

COMBATING THE THREAT OF PIRACY IN THE INDIAN MUSIC INDUSTRY

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ABSTRACT

The Music Industry has become more than just artists showcasing their talents to the world. As the term 'industry' denotes, it has become an economic activity, with its own demand and supply, intermediaries and other market players. It has rather evolved into an industry where the artists themselves are being marketed as a commodity, unlike the traditional approach where the physical albums and the music produced were the products being traded in the market. Technological advancements have also contributed to the transition. With the widened reach, followed the rights and obligations, the benefits and detriments. While this approach guaranteed rights to artists and performers, on the downside it has also become a breeding ground for questionable activities with the intention to, on the one side, make more money out of it and on the other hand, to get away from having to pay money to enjoy the fruits of the industry.

Piracy is one such questionable and illegal activity that is an instance of the latter case. It is the copying and distributing of music recordings without the consent of the right owners.

The manuscript specifically deals with the practice of Piracy in the Music Industry. It discusses the various forms of piracy and the impact that it has on the Music fraternity as a whole. It further discusses about the position of such activities in the light of the emergence of streaming platforms. To get a better understanding of the methods to mitigate the offence of piracy, a study is undertaken on the approaches taken by different countries around the globe, followed by the Indian scenario. This manuscript, to an extent, aims to understand Anti-piracy mechanisms in a comprehensive manner.

INTRODUCTION

Technology has impacted the world to such an extent that its emergence has marked a new era in itself. The world as a whole had to get on the bandwagon to adapt itself to the new era in the fear of becoming irrelevant in the ever-changing society. With the emergence of the internet, came along a plethora of technological advancements making it one of the most dynamic sectors making it difficult to adapt for the less prepared.

The music industry was no exception to this. The implications were such that the industry as a whole faced the brunt of it. Album sales, which contributed a major share to the revenue, became irrelevant with the emergence of applications such as Napster.

The positive effects, however, cannot be overlooked as the Music fraternity has benefited a good deal from the internet and technology as a whole.

The digitization witnessed a simultaneous globalization in the music industry as the geographical barrier started to disappear. Music, irrespective of its genre and nationality has transcended borders and the popularity of social media, has paved the way for online music communities. It has also opened up new avenues for artist promotion and marketing with a wider reach of audience. The digital distribution services such as Apple iTunes attempted to assist the recording labels to recover their seemingly displaced sales, at least a portion of it if not all. Rise in popularity of concerts could also be attributed as one of the indirect effects of the Internet.

The music industry as it is today, is no longer a standalone industry but rather co-exists with other industries as well. The players in the industry can be categorised into broad three categories. First, it is the Music Creation consisting of the singers, producers and songwriters. Second aspect is that of the Business' consisting of the labels, managers, agents etc. and lastly, from the customer's side is the streaming platforms, venues etc. Therefore, in an attempt to broadly classify the entirety of the now Music Industry, Recording and Distribution, Music Licensing and Live Music could be considered the different facets.

While the musical ecosystem did benefit owing to the technological advancements as mentioned earlier, it faced and is still facing a great deal of threats from the dark side of the internet. One of the major threats that continues to put the music industry in jeopardy is piracy.

PIRACY- THE THREAT

Piracy, in simple words, is the copying and distributing of music recordings without the consent of the right owners. From downloading unauthorized versions of copyrighted music from a file-sharing service to illegally copying music using stream ripping software or mobile applications, many different actions qualify as piracy.ⁱ The act of piracy is considered an intellectual property theft that is, Copyright infringement.

The activity of music piracy can be broadly classified into Counterfeiting, Pirate Recording and Bootlegging.

- a) Counterfeiting is the copying of a musical work including the sound, artwork, trademark, label and packaging of the original with the intent to make believe that the consumers are buying the genuine product.
- b) Pirate recording is the unauthorized duplication of legitimate recordings for commercial gain. Unlike a counterfeit product, the presentation of a copy of a pirate recording is not a replica of the legitimate commercial release.
- c) Bootlegging is concerned with a live concert or a broadcast. It is when a live concert or broadcast is recorded and sold without the permission of the owners having recording rights over the performances.

People resort to committing piracy due to their reluctance or inability to buy or pay to listen to music therefore, downloading it from unlicensed sites which allow people to do it for free. Accessible technology has enabled people to commit piracy with ease.

On the other hand, piracy leaves the artists, music publishers, composers, and record labels uncompensated for the investments in content creation, marketing, promotion and distribution. Worldwide revenue from physical recorded music fell from \$37 billion in 1999 to \$25 billion in 2007 and the recording industry has pointed out that piracy is the cause of such reduction.ⁱⁱ The Recording Industry Association of America (RIAA) stated that “this theft of piracy has hurt the music community, with thousands of layoffs, songwriters out of work and new artists having a harder time getting signed and breaking into the business.”ⁱⁱⁱ

Reduction in revenue of the recording industry and the possible reduction in the new releases due to diminishing copyright protection could be attributed to the increase in the commission of Piracy. However, the effect of piracy on sales is observed as inherently difficult to study. The reasons are two-fold. First, it is pertinent to note that piracy is an illegal activity and is therefore difficult to find records in Government statistics. This makes it difficult to get data on the volumes of unpaid consumption. Second, it is difficult to establish the causal impact of piracy on paid legal consumption owing to the fact that piracy as an act is non- experimental in nature.

HAS THE EMERGENCE OF STREAMING DETERRED PIRATED ACTIVITIES?

Streaming is the technology of transmitting audio and video files, live or recorded, to computers and other devices through the internet and it is played back in real time. Few examples of streaming content are Podcasts, movies, TV shows etc. Streaming, to an extent, has facilitated the transition to the cyber space, replacing the practice of purchasing CDs and physical albums.

At present, streaming is the most prevalent and preferred format in the music industry. Cash flow from streaming includes revenues from streaming radio, subscription and advertisement supported on- demand streaming services. While free streaming services restrict the consumers with limited access to music and frequent advertisement breaks intervening the listening experience, premium streaming services have unrestricted access in addition to an ad-free experience and other benefits such as offline listening.

On the face of it, streaming seems to have had a detrimental impact on the piracy trend as it satisfies the needs of the consumers by providing convenient and economic access to music. However, the real question is whether the emergence of streaming platforms has truly deterred the act of Piracy.

It is pertinent to note that piracy has still not been curbed entirely as it seems to assume various forms with the change in technology. What was formulated as a solution in an attempt to mitigate the vice of piracy, in turn induced the emergence of new forms of piracy. Stream

ripping is one such form of piracy that is inherent in the system with the emergence of streaming platforms.

Stream ripping, also known as Destreaming, is the process of obtaining a permanent copy of content being streamed online and saving such obtained. It is often used to save audio files from websites such as Youtube and allows people to turn a temporary stream into a permanent file in the form of an MP3. This, like any form of piracy is also a copyright theft as it is an unauthorised copy of someone's Intellectual property.

PIRACY- A GLOBAL OVERVIEW

To get a grasp on the ways to fight piracy, it is material to understand the different approaches taken around the globe in dealing with and mitigating the unlawful practice.

The United States of America

Incorporating the principles enshrined in the 1996 treaties of the World Intellectual Property Organization, the Digital Millennium Copyright Act, 1998 is a United States law that has enforced certain anti- circumvention provisions with heightened penalties for copyright infringement on the online platform.

The European Union

Website blocking of illegal copyrights is the prevalent practice to fight piracy in the countries under the ambit of the Union. According to Article 8(3) of InfoSoc directive, the right holder is entitled to demand an injunction against those intermediaries whose services are used by third parties to infringe the copyright or related right. Recital 59 provides for the condition to obtain blocking injunctions as to the matter for national law.^{iv} This has been ratified by various countries as well.

China

China initiated a note-worthy initiative to tackle online piracy and copyright infringement known as the Sword Net Campaign. The main focus of the campaign was the protection of audiovisual works, cracking down on infringements through streaming media platforms and

supervision of e-commerce platforms. It resolved 90 percent cases in 2018 by shutting down, conducting takedown and imposing fines.^v

The country also established a special court in Hangzhou to deal with copyright disputes and internet actions and handled online trials as well.

The Youtube-mp3.org dispute is one of the many instances that dealt with the offence of stream-ripping. In 2016, a German based website known for its stream ripping practices, Youtube-mp3.org with more than 60 million users a month, faced legal action filed by record companies in the UK and the US and was forced to shut down. The website circumvented the measures enforced by YouTube to control access to content on its site and automatically converted the videos into MP3.

THE THREE STRIKES POLICY

As a method to combat piracy, some countries have implemented, while others are deliberating upon the implementation of a Three Strike Policy. The policy takes the approach of terminating subscriptions and cancelling accounts in case of repeat infringement subject to certain factors.

Legislations enshrining the above policy has been enacted in South Korea, Taiwan, the United kingdom, France and New Zealand. In Ireland, the policy has been implemented by way of a private ordering.

Countries like Australia and Singapore have adopted the principle without committing itself to a legislation. In such States, by way of judicial procedure, a user is disconnected from the cyberspace upon being adjudged for having committed a copyright infringement.^{vi}

However, few countries have rejected this approach as well. Therefore, making it difficult for the universal applicability of the principle.

FIGHTING PIRACY- THE INDIAN SCENARIO

As Piracy is inherent in each and every media industry such as the film industry, music industry among others, the enforcement varies with each industry. However, it is the Copyright Act, 1957 and the Information Technology Act, 2000 that deal with anti-piracy laws in general in the country.

The Indian Music Industry (IMI) consisting of several major companies such as Sony, Saregama etc. is the first organisation that has taken law enforcement upon itself and has appointed officers to conduct and lead anti-piracy operations in the country. The apex body operates through its offices some of which are located in Kolkata, Mumbai, Bangalore and Chennai.

Though India joined the WIPO internet treaties in 2018, it is yet to enact laws that particularly deal with Music Piracy. In addition to the above, the fact that the GDP contribution from the Media and Entertainment sector estimates to a mere 1 percent^{vii} is making it difficult for the industry to make its mark enough to draw attention to the fraternity and the challenges faced by them. According to the IFPI-IMI Digital Music Study 2019, piracy is at the rate of 67 percent and subsequently causes an estimated loss of revenue of Rs.1500 crores annually.^{viii}

This comes as a shock considering the cultural richness of India and the country being a home to different genres and languages of music.

The Delhi High Court, in the case of *UTV Software Communications Ltd.*^{ix}, passed an order directing dynamic injunction and laid down certain criteria to identify websites as “rogue websites” for the extension of the same.

A dynamic injunction is when the court grants an injunction with respect to specific domain names that are guilty of hosting infringing content. It allows a right holder to approach the courts to extend the main injunction order against all mirror websites providing access to the same infringing online platforms that were the subject of the main injunction.^x

In the case of *Disney Enterprise v. MI Ltd.*^{xi}, the High Court of Singapore, while granting a dynamic injunction, held that the applicant need not return to the court for an order with respect to every single IP address of the infringing URLs already determined by the Court.

CONCLUSION

Music Piracy is very much prevalent around the globe irrespective of the measures being taken to fight it. Therefore, it is the responsibility of the States to consider it a grave issue affecting not only the economy but also the people involved in the process and their livelihoods as they are left to bear the brunt of the serious consequences of such Intellectual Property thefts. It is acknowledged that with technological advancement comes the flip side of unforeseen questionable activities. However, stringent laws are to be passed and regulatory committees are to be set up and with the aid of industry experts, counter-measures are to be formulated concurrently with action plans to curb such activities to the greatest possible extent.

Especially in a country like India, rich in culture and a home to various art forms, it is the need of the hour to properly regulate and protect the art forms and the artists in order to promote more and give artists the recognition and returns that they deserve.

ENDNOTES

ⁱ *About Piracy*, RECORDING INDUSTRY ASSOCIATION OF AMERICA, <https://www.riaa.com/resources-learning/about-piracy/>.

ⁱⁱ Joel Waldfoegel, *Music Piracy and Its Effects on Demand, Supply, and Welfare*, 12 THE UNIVERSITY OF CHICAGO PRESS JOURNALS, INNOVATION POLICY AND THE ECONOMY (2012).

ⁱⁱⁱ *Why We Do What We Do*, RECORDING INDUSTRY ASSOCIATION OF AMERICA, http://www.riaa.com/physicalpiracy.php?content_selector=piracy-online-why-we-do-what-we-do.

^{iv} [2001] OJ L 167/10 (InfoSoc Directive).

^v *Music Piracy- A Threat to the Survival of Music Industries in the Era of Digitization?*, LEXFORTI LEGAL NEWS NETWORK, (2020) https://lexforti.com/legal-news/music-piracy-a-threat-to-the-survival-of-music-industries-in-the-era-of-digitization/#_ftn65.

^{vi} Eldar Haber, *The French Revolution 2.0: Copyright and the Three Strike Policy*, 2 JOURNAL OF SPORTS & ENTERTAINMENT LAW, 301 (2021).

^{vii} *View: Why combating music piracy in India is a losing battle*, THE ECONOMIC TIMES, (June 04, 2020, 4:21 AM) <https://economictimes.indiatimes.com/industry/media/entertainment/view-why-combating-music-piracy-in-india-is-a-losing-battle/articleshow/76182858.cms?from=mdr>.

^{viii} Music Piracy, THE INDIAN MUSIC INDUSTRY, <https://indianmi.org/music-piracy/>.

^{ix} CS(COMM) 724/2017.

^x Essense Obhan, Taarika Pillai, *Dynamic injunctions to tackle digital piracy in India*, OBHAN & ASSOCIATES https://www.obhanandassociates.com/blog/dynamic-injunctions-to-tackle-digital-piracy-in-india/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration.

^{xi} (2018) SGHC 206.