network Tech. Co. v. Nanjing Rongding Catering Mgmt. Co., (2016) Su Min Shen No. 420 (Jiangsu High People's Ct.); Shenzhen Shengying Network Tech. Co. v. Wuxi Huanchang Ent. Co., (2015) Su Zhi Min Zhong No. 235 (Jiangsu High People's Ct.); Shenzhen Shengying Network Tech. Co. v. Wuxi Qiaosheng Ent. Co., (2015) Su Zhi Min Zhong No. 100 (Jiangsu High People's Ct.).

[33] As of July 20, 2021, 859 results can be found when inputting "illegal collective management" at https://wenshu.court.gov.cn/, the official search website for China's courts' judgments. In most of these cases, the defendant denied that the plaintiff was a qualified subject on the grounds of "illegal collective management," and most courts rejected this argument.

[34] (2015) Su Zhi Min Zhong No. 100 (Jiangsu High People's Ct.).

[35] (2018) Zuigao Fa Min Zai No. 417 (Sup. People's Ct.).

licensing market and creates difficulties in practice. Some karaoke operators thus refuse to pay copyright royalties because they would be sued even if they have signed blanket license agreements with the relevant CMOs and paid them royalties. To be fair, it would be too harsh to require a general commercial user such as a karaoke operator to examine whether the blanket license properly covers the works in use.[36] Considering the scale of the economy affected by the unsettled problem of "illegal collective management,"[37] this issue should not be ignored.

B. Unequal Treatment of Right Holders?

Relating to the problem of "illegal collective management," it is argued that the member right holders and non-member right holders are treated unequally when the compensation some courts award to non-member right holders are much higher than those awarded to CMO members. Thus far, Chinese courts have expressed different views on the liability of commercial users, such as karaoke operators, for copyright infringement to non-member right holders. There are mainly three different approaches: first, there is no difference in the compensation for copyright infringement regardless of whether a CMO manages the infringed works or not. Second, if a "commercial user" has taken a blanket license from a CMO and paid royalties, it has fulfilled the duty of care to protect copyright and should not be held liable for copyright infringement. Third, the court awards a non-member copyright holder higher compensation than a CMO member when the right holder litigates against a commercial user such as a karaoke operator. For a while, the third approach seems to have been the mainstream judicial practice. Such practice has caused serious concern since it produces a perverse incentive for right holders to not join a CMO. Instead, it would be in their best interest to hire an agent to sue on their behalf, putting the foundation of the collective management system in peril. This problem was acutely pointed out by the Guangdong High People's Court in a widely acclaimed judgment, which states:

> If the amount of compensation obtained by the right holders who are not CMO members is generally and significantly higher than the copyright royalty or compensation obtained by the right holder who has joined a CMO, right holders, acting as rational person, may no longer

[36] It should be noted that CMOs do not provide a list of works managed by them when issuing a blanket license, and the rights information inquiry systems provided by these organizations are not perfect. Because users cannot easily confirm which works CMOs do not manage, it is difficult for users to delete unauthorized works before the non-member right holder initiates a lawsuit.

[37] China's karaoke industry alone has a scale of more than RMB 100 billion. Project Team of the Music Indus. Dev. Rsch. Ctr. of Commc'n Univ. of China, *2020 China Music Industry Development General Report*, TENCENT (Dec. 11, 2020), https://new.qq.com/omn/20201211/20201211A0IOJM00.html (in Chinese).

> have the motivation to join a CMO. Instead, it is very likely for copyright holders to evade the operation of the copyright collective management system, and this would lead the copyright market to return to a fragmented state and lose the benefit of economic scale.[38]

This ruling clearly highlights the danger involved in the problem of "illegal collective management," which would benefit opportunistic right holders and their agents at the expense of commercial users, CMO members, and the collective management system as a whole. Moreover, the allowance of "illegal copyright management" would exacerbate the fragmentation problem in copyright licensing because more copyright holders will choose to manage rights on their own, instead of joining a CMO.

C. Mandatory Collective Management in Specific Areas

To address the problem of fragmentation in copyright licensing, it would be desirable to adopt a mandatory copyright collective management in some specific areas. For example, in the karaoke business, it is usually necessary for operators to house a large database of music and make popular songs available to potential customers. However, it is difficult for karaoke operators to provide necessary service to customers while there is no well-functioning collective management system, which requires a considerable volume of repertoire. If most right holders are discouraged from joining a CMO, a service business that involves a massive use of copyrighted works is nearly impossible. Thus, it is socially desirable to adopt a mechanism to facilitate the establishment of a centralized music database. China may learn from the German model[39] and introduce rules on mandatory copyright collective management in some special situations such as karaoke. In such situations, right holders can only exercise their copyright through CMOs,[40] and the users may access the database of music legally by obtaining a blanket license from the CMOs.

V. THE PRINCIPLE OF TRANSPARENCY

The transparency of CMOs is considered essential for a well-functioning copyright collective management system. In *WIPO Good Practice Toolkit for CMOs*, it is recommended that CMOs should disclose more than ten classes of information, including their articles of association, tariff

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[38] (2019) Yue Min Zai No. 287 (Guangdong High People's Ct.).

[39] Pursuant to the Act on Copyright and Related Rights of Germany (*Urheberrechtsgesetz*), the property rights involved in Sections 20b, 26, 27, 45a, 45c, 49, 54h, 60h, 61d and 61f, 63a, 78, 79a, 87k, and 137l may be asserted only by a collecting society.

[40] Tao Li, *The Value Basis and Supervision of the Monopoly Collective Management Organizations*, INTELL. PROP., no. 6, 2016, at 39 (in Chinese).

information, distribution policies, and deduction regulations.[41] WIPO also recommends that CMOs provide members with an annual report prior to the distribution of royalties in each fiscal year; that report should include detailed financial statements, annual activity reports, details of business expenses, and deductions for social, cultural, and educational purposes, staff salary information, and transactions between CMOs.[42] Moreover, the 2014 EU Directive on Copyright Collective Management places great emphasis on the principle of transparency, and Chapter 5 of the Directive specifically adopts the principle of transparency and a reporting mechanism. The Directive clarifies that CMOs should provide the information to rights holders and publicly disclose the scope of information. In addition, CMOs are required to provide a detailed annual transparency report.[43]

Article 8, Paragraph 3 of China's newly amended Copyright Law clearly stipulates that a CMO shall make regular announcements on general information about the collection and transfer of royalties, withdrawal and use of management fees, and undistributed royalties. CMOs are also required to establish a right information inquiry system for rights holders and users. The law states that the national competent copyright authority in China shall supervise and administer CMOs pursuant to the law. Clearly, the new Copyright Law enhances the principle of transparency by moving the provision's status from that of an administrative regulation, as reflected in the RCCA,[44] to that of a law, which is of a higher status under China's legislative hierarchical framework

In the digital age, it is plausible for CMOs to make use of new information technologies such as blockchain to achieve a higher level of openness and transparency. Based on our field research, we recommend that a centralized information system on copyright collective management be established at the national level to provide classified information for CMOs,

41 World Intell. Prop. Org., *supra* note 7, ¶ 1.2.

42 *Id.* ¶ 8.2.

43 Directive 2014/26/EU, 2014 O.J. (L 84) 72, ch. 5 (EU).

44 Article 24 of the RCCA provides: CMOs shall set up a licensing inquiry system for rights holders and users. This system shall include the types of rights, titles of works and audio and video recordings under the administration of the collective administration, names of rights holders, and the term of authorized administration. The CMOs shall respond to inquiries from rights holders and users for information on rights under administration of the organization. Article 32 further provides: CMOs shall record the following items for the rights holders' and users' reference: (1) the status of usage; (2) the status of collection and transfer of license fees; and (3) the status of withdrawal and use of management fees. Rights holders shall have the right to inspect and make copies of financial reports, working reports, and other business materials of the collective administration, and the collective administration shall facilitate such requests.

right holders, users, and other parties involved. A reliable database about CMOs, their managed works, and their use of works would enhance the protection of both copyright holders and users; copyright holders would receive reasonable remuneration while users would be able to legally use copyrighted works by paying a fair royalty. This database would also help build the trust of right holders and users in CMOs. In addition, the information system would provide valuable information to enable the supervisory authority to function effectively.

VI. CONCLUSION: GOOD GOVERNANCE OF CMOS

The copyright collective management system in China, though unsatisfactory, is believed to have played a key role in copyright protection. The third amendment of the Copyright Law thus places great emphasis on the collective management by laying down detailed rules on the setting of tariffs, the principle of transparency, and the supervision of the CMOs. It seems that the copyright collective management system in China is moving to a more inclusive and accommodating system with the feature of multi-party participation and joint governance in the new era. However, as the new Copyright Law finally gives up the controversial extended collective management, which was incorporated as an innovation in the previous draft, we face difficulties in the mass use of works of non-members and the problem of "illegal copyright management." These issues are expected to be addressed in the ongoing revision of the RCCA.

This Article believes that the "mandatory collective management" under special circumstances is a necessary and plausible approach to alleviate the above problems. Moreover, in order to reduce the dissatisfaction with the de jure monopoly model, a limited competition model seems to have its advantages in theory and may be the way forward for China in the long run. In terms of tariff-setting mechanism, China's Copyright Law provides a basic framework for the negotiation between CMOs and user representatives, but the detailed dispute resolution mechanism is yet to be specified. In addition, this Article recommends an authoritative system at the national level to provide reliable information for CMOs, users, and supervisory authorities. Such a system may somewhat reflect the philosophy of "instrumental rationality" on copyright collective management in the digital age.

As shown in the experience of other jurisdictions, a well-functioning copyright collective management system with good governance is the key to promoting innovation by bridging copyright holders and users of copyrighted works while promoting the prosperity of society as a whole. At present, China needs to build consensus on the good governance of the collective management system and explore a development path that fits the country's actual circumstances.