



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

---

## Copyright Laws - Rise of Digital Music Streaming In India

K. Srivalli Vaishnavi<sup>a</sup>

<sup>a</sup>Damodaram Sanjivayya National Law University, Visakhapatnam, India

Received 17 September 2021; Accepted 07 October 2021; Published 11 October 2021

---

*India's rapid pace shift to online, Internet usage increased the usage of digital music streaming whereas surge of Covid-19 worked as a catalyst in increasing people using music streaming platforms to listen to music. According to the reports, the online consumption of content in India is steadily increasing. Consumers are coming up to OTT platforms as a means of accessing films and television programs, In India, 96 percent of customers hear music on their cellphones, and 99 percent of music consumers were between the ages of 16 and 24.<sup>1</sup> On-demand streaming is used by 95% of users to hear music. While 70% of the population listens to music while working or doing other things and India experienced strong growth in music streaming revenue by 18.2% as per the IFPI global music reports,2019<sup>2</sup>. Broad users of the Internet, decrease in data prices, increase in smartphone usage, the reach of online platforms in rural India increased the digital streaming market in India.*

*There is an immediate need for changes or transformation in copyright laws for contemporary situations to reduce the abuse of content in the digital era. It needs a legal framework that brings technologically advanced aspects under its ambit to the copyright Act,1957. Recently, the registrar of copyright asked for comments from Industry and legal fraternity through the mail for amending necessary laws in the copyright act.<sup>3</sup> This change in the legal framework of copyright laws of India improves the opportunities of creating content and circulating creative content in a more systematic manner by creators and avoiding the*

---

<sup>1</sup> International Federation of the Phonographic Industry (IFPI), 'Annual global music report' (Ifpi.com, 2019) <<https://www.ifpi.org/ifpi-issues-annual-global-music-report/2019>> accessed 11 September 2021

<sup>2</sup> Ibid

<sup>3</sup> BananaIP counsels, 'Suggestions on the amendment of the Copyright Act,1957-part I' (Banana IP, 4 November 2020) <<https://www.bananaip.com/ip-news-center/suggestions-on-the-amendment-of-the-copyright-act-1957/>> accessed 11 September 2021

*infringement of creator rights. This article mainly answers the question of relevancy in the need for transformation of copyright laws regarding music streaming platforms and bringing online music streaming platforms into the picture of the legal framework of copyright laws in India.*<sup>4</sup>

**Keywords:** *copyright, statutory license, intellectual property, music streaming.*

---

## INTRODUCTION

In India usage of technology is sharply increased in past few years which also increased the number of people using online streaming platforms to watch movies, videos, and music. There are many factors that increased the consumers of music from online music streaming platforms like increase in usage of smartphone, decrease in internet prices, increase in rural people of India using online music streaming platforms, and lockdown because of covid-19 also contributed to the usage of online streaming platforms by people. Another most important factor contributing to the increase of customers of music streaming platforms is the offers and extensive collection of music and playlists provided by these music streaming platforms.

While the widespread access to online music streaming is a good outcome of digitization as well as a wonder of internet access, it has been discovered that artists in the music industry do not reap many advantages. They frequently do not receive adequate royalties in exchange for their efforts. As the world grapples with the COVID-19 pandemic, we are reassured of music's eternal capacity to comfort, soothe, and lift our spirits. Some elements, such as the power of a beautiful song or the link that exists between artists and followers, never go out of style. However, certain things have changed. Because so much of the world was locked down, and live music was prohibited, most listeners listened to music via streaming in practically every part of the globe.<sup>5</sup>

## LEGISLATIVE PRONOUNCEMENTS

---

<sup>4</sup> *Ibid*

<sup>5</sup> IFPI (n 1)

The Copyright Act of 1957,<sup>6</sup> as well as the Copyright Rules of 2013,<sup>7</sup> control the copyright system in India. The last time the regulations were changed was in 2016. According to an official source, while the Act gives rights and protection to content providers, it is their duty to make that content available to an increasing number of customers at affordable pricing. The content owners may not have a monopoly on this, and it should be accessible to a growing number of people.

Section 31D of the copyright act<sup>8</sup> is introduced by the government of India in 2012 and deals with the statutory licenses for such broadcasting of literature and musical works, as well as sound recordings. This is section of the copyright act is highly debated in recent years for its interpretation. The section allowed broadcasting organizers to broadcast whatever literary as well as musical works, as well as sound recordings, by notifying them in advance of their intention to broadcast the work and paying royalties to music right holders in a way than at a rate determined by that of the Intellectual Property Appellate Board.<sup>9</sup>

Whether the word "broadcast," as defined in section 2(dd) of the copyright act,1957,<sup>10</sup> which is commonly applied to radio and television, also pertains to online streaming? The music industry is clear that this will not, as that the Bombay High Court agreed<sup>11</sup>because streaming is an 'on-demand service in which an individual could really pick and choose what he wants to hear, as opposed to radio or television broadcasts in which content is previously programmed as well as the consumer has no say in it.<sup>12</sup> Those who desire to broaden the definition of broadcast, on the other hand, have a different perspective. And so this battle of minds is currently being waged in a proposed change to a Copyright Act's Rules.<sup>13</sup>

As an official statement by DPIIT suggested that "In order to ensure effective and impeccable adherence with the Copyright Act in face of technological advancements as in digital era, and

---

<sup>6</sup> Copyright Act 1957

<sup>7</sup> Copyright Rules 2016

<sup>8</sup> Copyright Act 1957, s 31D

<sup>9</sup> *Ibid*

<sup>10</sup> Copyright Act 1957, s 2(dd)

<sup>11</sup> *Tips industries Ltd v Wynk Music Ltd* (2019) Commercial IP Suit (L) No 113 of 2018 (Bom)

<sup>12</sup> *Ibid*

<sup>13</sup> Rules 2013 (n 7)

also to bring them in line with some other applicable legislation, the Department for Promotion of Industry and Internal Trade (DPIIT) has suggested establishing the Copyright Amendment Rules,<sup>14</sup> 2019".<sup>15</sup>

### **SECTION 31D OF THE COPYRIGHT ACT,1957**

Section 31D is included in the copyright act,1957 through amendment in 2012, which allowed broadcasters to share content that had already been released with the public after paying a royalty set by Intellectual Property Appellate Board (IPAB). It should be emphasized that, unlike in Patents Act, the licensee isn't really required to first attempt to get a voluntary license from the copyright owner over the subject matter.

Since the inclusion of Section 31D into the Act, there have been differing viewpoints as to whether Section 31D includes statutory licensing for internet broadcast & streaming services too. This is because, within the scope of statutory licensing, the framework of regulations under Section 31D read with Rules 29,<sup>16</sup> and 30,<sup>17</sup> of Copyright Rules 2013 doesn't clearly incorporate references to the word "internet broadcasting."

The scope of section 31D is explained by the Department for Promotion of Industry and Internal Trade by an official memorandum dated 5<sup>th</sup> September 2016 that is to clarify whether internet broadcasting comes under the ambit of section 31D of the copyright act,1957 as follows "any broadcasting organization desirous of communicating to the public.<sup>18</sup> may not be restrictively interpreted to be covering only radio and TV broadcasting as a definition of 'broadcast' read with 'communication to the public, appears to be including all kinds of broadcast including internet broadcasting. Thus, the provisions of section 31D are not

---

<sup>14</sup> Copyright Amendment Rules 2019

<sup>15</sup> 'Government proposes changes in copyright rules may benefit websites,music streaming firms' (*Economic times*, 3 June 2019) <<https://economictimes.indiatimes.com/tech/internet/govt-proposes-changes-in-copyright-rules-may-benefit-websites-music-streaming-firms/articleshow/696381>> accessed 12 September 2021

<sup>16</sup> Copyright Rules 2013, rule 29

<sup>17</sup> Copyright Rules 2013, rule 30

<sup>18</sup> Department for Industry policy and promotion, 'Official Memorandum' (*Dpiit.gov.in*, 5 September 2016)

<[https://dpiit.gov.in/sites/default/files/OM\\_CopyrightAct\\_05September2016.pdf](https://dpiit.gov.in/sites/default/files/OM_CopyrightAct_05September2016.pdf)> accessed 01 October 2021

restricted to radio and television broadcasting organizations only, but cover internet broadcasting organizations also”<sup>19</sup>.

In a recent case *Tips Industries v Wynk Music*<sup>20</sup>, the court ruled that Audio OTT providers are ineligible for a statutory broadcasting license under Section 31 D of a Copyright Act, 1957. In this case, Phonographic Performance Limited (PPL) licensed Plaintiff's music collection to the defendants through some kind of signed license agreement in 2014. In 2016, a disagreement arose between two parties over license fees, as well as the license, that was due to also be renewed for another two years, expired. The plaintiff then sent the defendant a cease-and-desist notification, advising him to disable or eliminate the Plaintiff's music collection from the wynk music platform.

After the license was suspended in 2017, both sides attempted to negotiate terms. The negotiations went apart, so Wynk Music used Section 31D of the Copyright Act to get a statutory license and began streaming the copyrighted music. Tips filed a copyright infringement lawsuit against Wynk Music at Bombay High court and wynk music disputed the issuance of a statutory license within Section 31D of the Copyright Act, 1957, whose primary purpose is to communicate the Plaintiff's music and sound recording to the public by publicizing the Plaintiff's music as well as a sound recording.

Wynk Music's major argument was “the internet broadcasting is subject to a statutory license under Section 31D, and Wynk's music streaming are equivalent to those of a radio broadcaster. Wynk relied here on Office Memorandum published by DPIIT in 2016, which said that statutory licensing might be expanded to online broadcasting.” The court, based on the Rajya Sabha Parliamentary Committee Report of Copyright Amendment Act, 2012<sup>21</sup>, analyzed the intent of the law underlying the introduction of section 31D. The incentives of a Statutory License in Section 31D are not accessible to the Internet broadcast. The legislature intended to

---

<sup>19</sup> *Ibid*

<sup>20</sup> *Tips Industries Ltd* (n 11)

<sup>21</sup> Parliament of India Rajya Sabha, ‘Parliamentary Standing Committee on Human Resource Development Report no 227 on the Copyright (Amendment) Bill (2010)’ (*New committee*, 2010)

<<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20HRD/227.pdf>>

accessed 12 September 2021

limit the issue of a Statutory License under Section 31-D to TV and radio transmitting organizations when it passed the amending law, i.e., the Copyright (Amendment) Act, 2012.

The court held that “Those who strive safety net to exploit copyrighted works, either through internet broadcast or download aspects, without seeking/obtaining a license from the owners thereof,” while analyzing new trends in the music industry as well as the increase of over the top service providers like the Defendants.<sup>22</sup> Such exploitation of copyrighted works via internet broadcast or download facilities without first obtaining a license from copyright owners, in my opinion, constitutes a usurpation of owners' sole rights to commercial rent, sell, or convey to the public their sound recordings”.

The defendant's argument that the law meant radio broadcasting to include internet broadcasting was rejected by the court. The defendant's main source of support, the Office Memorandum of a Central Government, was also rejected. The Court decided that because they are just guidelines and lack statutory authority, they also couldn't supersede the statutory scheme as in Section 31D. In the case *Warner/chappell Music Ltd v Spotify Ab*<sup>23</sup>, Spotify intended to join the Indian music world in order to obtain a license to broadcast music online from record labels and production companies. The parties' negotiations to achieve an agreement on a license have come to a halt. In the end, despite the lack of a license agreement, Spotify released its service and offered the songs to users, including those by the Petitioners. The people's story began when Spotify announced its desire to purchase a statutory license under Section 31D of the Copyrights Act of 1957.<sup>24</sup>

Spotify filed a compulsory licensing application before Intellectual Property Appellate Board (IPAB) under Section 31D with the goal of broadcasting the Petitioner's content as an Internet broadcast. Despite the concerns, Spotify proceeded to stream the petitioner's and other users' tracks with no licensing. When the IPAB did not yet decide on royalty rates, the issue became unclear, but Spotify moved ahead and started its services. Warner Music Ltd filed a copyright infringement lawsuit against Spotify in the Bombay High Court.

---

<sup>22</sup> *Ibid*

<sup>23</sup> *Warner/chappell Music Ltd v Spotify Ab* (2019) SCC 6469 (Bom)

<sup>24</sup> *Ibid*

The application of the defendant under Section 31-D of the Copyright Act of 1957 was found to be not maintainable. The court went on to say that such an order governing the exploitation of Petitioner's work would be made once the parties had a hearing. The defendant had also been told not to file the application before IPAB until the royalty rates had been determined. The Bombay High Court directed Spotify to deposit payment of Rs. 6.5 crores with the court, with no further explanations.

## STATUTORY LICENSING FOR INTERNET BROADCASTING

A quick reading of section 31D and the judgements given by the honourable court reveals that it was written specifically for radio and TV broadcasters. For example, it mandates that the publisher be provided advance notice of the broadcast's "length and territorial scope." As a result, section 31D may not apply to online music streaming services such as Spotify and other streaming platforms, because the final user controls the audio output as it has a feature of downloading/reproducing the song which completely differs from the broadcast in TV and radio like an interactive and non-interactive medium. The Draft Copyright Amendment Rules, 2019 proposed by the Department for Promotion of Industry and Internal Trade (DPIIT) recommends expanding the statutory licensing regime and setting up of appellate board to encompass online broadcasting<sup>25</sup>. As a result, the Indian music business is still at a crossroads.

“Expansion of statutory licensing to internet broadcast, according to music industry professionals, would breach India's international commitments under the WIPO Internet Treaties, which India ratified in 2018.<sup>26</sup> There are three factors that must be followed in order to issue statutory licenses, as per the Treaty stipulations. Statutory permits should be issued only in extraordinary circumstances; they must not interfere with the usual utilization of the rights and must not unnecessarily harm the legitimate interests of right holders.”<sup>27</sup> The Draft

---

<sup>25</sup> Ministry of commerce and industry, ‘Draft Copyright rules propose setting up appellate board’ (*The Hindu*, 3 June 2019) <<https://www.thehindubusinessline.com/news/draft-copyright-rules-propose-setting-up-appellate-board/article27428490.ece>> accessed 15 September 2021

<sup>26</sup> *Ibid*

<sup>27</sup> Neha Uppin, ‘Statutory licensing of music and competition law: The Indian music industry perspective’ (*JCIL*, 2021) <<https://jcil.lsyndicate.com/wp-content/uploads/2021/02/04.-STATUTORY-LICENSING-OF-MUSIC-AND-COMPETITION-LAW-THE-INDIAN-MUSIC-INDUSTRY-PERSPECTIVE.pdf>> accessed 15 September 2021

Copyright Amendment Rules, 2019 proposed is not completely fulfilling these requirements and is contradictory in nature, so the laws need to be framed non-arbitrarily towards the copyright owner and also considering the large public reach of creative work. Even when one is eager, it is difficult to obtain music licensing. In this situation, statutory licensing is a good option. It will be simple to obtain licenses and follow the law under such a paradigm. It will remove all barriers to license, compliance, and progression in one easy step. It is past time to establish a royalty rate for all types of broadcasting, notably internet broadcasting, and to put Section 31D into force. Sticking with voluntary licensing will only stifle creativity and the music industry's growth. The statutory license with fixed royalty rates would not exploit the licensee as well as the copyright owner and also there would be no monopolistic behavior from copyright owners.

It is a well-known truth that authors don't really, or earn very little, compensation from the licensing of lyrics, musical creations, and sound recordings. The 2012 amendment proposed and made compulsory royalty sharing in order to remedy this issue<sup>28</sup>. The recorded music industry has traditionally been unjust to authors, and maintaining voluntary licensing will only exacerbate the problem. The majority of record labels don't really feel that authors are entitled to a royalty share while sound recordings are played or commercialized in any other way. They argue that sound recordings are self-contained works that do not require any use of musical compositions and lyrics. On the one side, they don't want to split royalties with authors, and then on the other, they want to be appropriately rewarded via voluntary licensing. Voluntary licensing implies a lack of transparency, which implies the potential of withholding information from authors and failing to pay them the royalty part due. Statutory licensing, on the other side, allows authors to keep track of how their works are being used and establishes standards for license agreements.

## CONCLUSION

Section 31 D is not really the ideal option for internet companies to obtain a license. In any event, the legislature must take some steps to establish a statutory licensing regime that will

---

<sup>28</sup> Copyright (Amendment) Act 2012



regulate the streaming sector in India, because, as one might expect, online music streaming is the way of the future, and India is falling behind in terms of its online streaming legislation. The Copyright Act must be revised immediately to include online broadcasting. The real rights of copyright owners, as well as the greater public interest included in the distribution of musical works to online consumers by internet broadcast service providers, must be considered like this in an amendment. The purpose of works generated under copyright regime would be for the public in general to experience, as well as the financial gain to record companies is only a consequence of a process of obtaining music from creators to the public at large. The copyright system is neither reliant on the recording industry corporations, nor is it produced by their investments. The function of record labels has shrunk as the recording has grown less expensive and easier. They help in commercialization, but they don't share any of the profits with authors.

Statutory licensing does have the ability to advance the objectives of the most essential stakeholders as in the copyright system, authors as well as the public at large. It will create music licensing very clear, transparent, and well-organized. With the growing digital market and people listening to music on online streaming platforms, there is an immediate need for structured laws that govern the copyright system which leads to transparency, avoids illegal reproduction, abuse of other music works by the technological advancements. There is an immediate need of including internet broadcasting, non-interactive media, on-demand streaming services in the purview of copyright laws in India.