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SUB: IMI’s Responses to the White Paper of the Committee of Experts on a Data  
Protection Framework for India (the “White Paper”)  

Dear Sir,  

The Indian Music Industry – an IFPI affiliate, represents the Music Companies a.k.a. Record  
Labels on an all India basis. Almost all major domestic, regional and international companies  
operating in India are represented by the IMI. As part of our role in protecting the rights of  
our members, we investigate infringements of copyright and related rights, including  
infringements online. IMI welcomes the White Paper and the stated objective of the  
Committee of Experts in crafting a future data protection bill: to “ensure growth of the digital  
economy while keeping personal data of citizens secure and protected” (White Paper,  
Foreword at p(i)). Whatever proposals come out of the present consultation, in order to  
achieve these twin objectives, legislators will need to strike a fair balance between individual  
interests including the right to “informational privacy” and the right to property, including  
the protection of intellectual property rights.  

I. DATA PROTECTION RULES IN THE CONTEXT OF INTELLECTUAL  
PROPERTY RIGHTS ENFORCEMENT ONLINE  

The recorded music industry has invested very substantially in the development of the digital  
music market. Record companies have licensed over 40m tracks to over 340 digital services  
worldwide including, 14 services in India services (such as Hungama, and Wynk Music).  
India has been at the forefront of this digital revolution: in 2016, digital sources accounted  
for 65% of recorded music revenues (by trade value) compared to a global average of 50%.
Streaming revenue in India increased over 50% during 2016 and digital revenue overall grew by over 30% to reach US$72.1m.

The potential of the online music market in India is huge. India is currently the second largest Internet market in the world, after China, and the second largest smartphone market in the world. By November 2017, there were 350.7 million broadband subscribers, a number that continues to grow exponentially, offering an enormous opportunity for both domestic and international creative industries.

However, the high number of pirate services online in India severely undermines the market’s potential. The launch of 4G services, cheaper data rates, and increased smartphone penetration has made digital piracy easier and more common. A consumer survey of active Internet users in India showed that 94% of those surveyed downloaded pirated music content in the last six months. Legitimate services face stiff and unfair competition from piracy in numerous forms including torrent sites, cyberlinking sites (sites that index links to infringing cyberlocker files for download), and stream-ripping websites and apps (which offer Internet users the ability to make free permanent downloads of music from streaming video services).

The protection of intellectual property rights against online infringers ultimately requires the identification those responsible for alleged infringement. Data protection rules can enable illegal operators to hide behind claimed “informational privacy” while engaging in infringement with impunity, if the rules do not also provide for access to and use of data for legitimate purposes.

Effective redress mechanisms are fundamental to the health of the digital economy as a whole, and not only to the digital music market. Adequate data protection laws need to strike the correct balance to ensure that right holders are able to investigate and take action in respect of intellectual property infringements. More generally, the public interest is also served by balanced data protection laws that do not enable unlawful actors to hide their identities from the public.

II. LEGAL PRINCIPLES: BALANCING RIGHTS AND THE RIGHT TO AN EFFECTIVE REMEDY

Any data protection legislation arising from this consultation must enable intellectual property right holders to fully exercise and enjoy the rights endowed by various laws including the Copyright Act, and the enforcement authorities to prevent, stop, investigate into and take criminal or administrative action against any act that infringes or impairs intellectual property right. If legislation restricts the processing of personal data without

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3 Survey conducted in 2017 by Ipsos at the request of IFPI.
consent it will be vital to include appropriate exceptions including allowing the processing of personal data for prescribed “legitimate purposes”. Legitimate purposes should include, expressly, the investigation of, and action in respect of, unlawful activity including intellectual property rights infringement.

An example of how personal data is relevant to the enforcement of intellectual property rights online is the publicly available WHOIS database, which is used by IMI’s anti-piracy team, other right holders, consumer protection agencies, and law enforcement agencies (amongst others) on a daily basis. The WHOIS database includes personal data such as a domain registrant’s name, address and e-mail address. Ultimately, this data enables right holders to identify the responsible party behind an infringing site and to commence proceedings against them in some cases. This data is also used in the pursuance of other public interests, such as enabling consumers to verify who they are engaging with online, particularly when entering into transactions.

The current debate regarding how WHOIS will function in light of the EU General Data Protection Regulation illustrates the practical and commercial difficulties which may arise if legislation does not state clearly what is considered a legitimate purpose for which personal data may be processed. Including the express statement recommended above (as underlined) in any legislation will be essential to enable timely and effective action on intellectual property rights infringement. It represents the correct balance between the rights of the individual to privacy, and the rights of others who may be affected by their actions.

Further examples of “legitimate purposes” may include:

- Internet intermediaries have the duty under the Copyright Act and the Information Technology Act to disable access to or remove infringing contents transmitted, stored or hosted by them. As provided under the Information Technology (Intermediaries Guidelines) Rules, the intermediaries are required to work with the content users or owners to disable the infringing contents and provide information or any assistance to the authorised government agencies for the purpose of verifying infringers’ identity, or for the prevention, detection, investigation, prosecution and punishment of offences under any relevant law. For the said mechanism to work, it requires the intermediaries to provide or transfer information of one party to another or to the government agencies, and such information may be protected under data privacy law.

- The implementation of blocking pursuant to Section 69A of the Information Technology Act and the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules. The blocking process involves the sending of request from a party to the government authorities and the provision of directions by the government authorities to another agency or an intermediary to implement the blocking. The information may include information protected by data privacy law.
- The prevention or detection of crimes (including those criminal offences under the Copyright Act), apprehension and prosecution of offenders, compliance of any law or court order, and conduct of any legal proceedings.

Fundamentally, data protection rules should not provide a legal shield for illegal activities in the online environment. Any policy recommendations resulting from the present consultation should take into account the necessary balance of rights and the need for rights holders to defend their intellectual property rights.

We hope the Committee considers our above suggestions and incorporate them in the draft of the data protection legislation. For discussions, clarifications and further information, please contact Mr. Blaise Fernandes, President and CEO (blaisefernandes@indianmi.org) and Siddhant Singh, Assistant to CEO (siddhant@indianmi.org).

Yours faithfully,

[Signature]

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