



JASRAC/APMA Copyright Symposium on
Buyouts in Asia

2021.3.25.(Thu)18:30~20:30

JASRAC

Japanese Society for Rights of Authors,
Composers and Publishers
(JASRAC)

APMA
ASIA-PACIFIC MUSIC CREATORS ALLIANCE

Asia-Pacific Music Creators Alliance
(APMA)

JASRAC/APMA Copyright Symposium on

Buyouts in Asia

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■ Outline of Implementation ■

Title JASRAC/APMA Copyright Symposium on Buyouts in Asia
Date March 25, 2021 (Thu) 18:30~20:30
Org Japanese Society for Rights of Authors, Composers and Publishers (JASRAC)
Asia-Pacific Music Creators Alliance (APMA)

Approximately 5,600 views on the day*

*The event was broadcast on Nico Nico Douga
and the official JASRAC YouTube channel.

■ Program ■

Organizer Greeting

JASRAC Director

Manami Suko

Part I

Talk session

CISAC (International Confederation of Societies of Authors and Composers) President

ABBA member

Björn Ulvaeus

APMA Chairman, Composer / Arranger / Producer

Shunichi Tokura

Part II

Keynote speech

Associate Professor of Law, University of Hong Kong (HKU)

Alice Lee

Part III

Panel discussion

CISAC Director General

Gadi Oron

Associate Professor of Law, University of Hong Kong (HKU)

Alice Lee

CISAC Asia-Pacific Regional Committee (APC) Chairman / MC

Satoshi Watanabe

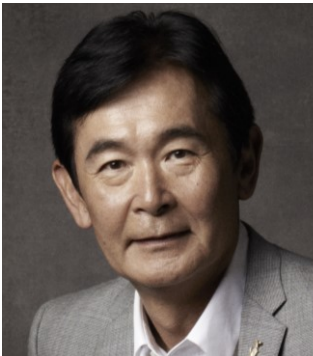
■ Profile ■



Björn Ulvaeus – President, CISAC

Björn Ulvaeus is a Swedish songwriter, musician, singer, guitarist, producer and a member of the Swedish musical group ABBA. Björn's songs, co-written with his ABBA partner and close friend Benny Andersson, became some of the most famous hits of all times, selling more than 400 million records all over the world. Björn was co-composer of the musicals *Chess*, *Kristina från Duvemåla*, and *Mamma Mia!*, and he co-produced the films *Mamma Mia!* and *Mamma Mia! Here We Go Again* with Benny Andersson. Björn has also been a longstanding tireless advocate for authors' rights. Together with Max Martin, he launched "Music Rights Awareness" to help creators around the globe better understand their rights. Björn also operates many successful businesses.

Photo byline: Olle Andersson, Zap PR



Shunichi Tokura – Chairman, APMA

Shunichi Tokura was born in Tokyo. He spent his elementary and high school years in Germany, where he received basic music education. He made his debut as a professional composer in 1969 while studying law at Gakushuin University in Tokyo.

From the mid-1980s, he shifted his activities to the US and the UK. In 1994, he premiered his first major musical "Out Of The Blue" at the Shaftesbury Theater in London. He has numerous credits for scoring motion pictures.

He has received almost every prestigious music award in Japan, including "Japan Record Award for Composition," "Japan Music Award," "Tokyo Music Festival Best Composer," "Japan Sales Award for Composition and Arrangement," and "Japan Record Award Grand Prize." He is credited with over 1,100 titles, many of them chart toppers, and has sold more than 60 million sound recordings. He has also scored many films and TV dramas.

Apart from creative activities, he served as a JASRAC board member from October 2001 to August 2010, and as chairman from August 2010 to March 2016. He was elected to the Executive Committee of CIAM, the International Council of Music Creators, in 2015, and appointed chairman of APMA, the Asia-Pacific Music Creators Alliance, in November 2016. He was selected Person of Cultural Merits from the Japanese government in 2018.



Alice Lee – Associate Professor, HKU

Alice Lee, LLB (HKU) and BCL (Oxford), is an Associate Professor of Law at the University of Hong Kong, specializing in Property law and Intellectual Property (“IP”) education, and a Senior Fellow of AdvanceHE (formerly known as the UK Higher Education Academy). She co-founded Creative Commons Hong Kong (<https://hk.creativecommons.org/>) in 2008 and initiated an IP Ambassador Programme with the HKSAR Intellectual Property Department for university students to share their knowledge and learn from IP experts and practitioners. She has served on consultative committees and statutory bodies including the Advisory Committee on Review of the Patent System (leading to the Patents (Amendment) Ordinance 2016). A recipient of the HKU Distinguished University Teaching Award 2019, she has promoted copyright awareness through a YouTube animation series “The Copyright Classroom”: <https://hku.to/CopyrightClassroom>



Gadi Oron – Director General, CISAC

Gadi Oron has been Director General of CISAC, the International Confederation of Authors and Composers Societies, since 2014. An entertainment and intellectual property lawyer by training, Mr. Oron has had leading roles in different sectors of the music and creative industries. As head of CISAC, he oversees the activities of the world’s largest global network of authors societies, covering more than 120 countries and representing over 230 collective management organisations.

An expert in international copyright, e-commerce and advocacy, Oron has represented the creative sector to governments, legislators and international bodies. He is Visiting Professor at Queen Mary, University of London, where he teaches on copyright and the creative industries. He has been named by “Legal 500” as one of the leading lawyers in France and, in 2019, was nominated by Variety Magazine as one of the top 26 Power Players in the international music industry.

Photo byline: Philippe Zamora



Satoshi Watanabe – Chairman, APC

Mr. Satoshi Watanabe is Senior Administrator at Corporate Affairs Bureau of JASRAC (Japanese Society for Rights of Authors, Composers and Publishers).

He has worked in the field of international relations for over 20 years, and also has experience in various licensing areas including general performances, mechanical reproduction, broadcasting and online/mobile music usages. Since 2014, he has assumed the current title and supervises international matters. He attends CISAC/BIEM meetings and also attends WIPO seminars as a speaker. As elected December 2016, he is Chair of CISAC Asia-Pacific Regional Committee.

■ Event Report ■

JASRAC/APMA Copyright Symposium on
Buyouts in Asia

Part I

Talk session

CISAC President, ABBA member

APMA Chairman, Composer / Arranger / Producer

Björn Ulvaeus

Shunichi Tokura

Part II

Keynote speech

HKU Associate Professor

Alice Lee

Part III

Panel discussion

CISAC Director General

HKU Associate Professor

APC Chairman, MC

Gadi Oron

Alice Lee

Satoshi Watanabe

Part I Talk session

CISAC President, ABBA member

Björn Ulvaeus

APMA Chairman, Composer / Arranger / Producer

Shunichi Tokura

The talk session started with the topic of the COVID-19 pandemic. Mr. Ulvaeus, living in Sweden, mentioned that he has not been able to visit the CISAC office in Paris after his election as President but has often been holding Zoom meetings instead. As his vision upon taking presidency, Mr. Ulvaeus stated that he would like to take on the topic of building copyright information infrastructure so that CMOs around the world will not be left behind technically in today's cloud-based music use such as streaming services. Touching on the difficulties the entertainment industry is experiencing in this pandemic, Mr. Tokura pointed out that human contact and communication – which are most important to music – are being taken away, and that while convenient digital tools do supplement the lack, there are things lost in this digitalization. Mr. Ulvaeus agreed that musical experience shared with the audience cannot be substituted, and while introducing the hardships theatres and performances are facing in Europe, pointed out that the rise of streaming services has brought increased attention on songwriters and that he expects songs themselves to be emphasized through these services.

On “buyouts,” which is the theme of the symposium, Mr. Tokura recalled the experience in his 20s with television commercials. He stated that so-called “subjugated buyouts” are the problem, appealing that songwriters should consider remuneration and spreading their names as two separate issues and that they should have concrete knowledge of their own rights. Mr. Ulvaeus said that although he did not face buyouts in Sweden when he started creating songs in the late 1960s, it is tragic to give away the copyrights of wholeheartedly written songs in buyouts and that young creators need advice. Both Mr. Tokura and Mr. Ulvaeus agreed that education is important in this matter.

Further, while Mr. Ulvaeus showed understanding for young songwriters to work for hire in the early days of their careers, he claimed that the buyout should not last for more than 10 years and that their rights should be reverted after this period. This could be one of the solutions, he said, and added that the help of lawmakers is needed. Mr. Tokura introduced how APMA, which he chaired at the time of the symposium, is dealing with buyouts.

Finally, Mr. Ulvaeus appealed that creators, who should be in the middle of the music industry ecosystem, are not getting enough remuneration, and that this situation should be changed. Concluding the talk session, Mr. Tokura referred to the keyword of the Olympic and Paralympic Games to be held in Tokyo this summer - “athletes first” - and stated that “creators first” is the keyword the current music industry needs.

Part II Keynote speech

HKU Associate Professor

Alice Lee

Prof. Lee reported the results of the primary research on buyouts in the Asia-Pacific region in six parts:

1. What is Copyright Buyout
2. Objectives
3. Scope of study
4. Survey questions
5. Recommendations
6. Way forward

In part 1, record companies, film producers / online video streaming service providers, and video game producers who commission the creation of musical works were identified as parties involved in buyout cases. Buyouts were explained as acts of these parties buying all copyrights of commissioned works from creators for a lump sum. Payment received from buyouts are different from royalties, and it was added that creators will not be able to use their own works after buyouts.

The two objectives of the study were explained in part 2: the first was to provide creators the knowledge they need to have as the basis of their decisions when they are offered buyouts, and the second was to raise awareness among governments and the public on this topic.

Part 3 introduced that the scope of this primary study was not only the music industry but was also extended to related industries such as film, broadcasting, and video games. There were eight Asian territories covered in the study, including Japan.

In part 4, it was explained that the following facts became clear as the result of dividing the study into seven sections:

1. Moral rights, among copyright, cannot be waived or given up in the territories studied except in Hong Kong.
2. In case a buyout falls under “unfair contracts” contrary to the will of the contracting party, the contract would not be finalized; however, legislation preventing unfair contract terms is available only in Australia and Thailand.
3. Among the territories studied, legislation entitling creators to fair and equitable remuneration – for example, legislation recognizing additional remuneration for unexpected hits – is available only in Macau.
4. Buyout contracts, in case they are for an unlimited period, can be terminated automatically after 25 years in Indonesia and after 10 years in Thailand. In Japan and South Korea, contracts can be terminated in case “non-exploitation of publication rights” apply.
5. For employee work, or “work for hire,” more than half of the territories studied including Japan provides the employer as the copyright owner. For commissioned

works, various arrangements exist.

6. Australia, Hong Kong, Thailand, and Vietnam have laws on government copyright.
7. In all territories studied except Hong Kong, there are education programs and public campaigns to promote copyright awareness.

Part 5 introduced five recommendations to solve buyout issues:

1. Regulate unfair terms in copyright buyout contracts of all territories
2. Grant all creators the right to fair and equitable remuneration
3. Require an option for creators to terminate contracts in case of non-exploitation
4. Secure fair and transparent negotiation when employees and freelancers create employee works and commissioned works
5. Organize public awareness campaigns in all territories

Plans for phase 2 of the study were introduced in part 6, with Cambodia, China, India, Malaysia, Singapore, Taiwan, and the Philippines as the seven territories subject to the research.

Part III Panel discussion

CISAC Director General

Gadi Oron

HKU Associate Professor

Alice Lee

APC Chairman, MC

Satoshi Watanabe

The MC of the symposium, Mr. Watanabe, introduced the organizational structure of APMA, how it has been dealing with buyout issues, and the brochure it is making as a part of its public awareness campaign.

Mr. Oron touched on the following three points from the position of CISAC's Director General:

1. The essence of buyout issues
2. Educational campaign "Your Music, Your Future International"
3. CISAC buyout guideline

On Point 1, Mr. Oron indicated out that buyouts are affecting all creators worldwide and that those who are in the position to take any jobs available have little choice, with many of them not having enough information on how buyouts could affect their careers. Mr. Oron reminded creators not to unknowingly lose control over their works and the ability to earn income from them.

In Point 2, "Your Music, Your Future International," a campaign aimed at providing sufficient knowledge and information when making decisions on buyout contracts was introduced.

Guidelines compiling the results of research on solutions to buyout contracts varying from country to country were presented in point 3. Although many buyout contracts for works for hire accept the principles of the United States law on this type of work, there are reasons to challenge these contracts in case the creator is neither a US citizen nor a US resident and the works are not US productions. Some examples presented were Article 18 (Principle of appropriate and proportionate remuneration) and Article 20 (Contract adjustment mechanism) of the EU Directive on Copyright in the Digital Single Market of 2019.

Mr. Oron pointed out that while there is a big information gap on the creators' side, they can negotiate from a stronger position if they acknowledge their own rights. He also mentioned that the position would become even stronger if the public becomes aware that copyright management organizations support and assist creators. Mr. Oron called for countries to develop laws protecting the interests of creators so that they are neither forced to give away their rights to others nor taken away the power to make a living by their own works.

Prof. Lee stated that for awareness campaigns, there is a need to involve not only creators but also young people in general - who may be potential creators - and introduced the "IP Ambassador Programme" which she initiated. She also pointed out the need to lobby the government.

* *

■ Organizer Greeting ■

Manami Suko

JASRAC Director

Hello, everyone. I am Suko Manami. The Japanese Society for Rights of Authors, Composers and Publishers, JASRAC, is excited to co-organize the Asian Buyouts Symposium with the Asia-Pacific Music Creators Alliance, APMA.

JASRAC was established in 1939 as the only collective management organization in Japan whose members, music creators and the publishers participate directly in its governance. It's highly concerned with matters that affect its members.

For over 20 years, JASRAC has organized symposia on many different topics, focusing on how authors' rights can and should be protected as the world around us continues to evolve.

APMA, formed by music creators and for music creators in 2016, continues to bring together the voices of music creators from around the region on issues such as fair compensation for creators in the digital age and copyright term extensions in that region.

JASRAC is happy to join APMA in the effort to educate music creators on the issue of buyouts and the long-term effects it may have on their livelihoods.

We inform the audience that due to unavoidable circumstances, Mr. Tokura Shunichi, who will take part in the opening segment, will not be able to stay with us for the panel discussion, the final segment of this symposium.

We thank the participants for this contribution to this symposium co-organized by JASRAC and APMA and look forward to a lively discussion. Thank you.

Part I Talk session

Talk session



Björn Ulvaeus

CISAC President, ABBA Member

Shunichi Tokura

APMA Chairman, Composer / Arranger / Producer

MC Satoshi Watanabe: So the first session is a talk between two music creators, Shunichi Tokura and Björn Ulvaeus. Björn, please turn on your camera.

Björn Ulvaeus: There we are.

MC Watanabe: It is my great honor and pleasure to start the first session with two very distinguished music creators.

Mr. Shunichi Tokura is a Japanese composer, arranger, producer, and he is Chairman of APMA, and Mr. Björn Ulvaeus is a Swedish songwriter, musician, singer, guitarist, producer, and a member of the Swedish musical group ABBA. He is President of CISAC, the International Confederation of Societies of Authors and Composers, which is a global network of 230 member author societies in 121 countries. That's CISAC.

So Mr. Tokura, would you start the talk session?

■ Responding to a Pandemic

Shunichi Tokura: Thank you. Thank you, Satoshi. And Björn, good morning to you.

Björn Ulvaeus: Good morning to you. Or good evening to you.

Tokura: Yes, good evening here.

Firstly, I'd like to congratulate you that you took over the presidency of CISAC in this hard time, during this pandemic. And I believe that I'm one of the many followers of yours and your contribution, your creations, and your activities throughout the years.

Ulvaeus: Thank you.

Tokura: And we're very happy that you took this role as the president of CISAC. So how are you keeping it up during this pandemic as the president of CISAC to start with?

Ulvaeus: Well, obviously, I was asked to become president before the pandemic, so I had already accepted. It took a while. I had to think long and hard whether I could be president of anything. *[laughs]* But in the end I decided, yes, maybe I can do something with my experience and my background. It's something that could be valuable to CISAC, so I decided to accept.

And during this time, it's been very interesting. I've had many Zoom meetings. I meet weekly with Gadi Oron, who is the CEO of CISAC of course. And my primary reason of becoming president was that I had a vision of the global solution to this fragmentation of rights and data that is happening because of the digital era. And the streaming services, they're all cloud-based, and the CMO infrastructure wasn't quite ready for I think the onslaught of the streaming services. So that's one of my greatest concerns is for the CMOs to keep up technologically.

Tokura: Okay. So you are now in Sweden, right?

Ulvaeus: I am in Sweden right now, in my house.

Tokura: And did you have any opportunity to visit CISAC in Paris?

Ulvaeus: Not yet, sadly.

Tokura: Oh, really. Okay.

Ulvaeus: I've been wanting to go down there and meet all the people, but the pandemic held me back.

Tokura: Yes, but there are so many modern tools that we can communicate with each other, and that's one of the subjects that we want to get into, but before that, it's inevitable that we will start tonight with this COVID-19 situation, and the entire entertainment industry is not only suffering financially but is overshadowed by discouragement, lack of hope, despair, whatever you want to call it, and we have found ways to communicate through various media and transmit our music, but I'm sure that many people will agree that, for me, music is all about human contact and communications, and to lack that takes away something very important from us.

But having said that, we do have various modern tools that we utilize in our daily life which help us during this pandemic, and that goes for our musical activities as well. Our life, our activities, even our musical creation are so dependent on these digital modern tools.

What I wanted to ask you, if you can describe to us how your activities have changed, and for that matter, your environment and your thoughts, maybe it all goes to the music consumption of people in this digital era. And sometimes it's very convenient; sometimes we lose something through that. What do you think about that?

Ulvaeus: I think we've come to realize that at a concert I think almost 50% of the experience is to be in an audience, and the contact between the performer and the audience is something that cannot be substituted with Zoom. It's absolutely impossible.

Tokura: Absolutely.

Ulvaeus: And I have several theaters in Stockholm, and of course I have musicals running, that were running before, in London and many kind of places, and everything is closed down and it's very sad.

You know, the artists used to make 70% of their income, about 70% of their income was from live entertainment, from live gigs, and now they've suddenly found that they are in the same position as the songwriters have always been, that they earn too little money, which has put the focus I think on the songwriter more than ever because this business of ours has never been more centered on the song than it is right now.

The song is everything. I mean, I have grandchildren who listen to music on Spotify, and they listen to songs, they don't even know who the artist is.

Tokura: No.

Ulvaeus: And it's amazing then that the songwriter should be in the periphery, always the poor cousin to the recording in our world, and I think this could be the year of the song. I hope sincerely it will be, when the streaming services may look at the song as important as it is.

Tokura: Okay, absolutely. This environment that we live in so strange, and especially with this COVID things are really rapidly changing people's minds as well as, not only performance but for creation as well. Did it change your... I mean, obviously you're still creating much music at home. Has it changed your ways of doing music?

Ulvaeus: It hasn't really because Benny Andersson and I, we can still meet at his or my place because it's big and airy and we can keep the distance, and so I've always written with him, so it hasn't changed for me, but I'm sure that it has changed for so many millions of songwriters around the globe.

I find that meetings like this or meetings about economy, about whatever, can take place via Zoom, but creative meetings, then you need to be able to see or to be able to reply immediately, you need to see people's reactions in a different way. So I'm missing that.

I'm right in the middle of project with digital copies of ABBA, who are going to be performing as avatars in London in a purpose-built arena, and that is a lot of creative work around that which now has to be through Zoom. But, I mean, what do you do? Then there's nothing else you can do.

■ About buyout experience

Tokura: Absolutely. Now today's topic, as many of you have seen in the invitation, is copyright buyout. Buyout has its history from very early days in the music industry when copyright awareness was still very immature. And here in Japan, buyout, it was not a common practice, but it was there in the '60s and the '70s, especially when it comes to, for example, advertisement jingles, theme music for television, motion pictures. I myself have had multiple buyout experiences on TV commercials, et cetera, and I thought, in those days, in the '60s and the '70s, I thought it paid pretty handsomely and I had no complaints.

But Björn, I think you would agree that nowadays when there are so many ways musical creation is utilized in vast quantities and generates a huge amount of remuneration, creators should be aware of the nature of their rights.

So can you share with me maybe your experience, maybe in your early career, something similar to this situation I just explained, that was a part of your world.

Ulvaeus: Yes, well, I suppose I was lucky. I started writing in the latter half of the '60s, 1960s, and even back then there was never any talk of buyout in Sweden, and it simply didn't happen. I didn't know about it even. It was, you wrote a song and you got registered with STIM, which is the CMO of Sweden, and you got your royalties. [*laughs*] So I was very lucky.

But emotionally, I tried to put myself in the shoes of someone who has parted with his

rights completely of a song that then becomes something which is lasting maybe and which is being played. It would be terrible to be in that situation.

Did you ever, was there ever any buyout of your material that still is played now and you regret it?

Tokura: Sometimes I hear a little jingle for about 3.5 seconds, something like that, and say, hey, that rings a bell, maybe 40 years ago, you know, but in those days it was like, I was doing it for fun and I wanted to, it was great to have work, whatever it was in my early 20s, for example, but I still hear all these little sounds or even little arrangements that I did because when the company grew and it grew to be a big huge company with tradition, with all this huge capacity of their marketing and all that, and people are so used to these little catchphrases, if you like, of these companies and they still use them. And to be quite honest, strangely, I never made a fuss about it. *[laughs]*

Ulvaeus: No, no. But if it had been a whole song and a song that would have lived through decades, then you might have been a bit more disappointed. With my experience, the only thing I can say to young songwriters, they need to be educated. They need to absolutely be advised in the matter of what it could mean to them...

Tokura: Absolutely.

Ulvaeus: ...if they go for a buyout. Because I think in the end, if you do it with a song that you've written with your heart and which is dear to you and which you think is a really good song, then to let people buy it out completely could be very tragic, very sad. And I think that's the most important point.

Tokura: Exactly.

Ulvaeus: Don't do it... If you really love that song, absolutely do not let them buy it out.

■ Subjugated Buyouts and Solutions

Tokura: Exactly. Well, when we talk about buyouts, and what we want to focus on is the problematic buyouts, which I call it like a subjugated buyout for example, that is when a party with a dominant preponderance force a deal with the young creator who cannot repudiate. So if you want to say no, you've got to really know, and exactly like you say, if you want to say no, you have to have the knowledge of what your rights are, and without that, like I told you earlier, when you are a young songwriter, you're so happy to have your song published or broadcast or streamed or whatever, and you'll do everything for it, just have your name on it, but remuneration is a different issue and it takes time for a young creator to learn that. And so exactly like you say, education, yes, education is the name of the word, isn't it?

Ulvaeus: And I think also the lawmaker must help. There must be moves. It's almost like you have to read the young songwriter the Miranda Rights, you know. Have you asked advice or have you done this or that before you take this decision? That would be a good thing, if a document signed for a buyout must be preceded by making sure that the writer knows exactly what he's doing.

Tokura: Yes. Okay, APMA, we're trying to develop some kind of an educational system, a seminar for example, et cetera, because in the Asia-Pacific region, there are still many cases that we discuss in our executive committee or in their general assembly. It's unlike North America or in Europe, there are so many under-developing countries, but there are brilliant, brilliant minds, talents in the Southeast...

You know, APMA has 21 members now. We started in 2016 with eight countries; now it's 21 countries. The last country who joined us was Nepal, and the Nepalese young composer who came to Tokyo with JASRAC's invitation just introduced us, a lot of cases that they were practically ripped off. And a very renowned composer from Thailand, his name is Thanit Chernpipat, he's one of the board members of APMA, and he's a well-known composer today and he's a performer as well, and last time when he introduced us with his episode, he had to pay an amount of money just to perform his own songs.

Ulvaeus: Yeah.

Tokura: That was... Oh.

Ulvaeus: Absurd. It's absurd.

Tokura: And so it really is the situation. And in the Asia-Pacific region, especially APMA is working pretty hard to educate these young creators.

Ulvaeus: I suppose that could be a kind of compromise because to work for hire could be a way for a young composer to get going, but then the buyout shouldn't be for more than, say, ten years, and then the rights should revert. That is also a solution because for a young writer to get royalties to start flowing in, he needs a body of work, and maybe to start him off it's good to work for hire for a while.

Tokura: Exactly. Yes. I think it depends on the region. It depends on the market. But I totally agree that we need the help of CISAC for example, an international operation, and to focus on these areas in the world, globally, in a focus globally on which areas that this education, their efforts, must be focused on. And I think the Asia Pacific region needs all the help they can get.

So we have to... Our time is... *[laughs]* Yes, Satoshi has been staring at me. But lastly, I want for you to explain or to tell us how you feel about... Do you feel there's going to be a huge change in the music world after this pandemic, post COVID-19, as far as creations, consumption, marketing, whatever, because this has changed our lives so dramatically, drastically.

■ The Importance of Creators First

Ulvaeus: It has, and the use of music, the listening has gone up, and people, music is more important to people than ever I think. It's just that the music industry, the ecosystem is dysfunctional because it doesn't reward those who are in the middle enough, and I'm talking about the songwriters primarily. Those who are the most important to the business are in the periphery when it comes to payments, and that has to change obviously.

And the solutions, what are they?

Well, as it is right now, the labels are getting paid four times as much as the publishers by the DSPs. That's an imbalance that has to be addressed. And I think the CMOs need to be more effective. They need to step up their technology, and they need global solutions, a cloud-based global solutions. I think that, it's a shame that the GRD, the Global Repertoire Database, was shot down because it's not in the interest of the songwriters for the CMOs to compete with databases. The CMOs should compete with their service to the songwriter, and they should ask themselves whenever they do something, is this in the interest of our songwriters or not?

And sometimes I think that the CMOs look at themselves as entities that are competing, and I think that's completely wrong. I think we need to look for third party solutions, global solutions, to the problem of inaccurate metadata.

Tokura: Okay. So I think we can conclude this that whatever we do, however we do it, we will talk with JASRAC in the coming days, post-COVID-19 obviously. But, you know, I think the keyword... The Olympic Games are coming and everything has been so in a turmoil this past six months, and luckily we seem to be, the torch, the marathon has started today. So I'm crossing my fingers that the Olympic Games would be successful this summer here.

But during all these difficulties, the keyword was athlete's first, that was the keyword of the Olympic Committee. But I'm telling, if it's athlete first, in the music world why doesn't somebody say creators first, artists.

Ulvaeus: Yes.

Tokura: That might be the keyword for our...

Ulvaeus: That is certainly a good keyword. Yes.

Tokura: So Satoshi, the time is up now? So we thank Björn for joining us tonight.

Ulvaeus: Thank you.

Tokura: It was lovely talking to you, and I hope to meet you in person in the near future.

Ulvaeus: Yes, absolutely. And I hope you have a good seminar going forward with the buyouts. It's a very, very important issue, and I'm glad that you're taking time discussing it.

Tokura: Thank you. Thank you, Björn.

Ulvaeus: Thank you.

Tokura: And that's for now. Bye. Bye, everybody.

Ulvaeus: Bye.

Tokura: Thank you. Satoshi-san.

Part II

Keynote speech

Keynote speech



Alice Lee

Associate Professor, HKU

MC Watanabe: Thank you very much. It was a very interesting dialogue between two big music creators. They shared their personal experiences in the early days of their careers, including buyout issues and the post-COVID situation. It was quite a wonderful and interesting talk. Thank you very much again.

So the next session is Prof. Lee's presentation about her buyout study in the Asia-Pacific region. So I would like to invite Prof. Lee now. She is an Associate Professor of Law at the University of Hong Kong, specializing in intellectual property law and IP education.

To the audience, if you have a question or comment, please write it in the chat box, and we will discuss the questions at a later session.

So now, Prof. Lee, the floor is yours. Please.

Ms. Alice Lee: Thank you very much, Mr. Watanabe. So now I am going to share my screen. I hope you can all see it.

MC Watanabe: Yes, I can see it.

Lee: Thank you very much. So I will try to keep the time and do it within 30 minutes because we will have questions and answers afterwards.

■ Six points on buyout study

So this is the topic. This has been my study for the past two years. This is on copyright buyout in the Asia-Pacific region. And before I start, perhaps I will tell everyone these are the six points that I'm going to talk about today (Part II slide 2).

So the first point is, what is copyright buyout? And secondly, what are the objectives of this study? Number three, the scope of the study in terms of the geographical scope and also the industries that we have been investigating. And then number four, I will be sharing the survey questions that we have been distributing to different members of CISAC in the Asia-Pacific region. And then number five, I will be mentioning five recommendations. And finally, we will look at the way forward, that would be our second stage of the study.

So if I maybe begin with the first topic that is copyright buyout. So what exactly is copyright buyout then?

This is a very simple definition (slide 3). I have tried to present the definition in the form of these symbols. We start from the left, and the top three parties as you can see on the slide. We are talking about a record company or a film producer or an online video streaming service provider or a video game producer.

What do these parties do?

And then the second row. These parties, they will commission the creation of a musical work. And here I use the word commission to mean that they are buying all the copyright from the creator in return for just a sum of money. In other words, they are not paying royalties. Royalties are different from this buyout situation. The main difference is, as

you can see at the very end of this slide, the creator cannot use the work later. That is because buyout means the record company, the film producer or the game producer, they are buying all the copyright. They just pay one lump sum to the creator, after which the creator cannot use the copyright anymore.

So is this a good thing or a bad thing? We want to know more.

■ Purpose of the buyout study

And so that is why we have APMA, the Asia-Pacific Music Creators Alliance, as well as CISAC, the International Confederation of Societies of Authors and Composers (slide 4). Together, they believe that this is an important topic for all creators in every part of the world, and so that is why they asked me, they invited me to do this Asia-Pacific comparative study of the buyout practices in different CISAC members and APMA members. And today, we also have JASRAC hosting this symposium to actually see what we can do to do two things.

So we have two objectives.

Number one, we want to empower all the creators, authors, and composers. How do we empower them? We give them the knowledge that they need in order to negotiate with the record company or the film producer. That is our first objective.

And the second objective is to raise awareness of copyright buyout issues. In particular, we wanted to talk to government and also we want to promote this as a public education program, and that is why we are very excited to see the initiative, Your Music, Your Future, which we will talk more about in the subsequent Q&A session.

So these are our two objectives, to empower the creators, as well as to promote awareness among government bodies as well as the members of the public.

■ The scope of buyout study

Now the scope of this study (slide 5). So what are the industries we're talking about in terms of copyright buyout?

Mainly, we are talking about the music industry because we are talking about musical works that are being used. But used for what purposes? There are being used in related industries that are listed on the right; namely, the film industry, the broadcasting industry, or the video game industry. So we are talking about all these industries where you will have musical works being created on a daily basis, and we want to help those creators get the rights protection and the remuneration that they deserve.

As to the geographical scope of our comparative study, these are the eight territories that we have surveyed in phase 1 of the study (slide 6). They are, in alphabetical order: Australia, Hong Kong, Indonesia, Japan, Macau, South Korea, Thailand, and Vietnam. And of course we have also surveyed other territories in Asia Pacific and they will be covered in phase 2 of this study.

■ Buyout study items

What questions do we ask them? (slide 7)

We actually came up with these seven questions with the guidance of APMA and also CISAC. So we had some brainstorming discussion with Ben from CISAC and also Mr. Tokura from APMA and also Mr. Watanabe from JASRAC, so we came up with these questions we thought would be the most important questions. Maybe I will go over them one by one before we look at the survey results.

Number 1, the first question, it's about copyright law in the different territories. The question we asked was whether creators can give up or waive their moral rights. I use the word "waive" here in quotation marks because this may be a technical legal word, but in simple language, the word waive simply means to give up, that means you don't want your right, you surrender your right. And I have underlined moral rights here because actually moral rights are related to copyright but they're not exactly the same, so later on I will talk more about the difference between copyright on the one hand and moral rights on the other hand.

We think this is one important question, so this is question 1.

Question 2, it's not about copyright. It is about contract law, and that is because we understand that usually musicians, when they do their composition, they will be entering into contract with a record company or a film company. So how do they enter into these contracts? Do they have any protection of the law? That was our second survey question.

So you can see on the slide, on the screen, our second question is, Is there any law governing unfair contract? And we have different definitions of unfair contract, as you will see in my subsequent elaboration.

And then number 3 and number 4, these are about the protection for creators, and in particular for this study, the creators, we are talking about musicians, composers. So question 3, we would like to find out whether under the law of these member territories creators will have a right to what we call equitable or fair remuneration.

And question 4, we also want to find out whether these creators or musicians will be allowed to revoke or to cancel the copyright by our contracts or whether the contracts will be terminated automatically is something happens.

And then, question 5, this is a more general copyright law question, and that is about who owns copyright in two particular types of work, and they are what we call employees' works and commissioned works, and we will talk about the differences, again, when we come to the survey results.

Question 6, in particular we want to find out whether governments in different member territories they have any particular legal provisions to govern government copyright, in other words, whether there is any law in the member territory saying who owns the copyright if it is the government that is in charge of the copyright work.

Finally, our last question is whether there is any public campaign or education campaign in the member territories to increase public awareness of copyright issues more generally, and I'm going to share the survey results from the eight territories that we investigated in

phase 1 of this comparative study.

Question 1, it's about moral rights (slide 8). As I said, moral rights are different from copyright. I know that this symposium will be joined by different members of the public, including musicians or including lawyers, so for the benefit of those who might not have the legal background, I'm going to very briefly talk about the meaning of copyright and moral rights.

As you can see on the screen, copyright, from the word copy, it is about a right to copy or to communicate the work to the public, and it's a bundle of rights, it's a collection of rights. There are seven, eight or nine different types of rights in different jurisdictions, and together we call these rights economic rights.

Why are they called economic rights? Because when you grant the right to copy to, say, a third party, you can actually charge royalty or you can ask for a lump sum. So that is why it is how you can generate income, so we call this an economic right. And these rights, you can actually give away or assign to other people if you want, of course in return for money. And here, I want to distinguish between two types of remuneration.

On the one hand we have royalties. Royalties will be money that you can receive on a regular basis when your work is being played by the person paying for the right. The more times your song is being played, the more royalties you will receive. So this is what we call royalties.

On the other hand we have the buyout practice or the buyout situation in which the creator will only receive one lump sum and then sell all his rights to the film or the video game producer once and for all, no more royalties and cannot use the work afterwards. So this is the copyright side.

Now how about moral rights then? Moral rights are not really about making money or generating income. As you can see, the most important moral rights I have put down here would be the right to be identified as the author. I think this is the most important right to any creator. You want people to acknowledge your work. Or another type of moral right would be the right to object to derogatory treatment, that means, if someone is using your work with mortifications that you are not happy with, then you can say no. That is called objection to derogatory treatment.

And I call these rights your personal rights because it is more about you as a person, as an author. So these are also called the author's rights, and that is why, because it is related to you as a person or as an author, so usually you cannot give up or waive these rights. That means these rights will be yours for as long as you wish. Unlike copyright, you can give it away to a third party easily.

So according to our first phase of the study, we surveyed these eight territories (slide 9). We surprisingly find that seven of them say that the authors, the creators, cannot give up their moral rights, as I said, because you are the author and you enjoy the moral right forever, even if you have given away your copyright. I said interestingly and surprisingly. It is in Hong Kong, the only place where you can actually give up, if you don't want your moral rights, that would be fine, because Hong Kong law, copyright law, will actually

allow authors to give up or to waive their moral rights if they don't want to keep their moral rights anymore.

But here, because we are doing a comparative study, I will not bother you with the details of the legislation because the details can be found in my report on phase 1 of the study. So maybe for the sake of simplicity, I will just give you this overview so that you can see all the places except for Hong Kong actually take moral rights very seriously and they cannot be given up.

If I may move on to the next question which is about unfair contract law (slide 10). I said before, there are two types of unfair contract.

The first type would be unfair formation of contract, and that means, as you can see from the picture on the left, if someone is holding a gun forcing you to enter into a contract, that means there is no genuine consent, then you can say, no, this is not my contract, and then this contract will be terminated afterwards because this is not my wish. This is the first type of unfair contract.

Another kind of unfairness would be when the contract terms, the clauses, are unfair to you as a contracting party. In other words, there are two contracting parties, but because you are the weaker party, you don't have the bargaining power, therefore, there are some contract terms that are unfair to you. So we in the survey wanted to find out whether there is any contract law in the eight territories about these two types of unfair contract.

And the result is, for the first type, that means unfair formation of contract, all eight places would have some legislation preventing unfair formation of contract (slide 11). For unfair contract terms, that means the second situation, as you can see on the screen, not every place has the legislation to deal with this. For example, Australia, they do have at the law. Japan has also amended its civil code recently. And Thailand also has some legislation about standard form contract.

So again, for the sake of simplicity I will not bother you with the details of the legislation because these are already included in my report.

Number 3, I think this is really the key question today (slide12). It is about whether the creator, that is the musician in this case, has the right to equitable or fair remuneration. In other words, I may have done something that is so brilliant that I may be entitled to additional remuneration, and interestingly, of the eight territories that we surveyed, only Macau has legislation about fair remuneration, and I have included their legislation in the PowerPoint (slide13), and there are two provisions, two articles in their legislation in Macau.

This is the first one, Article 12 subparagraph 4 in Macau, you can see I have already underlined the keywords for you, and here it says the "creator," that means the musician, "shall be entitled to," you can see I have it underlined, "special remuneration in addition to his agreed remuneration." In other words, the two contracting parties, they already agree on a sum of money, but because of the special circumstances of the case, the creator shall be entitled to additional special remuneration.

So what are the circumstances then? They are paragraph (a) and paragraph (b), so paragraph (a) here is that the creation has gone beyond the limits of your duty. In other words, maybe I just asked you to compose a very simple song, but then it turns out that your song is more than simple. I mean it is a big hit. It has generated a lot of income, which is out of our expectation, so that would be, “clearly gone beyond the limits” of what I expect of you.

And (b), “when uses are made of the work or benefits are derived from it that were not included” in the original negotiation, that means it is something beyond our expectation, then in these two circumstances, the creator will be entitled to special remuneration in addition to his agreed remuneration.

There is another paragraph in the law, or Article 36, which says that if after transferring the economic rights in the work for a sum of money, the creator suffers a grave economic prejudice as a result of disproportion between the income and the receipts earned by the beneficiary, that is the person getting the copyright, then the creator can demand additional compensation (slide 14).

So after the first phase of the study, we believe that this is something we would recommend, as you will see towards the end of my presentation. This is one of my five recommendations to all the member states, all the member territories for consideration.

Question 4, it’s about the duration of the contract (slide 15). So can you actually terminate or revoke a contract? Of course a contract is a contract. Usually, whether you can terminate it generally depends on parties’ agreement. In other words, we want to advise all the creators, all the composers out there, please, check your contract and make sure that you know what you can do or cannot do under your contract. If the contract says, yes, you can terminate or you can revoke it, then of course you can do this, and after terminating all the rights, all the copyright will go back to you as the creator. So that is the first thing you have to do, to check your contract.

But in addition to the contract, we also have the copyright law to help you out. That is why at the bottom of this page you can see, I said in some jurisdictions their copyright law actually specifies the circumstances under which a copyright buyout contract may be revoked.

So what are these circumstances then? This is a summary of the eight territories that we have surveyed (slide 16). You can see all eight of them would agree that if the parties say you can, then of course you can. That’s why I put down depends on the parties’ agreement for all eight places.

But then, there are some other jurisdictions that have additional provisions. For example, there are two types. It is about the duration and also it is about whether there is exploitation. Now, maybe we can start with the duration.

As you can see, I have highlighted in red color, in Indonesia, for example, if the buyout contract is for an unlimited period, then after 25 years it will end automatically. In other words, we believe that 25 years would be long enough, and so after that, the creator will be free to use the copyright in any way he or she likes.

Likewise, if we move to Macau, you can see Macau has a similar provision, also 25 years. Further down towards the bottom you can see for Thailand, it will be 10 years, so these are the three places that say, if we wait for 10 years or 25 years and the contract is no longer useful, then it will be terminated automatically.

Another situation I have highlighted in green color would be, let's say in Japan, when the creator finds that there is no exploitation of the copyright work, in other words, I have sold my copyright to you, but you have not done anything. I mean the producer, the film producer or the game producer, they have not done anything. They have not used my work, my musical work, for any of their production. So that is what we call a non-exploitation of the publication rights. Then as the creator, as the musician, I can terminate this contract.

This is also the case in South Korea. You can see they have a similar provision in green color. And also in Macau they said here, the creator can terminate a contract if he or she suffers from considerable prejudice, so again, that means, I have given you my copyright work, but you did not use it to generate any income, so you should give it back to me so that I can use it for a more beneficial purpose.

And then question 5, we want to see whether there is any legal provision about employee and commissioned work (slide 17). Employees' work means that it is created by an employee, whereas commissioned work means it is created by a freelancer. We know the difference. A freelancer is not on the payroll. It's not an employee. So it is only doing a job on a case-by-case basis. In these two cases, who owns the copyright then?

In the eight territories we find that there are some simple laws and some are more complicated (slide 18). For example, you can see that in more than half of the places, the employer would be the owner of the copyright if it is done by an employee. I have highlighted them in green. Those are the provisions in favor of employers. But there are some exceptions. For example, you can see in Australia, Indonesia, and Thailand, they actually give the copyright to the employee if the work is done by the employee.

On the right-hand side, for commissioned work, and you can we have different legal provisions in different places. For example, in Australia, you can see, it depends on the types of the work. If they are photographs or paintings, engravings, sound recordings, then the person paying for the work will have the copyright. But other cases, it will be the creator. And also, in Indonesia, Japan, South Korea, it would be the creator who gets the copyright, whereas in Hong Kong, it will be the person that is specified in the contract, so it can be the person paying or the creator, it really depends on what you say in your contract.

Question 6, we wanted to know whether there is any law governing the ownership of government copyright (slide 19), and interestingly, we find that half, that means four of them, actually have specific law about government copyright, and they are: Australia, Hong Kong, Thailand, and Vietnam. And the other four they don't really have specific provisions. That means the general law would apply.

The final and also another important question is, we want to find out whether there is any

public campaign or education program in these eight places (slide 20), and we are very, very happy to see that in Australia, Indonesia, Macau, Thailand, Vietnam, they do have copyright seminars, and regular meetings to educate the public. In Japan of course, we have JASRAC and they are doing this online seminar and they are doing other things to promote awareness of copyright. South Korea, also they have KOMCA doing a lot of education now.

And I highlighted, the only place I am not sure about is actually Hong Kong because here I have put out our Intellectual Property Department. I would hope that they have done more. So that is why after this presentation, I would be talking to our Intellectual Property Department in Hong Kong to see whether they will do any public campaign to educate the public about copyright in particular or copyright buyout.

■ The five recommendations

So a summary of the five recommendations would be here on the screen (slide 21).

One, we hope we can all regulate unfair terms in copyright buyout contracts. So this is about what you put into your contract.

Two, we hope we can all grant creators the right to equitable remunerations, fair remuneration.

Three, we hope there will be an option for the creator to terminate the contract if there is non-exploitation, that means no public use of the work.

Four, we hope there will be fair, transparent negotiation between employer and employee or in the case of commissioned works.

Finally, we hope all the territories can organize public campaigns to raise awareness of copyright issues.

In particular, as I said earlier, for equitable remuneration, we can find very helpful guidance from, the first one is Macau's example. I have already talked about their two articles. Another good example or guidance would be in Europe. They have the Copyright Directive, Articles 18 to 20 (slide 22).

■ The way forward

And finally, the way forward (slide 23). We have already started phase 2 of this comparative study, and we have distributed questionnaires to seven of our territories, including Cambodia, China, India, Malaysia, Singapore, Taiwan, and the Philippines. And we have also done a brochure to actually summarize copyright buyout in simple terms for everyone. And very soon we will be following up on the questionnaire with these seven territories, and we will do a report on phase 2. So hopefully, we will be working together and raise awareness of copyright buyout issues in the Asia-Pacific region.

That is my presentation. Thank you very much.

PartⅢ

Panel discussion

Panel discussion



Gadi Oron

CISAC Director General

Alice Lee

Associate Professor, HKU

Satoshi Watanabe

APC Chairman / MC

MC Watanabe: ...questions altogether after the final part of the panel discussion. Gadi, Alice, would you turn on your camera? Thank you. I see you. Okay, this panel, Mr. Tokura unfortunately cannot attend this panel, so I will moderate the discussion.

First, I'll introduce Mr. Gadi Oron.

He is Director General of CISAC, and he is a lawyer in the entertainment and intellectual property field.

■ APMA Initiatives

First, I want to discuss or introduce APMA's buyout campaign.

APMA was formed in 2016 as a partner alliance of CIAM, that's the International Council of Music Authors, to promote music creators' rights. And as Mr. Tokura mentioned now, from 21 countries and regions in the Asia Pacific, they are affiliated music creators.

APMA has identified corporate buyouts as one of the key challenges for music creators, adopting the Seoul Declaration 2017 and the Jakarta Statement in 2018 to draw attention to unfair practices in the form of corporate buyouts and to call on stakeholders to address and fix the problem.

And APMA commissioned Prof. Lee to conduct a buyout study in 2018, the result of which you just saw, the presentation for the study, phase 1.

And APMA is now preparing a brochure providing music creators with basic information about their rights and copyright buyouts. I want to show the brochure now (Part III slide 1, 2).

As you see, it's a little bit small. It's a concise, handy brochure, very simple questions. You might not see it. The questions are, what is copyright? Who owns copyright? What is copyright buyout? And a checklist. And the final message is, at the end of the day, you, the music creators, are free to decide whether or not to sign the agreement. So this is the buyout brochure. APMA is going to print the brochure in Asian languages, such as Chinese, Japanese, Korean, Thai, and so on.

Of course, we will have the digital brochure you can find soon at the APMA website. That's the APMA brochure which is part of the public awareness campaign.

So Mr. Gadi Oron, I understand that copyright buyouts are one of CISAC's main concerns right now, and CISAC has initiated an educational campaign on this subject. Can you tell us more about this, please?

■ CISAC Initiatives

Gadi Oron: Yes, of course. Indeed, buyouts is one of our top priorities internationally, and as what was mentioned earlier, in line also with what APMA is doing, what we want as an international organization is to help creators understand this issue and understand the impact that buyout contracts could have on their careers.

It's important to remember that when you look at this issue of buyouts, it's something that affects creators all around the world. It affects creators everywhere, it's a global problem, and we see it from many international perspectives. We see it everywhere.

In the presentation earlier, Prof. Lee talked about the situation in Asian countries and in the Asia-Pacific region, but it's important to remember that buyouts exist also in South America, and buyout contracts are becoming more and more popular in Europe. They of course exist in the United States. They exist in many other places.

It's also important to remember that they also affect different types of creators or creators who are active in different types of repertoire, whether it is music, whether it is creators of audio-visual works, whether we are talking about creators who are involved in the production and creation of video games, all of them, all of these creators find themselves in the same situation.

In a buyout scenario, they have a lack of choice, they don't really have a choice, and they don't have negotiating power usually to negotiate something better for them. All of them lack information about what these contracts actually mean for them, what they could mean for their careers. All of these creators are facing the same potential harm to their future careers.

We talked a lot about the background. We talked a lot about the legal, in the previous presentation, about the legal aspects, I would like to invite you to imagine this.

Think about the young creator, creators who are just starting their careers now. They dream of becoming famous. They dream of writing that one song that will break their career internationally, that will make them successful, that will make them rich, that will make them famous. Most creators in that situation, when they start their career, they work day and night, writing new songs or creating other forms of creative works, and at that stage of their career, they will accept anything that is offered to them. They will take anything that they receive just to start working, just to start becoming more popular, to gain more fans, and of course to make some money so that they can make a living from their creation because, as we know, when creators start their career, many times they do something else to support themselves financially but they all have this dream of becoming successful, of becoming famous and living from their creation, benefiting from it financially.

So while they have these dreams and while they work hard, they receive an offer to write a song for, let's say, a TV series, and they already picture it, they have this image in their minds. They will become successful. They will write this song that will make this series. This series will become a global hit and the song will become also a global hit. It will be played on the radio. It will be streamed online in different platforms all around the world. They can already see how this will break their careers and how it's going to change their lives.

Well, none of this will happen if they've transferred all their rights. If they sign a buyout contract, whether they understand it or not, they will not benefit from the success of the song they wrote. The song could become successful for sure, the TV series may become a hit, the song may become very successful, but the creator will see that from a distance

and they will not benefit from it financially. They will see the song played on the radio, they will see how much it is streamed, but it's very likely that they will see no benefit from that at all.

So as we heard earlier, there can even be situations where the creator themselves, himself or herself, will not be able to perform their own song in the case of some Draconian contracts that force the creators to transfer all their rights.

So what we want to do at CISAC, as an international organization that really has the benefit of the creators in mind, is to help them understand what these contracts are, what could be the impact of these agreements, what could be the consequences of the creator signing such buyout contracts.

We don't want to tell creators not to sign these agreements. We don't want to tell them, you should never enter into buyout contracts. That's not where we are coming from. What we want to do is to equip them, equip the creators, or I would say arm the creators with all of the information that they need in order to make an informed decision because this is a decision that could affect their career. It could affect their career in the future.

We want the creators to understand that when they give away their art in a contract, it could be many things. It could mean a loss of control over their works, it could mean a loss of the ability to earn an income from these songs or other creative works, and it could possibly mean that they will see the film or the TV program that they wrote the song for becoming extremely successful and they will not be able to share in any way in this success.

■ Your Music, Your Future International

So we want creators to have this knowledge, we want them to have the information, so that they can make their own independent, their own informed decision, and that's one of the reasons, that's actually the main reason that we launched the campaign, the campaign that you mentioned, Your Music, Your Future International. I'll try to share my screen and show you what the website looks like.

This is the front or the main page of the website (slide 3).

What we did is we at CISAC partnered with a movement that actually started in the US. It was a movement that had the goal of providing this information to creators. It was actually an initiative of creators, individual creators, who wanted to give this information to other creators. And what we did at CISAC was to take this initiative to the international level.

So now we have with Your Music, Your Future a global education resource, something that creators can use. It's totally dedicated to buyouts. The whole initiative is an extremely important initiative. I think it's also a wonderful initiative. I said it started in the US. I need to give credit to an American creator, Joel Beckerman. He was the guy who started this project, this idea, together with a group of other composers. They launched the first Your Music, Your Future platform, which was initially, primarily for US creators, and today it has more than 15,000 creators who have signed up for this initiative.

Really, as I said, it's about explaining from creators to creators what buyouts mean, how buyouts differ from receiving royalties, what are the types of clauses that you can be offered in a buyout contract, information about the different laws that apply around the world. Again, the goal here is to become an education campaign (slide 4). It's not an advocacy campaign. It's not targeted at governments. It's targeted at the creators themselves because we want the creators to understand their options.

We want them to know what does it mean to sign a buyout contract as opposed to what does it mean to receive regular royalties for the future.

And the people behind this project are creators themselves. As I said, it started by creators who just took it internationally. You can find on their website different quotes from creators (slide 5), and it's a global movement now, and this is why it was so important for us at CISAC to be a part of this because it's an international problem and something that international creators, creators all around the world, need to be aware of.

Maybe a final thing on this, on the international aspect of this website and of this campaign, is that it is now in English but we are working on preparing other versions that will be tailored to different markets. So now we are preparing a version in French, in Spanish, in Portuguese, even in Finnish. There will be a website there very soon, and hopefully one day also in Japanese and other languages.

MC Watanabe: Okay, thank you, Gadi.

Alice, as you said, CISAC is conducting an educational campaign and you are an IP education expert. I saw a very lovely animation series you put up. Do you have any comments on the authors' rights campaign?

■ Intellectual Property Ambassador Program in Hong Kong

Lee: Thank you very much. Actually, I like the Your Music, Your Future campaign very much because I could see many creators, many composers actually sharing their quotes. And I think it's really important to get not just these composers – of course it's great to have composers sharing their views and experience – but I think to bring it forward maybe, we need to involve more different members of the public, including, I would say, on the one hand, the young people, because, as Mr. Gadi Oron has said, we are looking at the young creators, the young composers, so I'm thinking maybe we could actually extend this program to, say, primary or secondary school students because they might be already composing their own music. So if they know when they're still young that these are the options that they have... Because, you know, nowadays, I mean even a primary school student might be already having his or her own YouTube channel. They might be composing. Right?

So what I have in mind right now, I have already got, actually in Hong Kong, I have already started an intellectual property ambassador program because I invited my students to go to share their knowledge, their copyright knowledge, with secondary school students and teachers, so I think copyright buyout will be the next topic that I would like to share with these students and teachers, I guess.

■ CISAC Buyout Guideline

MC Watanabe: Very interesting. Yes. You know, music creators need to be well educated and well informed of his or her rights to make an educated decision when approached with a buyout deal or offer, but for a music creator in need, it will be a little bit difficult to negotiate a fair deal with a big company.

How can a music creator secure fair terms for their labor? Gadi, I think that CISAC has produced a buyout guideline. Can you talk about that?

Oron: Yes of course. So indeed, as you said, there's an education issue and there's an information gap when it comes to buyouts, and CISAC indeed worked on guidelines on this issue because the first thing we need to remember is that the contracts themselves can be different in different countries. The practice of buyouts can take different forms and different shapes, and even though the basic idea is the same, a complete transfer of rights, the legal systems around the world are different, and because of that, the contracts can also be different, which means that the way to challenge these contracts, the arguments against such contracts, are not the same everywhere.

There are some common elements, and I think that perhaps it would be useful – we've prepared a slide that shows an example (slide 6) – because we've been talking a lot about the buyout contracts and we haven't actually shown what they look like, what the provisions look like, so let me share an example to illustrate this.

So what you see here is a clause taken from a contract that includes buyouts, a buyouts clause or buyouts provision, and what you can see is that it's very broad, and that's usually something that we find in most buyouts, provisions of buyout agreements. They are very broad. They cover the whole world. They usually apply to all of the rights of the creators. So they cover all the rights that the creator has. They usually cover the period of the life of the creator plus 70 years after his or her death, which is the term corresponding to the term of copyright in most countries.

And all of these contracts basically say that in exchange for a one-off payment, the creator gives away all of the rights for the whole world, for the whole duration of copyright.

And because the copyright laws are different in different countries, you need to find different solutions or different approaches to dealing with these contracts, and these different solutions will depend on which country you are talking about. And it's a very complex issue, and that's why we started to look at it internationally, and we took the initiative to investigate what's happening around the world, and we've produced later the guidelines. So as I guess many people watching us will know, CISAC is an international that brings all of the author societies of the world together, and all of these societies operate in more than 120 countries.

So we reached out to all of them so that then we can go back to them and help them understand how they can help their creators, creators who maybe signed a buyout contract without even understanding what they signed, and we wanted to help the societies and for the societies to help the creators understand what could be the arguments against such contracts.

If we use some examples, and it was mentioned earlier the concept of work made for hire, this is something that comes from the US system, the US copyright law. It basically means that the employer or the producer of the work is considered the author and therefore is considered the first owner of copyright, and indeed, we see many buyout contracts that basically apply this concept, and they say that the contract itself will apply US law, this will be the law that governs the contract, and the contract includes the doctrine of work made for hire, which is an American or a US copyright law doctrine.

But when the creator is not American and is not a resident of the US and the production is not in the US and the film or the TV series that we are talking about, let's say, are produced in Europe, then why should we accept that the law of California or the law of the US should apply to this type of relationship? And this is the sort of questions that we struggled with and this is why we ended up investigating this and looking at the different situations around the world.

And you do find that in many places you have much stronger protection that can be used to protect the interests of creators (slide 7). So for example, in Europe, we find much stronger protections for creators, we find them in individual countries, we find them under rules that apply throughout the US by virtue of the EU Directives, and the EU, the European Directives talk about the right of authors to have fair payment and proportional remuneration. Fair payment, proportional remuneration are things that can challenge buyouts.

There are individual countries in Europe, Germany, the Netherlands, a few others, that expressly prohibit buyout contracts. There are other countries that require under their law that there will be fair remuneration, which is proportional to the income that is generated from the work. In other words, a payment to the creator that is in line with how much the work that he created actually generated commercially, and this is the situation for example in France, in Italy, in Spain, in others.

But if we turn to the rules that apply throughout Europe as part of the EU legislation, we have a fairly new directive in Europe, the Directive on Copyright in the Digital Single Market. I'm sure many people who are watching this have heard about this directive. It's a very important directive. It talks about, one of the things there that you find, it's in Article 18, it is the right of creators to appropriate and proportionate remuneration when they license their rights. When they give away their rights, they are entitled to appropriate and proportionate remuneration.

There's also a provision there that says that if there was lump sum payment, it could constitute something which is a proportional remuneration, but this should not be the rule. In other words, in Europe, it is clearly stated that buyouts should not be the common practice; it should be the exception.

There are many other rules that are talking about the specifics of this issue, but I would like to mention some other things, and in this important European directive we find what we refer to as the transparency triangle (slide 7), the transparency triangle to say that it's a combination of rules that are there to protect the interests of creators.

So one of them, we call it the best seller clause, and what this clause means, you find it

in Article 20 of this directive, is that if the work becomes very successful in the market, the author has the right to demand a renegotiation of the contract or, in other words, it's a contract readjustment. The author can go and say, well, you know, we did not anticipate that commercial success and that amount of money generated by the work. I would like my contract to be renegotiated, and that could be used to challenge buyouts.

Something else which is very relevant is all of the reporting obligations, the transparency that is imposed by this directive so that the creators have a right to receive regular reports about how the work was used.

There's also a dispute resolution mechanism that representative organizations can utilize and can launch. That's very important because, as we know, in most cases the individual authors do not have a lot of power, and in fact they are afraid of retaliation or they are afraid of being blacklisted by the producers of creative works, and here, organizations that represent them can launch this dispute resolution mechanism.

And all of these things are mandatory. That's very important to remember. And these are the things that we looked at as part of our guidelines for societies.

The producers cannot circumvent all of these rules by saying, for example, that the contract will be subject to US law. It's just not going to valid. In fact, there are also some rights for the authors to revoke agreements, for example, when a work was not used, they can try and revoke the agreement.

So all of these things can be used to help creators to get a share, a better share, and to prevent situations where the producers of the work deny the creators' remuneration through this one-off payment that they received in the beginning.

Another point that I would like to mention in the context of the guidelines that we produced is that sometimes when creators join an author society, like JASRAC and like many of the other societies around the world, they already transferred their rights. They give their rights or they mandate the society to give the right, they give the rights to the society, and in those cases, when a producer comes and arrives later and offers a contract or buyout, it can actually conflict with the transfer that already took place or a mandate that was already given by the creator.

So, yes, I guess the question is, when a creator already signed a buyout contract, what can be done? And this is really why we wanted to produce these guidelines and to inform our societies that there are many things that they can do. Perhaps if US law applies and there is a reason to apply US law, then perhaps there's not much that can be done, but if there's no reason to apply the copyright law of the US to the relationship, between the author and the producer, then you can rely on all of these rules that you find in European laws to challenge, the rules that do not permit this type of contractual agreement, and really to insist that the creator has proportionate remuneration, fair remuneration. There are lots of arguments that can be used.

There's no one size solution to this situation. It's a very complex issue. As I said, the laws differ around the world, but what we really wanted to do with the guidelines is to give the societies, I would say, the arsenal of legal arguments that they can use to help creators

and this complements the awareness-raising campaign that is directed more at the creators themselves.

■ Answers to questions from the audience

MC Watanabe: Thank you, Gadi. Now I'd like to read some of the questions we have received and ask the two speakers' views.

First, this is a question from Europe, I guess. In Europe, members of CMOs are not allowed to agree to full buyouts because of their exclusive membership agreements with CMOs. Is this different in the Asia-Pacific? Prof. Lee, is this kind of issue included in your survey?

Lee: Exclusive? Could you please repeat the part about exclusive?

MC Watanabe: The society, its members, mandate their rights on an exclusive basis. For example, JASRAC members make a membership contract and they entrust all rights with us on an exclusive basis, but of course we have some exceptions. And I think most Asian societies have a similar mandate, agreement, with their members.

And here is the question: if a society member mandates their rights on an exclusive basis, why can buyout deals be allowed?

Lee: Interestingly, we did not specifically ask whether or the CMOs they are mandating this. So it may vary from one territory to another then. I think that is a very good question. Maybe we should include this question in our survey now. Thank you very much.

MC Watanabe: Of course, I think it's a CMO representation. And of course they have some issues with members, especially as now the non-exclusive mandate, including multi-territorial digital licensing we see in many territories. But I think it's one issue too that could CMO's regulation.

Another question, are there ways in which creators themselves can increase their ability to negotiate if they're faced with a buyout deal? Gadi, do you have any comment on this?

Oron: Yes, well, I think that this goes back to what we discussed earlier about first of all having the knowledge, the understanding of what it actually means, and when a creator knows what he should be looking out for and what the contract could mean and he knows the fact that they have these rights and that they are the basis for the future royalty income, then they can use it in negotiations. So one part of it is the education and awareness.

And the other part, which goes more into the ability of societies to help, which is why we inform societies about all of the potential arguments, legal arguments, we don't want creators to become lawyers, we want creators to be creators and focus on their creation, but they should know that there are many legal arguments that can be used. And as I said in the example, if there's no relationship at all to the US, then a creator should know that there's no reason to apply the law of the US to the contract and that's something that can be negotiated.

And we know that many creators are facing a situation of imbalance in the negotiation

power. Usually, the production company is very strong and the creators are afraid that they will lose the contract that is offered to them or they are afraid that they will be somehow blacklisted, but at the same time, I think that when the creators are aware of their rights and they are strong in the negotiations and they also know that they have the societies backing them and supporting them, I think that this could make their position much stronger.

MC Watanabe: Thank you, Gadi.

Another question, this was raised during Prof. Lee's presentation. Is the music industry in general respecting rights and providing adequate remuneration? I think the question is asking in the Asia-Pacific region. Prof. Lee, do you have any response to this?

Lee: Whether the music industry in general is respecting their rights to receive remuneration?

MC Watanabe: Yes, I think so.

Lee: From my observation, in Hong Kong for example, I think their rights are being respected generally. I do think so. But I heard from colleagues that in some other places, for example, Thailand, let's say, there might be less respect, so that's why I don't think we can say in general for all Asia-Pacific because we might have different practices in different places.

And so that is why I want to propose one thing, and that is, we could actually use this, Your Music, Your Future campaign to talk to not just members of the public but also governmental bodies because I think it would help if the government or government-related bodies can actually take the initiative in setting an example.

In other words, if a government body is hiring a musician, let's say, to do something for government-related productions and they set a very good example of respecting the creators' rights, then I think the whole industry would be following. It will be easier, I mean, for the musicians to negotiate on a fair basis.

MC Watanabe: Another question is here. The copyright law in Macau seems good for the protection of creators. Why is that? Is it just based on the background?

Lee: Yes, yes. That is because it is, I believe, based on their Portuguese background, so that is why their laws are very different from the rest of the region that I have been surveying. So that is why, you remember at the end of my presentation, I actually said that we could have very good guidance from Macau on the one hand and the EU Directive on the other hand, and that is because the Macau example actually is rooted in Europe. It's because of their origin. So I think that is the reason why they have very unique provisions in the whole Asia-Pacific region.

MC Watanabe: Okay. Thank you. And Gadi, the European Copyright Directive needs to be introduced in the member states' domestic law by June this year?

Oron: Yes, yes. Usually there is a transition period, and once the directive is adopted, the

European Union member states have a certain period of time to adjust their laws to meet the requirements of the directive, and they are now in the process of doing it.

And of course I think that what the world and Europe has gone through in the last year will probably delay that because there were other priorities but, yes, countries are working on adopting their laws to the elements and the requirements of the open directive.

MC Watanabe: There is another question, just similar, but I'll read it. Should CMOs establish institutions to advise or mentor young creators about music contracts? We have discussed a bit. Prof. Lee suggested even very young students need to be educated, but do you have anything to add?

Oron: Well, I know from our work with many societies, like JASRAC and like many others in Asia and in other regions, that many of them are doing this through different initiatives or those different workshops, different projects to help young creators get the knowledge and understanding about their rights, what they mean, why they are so important to their career. And many of our societies do it in their own country, the country in which they operate, but of course we do a lot of projects like that internationally through CISAC, Your Music, Your Future International. Their website is one of these platforms that we did at an international level to help creators all around the world.

CISAC also has creators' councils. CIAM is the International Council of Music Creators, and APMA is the Asia-Pacific Music Creators Alliance, which is the regional alliance of CIAM. All of these entities operate internationally and regionally to bring the information and to make it accessible to the creators. So definitely, there is a lot these activities happening.

MC Watanabe: Okay. Gadi, is there any similar activity in Latin America or maybe Africa?

Oron: Yes, yes, indeed. So in Latin America, as I mentioned very briefly, buyouts are also a major concern, and there was an effort there by Latin American societies to address this issue and again learn what is happening in the different countries and how it can be addressed.

The most recent step in that was the commissioning of a legal opinion. Just like Prof. Lee did for the Asia-Pacific region, we are now doing the same in Latin America, again, to build their basis of knowledge about the problem and how it can be addressed.

MC Watanabe: Okay. I'll ask my colleague, do we have any more questions? No? Okay. So we have covered most of the questions.

I would like to hear any final comments. Prof. Lee, you have made recommendations in your report, and you are conducting a phase 2 study for more territories in the region. Do you have anything to emphasize or an expectation to the second phase study.

Lee: May I share my PowerPoint again maybe?

MC Watanabe: Sure.

Lee: So this is the final, almost the end of my presentation about the recommendations. As you can see here, the recommendations cover different things, for example, the first one is about contract terms, and then number 2 is about remuneration, number 3 is about the right to terminate a contract in case of non-exploitation, number 4 is about contract again. It's about whether an employee or a creator can negotiate with the employer or with the commissioning party. And finally, it's about public campaigns.

So if you ask what we should be emphasizing, of course I think we should always start with the creators, as Mr. Gadi's RNS has already pointed out or emphasized before. We need to empower the creators with the knowledge that they need. I think this is step number one. They get the knowledge, they know what options they have or what the law is or what does it mean, I mean, a buyout as opposed to receiving a royalty. So this is basic knowledge. And if they have this basic knowledge, then they can talk about fair remuneration, they can talk about the right to revoke contract in the case of non-exploitation.

But once again, I would say, even with such knowledge, which is essential, it doesn't mean we can change the buyout practice unless and until we have somebody with the bargaining power to set a good example, and that is why I emphasize on the last point, a public campaign. In other words, I hope those who have the power could actually come forward and share the knowledge with the general public and set a good example because without a good example I don't think the employer or the commissioning party would be willing to actually give more rights or more remuneration to the creators, even so we know it is something that they should do.

So this is my personal view in promoting all of this. We should bear in mind that knowledge is really, really the first thing. With the knowledge, we should also come with a good example, preferably from someone or some organization that can set a good example for the entire industry. I think that is how we can change the life of all these young musicians.

So this is my personal view. I therefore look forward to working with different parties and different partners, all the CMOs or CISAC, in this kind of education public campaign so that we could actually make more people aware of the importance of buyout and the significance of the changes that we can make.

MC Watanabe: Thank you very much indeed. I look forward to the results of the phase 2 study.

Lee: Thank you.

MC Watanabe: Gadi, do you have any final remarks?

Oron: Well, maybe just to make a link with what Prof. Lee just said, I think that we need to remember that in buyouts, like in many other challenges that we have in the creative industries, the creators themselves, even though they are probably the most important part of the creative industries because there will be no music industry, no film industry, no TV without the creators, they have always been in a very weak position, in an inferior position,

and the only way to change that, the only way to empower them, to help them be stronger in negotiations is to have strong laws, to have a good enough legal framework, and what we saw in Europe is definitely the right way to go.

We need more and more countries to have laws that will protect the interests of the creators and make sure that they cannot be forced to give away their rights to others and be left with no ability to make a living from their works.

So we need the legislation, we need to empower creators through the education that we talked about so that they know what their rights are, and usually there is a big gap there. And we want and we need strong bodies to back creators and to be with them, to support them, and that's the role that CMOs and societies like JASRAC and many others are playing, to bring the knowledge and to also be there to assist the creators if they are facing situations where they are offered contracts that they know would put them at a disadvantage and risk their future careers.

MC Watanabe: Thank you. Creators first, we say.

Thank you for joining the Asia Buyout Symposium. I'd like to thank both speakers, Prof. Alice Lee and Gadi Oron, for their great contributions today. I think the discussions today will be very useful to music creators and stakeholders for their career-making and policymaking on the copyright buyout issue.

So, I am closing the symposium. Thank you again. *Arigato gozaimashita.*

Lee: Thank you very much.

Watanabe: Thank you.

Oron: Thank you.

Lee: Thank you.

Materials

Part II Slide

COPYRIGHT BUYOUT
IN ASIA-PACIFIC

1

1. What is Copyright Buyout
2. Objectives
3. Scope of study
4. Survey questions
5. Recommendations
6. Way forward

2

1. COPYRIGHT BUYOUT



Record company

Film producer/
Online video
streaming servicesVideo game
producerCommissions the
creation of a
musical workBuys all the
copyright from the
creatorCreator cannot use
the work later

3

Asia-Pacific Music **Creators** AllianceInternational Confederation of Societies of **Authors & Composers**

- To empower **Creators / Authors / Composers**
- To raise awareness (**government** and **public education**)

4

3. SCOPE OF STUDY

**Music industry****Related industries:**Film industry
Broadcasting industry
Video game industry

5

3. SCOPE OF STUDY

- Australia
"APRA AMCOS"
- Hong Kong
"CASH"
- Indonesia
"WAMI"
- Japan
"JASRAC"

- Macau
"MACA"
- South Korea
"KOMCA"
- Thailand
"MCT"
- Vietnam
"VCPMC"

6

4. SURVEY QUESTIONS

- [1] Copyright law – can creators give up or "waive" their moral rights?
- [2] Contract law – any unfair contract law?
- [3] Creators – right to equitable/fair remuneration?
- [4] Creators – allowed to revoke/cancel copyright buyout contracts?
- [5] Who own copyright in employee works/commissioned works?
- [6] Government – any law on government copyright/buyouts involving government?
- [7] Public campaign to increase public awareness of copyright issues?

7

Q1: MORAL RIGHTS

Two types of rights:

- **Copyright** = right to copy / communicate the work to the public
→ **economic rights** → owner can give away or "assign" these rights to others



- **Moral rights** = right to be identified as author / object to derogatory treatment
→ **personal rights** → can give up or "waive" these rights?

8

Q1: MORAL RIGHTS

Australia	Cannot give up
Hong Kong	Can give up or "waive" moral rights Cannot give away or "assign" moral rights to others
Indonesia	Cannot give up
Japan	Cannot give up
Macau	Cannot give up
South Korea	Cannot give up
Thailand	Cannot give up
Vietnam	Cannot give up

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Q2: UNFAIR CONTRACT LAW

Two types of unfair contract:



- 1) **Unfair formation of contract**
- coercion or improper influence
 - no genuine consent



- 2) **Unfair contract terms**

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Q2: UNFAIR CONTRACT LAW

Australia	Unfair formation: yes; Unfair terms: yes*
Hong Kong	Unfair formation: yes; Unfair terms: no
Indonesia	Unfair formation: yes; Unfair terms: no
Japan	Unfair formation: yes; Unfair terms: Civil Code amended
Macau	Unfair formation: yes; Unfair terms: no
South Korea	Unfair formation: yes; Unfair terms: no
Thailand	Unfair formation: yes; Unfair terms: yes (standard form contracts)
Vietnam	Unfair formation: yes; Unfair terms: no

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Q3: EQUITABLE REMUNERATION

Creators' right to equitable remuneration ensures that creators receive fair, just and reasonable remuneration for the rights transferred or assigned

Australia	No
Hong Kong	No
Indonesia	No
Japan	No
Macau	Yes*
South Korea	No
Thailand	No
Vietnam	No

12

Republication of the Regime of Copyright and Related Rights



Article 12(4): "Where the economic rights have been assigned to the person for whom the work was made, the intellectual creator shall be entitled to **special remuneration in addition to his agreed remuneration**, whether or not the work is actually disclosed or published:

- when the intellectual creation has clearly gone beyond the limits of even zealous discharge of the responsibility or task assigned;
- when uses are made of the work or benefits derived from it that were not included among those envisaged when the remuneration was agreed."

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Republication of the Regime of Copyright and Related Rights

Article 36(1): "Where the intellectual creator or his successors, having transferred or assigned the economic rights in the work for a consideration, suffer a **grave economic prejudice** as a result of manifest disproportion between their income and the receipts earned by the beneficiary of the transfer or assignment, they may demand **additional compensation** from the beneficiary according to the results of the economic exploitation."

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Q4: CAN CONTRACTS BE REVOKED?

- Generally, depends on parties' agreement

- check your **contract**
- if it says YES, the creator can revoke a copyright buyout contract
- all the rights will go back to the creator



- In some jurisdictions, their **copyright law** specifies the circumstances under which a copyright buyout contract may be revoked



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Australia	Depends on parties' agreement
Hong Kong	Depends on parties' agreement
Indonesia	Depends on parties' agreement; or If contract is for unlimited period, will be revoked after the 25th year
Japan	Depends on parties' agreement; or Creator can revoke if no exploitation of publication rights
Macau	Depends on parties' agreement; or If contract is for unlimited period, will be revoked after the 25th year (for cinematographic productions); or Creator can revoke if suffers from considerable prejudice
South Korea	Depends on parties' agreement; or Creator can revoke if no exploitation of publication rights
Thailand	Depends on parties' agreement; or If contract is for unlimited period, will be revoked after the 10th year
Vietnam	Depends on parties' agreement

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Q5: EMPLOYEE/COMMISSIONED WORKS



Employee work = created by an **employee**

Commissioned work = created by a **freelancer**

Who **owns** copyright in the above works?

There are **legal presumptions** to determine ownership

	Employee work	Commissioned work
Australia	Literary, dramatic, musical or artistic works: employer Other works: employee	Photograph for private purposes, painting/drawing/portrait, engraving, sound recording, cinematographic work: commissioning party Other works: creator
Hong Kong	Employer	Person specified in the contract
Indonesia	Employee	Creator
Japan	Employer	Creator
Macau	Person specified in the contract	Only specific provision governing photographs and computer programs
South Korea	Employer	Creator
Thailand	Employee	Commissioning party
Vietnam	Employer	Commissioning party

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Q6: LAW ON GOVERNMENT COPYRIGHT

Australia	Yes
Hong Kong	Yes
Indonesia	No
Japan	No
Macau	No
South Korea	No
Thailand	Yes
Vietnam	Yes

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Q7: PUBLIC CAMPAIGN

Australia	Yes (e.g. copyright seminars, legal advice sessions)
Hong Kong	Intellectual Property Department (IPD)?
Indonesia	Yes (e.g. panel discussions, legal clinics)
Japan	JASRAC
Macau	Yes (e.g. copyright fair, open days of CMOs)
South Korea	KOMCA
Thailand	Yes (e.g. annual meetings)
Vietnam	Yes (e.g. copyright seminars, legal advice sessions)

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Q8: RECOMMENDATIONS

Regulate	Regulate unfair terms in copyright buyout contracts
Grant	Grant creators the right to equitable remuneration*
Require	Require buyout contracts to include an option for the creator to revoke the contract in case of non-exploitation
Encourage	For employee works and commissioned works: encourage fair and transparent dealings between parties
Organise	Organise public campaigns to raise awareness of copyright issues

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EQUITABLE REMUNERATION

Helpful guidance:

- 1) **Macau:** Republication of the Regime of Copyright and Related Rights
- 2) **Europe:** EU Copyright Directive (17 April 2019), Article 18 to 20

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Q9: WAY FORWARD

Date	Copyright Buyout Study – Phase 2
Mar 2020	Distribute questionnaire to members in 7 countries/territories: Cambodia, China, India, Malaysia, Singapore, Taiwan, and The Philippines
May 2020	Collect questionnaire responses Draft Brochure
May 2020 - Mar 2021	Follow-up on questionnaire Revise Brochure
Apr 2021 onwards	Phase 2 report

23

Part III Slide

Check the deal agreement or local law to see whether and when you can get back your copyright if it was transferred.

Example: Indonesia
If the copyright of a work has been assigned / transferred in the form of a buyout agreement and/or transferred for an indefinite period, by law, the copyright ownership would automatically be reverted to the original author after 25 years.

Check carefully the terms in the deal agreement (you should consider seeking independent legal advice!)

- ◆ If there are any unfair terms, you should propose changes to the agreement to the other party of the deal.

At the end of the day, you are free to decide whether or not to sign the agreement!

- ◆ If you are made to sign the agreement against your will, or later discover that you have signed the agreement mistakenly, seek legal advice.



Bjorn Ulvaeus
CISAC President

"In the post-COVID world, the issue of copyright buyouts matters more to creators than ever before. Artists, composers and authors have to be aware of their rights, understand their options and make informed choices on the way they are paid. Their future livelihoods depend on it."



Shunichi Tokura
Chairman of Asia-Pacific Music Creators Alliance (APMA)

"Understanding about copyright buyout is important for all creators in the world, especially for those who want music creation to be their profession. That is exactly what APMA is actively working on, working together with fellow music creators of the region, sharing experiences that differ in each country / territory."

www.apmusicalliance.org
www.ciamcreators.org
www.cisac.org
international.yourmusicyourfuture.com








HOW MUCH DO YOU KNOW ABOUT COPYRIGHT BUYOUT?

A Creator's Survival Guide



1

WHAT IS COPYRIGHT? WHO OWNS COPYRIGHT?

? A TV producer approached me and asked whether I could give them all the rights of the song I wrote. What should I do?

A What, give the rights to them? You own the copyright in your song!

Copyright is the right to use your work, which includes the right to perform it, the right to make it available online, etc. Your song enjoys copyright protection because it is an original work.

? I see. Is it always the case that I own copyright in my work?

A Not always. If you are an employee or a freelancer, depending on the laws of your country / territory, you, your employer or the person who pays you (known as the "commissioner") may be the copyright owner of your work.

Of course, in some cases, you and your employer / commissioner can determine who shall own the copyright in your work by negotiating and setting out the terms in a formal agreement.

WHAT IS COPYRIGHT BUYOUT?

? Hey! I told the TV producer that I wouldn't just give them the rights of my song. They then explain they want to buy the copyright in my song and offered me some money.

A Oh, so they're now asking whether you would like to transfer your copyright to them in return for a one-off fee. This is known as a "copyright buyout". After the buyout is completed, you will no longer own and control the copyright in your work, and you won't be able to earn money (royalties) from your own creation.

? Wait, I won't be able to earn money from my creation anymore? Perhaps I should discuss the details of the deal with the person in charge.

A You definitely should talk to that person. Make sure that you get what you want and deserve! Here, read this checklist, it lists out items that you have to pay attention to when you come across a copyright buyout deal.

COPYRIGHT BUYOUT CHECKLIST

If you are an employee or a freelancer:

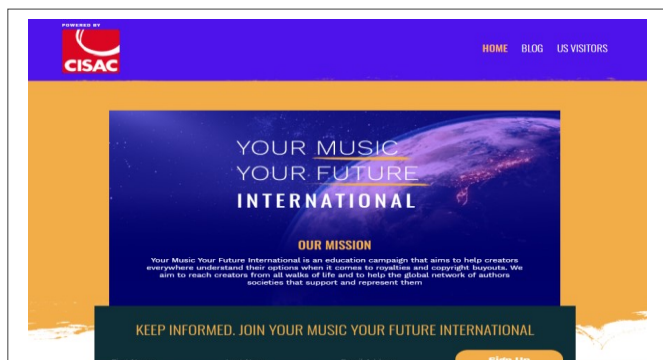
- ◆ Check the employment contract or freelance agreement to see who owns the copyright of your work.
- ◆ You may also check the law of your country on employee works or freelance works (legally known as "commissioned works")

Check the law to see if there is any right that you, as the creator, cannot give up.

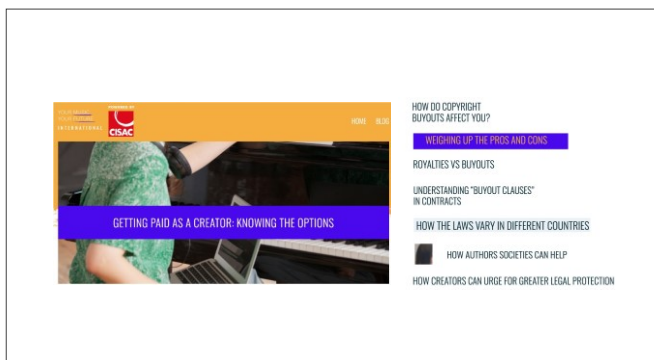
Example: Republic of Korea
Authors generally own moral rights (including right to make public, right of attribution and right of integrity) of their works. The author's Author's moral rights shall belong exclusively to the author.

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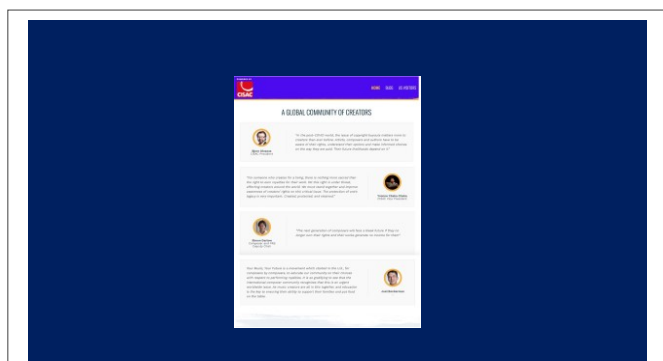
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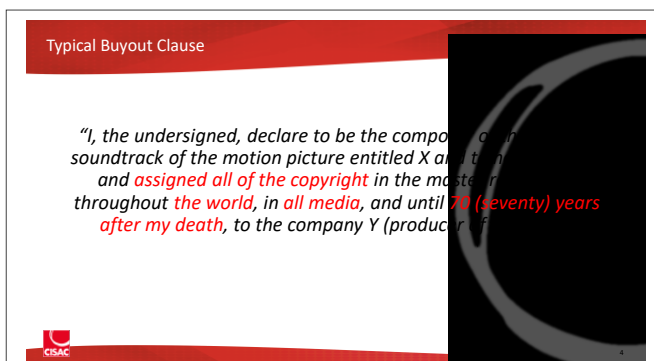
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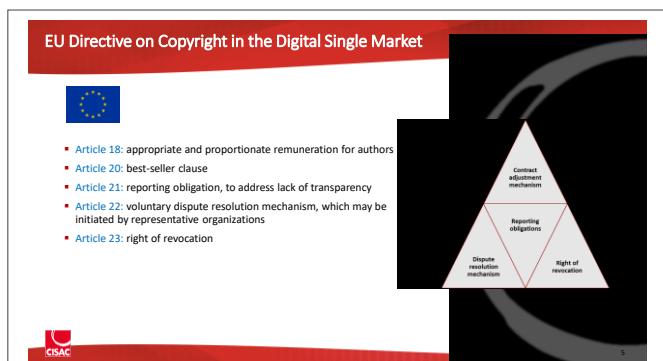
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