

THE INDIAN MUSIC INDUSTRY

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4th April 2023

To

Shri Rohit Kumar Singh

Secretary,

Department of Consumer Affairs,

Ministry of Consumer Affairs, Food & Public Distribution,

Government of India

Subject – IMI recommendations on Consumer Protection (E-commerce) Rules to include appropriate safeguards for protection to Intellectual Property Rights online.

Respected Sir,

Indian Music Industry (IMI) is the apex body representing the business and trade interests of the recorded music industry in India. IMI is a registered society under the West Bengal Societies Registration Act, of 1961.

As per recent news reports, we observe that there has been a revival in talks on finalising the e-commerce rules with the Ministry of Consumer Affairs (MCA) leading the latest round of deliberations around the rules.

E-commerce sector is no longer limited to E-marketplaces but also includes of services from online providers such as mobile app stores (such as Google App store), OTT services, and User Generated Content (UGC) sharing services. The online video market in India touched revenues of USD 1.92 billion in 2021.¹ Further, the audio market in India is also poised to grow from \$0.6 billion in 2021 to \$1.1 billion in 2025.²

With the rapid expansion of digital technology, certain UGC content sharing platforms and app stores that host unauthorised copyrighted content have become a major concern for the Indian creative sector, users, as well as consumers. These platforms and app stores take refuge under safe harbour protection in order to avoid responsibility to resolve the issue of infringing

¹ <https://www.exchange4media.com/digital-news/online-video-ad-subscription-revenue-in-india-reached-192-billion-in-2021-119512.html>.

² <https://timesofindia.indiatimes.com/business/india-business/uaes-etihad-airlines-extends-flight-suspe-from-countries-including-pak-india-until-july-31/articleshow/84503033.cms>.

material available on their platform leading to a breeding ground for internet piracy. Between January and August 2022, India ranked third in terms of source of traffic accessing piracy websites globally with 7.99 billion visits and this menace shows no signs of slowing down.³ As per IMI, the Indian recorded music industry suffers losses to the tune of ₹ 300 crore annually due to digital piracy.⁴ Further, pirated websites and apps are highly risky for consumers, exposing them to fraud and malware. According to Indian Computer Emergency Response Team, India witnessed 13.91 Lakh cybersecurity incidents in the year 2022.⁵

Currently, the existing safe harbour protection made available to the passive intermediaries is exploited by the marketplace e-commerce entities in order to escape their liabilities and responsibilities.

The recommendations made by the Parliamentary Standing Committee on Commerce in its 172nd Report on “Promotion and Regulation of E-Commerce in India” concerning the issue of “IPR Infringement in E-Marketplaces” and “Safe Harbour and Fall-back Liability” importantly highlight the need for the introduction of appropriate liability as well as the protection of intellectual property rights in the digital sphere.

We are grateful to the Consumer Ministry’s efforts of having an inter-ministerial discussion with the Department for Promotion of Industry and Internal Trade (DPIIT) and The Ministry of Electronics and Information Technology (MeitY). In light of the above, we earnestly request and urge the Ministry, to consider following suggestions while formulating the E-commerce Rules:

1. Ensuring that any intermediary safe harbour protections are reserved to only technical, automatic and passive intermediaries - **Rules must expressly state that safe harbour protection only applies to online intermediaries that are truly technical, automatic and passive.**
2. Ensuring certain pre-conditions must be fulfilled by services before the intermediary safe harbour protection is sought – Intermediary Rules must provide for robust, meaningful and effective rules in the form of:
 - a. **An effective notice and stay down procedure** – Rules must provide for “notice and stay down” whereby services shall not only terminate a notified infringement, but also terminate all other infringements on its service of the same notified content and prevent future infringements of that content.
 - b. **An effective repeat infringement procedure** – Rules must provide mandatory requirement of adopting “repeat infringer policy” by which the service terminates the accounts of users who repeatedly infringe third parties’ rights.

³ <https://www.muso.com/magazine/film-tv-piracy-surge-during-covid-19-lockdown>.

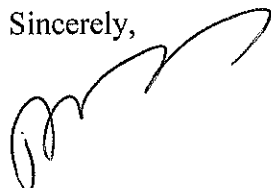
⁴ <https://indianmi.org/wp-content/uploads/2021/05/IMI-Economic-Report-Final.pdf>.

⁵ <https://ciso.economictimes.indiatimes.com/news/cyber-security-breaches-are-up-manifold-as-internet-penetration-grows/98078741>

- c. **Implementation of Know Your Business Customer (KYBC) norms** to ensure that all players in the digital ecosystem play their part in reducing unlawful activities online.

IMI also welcomes the opportunity to make an online/in-person representation of its concerns before the department and/or to provide further written submissions in relation to the subject-matter.

Sincerely,



Blaise Fernandes,

President & CEO,

The Indian Music Industry (IMI)