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"Analysis of Statutory Licensing Regime under the Copyright Act, 1954 in light of Internet based Broadcasting Organisations"

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Synopsis
This paper will begin by tracing the provisions governing broadcasting rights in India and will then move onto the various developments in the Indian Copyright Act with regards to the broadcasting organizations. It will specifically focus on Section 31D of the Copyright Act which deals with Statutory Licensing. It will analyze various grounds on which the said section is contested and will also examine the stand of Indian Courts with regards to the applicability of the section on various kinds of broadcasting organizations. While examining this, the paper attempts to answer whether the current statutory licensing regime under the Indian Copyright Act needs to include internet-based broadcasting organizations in light of developing technological advancements.
The paper will conclude by assessing whether a new licensing regime is required which would strike an adequate balance between ensuring access of content to the public while at the same time maintaining and promoting the incentive to produce new content.

INTRODUCTION

With ever-emerging technologies, the broadcast sector has become an important arena of contention between various interest groups mostly including broadcast companies, the government and the public. A significant aspect of this contention is the already existing and the present legal framework relating to broadcasting organizations. It is essential to examine the current legal framework surrounding the provisions of Statutory Licensing by various kinds of broadcasting organizations to understand if a new licensing regime is needed for the upcoming kinds of broadcasting organizations due to technological advancements.

(I) BROADCASTING RIGHTS IN INDIA

Every broadcasting organization requires two kinds of licenses to be able to broadcast in India.
(i) The Grant of a Permission Agreement to offer broadcasting services, which is granted by the Central Government, under the Telegraph Act, 1885[1]
(ii) A wireless operating license under the Indian Wireless Telegraphy Act, 1933[2].

Broadcasting licenses are limited in their territorial coverage and are subject to control with regards to the content they deliver. The Indian Wireless Telegraphy Act, 1933 describes a wireless communication to mean "*transmission, omission or reception of signs, signals,*

[1] The Indian Telegraph Act,1885.4(1).
[2] Indian Wireless Telegraph Act,1933

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writing, images and sounds, or intelligence of any nature by means of electricity, magnetism, or Radio waves or Hertzian waves, without the use of wires or other continuous electrical conductors between the transmitting and the receiving apparatus;".[3]

A bare perusal of this provision would indicate that it does not envision communication to mean transmission through the internet and only expressly provides for transmission through Radio Waves.

(II) RIGHTS OF BROADCASTING ORGANISATIONS UNDER INDIAN COPYRIGHT LAW

The rights of broadcasting organizations in India are primarily governed by the Copyright Act, 1957. The said Act was amended in 1994, which brought about broadcasting organizations within the ambit of copyright law and the rights of the broadcasting organizations under Indian copyright law were further amended in 2012 to expand the scope of rights granted to them.

Every broadcasting organization is given a special "broadcast reproduction right" under the Copyright Act, 1957 [4] which subsists for 25 years from the beginning of the following calendar year in which the broadcast is made. During the continuance of this right, no person shall, without a license from the owner of the right,

(a) re-broadcast the broadcast
(b) cause the broadcast to be heard or seen by the public on payment of any charges; or
(c) Make any sound recording or visual recording of the broadcasts, or(d) makes any reproduction of such sound recording or visual recording where such initial recording was done without a license, or where it was licensed for any purpose which was not envisaged by such license; or
(e) sells or gives on commercial rental or offer for sale or of such rental, any such recording or visual recording referred to clause (c) or clause (d).

However, Section 39 of the Act [5] provides for some exceptions where certain acts would not infringe the exclusive broadcast reproduction rights. These include bona fide research work, or reporting of news as well as other fair use exceptions referred to in Section 52 of the Act.

(III) STATUTORY LICENSING UNDER THE INDIAN COPYRIGHT LAW

With amendments made to the Act in 2012, the concept of Statutory Licensing was brought in, under Section 31D of the Act, which allows any broadcasting organization who is desirous of communicating to the public by the way of a broadcast or by the way of

[3] Indian Wireless Telegraphy Act, 1933.2(1).
[4] The Copyright Act,1954.37.
[5] The Copyright Act,1954.39.

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performance of a literary or musical work and sound recording which has already been published [6], may do so subject to provisions that shall give prior notice, in a manner as prescribed, of its intention to broadcast the work, stating the duration and territorial coverage of the broadcast, and shall pay to the owner of rights in each work royalties in the manner and at the rate fixed by the Appellate Board.[7] It also provides that the names of the authors and the principal performers of the work shall be announced with the broadcast.[8] Further, the section provides that the rates of royalty for radio broadcast shall be different from television broadcast and the Appellate Board (hereinafter "Board") shall fix separate rates for radio and TV broadcasting.[9]

A bare reading of this provision indicates that issuance of a statutory license by the Board for online broadcasting of copyrighted works was not contemplated by the legislature when this provision was added via the 2012 amendment into the Act.
To this end, the Department of Industrial Policy & Promotion (DIPP), Ministry of Commerce and Industry issued an Office Memorandum, dated September 05th, 2016[10], stating that the words "any broadcasting organization" in Section 31D must not be restrictively interpreted to be covering only radio and TV broadcasting as the definition of "broadcast" [11] with "communication to the public" [12] appears to include all kinds of broadcasting, including internet broadcasting.

Section 31D of the Act has been heavily criticized because it does away with the ability of the copyright owners to negotiate terms of royalties with the broadcasting organizations and thus tilts the benefit in favor of the broadcasting organizations at the expense of the copyright owners. Furthermore, it grants the Board the power to fix rates for radio and television broadcasting and this violates Article 19(1)(g) of the Constitution.[13]

(IV) STAND OF INDIAN COURTS REGARDING STATUTORY LICENSING

A recent case which discussed at length the matter of statutory licensing under the Copyright Act was the case of *Tips Vs. Wynk.*[14]

In the following case, the Plaintiff, Tips Industries Ltd, a famous music label in India, which has copyright over a significant repository of music, licensed its Repertoire to the Defendants, Wynk Music Ltd., which is an online music streaming app launched by Airtel. After the expiry of the license given to the defendant, both parties attempted to renegotiate license terms. However, these negotiations ultimately failed.

[6] The Copyright Act,1954.31D(1).
[7] The Copyright Act,1954.31D(2).
[8] The Copyright Act,1954.31D(5).
[9] The Copyright Act,1954.31D(3).
[10] Ministry of Commerce and Industry (Copyright Section), Government of India, 2016.
[11] The Copyright Act.2(dd).
[12] The Copyright Act.2(ff).
[13] South Indian Music Companies vs. Union of India, Madras High Court.
[14] "Tips v. Wynk", Bombay High Court.

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Subsequently, Wynk took refuge by invoking Section 31D of the Copyright Act, for a statutory licensing scheme, as per which "any" broadcasting agency desirous of communicating to the public any sound recording, may obtain a statutory license for the same, provided that they pay royalty rates as fixed by the Board.

Tips challenged the invocation of Section 31D and sued Wynk for copyright infringement in their exclusive Repertoire of songs, claiming that the same amounts to infringement of their copyright in sound recordings under Section 14(1)(e) of the Act.

It was ruled by the Court that Wynk's services involve three aspects-

Firstly, the Court ruled that the Defendants are admittedly enabling their customers to download sound recordings and access them offline in lieu of a monthly subscription fee. Storing the files of the Plaintiff's sound recordings in an electronic medium by the Defendants is nothing but making another sound recording embodying the Plaintiff's sound recordings and the right to do the same is granted exclusively to the owner of the sound recording under Section 14(1) (e) (i) of the Act and the Defendants cannot be allowed to continue the same without authorization of the Plaintiff.

Secondly, with regards to the issue of *the right to offer for sale* any copies of the sound recording which is provided for under Section 14 (1) (e) (ii) of the Act, the Court ruled that the activity of the Defendant enabling their customers to permanently download the sound recordings and have access to the same on the payment of a subscription fee is equivalent to the sale of a sound recording. Furthermore, in the case of a permanent download option, whereby a mirror copy is saved onto the customer's devices, the same can be freely accessed from outside the application and can be further copied/transferred to other devices and this virtually amounts to the sale of a sound recording by the Defendants. This violates the exclusive right of the Plaintiff to sell or offer for sale under Section 14 (1) (e) (ii) of the Act.

Finally, where the copyrighted songs are 'streamed' without the provision for downloading, it amounts to a 'communication to the public' and a 'broadcast' under the Copyright Act, the exclusive right of which belongs to the copyright owner and the same is protected under Section 14(1)(e)(iii) of the Act.

The Court then discussed whether Wynk would successfully be able to invoke Section 31D of the Act, given the fact that it is an internet-based broadcasting organization. To assess this, the Court looked at what would constitute a broadcasting organization under Section 31D of the Act.

It was contended by the Plaintiffs that the grant of Statutory License under Section 31D of the Act is only restricted to radio and television broadcasting organizations and the services offered by the Defendant make it an internet broadcasting organization, which does not fall within the ambit of Section 31D.

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Further, the Plaintiffs argued that a Statutory License is in the nature of an expropriator legislation, and thus, Section 31D is an exception to the rule which deprives the copyright owner's right to license works for broadcasting on the terms and conditions that he deems fit. Due to this, Section 31D must be construed narrowly to lessen the burden on the expropriated copyright owner.

Moreover, the Plaintiff argued that the Copyright (Amendment) Act, 2012 is a modern statute and was passed on the basis of the Copyright Amendment Bill 2010 and that digital downloading/ surfing of music was very much in the public domain from 2010 to 2012. Thus, the Legislature was fully aware of the existing digital technologies of downloading and streaming music at the time the Copyright Amendment Bill of 2010 was passed and the absence of the same from Section 31D in respect of internet steaming/downloading was a legislative choice, clearly indicating that the Parliament did not see licensing regime for internet music streaming, necessary or desirable.

The Defendants on the other hand placed reliance on the phrases *"any means of wireless diffusion"* and *"any means of display or diffusion other than by issuing physical copies"*. It was argued by the Defendants that the legislative intent is that "any" broadcasting organization, which is broadcasting or communicating to the public by any means of display or diffusion including wireless and wired diffusion, is entitled to a Statutory License under Section 31D of the Act.

It was argued by the Defendants that a liberal construction of Section 2(ff) which defines *"broadcast"* along with Section 31D should be allowed to berate life into the statute and if the same is not permitted it would be in direct conflict with Section 2(ff) which allows broadcast or diffusion by any means of display or diffusion. Furthermore, the Defendants also placed reliance on the Department of Industrial Policy and Promotion (DIPP) Office Memorandum from 2016 [15], which stated that Section 31D would include 'internet broadcasting'.

The Court agreed with the arguments advanced by the Plaintiffs, stating that the Copyright Amendment Act, 2012 is a modern statute and cannot be termed as archaic and agreed that the Legislature was aware of the internet steaming/downloading services for sound recordings.

The Court further affirmed the exproriatory nature of Section 31D and that it must be construed strictly in conformity with the specific intention with which it was enacted. It was held that in the absence of an express statutory provision including internet broadcasting within the purview of Section 31D, the scope of Section 31D cannot be expanded to include the same.

[15] n(10)

To construe the above-mentioned provision strictly, the Court examined the Rules appended to the Act. Rule 29 of the Copyright Rules [16], lays down the notice requirements necessary for communication to the public of literary and musical works and sound recordings. The Court stated that the requirements under Rule 29, which are to be read along with Section 31D, are only in respect of radio broadcasting, television broadcasting and performance. This supported the Court's conclusion that Section 31D does not include internet-based broadcasting organizations.

The Court further observed that this is fortified by Rule 31[17] of the Copyright Rules which contemplates the determination of royalties only in respect of television and radio broadcasting.

The Court then went on to examine the history of Section 31D and relied upon the Report of Rajya Sabha Parliamentary Committee on the Copyright Amendment Act, 2012 [18] and concluded that though the legislature was aware of internet streaming services, they intentionally chose to not include such forms of communication within the scheme of Section 31D. The Court further rejected the Defendant's reliance on the DIPP Office Memorandum of 2016, stating that it was in the nature of a guideline and lacked statutory flavor and thus would not prevail over the statutory scheme outlined in Section 31D of the Act.

Similarly, in the case of *Warner Chappell Music Limited vs. Spotify* [19] , the Defendant, Spotify, invoked a compulsory licensing scheme under section 31D of the Act by filing a public notice with the Board, conveying its intention to broadcast the work of Warner Chappell Music, as an internet broadcasting organization.

Spotify intended to broadcast sound recordings in which Warner had rights in the underlying musical works. Spotify's reasoning behind obtaining a statutory license under Section 31D was Warner's unreasonableness in refusing to grant Spotify a license, further stating that it would lead to a loss of works to the public and would thereby cause harm to the artistic community.

Spotify applied for the license under Section 31D on 25th February 2019 and launched its service 26th February onwards.

[16] "The Copyright Rules, 2013", 2013.29
[17] "The Copyright Rules, 2013", 2013.31.
[18] "The Copyright Amendment Bill,2010" (Parliament of India, Rajya Sabha 2010), DEPARTMENT - RELATED PARLIAMENTARY STANDING COMMITTEE ON HUMAN RESOURCE DEVELOPMENT TWO HUNDRED TWENTY-SEVENTH REPORT ON THE COPYRIGHT (AMENDMENT) BILL, 2010
[19] "Warner Chappell Music Limited vs. Spotify", Bombay High Court.

To this end, the Bombay High Court in its order dated 26th February 2019 [20], came to a peculiar conclusion. The Court directed Spotify to pay a sum of Rs. 6.5 Crores with the High Court and asked it to refrain from pursuing its application before the Board.

However, this dispute ended outside the Court when both parties decided to sign a global licensing deal, which as per Warner Chappell, would "appropriately value the songwriter of the musical works in its catalog".[21]

In this case, the Court applied the same logic as it did in the *Tips vs. Wynk* [22] judgment, and asked Spotify to withdraw its application because according to the Court's understanding, internet-based broadcasting organizations do not fall within the ambit of Section 31D of the Act.

(IV) AN ALTERNATE STANCE

Section 31-D (1), clearly provides "Any broadcasting organization desirous of communicating to the public by the way of broadcast may potentially avail of a statutory license."

Furthermore, Section 2(dd) of the Act, provides that "broadcast" is communication to the public by any means of wireless diffusion.[23]

As is evident from this, neither Section 31D (1) nor Section 2(dd) of the Act, make any distinction among broadcasters based on the medium chosen to broadcast. From the above-mentioned reasoning of the Court in the TIPS case, it is evident that the Court essentially supplied words to Section 31D by reading "by the way of broadcast" as including only "radio and television broadcast".

In the presence of two provisions, Section 2 (dd) and Section 31D (1) of the Act, which use the word "any broadcasting organization", the reading down of an already clear and unambiguous provision is unnecessary in addition to being impermissible.

Moreover, the Court's reasoning that Section 31D (3) [24] only lists the provision of royalty rates for radio and television broadcasting and this indicates that internet broadcasting is not included in the provision for statutory licensing, is flawed.

While it is true that Section 31D (3) prescribes that the royalty rates applicable for television and radio broadcasting would be different, however, Section 31D (3) must be read along with

[20] Ibid
[21] Manish Singh, 'Spotify and Warner Chappell end dispute in India, sign global licensing deal' (TechCrunch, 14 January 2020) <https://techcrunch.com/2020/01/14/spotify-and-warner-chappell-end-dispute-in-india-sign-global-licensing-deal/> accessed 14 May 2020
[22] n (10)
[23] The Copyright Act.2(dd).
[24] The Copyright Act.31D(3).

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Section 31D (2), which authorizes the Intellectual property Appellate Board (IPAB) to set royalty rates for "all" applicants who may be "any broadcasting organization desirous of communicating to the public by the way of a broadcast or by the way of performance." [25]

A combined reading of Section 31D (2) and Section 31D (3) does not support the conclusion that the legislature intended to limit statutory licenses to radio and TV broadcasters. Rather what can be understood from this is that subsection (3) of Section 31D is only a legislative command to the Board on how to proceed in a given situation due to the reason that TV and radio broadcast are consumed differently, hence the legislature commands the IPAB to set royalties for both separately. However, this legislative command does not prevent the IPAB from setting royalty rates for all other kinds of broadcasting organizations, as is mentioned under Section 31D (2).

Furthermore, in the case of *Tips VS. Wynk*, the reliance placed by the Court on the Rajya Sabha Standing Committee Report [26] to understand the history of Section 31D is erroneous. External aids are to be utilized only in cases where the provision is ambiguous or unclear. The reading down of an already clear and unambiguous provision by the use of external aids is an incorrect method of interpretation.

The rationale behind the Court's decision that the Parliament was well aware of internet streaming platforms at the time of inclusion of Section 31D by the 2012 Amendment of the Act, is also weak because had the Parliament intended to distinguish between broadcasters on the basis of a medium it would have expressly done so in the language of Section 31D.

In addition to this, the Draft Copyright (Amendment) Rules 2019 [27] have clarified the government's intention by substituting the words *"each mode of broadcast"* instead of the earlier reference to *"radio and television broadcast".* This further clarifies the intention to include internet broadcasters and that they may indeed apply for statutory licenses.

It may be argued that Section 31D is an expropriatory legislation and thus must be interpreted narrowly as it is the exception to the general rule, given that it does not let the copyright holder negotiate the royalty rates as it gives this responsibility to the Board. This would suggest that such a provision favors the broadcasting organizations.

However, it is important to note why the provision of statutory licensing even exists in the first place. Such a provision originates from the realization of the problem that copyright holders and most often record labels, use their monopoly to withhold communication of the work from the general public. This defeats the purpose of copyright law, which is to promote the progress of useful arts.

[25] The Copyright Act.31D(2).
[26] n(14)
[27] "Draft Copyright Amendment Rules, 2019" (The Gazette of India 2019).

In other cases, copyright holders or record labels may take advantage of their monopoly and charge exorbitant royalty rates making the dissemination of the works to the public even more difficult, thereby again defeating the purpose of copyright law.

Hence, the provision of a statutory licensing scheme in the Copyright Act denotes that the legislature has intended to ensure greater access of creative works to the public, at fair and equitable royalty rates.

If radio broadcasters are envisioned by the Act under Section 31D, then it goes without saying that internet broadcasters are included as well. This premise is further strengthened by the fact that both internet broadcasters and radio broadcasters essentially have the same business model, meaning that both broadcast music to the public. The only significant difference between the two is that internet-based broadcasters let the consumers pick and choose the music they wish to listen to. Therefore, the difference between them is that internet broadcasting organizations constitute a mode of interactive broadcasting while radio broadcasting is non-interactive.

(V) STATUTORY LICENSING IN UNITED STATES OF AMERICA

Digital technology has grown at an unprecedented rate in the last decade and along with it the music industry's business models have changed as well. Today the revenues from digital music services are increasing and had generated sales worth $4.4 billion in 2009. By the year 2014, the global digital revenues had increased to almost 57%, raising the sale revenues to roughly $6.9 billion.[28]

There are two kinds of online streaming services that exist today which can be classified as interactive and non-interactive. The former would include services that allow the user to choose the exact song that he would want to hear. Whereas, the latter would involve something like an internet radio station (For example- Pandora), which would not allow the user to choose the songs he wishes to listen to.

Interactive streaming services that provide on-demand services, letting the user choose the album/song, such as Spotify, have played a significant role in the recent growth of online streaming services.

The online streaming services signify an irreversible shift in the growth of the music distribution, where consumers are willing to spend about $10 a month which would give them access to unlimited music than pay $14 for just a single album. From this it is evident that on-demand streaming services are the future of recorded music distribution.

[28] IMI (Indian Music Industry), Vision 2022 India's Roadmap to the Top 10 Music Markets in the World by 2022 (The Indian Music Convention, 2018)
<https://www.ifpi.org/downloads/Digital-Music-Report-2015.pdf> accessed on 14 May 2020

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The earlier Copyright Licensing framework in the US was not equipped to grapple with the licensing issues involved with on-demand digital music services. Under the earlier Copyright regime in the US, digital streaming platforms had to obtain rights to perform and make copies of the sound recordings and compositions which required different negotiations and a myriad of other licensing processes.

Firstly, the owners of sound recordings which were fixed on or after 15th February 1972, would enjoy copyright protection in digital streams of their recordings when broadcast through radio, as the earlier Copyright Act provides only the owner of the sound recording the exclusive right to perform the work through digital transmission.

Moreover, no compulsory licensing or set licensing rates existed to obtain the right to perform or to make copies of sound recordings through an on-demand streaming service. The on-demand streaming services were left to negotiate directly with the owners of sound recordings- including the record labels, the artists, etc. - to obtain the rights to offer their works/recordings on the on-demand digital streaming platform.

Statutory licenses existed but only for non-interactive streaming services. Thus, if any artist or record label did not wish to make their compositions or sound recordings available through an on-demand streaming service, they could simply refuse to sign a license with the on-demand streaming service. Thus, the lack of statutory licenses posed significant challenges for on-demand streaming services in obtaining the rights to perform and make necessary copies of sound recordings.

A digital streaming service must secure both a public performance license and a mechanical license to stream a composition. Public performance licenses are blanket licenses that a digital streaming service obtains from performing rights organizations (PROs) like the American Society for Composers and Publishers (ASCAP), Broadcast Music Inc. BMI, and Society for European Stage Authors and Composers (SESAC). If a musical work is listed in the database for one of these PROs, so long as the on-demand service has obtained a blanket license from one of these PROs, it has the right to perform the work publicly. Obtaining these licenses tend to be fairly straightforward transactions, and the rates that ASCAP and BMI charge for these licenses are dictated through consent decrees with the U.S. government. [29]

Mechanical licenses, on the other hand, are statutory licenses obtained from separate organizations—that administer the compulsory licenses set forth in 17 U.S.C. § 115[30].

[29] Jason Koransky, Digital Dilemmas: The Music Industry Confronts Licensing for On-Demand Streaming Services (American Bar Association, Section of Intellectual Property Law, January/February 2016) <https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2015-16/january-february/digital-dilemmas-music-industry-confronts-licensing-on-demand-streaming-services/ > accessed on 14 May 2020

[30] "Title 17. Copyrights", 1976.115

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Under the statutory mechanical license framework in the Copyright Act, once a composition has been distributed in the United States, another party may distribute and make a copy of this composition, so long as it follows the procedures to obtain a compulsory mechanical license.[31]

In February 2015, the Copyright Office issued a report titled Copyright and the Music Marketplace [32]. This Report emphasized that musical compositions and sound recordings should be regulated more consistently on digital platforms. The Copyright Office acknowledged the inefficiencies that existed in the earlier copyright law framework, especially for interactive on-demand music streaming services, particularly in the process of obtaining rights to use musical compositions on their interactive streaming platforms. Furthermore, the Copyright Office suggested that bundled mechanical and performance rights must be created in order to streamline the licensing process. This would prevent both licensors and as well as the licensees from engaging in complicated licensing processes.

Another recommendation suggested by the Copyright Office was amending the earlier provision in the Copyright Act, i.e.; Section 115 [33] and replacing it with a process that provides for blanket mechanical licenses which would allow the licensee to obtain a Repertoire wide mechanical license. For caution and further for the benefit of the right holders, the said Report suggested adding an opt-out provision in cases where the publishers or other composition owners do not wish their works to be included in on-demand streaming platforms.

Thus, the Copyright Office Report sought to strike a perfect balance between protecting the author's as well as the music publishing company's rights at the same time establishing an arena in which on-demand streaming services could operate with ease. In 2018, the United States passed a legislation that transformed its copyright framework pertaining to its licensing regime for musical works. On October 11th, 2018, after being passed unanimously by both chambers of the US Congress, the new Act was signed into law by the US President Donald J. Trump. The new and updated Music Modernization Act (MMA) [34] marks a significant shift from the 1998 US Copyright legislation- the Digital Millennium Copyright Act (DMCA).[35]

The MMA is organized into 3 separate titles.

Title I of the MMA is known as the Musical Works Modernization Act and it intends to make it easier for digital music services to license music and for right holders to get paid when their music is streamed and downloaded online. In this way, it addresses the previously existing

[31] ibid
[32] United States Copyright Office, "Copyright and the Music Marketplace" (United States Copyright Office 2015), A Report of the Register of Copyrights
[33] n(27)
[34] "Music Modernization Act, 2018", 2018.
[35] "Digital Millenium Copyright act, 1998", 1998.

inefficiency of the song by song licensing system for the mechanical reproduction and distribution of musical works embodied in sound recordings by on-demand music providers.[36]

Earlier if this was done under the provision of a statutory license, this would have entailed serving an effective notice of intention on each copyright owner. The MMA establishes a new mechanical licensing collective (MLC) to administer blanket licenses for such uses. Upon implementation of the MMA, any digital streaming service would have to serve a notice of license on the MLC to obtain a blanket license. The MLC will also collect royalties and distribute them and will identify musical works and their owners for payment.

Title II of the MMA is known as the Classics Protection and Access Act which addresses the issue of sound recordings created before 15th February 1972. The MMA brings pre-1972 sound recordings within the scope of such covered works and provides federal remedies for their unauthorized use.

Title III of the MMA known as the Allocation for Music Producers Act, involves issues regarding payment of royalties to producers, mixers and sound engineers. It codifies the earlier practice on the part of producers of sending a "letter of direction" to distribute a portion of their royalties, to the performing rights organization after it collects it from various digital music platforms.

One major advantage of the MMA is that it streamlines the payment of royalties by distinguishing between interactive and non-interactive broadcasters. The MMA applies only to interactive streaming platforms like Spotify, Apple Music, etc. and not to non-interactive streaming platforms such as internet radio broadcasters because non- interactive broadcasting organizations do not require a 'mechanical license' for reproduction and distribution of their works, as they only require a public performance license.

(VI) CONCLUSION

Inclusion of Section 31D by the Amendment of 2012, signified a time in the music industry when music publishers charged exorbitant rates for radio broadcasting. It was possible for musical publishers to have an upper hand in negotiating royalty rates because of their diverse sources of income mainly earned through the sale of CDs, ringtones, etc. which gave them a better ability to negotiate unreasonable licensing terms with radio broadcasters. In the Standing Committee report [37], which the Court also made reference to in the TIPS case, the Committee reasoned that such voluntary licensing scheme wherein the music

[36] Karyn A. Temple, The United Stets modernizes its music licensing system (WIPO Magazine, June 2018) <https://www.wipo.int/wipo_magazine/en/2018/06/article_0002.html>
accessed on 14 May 2020
[37] n(14)

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publishers could negotiate the deal as per their liking is what gave rise to the need for having a non-voluntary or statutory licensing scheme.

Such a scheme would have fulfilled the objectives of ensuring fair and equitable returns to the actual owners of the underlying musical works while at the same time making access easy for broadcasting. This provision would further ensure checks and balances as the rates to be paid by radio broadcasters were to be fixed by the Copyright Board. A plain reading of Section 31D would at first indicate that it was only drafted keeping in mind radio broadcasting organizations. This can be gauged by the fact that the provision requires notice to be given by the broadcaster to the publisher indicating the "duration and territorial coverage". However, this requirement is inapplicable to on-demand streaming services such as Spotify, which are essentially an interactive platform since they allow their customers to decide the output. In a situation like this, an amendment which distinguishes between broadcasting organizations on the basis of interactive and non-interactive will be useful.

Today with the continuous advent of technology, the methods of music consumption have changed and have undergone a complete transformation since the 2012 Amendment. The earlier methods of music consumption through CDs, cassette tapes, and the like, have now made way for online music streaming platforms which now constitute about 78% of revenues in the global music industry.[38]

As discussed above, some jurisdictions like the United States have made a distinction between interactive and non-interactive broadcasters especially for the purposes of obtaining a statutory license. An absence of a similar distinction in the Indian statute compels one to read abstractly into the language of the Copyright Act and to apply the law to a state of technology, the development and impact of which was perhaps not envisioned by the legislature while drafting Section 31D.

While interpreting Section 31D one needs to consider the interests of the public and the availability and access to cultural works. Broadcasters and especially, in this day and age, the internet-based broadcasting organizations play a crucial role in doing so. With the constant evolution of the music industry alongside the evolution of technology, consumers now have a wider variety and easier access to music than ever before. The provision of a statutory license simplifies the royalty collection and payment process and enables continued access to musical works to the public. Keeping this in mind many other jurisdictions have also enacted provisions relating to statutory licensing.

The 2018 MMA which was based on the 2015 Copyright Office Report managed to strike a reasonably perfect balance between protecting the rights of music composers and music publishers in order to incentivize them for their creative effort while simultaneously

[38] n(24).9

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simplifying licensing processes for on-demand interactive streaming services, thereby ensuring proper dissemination and easy access of musical works to the public.

Indian lawmakers need to re-envision the current legal framework surrounding statutory licensing, given the digital age we are living in while balancing the ultimate purpose of copyright law, which is to encourage a wider and more accessible distribution of creative works to the public. The legislature must strive towards balancing between the interests of copyright holders along with the larger interests of the public, in light of the changes brought about by the evolution of music consumption methods and the birth of interactive on-demand streaming services.