

### "Show me the money": making end users pay for copyrighted works

[Formosa Transnational - Taiwan](#)

[Yulan Kuo, Jane CC Wang](#)

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On June 11 and 12 2015 the [Sixth Conference on European and Asian Intellectual Property](#) was held in Taipei, Taiwan. Delegates from more than 15 jurisdictions gathered to discuss the issue of paying for the use of copyrighted works from both local and international perspectives.

In his presentation Professor Raman Mittal from the University of Delhi concluded that “the development of sound mechanisms whereby end users can be made to pay for their use of copyright works fall into the domains of legislation, contract and management”. However, the key issue is how to get end users to pay for the use of copyrighted works. Although many end users are willing to pay for use, no legal mechanisms exist to protect those who do pay from further liability.

#### Playing it safe

End users can include internet service providers, content providers, luxury hotels, artists, cable television stations and advertising companies. Often negotiations take place between copyright owners and users of the copyrighted works. Users are often willing to pay to guarantee protection against infringement lawsuits or – in Taiwan – criminal penalties for the violation of copyright law. However, even such protection can entail legal risks. Lawsuits can arise not because an end user was unwilling to pay, but because it did not know who to pay.

A good example is the online music business. A new online business which wished to use copyrighted works faced a major challenge when it discovered that it could not guarantee that paying the copyright owners it was aware of would protect it from liability. The issue stemmed from the fact that there is no public register of copyright owners to search. Thus, in order to protect itself as far as possible from infringement liability, the business:

- entered into contracts with collective management organisations and major recording companies; and
- placed ads in newspaper and online to search for copyright owners whose works it wished to use, and then entered into contracts with those which came forward.

#### The power of contracts

This example demonstrates the power of contracts: they can ensure that copyright owners receive the royalties due to them, while protecting end users from infringement suits. The conclusion of a contract between an end user and a copyright owner can also act as evidence that the end user had no intention to infringe the owner's IP rights.

Further, contracts are the most practical way to make end users pay for using copyrighted works. A copyright owner can also adopt technical mechanisms to control the scope of its licences (eg, software that blocks certain internet protocol addresses in order to control the territory of a copyright licence). Because the scope of the licence can be specified, it is easier for the parties to agree a reasonable royalty fee and terms. An effective licensing contract can ensure that an end user pays a satisfactory royalty rate and the copyright owner receives the income it needs for a certain period.

#### Comment

Of the three domains which govern mechanisms to make end users pay for using copyrighted works, contracts should be the first choice for copyright owners. The right contract can afford protection against infringement suits and ensure the proper allocation of legal risk.

For collective management organisations, businesses and individuals, the key message from the conference was to consider contract options carefully before shouting “Show me the money”.



Yulan Kuo



Jane CC Wang



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For further information please contact:

Yulan Kuo  
Formosa Transnational  
[www.taiwanlaw.com](http://www.taiwanlaw.com)  
Email: [yulan.kuo@taiwanlaw.com](mailto:yulan.kuo@taiwanlaw.com)  
Tel: +886 2 2755 7366

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