

Towards fair compensation for music in private radio in India*

Consultation Paper

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Abstract

This paper examines the 2010 Copyright Board order prescribing 2% of Net Advertising revenues (“NAR”) to be paid by Radio Stations as compulsory license fees to copyright owners. The original order takes into account consumer access, infancy of the radio industry and global benchmarks to arrive at the 2% rate. However, these arguments have limitations. In addition, the scenario in India has significantly changed since 2010 with consumers having wide access to music and maturation of the radio industry with high growth rate of 15% per year on average since 2010. This paper prescribes moving towards a voluntary licensing structure for radio. This would lead to fair value for the music industry and promote creativity and growth in music and downstream industries of radio, television and digital platforms.

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1 Introduction

The music industry is the backbone of private radio and television channels, with musical content accounting for 83% of airplay time¹. Private FM has grown impressively since 2010, at an average rate of 15.19% annually². Advertising is no longer the sole source of revenue for the radio industry in India, which now earns revenues from multiple avenues such as content production and syndication for clients, planning digital media for clients, providing them sponsorship opportunities on podcasts and creating multimedia solutions for them using digital ideas to reach media dark markets through the reach of mobile phones, especially to audiences in Tier II and Tier III cities in India. This is all done on the backbone of the FM Broadcast industry i.e. recorded music.

In 2010, nine cases- as elaborated under Section 2, were referred back to the Copyright Board by the Supreme Court — to be resolved collectively by the Copyright Board, as they were all pertaining to the topic of compulsory license fee for radio broadcast. Citing arguments of consumer access and the infancy of the radio industry, the Copyright Board ordered for 2% of Net Advertising Revenue to be paid as compulsory license fee by Radio stations to the owners of copyright in music.

There are some issues that immediately arose with this order. Regulators and courts do not have the access to information or the processing capacity that the millions of market participants collectively have to correctly value music. Non-market pricing also violates important non-economic values such as self-determination and autonomy. Next, the order was taken to be *in rem* by radio stations who were not party to the order, driving down the bargaining power of copyright holders in the entire market. The order creates potential uncertainty for content owners, which could result in reduced amount of investments on developing new creative content and could ultimately bring down consumer welfare. Furthermore, the 2% NAR was locked into for into a span of ten years. This ten-year temporary order did not take into account the developments in technology and subsequent reduction in spectrum prices for the radio industry during the past decade. The order also cites licensing rates in several countries for comparison purposes. The rates of piracy, which is 67% in India³, also creates a disadvantage for the music industry which is not taken into account. Instead, the music industry pays the cost of subsidizing the radio industry rather than subsidies through direct transfers that the government can direct towards those it wishes to subsidise to achieve defined objectives. This ultimately leads to losses for the music industry, the radio broadcasting industry, and consumers.

The Copyright Board Order (2010) cited three broad drivers for the decision for a 2% of NAR license fee for the radio industry. The first issue was the limited access to musical content. One of the arguments of the copyright board order was access of consumers to musical content being limited. Additionally, there were only a few companies dominating the radio industry and internet connectivity was low. The second issue was the infancy of the radio industry, where stations had paid large amounts in recent spectrum auctions and were therefore running in losses. The third issue was benchmarking radio licensing structures to those practiced globally, with a focus on lower rates due to infancy of the industry in India. In this paper, I argue that in the current environment, access to music is no longer an issue due to greater geographical coverage of radio as well as expansion of mobile telephony and internet in India. I then demonstrate through industry

¹Leading FM radio players have cut down on their commercial time to counter listener fatigue. In 2017, Radio Mirchi capped commercial time on its stations at 10 minutes per hour, simultaneously increasing its ad rates by 5% in the markets where it has been present for long: <https://www.livemint.com/Consumer/JLlSczC2gnLWbsmp48lneJ/FM-stations-cut-commercial-air-time-on-growing-ad-fatigue.html>

²Source: Calculated using FICCI Frames reported revenue numbers for the years 2010-2018.

³IMI-IFPI Digital Music Study, 2019.

and company statistics as well as qualitatively that the radio industry can no longer be considered infant in India and is hugely profitable and growing. Given the significantly different conditions in the environment today and taking into account path dependence of policies, there is need for complete overhaul of license fee structures for the radio industry in India. I recommend that given the maturity of the market and to give music its fair value, there needs to be a shift in focus to voluntary licensing and market-determined voluntary contracts for licensing of recorded music by the radio industry in India..

The paper proceeds as follows. In section 2, I outline the legal history of compulsory licensing in India leading up to the 2010 order by the Copyright Board. In section 3, I lay out concerns with the order. In section 4 and 5, I argue that the current economic environment in which the radio industry operates is very different from the conditions in 2010, and the original rationale applied by the Copyright Board does not apply anymore. In section 4, I argue that access to music has substantially improved for consumers across India. In section 5, I argue that the radio industry is now mature with a high and stable growth path compared to the stage of infancy and running in losses as it was ten years ago. Section 6 discusses Fair Value of Music and provides evidence that the remuneration rates of radio to music do not represent fair value, and why this is the case. In Section 7, I propose recommendations to assure fair compensation of the music industry from the private FM radio industry in India.

2 History of compulsory licensing

The case history for fixation of royalty rate at 2% NAR by the Copyright Board is as follows:

1. In 2000, F.M. radio waves were opened up to the private sector. In Phase-I of FM Radio, the Government auctioned 108 FM radio channels in 40 cities. Soon after, there was a dispute with Phonographic Performance Limited (“PPL”), the copyright society which administered the radio broadcast rights for a majority of sound recordings in India including sound recordings of songs in Bollywood movies.
2. In 2001, PPL decided on a tariff scheme of INR 2400 per needle hour⁴. Several F.M. radio stations did not agree to this royalty rate and approached the Copyright Board for a compulsory license under Section 31 of the Act. Thirty-one petitions were filed before the Copyright Board.
3. On 19th November 2002, the Copyright Board fixed an interim rate. This interim rate was Rs. 1200/- for peak hours and a formula that made a deduction for other periods and also for ‘B’ and ‘C’ category cities⁵.
4. The impasse on the royalty rate continued, with T-Series filing its appeal in the Delhi High Court while PPL and the FM radio stations filed cross-appeals in the Bombay High Court against the 2002 Copyright Board order.
5. The Bombay High Court on April 13, 2004 set aside the Copyright Board’s order, questioning *“whether the Copyright Board was justified in rejecting the entire material produced by the complainants as totally irrelevant for determination of the compensation and fixing the amount of compensation on the basis*

⁴Needle hour is a measure that describes the actual number of minutes for which music is played in an hour after other things like advertisements and R.J. talk are excluded.

⁵Music Broadcast Pvt. Ltd. And Ors. vs Phonographic Performance Ltd. on 19 November, 2002, 2003 (26) PTC 70 CB; Accessible at <https://indiankanoon.org/doc/1687432/>.

of their best judgment or a valued judgment.” The Bombay High Court remanded the matter back to the Copyright Board⁶.

6. The Delhi High Court on June 30, 2004 ruled that a compulsory license could not be granted at all under Section 31 because under Section 31(2), compulsory licenses could only be granted in situations where licenses had not been granted to even one F.M. radio broadcaster. If there is more than one applicant, the license must be granted to the one that will best serve the public interest. The view taken by the Delhi High Court therefore was that the “mass grant” of compulsory licenses could not be done, and that All India Radio had been given the license to broadcast these songs already⁷.
7. Appeals from both these decisions were made to the Supreme Court, which on May 16, 2008 upheld the view taken by the Bombay High Court while rejecting the view taken by the Delhi High Court—that is, compulsory licenses may be granted to more than one F.M. radio broadcaster but at the same time, the rate would have to be determined through data. The Supreme Court disposed of the Special Leave Petitions holding as follows: *“However, we do not approve the manner in which the Board has dealt with the matter. It has refused to examine the witnesses. It took up the matter on a day for hearing which was fixed for production of witnesses. We, therefore, are of the opinion that the order of the Board should be set aside and the matter be remitted to the Board again for the consideration of the matter afresh on merit.”*
8. The Supreme Court redirected the matter back to the Copyright Board and the Board commenced fresh hearing of the compulsory license applications filed by the respondents⁸.
9. Cases led by Music Broadcast Private Limited, Entertainment Network India Limited and Radio Mid-day West India Private Limited were earlier decided by the Copyright Board in the 19th November 2002 order. After the Copyright Board decision was challenged in the Bombay High Court and ultimately in the Supreme Court, these three cases were remanded back to the Copyright Board for fresh hearing as described above. Fresh filings of six additional related cases were made in 2008. In this manner, a total of nine applications were filed under Section 31 (1) (b) of the Copyright Act, 1957⁹ for the granting of compulsory license for radio broadcast of sound recordings. Since all the cases related to common issues and in all nine cases, the respondent was the same, they were heard collectively¹⁰.
10. Between 2008 and 2010, voluminous evidence was led before the Copyright Board, and according to the F.M. radio broadcasters, it necessitated interim compulsory licenses. Note that during the period that the trial was going on with expert evidence being led by the F.M. radio stations and by PPL, the music could not be broadcast without an interim compulsory license.
11. Note that during the period from 2002 and 2010, even though the Bombay High Court had set it aside, the private FM radio industry and the recorded music industry had followed the interim order rate of 19th November 2002 by the Copyright Board as the norm. At that point, this had not been worded as an interim compulsory license: the court had said that it was granting a compulsory license based on its “best judgment assessment” on terms that may be revised later.

⁶Phonographic Performance Ltd. vs Music Broadcast (P) Ltd., 2004 (29) PTC 282 Bom; Accessible at <https://indiankanoon.org/doc/1415114/>

⁷Super Cassette Industries Ltd. vs Entertainment Network (India), AIR 2004 Delhi 326; Accessible at <https://indiankanoon.org/doc/1885590/>

⁸M/S. Entertainment Network vs M/S. Super Cassette Industries; Accessible at <https://indiankanoon.org/doc/1592558/>

⁹The Copyright Act 1957 can be found at: <http://www.copyright.gov.in/Documents/CopyrightRules1957.pdf>

¹⁰M/s Music Broadcast Pvt. Ltd. & Ors. v. PL; Accessible at <https://spicyip.com/docs/Copyrightboardorder.pdf>

12. On August 25, 2010, the Copyright Board passed an order fixing the royalty at 2% of net advertisement earnings of each FM radio station to be paid by to the music providers. The validity of such a license granted is upto 30th September, 2020¹¹.
13. Upon challenge of the Copyright Board order dated August 25, 2010 by Super Cassettes Industries Limited (T-Series), Delhi High Court passed an order on September 15, 2010 ruling that the order of the Copyright Board could not be applicable against T-Series since T-Series was not a party to the proceedings in which the impugned order came to be passed¹².
14. Two appeals against the Copyright Board Order dated August 25, 2010 were also filed before the Madras High Court, one by PPL and the other by the South Indian Music Companies Association (SIMCA). SIMCA challenged the Copyright Board order on the grounds that since they were not made party by the radio stations in the compulsory licensing applications filed before the Copyright Board, the Order should not be enforced against them. Stay in this case was ultimately not granted by Madras High Court¹³, in contrast to the outcome of the Delhi High Court order for the similar issue involving T-series.
15. In 2012, the SC held that the Copyright Board did not have the power to grant interim compulsory licenses under Section 31 of the Copyright Act, 1957 unless the legislation specifically provided the Board with such a power.

3 Concerns with the order

There are several immediate issues with the Copyright Board order of 2010. In the later sections of the paper, I argue that the current economic setting that the radio industry is operating in is very different from that of when the order was passed in 2010, and thus the order passed by the Copyright Board needs to be updated. However, even within the environment prevalent when the order was passed with deliberations being done during 2008-2010, the Copyright Board order was remiss in several ways. The effects of these inconsistencies were evident immediately on passing of the order. In this section, I document some of these problems.

3.1 Impositions on pricing

The primary issue is one of regulators and courts intervening to set rates for intellectual property. As argued by Schultz [2018], regulators and courts often lack the information that markets collectively possess. This is especially true for products and services with intangible value such as music. Music as intellectual property also contains non-economic value such as autonomy and self-determination. More practically, the location, the hour of the day, and the popularity and quality of content matter are factored into the price-setting while valuing music, and are constantly revised based on changing consumer tastes.

Non-market pricing interferes with business strategies that copyright holders i.e. record labels, and their Collective Management Organisation (eg. PPL) can employ. For example, strategies such as windowing and exclusive rights can increase the value from music, and allow content producers and copyright holders to

¹¹<http://iprmentlaw.com/wp-content/uploads/2018/02/Copyrightboardorder.pdf>

¹²<https://indiankanoon.org/doc/971891/>

¹³<https://indiankanoon.org/doc/971891/>

monetize their work in an autonomous fashion as per their business model. Flat licensing structures interfere with such strategies at the particular disadvantage of copyright holders.

Policies also have historical path dependence: it is often easier for regulators to change existing policies incrementally rather than through completely overhauling the structure of regulations [Schultz, 2018]. Existing policies, especially those which are based on limited information are poorly designed and create concerns in the future just from a single intervention. Thus, it is important to take into account the expected trajectories of technology advancement and market developments as far as possible even when pronouncing a temporary order, as the effects are long-lived.

The above mentioned order being taken as *in rem* (as discussed below) also impacted the music industry through creating confusion and ambiguity into the applicable royalty rates. The environment for creating quality content became a much more uncertain business than before. Distribution and promotion strategies were potentially affected, and it was uncertain as to how costs would be recovered. Content owners take risks and invest in creative projects which may or may not yield the returns they expect. An additional source of uncertainty was created by the order. Even with the order in place, there was a lack clarity on whether the 2% NAR license fee would be applicable to all radio stations or not.

In the face of such uncertainty, firms are found to defer or reduce investments¹⁴, or to stick to safer strategies and reduce experimentation and innovation. Uncertainty leads to lack of creation of diverse quality content by music producers. In the process of forcing the music industry to play safe, the Copyright Board not only affected the long-term growth and development of the music industry, but also affected distribution channels such as radio and television broadcasting which has ultimately driven down consumer welfare. It has been long-established in the economic literature that consumers value variety¹⁵. Variety explains why globalization can bring in value, even when products imported are seemingly similar to domestic goods. Variety can also explain the large number of radio stations available today in single locations. Reducing the risk-taking opportunities for the music industry has lead to homogeneity in the content available through different radio channels.

Homogeneity in content is an issue in the television broadcasting industry as shown in figure 1. Speakers of Tamil, Telegu, Malayalam and Kannada enjoy greater channel penetration, while groups such as Urdu speakers and Rajasthani speakers have below average availability of channels. The proliferation of different genres is only in Hindi, English and Telegu channels. Most genres and linguistic groups are under-represented.

Similar to the motivations for television is the case of radio broadcasting. Indian FM channels play Bollywood music to the exclusion of other genres, catering to what they refer to as overwhelming demand. Since radio stations in India play mostly Bollywood songs, the record labels too invest in creating Bollywood music. Therefore, on account of lack of variety of songs played by radio stations, the recorded music industry too is discouraged to take risks in making creative content other than Bollywood music.

Diverse quality content in music is beneficial to all parties, but such content creation is discouraged through policies that reduce risk-taking in creative content, as well as by advertising revenue driven structures that discourage radio stations from differentiating content and investing in niche markets¹⁶.

¹⁴Bloom, Nicholas, "The impact of uncertainty shocks," *econometrica*, 2009, 77 (3), 623–685.

¹⁵Broda, Christian and David E Weinstein, "Globalization and the Gains from Variety," *The Quarterly journal of economics*, 2006, 121 (2), 541–585.

¹⁶https://www.afaqs.com/news/media/19729_why-indian-radio-stations-are-having-so-much-fun

TABLE 4: GENRE AVAILABILITY WITHIN LINGUISTIC GROUPS | Source: BARC, Koan Advisory Analysis

NUMBER OF CHANNELS 0  50

LANGUAGE / GENRE	COMEDY	GEC	INFO	KIDS	LIFESTYLE	MOVIES	MUSIC	NEWS	RELIGIOUS	TELESHOP
Telugu	1	7	0	1	2	5	3	18	3	0
Tamil	0	16	1	2	1	7	8	7	0	0
Punjabi	0	3	0	0	0	0	3	2	1	0
Oriya	0	5	0	0	0	1	1	7	0	0
Malayalam	0	9	0	1	0	4	4	7	1	0
Kannada	1	7	0	1	0	2	2	9	0	0
Hindi	0	24	0	4	0	21	20	42	1	1
English	0	7	10	6	7	13	2	16	0	0
Bhojpuri	0	6	0	0	0	3	1	3	0	0
Bengali	0	8	1	0	0	4	3	7	0	0
Assamese	0	5	1	0	0	0	1	4	0	0

Figure 1: Notes. BARC linguistic and genre coverage in the Indian television industry. Source: Promoting the Creative Economy: India's USD 100 Billion Imperative, Koan Advisory Group.

3.2 In personam vs. in rem

The Copyright Board order was treated as *in rem* by radio broadcasting companies and taken as a precedent to apply the royalty rate of 2% NAR. It has come about to be the prevalent rate, though this was not necessarily clear to copyright holders at the outset. This can be seen in the follow-up appeal by T-series in the Delhi High Court against the 2% NAR royalty rate order passed by the Copyright Board. The reasoning, as mentioned in the judgment is as follows:

“It appears to this Court that Section 31 (1) of the Copyright Act, 1957 mandates that the owner of the copyright should be given a reasonable opportunity of being heard before deciding on whether refusal by such owner to grant license to the complainant was unreasonable and if held unreasonable, determining the compensation to be paid to such owner. This procedure which encapsulates the principles of natural justice is non-negotiable. Since admittedly, the Petitioner was not a party to the proceedings in which the impugned order came to be passed, prima facie it appears that the impugned order cannot be relied upon by any of the Respondents herein or any other to insist on the issuance of the compulsory licence vis-a-vis the copyrighted works of the Petitioner or to even rely upon the impugned order as regards the rates fixed for the purpose of grant of compulsory license.”

With the radio stations taking this order as *in rem*, the negotiating power of music producers and the collective management organizations that represent them has effectively disappeared.

3.3 Locked-in rates

The Copyright Board order is a temporary order, set to be reviewed in 2020, ten years after the original order. During this period of time, there have been significant advances in radio technologies. TRAI released its consultation paper in 2017 on bringing in digital transmission into private radio¹⁷, citing reasons of quality, more channels on a single frequency and reduced costs of transmission. Radio stations are not very keen on this technology today due to requirement of special receivers¹⁸. However, we can anticipate radio stations will potentially upgrade the technology in the near future as the supportive technologies and ecosystem develops. Such advances in technology and lowering of costs did not factor into the considerations of the Copyright Board in 2010. Similarly, the substantial online presence of radio stations as mentioned in section 5 was not anticipated at the time the Copyright Board order was passed.

Bidding has already been conducted for three phases of radio spectrum auctions, with IIIrd phase licenses extending up to 2033. Despite the various technological advancements, the 2% NAR license rate for PPL remained fixed in this past decade, and given the path dependence of policy, future regulation needs to be done ever more carefully to take into account adjustments due to technological advances and the current market conditions. Ten years is a long span of time and given the speed of technical change and advances, a shorter review period would have helped update policy based on economic developments over time.

3.4 Cross-subsidization

One of the arguments mentioned in the Copyright Board order for keeping compulsory rates at low values is that radio companies are loss-making due to the spectrum bid amounts paid to the Government for radio frequencies at the time the order was passed, and inconsistencies in the spectrum auction structure. Due to gaps in the financial statements submitted to the Copyright Board by the radio stations, it is not possible to trace the source of losses as being due to the bidding process, the royalty payments, or simply poor performance in a non-competitive industry at the time.

In any case, it is poor policy to subsidize radio *at the cost* of the music industry, since music content is the essential input into radio broadcasting. This strategy is essentially short sighted, as in the long run it will stunt the growth of the music industry, and thus subsequently affect the quality and diversity of content that radio stations can broadcast to listeners.

If the government wishes to subsidize radio, it could do so directly. This could be a targeted subsidy to promote smaller players or new entrants, or to promote broadcasting of certain kinds of content. It is up to the government to decide what is the content that the public would not have access to otherwise, and where is there a gap in the market and need for government intervention. The intervention could then be done by transferring any subsidies to be granted directly to the targeted parties. This would be a more transparent and non-distortive process for subsidizing the radio industry or specific parts or activities that the government feels require particular promotion or protection.

4 Access to music

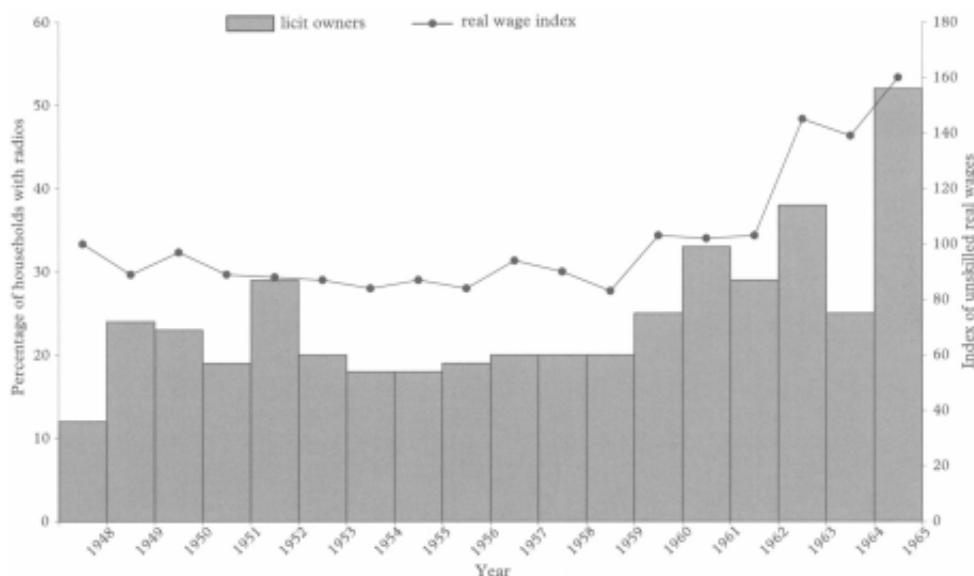
Radio could previously be considered a “luxury good” as its consumption increases as incomes rise. As a historical example, consider Figure 2. The proportion of households is shown against an index of real

¹⁷https://main.trai.gov.in/sites/default/files/consultation_paper_digital_radio_10072017.pdf

¹⁸<https://www.livemint.com/Opinion/OoboBd0yuUDjYqn6NcsPtL/Will-India-embrace-digital-radio-broadcasting.html>

wages from 1948 to 1965. As seen in the figure, the percentage of households with radio sets in Hong Kong increased with real wages for the given period. Though the luxury good argument held true historically, there is increasing evidence that with improvements in technology and lower prices for recreational content, consumption of recreational goods has become more egalitarian [Costa, 1997].

Figure 2: Radio ownership and income trends in Hong Kong



Notes. Relationship between radio ownership and real wages 1948:1965 Hong Kong. Source: Clayton [2004].

4.1 Radio network expansion

Three phases of radio auctions have been conducted.

As per the TRAI, as of 2017¹⁹:

1. AIR has 420 radio stations (AM & FM) that cover almost 92% of the country by area and more than 99.20% of the country's population. Private sector radio broadcasters transmit programs in FM mode only and presently operate through 293 radio stations. Private sector radio broadcasters are licensed to operate in FM frequency band (88-108 MHz).
2. In Phase-I of FM Radio, the Government auctioned 108 FM radio channels in 40 cities. Out of these, only 21 FM radio channels became operational and subsequently migrated to Phase-II in 2005. Phase-II of FM Radio commenced in 2005 when a total of 337 channels were put on bid across 91 cities having population equal to or more than 3 lakhs. Of 337 channels, 222 channels became operational. At the end of Phase-II, 243 FM Radio channels were operational in 86 cities.
3. In Phase-III expansion of FM radio, 966 FM radio channels are to be made available in 333 cities.

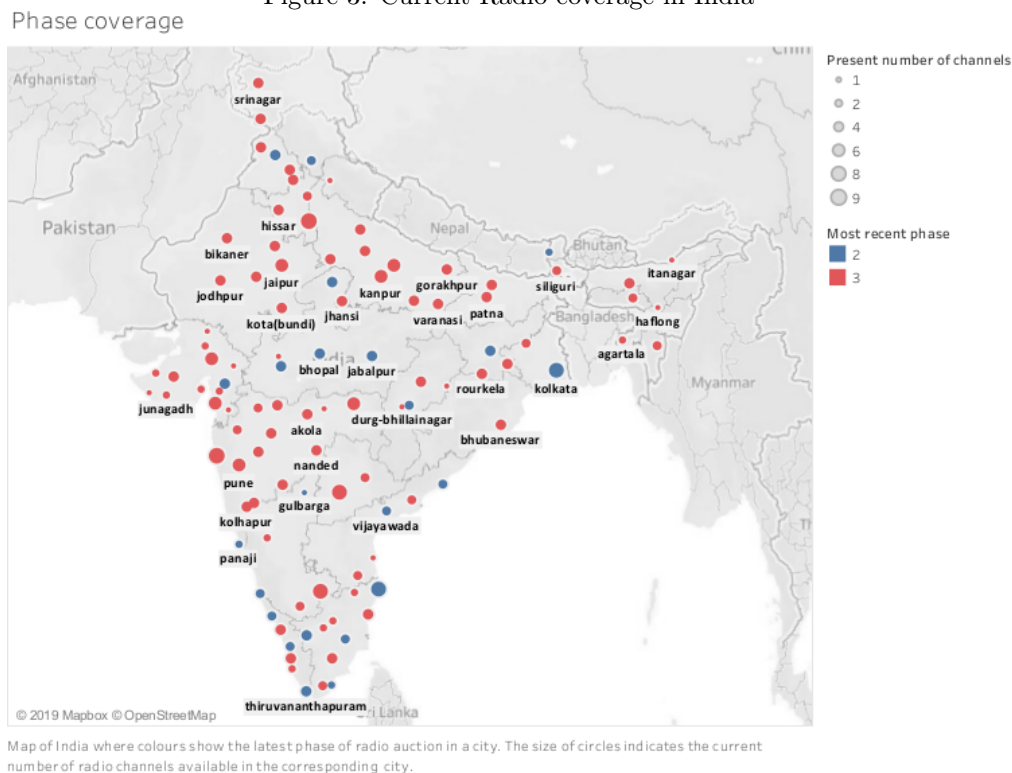
¹⁹https://main.trai.gov.in/sites/default/files/consultation_paper_digital_radio_10072017.pdf

Phase-III, 266 private FM Radio channels in 92 cities were auctioned in 2016. Out of these, 66 FM Radio channels in 48 cities have been successfully auctioned. As on 30th June, 2019, there are 366 operational private FM Radio stations in 104 cities with operational 33 Private FM Radio broadcaster as compared to 356 private FM Radio Stations in 98 cities with operational 33 FM Radio broadcasters in the previous quarter²⁰.

4. In order to encourage radio broadcasting for the specific sections of society, the Government has allowed setting up of Community Radio Stations (CRS). CRS typically broadcast in FM band with low power transmitters restricting its coverage to the local community within approx 10 KM radius. There are 206 operational CRS at present.

Figure 5 below shows the distribution of radio channels across India after the 3rd phase of private FM radio broadcasting auctions²¹. Each circle in the figure represents a city with the size of the circle indicating the number of radio stations at that location. The colours of the circles represent the latest phase of radio auctions in which the city received a new radio station. As evident, all the cities which were in Phase 1 (predominantly metropolitan and tier 1 cities) also acquired more stations in phase II and phase III of the radio auctions. In the second phase of the auctions, as clear from the map, several smaller cities were covered. In phase III, more tier 2 and tier 3 cities acquired stations, as well as expansion of radio broadcasting in cities covered in earlier phases.

Figure 3: Current Radio coverage in India



Notes. Source: Recommendations on 3rd phase of private FM radio broadcasting (Annexure II).

²⁰The Indian Telecom Services Performance Indicators, April – June, 2019, TRAI, accessible at https://main.trai.gov.in/sites/default/files/PIR_01102019.pdf.

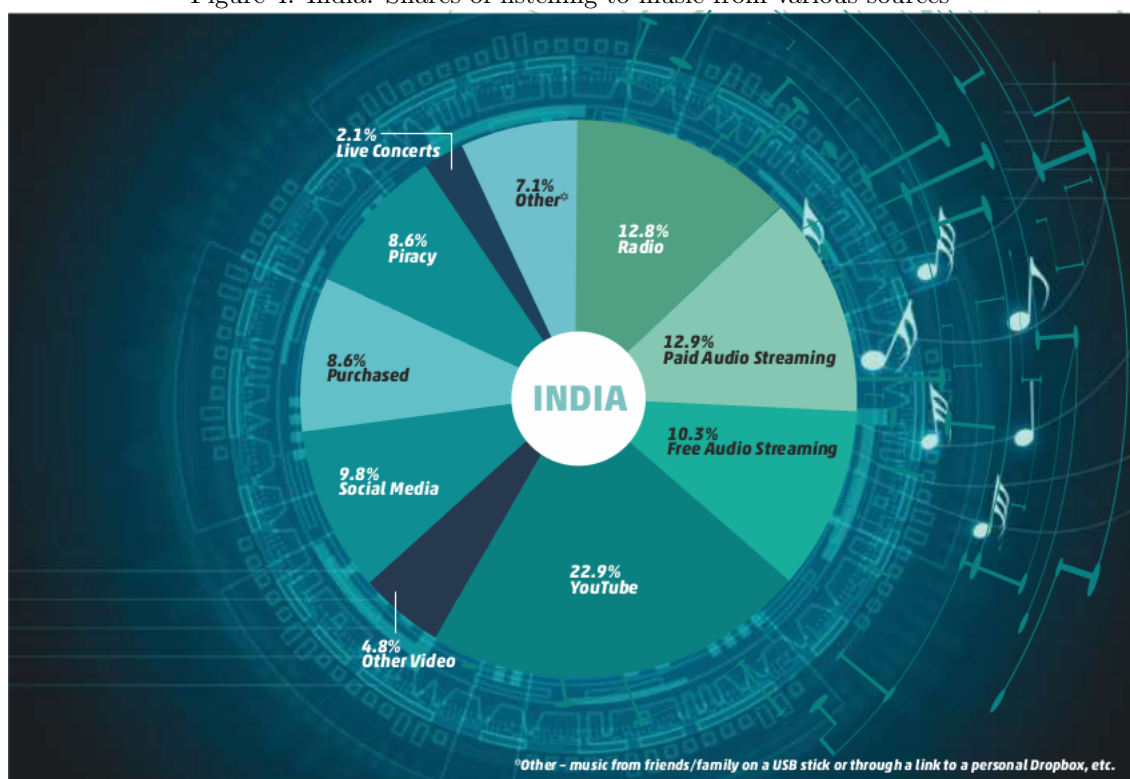
²¹<https://main.trai.gov.in/sites/default/files/recom22feb08.pdf>

There is also a large variety of content available through regional and community radios where content is available in local languages to listeners²². Access to radio cannot be considered a barrier for listeners in today's situation, and providing leniency to radio companies on this basis is no longer a viable argument.

4.2 Consumption of content via radio

The average internet user in India listens to 19.1 hours of music each week. This is higher than the average listening hours of the 18 core tracking countries (18 hours)²³. According to the IFPI, Radio was the most-used method for listening to music (86% of users). However, it took up less than 13% of total listening time as shown in the figure 4. As seen in the chart³, radio receives similar shares of listening time as other sources do in India.

Figure 4: India: Shares of listening to music from various sources



Notes. Source: IFPI Music Consumer Study (2019).

In a study published by Nielsen²⁴, radio has been found out to be the 2nd most accessed medium of entertainment, with the majority of the users belonging to the age group 26-45 (the segment is also the most lucrative for companies posting ads).

²²Community Radio Compendium, 2019. Published by the Ministry of Information and Broadcasting.

²³IFPI Music Consumer Study 2019 (India).

²⁴<https://m.dailyhunt.in/news/india/english/tvnews4u-epaper-tvnews/radio+is+the+undisputed+2+in+most+accessed+mediums+power+of+radio+study+by+nielsen-news+81339872>

4.3 Alternatives to Radio

Outside of Radio, the previous decade has seen an explosion in internet access and mobile telephony. According to the Kantar IMRB's ICUBE report for 2018²⁵, 627 million Indians have access to internet and 97% of users access internet on smartphones. The penetration of internet in rural India has gone from 9% in 2015 to 25% in 2018. Of the total user base, 87 percent or 493 million Indians, are defined as regular users, having accessed internet in last 30 days. Nearly 293 million active internet users reside in urban India, while there are 200 million active users in rural India.

In addition to these today we have a variety of digital platforms where consumers can access music at low values. Per Figure 4, if 19.1 hours is the average listening time, the average user spends 22.9% time on YouTube; 93% of surveyed respondents used YouTube to access music, per IFPI Music Consumer Study, 2019. These are emerging ways for consumers to discover new music as well, with 53% discovering new music through YouTube and 31% discovering music through conventional means such as television, films or advertising. Radio remains a relevant medium due to its reach and coverage of heterogeneous audiences, however access to music is no longer constrained for the people of India.

5 Growth of the Radio Industry

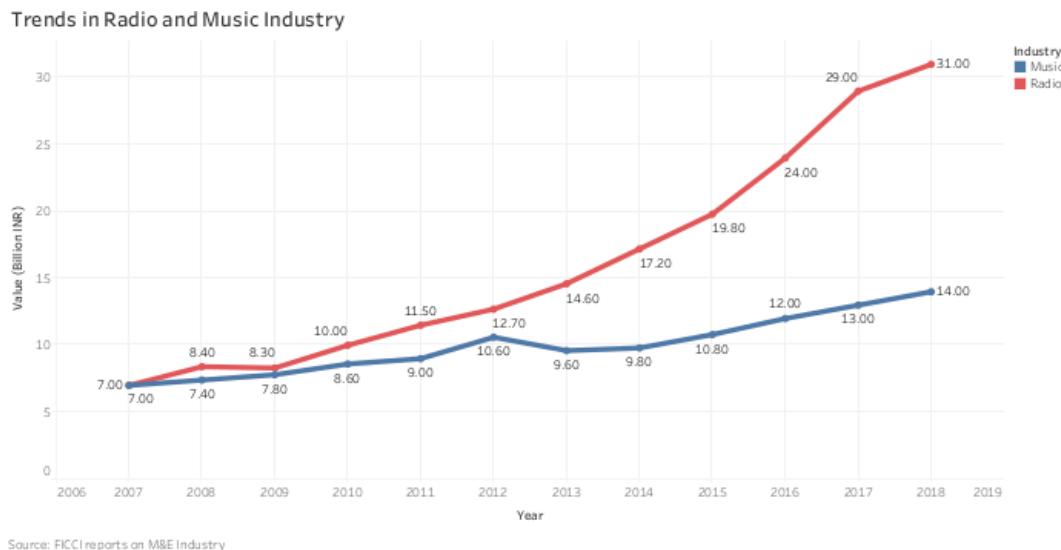


Figure 5: Relative trends in size of the radio and the music industry

Figure 5 shows that as of 2018, the relative size of the radio industry is more than twice the magnitude of the reported size of the music industry, as measured by revenue²⁶. If we use the radio statistics in combination with the recorded music industry numbers published by the Indian Music Industry 2018²⁷, then the radio industry is almost thrice as large as the recorded music industry. While the overall revenues of the radio industry for the year 2018 was INR 31.3 billion (FICCI Frames, 2018), the music industry recorded a generation of INR 10.68 billion (IMI Digital Music Study, 2018).

²⁵<https://economictimes.indiatimes.com/tech/internet/internet-users-in-india-to-reach-627-million-in-2019-report/articleshow/68288868.cms?from=mdr>

²⁶Revenue numbers for radio and music in figure 5 are taken from FICCI Frames reports for various years.

²⁷India Trends 2018

To be protecting the radio industry at the cost of the much smaller music industry doesn't have any economic rationale. Besides, the radio industry is large enough to sustain itself without subsidizing it with the share due to the content creators and owners.. Music is the backbone of the content broadcast by private FM, with music accounting for 83% of airplay time²⁸. By compressing the revenue share of music industry, one is jeopardizing the earnings of the private FM radio industry in India as well.

5.1 New sources of revenue

Private FM has grown impressively since 2010, at an average rate of 15.19%²⁹ annually. Advertising, which earlier constituted the entire size of the earnings of the radio industry, is no longer the sole source of revenue. The stations have diversified towards multiple avenues of earnings, such as producing videos for clients, planning digital media for the client, integrating advertising inside original content, providing clients sponsorship opportunities on podcasts and creating multimedia solutions using digital ideas for clients to reach media dark markets using the reach of mobile phones. Even of the new avenues, a lot depend on the contents provided by the music industry. Below are some of the newer revenue generation options adopted by radio stations today.

5.1.1 Award shows

Award shows such as the Radio City Freedom Awards, Mirchi Rock, City Cine Awards and Dhol event, etc. are examples of live events where music is the key (if not driving) component.

5.1.2 Online presence

ENIL's Original Content and Licensing Business is quickly scaling and has attained a significant market share, by production of video content which is eventually licensed to popular streaming platforms. Similarly, MBL launched India's first Video FM- VideoCity, that allows listeners to consume FM in a video format.

5.1.3 Political advertisements

Even within adverts, the content has significantly diversified with radio trending as one of the more preferred platforms for promoting political campaigns, with a 14% increase in the ad insertions on radio this election season alone, which also saw a 93% dip in ads on print media³⁰.

6 Fair value for music

In this section, I provide evidence that the royalty rates for radio broadcast of music do not represent fair value, and why this is the case. Valuation of intellectual property is hard in itself, and as argued by Schultz [2018], the regulators and courts are working with very limited information when they set about determining remuneration rates. As a consequence, the royalty rate determined by the Copyright Board Order of 2010 grossly undervalues music which is the most essential input in the radio business.

²⁸<https://www.livemint.com/Consumer/JL1SczC2gnLWbsmp48lneJ/FM-stations-cut-commercial-air-time-on-growing-ad-fatigue.html>

²⁹Calculated using geometric progression on FICCI Frames revenue numbers: $1000(1+r)^8=3103$ i.e, $r=1.1519$. 15.19%

³⁰<https://www.google.com/amp/s/m.businessstoday.in/lite/story/radio-is-the-preferred-advertising-media-for-political-parties-f1/331733.html>

6.1 Rate standardisation

An important highlight of FM radio's listenership is its premium listener profile. As many as 45% of listeners in the top 8 markets belong to the premium class, NCCS A. These listeners are the prime audiences for advertisers. Even at a national level, NCCS A listeners are at 29%, nearly double that of their share in the population. A reason for the high profile of radio listeners is listenership inside cars. As many as 25% of listeners in the 8 metros consume radio on their car stereos, a big jump since 2014³¹. The 2% of Net Advertising Revenue which is the compulsory licensing rate doesn't take into account metropolitan locations, peak traffic hours or popularity of content.

6.2 Limited negotiation

Radio stations will not opt for voluntary licensing as long as 2% Net Advertising Revenue remains as the compulsory licensing rate thereby limiting extensive negotiations with music producers. Digital OTT platforms, which operate in market-driven settings show that music is valued higher than what compulsory license fee gives. Globally, negotiated rates are in the range of 55-70% to the owners of copyrights in sound recordings as mentioned previously in this paper. In India as well, the remuneration to copyright holders is higher through OTT platforms than it is through radio. In 2018, the OTT platforms paid 745 Cr. to the recorded music industry whereas the private FM radio industry in India paid only 60 Cr. Royalties should be on the basis of quality and quantum of the catalog licensed, which does not happen when there is effectively a cap on royalty payments.

7 Recommendations

Given the concerns with the Copyright Board order as well as the different conditions in the industry today, the main recommendation that follows is to let voluntary licensing determine the fair market value for music rather than allow compulsory licensing to put a cap on remuneration to copyright holders.

India has a long history of protecting infant industries. However, with maturation of an industry, the regulators themselves take the initiative to remove protection. For example, the tariffs faced by telecom companies remained strongly regulated till very recently, and today only a few phone call rates remain regulated³². Similarly, for the radio industry, even if a need for protection was justified previously in 2010, now that the industry has grown and is expanding, it is time to remove the protections. The path dependence of regulation can act as a further barrier that the government needs to be conscious of and keep in check.

Any subsidies that the government still wishes to confer onto the radio industry can be done directly in a targeted manner, rather than at the cost of the underlying music industry. This would remove the myopia that the current compulsory licensing structure embeds. With a longer-term vision for growth of the music sector as well as dependent broadcasting and distribution industries, we can expect growth in the quality and diversity of content and more investment and creative risk-taking in the music industry. Promoting the creative sector in this manner will benefit radio and ultimately Indian consumers, in addition to artists, musicians, composers and producers.

³¹<https://www.musicplus.in/irs-releases-data-radio-mirchi-tops-chart-amongst-fm-broadcasters-india/>

³²<https://main.trai.gov.in/sites/default/files/DrftTT009072018.pdf>

References

- David Clayton. The consumption of radio broadcast technologies in hong kong, c. 1930–1960 1. *The Economic History Review*, 57(4):691–726, 2004.
- Dora L Costa. Less of a luxury: the rise of recreation since 1888. Technical report, National Bureau of Economic Research, 1997.
- Mark F Schultz. The market for performance rights in sound recordings: Bargaining in the shadow of compulsory licensing. *Available at SSRN 3292512*, 2018.