

Research on Digital Music Copyright Protection in China: Taking Music Infringement in Audiovisual Works as an Example

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Received: November 27, 2024 Accepted: December 26, 2024 Published: January 21, 2025

doi: 10.5296/jsss.v11i2.22425

URL: <https://doi.org/10.5296/jsss.v11i2.22425>

Abstract

With the advent of the information technology era, digital music has been widely disseminated in the new online media, and at the same time, digital music copyright protection problems have emerged, which, together with the explosion of audiovisual works in recent years, has led to the increasing and more complicated infringement of digital music. With the improvement of national policies and laws and regulations, public awareness of copyright protection has been formed, and relevant laws and regulations are being improved, but there are still many practical problems in the process of digital music copyright protection that need to be solved. This paper focuses on the current phenomenon of digital music infringement in audiovisual works, analyzes the problems related to digital music copyright protection, and proposes suggestions for protecting digital music copyright protection, aiming to alleviate the current phenomenon of ineffective digital music copyright protection and promote the sustainable and healthy development of China's digital music market.

Keywords: digital music copyright, copyright protection, audiovisual works

1. Introduction

Digital music arose around the mid-1990s and entered the commercial development stage in the early 21st century. With the advent of digital technology, the way music is consumed has changed. This change in consumption mode amplifies consumer's choices and brings greater profit potential to the music industry (Xinyi Yang, 2021). According to the *2020 China Music Industry Development General Report*, the size of China's digital music industry reached 66.4

billion yuan in 2019, up 8.4% year-on-year; the size of digital music users exceeded 607 million people, up 9.2% year-on-year, and the penetration rate of online music users reached 71.1% (Xuan Man, 2021) (Chunyang Jin & Hetong Xing, 2022). The rapid development of digital music in China has been accompanied by frequent digital music infringements. Especially nowadays, with the rapid development of Internet technology, 5G technology and other emerging information technology, digital music has become a new trend. The low cost of access and fast spread speed greatly enrich people's spiritual lives (Yanghuan Li et al., 2021) but at the same time, the cost of infringement is also greatly reduced, and the infringement may occur anytime and anywhere brings great challenges for the protection of digital music copyright (Yuzheng Zhang, 2022).

In June 2021, the newly revised Copyright Law of the People's Republic of China came into force. In the newly revised Copyright Law, the original term *Cinematographic works and works created by methods similar to the filming of films* is amended to "audiovisual works". The introduction of the concept of "audiovisual works" includes popular video forms such as short videos and live broadcasts and provides support for the copyright protection of such video works. As for music, which is an almost essential element of audiovisual works, according to Article 17 of the newly revised Copyright Law, the author of music, a work that can be used separately, has the right to exercise his copyright separately. However, in reality, music infringement in audiovisual works occurs frequently, which seriously damages the creative enthusiasm of music creators, and the messy phenomenon of music infringement in audiovisual works needs to be solved urgently.

2. Preliminary Literature Review

Bei Yi (2014) in 2018 compared and studied the experience of foreign digital music copyright protection and made suggestions for the legal protection of digital music copyright in China from two perspectives: the development of the generation of digital music copyright and the balance of rights in legislation. This author argues that it should conform to the development of the times, innovate the business model and protection model, and gradually seek new ways to adapt to the development of technology and society in terms of legislation and enforcement and institutional regulation. In 2016, Xiaotong Mian (2016) elaborated on the difficulties in raising the concept of music payment in copyright protection and the conflicting contradictions between mass sharing and subject interests, analyzed the dilemma on copyright protection in China's digital music industry with QQ Music as an example, and put forward ideas and suggestions to promote the development of copyright protection with the help of digital technology. The article argues that the traditional protection model of digital music copyright should be changed and innovative thinking should be combined with e-commerce platforms to create a model of cross-industry cooperation and common governance. Xingyu Zhang (2015) combed through the current model of online Internet music business and the digital music copyright-related laws currently introduced in China, fully analyzed the role of digital technology means on digital music copyright protection, elaborated the impact of digital music copyright protection on the interests of subjects in the industry, and made suggestions for the improvement of the protection model. This author argues that the Internet platform should be used to innovate the digital music industry model

and the digital music copyright service system so as to better protect digital music copyrights. Xiangdong Ge (2017) first sorted out the generation and extension of music copyright protection in China in terms of the measures taken by the government on music copyright protection and the cognition of music copyright protection by all relevant sectors of society, and then summarized the dilemmas and difficulties arising in the current situation of music copyright protection in China and deeply considered the development direction of music copyright protection in terms of the laws of music art and the legal system. This author argues that the focus should be on respecting the intrinsic laws of music, and in the practice of music copyright protection based on this, individualized management should be implemented to effectively guarantee the balance of interests of rights holders. In 2017, You Luo (2017) discussed the shortcomings of China's current digital music copyright protection, referred to the practice and legislative inspiration of foreign digital music copyright protection, and focused on both legislation and management systems to explore the experience that China can learn from in digital music copyright protection. The article argues that the legislation and management system of digital music copyright protection should be improved, fully respect the market operation law, and promote the diversified development of digital music copyright protection.

3. Methodology

The research methods of this study are mainly literature reading, comparative research and case study. Firstly, by reading previous papers on digital music copyright protection, we sort out the current problems of digital music copyright protection in China and propose countermeasures. Then the comparative research method and case study method are applied to give concrete examples for argumentation to make it more convincing.

4. The Current Situation of Digital Music Copyright Protection in China

4.1 Initial Formation of Copyright Protection Awareness

In 2015, the National Copyright Administration issued the *Notice on Ordering Online Music Service Providers to Stop Unauthorized Dissemination of Music*, which was once hailed as the "strictest copyright order" in the history of domestic music, and more than 2.2 million online music works were taken off the shelves. This policy had caused a sharp increase in demand for legitimate music copyright (Boyang An, 2022). Therefore, 2015 was also regarded as the first year of music payment in China. After several years of development and evolution, listeners have gradually changed their mindset from not understanding and not agreeing that "online music needs to be paid" at the beginning, and their willingness to pay has been increasing. According to Tencent Music's 2021 financial report, in the fourth quarter of 2021, Tencent Music's paid online music users reached 76.2 million, up 36.1% year-on-year, with a net increase of 5 million year-on-year. The paid rate reached 12.4%, up from 9.0% in the same period in 2020.

In addition, due to the easy and fast operation of various types of recording software today, which greatly reduces the cost of illegal elements to steal genuine music, China's online music service providers have also made some countermeasures to protect music copyright in

the platform library. For example, NetEase Cloud Music has developed a proprietary encrypted music file format ".mcn", users can only play music downloaded from NetEase Cloud Music on their platforms, which has to some extent reduced the rate of distribution and usage of pirated music (Miqi Chen & Honglei Zhai, 2022). At the same time, various short video platforms also pay full attention to the use of genuine music, such as Jitterbug's cooperation with Japanese record company Avex, Tencent Music's cooperation, the launch of the "Seeing Music Project" and the acquisition of the British music artificial intelligence company Jukedeck, which makes short video platforms meet users' needs for background music while also ensuring the source of music. This has enabled the short video platform to meet users' needs for background music while ensuring the legitimacy of the music source.

4.2 Relevant Laws and Regulations Continue to Improve

In 2013, China issued the *Digital Music Copyright Revenue Doubling Plan*, aiming to promote the transformation of China's digital music business model. While the country had not yet implemented the legitimate reform at that time, the attention paid to digital music copyright protection was still insufficient, and piracy was widespread, leading to the damage of the rights and interests related to digital music copyright, and the value of digital music copyright was also affected to a considerable extent. In 2015, China issued the *Notice on Ordering Internet Music Service Providers to Stop Unauthorized Dissemination of Musical Works*, aiming to solve the problem of illegal use of unauthorized musical art works that has long existed in the field of music and art in China (Shonan Wang, 2020). After this genuine reform, the state continued to implement a series of policies, continuously improve relevant laws and regulations, strictly implement them, protect copyright, raise public awareness of copyright, and enable copyright rights to be legally protected. 2021 saw the third revision of the Copyright Law officially implemented, further increasing the protection of music creators' rights and expanding the scope of protection for the digital music industry, such as expanding the broadcasting rights to include cable broadcasting and webcasting, improving the original legal provisions on the claim of online music copyright such as webcasting, and providing for the right to be paid for the broadcasting and performance of sound recordings in Article 45, greatly protecting the legitimate rights and interests of music creators and the value of digital music copyright (Yuqing Yan & Weihua Wang, 2021).

5. The Dilemma of China's Digital Music Copyright Protection Issues

5.1 Diverse Infringements

There are four main forms of introducing music into audiovisual works: using existing musical works as background music, playing existing musical works, covering existing musical works and creating a second version of existing musical works. These four forms sometimes do not appear separately, and existing musical works often appear in multiple forms in an audiovisual work. The common infringements are infringement of the copyright owner's right of attribution, right of performance and right of information network dissemination of musical works. It is worth mentioning that, for the determination of the right of adaptation, China's Copyright Law emphasizes the originality of the adapted work. As a matter of fact, there are a lot of high-quality second creations in the audiovisual works

nowadays, and most of the authors of these second creations do so because they love the original musical works and pay tribute to the authors of the original musical works, etc. However, the second creation without the permission of the copyright owner of the original musical works will infringe upon the rights of the copyright owner of the original musical works regardless of the original creation intention.

5.2 Involving Many Subjects of Power

Music infringement in audiovisual works involves the main subjects of power, including the creator of the music work, the creator of the audiovisual work and the audiovisual work distribution platform, and there is a complex conflict of interest among these three subjects. First of all, after the audiovisual works reach a certain traffic volume, the platform will give some funds to the creators for incentives, and many creators will benefit from this, while the platform itself will accumulate popularity to attract more advertisers and investment to gain more profit, so as to further the development of the platform. Therefore, based on realistic interests, platforms are often permissive about users' infringement behavior. Secondly, some cover audiovisual works are of high quality, which, coupled with the diversion given by the platform, can sometimes lead to the "hit" of some out-of-date songs, which makes the interest relationship between the creators of audiovisual works and the platform and the original song creators quite complicated and difficult to define.

5.3 Confusing System of Copyright Value Assessment

The copyright value assessment of digital music works is to make a reasonable analysis and judgment of the value of the copyright to be traded and to provide a reference basis for the transaction price (Xiaohui Zhang & Hao Lei, 2016). A digital music work that has undergone a value assessment can only receive a fair and equitable price that is recognized by the market. In the current digital music market environment, the data information of music copyright value is extremely asymmetric, and it is difficult for music rights holders to verify the authenticity of the data information related to music copyright value in a timely manner. Even the phenomenon of falsification of copyright value data information occurs, and the conflict of interest of digital music copyright subjects becomes more and more obvious. In addition, in audiovisual works, digital music, as an element of the audiovisual work as a whole, complements and interacts with other elements in the audiovisual work, and it is difficult to assess the proportion of the commercial value of music to the total profit of the audiovisual work in isolation from other elements. Thus, the non-subjectivity and invisible profitability of digital music works that exist in audiovisual works make it more difficult to assess their copyright value.

5.4 Difficult to Maintain Rights

Because of the virtual nature of the Internet and the massive amount of information, music creators are often in a vulnerable position when defending their rights, i.e., it is difficult to determine the information of infringers, and even many times infringement has occurred without the knowledge of the infringer. This phenomenon is particularly evident in music infringement in audiovisual works. With the massive amount of UGC videos distributed on

various self-media platforms, the infringement of many audiovisual works goes unnoticed, and the infringement is only discovered when the video explodes. On the other hand, for some niche music creators, their vulnerability in defending their rights has become more obvious. For example, the recent Volvo commercial infringed on Gala's "Young for you", as a major international brand, Volvo has produced many commercials before and could not have been unaware of the need to pay for commercial use of Gala's music. It's hard not to think that Volvo is taking a chance because of Gala's "niche" and believes that Gala is incapable of defending their rights. Unfortunately, it took six months after the infringement for Volvo to take down the ad in question, and the sincerity of its subsequent apology did not satisfy Gala.

6. Suggestions for Digital Music Copyright Protection in China

6.1 Refine the Definition of Reasonable Use

The fair use system was originally established to protect freedom of expression and freedom of information dissemination, and to set certain restrictions on the basis of encouraging the dissemination and use of works with a view to protecting the interests of copyright owners, so it is necessary to grasp the boundaries of fair use (Hong Jiao, 2022). The existing legal provisions on fair use only require a superficial free of charge, and this provision seems to be unable to be reasonably applied in fields such as webcasting. In order to regulate the dissemination and use of musical works on the Internet, the scope of free performance in fair use should be appropriately extended, i.e., free performance is not limited to not requiring audience payment and not accepting audience reward, and performers and live streamers should not be allowed to benefit financially from the performance in any other way (Weilun Ni, 2021). In addition, ordinary UGC users are generally in the hobby of making audiovisual works, basically without the ability to realize and commercialize, which can be appropriately considered into the scope of fair use, while PGC and PUGC users, whether for profit, should also take into account its influence and video type and other factors, that is, how much its ability to realize and potential commercial value.

6.2 Improve the Licensing Model

At present, there are mainly two kinds of music licensing models in China, namely, single-song licensing and package licensing, with different licensing platforms charging different rates and the same platform charging different rates for different licensing ranges. Take VFine Music, a commercial music distribution platform in China. For example, its fee is basically within a reasonable range for general platform organizations, but its single music licensing fee for individual users of self-published videos reaches 120 yuan, which is slightly high for some self-published users who do not profit from videos. VFine Music has also responded to this phenomenon by introducing a segmented licensing service for music, i.e., by splitting and spelling music segments.

The company is able to provide customers with customized background music to reduce the cost of purchasing music. However, at this stage, VFine Music's customers are generally institutional customers and lack segmented licensing services for ordinary users (Jun Mo & Ting Feng, 2020). Nowadays, individual users of various video platforms occupy the majority,

and music licensing platforms should pay full attention to the music licensing needs of such users and introduce more reasonable music licensing models for these ordinary users, so that ordinary users have the ability to use genuine music works in a legal way. For example, music licensing platforms can charge users according to the proportion of the demanded music portion of the total music duration.

6.3 Establishing a Standard Copyright Value Assessment System

A reasonable copyright valuation is conducive to the reasonable flow and efficient use of digital music copyright assets, therefore, for the long-term prosperity and development, the digital music industry urgently needs to establish a fair and perfect copyright valuation system (Leiqin Wang, 2019). First of all, the quality of digital music works is the most important factor in evaluating their copyright value, and the popularity and reputation of the creators as well as the artistry and values of the works should be fully considered, so that the copyright value can be evaluated more objectively. Secondly, a professional digital music copyright value assessment organization should be formed, and relevant professionals should be recruited to participate in copyright value assessment, such as experts and scholars, asset appraisers, legal advisors, etc. In addition, the copyright value of digital music is dynamic, and its evaluation should fully consider the market changes, including the possibility that a certain type of music is more sought after in a certain period, as well as the value-added effect of audiovisual works and offline performances on digital music works.

6.4 Reduce the Cost of Maintenance

In order to encourage copyright owners to take up legal weapons to defend their rights in a timely manner when they are infringed, it is especially important to increase the lower limit of compensation, that is, no matter what kind of infringement is involved, the infringer should first compensate the copyright owner for the license fee and should pay the copyright owner's legal costs. Secondly, relevant departments should actively take advantage of the Internet and use big data, artificial intelligence and other technologies to achieve real-time supervision of audiovisual works posted on video platforms, so as to accurately collect evidence of infringement. Specifically, it is to retrieve evidence of infringement by automatically tracking, identifying and aggregating data information of music copyrights in real time, promptly identifying the responsible parties for infringement and quantifying infringement, so as to speed up the efficiency of dealing with infringement. Once again, it is proved that the music copyright protection model based on block chain can ensure that the copyright owners of works obtain corresponding economic benefits from various distribution channels, which is helpful to build a harmonious music market environment (Nana Wang et al., 2021)(Zhini Cai, 2020). So, relevant institutional associations have the obligation to popularize the application of blockchain and other technologies in digital music copyright protection to music creators, promote the application of these emerging technologies in reality, and protect the interests of music creators in all aspects in terms of confirmation, use and maintenance of rights.

7. Conclusion

Nowadays, various audiovisual works have become indispensable cultural products in people's lives, and their prosperous development has also given rise to many copyright infringement problems. As an important part of audiovisual works, the copyright protection of digital music should be given full attention. Due to the short time of the emergence of short videos, live broadcasts and other forms of audiovisual works, the relevant laws and regulations are still not mature enough, which brings great challenges to the protection of digital music copyright and also affects the enthusiasm of original musicians in music creation to a certain extent. In order to efficiently manage the illegal use of digital music works in audiovisual works and protect the legitimate rights of copyright owners, it is not only necessary to start from the perspective of the system of copyright protection, but also requires the joint efforts of the whole society to jointly explore the effective means of digital music copyright protection and remedy. In the future, with the support of relevant scientific and technological means, legal support and policy encouragement, the chaotic phenomenon of digital music infringement in audiovisual works will be improved, thus promoting the healthy development of China's digital music market and the benign operation of China's music industry.

Acknowledgments

I appreciate the guidance and encouragement of my mentor Mengyu Luo. I am grateful to the interviewees for sharing their views and insights with me.

Authors' contributions

This work was carried out solely by Sijie Sheng. The author was responsible for the conception and design of the study, data collection, analysis and interpretation, manuscript drafting, and final approval of the version to be published.

Funding

Not applicable.

Competing interests

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

Informed consent

Obtained.

Ethics approval

The Publication Ethics Committee of the Macrothink Institute.

The journal's policies adhere to the Core Practices established by the Committee on Publication Ethics (COPE).

Provenance and peer review

Not commissioned; externally double-blind peer reviewed.

Data availability statement

The data that support the findings of this study are available on request from the corresponding author. The data are not publicly available due to privacy or ethical restrictions.

Data sharing statement

No additional data are available.

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