



The Indian Performing Right Society Limited

Regd. Office : 208, Golden Chambers, 2nd Floor, New Andheri Link Road, Andheri (W), Mumbai - 400 053.
Tel : (022) 2673 3748 / 49 / 50 / 6616. Fax : (022) 2673 6558. E-mail : admin@iprsld.com • Visit us at : www.iprs.org
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8th December, 2010

Shri G.R. Raghavender
Deputy Secretary & Registrar of Copyrights
Copyright Division, Dept. of Higher Education
Ministry of HRD
4th floor, Jeevan Deep Building, Sansad Marg,
New Delhi 110001

Subject: Factual Position / Clarification on Allegations/Mis-presentation of Facts against IPRS in report of Standing Committee on HRD.

Dear Sir,

The Indian Performing Right Society Limited (IPRS) is a company registered under the Company's Act and had been recognized by the as a Copyright Society u/s 33(3) of the Copyright Act 1957, to conduct business for Musical Works and words performed along with the musical works.

This is with reference to the assumed allegations against the society in Chapter XVI Sub Paras 16.1 to 16.13 and Chapter XVII Sub-Paras 17.1 to 17.8; we would like to put a the wrong projection on the role and functioning of IPRS, which are as under

- 1. Misnomer on Non- Disbursement of Royalties to Authors and Composers (per Chapter XVI, Sub-Paras 16) (- It has been a subject of a lot of discussions that IPRS has not paid the Authors and Composer, we would like to state that IPRS as per statue of the Copyright Act (sec. 34, 35 & 36) has to pay to royalty collected to the owners or as directed by the owners.**

We would like to inform that The Indian Performing Right Society Limited has fully protected copyrights owned and assigned to it by its members. As a responsible copyright society we have taken action against infringing users (Radio Stations/Operators, TV Broadcasters and General Users like Hotels, Events, Departmental Stores, Malls etc) of the works assigned to it by its members. We as a Copyright Society and not an judicial body that can pass judgments on disputes as to who owns the copyrights, in disputes amongst the lyric writers, composers, music company/publisher and film producer, the society has only gone by Supreme Court 1977 judgment, agreements/MOU signed by it or documents/judicial orders produced before it. We would like to inform the committee that IPRS has no role or is in picture when the film producer engages the lyric writer and music composer or the dealings with the music company/publisher or it will be unfair to say that the society has not protected the rights of the lyric writer

*With Received
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Administrative Office - North
B 317, Som Datt Chamber 1,
5, Bhikaji Cama Place, New Delhi - 110 066.
Tel. : (011) 2610 1556 • Telefax : 2610 1572
E-mail : delhioffice@iprsld.com

Administrative Office - East
Room No 2, Asian Hotel
P-38, Princep Street,
Kolkatta - 700 072 • Telefax : (033)4005 4450/4453
E-mail : kolkattaoffice@iprsld.com

Administrative Office - South
Parsn Paradise, Resi. Apts., D-1 Block B, IInd Floor,
109, G.N.Road, T. Nagar, 1
Chennai - 600 017 • Telefax : (044) 2834 1056.
E-mail : chennaioffice@iprsld.com

Member : International Confederation of Societies of Authors & Composers (CISAC)
• Copyright Enforcement Advisory Council, Ministry of Human Resource Development, Government of India.

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and composer in regards to their works/music in the film or being utilised / monitised by the music companies.

The Society in 2009-10 has distributed royalty to around 1060 authors and composers, like in any company we have a few authors and composers (not more than 60 in number) who disagree with compliances laid down by the Governing Council/Board and hence royalty to these authors/composers has not been disbursed.

The society to the extent possible has been fair in its dealings with its music composers/authors, and has never damaged the interests if the music composers/authors, in fact by getting the publishers who are copyright owners of the works to share 50% royalty to the music composers/authors has provided more than royalty of more than Rs 30 crores in the last 5 years.

We have been paying royalties to authors, composers and publishers (music company-owners) and the summary of the royalties paid is as below

DISTRIBUTION SUMMARY ON ROYALTIES DISTRIBUTED

ROYALTIES FOR THE YEAR Rs Lacs	COMPOSER / AUTHOR	PUBLISHER	TOTAL
2006 - 07 - IPRS MEMBERS	224.13	187.35	411.48
2006 - 07 - FOREIGN SOCIETIES	36.65	-	36.65
	260.77	187.35	448.13
2007 - 08 - IPRS MEMBERS	526.54	1,284.24	1,810.77
2007 - 08 - FOREIGN SOCIETIES	108.4	-	108.4
2007 - 08 - DISPUTED MEMBERS	159.03	-	159.03
	793.97	1,284.24	2,078.20
2008 - 09 - IPRS MEMBERS	564.5	618.17	1,182.67
2008 - 09 - FOREIGN SOCIETIES	131.12	-	131.12
	695.62	618.17	1,313.79
2009 - 10 - IPRS MEMBERS	831.95	1,644.68	2,476.63
2009 - 10 - FOREIGN SOCIETIES	148.28	-	148.28
	980.22	1,644.68	2,624.90
TOTAL	2,730.58	3,734.44	6,465.02

We have given information in June & July 2008 of the royalties disbursed to each member including authors and composers for the years 2005-06, 2006-07 and 2007-08 to the Registrar of Copyrights, Ministry of Human Resources Development as asked by them in June 2008. We are also attaching for you're the copy of the letter (as Annexure A) written to Standing Committee which gave the summary of royalty paid as above and a statement giving of royalties paid to a few of the authors

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and composer including to legal heirs of deceased authors and composers in the past few years.

Hence we are unable to understand the basis of which the Standing Committee has reached the conclusion that IPRS has not paid royalty to authors and composers as this is completely false and misleading.

2. Issue of "Owner" of the Musical & Literary Work and Governance of the Society by Owners (per Chapter XVI, Sub-Paras 16) – It has been raised by some eminent personalities including certain govt. officials that IPRS is biased against the authors and composers on the question of ownership in the literary / musical works and is treating the Publishers (Music Companies) as owner members. In this respect we would like to bring to light two documents which set the legal position of the society for ownership

i. **Submissions on Copyright Amendment Bill 1992 made to Joint Parliamentary Committee** - The Society submitted vide its memorandum dated 10th May 1993 to the JPC that the damage done by the 1977 Supreme Court Judgment that the Film Producer is the First Owner of the Musical & Literary works, the wordings on page 8, Stated in

Part "B. PROBLEMS DUE TO THE 1977 SUPREME COURT JUDGEMENT:

As you are aware in 1977, in the IPRS v/s EIMPPA case, the Supreme Court delivered a judgment which snatched from the Composers their rights of receiving royalty charges. The Court rules in the above case that the ownership. Inter-alia, in the musical works which are incorporated into the sound track of the cinematograph films, belong to the film producer, and not to the creator of those musical works, in-spite of any arrangement or contract previously made – disregarding the specific provisions of law....."

The society sought for neutralization of this judgment and sought for introduction of amendments that will help the composers to benefit by the amendment in the law which will allow them to retain the right in the musical works incorporated in the sound track of the film. The society also sought amendment/deletion of sections 17(b) & (c) so that the presumption of such rights is in favour of the music composer and lyric writer, any exploiter has to have a contract to the contrary.

ii. **Memorandum of Understanding (MOU) dated 12th November 1993 signed with Indian Phonographic Industries (IPI)** – The society signed an MOU with IPI where-in it was confirmed by IPRS that the Music Companies were the owners of the Musical Works as Publishers. This document was signed by the society and was

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ratified by all the directors of the then Governing Council of the society and this decision was also placed at the AGM.

The above were passed and approved by the society when authors and composers were only the members of the society, and in both the cases the society confirmed that authors and composers were not the owners and the copyright owners were the film producers or their assigns i.e. the music company

It is clear from the above provisions of the copyright act that the society has to be of the owners and administration has to be with the owners of the right. **Thus the role of society like IPRS is to govern the rights on behalf of the owners, it cannot decide with whom the ownership of the works rest.**

IPRS was formed in 1969 and then the members of the Society were authors and composers. IPRS had tried to license and collect royalty / license fees from the cinema theaters which resulted in the judgment of 1977 in Supreme Court [EIMPAA Vs IPRS 1977 (2) SCC 820]. As stated in Para 18 of the judgment by Justice Jaswant Singh were-in it is stated that were the Producer of a Cinematograph film commissions a composer or a lyricist for reward or valuation consideration is the first owner of the rights in the literary and musical works unless there is a contract to the contrary between the composer / author of lyric or music & the Producer of the Cinematograph Film. The observations

of Justice Krishna Iyer are Obiter-dicta and have no binding on the main judgment.

We would like to state that we as a responsible copyright society are trying to adhere to the provisions of the Copyright Act and Rules. We have explained our position and placed these explanations to the standing committee a copy of the said letter (as Annexure B) and sincerely hope that you will find our statements to your satisfaction and in case you have any doubts or need more clarification will be happy to provide the same.

3. **Tariff Schemes of the Copyright Societies (per Chapter XVII, Sub-Paras 17) –**

The respected committee has observed and opined that the society is does not have a mechanism in place for Tariff Fixation. We would like to inform that Prior to the amendments to the copyright act in 1994 only Performing Rights Society existed and the tariff was subject to approval by the Copyright Board. With economic liberalization and the way societies functioned across the world were-in the societies fixed the tariffs as approved by its members (i.e. cwners & authors), the Government

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amended the Copyright Act and introduced Copyright Societies through section 33, 34 & 35 with checks and balances. It also placed the responsibility of fixing the tariffs by the members in the Annual General Meeting in the Copyright Rules Chapter V rule 14 & its sun-rules. The Copyright Society viz. IPRS since then have been functioning the under act and rules and have been responsible in its functioning and has been transparent with its users on tariffs which are available on its website www.iprs.org for the past few years the tariffs have also been published in the gazette and have been filed in the various courts.

In fact our FM Radio Tariff was changed on the request of the HRD Ministry / I & B Ministry and Radio Operators and changed the royalty fees from fixed needle hour to % of Revenue with a minimum royalty per annum and the minimum royalty fixed gives credence to the type of City i.e. A+, A, B, C and D categories. So the conclusion that copyright societies like IPRS fix tariffs arbitrarily is absurd. We enclose copy of the said letter (as Annexure C) for your reference.

We are surprised that without giving us an objective hearing and asking us on specific complaints by users against us on tariffs it has been concluded that we are arbitrary and unreasonable. We would like to inform that irrespective of the class of users from TV, Radio to Hotels, Event organizers none come to us to obtain a license voluntarily it is we who have to chase them innumerable times and are subject to abuse (including Physically) or getting Police to detain our executives under garb of extortion of money in fact most of the Radio Operators and TV Operators Claim NO License is required from IPRS for Musical Works as these rights do not exist when a song (sound recording) is played. In fact most of the powerful users like TV & Radio who have control on print media and also the Government organisation like All India Radio (AIR) continue to use music without a license. We give below some of the major violators who have gone legal and dispute that license is required

	Total No. of Station Unlicensed / Disputing		Royalty Amount Due as per IPRS (Rs Crores)
1	All India Radio - Government (Royalty Pending from 2004 day Prasar Bhart CEO annouced to pay & letter from AIR, and all Rights being equal royalty rate for Sound Recording assumed as rate for Musical Works)	200+	11.00 +
2	Hostile Private Broadcasters - List Provided Earlier to I & B Ministry and HRD Ministry in earlier letters	100+	25.00 +

We enclose the letters (as Annexure D & E) written to the Information and Broadcasting Ministry and Human Resource Ministry list of powerful users

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who use music but are not paying for music or if payment is required to be made they would like to fix the same. We are in fact surprised that in spite of bringing this infringement to the notice of both the Ministries the violation continues till date. We believe it is these users of music viz. Radio Stations and their association the AROI and TV Channels like Zee TV and their association the IBF whose main revenue or derive a major revenues from music or music based programs but want to pay pittance to the owners and authors of the music and make the most noise to the ministry and in the Print Media against us (they always write articles against the society, you will not find a single article highlighting the good work done by the society).

IPRS as a society has more than 15000 licensees big and small and you are likely to receive complaints from 100+ which is not more than 1% of the user, but we fix tariffs as approved by our members and it is the duty of the society to keep its members happy. We are in business of music licensing which is not a essential public service like electricity or telecom and cannot be subjected to tariff fixation by regulators.

The new section 33A will completely destroy the functioning of Copyright Society as all the tariffs of the copyright society will be challenged by the users before the Copyright Board, and the owners / authors who administer their rights and monetise thru the Copyright Societies will be affected seriously. This section will encourage owners / authors not to join the society and license their rights directly as their license fees will not fall under the jurisdiction of the Copyright Board, if this happens it will create tremendous hardships to the users with regards obtaining the license from the different owners/authors.

4. **Statutory Damages for Infringing Users** – If the Government feels that tariffs of societies have to be regulated then we also request that new provisions in the Copyright Act 1957 for damages be brought for users (powerful users) who take deliberate shelter under that copyright act is not clear with regards to licenses to be obtained for playing of music and approach the courts and use the legal system to delay payments (as courts are over burdened & any clear order takes 3-5 years). This is act of infringement by non payment by such users is unfair and acts as a disincentive to complaint users who obtain a license and pay regularly, and the infringers use the legal system to their advantage and pay the same fees (without any penalty) after 3-5 years. We recommend that a provision of statutory damages for usage of works by non-compliant/infringing users be brought in so that users do not misuse the act and the legal system to frustrate the objectives of the law.

We have provided the information on royalties disbursed to author/composers to the Standing Committee vide letters dated 15th July 2010 and 22nd July 2010. Also we have informed vide letters dated 29th December 2008

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and 6th February 2009 the Ministry of Information and Broadcasting and the
**HRD Ministry on not obtaining of license and non-payment of royalties and
estimates of outstanding royalty amounts for music played by the radio
operators, copies of said letters are annexed herewith.**

**We strongly urge that our above clarifications be considered and if possible
expunge the remarks on no disbursement of royalty by IPRS to authors and
composers and that with regards Tariff fixation the society is transparent
and a majority of its licensees seem satisfied or our replies be brought to the
notice of the Parliament and that Government make specific provisions be
made in the Copyright act 1957 for Statutory Damages for Infringers of
Copyrights.**

Thanking you with Musical Regards

For The Indian Performing Right Society Limited



**Hasan Kamaal
Chairman**

Encl . - Copy of Letters to Standing Committee
Copy of Letters to HRD and I & B Ministry