THE INDIAN IMI MUSIC INDUSTRY Formerly IPI Estd. 1936

THE INDIAN MUSIC INDUSTRY

BF-170, Saltlake City, Sector - 1, Kolkata - 700064.

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~~10th June, 2016.~~

Shri Rajiv Aggarwal
Joint Secretary
DIPP
Ministry of Commerce & Industry
Udyog Bhavan
New Delhi.

Dear Sir ,

Ref : Representation of Indian Music Industry **[IMI]** .
To stop inclusion of Internet from Compulsory / Statutory Licensing.
31D : I & B Ministry's **'Expert Committee'.**

We thank you for the kind courtesy extended to us during our visit to your office on 7th June 2016.

Sir , of the various agenda points discussed during the meeting we emphasised on one issue which is of immediate and grave concern to the Music Industry and is the subject matter of this letter.

We hereby enclose a detailed representation on behalf of the entire Indian Music Industry for your consideration and support.

As a matter of urgency may we request you to take up this issue forthwith with the I & B ministry as their 'Expert Committee' has been deliberating this matter for sometime now .

As you are aware, an "Expert Committee " functioning within the Ministry of I & B is seriously considering the inclusion of Internet Music Streaming Services under the purview of Statutory Licensing under Section 31D and Compulsory Licensing under Section 31(1) (b) of the Copyright Act.

This would be detrimental to the Indian Owners of Copyrights , to the Authors and all the providers of digital content. The Internet is a boundary-less worldwide medium and the consequences of such an artificially contrived market distortion would be very wide, disadvantaging Indian Owners of Copyright on a Global scale.

The implications are staggering as it would bring not only common websites but every conceivable form of digital communication to the public , even mobile apps , within the scope of Statutory / Compulsory licensing which would critically diminish rather destroy the commercial valuation of Indian Music content.

AFFILIAT

In sum to allow broadcasting organizations access to the Internet under cover of broadcasting would open up avenues for them far beyond the scope of anything resembling a broadcast.

This unjust market distortion would be immeasurably worsened by the consequent application of non-voluntary licensing to the Internet.

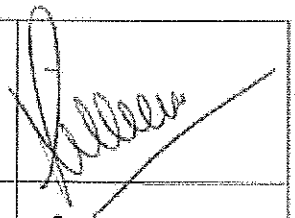
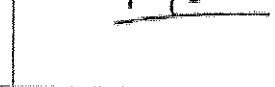
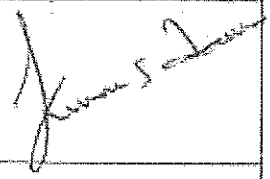
We seek a representation on this Expert Committee and DIPP's whole hearted support to stop Internet being brought under the ambit of Statutory / Compulsory licensing as it would be extremely detrimental to the legitimate interest of the INDIAN MUSIC INDUSTRY.

We would be happy to provide you any further information that you may require to enable both DIPP and IMI being suitably represented on I & B Ministry's "Expert Committee".

Once again Thank You for your time and support.

Kind Regards,

Yours Faithfully ,

Shridhar Subramaniam	**President – India & Middle East,** **Sony Music Entertainment (I) Pvt. Ltd.,** **92, Main Avenue, Santacruz (West),** **MUMBAI 400054** **IMI Board Director**	
Vikram Mehra	**Managing Director,** **SAREGAMA India Limited,** **2nd floor, Spencer Building,30, Forjett Street,** **Near Bhatia Hospital, Grant Road (W),** **MUMBAI 400036** **Special Invitee IMI Board**	
Kumar Taurani	**Chairman & Managing Director,** **TIPS Industries Ltd.,** **501, Durga Chambers, Linking Road,** **Khar (West), MUMBAI 400058** **IMI Board Director**	
Devraj Sanyal	**Managing Director & CEO,** **Universal Music Group South Asia,** **EMI Music South Asia.** **Enchanted Valley Carnival** **4th Floor, Samir Complex, St. Andrew's Road,** **Bandra (West), MUMBAI - 400 050, India** **IMI Board Director**	
Ganesh Jain	**Chairman & Managing Director** **Venus Worldwide Entertainment Pvt. Ltd.,** **106/1, Blue Diamond Bunglow,** **Opp. S N D T College, Juhu Tara Road,** **Santacruz (West), MUMBAI 400049** **IMI Board Director**	

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ENCLOSURE TO LETTER DATED 16.6.2016 TO SHRI. RAJIV AGGARWAL, JOINT SECRETARY, DIPP, MINISTRY OF COMMERCE & INDUSTRY, UDYOG BHAVAN, NEW DELHI.

NOTE :
Exclusion of Internet music streaming services from the purview of Statutory Licensing under Section 31D and of Compulsory Licensing under Section 31(1)(b) of the Copyright Act, 1957

The Indian Music Industry [IMI] is the second oldest Music Industry in the World established way back in 1906.

IMI has over the years withstood the onslaught of piracy through its singular effort of protecting IPR and stands today as the only legitimate Music Industry in the entire sub-continent. Pakistan , Sri Lanka , Bangladesh & Nepal do not have a legit Music Industry having surrendered their IPR to pirates.

Over 300 Members of IMI have over the past several decades been involved in the creation , nurturing , development and promotion of Indian Music in all the 18 official languages and 32 dilects of INDIA.

IMI Members sheer passionate commitment and significant investments has resulted in many a budding artist become legendary performers, lyricists and music composers reaching International acclaim.

We have recently learnt that some representations have been made to the I & B Ministry requesting inclusion of audio streaming over the Internet within the scope of Section 31D and/or within the definition of broadcast under section 2(dd) of the Copyright Act, so as to subject all Internet related music services to the regime of Statutory/Compulsory Licensing under Sections 31D of the said Act. It is learnt that the representations are under active consideration of an Expert Committee functioning within the Ministry of I & B which includes representatives of the broadcast industry but excludes any representation of the Music Industry.

We submit that any such step would be a wholly unsupportable encroachment on the Indian Music Industry's intellectual property rights and our legitimate business, contrary to law and totally beyond the scope both of the Copyright Act and of the law relating to broadcasting.

We would also like to add, with respect and in the public interest, that it would be more wholesome for the Government to involve all key stakeholders in consultations on such matters. Whenever the representatives of the broadcasting industry are invited for such meetings and consultations, those of copyright owners whose works are the subject-matter of the deliberations should also be invited.

Our main business, investment, labour and source of revenue is licensing the use of our copyrighted recorded music. We do this, in exercise of our rights under the Copyright Act, on a commercially negotiated willing-buyer willing-seller basis, granting licences under section 30 to all possible mediums including but not limited to Television, Radio, Internet, Cable TV, Terrestrial TV, Public Performance Licenses (which covers a wide range of shops and establishments, hotels, restaurants etc.) and to Telecom companies/ mobile service providers.

I. STATE OF THE MUSIC INDUSTRY AND DIGITAL CARRIERS

(1) Our content is available in various physical formats such as Cassettes, CDs and DVDs. However, over the last decade, the sale of music in physical formats has declined precipitately, is now almost negligible, and will not last much longer. This is a global phenomenon, and compounded in India by unbridled piracy. In India music is increasingly being heard on FM Radio and digitally on the Internet/mobile devices. Hence, virtually the entire revenues and sustenance of the music business come from such licensing.

At the same time, music royalty generated from radio and TV broadcasting are severely constrained by the draconian compulsory and statutory licensing regime . Radio revenues have already dropped substantially in consequence of the Compulsory Licensing Order issued by the Copyright Board in 2010, which fixed music royalty at a most unreasonable 2% of net revenue, as against the then prevalent Rs. 660 per needle hour which roughly works out to 7-8 % of revenue.

It is pertinent to add that the FM radio broadcasting industry has been able to collar unforeseen benefits because of the flawed nature of the Copyright Board's order: leaves loopholes including barter transactions, third party prior period adjustments, details of bonus airtime, etc which the Copyright Board is not competent to identify and the order applies to the entire music industry not excluding record labels who were not parties in the complaint determined by the Board.

Also, licensing revenue from under-lying works has taken a body-blow following adverse Orders from the Hon'ble Bombay and Delhi High Courts in 2013 and this is now before the Apex Court as an SLP.

Therefore, our only remaining avenue for livelihood and survival lies in new media i.e. the Internet and other forms of digital communication to the listeners/public.

The two main modes of digital exploitation are downloading (whereby the content is retained on the user's device either permanently or for a fixed period); and streaming whereby the user accesses the music transiently to listen to it on his device (with facility of temporary cache). Streaming is developing world-wide as the most important future source of licensing revenue. Besides international players like Guvera, there are India-based streaming services like Saavn,

Ganna and others. Such enterprises providing streaming services are able to further encash their acquired rights in recorded music by allowing their audience to download/ cache songs for use offline, by charging subscription fees additionally for this feature and/or the enhanced advertising revenue that they can recover for the wider reach that they achieve by means of such services. Copyright owners, obviously, have to factor this into negotiated license fees.

Even this bristles with real challenges. The digital environment is infested with ubiquitous, hydra-headed piracy perpetrated by elusive and nebulous criminals, many from Pakistan; and the un-cooperative attitude of ISPs. In real terms, despite the opportunities it may appear to have, the revenues of the music industry are declining.

(2) In sharp contrast, the broadcasting industry does not suffer any of the commercial risks involved in acquiring rights in music and marketing the same, it suffers none of the risks that the music industry suffers from "flop" releases. Rather, broadcasters can cherry-pick only the "hits", thus exploiting the music company's best assets to attract their audience and gain advertising revenue, without taking any of the music company's risks.

(3) The television broadcasting industry is not only growing but is also able to expand its reach by the growth of video-on-demand. This industry is thus able to enjoy the benefits of statutory licensing under section 31D of the Copyright Act far beyond the scope of what was even intended or foreseen by Parliament, giving its audience an interactive experience that encroaches upon the possibility of making-available services on the Internet which are the sole surviving opportunity for the music industry. And this kind of service by the broadcasting industry is not constrained by piracy in the same way as Internet business models. Here, the statutory licenses under section 31D would potentially be misused to bring the television broadcasting industry windfall gains.

Again, the FM radio broadcasting industry has been very rapidly expanding its reach with ever more broadcasting stations, and targets an audience that grows not only with greater access but with the steady shift of consumer preferences towards this new form of music consumption. This again, has the consequence of continually expanding the effective scope and commercial scale of the non-voluntary licenses available to FM radio, further encroaching on the recorded music industry.

(4) These structural advantages that the broadcasting industry enjoys would in normal circumstances be factored into commercial licensing negotiations. But the non-voluntary licensing regime radically distorts the market: in the entire chain of transactions from acquisition of rights to produce and market the sound recording, to the consumer, it is only the price payable by the broadcaster that is subject to regulation. By contrast, the broadcasters' own advertising revenues are unregulated and growing with the growth of their audience.

The present stagnation of the music industry, as compared to the ever-growing business of radio broadcasting, is reflected in the following data extracted from the *FICCI-KPMG Indian Media and Entertainment Report 2015*:

Industry size (INR billion)	2008	2009	2010	2011	2012	2013	2014	2014 over 2013
Radio	8.4	8.3	10.0	11.5	12.7	14.6	17.2	17.6%
Music	7.4	7.8	8.6	9.0	10.6	9.6	9.8	2.3%

As this authoritative data shows, the music industry is actually declining in real terms, having regard to inflation.. By contrast, the radio broadcasting industry is flourishing on the back of the content created by the music industry.

Background Legislative History

(1) At the time of enactment in 1957 the compulsory licensing provision in the Copyright Act (Section 31(1)(b)) was enacted envisaging the possible need for stray and rare situations of compulsory licensing to All-India Radio in case of difficulties with rights owners. In fact no such problem has ever arisen; to this day All-India Radio and Doordarshan broadcast music on the basis of freely negotiated voluntary licenses and enjoy perfectly cordial relations with the music industry. But with the advent of FM Radio in the 1990s, in particular, the actual scope and commercial consequences of compulsory licensing has been widened far beyond anything that could have been foreseen at the time when the compulsory licensing provision was enacted in 1957.

(2) The Copyright (Amendment) Act, 2012 has compounded this expropriation of our intellectual property by introducing Section 31D which innovates statutory licensing for music on TV and radio, concurrently with compulsory licensing. Now, under Section 31D, broadcasting companies apparently have a right to use our copyright-protected content without any permission at all, at flat rates fixed by the Copyright Board, a non-expert body whose composition is currently under constitutional challenge.

Several companies, have challenged the constitutional validity of the relevant provisions of sections 31 and 31D, and also the composition of the Copyright Board itself, and these challenges are currently *sub judice* before the Calcutta High Court. It is relevant to note that the Hon'ble Calcutta High Court has issued notice to the Union of India to respond in the matter and has also passed an interim order directing the Union of India to give a notice of 10 days in advance to the petitioner before initiating any proceedings under Section 31D.

(3) The legislative developments described above reflect a continuous process of encroachment by the broadcasting companies on the rights of copyright owners. For example the scope of the then proposed statutory license for FM radio that was included in the Copyright (Amendment) Bill 2010 was subsequently widened by the amending Act of 2012 to cover television as well.

Further, it is pertinent to note that the effective scope of non-voluntary licensing expands with such new developments in broadcasting as video-on-demand services. Video-on-demand services by broadcasters break the mould by adding an interactive feature to the licensed activities of broadcasting organisations and further encroach on the market share of other modes of communicating recorded music to the public.

(4) In this background we are shocked and disappointed to learn that there is an attempt to expand the broadcasting industry's appropriation of our content even to the Internet. Worse, this further encroachment on our rights is, we are given to understand, sought to be effected by administrative fiat, beyond the clear intention of the statute and at a time when the provisions which the broadcasting industry seeks to invoke are themselves under judicial challenge and in part subject to an interlocutory order of the Calcutta High Court.

Licensing of Recorded Music:

(1) Under section 18 of the Copyright Act, the rights owner's rights are divisible and the rights owner has complete liberty under section 18 read with section 30 of the said Act to licence different rights to different persons for use in different media on/for appropriate terms, periods, territories.

(2) Each different mode of accessing music constitutes a different market. The audience segment for each different medium varies; audience preferences are different for different genres of music and modes of access. The economic, business and technological considerations are different in each case. For some genres, regional and language considerations are also important. The rights owner is under practical compulsions and expectations to license his music in a disaggregated manner targeted at different uses and audiences and enjoys full legal rights to do so.

Therefore, the same licensing and royalty arrangements and modalities cannot be applied across the board to the main different markets viz. Television, Radio, Internet, Cable TV, Terrestrial TV, Public Performance Licenses (which covers a wide range of shops and establishments, hotels, restaurants etc.) and to Telecom companies/ mobile service providers.

Sharp Differentiation between Broadcasting and the Internet

Communicating music to the public on the Internet is not comparable to broadcast on TV and Radio. The Internet is a different technical, commercial and legal environment altogether. Unlike Radio and TV, which are unidirectional from broadcaster to audience, the Internet is a boundary-less, multi-directional and participative medium.

Broadcasting is a regulated medium, with important barriers to entry, and little scope for customisation. By contrast, in cyberspace, the Internet Service Provider (ISP) alone is subject to a licensing regime; but the ISP is a mere passive conduit and plays no active role in regulating the flow of content to the public. There are no barriers to entry for purposes of disseminating content; anyone can put up a website or mobile app; there is endless scope for customization of services through different business and delivery models. Unlike the position in broadcasting, no one making content available on the Internet is subject to prior licensing restrictions on content.

The distinction between these two completely different technical and commercial environments is reflected in the standard industry terminology: "webcasting" and "simulcasting" are Internet-specific activities of simultaneous streaming services. These activities are not an extension of broadcasting services, and are not treated as such. The so-called "Internet radio" is a misnomer, it is merely a form of streaming service and is not subject to any regulatory regime like radio broadcasting; it is merely an entrepreneurial business model for providing streaming services on the Internet. "Internet radio" is a commercial, not a legal, term. It has nothing to do with broadcasting in the legal sense.

Likewise, providing access to individual recordings on the Internet, whether for streaming or downloading, has no relationship at all with video on demand (referred to above).

The distinction between broadcasting and the Internet is elaborated further in the discussion of legal issues below.

II. LEGAL ANALYSIS

So as to neutrally examine the issues by legal experts, we have obtained legal advice on this matter and would like to assist the Ministry with the submissions below.

We are advised that the interrelated legal questions, which are pertinent, are:

(i) **Whether licenses granted to broadcasting organisations, to broadcast their signals by means of satellite or terrestrial broadcasting, also extend to the Internet?**

(ii) **Whether "broadcasting" as defined in Section 2(dd) of the Copyright Act extends to communication of music or other content to the public via the Internet?**

(iii) **Whether non-voluntary licenses enjoyed by broadcasting organisations under Sections 31D or 31(1)(b) extend to communication to the public via the Internet?**

We are advised that the answer to all three questions is in the negative.

Scope and purpose of a broadcasting license:

(1) Broadcasting organisations require two kinds of licenses, viz. (i) a Grant of Permission (GOPA) (or similar regulatory approval) to offer broadcast services; and (ii) a wireless operating license under the Indian Wireless Telegraphy Act, 1933.

A broadcasting license is a right to transmit electronic signals, and each broadcasting license pertains to signals in a particular wave length for a particular mode. Each broadcasting license granted by the Government is for the broadcast of signals within a certain spectrum in a specific technical mode, i.e. each such license is also limited to a particular mode such for satellite broadcasting which may be for uplinking, or for downlinking, or for DTH etc. or for terrestrial broadcasting. Each broadcasting license is a tightly circumscribed limited-purpose permission as above, also limited in its territorial coverage (notably in the case of FM Radio) and subject to tight controls in regard to content.

In a broadcasting licence, insofar as there is any reference to content at all, it is for restrictive purposes. For example each FM Radio licence is limited to a particular territory; the broadcaster's right to broadcast news and current affairs programmes is limited to those of All India Radio in exactly the same format and unaltered, and to certain kinds of public announcements.

(2) The consumer receives the broadcast on a device envisaged by the Indian Wireless Telegraphy Act, 1933; and not on a computer/mobile over the Internet. A broadcasting organisation thus cannot communicate content to the public over the Internet in its capacity as a broadcasting organisation under the terms of its broadcasting licence. Any person, howsoever designated (i.e. even if he calls himself a broadcaster) who communicates any kind of content to the public via the Internet (even if he calls it "Internet radio") would not be doing so in the capacity of a licensed broadcasting organisation, but would merely be doing so on the same footing as any other person providing content for downloading or streaming on the Internet.

"Broadcast" and "communication to the public" under the Copyright Act.

It is seen thus that the license under which a broadcasting organisation is permitted to operate does not, and cannot, extend to the Internet. The next question that arises is whether, despite this, a broadcasting organisation can communicate content to the public by virtue of any provisions of the Copyright Act. Here again, the answer has to be in the negative for the reasons given below.

(1) The Copyright Act uses but does not define the term "broadcasting organisation", hence the term has to be understood in the generally accepted sense of an organisation having the lawful right to broadcast, i.e. an organisation that holds a broadcasting license. The said Act grants a specific right, distinct from copyright, to broadcasting organisations under section 37 of the Act, viz. the "broadcast reproduction right".

This broadcast reproduction right comprises the following exclusive rights:
(a) the right to re-broadcast its broadcasts (i.e. transmit the signals simultaneously);
(b) the right to causes the broadcast to be heard or seen by the public on payment of any charges;
(c) the right to make any sound recording or visual recording of the broadcast; or reproduce, sell or give on hire such sound recording if made without permission.

Infringement of any of the above rights is infringement of the broadcast reproduction right, not infringement of copyright. The Division Bench of the Delhi High Court distinguished this right from copyright in *ESPN Star Sports v Global Broadcast News Ltd. & Ors.* 2008 (38) PTC 477 (Del):

"We have found that the broadcast reproduction right in respect of telecast of live events like a Cricket match are separate and distinct right as from copyright and as such Section 61 [of the Copyright Act] *is not applicable to broadcast reproduction right."*

In other words, the rights that the Copyright Act gives to broadcasters do not expand the normal definition of the terms "broadcast" and "broadcasting organisation".

(2) The definitions of "broadcast" in section 2(dd) and of "communication to the public" in section 2(ff) have to be read harmoniously in the above context. The two definitions are reproduced below:

(dd) "broadcast" means communication to the public-
(i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or
(ii) by wire,
and includes a re-broadcast;

(ff) "communication to the public" means making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing physical copies of it, whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available.

Explanation. -For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall he deemed to be communication to the public;"

Now although the term "communication to the public" occurs in both definitions it would be erroneous to conflate the two. Since the legislature has provided a different definition for "broadcast" it has to mean something different from "communication to the public". "Communication to the public" is a much broader term including within its scope every mode of communication of any copyrighted work of any kind to the public by any means whatsoever (except the issue of copies) including the Internet, public performance or any other means of display or diffusion; and also broadcast. But "broadcast" as separately defined in section 2(dd) is a much narrower term: it is only one of many possible instances of "communication to the public".

Section 31(1)(b) clarifies the position further: a complainant can invoke this provision to seek a compulsory licence from the Copyright Board only when (emphasis added) the copyright owner

"has refused to allow communication to the public by [broadcast], of such work ... on terms which the complainant considers reasonable;"

In other words, the possibility of compulsory licence is restricted to "communication to the public by broadcast" and does not extend to all communication to the public. "Broadcast" means something narrower than "communication to the public". The two do not mean the same thing.

The pertinent law on statutory interpretation is well settled and is stated succinctly by a three-judge bench of the Supreme Court in *J.K. Cotton Spinning and Weaving Mills Co. Ltd. v State of U.P. & Anr.* AIR 1961 SC 1170:

"In the interpretation of statutes the courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect.

(Quoting and approving Craies on Statute Law): *"The rule is that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply."*

(3) Therefore, it is crystal clear, and the only possible interpretation, that the meaning of "broadcast" for the purposes of the Copyright Act has to be understood as follows:

(i) Broadcasting is the activity done by a broadcasting organisation in pursuance of its broadcasting licence.

(ii) All communication to the public is not broadcasting; broadcasting is only the communication to the public of content by means of the signals which the broadcasting company is licensed to transmit.

(iii) There cannot be any difference between the subject matter of compulsory licences under section 31(1)(b) and 31D of the Copyright Act, since both are restricted to broadcasting.

(iv) The compulsory and statutory licensing provisions contained in section 31(1)(b) and 31D of the Copyright Act apply only to the communication of content to the public by broadcast in the sense described above. If a company which holds a licence as a broadcasting organisation wishes to communicate content to the public over the Internet, it stands on the same footing as any other person doing the same activity; and must obtain the licence of the copyright owner. Any licences whether voluntary or non-voluntary that it may have obtained for communication of any content to the public by broadcast cannot extend to the Internet; it will have to obtain separate voluntary licences from the copyright owners for the same.

Voluntary and Non-Voluntary Licences for Broadcasting of Content:

(1) In light of the above discussion, it is clear that, if a copyright owner licenses any content to a broadcasting organisation for the purpose of broadcast, then the scope of such licence (unless specifically provided otherwise) must necessarily be limited to the activities, like FM Radio broadcasting etc. for which the broadcasting organisation holds a broadcasting licence. For example, if a music company, being owner of copyright, licenses an FM Radio broadcaster only to broadcast certain sound recordings on its channel, the FM Radio broadcaster cannot then, without the permission of the music company, use the sound recordings for any other purpose: it cannot communicate the sound recordings to the public over the Internet any more than it could reproduce physical copies of the sound recordings (i.e. in the form of cassettes, CDs etc.) and put them on the market.

(2) Further, the scope of a non-voluntary licence enjoyed by a broadcasting organisation cannot be different or wider than the scope of a voluntary licence that the copyright owner might have granted for broadcasting. Obviously, the broadcasting organisation cannot exploit the work beyond the scope of its own licence to broadcast.

(3) The next question that arises is whether there is anything in section 31D (statutory license) that might be construed as extending the scope of such statutory license beyond the scope of a compulsory license under section 31(1)(b). There clearly is not.

Firstly, the statutory license granted by section 31D is, like the compulsory licenses, limited to broadcasting. The scope of "broadcasting" has already been discussed above.

Secondly, there is nothing in the statute that could be read as distinguishing the scope of the term "broadcasting" in section 31D from its scope in section 31(1)(b) or elsewhere in the Copyright Act. It is pertinent, in this regard, that under section 31D the prior notice that the broadcasting organisation is required to give is a notice *inter alia* stating *"the duration and territorial coverage of the broadcast"* which is a clear reference to "broadcast" in the same sense as elucidated above.

In sum, the whole idea of extending the scope of broadcasting licences to the Internet on the basis of the statutory and compulsory licensing provisions of the Copyright Act is fundamentally misconceived in law.

III. CONCLUSION & SUBMISSIONS

It is submitted, finally, that this whole issue of extending the scope of non-voluntary licences under the Copyright Act to the Internet adds another dimension to the broader question of the risks of cross-media ownership that TRAI and the Government, and civil society generally, have expressed concerns about.

It is very pertinent that the principal players in the broadcasting industry also have a substantial presence on the Internet. To cite only one example (purely for purposes of illustration) The Times of India (Bennett Coleman & Co.) owns Entertainment Network Pvt. Ltd. (which runs the FM channel Radio Mirchi), as well as the Internet website www.gaana.com. But there is no organic connection between these two businesses, merely common ownership. Gaana.com functions quite independently of Radio Mirchi on the basis of different licensing arrangements with copyright owners, in competition with other music streaming/downloading services. Now what the broadcasters want in effect is to obtain an unfair advantage over other sites competing with sites like (say) Gaana.com by applying their statutory licences that they enjoy for purposes of broadcasting to their own captive websites. This affects us because it amounts to a selective regulation of our licence pricing on the Internet, in favour of certain parties only, that was never contemplated by Parliament; it would be an unjust and discriminatory market distortion and would infringe our constitutional rights under Articles 19(1)(g) and 14 of the Constitution.

The Internet is a boundary-less worldwide medium and the consequences of such an artificially-contrived market distortion would be very wide indeed, disadvantaging Indian owners of copyright on a global scale. Indeed the implications are staggering. It would bring not only common websites but every conceivable form of digital communication to the public, even mobile apps, within the scope of statutory licensing for the benefit of a handful of Indian broadcasters at the cost of innumerable Indian copyright owners and all other providers of digital content who do not happen to be Indian radio broadcasting organisations. Such broadcasting organisations would, further, be able to leverage additional opportunities for encashment by enabling their audience to download/ cache songs for use offline; the reporting of revenue that broadcasting organisations earn from non-voluntary licences would be even more opaque than at present. In sum, to allow broadcasting organisations access to the Internet under cover of broadcasting, in such an environment, would open up avenues for them far beyond the scope of

anything remotely resembling a broadcast. This unjust market distortion would be immeasurably exacerbated by the consequent application of non-voluntary licensing to the Internet.

We therefore most humbly submit that any attempt to include the Internet within the ambit of statutory licensing under section 31D of the Copyright Act would be contrary to law, grossly unjust, against the public interest and devoid of natural justice. We further reiterate our request that there should no further deliberations on this issue without involving the music industry, which has invested hundreds of crores over the years into creating and promoting music and has shed its sweat on this.

Finally, it needs to be borne in mind that music is the main input and revenue earner for radio broadcasting; it is virtually the only input that FM Radio has to earn its advertising revenues. We submit that it is necessary to take a broader view having regard to the long-term interests of the entire media and entertainment sector. It is vital that the music industry be in a position to continue to generate and put on the market the creative content on which the whole structure depends. To impoverish the music industry would ultimately be self-defeating for the entire entertainment sector.

END.