A SYMPHONY OF EFFORTS
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So, these three years, I think everybody understands that they have been difficult ones.

We could not shoot films. We could not shoot music videos. We could not do live functions. Everybody's journey was affected during this time.

I think the great part about that was music somewhere came to the rescue of the end customer. Recently IMI did the study of the digital market in India and 92% of the respondents said that music helps them to calm down during these very, very stressful times. So yes guys, you and I all work for money but there's a larger thing we end up fulfilling for the community: to give people that two minutes of happiness or solace when they're down. A big round of applause to all of us for doing that.

And to our fascination, there are some other data points: globally, music is heard 18.4 hours every week and in India we listen to music close to 22 hours per week. So here we are all listening to music at all times, almost three hours a day, which is a very very heavy consumption. When you start looking right now, it's such a large country ka base.

The silver lining and I seriously believe they have a silver lining; mom dad taught us this: Ki Har andhere ke baad ek roshni dekhai deti hai, that's a reality.

What is a big gauge we got out of COVID: One, an altogether new generation got introduced to digital. A lot of parents and grandparents who were dead-against the word "digital" - who were very, very comfortable with their children sideloading music onto their phones, or going for apps that they were very comfortable with – for the first time, actually started to try newer apps (streaming apps, short form video apps), because they were stuck inside their homes with their children and grandchildren. This means an altogether new generation of users have now jumped onto the digital bandwagon. Just because COVID has gone away doesn't mean that those guys are going away from digital platforms. And I can tell you this, because the
biggest beneficiary will be my own company which has got the music of that era, you have people in their 40s and 50s and 60s now holding on to that digital part. The other huge benefit of this is that our dependence on film music has come down over the last three years. All of us, even companies if they are not for it have jumped into the independent artists, non-film music genre and have reaped rich dividends. Is the music going to die? No way. Film music is here to stay in this country. We are not going to become America, not in our lifetime. But you may have, and already there are very strong finds that you will have, a very strong independent artist game going on, which means great news right now for us and for the end customer. We all also talk about the fact right now, how Indian music industry is not very big. That's a fact. Formal music industry is around INR 1800 -1900 crores here and there, in those range of numbers. What shocked me, is that - if I go by the latest ICRIER study, which is one of the biggest think tanks of India - they are telling us that the informal industry what is the informal industry, primarily the brass band waale is a large number. That DJ market which is sitting in there, musicians, people who make musical instruments, if I combine all those parts, the informal industry is roughly 75 to 300 times the estimates of the formal music industry. That's the impact. They're saying that 14 million people are employed by the informal industry. The biggest employer in India is the Tata Group and they have a million people. So, you're talking about the music industry employing a larger number of people than even the largest private sector company of this country. I think what we see is not enough. The impact we see cannot be measured only in terms of the formal industry; somewhere, there is a bigger impact we're having on society. And we need to ensure that more and more of that informal sector actually starts getting onto the formal side. That's necessary because the future can be much brighter and why do I say so? There are four points I keep on throwing around at my own company that I'll highlight here: 700 to 750 million people right now have a smartphone in India, with one of the cheapest data costs that you can find anywhere in the world! Yes, telecom companies have taken the rates up, and still you have one of the cheapest ones. And we are aping the east and west. 15 - 20 years ago, I remember traveling to Hong Kong, Singapore and I used to laugh at Korea, I used to laugh at the kids there. Everybody used to be glued onto the phones. They used to walk with their phone in their hand, staring at the phone and I used to think, "ha! Indians are so much better. They're not like those guys." Today, the moment there is a break, out here, 75% of you will be glued onto your phones. Nothing important has come in there. Trust me, companies are going to be working, even with your absence. But we are glued, it's a habit that we have. That means that much more consumption is going to be happening. Second, [about] where we are aping the Western world. Earlier, during the good old days of Kyuki saas bhi kabhi bahu thi, the entire family used to congregate in front of the television and watch it together. Content consumption was done for the lowest common denominator - two hours of unique content was enough to satisfy the need of the entire family. In today's India, in any of the metro or non-metro cities it is perfectly okay for kids to be watching on their own devices, grandparents to be watching something else, and yes, husband and wife, who are not heading for a divorce, are also watching content on two different devices while sitting in the same room. That means that much more content demand is going to be there. If we can ensure that we create good quality content, and we ensure that content is rightfully monetized, there is money to be made for every stakeholder in this food chain. And that comes to a very important point, who are the stakeholders? There are three primary stakeholders, we have in our industry: people who create content, people who fund that content, and finally, people who monetize that content. The industry cannot exist unless somebody is writing, composing, and singing a song. If any of our labels or platforms think right now that we are the creative geniuses, they are bullshitting; the fact of life is that there are creative people who are far more smarter than we are, as labels or as platforms, who are able to create that content and they need to be properly reimbursed for it. Then, there are the labels. These are the guys who are going out there and putting big bucks behind every song. Remember, a Bollywood song today is costing between
INR 3 – 5 crores a song, and for the non-Bollywood independent music that you’re talking about, which are big numbers, it can go up to INR 2-3 crores. Not every song is going to be a hit. For every Shersha or Pani-Pani you see and the grand successes outside, there are lots of songs right now which have not done well, and somebody is going out there and funding it. That company also has to recover its money. Then comes the platforms. All of us have a problem with platforms right now, wondering why they are not paying enough. Platforms are also spending crores of rupees for customer acquisition. They also need to find a way to make money, at the end of the day, as they are also not in this business for charity. Somewhere, all three stakeholders have to understand the pain of each other and find a solution that works for all. Then only can we expect this industry to jump, leapfrog, and move out there within the top five/top six globally. Otherwise, it’s a difficult task.

Three-four things I’d like to say out here, what can help?

One, the mistrust has to go. This entire part that we are all looking at the other guys and saying, that party must be making lots of money and they’re depriving us - that feeling has to go. I keep on repeating the IPRS example. We did that with IPRS and after years of infighting, finally, everybody came together and said, we will work together and Rakesh will be presenting to you, I think tomorrow, and we’ll see the numbers and realize at what pace IPRS is growing, just because all the stakeholders came together and started working.

My first point: platforms have to go pay. There is no way that streaming platforms can continue being what they are. There are approximately 525 million paid subscribers globally for music. What’s so different about India? I don’t understand. People keep on telling me, “Listen, nobody wants to pay in India”. People said the same thing to us when we launched Carvaan, and today there are 2.7 million people who have paid $100 odd for Carvaan.

What’s so unique about Caravaan, all we did was get the value right and people paid.

Same thing should happen in subscriptions, that’s point two. We need to assist platforms to go finally fully paid. Then only there’s enough amount of money that will flow in. Audio advertising-based platforms, sustaining themselves is difficult. I’m just quoting from public data, but if I remember it correctly, I think Spotify is managing 85 to 88% of its global revenue through subscription. That’s how platforms survive. If in China people can pay, and in India, if people can pay for video OTT platforms, I don’t see why people will not pay for your audio OTT platforms. Jury’s still out.

I have Devraj sitting here who would strongly disagree if I say that INR100 per month may not be the right pricing. Whether the pricing is INR 50 per month, or is INR 100 per month, something needs to be done collectively so that the industry moves towards subscription.

Second, short format apps: great. But they need to find a revenue model pretty fast. I think everybody needs to learn from the revenue model that YouTube has cracked: there is free content, which is sitting in and whatever money they are making benefits both parties. YouTube also makes money and we also make money. Facebook is trying to do this for the longer format content now. I think every short format app needs to track their revenue model, otherwise, once again, it's not a
sustainable story. As labels if we feel that a lot of content is being consumed there, but we're not getting our value, obviously we're going to jack up our rates, which is going to make the entire ecosystem fragile. So, a revenue model has to be found by those guys and shared with the IP owners.

We need to find a solution to this problem because this issue is becoming bigger and bigger. We are very happy helping the platforms out in a fair and transparent fashion, whereby if they make less money, we are ready to take less money. But if you are going to be taking our content, hiding under the safe harbor and not paying us, I think then the battle line should be drawn at all times. We need to find a solution to this problem.

Labels, I think have to take more responsibility in investing in newer artists. Unless we create the next generation of artists, how will this industry go forward? And all of us, including my own company, we're all guilty of it that, at times we find shortcuts and do not invest in newer talent and just go for well-established or go for film music. While we do that, it's very important to go and nurture newer talent. Not everybody is going to become super hit Badshah. But still if we need to get that one Badshah, we may have to invest in hundreds of people, and hopefully, eventually, we are going to hit gold.

Collectively, we have to fight piracy. I think the organization I'm representing today, which is the apex body of music (IMI), are doing a commendable job right now in this space, whether it's working out there with the Delhi High Court or working out there with MIPCU (Maharashtra unit), they are ensuring that something is done if people are using content without paying for it - and remember it affects not only labels, it affects the artists also - since our ability to pay artists depends on how much money we are making. Nobody's in here for charity. You are also in here right now because you want to learn something. We're in this business right now because eventually we need to go and drive profits, so that we can give returns to our shareholders. While doing that, we want to do it in a fair and transparent fashion, while helping the society.

This entire point that people don't want to pay for public performance - I think we need to find a solution. It's a global practice. It's the law of the land that when consumption of music happens out here for any commercial purpose, in a public area, you need to take a separate license. I'm not going to take sides. One side says the prices are high and the other side says that they don't pay; we need to sit together on the table and resolve this problem. Then only there is growth, otherwise we are spending so much time fighting each other in the court and outside, whereas the same time and energy can be channelled into, I think, more fruitful things.

Similar cause, there are lots of Indian platforms and channels who refuse to look at publishing rights. I think that's very, very unfair. It's a government recognized right. It's an internationally recognized right. Why shouldn't publishing rights be paid? When you're paying for publishing rights, remember, a writer and composer are also getting paid for what he is due. Hats off to the global platforms, almost every global platform has recognized the rights and is paying for it, while many of the Indian platforms are fighting it out.

These are some of the macro issues that we need to find a solution to. The good part is far more conversation is happening in the industry and forums like these are great too, where we can have open chats and resolve the problem. Brushing it under the carpet is not going to work out, I'm telling you. The last part for all of you guys: learn to experiment. Not all experiments are going to pay off. Just because something has not paid off, doesn't mean you're not going to go out and keep on doing this experimentation again and again. What worked yesterday is definitely not going to work today. High probability is it will not work today. What's working today, may not work tomorrow. And you need to be finding the next big trend.

Mr. Vikram Mehra,
Chairman, IMI

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Foreword

By Mr. Blaise Fernandes, President and CEO of IMI

While the internet is frequently associated with George Orwell’s dystopian novel 1984, a better association could be with William Shakespeare’s phrase “all the world’s a stage” from As You Like It. The phrase is representative of the creative sector on the Internet today, more so of the global music industry.

Technology has democratised the music industry globally. Easy access via smartphones has made it possible for people across the world to listen to new releases and songs at the same time. Ad-supported streaming services make it possible for listeners across Brooklyn to Birmingham and Bhopal to Brisbane to play the same song free of cost. Today music truly knows no boundaries of languages and new genres strike a chord across nationalities. The success of songs such as "Despacito" by the Puerto Rican singer Luis Fonsi and "Love Nwantiti" by the Nigerian artist Ckay — that occupied the top spot on the IMI international charts in India.

Streaming services ensure that music becomes popular across nations and languages. But antiquated copyright laws deter investment in talent in India.
for several weeks last year — testify to the reach of streaming services. K-Pop is now a multi-billion-dollar enterprise and has listings on the NYSE. The congratulatory messages to the K-Pop band BTS on its ninth anniversary on June 13 are just another indicator of the popularity of this music genre.

Indian music is also witnessing democratisation, though in a much smaller measure. “Why This Kolaveri Di” in Tamil, “52 Gaj Ka Daman”, a Haryanvi track, and the Punjabi laced soundtrack of Shershaah have all crossed 1 billion music streams.

Globally, more than eight billion dollars plus have changed hands because of mergers and acquisitions in the music industry since 2020. However, the Indian music ecosystem has seen a trickle of global investments. Unlike “Despacito”, K-Pop and “Love Nwantiti”, Indian music has not touched global heights and is almost non-existent on the global stage or international charts.

Despite a rich talent pool, antiquated laws mandating statutory licensing for radio and television broadcasts — there’s also the threat of such licensing being extended to internet services — have created an atmosphere of uncertainty. Ambiguity in registrations of copyright societies — associations formed by authors and other owners of original works that have the power to grant copyright licences — and confusion in rules pertaining to royalty collection societies are big hurdles. The misuse of safe harbour provisions also erodes the value for all stakeholders in the music industry.

All this hampers investment plans of record labels who prefer to stick to genres that work — film soundtracks, for example — leaving no money for talent development in new genres or deeper investments in traditional genres. It also deters new players wanting to enter the Indian market. Copyright reforms could create a climate that encourages robust investments in all genres of music across the country. With 26 languages and 20,000 dialects, it is not difficult at all for the next “Despacito”, “Gangnam Style” or a group like BTS to originate in India.

Let's step aside to look at the reason for the introduction of statutory licensing in 2010: To support a fledgling private radio industry. However, in 2019, radio was Rs 3,500 crore and recorded music a Rs 1,200 crore industry. Here, David fuels Goliath. Further, streaming services, given their rich valuations, have no need for financial support via statutory licensing.

The music industry parallels the pharma industry, start-up sector and portfolio management services. As per IFPI, $5.8 billion is spent every year globally on the creation of new music and the discovery of fresh talent — akin to pharma inventing new blockbuster drugs. Similarly, deep investments will be needed to discover new genres and talent across languages in the Indian music space. In the Indian traditional and regional space, the returns on investments are meagre due to low ad-spends and subscriptions. Hence, even the most enterprising record labels or enthusiastic investors have no incentive to invest in the regional and traditional music markets.

Telecommunications Minister Ashwini Vaishnaw has talked of bringing India at par with China and South Korea, that boast of a robust 5G network. He has talked of an ecosystem wherein the telcos themselves would be free to set tariff rates based on their understanding of consumers. One hopes for a similar vision with respect to copyright licensing for the music industry.

The creative community benefits most when there are profits to be shared. A vibrant music ecosystem will bring in fresh investments across the board, ranging from new genres to concert venues. I-Pop could enable job creation and create gig economy opportunities. And, of course, soft power is invaluable currency.
With the availability of cheap smartphones and data in the country, an increasing number of Indian consumers now has access to the internet. From your experience, what would be the impact on content protection and enforcement for rightsholders in the music industry?

Mobile is undoubtedly becoming a key method through which we enjoy music today. However, mobile applications also increasingly serve as a source of infringing content. Improvements to data speeds and accessibility have enabled mobile applications to become piracy enablers. Not only do they provide access to existing piracy forms, mobile applications lend themselves to piracy via emerging technologies and this is the new battle ground for content protection and enforcement work.

The music community needs effective tools in order to tackle this – including disruptive and enforcement measures that can work effectively at scale. At a minimum, it should not be unduly burdensome to report infringing apps to app stores at scale and for such apps to be removed expeditiously and not be allowed to continue to function and generate revenues.

The major mobile applications store providers play a key role in this ecosystem; in terms of distribution and also monetisation through subscriptions and in some cases, advertising. The availability of infringing apps on the mainstream app stores also provides prominence and the appearance of credibility. We need the major mobile application store providers to act diligently to ensure that infringing mobile apps and egregious developers are not accessible on their marketplaces.
With the proliferation of Short Format Apps in the Indian market, what does it mean for the recorded music industry in terms of content protection?

Unlicensed UUC user-generated uploaded content (UGUC) shortform video applications that make available sound recordings are a significant issue in India.

Such services, whose primary purpose is to make available large amounts of copyright-protected content, invoke safe harbour protections. In doing so, they use such content to attract a substantial audience and generate revenues from content, without paying anything to creators and right holders.

While there are some positive initiatives in India for escalating cases where notified content is not removed, ultimately, right holders' recourse is currently limited to "notice and take down". This places undue burden on right holders as they must expend substantial resources finding and notifying these platforms of infringements. Even if the infringement is removed, it reappears, without any means of recourse against the platform or accounts that repeatedly upload infringing content.

The notice and take down mechanism currently in use for the enforcement of rights of copyright holders in India suffers from inefficiencies as it burdens rightsholders to constantly sift through heaps of content available online. In your opinion, what are some of the global best practices appropriate solutions that India should consider adopting to strengthen its fight against digital piracy?

To give a sense of the scale, in the twelve months to October 2022, more than 14.6 billion individual tracks were pirated from stream ripping sites, cyberlockers, bittorrent, and MP3 download sites alone. Notice and take down leads to an endless game of "whack-a-mole" and is not an effective method for tackling this mass scale piracy.

The solution is to introduce a "notice and stay down" obligation. This means that on receipt of a notice relating to an infringing piece of content, service providers are obliged to take steps to ensure that all instances of that content are expeditiously removed; and do not appear in the future.

This is an appropriate and proportionate obligation which could be implemented in a variety of ways, including by using automatic content recognition technology which is commercially available and already widely used today by online services.

With technological advancement come new ways to game the system, what are some of the prominent forms of digital piracy that have been observed globally in recent times?

Stream ripping has been the most prominent music piracy method globally for several years and it is particularly prevalent in India where 70 percent of respondents to IFPI's Engaging with Music Study 2022 said they had acquired music in this way. Stream ripping services enable users to create permanent, downloadable copies of sound recordings, which are only licensed for streaming on platforms such as YouTube. This activity takes revenue away from both local and international artists by reducing traffic to licensed streaming platforms, reducing sales of premium subscription streaming services and diverting sales of permanent downloads.

Now more than ever, emerging technologies are providing opportunities for new ways to experience and interact with music content, but these bring new threats in parallel. We are carefully watching technology trends such as NFTs, cryptocurrencies, the Metaverse, Artificial Intelligence and Web3. In the new immersive environment, piracy will harm the ability of creators to tell their story in the way they intend. It should also be noted that existing piracy methods persist and continue to evolve— for example, new forms of P2P piracy.
How have copyright laws and information technology laws evolved globally to address the issue of digital piracy? How should IMI advocate for keeping up with these changes?

Around the world, we have seen policymakers take steps to update or clarify laws to prevent the misapplication of safe harbours.

Safe harbours were introduced over 20 years ago when the internet was in its infancy. They were intended to protect the online services that were providing the critical infrastructure for the internet.

Today, their misapplication creates the opportunity for some online services to free-ride and engage with copyright-protected material without entering into free and fair licence negotiations or any licence at all for the use of those works. It also offers a pretext for brazenly infringing services to continue to operate.

This not only deprives artists and record companies of their legitimate income and enables piracy, but it also creates unfair competition in the digital music services market.

In Europe, the Directive on Copyright in the Digital Single Market was adopted and came into force on 7 June 2019. Article 17 of the Directive confirmed that user uploaded services that reactively engage with the content their users have uploaded infringe copyright and are not eligible for safe harbour liability privileges. As a result, these services are no longer able to avoid negotiating licences on fair commercial terms for the copyright-protected content made available on their services. In the absence of licences, they must take effective steps to prevent unauthorised content being made available on their services.

In the US, the Copyright Office concluded a study into Section 512 of the US Digital Millennium Copyright Act – the law which introduce safe harbours in 1998. It found that "services that provide additional services that are "related to storage" but go beyond mere hosting, should not be eligible for the safe harbour."

In Mexico, a legislation was adopted in 2020 which expressly requires hosting service providers to remove infringing content expeditiously and to prevent future infringements of that same content from being uploaded.

India should absolutely keep pace with these changes to ensure that online services are not disincentivised from seeking licences from right holders and cannot exploit opportunities created by the existing law to evade liability. This is essential to protecting the investment made in India's thriving local music scene.
EXPERT SPEAKS
Safe Harbour provisions were introduced in India in 2000 and subsequently amended in 2008. Have safe harbour provisions achieved the goal that was originally intended by the legislature?

Safe harbours under Section 79 of the Information Technology Act, 2000 exempts passive and technical intermediaries from liability for content being stored, used, shared, etc. on their platforms. The same safe harbour regime under the current IT Act continues to exist despite a tremendous change in the digital landscape since then. The emergence of online interactive UGC (User Generated Content) services warrants a differentiation between interactive active and non-interactive or passive platforms under the safe harbour provisions.

Law is meant to correct not just constitutional or sociological imbalances, but also economic imbalances. The misuse of safe harbour protection by certain online interactive UGC platforms that were not intended to be covered by the safe harbours has resulted in adverse impact on the interests of rights holders, thereby diverting from the original goal intended by the policy makers.

How has the technological landscape evolved in the past 20 years since the introduction of safe harbour provisions?

Technological advancement opened the floodgates of increased content piracy with the emergence of digital piracy making it easier for websites/apps operators as well as users to engage in piracy. The advancement of digital piracy was propelled by lack of accountability stemming from loosely developed laws and lenient approach to enforcement of IP rights on the internet.

The technology landscape has supported the growth of online interactive platforms while the creative sector remains in a lurch due to unauthorised use of their copyright protect works. Increased interactivity on the internet has also led to the proliferation of short form video apps that thrive on music.
How has copyrighted content contributed to the growth of online interactive UGC platforms?

Rapid changes in technology in the past 20 years have rendered the law on safe harbours obsolete and certain online interactive UGC social media apps are taking refuge under the existing safe harbour privileges. These apps are powered by user generated or user uploaded content which makes use of copyright protected works. Google India Pvt Ltd (GIPL) and Facebook India Online Services garnered ad sales of ₹41,115 crore between them in 2021-22. The two giants combined paid ₹2,277 crore out of the total ₹3,900 crore that the revenue department collected in FY22 as equalisation levy, accounting for nearly 58.4% of the total.

Further, the mode of consumption of digital content is continuously evolving, with new formats emerging. The prominent new format is short format video, provided by Short Form Video Apps (SFVAs). Short-form content has gained in popularity, given its bite-sized nature and easy to consume format. As per consulting firm RedSeer, the short video user base in India is expected to reach 600 million by 2025.

This is a global problem, the misuse of safe harbour provisions. Have there been any attempts globally to fix this issue?

In the US, safe harbour liability privileges were introduced in 1998 via Section 512 of the US Digital Millennium Copyright Act. In May of 2020, the US Copyright Office concluded its study into Section 512 and stated that there has been a shift in the balance of benefits and obligations of copyright owners and online service providers (OSPs) over the decades which has ultimately resulted in an increased burden on copyright owners to monitor and enforce their rights while OSPs enjoy enhanced protection when compared to that anticipated by Congress in 1998.

On similar lines, in Europe, there were growing concerns on fair sharing of value generated by new forms of online content between distributors and copyright owners. The European Commission addressed these concerns with a sector specific regulation – Directive on Copyright in the Digital Single Market, 2019 – which creates additional obligations on online content sharing services in the form of a requirement to take prior authorization from the copyright owners for making available of copyrighted works on their platform, failing which additional due-diligence must be followed by the services.

Furthermore, with a view to address broader concerns faced due to lack of accountability over online platforms regarding illegal content, the European Commission has introduced a modern legal framework through the Digital Services Act (DSA) which aims at creating a safer internet for users in EU by placing additional obligations on digital platforms for faster removal of illegal content such as illegal hate speech or terrorist content, content related to illegal activities, including the unauthorised use of copyright protected material, etc.

What are some of the recommendations that the aforementioned global trends made to correct the imbalances caused by the safe harbour regime?

The Study into Section 512 DMCA by the US Copyright Office made several recommendations to the US Congress. The study suggests that clarification be made regarding eligibility criteria of online service providers that are covered under the prevailing safe harbour provisions and that the current interpretation of knowledge requirements for online service providers be reevaluated vis-à-vis Congress’ intention. Additionally, the introduction of a clear, documented, and publicly available repeat infringer policy was recommended. It was also suggested that the interpretation of “information reasonably sufficient to locate infringing works” and whether it mandates rightsholders to comply with the same be reconsidered. Lastly, it was also recommended that the required minimum notice standards for a takedown notice be modified to a regulatory process to enable the Copyright Office to set more flexible rules.

Article 17 of EU Directive on Copyright in the Digital Single Market provides that online content-sharing service providers need to obtain an authorization for the particular act of communication to the public or making
available to the public. In the absence of such authorization from copyright owners, the services can take defence against liability for unauthorized communication on the fulfilment of certain cumulative conditions regarding best efforts to obtain authorization, best efforts to ensure unavailability of works for which rightsholders have provided relevant information on, and best efforts to act expeditiously on receipt of notice from rightsholders and prevent future uploads of such works including implementation of automated content recognition technology by online services.

What are some of the issues that the creative community and copyright holders face due to the inefficiencies of the safe harbour regime?

Interactive online platforms use safe harbor provisions either to avoid fair licensing negotiations with copyright owners or to evade accountability for any infringement taking place on their platform. As a result, the compensation paid to copyright owners by UGC platforms and many social media is far below what is rightfully due to the owners. While online users and interactive services extract tremendous value from music, the absence of proportionate revenue returned to the music community results in a value gap.

Misuse of safe havens leads to wide unrestricted usage of unauthorised copyright protected music leading to an estimated annual revenue leakage of INR 868 cr. to 1200 cr for the recorded music industry. Copyright owners are overly burdened with the task of monitoring interactive platforms for sifting of infringing content. Further, take down of infringing content does not prevent it from re-appearing almost immediately, resulting in an endless loop of content take down since take down does not mean stay down.

The creative industry has been suffering for the past 20 years. The Government of India must undertake a study into the prevailing market situation due to safe harbour provisions to ascertain the real economic beneficiaries and economic losers.

What would be your recommendations for Indian law makers to correct the economic imbalances created by the misuse of safe harbour provisions by interactive UGC platforms?

The Indian liability regime for online intermediaries under Section 79 of the Information Technology Act, 2000 must be reviewed and updated while keeping in mind global developments like the US Copyright Office Study into Section 512 DMCA and EU’s Directive on Copyright in the Digital Single Market. Moreover, the policy makers must look into clarifying that the safe havens under section 79 of the IT Act only apply to the activities of passive intermediaries and do not cover active intermediaries such as UGC hosting platforms. The misapplication of safe harbour can also be addressed by way of introducing strict and effective due diligence obligations on platforms.
The Conjoined Case of Film and Music

Interview with Mr. Sanjay Wadhwa, AP International Group
By Ms. Arasha Khan

Given your close association with film and also the recorded music industry, when compared to the past, what are some of the key ongoing trends that you can highlight when it comes to both film and music?

In the past, and when I say past, I mean about 30 years ago, when we had the physical CDs and the physical audio cassettes going out, we literally knew that 95% of our income was from physical CDs and cassettes, and 5% would come from radio and public performances and IPRS. So, if, for example, I had a film that I acquired, I would know within 30 days of the release of the audio, or a maximum of 45 days, because we normally would say, I’ll release the audio cassette. You have to release the film within 30-45 days of my releasing the movie. If the movie does well, then I already know by the 60th day if I have broken even, lost money or made money. Now, compare that with today and when I say today, I mean go back maybe 3-4 years ago, you had a situation where zero is physical and probably 95, again, was your digital revenues. There was a period when by the time the reports got reconciled and came to you, it used to take about 8-9 months for you to know if you actually made money or lost money on a transaction which means course correction was not possible. For example, talking specifically from a film perspective, let’s say you would have a music director coming out with an album every two months, or maybe every 30 days. Now, if I am gung-ho about a particular music director and I buy three films of his, one releasing today, one releasing two months later, and one releasing 4 months later, I think it’s only in the fifth month that I can do course-correction and know that it is not working and that I need to recalibrate the numbers. Now I have to wait for almost 10-12 months before really knowing whether or not I have made the money. As a result, I’m committing the same crime of buying the films at the same pricing or maybe 5%-10% at every point and then it comes down. Reality only strikes me after about 9-10 months. Now, compared to that today, we have a situation where we get a little more transparency, we get our revenue numbers on a dashboard. In some cases, we get it in a maximum of 60-75 days. So, it’s definitely much better than it was 3-4
years ago as I am able to do course correction, and pay higher or lower depending on the profit or loss. That's number one.

What has also happened is, of course, by virtue of all these digital platforms being available, and the democratization (when I say democratization I mean, an individual person can actually go and put up his content on all digital platforms and distribute it himself) people are willing to wait out. You have artists who say, "we take the album, we have transparency, we're able to do it". But on the other side, you end up having to pay a huge amount of money, because there'll be somebody saying, "oh, this particular song did many million hits", and therefore, they look at that number and ask for a very high price. For example, in the last year, I've seen more than a 150%-200% hike in the price of acquisition. This is more because of all the platforms wanting to raise public funds. Therefore, in their urgency to tie up artists or albums, they are willing to throw in the extra money, which has actually become a bane for the recording music industry. So that's become an issue for all of us.

What are some of the future trends we can expect going forward?

Going forward, as I see it, one, the customer is spoilt for choice. One can get pretty much 95% of their music across every platform. For example, the same songs are available on multiple platforms and one can choose where one wants to go be it Spotify, Gaana, JioSaavn, Amazon Music or YouTube Music.

Two, because of this, a lot of services would want to cut down their cost to keep customers on as a result of which you will find the ones that are not doing well financially drop their prices or change to an ad-based model or give everything out for free. There's going to be some amount of consolidation shortly, this question is of whether it will be three months or two years, but there is going to be some consolidation. Everybody is trying to retain subscribers, even though they're bleeding.

Given the astronomical costs of acquisitions, would you like to give us your views on the monetization of content when it comes to both films and audio?

I think one of the worst phases of our industry was when the radio broadcasters were allowed to play the music at 2% of the revenue. Now, let me draw up the basics. Every radio station has the same brick-and-mortar model structure. They have the same equipment. What is different are two things: The way they package the content in terms of who the RJ is or the style in which they package and the other thing is how they market themselves. Whereas if you look at it, my content is my content, if it's a hit, it's a hit is a flop, it's a flop. Here, I am being forced to pay for the inefficiencies of the radio station. For example, let's say, there is a particular radio station that has not marketed or packaged its product well and because of this, they end up getting lower revenue. That is a fault of the radio station and not the fault of my content, which could have been the best possible. Because of their inefficiency, I'm paying the penalty. If the landlord can ask for the rent that is prevailing in the market, if the DJ can ask for his salary, based on what the industry is paying, then there is no reason I am being tied to a 2% of the revenue.

In a radio station, the most important component is music. Without music, there's no radio station. Isn't it surprising that the lowest cost is attributed to the highest-value item? So that's the error our industry was not able to rally around enough. So that was the first death knell.

Coming to compulsory licensing and fair use, platforms pull down anything that disrupts peace and harmony and they have their own ways of identifying and pulling it down. Why is it that they can't do this? Compulsory licensing is another thing. For example, let's say hypothetically, there is a film with a known superstar that I'm bidding for. The very fact that I had to go ahead and give compulsory licensing to any platform negates the idea of me going and paying a higher price to the producer. If you look at it, on the basic, whether you record a song with a renowned superstar or a brand-new star cast, the basic cost of recording the song is literally the same. What makes is different is the face that's going to be singing this. So with a new artist singing the same album will probably go for like 10 lakh rupees, whereas the superstar album will probably go for over 20 crore rupees. But if you're going to get compulsory licensing into it, then why would I go and pay 20 crore for a great artist's movie? Automatically I would start reducing my price which in turn affects the creative talent in the industry.
Given your years in the monetization of content overseas, what are your thoughts on the consumption of film and music when it comes to the NRI's or the PIO's?

An Indian is always an Indian in any part of the world and film and music are part of our daily lives. Whenever a person moves out of the country and I have as well in the past, we yearn for the connectivity from back home. For example, if you have been in India, for say, 25-30 years and you move across the world, your entire social circle is disrupted. In that time, you generally end up finding solace in movies, music, and cricket. You end up listening to music and watching a lot of movies. So, there is a huge amount of consumption outside the country and people yearn for it. In India, the entertainment I see in India is entertainment. Outside of India, I'd say first, there is the connectivity factor and then entertainment. Further, because you are earning in a foreign currency, you end up having a little more disposable income to be able to spend. For example, a ticket in the US would cost about $12 or even go up to $25 for the first weekend. But in India, the same person, won't dare to spend more than 300-400 rupees to watch a movie. The revenue, percentage-wise, is higher outside. The first thing is connectivity more than the entertainment value, once you have left the country and you cannot quantify it.

You have seen the industry very closely over the past three decades or more. What is something that you admire from the new generation of authors, composers, lyricists and performers when it comes to the recorded music industry?

The new generation has got computers at their disposal and they come out with sounds which generally, live instruments can't generate. They have the internet available to them to seek inspiration from other languages and other foreign cultures. But what this has done is it has actually lengthened the process of recording a song. So, I am going back to the late 80s and 90s when I personally have seen Mr. Ilaiyaraaja who is a genius. He would have two recording theatres, sometimes even three at the same time where 7 AM to 1 PM would be to complete a song, and 2 PM to 9 PM would be for other songs. At the same time, he would also have another recording theatre going on, where he would do the re-recording of a movie in terms of the background score. So, he would have two studios working on 2-3 films at the same time. There were days when he would compose and record 4 songs and you would get the song out in the afternoon or the evening for shooting the next morning. The new composers today take 25-40 days to finally deliver the product so that it's available for shooting. That process needs to be quickened but they have the foreign inspiration factor and availability of the Internet and computers, which has got them technologically well-advanced.

What would you attribute the lasting strength of your brand AP International to?

I'd say only one thing. Do whatever you have to do in full earnestness and be transparent. You might win, or you might lose, but give it your best shot, and be absolutely transparent. That's how we've been in this business this long.
Music, Storytelling, and the Future of Music in 2023

In conversation with Mr. Jay Mehta, Manager Director, Warner Music India and SAARC

Warner Music India started off a global music giant entering the country, but the path taken by the label has been as distinct as the artists you have signed. Can you talk to us about this unique journey and what comes next?

We started Warner Music India in April 2020, right in the middle of the lockdown. So we had challenges like none other. When we started we had an extremely ambitious target of being a top 3 label in the country in less than 5 years. And the way we have progressed at a breakneck speed, this looks to be on track, probably faster. Our approach to expansion has been going closer to the ground, be it reaching out to consumers or signing artists.

And as you mentioned, our approach has been unique and distinct. At the core of our strategy, we wanted to be the destination for pop culture and that is reflected in the artists that we have signed: King, Armaan Malik, Diljit Dosanjh. At the same time, we decided to scale and reach out to every corner of the country via partnerships and investments through Tips (Bollywood catalogue and frontline movies), Sky Digital (Punjab, Haryanvi), Global Music Junction (Central India – Bhojpuri, Haryanvi, Oriya), Jjust Music (Bollywood soundtracks and artists), Mumbai Film Company – Riteish Deshmukh (Marathi movies and non film music) and Gujarati soundtracks. Ensuring that we are at the center of India’s massive regional growth strategy, we want to be the top 2 label in every regional language. The next aim is to go south and east and truly become the label with the largest reach in the country.
The music landscape has changed dramatically this year with the resurgence of Bollywood films and the inflow of regional music from all over the country. What does this mean for independent/non film pop music?

This is an interesting question and comes at the best time for us to answer it, when we have a non-film song of Warner Music India from our leading artist King to be the first ever in history to reach Spotify Global top 50. The consumption trends in India in the last 2 years clearly show us that music is truly democratized and at the same time, the boundaries between regional, national music and soundtracks has been blurred. There has been no better time for music artists in the country when a hit is coming from any where in the country and even from artists who have released their first track or just starting their careers. This is the most enabling trend in the country and is expected to only get more exciting.

It would be remiss to mention music and not mention short video format platforms at the same time. How has the boom of platforms impacted the way audiences discover and consume music?

Discovery of music is at its peak of fragmentation. A user is no longer just limited to one platform or one music asset but listening to their favorites and discovering new artists across audio and video streaming and short video format apps. King’s recent releases OOPS and Maan Meri Jaan continues to be an audience favourite across all platforms. Same is the case with global trends entering India: Ckay’s Love Nawantiti has been a sensation on TikTok that then translated in India across apps as well.

There is a massive opportunity for artists to build fanbases across different touch points beyond their owned channels. Communication can be personalized, the flavour for the same track can be different across platforms and the probability of sampling and artist discovery has multiplied manifold. As a label, we’re excited to create that opportunity for our audiences to get a chance to make the track truly their own with their expression on the music.

We’ve moved on from the era of just remixes to collaborations in music now. Featuring acts from around the globe are getting a taste of the Indian audience. How do labels see this as an opportunity?

Collaborations between artists aren’t a new format in the industry. But, with the caliber of talent we have in the country right now, we are seeing a unique shift in this format. Warner Music India has been at the forefront of this initiative to take Indian artists and sound global. We have seen Indian artists like Diljit Dosanjh and Armaan Malik have collaborated with Grammy nominated artists including Ed Sheeran. In the near future we are going to have a list of global collabs with King and more of our artists to continue this trend till it becomes a global music movement for Indian sound. At the same time, we have made India the top 3 country to some of the biggest international artists. This is a testament to not only the size of the Indian market but also the power of their fans in the country and the audience pool they make available to international acts. India continues to be an untapped market for many and we are at the threshold of being able to present Indian music and artists to the world.
"संगीताचे मोल्च नahi..."

"आवडले हिंदी, माणी अपरण सधून सोंड वर्धाणे हविटक्यांनी अस्पेक्ट केलेल्या डकूमेंटेशन देशो, राष्ट्रातील नियम, हसक याची आप्लव्याळा अनेकांना आर्यल व नसते. या संलग्न संगीताचे रचनकार योग्य पर्यंत्यापणाचा बिंदू राहतात, याच्या आप्लव्याळा आर्यल नसते."

By Ms. Mridula Dalvi
Published in the Maharashtra Times, 13 November, 2022
ARTIST VOICE
In the Vedic period (3000-1500 BC), music was solely ritualistic. But with passage of time, bhajans, kirtans, shabads and qawwalis came into being and they were all devotional in nature.

The word bhajan is means “to serve a person” - "bhaj" meaning 'to serve' and "jan" meaning "person". Bhajan is a popular form of devotional singing prevalent in North India. It is usually sung in temples in praise of God or is addressed as a plea to him. Bhajans are usually sung in groups. There is a lead singer who sings the first line or stanza and is followed by a chorus. The popular themes for bhajans are based on stories and episodes from the Ramayana and Mahabharata or based on the lives of Lord Rama, Lord Krishna and Lord Shiva etc. During my childhood, some prominent personalities whose bhajan singing inspired me were Meera, Kabir, Surdas, Tulsidas, Guru Nanak and my father Padmashri Purshottam Das Jalota.

Kirtans are another type of folk music usually based on the love stories of Krishna and Radha. Kirtans are of two types: Nama-Kirtana and Leela-Kirtana. The first involves constant uttering of the name and singing of the glory of God, while the second describes the various anecdotes of the Radha-Krishna love.

Qawwali is a devotional form of music where the lyrics are in praise of Allah, Prophet Mohammad, members of Prophet's family or renowned Sufi saints. It is written in Persian, Urdu and Hindi and is composed in a specific rāga. Qawwali is usually sung in a group, with one or two lead singers.

Shabads are devotional songs of the Sikhs sung in gurdwaras on religious occasions. They are ascribed to Sikh gurus and many Bhakti saint-poets. Guru Nanak and his disciple Mardana are credited with the development and popularity of shabad. Shabads are sung to the accompaniment of the harmonium, tabla and often the dholak and chimta.

When I started my singing, Bhajans were thought of as a form of entertainment for only old people, It was my fortune that I attempted to popularize them in all generations and classes of people. Be it young or old, musician, or a layperson, Indian or foreigners. But while doing so, I was under strict guidance and training of my father who always taught me to maintain the purity and sanctity of a Bhajan no matter what. He trained me with Raga Bhairav. My father would shut me up in a room and would make me practice a single note for hours and hours. This practice gave me a rich understanding of various notes. It also helped me develop my
capacity to hold a breath for a long time and also
gave a rich timbre to my voice. Along with classical
music, my father would also teach me how to sing
lighter forms like Ghazals, Bhajans, etc. He would
often tell me to respect and learn light music as
well. I am still a big fan of Kishore Kumar, and
Mohammed Rafi, as their voices were highly
emotive, and they would sing according to the
character on whom the song would be picturized.

Along with my music, I also pay equal attention to
my physical fitness. In my school/college days, I
was brilliant at a lot of sports like cricket, Tennis,
etc. this not only improved my fitness, but also
built in me the never-give-up attitude, and
motivated me, to do something huge in life. Even
now, I along with my regular music Riyaz, also
keep on doing Yoga and Pranayam, to maintain
physical and mental health.

I attribute my success to Raga-based compositions.
My famous Bhajans like Aisi Lagi Lagan (Mishra
Kafi), Jag mein Sundar Hain Do Naam (Raga Gujari
Todi). Tere Man Mein Ram (Raga Bhairavi/Komal
Rishabh Asavari), etc. and Ghazals like Chand
Angdaiyan Le Raha Hai [Yaman], are all based upon
1 or more Ragas. My father was a classical singer,
who popularized various Ragas through his
Bhajans. I also had the urge to popularize the
Ragas through my Bhajans Ghazals, among the
masses. So, I have always composed my
Bhajans/Ghazals in some Raga. People enjoy my
compositions because they are simple yet have the
power of the Raga behind them. I tried to maintain
simplicity so that a layman can also hum them. My
Bhajan 'Main Nahin Makhan Khayo, was sung by
Pandit Omkarnath Thakur, in a purely classical
style. My father simplified it a bit. Later, I simplified
even further, so that, it should reach masses. In
earlier times, Bhajans were sung in either purely
classical style, by the likes of Pt. Bhimsen Joshi, Pt.
Jasraj, etc., or in Purely folkish style. I borrowed
from both styles and developed my own unique
Gayaki, which was raga-based, yet not
complicated. In bhajans like 'Aisi Lagi Lagan', or
'Rang De Chunariya', I sang many phrases with
deep and long breathing, which gets listeners

spellbound. I love using the Ragas/Sargam patterns,
to convey, and enhance the meaning of the lyrics.
For example, in the Surdas Bhajan, there is a line
'Bhor Bhayo Gaiyan Ke Panche, Tu Ne Madhuban
Mohi Pathayo, Char Preher Bansi Bat Bhatkya, Sanjh
Pare Main Ghar Aayo (In the morning you sent me to
graze the cows, I wandered for the whole day,
playing my flute, and came back home in the
evening). For this, I used the Morning Raga Bhairav,
and the evening Raga Yaman to produce the effects
of morning and evening atmosphere. In another
Bhajan Chadariya Jhini re Jhini (Raga Des) by Sant
Kabir, I elaborated the line Dhruva Prehelad Sudama
Ne Odhi, using Ragas like Kedar, Malkauns, Basant,
Bhairavi, etc.

I do add Classical music to my Bhajans which makes
a huge difference. However, care should be taken
not to overdo the Sargam/Alap, as then the Bhajan
could sound like a pure classical Bandish. Another
thing which should be considered is that the
Sargam/Layakari should not sound as mere
mathematics, but should preserve the melodic
aspect of the Raga, and the Bhava of lyrics.

As an example of what I am saying, is in my Ghazal
Latzat-e-Gham Badha Dijiye, in which I sing the
word Pani (water) using the notes Pa, and Ni
for a few seconds. That is the melodious interplay
of words and Sargam.

I then experimented with adding some related
couplet/other poetry to my Bhajan, thereby
bringing forward the emotions of the main lyrics.
For example, before singing Aisi Lagi Lagan, which
describes the devotion of Sant Mirabai to lord
Krishna, I sang a poem, which describes how our
eyes, hands, speech, etc, should be used in paying
our respect to the god. Another such example is the
couplet that I sang in the Bhajan "Kabhi Kabhi
Bhagwan Ko Bhi" which moves people to tears.

Having sung for so many years, I am always learning
something from each artist, Padmashri Bhajan
Samrat Anup Jalota has become a path-breaker in
the field of Bhajans and Ghazals. His great
contribution to music would be remembered for
ages to come.
How would you describe your creative process? / What is the shuruwaat when it comes to your music? Tell us about your creative process?

There is no one creative process that I follow, I work on the flow of creativity. As there is no fixed process, it all depends on the project, situation and the film maker. I am a director's musician completely; I dive into director's vision of the character and the feeling of the scene.

How would you describe your safar to becoming a jaana-maana, well-loved artist?

It has been a beautiful safar to be very honest, I am grateful for all the things that favoured me. I am & I always will be thankful to God for making this happen. Like, every journey mine was also a roller coaster of ups and downs.

What are some of the popular changes/trends you've noticed in fan preferences when it comes to music?

The fan preferences have changed a lot over the last decade, now with so many streaming platforms that are easily accessible to everyone. This has also helped us broaden our creativity and allowed us to experiment more. And now this change allowed fans to explore so many genres of music and to create their own choices in music.

What are some of the key issues/challenges faced by sangeetkars that you wish to highlight?

There are different challenges in every field, we just have to overcome them. The challenges keep evolving as we evolve, it's a never-ending ride. It all depends on the project and the situation.

What are some of the mazedaar/exciting opportunities you see emerging for sangeetkars in the future?

We are now living in the digital world, with so many streaming platforms available and distribution partners like Believe Label and Artist Solutions (L&AS), artists have the opportunity to share their music with the audience directly. Artists are privileged right now, that they don't have to wait for an opportunity, they are creating audiences for themselves.
International Music Trends in India
Capturing Opportunities in the Digitized Music Landscape

Interview with Mr. Arjun Sankalia, Senior Director International, Publishing, Analytics & Insights - Sony Music India

In the past year, what are some of the interesting trends you have observed with international music consumption in India?

When I was growing up, we always had to wait before international music was released in India. It's a different story now as with the rapid growth of the Internet and deeper mobile penetration, people can access music anytime and anywhere, democratizing access to everyone through audio streaming services. Local streaming services such as Ganna and JioSaavn along with international platforms such as Spotify, Youtube Music, and Apple Music have made it possible for anyone in the country to experience different genres of music. Moreover, according to Statista, India is YouTube's biggest market in the region and Facebook's biggest market worldwide, driving further access for our people to discover and consume new music instantaneously regardless of its origin.

I believe that this acceleration in technology adoption will continue to influence how fans interact with music in more interactive and creative ways. At Sony Music India, we are tracking these trends carefully and working alongside our sister companies within the Sony Group as well as other ecosystem partners to lead the growth of the music industry. These include exploring the metaverse, podcasting, virtual concerts, short-form video platforms, and NFTs. In 2020, for example, we collaborated with Epic Games, where we featured Indian rapper Raftaar’s track Click Pow Get Down on Fortnite as part of the Bhangra Boogie Cup campaign. The campaign was well received and showcased how fans are looking for new ways to experience music and the universality of music itself.
Earlier this year, we launched a collaboration with Sony Pictures Entertainment, Sony Entertainment Talent Ventures India (SETVI), which was established as an entertainment company, offering actors, musicians, sportspersons, gamers and content creators in India the opportunities for co-ventures, metaverse solutions, brand partnerships and management.

With our finger on the pulse of these trends, our goal is to capture emerging opportunities available in an increasingly digitized music landscape, for our artists, helping them with the right platforms and tools needed to reach their audience whilst growing their careers regionally and globally.

**Could you name some of the most popular artists or acts in Digital India in the past three years?**

Due to its enduring popular appeal and cultural value, India's film industry plays a massive role in the country's music revenue, and domestic content remains an important part of Indian consumers' lives. Artists like Arijit Singh, Pritam, and Anirudh are continuing to dominate the charts, and BRAHMASTRA, this year's biggest Bollywood album and movie hit, gained over 630 million audio streams in just 4 months, becoming the #1 album on Spotify's Top 50 Albums for 7 weeks. A fantastic testament to the richness of the Indian film industry's contribution to the music industry.

Aside from India's growing domestic music scene, international artists like Harry Styles, Lil Nas X, Doja Cat, and of course, K-Pop groups, have won the hearts of people in India. Moving forward, I believe that we will only see more and more international artists making their mark in India across a wide range of genres.

**What are some of the popular international music genres in India that have stood the test of time?**

From my point of view, popular international music genres in India include Pop, Dance, and K-Pop.

**Pop Culture going multi-polar, here to stay or passing phase?**

I believe that it is here to stay. The streaming era has democratized the ability to find and discover more music. There is no passport for music anymore and you see that with genres like K-pop and P-pop, which have found popularity in far-flung places around the world, irrespective of language or cultural barriers. To take an example here in India, Indian artist Aditya A's “Chaand Baaliyan” has become a cultural sensation with over 300 million audio and video streams worldwide. It charted at #2 on Spotify's Global Viral Charts and a remix in collaboration with UK-based “Mumzy Strangers” was developed after.

There is huge potential in the music industry for artists no matter where they are, and at Sony Music Entertainment, we are relentlessly focused on trends and growing platforms to explore how we can support and empower our artists – both within the market and internationally – to continue growing their fanbase. Ultimately it's an exciting time in the Indian music market with huge room for growth and innovation – all to the benefit of artists, fans, and the entire industry.
One international tune that’s stayed on the club scene through the decades (could even be a remix version)

I feel that this is a question designed to reveal my age! I’ll go with 'Billie Jean' by Michael Jackson. Also, Rasputin by Boney M. These songs always get people on the dance floor, without fail.

Please share your wish list for possibilities of cross-cultural collaborations with international music and Indian acts

This is a tough one as there are too many on my wish list, but perhaps something that is both Punjabi and Spanish influenced – the world is ready for Bhangra-ton (Bhangra + Reggaeton).

Any insight on the market for international acts in India?

As above, audio and video streaming have democratized the ability to find and discover more music from different parts of the world. Short form video apps are certainly a growing frontier too. The massive popularity of Instagram reels and the emergence of various other apps like Moj, MX Taka Tak, Triller, and so on are paving new ways of consumption of music. In addition, the evolution of DSP services and their unique offerings such as virtual concerts, live streaming, and AV podcasts are also all helping in opening up new avenues for labels as well as artists.

This will continue to drive greater awareness of international artists and music within India, and help build a growing base of fans among music consumers in the country. With the demand for live entertainment bouncing back and the growing popularity of hybrid concerts that allow online audiences to stream live performances from anywhere in the world, we are only expecting the market for international acts in India to grow.
REGIONAL TREND
Music Transcending Linguistic Barriers
What are some of the instances that you can highlight for us where music has defied linguistic barriers?

I think one example we can really marvel over is the South. People are listening to songs from KGF, Pushpa, and even the newer stuff, not minding that it is a new language. Even in our Marathi industry, some hits like Sairat went big. Songs like Zingat, that people have loved both in rural Maharashtra as well as cities like Mumbai. Language no longer defines music. It is all really up to the production and presentation of it. More people have access to streaming services like Spotify and YouTube and are getting a lot more content out there. One can just put on an African playlist and listen to it the entire day, right here in Maharashtra, having not even ventured outside of Maharashtra in their lives. If the song itself is good, then we see that people are just gravitating towards it.
Which language is the most popular in terms of music consumption in your region?

In the Maharashtra regions, I would say Marathi is the main language. Main cities are a bit of a toss-up since it's a melting pot of so many people but there is a growing demand for Indie Hindi music now, especially music with both Hindi and English, combined. As an artist myself, most of my songs fit into the Hindi-English combination. An interesting aspect of regional music is that it flares up at different times of the year. For example, during Ganpati time, you'll get like a lot of Marathi music while during Navratri there's a demand for Gujarati music. Going by YouTube analytics, you see both spikes and valleys and it has a lot to do with seasons. But as far as steady music consumption goes Maharashtra has, from what we've seen at least, a big, big appetite for Marathi, and Hindi music as well.

Your label is spread over multiple genres. What are the major genres that dominate music in your region?

Well, devotional does very well. We also have pop and item numbers which people really gravitate towards nowadays. In Marathi music, koli music has been a hit since the last couple of years. Genres such as koli music for example have a very ardent fan base meaning that people who will listen/watch whatever you make, that's because that's the community. This is where regional also has an edge over mainstream, pop music or film songs where there's a risk of the audience not liking it. Love songs (romantic genre) have always been a big thing. But genres are starting to kind of melt together. The way music is produced has changed completely since I was a kid. Now, people are creating music sitting at home. So in a way, they have more freedom to explore the genres. People are going the independent route more than ever.

Marathi Lavani’s are also doing well. The music in the film Chandra did extremely well. We’re finding quirkier kinds of music. You have a love song that sounds entirely like a party song. That is turning into a completely different DJ disco beat. This criterion has been happening forever, but now the reach is greater than before since people have the capacity to put it out at a global level which is exciting to see.

Which are some of the key music consumption trends in your region?

The most obvious one is Instagram. We had a song go massive called ‘Undir Mama’. Madhuri Dixit did a reel on it and it went viral. The interesting thing to note is that while creating reels, people are unlocking this entire world of regional music, event songs that were released a couple of decades ago. As a result, songs are gaining traction. So social media is the big thing. The fact that music is free now is mainly the driving point for people. Then the attention span of the audience as well is low. You have to hook someone in five seconds. Otherwise, you’re not going to get listened to as there is so much music out there. I think Spotify has around 3000 songs being uploaded every day. In the older consumption model, you would produce the series then go meet with the retailers, and you had people who went and looked at the shelves. Now that’s changed to a Spotify playlist where you don’t necessarily have anyone to go to asking for your song to be on top of the playlist. It’s all algorithmic. We’re constantly having to tell people to cut down the song as people are just not consuming as much as they used to. People prefer to hear just two and a half minutes of a song and then move on to the next one.

I think music, for some inexplicable reason, has become less profitable. Monetization has become difficult. It’s not like those times when you would release an album and ride that album for a while. Now you have to be on top of things constantly. That’s basically consumption now. It is more of a hands-on approach now.
Which factors according to you have contributed most to the growth of music in your region?

It's very easy to access music. It's very easy for people to interact with their audience now. It's so much easier than it was even a while back. Now we get real-time feedback from the audience. You can tell what people like and don't like. So in Maharashtra, what people wanted at least from our labels for a while were Koli songs, to give you an example. We saw that people are really getting into Koli music, that community is really thriving. So we started doing that saw a response. I think mostly the accessibility of music is the biggest driving factor in these things. It's just very easy for people to listen to music.

How would you describe the impact of OTT and music platforms on the music from your region?

I don't necessarily think it's that big of a change. People always resist change when it comes. But this is just a new platform. It used to be MTV at one point. This is now just the way people are consuming content which will then be monetized in one way or another. Our country is in the growth phase. More and more OTT platforms are coming out, and more content is being made for them. I think that's a good thing, because the more content there is, the more content is required. There are more platforms to sell our music to now which is a good thing. I don't necessarily see it as that big of a change in anything other than mechanics. The mechanics of selling your music have changed, but it's still this: someone wants music, and someone has to deliver it. Those core tenets always remain the same. Playlisting now has become the biggest thing, because when people listen to music, they don't search for songs anymore. They just put on a playlist. It's a cycle of change.

My grandfather taught me about the law of averages while we were playing chess. I won a game and then he won the next. He let me win the next game after which he won again. He told me about the law of averages where everything has peaks and valleys. So things will change again. There will be people reminiscing about streaming and OTT platforms talking about it maybe 10 years from now like I'm talking about CDs. There will be something new and people will be figuring out how to monetize that. It is about keeping up with the times and not being afraid to change up your entire system once in a while.
What are the key challenges and opportunities for the recorded music industry when it comes to regional music?

I think the obvious one was COVID. But even that was more of an opportunity for us. The recorded music industry, a very large production, is in a very unique place right now. You can now run a label remotely. The pandemic showed us the writing on the wall. People were working more from home and less in the studio not to undermine the place of a studio in these areas; you want to produce high-quality music, you have to use a studio. But it's become vastly easier to generate an immense amount of content using a laptop. So in that way, we're seeing more opportunities rather than challenges. The challenge these days is how to get your work out there. People assume music is free and they don't have to pay for it. If I release a song tomorrow, someone will rip it, copy it or put it up for free on YouTube. How do you monetize then? People don't mind listening to ads and they won't get a subscription. But even in those ads, there is monetization in some way. So the system is kind of taking shape. We see YouTube, AdSense helping in those ways, with your sync rights and mechanical rights. Sync for films and TV are huge right now which is why it's great that IMI does by keeping those strong. When it comes to getting paid, the regional labels are especially vulnerable as for them it may get difficult to budget, for competing with players having 10 times our budget. Although regional is doing well, you still need to find a way to work at the national as well as international level. It's not just India you're competing with anymore. You're competing with everyone. Regional music from everywhere. Latin music is so big in India. Everyone is listening to Latin music in India which is great. But you have to pull up your socks and be creative. Our label has been active even through the pandemic. We got so many demos and our email was blowing up. It was certainly a very interesting time to be a label.
What are some of the future trends we can anticipate when it comes to regional music?

So film music will always be big in India. It has the biggest budget and can make the most noise. But as a label, we have to cultivate an audience for artists who don't have an audience yet. We have a lot of artists who are legacy artists now. Swapnil Bhandhorkar, Vaishali Sawant, Avdhut Gupte, all these people are considered the biggest names in Marathi. Our label has always believed in finding new talent and presenting it to the world. As far as trends go, it is now a package deal. It's not only about music anymore. It's the artist, their Instagram feed, how good your Spotify looks, how many subscribers you have on your YouTube channel, etc. That is how you cultivate an artist. Artists now are also doing it themselves. But people underestimate the amount of effort that it takes to be one, right? The amount of effort that it now takes without a system, like a label, constantly pushing and promoting you. So, the role of a label is changing and as far as future trends or opportunities go, I think it's exciting to see what kind of new relationship a label and an artist will take now because it is changing. It'll be interesting to see how artists and labels interact in the future. If anyone has studied economics, they know that imbalance is never prominent. There are a lot of things that labels provide to artists that the artists will slowly start recognizing after a while of being independent and in that, I think there's a new system that we're going to see that will provide a new face to music creation.

The demand for music has never been higher. New artists are coming up every day and putting music out there. Labels are going to eventually change shape. I don't think labels will be entirely artist oriented anymore. We can't be because an artist can handle their own career right now. We have to be oriented towards, all-around creation now. We have to offer an artist something that they can't get on their own. And we have a lot to offer. We have 20 years of working with people at the top of their fields who are willing and ready to work with us. So that's what a label does for an artist. There are opportunities that a label provides you that you wouldn't consider by yourself as an artist. I think we see a lot of OTT trends coming up. We are also catching up to sync which is also a big opportunity right now on platforms other than movies as well. So it's all exciting things happening.

Labels will always change shapes. If you see the graph of Sagarika Music, we opened in the 1980s as a record manufacturing plant. All the big movies used to come through our factory. Then over 20 years ago, we started a music label, and that was the entire system. We're working with the times now. It is different now. We don't necessarily need an office. We're listening to demos on emails where we're commissioning work with people. We released a song with a lyricist that we've never met and I don't think she has left her village much at all. But there is talent cropping up. As long as we at least stay passionate about creating music, we're adaptable to changing the way we create it.
Your business being a legacy business, what would you say is the strength of your brand?

My grandfather always had a passion for producing music. There's a legendary classical singer who gave my grandfather a recording of his because he knew that he was the only one in those times who would not cut it up. That's the crux of why we are still around. We find more and more people coming to us who have contended that they feel like they want to present but won't be heard anywhere else. That's the sort of feedback that we get. What we're seeing right now is that all that work that we produced 15-16 years ago, that's all blowing up now because it's still good music. right? But I think because we're a regional label, we get to be in a space where we're producing music that kind of just slowly seeps into people and stays with them for a while. W get so many comments now from listeners having grown up with our music. I like to believe that's happening again now with the work that we're doing. I think that's why people stick around because you're producing good content and at some point, it's going to do well. That doesn't mean that it's not extremely difficult to stick around. We survived the pandemic but it was extremely difficult, you have to cut corners and you have to stay. You have to have that vision to stay. And we find that when we do, there are people who still want to work with us, we still want to listen to our music and hopefully grow up with our music again.

Any message that you would like to send across?

Keep listening and keep being passionate about music. Pay for your music if you can. Because it helps us produce it. As long as you're passionate about an artist or some kind of music, it will keep getting produced. And we'll hopefully be able to get that to you.
The rich cultural heritage of Bengal has been pivotal to the evolution of Bengali music and also paved the way for many legends in the Indian music industry. From Nobel Laureate Rabindra Nath Tagore to music legends – Kishore Kumar, R.D. Burman, S.D. Burman, Bappi Lahiri to contemporary talents like Arijit Singh, Pritam, the list is endless. Art fosters where it is appreciated. Bengalis appreciate music like no other.

Despite being the seventh most spoken language in the world, the Bengali music industry still struggles to achieve the desired spot in terms of revenue numbers. The domino effect of this means an impact on production of new and quality music. Only labels with a large catalogue stand a chance to recover and fund for new music and they usually play it safe. Modern music creation is
an elaborate project that depends not only on the talent and creativity of one single person but also on quality sound recording, a captivating music video, a thorough marketing plan and access to key distribution partners. So, a continuous money flow is necessary for growth and current revenue from Bengali music is negligible in comparison to other markets.

I realise that lacking performance in revenue numbers is not a problem that cannot be addressed. The industry has huge potential. There is extraordinary talent available and hungry to create new music. The Bengali market is poised for big growth as the tier two and tier three towns have embraced the magic of OTT revolution and are hooked to great music and ease of finding their favourite tracks. What is left now is for us to forge meaningful relationships within the industry. If mutually supported, the road ahead should be one that benefits all.

SVF Music has had a very good year with streaming numbers being almost tripled on major platforms like Spotify and Resso. We have also done a unique partnership with Josh. Through them we worked with thousands of micro influencers to take our music to the remotest corner and drive overall growth. We also did fantastic LOFI production and 15% of our overall numbers are from those tracks. Our catalogue is also Dolby-Atmos ready and caught up to offer the best audio experience to listeners. We have a major deal with Merlin to track our global revenues. Hungama has been a great partner over the years for distributing on many platforms. I personally feel in spite of a great year, we have just scratched the potential of the Bengali market.

I truly feel there is strength in solidarity. The existing relationships with DSPs lack harmony. Just making music available on platforms isn’t enough. The labels can certainly benefit from a strategic presence, content positioning, playlists creation, categorization for Bengali Language - all of which efforts have so far been minimal to nothing. Bangladesh is another big opportunity loss for the Bengali music industry. It comprises 50%+ of the global Bengali speaking population. The prevalent restrictions keep a large part of Bengali population inaccessible to our music.

Even though the music industry has recorded a consistent growth over the years, the challenges that prevail cannot be overlooked and have perhaps hindered an otherwise exponential growth. The dynamism of the industry has managed to keep things interesting and offer growth in one form or another. Even the live event industry that was severely affected by Covid-19 is gradually gaining a foothold and I am certain it will bounce back in no time. Digital consumption, while already pervasive, is headed only upwards in the coming years. The experiment with music trends continues to engage the audience at large. To have industry partners on the same page in addressing the current roadblocks is certainly desirable. The time to be collaborative is now more than ever. While the present may not be ideal, I am glad we are closer to that point. The future looks promising.
NORTH
Mohali, Punjab

The Bubbling Potential of Punjabi Music

Interview with Mr. Satvinder Singh Kohli (Managing Director of Speed Records) and Mr. Balvinder Singh Kohli (Founder of Speed Records)

Which factors according to you have contributed most to the growth of music from your region?

Punjabi music has seen such a meteoric rise because of its unique music, beats and composition that has made it cross over to the mainstream.

The Punjabi music industry has grown tremendously over the past few years with popularity not only in India, but abroad as well among the Indian diaspora, specifically in the US, Canada, and the UK.

The massive Punjabi immigrant population worldwide, listening in to music distributed by online platforms coupled with Punjabi artistes selling out venues worldwide have been a force that has led to growth in this segment.

Which are some of the key music consumption trends in your region?

The taste of the audience has been continually evolving. Currently, there has been a great uptake in the Hip Hop / Trap genre with artistes such as Sidhu Moose Wala and A P Dhillon leading the charge.

Historically, there has been songs with melody and great lyrics that have been superhits, but this is continually changing.

Collaborations with international and regional artists also are also doing well.

How would you describe the impact of OTT and music platforms on the music from your region?

Music platforms have acted as a great connect between the artists and the audience to give, giving them a wide reach locally and internationally.

Regional OTT platforms like Chaupal and DSP’s like Saavn, Gaana, Apple Music and Spotify have become increasingly popular among the audience and have helped bridge the gap in taking the artist’s content and music to their fans.

The platforms have also helped reduce piracy with the audience preferring the ease of these services with music on at their fingertips.

This in turn has bolstered the revenue for the industry as a whole.
What are some of the future trends we can anticipate when it comes to regional music?

Recently, there have been instances where musicians of Punjabi origin based outside India, tried fusing western tunes with regional lyrics which has been warmly accepted by the diaspora audience.

Such fusion of western music and pop references along with regional lyrics can be anticipated as one of the upcoming future trends.

More fusions of regional lyrics in RnB, Unplugged, Trap & EDM style styles will be seen in the future.

What are the key challenges and opportunities for the recorded music industry when it comes to regional music?

The music industry has already turned digital, with physical formats relegated and now limited to their digital existence on YouTube and DSP's. Over time, this has led to a very impersonal method of consumption of music.

Another emerging threat is from short video platforms such as Instagram Reels and TikTok which have further led to shorter attention spans and music getting even shorter.

The key opportunities lie with labels and A&R to create music that will break through the clutter, with great composition fused with brilliant storytelling.

What are some of the instances where music has defied linguistic barriers?

The very fact that Punjabi music contributes to a huge chunk of hits in Bollywood is a telling factor. Even if people don't understand the language, they still consume it because of the heady beats and exquisite compositions.

The current trend of artists such as Diljit Dosanjh, A P Dhillon, Sidhu Moose Wala, Karan Aujla and others being famous world over with international collaborations has made it clear that Punjabi music has not only broken into the Indian mainstream but internationally as well.
IMI INSIGHTS
The BCCI and Creative Industry should form an Alliance to fight Digital Piracy

By Mr. Jenil Shah & Ms. Mridula Dalvi

The BCCI will be conducting the IPL Media rights auction any time now and per newspaper reports the bidding will be fierce given that both TV broadcasters and tech giants will be putting in their bids. The last time the final bid for 5 years was a whopping Rs 16,347.5 cr. This time, per media reports, the BCCI is expected to fetch revenues in the range of Rs. 35,000 – 40,000 Crores, an almost 150% increase. A global transition from traditional towards digital in the broadcast sector owing to the growth of over-the-top (“OTT”) viewing has led to significant changes in the manner of content consumption. As per the State of Mobile’s 2021 Report, mobile consumers streamed 146 billion hours on mobile devices in Q1 of 2019 globally which increased by 65% to around 240 billion hours by Q4 of 2020. The subscription OTT video service user growth saw a spike in 2020, exceeding 1.5 billion users internationally. While this transition to digital has led to a growth in viewership of online content such as sports, films, music, etc., it has also resulted in a rise in the extent to which internet users are exposed to illegal content.

Globally, in 2021, India ranked third in terms of source of traffic accessing piracy websites with 6.5 billion visits and this menace shows no signs of slowing down. With the IPL season just around the corner, it is astute to ask whether the current legal framework in India adequately secures the interests of the live sports sector given the fact that the piracy of live sports events causes immediate and unrecoverable losses to broadcasters as well as governing bodies such as the BCCI. This is an understandable concern given two important reasons:

- the life of a sports event is as short as the duration of the game itself and, therefore, its value lies mainly in its being watched “live”; and
- Such live streams can easily be re-streamed unlawfully through mirror URLs and illegal websites which have proliferated all over the digital space via peer-to-peer networks.

The true economic potential of not just the sports broadcasting sector but that of all sectors linked to the media and entertainment industry can only be realised

[i] BCCI to Hold E-Auction for IPL Media Rights in February, Dates Likely to Coincide With Mega Auction (news18.com)
[iv] We love piracy, say Indians. US, Russian citizens way ahead (livemint.com)
once it is cured of the disease called digital piracy. For this to happen, one of the urgent requirements is for India to relook at the remedial measures available to counter digital piracy and to take steps that further strengthen copyright enforcement.

A great place to identify certain best practices, insofar as remedial measures are concerned is the recently published report\(^{[v]}\) titled “Mapping Report on national remedies against online piracy of sports content” (“EU Report”) by the European Commission and EU Audiovisual Observatory. It is apposite to mention that the EU has been active and successful insofar as their anti-piracy efforts are concerned, especially with respect to their sports broadcasting industry. For instance, LaLiga in partnership with the Deutsche Fußball Liga (DFL), NAGRA and Nordic Content Protection recently brought down an illegal IPTV streaming network based in Spain that served more than two million paying subscribers worldwide. As per LaLiga, the pirate network was offering more than 40,000 video channels and video-on-demand content, offering a wide range of channels, sports events, films, documentaries, and series, as well as 50 pirate servers located in various countries in Europe. The piracy network was said to generate profits in excess of 15 million euros and cause much higher damages to the content industry.\(^{[vi]}\)

Some of the remedial measures that have been identified in the EU Report are dynamic blocking injunctions, administrative copyright enforcement, voluntary cooperation, use of content protection technology and IP enforcement by police forces. While contrasting these identified remedies with those currently existing in the Indian legal framework, the need for strengthening certain key remedial measures becomes important for the Indian media and entertainment industry to protect copyrights online.

To adequately protect the interest of stakeholders in the Indian media and entertainment industry in the fast-changing digital era, some important remedial measures inferred from the EU Report include the implementation of a meaningful and robust content removal process in the form of a “notice-and-staydown” mechanism as part of the existing safe harbour regime. Additionally, having in place an administrative authority with powers to extend judicial website blocking orders to related domain names and mirror sites would help to combat piracy. Apart from this, a necessary step further is the establishment of departments to enforce intellectual property rights similar to the Maharashtra Intellectual Property Cyber Unit (MIPCU)\(^{[vii]}\) and Telangana Intellectual Property Cyber Unit (TIPCU) in all states and Union Territories. Lastly, having in place a mandate for adoption of effective technology protection measures such as encryption, monitoring, content watermarking, geolocation, content take-down technologies, etc. by the online platforms is essential.

Introducing such measures will be beneficial not just for sports broadcasters but also for stakeholders like the BCCI. The premium rates that the BCCI is able to currently command at the IPL media rights auction certainly stand to be threatened if digital piracy continues unabated. Broadcasters may not find it feasible to continue investing such huge amounts for the rights of content which is subject to high levels of piracy.

Therefore, there is an urgent need for reviewing and ramping up measures to curb online piracy for live sports content as also for other segments of the media and entertainment industry in India. An informed levelling-up of measures would be crucial in securing investments as well as profits and in future-protecting the media and entertainment industry against piracy. This note serves as a clarion call for the sports and the creative sectors to unite forces to advocate for best measures in treating piracy as a common festering disease plaguing the media and entertainment industry in India.

\(^{[v]}\) Mapping report on national remedies against online piracy of sports content (coe.int).


\(^{[vii]}\) Maharashtra Intellectual Property Crime Unit (MIPCU) is a public-private initiative, set up under the aegis of Maharashtra Cyber, which engages with Anti-Piracy groups, law enforcement agencies (Indian and global) for integrated tactical response against IP related crimes.
"Rachnatmak Bharat, Abhinav Bharat" (Creative India, Innovative India)- this slogan was the backbone of the National IPR Policy (hereinafter referred to as Policy) that was launched on 12th May, 2016. To realise this objective, the Policy focussed on various facets of intellectual property development, ranging from the commercialisation of IPRs to development of human capital. It was a recognition of the fact that Intellectual Property and the protection of Intellectual Property Rights is an extremely vital part of the economy. However, the Policy was launched 5 years ago. Given that Intellectual Property is an extremely dynamic field where changes take place overnight due to the co-relationship between IPR and Tech, any IPR Policy needs constant review and monitoring. The changes both tech and non tech that have taken place in the last 5 years must be accounted for, otherwise the very purpose of having a National IPR Policy is defeated. The Policy is meant to serve as a guiding light for Intellectual Property regulation throughout the country. But if the light in the lighthouse itself is old and faint, then the ship is bound to sink or run aground. In fact, even when the Policy was formulated in 2016, emphasis was laid on the need for the Policy to be reviewed every five years to ensure that it remains up-to-date and relevant.

Of course, Covid is a black swan moment that no one saw coming, and it is understandable that perhaps the review of the Policy as promised in 2021 has been delayed due to that. But now, the time is ripe to get back on track and start work on updating the Policy in right earnest. Keeping the above in mind, after a thorough review of the National IP Plans laid out by democratically elected governments of US, Singapore, Japan, EU and the UK, this blog aims to highlight the globally accepted best practices in the field of IP which can serve as inspiration for the Indian Government when they set out to draft the next iteration of the policy.

The first important challenge that the IPR Policy must address comprehensively is the menace of piracy. Despite numerous attempts, piracy is still rampant today across the core IP sectors such as the creative industry. In fact, in the recorded music industry itself, we have one of highest piracy rates in the world at 68%. While the previous Policy does speak about piracy, the need for an attitude change amongst the people has not been addressed. The main change needed is that people must know that piracy is theft, and that people need to see it as such. If you would think twice before shoplifting from a store or walking away with cutlery from a restaurant,
the same hesitation must be felt before indulging in piracy. For instance, the “Get it Right from a Genuine Site’ campaign in the UK is a partnership between rights holders, government and ISPs. It educates consumers about the wide range of legal sources of content available to UK consumers and promotes the value of creative content and the underlying copyright.

Further, the Policy must also push for the establishment of a National Centre of Excellence for the development and analysis of all information related to the enforcement of IP rights. The Centre will then be at the core of all IP enforcement activity. It will lead and coordinate research, public/private taskforces, training, and any pilots or projects to bring the bigger picture on IP enforcement together and enable all parties, including industry, to use their resources effectively.

The current Policy does not have the facilitation and fostering of international engagement amongst its objectives. This is a major gap which needs to be filled. In today's inter-connected and globalised world, it is imperative to work to expand the market for copyrighted content of Indian origin and further capture overseas demand for the same. For this, it is necessary for all stakeholders to come together, the industry, chamber of commerce, Central and State Govts and the respective Ministries and Departments with the active help of our diplomatic missions across the globe to support the promotional activities aimed at overseas expansion of Indian content.

These are just a few of the updates that are required in the next IPR Policy. Incorporating these changes will help to increase the heft of Indian intellectual property law related industries globally and will ensure that we are in keeping with the times. It will help to increase the flow of investments into the Indian creative sector, and will also help to generate employment.

It is time to fix the light in the lighthouse, and reach the true potential of “Creative India, Innovative India.”
Importance of Cross Border Public-Private Partnership to tackle Online Piracy

By Mr. Jenil Shah

While the global media and entertainment (M&E) sector has seen recovery as well as significant growth after the pandemic, online piracy has also been growing with estimates that the illegal pirate video services will be a $67 billion industry by 2023.¹ Between January 2022 and August 2022, a significant 141.7 billion visits to pirate sites was recorded globally.² This figure marks a 21.9% increase over the same period in 2021. During the reported period, television was ranked as the top pirated industry with 66 billion visits to pirated sites, followed by news publishing with over 39.3 billion total visits to pirated sites, film with 17.6 billion visits to pirated sites, and Music with 9.9 billion visits to pirated sites.³ Further, the top traffic source for music piracy in 2021 came from India followed by Iran and the United States.⁴

The prevailing legal framework in India provides for several means of tackling online piracy such as notice-and-take down mechanism, judicial website blocking orders and criminal enforcement of intellectual property rights. However, these remedies are increasingly becoming obsolete and inadequate in light of rapid technological changes, increasing judicial burden, time limitations and costly litigation hurdles. As on March 2022, there were 4.1 Crore cases pending in District and Subordinate courts, 59,55,907 cases pending in 25 High Courts⁵ across the country and 71,411 cases pending before the Supreme Court of India.⁶ Further, after the abolition of Intellectual Property Appellate Board in 2021, 3000 intellectual property rights (IPR) matters were transferred to the Delhi High Court in addition to 2500 odd commercial civil suits pending before the Delhi High Court. Similarly, after the abolition of IPAB, approximately 400 matters were transferred to the Gujarat High Court in addition to 4000 pending IPR matters before the court.⁷

Combating the growing menace of online piracy will never be simple in the digital era and challenges faced due to the borderless nature of online piracy necessitate a unique solution. Therefore, Brazil’s anti-piracy campaign “Operation 404” becomes an important case

¹ https://www.parksassociates.com/blog/article/pr-01152020
³ Ibid
⁶ https://main.sci.gov.in/statistics
study highlighting the relevance of cross-border public-private partnerships as an effective means in improving IP enforcement and creating a safer environment for intellectual property owners. Co-ordinated by the Secretariat of Integrated Operations (SEOPI), the Ministry of Justice in Brazil, Operation 404 is an international collaboration between the Brazilian Civil Police, US enforcement agencies, UK’s Intellectual Property Office and Police Intellectual Property Crime Unit (PIPCU) and private body stakeholders representing IP stake owners. An effective public-private partnership leads to knowledge sharing among participating stakeholders and the evolution of new strategies for efficient copyright enforcement. For instance, NagraVision, a technology provider for anti-piracy services and a partner of Alianza anti-piracy group contributed significantly to the efforts of Brazil Operation 404 by providing access to its proprietary app detection program that targets apps that facilitate access to pirated content.⁸

Consistent efforts against online piracy made possible through public-private partnerships plays an important role in deterring pirates. For example, continuous efforts under Brazil Operation 404 led to signing of cooperation agreements between the Brazil Film Agency (ANCINE) and the main online marketplaces in Brazil to prevent their registered users from advertising illegal IPTV lists and illegal streaming devices. The signing of the cooperation agreements led to more than 30,000 illegal advertisements being removed.⁹

An efficient public-private partnership model by way of introducing administrative routes to combat piracy can also significantly reduce the burden experienced by the judiciary. Such efforts attack online piracy at the root and help in avoiding the economic, administrative and social costs of litigation, where in most cases the defendants are anonymous and cannot be traced making it difficult to enforce the court orders.

The propelling factor behind the growth of media and entertainment sector is the financial fuel of investments. Lack of an effective anti-piracy framework results in hurdles for investors in the media and entertainment sector to effectively monetise their investments. Prevalence of functional public-private partnerships working on combating online piracy safeguards the interest of investors, thereby attracting significant investment opportunities in the M&E industry.

For India to curb online piracy and improve its position from one of the top pirate markets to one that provides for adequate protection of intellectual property, it is crucial to take into consideration global best practices and adopt an efficient administrative anti-piracy framework in the form of a robust public-private partnership.

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Administrative Site Blocking

Indonesia Leads the Digital Anti-Piracy Efforts

By Mr. Jenil Shah

With the rapid expansion of digital technology, internet piracy has only increased and has therefore become a major concern for the creative community which includes writers, performers, lyricists and copyright owners. According to a June 2019 study conducted by the Global Innovation Policy Centre (an affiliate of the U.S. Chamber of Commerce), global online piracy cost the U.S. economy at least $29.2 billion in lost revenue each year. As per the Online Copyright Infringement in the European Union 2021 Report, piracy remains a significant problem in the EU. Over a 48-month period, between January 2017 and December 2020, 131 billion individuals visited piracy sites for the illegal consumption of digitally pirated films, TV shows and music in the EU including the UK. The average internet user in the EU accessed pirated content 5.9 times per month in 2020. Globally each state exchequer is also the silent big loser as pirated websites don’t pay taxes. Further, the Covid-19 pandemic has exacerbated the issue of digital piracy. For example, global film piracy increased by more than 33% during the lockdown. Digital Piracy rates keep growing exponentially given that technology keeps creating new forms of interactive digital platforms. As per MUSO, 130 billion persons visited pirate sites globally in 2020. Further, between January and September 2021, television was ranked as the top pirated industry with over 67 billion total visits, followed by publishing with over 30 billion total visits, film with 14.5 billion website visits, and Music with 10.8 billion visits respectively.

Digital piracy leads to immediate and irreversible losses in terms of legitimate audience and revenues to the creative sector. For example, in Spain, creative industries reported that 60% of internet users accessed illegal content up to 11 times a month in 2019, with an estimated loss of USD 2.17 billion to the creative sector.

[iv] https://www.muso.com/magazine/connecting-the-dots-converting-motivated-pirates-into-paying-customers,
[vi] EU Commission STAFF WORKING DOCUMENT – Counterfeit and Piracy Watch List 2020
The creative and sport broadcasting industry in India faces an identical challenge in terms of digital piracy. As per MUSO, India is the third most popular country for music piracy, with 6.5 billion total piracy website visits. Further, India was reported as the top market in terms of film and music piracy between January and September 2021.\(^\text{[vii]}\) As per IMI, the Indian recorded music industry suffers losses to the tune of 300 crore annually due to digital piracy.\(^\text{[viii]}\)

Internet piracy will never be a simple problem. The Indian anti-piracy protection framework provides for various means of tackling online piracy such as notice-and-take down mechanism, judicial website blocking, IPR awareness via training programs, public messaging, etc. However, these remedies have become obsolete and inadequate in light of rapid technological changes, added to that the increasing judicial burden, time limitations and costly litigation hurdles. As on March 2022, there were 4,09,85,490 cases pending in District and Subordinate courts, 58,90,726 pending in High Courts and 70,154 cases pending before the Supreme Court.\(^\text{[ix]}\) Further, after the abolition of Intellectual Property Appellate Board in 2021, 3000 IPR matters were transferred to the Delhi High Court in addition to 2500 odd commercial civil suits pending before the DHC. Similarly, after the abolition of IPAB, approximately 400 matters were transferred to the Gujarat High Court in addition to 4000 pending IPR matters before the court. Hence the need of the hour is new age anti-piracy tools to combat fast-evolving internet piracy. It is crucial & essential for India to immediately take into consideration best practices from other markets to deal with digital piracy and adopt a robust, efficient and swift administrative anti-piracy framework.

Indonesia's recent efforts have become a relevant case study for the purpose of strengthening the copyright enforcement regimes globally, capturing the effectiveness of having an administrative site blocking remedy and its impact on online piracy. As per AVIA (Asia Video Industry Association) CAP’s (Coalition Against Piracy), traffic to all pirate sites in Indonesia came down by 75% as of January 2022 compared to 2019.

In the Asia Pacific region with 61% and 52% of consumers admitted to accessing pirate services in the Philippines and Indonesia respectively.\(^\text{x}\) Since 2019, the Indonesian government has blocked 3,500 illegal websites as of January 2022. Consequently, the traffic to legitimate sites in Indonesia tripled over the same period. As per a recent 2022 CAP YouGov survey, 76% of Indonesian consumers accessed more legal content and less pirated, and 26% subscribed to legitimate sources as a result of illegal streaming sites being blocked.\(^\text{[xi]}\) Since 2019, Indonesia has become a leading market in managing an effective internal piracy measure through rolling website blocking process.

Administrative remedies that exist in other markets such as France, Italy, Greece, etc. have proven to be effective, reasonable and time-efficient in curbing internet piracy. To ensure a robust anti-piracy mechanism and IP enforcement in cases where time of the essence, it is imperative to urge Meity in coordination with the Department of Telecommunications and DPIIT to establish an administrative body empowered to enforce online copyright infringement via administrative site blockings. The body shall comprise of executives from the aforementioned ministries and departments as well as the copyright industry representatives. The body shall closely work with the creative industry stakeholders, internet service providers and inter-governmental functionaries to successfully defeat the plague called digital piracy, unlocking the true potential of the M&E industry in India and become a global power house for story-telling.

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\(^{[xi]}\) [https://avia.org/indonesia-continues-to-lead-the-way-in-site-blocking/](https://avia.org/indonesia-continues-to-lead-the-way-in-site-blocking/).
Monthly Intermediary Compliance Reports

Glass Half Empty

By Ms. Mridula Dalvi and Mr. Jenil Shah

Compliance reports pertaining to IT Rules 2021 are not adequate and do not discharge accountability.

The IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (hereinafter referred to as the 2021 Rules), issued by the Ministry of Electronics and Information Technology (MeitY) in February 2021, significantly modified the regulations governing intermediaries in India.

The 2021 rules, for the first time, aimed at regulating Big Tech platforms with the guidelines creating supplementary obligations for ‘Significant Social Media Intermediaries’ (SSMIs) in addition to the general obligations applicable to other intermediaries. Any social media intermediary consisting of fifty lakh registered Indian users or more is deemed to be a significant social media intermediary for the purpose of the 2021 Rules. While this is a step in the right direction, there are still a few issues in the implementation of the said 2021 Rules, and this article aims to highlight one such issue.

Rule 4 (1) (d) of the 2021 Rules places an obligation on SSMIs to publish monthly transparency reports disclosing: (i) the details of complaints received, and actions taken in response, (ii) the number of “parts of information” proactively taken down using automated tools; and (iii) any other relevant information specified by the government. Failure to comply with this obligation would lead to intermediaries losing their safe harbour immunity.

Therefore, to meet the above obligation, many SSMIs have started to issue their monthly compliance reports. However, inadequate disclosure about complaints received and action taken by the SSMIs relating to copyright infringement in these reports has created significant barriers for rights owners. Copyright owners are unable to a) determine the share of complaints related to copyright infringement within the total number of complaints received, and b) identify the actions taken by the SSMIs in response to these complaints.
number of complaints received b) analyse the efforts made and action taken by intermediaries to address the copyright infringement complaints.

Further, insufficient reporting and failure to issue monthly reports also increases the burden on IPR holders to monitor infringements. This is particularly problematic in the case of short-form video apps in India, which have been bolstered by a growing user base for Indian apps, following the ban on TikTok. It has been observed that compliance with periodic reporting obligations has not been uniform across all popular SSMIs as the format of reporting has been left to their discretion. While the compliance reports of some platforms are unavailable to the public, out of those that are available, it is observed that the number of user complaints received on the grounds of copyright infringement against which the action was taken, are not usually reported.

This lack of specific copyright infringement data in turn makes it difficult for copyright owners to determine the financial losses incurred due to infringement on content-sharing platforms, thereby defeating the very purpose of the compliance report i.e. transparency and accountability on part of the intermediaries. Being blindsided on copyright theft is also disadvantageous to copyright owners during licensing negotiations.

Therefore, it is clear that there is a need for an amendment to the 2021 rules, placing an obligation on significant social media intermediaries to disclose the details of complaints received and action taken regarding infringement of copyright within the monthly compliance report under Rule 4 (1) (d).

As clarified by Rajeev Chandrashekar, Hon’ble Minister of State for Skill Development and Entrepreneurship of India, the government’s perspective is to ensure 4 boundary conditions for policy & rule making around the Internet - that is openness, safety & trust, accountability and complete compliance to the Indian Constitution & legal provisions.

The Hon’ble Minister is right- lack of accountability erodes the economic value due to the copyright holder. Therefore, given the fact that the Government is so crystal clear about its vision, we urge MeitY to take into account our recommendations which are very much in line with the same.
Why the Supreme Court is Right in its Decision On Section 63 of the Copyright Act, 1957

By Ms. Mridula Dalvi

This ruling will be the first step towards plugging the economic losses arising out of piracy.

In a major relief to copyright holders, the Supreme Court recently clarified in the case of M/s Knit Pro International v. The State of NCT of Delhi & Anr.¹ that copyright infringement is a cognizable and non-bailable offence. The dispute originally arose between Knit Pro International, a company engaged in the manufacturing of knitting needles and Mr. Anurag Sanghi (the petitioner in the High Court case). Mr. Sanghi manufactured certain goods infringing Knit Pro's copyright. Knit Pro therefore filed three cases of infringement before the lower courts, which went in their favour, leading Mr. Sanghi to institute a case in the Delhi High Court (HC) on the grounds that copyright infringement is not a cognizable and non-bailable offence. The Delhi HC ruled in favour of Mr. Sanghi, which led Knit Pro to appeal to the Supreme Court.

Whether copyright infringement is a bailable and non-cognizable offence or not has been a contentious issue, with various high courts giving different interpretations of the law. The Hon’ble Karnataka HC in the case of ANI Technologies Pvt. Ltd. v. State of Karnataka² as well as the Hon’ble Rajasthan HC in the case of Nathu Ram S/o Purna Ram v. The State of Rajasthan³ held that offences under Section 63 of the Copyright Act, 1957 ought to be cognizable and non-bailable given that the maximum term of punishment is imprisonment for three years. In fact, in the ANI judgment, the judge also noted that via the 1984 amendment to the Copyright Act, the maximum imprisonment that could be imposed under Section 63 was increased from a period of one year to three years. The reasons for doing this were quite clear—the parliamentary intent was to make copyright a non-bailable, cognizable offence. In contrast, the Hon’ble Delhi HC in State Govt. of NCT of Delhi v. Naresh Kumar Garg⁴ as well as the Hon’ble Andhra Pradesh HC in the case of Amarnath Vyas v. State of A.P. held that the offences under the Copyright Act are non-cognizable and bailable.

¹ Ms_Knit_Pro_International_vs_State_of_NCT_of_Delhi.pdf (assettype.com)
³ https://indiankanoon.org/doc/125003057/
⁴ 2013 SCC OnLine Del 1142

Copyright © 2022 The Indian Music Industry
In all the aforementioned cases, the point of legal ambiguity has been as follows—offences under Section 63 of the Copyright Act for copyright infringement are punishable with imprisonment for a term “which shall not be less than six months but which may extend to three years.” As per the Indian Criminal procedure Code, 1973, only if the prescribed punishment for a cognizable offence is “three years and upwards” does the offence become cognizable and non-bailable. Since there is a possibility of granting a punishment of less than 3 years of imprisonment for copyright infringement, there was a difference of opinion within the various High Courts as to whether copyright infringement would fall under the ambit of cognizable and non-bailable offences.

The Supreme Court decision in the Knit Pro case has cleared the air by stating that since there is a possibility that the accused under Section 63 may be sentenced for a period of 3 years also, offences under Section 63 are cognizable and non-bailable. This SC decision reinforces the fact that copyright infringement is a serious offence, and copyright protection needs to be strictly enforced. The threat of a jail term would act as natural deterrent for anyone. Music labels who have borne the brunt of copyright infringement will welcome this decision.

This ruling will be the first step towards plugging the economic losses arising out of piracy, and this is essential given that India was reported as the top market in terms of film and music piracy between January and September 2021. Hopefully, it will also help to change the lackadaisical mindset that the corporate sector and society have towards copyright infringement. This will in turn have a positive impact on millions of livelihoods including those of producers, songwriters, musicians, performers and other stakeholders associated with the creative sector.

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5 https://www.musicbusinessworldwide.com/music-piracy-plummeted-in-the-past-5-years-but-in-2021-it-slowly-started-growing-again/
Summary by Mr. Jenil Shah,
Presented at Inventicon - 4th Annual IPR India Summit 2022

Emerging trends for adopting effective IP strategies to drive and deliver efficiency, innovation and unique growth opportunities.

Theme - Boosting Anti-piracy efforts with increased cooperation between rights-owners and law enforcement authorities

“Combating the growing menace of online piracy will never be simple in the digital era and challenges faced due to the borderless nature of online piracy necessitate a unique solution in the form of public-private partnership”

ONLINE PIRACY LANDSCAPE AND CHALLENGES POSED TO THE RECORDED MUSIC INDUSTRY

In the year 2020, 130 billion internet users were observed to be visiting pirate sites globally. Further, during January 2021 and September 2021, the television industry was ranked as the top industry in terms of piracy with over 67 billion total pirate sites visits, followed by publishing with over 30 billion total visits, film with 14.5 billion website visits, and Music with 10.8 billion visits respectively. The cherry on the cake, India was reported as the top most source of web traffic to pirate sites in terms of film and music consumption.
STATE OF THE INDIAN RECORDED MUSIC MARKET AND CHALLENGES FACED DUE TO ONLINE PIRACY

India, today stands at Rank 17 in terms of the global recorded music market. More than 80% of the recorded music revenue in the Indian market today is attributed to streaming. The market is increasing year on year, however, punching way below its weight in contrast to the high internet and smartphone penetration that is seen across the country. This slowed growth in the recorded industry can be attributed to n number of factors including revenue leakages caused due to Online Piracy (the Indian recorded music industry suffers losses to the tune of ₹300 crore annually due to digital piracy).

ROLE OF VOLUNTARY COOPERATIONS BETWEEN POLICE FORCES, RIGHTSHOLDERS, STAKEHOLDER ASSOCIATIONS AND ADMINISTRATIVE AUTHORITIES TO COMBAT ONLINE PIRACY: UK CASE STUDY

OPERATION CREATIVE

Operation Creative - key initiatives under the UK IP Crime Group and administered by UK Police Intellectual Property Crime Unit (PIPCU)

Under Operation Creative, Rogue Websites hosting unauthorised content are disrupted through takedown, co-operation with intermediaries and the disruption of advertising revenues.

PIPCU maintains Infringing Website List (IWL) with details of each pirate sites shared with industry, ensuring that legitimate businesses do not advertise on such sites, thus restricting advertising revenues generated by the pirates.

Under the Operation Creative initiative, 3,467 sites have been taken down as of 2021. As of 2021, 5077 websites on the IWL had their advertising revenues being disrupted by PIPCU.

BRAZIL CASE STUDY: OPERATION 404 AND INTERNATIONAL COOPERATION TO FIGHT PIRACY (BRAZIL-UK-US TRILATERAL)

Brazil's Ministry of Justice and Public Security initiated a campaign titled “Operation 404” (codenamed after the famous HTTP error titled “Error 404”) which aimed at combating IP crimes across the country.

Initially launched in 2019, Operation 404 is coordinated by the Secretariat of Integrated Operations (SEOPI) from the Ministry of Justice in Brazil, in collaboration with the UK IPO, the Police Intellectual Property Crime Unit (PIPCU), Brazilian Civil Police, and United States Department of Homeland Security.

The campaign has so far extended up to 4 phases with the recent phase announced in June 2022 and has so far prompted around 100 search and apprehension orders, which consequently resulted in the blocking of over 1000 pirate sites and 700 pirate apps that were streaming illegal content.

NEED FOR A WIDE COOPERATION BETWEEN RIGHTS OWNERS AND LAW ENFORCEMENT AUTHORITIES AND ITS IMPORTANCE

Implementation of effective public-private cooperation leads to increased scope for knowledge sharing, operational effectiveness, and the development of new strategies to fight online piracy; deters pirates; addresses the issue of over-burdening of Judiciary and Attracts significant investment opportunities in the M&E sector.

WAY FORWARD FOR THE IPR STAKEHOLDERS

An appropriate step towards implementing a suitable framework in the Indian context would be to efficiently analyse the currently existing models and determine the best practices most suitable. For Instance, Implementing the Infringing Website List (IWLs) in the Indian context to disrupt advertisement revenues obtained by pirates considering that India has an enormous digital advertisement market.

Creation of IP Crime Units similar to the Maharashtra Intellectual Property Crime Unit and Telangana Intellectual Property Crime Unit in more States and Union Territories of India to ensure integrated response against online piracy.

Introduction of Administrative copyright enforcement mechanism by establishing specific administrative bodies competent to enforce online copyright infringement.
OTT Estimates in India

By Ms. Dema Therese Maria
Excerpts by Ms. Arasha Khan

The findings of the paper reveal the estimated expected number of OTT users in various categories in India for the years 2025 and 2030.

Estimated Audio OTT Users (mn) (excluding podcast consumption)

<table>
<thead>
<tr>
<th>Audio OTT Users</th>
<th>2025</th>
<th>2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>High (+25%)</td>
<td>513</td>
<td>967</td>
</tr>
<tr>
<td>Medium (+15%)</td>
<td>423</td>
<td>832</td>
</tr>
<tr>
<td>Low (+5%)</td>
<td>333</td>
<td>698</td>
</tr>
</tbody>
</table>

CURRENT = ¹200 mn

a) Assuming a 5%, 15% and 25% points increase in the current percentage, the audio OTT user penetration rate in 2025 are 37%, 47% and 57%. Taking into consideration the projected penetration rate and the estimated 2025 internet users i.e., 900 million, we get 333, 423 and 513.

b) Assuming a further 5%, 15% and 25% points increase to the estimates from internet population 1343 million in 2030 as per Statista and taking into consideration the medium category 47%, the 2030 audio OTT user penetration rates are – 52%, 62% and 72%, we get 698, 832 and 967.


Copyright © 2022 The Indian Music Industry
Estimated Paid Audio OTT Users

<table>
<thead>
<tr>
<th>Paid Audio OTT users</th>
<th>2025</th>
<th>2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>High (+25%)</td>
<td>51</td>
<td>150</td>
</tr>
<tr>
<td>Medium (+15%)</td>
<td>34</td>
<td>117</td>
</tr>
<tr>
<td>Low (+5%)</td>
<td>17</td>
<td>83</td>
</tr>
</tbody>
</table>

**CURRENT = 2 mn**

a) Assuming a 5%, 15% and 25% points increase in the ratio of paid audio to paid video users for 2025 - the new paid audio OTT compared to paid video OTT users are 10%, 20% and 30%. Using the “medium” category calculated for 2025 under estimated paid video OTT (169), we get the figures 17, 34 and 51.

b) Assuming a further 5, 15 and 25 percentage points increase in the medium category for overall estimated paid video OTT users (333), the new ratio figures would be 25%, 35% and 45%. The new figures are 83, 117 and 150.

Estimated Ad-supported and bundled Audio OTT Users (excluding short form apps and social media)

<table>
<thead>
<tr>
<th>Ad Supported Audio OTT Streamers</th>
<th>2025</th>
<th>2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>High (+25%)</td>
<td>462</td>
<td>817</td>
</tr>
<tr>
<td>Medium (+15%)</td>
<td>389</td>
<td>715</td>
</tr>
<tr>
<td>Low (+5%)</td>
<td>316</td>
<td>615</td>
</tr>
</tbody>
</table>

**CURRENT = 198 mn**

---


Estimated video OTT users (Video OTT includes SVOD, AVOD, non-paying SVOD, YouTube and social media)

<table>
<thead>
<tr>
<th>Video OTT Users</th>
<th>2025</th>
<th>2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>High (+25%)</td>
<td>736</td>
<td>876</td>
</tr>
<tr>
<td>Medium (+15%)</td>
<td>639</td>
<td>806</td>
</tr>
<tr>
<td>Low (+5%)</td>
<td>556</td>
<td>736</td>
</tr>
</tbody>
</table>

CURRENT = 353.2 mn

Estimated paid video OTT users (Paid OTT does not include bundled users)

<table>
<thead>
<tr>
<th>Paid Video OTT Users</th>
<th>2025</th>
<th>2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>High (+25%)</td>
<td>233</td>
<td>413</td>
</tr>
<tr>
<td>Medium (+15%)</td>
<td>169</td>
<td>333</td>
</tr>
<tr>
<td>Low (+5%)</td>
<td>106</td>
<td>253</td>
</tr>
</tbody>
</table>

CURRENT = 40.7 mn

a) During the pandemic, there has been an increase in the number of paid subscribers to OTT and this trend is estimated to sustain. Hence, we assume 5% points, 15% points and a 25% points growth to the existing penetration of 11.5% to the estimated users by 2025. Taking 16.5%, 26.5% and 36.5% and of the “medium” category calculated for 2025 under Video OTT (639), we get the figures 106, 169 and 233.

b) Assuming further 5, 15 and 25% points increase from the estimated 26.5% in paid OTT penetration from 2025 to 2030 – 31.5%, 41.5% and 51.5%. Paid OTT penetration from the “medium” category calculated for 2030 under OTT (806), we get the figures 253, 333 and 413.

Decriminalisation of Offences under the Copyright Act, 1957

Not A Blockbuster Move

By Ms. Mridula Dalvi

In the past two years, the Central Government has slowly but steadily moved towards the decriminalisation of offences based on industry feedback that antiquated laws hamper the ease of doing business in India. There is also a school of thought that decriminalising certain economic offences will reduce the immense backlog of cases in the Courts. While the intent is laudable, it is essential to keep in mind that a one-size fits all approach cannot be taken while implementing this initiative. There are a few offences which, if decriminalised, would lead to catastrophic effects for the industry concerned - case in point being the offences under the Copyright Act, 1957. Decriminalising these offences would effectively legitimise copyright infringement and piracy.

As we are aware, piracy causes a huge loss to the creative sector. As per a recent MUSO report, India reported 6.5 billion visits to pirated websites, which was the third highest globally. Further, India was reported as the top market in terms of film and music piracy between January and September 2021. In fact, the recorded music industry loses revenues to the tune of 1200 cr. due to pirate activities such as illegal downloads, stream-ripping etc. Further, when it comes to the publishing industry, it is estimated that pirated books account for 20-25% of the total books in the market.

Huge investments are made by copyright owners to create or obtain copyrighted content. For instance, per the IFPI report “Record Companies: Powering the Music Ecosystem”, record companies spend $5.8 bn annually on artists and repertoire. Further, it is estimated that globally $220 bn was spent on creation of copyrighted content for cinema, TV and OTT in 2021, a 14% increase from the previous year. This figure is set to exceed $230 bn in 2022.

[1] Decriminalisation of offences under Companies Act: need of the hour – Commentary – Lexology
bn by the end of 2022. If copyright offences are decriminalised, there will be little incentive left for content creators and copyright owners in India and globally to stay invested in the media and entertainment industry. Thus, there is a high probability of investments drying up if the said copyrighted work is not protected adequately.

Disinvestment and loss of revenues inadvertently means loss of employment— for instance the Indian film industry provides direct employment to 8,48,000 people and the recorded music industry generates direct and indirect employment for 36,800 people.

In addition to the aforementioned issues, pirate activities also give rise to serious organised crimes. Counterfeiting, piracy and smuggling finance criminals and terrorists who deal in counterfeit goods to launder illegal money. In fact, in 2017, Mr. Rajnath Singh, the then Home Minister of India had announced a special course on intellectual property rights in all police training colleges, stating that piracy and copyright violations are a source of terror financing and money laundering.

Globally, many countries have criminalised copyright offences. For instance, the United Kingdom provides for imprisonment of up to 10 years for certain copyright offences. In the United States, a first-time offender may be imprisoned for up to 5 years for copyright infringement, and a repeat offender may be imprisoned for up to 10 years. Closer home, in Singapore, a person may be jailed for up to 5 years in case of certain copyright offences.

Stealing someone’s intellectual property, which they have given their blood and sweat to create, cannot be considered any less of a crime than stealing someone’s physical property. In India, respect for copyright is not very commonplace and there is a tendency amongst people to treat copyright offences as “acceptable” and “par for the course”. Decriminalising copyright offences would only exacerbate this issue and would be a blemish on India’s IP regime.

The Government has recognised audio and visual services as a “champion sector”. Further, recently, Union Minister for Information and Broadcasting Anurag Thakur called the media and entertainment sector a sunrise sector, and noted that it is expected to generate Rs 4 lakh crores annually by 2025 and become a $100 billion or Rs 7.5 lakh crore industry by 2030. However, for this potential to be truly realised, it is essential that piracy be strictly dealt with. Criminalisation of copyright offences acts as a deterrent to those who aim to commit copyright infringement and theft, thus preventing revenue leakages for copyright owners. Therefore, if the DPIIT truly believes in the potential of the Media & Entertainment industry, we urge them to take the aforementioned issues into consideration and further our case against the decriminalisation of offences under the Copyright Act, 1957.

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[iii] IMI report_singlePage.pdf (deloitte.com)
[iv] https://www.livemint.com/Politics/OXVUwsGWgXSvglOa1VgcBM/Piracy-copyright-violation-sources-of-terror-funding-Rajna.html
[vii] https://www.law.cornell.edu/uscode/text/18/2319
[x] https://pib.gov.in/PressReleseDetailm.aspx?PRID=1837074
Digital India Act:
Media & Entertainment Sector's last ray of hope for a fair online environment

By Mr. Blaise Fernandes & Ms. Mridula Dalvi

India is the largest market in terms of users outside the US for interactive digital platforms. This is mainly due to its digital citizenry which is enabled by 750 million smartphone users and cheap data with an estimate of 833.71 million internet users and growing. New forms of online content-sharing platforms such as short form video apps are expected to grow into a $19bn monetization opportunity by 2030 largely fueled by copyright-protected content uploaded by users aka digital citizens. However, some platforms are using the safe harbour protection either as a weapon while licensing negotiations with the copyright stakeholders or to evade liability arising from copyright infringement. This deprives the creative community, rightsholders and investors of their fair share, and adversely impacts the employment generation and revenues to the national exchequer.

To resolve this, Section 79 of India’s Information Technology Act, 2000 (“IT Act”) should be reformed to limit its overbroad safe harbours and to clarify the responsibilities of services eligible for them in the proposed Digital India Act.

What is a safe harbour?
A safe harbour (aka 'liability privilege') is a legal provision that limits the liability of online services for content uploaded and shared on their services by their users.

Why were safe harbours created?
Safe harbours were introduced over 20 years ago in the US and EU when the internet was in its infancy. They were intended to protect the online services that were providing the critical infrastructure for the internet, acting as technical, automatic and passive intermediaries between internet users.

What is the problem?
Today, active user upload content (UUC) services are curating and monetising content such as recorded music on their platforms and using safe harbour privileges to claim they do not need to license - and therefore pay a fair rate for - this content. They use copyright works, such as sound recordings and music videos, to attract vast numbers of users and to generate huge revenues while claiming not to be liable for the content that underpins their business.¹ This was never the intention behind the introduction of safe harbours and this misapplication has provided, on the one hand, the opportunity for some online services to free-ride and engage with copyright material without entering into free and fair licence negotiations (or any licence at all) for the use of those works, while, on the other hand, also offering a pretext for brazenly infringing services to continue to operate.²

² For example, erstwhile Musical.ly licensing negotiations with copyright owners was reported to be one-sided with copyright owners having to contend with either getting paid or opting for the DMCA takedown mechanism, see https://pitchfork.com/features/article/the-great-music-meme-scam-how-tiktok-gets-rich-while-paying-artists-pennies/.
This deprives artists and record companies of their legitimate income and enables piracy.³ Illegal streaming websites account for 80% of all online piracy-related activities⁴ and an alarming 30 percent of global consumers listen to music in copyright infringing ways.⁵ In the first quarter of 2022, MUSO measured 52.5 billion visits to piracy websites, out of which the music sector forms 7.3% of the total share.⁶ In 2021, music piracy accounted for 8.15% of all piracy in India in 2021.⁷ This is further illustrated by the fact that video streaming accounted for 50% of all hours spent listening to on demand streaming services but only generated 31% of overall streaming revenues for the recorded music industry.⁸ It also creates unfair competition in the digital music services market with services that have licensed music on fair terms struggling to compete.

³ According to the Digital Music Study Report 2021, the rate of music piracy in India is 68%, which is double the global average of 30%, which affects the revenue from streaming, which is , see https://indianmi.org/wp-content/uploads/2022/03/Digital-Music-Study-Report-2021-ONLINE.pdf.
⁹ The increasing value gap is an obstacle for Indian recorded music industry to realize its true potential, see https://www2.deloitte.com/content/dam/Deloitte/dv/Documents/technology-media-telecommunications/IMI%20report_singlePage.pdf.
effective steps to prevent unauthorised content being made available on their services. In the US, the Copyright Office concluded a study into Section 512 of the US Digital Millennium Copyright Act – the law which introduce safe harbours in 1998. It found that “services that provide additional services that are “related to storage” but go beyond mere hosting, should not be eligible for the safe harbour.”¹³

In Mexico, legislation was adopted in 2020 which expressly requires hosting service providers to remove infringing content expeditiously and to prevent future infringements of that same content from being uploaded.¹⁴

What is the solution for India? The Indian online liability regime should be reformed to ensure that there is a clear legal basis for the liability of active online services. The safe harbour protection must only apply to neutral intermediaries that are truly “technical, automatic and passive” as provided by section 79 of the IT Act, 2000. To ensure that the law in India cannot be taken advantage of to distort the digital market and provide a shield to infringing services in India, regulations must clarify the responsibilities of services eligible for safe harbours, including an obligation on hosting service providers to remove infringing content expeditiously and to prevent future infringements of that same content from being uploaded to their services. Further, all online service providers, not only those that may avail themselves of safe harbours, must implement effective repeat infringer and ‘know-your-business-customer’ (’KYBC’) procedures.

A bright future for music in India? India is currently the 17th largest music market in the world¹⁵ and is ranked 20th on the Global Influential Music Index.¹⁶ With its large population, economic power and incredibly rich and diverse music scene it should be far higher up the global rankings. Record companies have shown their commitment to India, signing local artists and investing in the people and infrastructure to help further develop the country’s music ecosystem. Many prominent Indian artists such as the late Sidhu Moose Wala, Anirudh Ravichander, Pritam, Arijit Singh, Tanishk Bagchi and A.R. Rahman are ranked within the top 200 Global Digital Artists, showcasing the footprint of a growing Indian influence in the global music scene.¹⁷ However, the misuse of safe harbour provisions has led to a value gap between potential revenue from UGC platforms and actual revenue including subscription-funded streams.¹⁸ If a solution to the safe harbour problem can be put in place, the value of Indian music can be properly recognised,¹⁹ allowing the whole music sector to grow sustainably for the long term – putting India where it belongs amongst the largest and most important music markets in the world.

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¹⁵ Going up two places from 19th in 2017, see https://indianmi.org/activities/india-trends/.
¹⁶ India Ranking 20th in the Global Influential Music Index, see https://www.medinops.de/global-music-index/.
The music industry in India has not realised its potential. While the estimated value of the global music industry is USD29 billion, the industry in India is valued at approximately USD234 million, or INR18.7 billion as estimated by EY-FICCI's 2021 report on India's media and entertainment industry.

India lags behind because of the long-standing challenges of underpayment by consumers of music, rampant sale and consumption of pirated content, massive digitisation and an ad-supported streaming user base. Music creation as well as consumption have seen sharp shifts with digitalisation.

YouTube remains the most preferred streaming platform for India, representing 22 per cent of the total time spent by Indians listening to music. YouTube also accounts for 50 per cent of music consumption for record labels. Digitalisation, however, has not had a similar impact on the other, often overlooked segment of the music industry, i.e., the informal industry, which comprises brass bands, local DJs, independent performers or live bands, music teachers, instrument manufacturers, etc. Further, the Covid-19 pandemic had a massive impact on the music industry in India and imposed a disproportionate burden on the informal sector.
The Industry Iceberg and its Hidden Informal Sector

We estimate that the informal music industry in India ranges between INR1398 billion to INR5620 billion. According to our estimates, the informal industry is a source of livelihood for almost 14 million people including DJs and their helpers, brass band members, sound engineers, independent artists, musicians, teachers and small-scale manufacturers.

The numbers estimated through this study emphasise the magnitude of the music industry, both in terms of income and the number of people engaged in it, hitherto unknown or unacknowledged. Even at the lower bound, the numbers are large enough to be considered important for policy discussion.

We argue that the estimates for the informal music industry indicate a need for policy intervention with respect to improving livelihood opportunities for the sector, providing social security to vulnerable groups and nurturing its overall growth perspective. The growth of this industry is not only for itself but also for several allied sectors that rely heavily on music for their growth.

Sectoral Analysis

Common Challenges of Low Skills, Low Wages and Inadequate Training

**Brass Bands:** Brass bands see seasonal demand and are often vulnerable to income shocks. Members depend on learning by doing, with limited professionalisation and quality training.

**Sound Engineers:** The demand for sound engineers has increased over time. However, there is need to improve the overall quality of sound engineers through formalised training programmes. These group is also vulnerable to low and irregular income.

**DJs:** Most DJs are not formally trained and consequently, inadequately compensated. While some popular DJs moved to online performances during the pandemic, most agree that there is no sustainable alternative to live.

**Independent Musicians:** Digitisation has enabled the rise of independent musicians. Marketing remains a key factor in their success. The industry does not offer the luxury of full-time regular employment to most artists. For most artists, especially in the traditional music segment, institutional support is lacking and it rides on the success of a handful of artists.
Conclusion and Policy Recommendations

Strengthening the role of institutions
The Indian Performing Rights Society (IPRS) and the Phonographic Performance Limited (PPL) are the leading organisations that govern the commercial use of music in India. Our stakeholder interactions have suggested that while both institutions have matured and strengthened over time, in comparison to several other countries, the member association and revenue generated by these institutions remain relatively low. A structured policy that focuses on strengthening institutions and supporting artists will go a long way in encouraging young artists to pursue music full time instead of treating it as a hobby or side income.

Improving quality by training and professionalisation of artists and sound engineers
Most artists depend on training provided on the job, or through family members, and more recently, online videos and other informal sources. As stated above, this reduces the bargaining power of artists and technical service providers in the industry as well as minimises opportunities to migrate to other high paying alternatives. The government should focus on increasing the support for training, including low-cost training by setting up more institutions and inculcating a culture of training and professionalisation.

Need to strengthen IPR laws and its enforcement
While enforcement continues to remain a challenge, the law itself can be strengthened in favour of the industry. The current Act allows exemptions to educational institutions, resident bodies, non-profit clubs, religious institutions and bonafide religious ceremonies including weddings. A more nuanced view of these exemptions can improve the royalty base for commercial music.

Additionally, the current law needs a balance between users and producers. The current version is user centric because of the provision for compulsory licence (Section 31), statutory licence for cover versions (Section 31C), statutory licence for broadcasting (Section 31D) and general exceptions to infringement of copyright under section 52 of the Act and does not favour creators and owners of the copyright. Law, if not in favour of creators and owners, needs to be balanced so that creators and owners of copyright are adequately remunerated for the investments made in composition and production as well as for their creativity.