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# Flying with two wings or coming of age of copyrightisation? A historical and socio-legal analysis of copyright and business model developments in the Chinese music industry

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## Abstract

Following the third copyright law amendment in China, this paper offers a timely contribution to the debates on the shifting policy, governance and industry landscape of the Chinese music industry. This paper conducts a historical and socio-legal analysis of the development of Chinese copyright law with regards to the music industry and argues that the Chinese digital music industry has developed to a stage where three business models collide, namely the cultural adaptation model, the renegade model and the platform ecosystem model. This paper draws on interdisciplinary literature and discourses from legal studies, business studies and cultural studies and provides new evidence of the much neglected autonomous development of Chinese copyright law on top of foreign pressure and the desired reforms to further integrate into the global market economy.

## Keywords

Business models, copyright amendment, digital copyright, historiography, music industry, platform economy, platform ecosystem model

## Introduction

The music and related industries, are viewed as copyright industries since revenue generation in these industries is largely based on the exploitation of copyrighted experience goods through content creation, promotion, distribution and consumption (Montgomery, 2010; Wikstrom, 2013). Experience products and services are intangible in nature and often need protection under intellectual property rights. With respect to the music industry in the West, it is normally protected

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under copyright law as literary (notes, compositions and sheet music) and musical works. In addition, related rights or neighbouring rights are stipulated in a number of national and international laws. Among such related rights, recordings and performers' rights are protected with great divergences among various juridical systems. However, copyright law alone cannot guarantee a healthy music industry, as the music industry is a complex, open and dynamic system entangled with technology advancement, market mechanisms and consumption modes, as well as the wider cultural policy and context.

This interdisciplinary study aims to provide a historical and socio-legal analysis of the Chinese music industry underpinned by two forces, namely copyright institution and business model innovation. My paper answers why copyright law did not start to work until recently in the Chinese music industry and what changes will this bring to the players in the industry in a digital age. This paper will first articulate the uniqueness of the Chinese music market before a detailed analysis of copyright protection and business model innovation. With a more than 620 million online user base and emerging middle-class consumers (International Federation of the Phonographic Industry [IFPI], 2015), the Chinese music industry did not make it to the Top 10 list until 2018 (IFPI, 2019). Digital sales superseded physical sales for the first time in 2015 when copyright started to work (F. Zhang, 2017). Dubbed as 'flying with two wings', the music industry in China is trying to tighten control over digital ownership of copyrighted music while innovating their business models, given the compacted and fast changes that took place in the past five years. The consolidation process was triggered by the 'Sword Net Campaign' of the National Copyright Administration (NCA) which gave a deadline for digital service providers to take down unauthorised music in 2015, otherwise their businesses would be shut down (China IPR, 2015; Low & Meuwiss, 2017). This is in line with China's national strategy to create a strong and innovative IP country, moving from 'Made in China' to 'Created in China' (Chen, 2018b; Keane, 2006). Following the third amendment of Chinese copyright law, this paper provides necessary insights on copyright policy changes and business model innovation in the Chinese music industry.

## Relevant interdisciplinary literature

The music industries contribute significantly to the cultural and creative industries, a discourse that gained policy currency across China in the past decade (Chen, 2018b). However, the development and governance of Chinese music industries do not fit neatly into Western literature in terms of legal studies and business studies. Abundant literature has dedicated to offering their own explanations on the uniqueness of Chinese music or media industries at large and why 'copyrightisation' did not follow 'naturally' after the 1978 opening up reform (see Alford, 1995; Keane, 2007). Existing literature suggests that the Chinese copyright system or the entire legal system has been influenced heavily by Confucianism, which values harmony and ethics. This is not entirely a culturalist approach as scholars also acknowledge that China has transplanted legal theory and practice from the west with its own developments (Creemers, 2012; Song, 2015). Therefore, it is a negotiated process as there is a seemingly philosophical contradiction between the private rights-based copyright concept and traditional Confucian thought ('legal irritant' caused by 'legal transplant' in Creemers', 2012 term, p. 65). In critical copyright studies, the notion of wielding intellectual property as a club against the disadvantaged may partially explain the 'blithe disregard' (2010) in China for 'American copyright'. Alford (1995) suggests that the resentment against American bullying runs high in the then China. Considering the time of his writing, this is probably true as Chinese modern history taught at school is based on a discourse

of self-strengthening against imperialist humiliations. He describes the sentiments as ‘the world [the West] owes China something’ because of such humiliations. Other scholars such as J. Liu (2010) see clashes over intellectual property not as political but economic, as the earlier music industries in China developed primarily based on bulk production and circulation of unauthorised music (tapes and later CDs). Taking a developmental perspective, Keane (2007, pp. 129–138) in the Joint ventures, franchising and licencing chapter has offered detailed empirical cases in China where emerging artists first used unauthorised musical works to create mash-up ringtones, established fame, and then secured record deals. This ‘becoming’ process identifies a peculiar identity and tactic shift from negotiating with (if not violating) copyright to embracing copyright wholeheartedly, moving freely from the public domain to the private market sector. Gu (2018) also emphasised the complexity and historical development of institutions in China in terms of copyright and its enforcement where certain convergences are evident between the industry and the state. In a word, the explanations above are woven together to underpin the uniqueness of the Chinese music industry where the national level legislation/policy, the industry level business practices and individual level negotiations with copyright law is a pragmatic and becoming process.

I use the term ‘copyrightisation’ to signify the complex, transforming and ‘becoming’ nature of Chinese institutions and markets, where multiple ownerships (state, private and in flux) create a dynamic matrix. China’s first copyright law came into effect in 1991 and became in line with international standards after China joined the Berne Convention in 1992 and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 2001 (Thomas, 2017). Departing from the contested normative debates on what China should have done or should do, recent literature has used ethnographical approaches to conduct empirical studies, as opposed to directly applying Western theory into a Chinese context, on how Chinese indigenous media industries develop in an ever globalising and networked market with its own characteristics (Chen, 2018a; Gu, 2018; Zhao, 2019).

Amid the Chinese market economy in the making, Gu (2018) argued that the convergence of power of the state and the industry under rising consumerism and commercialisation has a chilling effect on piracy in China, which has institutionally prepared the ‘copyrightisation’ process across media industries. External pressure has also contributed to the IPR compliance of China in recent years (Thomas, 2017). Based on in-depth interviews and case studies across different media industries, Zhao (2019) distinguishes the *formal* from the *informal* industry players, known as ‘*shan-zhai*’ (imitation and local adaptation), and how these players transform themselves into legally trading entities in the platform economy. Chen (2018a) demonstrates how online platforms’ rebellious and utopian endowments were taken advantage of and how users creatively appropriate and invoke the postcolonial, internationalist and socialist discourse with an aim to support the ‘oppressed third-world’ have-nots and have-less to continuously engage with and justify copyright violation and creative prosumption (Chen, 2020). The nationalist sentiment is ever stronger among Chinese consumers and arguably industries for domestic market appeal, given the protection enjoyed by Chinese domestic tech giants facing the turbulence and friction in neoliberal globalisation (Chen, 2018a).

The aforementioned accounts on the multifaceted factors shaping the media industries and institutions in China inform the structure of this paper. I investigate the Chinese music industry in terms of copyrightisation and business model innovation at three levels, namely the institutional level, the platform/organisational level and the individual/consumer level. This also makes the cultural production circuits complete, to have incorporated production, mediation/dissemination, and consumption. These empirical studies bridge a gap between Western literature and the

changing contexts in the Chinese music industry identified by Han (2014) that in a globalised market, copyright is subject to a country's specific social, cultural and political characteristics. Shen and colleagues (2019, p. 1) also contend that the music industries present 'a dramatically different trajectory in China, patterned by its distinctive historical and institutional context'. The Chinese government and the music industries take a pragmatic approach when developing Chinese copyright law. Copyright as a legal provision and its related administrative regulations and notice (*fagui* and *tongzhi*) will be effectively enforced only when it is deemed beneficial to its economic, social and cultural development (see more in Wu, 2007).

Under this backdrop, scholars from QUT proposed a market-based model which focuses on both the creative demand and supply in a complex social network. Informed by such a model, Montgomery (2010) contends that a weak copyright regime promotes the free flow of information and stimulates creativity, which leads to growth in the Chinese music industries (see critique in Priest, 2014). The debate is further complicated by scholars who hold a more balanced view in either reforming the current law or seeking alternative mechanisms (Lessig, 2001). Copyright law as an institution involves higher transaction cost for copyright holders due to the low cost of copyright violation in China (Hua, 2014). It is therefore quite costly for industry players to adopt the litigation strategy in China (Thomas, 2017). Such litigation strategy tends to benefit the domestic power-haves, namely record labels, singer-songwriters with big names and more significantly the platforms in the digital era (Zhao, 2019).

In an ideal market economy, copyright works as a general principle for the industry to form and operate their businesses (McKenzie, 2003). Various business models are then supported by specific provisions in copyright law with respect to the organisational level operations and key activities. However, some business models in China do not rely on tight copyright control, rather they focus on the touch points with consumers to get exposure and capture value from multiple income streams (Priest, 2014). Copyright tuning in and out in these processes and income streams, which reflects the complexity of the music industries identified by legal scholars such as Loren (2014), who sees maintaining fair compensation for artists by copyright law and adjusting business models in light of changing technologies as two competitive and *complementary* narratives and strategies. The section below will conceptualise the term business model in a Chinese context, in connection yet parallel with the literature in business and media and management economics (MME).

### *On business models*

Business model is a sloppy term in media management research (S. I. Zhang, 2019). In a comprehensive meta-analysis, Zott et al. (2011) reviewed 1177 interdisciplinary papers published since 1995. They find that business model research became prominent only from the 1990s as Internet technology began to shape the way in which people consume products and companies do business. From this literature we understand that there are generally two layers of business models, the industry landscape (industrial level) and organisational/firm-level strategies that help businesses maintain a competitive advantage. However, analysed in a Chinese context, the institutional level factors are largely neglected since studies based on the developed Western markets regards copyright as a given, safeguarded by a series of relatively static institutions (see review in Wirtz et al., 2010, on adaption of *established* business models into Web 2.0). In addition, individual/consumer level strategy is missing (see Agafonow, 2014), since the literature reviewed by the meta-analysis has a central focus on how firm run business (Zott et al.,

2011). In their analyses of business models and marketing strategies of the music industry, Vaccaro and Cohn (2004) take a service marketing perspective and emphasise the growing importance of marketing strategies in helping companies generate profits. Other scholars try to propose *business modelling* which is sometimes too technical, thus turning business models into concrete and rigid structures that are measured by idiosyncratic selections of diverse variables (Li et al., 2017). This may limit the innovation of business models and are largely based on empirical studies in the West, which may not be applicable to the Chinese music industries as an emerging market (Shen et al., 2019). Therefore, I do not take such an approach. My working definition for business models is the strategies for a business to take a trial and error approach for profit generation and competitive advantage, which includes the macro institutional and industrial level, the meso organisational level and the micro individual level strategies and tactics coordinated within a value chain. This approach will inform the analysis of business models in generic and strategic terms which is suitable for the Chinese music industry undergoing significant changes.

Economists such as Towse (2013), argue that the classical demand and supply rationale still apply in the digital age but in different dynamics. The producers of music will adjust their strategy to lower price or make their work free which was the case in a number of Chinese media industries (Keane, 2007; Keane & Zhao, 2012; F. Zhang, 2017). In addition, as quasi-public goods, music consumption by any individual does not affect others' consumption of the same product, especially in digital format (McKenzie, 2003). This undermines the effectiveness of the low-price strategy. Rather, it is anticipated that music can be repackaged and sold to different groups, for multiple times, using the price discrimination strategy. In theory, the price of music will decrease and approach the marginal cost, which is zero. In reality, it was also the case in the Chinese music industry when music could be obtained largely for free. However, this freemium model has changed in the past five years while young users are cultivated to pay for music. With the boom of Chinese fandom, fans sometimes would buy multiple digital music albums or EPs to showcase their loyalty and support (Chen, 2021). Given the shift in the Chinese music industry, in the following section, I will identify three business models in a Chinese context and argue that the cultural adaptation model, the renegade model and the platform ecosystem collide.

## Methodology

As the primary aim of this paper is to conduct a historical and socio-legal analysis of the development of Chinese copyright law with regards to the music industry, the methodology is informed by historiography. According to Sellmann (1995, p. 100), historiography is 'the art and science of writing history', which is widely adopted in postcolonial studies as a theoretical tool. Moving from narrating historical events as they were, modern historiographers inspired by postcolonialism realise that what constitutes history, is 'not only what they tell of the past matters but how they tell it' (Kunow, 2016, p. 106). Sellmann (1995) also emphasised the 'philosophical concept of history as a cultural tradition by which a people understand and interpret themselves' (100). This makes historiography an appropriate approach to inform the discourse analysis method to conduct the socio-legal analysis of Chinese copyright law in terms of the music industry as a lived experience from a Chinese perspective. This is due to the fact that 'copyrightisation' as a transformational process in institution and practice is often understood as abiding influence from a Western hegemony (see Creemers, 2012; Thomas, 2017) while neglecting the pragmatics and agency of the receiving

culture/society. Similar approaches have gained fruitful results in writing and analysing Chinese science history (Elman, 2005). This approach may overcome and expand the often chronological or individualised understanding of historical events by adding texture embedded in a Chinese context, illustrated by influential cases and historical events. This is particularly the case for the ‘shanzhai phenomenon’ in China, to be discussed and framed as ‘imitation, local adaptation and innovation’ in the section below.

## The cultural adaptation model

The Chinese music industry was known for its rampant piracy issue and received little attention both in academia and in the global industry. One strand of research focuses on ‘piracy’ issues in China, framed by a vernacular term ‘shanzhai’ with negative connotations at the beginning. However, Keane and Zhao (2012) explained its literal meaning as a stronghold for bandits hidden in the mountains outside the control of the mainstream (see also Cheung, 2012). It refers to the quick prototyping of popular products and services which have been tested by the market and quickly gain economy of scale. In a similar vein, imitation was argued as a central component of creativity and innovation (Lotman, 1990). Chinese musicians are often accused as copycats and the ‘shanzhai’ model was often compared with the Western traditional proprietary model in which music is viewed as products and artefacts and protected by copyright law. Here, historiography plays an anticipated role in countering the ahistorical account of copyright development around the world, especially in the third world. In fact, the United States who often accuses China of an ‘intellectual theft’ developed its publishing and film industries based on the violation of copyrighted work from the United Kingdom (see detailed analysis in Meng, 2007). Therefore, copyright disputes are already historical, situated within an existing power relationship. The traditional proprietary model is based on ‘unit of sale’ and the control of technology such as vinyl, tapes and CDs. If an individual or organised violation occurs, the litigation strategy follows. Abundant research has shown that mere technology control cannot solve the piracy issue (Leyshon, 2014; Pang, 2012; Wikstrom, 2013). Responding to the aforementioned historical nihilism, a historical analysis will explain why the proprietary model did not work as expected in China.

In the Maoist socialist China (1949–1978), music and other cultural affairs (*wenhua shiye*) were regarded as created and owned collectively by the people with a prominent political role (Keane, 2013). The music scene is an extreme case during the cultural revolution (1966–1976) when other genres of music were regarded as spiritual pollution and were largely banned except *Yangban Xi*, model operas. Such sanitised versions of Peking Opera only consist of a limited number of works, making the music scene a cultural vacuum (Clark et al., 2016). This arguably triggered a cultural boom later in the music sector, turning from state-owned *cultural affairs* into a market-driven and state-supervised *cultural/music industries* (see more in Rofel, 2007).

From 1978 onwards, following the opening up reform, the state’s cultural policy started to tolerate pluralistic tastes and values (Herlihy & Zhang, 2016). This would not happen without the privatisation of ownership, with the co-existence of state-owned music affairs and the market-oriented pop music sector. According to C. Liu (2014), Cantopop and Manopop from Hong Kong and Taiwan were imported to fill the cultural vacuum (see discussion in Clark et al., 2016). During the late 1980s, Shaanxi folk songs (Northwest Wind) became the first prominent local popular music in China, followed by rock and roll. Major recording companies, as part of the state-owned cultural affairs, were still heavily subsidised by the government. It is not until the early 1990s that the market

started to take a prominent role, parallel with a planned economy (Wu, 2007). This socialist legacy is still important when studying the Chinese music industry when cultural and creative contents are still created to reflect the socialist spiritual civilisation (Shen et al., 2019).

Unlike other scholars who emphasise the influence and pressure from the West, Creemers (2012, p. 65) and Han (2014) suggested that the copyright development started to catch up for at least four forces within the post-reform period. First, culture expenditure had reached a level that the government can no longer fund to maintain a fiscally viable sector. Copyright was regarded as a useful market mechanism to incentivise artist creation. Second, after crushing the ‘Gang of Four’, Deng Xiaoping took office and started the Period of Readjustment and Recovery (*bo luan fan zheng*). Copyright protection was crucial in safeguarding the intelligentsia’s position as part of the alliance of the working class. Third, copyright contributed to and supported the reform efforts in the wider Chinese economy. Last but not least, China, along with a couple of other countries faced intensified international scrutiny and pressure due to piracy issue and copyright legislation was the quick and effective answer to both internal needs and external expectations. Since China took a dual-track model (*shuangguizhi*, state and market ownership) to develop its economy, the music industry witnessed a golden 30-year development as reviewed by Cao (2013) where different tastes, schools and genres were allowed to coexist in the market and the public domain.

Business model researchers seldom consider the political aspect of media industries in China as ‘political economy’ is hard to measure in classical economic terms premised in ideal situations. Even in media and communication studies, this has been overtly attributed to censorship, either as top-down ‘thought management’ or irresistibly ‘market dictatorship’ under an authoritarian system (Brady, 2008, 2010), neglecting the tensions and manoeuvres within the commercialisation process of the media industries (Stockman, 2012). Therefore, business model and policy research based on purely economic terms will nonetheless present an idealised and incomplete picture of what is going on in the Chinese music industries. In the following section, I will explain why the traditional Western proprietary model based on the copyright regime in the West did not fully apply in a Chinese context.

As indicated in Figure 1, I map the western proprietary model onto the Chinese music industry in a streamlined manner, focusing on value creation and value capture. Strand 1 shows the traditional copyright model with a focus on the reproduction right, mechanical licence and distribution rights. Strand 2 focuses on the publishing and licencing of sound recordings (there is an income split between the publishers, composers and record labels agreed by contracts). In turn, music fixed on sound recordings are further exploited through licencing deals. These include broadcasting rights and performance rights (royalties from traditional mass media are still hard to recoup to this day, IFPI, 2019), communication to the public and making available rights. Strand 3 focuses on the income generated by and/or associated with the performing rights of musical works, such as live performance, touring, mechanise and sponsorship. However, these latter activities are less relevant to the copyright royalties, sometimes totally irrelevant to music. Rather, they rely heavily on the live craftsmanship and charisma of performing artists, such as fresh appearance and healthy persona within the entertainment economy (Priest, 2014).

A relevant historical case illustrates how the ‘cultural adaptation model’ thrived in China other than the direct replication of the traditional Western proprietary model. Pacific Records was founded in 1979, the first record company after the opening up reform in China. Its development trajectory coincides with the economic take-off in China. However, with the copyright law in place in 1991 and Internet technology penetrated into people’s lives around the 2000s, its impact

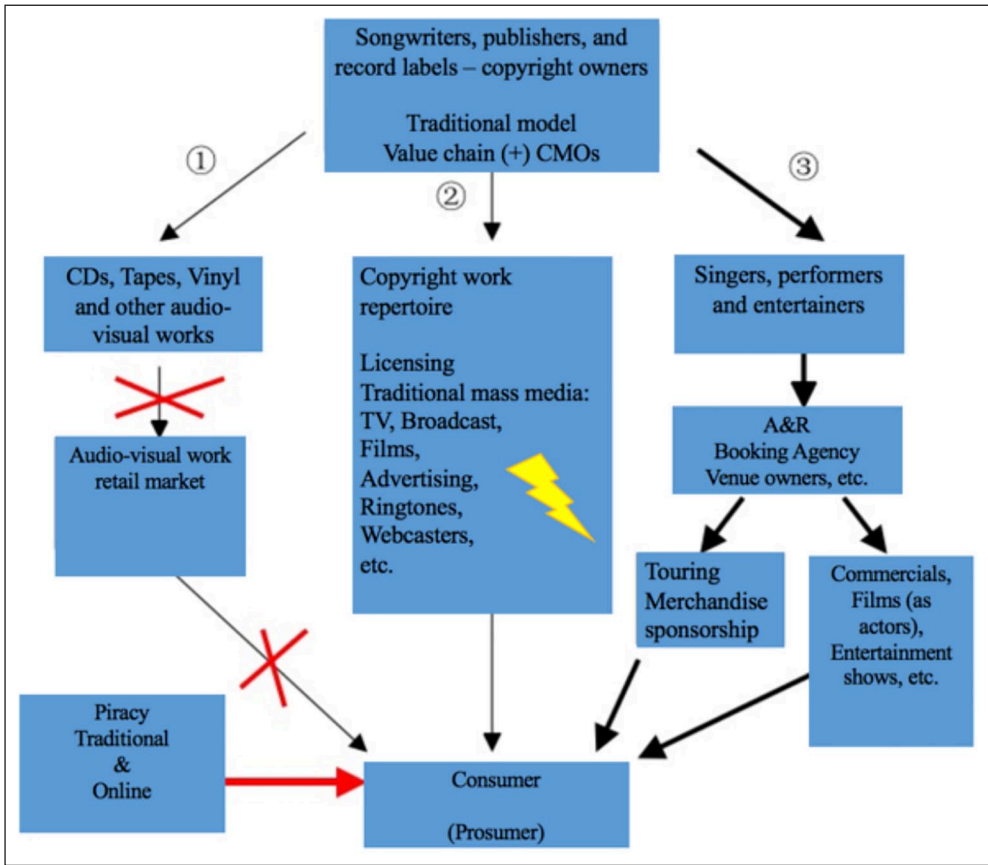


Figure 1. Mapping the value chain to Chinese music industry.

started to shrink. In 2014, the sales of records had decreased by 96% compared with that of 2005 (Cao, 2013). It adopted a cultural adaptation model from 1979 to 1991 when copyright was not in place, exploiting well-tested hits in markets outside mainland China, namely to produce cover songs. It provides a necessary annotation to the golden 30 years of the Chinese record industry since the first 10 years were not subject to copyright regulation (C. Liu, 2014). I use ‘cultural adaptation’ instead of ‘shanzhai’, due to the persistent postcolonial discourse of a low-income country tactically learning from its western counterparts within an imbalanced world order (see Chen, 2018a). A cultural adaptation model is informed by Lotman (1990) where consumers are reviewed as active agents with cultural rights who participant in cultural adaptation and value co-creation. In doing so, the development of cultural and creative industries is an evolutionary process, learning, imitating and in turn creating hybrid and novel forms of culture. In addition, such cultural goods and services are created primarily for domestic consumption, considering the language barrier, these works from the source market would not have captured the local Chinese audience in the first place. As can be seen from the recent development of Chinese online platforms (Zhao, 2019), the significance and contribution of ordinary ‘cultural transmitters’ (Lotman,

1990) should be acknowledged for their efforts in translating, interpreting and promoting the source culture. These prosumers are the lyrics translators and subtitle providers who educate consumers and promote the source culture which is beneficial to platforms and producers in the long term (Chen, 2018a). ‘Shanzhai’ is a useful cultural term, however, it has little value in legal terms since the ‘idea/expression dichotomy’ clearly defined that ideas are not protected, rather, it is the expression of ideas that are protected. In the Chinese context, as have been discussed extensively by scholars such as Cheung (2012) and Keane and Zhao (2012), *Shanzhai* ‘has evolved into a distinctive Chinese phenomenon marked by low prices, innovative appropriations and locally customized designs’ (Cheung, 2012, p. 3), spanning from tech gadgets to business models and digital services. To set these passionate debates of ‘imitation vs innovation’ aside, the western copyright-based ‘traditional model’ failed miserably in the Chinese market as more than 90% of the music consumed in China before 2015 were pirated (IFPI, 2016).

With the traditional value chain heavily distorted in the music industries, similar to their Western counterpart, the revenue is primarily contributed by the third strand of streams, including live performance, touring, merchandise and sponsorship, accounting for more than 45% of all income streams (J. Liu, 2015). This presents a serious challenge to the Western proprietary model in China since copyright is failing in the West and why should it be adopted in China when record sales decreased significantly from 2003 onwards (see Fung, 2013; Montgomery, 2010). ‘Going back to the streets’ and directly engaging with the audience gained new momentum in the online platform economy exemplified by more than two hundreds of music festivals held annually in China (An, 2017). New strategies and business models are needed when copyright royalties are difficult to recoup for digital music. However, this chaos also means a change of the game, since new entrants such as digital aggregators are entering the music industries.

## The renegade model

With the declining record sales in the early 2000s, the digitalization of music gained momentum in China since copyright holders started to exploit their rights digitally (Cao, 2013). According to the China Internet Network Information Centre (CNNIC), by the end of 1997, China had 620, 000 netizens. In 2003, the number increased to 68 million, and 710 million by June 2016 (CNNIC, 2016). The year of 1997, when the first CNNIC report was produced, also marked the beginning of the Chinese online music industry. At first, online music was regarded positively undergoing a steady growth around that time, initiated by legitimate music traders who owned copyrighted music. However, the unauthorised sharing of music (piracy) became a competing market force, exemplified by digital renegade aggregators (G. Liu, 2006).

The Digital music market in China can be generally categorised into two types: online music (*zaixian*) and wireless music (*wuxian*) as indicated in strand 2 (Figure 1). These two types of music are digital in format, however, they are hosted and disseminated via two different infrastructures. Online music can be stored on personal computers and servers, which can be played on desktop, portable music players, and online. Wireless music is primarily played via mobile phones where music does not have to be stored locally but via telecommunication providers (G. Liu, 2006).

Among the diversified income streams of the second strand (Figure 1), a significant portion is contributed by the wireless music market (see the discussion on the uniqueness of the ringtone wireless market in China in Keane, 2007, pp. 136–137; Priest, 2014). The wireless music market is dominated by the state-owned telecommunication sector through ringtones. Ringtones

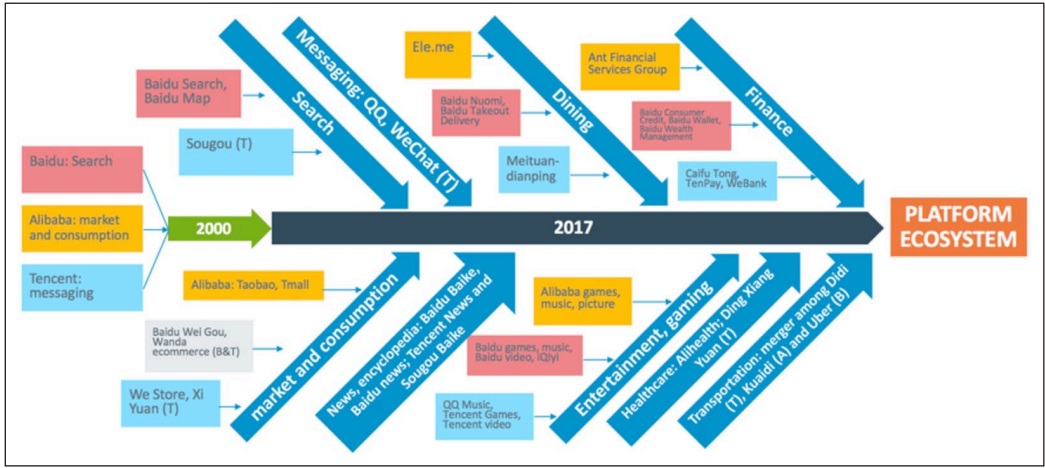
controlled by three major Telecoms (China Mobile, China Unicom, and China Telecom), accounted for almost 80% of the mobile services income (J. Liu, 2015). Lawful consumption of ringtone generated the most revenue in the early 2000s (Montgomery & Fitzgerald, 2006). Ringtones continued to maintain its leading position until 2016 and in total, the ‘three majors’ distribute mobile music to 1.37 billion subscriptions (De Ritis & Si, 2016). Technological control over music is effective in the wireless market, where the often 30-second long ringtone is stored on and played via Telecoms’ servers, therefore such music cannot be downloaded or pirated by businesses or users.

However, it is difficult to generate enough money for artists as a viable income stream. The Telecoms seek to drain as much revenue as possible, adding little new value to the network. As Priest (2014) points out, even though ringtone revenue amounts to more than 4 billion US dollars annually, the Telecoms keep more than 98% of this strand of revenue. The remaining 2% left for copyright owners constitutes around 80% of their total income from recorded music, which has to be further divided between producers and creators.

In addition, online and wireless music face a great challenge of unauthorised music sharing online – the organised renegades. According to Vaccaro and Cohn (2004), the renegade model is broadly defined as a counter and resistant model to the proprietary model, which refers to the unauthorised music file exchange via P2P services. Here, piracy conducted by individuals as a distinct cultural practice will not be discussed at length, since it arguably also generates exposure to new songs and for new artists. The renegades emerge at a unique time, as the government was de-regulating the Internet industries to foster a stronger Internet-based economy (Zhao, 2019). It also coincided with the ‘safe harbour’ doctrine stipulated in the United States and later adopted in China as part of international conventions (Hua, 2014; Thomas, 2017).

A historical account of one such renegade, China’s largest search engine Baidu would better illustrate the case at hand. Baidu was established after Napster in 2000 and became a publicly-traded company in Nasdaq in 2005. One of the services it offers is music searching and downloading. Its renegade model has been well documented in legal proceedings, between both domestic and foreign stakeholders. According to Wong and Ojansivu (2012), Baidu faced a series of lawsuits after its IPO in 2005. The lawsuits against Baidu in terms of alleged music copyright violation were suspended after Baidu reached an agreement with various plaintiffs in 2011 since such alleged copyright violation was exempted via the ‘safe harbour doctrine’. Following the agreement, Baidu was removed from the ‘301 list of notorious markets’ compiled by the Office of the US Trade Representative accordingly, as a reward. When music is largely shared for free online, artists’ income stream is shrinking. In turn, music was used for promotion and marketing purposes, becoming an advertisement itself. There are several implications to consider.

First, music as a promotional tool undermines the value of music and gives way to commercialisation and profit-making rather than to artistic freedom. Second, corporate patrons often seek artists who have a publicly healthy image to endorse their products or company. Therefore, grassroots, underground and controversial artists have little opportunity to develop their career with such an approach. Third, non-musical traits play a more important role for bundled or endorsed products, for example, fresh looks and acting skills are much sought after (see the relevant discussion on 360 deals in Ge, 2018). This will drive out musicians who have little value in alternative or converged markets. In addition, the renegade model often tightens the breathing space of the music attached to bundled products. This will make consumers end up paying more while music is devalued (see



**Figure 2.** Tech giants as ‘becoming’ ecosystems, created by author with information from McKinsey (Atluri et al., 2017).

more in Priest, 2014). Finally, the renegade model is not going to sustain when China is pushing forward a stronger copyright regime as demonstrated in the third copyright amendment.

### The platform ecosystem model

As mentioned previously, the digital music industry in China has taken new forms after the consolidation process triggered by NCA’s 2015 Sword Net Campaign. Before that, the conflicts between the copyright holders (largely the record industry) and the renegades had been undergoing a continuous litigation process since 2005. This administrative decree of NCA in 2015 set the tone for the platform ecosystem to develop in China. A number of litigations served not as an end but as a means to form mergers and acquisitions and partnerships, cross-licensing copyrighted work (Dredge, 2017). As can be seen from Figure 2, platforms such as BAT (Baidu, Alibaba and Tencent) and NetEase have their own music services with different foci, relying on their acquired strength and capital in different areas, cross-linked in their ‘everything’ ecosystem, such as finance (crowd-sourcing, bonds), banking (e-payments), insurance and healthcare, retailing and eCommerce, search engine, dining, entertainment and gaming, communication and messaging, and news, in addition to transportation and delivery services (Atluri et al., 2017).

In terms of the music industries, the tech giants shown in Figure 2 have established their respective ‘all-rounded industrial value chain’ (*quan chuanyelian*), a seamless circle built around producers, disseminators and consumers. By definition, a platform ecosystem shares the same basic structure of a media company, which brings together producers and consumers in one marketplace (Parker et al., 2016). The key is to orchestrate and coordinate (external) recourses instead of directly owning and controlling them. The *network effect*, achieved when the supply and demand side reaching a matching critical scale, is their core value (see also, Chen & Cheung, 2018).

In the renegade model, music is regarded as information and shared free of charge online. By contrast, music is regarded as a service in the platform ecosystem model, especially added-value services. These platforms offer mega-apps, licenced repertoire with social media functions, where

consumers can sign up for online music streaming and downloading services, data and music packages, as well as engagement channels for artists, producers and consumers to communicate with each other.

Among the *cooperation* of these music platforms, NetEase Cloud Music (NCM), a smaller platform compared with BAT, has adopted a niche market strategy in the past five years. It not only nurtured many new indie artists but also secured some significant figures in sales. In November 2016, NCM invested 200 million RMB and launched their indie music support plan, Project Stone (Ge, 2018). Project Stone has seven components, ranging from promotion plan, album investment plan, performance plan, like and reward plan, music training plan, musician merchandise, as well as musician Index. This strategic move is to expand its business model from a mere music streamer to music marketing, A&R (artists and repertoire), talent management, creating an ecosystem of itself.

According to (Ge, 2018), up until November 2017, NCM has won 400 million users through providing niche music (the long tail) via exclusive licencing deals. NCM's ecosystem is artist-centred and is set to generate new and exclusive copyrighted work with better compensation deals. However, this ecosystem model is still being implemented therefore it is still too early to decide whether it will become a reliable source of income for artists. Tencent QQ music is the only platform that claimed to have made profits back in 2016, while its western counterparts such as Spotify is still losing money (Dredge, 2017).

## Conclusion

This paper provides a socio-legal and business model analysis of the Chinese music industry when a 'copyrightisation' process is underway. Consulting interdisciplinary literature with both historical and up-to-date cases, this paper argues that the cultural adaptation model, the renegade model and the platform ecosystem model collide in the social media age. As the Chinese government and businesses alike aim to move from 'made in China' to 'created in China', more emphasis will be put on China's soft power generated from its non-state actors, especially from the cultural and creative industries. This seems to have exerted significant influence on the dynamic matrix created by multiple ownerships (state, private and in flux) in a shifting world order (Edney et al., 2019).

By identifying different strategies behind these models, individual artists can better position themselves, as musicians or entrepreneurs, when music is going into the cloud. 'Fly with two wings' may be too optimistic a projection, as China has just witnessed its coming of age of 'copyrightisation' in the digital music sector. As the new music platforms are gaining monopolistic positions in the music industries, record labels and artists are anticipated to use the proprietary model and take legal actions when necessary while innovating their business models in the online platform economy. However, the traditional proprietary model will still face resistance in a Chinese context since consumers and prosumers as cultural agents will continue to negotiate in the changing power relationships. The renegade model will take new forms despite the tightening copyright regime in China. In other words, these models will co-exist and evolve within the creative industry ecology. Platforms are exploring a matrix of paid models (freemium and subscription, Zhao, 2019) to utilise their repertoire, invest and nurture a new breed of aspirational musicians, which calls for further scholarly exploration.

This paper has several limitations. First, the paper aims to provide an up-to-date account of the development of the Chinese music industry with regards to business model innovation in a

changing copyright regime. It is limited in detailing the specific models that are experimented with by individual companies. Instead, the business models discussed are from a strategic perspective (Li et al., 2017). It offers necessary contexts which are largely neglected in business literature where institutions, both social and legal, play a prominent role in shaping consumers' behaviour and the way in which businesses operate in China. In addition, due to limited space, only three influential cases have been discussed while other industries players may also contribute to the overall development of the music industry. However, the indigenous historiography presented here demonstrates the competing discourses from a cultural perspective which further contributes to the debate of business model and copyright research in China, in conversation with a Western-centric perspective.

This study also calls for further research on why it takes so long for the third copyright amendment to be finalised even though the first draft was released back in 2012 (NCA, 2017; Xinhua, 2012b). Despite the positive development in the digital music industry since 2015, China is caught up in the process of moving from 'Made in China' to 'Created in China' through making a stronger copyright regime. It has to balance the interests of competing stakeholders (Han, 2014; Xinhua, 2012a), namely the record industry (home and abroad), the tech giants, and the cultural rights of consumers in a socialist market economy.

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