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**REPORT ON THE ONLINE MUSIC MARKET AND MAIN BUSINESS MODELS IN
ASIA: OVERVIEW AND GENERAL TRENDS**

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1. Methodology

This report (“Report”) reviews some of the current trends in the online music market in Asia. The information presented is derived from published literature, industry reports, and news items. Additionally, the Report uses findings from a sample of informal interviews conducted by the authors with individuals with first-hand knowledge of the matter, including legal experts, industry representatives, artists, and collective management organizations (CMOs) to supplement the literature review.

The Report is updated with information available up to April 2021. The authors have verified, to the extent possible, the information collected and referenced. However, due to its limited scope, the Report does not intend to be an exhaustive analysis of all the issues relevant for the topics addressed. Instead, it focuses on some of the current trends in the online music market in Asia and highlights some of the most relevant issues related to the technological infrastructure and business models on one side, and the chain of rights, remuneration, and regulations of CMOs on the other side.

The information provided in this Report is the sole responsibility of the authors and does not reflect the views of the Member States or the WIPO Secretariat. Finally, the Report does not intend to offer specific recommendations, advice, or proposals regarding the topics addressed.

2. Introduction

Asia is one of the fastest growing markets worldwide for online music. The latest industry reports and statistics confirmed the region’s business growth based on all relevant indicators.¹ In 2020, the continent saw the second largest increase in revenue for music, both from subscription and ad-supported streaming services.² In 2021, revenue in music streaming in Asia is forecasted to reach US\$5.608M while the annual growth rate in revenue is expected to be 11.99%. The projected market volume will hit US\$8.821M by 2025.³

Asia is also a very diverse continent with a mosaic of countries at different stages of social and economic development. It includes developed and high-income countries, such as Japan, South Korea, and Singapore, large emerging economies such as China, India, and Indonesia, the Philippines, Thailand, Malaysia, Vietnam, and fast developing least developed countries such as Bangladesh and Cambodia.⁴ This diversity is directly reflected in the online music market in terms of users, revenues, and business models.

Because of this diversity and the size of the continent, it is particularly complex to offer a comprehensive and precise review of the region. Still, despite the different stages of economic development and infrastructure, today the region has a consistently high rate of Internet penetration and mobile connectivity, both necessary for online music. Access to banking and payment services, on the other hand, vary considerably, as do users’ ability to purchase mobile

¹ IFPI Global Music Report 2021, 64-65; 77; 84-87.

² Asia and Latin America were the fastest growing regions. IFPI Global Music Report 2021, 77. Asia, excluding Japan, was the fastest growing region worldwide. *Id.*, at 85.

³ Statista, Music Streaming Asia, 2021. However, at the global level, USA is still the largest market. In comparison with Asia’s US\$5.608m, USA is expected to gross US\$8.669m for 2021.

⁴ This list is not exhaustive of all jurisdictions in Asia.

phones or pay for streaming subscriptions. This directly affects music distribution and business models.

Asia online music providers are also more diverse than in other regions. Large multinational platforms, such as Spotify, YouTube Music, and Apple Music, co-exist and compete with regional platforms like Joox, Melon, Gaana, and local digital service providers (DSPs). User generated content (UGC) media, such as YouTube, Tik Tok, Facebook, and We Chat, are also very popular. In addition, new initiatives are routinely created to compete in this highly dynamic market. For example, Spotify added several countries in the region to its portfolio in early 2021.⁵ It also included Asia amongst the regions in which brands would be able to serve ads to users of its free services via On Repeat featuring users' most frequently streamed tracks.⁶

Further, Asia is home to many languages and songs in local languages are often popular amongst those speaking these languages. As a result, these songs are generally included in the music catalogues offered by international and regional providers. Platforms also regularly collaborate with local, regional, and independent artists. Regional platform Joox, for instance, signed a licensing agreement with Merlin in early April 2021 to increase its current catalogues.⁷

Also in Asia, however, the rise of online music has disrupted previous business models and impacted the value chain. National governments are discussing these issues but, so far, most actions have focused on regulating CMOs. Discussions with authors (songwriters, composers, and lyricists), performers (musicians and singers), record companies, and representatives of CMOs give insights on these challenges and the complexities of future developments.

In this Report, we offer an initial review of the online music ecosystem in Asia. As mentioned, this Report is non-exhaustive and aims primarily at highlighting the development and selected trends in this area—both from a business and legal perspective.

3. The Rise and Development of Online Music in Asia

In 2016, Asia was defined as a “relatively small market” for online music, with “significant” opportunities.⁸ Already at that time, subscription and ad-supported revenues for streaming had grown considerably, along with mobile and Internet connectivity.⁹ Regional online music services were also rising.¹⁰ Five years later, these significant opportunities have blossomed. Along with even higher Internet and mobile connectivity penetration rates, Asia's music revenue grew by 9.5% in 2020.¹¹ This figure was higher than the global rate of growth of 7.4% for the same period, with the majority of revenue coming from streaming.¹²

In this Part, we offer a summary of these developments focusing on the infrastructure, the providers, and the diversity of music and services the region offers. We also consider how language and culture continue to affect consumers' tastes in music and in turn business models.

⁵ *Spotify expanding to over 80 new locations including Brunei, Laos and Cambodia*, NME, available at www.nme.com.

⁶ *Spotify opens personalized 'On Repeat' playlist to brand sponsorship*, Music Business Worldwide, available at www.musicbusinessworldwide.com/spotify-opens-personalized-on-repeat-playlist-to-brand-membership.

⁷ *Tencent-owned music streaming service JOOX inks licensing deal with Merlin*, Music Business Worldwide, available at www.musicbusinessworldwide.com/tencent-owned-music-streaming-service-joox-inks-licensing-deal-with-merlin.

⁸ McKinsey, *The Rise of Progress: The Rise of Music Streaming in Asia*, 2016, 3, available at www.mckinsey.com/the-beat-of-progress-the-rise-of-music-streaming-in-asia.pdf [hereinafter McKinsey Report]

⁹ *Id.*, 4.

¹⁰ *Id.*, 6.

¹¹ IFPI Global Music Report 2021, 84.

¹² *Id.*

(a) Infrastructure and Digital Ecosystem

Strictly speaking, digital technology arrived in the music industry, and in Asia, with the advent of CDs. Interestingly, this model remains very popular in Japan, where over 60% of music revenue in 2020 continued to originate from physical goods, primarily CDs.¹³ Today, however, we reference digital technology largely to describe music distribution, either through streaming or downloads.

In general, the production and distribution of online, or digital, music is dependent on a multi-factorial ecosystem, revolving around the information society and e-commerce. These factors are: 1) information infrastructure (i.e., Internet penetration and mobile connectivity); 2) availability of mobile devices (including financing systems to purchase mobile phones¹⁴); 3) banking or finance system for payments and subscriptions; and 4) legal infrastructure to support e-commerce, content creation, and content distribution.

In the past years, Asia has grown exponentially regarding each of these factors, even though a difference in infrastructure applies across Asia, particularly in rural areas. In addition, most Asian countries have updated their copyright laws,¹⁵ even though the level of compliance and enforcement still varies. The region also continues to see considerable online music piracy.¹⁶

With respect to the Internet, Internet penetration and users are consistently increasing across all territories in Asia.¹⁷ Not surprisingly, South Korea, Japan, and Singapore led the region in 2020 with 96%, 93.8%, and 88.4% penetration rate, respectively.¹⁸ On the other hand, China, India, Indonesia, Japan, and the Philippines had the highest number of Internet users because of their population size.¹⁹

The penetration rate of smartphones also continues to grow exponentially. In 2020, Malaysia led the region with a 95.14% rate, followed by South Korea with 91.64%, and Singapore with 88.43%. Thailand, Japan, the Philippines and Indonesia all had between 76 to 67% penetration rate, while China was 64.64% and India 52.67%.²⁰ Still, because of differences between urban and rural areas, as well as higher prices of smartphones, the penetration of mobile connectivity in the region is higher than smartphone usage overall. To cite a few examples, Cambodia's broadband connection 3G-5G in the past year was 73.1% of the population, whereas the

¹³ *Id.*, 85, 127. However, it should also be noted that, even though streaming revenues were only 23.5% of the total revenues in Japan in 2020, they still grew by 38.1%, which was above the global average of 19.9%. Moreover, Japan was the fifth largest market for streaming globally, and the fastest growing market for streaming revenues in the top 10. *Id.*, 86.

¹⁴ Asia also seems to be a region in which the cost of purchasing data for mobile phones is lower than in other parts of the world. See *Mobile Data Cost Around the World in 2020*, Spend Me Not, available at www.spendmenot.com/blog/mobile-data-cost-around-the-world/.

¹⁵ The national laws of all WIPO Members States are published by WIPO Lex, <https://www.wipo.int/wipolex/en/index.html>. In recent years, some countries have amended their laws as part of their obligations due to their membership to international treaties. For the current list of signatories from Asia of the relevant WIPO treaties, see *infra* notes 76, 77, and 78. In addition, some countries in Asia have discussed, and are considering, becoming signatories to these treaties.

¹⁶ Updated data related to online music piracy are difficult to find from respected sources. For global recent statistics, see IFPI, *Music Listening 2019*, 21.

¹⁷ Statista's Key Market Indicators (2021).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ IFPI Global Music Report 2021, 110, 123-24, 127-28, 136, 141, 144, and 149.

number of mobile phones was 125.8%.²¹ Indonesia had a total rate of 125.6% of mobile connections versus 73.7% of Internet users.²²

Considerable differences also remain regarding the Internet and mobile phone subscriptions. In countries like Singapore, Japan, or South Korea, telecommunication companies often offer subscribers a minimum contractual period in return for a free or partly financed smartphone. In lower income countries, on the other hand, a popular form of subscription is prepayment. For example, 91.3% of all mobile subscriptions in Cambodia in 2020 was pre-paid.²³ Similarly, the share of prepaid mobile users in India in 2020 was between 84.6% and 98%²⁴. The dominance of the prepaid model is linked to the large numbers of the population without bank accounts or credit cards. However, this model also implies users have to buy the handphones upfront. This has led to both the introduction of several less expensive models of phones, and the growth of instalment plans to purchase smartphones being introduced in most countries in the region.²⁵

As we elaborate in the next section, the limitations in disposable income, credit lines, and online banking are additional reasons for the large diffusion of ad-supported streaming in the region versus subscription-based services. Further, the growing trend of restaurants and shopping malls offering free Wifi—a trend seen worldwide—encourages users with limited income to use free streaming. Still, the convenience of listening to music without ads compared to free streaming has become more attractive, also due to increasingly lower fees, the possibility of using the service on multiple devices, and the service bundles offered with subscriptions.

(b) Main Business Models: Digital Service Providers and User Generated Content

As confirmed by recent data,²⁶ music streaming largely surpasses digital downloads (also) in Asia today. The success of streaming over downloads is largely because it enables users to access a wider variety of content at their will and anywhere. In addition, users can access free music through popular ad-supported streaming services.

A combination of multinational as well as regional and national DSPs offer streaming services in the region. Even though not all are present in each country, the most popular services are Spotify, Apple Music, YouTube Music, Deezer, Tidal, Amazon Music, Bandcamp, Genie Music (South Korea), KKBOX, Melon (South Korea exclusive), QQ Music, Soundcloud, Xiami Music, KuGou, and KuWo.²⁷ Other services are available to users, though they are usually national or limited to a few countries.²⁸

²¹ *Digital in Cambodia: All the Statistics You Need in 2021*, DataReportal, available at <https://datareportal.com/reports/digital-2021-Cambodia> [hereinafter Digital in Cambodia].

²² *Digital in Indonesia: All the Statistics You Need in 2021*, DataReportal, available at <https://datareportal.com/reports/digital-2021-Indonesia>.

²³ See Digital in Cambodia, *supra* note 21.

²⁴ Statista, India: Prepaid Mobile Subscribers by Telecom Circles, 2021.

²⁵ *Installment Plans and the Rise of the Smartphone Middle Class in Asia*, IDC Corporate USA, available at www.idc.com/getdoc.jsp?containerId=AP45751318. There is also a direct correlation between price of phones, installment plans, and the uptake of streaming in the region, even if no economic report seems to have specifically focused on this aspect of the market to date.

²⁶ IFPI Global Music Report 2021, 85; Statista, Music Streaming Asia, 2021.

²⁷ Statista, Music Streaming Asia, 2021.

²⁸ To provide some specific examples, the main services operating in India are today: Amazon Music (20%), Gaana (20%), Google Play Store (15%), Wynk (15%), Hurgama (10%), and YouTube Music (10%). China's services feature: KuGou (25%), QQ Music (25%), Net ease (20%), Apple Music (10%), and Xiami Music (5%). Services in South Korea are: Melon (35%), Genie (15%), Naver Music (15%), Naver Music (10%), Flo (5%), Apple Music (5%), Bugs (5%), and Kakoomusic (5%), whereas the following services operate in Japan: Spotify (30%), Google Play Store (15%), Apple Music (10%), Line Music (10%), YouTube Music (10%), Amazon Music (5%), Rocochocku (5%), and Utapass (5%). In Thailand, Joox has the largest part of the market (70%), followed by Spotify (20%) and Apple Music (5%). In Indonesia,

Besides DSPs, media offering services to stream UGC are also popular. In particular, YouTube is one of the most popular services for video streaming (although it allows an audio-only service). Other popular UGC platforms in the region include: TikTok, Facebook (with Facebook Watch), Instagram (with Reels), Pinterest, BuzzFeed, Reddit, Upworthy, Vice, Vox, Quartz, and Snapchat. Specifically for China, WeChat, Weibo, Baidu, Xiaohongshu, Xueqiu, and Douban are available. In addition, various countries have seen the growth of local platforms, at times for content in local languages. For example, Kaskus, Line Today Buzz, Keep, Kompasiana, 1cak, and Sociolla are UGC media available in Indonesia.

Unlike radio, which is often regulated under traditional broadcasting law, DSPs and UGCs often fall within the ambit of laws governing the Internet. Many Asian governments have chosen to apply a “light touch” to facilitate the development of this new media. In Singapore, for example, most Internet content providers are automatically licensed under a “Class Licence”²⁹ while Malaysia has its MSC Malaysia (previously named Multi-Media Super Corridor) and its attendant policy. As such, the DSP and UGC platforms find it relatively easy to penetrate these markets.

As in other regions, both DSPs and UGC media operate both on a subscription basis and via ad-supported services.³⁰ In some countries, in particular Japan and South Korea, the percentage of subscription-based streaming largely surpasses ad-supported services.³¹ In other countries, in particular lower income countries, the free service is equally or more popular than the subscription based one.³² This is the case, for example, in China, India, Indonesia, Malaysia, the Philippines, Cambodia, and Bangladesh, among other countries.³³ However, as noted by many in the industry, ad-supported streaming services are not only useful for users. This format still earns profits with the ads while creating a “selling path” for the streaming services, as many users later convert into paying subscribers.³⁴

Some services also collaborate directly with advertisers on subscriptions. For example, Joox started to sell premium subscriptions to advertisers instead of users, so advertisers could use the subscriptions as rewards for loyalty programs, extra purchases, or as a promotional tool.³⁵ The collaboration between brands and streaming services is an increasing trend in the region. Common techniques to combine the benefits of free services and ads are, for instance, pop in-app advertising, branding of playlists, sales of premium subscriptions to partners, and co-branding of offline events.³⁶

Still, even though ad-supported services continue to be more common than subscription-based ones, 2020 saw revenue increases in both market segments in Asia, notably an increase of 32.7% for subscription streaming and 22.2% for ad-supported streaming revenue.³⁷ These are

Joox (35%) and Spotify (35%) have a similar share of penetration, followed by Apple Music (10%) and Deezer (5%). Spotify is also the largest service in Vietnam (40%). The data are provided by Statista.

²⁹ Broadcasting (Class Licence) Notification; s29, Broadcasting Act (Cap 28) (Sing.).

³⁰ For a detailed analysis of the two different payment systems, see the report (https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=456065) by Ms. Butler to this Committee.

³¹ This is reported by the IFPI Global Music Report 2021, 86-87 based on the recorded music revenue by consumption format for Japan and South Korea.

³² *Id.*

³³ *Id.*

³⁴ See Butler, *supra*, note 30 (noting also that free ad-supported streaming services are a useful tool against music piracy and many consumers can still stream for free, but lawful content).]

³⁵ See McKinsey Report, *supra* note 8, at 7. One example is its partnership with FWD Insurance in Indonesia, where FWD engaged in a VIP bulk sale with JOOX to provide ~4,000 3-month VIP JOOX subscriptions to new users.

³⁶ *Id.*

³⁷ IFPI Global Music Report 2021, 54.

relevant data for the region, in particular because several artists rely directly on the platforms for their remuneration, as we describe further in Part 4.

Ultimately, different factors affect and guide the strategies of online music platforms in the various Asian countries. Platforms decide what format to offer, the price of subscriptions, the conditions for users based on local consumer behavior, average income of the population, Internet and mobile connectivity penetration, and so forth.

(c) Consumers' Preferences and Catalogues

Music markets in Asia can be divided into international, regional, and local. International music is most often represented by English songs from North America, England, and groups from non-English speaking countries singing in English. However, songs in local Asian languages are the most popular type of music both nationally and across the region. While access to the Internet and mobile connectivity have facilitated streaming popularity, music preferences remain deeply rooted in local language and culture. Immigration waves across the region, cultural affinity, and the resulting cultural mixes and common traditions also affect regional music markets.

In particular, South Korean K-Pop has become widely popular in several Asian countries.³⁸ C-pop and Madopope are widely listened to outside of China in countries where Chinese is widely spoken, such as South Korea, Japan, Malaysia, Singapore and Vietnam.³⁹ Indonesian music has broken beyond the country to the point that Spotify created Pop Indo Hub, later renamed Musik Indonesia, with more than 30 playlists.⁴⁰ Old and new Bollywood music is the most listened to music in India along with Indian pop and rock,⁴¹ whereas Bengali music is the preferred music in Bangladesh,⁴² Thai songs in Thailand,⁴³ and J-Pop in Japan.⁴⁴

An interesting example of the role of language and cross-culture is Singapore, which does not have an indigenous language, but only a national language, Bahasa Melayu, and four official languages: Bahasa Melayu, English, Chinese (Mandarin) and Tamil. Moreover, except for a few Mandrasahs and Special Assisted Programme Schools (schools which use English and Mandarin), the first language or medium of instruction for all other schools is English. Yet, Chinese songs continuously hit the charts in Singapore (which has more than 70% Chinese in its population) despite the fact that it is a second language. As Singapore has a limited local market, Singaporean Chinese artists also exploit commonalities in the region and seek success in other Chinese-speaking markets, like China and Hong Kong, while Singaporean Malay artists try to break into Malaysia and Indonesia, as both countries speak primarily Bahasa.

Across the region, ethnic minorities listen to music in their own native language. This is usually followed by English songs. For example, in Malaysia, where Bahasa Melayu is the national language, the Chinese and Indian ethnic minorities would listen to songs in their own language. The same happens in Indonesia and other countries where there are Chinese and Indian ethnic minorities.

³⁸ Statista, Popularity of South Korean pop music (K-pop) Worldwide, 2020

³⁹ *Move Over K-Pop & J-Pop, C-Pop Is On The Rise*, Trend and Chaos, available at <https://trendandchaos.com/move-over-k-pop-j-pop-c-pop-is-on-the-rise/>.

⁴⁰ *Spotify Launches Hub Dedicated to Indonesian Music*, The Jakarta Post, available at www.thejakartapost.com/life/2020/04/15/spotify-launches-hub-dedicated-to-indonesian-music.html.

⁴¹ *Top Charts Playlists: Latest Bollywood Songs, Punjabi & International Songs*, Gaana, available at <https://gaana.com/topcharts>

⁴² Information from interviews with experts in Bangladesh.

⁴³ Information from interviews with experts in Thailand.

⁴⁴ *An Introduction to the Wonderful World of J-Pop*, The Real World from Trafalgar, available at www.trafalgar.com/real-word/introduction-world-j-pop/

Because of the relevance of local languages, all regional and international streaming services offer numerous tracks in local and regional languages and have created their local language libraries. In addition, services personalize access based on a variety of languages. For example, Spotify supports a large number of Asian languages. In February 2021, it also added 12 Indian languages including Hindi.⁴⁵ Joox offers user interfaces for Chinese, English, and Malay speakers.⁴⁶

Languages and local music tastes are also directly reflected in the songs which hit the top of the charts. This is evidenced by a straw survey on Spotify of its Top Songs Charts by countries.⁴⁷

Besides offering local content, regional services are also supporting and procuring music from independent, local labels or artists catering to local tastes (for example, indie rock in Hong Kong). Several services offer additional options to connect with local artists. In particular, the organisation of events in collaboration with local artists contributes to a more localised customer experience. For example, Joox offers users access to music videos, concert recordings, and artist interviews directly through its app.⁴⁸ It also created a collaboration with Red Box Karaoke in Malaysia to host live performances with local musicians.⁴⁹ Besides Joox, several services recognize the popularity of karaoke in the region. Most recently, in Indonesia, MYDIO Sing Musicainment released a Pocket Family Karaoke Entertainment application with hundreds of song banks. This service seems to be a first worldwide and offers several packages, including some offering vouchers for online food orders.⁵⁰

Streaming services additionally allow users to personalize their playlists. For example, Joox offers personalized "Your Daily Music" selection to many of its users, allowing users to select 10 artists or music genres after which Joox automatically compiles a playlist. Spotify has its "Discover Weekly" playlists, allowing users to select songs in their preferred languages. Services also allow users to share their favorite songs on social media, and with other customers of partners, such as advertisers. This increases user activity and promotes stickiness with the services and the services' partners.

Last, it should be noted that catalogues of songs in a local language need not be owned by local music publishers or recording companies. A good (old but still applicable) example is the catalogue of musical and literary works recorded by Teresa Teng. It was acquired by Warner Chappell Inc, an American company, in the early 1990s. Royalties collected in Asia have to be sent to the USA.

(d) The Growing Role of Aggregators

The technical requirements of DSPs have created a new entrant into the industry: aggregators. Unlike UGCs, DSPs have strict technical requirements in the format of the recordings to be uploaded. Further, DSPs sign agreements with aggregators authorising them to upload on

⁴⁵ *Spotify app will soon be available in Hindi and 11 other Indian Regional Languages*, The Indian Express, available at <https://indianexpress.com/article/technology/tech-news-technology/spotify-app-user-interface-hindi-12-indian-regional-languages-7200788/>

⁴⁶ See McKinsey Report, *supra* note 8, at 5.

⁴⁷ For Spotify, this can be done through a search by "country" and "Top 10" and a playlist of the most played song appears. For Singapore see also <https://www.rias.org.sg/rias-top-charts/>; For Malaysia - <http://rim.org.my/rim-charts-top/>.

⁴⁸ *Id.*

⁴⁹ *JOOX Event Highlights 2015-2018*, JOOX, available at www.joox.com/my-en/article/2343

⁵⁰ *MYDIO Sing Musicainment, the Pioneer of World's Pocket Family Karaoke Apps*, Independent Observer, available at <https://observerid.com/mydio-sing-musictainment-the-pioneer-of-worlds-pocket-family-karaoke-apps/>

behalf of others. As such, “aggregators” have emerged to assist record producers other than major labels to gain access to these platforms. “Do-It-Yourself” (“DIY”) producers and owners of recordings cannot upload their songs onto the platforms directly. They have to use aggregators because aggregators have the technology to do so.

In Asia, there are 13 aggregators. Eight of them are “free”, meaning there is no cost for getting access but they charge artists or songwriters a commission or royalties. These are: Soundrop, Amuse, Awal, Indiefy, Fresh Tunes, Bandcamp, United Masters and Songtradr. Aggregators that charge are: Gyrostream, Pison, Music Diffusion, Juni Records and Believe. Not all aggregators are present in all the countries.⁵¹

In addition to uploading, some aggregators assist in placing the songs onto playlists of DSPs and other marketing and promotion functions which used to be done by record companies for their artists. In these instances, DIY artists can outsource these additional tasks to aggregators.⁵²

However, aggregators cannot fully replace record companies at this time, because the latter also provide artists with resources in the creation and production of a recording in addition to the marketing and promotion. Artists’ desire to control their expression is as old as music itself. Asian artists are no exception. Established artists in Asia have switched labels or formed their own production companies for this reason. Some may do so from the start of their career. An example is Hong Kong superstar Andy Lau. He formed New Melody Records Limited, when he crossed over from acting to singing. Some young artists have confided that they do not want a label because of creative constraints.⁵³

Without the need to print CDs and with the relatively low cost of marketing on the internet⁵⁴, what seems certain, is that aggregators could replace music companies’ promotion and marketing function on the Internet for a certain market segment. Further, the fees charged by aggregators are reasonable, which implies low barriers to entry. For the basic operation of uploading songs and keeping them on DSPs, the annual subscription fee is approximately US\$50.⁵⁵

Music companies and DSPs seem aware not only of the growing importance of aggregators, but also the competition they could provide in the near future. As such, they are beginning to invest in aggregators. For example, Sony has recently acquired AWAL for US\$430M. Observers say that Sony has acquired an Artist and Repertoire Department in doing so.⁵⁶

Thanks to aggregators, new artists no longer need to wait to be “discovered”. Instead, music companies now frequently look for new artists on DSPs. Since these artists already have access to the market with their own productions, music companies can see directly how they are received. This eliminates the need to sign up new artists before they have tested the

⁵¹ *Free Music Distribution: 9 Best Aggregator Services for Spotify*, Mastrng.com, available at www.mastrng.com/free-music-distribution.

⁵² *DIY Artists will Earn more than \$1B this year. No wonder the major labels want their business*, Rolling Stone, available at www.rollingstone.com/pro/features/DIY-Artists-will-Earn-more-than-1-Billion-this-year-No-wonder-the-major-labels-want-their-business.

⁵³ Information from interviews with various experts in the region.

⁵⁴ Based on our interviews, one of the most important tools for promoting a recording in the region (as in many other countries) is a highly quality music video uploaded onto YouTube and Facebook. In comparison to advertising space in magazines and TVCs, the costs for making a music video could be less. Further, a music video that is watched on YouTube may receive royalties.

⁵⁵ *Upload Music To Spotify: Here's How it's Done*, Start Moovin Blog, available at <https://startmoovin.nl/en/blog/upload-music-to-spotify/>

⁵⁶ *Sony Music pays US\$430m for Kobalt's recording, neighbouring rights*, The Music Network, available at www.themusicnetwork.com/sony-music-buys-kobalt-music-divisions/.

market. The result is that many music companies in the region, for example in Singapore, no longer have an Artists and Repertoire Department. Instead, they sign on artists who have proven to have a substantial and growing following. Examples include Universal Music Singapore signing up Charlie Lim,⁵⁷ and Sony Music Singapore signing up indie band Sam Willows.⁵⁸

As is evident from these facts presented, aggregators are not only the new gatekeepers for new artists to enter the market. They can also replace music companies for the promotion and marketing activities. Many DSPs pay the copyright owners⁵⁹ through the aggregators directly, bypassing the CMO. As such, aggregators' role in the online music world will only grow in importance and further disrupt current business models.

4. Impact of Online Music on the Music Industry

The rise of online music has profoundly impacted the industry in Asia. Unlike the change in format in the 70s and 90s, from vinyl to cassettes and from cassettes to CDs, this change has been followed by a shift in revenue. It is old news that streaming has made remuneration a primary concern for all industry stakeholders, including songwriters, performers, producers, publishing companies, and record labels. In addition, as discussed above, the technology required by the DSPs has seen the entrance of aggregators. As a result, businesses are finding ways to respond to the disruption. We have addressed several of these trends in the previous Part of the Report.

In this Part, we focus on the disruption that the technology and shift in consumer preferences have caused to music management and the legislative responses, if any, adopted in several Asian countries.

(a) Value Chain, Royalty Shift, and Disruption to Management

Legal considerations related to the value chain, royalty shift and disruption to management resulting from streaming are no different in Asia than in the rest of the world. As everywhere else, the creation and distribution of music is directly dependent on a chain, or rather a web of rights,⁶⁰ and the value chain follows the rights.

In music production, the link between record companies and music publishers has traditionally been the mechanical right granted by the latter. This link remains unbroken for as long as the record companies are using the musical compositions held by the publisher. The use here is for the production of the recording, physically embodied in the masters. Regarding online music, however, there has been a shift at the stage of delivery to consumers. Notably, masters are traditionally used to replicate the recordings into CDs and, as a result, a mechanical licence is needed for each CD printed, and mechanical royalties are accounted for and paid for each CD sold. In streaming, only one reproduction is needed when the recording is uploaded. In other words, tangible objects are no longer required to deliver the music to consumers.

⁵⁷ *Local singer-songwriter Charlie Lim signs on with Universal*, The Straits Times, available at www.straitstimes.com/lifestyle/entertainment/local-singer-songwriter-charlie-lim-signs-on-with-universal.

⁵⁸ *Local indie acts signed by major record labels*, The Straits Time, available at www.straitstimes.com/lifestyle/entertainment/local-indie-acts-signed-by-major-record-labels.

⁵⁹ These are mainly the producers of sound recordings who used the services of the aggregators.

⁶⁰ Since the transfer of copyright can be divided in many ways, it is more apt to call it a web of rights as also done by Butler in her report. See Butler, *supra* note 30.

Accordingly, with streaming, royalties are generated by granting DSPs the permission to make available to the public the recordings. Depending on the service, different fees may be paid for the streaming. Mechanical rights are involved only when a download is made. The various fees are set by different entities.⁶¹

DSPs also need to secure licenses for uploading the recording onto their servers for listeners to access. Unless a CMO represents some of the rights holders, DSPs negotiate licenses to obtain the necessary performance and mechanical rights directly with record companies and music publishers. When doing so, DSPs generally negotiate worldwide deals. For indies with smaller catalogues, DSPs usually negotiate with a group of them i.e. Merlin, as in the recent agreement between Joox and Merlin to which we refer in the Introduction. In Singapore, most indies have given COMPASS, the local CMO, the authority to negotiate and contract on their behalf.⁶²

UGCs present a different challenge because their content is uploaded by subscribers. Accordingly, UGCs do not have the duty to obtain copyright clearances up front for letting users upload the content (under certain conditions). This content is also more varied and includes sound recordings and video recordings of covers of original songs. In general, no licences from record companies are required for cover versions. If a video is made in which performers perform the music themselves, only a synchronization license is required from the music publisher or an author rights CMO. If the video includes the original recording, then an additional license from the phonogram producer and possibly a CMO representing performers is required. Famous examples in this respect are the productions of Internet sensations Kurt Hugo Schneider and Sam Tsui in the U.S.⁶³ Several artists in Asia are following this model and have become regional and international YouTube sensations.⁶⁴ In practice, people make and upload videos without proper copyright clearance on UGCs. Even though these platforms are supposed to disallow or take down videos which have not obtained copyright clearances,⁶⁵ their continued presence on platforms remains common in many Asian countries based on our interviews.⁶⁶

There is a difference between contracting and contract management. While the negotiation and contracting may take place directly between music companies and the DSPs and UGCs, the payment of licence fees and reporting of usage may not be the same. Payments of licence fees may be made to a thirdparty administrator appointed by the music company, who will process and separate the licence fees received and distribute them to the copyright owners. The principle is that each usage of a work or sound recording within the catalogue licensed will have to be matched with the copyright owner. Not all works or sound recordings in the catalogue receive the same “airtime”. Some are more popular than others. The shift to streaming is akin to receiving a hard copy of a magazine subscription and reading it from a data retrieval system. Matching each “transmission” of a recording and the underlying rights to their copyright owners is a considerable effort, which requires expertise in data and information management and information technology infrastructure. Several music companies do not have the resources to handle royalty distribution and for this reason, they delegate this function to CMOs.

Due to the shift to streaming, some problems regarding proper and accurate accounting of the revenues collected to the copyright holders have been magnified. Legally, for streaming, each time a song is played, the copyright owners have to be paid, in contrast with the sale of a CD.

⁶¹ *Id.*

⁶² See Tay Eu-Yen, *Collective Management of Musical Copyright in a Self-Regulated Regime: Singapore's Copyright Review and the Hope for Transparency*, 32 Singapore Academy of Law J. 1063 (2020)

⁶³ Kurt Hugo Schneider, YouTube Channel, available at <https://www.youtube.com/channel/UCplkk3J5wrEI0TNrthHjq4Q>.

⁶⁴ 10 Talented Asian YouTube Cover Artists You Need To Listen To, Character Media, available at <https://charactermedia.com/10-talented-asian-youtube-cover-artists-you-need-to-listen-to/>.

⁶⁵ For the specific clauses related to the prohibition to upload infringing materials, we refer to the specific terms of use of the respective platforms, such as YouTube, Facebook, etc.

⁶⁶ Information from interviews with various experts in the region.

Therefore, errors caused by inaccurate databases will repeat themselves till the end of the protection period for the song and recording concerned.

Computers may be able to store and match what has been played with the distribution to be made to the copyright holders. However, this matching will not be accurate if the initial information is not. For example, record companies may not provide DSPs with accurate credits for the underlying music and lyrics of their recordings. The credits for songs on some DSPs pale in comparison with those on traditional album sleeves. It is in fact not unheard of that composers and lyricists appear together under the rubric of “Written by” on streaming services. The year of publication also does not appear. This may prejudice the rights of the songwriter if the streaming service is the first place where a song is released. This issue has been debated in the region.⁶⁷ The idea of having registries has been considered in various jurisdictions, including Singapore and Indonesia.⁶⁸

The reality of this problem is clear when we do a sample check on Spotify. The famous Batakese folk song written by Nahum Situmorang, “Sing Sing So” illustrates this problem. On 30 April 2021, this song had three different recordings on Spotify. The credits for the song and songwriters in each of these recordings are not the same. The one recorded by Trio Ambisi has the writer correct. The same song was covered by Viky Sianipar twice in the early 2000s⁶⁹. In both covers, instead of Nahum, Viky is credited as the songwriter. This is inaccurate because, even if Viky has modernised the song with his arrangement, the song is still the same. Finally, a Taiwanese singer, Teresa Teng, covered the song in Mandarin in the early 1980s. The credit for this version merely lists it as an Indonesian folk song. On the face of the record on Spotify, the impression is that the writer is unknown.⁷⁰

Another example is a famous Chinese classic, first released in the 1960s: “Lu Dao Xiao Yequ”. The original version was recorded by Gu Mei in the 1960s and has two songwriters whose names appear in Chinese characters. The same song was recorded by Tsui Ping. In that version, one of the writers was different. Two additional cover versions made in or after the 1980s can be found on Spotify. One by Tsai Chin, the other by Jenny Tseng. In the credits, they both have only one songwriter instead of two. Jenny Tseng’s bore the name of one of the writers in the original version, “Zhou Lan Ping”. Tsai Chin’s bore a name “Ey Chun”. This is a totally new name. When one listens to all these recordings, the melody and the lyrics of the recordings are the same. As such, there appears to be no reason for any differences in the credits. These material mistakes in identifying the correct songwriters clearly show the impact on the accounting and in turn artists’ remuneration.⁷¹

(b) Current Debates

In this Part, we address three issues directly related to streaming: 1) performers’ rights; 2) revenue sharing; and 3) the regulation of CMOs. We have chosen these topics because they are directly related to music copyright contracts and their management. These issues are interconnected. While recording was still in analogue, the debate on fair and equitable sharing centred on the disparity of remuneration to contributors in the creation of a copyright subject matter. In particular, the creation process in the music industry centres on the creation of sound recordings, which requires multiple talents, whereas the creation process for songwriting is

⁶⁷ *Id.*

⁶⁸ See *infra* Part 4(c)(iii).

⁶⁹ According to the credits, Viky Sianipar recorded one version with Alsant Nababan and another with Lea Simanjuntak. The source of the information is MS Production.

⁷⁰ The authors have confirmed this information directly on Spotify.

⁷¹ *Id.*

more individualistic and independent. This fact is reflected in the WIPO Copyright Treaty (“WCT”) and the WIPO Performances and Phonograms Treaty (“WPPT”). In the former, there is no reference to such stakeholders while in the WPPT a chapter is devoted to the rights of performers.⁷² With streaming, fair and equitable sharing of revenue has become an issue between content creators and the channels of delivery, the platforms.

In particular, one of the consequences of the “revenue shift” from mechanical royalties to what the industry loosely calls “public performance”⁷³ royalties is the growing importance of CMOs in the management of copyright. Thus far, no country in Asia has addressed issues related to distribution of revenues along the value chain in its legislation. However, several Asian governments have focused on regulating the CMOs.

(i) Performers’ Rights

An issue, which is relevant to the region, is the equitable remuneration of performers. Based on the interviews conducted, introducing equitable remuneration may be one possible way to resolve the imbalance of bargaining positions between performers and record companies, DSPs and UGCs.⁷⁴ This is especially so for non-featured performers who may be easily substituted. This is because economic rights granted by copyright laws can generally be assigned or “contracted out”. Non-featured performers generally do not have equal bargaining power when negotiating with record companies, which will insist on the assignment or waiver of the rights.

In addition, since the creation process for sound recordings requires producers, sound engineers, studio managers, featured singers, back-up singers and musicians, other direct contributors to creation need to be considered as part of this discussion. For example, sound engineers should be considered as they are definitely important to the production of sound recordings and, in Asia, they are often also the producers.⁷⁵

In the region, the following countries are members of relevant international treaties. Notably, Cambodia, India, Japan, Philippines, South Korea, and Vietnam are party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 1961 (“Rome Convention”).⁷⁶ Brunei, China, India, Indonesia, Japan, Malaysia, Philippines, South Korea, and Singapore are members of the WPPT.⁷⁷ Cambodia, China, Democratic People’s Republic of Korea, Indonesia, Japan, Philippines, and Republic of Korea are members of the Beijing Treaty on Audio-Visual Performances 2012 (“Beijing Treaty”).⁷⁸

Sentiments from the interviews conducted are that record companies, DSPs and UGCs in the region are, unsurprisingly, not keen on performers being given more rights. This is because it could create additional costs. In addition, from our interviews, non-featured performers are not generally aware of the concept of equitable remuneration. Many of the non-featured performers interviewed are also composers, producers and musicians. They often negotiate on a project basis, without fine distinction on rights. It could complicate their contract negotiation. Their main

⁷² Chapter II, WIPO Performances and Phonograms Treaty.

⁷³ Most performing rights CMOs require the assignment of 1) public performing rights; 2) broadcasting rights; and 3) transmission via a cable programme rights.

⁷⁴ Information from interviews with various experts in the region.

⁷⁵ *Id.*

⁷⁶ For the full list of the contracting parties to the Rome Convention, see https://wipolex.wipo.int/en/treaties/ShowResults?search_what=C&treaty_id=17

⁷⁷ For the full list of the contracting parties to the WPPT, see https://wipolex.wipo.int/en/treaties/ShowResults?search_what=C&treaty_id=20

⁷⁸ For the full list of the contracting parties to the Beijing Treaty, see https://wipolex.wipo.int/en/treaties/ShowResults?search_what=C&treaty_id=841

complaint is the decreasing royalties received as result of streaming. Therefore, they prefer a flat fee because it offers them an upfront payment.⁷⁹

This issue is increasingly relevant with the rising importance of live streaming of performances on platforms as a response to the Covid-19 pandemic due to region wide lockdowns, and limitation of people's attendance at concerts and live performances.

(ii) Share of Digital Revenues

Issues surrounding how digital revenues generated through streaming services are shared among the various players/stakeholders have been raised in an increasing number of fora. Often debates focus on the so-called “Value Gap”⁸⁰, an issue that has been under discussion for several years worldwide. In particular, the competing vested interests in these debates are between two industries, music and technology, and not just within the music industry. In particular, some argue that the rising revenues for streaming are evidence of industry growth and that the Internet has greatly benefitted record labels and CMOs.⁸¹ Others argue that online intermediaries, notably YouTube, capture the lion’s share of this growth.⁸² An additional aspect of this debate is the extent to which the revenues from online music and streaming are shared with artists.⁸³

Because of the limited extent of this Report, we cannot address these arguments in detail. Nevertheless, there is no doubt, from several interviews conducted with artists, industry experts, and CMOs, that the sharing of digital revenues remains one of the most relevant issues for many stakeholders in Asia today.⁸⁴ However, unlike the Directive adopted in Europe in 2019,⁸⁵ no countries in Asia have taken any legislative steps to regulate the “Value Gap” and revenue sharing regarding online music, at least so far. Likewise, no open discussion regarding the necessity to entertain specific legislative initiatives in this respect has been held, despite some interest expressed by representatives of the industry who seem to favour these initiatives.

We also have not observed any initiatives from the performing rights CMOs and music publishers in this respect. Due to the cover versions made specifically to be streamed on UGCs and the popularity of musical reality or talent shows, e.g. “China’s Got Talent” and “Sheng Ru Ren Xin” (Super Vocal), the music publishing sector of the industry may stand to gain if similar legislations are implemented. Whether an EU-style legislation might be considered in Asia will depend on various factors, which is outside the scope of this report.

⁷⁹ Information from interviews with various experts in the region. These sentiments have been gleaned from performers relevant to the production of sound recordings only. The authors have not interviewed dancers and choreographers and other stakeholders making direct contributions to music videos.

⁸⁰ Which could be defined as “the disparity between the value that music-streaming platforms extract from musical content and the revenue generated by those who create and invest in the creation of such content.” Daniel Lawrence, *Addressing the Value Gap in the Age of Digital Music Streaming*, 512 VANDERBILT J. TRANSNATIONAL L. 511 (2019).

⁸¹ Victoria de Posson, *Value Gap or Growth? How Digital Music Boosts Music Industry Growth*, Computer and Communications Industry Association, available at https://www.cciainet.org/wp-content/uploads/2019/12/CCIA_Paper_Value_Growth_Music_Industry_2019_A4-2.pdf.

⁸² IFPI, *Global Music Report 2018*; See also Lawrence, *supra* note 80.

⁸³ In this respect, see generally Kazuhiro Ando, *Contractual Relationship Among Artists, Record Labels, and Artist Management Companies in Japan*, in *The Oxford Handbook of Music and Policy* (Sean O’Connor ed., 2020). See also International Federation of Musicians, *The Fair Internet Campaign Reaches Asia*, <https://www.fim-musicians.org/fair-internet-asia-2015-12>.

⁸⁴ Information from interviews with various experts in the region.

⁸⁵ Digital Single Market Directive, EU 2019/790 of the European Parliament and of the Council of 17 Apr. 2019, on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, art. 17.

Still, policy initiatives in this area remain important based on the views of many stakeholders. Several experts interviewed opined that the current business models have evolved such that it is almost impossible for artists not to allow their music to be streamed on UGCs like YouTube and Facebook, in addition to local platforms. In fact, these are the first places to upload any new productions as they are the primary channels for promotion work.⁸⁶ As consistently confirmed through our interviews and as shown in the data reported in the earlier part of this Report, YouTube is the most popular platform in the region to “watch” music followed by Facebook.⁸⁷ Asian artists from Korea, to India, to Singapore, and so on are becoming Internet sensations with cover songs on YouTube, Facebook, and local platforms.⁸⁸

(iii) Regulation of CMOs

From a policy-making standpoint, one of the relevant trends in several Asian countries in recent years has been whether to regulate CMOs and the extent of such regulation. While the debate on revenue sharing discussed in the previous focuses on the sharing of economic rewards, the debate on CMOs focuses on CMO members’ interests and how to ensure the rights holders are getting these rewards. Both issues are equally important to the ecosystem of music copyright management.

With the exclusion of Japan and South Korea, the CMOs in the region are less than 50 years old. For example, the Composer and Author Society of Hong Kong was founded in 1977. Moreover, Asian CMOs are mainly for Performing Rights⁸⁹. There are a limited number of countries with mechanical rights CMOs. They include Japan and South Korea. In others, often the performing rights CMOs would manage mechanical rights, if approached. This is a service for the indies which, unlike the multinationals, do not have the administrative capacity. These CMOs include the Composers Authors Society of Hong Kong, the Composers and Authors Society of Singapore and Music Authors Copyright Protection Berhad in Malaysia, and the Filipino Society of Composers and Authors Inc.

Other than Japan, mechanical rights arrived in Asia in 1993. Prior to this, only in Hong Kong, Malaysia and Singapore were record companies paying mechanical royalties to the music publishers. This was the result of a MOU signed by the then five majors. It was agreed that the record companies would start paying mechanical royalties in a number of countries in Asia to music publishers. The royalty rate for the next five years was fixed by the MOU. With some exceptions, 1 January 1994 would be the date when accounting started in these countries. The royalty rate was pegged to the statutory right licence rate, if the country’s copyright law has such a concept. Industry Agreements on mechanical royalties, modelled on the one drafted in Hong Kong, would be signed and implemented.⁹⁰

Prior to the formation of CMOs for performing rights and the payment of mechanical royalties, the standard practice in Asia was for record companies to pay the writers and artists a lump sum. For the songwriters, their copyright would be assigned to the record companies absolutely. For the artists (performers), the phonogram producer would generally obtain the full assignment or be considered the first owner of rights in the sound recordings. According to Madam Si Lean Chun, one of the first recording artists in South East Asia, this was the practice in the 1950s

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See *Southeast Asia tuning in: These 7 music-focussed startups give local music scene a chance against the mainstream*, e27, available at <https://e27.co/southeast-asia-tuning-in-these-7-music-focussed-startups-give-local-music-scene-a-chance-against-the-mainstream-20191119/>.

⁸⁹ The capitalized phrase “Performing Rights” is used in this Report to include all the rights managed by a performing rights CMO. They are, generally, (1) public performance rights; (2) broadcasting rights; and (3) right to communicate to the public.

⁹⁰ See George Hwang, *Music Publishing in the Far East*, 1994 5.5 Ent. L. R. 154.

until the early 1970s in some countries. The current system is based instead on payments of royalties.

Due to the novelty of the music publishing business which requires the support of CMOs for performing rights to fully realise the revenue, many private businesses tried to venture into being a CMO in some countries. Since copyright is a private right, many thought that excessive intervention of governments to a CMO's formation and management would not be desirable for a CMO's business operation. As such, several countries have more than one CMO. However, several Asian countries have recently discussed reforms to regulate CMOs because they recognize their important role in many aspects of the business. Discussions have focused on issues spanning from market confusion, economies of scale and competition, efficiency, transparency, and governance, to ethics. It has been argued that CMOs are fiduciaries and owe their member-songwriters a high degree of duty.

Because of the complexities surrounding these discussions, we cannot address in detail the regulation of CMOs across the region in this Report. Instead, we limit our analysis to highlight a few examples from selected countries, showing a variety of approaches and different levels of government intervention.

India

There are currently four CMOs operating in India in the music area: Indian Performing Right Society (IPRS, representing music authors and publishers); Indian Singers Rights Association (ISRA, representing music performers); Phonographic Digital Limited (PDL); Phonographic Performance Limited (PPL, representing phonogram producers); and Novex. Out of these, IPRS and ISRA are accredited under the Indian Copyright Act of 1957 as copyright societies.

On 30 March 2021, the government of India adopted the Copyright (Amendment) Rules 2021,⁹¹ which introduce a requirement for copyright societies to submit an Annual Transparency Report (ATR) to the Registrar of Copyright (a statutory authority under the Act) with details such as the royalties collected and distributed, the fees retained as administrative expenses by the CMOs as well as the cases where certain sums were not distributed by the CMO on account of the relevant copyright owner not being identified or traced, for each financial year.

These provisions apply only to the copyright societies registered under the Copyright Act, and not to other CMOs. However, experts say they should help in bringing greater transparency to the activities of copyright societies.⁹²

Indonesia

The first CMO in Indonesia was formed in 1990, *Karya Cipta Indonesia* (KCI), a CMO for authors' rights of songs and music. In 2006, *Wahana Musik Indonesia* (WAMI) was established by music publishers. The country now has nine CMOs. Eight CMOs are specialised for royalty management for songs and music, covering authors' rights as well as related rights in various genres, whereas one CMO is specialized for literary works.

In order to provide the users with one-stop service in royalty collection, Indonesia seems to prefer a centralised approach for songs and music. It has not only intervened from a regulatory

⁹¹ *The Gazette of India*, available at https://copyright.gov.in/Documents/Notification/Copyright-Rules_Amendment_2021.pdf.

⁹² Information from interviews with experts in India.

angle but has formed bodies to manage the CMOs.⁹³ To prevent issues that could arise due to the growing number of CMOs, the Indonesian government formed a national CMO to be the sole licensor and collector of licence fees based on the Law Number 28 Year 2014 about Copyrights. This is the National Collective Management Organization (*Lembaga Management Kolektif Nasional* or *LMKN*), which would then distribute the fees to various CMOs for redistribution. The role of LMKN is primarily to resolve possible issues of confusion by users.

At the end of March 2021, the Indonesian government passed a new law to clarify that several commercial services playing music for the public need to obtain copyright licences. This is Indonesian Government Regulation Number 56 of 2021 Concerning the Management of Copyright Royalties for Songs and Music.⁹⁴ The services covered include “commercial seminars and conferences; restaurants, cafes, pubs, bars, bistros, nightclubs and discotheques, music concert; aircraft, buses, trains and ships; exhibitions and bazaars; cinema; telephone private ringtones; banks and offices; shops; recreation centers; television broadcasting institutions; radio broadcasting institutions; hotels, hotel rooms, and hotel facilities; and karaoke businesses.”⁹⁵

The Regulation also provides for the creation of a national data centre to house information on all the Indonesian songs, possibly to tackle the problem of accounting and royalty distribution.⁹⁶ The aim of this provision is to ensure that the copyright ownership is accurately documented. This could ameliorate some of the problems caused by inaccurate information. A centralised and authoritative registry would be useful in rectifying inaccurate information, but more importantly, it will help ensure that no inaccurate information will be generated in the future.

Malaysia

There are also four CMOs in Malaysia operating in the music or audiovisual area: Music Authors' Copyright Protection (MACP, representing music authors and publishers); Public Performance Malaysia (PPM, representing phonogram producers); Recording Performers Malaysia Berhad (RPM, representing music performers); and Motion Picture Licensing Corporation Malaysia (MPLC, representing audiovisual producers).

Due to the different rights and societies in existence, the government was concerned that the Malaysian public was confused. As a result, in 2017, the Music Rights Malaysia Berhad (MRM) was formed by the government to create a one-stop service similar to the one in Indonesia. However, MRM was not successful due to insurmountable challenges between the four licensing bodies which were joint-venture partners and was closed down in 2020.⁹⁷ However, an entity named “One Stop Music (OSM) Berhad” was formed in 2006 with the support of Recording Industry Association of Malaysia (RIM). Initially, it was to represent independent record label members of RIM. It later merged with the Malaysian Music Publishers Berhad (MMP) to effectively act as a one-stop rights clearing house for its members.⁹⁸

⁹³ Information from interviews with experts in Indonesia.

⁹⁴ Gov't Issues Regulation on Songs, Music Copyright Royalties Management, *available at* <https://setkab.go.id/en/govt-issues-regulation-on-songs-music-copyright-royalties-management/>. The authors have received a copy of the unofficial translation of this Regulation directly from Indonesian experts.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Aref Omar, *Music Rights Malaysia to End Royalties Disputes*, available at <https://www.nst.com.my/lifestyle/groove/2018/02/334729/music-rights-malaysia-end-royalties-disputes>; *MACP, PPM and RPM Resume Licensing With Dissolution of MRM*, available at <https://www.malaysiakini.com/announcement/534150>

⁹⁸ For more information, see One Stop Music's website, <https://www.onestopmusic.com.my>

Besides users' issues, there were also royalty distribution and members' issues. In recent times, there have been significant music royalty distribution controversies particularly in relation to phonogram producers and performers. As a result, the Malaysian Intellectual Property Office (MyIPO) has increased regulatory oversight. In addition, the Malaysian government introduced regulatory amendments in 2020 to allow the Copyright Tribunal to hear members' disputes in relation to royalty distribution by licensing bodies.

Philippines

Discussions regarding possible reforms for CMOs have also taken place in the Philippines.

As of April 2021, two CMOs are accredited in the Philippines in the music area. One is Filipino Society of Composers, Authors and Publishers (FILSCAP, representing music authors and publishers) and the other is Performers Right Society of the Philippines (PRSP, representing music performers).⁹⁹ The accreditation of Sound Recording Rights Society, Inc. (SOUNDSRIGHT, representing phonogram producers) has been suspended, and the suspension is on appeal.¹⁰⁰ Recently, new CMO candidates have been formed. One of them is Independent Music Producers of the Philippines (IMPRO, representing independent music publishers), which applied for accreditation in March 2021.¹⁰¹ The IP Office of the Philippines (IPOP HL) is currently examining its application, along with the one from PRM, a new joint CMO representing performers and music producers.¹⁰²

Currently, the Congress is discussing the regulation of CMO license fees by amending the IP Code. This discussion does not extend to royalty distribution and accounting systems.¹⁰³

Singapore

Singapore decided to regulate its CMOs as part of its ongoing copyright reforms. The CMO regulation is included in the Copyright (Amendment) Bill 2021 draft bill published by the Ministry of Law on 5 Feb 2021 for public consultation.¹⁰⁴ Collection of feedback for this bill started in 2016. The regulation of CMOs was treated on a standalone basis.

A separate consultation paper on regulating CMOs was published in 2017.¹⁰⁵ Due to representations made by individuals and organisations, another consultation paper was published in July 2020.¹⁰⁶ This culminated in the 2021 draft bill. This bill as envisaged is a considerable amendment to the Copyright Act 1987.

⁹⁹ List of Accredited Collective Management Organizations, available at <https://www.ipophil.gov.ph/collective-management-organizations/>.

¹⁰⁰ We understand from experts that this appeal may not have been successful, but this information is not published at this time and we could not confirm it.

¹⁰¹ We also understand the accreditation has been successful, even if again this cannot be confirmed at this time.

¹⁰² Information from interviews with experts in the Philippines. We also understand from other sources that the accreditation has been successful, even if again this cannot be confirmed at this time.

¹⁰³ Information from interviews with experts in the Philippines.

¹⁰⁴ Copyright Act 2021, Bill /2021 (Sing.), available at https://www.mlaw.gov.sg/files/news/public-consultations/2021/copyrightbill/Annex_B-CopyrightBill.pdf

¹⁰⁵ *Public Consultation on the Copyright Collective Rights Management Ecosystem in Singapore*, Ministry of Law Singapore, May 16, 2017, available at www.mlaw.gov.sg/files/news/public-consultations/2021/copyrightbill/Annex_A-CMO_Consultation2017.pdf.

¹⁰⁶ *Public Consultation on the Copyright Collective Rights Management Ecosystem in Singapore*, Ministry of Law Singapore, June 3, 2020, available at www.mlaw.gov.sg/files/news/public-consultations/2021/copyrightbill/Annex_A-CMO_Consultation2020.pdf.

With the regulation of CMOs, the government noted that self-regulation by the CMOs was not working. As such, a “class licensing scheme” (a form of permit granted by the government automatically for individuals and entities fulfilling certain conditions where a licence or permit is necessary under the law from a government authority) was proposed. The approach is minimum oversight. The CMOs which fall under the licensing scheme will have to meet certain standards, guided by four principles: transparency, governance, accountability and efficiency. These principles aim at striking the right balance between private rights, accounting and management efficiency and ethics.¹⁰⁷

Interestingly, Singapore saw increased activity in the music industry between the first consultation paper in 2017 and the draft bill in Feb 2021. The international publishers formed Sing Cap Public Limited (SINGCAPS), a company limited by guarantee, which was incorporated on 31 December 2018 and was recognised as a provisional member by CISAC on 30 May 2019. SINGCAPS was to compete with COMPASS, the first and until then, the only CMO for musical and literary works in Singapore. Unfortunately, due to COVID-19 and other factors, it stopped operations in July 2020. Because of this, whether Singapore is able to support two performing rights CMOs for musical and literary works remains to be tested.

Thailand

Thailand is a country with an unusual number of CMOs. 39 CMOs are listed by the Department of IP, Ministry of Trade and Industry (DIP) on its website.¹⁰⁸ Many of them are working in the field of music. None of these is state-owned. Many are profit making, with some being non-profit organisations. A few are recognised by international bodies such as CISAC. One of them is Music Copyright Thailand Limited (MCT).¹⁰⁹

The Thai government has been discussing CMO reforms for over 10 years but no legislation has been adopted. The industry has been active in expressing its opinion on the reforms.

The current high number of CMOs is one of the main concerns in Thailand. Users are often confused based on the views of experts we interviewed.¹¹⁰ For example, a “live” performance venue may not need a licence from a sound recording CMO. Also, having obtained a licence from a CMO, users often thought that they had fulfilled their obligations but then received a demand from a competing CMO with a different catalogue. Copyright owners, especially the composers, are also confused, and some have assigned their rights to two CMOs.

Because of this, DIP’s first attempt at reform was to adopt a law establishing only one non-profit making CMO. A bill was drafted and open for consultations approximately a decade ago. The existing CMOs threatened legal action claiming that the proposal contravened their constitutional right to compete. As a result, the draft was not introduced in Parliament.¹¹¹ A few years later, the DIP tried to introduce another bill, allowing multiple CMOs. However, the bill

¹⁰⁷ *Id.* (clarifying at 1.2 the following “1.2.1 Any entity that carries out collective licensing activities in Singapore will be automatically subject to and have to comply with all licence conditions. 1.2.2 The class licence will reference a mandatory Code of Conduct to set standards for transparency, governance, accountability and efficiency. It will require CMOs to have dispute resolution mechanisms in place for creators.”)

¹⁰⁸ There is a possibility that there may be more, as some may not be registered, but still operating in the country.

¹⁰⁹ Music Copyright (Thailand) Ltd., available at mct.in.th/about_us.php?page=about_us&Language=EN; see also International Confederation of Societies of Authors and Composers, Member Directory, available at <https://members.cisac.org/CisacPortal/directorySociety.do?method=detail&societyId=142&rMethod=membersDirectoryList&by=country&domain=&alpha=T>.

¹¹⁰ Information from interviews with experts in Thailand.

¹¹¹ *Id.*

required CMOs to submit their financial statements to the DIP to ensure the collection and distribution of royalties has been made. Again, it was unsuccessful.¹¹²

Currently, the Ministry of Commerce applies a provision under the Price Control Act to regulate the CMOs indirectly. It requires CMOs to submit a notification to the Ministry of Commerce informing the maximum rate of royalty they are collecting. Most recently, the DIP has drafted a soft law in the form of a Code of Conduct. This is a guideline on good practices for CMOs, which is as of May 2021 published for public hearing.¹¹³

5. Conclusion

In this Report, we have presented a broad review of online music in Asia and highlighted several of the current trends and developments, from both business and legal standpoints. The region is a complex mosaic. Individual countries share similarities, but also differences—at times small and at others big—with respect to technological infrastructure and Internet penetration, existing platforms and business models, and legal developments related to online music.

As noted in several industry reports, Asia is one of the fastest growing markets worldwide for online music. This growth is destined to accelerate in the near future. The next several years will witness progress and changes. As online music continues to develop in the region, its laws will need to keep pace. A country-by-country analysis in this area, not only the large countries but also smaller economies and LDCs, may be necessary to fully map the impact of online music across this vast and diverse region.

[End of document]

¹¹² *Id.*

¹¹³ *Id.* The draft, called “Good Practices on Collective Management of Copyright in Music” is available in Thai on the website of the Thai Department of Intellectual Property, available at <http://www.ipthailand.go.th>.