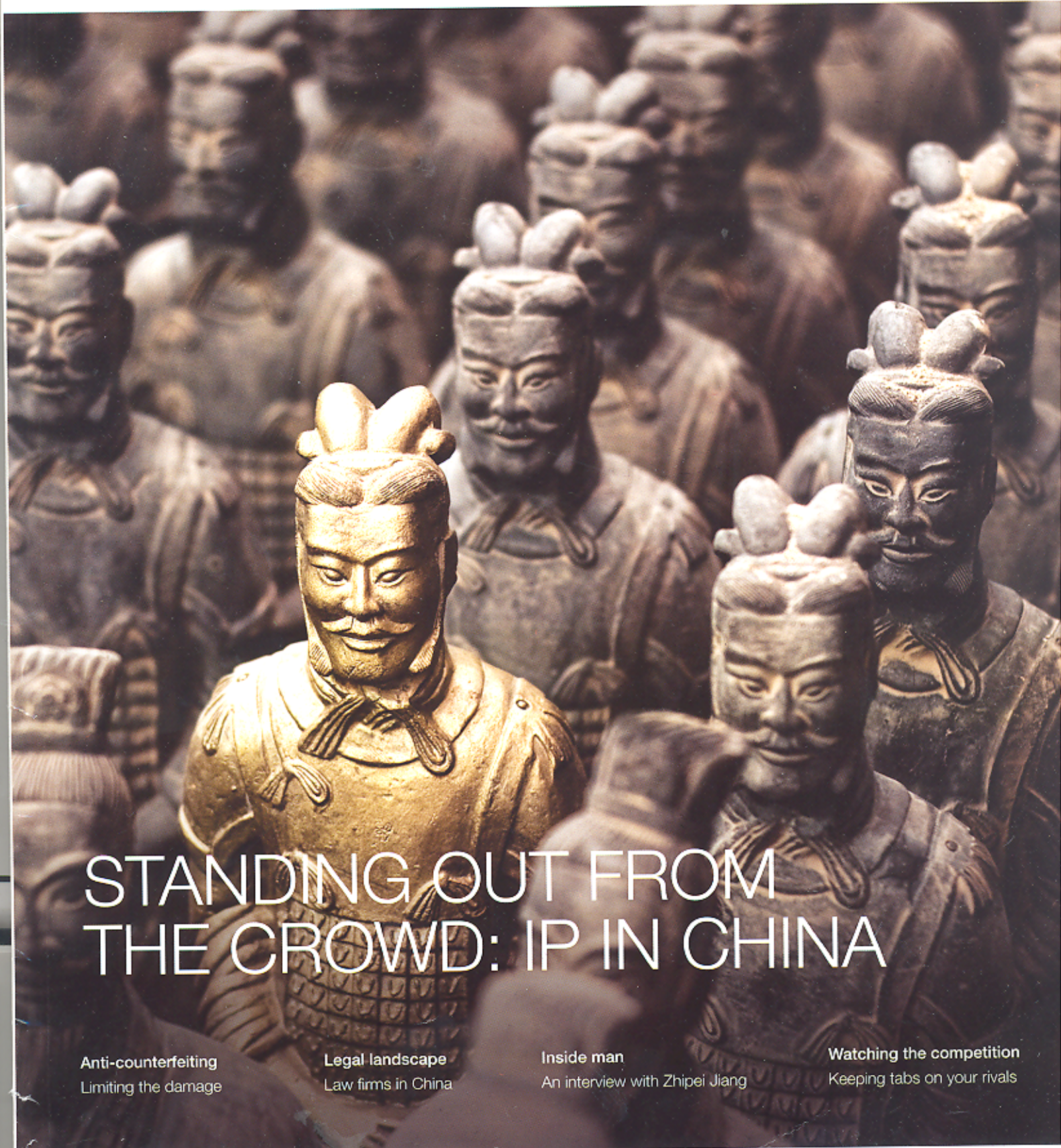


# WIIPR

WORLD INTELLECTUAL PROPERTY REVIEW

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## STANDING OUT FROM THE CROWD: IP IN CHINA

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FEATURING CHINA, TURKEY, BRAZIL AND INDIA



## A MORE EQUAL MUSIC

Bisman Kaur  
Remfry & Sagar

The Indian music industry is unique. Over 60 percent of sales come from film music. Yet, composers and lyricists in the film industry are not an envied lot. Their services are engaged for fixed sums and contracts worded to assign all royalties to film producers.

Internationally, music contracts are structured differently. A composer and lyricist typically assign copyright in the song to a publisher, which generates income by licensing rights and collecting royalties. Mechanical royalties stem from licensing the right to make a sound recording; synchronisation royalties come from allowing use of the song in film, while radio and television broadcasts, restaurant play and live performances yield performance royalties. In exchange for transfer of ownership, the creative team gets a share—commonly 50 percent—in the various royalties. These are collected in tandem by more than 200 societies across the world. Significantly, if a society gives out more than a 50 percent share to the publisher, it risks de-recognition by the governing body.

The first Indian copyright society (known today as Phonographic Performance Ltd.) was established in 1936 and represented music producers. In 1969, the Indian Performing Rights Society (IPRS) was set up to collect royalties on behalf of authors, composers and publishers. However, producers always enjoyed an upper hand. A 1977 Supreme Court judgment recognised an author's/musician's 'performance rights' over radio broadcasts and restaurant play; however, it unequivocally held that the film producer was first owner of copyright in a film, including all its constituent elements, such as music, lyrics and script.

Subsequent amendments to the law delineated the rights of composers, musicians and film/music producers with greater clarity and harmonised them with prevailing international norms. However, legal awareness in the creative community has historically been low, making it set practice for film producers to buy out lyricists' and musicians' rights to make a sound recording and sync it to film for low sums.

This highlights another peculiarity—there is no entity called a music publisher in India. Film producers perform an analogous role and are also IPRS members in place of publishers. On paper, they are meant to share 50 percent of royalties arising from performance rights with lyricists and musicians. However, some years ago, music companies began offering handsome lump sum amounts to movie producers in exchange for their music publishing rights. In return, they demanded assignment of all copyright belonging to the original author/composer, claims of all royalties stemming from current and unforeseen future avenues, and membership of the IPRS. The producers agreed, appropriately modifying contracts with authors and musicians. Subsequently, music companies tacked on

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similar conditions to prior contracts as well. Non-film music recording contracts followed a similar pattern. Having usurped all royalties, the IPRS discontinued royalty payments completely to authors and composers.

Inequity in the system is also demonstrated by considering royalties that may accrue from 'unforeseen future avenues'. To illustrate, in 2004-05, royalty collections from mobile ringtones were approximately \$1.5 million. Six years later, they had jumped nearly 2,000 percent to \$30 million.

To redress the situation, a copyright amendment bill was released in 2010. After lengthy and contentious consultations with stakeholders, the government committee examining the bill tabled its report before Parliament.

Under the proposed regime, authors of literary works and music composers may assign copyright to a film/music producer. However, assignment cannot extend beyond specified media of exploitation to encompass 'unforeseen future avenues'. Further, authors and musicians are barred from waiving their right to a minimum 50 percent share in all royalties arising from exploitation of their underlying works (with the exception of royalties stemming from the screening of the film in a cinema hall). Royalty rights can only be assigned to legal heirs or a copyright society for collection and distribution of royalties. Contracts to the contrary would be void.

Producers claim that the bar interferes with the constitutional right of freedom of businesses. However, the Minimum Wages Act provides a parallel, wherein no person can contract labour at rates lower than statutorily prescribed levels. Concerns also stem from whether or not the amendments will take retrospective effect—this aspect will only be clarified once the final bill becomes public.

The amendments are expected to become law in the near future and hold the promise of rewriting the rules of business in the Indian film and music industries. ■

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