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IMI-FICCI-IFPI Digital Piracy Seminar

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Foreword



**Mr. Blaise Fernandes,
President & CEO,
Indian Music Industry**

The Government of India has shown foresight in identifying the Media & Entertainment Industry as a champion sector. In the creative world, the tiniest idea gives birth to stories which take the form of various visual & performing arts. There are many livelihoods involved in the creation of films, music, literature & art, the entire creative process has investments and economics driving the sector and contributing to the GDP. A vibrant creative sector contributed 4% (2017) to the economy of United Kingdom and 4.2% (2018) as seen in the US economy. In Asia, K-Pop today contributes USD 5 billion to the South Korean economy - the leading player of K-Pop, Big Tree Entertainment today has a market valuation of USD 1 billion. Per FICCI-EY 2019 report, the Media and Entertainment Industry in India is estimated to have revenues approximately USD 25 billion. For our country, with a rich diversity and cultural heritage there are many stories to tell, and there is no reason why the industry in India cannot achieve the GDP contributions of markets like United Kingdom, US and South Korea. In India, as long as there are a high percentage of revenue leakages in the monetization chain because of piracy, fair value to all stakeholders in the creative process will always remain a pipe dream and champion status will always elude us. The Government has addressed this concern recently, but the time has now come to introduce administrative measures which will empower the executive and bring

immediate and long-term relief to this cancer called piracy of content.

From over \$25 billion in 1999, the global music industry fell to \$14.1 billion in revenues in 2014 but thanks to early adoption of technology it has shown signs of revival and is now valued at \$19 billion.

Closer home, cheap data and smartphone penetration have proved to be a double edged sword, though they have helped the Indian recorded music industry cross the INR 1000 crore mark for the first time, sadly as per the IFPI-IMI Digital Music Study '19, piracy is still pegged at 67 percent and causes an estimated loss of revenue of INR 1500 crore annually. Like cancer, piracy will need chemotherapy and the prescribed course of action which will be most effective is through administrative measures. Administrative measures wherein the executive at the centre and state will be empowered to block infringing websites and apps in the digital space, and in the physical space preventing counterfeit products of Carvaan and Kodi Boxes giving the consumer illegal access to television channels, OTT services etc. Creative industry stakeholders are ready and willing to provide the executive empirical and fact-based evidence of such infringing vehicles.

The palliative care to this cancer is via Digital Civics where it is important that the public at large needs to be educated about the potential financial threat of



accessing content illegally, with embedded malware entering devices and the pirates getting access to credit card details, bank details and the very real possibility of identity theft. As per RAND reports, entertainment piracy operations have close links to terror organizations and crime syndicates.

Cell for IPR Promotion and Management ("CIPAM"), an initiative of the Ministry of Commerce has made a good start to spreading digital civics, but efforts need to be ramped up and the creative industry must contribute monetarily and professionally to the CIPAM initiatives. The MCDCU (Maharashtra Cyber Digital Crime Unit) project in Mumbai is a much-needed initiative as a B2G (Business to Government) partnership where industry has made monetary and technical collaborations with a state initiative.

The Maharashtra B2G initiative should be rolled out initially to other high potential creative states such as Karnataka, Kerala, West Bengal, Andhra Pradesh, Tamil Nadu with immediate effect - and in Phase 2 to the rest of the country.

The Chinese music Industry lagged behind India till 2014. In 2019, it ranks at 7th and by 2022, it is expected to be amongst the top 3 in the world with revenues up to USD 1,400 million while India ranks 15th with revenues accruing to USD 156 million.

In China, a vibrant music ecosystem

has created 40 million jobs according to the Prof. Fengyan Zhang (Communication University of China, Beijing).

The creative industry, the telecom operators and the Government of China introduced the "Sword Net Action" an annual anti-piracy programme. Under this programme, the music industry files between 200-500 administrative complaints and every year of which 80-90 percent complaints are resolved successfully. The Chinese Music Industry has a piracy rate of 74 percent which is considerably higher than India's rate of 67 percent. However, India has a low take down rate of 37 percent as opposed to the 97 percent take down rate in China. It is pertinent to note that this was the same Chinese Digital Ecosystem where as recently as 2013, the time for a takedown was 2 weeks and 2 days. Takedown time now stands at 2 hours, highlighting the collaborative work done by the Chinese administration, telecom service providers and creative industry stakeholders on the back of administrative measures for piracy.

Per the Ministry of External Affairs, the Indian Diaspora is estimated to be 31.1 million, based on other studies it is estimated the South Asian diaspora is around 10 million, a potential of 40 million consumers outside India. The Latin American Music industry earns USD 500 million from exports. Content from the Indian creative industry if

protected outside India has the potential of exports over USD 1 billion.

As per IFPI, in 2019, there were 467 websites hosting illegal Indian content outside India, the number apps embedded with pirated Indian content grows by the hour. It is time that India uses every diplomatic platform or forum be it at the bi-lateral level via the FTAs or multi-lateral trade pacts such as BIMSTEC and RCEP to ensure greater enforcement of media and entertainment content infringement and seek content protection for the Indian creative industry. Maybe it is time for our own India 301 annual report. USTR, are you listening?



Foreword

A robust and dynamic creative sector reflects the priority accorded by a country to innovation and creativity. Studies conducted in 42 countries have shown that copyright industries contributed 5.81% and 5.32% to their GDPs and employment generation respectively. A FICCI-EY 2019 study estimates India's Media and Entertainment sector revenue at US\$ 25 billion. There is no reason why this figure should not increase exponentially for a culturally rich country like India.

The music industry worldwide has seen a rapid rise with the global recorded music market in 2018 reportedly growing by 9.7% to reach US\$ 19.1 billion, with India ranking 15th amongst the global recorded music markets. As the multiple digital platforms boost music consumption, they provide a huge growth opportunity for India's music industry, paving the way to India ranking among the first 10 music recorded markets.

While creativity and human endeavour fuel economic progress, it is intellectual property rights that recognize and reward individuals for such efforts. However, online piracy is a prime hurdle causing severe revenue leakages in the monetisation of music. Piracy in India is estimated at a staggering 67%, down from 94%, causing an annual loss of Rs. 1500 crore for the country's recorded music industry.

Piracy must be collectively addressed to ensure that the fair value of music reaches its creators, a key prerequisite that India's National IPR Policy aptly underlines. Indeed, steps taken by the Government of India to spread awareness on the adverse social-economic impact of piracy and efforts at

better enforcement have helped bring about some decline in piracy. However, there is much more to be done in this sphere.

The government must work with the music industry and various stakeholders to review laws, rules and procedures periodically, improve working of the copyright office and the copyright board and streamline the working of copyright collection societies. India also needs to undertake an economic-impact study for creative industries that gauges their contribution to GDP, employment etc., to help draw attention to the sizeable value creation by this sector. Recent proposals suggesting specific measures to combat on-line piracy, specifying responsibilities of intermediaries, introducing penal provisions for unauthorised camcording in the Cinematograph Bill, coupled with several progressive judicial pronouncements, are positive steps that would help curb content piracy.

FICCI has been working intensively on copyright issues at the policy, operational, capacity building and enforcement levels. FICCI was, therefore, very pleased to collaborate with IMI and IFPI in organizing the 'Digital Piracy Seminar' which provided an excellent forum to engage with leading music industry professionals on the emerging global music landscape and the key challenges that confront the Indian music industry. The report of the seminar highlights potential of India's music industry and provides vital recommendations which, I am sure, will engage attention of the policy makers and industry leaders.



**Mr. Narendra Sabharwal,
Chair, FICCI IPR
Committee & Former
Deputy Director General,
WIPO**

Keynote Address



Mr. Narendra Sabharwal, Chair, FICCI IPR Committee & Former Deputy Director General, WIPO

Human creativity and endeavour fuel the progress of mankind and effective IP protection, in particular, copyright and neighbouring rights, ensure the recognition and remuneration of individuals for their creativity.

Based on studies analysed using the methodology of the World Intellectual Property Office 'WIPO' conducted in 42 countries, the copyright industries in these 42 countries contributed on an average 5.81% and 5.32% to their GDPs and employment generation respectively. This is indicative of a

strong correlation between copyright industries, GDP and employment as well as other indices such as the Global Innovation Index (GII) and Global Competitiveness Index (GCI). According to a FICCI-EY study of 2019, the M&E industry in India is estimated to have revenues of approximately USD 25 bn. For a culturally rich country like India there is no reason why this figure should not increase exponentially. As per the Global Music Report (GMR) of the International Federation of the Phonographic Industry ("IFPI") 2019, the global

recorded music market grew for the fourth consecutive year by 9.7% in 2018 to reach a total revenue of USD 19.1 bn. India ranked 15th amongst the global recorded music markets of 2018. In the future, India has the potential to attain the 10th rank thus adding to India's soft power. As per the Digital Music Study (DMS), 2019, the digital market consumption in India has been growing at a rapid rate with an internet user on an average listening to 19.1 hours of music every week (2.5 hours daily) i.e., more than the global average of 18 hours.

Digital platforms have multiplied with audio and video streaming boosting the growth of digital consumption. This provides a huge opportunity for the music industry in India to grow. However, online piracy poses the biggest hurdle to the growth of the music industry in India. Piracy has caused severe revenue leakages in the monetisation of music for their creators. If the menace of piracy is not curbed, it will hamper the fair value of music from reaching its creators.

As per DMS 2019, piracy in India is at 67%, causing an estimated annual loss of INR 1500 Cr. to the recorded music industry in India. Even though the piracy rate has declined from 94% in 2017, there is a lot of work to be done. The government of India, judiciary, enforcement agencies, and the industry have come together to tackle the problem of piracy. Cell for Intellectual Property Promotion and Management (CIPAM), which was created under Department of Promotion of Industry and Internal Trade (DPIIT), was recognised for its tremendous outreach that they have undertaken and to spread the message of the negative impact of piracy and counterfeiting to society. The draft e-commerce guidelines have specific provisions that tackle counterfeiting and piracy. The draft e-commerce guidelines have provided for the liability of the intermediaries which require that intermediaries shall observe due diligence while discharging their duties and deploy

technology base automated tools or appropriate measures to curb piracy and digital crime. The anti-camcording bill has been introduced in the parliament to help reduce the activity of piracy. Apart from blocking and taking down rogue websites, the judiciary has passed many John Doe orders and introduced dynamic injunction orders.

The industry has partnered with the govt and enforcement agencies, for example, the Maharashtra Cyber Digital Crime Unit (MCDU) project which came after Telangana who had taken the lead to create Telangana Intellectual Property Crime Unit (TIPCU). The business to government partnership is growing in various other states as well. Federation of Indian Chambers of Commerce & Industry (FICCI) have launched a robust IPR Enforcement Toolkit- for the education, training and capacity building of police officers.

Four plausible concrete suggestions which resonate from the National IPR policy of 2016 to tackle piracy:

1 Under legislative and legal advice, the policy recommends keeping the laws, rules and guidelines under review to update and improve them from time to time in consultation with the stakeholders.

There is a need to review some laws, rules and guidelines as far as creative industries are concerned.

2 On the administrative side, there is

a need to modernise the copyright office, operationalise copyright board, now IPAB ("Intellectual Property Appellate Board") as well as stream line the working of copyright administration societies.

3 In terms of enforcement and adjudication, the policy itself emphasises better coordination between various agencies in order to curb counterfeiting and piracy.

4 A central coordination empowered body which can have jurisdiction over other enforcement bodies and can take a unified view in a country like India.

India does not have an economic impact study for copyright industries to gauge their impact on GDP, employment, exports, etc. This needs to be done as soon as possible in a country like India as the contribution will be sizable and robust which would help draw attention to the value of creative industries.



Keynote Address



Mr. Lauri Rechardt, Chief Legal Officer, International Federation of the Phonographic Industry (IFPI)

India is one of the greatest growth potential markets in the world for the recording music industry today. As per statistics in 2018, the recorded music industry in India was worth USD 132 mn while the country which was ranked tenth in the world had revenues of USD 220 mn. This implies that by 2022, the recorded music industry in India would have to grow roughly 30% yearly.

A few things need to change for the recorded music industry in India to achieve the Vision 2022 goal of reaching the top 10 music markets in

the world. Piracy levels in India are still very high which is a concern for the creative ecosystem as it continues to erode legitimate digital market players.

In a nutshell, there needs to be more effective measures and procedures to tackle piracy. There needs to be more efficient and effective website blocking orders so that consumers in India do not unwittingly stray into pirate services.

The recorded music industry in India is truly digital, as 80% of the music

revenues come from digital services, this figure is expected to grow further in India. As a digital industry, the recorded music industry in India needs a fair and competitive market place. The key to a fair market is one that allows Digital Service Providers (DSPs) and the copyright owners to operate in a level playing field. This will ensure that the laws that underpin the digital market place in India, are drafted or applied in a manner that is not distortive of the market place.

Presentation on Music Consumer Insights



Dr. David Price, Director, Consumer Insights and Analysis, IFPI

Music is vital in India as it is woven into everyday lives. It is the heart and soul of many people in India. A key interest is how things have changed in India since 2016 when Jio launched and the cost of data rates declined. In 2016, just before the launch of Jio, 500 MB of data from Airtel cost INR 142, while the current rate for 42 GB of data from Jio costs INR 149. The cost of data in India is the cheapest in the world and consumption of mobile data is the highest in the world. In comparison, the average

consumption of data globally is 12 GB per month and in the UK, the average data consumed per month is 4 GB. This creates a different mindset among internet users in the way they can access and use the internet, in particular, the access to stream content like music.

In the last three years, with easier on-demand access, people now have access to the whole world of music. This is an opportunity for music listeners, not just to increase music consumption but to have an

exposure to different languages, cultures and the different types of music from around the world.

As per conversations with individuals about what they loved about music in India, responses received were that music weaves through the diversity of genres and the emotional connection one experiences with music, dance, film, religious festivals and cultural habits.

Based on a sample survey of around 2000 people, the following were observed:

- Domestic genres were just as important as Bollywood music, 49.5% of respondents said that some kind of Bollywood music new and/or old was their favourite.
- 82.5% respondents said that they cannot live without domestic genres or a particular kind of Indian music.
- Newer Bollywood is preferred by younger generations who grew up listening to it. Any Bollywood is slightly skewed towards older listeners, especially Older Bollywood music.
- Younger listeners are more interested in discovering music beyond Indian music as 29% music listeners aged 16-24 said they liked a non-Indian genre as their favourite type of music.
- 70% of all music listening time is consumed from streaming services.
- Across all age groups, 20% of music listening time is consumed on Audio- Video streaming services, social media and short video apps like TikTok.
- YouTube is universal in India as 72% use YouTube on a daily basis to consume music whether it is in the form of a single video, dance cover, etc.
- 35% of the time that music listeners spent on YouTube, was spent on

viewing Bollywood music videos, dance videos, song lyrics, song covers uploaded by users, Indian and international music, and so on.

Based on these observations it is wonderful to see how tightly woven and important Indian classical music is to music listeners in India while in the UK, 3-4% of the people have opera and classical music as their favourite music genre.

Music genres such as pop or hip hop are spreading rapidly among younger listeners in India. Indian hip hop and international music are also highly preferred by the music listeners in India aged 16-24. Worldwide, classical music tends to appeal more to slightly older listeners. The key observation from the responses obtained from the sample of music listeners in India is the real diversity of genres that people could name as well as the increased listening to various genres when they had much wider exposure to different kinds of music.

Further, music listeners aged 16-24 spend a lot of their music listening time on YouTube and on-demand streaming services like Jio Saavn, Gaana and Spotify, spending 5 hours altogether on both these platforms. As people get older, people listen to less music on streaming services as they are less likely to have a phone. The percentage of music listening time on Audio OTT services would have varied three years ago when consumption of content on the internet was different from what it

is today, this change has been observed in many countries around the world where streaming has started to dominate the music world across every region. However, the speed and popularity of streaming services have grown in India unlike any other.

According to the responses from surveyed music listeners, entertainment is a key factor as to why people listen to music. Another important factor that listening to music adds to the user is the health benefit that helps people feel calm, increase happiness, provide stress relief and increase energy. Different types of music are consumed in varied methods for a wide range of reasons. Music also accompanies a whole range of different activities. Individuals listen to music while relaxing at home, driving in the car, sleeping, while at the gym and cooking.

Domestic services such as Gaana and JioSaavn are the most used and favourite music streaming services in India. Amazon has done well in the country by bundling their prime music service with Amazon Prime. Other streaming services such as Wynk, which is more focused on regional music and GooglePlay (music listeners also pay for Google Music as it gives them access to the most updated music) are also used in India, the latter of which has been in the market for many years through Android phones. Spotify which was released this year has managed to carve out a huge portion of the market, its UI being one of the main reasons

why users listen to music on Spotify. In addition, music listeners in India and China use more than one streaming service. Apart from these two countries, it is rare to see people employ more than one streaming service. Younger age groups, on an average rely on 3.5 streaming services on a regular basis. Jio network subscribers would also have access to the Jio Saavn music app.

People employ wide ranges of services for a wide range of reasons. People aren't necessarily paying for value of music as the music streaming services are side-lined in connection with their network provision or their Amazon bundled service. As an industry, there is a need to convince people of the singular value of music.

Individuals use YouTube as it enables them to pirate content from their platform through services that allow it to be saved or downloaded in the form of an mp3 file, i.e., "stream-ripping". People value music so much that they often access music through any means and piracy is a common route to music access. Stream ripping or downloading YouTube content is a very simple and quick process. One obtains the URL of the video and inputs the URL on sites like yt.mp3 which converts the video to an mp3 file in a few seconds. A lot of people do not understand this unlicensed access is piracy which robs revenue from reaching its creators. BitTorrent and ThePirateBay are the most famous piracy sites.

At a monthly rate of 67%, the piracy rate in India is one of the highest in the world. Stream ripping or downloading content from YouTube is the major music piracy threat in India. The usage of services such as BitTorrent and CyberLockers like Rapidgator that store music, still remain very high in India. In most countries, piracy tends to be higher among younger age groups as they have a higher engagement level with music and are ready to get content whether it is through piracy or not.

One of the most effective ways to address and tackle piracy is through site blocking. Blocking access through ISPs is a successful method in reducing traffic to pirated sites. In 2014, Argentina, ThePirateBay, was blocked and visits to the site dropped by 99% over the course of the year. In addition to blocking one or two sites, the ability to easily and successfully block a range of sites would have a really big impact on reducing piracy. The BPI, UK, pioneered the blocking of ThePirateBay. When ThePirateBay was blocked, the impact on the overall torrent activity was dismal as people had other alternatives. When other sites like Kickass Torrent, were blocked, there was a decline in overall torrent activity as major user-friendly torrent sites became inaccessible to users. Over time, there was an impressive reduction in torrent activity in the UK. It is also important that site blocking is twinned with the ability to give people access to content through license methods.

India has many different licensed audio streaming services, thus, the demand for music can be met in India as people have the ability to get musical content through on-demand access. However, the supply of pirated content needs to be tackled as people have the ability to access content easily through piracy. When access to content is blocked, there is a decline in unlicensed content as well as an increase in consumption of licensed content. Site blocking will unlock revenues across the music industry, the film industry, sports industry, etc., which have content that is pirated online. Other examples of countries which were successful in driving footfall from unlicensed sites to licensed sites through site blocking are Netherlands, Finland, Austria, Belgium, Spain, Australia and South Korea.

Piracy is the issue of demand and supply. India has the ability to make and meet demand to give people access to music through licensed services. However, the supply of music is an issue as piracy sites are often located outside of India. Therefore, using domestic enforcements is very difficult to address the external supply of unlicensed content as the legal process is lengthy and expensive. In addition to site blocking, there needs to be corroboration with major platforms like YouTube, Facebook and WhatsApp to address the core problems of the music industry and persuade them to block access to unlicensed content made available or shared on their services.



Surveyed respondents in the age groups 16-24 (1.8 hrs/week) & 25-34 (2 hrs/ week), spent more time than other age groups consuming music through pirated means.

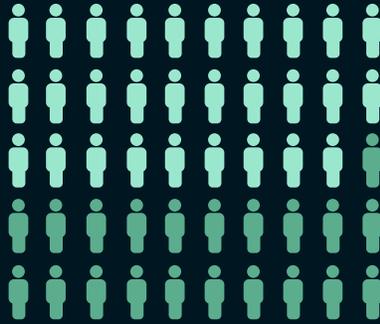


**The global average rate of piracy is at ,
27%
while India at
67%
has the second-highest piracy level in the world.**



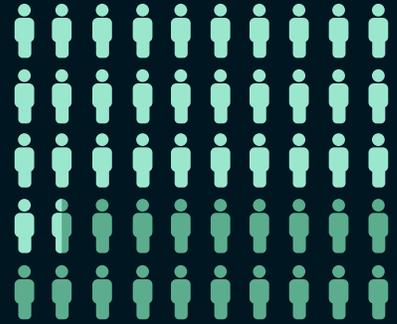
76%

Surveyed respondents in the 16-24 age group used piracy as a way to listen to or obtain music.



58%

Surveyed music listeners used Stream ripping which is the most common form of pirate activity .



63%

Surveyed respondents in the 16-24 age group engaged in stream-ripping to listen to music.

Panel on Preventive Measures Now and Going Forward: The Best Possible Scenarios



Moderator: Mr. Vipul Maheshwari, Co-Chair, FICCI IPR Committee and Managing Partner, Maheshwari & Co.

Panelists

Mr. Amarjit Singh Batra, Managing Director, Spotify

Ms. Oindrila Maitra, Director (Legal and Business Affairs), JioSaavn

Mr. David Price Director Consumer Insights, IFPI (International Federation of Phonographic Industry)

Mr. Sanjay Tandon, CEO, Indian Singers' Rights Association (ISRA)

Mr. Raju Singh, Board Member, Music Composers Association of India and Indian Performing Rights Society (IPRS)

Introduction and Objectives

Cheap internet data, increasing smartphone penetration and demographics are a host of favorable variables based on which the recorded music industry in India stands at the point of takeoff.

There has been a substantial increase in the consumption of legitimate music content in India aided by the aforementioned factors but this favorable growth trajectory comes with the caveat of rampant piracy. Based on a survey

conducted by IFPI more than half of surveyed internet users in India admitted to accessing unlicensed content on a monthly basis.

The rampant piracy in music alone accounts for 67% of surveyed users in India who admitted that they had accessed musical content through pirated means¹. Illegal P2P Apps, stream ripping websites and infringing websites based out of India have together resulted in losses of upto US\$ 250 million or INR 1500 Cr annually².

¹ Digital Music Study, 2019

² Vision 2022: India's Roadmap to the Top 10 Markets in the World by 2022

Key Takeaways

Why is piracy still rampant: tracking the source

A strong anti-piracy mechanism is needed to ensure that piracy does not become the albatross around the neck to this pursuit.

India has come a long way in grappling the issue of piracy which has resulted to a decline in the piracy rate to reach 67%³ in 2019 as opposed to 76%⁴ in 2018. But the decrease in these numbers are miniscule to have a sustained impact and thus, a lot of challenges await the industry ahead to combat this menace.

While most stakeholders have chosen to see piracy from the customers point of view, there is another school of thought that needs to be considered with respect to the content creators who are severely handicapped when it comes to knowledge about the available remedies to tackle piracy.

As for the consumers' point of view, it is primarily an issue of lack of awareness about the availability of legitimate and free sources of music due to which they turn to pirated sources for their music content.

Tackling Piracy is a four-way amalgamation of mindset change, positive as well as negative PR for legitimate & pirated sources respectively, and the Integration of technology and legal actions.

Role of the Artists

There is a need to highlight to the public that their favorite artists will inevitably suffer financially when there are revenue leakages due to piracy.

Building a career in the music ecosystem in India is potentially prohibitive owing to high rates of piracy and there has to be a concerted effort to bring about a quotient of empathy within the consumers. When consumers see their favorite artists being at a disadvantage financially which could potentially affect their future work, they are likely to switch to legitimate forms of music.

Consumers of Music have a misconceived notion that music is a free good. Consumers need to be educated about the contribution of paid subscription to the growth of the music ecosystem which includes their favourite artists. The music industry needs to focus on the existing user base and devise awareness initiatives which direct these users towards paid subscription models.



³ Digital Music Study, 2019

⁴ Digital Music Study, 2018

Recognition of Piracy as an illegal activity with repercussions

Piracy needs to be recognized as an illegal activity with stringent enforcement actions against non-compliant users or infringers. There has been judicial and government laxity at times when it comes to dealing with piracy. There has to be more action taken towards IPR, especially copyright, and in order for this to happen, judicial officers need to be sensitized and trained.

Emergence of John Doe orders is a specific relief against infringing websites but often precious time is lost trying to get multiple orders against such websites due to the overburdened Indian Judicial System. Setting up for ad-hoc administrative bodies dealing with specific cases of infringement is a step in the right direction akin to the ones in countries like Portugal and Italy. With the right amount of evidence presented by content creators to these bodies, quicker action is possible. Such mechanisms will also relieve the judiciary from IP matters at a time when it is burdened with heavy pendency of other cases.

Unified Push from the music industry against piracy to achieve fair value

Piracy is a major detriment to the music ecosystem unlocking fair value for all stakeholders in the value creation and supply chain. It is therefore, imperative that all stakeholders in the music ecosystem tackle the challenge of music piracy as a united front.

As long as the ability to pirate sound recordings exist, valuation of music will remain artificially low, as legitimate services will not be able to compete with pirated sources. This will have a negative effect on the inflow of investments in the recorded music industry and thus is a problem for all and not just for any one component of the music industry.



China's Measures against Piracy "Sword Net Action"



Ms. Jenny Wong, Asia Regional Director, IFPI

Sword Net Action is a joint campaign targeting copyright infringement on the internet by the Chinese administration. It was launched in 2005 by the National Copyright Administration of China and is supported by a number of agencies such as the CAC which is the Cyberspace Administration of China, the MIIT (Ministry of Industry and Information Technology of China) and the PSB (Public Security Bureau).

The campaign is annual and primarily runs from April to October. It is important to understand what the IFPI

does before Sword Net with respect to enforcement. IFPI sends out thousands of notices and takedowns requests. In 2018, the number stood at 48,204 notices covering 407 infringing links but that number fell down drastically by up to 14% to 34,925 notices covering 242 infringing links. This was due to the immense rate of successful take downs in China- almost 98%.

The unique nature of Chinese websites is characterized by the rule that every website in China needs to be registered. They need an ICP (Internet Content Provider) Registration which

means they have to provide details such as ownership details of the website and the location of origin (region of origin). This is all monitored by the MIIT.

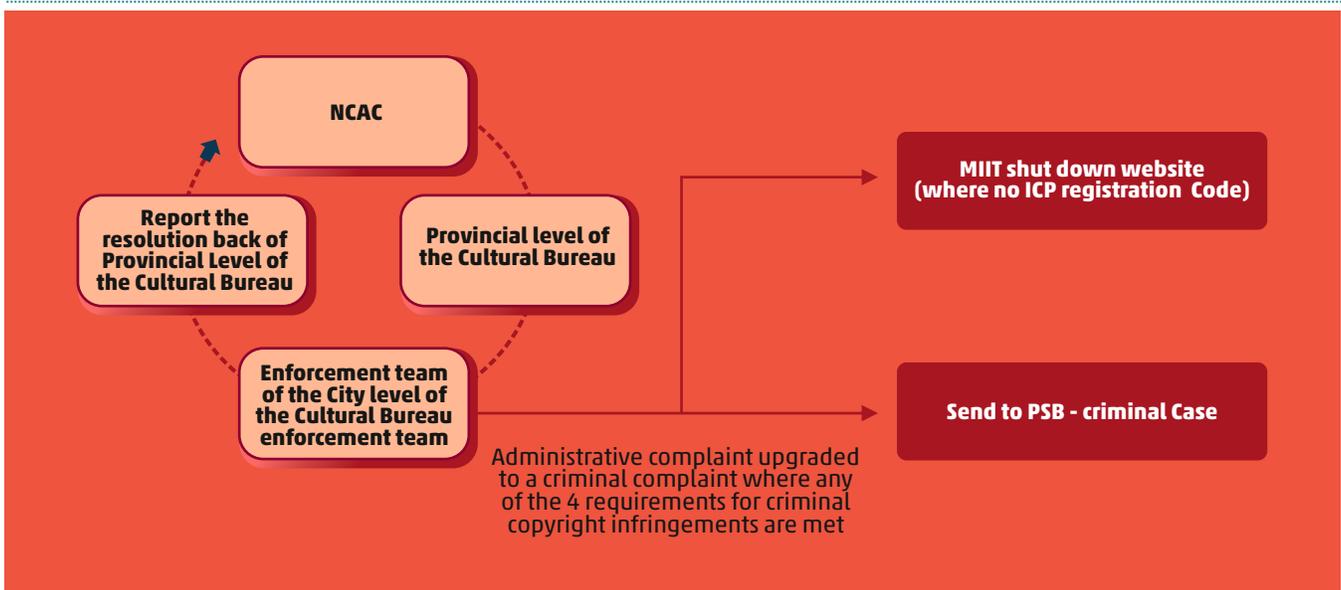
All websites in China are mandatorily required to display their ICP Registration Code. As a result of these mass registrations, anyone can choose to visit the MIIT website, look up a registration code and find out the owner and location of the website.

Although China enjoys a high take down rate, there are still different

challenges which the IFPI faces in China and this is where we rely on the Sword Net campaign. Some of the areas we need help on are:

- 1 Mobile apps which facilitate infringement.
- 2 UUC (User Uploaded Content) Websites with repeated heavy infringement problems.
- 3 Websites which use technical tools where technical investigative methods are ineffective. An example of this would be forums requesting membership to view full content.

The Sword Net Process



The MIIT is also authorized to block sites but copyright owners cannot apply website blocking by themselves.

Local enforcement teams have the jurisdiction to (where the site has an ICP registration code) request the website to remove infringing contents, fine, shut down the website and confiscate server custody (for less than 15 days).

The first successful criminal case in China was in 2011,

7t7t.com and the operator was sentenced to 6-month imprisonment, fined 15,000 and confiscated 12,000 of their illegal income.

In 2014, there was another successful case with the operator of yinpu.net being sentenced to 6 months imprisonment, fined RMB 40,000 and confiscated RMB 20,000 of their illegal income.

When a case meets any one of the following requirements, the local enforcement team passes the case to the local Police to investigate as a criminal complaint.

- 1 Illegal income earned by the ICP must exceed RMB 50,000.
- 2 Infringing content must exceed 500 items.
- 3 Clicks of infringing content must exceed 50K times.
- 4 Number of registered members must exceed 1000 accounts.

The USP of Sword Net is unlike programs in other countries, it is very time focused and hence one cannot make submissions every month. The submissions can be made only in July and December of every year. The time in between is used by the stakeholders to collect information and conduct investigations for submissions.

The benefits of Sword Net Action

- **High take down rates by ICPs**
98.8% takedown rate in China 2018, meanwhile 45.1% in India
- **Reduction in individual infringing websites**
In 2015 there were 300+ China infringing websites in our list in 2019 we had onl 71
- **Local culture enforcement team works closely with IFPI to understand new techniques and investigative skills for inline piracy**
- **Costs (time, manpower, expense) are low, with high resolution rate**

Like all initiatives, the Sword Net too has its faults and minute course corrections are needed. One of the obvious challenges is that offshore websites still remain unaffected by Sword Net. There are also issues with the transparency with the local enforcement authorities. Since it is a joint collaboration, in cities where stakeholder relationship with the local authorities is yet to be built, it is very hard to track progress.

For India to replicate the success of China, it is important to develop a fast and efficient system of website blocking option which is administrative.



Panel on Intermediary Liabilities



Moderator: *Mr. Ameet Dutta, Partner, Saikrishna & Associates*

Panelists:

Ms. N S Nappinai, Legal Activist & Advocate, Supreme Court & Bombay High Court

Mr. Lauri Rechart, Chief Legal Officer, IFPI

Mr. G.R. Raghavendra, Joint Secretary, Ministry of Law and Justice, Government of India

Mr. Nikhil Pahwa, Founder, Medianama

Background on digital platform responsibilities (Opening Comments)

In the late 20th century, when the internet as society knows it today, was young, policy makers and legislators thought it advisable to ensure that: the gatekeepers of the internet i.e. internet service providers ("ISPs") be shielded against lawsuits for such ISPs to grow and develop. As a result, they were granted certain liability privileges, commonly known as safe harbors. These privileges were granted on quid pro quo like understanding which required the ISPs to act as diligent economic operators and as and when they were notified and received knowledge about infringements on

their platforms, they were expected to put a stop on infringing activity on their platforms. This understanding was the premise on the basis of which legislation related to ISPs as well as safe harbors was granted under the Digital Millennium Copyright Act, 2000 in the US, the Electronic Commerce Directive, 2000 in the EU, the Information Technology Act, 2000 in India as well as legislations being enacted in Japan, China, etc.

Today, almost twenty years later, the internet has changed beyond recognition. The nature of services offered by the ISPs as well as their business models have changed since the time these laws were introduced and if one looks at the

music industry, it has also witnessed a fundamental change. The primary issue being faced by the music industry and the copyright industries at large is that laws enacted almost 20 years ago – (several light years in internet terms) are not adept to deal with the challenges that the rapidly changing critical internet infrastructure pose. Certain services, in particular, user-upload content services with hundreds of millions of users, have now become the main conduits for distributing copyrighted content. These services monetize the content that they distribute and data that they gather and yet, claim the same liability privileges that were originally intended for purely passive, automatic and technical platform services. The result, therefore, is very serious extortion in the digital marketplace because these services, the most notorious being YouTube with a billion users, access and distribute copyrighted musical content and at the same time, claim to be protected by the shield of safe harbors.

Policymakers, in some countries, are waking up to this problem and starting to take corrective action. As an example, in Europe, in the context of the Directive on Copyright in the Digital Single Market, the legislators have

sought to address the abovementioned issue. Article 17 of the EU Directive on Copyright in the Digital Single Market ("EU Copyright Directive") seeks to clarify the original intention of safe harbour privileges and in the process, serves to clarify the following three important things-

- 1 an online content-sharing service provider performs an act of communication to the public or an act of making available to the public when it gives the public access to copyright-protected works or other protected subject matter uploaded by its users.
- 2 confirms that when online content-sharing service providers play an active role, they can't be eligible for safe harbors.
- 3 lists and consolidates conditions that such services must fulfill in order to avoid liability in the absence of licenses from owners of copyright protected work and other subject matter.

The Directive on Copyright in the Digital Single Market in the EU sets a benchmark of global practices that can be adopted by other countries including India.



Key Takeaways

Intermediary Liability laws in India

Laws in India on intermediary liability need to be updated. In order for the music industry to be able to negotiate licenses and license works, there exists a need for a liability on ISPs exists, otherwise there is no incentive for the music industry to negotiate licenses. This would eventually help in money is flowing to the artists and back to the virtuous circle, giving the music industry the ability to develop local talent, more music and better content.

While the judgment passed by the Delhi High Court in *Super Cassettes Industries Ltd. v. Myspace Inc. & Anr.* followed the reasoning in line with *Shreya Singhal v. Union of India* and clarified that an intermediary may be held liable for infringing content hosted on its platform only when it has specific or actual knowledge or a reason to believe that such information may be infringing, the judgment did require Myspace Inc. to maintain accounts for a "damages" assessment. This made MySpace Inc. move beyond the sphere of a strictly automatic, passive and technical intermediary. A clear distinction needs to be made between active and passive intermediaries in India.

Article 17 of the EU Copyright Directive

Article 17 of the EU Copyright Directive clarifies that user upload content services which claim to be covered by safe harbour, are not genuine intermediaries. These are advertising platforms, such as YouTube, that attract both advertisers and traffic through distribution of content and are in direct competition with content distribution services such as JioSaavn or Gaana or Spotify in India. Article 17 of the EU Copyright Directive ensures fairness and a level-playing field in the digital content market.

Lessons for India

DNA of law is such that it will always play catch-up to technology and economic development; law needs to be structured in a way which allows it to be adept in dealing with natural economic progression and technology. These are the challenges that Article 17 of the EU Copyright Directive seeks to address.

The distinction between active and passive intermediaries needs to be determined keeping in mind various factors such as what activities make an ISP active enough to mandate criminal action and what can be effectively resolved with a takedown notice. Once a platform engages with content and categorizes and promotes content like modern ISPs do, the required knowledge to attract liability can be attributed to them since they are aware of a possibility that they would be engaging with copyright restricted content. Mechanisms to counter piracy ought to be developed, which do not change the fundamental nature of the internet i.e. to allow users to upload content using intermediaries.

S. 69A of the Information Technology Act, 2000, which provides for administrative website blocking, can be resorted to protect copyright. Case in point being China. Post deployment of an administrative program to tackle piracy, taking the takedown time as a performance metric for such a program, the takedown time of an infringing website/app stands at 2 hours. This was the same Chinese Digital Ecosystem where as recently as 2013, the time for an infringing website/app takedown was 2 weeks and 2 days, therefore, highlighting the collaborative work done by the Chinese administration, telecom service providers and creative industry stakeholders on the back of administrative measures for piracy.

Together, Department for Promotion of Industry and Internal Trade ("DPIIT") and Ministry of Electronics and Information Technology ("MeiTY") in India could frame laws in a manner which protects the rights of the copyright owners without sacrificing rights of users so as to encourage and protect innovation. A balanced digital ecosystem and acknowledgment of the rights and interests of creative businesses along with other compelling notions of free speech, fight against fake news and other types of content; is the need of the hour.



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