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Copyright and Music Policy in China: A Literature Review

Authors

John Street
University of East Anglia
j.street@uea.ac.uk

Li Zhang
University of East Anglia

Maja Simuniak
University of East Anglia

Qingning Wang
University of East Anglia

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Abstract

This literature review documents English and Chinese language research into copyright policy in China. It is supplemented by news and specialist trade reports on the topic. The paper locates copyright policy within a wider context that is defined by: 1) the effects of digitalization on the Chinese music industry; 2) the impact of China's engagement with the global economy; and 3) initiatives taken by the Chinese government to develop its creative industries. Copyright policy is a product of all three, framed by the distinctive features of the Chinese political system and by the emergence of China as a key player on the global stage. The story of copyright policy in China is symptomatic of the country's changing international role and its internal politics. The latter is marked by the rise of industry stakeholders who have played a decisive part in shaping policy, and by a desire to present China as a source of creativity (rather than copying). The former, it is suggested, is marked by a shift from China as a 'norm taker' to China as a 'norm maker' in the conduct of global relations.

Introduction

Recent years have seen major reforms in China's policy on copyright. Like the rest of the world, China has confronted the impact of digitalization on the creative industries. But in the Chinese case the internet has not been the only driver of change. There has been the pressure generated by the country's ever closer integration into global trading agreements. There has also been the desire to correct a widespread view, whether right or wrong, of China's creative

industries. Once stereotyped as a country associated with widespread piracy, a preference for imitation and an absence of creativity, China has been actively seeking to reverse these images and associated practices. And, for some of the authors we discuss, it is succeeding in this ambition. China's is shifting from being a 'norm taker' to a 'norm maker', setting the agenda for future developments in the creative industries (Yu, 2011).

The body of the review is organized chronologically and thematically. The historical narrative is divided into four periods: a) pre-2000s: copyright and the music industry is largely neglected, save for content control (censorship or propaganda); b) early 2000s: increasing concern about piracy, engendered by closer Chinese involvement with global markets and global trade agreements; c) mid-2000s: greater global cooperation and reform of the domestic copyright regime; d) mid-2010s: copyright reform is stalled.

The literature review allows us both to assess these changes, and to identify the different causes attributed to them. It also enables us to put them in a wider context. More particularly, it makes possible an assessment of the current state of research in both English and Chinese language scholarship on copyright and copyright policy in respect of music in China, and to identify the research agendas emerging from them. Our review suggests that this research derives from a range of disciplines or fields: legal studies, policy analysis, cultural politics, economics and business studies. It focuses predominantly upon the market and the impact of globalization, and upon the state's role in each. Relatively little has been written about copyright and music consumption in China, beyond reference to piracy, which is attributed both to the assumptions embedded in Confucianism and to more pragmatic economic incentives (Shi,

2008). The literature does indicate, however, that China is home to a thriving music culture. Whether it thrives despite, or because of, the copyright regime is a source of debate. Whatever the case, the literature reveals that the copyright regime is undergoing reform, and that this is dependent on political will as much as industrial or market incentives. Indeed, it may be that the highly politicized nature of copyright in China accounts for the impasse reached in the latest (2010-) series of reforms.

In compiling the literature reported here, we have attempted to identify all scholarly work published in English on China's music industry, especially as it relates to Intellectual Property (IP). We have supplemented this with equivalent literature in Chinese. We have also collected news items and industry/trade magazine reports (in English and Chinese) that relate to our topic.

In identifying appropriate themes, we considered different approaches. These included referring to the discipline/field (and associated approach/method). But while this might be of interest to those located in these specific fields, our view is that a more productive approach is to organize the literature around topics that derive from the policy agenda and policy practice of the copyright regime. These led us to focus upon:

1. China's creative industries and the case of music
2. Government national and international policy in relation to the creative industries (especially in response to South Korea and Taiwan)
3. Copyright regulation: the politics of reform
4. The role of intermediaries in the administration of copyright and in the future copyright regime

Throughout the review our attention is upon the drivers of reform, crudely captured in the contrast between exogenous and endogenous factors; that is, between forces at work globally and those at work domestically, where in both cases politics and economics are heavily implicated. Of equal interest is how commentators identify key players in this process of change. It seems that while the state (and the Communist Party) is decisive, its authority is moderated and mediated by the rise of new corporate players (e.g. Alibaba, Baidu, Tencent etc), and by new voices released by economic and political change (from the emerging middle class to the representatives of musicians and others).

China's experience of digitalization is not entirely dissimilar to that in the West, but it is obviously filtered through a different political, economic and cultural order. While the players look the same – and *are* the same in the case of Google – the way they operate is different. And in many ways the differences – and what accounts for them – are what inspires the emerging research agenda suggested by this review.

By way of background: the Chinese music market is smaller than conventional wisdom might anticipate. Combining music and video, it was reported to be worth \$243 million in 2013 (Marketline, 2014). According to the same report, it was not expected to grow rapidly, reaching \$247 million in 2018 – a growth of only 0.3% from 2013 (Marketline, 2014: 11). By comparison, the Japanese market in 2013 was estimated at \$5,582 million, and South Korea's at \$579 million (ibid.: 10). Or to give another illustration: in 2011, China had the world's second largest economy and a population of 1.3 billion people, but it came 22nd in the world for music sales (Yang, 2012).

The Chinese music industry pre-digitization

The modern history of China's popular music dates back to the 1930s in Shanghai. However, due to the intervening wars and the Cultural Revolution, its music industry hardly developed at all until the end of 1970s, when widespread economic reforms were instituted. For much of the 1980s, most of the popular music consumed in China came from Hong Kong and Taiwan, although there was an emerging mainland music scene. In the late 1980s, popular music was formally recognized by the mainstream industry, marked by its inclusion in several major national music events organized by China National Radio and China's Central Television (Qiao 2009). From 1988 to the early 1990s, the popularity of northwest wind [Xibeifeng] or pop songs in the style of northwest Shanxi folk songs led the development of China's popular music. At the same time, rock and roll arrived on the mainland.

China's music industry grew fast in the 1990s, giving rise to an increasing variety of musical styles and talent. This period saw the establishment of record companies and music-related entertainment programmes in mainstream mass media (Dujunco, 2002; Xu, 2013; Zhang 2014). With its entry into the World Trade Organisation (WTO) in the early 2000s, China became part of the international music market and began to share in the development of technology that was to drive the digitalization of music.

Prior to the advent of digitization, the conventional wisdom was that the Chinese music industry, together with its partner creative industries, was subject to a weak, almost non-existent, copyright regime, and that piracy was rampant (Chow, 2006; Swike et al, 2008). The BBC spoke once of the 'Chaos of China's Music Industry' (BBC online, 21 February 2008), and an academic commentator

described China as being 'at the heart of the international piracy epidemic' (Priest, 2006). This weakness in the regulatory regime was to be found not just in the law, but in all the actors responsible for the operation of the copyright. So, for example, the collecting societies/collective management organisations (CMOs), so vital to the operation of copyright in the West, were deemed to be largely ineffectual (Jiang, 2013). Furthermore, it was assumed that this state of affairs did not worry unduly the Chinese authorities. Indeed, according to Alex Cummings (2013), the first attempt to tackle the problem of piracy was motivated not by the loss of revenue, but rather by ideological concern over the malign influence of the West's decadent music. As Cummings (2013: 183) writes: 'Ironically, in the early 1980s, the Chinese government took the sort of proactive steps to suppress piracy that Western leaders later implored the Communist state to take in the 1990s.' But even if the initial motive was not money but ideological purity, the economic costs of piracy were to become an issue. This took some time to register, however. For much of the second half of the twentieth century, mainland China, Hong Kong and Taiwan were partners in a thriving bootleg economy. Originally, it was Hong Kong and Taiwan that supplied China with its bootlegged music. Subsequently, when Hong Kong and Taiwan began to comply with global copyright regimes, it became China's turn to supply illegal copies to Hong Kong and Taiwan (Cummings, 2013: 195-6). It was only when China began to engage more directly with the world economy that it started to reform the regulation of copyright (although this world engagement is not in itself sufficient explanation of what happened subsequently). In the 1970s, the UN secured the support of many nations to sign up to the Phonograms Convention instigated by the World Intellectual Property

Organisation (WIPO) . China did not become a signatory until 1993 (Cummings, 2013: 186). The General Agreement on Tariffs and Trade (GATT) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) provided further incentives. Since the 1980s, the US government has pressured China for improvement in its IP regime. Under the threat of trade sanctions, China agreed in 1992-3 to the Berne Convention, the Universal Copyright Convention, and the Geneva Phonograms Convention (Chen and Maxwell 2010). China's ambition to join the international community, particularly the WTO, also provided an incentive to reform copyright policy.

The pressures for change, and the factors affecting the form of that change, were not exclusively external. Two other elements matter to the story. The first is the political system itself (and its operation). No account of copyright reform in China can afford to overlook the domestic management of political power and the policy process. Whatever the pressures from the global order, they are mediated and managed by the Chinese political system and by the internal politics of the Party. The other key element that supplements the exogenous forces is policy on culture. This is not confined to propaganda and censorship, although both play their part; there is also a desire to realize the commercial (and other) value of the creative industries. In 2010, the Chinese government published its 12th Five Year Plan, which, for the first time, described the cultural industry as one of the pillars of the national economy.¹ Two years later, the Ministry of Culture published a development plan for the cultural industry.²

¹ Available at <http://politics.people.com.cn/GB/1026/13066190.html>, accessed on 20th July 2015.

² http://news.xinhuanet.com/fortune/2012-02/28/c_111581378.htm, accessed on 20th July 2015

These changes are reflected, according to Anthony Fung (2007), in two important shifts in the state's relationship to the music industry. The first is discerned in the state's move from a concern with censorship of music to its ambition to promote Chinese music for economic and nationalist reasons. The second involves a re-definition of the form and location of Chinese popular music. This is represented in the transition from Canto pop to Putonghua pop; the former is associated with Hong Kong, and the latter with Beijing, Shanghai and Guangzhou. This is not to say that censorship ceased – in 2011, the Ministry of Culture proscribed Lady Gaga, Katy Perry and the Backstreet Boys (*Huffington Post*, 26th July 2011) – but rather to indicate the changing territory on which music policy operates. It is against this background that the post-digitization story emerges.

Digitization and the Chinese Music Industry

The recent history of the music industry in China is not radically different from that in the West. As one writer has observed: '[T]he development of China's digital music industry was almost synchronous with the West' (Li, 2013: 70). China experienced the effects of digitization, and responded in similar ways. Digitization combined peer-to-peer technologies, online sales, ringtones and later streaming services. Online music sales grew by 14% in the year 2010-11; and 600 million people – 70% of mobile subscribers – were reported to use music streaming sites (Tan, 2011). These changes were engineered and operated by a variety of firms (A8, Baidu, Top100 etc.), which saw the integration of computing and communication interests. John Li (2013: 72-3) describes the Chinese digital music industry as an 'integrated system', in which

'service providers' and 'content providers' are mutually dependent. Their development was aided by the introduction of 3G in the late 2000s, but it differed from its Western equivalent. It was 'skewed' towards the mobile music market (90% in 2004; 73% in 2008), as opposed to the online market (10% in 2004; 27% in 2008)(*ibid.*: 80). According to the 2014 *Development Report of China's Music Industry*, by the end of 2013, China's total digital music sales were worth RMB 44.07 billion (£4.5 billion), with RMB 39.71 billion coming from offline music sales and RMB 4.36 billion from the online market.³ China was home to 0.453 billion internet music users, of which 0.313 billion were mobile music users (Shao 2014: 52).

The boom in digitization is dated from 2004-5, and its effect – most notably the decline in CD sales – is an emerging theme, as is the persistence of the problems of piracy, and its consequence for artists. Eric Priest (2014c) gives an indication of the effect of piracy: 'China's recorded music revenue is so disproportionately low that China's total recorded music revenue in 2011 was eclipsed by that of Thailand — itself a high-piracy country with one-twentieth the population of China.' In 2009, there were around 7,200 online music websites in China, but fewer than 20 of them provided legal copies (Hu 2009:52). Much of the music consumed was downloaded and streamed for free. Websites that provide legal copies relied on commercial ads for survival. Of the total of online music revenue in 2009, advertisements generated 88.3% of the income, whilst that from user payment and subscription accounted for only 5.1% (Chen 2013).

³ Available at http://www.ce.cn/culture/gd/201411/14/t20141114_3905292.shtml, last accessed on 21st July 2015.

The unexpectedly large ringtone market has, according to some commentators, saved the Chinese music industry (Tu 2006).⁴ Offline music sales were worth RMB 2.6 billion in 2005, RMB 1.2 billion of it coming from ringtones, almost equal to traditional record sales (ibid: 68). This growth was unexpected, but was quickly exploited. Service providers began to offer various sounds to customers, from quirky and humorous items to classical and popular music. Most mobile users favoured popular music, which accounted for 70% of the ringtone market - the song, *Mice Love Rice*, was reported to be downloaded more than 600,000 times in a single month in 2005 and received RMB 20,000,000 for its sale (ibid: 68-9). These sales were strictly regulated by the copyright regime, managed by China Mobile and China Unicom, China's two major communication networks. All ringtones had to be authorized by the record company and mobile users had to pay for them.

The success of the ringtone market should not distract from the continuing prevalence of piracy.⁵ Although the number of China's internet users was twice that in the US, its digital music income per capita was only 1% of that of the US (Pu 2001: 48). Attempts to deal with this met with mixed results. The explanation for this, according to one view (Chow, 2006; Dimitrov, 2009; Mertha, 2005), is that the regime lacked the political will to challenge piracy effectively. Others have argued that China has in fact made major inroads. China, they note,

⁴ In China there is a difference between the ringtone and the ringback tone. The former refers to the sound/music that the phone holder hears, and the latter is the one that the dialer hears before the phone holder picks up the phone. The sales of the ringtone market are very limited, but the sales of the ringback tone market are huge. We use 'ringtone' to cover both.

⁵ Nevertheless, if we take piracy into consideration, we get a different picture. The International Federation of the Phonographic Industry (IFPI) reported that, while in 1997 China's music sales ranked it 21st in the world, the estimated sale of the pirate versions was 20 times of that of the legal copies. On this basis, if there were no piracy, China's music sales would have placed the third in the world after the US and Japan (Pu, 2001: 8).

unlike the US, has 'specialized intellectual property divisions within its courts' (Priest, 2014a: 1), and this has delivered year-on-year increases in prosecutions. In 2008, the number of intellectual property right prosecutions, it is claimed, were more than a third higher than the previous year (Pang, 2012: 9; Sepetys and Cox, 2009; Tong et al, 2008), and in 2011, 300 illegal download sites were closed (Tan, 2011). Indeed, Xuan-Thao Nguyen (2011) argues that China has become stricter in its prosecution of IP offences, just as the US is getting softer. However its effects are judged, it is clear that there has been a change of policy, and that it stemmed from the Ministry of Culture and its 2009 *Notice on Strengthening and Improving the Content Review of Online Music*. The Notice restricted those who can trade on the internet. Those allowed to do so had to be approved by the Ministry of Culture to engage in the production, release, dissemination and importing of online music products (Dong and Jayakar 2013: 95; Chao, 2011; China IPR, 2014). However, the Ministry has not operated alone, but in conjunction with industry players. An illustration of this is the formation of the Alliance of the Digital Music Industry (ADMI) in 2011, which brought together important music industry corporations including Tencent, Sina, China Record Corporation and the major telecoms companies. Together they committed to abide by the regime that regulated online music.

The existence of ADMI owes much to the emergence in China – as in the West - of the streaming services. These included Xiami and Baidu, both of which appear to have been modeled on Spotify. And like Spotify, their business model depends on signing deals with the content rights holders. Baidu, for example, reached agreement with Universal Music Group, Sony Music Entertainment, and the Warner Music Group, and signed deals with 'One Stop China', a joint venture

between Universal, Sony and Warner, for rights to their respective catalogues. This agreement also helped Baidu to win its international reputation. Its stock market price on the NASDAQ reached an all-time-high right after the signing (Dong and Jayakar 2013: 97). Both Baidu and Xiami have subsequently become part of the Alibaba empire (*International Business Times*, 4th June 2013).

As with Spotify, musicians in China have expressed concern about the rewards that they receive from the streaming services.⁶ There is some of the same secrecy that affects Western streaming income (Seabrook, 2014), but Xiami at least has been more transparent. In the first two years of its existence, it claims to have taken no money for itself. Instead, streaming terms, overseen by the National Copyright Administration (NCA), have split as payments as follows: composer 10%; lyricist 10%; singer 80% (Xiang, 2013). This would seem to suggest that other right holders – e.g. the record label - receive nothing.

The rise of the streaming service (and the issues associated with them) might seem to suggest a trend towards the ‘Westernisation’ of the Chinese music market. This may not be the case. Western acts (such as Taylor Swift) have, for the most part, failed to make a significant impact in China. Rather, the rise of streaming services have been presented as part of the process by which the centre of the Chinese music industry is shifted away from Taiwan and Hong Kong, and towards Shanghai and Beijing and mainland China more generally. And while, in a similar vein, it might be supposed that digitization also represents an opportunity for Western companies to get a foothold in the Chinese market, Lucy Montgomery and Brian Fitzgerald (2006: 413) argue that

⁶ See the results of a survey published by China Music Radar: <http://www.chinamusicradar.com/asian-news/musicians-guide-survey-results/>

Western companies have, in fact, been reluctant to invest. Google's involvement in music streaming in China was reported to have collapsed because of lack of revenue (*Wall Street Journal*, 21st September 2012).

Music policy in China

While the drivers of industrial and technological change in the music industry may be similar in the West and in China, the role of the state might be expected to be radically different. And to the extent that the politics of music content remains a concern of the state, this is undoubtedly true. But the part played by the state is not the only distinguishing factor. Culture matters too. Writing in the 1990s, Tim Brace (1993) argued that music occupies a central role in Chinese life, a consequence of the Confucian tradition that infuses and informs its culture, and which, according to some writers (Alford, 1995; Butterson, 1996), also explains China's historical indifference to intellectual property – 'to steal a book is an elegant offense'. A study of Chinese college students reported that they feel no legal or ethical issues in purchasing pirated goods (Stephens and Schwartz, 2013). Brace argues that - in the context of a Marxist/Maoist political ideology and politics – this creates a contradiction in music policy between, on the one hand, respecting popular traditions and reflecting popular taste and, on the other, guiding and shaping them (Brace, 1993: 10).

For much of the history of the People's Republic of China, it is claimed that 'music as well as other cultural forms were viewed as means of propaganda for the prevailing state political ideology' (Ho, 2000). Hence, music policy was about shaping taste. Ju Qui-hong (1991: 20), for example, suggests that the late 1970s saw the authorities relaxing their insistence on 'majestic' music, and allowing for

a 'softer' more 'lyrical' style that reflected a 'pluralistic' society's 'pluralistic tastes and values'. Zeng Sui-jin (1991) also speaks of a greater 'heterogeneity' in music after 1978, when Deng Xiao-ping's 'open-door policy' was announced. And as Wai-chung Ho (2000) notes, what has been the case in mainland China does not apply to Hong Kong, where music has never been subject to the same degree of control, even after 1997.

For the mainland, though, censorship remains an issue. The authorities, following the period of economic reform, have been trying to develop a new form of music censorship in order to keep pace with a fast changing society and economy. In December 2006, the Ministry of Culture published *Suggestions on the Development and Management of Internet Music*.⁷ Among its requirements was the injunction that all imported music must be censored by the Ministry of Culture before going to market. It also insisted that internet music companies should vet the music put up on their websites by users. However, with the rapid development of China's digital music industry, the 'Suggestions' were not fully implemented by internet service providers and content producers. As a result, August 2009 saw the Ministry of Culture publish the *Notice of Strengthening and Improving Internet Music Content Censorship* (Ministry of Culture [2009] No.31). The Notice defined internet music and clarified the procedure for censoring imported music products. It also required music companies to register domestic music products with the Ministry of Culture.

At the end of the 11th Five Year Plan (2006-10), the Chinese authorities had begun to develop a new agenda for the creative industries, a move that has been

⁷ Full details of the 'Suggestions' are available at <http://tech.sina.com.cn/i/2006-12-11/17481282518.shtml>, last accessed on 22 July 2015.

seen to emulate that of its near neighbours in Korea where the global success of 'K Pop' was regarded as a product of government policy (Kwon and Kim, 2014). This change was relatively slow in emerging. Michael Keane (2009) argues that, while in the early 2000s there were advocates of intervention to promote the creative industry, they were in a minority. He reports (2009: 434) a Ministry of Culture spokesman as arguing 'that whereas the Chinese cultural industries integrated economics and ideology, the UK creative industries were lacking ideology'. It was only with the emergence of 'The Cultural Industry Promotion Policy' (CIPP), introduced in 2009, that the minority became a majority. The CIPP was designed to promote the creative industries in a manner redolent of the South Korean model. It is possible – although there seems to be no direct evidence of this⁸ - that the Korean model influenced thinking in Beijing. Certainly, with the increasing emphasis on the commercial value of music (as opposed to its propagandist function), it became inevitable that the state's priorities changed (Kraus, 2004).

One example of this change is the creation of Music Valley, just outside Beijing, to serve as a 'National Music Industry Base'. Its clientele were to be musicians, who were provided with studios and instruments. Another example is the call, reported in *The China Daily* (European) (Chen, 2014), for greater investment in the music industry, and for the development of a new business model. Since 2009, the government has approved the establishment of National Music Industry Bases in Shanghai, Guangdong and Chengdu. By the end of 2013, the

⁸ Although see a positive report of the Korean approach in the *South China Morning Post*, 30th November 2012

total assets of these Bases were worth RMB 8.2 billion.⁹ In February 2012, the Ministry of Culture published *Plans to Double the Value of Culture Industry in the 12th Five Year Plan Period* (Ministry of Culture [2012] No.7), in which the music industry – 8% of the total culture industry – featured prominently.¹⁰

Accompanying policies designed to promote the music industry were those designed to eliminate piracy. These were not inspired primarily, as in an earlier era, by a desire to control content (although that ambition remained), but rather to challenge the dominance of Western culture. As Michael Keane (2009: 433) argues: ‘China would invest in its culture, not just for economic reasons but as a way of resisting what many conservatives felt would be the inevitable inroads of Western movies, television and advertising.’ The 12th Five Year Plan (2011-16) outlined a ‘going out’ strategy to export Chinese culture and exercise global soft power. The state’s motives, therefore, appear to be multifaceted: economic growth and competition, content control, international reputation and ideology. These mixed motives beg the question as to how we should characterize the state’s role in the Chinese music industry. Martin Cloonan (1999) has identified three types of music policy regimes: the authoritarian, the benign and the promotional. These were designed to capture variations in the state’s use of various levers or policy tools to shape music policy (these included censorship, copyright, broadcasting, immigration, tariff barriers and subsidies). As Cloonan himself acknowledges, the three forms represent ideals types at best, but China would have been allocated to the authoritarian category, the assumption being

⁹ The 2014 Development Report of China’s Music Industry, available at http://www.ce.cn/culture/gd/201411/14/t20141114_3905292.shtml, last accessed on 21st July 2015.

¹⁰ Ibid.

that music policy was directed from the top and was designed to serve and maintain the interests of state control and political order.

The reality is yet more complex. Copyright policy, for example, has not derived directly from edicts issued by the Communist Party. Indeed, the most recent reforms were put out for public consultation (1709 Blog, 2014). In this respect, China is not straightforwardly authoritarian. Indeed, it might even be understood as adopting a variant of neoliberalism. Certainly, Keane detects evidence of a neoliberal turn, framed by political authoritarianism, which he calls 'authoritarian liberalism' (Keane, 2013: 18). 'The Chinese state', he writes (Keane, 2013: 17), 'intervenes in media and cultural markets on a number of different levels, over and above creating institutional frameworks.' The new initiatives – like Music Valley and the National Music Industry Bases – always involve Party members in the planning process.

Other writers discern other motives. In her study of China's creative industry and its IP regime, Laikwan Pang (2012: 13-14) contends that China's policy is not driven simply by the desire to ensure that markets operate efficiently and comply with international standards, but also as a way of registering China's creativity on the world stage. For reasons of national pride, there is a desire to counter the impression that China copies what the rest of the world creates (Zhang, 2010), albeit filtered through the political sensibilities that inflect Chinese accounts of 'creativity' (Keane, 2009: 433). Again, while this might describe policy driven by the political elite, it is claimed that the elite is itself reacting to pressure elsewhere in society. The demand for more creativity, for example, is attributed to the emergent middle classes in China (Montgomery and Fitzgerald, 2006: 416). If this is the case, then both the willingness to

consult on copyright policy and to take a more active role in the creative industries, let alone the neoliberal tendency, suggest a more complex picture than that of 'authoritarian' cultural policy. Against this background, we turn now to the specifics of copyright reform in China.

Changes to copyright policy in China

According to John Li (2013: 77), the new integrated digital music industry has struggled to develop its business 'due to music copyright and unfair profit distribution issues [between service providers mobile business operators]'. This problem has become especially acute given the preponderance of mobile music use, and the adverse effect of piracy on it (ibid.: 81). This has been recognized by the Chinese authorities. Yan Xiaohong, deputy chief of the State Copyright Bureau, offered an unequivocal statement of intent: 'We encourage innovative content produced by Internet users, but plagiarism and modification of others' work without permission will be banned and punished' (*China IT & Telecom Report*, 24 April 2009). But, of course, there may be a wealth of difference between intent and implementation. However, it is clear that, since the turn of the millennium, China has greatly strengthened its copyright regime.

China's first copyright law was introduced in 1990, 'after a decade of intense internal debate over the appropriateness of copyright in a socialist system' (Priest, 2014a: 1). The resultant law bore a family resemblance to the Western version in its recognition of the author's economic and moral rights, and in the provision for redress through the courts. But, according to Eric Priest (2014a: 1), it was not as stringent as the US's version, and it put copyright within the context of a socialist state. Article 1 identifies the purpose of copyright: 'This Law is

enacted, in accordance with the Constitution for the purposes of protecting the copyright of authors in their literary, artistic and scientific works and rights related to copyright, of encouraging the creation and dissemination of works which would contribute to the construction of socialist spiritual and material civilization, and of promoting the development and flourishing of socialist culture and sciences.’¹¹ Initially, it did not provide for rights in the broadcasting of music, and was considered to provide less protection than that offered elsewhere (Zhang, 1997).

China’s copyright policy consists of one law (the Copyright Law), and a series of regulations. The regulations complement the law, and are revised to update or strengthen its operation. The regulations include, for example, the ‘Regulation on the Protection of the Right of Communication on Information Networks’, which is also called the ‘Internet Regulation’, first enacted in 2006 and revised in 2013 (State Council 2013 No.634); ‘Regulations on Copyright Collective Management’ (State Council 2004 No.429); ‘Tentative Methods on Payment for Using Audio-Visual Products by Broadcasting Radio and Television’ (State Council 2009 No. 566); ‘Copyright Law Implementation Regulations’ (2nd revision) (State Council 2013 No.633); ‘Explanation of Some Issues on the Application of Law in Handling disputes of Copyright Infringement on Computer Internet’ (the Supreme People’s Court 2006 No.11); ‘Opinions on Some Issues on the Application of Law in Handling Criminal Cases of Infringement of Intellectual Property Rights’ (the Supreme People’s Court 2011 No.3), and so on.

¹¹ The law is available in full at: http://www.ccpit-patent.com.cn/references/Copyright_Law_China.htm

Over the years, China's legal system has developed stronger IP protection. Most recently, on 8th July 2015, the National Copyright Administration published a 'Notice on Ordering Internet Music Service Providers to Stop Communicating Unauthorized Music Products'. The Notice requested the service providers to remove all unauthorized music from their websites by 31st July 2015, otherwise, they would be severely punished by law.¹² This has led to some two million songs being deleted, according to press reports.¹³

The 1990 original law has itself been reformed, first in 2001 and then in 2010, but throughout the law remained linked to the socialist ideal. The 2001 version modified the emphasis placed on socialism, and expanded the range of economic rights – including broadcasting - that were protected. It also acknowledged the role of the internet and the need to protect online rights (Priest, 2014a: 2).

These changes did not deliver the effective enforcement regime that the US, among others, were demanding (Yu, 2005). According to the International Federation for the Phonographic Industry (IFPI), in 2004 90% of all record sales were pirates; in 2003, legitimate sales were worth \$198m, while pirates were estimated to be worth almost three times as much \$591m (IFPI, 2004).

The 2010 law was intended to meet such concerns, and included the establishment of the rights of Collective Management Organisations as not-for-profit bodies regulated by the National Copyright Administration (Article 8). The 2010 reforms were intended to stamp out 'plagiarism and unauthorized modification', and to ensure that radio TV pay for their use of music (Hua, 2009).

¹² Available from the official website of China's National Copyright Administration at <http://www.ncac.gov.cn/chinacopyright/contents/483/255725.html>, accessed on 22 July 2015.

¹³ Reported in the China Times, 5th August 2015: <http://www.wantchinatimes.com/news-subclass-cnt.aspx?id=20150805000013&cid=1104>

This included the introduction of a controversial statutory licensing measure, which would allow broadcasters to use music without contacting the original right holder. It also, though, introduced the requirement that owners of rights prove their ownership claims (Global Outpost, 2011).

Subsequent amendments were proposed in March 2012 (1709 Blog, 2012). These included further support for CMOs (Jiang, 2013), together with what became known as ‘the 3 month rule’. This referred to the law that would allow music to be re-used after three months of publication without the consent of the right holder, as long as the authorities were notified of the re-use and there was payment of fair compensation (*China Daily (USA)*, 19 May 2012). This last phase of reform has yet to be implemented. Following public consultation, which included foreign stakeholders and the use of expert advice, it emerged that there was consternation at the proposals. Composers and record industry executives expressed anxiety about the ‘3 month rule’. Partly this was caused by confusion over what exactly the rule entailed – did the rule apply to composer rights or sound recording rights? Meanwhile, broadcasters raised objections to the requirement placed on them to pay for the recordings they used. It seems that, as a result of these objections, the momentum behind the reforms has dissipated.

Explaining change in copyright policy

There are three general questions that emerge when considering policy on copyright in China. The first is why it was virtually non-existent, until relatively recently. The second is what caused this situation to change. And third is what form copyright policy is now taking – is it a clone of western copyright policy (insofar as there is a single form), or is it taking on a distinct, Chinese aspect?

We have mentioned three general explanations in the course of this review. These are cultural (the role of Confucianism), political (the role of the state and its ideology), and international (China's relations with the outside world). Scholars draw on all three, but differ in where they put the emphasis. Peter Yu (2008), for example, argues change has been dependent on the political will, not of the Chinese Communist Party, but of the US, which he contends has not pushed as hard as it might for change. By contrast, Hong Xue (2012) makes a distinction between the phases of change. He identifies three. In the first two phases (2001 and 2010), he contends that the reforms were a response to trade relations, and the obligations imposed by the WTO (membership of which required signing up to TRIPS). This resulted in China becoming compliant with the TRIPS regime (Torremans et al., 2007). The more recent round of reforms, however, Xue attributes to a different set of forces. The 2012 reforms, he argues, were driven not by 'imminent trade pressure'. Instead, they served as 'a touch stone of Chinese national strategy of indigenous innovation. The national strategy seeks to promote China's development into an innovative, IP-intensive economy primarily through stimulating more intellectual property rights developed and owned by Chinese' (Xue, 2012: 353).

Other authors disagree with Xue, at least insofar as the pressure for change remains exogenous. They downplay the role of international trade agreements, and focus instead on partnerships formed commercially. Dong and Jayakar (2013), for example, point to the deal struck by Baidu with the three Western music conglomerates. This involved potential abuses of copyright by Baidu that were settled away from legal (and political) scrutiny. Laikwan Pang (2012: 9) notes that the deal that brought a Disney park to Shanghai was a result of 'the

city's determination to correct its lax IPR protection.' Andrew Mertha (2005) argues that a distinction needs to be made between the formal, elite level agreements made in response to the WTO and TRIPS, and what happens at ground level, where relations between internal bureaucracies are decisive. As an example of the latter, he describes a time in 2009 when musicians and record companies felt that they were vulnerable on a number of fronts, including copyright protection. They felt that, although there were laws and policies in place, they did not receive the royalties that they were owed. A survey published in January 2005 revealed that musicians' main income derives primarily from performance (40.09%) and commercial or other activities (37.61%), with royalty income only accounting for 5.29%.¹⁴ Musicians felt that other people in the industry were being rewarded, but that they were missing out (Dai 2006). The suggestion was that the rhetoric took one form, while reality took another.

The politics of copyright reform

From the beginning, copyright policy in China was highly politicized. Or perhaps, more accurately, in China it was politicized differently to the way it was in the US or elsewhere. Where, in the US, copyright has been seen primarily as an individual right, designed to recognize the contribution of the individual creator, in China the primary focus has been on collective welfare (Alford, 1995). But even this neat distinction is regarded by some as over-simplifying the politics of copyright. In China, according to Montgomery and Fitzgerald (2006), there is a

¹⁴ 2005 Survey on Musicians Current Living Status, available at http://www.weixinyidu.com/n_33886, accessed on 23 July 2015.

political tension between the individualism of intellectual property regimes and the collectivist traditions of the Communist Party.

To focus on the political dimension is not to deny the presence of economic drivers (Cheung, 2009); it is, rather, to focus on a dimension of copyright reform that is sometimes neglected or overlooked. Even if, as Wu (2012) argues, the first two amendments of the Copyright Law were a condition of membership of the international economic order, these conditions were politically ordained. Indeed, Eric Priest (2014a: 1; see also Yu, 2000 & 2005) claims that the US threatened a trade war and economic sanctions if China failed to improve its copyright regime.

To join the WTO, China had to comply with TRIPS. The first amendment of the Copyright Law in 2001 was introduced against this background (Yang 2013: 37). And later, following China's membership of the WTO, the US brought cases against China when it was deemed to be in breach of WTO rules (Priest, 2014a: 2). The US made a formal complaint to the Disputes Settlement Board (DSB) of the WTO and requested consultations with China in April 2007. China agreed two years later to implement the DSB recommendations by 2010 (WTO 2010). The Standing Committee of the 11th National People's Congress of China approved the amendments and the State Council revised the Regulations for Customs Protection of Intellectual Property Rights (*ibid.*). Edicts, however, are not simply obeyed or laws implemented. When the Beijing Copyright Bureau insisted that the claims of right holders had to be proven by the owner, it was forced to change its policy two months later. It was this decision that is linked to the formation of the Alliance of the Digital Music Industry (ADMI) to act on behalf of stakeholders, further politicizing the process (Global Outpost, 2011).

The legacy of this increasing politicization was evident with the third phase of the copyright amendment saga. This phase, regarded as an 'active arrangement' by the government, was also justified on both economic and political grounds, but this time the focus was on domestic as well as global interests (Wu, 2012). According to Wu, China's IP industry contributed 7% of GDP and was important to the transformation of the national economy. At the same time, to protect its national culture from globalizing forces, to promote its creative industries and to wield soft power, it was important for China to have a robust legal system. The proper recognition of the value of intellectual property rights and of right holders' interests was regarded as the necessary condition of innovation (Dong and Jayakar 2013: 93).

Not everyone has seen copyright reform in these terms: as a largely pragmatic response to a policy of economic development and expansion. Stephen McIntyre (2011), for example, contends that a very different kind of politics lies behind copyright reform in China. It is motivated by the desire to restrict freedom of expression. Copyright, by this account, is an extension of the system of censorship. Certainly, it is the case that responsibility for copyright rests with the same department (State Administration of Press, Publication, Radio, Film and Television [SARFT])¹⁵ as is responsible for propaganda and censorship; it is also the case that China remains deeply suspicious of Western culture and its perceived political messages. However, it may be a step too far to reduce copyright reform to the desire for censorship. What does seem to be the case is

¹⁵ New SARFT or SAPPRT was formerly known as the State Administration of Radio, Film, and Television (SARFT). In March 2013, the State Council announced the plan to merge SARFT with the General Administration of Press and Publication to form the new body.

that copyright policy is increasingly the subject of ever more complex domestic politics.

When the Copyright Administration drafted its proposed third phase of reform and put the draft out for public consultation, this elicited a number of responses, including complaints about the conduct of collective management organisations and the operation of statutory licensing, among other things. Exactly how many responses seems to be unclear. The Xinhua news agency puts the figure at 1560 (Xinhua General News Service, 2012); another report speaks of 400 written comments and 1 million suggestions on Weibo (Jia, 2012). Whatever the true number, the fact of this consultation process opens up a new dimension of the politics of copyright in China, as does the nature of the complaints made.

The reform that appears to have generated the greatest response was the so-called '3 month rule' and its very brief period of copyright protection. This was a source of anger from musicians in particular (BBC Monitoring, 2012; 1709 Blog, 2012).¹⁶ But it has not just been those on the frontline who have voiced concern. Other commentators have argued that the most recent reforms are overly restrictive, and may fail to encourage the innovation that drives economic growth (Xue, 2012). The complaint is that the changes too closely mimic the US model and take too little account of the new (digital) environment in which copyright operates. China's dilemma, it is argued, is the choice between imitation and innovation. The former is associated with the over-protectiveness of a

¹⁶ This perhaps symptomatic of the fact that musicians are increasingly giving voice to their views in China. A Musicians' Guide Survey of 614 musicians living mostly in Shanghai and Beijing, 50% of whom worked full-time as musicians, revealed that a high proportion were strongly opposed to illegal downloading.

developing country; innovation, on the other hand, requires a less cautious approach, and a less restrictive IP regime (Hua, 2013).

The Managing Director of China's National Copyright Administration, the body responsible for the reforms, defended the '3 month rule' proposal on the grounds that it made it easier and faster for songs to be popularized. The only losers, he suggested, were the record companies (Qu, 2012). Nonetheless, the opposition from the copyright holders won the day, and the Article was deleted from the final draft published in July 2012 (Feng 2014: 322).

While the early phases of copyright reform passed with little or no controversy, prompted by the incentives created by the WTO and by US pressure, it is evident that the last set of reforms has enjoyed a much less easy ride. Two possible reasons suggest themselves. The first is the consultation process and the responses it elicited. These were not universally enthusiastic. The second (and possibly related) was that SARFT lost interest in this particular policy initiative, even if they did not lose interest in illegal downloading (as we have already noted: all service providers have been required by the NCA to remove unlicensed music,). It is not possible, as yet, to be sure what is happening and for what reason. What is clear, however, is that the explanation is as likely to be political as anything else, and that the politics are born of the complex set of interests of multiple stakeholders, released in part by the consultation process. One such stakeholder are the copyright management organisations (CMOs).

Intermediaries in China: the case of the Collective Management Organisations

In the UK, Collective Management Organisations have existed for a 100 years or more; in China, they have existed barely for 20 years. So far, there are only five CMOs in China and two are related to music: The Music Copyright Society of China (MCSC), established in December 1992, and the China Audio-Video Copyright Association (CAVCA), established in December 2005.¹⁷ The operation of CMOs in China is subject to government approval and control. The state is responsible for their establishment, leadership appointment, financial management and decisions on membership charges.¹⁸

The consultation on copyright reform revealed a widespread view that, compared to their Western counterparts, Chinese CMOs have been ineffective and have been bypassed in the distribution of revenue (Interview with representatives of UK Music and PRS for Music, 19th September 2014). Under existing Copyright Law in China, the CMOs are granted no special legal status (Ma, 2011: 24). Chinese music copyright holders and music record companies do not rely on CMOs for their revenue or for the protection of rights. For example, in July 2005, seven Hong Kong based international music companies, including EMI, Sony BMG, Times Warner, and Universal, sued Baidu for copyright infringement of 137 songs (Jiang 2006). The companies lost the case, but the first CMO to try to make a similar claim was no more successful. In January 2008, MCSC accused Baidu of infringing the copyright of 50 songs and asked for compensation of RMB 1.060 million. Although the Daidian District People's Court ruled in favour of the

¹⁷ Their official websites are available at <http://www.mcsc.com.cn/> and <http://www.cavca.org/>, respectively.

¹⁸ In Europe, CMOs are regulated in a variety of different ways (or at least, they have been – the EU is committed to greater harmonization). The variation extends from a laissez-faire regime to statutory regulation. The latter is closest to the Chinese model.

MCSC, the court ordered Baidu to excise the lyrics of only 50 songs saved on Baidu's server, and to pay a penalty of a mere RMB 50,000 plus RMB 10,000 to cover the court fees (Dong and Jayakar 2013: 90).

Such results were seen by the National Copyright Administration as failures of the system, and hence these flaws became the target of reforms in 2005 and 2010 (Qu, 2010; China Law and Practice, 2010; Jiang, 2013), and were highlighted in the consultation for the 2012 reforms (Jia, 2012). The CMO is now seen as key to the effective delivery of copyright reform in China, and the third phase of reform was designed to establish their role, ensure transparency in their operation and extend their remit (Jia, 2012). One such revision was the requirement that CMOs represent *all* right holders in a work. The overall intention was to achieve 'efficiency in the digital age' (Tang, 2012). In moving in this direction, it appeared that China was drawing on the example of UK, among other cases.¹⁹ However, despite these plans, the consultation and lobbying process produced very little change: the extension of collective rights to radio, television and karaoke parlours was not implemented (Jiang, 2013).

China and the Western music industry

For the most part, this review has focused on China and its music industry. But, of course, part of our story has been about how that industry has responded to developments elsewhere, whether of near neighbours, distant Western interests or transnational processes. Before we end, it is important to give some further attention to the place of Western music in China.

¹⁹ The UK's Intellectual Property Office and the Foreign and Commonwealth Office have, in conjunction with the relevant authorities in China, commissioned research into CMO best practice for the benefit of the reform of the Chinese copyright regime.

Antje Cockerill and Liu Yang (2013) argue that, insofar as Western music is consumed, it is primarily accessed via downloading, rather than via CDs or live performances. This consumption, they further suggest, is associated with a desire for wider social and political change (which may account too for the censorship of Western artists). But this potentially subversive use of music is not exclusive to Western sounds. Yin Fai Chow (2011) points out that Chinese music can also perform a political role in informing the identity of fans and audiences. And as with music everywhere, this use can serve either oppositional or loyalist politics (Fung, 2007). Just as Western music in China can be an expression of rebellion or a means of branding luxury goods (such as BMW cars).

Beyond its role as a cultural signifier of various social and political identities, Western music in China is also seen to represent a commercial opportunity. So far, it has to be said, an unrealized opportunity. This is in part due to the IP regime which has failed to deliver substantial returns to the Western music industry. But the IP regime is only one aspect of the story. There is also a political tale to be told. Lucy Montgomery (2009) points to the deliberate strategy of the state to maintain control over content, and to the international industry's wariness about China's IP regime. Heidi Rupke and Grant Blank (2009) offer a different, cultural explanation. They claim that only a limited range of US genres or categories travel to China. These are country, easy-listening and oldies. And the factors that Rupke and Blank identify in explaining this selection are, among others, the associated high cultural capital, the resonance of the themes and the political acceptability of the sentiments. The high profile tours – by Bob Dylan, the Rolling Stones etc – are not regarded as major sources of income. Some £73k was recouped in 2013 by PRS, and £120k forwarded to China, primarily from the

use of music in Chinese restaurants (Interview with UK Music and PRS, 19th September 2014).

Western companies have bought into China – see, for example, Warner’s purchase of China’s major indie label, Gold Typhoon Group, and its alliance with the internet provider Tencent (Cooke, 2014), or the deals struck with Baidu and other streaming services. But, as we have noted, these ventures have not always proved successful – hence the closure of the Top 100-Google project in 2013, some five years after it began (Xiang, 2013; Kan, 2012).

Summary

This chronological and thematic review of the literature on copyright and music policy in China has identified a number of emerging issues and associated research agendas. One of the key questions has been: what drives copyright policy change in China? It is clear that over the period since 1990 substantial reforms have taken place, and that they appear to have come to a halt. We have identified a number of possible sources of change, from the global to the technological, from the political to the economic. And within each category a variety of different factors are evident. Along the political dimension, for example, we have seen the effect of international relations, political ideology and internal political pressure. As in the West, neither globalization nor technological change in themselves account for what is happening. What we have noted, however, is that concern over the regulation of content remains important to the Chinese authorities, and shapes some aspects of the reform of the copyright regime.

What is also apparent is that there is – as there is in any policy system – a gap between policy intent and policy practice. Have the copyright reforms brought about the changes that were intended? Did the early reforms stamp out illegal downloading? Not entirely. It is still the case that piracy is widespread, and changes to the copyright regime has enjoyed limited success (and is believed to accounts in large part for Google’s departure). It is also the case that the authorities are making concerted efforts to clamp down on illegal downloading. Have the reforms had a transformative effect upon the Chinese music industry, inspiring the efficiency and creativity that was their intent? Certainly, with the 2012 copyright reforms stalled, disquiet remains about the future of the creative industries. Writing in the *China Daily*, Sun Xiaochen (2014) reports that the NCA bemoans the lack of appeal of China’s products overseas, a problem it attributes to a dearth of creativity (and the failure of the copyright regime to incentivize this). Copyright-based industries were claimed to be worth \$507bn in 2011 and to employ 11.2m people, but their exports were valued at only \$5.3bn (compared to the US’s \$141bn). Despite the anxiety engendered by this, and the assumption that copyright reform is a necessary condition for change, the process of reformation appears to be becalmed, despite, it is reported, public support for that reform (1709 Blog, 2012).

We need to be cautious, however, of any neat translation between the idea of creativity and the value of the creative industries as they operate in the West, and their meaning in China. Keane (2009), in particular, argues that understanding of China’s policy for the creative industries needs to derive from a culturally and political inflected interpretation of the key terms. ‘China’, he

writes (2009: 438), 'may not be able to develop the same kind of creative expression as the West.'

Equally, in analyzing and explaining the process of policy change in China, we need to be wary of supposing there is a universal process of policy-making, such that Washington and Beijing are interchangeable. At the same time, our review indicates that the conventional view of the Chinese political system, in which Party dictates everything, may not apply. It is apparent that a range of actors and interests are at play, and copyright reform does not derive from, or get implemented by, a single source of power and influence. The question is how best to understand and analyse the policy process.

It is notable that the academic literature on China and its IP regime (and its reforms) is dominated by legal scholarship. We have unearthed some contributions from cultural studies and from business economics, but these are few in number. There is almost nothing from policy science or political studies. There is a logic, of course, to the dominance of legal scholars. IP is the province of lawyers. But IP is not just (or even) a simple product of legal statute.

Understanding how the laws come into being and what they regulate requires an account of the agendas that they serve. It would be difficult, if not impossible, to understand reform of copyright in China without reference to the impact of globalization and international trade, and the institutions who administer it. By the same token, it is important to appreciate the process by which domestic interests and pressures play into the resultant policy. This review has revealed the shifting ecology of interests that surrounds copyright. The implication of this is not just that the task of researching change is a multidisciplinary one, but a multi-method one too.

The focus on the law and legal scholarship is also more revealing of what the law intends than of what it achieves. One of the weaknesses of the post-1990 copyright law in China was less the specific terms of the act, but rather the reluctance of the state to implement it (Priest, 2014b). Reform in China had less to do with the letter of the law, and more to do with system by which that law was implemented. From such a perspective, the operation of the National Copyright Administration becomes ever more salient. And this leads to further political questions as to how the NCA deals with its caseload. In China, there are two routes: an administrative one, and a legal one, and the choice matters to how the policy is implemented (Priest, 2014a: 2).

Copyright reform in China, as elsewhere, is not a topic only for legal scholars and policy scientists. There is also a cultural politics to the process. This has to do with underlying assumptions about the value of music, the 'problems' of copying, and the political principles to be served by reform. And finally, there are questions of evaluation that need to be addressed. Crudely, these have to do with the extent to which a flourishing creative sector depends upon a strict or a lax copyright regime (Yu, 2007). If it is too strict, does it hamper innovation; if it is too lax does it disincentivise creators? Or is copyright irrelevant either way?

Certainly, Priest (2014b) remains convinced that the copyright system is important, and that piracy imposes no significant harm. He is, in this argument, responding to Lucy Montgomery and Jason Potts (2008), who claim that a weak copyright system works to the benefit of the creative industries (see also Raustalia and Sprigman, 2013). Such things matter. The UK music industry is concerned about the effect of copyright and reinforcement regimes in Asia on its potential markets. Addressing such concerns requires more than an account of

the law and its reform; it entails an understanding of the complex politics by which that law is drafted and implemented. For Peter Yu (2011), this translates into the question of whether China is no longer the 'norm taker', following instruction from other global players, and is now the 'norm maker', setting standards for the future.

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Glossary

ADMI	Alliance of the Digital Music Industry
CAVCA	China Audio-Video Copyright Association
CIPP	Cultural Industry Promotion Policy
DSB	Disputes Settlement Board
MCSC	Music Copyright Society of China
CMO	Collective Management Organization
GATT	General Agreement on Tariffs and Trade
IFPI	International Federation of the Phonographic Industry
IPO	Intellectual property Office

NCA National Copyright Administration
PRS Performing Rights Society for Music
SARFT State Administration of Press, Publication, Radio, Film and Television
TRIPS Agreement on Trade-Related Aspects of Intellectual Property Rights
WIPO World Intellectual Property Organization
WTO World Trade Organization

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RCUK Centre for Copyright and
New Business Models in the
Creative Economy

College of Social Sciences / School of Law
University of Glasgow
10 The Square
Glasgow G12 8QQ
Web: www.create.ac.uk

