

Relevance of Copyright Societies in the Digital Age

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Abstract

The emergence of digital technologies and the internet has revolutionized the way people access and consume creative works. In this context, the role of copyright societies has become increasingly important in managing and protecting the rights of creators and copyright owners. This paper explores the relevance of copyright societies in the digital age, examining their historical development, functions, and challenges in the digital environment. The study analyzes the impact of digital technologies on the activities of copyright societies, such as licensing, collecting, and distributing royalties, and discusses the role of technology in facilitating these activities. The paper also considers the legal and policy issues surrounding copyright societies' operations in the digital age, including the need for greater transparency, accountability, and governance. Finally, the study offers recommendations for copyright societies to adapt to the changing digital landscape and to better serve the interests of creators and copyright owners in the digital age.

Copyright is the phrase used to describe the legal or exclusive rights granted to the owner of intellectual property, such as authors or composers, for a specific period of time. Artistic works like poetry, novels, movies, songs, computer programs, buildings, and writers' original literary, theatrical, and musical creations are primarily protected by copyright laws. When artists create something novel and innovative, they want to ensure that it is protected so that no one else can profit financially from it. A licence from a copyright society¹ can be obtained to safeguard the creator's rights and allow them to receive royalties from the public.

Copyright Societies in India

A "Copyright Society" is a licenced collective legal organisation that protects and manages the original creations of writers and artists. The rights of the original creators and the actual proprietors of these works are likewise protected by the Copyright Society. Copyright Societies assure creative writers that they can manage the economic aspects of their work. Copyright societies can be referred to as a legal body whose object is to protect or safeguard the interest of owners of the work in which copyright subsists. In other words, Copyright societies are legal bodies created under the Copyright Act 1957 to protect the interests of authors and artists from exploitation by publishers and potential infringers by providing them with better bargaining power to monetise their creative works. Their primary responsibilities include managing royalties and controlling the granting of licences on behalf of the creators of creative works. There are four Copyright Societies in India. They are

¹ "The Copyright societies are also authorized to watch out for infringement of the copyright and take appropriate legal action against the infringers"

- Society for Copyright Regulation of Indian Producers for Film and Television (SCRIPT) for cinematograph and television films;
- The Indian Performing Right Society Limited (IPRS) for musical works;
- Phonographic Performance Limited (PPL) for sound recordings; and
- Indian Reprographic Rights Organization (IRRO) for reprographic is for photocopying works².

The Indian Performing Right Society Limited (IPRS) and Phonographic Performance Limited (PPL) are the Copyright Societies of India registered under section 33³ of The Copyright Act, 1957. Although the IPRS was first formed in 1969, it had to be re-registered in 2017 as a copyright society. This was due to the 2012 amendments⁴, where the legislation stated that artists could only assign their royalty rights to a copyright society and necessitated that copyright societies reregister with the government within one year⁵. In the same way, PPL was enlisted under the Indian Copyright Act of 1957 as a copyright society; however, in 2012, PPL submitted a request to be re-registered, but before the government had a chance to assess it or decide, PPL decided to take back its application and continue operating as an incorporated entity. The government informed PPL that because it might have violated the rights of copyright owners, it could not grant its request to withdraw the application⁶. In 2018, PPL put another bid to be re-registered, yet the government declined it as it was presented too late. In the meantime, the government registered another company called Recorded Music Performance Limited (RMPL) under Section 33(3) of the Copyright Act of 1957. PPL submitted a legal appeal⁷ to the High Court of Delhi⁸ and asked for an interim ruling preventing the government from examining or dealing with any other group's application (RMPL) to be registered as a copyright society for sound. Recordings. Delhi High Court, vide its order dated April 11, 2022, granted relief to both RMPL and PPL in their conflict over registration as a copyright society⁹. As a pro tem measure, the Court has granted a stay on the decision of the single judge order to the extent that it disallows RMPL from functioning as a Copyright Society. The Division Bench has also directed the Government of India to consider the application of PPL during the pendency of the appeal- within four weeks¹⁰.

² Suchita Saigal, et. al., *Licensing Intellectual Property Rights' Use in Law of Business Contracts in India* by Sairam Bhat (ed.), New Delhi: SAGE Publishing India, 2010, p 104.

³ Section 33 of The Copyright Act, 1957 states that, "No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 commence or, carry on the business of issuing or granting licenses in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub section (3)"

⁴ The 2012 Amendments ushered in a new era for collection of royalties and distribution of rights for collecting royalties. Its most striking feature was the fact that the right to collect royalties by individuals couldn't be waived off when the work is a part of a cinematographic film and sound recording.

⁵ Section 33(3-A) was inserted which lays down that to be a valid copyright society an entity (carrying on the business of issuing or granting copyright licences) must newly register itself under Section 33 within a year from the commencement of 2012 Amendment. Thus, if a copyright society existed by virtue of a pre-2012 registration, there would not be a bar under Section 33 operating on such a society unless there was a new registration within one year after the aforesaid enactment.

⁶ Section 33(3-A) grants the Central Government prerogative to withhold renewal of registration if a copyright society does not share control and royalty with the authors of works. Thus, the intent of the legislature to benefit authors with low bargaining power vis-à-vis major production companies who own the capital required for production and marketing of creative works is very clear.

⁷ The appeal was filing according to the proviso to Section 33(3) of the Copyright Act which states that "that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works"; however, there is no express bar on registration of more than one society for the same kind of copyrightable matter.

⁸ Recorded Music Performance Limited v Phonographic Performance Ltd. & Ors. W.P.(C)-IPD 21/2021 & CM APPL. Nos. 28, 35, 17949 of 2021

⁹ Delhi High Court, passed an ad-interim order stating that "... in the event the petitioner succeeds in the present petition, its application for re-registration dated 09.05.2013 under Rule 47 of the Rules would stand revived, and would have to be examined on its own merits. This position will be borne in mind by the respondent, and the respondent shall not take any action inconsistent with this position during the pendency of the present petition." (Emphasis supplied)

¹⁰ LegalSpeak, RMPL vs PPL: Delhi High Court as a PRO-TEM Measure reinstates RMPL as a Copyright Society for Sound recordings, available at <https://ncai.in/blog-detail/rmpl-vs-ppl-delhi-high-court-as-a-pro-tem-measure-reinstates-rmpl-as-a-copyright-society-for-sound-recordings> accessed on December 13, 2022

A considerable additional adjustment during the amendments was in the capacity of Copyright Societies. The organisations needed to publish their royalty charts so that individuals receiving royalties could have clarity in the procedure. It was made obligatory for the copyright societies to have an equivalent amount of authors and proprietors on its governing body. It provided a period of one year for the existing copyright societies to reapply.

Need of Amendment in Copyright Society Act, 1957

Before the 2012 amendments, where the legislation specified that only a copyright society might accept an artist's assignment of royalty rights, there were two significant organisations in India that dealt with copyright issues in the music industry. The Indian Performing Rights Society (IPRS), which manages Copyrights for Individuals and Phonographic Performance Limited (PPL) on the other hand was in charge of more than 317 music labels' public performance rights. The PPL initially had authority over the record labels¹¹. These labels also owned the music recordings. The revenue received from broadcast and public performances was distributed by PPL to its members annually¹². They successfully expelled the persons and artists from the IPRS's governing body. As a result, the country's copyright societies came under the music labels' authority, and exploitation became the standard. Around 2004, new ways of exploiting works worsened the authors' issues. The creators of ringtones claimed remuneration for this use of their work as they grew highly popular. As a result, they would get paid a small royalty each time a ringtone was played. However, the IPRS, which was run by the labels, said that it could not collect royalties for the people since it had already given the PPL the authority to grant rights for ringtones. Similarly, in the case of Bennett Coleman and Co Ltd vs Phonographic Performance Ltd.,¹³ the plaintiff was a licensee to broadcast the FM Channel on All India Radio. The defendant was the copyright holder of various phonographic performances. The respondent is a copyright society registered under section 33 of the Copyright Act 1957. Disputes arose between the parties concerning the rate per needle hour for music playing on the FM channel. The 2012 Amendments¹⁴ marked the beginning of a new era for royalties collection and the division of royalties' collection rights. The copyright society did not acknowledge the authors' rights before the amendment. This amendment led to a number of legal disputes between the authors, the owners of the rights, and the copyright organisations. But with this change, the word "author" was added to the provisions. The inclusion of authors in the copyright society ensured that the administration of each copyright society's governing body would consist of an equal number of authors and owners and that there would be no distinction in the distribution of royalties between authors and owners of rights. The change also deleted the provisions for copyright society compensation payments and replaced them with provisions for tariff schemes. The amendment created conformity with international standards established by the WIPO copyright treaty.

Effects of the Amendment Act

The primary responsibility of copyright societies is to grant licences for the use of copyright in works intended for public reproduction, performance, or communication, to monitor instances of copyright infringement and the legal consequences of those instances, to monitor the use of works and collect revenue, to assign payment as royalties to members, and to enter into cooperative agreements with foreign collecting societies to collect and distribute

¹¹ PPL negotiates licences pertaining to sound recording in a wide variety of users in several media, such as broadcasting, television, internet, hotels, discotheques, restaurants, large scale events and public performances.

¹² Supra Note 2.

¹³ G.A. 4314 of 2001 decided on 26 March 2004 at the High Court of Judicature at Calcutta.

¹⁴ The amendment is of vital importance because it created conformity with the international standards established by WIPO Copyright Treaty or known as WCT and WIPO Performances and Phonograms Treaty also known as WPPT.

income. The copyright society is such an entity which safeguards the interests of the owners of the work in which copyright subsists¹⁵. The Part VII¹⁶ of the Copyright Act 1957 is mainly to govern and protect such functions of these corporate societies¹⁷. The Copyright (Amendment) Act 2012 came into force with the primary objective of establishing an equitable and just framework for the administration of copyright and sharing of revenue to protect the rights of owners and authors incorporated in cinematography and audio recordings.

The amendment of 2012 added to the burden with respect to "issuing or granting licence" with respect to the works mentioned above. It also added a new provision, Section 33 (3A), which talks about renewing a licence after a period of five years. Section 33 says that any person or association of persons must get itself registered with the Central Government to carry on the business of issuing or granting licences in respect of the Act. The copyright societies are controlled by and are accountable to the owners of the copyrights. There is also overall supervisory control by the central government. The lawmakers purposefully strayed from the former plan under the unamended Copyright Act about the ability to fix tariffs. Specific checks are made per Section 33 (3) when a copyright society registers. The interests of writers and other rights holders must be considered by the central government, as well as the convenience and interests of the general public, especially those of the categories of people who are most likely to apply for licences. Once a copyright society is registered, the central government and the copyright owners can exert authority over it as specified in Section 35 of the Copyright Act¹⁸. The legislative mandates that the copyright society set tariffs in place of the central government, which would otherwise be in charge. The owners must approve these tariffs of the relevant rights. This relates to collecting and dispersing fees and the "use of any sums acquired as fees for any purpose other than distribution to the owner of rights." The copyright organisation would "give such owners regular, comprehensive, and thorough information regarding all its operations related to the administration of their rights."¹⁹

This provision is inconsistent with Section 30, which talks about the condition of granting licences, and Section 18, which provides for the assignment of copyright²⁰. Sections 18 and 30 are provisions of the original Act. The impact of these provisions due to the addition of Section 33 is not clarified by either the statute or its Amendments. It needs to be clarified whether Section 33 should prevail over Sections 18 and 30 or the other way around. In *Leopold Cafe & Stores v. Novex Communications (P) Ltd.*²¹, the Bombay High Court decided that the issuance of licences by Sections 18 and 30 is not barred by Section 33 of the Act. The prohibition in Section 33 does not obliterate the right under Section 30, and both must exist harmoniously. "...What Section 33 forbids is an engagement in the "business of issuing and granting" licenses in works in which copyright subsists. This cannot mean that a copyright owner cannot appoint an agent to grant any interest on behalf of the copyright owner. That is something that Section 30 in terms permits. The express permission in Section 30 cannot be

¹⁵ Akhil Prasad and Aditi Agarwala, *Copyright Law Desk Book: Knowledge, Access & Development*, Delhi: Universal Law Publishing, 2009, p 204.

¹⁶ Part VII consisting from Section 33 to Section 36A of Copyright Act, 1957 states all the details about Copyright Society. This part covers the registration, administration of rights of owners, payment of remuneration, submission of return and reports, rights and liabilities of copyright societies.

¹⁷ Jatindra Kumar Das, *Law of Copyright* (2nd ed.), Delhi: PHI Learning Pvt. Ltd., 2021, p 512.

¹⁸ Control over the copyright society by the owner of rights - (1) Every copyright society shall be subject to the collective control of the owners of rights under this Act whose rights it administers (not being owners of rights under this Act administered by a foreign society or organization referred to in sub-section (2) of Section 34) and shall, in such manner as may be prescribed, - ...

¹⁹ *Event and Entertainment Management Assn. v. Union of India* in the High Court of Delhi at New Delhi, W. P. (C) 5422/2008 & CM APPL 10648/2010

²⁰ Section 18 says that once an assignment is in place and one becomes an owner of specific copyright in work, that individual is going to be acting in the capacity of the owner of the copyright for all those rights which are granted to that individual. As a result of such assignment the copyright society becomes the exclusive owner of the public performing rights of its members.

²¹ (2014) 6 Bom CR 394

occluded by extending the express prohibition in Section 33. All that the two sections, read together, require is that the factum of the agency must be disclosed...The minute the principal is undisclosed, and the license is issued and granted in the agent's name, the prohibition in Section 33 comes into play"²².

Terminology Interpretation through Case Laws

All users of music, including radio stations and television stations, need to obtain a 'license for public performance' whenever they broadcast or perform or play these literary and musical works prior to the event or broadcast if it is to avoid violating the Copyright Act, 1957²³. A License is not required from a copyright society or other authors or owners of the copyright if the work is being utilised for a bonafide religious ceremony, including a marriage function, as the same is covered under the exceptions to infringement of copyright under Section 52 (1) (za) of the Copyright Act, 1947. Commercial establishments must obtain two licences, one for playing copyrighted songs in the background throughout the year and another for events like New Year, Christmas, Valentine's Day, Holi or corporate events²⁴. In *Phonographic Performance Limited vs LookPart Exhibitions and Events Private Limited*,²⁵ Defendant used sound recordings for which Plaintiff has rights, at various social events managed and organised by it at commercial venues regularly. It is submitted that Defendant, while organising its events, including weddings/marriage ceremonies and other social events, ought to obtain licences for playing music. The Defendant argued that when music is to be played for the purposes of marriage ceremonies or other social events connected with marriages, including a marriage procession, the use of music is deemed to be fair use. Hence, no licence would be required. The Court appointed Dr Arul George Scaria for his expert opinion. He submitted, "As is evident from diverse case-laws and scholarly literature from different jurisdictions including India and the United States, the engagement of a facilitator who empowers a copyright user to exercise their legitimate user rights under copyright law or the commercial character of that facilitating entity, should not prevent the Court from allowing the exercise of a right provided under copyright law. In the absence of facilitators, most users in India may not be able to exercise their legitimate rights under S. 52(1)(za)."

In *Event and Entertainment Management Assn. v. Union of India*'s²⁶ unauthorised public music performance for which rights were owned by various third-party licencing and collecting companies and copyright societies was the subject of the proceeding. One of the respondents, Novex, had already filed a suit against several hotels to prevent them from playing the aforementioned songs in public without permission. The High Court ruled in its order that Novex could conduct business in accordance with Sections 18 and 30. It might therefore collect licence fees from users per Sections 18 or 30 of the Act as a valid assignee or an authorised agent of the respective songs' composers and producers. In another case, High Court stated that the issuance of licences by virtue of Sections 18 and 30 is not barred by Section 33 of the Act²⁷. *M/s Novex Communications vs DXC Technology Pvt. Ltd.*²⁸ Madras High Court stated that a combined reading of Sections 18, 30 & 33 of the Act makes it clear that the copyright owner is entitled to independently issue licenses and collect royalties and is clearly misconceived. Section 33(1) and its second proviso do not touch upon the right of an owner, nor does it debar him from dealing with the business of issuing licenses for his works in his individual capacity.

²² *Leopold Café Stores v. Novex Communications Pvt. Ltd.* [2014 (59) PTC 505 (Bom)]

²³ *IPRS Limited v Hello FM Radio Archives* 2012 (50) PTC 460 (Delhi).

²⁴ Music copyright licence must for pubs, hotels, *Times of India*, Dec 23, 2022 (Goa News)

²⁵ CS(COMM) 188/2022 & I.A. 4772/2022, High Court of Delhi, Date of Decision: 11th May, 2022

²⁶ 2016 SCC OnLine Del 6567.

²⁷ *Leopold Cafe & Stores v. Novex Communications (P) Ltd.* (2014) 6 Bom CR 394

²⁸ Civil Suit Nos.407 and 413 of 2020 Pronouncing Orders on: 08.12.2021

It merely regulates the mode and manner of its exploitation through the business of licensing by routing it through a copyright society.

In a combined order dated December 21, 2016²⁹, the Bombay High Court stressed the necessity for collecting societies to provide all relevant information about copyrighted works to potential licensees and called for greater transparency in their business practices. Court noted that in areas of copyright enforcement, it is essential to provide the greatest amount of transparency, particularly in this digital age with its profusion of material, and "a person who needs a license must know for what he needs that license and from whom, and at what rate". Event organisers and hosts cannot use copyrighted works without paying the license fee to the owner, whosoever that may be³⁰. Similarly, the Bombay High Court has prohibited commercial establishments like hotels, resorts, lounges, pubs, clubs, and bars from using Phonographic Performance Ltd. (PPL) copyright-protected sound recordings without a licence in a series of rulings made against specific establishments in December 2022³¹.

Conclusion

With the introduction of "performer rights," the creator's interests are now of utmost importance. The act seeks to recognise the rights of a wide range of individuals, including writers, musicians, singers, etc., and to safeguard such rights from any type of violation. Individual artists find it very challenging to keep track of copyright violations, so they are permitted—and even encouraged—to establish copyright societies to protect their collective rights. These copyright organisations also have the authority to offer licences to people who exploit their copyright. Despite the protection provided to these copyright organisations in the form of the Amendment Act 2012, the adoption of licencing systems through cooperative societies has not yet produced positive outcomes. A significant question has been raised over the power and jurisdiction of these organisations to provide licences due to the ongoing limbo surrounding the operation of these societies between sections 33 and 30, read with section 18. The issue has worsened due to the conflicting views of the several High Courts. Although copyright organisations appear to be the only practical alternative for carrying out the Act, their future is still unclear. It's time for the government or the courts to establish a set norm for how copyright societies must operate.

²⁹ In the cases PPL V. Welcom Hotel Rama International (ITC) & 4 Ors., PPL V. Corum Hospitality & 4 Ors., PPL V. Mynokos Blu & 4 Ors., PPL V. British Brewing Company Pvt. Ltd. & 4 Ors., PPL V. YMCA International Centre & 4 Ors., PPL V. Neon The Disc & Ors., PPL V. Impresario Entertainment & Hospitality Pvt. Ltd. & 4 Ors., PPL V. J.W. Marriott & 4 Ors., PPL V. Titos Resorts & Hospitalities Pvt. Ltd. & 4 Ors. and PPL V. K-2 Club and Lounge & Ors.

³⁰ IPRS, PPL and Novex have in the past moved courts in Delhi and other cities and obtained orders restraining hotels, restaurants, event management firms and FM radio stations from playing movie songs or music without taking licence or paying royalty. Bombay High Court had on a plea by IPRS ruled that Entertainment Network India Limited (ENIL) will have to pay royalty for broadcasting songs on its FM Radio station, Radio Mirchi, in the seven metro cities where they operate.

³¹ No licence, no music during New Year parties, says Bombay HC, Hindustan Times, Dec 20, 2022 Pune