

iCe Hotline

April 26, 2006

FM BROADCASTERS OBJECT TO IPRS'S ACTIONS

FM radio channels are being threatened with action by the Indian Performing Rights Society (IPRS), for non-payment of license fees to IPRS. The FM channel owners have on the other hand been making the necessary payment to Phonographic Performance Limited (PPL), which is another collecting society.

In India, collecting societies are registered under Section 33 of the Copyright Act, 1957 to administer rights that copyright owners have in their works. Also, as per Section 33(3) of the Copyright Act, the Central Government will not ordinarily register more than one copyright society to do business in respect of the same class of works.

In respect of the Indian music industry, there are currently two established collecting societies, PPL and IPRS. PPL is known to represent music companies/record companies who hold rights in sound recordings while IPRS is recognized as representing authors of lyrics and composers of music. Further, PPL represents the class of copyright works that are "sound recordings" while IPRS claims that it represents the class of works, which are "musical works." The aforesaid information is provided on the websites of PPL and IPRS, which are <http://www.pplindia.org/aboutus.html> and <http://www.indiavibes.com/iprs/> respectively.

In spite of the above distinctions, there still remain some grey areas as to the requirements to pay license fee to both PPL and IPRS in relation to certain modes of exploitation of rights. As a result, there have been instances of deadlock between users of music and collecting societies.

There appears to be some merit in the stand taken by FM radio since it could be argued that FM radio is merely using the rights in the sound recording and therefore has secured the necessary license from PPL. However, the ambiguity that remains is whether by merely obtaining a license from PPL to use the sound recording the FM companies have comprehensively covered all the rights and licenses that they are required to take for the broadcast of the music from the sound recordings. Also, due to lack of clarity on the aforesaid issues, if license fee is paid to both PPL and IPRS there is a possibility that the same the authors and composers are being paid twice, i.e. by the sound recording producers and by the music users.

While the government is the licensor of the FM radio channels it has not provided clarity to the radio channel owners as to the entity from which the channel owners should obtain copyright licenses. In the context of the above situation, the radio channel owners intend to approach the Copyright Board for a hearing on these issues. However, as the Copyright Board does not often convene there is unlikely to be a speedy resolution of this matter.

This confusion and overlap could have been avoided by back-to-back arrangement between PPL and IPRS. It may also be helpful to look into the practices and arrangements of collecting societies in other jurisdictions who may have devised ways to avoid overlap in scope of functions of collecting societies.

- Sushma George & Gowree Gokhale

Source: *The Times of India* article dated April 23, 2006

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