

LEGAL FRAMEWORK OF COPYRIGHT SOCIETIES AND COMPETITION

LAW IN INDIA

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Copyright societies in India have been accorded a monopoly status by the Indian copyright Act. Copyright Societies are important institutions that bridge the gap between the copyright holders and users of the works protected by copyright. Initially copyright societies came into existence as not-for-profit organizations but with the growth of business, they took shape of big business house that are interested only in profit-making and not copyright management. Moreover these societies are acting in violation of the copyright Act. Time and again it has been complained by the users and copyright holders that these societies are abusing their dominant position which is harming the competition in the market. The 2012 Amendment introduced many safeguards in the interest of copyright holders but due to lack of proper implementation machinery they have not been of much use. The present research paper looks into the functioning of copyright societies and their anti-competitive practice in relation to copyright licensing.

I. INTRODUCTION

In India, copyright law is governed by the Copyright Act, 1957. It provides protection to the rights of creators of different types of work like literary works, dramatic works, graphical works, musical works and artistic works.¹ The present Copyright Act has been amended several times; most recently it was amended in 2012.²

As per the Copyright Act, it is necessary to obtain permission from the right holders for using any copyrighted work, unless the act in question falls under one of the specific exceptions provided under the Act.³ Infringement of the rights provided under the Copyright Act can lead to civil and criminal proceedings against the infringer.⁴ So it becomes necessary for a user to obtain a license from the copyright owner before a work is used in public for avoiding the penalty under Section 63

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¹ The Copyright Act, 1957, Section 13

² Copyright (Amendment) Act, 2012.

³ For the list of exceptions provided under Indian copyright law, see Sec. 52 of the Copyright Act, 1957.

⁴ The Copyright Act, 1957, Section 51

of the Act.⁵ It is not easy for a user to approach every right owner to get a license and for an owner to entertain each and every request for obtaining such a license.⁶ The Copyright Act provides a solution to this problem by incorporating detailed provisions regarding copyright societies under Chapter VII of the Copyright Act, 1957.

II. LEGAL FRAMEWORK OF COPYRIGHT SOCIETIES IN INDIA

There was no provision in the Copyright Act (hereinafter referred as “the Act”) for the collective administration of copyright by copyright societies before 1994.⁷ Recognizing the importance of collective management of copyright, the Indian parliament incorporated the provision of copyright societies under chapter VII of the Act by the amendment of 1994.⁸ By this amendment performing rights societies were replaced by the copyright societies.⁹ The working of performing rights societies was limited to granting of the performance rights whereas copyright societies extends license for all classes of work.¹⁰ Copyright society has been defined under the Act as a society registered under sub section (3) of section 33 of the Act.¹¹ Section 33(1) of the Act provides that after the Amendment Act of 1994 the business of issuing or granting license in respect of all the works in which copyright subsists shall be carried out only by a Society registered under the Act.¹²

As per the Act there should be at least seven members to form a copyright society.¹³ In India, it is the Central Government that has the power to register these societies keeping in view the right of the authors and owners and convenience of the public.¹⁴ According to the Act, the Central Government is generally allowed to establish only one copyright society in respect of one class of work.¹⁵ A copyright society shall be granted registration for a period of five years which can be renewed from time to time.¹⁶

⁵ The Copyright Act, 1957, Section 63

⁶ Mihaly Ficsor, *Collective Management of Copyright and Related Rights*, CTR ON WIPO, 3 (2002) http://www.wipo.int/edocs/pubdocs/en/copyright/450/wipo_pub_1450cm.pdf

⁷ Divya Subramaniam, *Legislative Comment Protection Of Performers' Rights - Evolution And Administration In India*, Ent. L.R. 139, 143(2009).

⁸ V.K AHUJA, *LAW RELATING TO INTELLECTUAL PROPERTY RIGHTS* 25 (2nd ed., 2015)

⁹ Divya Subramaniam, *supra* note 7, at 143

¹⁰ *Id.*

¹¹ The Copyright Act, 1957, Section 2(ffd).

¹² The Copyright Act, 1957, Section 33(1).

¹³ The Copyright Rules, 2013, Rule 44(1).

¹⁴ The Copyright Act, 1957, Section 33(3)

¹⁵ The Copyright Act, 1957, proviso to Section 33(3)

¹⁶ The Copyright Act, 1957, Sec 33(3A)

Power of copyright societies relating to the administration of the rights of owners has been provided under section 34 of the Act. Subject to certain conditions a copyright society may accept from the owners and authors an exclusive authority to administer any right by way of issuing license and collection of fee.¹⁷ This section also empowers the copyright societies, the authority to enter into reciprocal agreements with the collecting societies working overseas.¹⁸ For the purpose of carrying out the administration of copyright, a copyright society is allowed to perform following functions:¹⁹

- Issuing of license under section 30 of the Act
- Collection of fee in consideration of such license
- Distribution of royalties collected in the form of license fee to the owner and author of copyright.
- Any other function in line with other provision of section 35.²⁰

According to the Act, copyright societies in India shall be under the collective control of authors and other owners of the rights who are its members.²¹ Before devising any procedure for the collection and distribution of fee collected from the users, copyright societies are required to take approval of its members.²² Collecting societies are also bound to provide detailed information regarding their functionality in the administration of copyright to its members.²³ A copyright society is not allowed to discriminate among its members at the time of payment of royalties. Copyright societies are required to obtain an approval of the authors and other owners of rights regarding procedure devised for the collection and distribution of fee and utilization of the revenue collected apart from the payment of royalties.²⁴ The royalties to be distributed by the copyright society among authors and owners shall be in proportion to the use of their work.²⁵ The Act also provides that all the members of the society will be having equal status; there can be no discrimination between the members.²⁶

¹⁷ The Copyright Act, 1957, Section 34(1)(a).

¹⁸ The Copyright Act, 1957, Section 34(2).

¹⁹ The Copyright Act, 1957, Section 34(3).

²⁰ *Id.*

²¹ The Copyright Act, 1957, Section 35

²² The Copyright Act, 1957, Section 35(1)(a).

²³ The Copyright Act, 1957, Section 35(1)(c).

²⁴ The Copyright Act, 1957, Section 35(1)(b).

²⁵ The Copyright Act, 1957, Section 35(2).

²⁶ The Copyright Act, 1957, Section 35(4).

III. COPYRIGHT (AMENDMENT) ACT, 2012 AND COPYRIGHT SOCIETIES

The Copyright (Amendment) Act of 2012 (hereinafter “the 2012 Amendment”) made significant changes in the working of copyright societies. Before the 2012 Amendment, copyright owners were allowed to grant license in respect of their work individually in respect of all categories of work under proviso to Sec 33.²⁷ But the 2012 Amendment provides that copyright societies shall have the exclusive right to carry out the business of issuing or granting license in respect of literary, dramatic musical and artistic work incorporated in a cinematographic film.²⁸

The 2012 Amendment also provided that all the copyright societies already existing in India before the Amendment shall get themselves re-registered within a period of one year from the date of Amendment.²⁹

Another important amendment in this area was the insertion of Section 33A.³⁰ This section imposes a mandate on every copyright society to publish its tariff scheme.³¹ It also provides for an appeal to the Copyright Board by a person who is aggrieved by such tariff scheme.³² According to the 2012 Amendment, Copyright Board will have the power to remove any unreasonable inconsistency.³³ Copyright Board may fix an interim tariff to be paid by the parties after hearing both the parties.³⁴

Section 34 of the Act which provides for the administration of copyright by the copyright society was also amended.³⁵ Before the amendment, administration of right of only authors was provided. By way of the 2012 Amendment, ‘other owner’ was added to the section which implies that copyright societies are also authorized to carry out the task of administration of right of other owners who are composers and lyricists.³⁶

The reason for adding the words ‘other owner’ in section 34 was the amendment made in section 17 and 18 of the Act.³⁷ After the amendment, authors of musical works who were working under the

²⁷ The Copyright Act, 1957, Proviso to Section 33(1).

²⁸ *Id.*

²⁹ The Copyright Act, 1957, Second proviso to Section 33(3A).

³⁰ The Copyright Act, 1957, Section 33A

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ The Copyright (Amendment) Act, 2012, Section 21

³⁶ *Id.*

³⁷ Copyright (Amendment) Act, 2012, Section 7

employment of publishers of cinematographic films are also regarded as owners of the work.³⁸ Before the amendment, the composer and singer did not have any right to receive royalty from the public performance of their work after synchronization of the work into a film. The amendment introduced a proviso to section 17 which states that even after incorporation of the work in the cinematographic film, right of author and owner will remain unaffected. Further amendment was made in section 18 which provides for the assignment of rights by the owner and author. By way of introducing a different proviso to section 18, the Act now provides that even after the assignment of their work, the authors of the literary or musical work, which is included in a cinematographic film or sound recording shall not lose their right of receiving copyright royalties in share with the assignee of that work.³⁹

One of the reasons behind the introduction of the 2012 Amendment was to make the Act in compliance with the international treaties of WIPO such as WIPO Copyright Treaty (WCT), WIPO Performance and Phonographs Treaty (WPPT). The 2012 Amendment also helped in removing the ambiguities created by the judgement of *IPRS v. Eastern India Motion Picture Association*.⁴⁰

From the very beginning of the Act, there has been very little clarity on the issue of ownership of copyright of a song after it is being synchronized into a movie by a producer.⁴¹ This confusion was further increased with the judgment of the Hon'ble Supreme Court in *IPRS v. Eastern India Motion Picture Association*.⁴² In that case, it was claimed by the producers of movies that only they have right in the songs once they are incorporated in the movies.⁴³ Singers and composers are just the employees and not the owners so they are not entitled to any royalties from exploitation of the work.⁴⁴ The Hon'ble Supreme Court, while relying on section 17 of the Act, decided that the producer of a cinematograph film has all the rights in the work which is created by the composer in return of a consideration paid by the producer of the film. Therefore, the producer has all the right

³⁸*Id.*

³⁹*Id.*

⁴⁰ *Indian Performing Right Society v. Eastern Motion Picture Association*, 1977 SCR (3) 206

⁴¹ Prashant Reddy T., *The Background Score to the Copyright (Amendment) Act*, 5, NUJS. L.R.469, 479 (2012)

⁴²*Id.*

⁴³*Supra* note 40 at 213, 214

⁴⁴*Id.*

in his movie, including in the lyrics and composition of the soundtrack.⁴⁵ It was laid down by the court that the composer cannot claim any right unless otherwise provided by the contract.⁴⁶

After 2004, payments of royalties to the singers were stopped by the Indian Performing Rights Society and Phonographic Performance Limited.⁴⁷ Initially these societies were composed of singers, composers and publishers, but with the passage of time, as business grew, it was taken over by the publishers.⁴⁸ Publishers and producers claimed that they were the only ones who were entitled to royalty and that composers and lyricists had no claim in royalty.⁴⁹

Controversies relating to the payment of ringtone royalty also constituted one of the reasons for the 2012 Amendment. In the late 1990s, with the development of technology, ringtone for mobile phones came into existence.⁵⁰ Music labels and collecting societies were earning huge royalties from cellular companies by licensing their music for use in the form of ringtone royalties.⁵¹ However, out of huge money earned by the music labels, they were not sharing a single penny with the producer of the movie.⁵² Due to the non-payment of royalties, there were conflicts of music publisher with music labels and cellular companies. Music labels were primarily arguing that such technology did not exist the time of assignment of the rights.⁵³

All these incidents which were exploiting the composer and singers led the Parliament to amend the Act and provide them with greater protection to their work.

Copyright Societies in India

In the Indian market, for collective administration of copyright in musical works, there are three players IPRS, PPL and ISRA. The Indian Performing Rights Society (hereinafter “IPRS”) collects royalties on behalf of the composers and lyricists.⁵⁴ Whenever there is a live performance of the

⁴⁵*Id.*, 222

⁴⁶*Id.*

⁴⁷ Prashant Reddy T., *supra* note 41 at 487

⁴⁸*Id.*

⁴⁹*Id.*

⁵⁰*Id.* at 485

⁵¹*Id.* at 486

⁵²*Id.*

⁵³*Id.*

⁵⁴The Indian Performing Right Society Limited, THE INDIAN PERFORMING RIGHT SOCIETY LIMITED <http://www.iprs.org/cms/Home.aspx> (last updated March 06, 2017)

work of its members, IPRS has right to claim royalty.⁵⁵ Another society is Phonographic Performance Limited. (hereinafter “PPL”) which collects royalties for sound recording.⁵⁶ Third and the most recently established society is the Indian Singers Right Association (hereinafter “ISRA”)⁵⁷. ISRA collects royalties on behalf of singers and it the only society which is registered under the Act.⁵⁸

However, IPRS and PPL are no more copyright societies as they failed to get themselves registered after the 2012 Amendment which mandated every copyright society to get itself re-registered under the Act within one year of the Amendment.

IV. COLLECTING SOCIETIES & COMPETITION LAW

As already mentioned, copyright societies have been accorded a monopoly status by the Act. In India, as already discussed, section 33 of the Act states that the business of issuing or granting license in case of cinematographic film shall be carried out only by a registered collecting society.⁵⁹ It is also provided that government shall register only one copyright society in respect of each class of work.⁶⁰ The statutory interpretation providing for one copyright society, for one class of work has left sufficient room for monopolizing the market of copyright management

In India, the monopoly conferred on copyright societies makes their activities suspicious of having an effect on competition in the market of collective administration of copyright.⁶¹ Copyright societies are in a dominant position as only they are allowed to issue license for the use of the work of the creator.⁶² Copyright societies have been under the scrutiny of competition law in EU and the U.S. Till date India does not have any jurisprudence like U.S. and E.U on regulating the activities of copyright societies by applying the competition rules. In EU, copyright societies are considered to be an efficient system for the collective administration of copyright.⁶³ However European Court of

⁵⁵*Id.*

⁵⁶License Categories, PHONOGRAPHIC PERFORMANCE LTD., <http://www.pplindia.org/licctg.aspx> (last updated March 06, 2017)

⁵⁷About ISRA, ISRA COPYRIGHT, http://isracopyright.com/about_isra.php (last updated March 06, 2017)

⁵⁸IndianSingersRight Association, INDIAN SINGERS RIGHT ASSOCIATION http://isracopyright.com/certificate_of_registration.php (last updated March 06, 2017)

⁵⁹*supra* note 27

⁶⁰*supra* note 15

⁶¹*Special Topic – Response by India Group, CTR ON APAA COPYRIGHT COMMITTEE,1 (2014)* http://www.apaaonline.org/pdf/APAA_63rd_council_meeting/CopyrightCommitteeReports2014/India%20Copyright%20Committee%20Special%20Topic%202014.pdf

⁶²*supra* note 27

⁶³ LIONEL BENTLY AND BRAD SHERMAN, INTELLECTUAL PROPERTY LAW 332(4TH ED., 2014).

Justice (hereinafter “ECJ”) has ruled many times that copyright societies are subject to competition law.⁶⁴ Court of the Justice of the European Union (hereinafter “CJEU” formerly known as ECJ) has decided many cases relating to the activities of collecting societies which were in conflict with the competition laws in Europe.⁶⁵ The European Commission has kept a constant check on the activities of collecting societies through the lens of competition laws.⁶⁶ In EU, anti-competitive activities of collecting societies are controlled mainly through two provisions of EC competition rules i.e., Article 101 and 102 of Treaty on the functioning of European Union (hereinafter “TFEU”).⁶⁷ With the passage of time, European Commission and CJEU (formerly ECJ) have developed a practice of testing the anti-competitive activities of copyright societies on the parameters of competition rules under Article 101 and 102 of TFEU.⁶⁸

ASCAP and BMI, two performing rights societies in the U.S., have been subject to prosecution and observance of antitrust law of the U.S. for the last 70 years.⁶⁹ Most of the licenses for the non-dramatic public performances in music are granted by ASCAP and BMI.⁷⁰ Due to their near monopoly status, many of their actions have been challenged before the antitrust law of the U.S.⁷¹ The U.S. antitrust law has been playing an important role in regulating the activities of Performing Rights Organizations as some of their activities may lead to the concentration of market power and violation of section 1 and 2 of the Sherman Act.⁷²

Copyright societies in India also have the potential to affect the competition in the relevant market. Anti-competitive activities of these societies which may lead to abuse of their dominant position toward users and copyright holders can be analyzed under the following heads-

⁶⁴*Id.*

⁶⁵ DANIEL GERVAIS, COLLECTIVE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS, 137 (2ed.2014).

⁶⁶*Id.*

⁶⁷Consolidated version of the Treaty on the Functioning of the European Union (last updated December 13, 2007), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

⁶⁸Ehlermann et al., *European Competition Law Annual 2005:Interaction Between Intellectual Property And Competition Law*, 343 (2007)

⁶⁹SUSY FRANKEL, THE EVOLUTION AND EQUILIBRIUM IN THE DIGITAL AGE, 269(2014).

⁷⁰Linda McLeod, *Source Licensing: A Legislative Swan Song to the Blanket License*, 67 Or. L. Rev. 735,739(1988)

⁷¹Robert Isreal Goodman, *Music Copyright Associations and the Antitrust Laws*, 25Ind. L.J.168, 176-177(1960).

⁷²Mary Katherine Kennedy, *Blanket Licensing Of Music Performing Rights: Possible Solutions To The Copyright-Antitrust Conflict*, 37 Vand. L. Rev. 183, 184-185(1984).

V. ABUSE OF DOMINANT POSITION TOWARDS USERS

A. High Rates Of Fee Claimed By Copyright Societies

Dominant position of IPRS, PPL and ISRA for providing license in respect of their categories of work may lead to high rates of royalties charged by them. They may abuse their position by charging exorbitant prices for their services. Royalty rates charged by these companies are accused to be very high and unreasonable.⁷³ There is no fixed rate of royalty that is charged by them and it varies as per the negotiations that take place between the personnel of IPRS, PPL and ISRA, on one hand and the user of their repertoire, on the other hand.⁷⁴

It was claimed by Telangana Chamber of Event Industry, Hyderabad that in the U.K., fee for a PPL license for a year is just INR 16112/-, while in India this amount goes up to 1 lakh per event.⁷⁵ As a common user, one might not be able to know the correct tariff and one does not have any option except to pay these societies the amount asked by them.⁷⁶ Even after the mandatory requirement of publishing their tariff, PPL has not published their tariff rate on their website.⁷⁷ IPRS is asking for an unreasonable fee even for content which is available in the public domain.⁷⁸ For example, in December 2004, Eastern Railway came out with an idea of playing music in the trains for making the journey of passengers a more soothing experience and accordingly, suggestion were taken from the general public.⁷⁹ After deliberations, it was decided that Rabindra Sangeet would be played in the trains running in the Eastern Railway. However, IPRS asked a hefty royalty of Rs.16 lakh from the Railway for allowing license of these songs.⁸⁰ The question became interesting after it was realized that Rabindra Sangeet might be in public domain.⁸¹ The practice of charging a high license fee even

⁷³ Meera Srinivasan, *Caught between music and royalty claims*, THE HINDU, Sep 5, 2012

⁷⁴*Id.*

⁷⁵ Dear Santa, Save my industry, SPICYIP <http://spicyip.com/wp-content/uploads/2015/01/iprs-ppl-santa-claus.pdf> (last updated March 06, 2017)

⁷⁶Eventfaqs Bureau, *EEMA lambasts PPL 'propaganda'; says 'music licensing bodies exploiting loopholes'*, CTR ON EVENTFAQS.COM (Jan 25, 2010) <http://www.eventfaqs.com/news/ef-07930/eema-lambasts-ppl-propaganda-says-music-licensing-bodies-exploiting-loopholes--e4llhipuhw>

⁷⁷*Comparative Transparency Review of Collective Management Organisations in India, United Kingdom and the United States*, CTR. ON THE CENTRE OF INTERNET AND SOCIETY (July 15, 2015) <http://cis-india.org/a2k/blogs/comparative-transparency-review-of-collective-management-organisations-in-india-uk-usa>

⁷⁸ Swaraj Paul Barooah, *IPRS, Indian Railways, & Rabindrasangeet (!)*, CTR ON SPICYIP (Jan 3, 2015) <http://spicyip.com/2015/01/guest-post-iprs-indian-railways-rabindrasangeet.html>

⁷⁹*Id.*

⁸⁰*Id.*

⁸¹*Id.*

in cases where the copyright society has no such claim over it is one example of the abusive practices of copyright societies owing to their dominant position.

This practice of charging high license fee may amount to abuse of dominant position under section 4(2)(a)(i) of the Competition Act, 2002.⁸² In the case of HT Media Ltd v. Super Cassettes Industries Ltd.⁸³ HT media Ltd. filed information against super cassettes industries claiming the violation of Section 3 and 4 of the Competition Act. It was alleged that T. Series is holding a share of 70% Bollywood music and it is using its position abusively by charging high rate of fee for its broadcasting license. It was also claimed that opposite party is also imposing minimum commitment charges to be paid by the licensee irrespective of the use made by them.⁸⁴ Super cassette was allowing its license only to those licensees who were abiding by above said terms. It was held by Competition Commission of India (hereinafter “CCI”) that if a dominant entity imposes an unreasonable and discriminatory prices while licensing their content it will amount to abuse of dominant position under section 4(2)(a)(i) of the Competition Act. CCI held that super cassettes industries ltd. is abusing its dominant position by imposing such unreasonable condition before the licensee.⁸⁵

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⁸² The Competition Act, 2002, Section 4: (1)

⁸³ Case No 40/2011

⁸⁴ *Ibid.*, page 2

⁸⁵ *Ibid.*, page 90

⁸⁶ HT media Ltd v. Super cassettes Industries Ltd Case No 40/2011

⁸⁷ *Id.*, at 2

who were abiding by above said terms. CCI held that super cassettes industries ltd. is abusing its dominant position by imposing such unreasonable condition before the licensee.⁸⁸

B. Behaviour As Cartel

In many aspects, copyright societies in India may appear to be behaving like a cartel. Cartels are prohibited under section 3(3) of the Competition Act.⁸⁹ For example, IPRS initially comprised of composers, authors and publishers but with the passage of time, it is converting into a society of music labels.⁹⁰ PPL which is collecting royalties for sound recording has more than 200 music labels as members and they are offering their work together from the window of PPL.⁹¹ The working trend of copyright societies in India resemble a cartel which eliminates the competition between market players.⁹²

The price offered by PPL for obtaining its license is irrespective of whose work is in demand. All music labels who have the power to control the affairs of PPL are directing the terms of the license in collusion. Music labels, who would otherwise be competitors, are acting as cartels. They are offering their goods on a single price which often appears to be too high for users to pay as will be elaborated under the next heading.

C. Unreasonable Conditions On Licenses

IPRS and PPL impose unreasonable conditions on the users while granting them license for the use of the work which might lead to the offence of abuse of dominant position.⁹³ IPRS and PPL are claiming a flat fee for the full year for their blanket license without taking into consideration the level of business.⁹⁴ Both the societies offer only blanket licenses to the users. While taking a license from these societies, users are required to pay an annual sum for their entire repertoire offered by the societies irrespective of the requirement of the users.⁹⁵ Both of these societies are in a practice of claiming royalties for six months or yearly basis. Many times it has been alleged by the business

⁸⁸*Id.*, at 90

⁸⁹ The Competition Act, 2002, Sec 3(3)

⁹⁰*supra* note 41 at 487.

⁹¹ Prashant Reddy, *Is there a need to break up the cartels in the radio – music labels negotiations?*, CTR ON SPICY IP (February 7, 2013) <http://spicyip.com/2013/02/is-there-need-to-break-up-cartels-in.html>

⁹²*Id.*

⁹³*Id.*

⁹⁴ Speak Goa, *IPRS, PPL Agencies Harassing Small Business Men In Goa* (March 28, 2013) <http://permalink.gmane.org/gmane.culture.region.india.goa/144512>

⁹⁵*Id.*

guild of entertainment industries that they are threatened by these societies to have a license on annual basis or on a half yearly basis.⁹⁶ Some users such as hotels might not be using the work lying in the repertoire of IPRS and PPL for a full year but they are forced to pay for a year if they want to have a license. Some hotels in India are doing business only for a few months but they are forced to take a license for the full year and they are forced to pay even for a period when they are not using the work at all.⁹⁷ This practice of IPRS and PPL may be subject to scrutiny under section 4(2)(a)(i) of the Competition Act.⁹⁸

VI. ABUSE OF DOMINANT POSITION TOWARD COPYRIGHT HOLDERS

Copyright societies may abuse their position towards copyright holders in multiple ways:

A. Refusal To Grant Membership To Small Music Labels

IPRS and PPL do not allow their membership to small music labels or regional music labels because of the low popularity of their music. For example, South India Music Association (SIMCA) was denied membership by the PPL on impractical grounds.⁹⁹ One of the grounds for refusal stated by PPL was its eligibility criteria which provides that for becoming an associate member there must be at least 50 music albums and cover version excluding classical and devotional albums.¹⁰⁰ It means that PPL does not recognize devotional music as per its eligibility criteria. But no such condition is being provided in its Memorandum of Association (MOA). Also, as per the registration certificate of PPL, there is no distinction between film and non-film music¹⁰¹ It may amount to refusal to deal under section 3(4)(d) of the Competition Act¹⁰²

B. Unreasonable Conditions While Granting Membership

Copyright societies may abuse their dominant position by imposing unreasonable conditions while granting membership to copyright holders.¹⁰³ For example, they force the copyright holder to make an exclusive assignment of his right in favor of the society and afterwards they claim themselves to

⁹⁶*Id.*

⁹⁷*Id.*

⁹⁸ The Competition Act, 2002, Section 4

⁹⁹ Prashant Reddy, *Music labels across India complain against PPL's anti-competitive behaviour*, CTR ON SPICY IP (Dec 29, 2011) <http://spicyip.com/2011/12/music-labels-across-india-complain.html>

¹⁰⁰*Id.*

¹⁰¹*Id.*

¹⁰² The competition Act, 2002, Section 3(4)(d)

¹⁰³ Prashant Reddy, *supra* note at 86

be the owner of the copyright.¹⁰⁴ Copyright holders want to retain some of their rights as rights for individual administration but they are not allowed to do so if they want to have the membership of the copyright society.¹⁰⁵ This practice results in limited choice to copyright holder for choosing the best competitive means for administration of his copyrights.¹⁰⁶ In EU also this practice of copyright societies was held to be an abuse of dominance position in the case of *Banghalter & Homen Christo v. SACEM*¹⁰⁷. In that case, the court clearly pointed out that the copyright societies should impose only those conditions while granting its membership which are necessary for carrying out the purpose for which they are created. In the U.S. also consent decree provides that the assignment of rights made by copyright holders to copyright societies must be a non-exclusive one and members must have the right to administer their rights individually.¹⁰⁸

VII. CONCLUSION

The Act contains some detailed provisions with regard to the working of copyright societies in India.¹⁰⁹ But the system of collective administration of copyright in India still suffers from lack of transparency and this has resulted in many unfair results. Even though many checks and balances were attempted to be included in the Act with regard to the activities of copyright societies, India hasn't been able to evolve an efficient and transparent copyright societies. As discussed earlier, copyright societies in India are engaging in various anti-competitive practices. Jurisdictions like the U.S. and E.U. have a long history of applying the competition law to the collective administration of copyright. They have developed jurisprudence in regulating activities which are leading to abuse of dominant position by copyright societies. Learning from their experiences, the Indian Copyright Act has also incorporated some provisions for the prevention of abuse of dominant position by copyright societies. But it is high time to strictly regulate the activities of these societies also through competition law. Copyright societies in India are abusing their dominant position towards users and copyright holders. India needs considerable reforms in this area, so that we can have an effective system for the collective administration of copyright.

¹⁰⁴*Id.*

¹⁰⁵*Id.*

¹⁰⁶*Id.*

¹⁰⁷*Banghalter & Homen Christo v. SACEM* [2002] Case COMP/C2/37.219

¹⁰⁸ *United States of America v. American Society of Composers, Authors and Publishers (ASCAP) et al.*, No. 09-0539, 2011 WL 3749292 (2nd Cir., 2011)

¹⁰⁹*supra* note 27