

Vision 2022:

Unlocking Fair Value to Stakeholders to Propel the Recorded Music Industry in India to the Top 10 Music Markets in the World.



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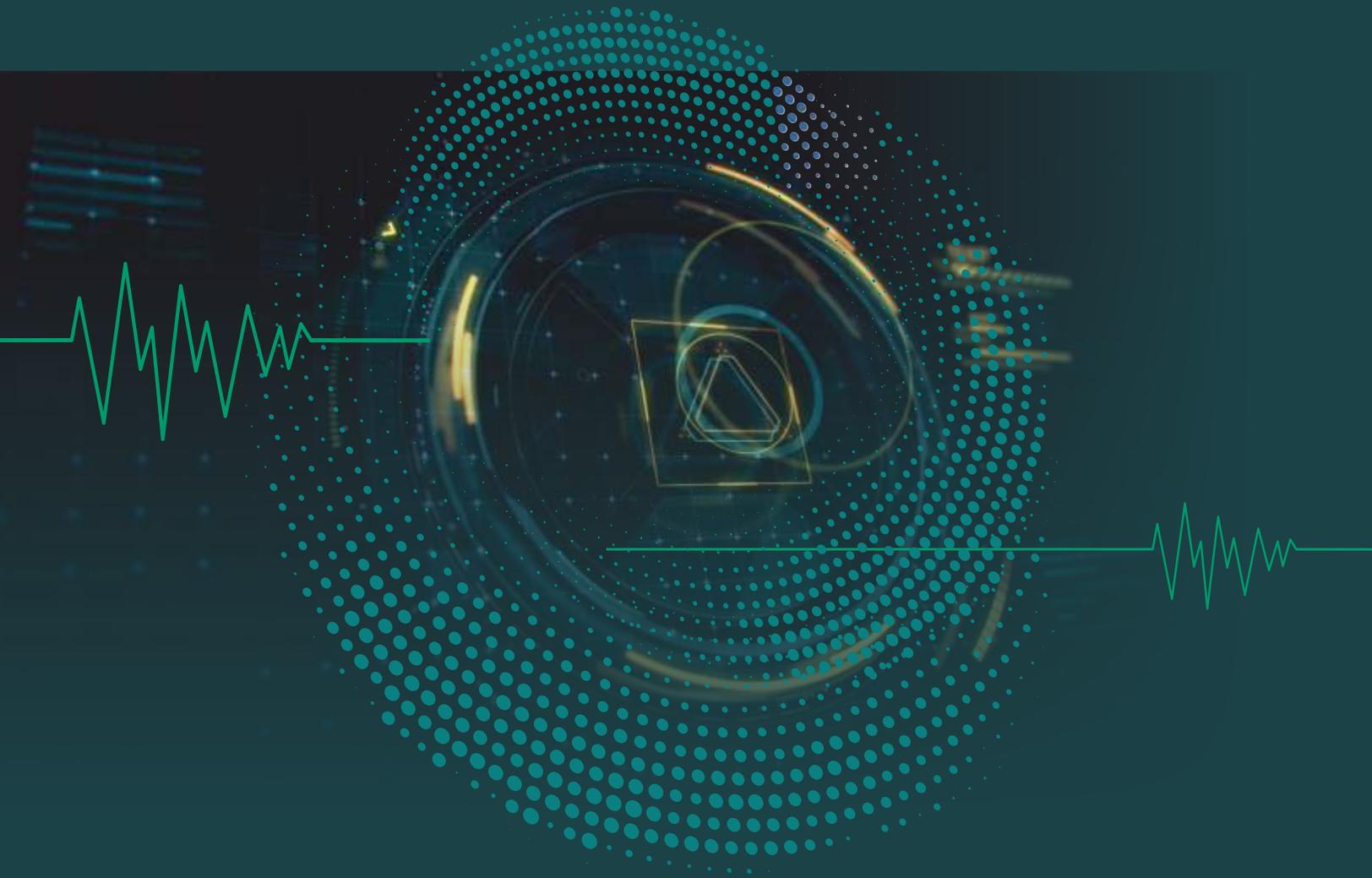
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DIALOGUE

**THE INDIAN MUSIC
CONVENTION 2019**

Foreword



Blaise Fernandes

President and CEO, The Indian Music Industry

“I know you may not neglect me, but it may be too late by the time you act”

GHALIB

On 3rd September, 2019, the Indian Music Industry (“IMI”) hosted the 2nd edition of Dialogue: The Indian Music Convention 2019 in New Delhi. The national conclave saw participation from key stakeholders in the music ecosystem including representatives from the recorded music companies, copyright societies, industry partners (DSPs), as well as representatives from IFPI, think tanks and diplomatic missions. The DPIIT and Copyright Office continued to show their support for the increased engagement between these stakeholders, through their participation at the event.

At Dialogue, IMI along with Deloitte today jointly launched "Economic impact of the recorded music industry in India". Ms Sumita Dawra, Joint Secretary, DPIIT, unveiled the report along with Mr Vikram Mehra, Chairman, IMI.

“Vision 2022: Roadmap for India to reach the top ten music markets in the globe” per IFPI metrics was the mission statement of Dialogue 2018 and I am pleased to say that we are on course to achieve our objective. India jumped to 15th place in the IFPI global rankings in 2019 from 19th in 2018. For the 3rd year in a row IMI members have recorded an average of 20% growth rate for the past three years. Today we are at US\$ 156.1 mn and are currently around US\$ 143 mn away from reaching the 10th spot. Some of the low hanging fruits are:

Sync Revenues:

With digital advertising growing at 33.35 % and the total pie at approximately US\$ 2.64 bn or INR 169 bn in India, the increase in advertising spend is an opportunity for our members and IMI is working at various levels and forums to evangelize the effective and economic use of sync licenses with the advertising fraternity (brands, associations etc.) and the advertisers.

Driving traffic to legitimate sites is another key focus area:

As per the IFPI - IMI Digital Music Study 2019, research indicates 67% consumers still visit pirated websites for their music needs. We commend the efforts of CIPAM, MCDCU and IMI continues to support these efforts. IMI has

welcomed the Dynamic Site Blocking ruling of the Delhi High Court. Piracy is like cancer needing both chemotherapy and palliative care. The focus has been on chemotherapy and the industry will maintain those levels but will also increase our efforts on palliative care and work together with the all the stakeholders, the DSP's, telcos and the creative industries in driving traffic to legitimate sites.

Lastly, Brazil earned US\$ 77.4 mn in Public Performance revenues when compared to US\$ 14.7 mn earned by India, we are hopeful that PPL will be granted society status soon and that will help us grow this revenue stream.

The recorded music industry in India embodies and has many touch points with our Hon'ble Prime Minister Shri Narendra Modi's vision to name a few, **#STARTUPINDIA #DIGITALINDIA #MSMEINDIA #INVESTINDIA.**

We live in interesting and challenging times.



Keynote Address



Vikram Mehra

Chairman, IMI and MD, Saregama

“If the rights holders who invest in the creation, promotion and marketing of music are not remunerated equitably and cannot exert their complete rights over their own creations, it's as good as getting dammed at source - what incentive will there be to invest?”

Fair Value when looked at as an economic term looks very plain and simple, but when juxtaposed to the recorded music industry or for that matter the creative industries metaphorically, it can be compared to the River Ganga

There have been some issues, but we have now brought in a host of changes over the last few years, namely,

- Greater transparency overall, both in terms of acquiring and licensing music
- Music labels coming together with both lyricists and music

composers as a single body, working towards increasing the overall publishing revenue pie for the Indian Performing Rights Society (“IPRS”), and formulating distribution policies that are fair and are seen fair. The good news is that within 18 months of its re-registration with the International Confederation of Societies of Authors and Composers (“CISAC”), IPRS has become the fastest growing collection body in the publishing world. -We are working on a similar partnership with singers to maximise performance revenue for ISRA



- Auditing and reformulating all the policies and processes of our public performance body called Phonographic Performance Ltd. ("PPL"), so as to be customer friendly, and weed out corruption and leakages

- Bringing in greater regional focus in all collection bodies to give fair representation to the growing regional music market

- Bringing in professionals to run bodies like IMI, PPL, IPRS

- Work with the Government to reduce content piracy. The good news is that an increasing/greater number of youngsters are switching to legal means for listening to music.

- Over 60% of all music heard on music platforms has been released over the last 12 months. This means more and more new talent is getting a chance to shine

We still have a lot of work to do. And we need the government's help. Under the guidance of our dynamic honourable Minister of Commerce; we will be able to enter the top 10 music markets.

The Ganga originates in Gangotri and flows through the plains of India creating its various tributaries and touching millions of lives spiritually, socially and economically. Now imagine: what if the flow of the Ganga was dammed at the Gangotri? What would then be the consequences on the lives of 100s of millions of Indians, who rely on the Ganga for spiritual, economic and social sustenance?

This is the situation the recorded music industry in India finds itself in for the past decade or so. If the rights holders who invest in the creation, promotion and marketing of music are not remunerated equitably and cannot exert their complete rights over their own creations, it's as good as getting

dammed at source - what incentive will there be to invest? On the other side, if Fair Value is accorded to the Copyright Owners of recorded music it will unleash tangible and intangible benefits, both economic and social.

Examining the flow of rights and commercial value between all stakeholders in the recorded music industry, let's take the example of film music which is around 60-70% of new music created in India:

1. The producer of the film pays the creative talent connected with the creation of the soundtrack, this is a pure economic activity and payments are made on demand and supply.
2. The first right that film producer sells is the official sound track rights and the money thus obtained is the seed money that goes into the production of the film. These rights are bought by

music labels for 15-25cr per movie plus royalties of 30% in perpetuity post recouping the upfront payment. The music label then spends marketing monies in promoting the music of the film. Apart from music rights the film producer also recoups his cost by selling movie rights to digital platforms, TV, and theatrical.

3. The music label tries to recover its costs of 15-25cr by licensing the sound recordings to streaming platforms, TV channels, radio stations etc. On an average it takes 7-10years to recover the money given upfront to the producer. Post recovery of its upfront paid money, music label shares around 30% royalties with the film producer in perpetuity
4. The users of music have to also take publishing license from the publishing society IPRS. This money gets distributed between lyricists, composers and owners. (We will soon have a similar arrangement with singers of the songs)

5. The singers and few music composers of the songs also make money through performances in events and weddings. Thankfully for the industry, this market is booming and artists can earn in the range of 3 lakhs to 3 crore per event.

So far, our Ganga is flowing beautifully and creating many tributaries. However, there are blockages in the form of:

1. RADIO

Despite the fact that the recorded music industry supplies the radio industry with the raw materials, i.e., recorded music, which is the only factor that drives listenership resulting in ad revenues, tentpole events like awards, brand solutions for clients all monetized by the radio broadcasters - the recorded music industry receives paltry compensation in return: INR 60 Cr. This is only a miniscule fraction of the radio industry's total revenue. This is because Radio stations are

supposed to pay only 2% of their top line towards the music costs. On top of that Radio doesn't pay anything to IPRS for the publishing rights, implying an ~ INR 1100cr music industry is subsidising an INR 3100cr radio industry.

2. TELEVISION

Some of the top-rated reality shows on television are music-based talent shows such as Saregamapa Lil'Champs, Superstar Singer and Dance Deewane (as per BARC ratings) are powered by recorded music repertoire. But similar to the radio industry, the returns received from this (TV) INR 74,000 Cr industry do not reflect this contribution.



3. AUDIO OTT - DIGITAL STREAMING

With larger user data bases (in 100s of millions of monthly active users), fuelling further investment by VCs, telcos, M&E conglomerates, foreign services and investors (like China) – the audio OTT economy houses enterprises which are valued well over billions of dollars. Recorded music is driving the strength of these data bases and thus valuations of these services.

Currently, these platforms negotiate voluntary licenses with rights holders but concerning mis-interpretations of statutory licensing framework threaten to derail this train, as owners and creators of copyrights are increasingly pressured to accept lower rates by these platforms, else be forced to license at government regulated tariffs.

This is deeply concerning, not to mention internationally unprecedented. Nowhere in the world is digital streaming covered under statutory licensing. The landmark Bombay HC verdict in this matter was a welcome relief, but there is a need for greater clarity to ensure this confusion doesn't impact the ease of doing business in the recorded music industry.

4. LACK OF PP PENETRATION

The administration of PP licenses

remains low as lack of voluntary uptake by a large number of establishments such as restaurants, pubs, casual diners, is made worse by the low priority accorded to PP copyright infringement by law enforcement agencies. Further, exemptions given to events like weddings remains problematic as it is extremely unfair that while users are willing to spend vast sums of money on hiring artists, emcees, and equipment for a wedding, they demand an exemption for the payment of PP licenses.

It's not that we are not responsible for some of this mess. There are 3 bodies today issuing public performance licenses for sound recording, and none of them have a copyright registration. We urge the Govt to help resolve this impasse by issuing PPL's registration, while we commit to bringing more customer friendliness in our operations.

5. PIRACY

Revenue leakages due to piracy are a regular occurrence with industry losses racking up close to INR 1500 crore annually. 76%, i.e. piracy rates in India, as per the IFPI Music Consumer Insights report (2018), remain the highest in the world and are a true challenge to the stakeholders in the value chain receiving fair remuneration for their investments.



We are glad with the efforts of the DPIIT, CIPAM and state govts, for example, the MCDCU (Maharashtra Cyber Digital Crimes Unit) project, but there is a need for a greater number of such initiatives and we are hopeful more of such projects can be replicated across India.

Now, imagine if these blockages such as statutory licensing, singers and labels coming together, registration of PPL, etc are removed and fair value accrues to the copyright holder- this musical Ganga will find more tributaries, as investments flow back creating jobs and adding to the GDP for example,

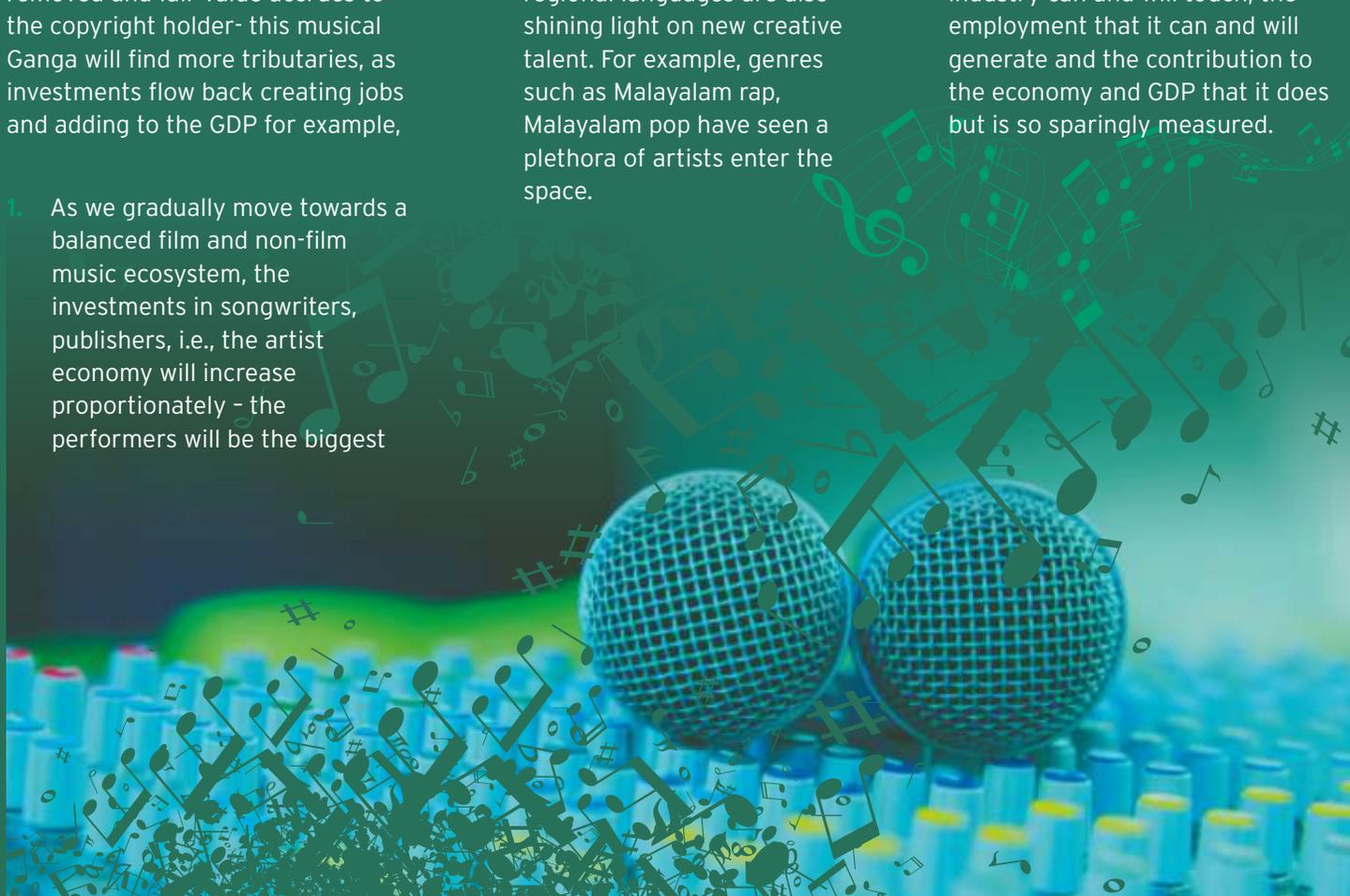
1. As we gradually move towards a balanced film and non-film music ecosystem, the investments in songwriters, publishers, i.e., the artist economy will increase proportionately - the performers will be the biggest

beneficiaries and more talent across the 26 states will be discovered.

2. Regional and sub regional repertoire - Digital democratization is driving consumption of music all across India: the growth of the Punjabi, Telugu and Tamil music markets, to name a few, have seen growth over the last three years. Genres within the regional languages are also shining light on new creative talent. For example, genres such as Malayalam rap, Malayalam pop have seen a plethora of artists enter the space.

3. Global outlook and soft power - The recorded music industry is uniquely placed in India is in a position to help India leverage its soft power, promote the cultural life of the country internationally and promote collaborative opportunities, owing to the popularity of Indian music and the vast Indian diaspora abroad.

Just imagine the lives the music industry can and will touch, the employment that it can and will generate and the contribution to the economy and GDP that it does but is so sparingly measured.



International Trends



Lauri Rechardt,

Chief Legal Officer, IFPI

“With record labels choosing to spend up to 30 percent of their revenues or USD 5.8 billion per year on the music industry equivalent of R&D, it is important to realise the positive trends seen in the global music industry are not accidental but a by-product of the music labels investing heavily in producing and making music available to the largest possible audience”

It is a great time to be a music fan thanks to music labels and their digital partners. There is more music available to consumers today than ever before. Whenever consumers want, the way they want and whatever they want, i.e., user convenience has been made possible in and this is very much thanks to the fact that the music industry is a truly digital industry globally. A majority of the music industry's sales revenues, around 60% came from digital services. The single biggest revenue source for the industry is online streaming.

In 38 markets streaming already accounts for more than half of their respective industry revenues. In India, streaming accounts for a whopping 70% of the recorded music industry revenues. At the same time, physical product is still an important part of the recorded music industry revenue mix and the industry continues to support this stream. Physical sales and royalties from performance rights from the music played in public venues, radio and TV, account for roughly 14% of the industry overall revenue.

After some 15 years of global decline, mainly due to a perfect storm of rampant piracy, the double transition from analogue to digital and ownership to access based consumption of digital content, the industry is now a growth industry for the fourth consecutive year. The main driver of the industry's growth is streaming. In 2018, the industry was worth US\$ D 19.1 bn which amounts to 9.7% growth year on year. In India, the growth rate was more double the average at 24%.

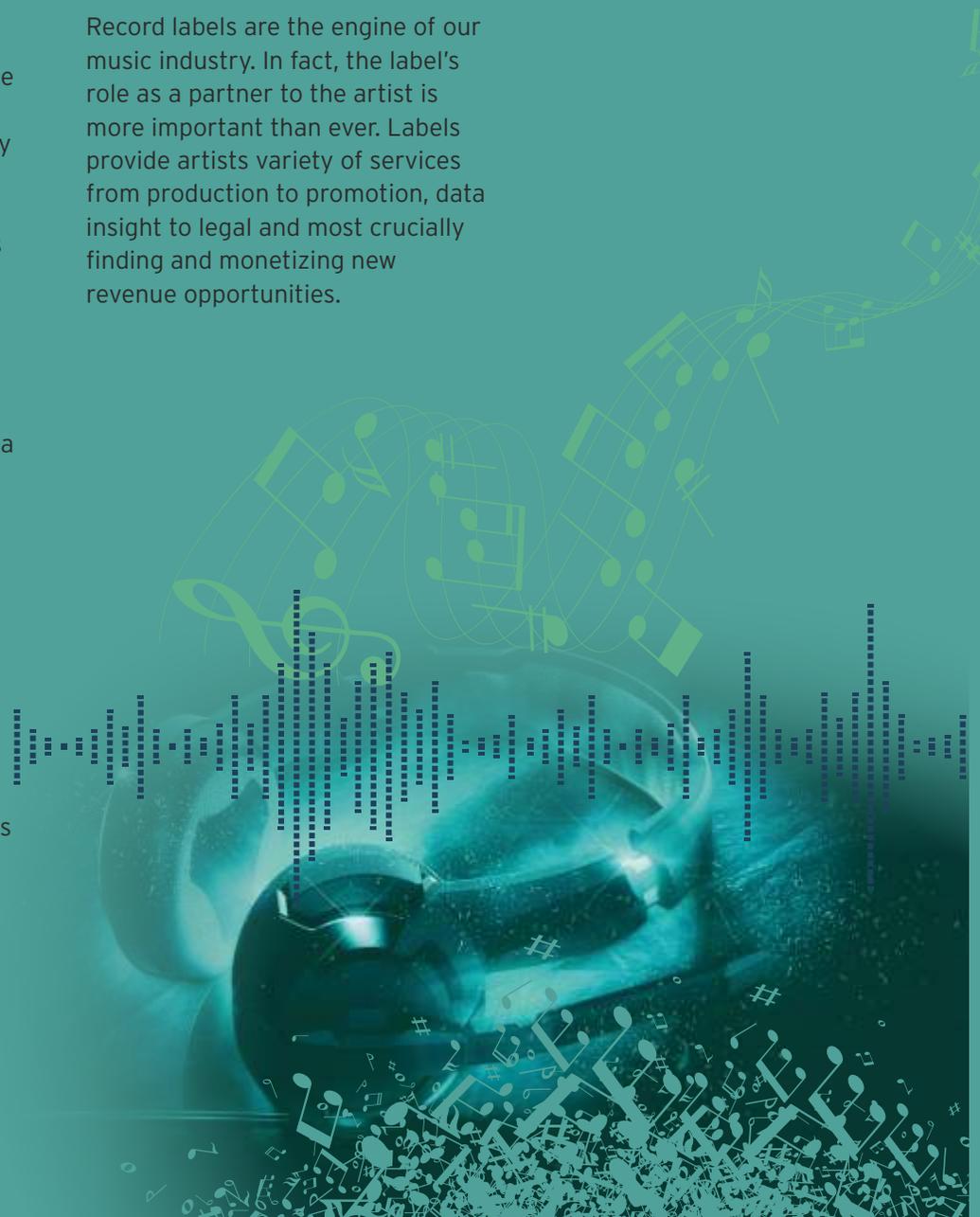


The good news is that India has a massive growth potential. The less good news is that India globally is still punching way below its weight when it comes to the value of its recorded music industry. For instance, if we look at Brazil and China; which are both already in the top 10 markets, thanks to the growth of streaming, are constantly and consistently growing strong- Brazil is at 15.4% and China at a whopping 79.6% year on year. This is evidence of one of the most exciting features of the new digital music industry. The growth of digital music is truly global with markets such as Mexico, China or Brazil, that were lost due to piracy a few years ago, are now back and growing strongly in part due to the success of local repertoire.

It is important to keep in mind that whatever positive trends that happened were not accidental. Music labels have invested heavily in producing and making music available to the largest possible audience in a variety of ways. As per a recent IFPI study, in 2017, record labels around the globe spent around 30% of their

revenues or USD 5.8 Billion per year on artists and repertoire marketing which roughly equates to R&D in other industries.

Record labels are the engine of our music industry. In fact, the label's role as a partner to the artist is more important than ever. Labels provide artists variety of services from production to promotion, data insight to legal and most crucially finding and monetizing new revenue opportunities.





Unlocking Fair Value from Radio Broadcasting

Megha Patnaik

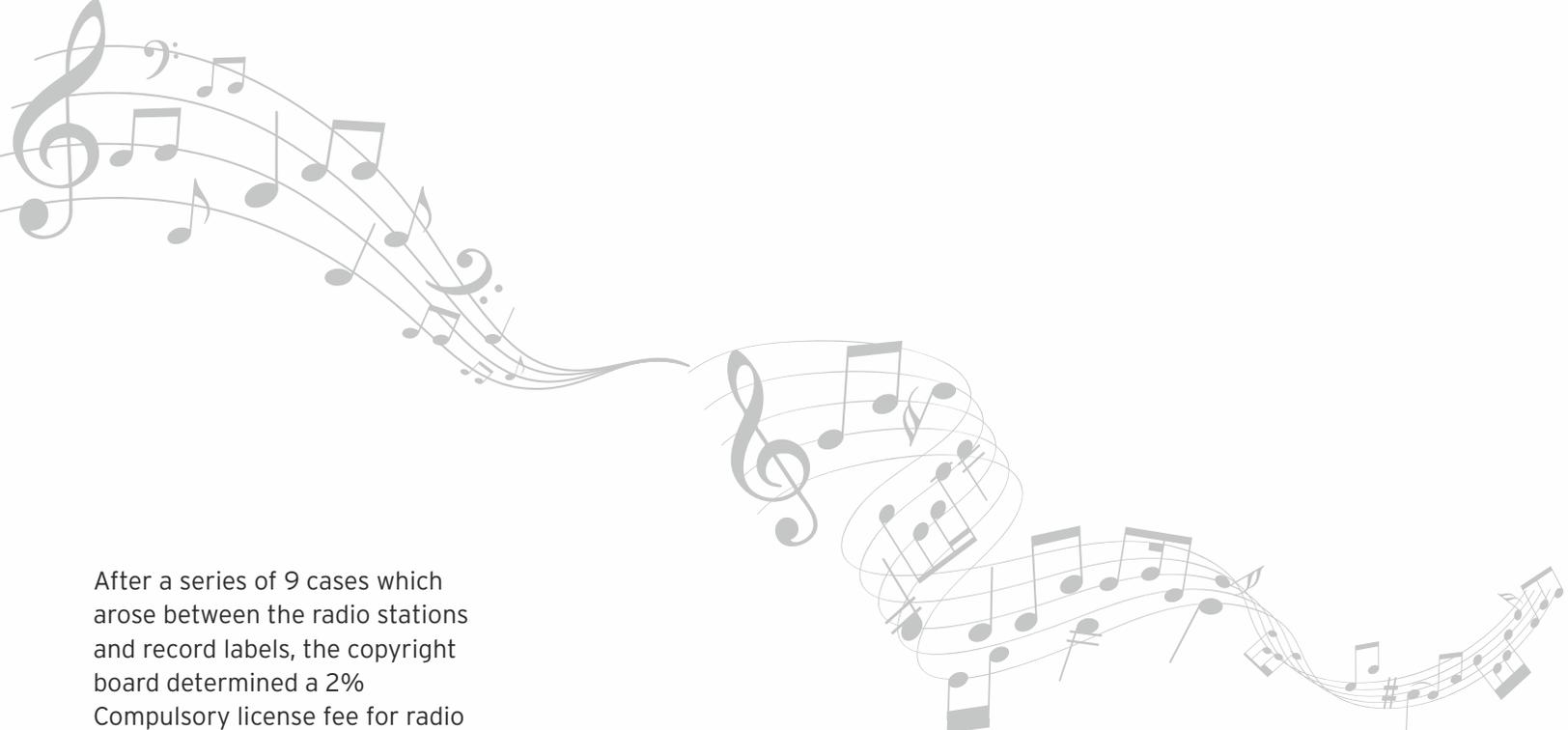
*Visiting Assistant Professor,
ISI and Fellow, Esya Centre*

“Let voluntary licensing determine the fair value of music and any specific subsidies that the government wants to provide can be transferred directly when radio companies have lost money in bidding for radio spectrum, instead of subsidising them at the cost of the recorded music industry.”

In terms of the distribution industries, music is at the core of the ecosystem for radio, TV and OTT platforms. Around 50 mins of every hour on the radio is fundamentally based on music. Radio channels that go beyond this ratio of ads to content, tend to lose listeners.

The Copyright Board Order assigned 2% of the net advertising revenue to be paid as a compulsory license fee by the radio stations to the record labels. The original arguments contained in the Copyright Board Order focused on the needs of consumers to have access to music, the nascency of radio at that point of time, and global benchmarks in countries

which were similar to the level of penetration of radio in India. 10 years later, the economic health of the radio sector and the consumer access today would question the need for Copyright Board order. India is ready to move to a market determined license rate which would essentially promote creativity and growth in the core industry which is music.

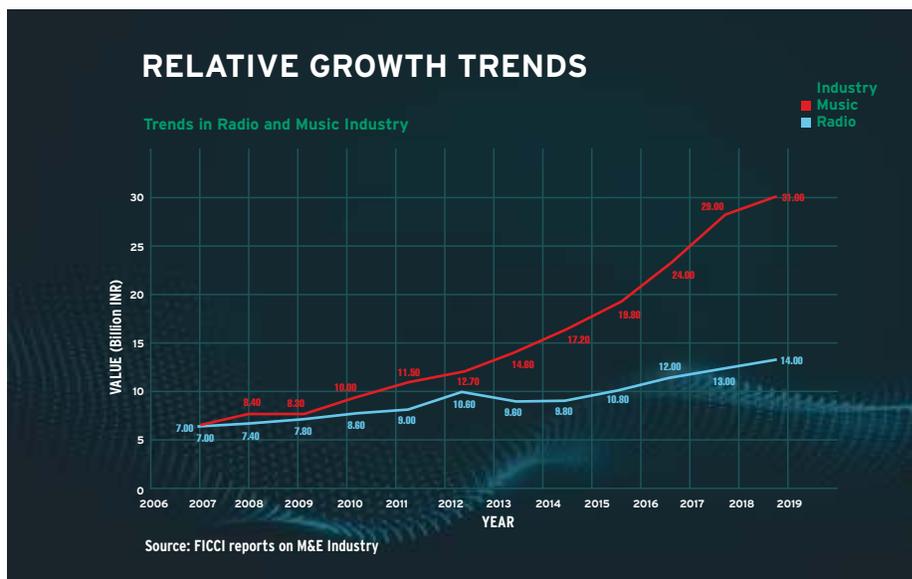


After a series of 9 cases which arose between the radio stations and record labels, the copyright board determined a 2% Compulsory license fee for radio stations to pay to record labels. The order was 'in personem' and not 'in rem' which means it would apply to the parties which were part of the cases and not for the industry as a whole. The copyright board order is a temporary order set to be reviewed in 2020. The rates argued under compulsory licensing were based on global benchmarks ranging from 0.5-5%. Since the radio was a nascent sector, there was a need to promote & protect the radio sector by making content available, hence a lower license rate was decided upon in India. Today, these arguments no longer hold validity.

When the judgement was given, internet coverage in India was very sparse. Further, there were fewer radio stations, as radio phases had not been completely rolled out at that point. Radio stations had paid very heavily in their bids for frequencies to the government. Radio broadcasters were making a loss and did not have money for the music repertoire they needed. Therefore, the lack of access and nascency of the radio sector were true in 2010.

Looking at these challenges today, access is no longer an issue. Most major cities were covered in phase 1. Many of the cities and smaller towns in India have been covered as of today through Phase 2 & 3 spectrum auctions. After the 3 phases, radio stations including regional and community radios have a large geographical coverage. In addition, today there are 627 million internet users, 97% users access the internet on their smartphones, rural penetration of internet increased from 9% in 2015 to 25% in 2018 and streaming platforms (ad and subscription models) provide access to listeners of music.

The radio industry has grown and continues to grow. In terms of the growth rate in revenue of the radio industry relative to the recorded music industry, there is a stark difference.





The radio industry should be able to pull up the recorded music industry by passing revenues to the recorded music industry at a fair value. The radio industry is considered resilient in other countries but in India it is growing. Radio is a low-cost option with wide coverage and heterogeneous user reach and is therefore a financially viable sector with lots of ad revenue coming in.

Further, technological innovations are going to push radio growth further from analogue to digital, where more channels can be broadcasted through one frequency. With the same frequency, radio stations will be able to broadcast more. Quality content is important to get listeners, this should translate into growth for the recorded music industry from the radio industry itself.

The 2% rate doesn't consider the kind of content that is played - whether its popular or not, what city and time of the day it is played, all aspects which would result in different amounts of royalties. Radio stations have different avenues of earning incomes through YouTube channels, live award functions and political advertisements. Record labels are able to earn from OTT platforms more than the fixed 2% fee from radio sector which points that music has a higher value than the 2% compulsory licensee fee provides.

The earnings of the recorded music industry instead of the 2% Compulsory license fee should be based on the quality and quantum of the list of music provided to radio. As long as the disputed 2% rate persists, radio stations are going to find it cheaper and more

viable to opt for that rather than opting for negotiations where they may have to pay more which would essentially be the value other distribution platforms pay, i.e. fair value.

Let voluntary licensing determine the fair value of music and any specific subsidies that the government wants to provide can be transferred directly when radio companies have lost money in bidding for radio spectrum, instead of subsidising them at the cost of the recorded music industry. There would be growth in quality and diversity of content, radio stations will try to find new types of music which would help the creative sector, the music industry and eventually, the radio industry.





HIGHLIGHTS OF THE EVENT





Unlocking Fair Value

MODERATOR:

Vivan Sharan

Partner, Koan Advisory Group

PANELLISTS:

Rajat Kakkar

MD, PPL

Megha Patnaik

Visiting Assistant Professor, ISI and Fellow, Esya Centre

Vivek Raina

Director, Believe Digital

Dibyendu Lahiri

Director, Asha Audio

INTRODUCTION AND OBJECTIVES

The size of the music market in India, in terms of per capita income, India is at US\$ 0.12 per capita as compared to US\$ 18.75 per capita in the US. The music market in India can punch above its weight if fair value is unlocked for stakeholders in the music ecosystem in India.

In addition, subscriber base is another benchmark, countries use to highlight a thriving music economy. Content platforms are able to monetise their services through competitive and/or cheap price strategies in huge subscriber market bases which helps them attain larger market capitalisation. Considering the average hours spent listening to music by consumers in India which at is 22 hours as compared to the global average of 18 hours, OTT services in India have great potential to monetise their content.

The objective of panel is to discuss the view of music not just as a commodity but as intellectual property. And to further discuss the challenge of discovering value along the supply chain.





KEY POINTS

The value of Music; the intellectual property

The audio OTT market in India accounts for 1% or 2 million paid subscribers of the paid subscription market globally, which constitutes of more than 200 million paid subscribers. This implies that consumers still perceive music as a free good rather than the property right of the owner who deserves monetary return.

Further, the importance of acknowledging copyright in the music economy is to ensure not only the creation in new varieties of music but to preserve traditional music. Therefore, when comparing

intellectual property between countries, it is important that intellectual good is compared to how Intellectual Property is viewed and valued rather than calculating solely, the monetary value tagged to the intellectual good.



Need for voluntary licensing norms

Private FM stations sell advertisement slots at the cost of INR 1,200-1,500 for a 10 second ad slot based on prime and non-prime time slots of the day. Small radio stations earn around INR 30-40 crore annually. In addition, radio stations earn high revenues and pay out huge salaries to their employees. However, the recorded music industry in India, in

accordance with compulsory licensing, earns a meagre 2% of the net revenues from radio stations.

There needs to be direct government support for fledging industries without affecting the earning capacity of another industry, by making structural changes in licensing norms.





Role of Phonographic Performance Limited (PPL) in unlocking fair value through Public Performances

Users need to be educated that a public performance license is necessary to enjoy the works which have been invested in by various stakeholders of the music ecosystem. PPL which represents 97% of record labels in India for the collection of the record label's fair share for music repertoire used in public performances, has seen a 25% increase in revenues as compared to the previous year, this would lead to an inflow in revenue to the recorded music industry.

To ensure that revenue collection through public performances of music content reaches the right hands, PPL has undergone major developments such as digitization of application procedures for Public Performance Licenses through a digital platform called 'PLUS' which can issue licenses in a few minutes rather than a few days which was the case earlier.





Role of the government in unlocking fair value

The government needs to have regular dialogue with the recorded music industry and the stakeholders. In the UK and other regions of the world, equivalent Collection Management Organizations like PPL UK, instead of providing concessions to users and/or record labels, work with the government every year to set and update tariff rates for public performance licenses which is reasonable to both the users and record labels. Similarly, in India there needs to be frequent

engagements with the government and stakeholders in the music ecosystem, to present data points and cases which can help set tariff rates in the best interests of the music industry as a whole. In terms of enforcement and police need to be sensitized that intellectual property is similar to property rights. Therefore, rights that would be enforced if property was trespassed upon should also be enforced when intellectual property is misused.



Role of the industry in unlocking fair value

The industry needs to work with different arms of the government while sensitizing the public about the value of intellectual property. In addition, the industry needs to create tariff rates which are inclusive and are tailor made for users. This would smoothen out the process of license applications incentivizing users to apply for music content licenses and

therefore, promote the growth of the music industry in India.

Earlier, the music market in China was worse off when compared to India. However, China was able to pick up pace as cooperation and understanding within the music ecosystem helped unlocked fair value in the recorded music industry in China. Similarly, the

music industry in India needs to engage in conversations as well as involve regional players to exchange ideas and support collection of returns for use of music repertoire in the music ecosystem.

KEYNOTE

Sumita Dawra,

*IAS, Joint Secretary,
Department of Promotion of Industry and Internal Trade*



“There is a need for a strong legal and policy framework to be ready to face challenges in the industry. As for unlocking fair value, the government assures everyone that they want every industry to reach its maximum potential and that includes the music industry.”

Music brings jobs, livelihoods, income, foreign exchange and creativity. We all know the M&E industry is a big industry, growing rapidly, according to figures in the economic survey. The last 5 years has seen 82.44% growth in the M&E industry from INR 91,819 Cr. in 2013 to INR 167,500 Cr. in 2018.

As per a study by India Brand Equity Foundation (IBEF) which forecasts the growth in next 5 years at 13%, which according to government is very good. The numbers behind this study have depicted revenue growth in the M&E industry from INR 1,436 billion

in FY (2013) to INR 2,060 billion in FY (2018).

Music is only one part of the M&E industry. For the music industry, the forecast is at INR 14.40 billion in 2018 to INR 29.6 billion in 2020. However, I am not sure how the Music Industry reacts or whether it agrees with this industry estimate. As the industry evolves, there are new challenges which are to be faced.

We need a strong legal and policy framework to be ready to face challenges in the industry. As for

unlocking fair value, the government assures everyone that they want not only the music industry but every industry to reach their maximum potential.

Piracy is definitely a priority for the government. The National IPR policy has been one of the interventions in the past. Other developments from the government's side include accession to the WIPO treaty and CIPAM capacity building programs have been going on and we at the government are always open to regular communication with industry stakeholders.



Fire Side Chat

PARTICIPANTS:

Jehil Thakkar, Partner, Deloitte India and
Kwee Tian Ang, Senior Vice President -Asia Public Policy,
Universal Music Group

Jehil Thakkar:

It is clear that India is punching way below its weight. Can you give us some insights on other emerging markets when compared to India. Could you explain China’s growth rate?

Lauri Rechart:

China is a great example. What we have seen in China is absolute laser focus in fighting piracy. The government has gone out of their way to ensure there is a market switch from piracy model of business to a licensed legitimate based model. In a short time, we have seen the market develop and its mainly because of the government engagement and commitment to ensure piracy is eradicated or on the margins.

Jehil Thakkar:

In addition, does China also implement statutory licensing norms or mandate particular business models or structures for the industry?

Lauri Rechart:

In China, the DSPs and the industry negotiate their own free business terms and that is a very important story for India considering the presence of 31-D. The threat of extending statutory license to digital services which in my opinion will be a death blow to legal music services in the country.

Jehil Thakkar:

As far as India goes, are there any specific steps we need to take when it comes to combating piracy?

Lauri Rechart:

We have seen some positive developments. However, we need certain specific legal procedures to block illegitimate pirate websites. Very often these are based outside India which means right owners cannot get to them. We need website blocking which is scalable and quick so that consumers do not; even unwittingly, consume pirated music from websites based outside of India.

Jehil Thakkar:

What new revenue sources do you see emerging that the industry can get ready for. We talk about 5G which might give birth to additional business models? What new models can emerge due to technology across the world.

Lauri Rechart:

We do see that the tech is developing. Which means we will see more music products. New services which we call stems, Visual Reality, Augmented Reality which I believe all music labels are looking at. High resolution music streaming is already available in the market.

Jehil Thakkar:

Do you see any structures or legislations on such developments already around the world to deal with such tech changes?

Lauri Rechart:

What we have seen is that Europe has been the vanguard for applying the liability rules with respect to online platforms. There are some platforms online that wrongly believe that they don't have any responsibility for the content uploaded on their platform. They believe responsibility is with the users. YouTube is obviously the largest of these platforms but it's not all about it. YouTube have become the largest and most powerful on demand music distributors. They need to be dealt with in the same manner as all other online music distributors such as Gaana, Spotify in the sense that they need to negotiate licenses.

Jehil Thakkar:

How do you deal with services like Tik Tok which are emerging and based on user generated content with music?

Lauri Rechart:

The key is for the market players to be able to negotiate commercial terms. Some companies might think of it as great promotion while others might not. The key thing is market forces should reign and the music industry should have the right to negotiate their own commercial terms.



INDIA COPYRIGHT OFFICE Updates and Developments

Hoshiar Singh,

ITS, Registrar of Copyright



The Copyright office's primary function is registration of copyrights. During the last year or so we were in a position to clear all backlogs related to registration of copyrights.

As of now, registration of copyrights is granted within a period of 1 month from the date of receipt of application. During 18-19,

the Copyright Office received 18,250 applications as compared to the 17,842 applications in 17/18.

The registered copyrights in 18/19 was 14,500 which was down from the 19,000 in 17/18. This drop-in number was because the office was able to clear the backlogs.



“Piracy is something which can be combated with a multi-dimensional approach and we assure all stakeholders the government is aware of its perils. Creating awareness and cutting down source of income of infringing websites will be our focus in the coming years.”

Registration of copyright is the prima facie instrument to establish the ownership of copyright. The number of applications received for registration of sound recording was 678 which is only a fraction of the total applications.

I would encourage the music industry to encourage the owners of music to get a copyright registration of their products.

The Copyright Office has completed the task of digitalization of the register of copyrights for the period since its inception- 1958 to 2017, all the digital records have been uploaded to the website of the Copyright Office.

These registered works can be searched either by the title of the work, name of the author or diary number of the application.

Even though India is an IT superpower, during 18-19, the copyright office only received over 2000 applications for software programmers which is just 12 percent of the total applications. In a consultation meeting with the stakeholders, it was found out that this was attributed to the cumbersome process of registration.

Existing rules require source code and object code of the software programme that is to be registered. New rules have made this process less cumbersome and people do not have to submit either the source or object code.

This is based on the global best practices being adopted across the global in copyright offices. Use of digital technology, transparency and accountability is at the

forefront of how the copyright office functions in the digital era.

Piracy is something which can be combated with a multi-dimensional approach and we assure all stakeholders the government is aware of its perils. Creating awareness and cutting down source of income of infringing websites will be our focus in the coming years.

The Office promises to work with stakeholders to develop an ecosystem which supports the economic growth of the industry and supports the right holders.





THE CHINA GROWTH MODEL: “How did China achieve these numbers”

Kwee Tian Ang,

Senior Vice President - Asia Public Policy, Universal Music Group

“With similar sizes and similar positions, 5 years ago India and China stood on the same pedestal. In 2014, the value of the Chinese market was USD 105 million and in India, it was USD 100. Fast forward to 2019, while one (China) has grown exponentially, the other (India) despite showing growth seems to have struck a rut. The key reason for this difference in fortune is the single-minded focus by the Chinese government on combating piracy, in particular, piracy in a digital sphere”



Five years ago, India and China had similar sizes and similar positions. In 2014, the value of the Chinese market was USD 105 million and in India, it was USD 100 million. China was ranked 19th and India was ranked 20th. Last year in 2018 as per the IFPI reports, the Chinese market exceeded half a billion US dollars. The Indian market is at USD 156 million. Although there is growth in India it has been more muted and lags far behind the growth in China. The question in everyone's mind of course is, what are the reasons that has driven China to grow that quickly?

The key reason is the singular focus by the Chinese government on combating piracy, in particular, piracy in a digital sphere. In 2013, notice and take downs were often issued in China, however, the take down rate was ~52%. In 2012, the take down rate was around 40%. In other words, a lot of rich Chinese consumers, were still getting their music from illegal sources. At the end of June 2019, the take down rate in China was 97%.

In China, when a notice is issued, content is taken down and the time for the take down is two hours.

In 2013, it took two days to two weeks. The progress in China has been massive. In India, with respect to the notice and take downs that were issued, the take down rate has been 37 percent.

In addition to the take down actions, the Chinese government have also implemented the SWORD net action. These are administrative actions that happen every year from July onwards, where the Copyright Office in China invites all copyright holders (music, games, books, etc.). Anyone is invited to submit administrative complaints about piracy, and other illegal content. In the last five years, the music industry submitted anywhere between 200 to 500 complaints a year. Today complaints lodged have fallen down to about 200 because piracy is very much under control. In 2018 of the 214 cases that were filed, 90% have been solved. The solving rate by the government is very high and 90% of the cases have been settled, 64% of those cases receive a warning after take down notices are issued while ~ 11-12% are shut down. Of those who refused to take down content or shut down, ~ 5-6%, were fined and had their assets ceased. Although foreign sites were restricted in China, there were about 5- 6% involving foreign sites targeting mainland Chinese consumers. These cases were referred to the Ministry of Information &

Technology in China for blocking. The situation in China is slightly different from the access to the foreign sites in India. China is very comprehensive and takes legal action to control piracy with a host of measures.

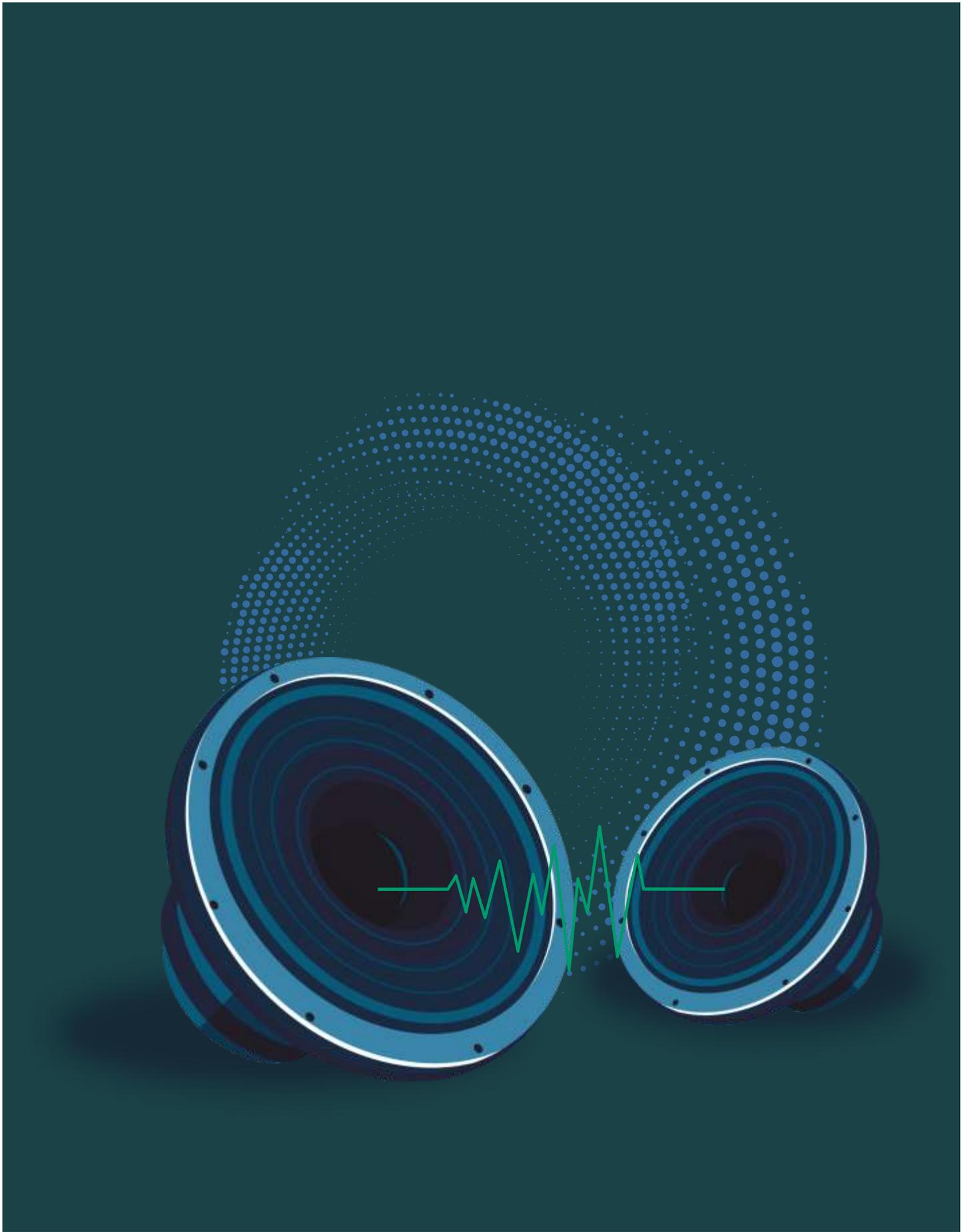
While in India, IFPI issued notices to 467 infringing sites that are offering Indian content for the market in India. All 467 site were based outside of India. There is not much you can do from here even though the website blocking measures exists here and Indian law has not been able to block off those sites.

Five years ago, both countries were positioned at the same level. How the countries have managed digital piracy is very crucial. With the Chinese government, if an infringer doesn't take the content down, if the infringer doesn't take a license, the Govt. shuts them down. Therefore, Chinese sites were forced into getting licenses which were voluntarily negotiated. Digital platforms make billions of dollars in income as compared to copyright holders. The DSPs are in a perfectly good position to negotiate the license fees with the right holders and this has resulted in the Chinese market growing.

The number of paying subscribers in China is still far off the 47%

global average. In India, it is not even at a double-digit figure. There's a lot more to grow in China, which also means that India's market has exactly the same potential. So, there are a lot of reasons why we all have to work together with the government for positive action in helping to control piracy. Forcing the platforms towards licensing is as necessary as is the music industry coming to work together to ensure that royalties are paid, properly distributed and shared for the market to grow and prosper and for everyone in the music ecosystem to have a fair share of the pie.





STREAMING: it's growth and future

MODERATOR: **Abhimanyu Singh**, *Project Management Officer, IMI*

PANELLISTS: **Devraj Sanyal**, *Managing Director & CEO, Universal Music Group*; **Neeraj Roy**, *Managing Director (Founder) & CEO, Hungama Digital Media Entertainment Pvt. Ltd.*; **Atul Churamani**, *Founder & Managing Director, Turnkey Music & Publishing* and **Aditya Gupta**, *Director, Aditya Music*



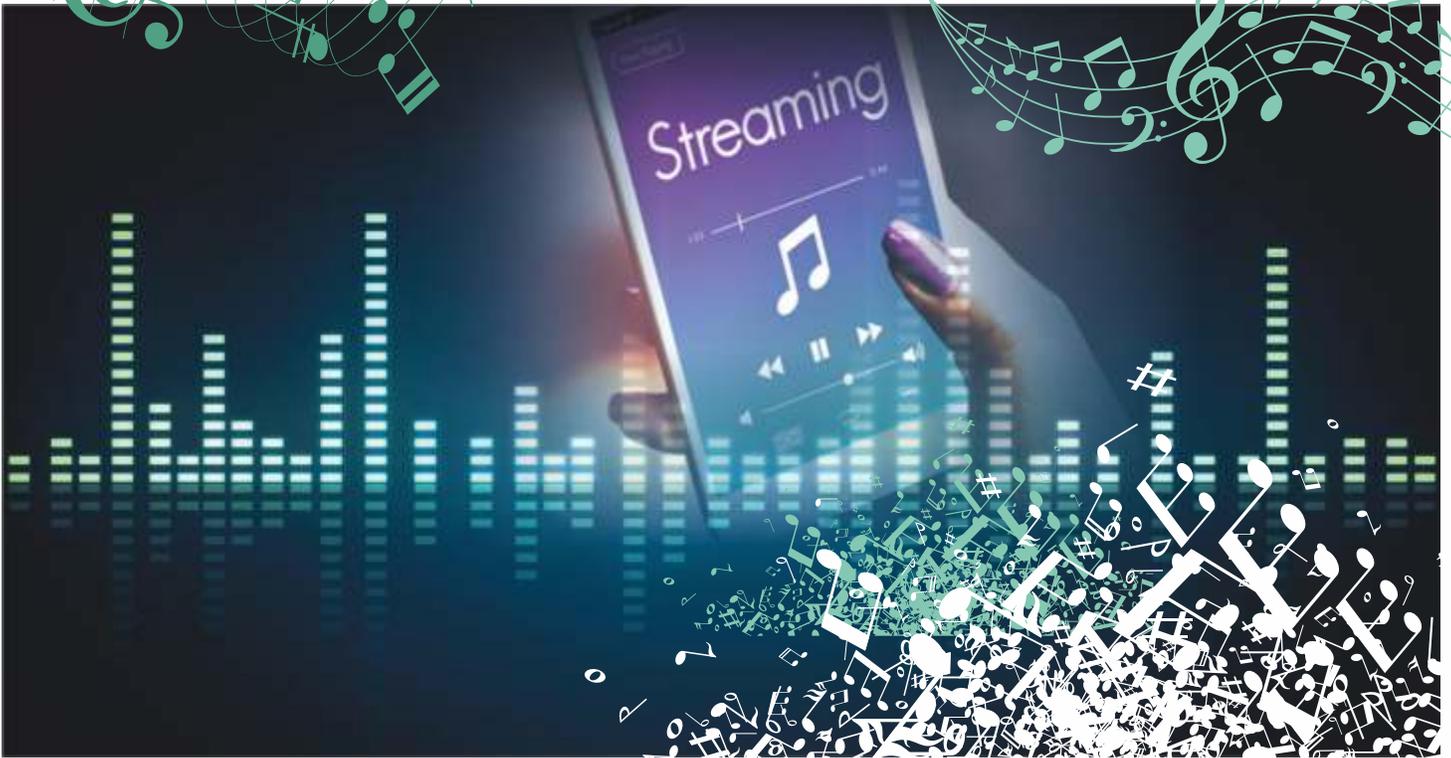
INTRODUCTION AND OBJECTIVES

The recorded music industry in India has a multi-impact on the media & entertainment ecosystem and the larger economy. Streaming which is still in its expansion phase contributes 70% to the revenue pie of the recorded music industry with a 31% growth rate year on year. Streaming is a high potential market due to favourable tailwinds present in India such as increasing smartphone penetration, cheap data; rise in disposable income and a younger (15-34) demographic which is expected to represent at least 34.33% of the population by 2020. To see sustainable and equitable growth of the music ecosystem in India, we need to ensure that the right foundations are in place to support streaming services and vice-versa.

The objective of the panel was to establish how streaming can continue to fuel the M&E industry and to ensure that the impact of the recorded music industry is on par with the value derived by those platforms and services that rely on music as a key offering.



KEY POINTS



Foundations for a sustainable music ecosystem

In the next 4-5 years, the India will have 500 million consumers accessing a variety of content services. Music will be one among those within the broader realm of services that customers would consume. Today, there is no incentive for the consumer to pay

for content. There needs to be a business model for an entire range of services available in a data abundant environment where ownership of content (music) has been superseded by a model based on access to content.



Fair Value from Streaming services

In terms of consumption and usage, streaming has seen a 60% growth year-on-year due to increasing internet penetration. The consumption rate for streaming services is higher for regional labels as they are more dependent on the OTT market for distribution, as they don't have many revenue streams such as physical sales, sync and

concerts thus, questioning the wide access provided to songs through the free ad-supported tiers of DSPs. Premium content should be placed behind a pay-wall. Further, investing in new film music proves to be difficult, if costs cannot be recovered via streaming platforms, as content is being made available for free to the users.



Streaming business model

The streaming business model is based on seeking higher market valuations - which incentivize further investments from individuals and enterprises alike. The business gives music away for free, in the hopes of encouraging greater footfalls and therefore advertisers, a percentage of the ad-

revenues earned are given to the recorded music industry. However, streaming services have failed to get advertisers on board with this value proposition which in turn has knocked off royalties paid by streaming services towards the recorded music industry.



The benefit of music as a category - it is the largest consumed and highest repeat consumption (consumer uses the same good repeatedly over time) category across 22 app categories such as finance, food delivery, travel, etc. Musical content has been bundled with other services provided by Telecom Service providers through low-priced data plans; with 400 mn paying subscribers in India who

subscribe for the data pack fail to realise the value of the bundled services therefore artificially deflating the value of content. Providing access to music as part of bundled services is an unsustainable model when compared to providing standalone music services.



Challenges to a Subscription Economy

India has moved from a data starved environment to a data abundant environment. Therefore, there is no incentive among users to pay for premium subscription models as they are able to access content easily without having to store it in their devices.

People pay for the experience. Services have to start looking at differentiating their offerings. Therefore, in order to get people to pay for services, platforms need to have a value proposition in place. For example, karaoke services in India like Smule who have monthly

paid subscription plans, have already picked up around 8 million subscribers. Audio OTT services have a Monthly Active Users base but the focus should be directed on getting consumers to pay for services, even if it starts with small payments.



Misperception of music as a free good

Music listeners 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. The music industry needs to focus on the

existing user base and directing them towards paid subscription models. Most importantly, piracy needs to be recognised as an illegal activity with enforcement actions against non-compliant users or infringers.

NLSIU Roundtable:



National Law School
of India University
Bengaluru

THE INDIAN
IMI
MUSIC INDUSTRY



Department of Industrial Policy and Promotion, Ministry of Commerce and Industry
Chair on IPR & Centre for Intellectual Property Rights Research and Advocacy (CIPRA)
NATIONAL LAW SCHOOL OF INDIA UNIVERSITY
in association with
the Indian Music Industry (IMI)

One Day Roundtable
“Unlocking Fair Value of Stakeholders”



Keynote Address

Prof. (Dr) T Ramakrishna

*Professor of Law,
Chair of Intellectual Property Rights,
Head, CIPRA,
Head, Institute of Excellence on Standards & IPR*



The Music Industry has witnessed a mini renaissance post 2015 after a period of depression of almost 15 years. It has coincided with a whirlwind shift in technology which has changed the way people around the globe like to consume their music. Apps like Amazon and YouTube have been game changers in the field of IPR but have also brought in along a myriad of problems from which all stakeholders need to be safeguarded.

With technology being a massive disruptor in the modern world, the single point agenda is to grow the music industry and to see how we can bring together all the stakeholders and concerned agencies and find a solution to the emerging problems related to music in the digital world.

“The Music Industry is growing at an impressive annual rate despite revenue leaks such as piracy, lack of fair value but all stakeholders whether they are from the government or the industry or the academia need to come together and find a solution for the music industry which has the potential to contribute up to 6 percent of the country’s GDP.”

Revenues of the music industry in India today are majorly generated by streaming and sync licensing with a whopping 85 percent of the total contributed by these two.

The emphasis is on how the recorded music industry is powering giants of the Music and Entertainment ecosystem. The burning issue is related to entities which pay the music industry. Industries with revenues reaching 10 times of what the music industry earns, pay about 2-3 percent towards the use of music. This is a fair value issue which needs to be addressed as a lack of it, hurts the entire music ecosystem.

The music industry has for long questioned whether access of content to public should be at the

cost of loss of revenue to the content makers (record labels). It is absolutely vital that academia be involved, and similar roundtables are organized in the future to discuss the bottlenecks against fair value and determine the nature of these bottlenecks-whether regulatory, whether legal etc.

Shri Ramesh Sippy had once said that revenues are like one giant pie and the content makers have no issues with sharing this pie provided, they have a chance to keep a bit for themselves.

A lot of work over the last few years has been put in by the labels, but an industry wide participation is yet to be seen. A joint effort from everyone is needed and everyone with relationships with government

and its agencies need to join, participate and contribute.

The Music Industry is growing at an impressive annual rate despite revenue leaks such as piracy and lack of fair value but all stakeholders whether they are from the government or the industry or the academia need to come together and find a solution for the music industry which has the potential to contribute up to 6 percent of the country's GDP.





Keynote Address

Mr G R Raghvendra

*Joint Secretary, Ministry of Law & Justice,
CSS, Former Registrar of Copyrights*



“Statutory Licensing is not a permanent phenomenon – it is only a temporary support for the industry and can be taken back.”

India took the initiative to introduce amendments in its National Copyright Law per Article 12 of the Beijing Treaty on Audiovisual Performances, 2012 (“Beijing Treaty”), which deals with the transfer of the exclusive economic rights of performers to the producer. Art. 12(1) of the Beijing

Treaty states that national laws may provide that subject to any contract to the contrary, the exclusive rights in the treaty shall be owned, exercised by or transferred to the producer once agreement is given to the fixation of a performance. Underlying the idea behind the amendment

relating to the right to receive royalties is the principle of equitable remuneration, which can be traced to Art. 13 of the Berne Convention and the patent law of Germany. The phrase ‘right to receive royalties’ by authors and music composers was inspired from German copyright law. Art. 12 of



Rome Convention also empowers states to protect rights of performers when business models fail to respect equitable remuneration. The language of the article is very similar to Sections 18,19 and 38 of the Copyright Act, 1957.

The Berne convention that first formulated these limitations and exceptions and brought the focus on the communication to public and broadcasting. Brussels division of the Berne Convention, 1948, introduced a limitation to the exploitation of the right for the creators and for the first time, the concept of compulsory and statutory license was introduced, which created ripples around the world. The concept of equitable remuneration for the owner, thus introduced, was provided for under the Berne Convention vide Article 11 bis 2, which was then adopted in various copyright legislations around the world.

However, Article 11 bis 2 of the Berne Convention did not address the problem of the music industry. The Rome Convention for the

Protection of Performers, Producers of Phonograms and Broadcasting Organisations, 1961 recognized the rights of the music industry, which not only incorporated limitations and exceptions of the Berne Convention but along with that, introduced Article 12 which recognized that when there is a market failure, business models can be introduced in national legislation.

The Indian Government's intention at the time of introduction of S.31D of the Copyright Act, 1957, was to strike a balance between private rights and public interest in the sphere of copyrights. This balance can be sourced to the Berne Convention, Art. 7 of the TRIPS and also to the preamble of all the WIPO Treaties, the latest being the Beijing Treaty. These treaties recognize the need for balancing interests in order to create access to knowledge for the purposes of research, education, libraries and the disabled without harming the moral rights of the owner of the copyright. In pursuance of this goal of balancing interests, India sent a five-member delegation to the 1996

WIPO internet treaty and diplomatic conference, to enable harmonization of the domestic copyright laws to the TRIPS level. Thereafter, the delegation recommended that the Government sign the WPTC. This was, however, deferred by the Government until national consultations with the different stakeholders had been completed.

From the year 1998 to 2006 consultations with the various stakeholders continued, pursuant to which the final draft was made public in order to enable comments on the same. In addition, region wide consultations were also undertaken by the copyright office. Thereafter, final demands were made by the film industry for a term extension in the cinematographic field. In India, due to the pressure sustained by filmmakers, the government thought that the principal director should also be accorded some benefit in light of his/her contribution to creativity and a contract existing between the director and producer to that effect. This argument was not accepted by



the Parliamentary Standing Committee. Furthermore, the amendment sought to recognize the contribution artists, composers and lyricists for their work and hence performer rights were granted. This was necessary pursuant to ruling in the IPRS v. Eastern Motion Company (1997) wherein the Supreme Court though recognized rights of performer's, held that rights to royalties were transferred to producers and music labels as per §17(b). In 1993, authors and composers and music companies came to an understanding according to which royalties on performance rights were agreed to be shared equally between them as per international norms. This continued till 2004, however, problems arose when few authors objected to the arrangement. Therefore, a need was felt to recognize rights of performers distinct from cinematographic film or sound recording. This amendment sought to illuminate what in J. Krishna Iyer's words was a 'penumbral' area in law (IPRS v. Eastern Motion Company).

A compulsory licensing provision already existed under S.31 (b) of the Copyright Act, 1957. The introduction of a Statutory Licensing provision under the Copyright Act, 1957 was a political decision and the Government was in support of introducing a Statutory Licensing provision to support the infant private FM radio industry in India. It was discussed that the introduction of a Statutory Licensing provision under S.31D was only temporary and once the radio industry was provided support, it would be removed from the Copyright Act, 1957. Statutory Licensing is not a permanent phenomenon - it is only a temporary support for the industry and can be taken back.







International Perspective

Lauri Rechardt

Chief Legal Office, IFPI, UK



In 2000, the recorded music industry globally was at its peak. After 15 years, the industry was declining due to the influence of many factors: a major distorter is digitisation and with-it piracy as well as the transition from analogue to digital, from selling CDs to selling downloads and a sudden transition from ownership to access based consumption. People no longer bought CDs or downloaded music, rather they subscribed to a music streaming service.

We are now in a happier place; the industry revenues grew by 9.7% in 2018. Almost 60% of global recorded music industry revenues came from digital sources. It is interesting and exciting to know that the recorded music industry in India is ahead of the digitalization curve globally. In India, almost 80% of the industry revenues came from digital services. There are 100s of licensed digital services offering instant access to over 50 Mn sound recordings as compared to 15 years

ago where one would have to go to a record shop in their city to listen to music and if they were lucky, were able to find the very same recording. For the consumer and music fans this is very good times.

Let's not forget what's behind it; the industry through the good times as well as the bad times has continued to invest in discovering talent. In 2017, US \$ 5.8 bn i.e.,

“Look at the market, look at the tens of millions of songs available, and then question is statutory license really justified? The answer must be resounding no. The right way is for the parties to negotiate fair, voluntary licences, even if it may sometimes take more time than resorting to statutory licenses. Voluntary licensing is the international norm, and it sets the right foundations for a vibrant and sustainable Indian digital content market...”

30% of global revenues, were re-invested in Research and Development of the industry. The important part of this is that record labels paid their artists royalties on the basis of a mutual agreement made between them. Artists saw new channels and opportunities to market in the digital period and were able to get a bigger share of a bigger cake.

The industry has also invested significant amounts in systems & digitalisation, to enable the offering of their entire catalogue including the latest tracks or songs. This was easily forgotten especially when digital piracy was taking over the industry. But, doing things the right way takes time & investments and now we are seeing growth fuelled.

The music industry is still an industry in recovery. We as an industry are way below than what we were in 2000 and that is despite the fact that the actual engagement in music is higher than ever. Engagement in India is higher than the global average, which means that the consumption of music in India is higher than the global average. There is great potential for the recorded music industry globally and individually but to unlock this we need to unlock fair value for the stakeholders.

As a digital industry what we need is a fair digital market; which provides a for the ability to conduct our business in a fair level playing field and markets that function like any other would.

We look at the liability rules and they must be such that they support and not stop the industry. Right owners should be able to license their rights in a free and fair way, the way they wish without unnecessary compulsion and regulation. Piracy is still complacent and undermined. We need to reach out to legal services so that these services can grow and help set the value of music.





Liability rules has been the number one priority globally. Earlier in 2000's, liability privileges also known as safe harbour were enacted in a number of countries including India that were originally intended to shield passive online intermediaries from artificial losses which is a fair and just objective. However, active online services that were never meant to be covered under these liabilities have been claiming these liability privileges. We need to push back the liability privileges to its intended function which is shielding passive services and ensure that active services, in particular, services that harvest content from their users like YouTube, which is the largest on-demand music distribution service. Content service providers need to license and negotiate with the right offer instead of offering all the world's music content and afterwards coming to the copyright holder saying, "here's what we'll give you, if you don't like it you can send me take down notices.". This market has led to the abuse of the value which is the difference between what user upload content services pays for their rights and how much value they extract in terms of traffic and ad-revenue from their users. The EU realised this is a problem and addressed the individual market directed through Article 17 that active content sharing service providers cannot benefit from safe harbour privileges and engage in copyright restrictive

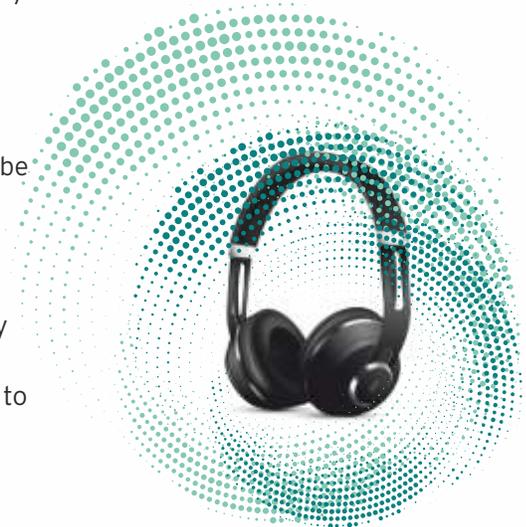
acts when they make available unlicensed content on their platforms.

There are hundreds of licensed services with over 50mn sound recordings available globally, this implies that the licensing market works. Licensed music is made available online through negotiations between the copyright owners and interfaces in a fair manner. Therefore, there is no need to consider using exceptions or limitations to license the rights of copyright owners as per the whims of service providers. There are economic arguments against limiting the right of copyright owner's ability to license their content. Statutory or compulsory license distorts the market and to avoid this they should be introduced when there is market failure. Hence, it is important for the development of digital services globally and individually, that copyright owners are able to negotiate their licenses in a free and fair manner. India is a signatory to Article 14 & 16 of the WIPO treaty, implying India cannot impose restrictions such as the extension of 31D to internet broadcasting services as it would be against India's international obligations.

We are seeing new forms of piracy which did not exist in large scale few years ago. The biggest threat to

the industry is stream ripping which allows a user to rip a track from a streaming platform and converting it into a downloadable file which can later be accessed offline as well as shared. This undermines the important conversion of consumers from free to premium paid users; which would have otherwise helped unlock the fair value divider. These streaming ripping services and the location of the infringers that operate these services are difficult to identify.

Very exciting times are ahead for the global industry growth but we need support from the government and legislation, not for special perks but to ensure the record labels operate in a fair ecosystem. This is not an unreasonable ask.







Setting the Roadmap



Blaise Fernandes

President and CEO, The Indian Music Industry

The Government of India last year announced Media & Entertainment as one of its 12 champion sectors. It is time for India to revisit its National Media Economic Policy. Media power currently is concentrated in the hands of a few corporations or individuals - both in traditional media and digital media. Fair Value, Democracy and Creativity are all at threat till the time this continues.

The DPIIT and all stakeholders need to come together and get all baseline data for all the soft power India has including but not limited to a- vibrant film industry, a vibrant music industry, dance, arts etc. However, we do not have firm data on the economic contribution by us to the nation. We encourage the DPIIT to conduct a study on the WIPO lines to calculate the number of lives that the entertainment

industry touches. We currently reach 1.5-2 percent of the GDP contribution to the nation but it is my firm belief that this number can reach as high as 6 percent. Sample this- 650000¹ villages throughout the country and each village has its own brass band employing a minimum of 20-25 people. These bands do not play their original compositions but tweaked versions of music from the films.

¹Census 2011

Our Hon'ble PM talks about Ease of doing Business in India. We wholeheartedly welcome that but the moment a department issues an office memorandum out of their jurisdiction, this said Ease of doing Business goes out of the window. Executive overreach and office memos hamper the growth of our industry and render the labels clueless unsure of how much to invest and what their investment plans should be. As long as there is uncertainty, there will never be proper investments and the business as a whole will be stifled.

The Recorded Music industry today contributes today to what is called the #GigEconomy where young men and women have multiple jobs and earn a livelihood out of these jobs. Performers at live centres, restaurants, offices are all part of the gig economy. The music industry in India contributes to India's soft power and heritage keeping in mind the fastest product which moves out of India digitally is a song.

In addition, what we need is a strong anti-piracy mechanism. Today, there are 2 levels of piracy- One is the traditional B2C (Business to Consumer) and the other is the B2B Piracy which is equally big.

In conclusion, it is time for some sort of recognition for the music

industry. There are national awards given annually to films and we have made our recommendations across to the Ministry for recognition across the board.



“Today, India is in a position to leverage its soft power and showcase its vast culture due to the popularity of Indian Music and the presence of a vast Indian diaspora abroad.”



HIGHLIGHTS OF THE EVENT

One Day Roundtable on

“Unlocking Fair Value to Stakeholders”

September 5, 2019

Bengaluru





PANEL DISCUSSION I:

A re-look at Statutory Licensing in India – whether it stifles of ‘Fair-value’ Assessment

MODERATOR: **G R Raghvendra**, *Joint Secretary, Ministry of Law & Justice, CSS, Former Registrar of Copyrights*

PANELLISTS: **K T Ang**, *Regional Director, Public Policy Universal Music Group: Great China, ASEAN, South Asia;* **Lauri Rechart**, *Chief Legal Office IFPI, U.K;* **Lehari Velu**, *Partner, Lahari Music;* **Puja Uday Bakshi**, *Director Legal: Sony Music India;* **Kalyan C. Kanakala**, *Founder, BananaIP (BIP) Counsels;* **Priyanka Joshi**, *Manager Legal, Zee Music and* **Harish Narsappa**, *Founder Partner, Samvad Partners and Co-Founder, Daksh*



INTRODUCTION AND OBJECTIVES

The recorded music industry powers large industries in the Media and Entertainment ecosystem such as the radio industry and the television industry. These industries enjoy high valuations and earn revenues in multiples as compared to the recorded music industry. However, there is a disproportion in the revenues earned from these large industries and the value that music adds to these industries. This is because some of these industries, or companies, do not negotiate fair commercial terms for their use of sound recordings. This makes it easier for larger industries in the Media and Entertainment sector to justify when rules such as statutory licensing exists.

The objective of the panel is to discuss the rationale of statutory licensing under Section 31D of the Copyright Act, 1957, and its implications on the recorded music industry and the broader Media & Entertainment Industry.





KEY POINTS

The relevance of Statutory licensing in the internet era

Statutory license exists globally in limited areas of broadcasting (TV and Radio). In the internet era, statutory licensing doesn't exist. The extension of statutory licensing to internet services would be off-kilter with the way statutory license exists in the Indian and International sphere. In terms of Section 31D, the law in India is sufficiently clear that it is applicable to TV and radio broadcasting. Broadcasting is a one

to one viewership; however, internet transmissions is a multi-reach medium with simultaneous views.

The economics behind the introduction of statutory licensing is for when there is market failure in the system. The licensing market for internet services, however, has no signs of market failure. The legal reasoning behind the introduction of statutory licensing, Article 14 of

the WIPO Performances and Phonograms Treaty (WPPT), established exclusive rights available for interactive forms of transmission and Article 16 which confirms and establishes the three-step test that limits the exclusive right in the treaty. There is legal consensus that internet transmissions have never passed the three-step test.



Digital Service Providers and their claim on S31D

Several DSPs have gradually tried to increase the scope of statutory licensing through litigations at various levels, modus operandi being DSPs would propose

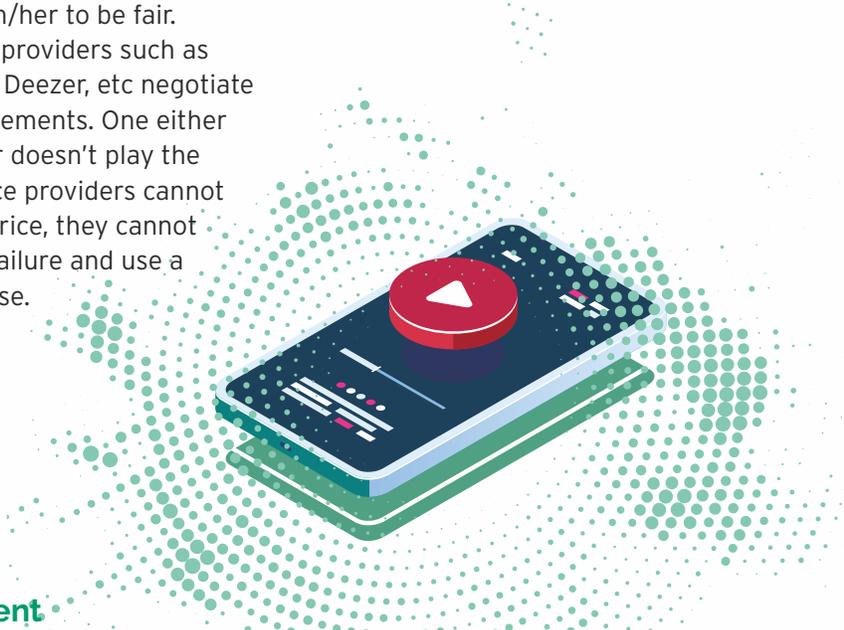
negotiations, then resorting to 31-D - fight cases, and subsequently settle for fixed interim rates. DSPs have strived to ensure that Section 31D was applicable to internet

transmissions. To create fair value today, making available of rights in the global arena depends on voluntary licensing as a good market practice.

Copyright - Exclusive property rights

The idea of copyright is like owning exclusive rights to a property. The owner of the property has the right to negotiate prices based on market research with a potential buyer and/or user without intervention unless there is market failure. For instance, when one wants to purchase a car, he/she cannot walk away with the car by paying a price

deemed by him/her to be fair. Online service providers such as Spotify, Apple, Deezer, etc negotiate voluntary agreements. One either pays the fee or doesn't play the music. If service providers cannot agree on the price, they cannot claim market failure and use a statutory license.



Unsustainability of equal pricing for all content

Music is created by lyricists and authors. However, the recorded music labels invest huge amounts of money (in crores) to put them on the global map. Record labels should have the right to decide how to recover costs from a certain sound recording. Statutory licensing is different from compulsory licensing. Compulsory

licensing was necessary when work was being withheld from the public.

The ability to negotiate licenses helps promote creativity in the entertainment industry. For instance, if there was a blanket rate for Netflix who sought to acquire the series "Sacred Games" and an

unknown piece of content; this fixed rate would be unfair for the content creators as it doesn't allow them to negotiate prices according to the quality of their content. There should not be a cap that decides the value or how much a user pays for the foundation of their content, in this case music is the foundation.



Ambiguity of Section 31D

Statutory Licensing creates market disruptions and ultimately it is the creators of content who suffer. When Section 31-D was introduced in 2012, the Parliamentary Committee was aware of the growing presence of the Internet in India and yet, chose to overlook it in the definition of "broadcasting" thereby making it apparent that statutory licensing was available only to the radio and television broadcasting domain.

PANEL DISCUSSION II:

Combatting Digital Piracy to ensure creative content owners a fair return

MODERATOR:

Blaise Fernandes,
CEO & President, IMI

PANELLISTS:

Harish Narsappa,
*Founder Partner, Samvad Partners
and Co-Founder, Daksh; Samvad partners*

Harikrishna Holla,
IPR Attorney

Lauri Rechart,
*Chief Legal Office,
IFPI, UK*

Nidhi Jhavar,
Legal Associate, IMI





INTRODUCTION AND OBJECTIVES

The recorded music industry is at a take-off point on account of various favourable factors such as demographics, cheap data and increasing smartphone penetration. The youth (15-24) in India represent 19.1% of the total population and is expected to grow to 34.33% by 2020². In 2018, there were 610 million mobile broadband subscriptions and is expected to increase to 1.25 billion in 2024³. In addition, India has the world's highest data usage per smartphone at an average of 9.8GB per month⁴ and the number of smartphone users is expected to double to 829 million by 2022 from 404.1 million in 2017⁵.

The aforementioned factors have contributed to increased legitimate content consumption, however, the favourable growth trajectory in the recorded music industry has also been accompanied with the menace of piracy. More than half of surveyed internet users (54%) access unlicensed content on a monthly basis in India on rogue websites⁶. Based on a recent survey, of Internet users in India, 76% of internet users accessed musical content through pirated means, highlighting the rampancy of piracy and another example of "Anti-Fair Value"⁷. Illegal P2P apps, streaming apps, stream ripping websites or even infringing websites based out of India or Pakistan, result in losses of ~US\$250 million⁸.

The panel discussed piracy in the current market scenario, recommendations to address the issue of piracy.

² "Youth in India" report by Ministry of Statistics and Programme Implementation, Government of India, 2017.

³ Ericsson Mobility Report, 2019

⁴ Ericsson Mobility Report, 2019

⁵ Cisco Visual Networking Index: Forecast and Trends, 2017-2022 White Paper.

⁶ AudienceNet - IFPI Survey, available at <http://indianmi.org/be/wp-content/uploads/2018/10/Digital-Music-Study-2018.pdf>.

⁷ AudienceNet - IFPI Survey, available at <http://indianmi.org/be/wp-content/uploads/2018/10/Digital-Music-Study-2018.pdf>

⁸ IMI-Vision 2022 Report, 2018



KEY POINTS

Judicial, executive and law enforcement developments

Advancements in technology have been accompanied with the malevolent activity of piracy. India has come a long way in grappling the issue of piracy. The development of a government department- Centre for IPR Promotion & Management (CIPAM), under the Department of Promotion of Industry and Internal Trade (DPIIT), undertakes action on issues related to Intellectual Property Rights and educates stakeholders

on the challenges in combatting piracy. The presence of two cybercrime units - Maharashtra Cyber Digital Crime Unit (MCDU) and Telangana Intellectual Property Crime Unit (TIPCU), which are similar to the model of Police Intellectual Property Crime Unit (PIPCU) in London. PIPCU is funded by the government and the industry, to deal with fraudulent activities related to Intellectual Property.

Indian courts such as the Delhi High Court have recently crafted the remedy of dynamic injunction orders, along with a few other countries like Singapore, which block infringing domains that reappear after the initial injunction, otherwise known as mirrored websites.



Chemotherapy to piracy

There is a need for a fast and scalable mechanism such as 'Infringing Website Links' or 'IWLs', dynamic injunctions, blocking of IP addresses/websites and legislative and judiciary work, to deal with issues related to infringing service

providers. Since most servers of pirate websites are located outside the country, having an efficient and thorough administrative website blocking can help alleviate losses due to piracy.

Palliative Care to piracy

Building consumer awareness by educating and evangelising consumers with respect to the broader security implications of accessing content on pirated website is an essential route to tackling piracy. Data is mined through malware that enters the system when a free pirated version of a sound recording or movie is downloaded.

While there is moral indictment attached to stealing a packet of biscuits, there is none when it comes to listening to music without paying. Educating users through consumer forums and workshops can help change the mind set of consumers.



Unlocking Fair Value through curbing piracy

Fair value will be achieved only when piracy is adequately tackled. As long as the option to pirate sound recordings exist, valuation of music will remain artificially low, as legitimate services will not be able

to compete with infringing services, and the true value of the IP will not be realized.. This will have a negative effect on the inflow of investments in the recorded music industry.



Judicial and government laxity

More action needs to be taken to IP rights; in order for this to happen, judicial officers need to be sensitized and trained in matters of IPR. Often, judicial officers have limited training and knowledge in the field of IP rights; therefore, they fail to take the issue of piracy seriously. This results in lack of primary measures by the police as well as poor judgments in court in IP related matters. Both academia

and the industry will have to help in training judges on IP matters.

Further, the laid-back approach towards enforcement of law on IP rights by the state, weakens the ability to curb piracy. The Government of India needs to take active action similar to those undertaken by Government of China, such as administrative

blocking and SWORD Net Action to deal with issues related to piracy. The efforts taken by the Government of China resulted in a take-down rate of more than 85%. However, in India, once a take-down notice is issued, not enough is done by law enforcement to follow up on infringing platforms to ensure stay down of illegal content.



Capacity building of the government

Capacity building of the government of India in dealing with issues related to the IP sphere is the need of the hour. The recorded music industry needs to work with the government to build capacity. The government needs to be cognizant of lags behind in understanding technological and digital advancements as every time

a particular form of piracy is tackled, a new form of piracy springs up. Working with the government to build new technology solutions would benefit both the recorded music industry as well as increase the efficacy of the government in battling piracy.

Other Recommendations

- Modifying laws that are supportive of the interests of the music ecosystem takes time. However, the industry requires more dedicated intellectual property units such as Maharashtra Cyber Digital Crime Unit (MCDU) and Telangana Intellectual Property Crime Unit (TIPCU) which can help minimise piracy activities.
- Apart from consumer awareness of pirated content on websites, more consumer retention techniques on legitimate websites are essential to incentivise and engage consumers on their platforms for a longer period. For example, in China, users can interact with artists, this helps retain consumers as they have added advantage over such services.
- Advertisements fuel activities of pirate websites and infringers. Therefore, combined efforts from the Advertising Standards Council of India (ASCI) along with music industry stakeholders to build awareness and identify solutions to curb piracy like removing advertisements on illegal content service providers.
- Introduction of a clean mark or an official certification of clean sites which do not host pirated content.

Valedictory Address



Hon'ble Justice N Kumar,

Former Judge, Karnataka High Court

“I encourage all stakeholders to work closely with the academia to spread awareness about the ills of piracy, it is predominantly a mentality issue and till a concerted effort is carried out, there will be no fix, let alone a quick one for it.”

Piracy is the biggest malaise plaguing the music industry today. While combating piracy, one needs to think of it as a mentality problem. The idea of content being free has seeped into the average person's conscience that paying for the same seems laborious to many.

As part of the judiciary, I can tell you, we have a multitude of Intellectual Property Laws present to protect Intellectual Property

against the cancer that is piracy but we have to ensure better implementation of the same.

The IPAB does not speak about internet broadcasting and the interpretation of section 31-D is a bone of contention for the recorded music industry in India. I would like to assure them that when there is ambiguity about the interpretation of a statute, it is only the court which is empowered to give the

correct interpretation. An Under Secretary of a Government body cannot interpret the same according to their whims and fancies. I encourage all stakeholders to work closely with the academia to spread awareness about the ills of piracy, it is predominantly a mentality issue and till a concerted effort is carried out, there will be no fix, let alone a quick one for it.



NOTES



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