

Music License Brief / Update – Dec 2017

At present there are multiple agencies as mentioned below, who are engaged in the business of granting licenses for playing of music in restaurants.

- (a) PPL (Phonographic Performance Ltd.).
- (b) IPRS (The Indian Performing Right Society Ltd.).
- (c) NOVEX Communications Pvt. Ltd.
- (d) ISRA (Indian Singers Rights Association).

Background

In the past, only PPL and IPRS were authorised to grant such licenses, since they were registered as copyright societies with the government, as is required under section 33 of the Copyright Act. PPL license was applicable in case only recorded music was played, while both PPL and IPRS were applicable in case of live performance/DJ, which condition remains same. However, after coming into force of the Copyright (Amendment) Act 2012, both PPL and IPRS had withdrawn their applications for registration renewal in May/June 2014, stating that they ceased to be copyright societies under the Act, and were not desirous of continuing to carry on business as a registered copyright society. It is understood that this move was probably in reaction to the government's move of appointing an inquiry into the conduct of these societies. Their applications for renewal of registration were however deemed to be pending with the government.

Post this development, over the past couple of years, these agencies have been asserting their rights to grant and issue Licences under Section 30 of the Copyright Act. However, it is relevant to mention that Section 33 of the Copyright Act mandates that ***“No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 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)”***. The Copyright Societies would also be governed by the Tariff Scheme to be framed under the Copyright Rules, and are under the obligation to follow the guidelines of the Copyright Board for fixing the Tariff. Further, sub section (3) also states that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

Detailed update on each of these agencies is given below.

Indian Singers Rights Association (ISRA)

ISRA is registered as a copyright society, and they are engaged in granting licenses related to performer's rights of singers. License is required to be taken from them only if actual vocals of the singers are being played. Documents/list of the specific singers covered by them may be asked for and satisfactorily verified before taking the license. They have recently also entered into agreements with some other countries for collection of fees for

their singers. The relevant documentations/list for this may also be asked for and verified before taking license.

Indian Performing Rights Society Ltd (IPRS)

The government has recently completed an inquiry into the dealings of the society, post which IPRS has been granted registration as a copyright society. This registration is now being quoted by IPRS as authority for them to grant licenses. However, it may be noted that the registration granted by the government on 28th November 2017 is conditional, as mentioned in the certificate itself and reproduced below:

“The registration and the permission hereby granted are subject to the following conditions and liable to be cancelled on non-compliance with, or contravention of, any of them, namely:-

- i. That the particulars furnished in the application are true and correct and not misleading in any manner, and***
- ii. That the Copyright Society shall duly comply with all the obligations imposed on it by or under the Copyright Act 1957 (14 of 1957) and the Copyright Rules 2013.***
- iii. That the Copyright Society takes appropriate remedial action with regards to the observations as detailed in letter No. F No. 07-01/2017 –CO dated 28.11.2017 in the time bound manner and submit a report within 60 days.”***

In view of the above conditions imposed by the government, especially in relation to sub para iii above, it is suggested that IPRS may be asked to confirm compliance as mentioned in the certificate. Payment for license may be made with clear written response that in case the registration is cancelled due to non compliance of conditions, then IPRS will be liable to refund the money with interest / damages etc.

Phonographic Performance Ltd (PPL)

PPL is not yet registered as a Copyright Society, and continues to assert its rights to grant licenses under Section 30 of the Copyright Act. Our stand on the issue remains that they need to be registered as copyright society under Section 33 of the Act before carrying on the business of granting licenses.

It is relevant to mention that there are court judgments against them, as is evident from the recent case in Bombay High Court where the claims of PPL related to assignments under Section 30 of the Copyright Act have been rejected. [Attached](#) are the relevant details of the case in Suit (L) No. 1143 of 2016 titled Phonographic Performance Limited Vs Impresario Entertainment & Hospitality Pvt. Ltd. & others. In another order of Bombay HC dated 21st December 2017 ([attached](#)), PPL has been denied interim stay as being not a registered copyright society.

PPL has also been quoting a court order in their favour of Delhi HC dated 29th December 2016. In this regard, our comments on the 29th Dec order are as given below:

The order dated 29.12.2016 passed by Hon'ble Delhi High Court in writ petition being W.P. (C) No. 12076/2016 titled M/s. Event and Entertainment Management Association (EEMA) V. Union of India & Ors was further to the order passed on 23-12-2016 in this case. The 29th December order is merely an interlocutory order and has not been passed on merits of the case. The said order is an interim arrangement between the contesting parties in the said writ petition as a consent order, and thus would be binding only on the consenting parties in W.P. (C) No. 12076/2016. In addition, para 7 of Delhi High Court order dated 29-12-2016, states that if the license is issued and granted in the agent's own name, the prohibition in Section 33 will come into play. Licenses are being issued in PPL's name, and therefore provisions of section 33 of the Act are applicable for them to be registered as copyright societies.

NOVEX Communications Pvt. Ltd

NOVEX Communications is also not registered as a copyright society. They too have been asserting their rights to issue licenses under Section 30 of the Act. NRAI is recently involved in a case with NOVEX in Delhi HC, where we hope to bring up the issue of mandatory requirement for these agencies to register as copyright societies as required under section 33 of the copyright act.