

## THE INDIAN MUSIC INDUSTRY

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25<sup>th</sup> February, 2022

To,  
Dr. Aruna Tiwary,  
Cell for IPR Promotion and Management,  
Department for Promotion of Industry and Internal Trade,  
Ministry of Commerce and Industry.

**Subject: IMI Recommendations in relation to IPR and proposal for Criminal law amendment**

Dear Sir,

We, the Indian Music Industry (“IMI”) represent the business and trade interests of the Indian recorded music companies on a pan-India basis with a membership base of 204 music labels. IMI is registered under the West Bengal Societies Registration Act, 1961. IMI is affiliated to IFPI, the association representing the recorded music industry worldwide.

**Background:**

Today, technology has advanced at a breath-taking pace, enabling access to a large variety of content without limitation of place or time. Globally, the number of internet users has increased in the past 10 years from 1.97 bn in 2009 to to 4.66 bn in 2021<sup>1</sup>. In India alone, the number of active internet users expected to increase by 45% in the next few years and touch 900 million by 2025 from around 622 million in 2020.<sup>2</sup>

The explosion in the number of users online, along with presenting opportunities for businesses to grow, has also become a breeding ground for criminals with wide scale infringement of the

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<sup>1</sup> Internet users in the world 2021 | Statista

<sup>2</sup> Internet Adoption in India; ICUBE report June 2021



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recording industry  
worldwide

valued rights of those who create content. The range of legitimate content services online has been accompanied with an increase in infringement of content online as it provides the greatest opportunities for infringement without detection.

The recorded music industry provides support to formal partner industries as well as informal industries. An estimated INR 8,660 Cr. and 36,800 FTE (Full Time Employment) generated by formal partner industries such as television, radio, live events, films and audio OTT, is attributed to the impact of the recorded music industry<sup>3</sup>. Therefore, the recorded music industry in India despite being valued at a mere INR 1,332 Cr.<sup>4</sup> makes a sizeable contribution to the Indian economy, both directly and indirectly. In order to ensure that we can protect this investment, there must be effective and appropriately targeted laws and a clear message needs to be sent to infringers and violators of copyright that unauthorised exploitation and abetment of unauthorised exploitation of intellectual property is impermissible in law and equity.

The issue of copyright piracy in recorded music industry has evolved from the physical realm to digital. The earlier methods of tracking down the offenders and destroying the physical paraphernalia has become obsolete. Digital piracy results in significant losses to the tune of INR 1200 Cr<sup>5</sup> to the recorded music industry due to illegal downloads, stream-ripping and infringing websites hosting pirated content. Even as we debate different means for countering piracy, it is pertinent to re-iterate that the aftermath of digital piracy is not just revenue losses but also the fact that these unscrupulous revenues are used to fuel adverse activities such as terrorism.

**The Connection between Copyright Infringement (Piracy) and Terrorism:**

Intellectual property crime is one of the fastest growing criminal enterprises worldwide. The primary reason is that intellectual property theft is a low risk, high return crime. According to a United States Trade Representative's Special 301 report, the real incentive for criminals to begin counterfeiting and piracy operations is that they can begin illegal operations with little capital investment and even if they are caught and charged with a crime, the penalties in most countries do not offer a sufficient deterrent.<sup>6</sup> Apart from infringement of private rights, counterfeiting and piracy activities also give rise to serious organised crimes. Counterfeiting,

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<sup>3</sup> Deloitte – IMI Economic Impact of the Recorded Music Industry in India, 2019

<sup>4</sup> IFPI Global Music Report 2021

<sup>5</sup> A CASE FOR FREE MARKET ECONOMICS IN THE INDIAN RECORDED MUSIC INDUSTRY, IMI Report 2021

<sup>6</sup> Office of the United States Trade Representative, 2003 Special 301 Report



piracy and smuggling also finance criminals and terrorists who deal in counterfeit goods to launder illegal money.<sup>7</sup> It is now considered fairly undisputed that Copyright Piracy has been infamously considered as an easy choice for funding terrorist activities.

There have been several intelligence reports originating from Britain and USA that trace back the revenues generated from websites offering infringing copyrighted content to the operations of Al Qaeda as also regional terrorist organisation such as Hezbollah and Hamas. It was reported that in 2015, there was a \$2.5 million transfer from a DVD pirate Assad Ahmad Barakat to Hezbollah, who received a "thank you" note from the leader of Hezbollah.<sup>8</sup> In fact, in 2017, Mr. Rajnath Singh, the then Home Minister of India had announced a special course in all police training colleges on intellectual property rights stating that piracy and copyright violations are a source of terror financing and money laundering.<sup>9</sup>

Terror groups, especially, in developing countries have used copyright piracy for funding their terror activities. Developing countries are easy targets for copyright piracy due to the low rate of criminal enforcement mechanism.<sup>10</sup> In the United States, intellectual property theft/piracy is treated as a white-collar crime and can be investigated by even the FBI.<sup>11</sup>

Digital Piracy and the platforms supporting it in the current form is a hydra-headed monster; it not only masks behind the veil of anonymity but also regenerates into new forms. The website—songs.pk – is the most visible example.

**Protection of valuable content of the copyright owners under international treaties:**

Imposing Criminal Sanctions for copyright infringement is in line with India's international obligations. India is a signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) administered by WTO, which provides for criminal sanctions to apply

<sup>7</sup> Mr. Rajnath Singh on Piracy, copyright violation sources of terror funding, available at <https://www.livemint.com/Politics/OXVUwsGWgXSvgIOa1VGcBM/Piracy-copyright-violation-sources-of-terror-funding-Rajna.html>

<sup>8</sup> Stephen Carlisle, "How Copyright Piracy Funds Terrorism and Google Removes 180 Million Videos from YouTube," *NovaSoutheasternUniversity.edu*

<sup>9</sup> <https://cfo.economictimes.indiatimes.com/news/piracy-copyright-violation-sources-of-terror-funding-rajnath/60179955>

<sup>10</sup> Robinson, Brandy, IP Piracy & Developing Nations: A Recipe for Terrorism Funding, accessible at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2568466](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2568466)

<sup>11</sup> <https://www.fbi.gov/investigate/white-collar-crime/piracy-ip-theft>

to copyright infringement occurring on a commercial scale. Therefore, India is bound by its international obligations to impose criminal sanctions for copyright infringement.

**Article 61 of TRIPs provides as below:**

*Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.*

The international framework providing for the criminalisation of online copyright infringement is reflected in the domestic law of many countries in the world. Annexure A provides for an overview of maximum prison sentences for piracy in EU Member States.

**Recommendations**

IMI would like to make the following suggestions with respect to the existing provisions under the Copyright Act, 1957 and the Code of Criminal Procedure to enhance the penalties provided therein—

**1) Changes to Section 64 of the Copyright Act, 1957**

IMI proposes the introduction of a provision under Section 64 of the Copyright Act, 1957 for introduction of an expedited process to effectively tackle copyright infringement.

IMI suggests the following in this respect-

- Inclusion of a provision under Section 64 wherein in the event that a complaint of infringement is filed by the copyright owner himself along with proof of ownership such as a registration certificate, such a complaint be routed through a special procedure

and the complaint be resolved with immediate effect, without having to undertake the regular procedure as laid down under Section 64(1) of the Copyright Act, 1957.

- Strict penalty provisions be introduced in case of leakage of information regarding complaint against copyright infringement.

We propose that the existing Copyright Rules be modified to the same effect.

### 2) Online copyright offences be treated as seriously as physical copyright infringement

IMI believes that *online copyright offences should be treated as seriously as physical copyright infringement*. Harmonising the treatment of such offences shall provide a deterrent effect to criminals and where criminality continues, tangible punitive action.

Such a practice is followed by UK, considered to be a global leader in protection of intellectual property rights. Under the Copyright, Designs and Patents Act 1988, copyright criminal offenders can be punished with a fine and up to 10 years in prison. A maximum of 10 years allows the courts to apply an appropriate sentence to reflect the scale of the offending.<sup>12</sup> We advise that the Indian Government also follow suit and increase the term of imprisonment for Copyright infringement to 10 years along with the provision for a fine proportionate to the losses caused. Capping the maximum available sentence at a lower level such as three years as provided for under Section 63, Section 63A and Section 63B unnecessarily limits the ability of the courts to apply appropriate sentences in the more serious cases of copyright infringement.

### 3) Changes to Part II, First Schedule of the Code of Criminal Procedure (CrPC)

Currently, there is ambiguity regarding whether an offence which attracts a maximum penalty of 3 years imprisonment, but a minimum penalty less than that falls under the category of a cognizable, non-bailable offence. This takes away from the seriousness of crimes such as copyright infringement, which even though may attract a punishment of 3 years imprisonment, may still not be considered a cognizable, non-bailable offence simply because a lower term of imprisonment is allowed. This would not be in line with the intent of the legislature, and in fact, while interpreting the said provision, the Hon'ble Karnataka High Court in the case of

<sup>12</sup><https://www.lexology.com/library/detail.aspx?g=50abbceb-a59b-4ef5-ba89-5d51dd23dd34>

ANI Technologies Pvt. Ltd. v. State of Karnataka has held that the possibility of imposing a sentence for 3 years qualifies copyright infringement under Section 63 of the Copyright Act as a cognizable and non-bailable offence per requirement of Schedule II of the CrPC.

Therefore, taking all the above factors into consideration IMI recommends the following changes to be made to Part II, First Schedule of the Code of Criminal Procedure (recommended changes in bold) -

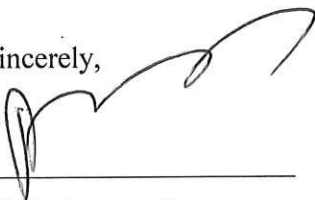
PART II - OFFENCES UNDER OTHER LAWS

Description of Offence	Cognizable	Bailable	Triable By
If punishable with death, imprisonment for life, or imprisonment for more than 7 years	YES	NO	Session court
If punishable with imprisonment for 3 Years, and upwards but not more than 7 Years <i>(Including those offences that are punishable with a maximum of 3 years of imprisonment but with the option to provide for a lesser term)</i>	YES	NO	Magistrate of the first class.
If punishable with imprisonment for less than 3 Years or with Fine only	NO	YES	Any Magistrate

This will act as a deterrent for criminals and in the case of copyright infringement will ensure that labels take action and get FIRs filed against the Directors of the Company who infringe their content.

IMI also welcomes the opportunity to make an online/ in-person representation of its concerns before the DPIIT and/or to provide further written information in relation to any questions.

Sincerely,



**Blaise Fernandes**

President & CEO

The Indian Music Industry