

The Status Quo and Future of Intellectual Property Protection for Chinese Original Music

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Abstract: With the rapid development of economic society in China, the music industry has ushered in a brand-new historical stage of development and hit record highs in industry size, market coverage, influence and fields involved, etc. Among them, the proportion of original music is becoming larger and larger, which highlights the vigor of Chinese original music market in recent years. It has to do with the efforts of a large number of original music composers. From another perspective, limited by legal construction and judicial practice, etc., the intellectual property protection for Chinese original music (IPPCOM) has always been in question and really makes a huge impact to the original music industry. The topic of intellectual property protection for original music has been raised widely in recent years. It seems extremely necessary and urgent to study relevant topics in a systematic way. My study is established on this basis and hopes to discuss all kinds of problems with the intellectual property of original music (IPCOM) systematically, based on the topic of IPCOM. Meanwhile, the main objective of this study is to break shackles of IPPCOM and find a fundamental solution to promote intellectual property protection (IPP) by building standard essential patents for original music. In this study, we expect to achieve the research object by combining theory with practice and improve the effectiveness of study, to bring beneficial implications and help for the progress of IPPCOM.

Keywords: original music, standard essential patents, legal construction, judicial practice, copyright

1. INTRODUCTION

After 30 years of reform and opening up, China has become one of the world's largest markets. The development and integration of the industry have reached an unprecedented height. In 2010, China overtook neighboring Japan and became the world's second largest economy. It maintained an economic growth rate of 7% for many years and increasingly demonstrated a diversified economic vitality. Along with the rise of the production and living standards of

ordinary people in China, cultural entertainment industries based on the changes of personal income and thinking modes are rising sharply and showing a unique development momentum. Music, movie, tourism and other industries, in particular, developing rapidly and strongly boost the growth of Chinese economy. To take music market for example, the total size of Chinese music market industry reached 285.15 billion yuan in 2014 and grew by 8.28% in comparison to 2013. It has exhibited a strong development momentum.

The music industry, which is closely related to people's life, has a huge impact on young groups. Especially the rapid development of Chinese original music in recent years gives a more solid support to the "transformation and upgrading" of music industry. Original music is a fundamental support for the development of music. But the development of pop music in a general sense must depend on the genesis and development of original music, which has an extensive effect on different social strata. To take the United States, which has the most developed pop music in the world, for example, the incentive mechanism for original music and rise of digital technology also drive the progress of original pop music industry. This is undoubtedly a positive inspiration for the development of relevant industries in China.

Obviously, today the topic of IPP has raised increasing concern. In such a huge country as China, it seems even more necessary and practical to discuss the protection for original music. To examine the development path of original music in view of intellectual property and law and seek strategies to perfect standard essential patents for Chinese original music from the demand of the music industry itself, is a fundamental mission, which must be known and not be shirked by current Chinese original music practitioners.

2. RESEARCH PROBLEM

This study is based on IPPCOM. Overall, it is divided into two parts, i.e., the status quo of Chinese original music and IPP. To divide the research content, this study will start from the following three aspects.

2.1 The status quo of Chinese original music

Benefiting from the overall rapid development of Chinese economy, the size of Chinese music market is larger and larger and displays a flourishing momentum. As an important part of music market, the fundamental direction of original music is to pursue "originality". This is the cornerstone and foundation for the development of music industry. If the foundation of original music is destroyed, it will be a fatal blow to the entire Chinese music market. On the one hand, the development of Chinese original music is still "in the ascendant". A lot of talented music composers, singers and staff have composed a lot of excellent original music works with full enthusiasm. They become an indispensable force in the current music market. On the other hand, the survival and development environment of Chinese original music are very difficult. Many composers who make a living by creating original music still live a tough life, which

reflects the unsound mechanism of Chinese original music market and underlying problems with IPP.

For example, a prominent Chinese original music composer, Zhang Yadong, complained to his friend GAO Xiaosong that his deposits had never exceeded 1 million yuan, or even 100,000 yuan. As an influential original musician in China, Zhang Yadong's complaint and experience indeed reflects the current dilemma of Chinese original music. Affected by the weak IPP, piracy, network influence, tort, imitation, plagiarism, royalties and other problems spring up one after another and largely brings a great negative impact on the development of Chinese original music. Therefore, from the overall situation to purify the Chinese original music market and protect the intellectual property of original music by law, we must take more effective measures to resolve relevant problems and create a more healthy space for the growth of original music.

2.2 The necessity to protect IPCOM

The development of Chinese original music is still in the ascendant and shows great vitality. However, in stark contrast to this, our society hasn't paid high attention to original music. There is still a lack of awareness and initiatives to protect the intellectual property of original music. Original music is the foundation of music industry and constitutes a basic framework for the development of music industry. To protect Chinese original music, we must proceed from intellectual property. Otherwise, a series of unexpected problems will surface.

At the end of 2014, for example, Taylor Swift, the most popular country female artist in the U.S., bombarded online music at the American Music Awards. When a streaming media music service network Spotify removed her entire catalogue, her copyright holder in China, Universal Music also wrote letters to TTPod, NetEase, Xiami and other websites and warned that they must remove Taylor Swift's free online music. On December 24, 200 music works spread on NetEase Cloud Music platform was accused of alleged tort by KuGou. The platform was required to stop the play and download of relevant music immediately. The amount of claim was up to millions of yuan. Music channels, such as QQ music and Netease Cloud Music, have significantly enhanced their awareness to safeguard copyrights. Almost all parts of the world are discussing about a more reasonable sales and distribution mode in digital music environment. Starting from IPP is a unanimous choice of the industry.

From the perspective of legal theory, although the law stipulates that a copyright will be automatically obtained since a work is finished, the completion of work is not a known or credible time node. In other words, it is difficult for the original author to prove that he/she is the copyright owner. As a result, the author must have certain legal awareness, register his/her work with an authority consciously and form irrefutable and credible written documents of title. When the original author publishes his/her works on a network media, he/she should "indicate that the content mustn't be copied to other sites without permission". Moreover, he/she must create a screenshot of or otherwise save the web page on which he/she publishes for the first

time and have it notarized if necessary. Besides, website owners and managers have the obligation to review and mustn't develop a website at the expense of infringing composers' rights. So, it is very crucial to patent original music. Copyrights, ownership, standard essential patents, etc. derived on this basis also deserve wide attention.

To sum up, the problem of IPPCOM is age-long. It is a complex legal issue and also a social issue that involves multiple divisions of labor in the society. But at present, it is universally accepted that it is urgent to protect IPCOM. This is an essential requirement for the progress of social civilization, a fundamental demand for the sustainable development of music industry and even a fundamental requirement for the rejuvenation of Chinese culture.

2.3 Strategies and train of thought of IPPCOM

Needless to say, promoting IPPCOM is no mean feat. This is because from the perspective of judicial practice, IPPCOM requires building more detailed laws and regulations and improving the long-term mechanism. In addition, from the inherent thinking of the Chinese society, a vast majority of social public is still misfit or resistant to the mode of paid music. So to speak, the public base of music copyright protection and paid music is still unsound. From the overall situation to protect intellectual property, we need to promote IPPCOM more carefully and effectively to achieve actual effect.

For example, an amended draft published by Copyright Law raised the statutory damages from 500,000 yuan to 1 million yuan. It was considered a major breakthrough of this amendment. As it stands, compensation clauses may be added. In the future, it is also likely that civil cases grow into criminal cases. Now, music piracy in China is changing from "dare not", "must not" to "will not". This change is certainly of positive help to the promotion of IPPCOM in the future.

For another example, in July 2014, Alibaba acquired Xiami music and won the exclusive music copyright of The Voice of China successfully. In September, QQ music reached access and cooperation agreements with JVR music, HIM International, Emperor Entertainment Group, Wonderful Music, Huayi Bro. and other record companies and added exclusive columns to the mobile side. While Baidu music also signed cooperation agreements with many music copyright owners, such as Universal, Warner, Sony, Rock, EMI and Music Copyright Society of China, and took the initiative to explore a new cooperation pattern with the industry.

Taken together, to promote IPPCOM, we must keep a foothold in legal construction and judicial practice, perform effective judicial supervision and control, improve the quality of a standard essential patent system for Chinese original music and safeguard the rights and interests of original music composers and owners decisively.

First of all, to confirm rights. The main task of the Copyright Protection Center of China (CPCC) is to maintain rights and notify websites involved to remove illegal products. After the notice of CPCC as an authority, the removal rate can reach 95%-98%. If the content owners notify by themselves, it is difficult to achieve such an effect. The premise for official credibility

to take effect is to confirm the rights. Confirming rights can maintain the patents of Chinese original music well and provide a legal space for the development of original music.

Secondly, to settle accounts for copyright licensing. Due shares must be obtained, by credibility and technical means. There is a royalty settlement center in the United States, which settles royalties for the second licensing of music (the original work was the first licensing). It is a very big system with complicated pricing model, after years of accumulation. On this basis, the United States is planning to set up a copyright licensing platform. China is also building a platform, which allows the subject of industrial chain to get these services easily, cheaply and conveniently and give them a solution to settle accounts for copyright licensing. CPCC takes charge of Copyright Agency Center of China and serves as a royalty settlement center, or builds a platform to help the subject of industrial chain to give clear billing services.

Thirdly, to maintain rights. Licensing is to keep the main channel smooth, while maintaining rights is a deterrent force and must be legally deterrent. Apart from legal protection, there must be detailed solutions, too. For example, engaging in a lawsuit is indeed a solution, but if the cost is too high, the solution may not be available. Since 2010, CPCC set up a Chinese audio and video copyright supervision and investigation platform. Audios and videos can be extracted by feature. Entrusted by companies, the Center can supervise the use of a certain song on the entire network. In an Internet era, without the support of technology or platform, there will be no solutions. The key is to offer public services, using Internet thinking and help the subject of industrial chain to recover money, rather than simply crack down on them.

From the local judicial practice in China, quite a few local governments also promote IPP for original music tentatively. For example, in 2013, to improve living conditions of musicians, the government formulated Beijing Digital Music Copyright Income Doubling Plan, with a view to establish a new commercial mode for digital music copyright after three years of efforts preliminarily, double copyright income of authors, record companies and obligees involved in this plan, provide high-quality and influential music works for the public, form a favorable environment where originality is respected and encouraged. This plan includes strengthening law popularization, improving public awareness of copyright, building a copyright industry alliance, exploring a new music copyright operation mode, supporting to build a cooperation and trading platform, promoting the publicity of original works, strengthening administrative supervision, regulating market order, developing supportive policies, encouraging composition, dissemination and protection, etc. Specific measures include monitoring key music websites actively, building a reporting and complaining channel for obligees, carrying out special actions against digital music piracy, cracking down on tort and piracy strictly, associating with law-enforcing departments to investigate major cases about digital music torts for lucrative purpose, meanwhile, developing supportive policies, including setting up special funds for digital music copyright protection, and so on.

In general, to promote IPPCOM and benefit the original music industry using the achievements of legal construction, it is necessary and obligatory to do multi-level and multi-dimensional work. Only by pushing forward these jobs in a down-to-earth manner,

popularizing the concept of standard essential patents for original music and forming a normal state of music patent protection will IPPCOM achieve actual effect and the rights and interests of Chinese original music composers and owners be protected.

3. RESEARCH BACKGROUND

Original music is the essence of music creation and cornerstone for the development of music industry. Without originality, the music industry would be destroyed and the music audience would be discrete. The true meaning of music would be lost. So original music in any context in any country must be respected and protected and receive wide attention. This paper focuses on Chinese original music from the dimension of IPP and analyzes relevant issues from the perspective of intellectual property law. It has been proved time and again that it is due to the lack of laws and regulations on IPP and insufficient implementation and supervision that the rights and interests of Chinese original music are violated.

Of course, seeing from the overall background, Chinese original music in the narrow sense means the original content of Chinese pop music. Especially in recent years, the economic society in China has developed rapidly. In this context, the growth of Chinese music undertakings has also sped up. Chinese pop music is a typical example. Under the drive and efforts of many singers, such as Jay Chou and Phoenix Legend, the “original Chinese style” in Chinese pop music is very striking and even becomes a musical form with great social influence. It is deeply loved and sought after by general audience and fans. Pop music in the form of “original Chinese style” combines modern music composition with traditional Chinese culture and produce music works with a unique charm. The research value is worth pondering. Therefore, this kind of pop music established on originality has a unique charm and naturally attracts the favor of social public.

At the level of society, the prevalence of Chinese pop music, especially original Chinese style, has made contributions to the revival and development of traditional Chinese culture to some extent and allowed more young people to learn more about traditional Chinese culture by listening and enjoying “Chinese-style” pop music. For example, typical original songs such as Chinese Flower Pot, Lan Ting Preface, East Wind Breaks composed by Jay Zhou let more young people understand and recognize traditional porcelain, ink painting, calligraphy and musical instruments, etc., which has a positive influence on the popularization and promotion of traditional culture. Of course, we should also see that in Chinese pop music, Chinese style is too commercialized and entertaining. We must discriminate carefully, let it develop in a harmonious and healthy direction and contribute to the spread of advanced culture. Taken together, such kind of music creation based on originality is gospel for the development of music industry in China. We must encourage and support it.

At the level of law, IPP for excellent Chinese original music is still absent, misplaced, inadequate or overlooked. This is because on the one hand, detailed rules of intellectual property law are insufficient to cover all aspects of Chinese original music. On the other hand,

in the process of execution and implementation of IPP, problems come out in one way or another, making the protection for original music a mere formality, rather than a reality. This has caused great damages to original music composers and their companies. The key to these problems is to penetrate crucial problems with IPPCOM and investigate relevant issues from standard essential patents for original music.

4. RESEARCH FRAMEWORK

In this study based on IPPCOM, the overall structure is clear. The basic framework and structure are as follows:

Part One: Research background and research significance.

Part Two: The development and trend of Chinese original music. The current development and future trend of Chinese original music are analyzed, using survey, data and cases.

Part Three: The dilemma and problems with IPPCOM are judged, especially the problem of standard essential patents. This part is one of the key points in this study and explains the dilemma of IPPCOM in simple terms from legal construction, judicial practice, supervision and original music itself.

Part Four: Measures and solutions to promote IPPCOM. This part echoes with Part Three effectively and elaborates on how to better drive the industrial development of Chinese original music, form the standard essential patent system for original music, safeguard basic rights and interests of Chinese original music composers and owners, while protecting intellectual property, thereby driving intellectual property work to make orderly progress.

Part Five: Conclusion and prospect. By discussing the problem of IPPCOM, the author finally draws a conclusion and predicts the future trend of IPPCOM.

5. RESEARCH METHOD

In this study based on IPPCOM, the author proceeds in an orderly way using multiple methods and means, to reveal the dilemma of current IPPCOM more profoundly. To be specific, the main research methods in this study are as follows:

5.1 Literature review

Using the library, borrowing and the Internet, the author collects and summarizes literature, data, periodicals and papers, etc. and forms a systematic literature bank. Appropriate content is screened out from foreign literature and data, especially from developed countries like Europe, the United States and Japan and form basic research literature. Relying on research papers on renowned periodicals, the author finds beneficial content to support this study effectively.

5.2 Case study

This study based on IPPCOM doesn't elaborate theories, but put them into practice, in the hope of driving progress in reality. So the author adds many cases to the study to discriminate the current dilemma of IPPCOM from multiple aspects and perspectives, find feasible solutions with small cases as the entry point, validates those using legal theories on IPP and put forward feasible solutions.

5.3 Survey

This study regards survey as one of the important research methods. The survey is an important basis of this study. Two aspects are analyzed, i.e. overall survey and sampling survey. The former emphasizes an overall view of the Chinese original music market. The latter is based on an analysis of a specific region or ethnic group. Specific methods include sampling and questionnaire, etc. These methods can well explain why IPPCOM is caught up in dilemma and bring implications for strategic orientation.

5.4 Comparative analysis

In this study on IPPCOM, the object is certain, so comparative analysis should be applied more. For example, by studying and analyzing IPP for the U.S. original music, we can compare and find omissions and deficiencies in IPPCOM and better reflect on them. Meanwhile, this kind of horizontal comparison can reveal the root of problems and find a solution more easily. Besides, a longitudinal comparison between IPCOM and patent protection is also indispensable. That is, we need to compare different conditions of IPPCOM in different periods, especially its progress in various parts of China in recent years. More importantly, we need to combine horizontal comparison with longitudinal comparison. The effect will be better. It is vital importance for the progress of this project. Meanwhile, it can increase the "technical content" of the study.

6. CONCLUSION AND PROSPECT

It is universally acknowledged in the industry that the protection for Chinese original music must start from legal practice. In fact, more and more judicial practice also shows that the protection for original music copyright, standard essential patents, royalties and original rights and interests must be built on strict legal network. The efficiency of implementation and execution is also very crucial. IPP for original music involves copyright protection, while a collective copyright management system is the best footnote for a harmonious society and a vivid benchmark for the degree of rule by law in a country. The collective copyright management system is to protect the rights of music authors that cannot be claimed by

themselves. But there is a gap between China and developed countries in the popularization of this system. Looking at the issue of IPPCOM from legal construction is an important goal in this research field.

On the other hand, we can see that many excellent original music practitioners have set up good examples for the industry and pointed out the direction for IPPCOM. For example, with the rapid development of Chinese pop music, a lot of pop singers with great social influence have emerged. Many of them are famous for Chinese genre and deeply loved by fans, especially young people. For example, Jay Chou and Vincent Fang worked a miracle of Chinese-style music during 2005-2010. Their influence was far-reaching. Again, a series of Chinese-style songs by Phoenix Legend are on everybody's lips. Also everyone knows them. In addition, many singers are under the influence of Chinese-style music and compose many original pop music works in Chinese genre with high quality and profound influence. Behind the success of these pop music works is the improvement of the quality and protection for original works. Their combination allows excellent original music to "pass through the hall into the inner chamber" and produce a wide range of economic and social benefits.

Respecting copyright and patent and protecting intellectual property is a consensus, or rather, a contract with legal binding force formed with the progress of human history. It is a sign of modern civilized society. In the age of Mozart and Beethoven, it was hard to guarantee IPP for composers. At that time, most composers were entrusted by theatres or private persons. They didn't sign any contracts with publishers. If their works were pirated and performed in other theatres, they can't receive any rewards. Without legal protection, composers must try by all possible means to protect their own rights. For example, when composing a piano, band and chorus work titled *The Choral Fantasy*, Beethoven wrote the band and chorus part in just a few weeks. But he left out the piano solo in the first half of work on purpose and composed the long piano opening of *The Choral Fantasy* at one stroke on the day of performance. Similar cases fully demonstrate that in an age with unsound IPP, the initiatives of original musicians showed the preciousness of originality.

Thus it can be seen that respecting copyright and patent and protecting intellectual property not only concerns vital interests of copyright owners, but also protects people's creative and innovative spirit. It is an inner impetus for a nation and a country to carry out cultural creation and technical innovation. Only with IPP, a good social environment and legal protection will our country gain a perennial source for development. This is an implication of IPPCOM and also an important expression of the spirit of contemporary society.

With this goal and appeal, from the overall situation of protecting intellectual property of Chinese original music, we need to establish and perfect a copyright law enforcement system adaptable to the regulations of copyright law and the current severe situation of copyright protection as soon as possible. Meanwhile, refine the standard essential patent system for original music. For example, we need to further improve copyright laws and regulations and revise copyright laws in time, especially criminal responsibilities of copyright protection, enhance the legal deterrent force to crack down on tort and piracy, improve copyright law

enforcement mechanism and strengthen copyright law enforcement. Based on the basically sound legal system for copyright protection, we need to shift the focus of copyright protection to strict law enforcement, increase financial input into copyright protection and change the “unsound organization, unguaranteed materials and methodless enforcement” of copyright law enforcement department thoroughly. Intensify law popularization and dissemination and carry out national intellectual property education in depth. Only by doing these will IPCOM and patent protection achieve actual effect, the core value of original music be highlighted and a society of rule by law be better constructed.

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