



## 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 6658. E-mail : admin@iprsltd.com • Visit us at : www.iprs.org

Ref:IPRS:SHE:OS:4056:2011

18<sup>th</sup> February, 2011

**Mr G R Raghavender**  
**Director & Registrar of Copyrights**  
**Ministry of Human Resources Development**  
**Department of Secondary & Higher Education**  
**Jeevan Deep Building, 4<sup>th</sup> Floor,**  
**Parliament Street,**  
**New Delhi 110001**

- Re : (a) Your letter dated 14<sup>th</sup> January, 2011 received by Speed Post on 19<sup>th</sup> January 2011 and the letter dated 24<sup>th</sup> January 2011 regarding the above subject matter.  
(b) Our interim replies dated 3<sup>rd</sup> February, 2011 and interim reply dated 11<sup>th</sup> February, 2011.

Dear Sir,

We have been served with the Copy of a Court Order restraining us from filing a detailed reply to you in regard to the abovementioned subject, pursuant to our Interim Replies dated 3<sup>rd</sup> February, 2011 and 11<sup>th</sup> February, 2011.

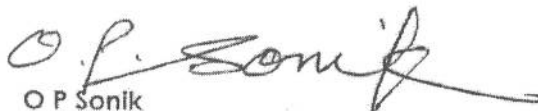
We may further state that pursuant to the interim replies we have finalized and drafted the Final detailed Reply that we propose to file with your good self after having the same approved from the Executive Committee authorized in this matter by the Governing Council. However, in view of the abovementioned order we seek your advise as to the further steps that we are required to take with reference to your letters dated 14<sup>th</sup> January 2011 and 19<sup>th</sup> January 2011, to give our detailed reply to your queries in the letters mentioned above..

We may also request you to grant us a personal hearing with regard to the subject mentioned above.

Thanking you with Musical regards

Yours sincerely,

For The Indian Performing Right Society Limited

  
O P Sonik  
Director

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



# The Indian Performing Right Society Limited

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Ref:IPRS:SHE:HK:4022:2010

11<sup>th</sup> February, 2011

**Mr. G R Raghavender**  
Director & Registrar of Copyrights  
Ministry of Human Resources Development  
Department of Secondary & Higher Education  
Jeevan Deep Building, 4<sup>th</sup> Floor,  
Parliament Street,  
New Delhi – 110 001

Sub: Complaint by some lyricists and composer regarding illegalities with respect to administration of The Indian Performing Right Society Limited (IPRS)

Dear Sir,

This is in reference to your letter dated 14<sup>th</sup> January, 2011 received by speed post on 19<sup>th</sup> January 2011 regarding the above subject matter. We have provided a reply in the Interim vide letter dated 3<sup>rd</sup> February 2011 and tried and covered all the issues raised by in your letter of 14<sup>th</sup> January 2011.

We had informed you that we have 2466 members, however we would like you to note that out of which Publishers Members are 288 AVP Publishers Members are 239 and balances 1939 are Authors and Composers Members.

Out of the 1939 Author Composer members 1510 members have signed the letter affirming the MOU of 1993 and confirmed their satisfaction in the running of IPRS. We have around 375 authors and composers who are not reachable and leaving a balance of a maximum 55 authors composers who are disputing or and have issues with IPRS of which only 28 have sent you a unsubstantiated complaint, which is 1 % of the total membership of the society.

As you are aware that 1510 authors and composers who have affirmed the MOU of 1993 have in the past 5 years been paid a total amount of around Rs 30 crores and continue to receive their royalties.

Thanking you with Warm and Musical Regards.

Yours sincerely,  
For The Indian Performing Right Society Limited

**Hasan Kamaal**  
Chairman

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Ref:IPRS:SHE:HK:367:2010

3<sup>rd</sup> February, 2011

Mr. G R Raghavender  
Director & Registrar of Copyrights  
Ministry of Human Resources Development  
Department of Secondary & Higher Education  
Jeevan Deep Building, 4<sup>th</sup> Floor,  
Parliament Street,  
New Delhi - 110 001

15287/2011 - JS (By Rep)

Subject : Complaint by some Lyricists and Composer regarding illegalities  
With respect to administration of The Indian Performing Right  
Society Limited (IPRS).

Dear Sir,

This is in reference to your letter dated 14<sup>th</sup> January, 2011 received by speed post  
on 19<sup>th</sup> January, 2011 and the letter dated 24<sup>th</sup> January, 2011 regarding the above  
subject matter.

At the very outset we would like to state that this reply is only an interim reply in  
view of the undue haste shown by you to elicit a response to your letter of 14<sup>th</sup>  
January, 2011. The Governing Council of IPRS is being scheduled to meet in mid  
February and we would like to file a further detailed reply thereafter.

*However keeping in view the regard IPRS holds for your good self and the high  
office held by you we have deemed fit to comply with your demands and file the  
below interim reply.*

\* Let us begin by assuring you that IPRS will not distribute any royalties due to  
authors and music composers to its other Members.

\* Further we wish to state that the allegation mentioned in the complaint letter dt.  
20th Dec., 2010 addressed to the Honorable Minister & yourself that the Society  
has started issuing in the last two weeks out of turn very large cheques to some  
record labels/publishers is malicious, baseless, & false. We place on record that the  
Society has not distributed any royalty cheques, leave alone out of turn payments  
to any record label / publisher after 23rd November 2010 - the date of the tabling  
of the Standing Committee Report on Copyright (Amendments) Bill 2010 in  
Parliament. This allegation seems to have the ulterior motive of trying to evoke an  
emotional / sentimental response from the Government.

\* Furthermore, we fail to understand the basis & correctness of the complaint that  
Rs. 25 crores invested in various legal monetary investments belong to authors &

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5/1/2011

JS (By Rep)  
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DIR (By Rep)  
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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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composers who have not signed the letter ; this again is baseless, factually incorrect and false.

Let us clarify that the Society is in the business of collecting licensing royalties / fees and amounts collected during the year are usually distributed in the following year as done

internationally. This is the normal time required for receiving, processing and calculating royalty disbursements based on logs & reports received from various users.

Hence till the time the royalties are distributed the Society invests in various bonds/funds or fixed deposits which is the normal practice followed by any prudent business entity as well as all similar Collecting Societies throughout the world.

\* Royalties to Authors / Composers is paid by IPRS either against Claims of Ownership of Works or under the 1993 MoU. For pending payments, if any, the complainants either need to file proper Ownership or as non-owner's affirm the MoU. **1473 non-owner authors / composers have affirmed the 1993 MoU.**

The 28 odd complainants [who are not even 1% of IPRS membership] have voluntarily decided not to collect royalties despite our best efforts to distribute the same to them upon completion of the necessary documentation procedures. We sincerely request you to direct them to collect the said amounts, which is duly kept with us, upon fulfillment of the legitimate internal documentation procedure.

*Now, we would like to state that the information sought and the direction issued by you has no basis whatsoever. The complaint dt. 20th December 2010 and 26th December 2010 cannot form the basis for seeking information from us or issuing any direction against us for the following reasons:*

\* The persons who have signed the complaints are not owners of rights within the meaning of the Copyright Act 1956 and Rules thereunder nor have they filed any ownership of work/s with IPRS, hence no cognizance should be taken by you of their complaint. It may be further stated that the complainants were given due opportunity to register their ownership rights but they failed to do so till date.

\* All owners of rights registered with IPRS have always approved the manner in which IPRS is being managed and have not raised any issue or had any grievances with the functioning of IPRS. The Copyright Act confers the right of administration of the copyright society only upon the owners of the rights. Therefore it is the bounden duty of the Registrar of copyright to protect the interest of the owners of rights and not of those persons who do not own of rights.

\* The complainants do not even represent 1% of the total members of IPRS.

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\* The complainants have voluntarily preferred not to raise any objections through the internal procedure at IPRS.

\* Some of the complainants who have raised objection now are parties to litigations pending before various courts where several issues raised by them are sub-judice. In the said proceedings these complainants had appeared but have now abandoned their claims and have voluntarily decided not to appear.

\* The complainants are now seeking to raise issues that have occurred more than 3 years earlier. This clearly shows that the complaints are politically motivated and are a result of a scheme to rest control of IPRS having failed to do so democratically. IPRS is most democratically run organization and all owners have a say in the functioning of IPRS.

\* Some of the issues raised by the complainants are pending adjudication before civil courts. Copies of orders passed have been served to your good self. It may be pointed out that in one such case your good self has also been arrayed as a party. We are sure you have examined the said orders passed and have directed us to file our present response only after seeking opinion that in doing so we / and or you would not be blamed of obstructing the administration of justice.

**Even so we have thought it fit to respond to your letter of 14th, January 2011 without prejudice to our rights. We are sure you would look at our reply objectively and in an unbiased manner and accept our submissions.**

I.

*We begin with categorically stating that there are no illegalities with respect to the administration of the Indian Performing Rights Society (IPRS) neither is there any delay on behalf of IPRS to disburse Royalty nor is there any incorrect distribution of Royalties by IPRS as alleged by the complainants.*

Further, at the outset we would also like to know and understand the veracity of the respected purported 28 complainants.

IPRS does not dispute the fact that the said 28 persons who have signed the complaints are Lyric Writers and Music Composers but, as you are aware, **they are not owners of any copyright works in the books of IPRS.**

[You are also aware that IPRS as a responsible Society has in the past written letters to all authors / composers and publishers asking details of the works (literary and or musical) that were owned by them so that their name/s could be entered in the Register of Owners but none out of the said 28 complainants have responded till date with regards to the works owned by them.

Hence according to the documents and information with IPRS none of the alleged complainants are Copyright Owners and the Society following the provisions of the Copyright Act 1957 and Copyright Rules 1958 collects license fees / royalty

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from various users of music (for the musical & literary works) only for the musical & literary works owned by its constituents who are Owner Members.]

**Therefore, in our humble opinion , as per the Copyright Act & Rules 1957 the Authorities must address the issues / interests of Owners rather than that of non-owners.**

II. To further strengthen the view point that IPRS is doing nothing illegal but only complying & acting within the 4 walls of the Copyright Act / Rules 1957, we would like to state as follows:

A. That IPRS was formed in 1969 under the Company's Act with only Authors & Composers as Members.

B. IPRS on behalf of Authors & Composers had tried to license and collect royalty / license fees from the cinema theaters and other users of the Works.

C. (i) The Eastern India Motion Pictures Association legally challenged IPRS's demand which resulted in the judgment of 1977 in Supreme Court [EIMPAA Vs IPRS 1977 (2) SCC 820].

*[ Para 18 of the judgment stated that where the Producer of a Cinematograph film commissions a composer or a lyricist for reward or valuable consideration, the Producer 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 and the Producer of the Cinematograph Film.*

*Thus this Supreme Court order restrained the then IPRS of 1977 to collect any Royalty / license fee.*

*[Hence IPRS with only Authors and Composers as Members was unable to conduct the business of copyright in Lyrical & Musical Works as the Authors & Composers did not own the copyright to the Works.]*

(ii) The Entertainment Industry (before 1977 & thereafter, till date) has abided by the Spirit & Law that the Film Producer is the *first owner* of the copyright of Lyrical & Musical Works by which authority the Film Producer legally assigns such rights to the Music Companies, under a Contract for a good value consideration.

D. The reliance, in the above mentioned Supreme Court 1977 judgement, on the footnote /observation made by Justice Krishna Iyer is as follows:

"The judgment just delivered is on behalf of the Court, which makes this footnote, in a sense, otiose. But I do append the abbreviated opinion solely to highlight a slightly penumbral area of the law and to voice a need for legislative exploration to protect a category now left in the cold."

The Governing Council was and is of the opinion that the observations of Justice Krishna Iyer are Footnote/Obiter-addicta and have no binding on the main

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judgment it was merely asking the Government to legislate to protect the economic interest of the author/composers.

**E. This view of ours has been upheld by the Report of Standing Committee on Human Resource Development presented & placed in the Rajya Sabha and Lok Sabha on 23<sup>rd</sup> November 2010, in Paras 9.14 & 9.16. and has recommend for an amendment in the Copyright Act 1957 to incorporate the recommendations / directive of the Supreme Court in 1977 and the said report paras are quoted for your reference.**

(i)9.14 ..... The Committee, however, observes that in the footnote of this very judgement, Justice Krishna Aiyar also advised as follows:  
"the authors and music composers who are left in the cold in the penumbral area of policy should be given justice by recognizing their rights when their works are used commercially separately from cinematograph film and the legislature should do something to help them".

(ii)9.16 The Committee can only conclude in the light of the long standing infirmity in the copyright law outlined above that proposed amendments in section 17 and 18 were overdue. It has taken more than thirty years for the legislature to act upon a Supreme Court directive which indeed is a very sad state of affairs. The Committee emphatically recommends that this long standing infirmity in the copyright law needs to be removed without any further delay."

F. Further we would like to draw your attention to two legal cases described below and the outcomes in the said cases, in the first case in an interim order by the **Division Bench in Calcutta High Court** ruled against the composer upholding that producer is the first owner of the musical works of the film unless there is a contract to the contrary and in the second case the author had assigned his copyrights to the producer but challenged that he did not assign any rights till the producer showed the document. The concerned author withdrew the case but was levied legal cost of Rs 1 lac.

*[So taking both the cases as a reference and the conduct of the parties in both cases, IPRS is in no position to ascertain that they held the Copyrights to their works which also makes the so called assignment give by Authors and Composers to IPRS stands suspect.*

*IPRS is not there to ascertain who owns the rights; IPRS's function is only to collectively govern the rights for the owners of rights.]*

(i) In the first instance we would like you to take note of the judgment on 1<sup>st</sup> October 2010 of the **Division Bench of High Court of Calcutta** in the Case No. APO 265 /2010, C.S. No. 109/2010, GA 1731/2010 filed by Anandji Virji Shah Vs. Nadiadwala Grandson Entertainment Ltd, Anandji & Kalyanji Virji Shah are also the complainants in the purported letter to the HRD Minister and you.

In the said case Kalyanji Anandji were the composers of the songs & music of the movie "Lawaaris" by Prakash Mehra Productions released in 1981 and there were no contracts between the composer and the producer, the producer had assigned by



an agreement the rights in the literary, dramatic and musical works and the sound track in favour of Gramophone Company of India Ltd now Saregama India Ltd. and Saregama had licensed for synchronization the music and lyrics of few lines of the song "Apni toh Jaise Taise" of "Lawaaris" as in the song "Aapka Kya Hoga (Dhanno)" in the film "Houseful" produced by Nadiadwala. Anandji Virji Shah appealed / contested against Saregama licensing for the song in 'Houseful', and stated that the producer cannot trench on the composers right by performing or producing or reproducing the music separately from under section 14(1)(c) drawing this argument from opinion expressed by Justice Krishna Iyer. The Division bench ruled that they do not find a gray area to hold that the rights of the music composer or lyricist can be defeated by the producer of the cinematograph film in manner laid in provisio (b) & (c) of section 17 and ruled against the contentions and claims of rights by Anandji Virji Shah. (enclosing copy of the court order)

*[In this case Anandji Virji Shah, Composer who is also a complainant to the HRD Minister and you, the Divisional Bench of Calcutta High Court in the interim upheld the Supreme Court Judgment of 1977 and passed that he did not have copyright in the musical works created by him along with Kalyanji Shah (also a complainant).]*

(ii) In another case involving one of the complainants of the purported letter Shri Javed Akhtar, who had filed against Magic Mantra Vision and Others in Delhi High Court CS (OS) No. 1743/2005 and IAs No. 5983/2006 & 5278/2006.

The case of Shri Javed Akhtar the Plaintiff was that he remained the sole owner of the rights in the lyrics i.e. the underlying works except the right to make the cinematograph film viz. "Pyar ki Dhun". It was contended by the plaintiff that the Producer was in violation of his copyright in the lyrics by assigning the rights in the lyrical works to Saregama India Ltd for exploiting/use of the said songs in other form like audio CD/cassette, internet downloads etc. The Producer produced a letter purportedly written by the Plaintiff in 2001 assigning in perpetuity all the copyrights in favour of the Producer, and the said letter was denied on behalf of the plaintiff. The case was ahead pursued after applications, arguments and statement on oath by the Producer as the letter is true, the Plaintiff made a statement that though the signatures appear to be his, he had no idea that he was being made to sign an agreement assigning or transferring his rights. The Plaintiff Shri Javed Akhtar then withdrew the suit which was allowed, but Rs 1 lac cost was levied on the plaintiff for unnecessary hardship caused to the Producer on account of denial of the letter. (enclosing copy of the court order)

In this case Shri. Javed Akhtar, the lyric writer who is also a complainant to the HRD Minister had assigned all his copyrights to the film producer even though he had supposedly earlier assigned rights to IPRS.



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*So abiding by the Supreme Court order of 1977; taking both the above cases as reference and the conduct of the parties, the Author / Composers have been unable to establish ownership of their works.*

*Therefore the so called assignment/s given by the Authors & Composers to IPRS are suspect and untenable in law.*

*It is not the function of IPRS to ascertain who owns the rights; IPRS's function is only to collectively govern the rights for the owner of such rights.*

*In such circumstances IPRS as a responsible Copyright Society can only follow the 'Register of Owners' as prescribed per Rule 14 of Copyright Rules 58.*

### III.

Below is our interim reply, to the best of our ability, to the various issues raised by you in your letter seeking our comments and response.

i. IPRS was registered as a Copyright Society with its Memorandum and Articles of Association u/s 33(3) and had to follow the provisions of Copyright Act 1957 and Copyright Rule 1958.

The Government of India's Certificate of Registration as a Copyright Society **does not state that IPRS is being registered as a copyright society of Authors and Music Composers as claimed by you in your letter.**

The certificate states that IPRS has been "registered by the Central Government, vide Registration No. CS/02/MUSICAL WORK/96 as a Copyright Society under sub-section (3) of section 33 of the Copyright Act, 1957 (14 of 1957) and permitted to commence and carry on the copyright business in MUSICAL WORKS AND ANY WORDS OR ANY ACTION INTENDED TO BE SUNG, SPOKEN OR PERFORMED WITH THE MUSIC"

Moreover as the certificate states that the Society has been registered to commence & carry on the **copyright business**. Please note:

a) 'business' can be carried out with regards to specific right/s (viz. Literary and Musical Works, Sound Recording and rights defined in section 14), **only by the owner of the said rights**, and any usage without owners license is an infringement as per section 51 of Copyright Act 1957.

Authors / Composers {**as explained in point (C) above**} not being Copyright Owners were unable to conduct the business of copyright and therefore requested the Owner Publishers of their Music (Music Company/Producers) to join & become members of IPRS so that IPRS could conduct the business of copyright in musical / literary works.

Please note that the Certificate of Copyright Society was granted to IPRS in 1996 when Owners Members (Publishers/Music Companies) were members of IPRS.

*[As Authors & Composers, on their own, were unable to conduct the business of copyright in lyrical & musical works as they did not own the copyright to the works the Author/Composer community under the leadership of the late Shri*

*Naushad Ali who was Chairman IPRS, persuaded & convinced the Music Companies to join IPRS which they did as Music Publishers in 1993.]*

*Therefore your statement in point i. of your letter dated January 14, 2011 that "The Government registered the Indian Performing Rights Society (IPRS) on 27.3.1996 under section 33(3) of the Copyright Act,1957 as a copyright society as authors and music composers for management, collection and distribution of performing rights" is totally incorrect.*

b) The Owners of Copyright / Music Companies / Publishers joined IPRS in 1993 as a goodwill gesture to encourage the authors and composers and entered into an MoU on 11-12-1993 which categorically acknowledges that the Music Companies (Publishers) are the owners of two rights namely copyright in Soundrecording and the copyright which includes Performing & Mechanical rights to musical & literary works and that the Music Companies (Publishers) shall share Performing Right Royalties in the interest of giving encouragement to the composers/authors.

Once again please note that Owners of Copyrights / Music Companies / Publishers were Members of IPRS before IPRS was given the Certificate of a Copyright Society.

c) Owners of Copyrights / Music Companies / Publishers can conduct the business of copyright without being a member of a Copyright Society eg. Yashraj Music / T-series / SIMCA Music Company members and many others.

d) The Copyright (Amendment) Act, 1994 introduced Chapter VII (w.e.f. 10-5-1995) - providing the forming of Copyright Societies under the collective control of the owners of the Rights.

(i) As per the Copyright Act 1957 & in item (ii) of the Certificate issued by Government to Register the Society (in this case IPRS); the Society ie IPRS, is obliged to comply with all obligations imposed on it by or under the Copyright Act and Rules.

**NB. Section 34 & 35 and Rule 14i & K states that the Copyright Society should be governed by Owners of rights only.**

As the earlier Articles of Association of IPRS were not in conformity with the provisions of Company's Act, Copyright Act 1957 and Copyright Rules 1958, the lacunae therein resulted in the Society not following the provisions of law and this led to numerous litigations against the Society.

**The Governing Council / Society had taken opinion from Former Chief Justice of India, Justice Mr. Y V Chandrachud on the subject of whether changes were required to its memorandum and articles of association (copy of opinion attached).**

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The Society proceeded and acted on the opinion of Former Chief Justice of India, Mr. Y V Chandrachud.

The Governing Council adopted the draft of the revised Memorandum and Articles of Association as per the said legal opinion received by IPRS; these amendments were required as the earlier articles of association of IPRS were not in conformity with the provisions of Company's Act, Copyright Act 1957 and Copyright Rules 1958. The said changes to articles of association was to comply with the section 34 and 35 of Copyright Act which states that the Society should be governed by the Owners of rights only and according to rule 14L, 14N and 14O specifies that the Annual General Meeting be of Owners.

(ii) At the Annual General Meeting for the year ending 31st March, 2007, at which the changes, based on the legal opinion of former Chief Justice of India Justice Y.V.Chandarchud, were proposed and adopted was convened and conducted by Barasaat Court (West Bengal) appointed Receiver.

The Annual General Meeting for year ended 31<sup>st</sup> March 2007 was held by the Barasaat Court appointed receiver Mr. Tarun Jyoti Banerjee. The receiver held the AGM on 5<sup>th</sup> January 2008 and issued the notice to the Owner Members whose name appeared in the Register of Owners.

We have informed your office in April 2008 on the changes in the Articles of Association and that Owners members attended the AGM. The Ministry did not raise any objections.

Also we do not agree with your statement that Society should have got re-registered with the new amended instrument and held its AGM after approval from the Ministry, as per our understanding and provisions of the law we have not violated any provisions of the copyright act or rules in amending the articles of association.

As per our understanding no provisions of the Copyright Act and Rules provide that we are required to re-register the Society with the amended articles. We shall be obliged if you can refer the said Section and / or clause that does so.

**IPRS has amended its articles of association as per legal advice and to bring the articles in conformity and in compliance with the provisions of the Copyright Act 1957 and Copyright Rules 1958 thus has not violated any law.**

ii. The Society has assignment deeds signed with authors / music companies when they become members of the society.

IPRS admits authors / music companies as per its articles which allows for all to become members of the society be they "owner member" or "non-owner member".



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As explained & detailed in II above, the society is in no position to establish whether ownership rests with the authors/composers vis-à-vis the film producer or their assigns i.e. Music Company /Publisher other than MOU of 1993 and the 1977 Supreme Court to which IPRS is a party.

We again bring to your attention the two cases of Anandji Virji Shah where the court has ruled that the copyrights are with the film producer and in the second case of Javed Akhtar where the author has assigned to the Producer on his own.

Therefore IPRS being in no position to establish ownership nor rely on assignment deeds signed by the author / composer members and given to IPRS called upon all its Members i.e. Publishers, Authors and Composers vide its letter dt.27th August 2005 and 9th December 2005 to Register with the Society the details of Literary and / or Musical Works owned by them and based on these submissions compiled the 'Register of Owners' as per the Copyright Act & Rules.

iii. We would like to have the copy of the letter dated 25<sup>th</sup> April 2008 which has been referred by you for us to comment on it, at IPRS we do not seem to have on record any such letter written to you/department on 25<sup>th</sup> April 2008.

As mentioned by you the 1993 MOU [detailed in item i (a) & (b) above] was signed when only authors and composers were members of IPRS, between Indian Phonographic Industry-IPI (now Indian Music Industry-IMI) & IPRS on the basis of which the Owner Publishers Viz. Music Company agreed to share 50% royalty in ratio of 30% to composer and 20% to author from Performing Rights.

Some of the authors & composers disputed the 1993 MOU and refuted that the Music Company / Publishers were the owners in the musical & literary work by assignment from the film producer as they i.e. authors and composers did not assign any copyrights to the film producer.

As some of these author / composer members raised disputes on ownership of the musical & literary works with music companies, the Owner Members (Publisher Music Company) asked that they would like to continue the MOU arrangement of encouragement to creative community of sharing royalties only for those who are affirmative of the said MOU.

Accordingly royalties have been disbursed from 2008 onwards as per MOU to the author composer members who have signed letter affirming the MOU and its terms.

However if the author or composer is able to provide details of works owned by them, through a contract to the contrary, they can claim such Performing Rights Royalty on the strength of their own Ownership.



iv. The society viz. IPRS is mandated to function under law per section 34 and 35 of the copyright act 1957 and rule 14-I/K.

We quote and explain relevent portions of Section 34 & 35 as follows:

**Quote:**

**34. Administration of rights of owner by copyright society** -(1) Subject to such conditions as may be prescribed,-

.....

(3) Subject to such conditions as may be prescribed, a copyright society may-  
(iii) distribute such fees among owners of rights after making deductions for its own expenses;

**35. Control over the copyright society by the owner of rights.-**

(1) Every copyright society shall be subject to the collective control of the owners of rights under this Act whose rights it administers (not being owners of rights under this Act administered by a foreign society or organisation) referred to in sub-section (2) of section (34) and shall, in such manner as may be prescribed,-

(a) obtain the approval of such owners of rights for its procedures of collection and distribution of fees;

(b) obtain their approval for the utilisation of any amounts collected as fees for any purpose other than distribution to the owner of rights; and ....

**Unquote.**

Hence according to the provisions in section 34 & 35 of the Copyright Act 1957 mentioned above IPRS has to function as per procedures to collect and distribute royalty as laid down by the Owners and has to seek the approval of the Owners for utilisation including distribution of the fees collected if it has to distribute royalty to people other than the owners of rights.

In the present case IPRS carried out its functions as per the legal provisions by obtaining approval for collection and utilization of the fees from the Owners of the Copyright in the Musical and literary works mentioned in the 1993 MOU and Register of Owners.

**The society has taken legal opinion from Justice S N Phukan, Former Justice of Supreme Court of India on distribution of royalty to owners (copy of opinion attached).**

The Owners have granted approval in the general meeting to utilize by distributing 50% as stated in the 1993 MOU for the royalties collected on behalf of the Owners to those Authors and Composers or their Legal Heirs who re-affirm the 1993 MOU.

If IPRS utilized distributed royalty fees to its member's viz. non-owner members without the approval of the owners then IPRS would be in violation of the very

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function of the copyright society, currently it is functioning as per the provisions of the Copyright Act 1957.

**The above states clearly the legal base adhered to by IPRS when requesting non-owner members to affirm the MOU and establishes that it is not against the very functions of a copyright society registered under section 33 of the Act for collection and distribution of royalties to its members as mentioned by you in your letter dt.14, January, 2011 item iv.**

v. The Indian Performing Right Society Limited as per the MOU signed has recognized the Film Producers (or their assigns the music companies) to be owners of copyrights in the Lyrical & Musical Works i.e. the underlying works for Film Music and the Music Companies as producer for Non-Film Works; thus recognizing them as Owners.

The society has also written letters in past asking the authors and composers and music company publishers to inform the society on the details of musical works and literary work owned by them, the society did not receive any response from the authors and composers claiming ownership.

**So a similar undertaking from Music Companies who are Owners is otiose.**

As asked we are enclosing the list of name of 1473 members & legal heirs of deceased author / composer members who have signed the letter along with the list of all the Members i.e. Publisher, Authors and Composers of the Society.

vi. The Memorandum and Articles of Association and its various provisions are made for Governance of the Company and other sections which are in consonance with the Company's Act 1956 along with the Copyright Act 1957 and Copyright Rules 1958. The distribution of the royalties / license fees collected by IPRS a copyright society is as per annual general meeting of the Owners (Rule 14N) and as per provisions of rules (Rule 14K & L).

Accordingly the Owners have in the AGM and GC framed and stipulated the rules for distribution of royalty to non-owners (authors & composers) on the condition that they should affirm the MOU which states music companies are owners, or establish themselves as Owners.

**Both options are available to Authors and Composers i.e. to affirm the MOU or alternatively establish their Ownership in their Works.**

vii. The MOU dated 12<sup>th</sup> November 1993 signed by IPRS and IPI (copy enclosed) states the following in the preamble and Clause 1 as follows

"In this Memorandum of Understanding,

IPRS - means The Indian Performing Right Society Ltd  
IPI - means The Indian Phonographic Industry

PPL - means The Phonographic Performance Pvt Ltd

IPRS confirms that Record Companies are owners of musical works as Publishers and the parties hereto viz. IPRS and IPI confirm the following understanding:

**1. IPRS understands that IPI members who are all record producers own two copyrights, that is, copyright in their sound recordings and the copyright which includes performing and mechanical rights in the musical and literary works used therein in the record producers' capacity as 'music publishers'.**"

So it is clear from the statement in the preamble and in clause 1 (which is underlined), that IPRS confirmed that the Record Companies are owners of Musical Works and that the Record producers owned two copyrights i.e. in the sound recording and in the musical and literary works and the same does not require any further clarification.

viii. The MOU signed in 1993 is a legally binding document for IPRS as a society and the legal instrument to collect & distribute Royalty.

As detailed in III i (a) the MOU (was & still) is the basis for the society to license and collect royalty for Indian Works in the territory of India, which till 1993 could not be enforced by IPRS in the Indian Market for Indian Works due to the impact of the 1977 Supreme Court Judgment which ruled that the Film Producer is the first owner of the musical & literary works unless there is a contract to the contrary and without proving that IPRS represented owners no user of music was willing to obtain license and pay royalty / license fees to IPRS for the Indian works.

So the MOU is the legal document for IPRS to collect Royalties as it admits & acknowledges Owners of Rights at agreed terms & conditions.

&

Further the MOU is the legal understanding for the society for distributing royalty to authors and composers (or their legal heirs) who are non-owners.

You have opined that the same is not binding on the authors and composers, sure it is not if they are owners of rights however those authors and composers who are not right owners & dispute the MOU and its contents cannot enjoy the distribution of Royalty as the said authors and composers not being owners cannot be paid Royalty as per the Copyright Act & Rules. Such non-owner authors / composers can receive Royalty by affirming the MOU.

# The Owner Music Company Members have continued to share royalty with those non-owner author and composers who affirm and agree with the MOU.



ix. The 'Register of Owners' as per the Copyright Act reflects the real Owner of Copyright. Items II & III and ii above state in detail the need for IPRS to call for the forming of and relying on the 'Register of Owner'.

The society has written to all in 2005 asking the then members to send in their details of works owned by them so that their name could be included with the details of musical and literary works owned by them. The society received letters along with the details of musical and literary works owned by Publishers (Music Companies) to be taken as owner members and include their name in the register of owners.

The society did not receive any letter or communication from the author/composer members giving details of the musical and literary works owned by them. Also the society vide the signed legal document of 1993 i.e. the MOU had accepted that the Music Companies have the copyrights in the musical and literary works. Hence the society has registered "owner members" on the basis and documents as stated above.

**Kindly also read item II above which has a detailed explanations along with mention of court cases.**

**The "Register of Owner" is the key under the copyright Act to establish the real Owner & IPRS has done so meticulously.**

x. **We do not have a two tier membership.** We have classification as "Owner Members" and "Members" - how can this be deemed to be a violation. If so, which provision of section 33 has been violated and how?

As per section 33(3) under which the society has been recognized as a copyright society reads :

"(3) The Central Government may, having regard to the interests of the authors and other owners of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights and the ability and professional competence of the applicants, register such association of persons as a copyright society subject to such conditions as may be prescribed:

Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works."

The section means that the government with regards the interests of the authors and other owners register the copyright society, which means that along with the owners of rights if required authors can be members even if they are not Owners.

H



The Administration of the rights of owner by copyright society is laid in section 34 and Control over the Copyright society by the owners of rights is laid in section 35.

Both the sections 34 & 35 enable the society to function under the conditions laid down by the owners of rights and collective control of copyright society by the owners, both the sections do not bar other non-owners from being members or joining the society. In fact as the society has the approval of the owners to utilize the fees collected to be distributed to the non-owner author / composer or legal heirs, so the society also has recognized them as members, this facilitates in distribution of royalty to authors and composers and legal heirs. We would like to be informed on the specific sections and provisions which we have violated by making non-owners as members.

xi. IPRS as a copyright society governs by licensing the copyrights assigned to it by the owners and the owners have the right to restrict or modify the rights assigned to the copyright society for governance and license of the same by the society.

The Copyright Society like IPRS has to abide by section 34, rule 14 it

**34. Administration of rights of owner by copyright society.-(1) Subject to such conditions as may be prescribed,-**

.....  
(b) an owner of rights shall have the right to withdraw such authorisation without prejudice to the rights of the copyright society under any contract.

**14G. Conditions subject to which a copyright society may accept authorisation and an owner of rights may withdraw such authorisation. — (1)**

A copyright society may accept from an owner of rights or his duly authorised agent, exclusive authorisation to administer any right in a work if such owner or such agent enters into an agreement, in writing, with the copyright society specifying the rights to be administered, the duration for which such rights are authorised to be administered, the quantum of fees agreed to and the frequency at which such fees shall be paid by the copyright society in accordance with its Scheme of Tariff and Distribution.

(2) The owner of copyrights shall, without prejudice to the rights under the agreement and subject to the condition of a prior notice of sixty days, be free to withdraw such authorisation in case the copyright society fails to fulfil its commitments as laid down in the agreement.

**14H. Conditions subject to which a copyright society may issue licences, collect fees and distribute such fees. —**

(1) A copyright society may issue licences and collect fees in accordance with its Scheme of Tariff in relation to only such works as it has been authorised to administer in writing by the owners of rights and for the period for which it has been so authorised.

X

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The Governing Council of IPRS had formally adopted the resolution in December 2003 for governing the reproduction (mechanical) rights as allowed by the owners (viz. the publisher music companies) in the musical & literary works and Ringtone which is a sale by reproduction of the musical & literary work. The society even though had started licensing same from 2002 onwards from a verbal assurance from the owners that it be allowed to administer the same, but it had no formal agreement of assignment with all the major owner publisher members for governance of the mechanical (reproduction) right in the works. The Owner Publisher members in January 2004 with drew the verba assurance to administer Mechanical Rights which they had earlier authorized the society to so in December 2003.

We do not agree with your observations that the society has taken decisions which are extremely detrimental to the interest of the author and music composers.

**The society according to various provisions of the Copyright Act and Rules stated below, should take decisions which are not detrimental to the interests of the Owner.**

### **33. Registration of Copyright Society - .....**

.....  
(4) The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the owners of rights concerned, cancel the registration of such society after such inquiry as may be prescribed.

**According to the Society it has not taken any Steps or decisions or is being managed in a Manner which is Detrimental to the Interests of the Owner.**

xii. The Owners withdrew the rights / restricted IPRS's from administering / governing the collection and distribution of the said ringtone rights, the said rights were not assigned to the society by the authors and music composers as they do not own the rights.

As stated in the letter under reference that the Owners will administer them directly or they can seek guidance from IMI, IPRS has not assigned any of the said rights under reference to any other society.

xiii. The society does not license and collect royalty for the mechanical rights as IPRS does not have the mandate to collect royalties for the mechanical (reproduction) rights from the Owners of the rights. The Society currently is licensing and collecting for the Performing Rights (viz. Broadcasting and Communication to Public) in the literary and musical works.

xiv. The Owner Members informed the society that they have received a large number of requests from most, if not all major Television Channels to have a 'Single Window' License for Music Played on TV.

The Owners approved in the Governing Council for ease of use and monetization a single window license to be given and accordingly the Governing Council approved that a MOU be signed with PPL only for Domestic Music and cleared the MOU's commercial term.

IPRS continues to license for International Music/Musical Works.

PPL in-turn appointed Select Media Holdings Private Limited as an agent for licensing for all Indian Channels except ZEE TV network which was directly licensed by us.

We have no knowledge or dealings with Label Music India Private Limited.

xv. The society has filed regularly Annual Returns along with the certificate of administrative expenses each year. As asked I am enclosing herewith copy of the annual returns along with certificate for administrative expenses for the last 5 years.

We would also like to inform you that:

The Society has written letter to the Standing Committee, HRD Minister and you (copy of said letter enclosed) clarifying the assumed allegations against the society in Chapter XVI Sub Paras 16.1 to 16.13 we would like to put a stop to the wrong projection on the role and functioning of IPRS primarily on Non-Disbursement of royalty to Authors and Composers were-in we have clarified that the society has disbursed around 30 crores in past five years.

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 you in June 2008.

**You have chosen to ignore the said disbursements to thousands of authors and composer, as per the MOU, but seem to focus and act on complaints from few high profile author and composers without verifying their ownership status as required under the provisos of the Copyright Act 1957.**

Also from the tone and substance of the letter dated 14<sup>th</sup> January 2011 and past letters/actions it shows that the Ministry has already reached conclusions on complaints by renowned high profile authors and composers rather than copyright owners, and formed a biased and negative opinion on the functioning of IPRS whose endeavor is to function within the ambit of the Copyright Act & Rules and act in a manner which is not detrimental to interests of the owners.

Also in past by asking the society to pay to non-owner author-composer rather than paying to owners or as asked by owners, which would have put the society in violation of the provisions of the copyright act 1957 and copyright rules 1957.

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We are sure you would favourably consider the submission made by us and ignore the baseless, malicious and wrongly motivated allegations made against IPRS. As requested earlier we once again urge you to grant us four weeks time to file a detailed reply.

We also seek an opportunity to have a personal meeting with you to prove the falsity of the allegations made against IPRS.

Thanking you with Warm and Musical Regards.

Yours sincerely,  
For The Indian Performing Right Society Limited



**Hasan Kamaal**  
**Chairman**

- Encl.:
1. Opinion of Y V Chandrachud, Former Chief Justice of India.
  2. Opinion of S N Phukan, Former Judge Supreme Court of India.
  3. Copy of High Court of Calcutta in Case No. APO 265 /2010, C. S. No. 109/2010, GA 1731/2010 filed by Anandji Virhi Shah Vs Nadiadwala Grandson Entertainment Ltd.
  4. Copy of Delhi High Court Order in Javed Akhtar vs. Magic Mantra Vision and Others in Delhi High Court CS (OS) No. 1743/2005 and IAs No 5983/2006 & 5278/2006.
  5. Copy of 1993 MOU between IPRS and IPI.
  6. Copy of the letter written by IPRS in December, 2010 to HRD Minister / Standing Committee and the Registrar.
  7. Copies of filed last 5 years Annual Returns & Certificate of Administrative Expenses.
  8. List of Members of IPRS and List of author / composer who have signed letters.