

POTENTIAL FOR INDIAN MEDIA & ENTERTAINMENT EXPORTS – NEED TO STOP THE LEAKAGE

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EXECUTIVE SUMMARY

- Media and entertainment exports play an important economic role in driving a country’s soft power. Despite the relatively small size of the Indian media and entertainment sector, the wide India diaspora spread across the world presents a significant opportunity for the export of Indian domestic media & entertainment content.
- The role of the public-private partnership in the form of Korean Copyright Protection Agency acts as a relevant case study to examine the strong overseas copyright protection and promotion of Korean content, thereby leading to increased export revenues for the market.
- In light of the key policy objectives laid down under the 2016 National Intellectual Property Rights Policy, the paper suggests key recommendation in the form of creation of a specialised administrative agency to enforce IP rights, increased

collaboration between specialised enforcement agency and overseas promotion associations, and enforcement of IP rights via bilateral treaties to protect Indian content internationally.

INTRODUCTION

Media and entertainment exports play an important role in the economic activity of a country, boosting the growth of the domestic creative sector through additional revenues. Notable examples include the USA, where the media and entertainment industry reached USD 660 billion in 2020,¹ and South Korea, with a total market value of entertainment culture standing at USD 16.15 billion in 2021.² Specifically in the music sector, thriving exports have a broader spill-over effect on other sectors, including music publishing, internet and radio listening platforms, the live industry, instrument manufacturing, musicians, and music teachers, among others.

In 2019, the U.S. music industry exports stood at USD 9.08 billion.³ UK music exports were worth £2.5 billion (USD 3.07 billion) in 2021, and there remains significant growth potential in the UK music industry, with the value of the global recorded music market projected to double by 2030.⁴ South Korean music exports have increased more than fifty-fold in the last 15 years, rising from £10.8 million in 2007 to £604 million in 2021.⁵ This multi-fold increase in South Korean music exports owes much to strong overseas copyright protection and the promotion of Korean content enabled by the Korean Copyright Protection Agency.

KOREAN COPYRIGHT PROTECTION AGENCY (KCOPA): A CASE STUDY FOR OVERSEAS PROTECTION AND ENFORCEMENT OF COPYRIGHT

The Korea Copyright Protection Agency (KCOPA)⁶ was established as a result of the Korea Copyright Act amendment passed by the National Assembly in 2016. KCOPA, under the Ministry of Culture, Sports and Tourism. It assists the copyright special judicial police and

1 <https://www.trade.gov/media-entertainment>

2 <https://www.mcst.go.kr/english/statistics/statistics.jsp>

3 https://www.riaa.com/wp-content/uploads/2021/02/The-U.S.-Music-Industries-Jobs-Benefits-2020-Report_Executive-Summary.pdf

4 <https://exxfmt5ydc6.exactdn.com/wp-content/uploads/2023/03/Export-Opportunities.pdf>

5 <https://www.statista.com/statistics/625158/south-korea-export-music-industry/>

6 <https://www.kcopa.or.kr/eng/index.do>

online home monitoring group,⁷ and takes prompt action against online piracy of copyrights by way of public-private cooperations.

According to the KCOPA's Articles of Incorporation, the purpose behind its establishment is "to contribute to cultural improvement and development and relevant industries by supporting the establishment/enforcement of copyright protection policies, deliberating on matters related to copyright protection, and implementing projects required for the protection of copyrights."

KCOPA's organizational structure plays a key role in online protection of Korean content. The agency consists of 3 verticals, namely, the Management Planning Office, the Infringement Response Headquarters, and the Protection Support Headquarters.⁸

The Infringement Response Headquarters, located in Korea, consists of the "Overseas Division", which is essentially responsible for protecting Korean content overseas. The Overseas Division located in Korea is in charge of the operation and management of overseas copyright offices and overseas business of KCOPA.

Some of the main functions of the Overseas Division include: establishment and operation of overseas copyright centres (offices), providing overseas illegal reproductions infringement response support, conducting international Copyright Protection Personnel Workshops, and administration of Customized Overseas Copyright Voucher Support Project.

In furtherance of protecting Hallyu content⁹ internationally, KCOPA currently operates overseas offices in Vietnam, Thailand, and the Philippines. The overseas office in China is currently operated by Korea Copyright Commission which will soon be transferred to KCOPA. Overseas offices provide legal support services to overseas companies in conjunction with local law firms. The support also includes professional legal consulting as well as relief measures such as preserving evidence for major infringements, sending warning letters, and applications for administrative punishment. During 2016-2020, a total of 1,786 cases of overseas copyright consultation and legal consulting were provided, and 26,418 cases of relief measures were supported.¹⁰

As part of International Copyright Protection Personnel Workshops, KCOPA conducts specialized training programs for copyright enforcement personnel to strengthen Korea's international position in the copyright field by fostering experts in the field of copyright protection and enforcement. Since 2012, KCOPA has been providing informative sessions on a wide range of subjects, including international treaties and laws related to copyright enforcement, civil and criminal procedures for copyright infringement, border measures while targeting staff in charge of partner countries such as developing countries, officials in related

7 Process administered by KCOPA to monitor illegal reproductions on domestic and foreign sites, and actively responds to a wide range of domestic and foreign copyright infringements.

8 https://www.kcopa.or.kr/lay1/program/S1T9C24/staff/org_chart/list.do

9 Also known as Korean wave. Hallyu refers to South Korean TV dramas and popular music that gained great popularity in Asian countries such as China and Japan.

10 KCOPA Report, 2022 - A study on measures to improve the efficiency of overseas copyright protection systems

organizations, and experts. In 2019, KCOPA conducted international workshops that received participation from 9 countries and comprised 17 copyright enforcement personnel.

With respect to the function of the Customized Overseas Copyright Voucher Support, KCOPA aims to contribute to strengthening the competitiveness of Korean content exporters and protecting copyrighted works by providing vouchers for expenses necessary for preventing infringement of overseas copyrights and resolving disputes for domestic content companies (individuals) entering overseas markets. The role of providing overseas illegal reproductions infringement response support is to effectively protect and counter infringement of Hallyu content that has entered overseas markets, and to strengthen illegal reproduction measures through consumer-centered public-private cooperation as well as through cooperation with local governments and related organizations.

KCOPA receives continuous support from government departments and forums such as the Korean Ministry of Culture, Sports and Tourism (MCST), Korean Intellectual Property Office (KIPO), Korea Customs Service, Korea Media Ratings, Korea Copyright Commission, World Intellectual Property Organization (WIPO), Office of Communications UK (Ofcom),¹¹ United States Trade Representative (USTR),¹² etc. KCOPA works closely with private stakeholders including International Federation of the Phonographic Industry (IFPI), Music Publishers Association (MPA), Content Overseas Distribution Association (CODA),¹³ American Society of Composers, Authors, and Publishers (ASCAP), Recording Industry Association of Japan (RIAJ), Recording Industry Association of America (RIAA), SABAM, etc.¹⁴

Analyzing the role and function of KCOPA becomes significantly relevant for the Indian M&E industry stakeholders, government and policy makers to realize the need for protection of copyright works in India as well as in overseas markets where Indian content is consumed exponentially.

ROLE OF INDIAN DIASPORA IN ENABLING INDIAN CONTENT TO BREAK OUT GLOBALLY

Several Indian films, TV series, and music now garner global viewership on platforms like Netflix, Amazon, Zee5, and Hoichoi. For instance, the Amazon original series "Farzi," released in 37 languages globally, was streamed by viewers in 170 countries and territories over the launch weekend. It also entered the top 10 trending lists on Prime Video in multiple countries.¹⁵ Consumption of South Asian music is experiencing exponential growth in markets

11 UK Telecom Regulator

12 United States Trade Representative

13 Japan Content Overseas Distribution Agency

14 <https://www.kcopa.or.kr/lay1/program/S1T206C207/link/board/index.do>

15 [https://www.yahoo.com/entertainment/next-decade-belong-indian-stories-](https://www.yahoo.com/entertainment/next-decade-belong-indian-stories-115010340.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQ)

[115010340.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQ](https://www.yahoo.com/entertainment/next-decade-belong-indian-stories-115010340.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQ)

such as the US, the UK, Canada, Australia, and Germany, with India being one of the largest contributors of artists from the South Asian Region. Songs like "Kesariya" (from Brahmastra), followed by "Besharam Rang" (from Pathaan), and "Jhoom Jo Pathaan" (from Pathaan) were among the top 10 streamed songs during May-end 2022 and May-end 2023 in a majority of the largest diaspora markets, including the US, the UK, UAE, and Australia.¹⁶

According to data from the Ministry of External Affairs (MEA), the Indian diaspora is widely dispersed around the world, with a considerable number of Indians settled in markets such as Canada (1,689,055), Kuwait (1,029,861), Malaysia (2,987,950), Saudi Arabia (2,594,947), South Africa (1,560,000), UAE (3,425,144), the UK (1,764,000), and the US (4,460,000).¹⁷ This presents a significant opportunity for the export of Indian domestic Media & Entertainment content.

Diasporic audiences can act as promoters of Indian culture, potentially playing a role in brokering and gatekeeping Indian content in the international market.¹⁸ For example, diasporic Korean youth have played an important role in the recent rise of the Korean Wave.¹⁹ They've contributed to the production of paratexts (such as cover art, derivatives of Korean content, fan-created subtitles) and the construction of overseas Hallyu infrastructure (e.g., venture companies specializing in K-drama streaming services), thereby accelerating the penetration of Korean content into international markets.

Global OTT platforms provide Indian creators with a global audience, and it's up to the Great Indian Content Factory to produce content for the world. While there's immense potential for Indian media and entertainment exports due to the large Indian diaspora present in the international market, the ease of technology use and the lack of adequate copyright protection against piracy in the internet realm pose immediate challenges to the sector.

Despite the immense export potential of Indian content, there's a constant challenge of online piracy faced by the Indian creative sector, affecting content creators and rightsholders, and thereby adversely impacting the entire value chain. Between January 2022 and August 2022, a significant 141.7 billion visits to pirate sites were recorded globally across all media sectors, including TV, publishing, film, music, and software. This figure marks a 21.9% increase over the same period in 2021. Furthermore, India was the third most popular country for piracy, with 7.9 billion total piracy website visits across film, TV, music, software, and publishing sectors during the first eight months of 2022.

[AAAMxe_GkwvQpTvGYNklZyH_qL5H8ENUJJrKa6RrVI3IHRWN3SxFQUIsueBHlls7brh3RGd8dyqdG4sJ-mAMVRHESN5kAvmkbKTEOQ9dM4PdNMiQmmAkKlrTtdeEINGeruF_jYXFujc6Xn8MwJTAQd11Y4cbKXLxFFkLP2D0aT9-Lh](https://www.spotify.com/2023-08-07/broadcasting-desi-music-to-new-homes-around-the-world/)

16 <https://newsroom.spotify.com/2023-08-07/broadcasting-desi-music-to-new-homes-around-the-world/>

17 https://mea.gov.in/images/attach/NRIs-and-PIOs_1.pdf

18 Diasporic Hallyu: The Korean Wave in Korean Canadian Youth Culture. Available at https://books.google.co.in/books?id=GXJnEAAAQBAJ&pg=PA9&lpg=PA9&dq=%22play+a+role+in+brokering+or+gatekeeping+the+overseas+content%22&source=bl&ots=d61RDU-wTI&sig=ACfU3U1sD36EeCLdEpu0yyj_TCaj_4XGbA&hl=en&sa=X&ved=2ahUKEwiwicP4hZWAAXVhxjgGHQdoBcEQ6AF6BAGJEAM#v=onepage&q=%22play%20a%20role%20in%20brokering%20or%20gatekeeping%20the%20overseas%20content%22d&f=false

19 <https://library.oapen.org/bitstream/handle/20.500.12657/54022/1/978-3-030-94964-8.pdf>

CONCLUSION AND RECOMMENDATIONS

The 2016 National Intellectual Property Rights Policy²⁰ formulated by the Department for Promotion of Industry and Internal Trade (DPIIT) lays down the objective of enabling enhanced coordination between various agencies and providing direction and guidance on strengthening enforcement measures; coordinating and sharing intelligence and best practices at the national and international level; studying the extent of IP violations in various sectors; examining the implications of jurisdictional difficulties among enforcement authorities; and introducing appropriate technology-based solutions for curbing digital piracy. While the policy outlines an important aspect necessary for the protection of Indian content internationally, the implementation of the same remains a key challenge.

The following are some of the key recommendations to ensure adequate protection of copyright in India and overseas:

1. Creation of an Indian Copyright Protection Agency in the form of an administrative agency under the aegis of the Ministry of Commerce:
Robust enforcement of copyright has been made possible with the creation of specialized agencies like the Korean Copyright Protection Agency. The government should consider establishing a specialized agency akin to the fact-checking unit as proposed under the new Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2023. The specialized agency may consist of representatives from MIB, DPIIT, MeitY, and DoT. The agency should be entrusted with the following functions:
 - The joint representatives highlighted above may be entrusted with powers to enforce IP rights upon receipt of complaints from the Intellectual Property rights holders.
 - Removal/Blocking of pirating websites/content: The administrative enforcement body may primarily deal with the enforcement of IP infringement matters and issuance of appropriate directions to Internet Service Providers (ISPs) and other intermediaries, including app stores, to remove and/or block any notified infringing content/websites in India.
 - Fines: The said body may impose significant fines in case of non-compliance with administrative orders to act as a deterrent.
 - Ad revenue blocking: The body may also maintain an “Infringing Website List” (IWLs), i.e., a list created for the purpose of preventing placement of advertisements on infringing websites and smartphone apps and disrupt digital

²⁰ <https://cipam.gov.in/index.php/about/national-ipr-policy/>

advertising revenues on identified infringing platforms. The details of websites and apps can be contributed on WIPO Alert²¹ with WIPO member states.

- The said agency may be supported by a body of representatives from the creative industry to identify rogue infringing websites and apps for the purpose of maintaining IWLs.

2. Collaboration between Specialized enforcement agency and overseas promotion association:

Joint-partnership between the global enforcement agencies and overseas content promotion association via reciprocal agreements can enable Indian content to travel beyond domestic boundaries while providing adequate protection to rights holders against online piracy. Services Export Promotion Council (SEPC)²² in partnership with the proposed enforcement agency should work with global law enforcement authorities of priority markets like the UK (Police Intellectual Property Crime Unit), Brazil, the US (Department of Justice and Homeland Security), etc., where there remains substantial growth scope for entertainment and AVGC exports of Indian content. The scope of partnership between enforcement agencies may extend to enforcement of rights in the respective jurisdiction of the partner States and includes action such as suspension of infringing domains, removal of infringing apps, and coordinating of criminal action against infringers.

3. International presence:

Market presence in the form of a physical establishment by a copyright protection agency can enable better cooperation between private and public enforcement agencies internationally. International cooperation and enforcement actions can be streamlined by way of establishment of overseas office and conducting of enforcement operations by liaising with the respective law enforcement authority prevalent in the foreign market.

4. Bilateral Treaties:

To stay in line with building an international presence with respect to copyright protection, a key aspect will be cross-border ties. In order to achieve the same, the specialised administrative agency may enter into bilateral ties with countries having an effective Notice and Take Down mechanism in place. This will ensure the takedown of Indian content that has been pirated, and India will have to reciprocally ensure a takedown of the partnering country's pirated content. For example, the agency may consider entering with countries such as Germany, Italy, Denmark, and Spain that implemented the EU Directive on Copyright in the Digital Single Market (CDSM).²³

21 WIPO ALERT is a secure, online platform to which authorized bodies in WIPO member states can upload details of websites or apps which have been determined to infringe copyright according to national rules.

22 <https://www.serviceseperc.org/home/aboutUs>

23 <https://www.create.ac.uk/cdsm-implementation-resource-page/>