

# IPRS AND PPL: UNFOLDING THE BATTLE OVER THEIR LEGITIMACY

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## INTRODUCTION

*'India is a nation of music lovers. Be it the birth of a child, a journey, a wedding, a festival or other celebration, or even the sad death of a loved one – we sing, and have a song, for every occasion.'*

In the recent past, the music industry has been the victim of legal manoeuvres and at present, there remain many questions unanswered. By virtue of The Copyright Act, 1957 (14 of 1957), the composers, lyricists (or authors) and the publishers of music are being protected and their rights, both economic and moral, being taken into account.

Chapter VII, Sections 33-36A of the Act, recognises Copyright Societies in the country. The Indian Performing Right Society Limited (IPRS) and Phonographic Performers' Limited (PPL) were two such copyright societies.

IPRS came into existence on 23rd August 1969. It claims to be a non-profit making Organization and is a Company Limited by Guarantee and Registered under the Companies Act, 1956. After the 1995 Amendment, IPRS got itself registered under Section 33 of the Copyright Act, 1957 as the Copyright Society to do business of issuing Licenses for usage of Musical works & Accompanying Literary Works.

The Indian Phonographic Industry (IPI), the Association of Phonogram Producers, was established in 1936, and it was instrumental in finalising the Broadcasting Licence arrangement in India. Subsequently, IPI members decided to form a specialised body to administer their Public Performance and Broadcasting Rights, and so PPL came into being in 1941. Just like IPRS, PPL also got itself registered under Section 33 of the Copyright Act, 1957 as the Copyright Society.

With this background, and few latest developments such as the 2012 Copyright Amendment Act, there emerged a series of litigation, unfolding of facts and to the present day, few questions unanswered.

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## RECENT LEGAL DEVELOPMENTS: CATCHING THE CULPRITS

With the Copyright (Amendment) Act, 2012 changes were made in Section 33 of the Act wherein Section 3A was inserted, the proviso to which stated that *every copyright society already registered before the coming into force of the copyright (amendment) Act, 2012 shall get itself registered under this chapter within a period of one year from the date of commencement of the Copyright (Amendment) Act, 2012.*<sup>52</sup>

The said amendment came into force on 21<sup>st</sup> June 2012 and hence as per the amendment, IPRS and PPL were to re-register by 21<sup>st</sup> June 2013.

Both the entities did apply for their re-registrations, but IPRS wide letter<sup>53</sup> dated 2<sup>nd</sup> June 2014 and PPL wide letter dated 20<sup>th</sup> May 2014 withdrew their application for re-registration with the copyright office and thereby expressed their desire to discontinue as Registered Copyright Societies.

However, due to their failure to re-register, IPRS and PPL, which were earlier Copyright Societies, automatically got de-registered on 21 June 2013 as a consequence of the 2012 Amendment to the Act. Both PPL and IPRS have chosen not to re-register as Copyright Societies but are now conducting business as private limited companies, registered under the Companies Act.

IPRS has for long been in the limelight for malpractices and primarily, that it does not fulfil the very purpose for which it was formed – distributing royalties to its members, that it collects on their behalf.

Thereafter, several complaints made to the Copyright Office came into limelight, pertaining to ‘non distribution of royalties to authors and composers by imposing illegal conditions in violation of the Act and the Rules framed thereunder; illegal sublicensing of collection of royalties by the petitioner society by causing loss of revenue; illegal transfer of mechanical rights and ringtones royalties by the petitioner society to Phonographic Performance Limited(PPL) a copyright society to manage sound recording rights; forgery of signatures or misrepresentation by the management of petitioner society to the Ministry and reasons for noncompliance of the Rules by petitioner society for its re-registration.’<sup>54</sup> Pursuant to these, on 27<sup>th</sup> February 2014, the Central Government passed an order, expressing the opinion that it is necessary to appoint an Enquiry Officer as per the provisions of the Act and the Rules for the purpose of making an enquiry into alleged irregularities in the functioning of IPRS, to manage performing rights registered under Section 33 of the Act as the alleged irregularities are *prima facie*

<sup>52</sup> Ins. By Act 27 of 2012, sec 19(ii)

<sup>53</sup> Ref no. :IPRS:RN:HKOS:022:2014

<sup>54</sup> Para 3 - The Indian Performing Right Society Ltd. (IPRS) v. Union of India and Others with Mr. Hasan Kamaal v. Union of India; 2015 SCC Online Bom 4279

violations against the provisions of Sections 33 to 35 of the Act and the Rules framed there under. The government thereafter, appointed Justice Shri Mukul Mudgal, a retired Chief Justice of Punjab and Haryana High Court as the Enquiry Officer to inquire into alleged irregularities in administration of IPRS.<sup>55</sup>

IPRS was swift to move the High Court of Bombay in a Writ petition challenging the governments order. Their very first contention being that the appointment of Justice Shri Mukul Mudgal did not meet the requisites under the Act and the Rules<sup>56</sup>. Thereafter, on 2 September 2014, Justice Mukul Mudgal, resigned from the post of Enquiry Officer with immediate effect as he did not want his qualification to be a subject matter of litigation. Further, IPRS in its petition had submitted that it had ceased to be a ‘copyright society’ and therefore the Central Government had no power to investigate IPRS. They contended that since it failed to re-register as a copyright society as per Section 3A of the Act, the order was inapplicable as it was passed on the very presumption that IPRS still continued to remain a copyright society. The Bombay High Court in dismissing IPRS’ petition observed that the allegations for which the inquiry had been instituted were committed when IPRS was still a ‘copyright society’. It stated:

*‘petitioner was admittedly a copyright society from 1996 onwards and even on the date of issuance of show cause notices on 30 August 2012 and 31 May 2013.’<sup>57</sup>*

It is necessary to note that the IPRS was registered as a copyright society way back in the year 1996, and therefore, it was a registered copyright society from 1996 till 21 June 2013.

The Central Government was well within its jurisdiction to have prima facie deemed it necessary to appoint an enquiry officer to look into IPRS’ alleged irregularities. Disappointed with the judgement, IPRS moved the Hon’ble Supreme Court of India. However, the Supreme Court dismissed the Special Leave Petition (On 11<sup>th</sup> September).

### **LIFTING THE VEIL - The interplay between Sections 30 and 33 of The Copyright Act, 1957 (14 OF 1957)**

Having discussed the *status quo* of IPRS and PPL, it is of significance to understand that both of them now claim to function under the ambit of Section 30 of the Act. The question that arises, is whether, IPRS and PPL in their present claimed capacity can enforce copyright?

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<sup>55</sup> *Ibid.*

<sup>56</sup> under Rule 50, the Enquiry Officer can only be an officer not below the rank of Deputy Secretary to the Government of India

<sup>57</sup> Para 12 - 2015 SCC Online Bom 4279

Section 30 of the Act provides for granting of licences by agents acting on behalf of the owners, that is, the actual copyright holders. In the present situation, the concerned entities claim to function as agents of their members and thus grant licenses in the capacity of agents.

Here, the interface between Sections 30 and 33 comes into play.

Firstly, as per section 33 of the Act, *no person or association of persons shall, carry on the business of issuing or granting licences in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (3).*

Further, IPRS's claims', to carry out its business of issuing or granting licences under the shields of agency under Section 30 of the Act, is struck by the provisions of Section 33. The business of issuing or granting licences can only be carried out by a registered copyright society and as stated above IPRS ceases to be a registered copyright society since 21<sup>st</sup> June 2013. PPL and IPRS continue to maintain that they are not copyright societies and hence not amenable to the Copyright Act, however, in so claiming PPL and IPRS may well be digging their own graves. Justice Gautam Patel in *Leopold Café Stores v. Novex Communications Pvt. Ltd.*<sup>58</sup> observed that "*in order to qualify an agent, it is necessary for the agent to disclose that it is acting for and on behalf of the copyright owner in all the relevant documents.*" Further, the licenses can then be issued by PPL & IPRS only in the name of the copyright holder, and not in their own name. However, the practice of PPL and IPRS is quite clear that they issue licences in their own name and stage organisers are required to acquire licenses from them directly<sup>59</sup>. Hence this practice is struck by section 33 of the Act as these two entities are no more Copyright societies and thus they cannot perform the said functions in the name of agency.

Further, in this very case it was clarified that It is not the mere "carrying on of business" that is interdicted by Section 33. It is the carrying on of the business of issuing or granting licenses in its own name, but in which others hold copyright. Every agent also "carries on business", but that is the business of agency, with the agent functioning as such, i.e., clearly indicating that it is acting on behalf of another, one who holds the copyright. This is the only manner in which both Section 33 and Section 30 can be harmonized. Further there lies a distinction in the terms 'issuance' and 'granting'. However, both words must be read together with their conjunctive. "Issuing" possibly implies to the physical act of generating a license. "Granting" is the legal effect of that issuance. What Section 33 forbids is an engagement in the "business of issuing and granting" licenses in works in which copyright

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<sup>58</sup> 2014(6)BomCR394

<sup>59</sup> *Ibid*

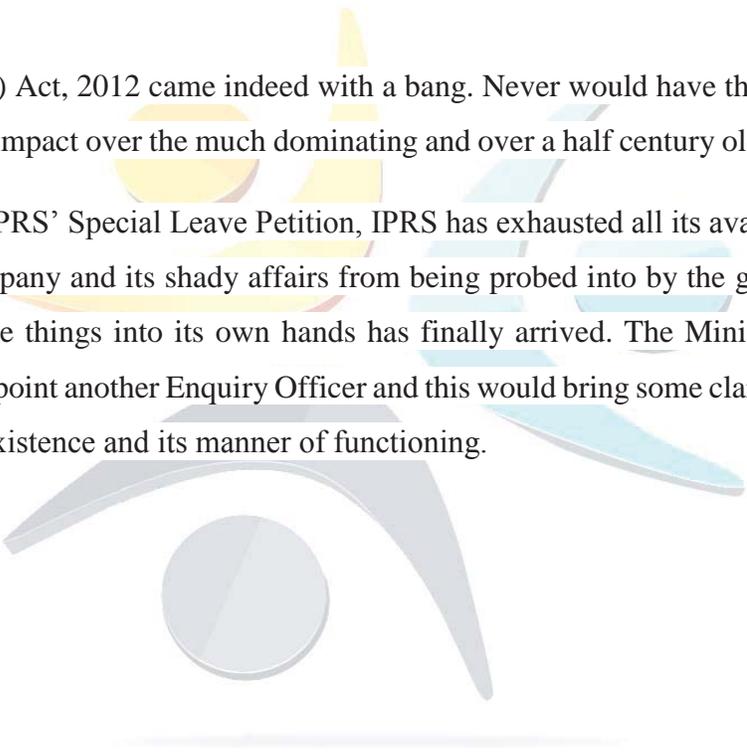
subsist. This cannot mean that a copyright owner cannot appoint an agent to grant any interest on behalf of the copyright owner.

Thus from the above, it is evident that both IPRS and PPL cannot function within the ambit of Section 30 of the Act, they not anymore being a registered copyright society. If at all they wish to continue to be in business, they must transform their functioning to suit the legalities of Sections 30 and 33 of the Copyright Act, 1957.

## **CONCLUSION**

The Copyright (Amendment) Act, 2012 came indeed with a bang. Never would have the legislature thought that it would bring upon such an impact over the much dominating and over a half century old entities, IPRS and PPL.

With the SC's dismissal of IPRS' Special Leave Petition, IPRS has exhausted all its available legal options in its mad pursuit to shed the company and its shady affairs from being probed into by the government. The time for the Government to truly take things into its own hands has finally arrived. The Ministry of Human Resource Development would soon appoint another Enquiry Officer and this would bring some clarity on the entire question of the legitimacy of IPRS' existence and its manner of functioning.



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