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Empowering Creativity: A Case For Artist Royalty Rights In India, With EU As Reference

This article addresses the need to legislate an Act pertaining to royalties to be paid to Musicians by citing European legislations and judgments which have not only helped local European Artists but also American Artists

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Introduction:

With the advent of the internet, accessibility of music has increased multi-fold creating a highly profitable industry worldwide. The music labels that publish music in their own name have become huge conglomerates who control how and when any music

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streaming platforms etcetera. Remuneration that musicians receive is a one-time payment however royalty is a recurring payment which reflects the popularity of the song.

This 'royalty' issue has always been a highly contested issue in Bollywood. A struggle that sparked the demand for royalties was the one led by Ms. Lata Mangeshkar in the early 1960s. She was instrumental in bringing a lot of favorable decisions for the musicians of Bollywood however, as far as royalties is concerned, she couldn't single-handedly fight against the powerful label, producers, and politicians. While the situation now has improved drastically thanks to the 2012 amendments to the Copyright Act and the judgement by the Bombay High Court in *Indian Performing Rights Society v. Music Broadcast Limited*[1], this article addresses the need to legislate an Act pertaining to royalties to be paid to Musicians by citing European legislations and judgments which have not only helped local European Artists but also American Artists.

The 2012 Amendment: Prospective or Retrospective?

The 2012 Amendment to the Copyright Act added sub sections 9 and 10 to section 19 of the Copyright Act that say when an author's work is used in a film, they have the right to claim a share of any royalties. This applies even if they have assigned over the copyright of their work to someone else. While these amendments do make the Musicians right to royalties inalienable, there is no clarity as to whether these amendments shall apply prospectively or retrospectively. This is because of the way the law is worded - it uses the word 'shall', which usually means something will happen in the future, hence implying a prospective application. Nonetheless, subsection 9 of section 19 starts with "no assignment of copyright" and does not specify "no future assignment of copyright". Therefore, deducing from the first few lines of Section 19(9), it seems as if the legislative intent is to protect the right of the author's royalties against every assignment of copyright and not every assignment post the provision comes into force. Hence, a retrospective application of the Amendment can also be alleged.

The lack of clarity pertaining to the application of the statute could even worsen the already scarred relationship between musicians and labels/producers. While the former might claim royalties for past films, the latter would not pay the same leading to further legal implications. Furthermore, there exist a lot of pending disputes between both parties with the radio stations/Music labels/Streaming Platforms looking to squash the 2012 Amendment. The Amendment to section 19 has benefitted the musicians but the extent of the same cannot be said to game changing as it has further thrown the relationship between artists and music conglomerates into jeopardy with popular artists even in recent times being denied their right to royalty.

EU's stand on Royalties vis-à-vis the need for legislation in India:

The European Union (EU) has always protected the musician's right to royalty. It has embodied the French term *Droit De Suit* in spirit and in legislation. The majority of EU Nations, being a party to the 1961 Rome Convention of Protection of Performers and Broadcasting Organizations[2] have statutorily required the distribution of music royalties to artists when their work is being used. As recent as 2011, the EU extended the legislation providing Royalty Protection to Musicians for 70 years. This legislation has ensured that Music Labels and Musicians amicably and equitably fulfill their duties as it ensures that both parties get their deserved dues in the form of royalties. The lack of ambiguity in Europe has been instrumental in ensuring that there exist no conflicts between Music Labels/Producers and Musicians as far as Royalties are concerned. Furthermore, a recent judgement by the European Court of Justice (ECJ) in the case *Recorded Artists Actors Performance Ltd (RAAP) V Phonographic Performance Ireland Ltd (PPI)*[3] held that all artists, irrespective of nationality, shall receive royalties for the use of their work. This was a huge win for American artists in Europe as they are neither paid royalties in the US nor were they being paid in Europe. However, this judgment proved to be game changing for American Musicians popular in Europe.

Therefore, setting up royalties as one of the criterion for compliance, akin to the law in the EU, would do wonders for Musicians working for Bollywood. While the 2012 amendment to the Copyright Act is helpful it does not entirely solve the issue. A history of dominance by Music Labels/Producers cannot be changed by a mere amendment but would require an entire legislation addressing the issue. A legislation that actively strives to uphold the artists' right to royalty and also provides a grievance redressal mechanism in case the same is violated.

IPRS v. Rajasthan Patrika Pvt. Ltd. along with IPRS v. Music Broadcast Limited[4]:

The Bombay High Court, in the instant case, discussed relevant cases by the Supreme Court and High Courts, including the case *IPRS V Eastern Motion Pictures Assn of 1977*[5], that upheld royalty rights to musicians of original works in cinematograph films. In the 1977 case involving IPRS, the Apex Court held that once a piece of music became a part of a cinematograph film, the Producer enjoyed exclusive rights over the work. This judgement was however, in spirit, overruled by the 2012 Amendment to the Copyright Act. On top of the same, the judgement by the Bombay HC in this case was a huge win for all the artists involved in creating a piece of music. The court made it clear that when radio stations play music, they have to respect the musician's right to collect royalties. This is true even though the law gives radio stations the right to broadcast music to the public.

However, pursuant to such judgement by the Bombay High Court, only two of over 350 radio stations[6] are paying royalties to the IPRS. Furthermore, the powerful radio station conglomerates, unhappy with the Bombay High Court decision, might appeal to the Supreme Court. While the payment received by IPRS as royalties has undergone an exponential increase in a few years

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Another prominent issue is the lack of legal provision/regulation for tracking and disclosure of the number of streams a song gets across streaming platforms thereby making it complicated to calculate royalties to be received by rightful artists. Therefore, a legislation addressing all of the above-mentioned issues needs to be on the agenda of the Legislature as it is the need of the hour.

Conclusion:

The struggle for fair royalty payments to musicians in Bollywood is a complex issue that requires comprehensive legislation. While the 2012 Amendment to the Copyright Act has made significant strides in protecting musicians' rights, it has not completely resolved the issue. The lack of clarity in the law and the dominance of music labels and producers continue to hinder musicians from receiving their rightful dues.

Future Implications:

Royalty is not just a financial reward but recognition of the musician's work. Looking ahead, it is crucial for India to consider implementing a separate legislation that specifically addresses the issue of royalties, similar to the approach taken by the European Union. Such legislation should not only uphold the artists' right to royalty but also provide a clear and efficient grievance redressal mechanism.

Furthermore, the legislation should include provisions for tracking and disclosure of the number of streams a song gets across streaming platforms. This would simplify the calculation of royalties and ensure that artists are paid what they are entitled to.

In the long run, a robust and fair system for royalty payments would not only benefit the artists but also contribute to a thriving and sustainable music industry. It would encourage creativity and innovation, as artists would be assured that their work is recognized and rewarded appropriately.

This article hopes to spread awareness about the importance of musicians' right to royalty and the need for effective legislative to protect these rights. The plight of musicians can only be addressed comprehensively through collective efforts from the government, the music industry, and the public.

[1] Interim Application No.1213 of 2022 In Commercial IP Suit No.84 of 2022(Decided on 28th April, 2023)

[2] Rome Convention, 1961, International Convention for The Protection Of Performers, Producers of Phonograms And Broadcasting Organisations (done at Rome on October 26, 1961)

[3] Case 265/19; European Court of Justice (ECJ)

[4] Interim Application (L) No. 9452 of 2022 In Commercial IP Suit No. 193 of 2022 along with Interim Application No. 1213 of 2022 In Commercial IP Suit No. 84 of 2022(Decided on 28th April, 2023)

[5] 1977 AIR 1443, 1977 SCR (3) 206

[6] Bollywood sings the royalty blues (15th July 2023) <https://lifestyle.livemint.com/news/big-story/bollywood-hindi-film-music-composers-singers-royalties-copyright-111689338009295.html>

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