

K/A – Regional Manager

27th August 2009

To
The Regional Manager
Phonographic Performance Ltd.
BD-96 Salt Lake City
Sector-1
Kolkata 700064
Tel No. (033)23341565

Re: Communication to the Public - Sound Recordings

Dear Sir,

We propose to hold an event entitled _____ on [date], at [venue name and address].

At the said event, our DJs will be playing sound recordings from a list of sound recordings as described in the attachment to this letter.

In the attachment, we have also provided you with all relevant details including the name of the sound recording, record label, and author, composer, publisher information as available on the CD/ Vinyl jackets.

In order for us to determine whether any license fee is payable to PPL for the communication to the public of the attached sound recordings, kindly provide us with copies of all agreements demonstrating PPL's entitlement in this regard, with respect to each of the sound recordings in the attached list, within 10 days from the date of receipt of this letter.

Upon receipt of the same, we will proceed to make payment in respect of such sound recordings that appear to be clearly within PPL's licensing repertoire, on a *pro rata* basis with respect to your Tariff Scheme.

Kindly also provide us with a copy of your Tariff Scheme in advance so that we may also satisfy ourselves of the reasonableness of the rates set out therein.

We look forward to hearing from you.

Warm regards

XXXX

Encl: List of Sound Recordings

From: partha chakrabarty [mailto:parthapplindia@gmail.com]
Sent: Thursday, August 27, 2009 3:45 PM
To: xxxx
Subject: info ppl

Dear Mr. XXXX

As discussed, attached please find the documents required by you.

Regards.

Partha

Hand Book of Copyright Law

FOREIGN WORKS

Is copyright of foreign works protected in India?

Yes. Copyrights of works of the countries mentioned in the International Copyright Order are protected in India, as if such works are Indian works.

Does copyright subsist in a foreign work?

Copyright of nationals of countries who are members of the Berne Convention for the Protection of Literary and Artistic Works, Universal Copyright Convention and the TRIPS Agreement are protected in India through the International Copyright Order. A list of such countries is at Appendix-IV.

Which are the international copyright conventions of which India is a member?

Copyright as provided by the Indian Copyright Act is valid only within the borders of the country. To secure protection to Indian works in foreign countries, India has become a member of the following international conventions on copyright and neighbouring (related) rights:

- i. Berne Convention for the Protection of Literary and Artistic works.
- ii. Universal Copyright Convention.
- iii. Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms.
- iv. Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties.
- v. Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

COLLECTIVE ADMINISTRATION OF COPYRIGHTS

What is collective administration of copyright?

Collective administration of copyright is a concept where management and protection of copyright in works are undertaken by a society of owners of such works. Obviously no owner of copyright in any work can keep track of all the uses others make of his work. When he becomes a member of a national copyright society, that society, because of its organisational facilities and strength, is able to keep a better vigil over the uses made of that work throughout the country and collect due royalties from the users of those works. Because of the country's membership in international conventions, the copyright societies are able to have reciprocal agreements with similar societies in other countries for collecting royalties for the uses of Indian works in those countries. From this it can automatically be inferred that it will be in the interests of copyright owners to join a collective administration organisation to ensure better protection to the copyright in their works and for reaping optimum economic benefits from their creations. Users of different types of works also find it easy to obtain licences for legal exploitation of the works in question, through the collective administrative society.

What is a copyright society?

A copyright society is a registered collective administration society. Such a society is formed by copyright owners. The minimum membership required for registration of a society is seven. Ordinarily, only one society is registered to do business in respect of the same class of work. A copyright society can issue or grant licences in respect of any work in which copyright subsists or in respect of any other right given by the Copyright Act.

What are the functions of a copyright society?

A copyright society may:

- i. Issue licences in respect of the rights administered by the society.
- ii. Collect fees in pursuance of such licences.
- iii. Distribute such fees among owners of copyright after making deductions for the administrative expenses.

From: xxxx
Sent: 31 August 2009 19:55
To: 'parthapplindia@gmail.com'
Cc: xxxx; xxxx
Subject: xxxx

Dear Sir,

Please see the attached letter.

Yours sincerely,

ATTORNEY FOR XXXX

BY EMAIL/ FAX AND REGD A.D.

31st August 2009

Please Quote Our Ref:

Mr. Partha Chakrabarty
Phonographic Performance Ltd. (PPL)
BD-96, Salt Lake City,
Sector-1
Kolkata-700064
EMAIL: parthapplindia@gmail.com

Re: Event License Fee for XXXX

Sir,

We act for XXXX, and are under instructions to address you as under: -

Vide its letter dated 27th August 2009, faxed and couriered to your office, our client had intimated PPL that it proposes to hold an event on XXXX at XXXX, Kolkata 700016. Our client has also sent PPL a list of foreign sound recordings proposed to be played at the said event, along with details of their respective foreign record labels etc.

Our client requested PPL to, inter alia, demonstrate its rights to license the said sound recordings with reference to agreements with the foreign labels in question. Kindly note that our client does not propose to play any sound recordings, copyright in which is owned by the member companies of PPL.

Instead of providing the requisite details, our client received a response via email dated 27th August 2009 from PPL, attaching extracts from a Handbook of Copyright Law which purportedly responds to the requests made by our client in its letter of 27th August 2009. Our client states that the said attachment in no way establishes PPL's rights to license sound recordings intimated by our client to PPL. Further, by such a response, PPL is indulging in a misinformation campaign about the extent of its authority to license sound recordings and also about exactly which sound recordings may be licensed by PPL.

Our client states that merely being a registered copyright society does not authorize PPL to collect public performance licensing fee for all or any sound recordings that may be communicated to the public. A license fee may only be collected if such specific sound recordings fall within the PPL repertoire of authorized sound recordings.

In a phone conversation had by our client with a PPL representative in Kolkata on 27th August 2009, PPL has also confirmed that the record labels intimated by our client are not connected with PPL in any manner. In such an event, PPL has no mandate or authority to collect license fees when the sound recordings of such labels are played. However, the said representative maintained that an event license fee is payable to PPL.

Under the circumstances, PPL has not demonstrated any authority to charge our clients any so called event license fee with respect to the sound recordings intimated to PPL and our client is not liable to pay the same to PPL.

Further, PPL's actions in pressing its demands for payment of event license on pain of legal action against our client amounts to groundless threats of legal proceedings for which our client is entitled to commence legal action under Section 60 of the Copyright Act, 1957, as also, separate proceedings for malicious prosecution.

Under the circumstances, failing PPL's ability to demonstrate its authority to license the sound recordings in question, PPL is required to immediately withdraw all demands for any so called event license and groundless threats of legal action against our client and is also required to cease and desist from harassing our client and its representatives, or disrupting or interfering with our client's events in any manner.

PPL is also called upon to provide the following information.

1. The names, addresses and nationalities of foreign record labels and societies whose repertoire is administered by PPL for public performance in India.
2. Copies of agreements from foreign record labels and societies authorizing PPL or its members to collect license fees for public performance of their sound recordings in India.
3. Details about remittances made to foreign record labels and societies in the past from license fees collected, and the songs for which such remittances have been made.

Yours sincerely,

XXXX

CC

XXXX

From: partha chakrabarty [mailto:parthapplindia@gmail.com]

Sent: 31 August 2009 22:47

To: xxxx

Cc: xxxx

Subject: xxxx

Dear Sir

sorry we r not going to disclose terms and conditions of aggrement we have with our members since it is very much company oriented and not a public document.

If you r not satisfied with explanation as forwarded by us from Coyright Law Book released by Govt of India ,I am afraid u need to go to Ministry/Judiciary for knowing fact of Life.Meanwhile event as discussed needs to be stopped unless matter is being cleared by any appropriate authority to both the parties.

Thanks

PARTHA CHAKRABORTY

From: xxxx

Sent: 01 September 2009 12:41

To: 'vipulpradhan@indianmi.org'; 'infoimi@indianmi.org'; 'infoppl@indianmi.org'; 'shrikhande@indianmi.org'

Cc: xxxx; xxxx

Subject: xxxx

Dear Vipul,

I am writing to you on a matter of great concern to both me and my client XXXX.

I did not want to escalate the matter to you initially but someone named Partha Chakrabarty from your Kolkata office just called my client's representative Mr. XXXX, began abusing him over the telephone, also directed abuse to me by using various expletives ("your f**king lawyer" is I believe the expression used), and has threatened my client with dire consequences.

The background of the said phone call from your Mr. Chakrabarty is as follows: -

On 27th August 2009, my client wrote to your Kolkata office intimating it about an event it proposes to hold at Kolkata, indicating the list of sound recordings that were proposed to be played at the said event and seeking to know whether PPL was authorised to license the said sound recordings. That letter is attached to this email named "The Regional Manager".

On 27th August 2009 a person by the name of Partha Chakrabarty responded by email attaching extracts from the Handbook of Copyright Law (attached to this mail) in response to our client's queries. A copy of that email may be found at the bottom of the mail trail below.

Our client asked us to respond to Mr. Chakrabarty on its behalf and a copy of our covering email dated 31st August 2009 is below, along with our reply (attached to this email named Reply to PPL).

Your Mr. Chakrabarty then responded by email dated 31st August 2009 (below) and as you can appreciate, the tone of his email was very disturbing, not to mention, disrespectful, in fact going to the extent of asking us to "go to Ministry/ Judiciary for knowing fact of life". Of course, none of the queries contained in our Reply were addressed even remotely by your Mr. Chakrabarty.

Subsequent to the receipt of this mail, Mr. Chakrabarty has called our client at 10:59 A.M. this morning from the number 033 2334 1565 (which we believe is the phone number of PPL's Kolkata office), verbally abused him and threatened him and his company including directing abuses towards me personally.

We are deeply concerned for our client by this turn of events. Not only is PPL refusing to inform our client as to which foreign labels and societies it may license, and propagating a misinformation campaign about the extent of its rights, it appears that its representatives have also taken to abusing and threatening end users. Mr. Chakrabarty's actions are actionable under applicable criminal law. Mr. Chakrabarty has also made groundless threats against our client. It is difficult to believe that the responsibility of a registered copyright society such as PPL would be placed in the hands of goons.

Being a registered copyright society, PPL has a duty under the Copyright Act, 1957 to function in a transparent manner. By not revealing the exact nature of its rights, PPL is keeping end-users in the dark about which foreign sound recordings may be played without a PPL license and which ones require to be licensed by PPL.

As you are aware, Section 14-H of the Copyright Rules 1958 mandates that a "copyright society may issue licences and collect fees...in relation to only such works as it has been authorised to administer in writing by the owner of right..". So the matter is quite simple – either PPL has the rights in writing from the labels intimated to it or it does not. It is not entitled to keep such details secret.

It is pertinent to point out that various past Annual Reports and Balance Sheets of PPL filed before the Registrar of Companies do not disclose any royalty payments to foreign collecting societies or foreign labels so there is a very valid concern about whether or not PPL has any authority to license any foreign sound recordings.

Under the circumstances, we must firstly insist that Mr. Chakrabarty on behalf of PPL tenders an unconditional apology in writing to both my client and me personally.

Second, we insist on behalf of our client that unless PPL is able to demonstrate its authority to license the sound recordings intimated to it, it will not hamper, hinder or prevent my client's event from taking place at Kolkata on XXXX.

Third, we insist on behalf of our client that PPL reveals the extent of foreign sound recordings administered by it in the form sought in our attached Reply.

On a separate note, PPL's XXXX representatives had visited me on 31st July 2009 along with an Advocate from Kolkata Mr. XXXX to discuss licensing issues related to foreign sound recordings. I had sent a mail to your XXXX office after the said meeting to which I have received no reply. I will forward to you that correspondence separately.

I am sorry to have escalated this to you Vipul but in view of the threatening and abusive phone call received from your Kolkata representative this morning, the matter has become quite serious.

As the issues outlined are inextricably connected with the management of the affairs of PPL as a registered copyright society, I am also copying this mail to the Registrar of Copyrights.

We look forward to an immediate resolution of the matter.

Warm regards,

XXXX

From: partha chakrabarty [mailto:parthapplindia@gmail.com]

Sent: Tuesday, September 01, 2009 1:41 PM

To: xxxx

Subject: ppl licence

Dear Mr XXXX

Plz note that version of a lawyer is not being considered as language of Law .Being a Copyright Society authorized under Ministry of HRD Govt of India we observe that you are being misguided and your said Lawyer has failed to understand functioning of the Copyright Society and ambit of it's operation.

Meanwhile you are hereby requested to appeal to the proper forum to dispel your doubts and come up with some sort of openion in support of your claim.Otherwise you need to stop your proposed activity as you are going to have in Kolkata since Infringement of the Copyright is nonbailable offence.

Thanks

PARTHA CHAKRABORTY
PPLKOLKATAJAS

From: xxxx

Sent: 01 September 2009 13:57

To: parthapplindia@gmail.com

Cc: xxxx; xxxx
Subject: RE: ppl licence

Mr. Chakrabarty,

As we have communicated with you through our attorneys, you are requested to direct all communications to XXXX.

I certainly did not appreciate the way you called, abused me and our attorneys with foul language and threatened me this morning. We are discussing the legal implications of your actions with our attorneys.

Our attorneys have already written to Mr. Vipul Pradhan, CEO of PPL, Mr. Shidore, Mr. Shrikhande and the Registrar of Copyrights, in this regard.

Yours sincerely,

XXXX

From: xxxx
Sent: 01 September 2009 14:02
To: 'vipulpradhan@indianmi.org'; 'infoppl@indianmi.org'; 'infoimi@indianmi.org'; 'shrikhande@indianmi.org'
Cc: xxxx
Subject: FW: ppl licence

Dear Vipul,

My client has now received the below mail from Mr. Chakrabarty of your Kolkata office and has responded (below).

The groundless threat to stop our client's event continues with allusions to criminal prosecution.

Please treat this matter as most urgent.

Warm regards,

XXXX

From: xxxx
Sent: 02 September 2009 19:06
To: 'infoppl@indianmi.org'; 'shrikhande@indianmi.org'; 'infoimi@indianmi.org'
Cc: 'vipulpradhan@indianmi.org'; xxxx; xxxx
Subject: On behalf of xxxx

Dear Sir,

In view of PPL's continuing failure to respond to our client's queries, our client deems that PPL has no authority to administer or license the sound recordings intimated to it vide its letter dated 27th August 2009. Our client will proceed with its event accordingly with no liability to secure any license from PPL.

Any further attempts by PPL to harass, extort, abuse, molest or threaten our client or its agents/ representatives, or disrupt our client's event in any manner will be met with a swift legal response.

The written apology from PPL's licensing executive Mr. Partha Chakrabarty, for the threatening and abusive phone call made by him to our client yesterday is still awaited.

A copy of this mail is being marked to Shri G. R. Raghavender, Registrar of Copyrights.

Yours sincerely,

XXXX