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Copyright societies in India are subject to interim measures that aim to boost transparency. DPS Parmar and Aniruddh Singh of LexOrbis report

There was a lot of buzz in the news relating to the series of orders passed by the Delhi and Bombay High Courts regarding payment of the copyright licensing fee to the copyright societies registered under Section 33 of the Copyright Act of 2012. At first instance, the Delhi High Court restrained these societies from granting licences as the registration of the societies had expired and they had not re-registered them as per the requirement under Section 33 of the Copyright Act.

However, balancing the interest of the parties to the suit, the vacation bench of the Delhi High Court directed the societies to publish proof of their right to collect royalties and grant licences on behalf of copyright holders.

The Bombay High Court also sought a higher level of transparency on behalf of collecting societies. Both courts have provided interim measures based on consent between the parties.

The issues

Copyright societies look after the business of issuing licences in respect of copyrighted works, collect royalties on behalf of the copyright owner, and distribute royalties among the rights holders. Chapter VII of the Copyright Act of 1957 deals with the registration, functions and liabilities of these societies. In 2012, the Copyright Act was amended to require all copyright societies to register again within a period of one year. Initially, the two main copyright societies, the Indian Performing Rights Society (IPRS) and Phonographic Performance Ltd (PPL), applied for renewal, but later, IPRS withdrew its application. The government, being observant of these suspicious activities, initiated an enquiry into IPRS under Section 33(5) of the Copyright Act.

Subsequently, a writ petition was filed by IPRS in the Bombay High Court claiming that it is no longer a copyright society under the Copyright Act and so no enquiry can be initiated by the government. The contentions of IPRS were dismissed by the court, allowing the government to continue with the enquiry. In the meantime, many allegations were raised as to the irregularities and lack of transparency in the functioning of copyright societies.



DPS Parmar, Senior consultant, LexOrbis

Glimpse of 2016

Last year, copyright came into the domain of the Department of Industrial Policy & Promotion (DIPP), under the Ministry of Commerce and Industry, from the ambit of the Human Resource Development Ministry (HRD). In October last year, the DIPP issued an official memorandum that clarified that the registration of copyright societies, ie, PPL and IPRS, expired on 21 July 2013 and their applications for re-registration were under examination before the central government, which was also looking into the alleged malpractices of IPRS.

There was a significant development in December, with a restraining order being passed by the Delhi High Court in the writ petition filed by the Event and Entertainment Management Association (EEMA).

The petitioners contended that the respondent societies were illegally granting licences and collecting royalties for copyrighted works, as their registration had either expired, or they had never even registered as a copyright society under Section 33 of the Copyright Act.

Justice Sanjeev Sachdeva observed that Section 33 of the Copyright Act provides that only registered copyright societies have an exclusive right to collect royalties and grant licences on behalf of rights owners and, in an interim order dated 23 December 2016, the single bench of the Delhi High Court restrained all three respondent societies (IPRS, PPL and Novex Communications) from collecting royalties or granting licences for copyrighted works due to the expiry of their registrations, and non-registration in case of Novex as a copyright society.

After the restriction from the court, the societies defended themselves on the basis of Section 30 of the Copyright Act, according to which a copyright owner or its agent may grant any interest in the right. With the help of this particular provision, the societies claimed themselves to be the authorised agents and contended that they can grant licences or collect royalties on behalf of copyright owners even if they are not registered under Section 33 of the Copyright Act of 2012.

The licence issuing company was directed to provide proof by way of legal agreements within seven days of the invoice, to the satisfaction of the event organiser

After hearing both parties, a vacation bench of the Delhi High Court issued an interim order. In the order passed on 29 December 2016, Justice Najmi Waziri declined to vacate the earlier injunction obtained by EEMA from the Delhi High Court on 23 December 2016 against the collection of licence fees by IPRS, PPL and Novex. However, the court allowed the societies to collect royalties provided they fulfil certain conditions.

The court gave directions for keeping a complete list of performances for which payments are claimed and these payments would be subject to the final outcome of the petition by EEMA.

In an earlier order, Justice Sachdeva, while accepting EEMA's contention that IPRS, PPL, and Novex were not registered copyright societies under Section 33 of the Copyright Act, had therefore restrained them from collecting any licence fee from performers or performing societies. This matter will be further heard on 24 April 2017.

As per the conditions of this interim order, EEMA members or the event organiser are required to provide PPL, IPRS or Novex with a list of songs that they intend to play before an event via mail and PPL, IPRS or Novex will thereafter need to confirm in writing that they own the tracks.

Further, PPL, IPRS or Novex were directed to publish a detailed list of all songs they own, including the names of the authors/producers, on their websites, along with the dates of validity of the contracts until 31 March 2016.

In addition to this, the licensing companies had to upload the valid legal agreements by which they claim ownership of these tracks by 31 December 2016. The event organisers were also required to pay royalties before the event as per mutual negotiation with the copyright owners.

The licence issuing company was directed to provide proof by way of legal agreements within seven days of the invoice, to the satisfaction of the event organiser. If the event organiser is not satisfied by the proof provided, it can seek a refund through the courts.

The money would not be appropriated until such a time that the matter is mutually resolved.

Moreover, the order of the Delhi High Court gave four weeks to the collecting societies to facilitate prospective licensees with a search mechanism on their respective websites and also explore the possibility of accepting payment via an internet payment gateway. The court made it clear that copyright licence fees for owners can only be collected under Section 30 by these companies provided that, when called upon to do so, they prove their ownership.

The vacation bench's order was seen as diluting the previous interim order that was passed by the Delhi High Court. In fact, the orders that followed on this issue were pronounced with an objective to maintain the status quo of the provisions that existed.

The courts stepped in to ensure that the principle of transparency is followed by the societies and mandated them with a duty to disclose the list of songs along with their assignment deeds.

The societies, following the court's order, published an exhaustive list of copyrighted works over which they have an exclusive right to collect royalties. They have also uploaded the assignment deeds on their websites as per the guidelines of the order. It is evident that the present interim mechanism will surely bring a higher level of transparency and the rightful owners will be paid in a more reasonable manner, and the licence seeker will also be charged in a more logical and reasonable way.

But it should not be overlooked that the present mechanism is interim in nature. The Delhi High Court has listed the matter for a further hearing. The courts have yet to finally settle the ambiguities on the legality of these societies.

The court orders imply that if the societies provide substantial evidence of assignments by the true copyright owners to act as their agents then they can carry on with their practice of collecting royalties and granting licences on the behalf of copyright owners. [IPPro](#)

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