

“The Functioning of Copyright Societies under The Indian Copyright Act, 1957”

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ABSTRACT

The Indian Copyright Act, 1957 works towards the protection of the interests of the producers of original work including music, lyrics, composers, authors. The Act provides for the establishment of copyright societies to facilitate the implementation of the Act. These copyright societies find place in all legal systems of the world and helps in coordinating the process of collective administration of the copyright interests. As per section 33 of the Act, for a society to function it must be registered with the government and should function under the supervision of the Government. However, as per section 18 of the Act, any owner of copyright can assign his interests to any person, other than a registered copyright society. This has led to a situation of chaos wherein societies have been engaging in the business of granting license under the guise of sec. 18, allowing them to be free from any kind of governmental supervision. Further, the act provides that ideally there should exist only one copyright society for a particular class of work, however with the increase in the number of these societies, there exist overlapping leading to confusion and chaos especially for the users. Adding to these troubles the still exist much ambiguity regarding the licensing from multiple societies for using an original piece of work. These problems have been hindering the process of successful implementation of the Indian Copyright Act. This paper showcases the problems in the interpretation of the Act, the inability of the judiciary in providing a clear path for the proper functioning of the legislation. The government should initiate some damage control policies to improve the compliance of the act, since the Act is a progressive piece of work whose success is being held back due to faulty implementation.

Important Terms: Copyright Societies, Section 33, plurality, licensing.

Introduction:

The Indian Copyright Act, 1957 along with its 2012 Amendment, stands as a long sighted step on part of the Government of India to safeguard and protect the rights of various artists and writers. The act provides the creators of original content with an inalienable right to receive royalty (R3). The artists, authors and composers were devoid of their right to receive royalty before the inculcation of the Amendment Act, 2012. The amendments were aimed at changing the regulatory framework for Indian copyright societies and inserting statutory safeguards to protect songwriters and composers. Since, it is a very difficult task to recognise the rights of these creators individually, the Act provides for the composition of Copyright Societies. In India there subsists Copyright Societies like the Indian Performing Rights Society (IPRS), the Phonographic Performance Ltd. (PPL), the Indian Singers Right

Association (ISRA) and Novex Communications Pvt. Ltd. Further, the Indian Copyright Act although being a progressive act suffers from serious drawbacks in its implementation scheme that has hampered the aims that the act wanted to achieve. There exist a number of loopholes in the legislation with regard to the working of the Copyright societies. The Amendment Act, 2012 was aimed to remove the corruption from the copyright societies and to provide fair contracts to composers, lyricists and musicians who are involved in the production of original work. However, there still exist ambiguities at the very ground level as far as the working of the copyright societies are concerned including the conflict between section 30 and section 33 of the Act, which both provide for the functioning of copyright societies and the delegation of copyrights. Further, the working of the various copyright societies has also not been satisfactory. The Act empowers these societies with the responsibility of the implementation of the act through licensing powers; however these societies are in constant limelight for all the wrong reasons. Adding to these problems, the various HC's have presented a diverse range of opinions regarding the issues pertaining to the working of the copyright societies.

Copyright Societies:

The concept of collective administration of copyrights is based on the premise that the management and protection of copyright works in several fields pertaining to different individuals is undertaken by a single society that comprises of the producers of such original work as members. Such a society facilitates the process of distribution of copyright by acting as a single clearance window for those intending to purchase copyrights in the original songs, books etc. Under Section 33 of the Indian Copyright Act, 1957, a copyright society is considered to be a registered society for collective administration of copyright. The Act allows for the formation of such society by the owners of original work that may include authors, musicians, composers and lyricists etc. In India, a society like Indian Singers Right Association (ISRA) works towards protecting the interests of only singers while societies like PPL has members from diverse field of arts including lyricists, authors etc.

The Copyright societies have been empowered to grant licences in respect of any work in which copyright subsists or in respect of any other right given by the Copyright Act. The primary function of a copyright society is to administer the rights on behalf of its members and grant licenses for the commercial exploitation of these rights. Such a society collects the license fee or the royalty on behalf of its members, which is then conveyed to the members deducting the expenses borne for collection and distribution by the Copyright Societies.

Conflict Between Section 33 & Section 30 r/w Section 18 of the Copyright Act:

Section 18 of the Copyright Act stipulates that a copyright owner/author of creative works retains the right to assign copyright to any "person" of his/her choice. In such an assignment, a copyright society is not necessary. However, Section 33 creates a specific bar on any other entity to issue licences as a copyright owner that may be assigned such rights under Section 18.

The anomaly is that due to Section 33, only a registered society has the right to engage in business of issuance of licences, even though under the scheme of the Copyright Act, copyright owners have the right to licence a work under Section 30. The impact upon sec 30 and sec 18 due to the addition of Section 33 is not clarified by either the statute or its Amendments. It is not clear whether Section 33 should prevail over Sections 18 and 30 or the other way round. This leads to the existence of a legal vacuum regarding the third-party licensing system and the rights and interests of the societies engaged in the business of granting/issuing licences in respect of creative works.

The High Court of Delhi in the case of Event and Entertainment Management Assn. v. Union of India & Ors.¹ held that Novex Communications Pvt. Ltd. could operate its business within the scheme of Sections 18 and 30. Novex Communications held the copyright works of its members as an assignee, however it was not registered as a copyright society under section 33. This judgement opened the floodgates since it allowed any association to collect licence fees from users either as a legitimate assignee or an authorised agent of the authors and producers of the said songs in terms of Section 18 or Section 30 of the Act.

However taking a contradictory stand the Bombay High Court, in the case of Leopold Café & Stores v. Novex Communications Pvt. Ltd.² imposed a temporary ban on Novex Communication and restrained it from issuing public performance license, which it holds as an assignee. The HC stated that S. 33 prohibits the issuing/granting of licenses by a party in its own name when the copyright in the same is held by others. However, if the business is one of agency, that is, if the party is functioning as an agent and is acting on behalf of the copyright owner, then that would be permissible by virtue of S. 30, Copyright Act. Thus, in terms of the judgment, the engaging in the business of issuing of licence in one's own name is prohibited by Section 33. The issuance of licences by an owner/authorised agent in the course of carrying on a different business is not prohibited by Section 33 because it is allowed by Section 30 of the Act.

Legally, this judgement leaves the third-party licensing and collecting entities on an uncertain footing. The courts have not been able to clear the air in this regard, since judicial pronouncements have been contradictory on this aspect of the Amendments. This can be showcased by the fact that the Delhi High Court reached an entirely opposite conclusion as compared to that of the Bombay HC about the scope of Section 33 within a span of one year. The reasoning of the Bombay HC completely shadows and overlaps Sections 18 and 30 to give absolute effect to Section 33 of the Act.

Currently, IPRS and ISRA are registered copyright societies in accordance with sec. 33 of the Act while PPL, and Novex Communications appear to be performing the functions of Copyright Societies. Since, PPL and Novex are not registered under sec. 33, the provisions governing the conduct of Copyright Societies are not applicable to them. Therefore, these

¹ Event and Entertainment Management Association. v. Union of India & Ors., W. P. (C) 5422/2008 & CM APPL 10648/2010

² Leopold Cafe & Stores v. Novex Communications (P) Ltd., SUIT (L) NO. 603 OF 2014.

entities are no longer regulated by the Copyright Act. By declaring themselves to be private companies, these entities have in effect defeated the entire objective behind the 2012 Amendments of bringing more transparency into the functioning of Copyright Societies.

Thus, the legal ambiguity that has emerged between the implementation of sec. 30 and sec. 33 has led to a situation of chaos, which is being exploited by the copyright societies.

Problems of Plurality of Societies:

The sec 33 of the Indian Copyright Act, 1957 provides that the Union Government shall not in the ordinary course of business, register more than one copyright society to do business in respect of the same class of works.³ However, there is no rigid limit in constituting more than one copyright society. The same is based on the discretion of the Union government.

Typically there are three works in a song, namely the lyrics, music and recording of the literary and the musical works. As of today, if a person wishes to broadcast a song from a bollywood film, he has to obtain two licenses, one from PPL for the sound recording work and one from IPRS for literary and musical works. This position was affirmed by the Madras HC in the case of *The Indian Performing Rights Society Limited v. Branch Manager, The Muthoot Finance Pvt. Ltd.*⁴

While, in 2012, the Division Bench of the Delhi HC delivered a much debated judgement in the case of *IPRS v. Aditya Pandey*⁵ wherein it was held that the users of music were only liable to pay royalty to the owners of the sound recording the communication or broadcasting of the said recording. The HC laid down that the lyricists and composers had no right to receive royalty in such cases.

This judgement was further upheld by the SC in the case of *International Confederation of Societies of Authors and Composers (CISAC) v. Aditya Pandey & Ors.*⁶ Wherein the SC held that, “mass media outfits like radio stations and event organizers don’t need to secure license from lyricist and music composers for broadcasting/communicating the songs in public after it has paid for the broadcasting of the song to the sound recording company.” This meant that the broadcasters were only liable to pay royalty to PPL only. However, this judgement did not take into account section 19(10), inserted through the Amendment Act, 2012.

This has led to the problem of plurality of societies and dual payment of royalty, which can have detrimental and impractical consequences. Plurality of societies places a substantial burden on the users, leading to unnecessary confusion and competition.

³ Sec. 33(3), The Indian Copyright Act, 1957

⁴ *The Indian Performing Rights Society Limited v. Branch Manager, The Muthoot Finance Pvt. Ltd.* OSA No.64 of 2009 And MP No.1 of 2009.

⁵ *IPRS v. Aditya Pandey* CS(OS) 1185/2006 & I.A. Nos. 6486/2006, 6487/2006, 7027/2006.

⁶ *International Confederation of Societies of Authors and Composers (CISAC) v. Aditya Pandey & Ors* CIVIL APPEAL NOs. 9414-9415 OF 2016.

As opposed to a convenient arrangement where users have a single access point to seek licenses, they have to undertake research as to which copyright society controls a particular work. Multiple licenses are required from different societies in order to gain access to a broader repertoire with more variety. Large intermediaries may manage to survive, but this will be too much of a hassle for small users like hotel / cafe owners etc. who will need to invest a lot of time and labour to research on representation. Keeping in mind, the existing complexities in the process and the confusion caused thereof leads to a sense of discouragement among the people to seek licences and even promotes piracy and illegal production of original work.

Need for Reforms:

The Indian Copyright Act, 1957 like any other legislation is not free from errors and its implementation mechanism can be moulded in order to achieve greater success. The following steps can be undertaken by the copyright societies, who have been granted licensing power under the act, to have a better mechanism in place to implement the Act.

1. Lack of Awareness:

Most of owners of such place are unaware of the rights which exist in these songs and repeatedly indulge in the public performance of the songs without taking proper license from the respective copyright societies. The copyright societies must take up initiatives in order to create mass awareness in this regard. Although, the societies are doing their bit in terms of filing suits against these infringements, these steps have not yet lead to creation of a general atmosphere of awareness with regard to copyright and licensing issues.

2. Exceptions and limitations:

Any royalty scheme that covers a diverse array of users- big and small broadcasters, major retail chains must be sensitive to the economic differences between the users. If the statutory or negotiated royalty rates under the expanded performance rights are not responsive to the needs of non-profit organisations, these users would be unable deliver performances to the consumer and the consumer in turn will be left with fewer choices.

3. Requirement of licensing from multiple copyright societies:

For certain broadcasts, separate licences need to be taken from multiple copyright societies. This cumbersome requirement should be abolished and a single blanket like license should be established which can give the broadcaster all the rights which exist in a song.

Conclusion:

The Indian Copyright Act, 1957 along with the Amendment Act, 2012 has been made to protect the rights of creators of original work. This act has introduced 'performer rights' wherein the interests of the creator are of paramount interest. The act aims to acknowledge

the rights of varied class of people including authors, musicians, singers etc. and protect these rights from any kind of infringement. Since, it is very difficult for the individual creators to keep a track of copyright infringements, they are allowed and even encouraged to form copyright societies to assert their collective rights. These copyright societies are further, granted power to issue license to the users of their copyright. However, the implementation of the licensing schemes through cooperative societies has not yet led to fruitful results given the cushion provided to these copyright societies in the form of the Amendment Act, 2012. The continuing limbo regarding the functioning of these societies between sec. 33 and sec. 30 read with sec.18 has presented a big question regarding the authority and the jurisdiction of these societies to grant license. The divided opinion of the various High Court's has led to the deepening of the crisis. While, the copyright societies seem to be the only feasible option regarding the implementation of the Act, their future is still uncertain. It's time that government or the Courts lay down a standard guideline for the functioning of the copyright societies. Further, the very idea of doing away with the copyright societies and the formulation of a common government authority doesn't seem far-fetched and unrealistic.