

Challenge in China's Digital Music Industry: How the Protection of Music Copyright Causes Oligopoly

Research Paper

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Received December 27, 2021; Accepted January 20, 2022

Abstract: Along with the rapid growth of China's music industry, laws and policies that protect music copyrights are also gradually improving. However, the distribution of copyrights among major music platforms is uneven. Music copyrights have become an effective implement for the major music companies in China to eliminate players in the market and create barriers to the industry. This paper analyses the cause of the uneven distribution of music copyrights among music platforms, discusses how this situation leads to an oligopoly that affects the consumers and music producers, and indicates some possible solutions.

Keywords: *Music Copyrights • Music Business • Digital Music • Oligopoly*

1. Introduction

Dating back to the 2000s, there was not an effective music copyright protection mechanism in China. The lack of supporting laws of music copyright followed the prevalence of pirated music. Due to the accessibility and the low price of pirated music, the demand for music copyright was deficient, resulting in the decrease of music copyright's price. However, a digital music company, Haiyang Music, took advantage of this situation and purchased >20 million music copyrights from record companies at a relatively low price (IC Lab 2020). Haiyang Music's forward-looking move set the stage for the subsequent competition for music copyright in China's digital music industry.

In 2015, the Chinese National Copyrights Administration had issued a series of policies regarding copyright protection, asking the digital music platforms to stop providing all unlicensed music. This policy had caused a sharp increase in demand for legitimate music copyright (IC Lab 2020).

The price of music copyright continued to increase in China. Competition among digital music platforms for copyrights had been intensified. A case in point was the Universal Music Group (UMG)'s licensing fees. UMG's initial offer was between \$3,000 and \$4,000, then the licensing fee was bid up to \$350 million in cash plus \$100 million in equity, even the lowest bid reached \$240 million (IC Lab 2020). UMG's soaring licensing fees were just a microcosm of the market at the time. The price of music copyright in the entire digital music market was growing exponentially. As a result, many digital music companies exited the market because they could not afford to stay put because of the exorbitant price of music copyright. As many music companies struggled to cover the high cost of the copyright, an online digital music company, Tencent Music Entertainment Group (TME) (founded by Tencent after purchasing Haiyang Music, Kugou Music, and Kuwo Music), benefitted from the policies. After purchasing several major music companies, including Haiyang Music, mentioned in the previous text, which had already purchased a considerable number of music copyrights, TME now owned copyrights for >40 million songs. Before these policies on copyrights were issued, TME's copyrighted music and songs could also be found on other music platforms. After 2015, with the support of the policies, TME can sue those music platforms that are offering music that TME owns the copyrights for.

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To some extent, policies on music copyright issued by the Chinese National Copyrights Administration had positively affected the music industry in China, protecting musicians' and copyrights owners' interests. However, the implementation of these policies also provides music companies such as TME with the power to manipulate the market. According to the *2016 China Online Music Industry Research Report*, TME has already owned >90% of all the music copyrights in China's music market (iResearch.com 2016). Most of the remaining music copyrights, close to 10% of all, are held by a handful of other music companies. These companies tend to hold the copyrights alone rather than reselling or sub-licensing them to other music companies. Such action creates a high barrier to entry into the digital music market because those start-up music companies have no access to music copyright. The effect that the unbalanced distribution of copyrights had on the digital music market was noticeable. Between 1999 and 2010, there were eleven major digital music companies founded in China, while from 2011 to 2016, there was only one (iResearch.com 2016).

An oligopoly was formed in China's digital music market, with less than ten companies holding nearly all the music copyright in the country. Each music company has a music library that is entirely different from those of its competitors. Additionally, all these music companies refuse to share or sub-license their copyrights in any form. As a result, the circulation of music resources is severely limited in China's digital music market. Consumers have to visit multiple music platforms to find all the songs on their playlists. Consumers' interests are being reduced because they need to pay more when downloading songs on multiple platforms. What is more, the non-circulation of music also harms musicians. As the music companies are competing with their rivals through restricting sharing and sub-licensing copyrights, musicians are not able to have more people listen to their music works.

The music copyright protection law issued in 2015 by the Chinese National Copyrights Administration was once seen as an effective implement to regulate the digital music market and protect musicians' interests. However, as these laws eradicated pirated music, they also led to the oligopoly in China's digital music market today. This has become a challenge in China's music industry and an urgent problem to be solved.

2. The Cause of the Oligopoly in China's digital Music Market

2.1. The Prevalence of Pirated Music in China's Early Digital Music Market

Since the 1990s, the internet has started to flourish in China. The internet had gradually become a popular medium through which music was transmitted. The concept of digital music was introduced to China's music industry. The advent of digital music had fundamentally removed consumers' dependence on physical carriers of music goods, making music easier to be copied and transmitted. With the absence of relevant laws, the internet, a new medium for the spread of music, led to the prevalence of pirated music.

With the lack of music copyrights protection laws, some companies started to make profits from pirated music. For instance, FeixingWang company, a Taiwan digital music company that entered China mainland in 2000, developed an app named KURO that provided its users with unauthorised music downloads services that only charged 20 RMB per month. In 2003, KURO had more than a million registered users (Li Li, 6).

After the great success of KURO, music companies at that time soon realised the potential profits from selling pirated music. Without the government's adequate protection of copyrights, it almost cost nothing to sell pirated music, and there were huge profits in return at the same time.

The increased prevalence of pirated music therefore resulted in a decrease in demand for music copyright, resulting in the fall of the price of music copyright.

Although the majority in the digital music industry tended to sell pirated music rather than purchasing authorised music copyrights, some forward-looking entrepreneurs believed that the government would eventually introduce laws to protect music copyrights. The current low price of music copyrights had been a perfect opportunity for them to hoard music copyrights and get a head start in the future digital music industry.

A representative of these entrepreneurs is Guomin Xie, the founder of Haiyang Music. As the price of music copyrights in China remained low, Xie signed contracts with more than a hundred record companies to purchase the copyright of their music. In 2013, Haiyang Music had owned copyrights for >20 million songs, which were more than half of all music copyrights in the market (IC Lab 2020).

After the Chinese government implemented laws regarding copyrights protection in 2015, piracy of music was severely cracked down. While other music companies were rushing to purchase music copyrights, Haiyang Music had already owned more than half of music copyrights in China and naturally became a dominant power in the

market. To consolidate the position in the industry, Haiyang Music purchased another major music company, Kuwo Music, completed the stock exchange merger with another music company, Kugou Music, and renamed China Music Corp. (Lei 2013). Through this process, Haiyang Music integrated its copyright resources and the user resources of Kuwo Music and Kugou Music.

Haiyang Music was not the only company that tried to control the market by seizing music copyrights. But overall, there were less than ten companies still standing in the market, including China Music Corp., QQ Music, Xiami Music, TTPOD, and NetEase Cloud Music. An oligopoly had already been formed in China's digital music market.

As shown in figure 1, China's digital music market had exhibited a typical feature of oligopoly: high barriers to entry. Figure 1 shows the change in the number of newly founded digital music companies in China. After a short boom in the digital music business during the mid-2000s, the number of newly founded digital music companies in China decreased dramatically and remained at zero after 2015. Fewer and fewer digital music companies were willing to enter the market after only a few large companies controlled the copyrights resources.

In conclusion, the prevalence of pirated music in China's early digital music market had resulted in the low price of music copyrights. Music companies were enabled to purchase numerous music copyrights at a bargain price. After the implementation of the music copyright protection laws, music copyrights became a scarce resource. The companies which had purchased a great many copyrights previously then had the power to crack down on their competitors and create barriers within the digital music industry.

2.2. Exclusive Copyrights

China's digital music market is a late starter compared to other developed countries. The lack of laws regarding music copyrights protection had hindered the flourish of digital music in China, as mentioned in Section 2.1. However, as the Chinese government gradually refined copyrights-related laws, new problems emerged.

Music copyright is one of the most complicated systems in the field of copyright. China was very short of relevant theoretical reserves and legislative experience as a late starter in the digital music industry. A case in point was that in the third amendment to the Chinese Copyright Law, the system of 'statutory licence to make sound recordings' and 'extended collective management', which claimed to protect the interests of the right holders, was strongly opposed by the music copyright owners, who were actually the 'protected objects' of the law (Xiong Qi, pp. 104). As an imported product, China's music copyright system is similar to those of developed countries that were established even before China's music industry had emerged. Chinese government tended to introduce developed countries' copyrights laws to the Chinese market but overlooked the demand of the domestic market. Such direct transplantation of laws had caused some serious problems. Since exclusive music copyright is less common in other countries, these countries do not have strict regulation on the use of exclusive copyright. In China, where exclusive copyright is owned by only a few companies, the direct transplantation of foreign laws on music copyright led to the abuse of exclusive music copyright (Wang and Xu 2018).



Figure 1. The number of newly founded digital music companies in China had experienced a sharp growth in 2005, and then dropped to zero in the following years due to the difficulties to obtain music copyright and strategies adopted by the large companies to eliminate competition in the market.

Exclusive music copyrights had played an important role in forming an oligopoly in China's digital music market. As mentioned in Section 2.2, Haiyang Music, which TME later purchased, had bought a considerable number of music copyrights when the price was relatively low. Most of the copyrights Haiyang Music purchased were exclusive ones. Some other large companies took similar actions. The result is that a large portion of the copyrights in China is held exclusively by a few big companies.

Digital albums have been a major form of exclusive music copyrights in China's digital music market in recent years. Figure 2 shows the market share for digital albums in 2020. It can be seen that TME has the absolute dominant power in the market, followed by NetEase Cloud Music.

The exclusivity of the copyrights means that other companies do not even have a chance to purchase these copyrights, thus being washed out from the digital music market in the competition. The major implication of exclusive music copyrights in China is that several small and medium-sized digital music companies without a sufficient number of music copyrights are rapidly eliminated from the market, and the competition in the digital music industry has gradually evolved into copyright competition of the giants.

3. Effects of Oligopoly on China's Digital Music Market

3.1 An Obstacle to the Wide Spread of Music Works

In 2016, China's digital music market had reached 49.818 billion RMB while the scale of the physical records market was only 559 million (Huang, 2017, pp. 75). Digital music output value accounted for 74.88% of the entire music market. Digital music had become the mainstream of China's music market.

Unlike film and television works, which have a wide variety of distribution channels including cinemas, the internet and TVs, the consumption of digital music is heavily dependent on online music platforms. Thus, the non-circulation of music copyrights will greatly limit the widespread of music works.

In 2015, China's digital music market has ushered in the 'Dual Apps Era'. The 'Dual Apps' does not really mean two apps but refers to two giants in digital music industry, TME and Alibaba, which were two major oligarchs in the market at the time. Users have to download at least one music software from TME, including QQ Music, Kugou Music and Kuwo Music, and one software from Alibaba in order to have a more complete music library. Both TME and Alibaba hold a large number of exclusive music copyrights that would not be shared between each other. Users in China are not able to have access to all music works with a single app downloaded. The 'Dual Apps Era' is a perfect example of the oligopoly in China's digital music market.

Such 'Dual Apps' model is against users' experiences. In most instances, users tend to download one app of a category that fits them best and develop strong user viscosity with that app. However, in 'Dual Apps Era', users have to switch between different music software. Users not only have to overcome the discomfort caused by different interface designs of the apps but also have to remember on which music platform are the songs in their playlist available. Such user experience is not friendly to consumers, and further eliminates consumer choice.

In 2020, a brand-new 'Dual Apps Era' has arrived, with Xiami Music (Alibaba's music software) officially announcing that it will close its service on February 5th, 2021. Alibaba's position in the music market has been replaced by NetEase Cloud Music. The 'Dual Apps' now refer to TME and NetEase Cloud Music.

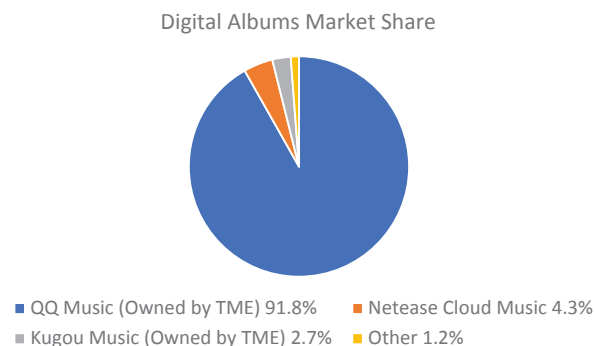


Figure 2. TME's digital albums market share had reached 94.5% in 2020, and Netease's digital albums market share was 4.3%. TME and Netease together owned nearly 98.8% of the exclusive copyright in the market in the form of digital albums, while there was only 1.2% left for other relatively smaller companies.

Although the players in this oligopoly have changed, the logic behind it remains the same: two leading oligarchs control most of the market, some other smaller oligarchs have the rest, and there are less than ten companies in the entire digital music market.

3.2. Fuelling Market Prices

Besides the negative effects on the transmission of music works, the oligopoly in China's digital music market also caused the prices of music to rise dramatically and harmed consumers' interests.

Since each company in China's digital music market has music products and services that are different from others and consumers have a relatively inelastic demand for such products and services, digital music companies can increase prices with little or no consequence.

In essence, an oligopoly is neither productively efficient (Price=Minimum Average Total Cost) nor allocatively efficient (Price=Marginal Cost). The oligopoly in China's digital music market not only fosters the price increase but also causes resources to be misallocated.

In addition, although digital music companies in China do not collude with each other to eliminate competition in the market, the lack of circulation of copyright has been already limiting entrants and decreasing innovation.

4. Future Implication

4.1. Monopoly

Although China's digital music market today is an oligopoly, many data imply a possible monopoly in the future. As previously mentioned, TME has a market share of 94.5% in the digital albums market (QQ Music has a market share of 91.8%, and Kugou Music has a market share of 2.7%, both of these companies are owned by TME) (Bigdata Research 2020). That is to say, TME is only a step away from monopoly in this specific sector of the digital music industry.

The digital albums market is not the only place where TME has dominant power. Even taken China's digital music market as a whole, TME is in the lead.

Digital music downloads are one of the most important indicators of a company's competitiveness. TME's market share of digital music downloads had reached 66% in 2020 H1 (iResearch.com, 2016), as shown in Figure 3, which is significantly larger than any other digital music company.

Another important indicator for the digital music market – monthly active users – further illustrates TME's dominance in China's digital music market. In 2016, the total number of monthly active users on digital music platforms in China was approximately five hundred million, while TME's monthly active users were approximately four hundred million. Nearly 80% of all monthly active digital music users had chosen TME (iResearch.com, 2016).

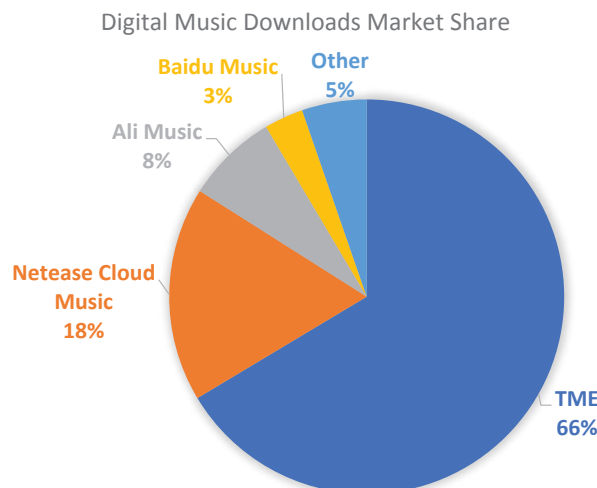


Figure 3. TME had the highest digital music downloads market shares of 66% in 2016, and Netease's digital music downloads market shares were 18%, which was the second-highest. Digital music companies' music downloads market shares were approximately proportional to the amount of music copyright they owned. That is to say, the amount of copyright owned directly reflects a company's competitiveness in the market.

According to the Chinese Antimonopoly Act, in any of the following circumstances, the operator may be presumed to have a dominant market position:

- (1) The market share of one business operator in the relevant market reaches half.
- (2) The combined market share of the two business operators in the relevant market reaches two-thirds.
- (3) The combined market share of the three operators in the relevant market reaches three quarters.

In addition, Article 3 of the Anti-monopoly Law of the People's Republic of China stipulates that an operator's behaviour of abusing its dominant market position is a monopoly behaviour (Jingxiang Entertainment 2017).

TME has met all three circumstances above, and it did use its dominant market position in its competition with Netease Cloud Music. A case in point was 'Netease Cloud Music removed Jay Chou's songs', which was an incident that happened in 2018.

Jay Chou is one of the most famous singers in China. Most of his music works' copyrights were purchased by TME. In 2018, Chinese National Copyright Administration encouraged TME to resell or sub-license its exclusive copyrights to other digital music platforms to prevent potential monopoly. However, no specific law was enacted to stipulate the sub-license or resell of exclusive copyrights. On February 9th, TME and Netease Cloud Music had reached an agreement on music copyright cooperation. They would license each other's music works, accounting for >99% of the total number of their exclusive music works and carry out long-term cooperation on music copyright (Guo & Zhang, 2018). After obtaining the copyrights of most of TME's music works, Netease Cloud Music had experienced a significant increase in active users and carried out a series of propaganda campaigns, building a good reputation for the company (IC Lab 2020). Nevertheless, TME saw these signs as a threat to its leading position in the market. Only 2 months after the agreement, TME unilaterally stopped the sub-licensing of exclusive copyrights. Netease Cloud Music had to remove numerous music works including Jay Chou's songs. In this case, TME's action is apparently a monopoly behaviour according to Chinese Antimonopoly Act because it had abused its dominant power in the market. However, the scope of application of China's Anti-monopoly Law does not include intellectual property, so no law or policy can clearly determine whether Tencent Music's behaviour is a monopoly, although it has basically met the conditions of monopoly.

TME owns over 80% of all music copyrights in China. It is TME but not a neutral third-party agency or government that sets the licensing rules, offering TME the opportunity to use the rights to stifle rivals. Although the sub-licensing itself has many benefits for the development of the domestic digital music market, when it is controlled by a company that owns the exclusive rights, it becomes the continuation of the exclusive rights, rather than the real meaning of sharing. Sub-licensing is no longer a preferable way to solve the problem of exclusive copyright. Instead, it accelerates the transformation from oligopoly to monopoly in China's digital music industry.

4.2. Price Discrimination

If China's digital music market becomes a monopoly in the future, price discrimination may become another serious problem that would hurt consumers. Price discrimination happens in a monopoly, and the definition of price discrimination in a broad sense is 'Charging different prices to different customers for the same good or service' (Oxford Reference 2021).

In the digital music market, price discrimination can be achieved more easily. The distribution of digital music has a lower cost than that of conventional music. Digital music can be distributed electronically, so there will be no cost for making CDs or transportation. That is to say, digital music has no production cost except some fixed costs such as the initial cost of purchasing copyrights and building internet servers. Thus, digital music companies can achieve price discrimination not only by setting different prices for similar or same products but also by setting different prices for different products, since the cost for a digital music company to distribute one song is the same as that of one hundred songs.

A digital music company usually achieves price discrimination by offering different plans for its users. For example, Netease Cloud Music offers two distinctive plans. The first one, named 'Music Pack', provides users with access to most of Netease's music library in high quality (HQ) tone quality, while the second one, named 'Vinyl Record VIP', gives users access to the entire music library in super quality (SQ) tone quality¹. It is also worth mentioning that Netease Cloud Music once offered plans that included unlimited downloads for a specific musician. In 2018, for instance, Netease Cloud Music rolled out a 'Jay Chou Music Pack', which gave users

¹ Music in SQ quality is distributed in FLAC format, and music in HQ quality is distributed in MP3 format.

access to Jay Chou's songs only, and was sold at a relatively lower price than plans that give access to the entire music library.

For Netease Cloud music, the costs for distributing songs in different qualities are all the same. Additionally, whether giving users full access or partial access to the music library does not influence the cost for Netease since all songs are distributed electronically and they have already existed in NetEase's servers.

A user who demands a higher quality of music can purchase the 'Vinyl Record VIP' plan, while a user who does not care about tone quality can purchase a 'Music Pack', whose price is relatively lower. Furthermore, Jay Chou fans can purchase a plan that only includes Jay's songs. In this way, Netease has successfully sold its music at the highest price that a specific consumer is willing to pay. Unlike conventional markets where monopolies have to charge different prices for similar products to achieve price discrimination, monopolies in the digital music market can charge different prices for different products and still manage to implement price discrimination because the cost on the producers' side does not change.

Intriguingly, such price discrimination happens in an oligopoly market in today's digital music industry in China. The reason is that although neither TME nor Netease has become a monopoly in the digital music market, both of them have become a monopoly in the copyrights market. Because of exclusive copyrights, the copyright of a song can only be owned by a single company, which makes that company a monopoly. Companies such as TME and Netease then take advantage of the exclusivity of music copyrights and implement monopolistic behaviour in an oligopoly market.

4.3. Government and Institutional Intervention

The lack of policies regulating exclusive copyrights will likely worsen the plight in China's digital music market. Uncontrolled exclusive copyright makes sub-licensing and resale of music copyright impossible, eliminating the diversity and competition in the digital music market. Thus, government and institutional intervention are necessary for the Chinese digital music industry to survive.

Fortunately, China has lessons to draw from other countries in the world. As early as 1995, the U.S. Department of Justice enacted The Digital Performance Right in Sound Recordings Act of 1995, which stipulates that the term of exclusive copyright licence shall not exceed 12 months. By limiting the term of exclusive copyright to 12 months, the government easily disabled digital music companies to stockpile a large amount of music copyright. The Chinese government should also enact laws limiting the term of exclusive music copyright. When such laws come into effect, music works in China can be accessed on more online music platforms, while large companies such as TME and Netease will lose their power to eliminate competition in the market and create barriers to the industry (Zhu 2019).

In addition, most countries in Europe and America have established performance rights organisations (PROs) to manage music copyrights, and most of these organisations are non-profit. In the US, for example, there is a PRO named the American Society of Composers, Authors, and Publishers (ASCAP). ASCAP helps musicians track, collect, liquidate and distribute royalties (Wikipedia 2021).

Back in China, although there is a performance rights organisation named Music Copyright Society of China (MCSC), there is no corresponding law supporting MCSC's actions. Therefore, MCSC's power in the market is deficient compared to that of TME and Netease. The Chinese government should start building a better copyright system that helps musicians manage and distribute their royalties and make sure that music work can be accessed on various music platforms to maximize musicians' profits.

Although regulations regarding exclusive copyrights in China are still incomplete, a recent action of the State Administration for Market Regulation (SAMR) (2021) has revealed the Chinese government's determination to prevent monopoly in the digital music market. SAMR decided that TME's acquisition of China Music Group shares illegally implements operator concentration, eliminating and restricting competition. SAMR ordered TME and its affiliates to terminate the exclusive music copyright within 30 days from July 24th, 2021. This action of SAMR has effectively contained TME's transformation from an oligarch to a monopoly. However, this action does not address the fundamental problems in China's digital music market: the price of copyright is still unreasonably high, making it impossible for new-founded companies to enter the market. While TME's power in the market was weakened, Netease now gains the opportunity to become another monopoly. The oligopoly still exists in China's digital music market, and the possibility of future monopolies has not been eliminated. The market needs a thorough reform of China's music copyright law.

5. Conclusion

Around the world, the protection of digital music copyright started relatively late in China. However, China has the largest digital music market in the world with 780 million users in 2020. The mismatch between the scale of users and the copyright protection capability poses a great challenge to China's digital music industry.

In the early 2000s, there was no sufficient law that protects digital music copyright. The low price of pirated music had made it popular among the majority of music listeners. The flourish of the internet had accelerated the spread of pirated music. At the time, the price of digital music copyright was very low, since companies saw no advantages in purchasing copyright given the prevalence of pirated music. However, Guomin Xie, the founder of Haiyang Music, purchased numerous music copyrights and signed contracts with several major music groups at very low prices. Xie's action did not draw any attention from the public. Neither the government nor other companies in the market realised that Xie had set the stage for the oligopoly that was going to happen in the following years. After the Chinese government started to crack down on music piracy, music copyright had become a precious resource. When companies started to realise the importance of music copyrights, TME, which purchased Haiyang Music, and several other companies had already owned nearly all the music copyrights in China. A few companies controlled the market and seized the flow of music copyrights through the form of exclusive copyright, which made it impossible for new companies to enter the digital music industry.

The oligopoly in China's digital music market has limited the spread of music work. Each digital music company has a different music library. Since all companies refuse to share, resell or sub-license their music copyrights, users have to visit several apps to find all music they want to listen. Musicians also find it difficult to make their music more accessible to listeners. Besides, the oligopoly has caused the price of music work to increase. The cost of listening to music increases for consumers, but the profit that musicians make does not change. Instead, digital music companies' revenue grows significantly. The oligopoly not only has negative effects on the market but also harms the music culture in China by discouraging musicians and listeners.

Given that TME owns nearly 90% of all the music copyrights in China, it is likely that TME will grow into a monopoly in the future. In fact, some monopolistic behaviours such as price discrimination have already occurred in today's market.

The music industry should not be a battleground for capital. Music is about art and style, but not business and profit models. Government, organisations and individuals must work together to address the challenge in China's digital music market and promote the prosperity and diversity of music culture.

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