

**China's Music Industry: Hot Topics in Legal & Business Affairs**  
**March 30, 2021**

Presented by [Mathew Alderson](#) and [Alex Taggart](#)

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**Mathew Alderson 0:05**

Hello and welcome to our webinar: China's Music Industry, Hot Topics in Legal and Business Affairs. My name is Mathew Alderson. I'm a partner at Harris Bricken attorneys and consultants in Beijing. I focus my practice on international entertainment transactions involving China or Chinese companies. I started my career many years ago in the music business, where I worked in house or a group of companies in Sydney, that included music management company, record label, and music publisher. These days, my music industry clients include international collection societies, major independent music publishers, and recording artists. Joining me today from Los Angeles is Alex Taggart, head of international at Outdustry Group. This is a position that Alex has held since 2018. Alex was previously the general manager of Outdustry China operations. He's fluent in Mandarin. Outdustry provides market leading a&r marketing and rights management services in the China and India, music markets. And they do that. So some of the leading names in the global and local industries. Outdustry has staff located in Beijing, Kuala Lumpur, London, Los Angeles, Mumbai, Shanghai, and Taipei. In today's webinar, we're going to address a number of topics, including recent history of the music business in China, challenges faced by international businesses, seeking to engage with China, the platform or DSP landscape. No discussion of China music, of course, would be complete without looking at copyright and rights generally. So we will be taking a look at recent changes to the copyright law in China as they affect music. We'll be talking about royalties, we'll provide some tips for entering deals or doing business in China. And finally, at the end, we'll be trying to answer some of your questions. We've already received a number of really great questions from listeners prior to the webinar. And we'll also be expecting questions to arise while we're speaking. And as I say, we'll try to deal with them towards the end. So, to kick things off, Alex, how about giving us your thoughts on the recent history of the music business in China, we're looking at questions like piracy, the so called exclusive wars, and the emergence of a paid model in music consumption.

**Alex Taggart 3:22**

Great, yeah, we'd be happy to, first of all, just want to say thanks very much for the invitation to Matthew into Harris. Bricken. Really happy to be here. So just to give a bit of context on the market, I mean, some people are probably quite familiar now, with the market, since it seems so much growth over the last few years and makes a lot of headlines. But I think a bit of context, in terms of sort of how we got here can be very helpful, if only to show how far things have come in the, I guess, over the last decade or so. So, up until the early 2010s, which was around the time that I first arrived in China. The the industry was it was basically a total piracy market. There was the internet had come along, but there was not very strong copyright protection, particularly in that area. So you have things like the Baidu mp3 search engine where you can remember, I remember the services being around when I first arrived, you could just, you know, go on, you type in the name of the song, it pops up, you download an mp3, not protect, not a particularly healthy environment. So and then around around that time, there were the earliest incarnations of what we now know as the the streaming platforms, you know that platforms like Xiaomi are owned by Alibaba and QQ Music owned by Tencent. And these were effectively, you know, rough and ready platforms where they were essentially, there was no real infrastructure, no licensing, no ingestion of content. It was largely sort of ripped From the web and plugged

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into the back of the service, and that was that, but they started to amass quite sort of significant audiences. So this created a situation where you basically had an increasingly active market, but no real commercial model. So, a few years later, around 2013, Tencent QQ Music at the time, and China music Corporation, which was a big competitor, which was the owner of the platform's Kubo, and kua, which still exists today, that Tencent and China music Corporation, CMC, were in pretty sort of hot competition, they began trying to monetize the industry by basically competing for exclusive licenses from major domestic and international catalogs. So that was the the global major labels and also other sort of local Chinese labels. And people were sort of going around snapping up catalogs with with, with big advances. Later on netease Cloud music, which some people have probably also heard of, but was very new at the time. And Alibaba Xiaomi also got in on this sort of buying up exclusivity. And so this basically was a way of forcing their their competitors to license from them. And while this can't be, it may seem not particularly healthy. But it can definitely be argued that it kick started the industry and put the Chinese market on at least on people's radars. But a few pretty inherent problems, it created an arms race, where content costs just went skyrocketing for these platforms. Obviously, they're sort of very well monetized tech ecosystems. So this, you know, they, they weren't lacking money. But platforms would also buy out rights for a number of years. And then they weren't particularly motivated, either to sublicense them to their competitors at that sort of friendly rates, or to provide rights holders with very detailed reporting on usage. So there was a lot of energy coming into the market and some money starting to flow through but but a lot of the sort of the basic infrastructure was was missing and sort of to move forward towards the paid model. So everyone was was so desperate for market share at the time, that no platform wanted to kind of throttle the user experience, because they, they were aware that if they started putting things behind a paywall, all the users would just go over to the other, the other platforms. So eventually sublicensing, between platforms began happening. And that was made conditional on everyone falling in line with a subscription model paid subscription model, whereby certain functions were put behind a paywall. And that paywall now still remains relatively stable. It's so if you are a subscriber, you can only download music to your phone or cache music to your phone, or to your device if you're a subscriber. And you can also only play music in high quality if you're a subscriber. And so this was anywhere between sort of four different models, eight and 15 renminbi a month, which is from around \$1.25, to \$2.30. So we're not, you know, it's not very much money. And there's all kinds of sort of bundling options and things as well. And so that that became sort of the relatively stable paywall over the next few years. And now we're just seeing the beginnings of that paywall starting to evolve in a in a really interesting way. Maybe we can get into that a little later. And that's, that's had some some really great effects. They that the international major labels are now beginning to end their exclusives and go direct with with all partners in the market, which is something that we've we've always done with, with all of our clients, and some local labels are beginning to do the same thing. So it's, yeah, things are beginning to look like they're heading in a good direction.

### **Mathew Alderson 9:16**

That's really interesting. When I first came to China, the perception of the market was Chinese consumers would never pay for online content, particularly music. And now we've seen a complete reversal of that state of affairs and we're in a situation where Chinese consumers will willingly pay for content. I might now make some comments on what I see as the major challenges for international players seeking to engage with China in the music industry. And I think, to a certain extent, there'll be a bit of overlap. We saw consistency with the comments that you've just made, Alex. To my mind there, there are three main challenges facing the

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industry or IC three issues coming up again and again in practice. The first one is the inadequacy of metadata, moving between the international buyers and the local players. So I constantly hear that the international companies are not providing metadata to the DSPs in China in a manner that will allow the DSPs properly to track consumption and pay royalties. And to a certain extent, I think there may be technological reasons for this, because I understand that the systems that are used in China, by the DSPs are not always compatible with those that are used by the foreign pious. And the second point, and this is something that echoes, what Alex has said, is that we're still seeing the impact of the heady days in which big advances were paid to the major labels under exclusive deals with the DSP. And although from the outside that looks good, because foreign content, foreign music was generating substantial returns, the problem is that the focus was on an energy on a minimum guarantee instead of on royalty income, that is based on actual transactions. So what happens in these big deals is that the buyouts discourage a transactional accounting model. And they result in a lot of breakage. That is an applicable surpluses. So when you have these lumpy payments, you get large pots of money, which, because the transactional model is not there can't be clearly allocated to any particular rights owner. And I don't think that that has been very healthy. And the third issue that I see is that collections, copyright collections are very, very messy, and very, very murky. And there are a couple of aspects to this. The first is that in China, the traditional distinctions in the music business between mechanicals, public performance, and now streaming are blurred. And just as China leapfrogged over six line Felicity into into mobile. They've also really leapfrogged over a whole series of developments that occurred in the West, to get to the point where now, effectively all the consumption occurs online and on handheld devices. And this means that when you raise questions like To what extent does a stream or a download include a mechanical Republic performance component? The answer is unclear. Whereas in other countries, there are customers which apply and say that a certain proportion of that streaming income is attributable to mechanicals or public performance. So those standards are not applicable here. And the other aspect of it is that the foreign labels deal with both the DSPs and the collection societies and the major correction society here is the MC sc. The music copyright Society of China and one of the ongoing difficulties in the market is that the rights owners find themselves in a situation where they're dealing with the FCC and the DSP for the same catalogs, yet conflicting or overlapping royalty claims are made by the collection societies and the DSPs. And the extent of the remit of the collection societies, these are the the platforms is not clear. So you get dual pains and certainly in efficiency, because both the mcsc and the DSPs pay advances to the foreign rights owners. And then the question becomes, well, how do you recoup these advances and who's entitled to what? So they are the main systemic challenges that I see. And Alex at this point, it might be good opportunity for us to have a little look at at the platforms in more detail. Perhaps you could provide an overview of the platform landscape. And give us your take on the macro problems that beset the music industry in China.

### Alex Taggart 15:20

Sure, yeah. I mean, so far, I think we've talked a lot of doom and gloom. But there's actually there's, it's actually a incredibly sort of vibrant music consumption landscape out there. It's, it's, it's even sort of tough to summarize the best because there's just so much activity and innovation, incredibly diverse landscape of music use and music consumption. There's definitely too many platforms to name them all. But, but I'll give an overview and maybe maybe talk about a couple of the drawbacks as well. So the ones that everyone's probably heard of, there are others. TME, Tencent Music Entertainment netease netease. Cloud music, which is owned by Nettie is the sort of the web portal and gaming company. And then, until recently, there was

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Alibaba, who everyone knows the massive ecommerce giant, which was, until recently, a significant player in that streaming landscape too. So these are kind of the incumbents or were too so Alibaba shuttered Xiaomi, a few, late January, to focus on providing music for its social commerce apps, which is another category, which I'll come on to in a second. But if we start with tme, so to me, almost needs no introduction. Anyone who's following music industry news, will know about Tencent Music Entertainment. More than their most recent filing, they they posted more than 40% growth in paying users from q4 2019 to 2020. So that's obviously incredible growth that is very impressive and deserving of applause. So tme divided into two main landscape, or two main categories, I'd say, three streaming platforms that are kind of recognizable, sort of similar to the streaming platform, though, you know that the mainstream platforms that we're used to in the West, there is QQ Music, which is sort of more popular with first and second tier city users, kugel, and core, which are sort of similar ish format, but popular with more sort of second, third, fourth tier cities. And then, so outside of those main streaming platforms within tme, you then have their social entertainment category, which encompasses things like tme live, which is the live streaming platform, and crucially, we sing, which is a very impressive platform, a karaoke platform where users can access instrumentals of pretty much all of the music that's, that's within 10 cents catalog, record their own versions, sort of their own vocal over the top of a digitally created instrumental, and then post that back there own cover to cover version to the to the platform. So that's, you know, very interesting and innovative platform. So then that's to me, then you have netease, which is netease Cloud music, which is not quite at the scale of 10 cent, but it is often referred to as sort of the the darling of many international labels and artists because of how popular it is with first tier city users who are more likely to be into international music. And they're all also more likely to be subscribers. So that's where you kind of find that the more high value users in terms of revenue that he has has, has been a great partner to the music industry, because of this has very sort of innovative playlisting and great branding and has done sort of artist discovery very well. net is also has its own short video platform called m log and the karaoke platform called insia, which is sort of a wheezing competitor, which which is which launched late last year, and has been very much making inroads into that very sort of active market as well. So that's the sort of the main recognizable streaming platforms. Moving on, you then have short video, China, you could even say as the home of short video. The two main sort of players there, the biggest one being Darwin, which is the Chinese version of tik tok. So dollar yen is owned by bytedance, which acquired music the platform musically and then turn that into Tick Tock. So, dollar yen is like the original Chinese Tick tock, basically, whose functionality was basically ported over to create Tick Tock. So there's no yen. And there's also quite show, which is a similar app. It's dorian's biggest competitor, slightly less music focused, but still an absolute behemoth. It actually quite show just listed in on the Hong Kong Stock Exchange for at floated at 5.3 billion. So that's pretty, pretty impressive.

And that's these are also sort of very, very well monetized ecosystems. Then I mean, that's, that's kind of a good segue to talk about social commerce. This is going to be the, this is going to prove to be, I would say, one of the most kind of impressive innovations to come out of China, or at least to be popularized by China. You can kind of include, though in in this in this category now, because you can buy things directly through the Dogon interface. But it's essentially apps where ecommerce is fully integrated with, with social media content. So for example, Alibaba has a suite of social commerce apps where I suppose you could say that influencers on the platform are at the same time kind of creating innovative social content, but using that to, you know, partner with brands and sell their own products and things like that. And the uptake of

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this among the user base has been massive. And like I referenced earlier, Alibaba is now seemingly trying to focus its music resources on to providing music for, for these social commerce apps. So yeah, watch that space, I would say. And then sort of beyond that, you have the video on demand platforms. So just this is just kind of a brief mention, because even though they are heavily involved in music, in some ways, they're not, they don't tend to be where the focus of the music industry conversation is. So that would include platforms like Billy Billy, which is the often referred to as the YouTube of China. It's sort of a UGC, slash kind of professional UGC platform, which also hosts live streams, and is incredibly well monetized. The vast majority of its revenue comes from users, buying virtual gifts and sort of tipping creators on the platform, which is another thing that we can maybe get into a little bit later. Also, it which is another one of the sort of biggest subscription video on demand platforms, owned by Baidu, which is the search giant. So by doing so, sorry, it hosts most of the music, TV shows and variety shows that remain the absolute number one to promote the number one way to promote music in China. So the sort of the domestic music ecosystem music promotion ecosystem, is very much still focused on you break a new artist or a new song through a TV show. And that's the way that you do it. Pretty much the vast magic for the vast majority of artists in the in the mainstream. And then you have Tencent Video, which hosts music videos and more variety shows kind of in a similar way to to it. But it has had the most success in the past few years with these TV shows most recently one where it's sort of a battle of the bands for want of a better term. So, so this, all of this sounds sounds very positive. And there's, you know, some serious efforts towards monetization going on there. But while there are this is kind of new, you know, new platforms, new models popping up everywhere. The there are some drawbacks, the payouts to rights holders are such that, in the, in the short term, everyone is very much banking heavily on long term growth in paying subscribers, which which is happening. And we you know, we as a company believe in this fully, it's gradually heading in the right direction, for sure. But the truth is that the market is certainly nowhere near mature yet. I think it's just important to maybe have a bit of a reality check on that sometimes, particularly when there's you know, there's so much news going around about the market, it often gets referred to as if you know, the Chinese market is now a mature market and sort of in line with with the rest of the world, which is not quite the case yet. So as as Matthew referenced earlier, advances paid out to labels, whether it was for sort of exclusivity or not used to be a tool to make it worth people's while doing business in the market in the short term. So you'd say it was a way of getting people's attention and sort of getting getting China on the map, so to speak. Now Those advances are beginning to dry up a little across the board. Meanwhile, the unit economics of streaming have not quite caught up yet. So this sort of the drop in advance and the sort of the rise in, you know, the the per play payouts and the revenue share has not quite caught up. So it's an A little bit of an awkward growth phase that I'm absolutely sure will, you know, the trends are going towards that, that catching up very soon. And we'll talk more about sort of those deal structures in a second that can help people take it to prepare themselves for that.

But meanwhile, in that situation, everyone is very excited about the live industry in China, or they were before 2020 happened, which sort of makes up for that shortfall in the short term. So And just a quick point on on, on reporting there, which has always always been an issue, as Matthew referenced, the delivery of content and reporting was always a big issue. But it has come along leaps and bounds over the past few years, particularly on the recording side, publishing reporting, which as a lot of a lot of people may know is much more complex. It's very much still in the in the development stage, you know, working out the kinks, as we go, which is, you know, we went through that, those years on the on the recording side. And it's just, you

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know, it's more complex, but it's really the same path of development that's happening. So it's that's that's good news.

**Mathew Alderson 26:31**

Well, thanks, Alex. And I think there's a lot more to talk about when we return in a minute to discuss royalties. But for now, what I'd like to do is discuss the topic of rights. And look at the sometimes thorny issue of copyright in China. I think it's important to remember that the tremendous developments that we're seeing in the Chinese music industry, are driven by an increasingly effective copyright system. And the reason I say that is that China has moved quite rapidly from an almost entirely piracy driven market to a market that follows copyright fundamentals. And although sometimes we're critical of some of these big, advance driven deals, the reality is that because of those deals, large Chinese companies have acquired valuable intellectual property assets, which they are now prepared to protect using the Chinese copyright system and Chinese copyright law. For this reason, the vast majority of cases in Chinese courts involving copyrights between Chinese companies, it's no longer a thing that is used by foreigners, particularly Americans and Europeans to to Badger the Chinese about infringement. It's a thing which has an intrinsic value, which is recognized by the Chinese. Now, the thing with copyright in China is that, at least insofar as it applies to music, musical works and sound recordings receive very different treatments. Musical works, enjoy copyright protection, but sound recordings only enjoy neighbouring rights. And for those of you not familiar with that, neighbouring rights are those that applied to certain types of subject matter which are not thought to be sufficiently substantive to attract copyright protection. And the reason for this distinction is that in China, sound recordings are considered to be insufficiently original to qualify as copyright works. And in Chinese juris jurisprudence, they set the standard of originality very, very high. Sports broadcasts and music videos have suffered a similar fate to sound recordings. And I call this in some of my writings about this question, the stranglehold of originality. And I'll give you an example using music video because I mentioned that the issues come up in cases brought by music labels against karaoke bars in connection with music video copyright in China. And the issue was that a public performance license is required by karaoke bar only if the music video is a work of cinematography that is a word that satisfies the high threshold of originality, and no license is required for some In which is nearly a music video or video recording should I say. And the rule of thumb that gets applied in this area is whether the music video is scripted or not. And to use an example given by my friend Dr. De Lille at Stanford, the application of this rule would mean that the music video for Michael Jackson's Thriller would enjoy copyright protection. But the video for Moonwalker live at Madison Square Garden would not. So I hope that gives you a better idea of how that issue is, is playing out in China. In China, musical word copyright includes the network communication, right, which is often referred to as the streaming right or the online right of dissemination. And it also includes the broadcast, right, and it's these rides, which allows the musical work copyright owner to control and collect royalties from streaming and from broadcasting.

But Chinese copyright law only gets the sound recording copyright owner right of approval, at a rod of remuneration, when the network communication right is exercised. So those two rights, the right of approval and the right of remuneration, you can see are not rights of copyright, they are neighbouring rights. And those these rights allow record labels to obtain payments. For the streaming of their sound recordings, they are still merely neighbouring rights, and not rights of

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copyright. And the point that has been controversial for many years, has been that there's never been a broadcast, right, of any kind for sound recordings in China. And in many ways, China was quite similar to the United States in that respect. But that's about to change. From one June this year, Chinese copyright law will recognize a new neighbouring rights, which is a right of remuneration for certain broadcasts. So again, it's not a copyright, it's a neighboring rights. But it's a right of remuneration for sound recording broadcasts, and that's a new thing and oppose the development. The new right will apply when a sound recording is transmitted by wired or wireless means or communicated to the public via audio technology. And subject to whatever the implementing regulations may say, the new rod is being interpreted by local industry as applying to radio and TV broadcasts to non interactive with broadcasts and simulcast and to performance in other places, such as supermarkets and hotels. And the reason I mentioned implementing regulations is that typically, when China enacts a new law, we see the law which sets the overall contours. And then later, the Chinese provide regulations which guide us as to the meaning and smooths out some of the disparities in the in the law. And last time I looked, we hadn't seen the implementing regulations for the changes to the copyright law. And it may be that in those implementing regulations, we get some more guidance about how these issues are going to unfold. And I mentioned using video there are moves now for to introduce a new audio visual copyright work which will subsume the right that the work of cinematography and also video works but the underlying problem which I illustrated in relation to music video will still remain because the law doesn't answer that question squarely, where do you draw the line? Now, the thing is that the collection process that will apply to this new income stream remains unclear. And as I said earlier, collections in this country are murky and unclear at the best of times. We don't yet know whether there will be a new collection society or this income or whether one of the existing collection societies will be expected to collect. way again, we're going to need to see what the implementing regulations say about this. But if the process works, the introduction of the new rights should open up a flow of broadcast royalties. For record labels, and the thing is that the Chinese broadcasters can hardly be expected to welcome that idea. So there's going to be a tension between those stakeholders, as the new law is implemented and interpreted. And what we hope is that the flow of royalties will not just be a trickle. And industry, I think, expects, initially the assessment is that the, the new income will make up about the same proportion of overall income as as public performance. Revenue does, which was on 2019 figures about 12% of the overall receipts. Alex, I'm not sure if you've got anything to add on that. I know, it's a big topic. And it's very hard to do it justice. But I wanted to focus on the changes as they affect music without going into the other stuff. But unless you've got any other thoughts, it might be a good point at which to return to royalties, and look at how the deals are structured and common deal structures and so on.

**Alex Taggart 36:15**

Yeah, for sure. I

think those are very, very, is a very complex issue that you just, I think explained very well there. So I won't I won't try and add anything on to that. So But yeah, I mean, a common topic that we often get asked about is, you know, how do royalties work? Am I going to make any money from China? And if I do, how do I get it out of the country. And this is something that we spend a lot of time on is making sure that the the deals that we're working on are set up in a, you know, a dynamic and sustainable way. So our clients are well set up to benefit from to share in the partners growth in the market, and, you know, to to establish kind of a healthy ecosystem. So

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maybe I could talk a little bit about common deal structures and how things work. So there's actually I mean, anyone who's done licensing deals, or familiar with licensing deals anywhere else in the world for for this kind of content, or I guess, with with these kinds of platforms, they're not, there's not too different or too dissimilar, or at least that anyone is telling you, it needs to be totally different, because you're in a different because this is China, then that's not actually true. And that's actually a bit of a red flag. And I would say that, so depending on the on the kind of service that you're doing a deal with, you'll have you know, that your commercials will be a combination of, you know, per stream rates, revenue shares, per subscriber rates have been popular in the past couple of years. So that last one being particularly quite an interesting one to explore. So that's per subscriber rates. So So rights holders getting getting paid based on how many subscribers the platform's have, because there's a lot of discounting that goes on. There are there are, as I mentioned earlier, all kinds of bundles that the each of these platforms is sort of you know, and it's a very creative thing that they're doing getting or getting creative by by bundling things together. That's, you know, no problem with that. But it's just something to, you know, when there's so much discounting going on, and the the key, kind of the key goal for the platform's is user subscriber acquisition, it's something that rights holders need to be aware of, and build into their deals. So I would say, always explore all of these options, there's nothing that's kind of unheard of, I would say, you know, if you're in a position to always do aim for an advance, because, you know, the the market does require a lot of kind of day to day attention, it's not something that you can just sort of do the deal and then wait for the money to roll in. It's not not exactly how it works, yet. So in advance can kind of, you know, essentially cover the the overheads of spending so much time going back and forth with with with your partners to sort of figure out how they work. And, you know, get all of the all of your reporting, invoicing and everything. So, those those adverts are always aimed for advance then as I mentioned earlier, they're not what they used to be. It's, you know, as the as the platforms become a lot more kind of mature. And also we have publicly traded companies, among our partners now who, obviously they've they have to the belts, belts get tightened in those in those circumstance. So we So yeah, that's that's a couple of tips there is, you know, always try and try and push them in advance where possible, and that it really helps if you're able to come with some kind of data to back up the arguments that you're that you're making in negotiations, that and that's something that we didn't have until a couple of years ago. You know, there's now some pretty solid, verifiable data that we can go into negotiations with, which is, which is good for everyone? I'd say, the deals end up being fair to both sides. So another question is, are the current and rates in the market sustainable? And I think, I mean, the short answer is no, but they are, I mean, ideally, we would get to a point where the services are, you know, all generating plenty of revenue, the revenue share model is always the revenue share kind of calculation in the in the deals is always kicking in whenever, you know, whenever this sort of reporting period comes around, services are growing, business is booming, and, and rights holders are sharing in that growth, that would be that the ideal situation. But the the problem with that is not I mean, obviously, numbers of subscribers are growing very quickly, which, which is a really good thing. You know, as I mentioned, Tencent has seen 40% year on year growth to to q4 2020. That's really healthy growth, but the current market standard revenue shares per play rates, and such are really off the bottom of the scale, when compared to players of comparative sizes, in more developed markets, in the rest of the world, and like I referenced earlier, the, the platforms in China are often mentioned in the same breath as these, you know, the, as companies like Spotify, apple, and, and remember that tme and Spotify are actually kind of valued at around the same at the moment, despite one being a lot better sort of monetize than the other. Which, which is why I say that everyone's banking on this, this long term growth, which does seem to be

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coming. But it's, it's definitely a long term market, not not a short term, a short term kind of cash grab, because the the, if you're expecting to come in, and then find those, and you're sort of instantly start making money with no effort from those from those rates, that's not going to happen, because those market standard rates are very different to what they are in the rest of the world. But gradually catching up. One big question that we that we often, you know, we that we deal with every day, is how, once you've, okay, you've you've, you've got some music licensed, you're doing well, you know, your artists are popular, you're making some money, you're seeing money coming through on the reports, getting money out of the country. And this is one of the most complex issues I would say on in terms of sort of doing business in China, and I'm sure Matthew can attest to that as well. Because tax sort of tax is a really big, a very difficult topic. So just to get into the weeds on it for a second, the streaming platforms are very much set up to or have been setting themselves up to report tax inclusive pre tax numbers pre tax revenue to two rights holders, which can be very problematic for rights holders because they have they end up with you know, revenue appearing on their books that tax was then subsequent from which tax was then subsequently deducted, which in the music industry can be very problematic. You know, if someone's to be audited or or anything like that, and taxes also unpredictable, it kind of depends on what which can depend on what part of China you're in which bank you're with. And also could just kind of changes on a on a semi regular semi regular end but also on predictable basis. So the the the golden rule, if you can keep to it is agree everything net of tax, that make sure you know, when you're signing that contract, what these figures are actually going to mean because sometimes we've seen people bundle into deals saying hey, okay, this is the this is, you know, the, there will be China side taxes deducted from whatever this number is. And then people get really badly burned when they find out that there's some huge tax that they weren't expecting. So if even if you're not able, for some reason to, to agree net of tax numbers, at least get very clear on what the post tax numbers are likely to be, just so your expectations are clear. One final point on that, on getting money out of the country,

it's it's unfortunate but but totally normal to have a sort of 30 to 45 day period from your partner receiving the any invoice that you might issue them to you actually receiving the payment, and most local partners will will try and make sure that that's written into the deal. And it's actually advisable to have that in there. And if you can, penalties for going over that that threshold. So and just just very quickly, other potential trip wires that you would always want to make sure you addressing the content. So reporting schedules, make sure that if you're doing a deal that the that you know, exactly how often you're going to be receiving reports push for as often as possible. And make sure they're being provided to on sort of automatically, there's no kind of manual intervention going on there. And you know, how regular so if you receive, let's say, a monthly report, is it a monthly report with a weekly breakdown, I realize this is quite sort of getting into some pretty pretty granular detail here. But these things are very important. And then just finally, an important topic to touch on is what happens with UGC, because a lot of these platforms are still you know, that even platforms that are owned by the big guns are still allowing UGC in some form. So, for example, sometimes, and this is something that people, a lot of people who've been doing business in the market for a long time, either aren't aware of or sort of maybe some sometimes turning a blind eye to, on let's say, you're a record label and or, you know, artists management company or an artist yourself. You might find UGC versions of your music videos. So just user uploaded music videos on the major platforms appearing on your artists page. So if anyone who's watching today is at a record label, or is an artist himself and does have access to the platforms, it might be worth just checking, hey, I user uploaded

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versions of my music videos appearing on my on my page rather than the the official versions. So and particularly on platforms, like we sing, for example, which is a sort of, you know, they thrive on music on UGC, because it's used as generating cover versions of songs, which is really great. You know, it's such an interesting way of users engaging with music, but anything that does open up that UGC capability does kind of create that issue. So it's that's something to address, or to, I don't know, maybe even use as a lever in negotiations. So yeah, so that's that. I mean, that there's that could go on about that for hours. There are so many potential tripwires. But those are some Those are some key ones.

**Mathew Alderson 48:17**

Thanks for that. Alex, I certainly agree with what you said. And particularly your point on on advances and on data. I think one of the points that comes out of what we were saying earlier about the systemic difficulties is the fact that like I said, the collection societies and the DSPs will at times make overlapping claims. And you can be faced with a question from the DSP like, Well, why would we? Why would we pay for this, again, when an advance has already been paid to the collection society, and that puts downward pressure on events. And also the question of data is a very, very good one. You've really got to know your market. And if you have a catalog of music, it's going to help you negotiate a deal if you've made some effort to find out how it's being absorbed by China or how it's being consumed in China, where the listeners are, who they are, what the demographics are, what the popularity is, rather than just drawing inferences from your experience in the West, which in many cases might apply. I've got some other basic tips to add to the list. And these are tips for contracts and deals. Generally, the first one that comes up all the time is you've got to remember that mostly in contracts, a choice of Chinese law and jurisdiction is going to be the best one for you. The reason for that is that Chinese courts will generally not enforce foreign judgments. So if you select, or if your lawyers select the law of California, or the law of England and Wales and the jurisdiction of the courts in those places, thinking that that makes us safe, it can put you in a position where you're in the worst of both worlds, because you will find your Chinese partners effectively out of reach if you need to initiate a dispute or to even find the leverage for a dispute. But at the same time, they can come and avail themselves of your courts quite easily. And that leads me to the next question, which is choice of language. And although Chinese law does not require that contracts be in Chinese, the best practice is that they ought to be in Chinese or at least bilingual. There are two reasons for that. The first is that if there is ever a dispute, you're your ultimate forum will be in China, if you're able to get there, because you've made the right choice of law and jurisdiction. And the proceedings Surprise, surprise will be conducted in Chinese. And the first thing that the decision maker will do is to ask for a Chinese language translation of a contract that's in English or some other language. And if you are at that point in the grips of a dispute, it's most unlikely that you'll be able to agree on it. And the court appointed translation will probably be of a low quality, meaning that you create all sorts of other problems. And the second thing is that although the people that you're dealing with will generally the speakers in English, the people whose job it is to calculate and pay the royalties, and to deal with the mechanics of your agreement, at the back end of the business will not be English speakers. And they will not understand the niceties of your agreement with all of the little causes here and there about royalty, computation and so on. So we recommend Chinese language for those two reasons. And the final point, the final tip is that you've got to resist the temptation to enter short form agreements, the Chinese like short form agreements, they prefer generalities, to specifics in contract making. Not always, but often. And what you really need to do is resist the temptation to sign a letter of intent or some

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other short form agreement, which you think looks innocuous, but which will really put you in a position from which it's impossible to get out. So

**Alex Taggart 53:02**

All great points, those are all those are all so so key to remember.

**Mathew Alderson 53:07**

Thank you. Yeah, I mean, this is sort of an overlap and consistency in our experiences in that respect. So that concludes the substantive part of the webinar. And now what I'd like to do is turn to the questions, we've got a number of very searching and very questions that have come through already, and some others have popped up along the way. So I'm just going to grab a few to see if I can answer them. The first one is limitation to foreign investment in China's music business? Well, the answer to that is, Yes, there is. And like the film and TV businesses, the music business in China is a restricted sector. So foreigners can't independently engage in production and distribution and other sorts of activities. And that is why you need to have a partner or to have a licensee in China. Alex, why don't you grab a question? And Abigail answering? Yeah, sure.

**Alex Taggart 54:16**

Sure. Just, I guess we're not too far of time. So I'll do it sort of a bit a bit rapid fire. But there's we have a great question about censorship. So how does the PRC, People's Republic of China government execute censorship of music content? This is a really interesting one, because a lot of people assume that this is something that we think that you know, doing business in the music business in China you encounter all the time. But the interesting thing here is that when at least in the digital world, the burden of clearing censorship is not on the rights holder, it's on the streaming platform. So in terms of day to day, kind of engagement with censorship, almost enough, pretty much nothing unless you know, sometimes the platforms will respond that certain thing doesn't certain content doesn't meet censorship standards. The only time we've you know, our heaviest engagement with censorship has been when we're putting out CDs and or vinyl, which isn't a huge part of the business. These days still it's there, but it's not huge. So, yeah, not not a massive part of the the day to day operation.

**Mathew Alderson 55:24**

And here's another interesting one, how do you see Tencent and meta is a strong positions in the market evolving in the future? And what are the main threats? I think Alex dealt with that in his comments earlier. But what I'd like to add to that is that one of the developments we're seeing now suddenly arisen in recent months, is an increased willingness on the part of Chinese regulators, regulators to take on the platforms and the internet companies about questions relating to market share and unfair competition. And that has had a very serious effect on pinsent's share value in recent times. And this is accurate, and and to answer the question of threat that I think is, is going to increase. Another question here. What about the IP protection for foreign songs used in China, the situation is, is the same as it is for a local songs. Copyright can be registered. The difficulty, of course, is that the way the system works here is that it's very hard to register a copyright for an entire catalog. So copyright, registration, or formal recognition of copyright on a song by song basis is impracticable. But the Chinese notice and takedown systems used by the platform's and the e commerce companies, very effective and

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works quite well, as long as you have all of the information organized so that you can establish that you are the copyright owner. Oh, yeah.

**Alex Taggart 57:09**

Yeah, no, that's it. I think it's a really good point. And also kind of links into a question that's come in, during the webinar. How do you deal with infringing UGC? content on platforms? Do you take down ignore, try to monetize? That's, that's really interesting that China does have safe harbor law. And so for example, on we seeing or sort of comparable platforms, if you want to have content taken down, you absolutely can. And these days, I would say that's probably more so than before that's our go to is to, you know, have it have content taken down before you start kind of negotiating about it. It's because, you know, China's is a more developed market now than it was previously. And so there's, you know, starting off a negotiation on that foot, saying, right, let's make sure the content isn't available, and then we'll negotiate how it's going to how it's going to become available. However, I mean, that's, that's down to however you want to play that, if, you know, if your content is really popular, if it's, you know, being been uploaded everywhere, it's really popular, that can be a really strong bit of leverage in a negotiation.

We've definitely been in cases before where we're, we're saying, look, the, you know, some of these songs that were, that were speaking on behalf of our, that they're racking up, you know, millions, you know, dozens of millions of plays. And so it's, it's obviously popular, and let's do a deal. So, I guess, probably kind of similar to how you might treat it anywhere else. But but there are systems for you know, there is notice and takedown and safe harbor safe harbor that that compels platforms to take down content when requested.

**Mathew Alderson 59:02**

Thanks. And quickly, I'll try and answer this last question. What difficulties do professional concert pianist face when planning performances in China? Normally, I wouldn't touch that with a bargepole. But recently, I had the good fortune of being at a party at which a concert pianist, a Chinese concert pianist, performed a recital. I got talking to him afterwards. And he said, the biggest problem is that it's difficult to tune the pianos and get the venue to take the tuning, and the setup requirements of the concert pianist. Seriously, and this causes no end of different please. I'm also tell by the way that all the innovation in classical music now is taking place in China. And according to this fellow, the European and American classical music scenes if I can use that would have become more than I think that completes the webinar now and I want to thank you all for listening, I'm sorry we couldn't get through all of your questions, but I do hope that you've enjoyed it. We're happy to take questions by email if you'd like to contact us after the webinar. Thanks, Alex. Great.

**Alex Taggart 1:00:16**

Thanks very much, everyone and thanks Matthew and to Harris Bricken.

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