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Pay by Box or Pay by Click ?  
----Collecting the royalty from the Kara-Ok  
Industry in the Internet Time

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# The outlines to be discussed

- I. The background of the collective management of copyright and KTVs Industry in China;
- II. The debate between pay-by-box and pay-by-click;
- III. The Current Situation and remaining problems;
- IV. The Conclusion.

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# I. The background of the collective management of copyright for KTVs in China

- The first legal basis: Copyright Law of 2001.
- The right of performance; and
- The right of showing;
- The copyright law of 2001 provides the right of performance to the copyright holders of the works and the right of showing of fine art, photography, cinematography and any work created by analogous methods of film production through film projectors, over-head projectors or any other technical devices.
- (Article 10(9)(10))

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- The second legal basis: Copyright Collective Management Regulations (Decree of the State Council No. 429) of 2004, which came into force in March, 2005.
  - The No.429 Decree provides the legal basis for the organization and operation of the copyright collective management organizations (the CMOs).

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# The criteria to be qualified as the CMOs

- Firstly, to get approval from the copyright management department of the State Council; and
- Secondly, to go through registration formalities in the department of civil affairs of the State Council; and
- (The procedure requirements)
- Thirdly, to establish copyright collective management organization should meet with following requirements:
  - .....The business scope should not cross and mix with the business scope of copyright collective management organizations that have already registered in accordance with laws. ....and
  - (The substantial requirements)

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- Fourthly. Except for the copyright collective management organization established in accordance with the provisions of these regulations, none organizations and individuals may be engaged in copyright collective management activities.
  - (Prohibition requirement)
  - So the essential characteristics of the CMOs are:
    - 1. non profitable civil organization;
    - 2. no cross and mixture of business scope between the different the CMOs;
    - 3. the exclusive status in the business.

- So far only two CMOs exist related to KTV license.
- China Audio-Video Copyright Association (CAVCA )and Music Copyright Society of China (MCSC )



- As the only one CMO related to audio-video works in China which was approved by the NCAC and was registered in the Ministry of Civil Affairs, CAVCA collectively manages the copyright and related rights of audio-video programs according to the law.

- Music Copyright Society of China (MCSC )



- MCSC which was established in December 17, 1992, is a non profit-making social organization with the status of a legal person in whose name the Chinese music copyright owners exercise their rights by way of collective administration.

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- Two questions so far:
  - 1<sup>st</sup>, whether the CMOs, as the non profitable civil organizations could cooperate with the profit oriented enterprises to collect the royalty jointly ?
  - 2<sup>nd</sup> , whether the CMOs are in the monopoly position and possible violation of the antitrust law?
  - The CAVCA has cooperated with the Tian He Group Ltd to collect the levies from the KTVs.
  - Some lawyers have challenged the monopoly position of the CAVCA.
  - <http://ip.people.com.cn/GB/8573419.html>
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## The business background of the Kara-Ok industry in China;

Karaoke has been one of the most popular forms of entertainment in China in the past two decades, and the country has about 100,000 KTV clubs.



Most of the KTVs are private, middle and small size of the enterprises.

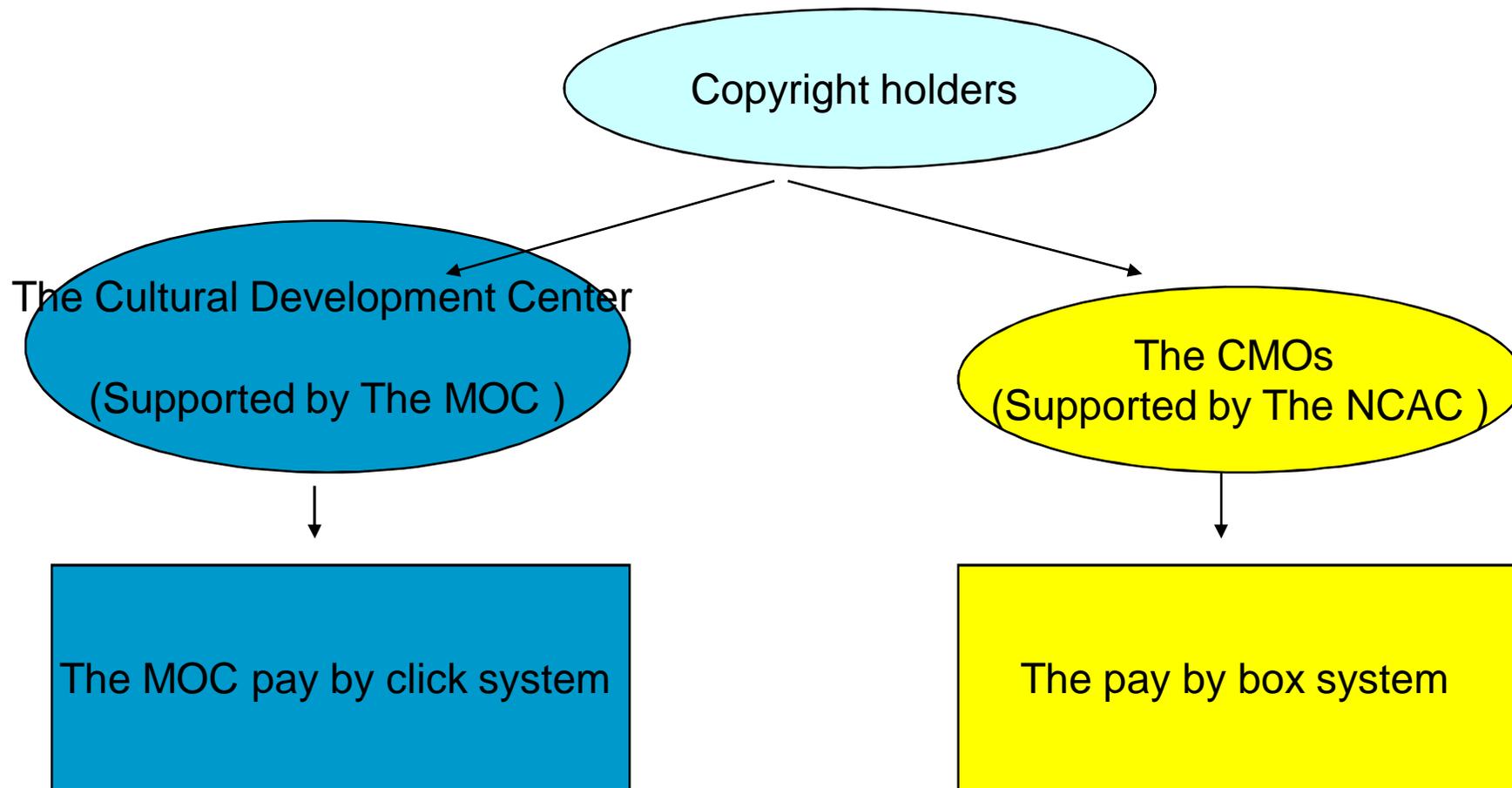
- On the contrary, the Telecommunication Enterprises and the broadcasting organizations are giant and state controlled enterprises.

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# The common points and gap between copyright holders and KTVs.

- Both the copyright holders and KTV industries have reached the common ground that the copyright holders should be paid when their works are used by KTVs.
- **That is “there is no free lunch.”**
- The disagreements includes:
  - **How to pay;**
  - **How much to pay;**
  - Whom to pay;
  - Who to pay;
  - When to pay;

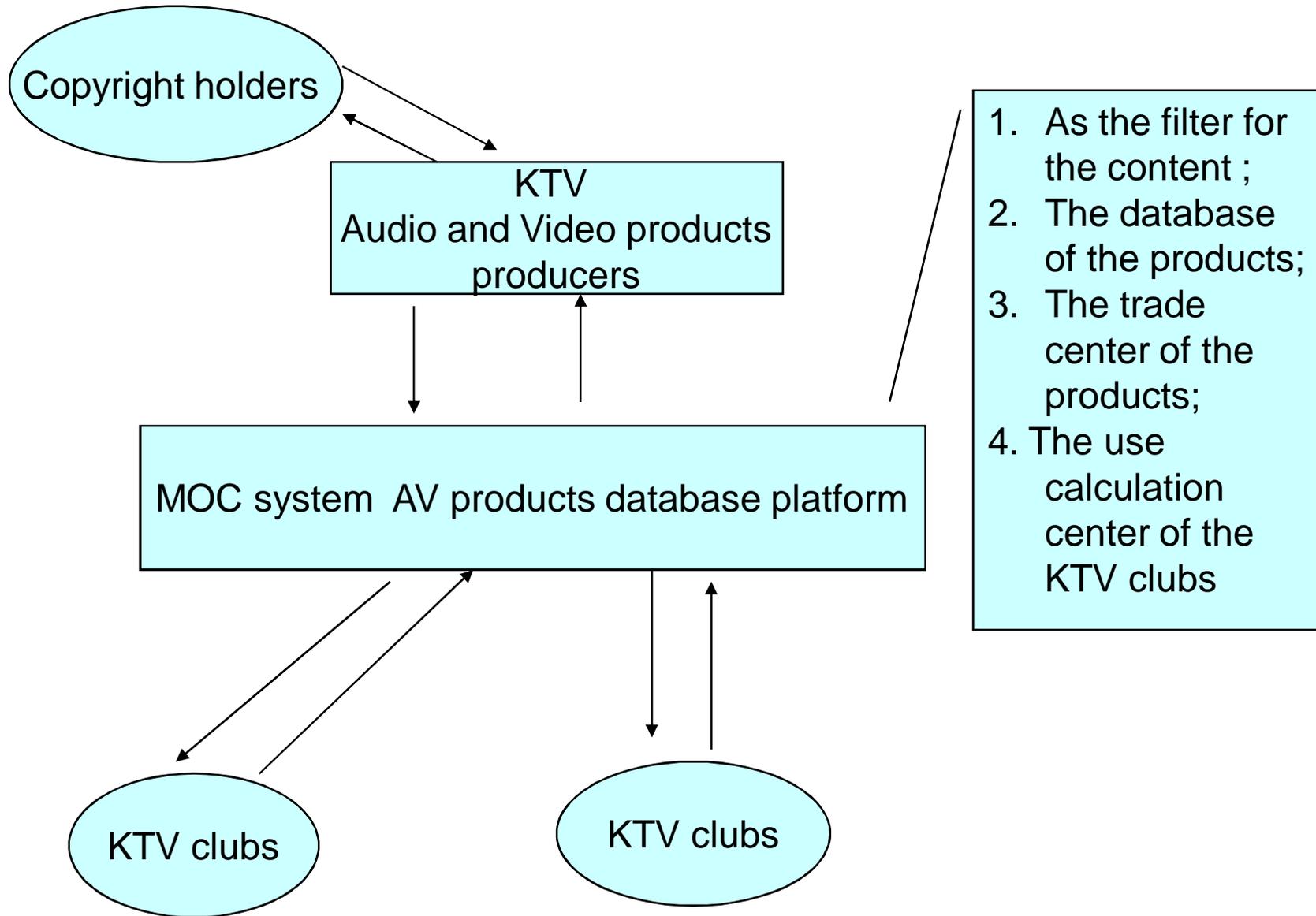
# How to collect: two branches of royalty collection from KTVs



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# The MOC pay by click system

- The pro pay-by-click from The Ministry of Culture of China (the MOC )
- The pay-by-click system had been supported by the MOC which is in charge of the content regulation of cultural products and market.
- Since the July, 2006, the MOC has promoted the so called “National Kara Ok Content Administration and Service System”(“全国卡拉OK内容管理服务系统” )(the MOC system).



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# The NCAC pay by box system

- Both CAVCA and MCSC are the only two CMOs to collect levies from the KTVs on behalf of the copyright holders of the music works and the audio-video programs separately.
- To avoid the repeat collecting process, CAVCA and MCSC have made an agreement that CAVCA collects the levies for both CAVCA and MCSC as a package. And then, they share the amount of the levies.
- (How to share? )
- The notice issued by NCAC as the no. 1 publication of 2006, which recommends the rate of the levy.
- The rate of levy recommended by the Notice is not more than RMB 12Yuan per box per day, which can be adjusted according to the different economic development level in the different areas.

The rates of levy determined by the CAVCA in different provinces of year 2009 (part of it)

Province	Rate (RMB Yuan per day per box)
Beijing	11
Shanghai	11
Zhe Jiang	10
Tian Jin	10
Guang Dong	10
Jiang Shu	9.6
Fujian	9.3
Shan Dong	9.2

Province	Rate (RMB Yuan per day per box)
Nei Meng Gu	8.7
He Bei	8.6
Chong Qing	8.6
Ji Lin	8.4
Shan xi	8.3
Hu Nan	8.3
Hei Long Jiang	8.3
He Nan	8.3

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## II. The debate between pay-by-box and pay-by-click;

The Pro pay-by-click from the academics

- 1. it is transparent; the copyright holders, KTV clubs and consumers know how many works used.
- 2. it could be priced individually; the copyright holders could price their works as they will with the users.
- 3. it could avoid the concerns of monopoly by the CMOs.
- 4. it seems representing the new trend of the digital technology environment; the levy system started from some European countries and was adopted by other countries since the middle of the last century before the Internet time.
- Now the European countries seem thinking to abandon it because the digital technology and Internet provide one more option.
- P.Bernet.Hugenholtz, etc: The Future of Levies in a Digital Environment, Institute for Information, Amsterdam, March 2003
- <http://www.ivir.nl/publications/other/DRM&levies-report.pdf>

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## The pro pay-by-click from the KTV industries



- Some KTV clubs support the pay-by-click system.
- For example, the Entertainment Industry Association of Guang Zhou city expressed such as opinion.
- Mr . Huang, ShiQiu, the Chairman of the Entertainment Industry Association of Guang Zhou publicly criticized and protested the Pay-by- Box system , who was honored as the Figure of 2006 in Guang Zhou.

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## The Pro pay-by-click from the MOC

- Why the MOC support the pay-by-click system ?
- Content regulator's responsibility
- From the legal point of view, the MOC is responsible for the regulation and cleaning of the cultural products in China.
- The works used in KTV fall into its responsibility, the MOC is planning to set up a central platform as the gatekeeper for all the works used in the KTV, filtering out the pirate, violent, indecent and erotic content which is against the mandatory laws and regulations.
- Content regulator's own interest?
- The MOC system is deployed by the enterprise of which, is said, the MOC holds some shares indirectly.



- Until June, 2009, the MOC is still promoting the MOC system as the experimental points in some cities, such as He Shan city, Guang Dong province.

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## The con pay-by-click from the CCMOs

- The CMOs concern the security and stability of the system.
- Since the TPM and DRM in the digital environment are always vulnerable so far, even the Microsoft could not develop an effective system to protect its products. How to secure the system and keep out of circumvention by the KTVs and other hackers.
- Nearly all the countries adopt the pay-by-box system, whether we should change it.

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## The con pay-by-click system from the KTVs.

- Some KTV clubs, for example, the Association of Haidian Entertainment Industry in Beijing are against the pay by click system.
- The main reason:
  - They worry that they will be forced to replace their VOD equipments installed in their clubs with the new pay-by-click system, which will cause extra cost for them.

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## The pro pay-by box from the CMOs.

- 1. it is simple to calculate and determine the amount of levy for every KTV clubs;
- 2. it is the common method used by other countries or areas, such as Japan, Hong Kong or Taiwan province.
- And
- 3. the CMOs will play the indispensable and key role in this system. For pay-by-click system, the DRM technology maybe will replace the CMOs.

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# The Pro pay-by-box system from some KTVs

- The pro pay-by-box system from some KTV Clubs with disagreement on the rate of levy.
- Some KTV clubs support pay-by-box system except for the rates of the levy because they concern that pay-by-click will cause extra cost of replacement of VOD equipments.

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# The Pro pay-by-box system from the NCAC

- Different with the MOC, the NCAC generally support the pay-by-box system, the recommended rate notice is the evidence of it.
- The reason why the NCAC supports it:
  - 1. the NCAC as the copyright law implementation department, has the responsibility to protect and fulfill the right of the copyright holders. The pay-by-box system is the common method of the world to deal with KTV issues.
  - 2. the CMOs are directly guided and regulated by the NCAC. Routinely, they should have reached common understandings before carrying out this project.

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# The con pay-by-box from some KTVs.

- Nearly all the KTVs strongly protest the rates of levy issued and determined by the NCAC and the CMOs.
- For example, both some KTVs in Beijing and Guang Zhou expressed that they could accept RMB 1 or 2 Yuan per day per box.
- 1. by what way, the RMB 12 yuan per day per box has been determined?
- 2. whether the rate is correct?
- 3. whether the procedure to determine the rates is legal?

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# The con pay-by-box from the KTVs.

- KTVs question the legal authority of the CMOs.
- For example, whether they have been authorized by the copyright holders;
- whether the KTVs will be sheltered from the infringement litigations from the copyright holders if they pay the levies as the CMOs proclaimed.

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## The con pay-by-box from the consumers

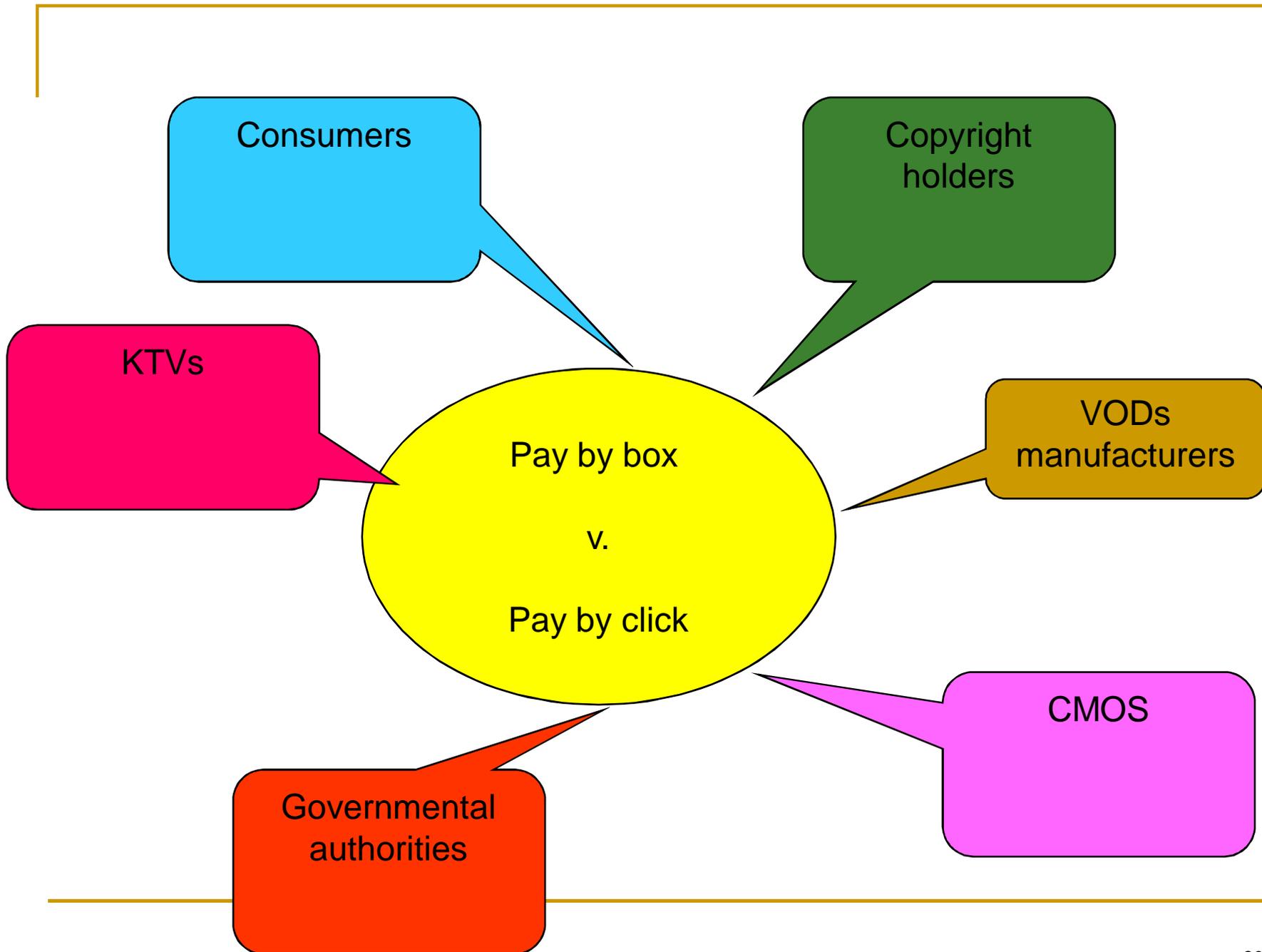
- Consumers worry that pay-by-box will increase the cost of the KTV clubs and the cost will be transferred to the consumers secretly.
- Actually ,some KTVs have increased or are thinking about to increase the price on the excuse of the payment of levy.
- <http://news.people.com.cn/GB/37454/37460/4733476.html>

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# Summary of the debate

- The MOC supported pay by click system
  - Advantages:
    - 1. transparent;
    - 2. pay as the participant's will;
    - 3. compatible with the trend of digital technology;
  - Disadvantages:
    - 1. the technology not available so far;
    - 2. the cost of equipments replaced or updated;
    - 3. no successful experience from the international society;
    - 4. the fragility of the technology ;
    - 5. no determinative income expectation for the copyright holders.
  - The NCAC supported pay by box system:
  - Advantages:
    - 1. simple to understand and carry out;
    - 2. the common method adopted by the international society;
    - 3. no extra cost of equipments;
    - 4. clear income expectation at least for the CMOs.
  - Disadvantages:
    - 1. no-transparent;
    - 2. monopoly;
    - 3. misuse by the CMOs;
    - 4. one fit all levy price;
    - 5. the out of date measures generally fit for analogue technology environment.
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## III. The Current Situation and remaining Problems

- 1. the pay-by-box branch
- The CAVCA has collected the levies from the KTVs since the year of 2008 even though some KTVs and their associations still strongly protest it, especially the rate of the levy.
- The CAVCA adopts the carrot plus stick policy; the KTVs that voluntarily pay the levy will be given some discount; the KTVs that resist to pay are sued in the courts.
- And some courts have taken the publications of the rate of levy as the reference to calculate the damages.
- Interesting point:
  - The CAVCA cooperates with a company to collect the levies.
  - The company named Tian He group has close relation with the MOC. It is said that one subsidy of the MOC holds about 10% shares of the company.
  - Is it a kind of compromise between the MOC and the NCAC?

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# The new questions with the pay by box branch

- Question 1
- The decree No. 429 requires that the CMOs should be non profitable civil organizations.
- Does the cooperation between the Tian He group and the CAVCA comply with the regulation?
- Question 2
- The CAVCA claims that they will charge 20% of all the levies as the management cost. Is it too high?
- And, the total amount of levy collected in the year of 2008 is about RMB 60 million Yuan; but only several millions have been distributed to the copyright holders. It is challenged by both the KTVs and copyright holders why aggressively collect the levy but lazy on distribution of it.

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- Question 3.
  - There is still no clear answer how the rates of the levy is determined.
  - As the use of private rights, the rate should be the common agreement between the two private entities, i.e. the copyright holders and the KTVs.
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  - Can the CMOs issued the rate under the guide of the NCAC individually and enforce the KTVs to accept it by the threat of the litigations?

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- 2. The pay by click branch
  - The Cultural Development Center does not give up the pay by click program. The pay by click equipments have been put into test in several cities.
  
  - The news reported that the CDC, the CAVCA and the VOD manufacturers have reached the trilateral agreement on the September, 2009. According to the agreement, the use of the music works will be recorded by the VODs, and the KTVs will be charged RMB 0.12 Yuan per works per use. The income will be transferred to the CAVCA and distributed to the copyright holders.
- Interesting points:
  
  - Can the income of royalty be distributed to the copyright holders directly since the pay-by-click system has clear record on use and the price of the works could be determined by the copyright holders individually?
  - If the answer is YES!
  
  - Is it another compromise between the MOC and the NAVCA to invite the CAVCA as one of the parties in the agreement?
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## V. Conclusions

- 1. We could learn a lot from this process since it is the first time that the copyright holders to collect the royalty widely in China. Especially, the loud and impressive voice of the KTVs industries changes the image of the Chinese industries, who generally are shy when argue with the governments or the entities who have strong governmental backgrounds.
- Unfortunately, the copyright holders, especially the big labels should have louder voice in the process. But in the most of time, they keep in silence.

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- 2. The broadcasting organizations are the next big fishes for the copyright holders. According to the Copyright Law of China, the broadcasting organizations shall pay the royalty to the copyright holders when they use their works during the broadcasting. But the collection has not been carried out so far. And it is expected that the collection will start soon.
  - Obviously, the lessons learned from the KTVs process will be great helpful to deal with this issue.
  - And we need to pay attention to the difference between the broadcasting organizations and KTVs.
  - Most of the broadcasting organizations are giant, well organized and state owned enterprises. They have strong governmental backgrounds and are the controllers of the main media.
  - Compared with the giants, the copyright holders and the CMOs have no obvious advantages.
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- 3. Whether the CMOs can still survive in the digital environment?
- The telecommunication enterprise provide us an different model.
- Besides the KTVs and the broadcasting organizations, the telecommunication industry is another big copyrighted works user and royalty contributor in China.
- For example, according to the China Mobile Company annual report of 2008, the total income of the company generated from the music service is more than RMB 16billion Yuan, which has overcome the traditional music market in China, and more than 3 billion of them refunded to the copyright holders without the involvement of the CMOs.

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- But the CAVCA and the MCSC almost play no role in this music market. The number of the IT enterprises are limited and most of them have clear book records on the revenue of the music products because of the assistance of the technology.
  - The copyright holders, especially, the big labels such as Sony, Fuji, EMI and Time Warner can negotiate with these IT enterprises and collect the royalty directly.

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- Back to the KTVs, if the MOC's pay by click system succeeds, it is highly possible that the big labels could directly negotiate with the operator of the platform or with the VODs through the platform. The necessity of the CCMOs' involvement will be a question.
  - The debate between the pay-by-box and pay-by-click has been beyond the question of collection royalty from the KTVs.
  - It is a question on what way we go to manage the copyrights when we face the cross road of analogous technology and digital technology today.



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- **Thanks for your attention !**