Date: May 25\textsuperscript{th}, 2017

To,
Secretary
Department of Telecommunications,
Ministry of Communications,
GOI

\textbf{Sub:} Response to the Draft National Digital Communication Policy, 2018

Respected sir/ma’am,

IMI, a.k.a. the Indian Music Industry is the apex body in the recorded music industry in India and is affiliated with IFPI, a.k.a. International Federation of the Phonographic Industry. At the outset, on behalf of IMI and IFPI, our heartfelt gratitude for seeking stakeholders’ comments on the Draft National Digital Communication Policy, 2018. We support the Government’s policy for improving digital connectivity in India. Thanks to Digital India Initiative by the government, digital music steaming is booming, aiding the music industry’s double-digit growth for two consecutive years and the Indian music industry is expected to out-perform most evolved recorded music industries in the digital domain and climb up in rankings in the coming years.

Our industry has licensed over 40 million tracks to some 350 digital services, and there is great potential for digital growth in India. To achieve that potential, digital industries need fair digital markets. In particular:
1. The provision of internet coverage to all citizens should come along with proper measures to ensure respect and protection of copyright, since contents are so easily accessible on the web. Such measures include:
   (a) Putting in place effective administrative website blocking with emphasis on the sites hosted in Pakistan discussed in Appendix A, and making sure such website blocking measures are on both domain level and IP address level so that infringing website would not reappear under different disguises;
   (b) Strengthening and expediting criminal prosecution;
   (c) Copyright education and awareness programmes in all parts of the country.

2. When restructuring the legal and regulatory frameworks for service/content providers such as telecoms, broadcasters and ISPs, the interests of different stakeholders must be balanced, and a proper system must be in place for copyright holders to be fairly remunerated for use of their creations:
   (a) Digital content providers must be distinguished from broadcasters under the copyright legislation in respect of licensing;
   (b) In either case, right holders should be allowed to exercise exclusive rights over broadcasting, making available, and other kinds of communication to the public and freely negotiate licenses on commercial terms, and not be subject to statutory license; and the definition of "broadcast" under the Copyright Act should be corrected and made in line with internationally agreed definition, i.e. it should only cover wireless means of transmission (Please refer to Article 2(f) of the WIPO Performances and Phonograms Treaty).
   (c) ISPs must not benefit from any kind of copyright infringement exemption/safe harbour if they are more than a technical, passive, neutral service provider. Guidance may be sought from Art. (37) to (39) of the EU Proposal for a Directive on Copyright in the Digital Single Market 2016 (https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-593-EN-F1-1.PDF).
   (d) The safe harbour provisions under the IT Act should be improved, in particular, the notice and take down mechanism should be enhanced to notice and stay down.
(e) Civil and criminal liability should be imposed on service providers that actively distribute, promote or provide access to works without authorisation from the right holders.

3. Providing financial and technical support to the creative industry to utilise digital platforms / infrastructures to create, promote, distribute and commercialise their works.

4. Entering into the WIPO Internet Treaties (i.e. the WIPO Performances and Phonograms Treaty and the WIPO Copyright Treaty) to make sure other countries to the treaties reciprocally protect the digital rights of Indian creators.

Thank you once again for this opportunity to respond to the Draft Policy. On behalf of IMI, I humbly appeal to the concerned authorities to kindly consider the above submissions and we will be happy to provide any supplementary information. Please feel free to reach out to Siddhant Singh (siddhant@indianmi.org) or Blaise Fernandes (blaisefernandes@indianmi.org) for any further information.

Thanking you,
Sincerely,

BLAISE JACOB FERNANDES
President and CEO
The Indian Music Industry
Appendix A: Case Study: Songs.pk

Out of the approx. 150 sites that thrive on pirated Indian content, nearly half are from the US, followed by 11 from Canada, 9 from Panama and 6 from Pakistan. While hostile neighbors like Pakistan have benefitted from infringing Indian IP in the past though the physical format with well documented evidences of fugitives like Dawood Ibrahim reported to have agents who produce and sell pirated Bollywood movies and music CDs worldwide, this practice to undermine the rights of Indian IP owners have carried forward to the digital domain as well. Before the Hon’ble Calcutta High Court order to block it, illegal downloading website from Pakistan, songs.pk was among the most popular source for pirated Indian music. However, within a few days of the ruling, it appeared with a new domain songspk.name, then several other domains in the next few years and in October 2017, it reappeared under its old domain name, songs.pk, still operating in contempt of the Hon’ble HC ruling.

Songs.pk is only one of the many websites against which the music industry, the judiciary and the government has taken strict action, but many more new links emerge at a regular interval and they continue to stack massive profits from ad-revenue. Through such placements, a single pirate site can bring in millions of dollars annually, and because they don't pay for the distribution rights to films and TV shows, they can generate profit margins in the range of 86% to 93%. The top 100 such sites illegally exploiting Indian films and music make INR 3500 Cr. a year by exploiting Indian content, and to put it in perspective, the Indian film and music industries grossed little over 1300 Cr. and 375 Cr. in 2016, respectively. In other words, the pirates made 52% more than the producers of the media.

While most of such websites operate out of US and Canada, stringent anti-piracy laws give provisions for the rights owners to act against infringers in these countries. However, in the case of Pakistani websites like Songs.pk, it has become a ‘whack-a-mole’ situation where in the last 5 years, songs.pk has reemerged under 20 different domain names after IMI took down the website several times with the help of IFPI under the directive of the Hon’ble Calcutta High Court.

[2] India today: Not just terror, film piracy trail too leads to Pakistan
[5] List of other domains for songs.pk