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Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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ENHANCING THE INDIAN MUSIC LICENSING ECOSYSTEM: LEGAL REFORMS, TECHNOLOGICAL INTEGRATION, AND ARTIST EMPOWERMENT

AUTHOR – SIDDHARTHA MISHRA, ADVOCATE AT ALLAHABAD HIGH COURT

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Abstract

This research paper explores the legal landscape of music licensing in India, examining the existing framework, key stakeholders, challenges, and potential reforms. It highlights the impact of technological advancements and digital platforms on the music licensing ecosystem, drawing comparisons with international standards to suggest improvements. Through an analysis of case studies, legal precedents, and empirical data, the paper aims to provide a comprehensive overview of the current state of music licensing in India and propose actionable recommendations for enhancing the system to ensure fair compensation and protection of artists' rights.

Introduction

Music licensing is a crucial aspect of the music industry, ensuring that creators are compensated for the use of their works. In India, the landscape of music licensing has evolved significantly, driven by technological advancements and the proliferation of digital platforms. This paper seeks to provide a detailed examination of the current legal framework governing music licensing in India, identify the challenges faced by various stakeholders, and propose potential reforms. By comparing India's approach to music licensing with international standards, we aim to highlight areas where India can learn from global best practices.

I. Overview of Music Licensing in India

Music licensing in India is governed by a combination of statutory provisions, case law, and industry practices. The primary legislation is the Copyright Act, 1957, which provides the legal framework for the protection and licensing of musical works.

A. Key Players and Stakeholders

1. Indian Performing Right Society (IPRS)

The Indian Performing Right Society (IPRS) is the primary collecting society in India responsible for licensing and collecting royalties on behalf of composers, lyricists, and publishers. Established under the Copyright Act, the IPRS negotiates licensing agreements with various users of music, including broadcasters, digital platforms, and public performance venues. It plays a crucial role in the music licensing ecosystem by ensuring that royalties are collected and distributed to its members.

2. Phonographic Performance Limited (PPL)

Phonographic Performance Limited (PPL) is another major collecting society in India, focusing on the licensing of sound recordings. Representing record labels and performers, PPL ensures that royalties are collected for the public performance of their recordings. PPL negotiates licensing agreements with a wide range of users, including radio stations, TV channels, and digital platforms.

3. Music Composers and Lyricists

Composers and lyricists are the creators of musical works and hold the copyright to their

creations. They rely on collecting societies like IPRS to manage their rights, collect royalties, and ensure they receive fair compensation for the use of their works.

4. Record Labels

Record labels play a pivotal role in the music industry by producing, marketing, and distributing music. They own the copyright to sound recordings and negotiate licensing agreements with various users, including broadcasters, digital platforms, and public performance venues.

5. Digital Platforms and Streaming Services

The rise of digital platforms such as Spotify, Apple Music, and YouTube has transformed the music industry, creating new opportunities and challenges for music licensing. These platforms negotiate licensing agreements with collecting societies and record labels to ensure legal distribution of music and the payment of royalties to rights holders.

II. Types of Music Licenses

Understanding the different types of music licenses is essential for navigating the complex landscape of music licensing. The main types of licenses include:

A. Mechanical License

A mechanical license allows the licensee to reproduce and distribute a musical work in a physical or digital format. This type of license is typically required by record labels and digital music services that distribute copies of music to the public.

B. Performance License

A performance license allows the licensee to publicly perform a musical work, whether live or through recorded media. This license is commonly obtained by venues, broadcasters, and digital streaming services.

C. Synchronization (Sync) License

A synchronization license allows the licensee to use a musical work in synchronization with visual media, such as films, TV shows,

commercials, and video games. This type of license is essential for producers and content creators who wish to include music in their visual projects.

D. Print License

A print license permits the licensee to reproduce and distribute printed versions of a musical work, such as sheet music. Music publishers typically obtain this type of license to publish and sell sheet music.

E. Master Use License

A master use license allows the licensee to use a specific recorded version of a musical work. This license is often required in conjunction with a sync license when a specific recording is used in visual media.

III. Legal Framework for Music Licensing

The legal framework for music licensing in India is primarily governed by the Copyright Act, 1957, along with relevant amendments and case law interpretations.

A. Copyright Act, 1957

The Copyright Act, 1957, is the cornerstone of copyright law in India, providing the framework for the protection and licensing of musical works. Key provisions relevant to music licensing include:

1. Section 14: Meaning of Copyright

Section 14 defines the exclusive rights conferred by copyright, including the rights to reproduce, distribute, perform, and communicate the work to the public. For musical works, this includes the right to perform the work in public and to communicate it to the public.

2. Section 30: Licenses by Owners of Copyright

Section 30 allows the owner of the copyright to grant licenses for the use of their works. This section is fundamental for music licensing, as it enables rights holders to authorize others to use their works in exchange for royalties.

3. Section 31: Compulsory License in Unpublished or Published Works

Section 31 provides for compulsory licenses in certain circumstances, allowing the use of copyrighted works without the owner's consent, subject to payment of royalties determined by the Copyright Board. This provision aims to balance the rights of creators with public interest.

4. Section 33: Registration of Copyright Societies

Section 33 mandates the registration of copyright societies like IPRS and PPL, which are responsible for managing the rights of their members, licensing their works, and collecting and distributing royalties.

5. Section 52: Certain Acts Not to be Infringement of Copyright

Section 52 outlines exceptions to copyright infringement, including fair use provisions. These exceptions are relevant for understanding the boundaries of permissible use without a license.

B. Relevant Case Law

Case law has played a significant role in shaping the interpretation and application of copyright provisions in the context of music licensing.

1. Super Cassettes Industries Ltd. v. Music Broadcast Pvt. Ltd.

In this case, the Delhi High Court ruled that music broadcasters must obtain licenses from copyright holders before using their works. This case highlighted the importance of licensing agreements and the need for clear and enforceable legal provisions (2008 37 PTC 166 Del).

2. Gramophone Company of India Ltd. v. Super Cassettes Industries Ltd.

This case addressed the issue of copyright infringement in the context of sound recordings. The court emphasized the need for proper

licensing agreements to protect the rights of copyright holders (1996 SCC OnLine Cal 285).

3. Eastern Book Company v. D.B. Modak

This case, while primarily focused on copyright in legal databases, addressed the issue of fair use and the balance between protecting copyright holders' rights and allowing reasonable use of copyrighted works (2008 1 SCC 1).

IV. Comparative Analysis of Music Licensing Frameworks

Comparing India's music licensing framework with international standards provides valuable insights into potential areas of improvement.

A. United States

The U.S. music licensing system is characterized by a robust legal framework, including the Copyright Act of 1976 and the Music Modernization Act of 2018. The U.S. has multiple performing rights organizations (PROs) such as ASCAP, BMI, and SESAC, which compete to represent composers and publishers. This competition ensures better services and royalty rates for artists.

1. Music Modernization Act of 2018

The Music Modernization Act (MMA) addresses several key issues in the digital music era, including the creation of a centralized mechanical licensing system for digital music services. This Act aims to simplify the licensing process, ensuring that artists receive fair compensation for the use of their works on digital platforms.

2. Competition Among PROs

The existence of multiple PROs in the U.S. creates a competitive environment that benefits artists. Each PRO strives to offer better services and higher royalty rates to attract and retain members. This competition can lead to more efficient and artist-friendly licensing practices.

B. European Union

The EU's music licensing framework is harmonized through directives such as the Copyright Directive and the Collective Rights Management Directive. The EU emphasizes transparency and accountability in royalty management, with strict regulations on the operations of collecting societies.

1. Copyright Directive

The EU's Copyright Directive aims to harmonize copyright laws across member states, ensuring a consistent level of protection for rights holders. It also addresses the challenges posed by digital platforms, requiring them to obtain licenses for the use of copyrighted works.

2. Collective Rights Management Directive

The Collective Rights Management Directive focuses on improving the transparency and governance of collecting societies. It sets out rules for the operation of these societies, including requirements for accurate and timely royalty payments, transparent accounting practices, and effective dispute resolution mechanisms.

C. Lessons for India

India can learn from the competitive PRO environment in the U.S. and the transparency measures in the EU. Implementing similar practices could enhance the efficiency and fairness of the music licensing system in India.

1. Introducing Competitive PROs

Introducing competition among collecting societies in India could lead to better services and higher royalty rates for artists. Encouraging the establishment of multiple PROs could create a more dynamic and artist-friendly licensing ecosystem.

2. Enhancing Transparency and Accountability

Adopting transparency and accountability measures similar to those in the EU could improve the operations of collecting societies in India. Implementing clear rules for royalty collection and distribution, along with regular

audits and reporting, could build trust between artists and collecting societies.

V. Challenges in Music Licensing in India

Despite a robust legal framework, several challenges hinder the effective implementation of music licensing in India.

A. Lack of Awareness and Understanding

Many artists and rights holders lack awareness and understanding of the music licensing process, leading to missed opportunities for revenue and protection of their rights.

1. Education and Training

Providing education and training on music licensing can empower artists to better navigate the licensing landscape. Workshops, seminars, and online resources can help artists understand their rights and the licensing process.

2. Awareness Campaigns

Conducting awareness campaigns to inform artists about the importance of licensing and the services provided by collecting societies can increase their participation and engagement with the licensing system.

B. Enforcement and Compliance Issues

Enforcing licensing agreements and ensuring compliance with licensing requirements remain significant challenges. Unauthorized use of music and piracy are prevalent issues that undermine the efforts of rights holders and collecting societies.

1. Strengthening Enforcement Mechanisms

Strengthening enforcement mechanisms, including regulatory oversight and collaboration with law enforcement agencies, can address issues of unauthorized use and piracy. Implementing stricter penalties for copyright infringement can act as a deterrent.

2. Technological Solutions

Leveraging technology such as digital fingerprinting and automated content recognition can improve the tracking and

enforcement of licensing agreements. These technologies can help identify unauthorized use of music and ensure accurate royalty payments.

C. Dispute Resolution

Disputes over royalty payments and licensing agreements are common, highlighting the need for effective dispute-resolution mechanisms.

1. Establishing Dispute Resolution Bodies

Establishing dedicated dispute resolution bodies or mechanisms within collecting societies can provide a streamlined and efficient process for resolving conflicts. These bodies should be accessible, transparent, and impartial.

2. Alternative Dispute Resolution (ADR)

Encouraging the use of alternative dispute resolution (ADR) methods such as mediation and arbitration can provide quicker and more cost-effective solutions to licensing disputes. ADR can help maintain positive relationships between parties and reduce the burden on courts.

VI. Role of Technology in Music Licensing

Technological advancements offer both challenges and opportunities for music licensing.

A. Blockchain and Smart Contracts

Blockchain technology and smart contracts have the potential to revolutionize music licensing by providing a transparent and immutable record of rights and transactions. These technologies can streamline royalty payments and reduce disputes over rights.

1. Blockchain Technology

Blockchain technology offers a decentralized and transparent way to manage music rights and transactions. By recording all transactions on a public ledger, blockchain can ensure that rights holders receive accurate and timely royalty payments.

2. Smart Contracts

Smart contracts are self-executing contracts with the terms of the agreement directly written into code. These contracts can automate royalty payments, ensuring that artists receive their fair share without the need for intermediaries.

B. Digital Fingerprinting and Automated Content Recognition

Advanced technologies such as digital fingerprinting and automated content recognition can improve the tracking and management of music rights, ensuring accurate royalty payments and reducing infringement.

1. Digital Fingerprinting

Digital fingerprinting technology creates a unique identifier for each piece of music, allowing for accurate tracking of its use across various platforms. This technology helps collecting societies and digital platforms ensure that royalties are paid to the correct rights holders.

2. Automated Content Recognition

Automated content recognition technology can detect the use of copyrighted music in various contexts, such as streaming services, social media, and public performances. This technology helps enforce licensing agreements and ensures that artists receive fair compensation for the use of their works.

VII. Case Studies and Legal Precedents

Analyzing case studies and legal precedents provides practical insights into the challenges and solutions in music licensing.

A. Landmark Cases in Indian Music Licensing

Examining landmark cases helps understand the judicial approach to music licensing issues and the effectiveness of existing legal provisions.

1. Super Cassettes Industries Ltd. v. Music Broadcast Pvt. Ltd.

In this case, the Delhi High Court ruled that music broadcasters must obtain licenses from copyright holders before using their works. This case highlighted the importance of licensing agreements and the need for clear and enforceable legal provisions (2008 37 PTC 166 Del).

2. Eastern Book Company v. D.B. Modak

This case addressed the issue of copyright infringement and fair use in the context of digital platforms. The Supreme Court of India emphasized the need for balance between protecting copyright holders' rights and allowing reasonable use of copyrighted works (2008 1 SCC 1).

B. Successful Licensing Agreements and Disputes

Studying successful licensing agreements and resolved disputes can highlight best practices and areas for improvement in the music licensing process.

1. Licensing Agreement Between IPRS and Spotify

The licensing agreement between IPRS and Spotify is an example of a successful negotiation that benefits both parties. Spotify gains access to a vast library of Indian music, while IPRS ensures that its members receive fair compensation for the use of their works.

2. Dispute Between PPL and Radio Broadcasters

The dispute between PPL and radio broadcasters over royalty rates highlights the need for clear and transparent licensing agreements. The resolution of this dispute involved negotiations and regulatory intervention, resulting in a more equitable royalty structure.

VIII. Policy and Regulatory Reforms

Proposing policy and regulatory reforms is crucial for enhancing the music licensing ecosystem in India.

A. Proposed Reforms to Improve the Music Licensing Ecosystem

Reforms such as enhancing the transparency of collecting societies, introducing competitive PROs, and leveraging technology can improve the efficiency and fairness of the music licensing system.

1. Enhancing Transparency of Collecting Societies

Improving the transparency of collecting societies involves adopting clear and transparent accounting practices, providing detailed royalty statements, and ensuring timely royalty payments. These measures can build trust between artists and collecting societies.

2. Introducing Competitive PROs

Encouraging the establishment of multiple PROs can create a competitive environment that benefits artists. Competition can lead to better services, higher royalty rates, and more efficient licensing practices.

3. Leveraging Technology

Leveraging technology such as blockchain and automated content recognition can improve the efficiency and accuracy of royalty collection and distribution. These technologies can reduce disputes and ensure that artists receive their fair share.

B. Role of Government and Regulatory Bodies

The government and regulatory bodies play a critical role in shaping music licensing policies. Strengthening regulatory oversight and providing support for technological adoption can drive positive changes in the industry.

1. Strengthening Regulatory Oversight

Strengthening regulatory oversight involves ensuring that collecting societies operate

transparently and accountably. Regulatory bodies should enforce clear rules for royalty collection and distribution, and address disputes promptly and fairly.

2. Supporting Technological Adoption

Providing support for the adoption of advanced technologies can enhance the efficiency of the music licensing ecosystem. Government initiatives and funding can help collecting societies and digital platforms implement technologies such as blockchain and automated content recognition.

IX. Music Licensing for Public Performances and Broadcasting

Public performances and broadcasting constitute significant revenue streams for artists and rights holders.

A. Legal Requirements for Licensing Music for Public Performances, Radio, and TV

Understanding the legal requirements for licensing music for various uses ensures compliance and maximizes royalty collections.

1. Public Performances

Licensing music for public performances involves obtaining licenses from collecting societies such as IPRS and PPL. These licenses cover a wide range of uses, including live performances, background music in venues, and events.

2. Radio and TV Broadcasting

Radio and TV broadcasters must obtain licenses from collecting societies and rights holders to legally broadcast music. These licenses ensure that artists and rights holders receive compensation for the use of their works.

B. Compliance Issues and Best Practices

Adopting best practices for compliance can reduce disputes and enhance the efficiency of the licensing process.

1. Ensuring Compliance

Ensuring compliance with licensing requirements involves obtaining the necessary

licenses and adhering to the terms of the agreements. Users of music should regularly review their licensing arrangements to ensure they remain compliant.

2. Adopting Best Practices

Adopting best practices such as maintaining accurate records of music usage, providing timely payments, and engaging in transparent negotiations can improve the efficiency of the licensing process and reduce disputes.

X. Impact of Music Licensing on Independent Artists

Independent artists often face unique challenges in navigating the music licensing ecosystem.

A. Challenges Faced by Independent Artists

Independent artists may lack the resources and knowledge to navigate the complex licensing landscape, resulting in missed opportunities for revenue.

1. Limited Resources

Independent artists often have limited resources to invest in legal and administrative processes related to music licensing. This can make it difficult for them to secure licenses and collect royalties.

2. Knowledge Gaps

Navigating the music licensing landscape requires knowledge of legal and industry practices. Independent artists may lack the necessary expertise, leading to difficulties in securing licenses and ensuring fair compensation.

B. Opportunities within the Current Licensing Framework

Identifying opportunities within the current framework can help independent artists maximize their earnings and protect their rights.

1. Leveraging Collecting Societies

Independent artists can benefit from joining collecting societies such as IPRS and PPL, which can manage their rights and collect royalties on

their behalf. These societies can provide valuable support and resources.

2. Utilizing Digital Platforms

Digital platforms offer new opportunities for independent artists to distribute their music and reach a global audience. By negotiating licensing agreements with these platforms, artists can ensure they receive fair compensation for the use of their works.

XI. Role of Collecting Societies

Collecting societies are pivotal in managing and enforcing music rights.

A. Functions and Effectiveness of Collecting Societies

Evaluating the functions and effectiveness of collecting societies like IPRS and PPL provides insights into their impact on the music industry.

1. Negotiating Licensing Agreements

Collecting societies negotiate licensing agreements with a wide range of users, ensuring that rights holders receive fair compensation for the use of their works. These agreements cover public performances, broadcasting, digital platforms, and more.

2. Collecting and Distributing Royalties

Collecting societies are responsible for collecting royalties from users of music and distributing them to rights holders. They play a critical role in ensuring that artists receive their fair share of revenue.

3. Enforcement of Rights

Collecting societies enforce the rights of their members by monitoring the use of their works and taking action against unauthorized use. This involves legal proceedings, negotiations, and collaboration with regulatory bodies.

B. Areas for Improvement

Identifying areas for improvement can enhance the effectiveness of collecting societies in supporting artists and managing rights.

1. Enhancing Transparency

Improving the transparency of collecting societies involves adopting clear and transparent accounting practices, providing detailed royalty statements, and ensuring timely royalty payments. These measures can build trust between artists and collecting societies.

2. Improving Efficiency

Leveraging technology and streamlining administrative processes can improve the efficiency of collecting societies. This can reduce administrative costs and ensure that a larger share of royalties is distributed to rights holders.

3. Strengthening Dispute Resolution Mechanisms

Establishing effective dispute resolution mechanisms can provide a streamlined and efficient process for resolving conflicts. These mechanisms should be accessible, transparent, and impartial.

XII. Conclusion

The music licensing landscape in India, while robust, faces challenges in ensuring fair compensation for artists, enforcing licensing agreements, and adapting to technological advancements. By learning from international best practices and implementing proposed reforms, India can enhance its music licensing ecosystem, supporting artists and promoting cultural production. The impact of music licensing extends beyond the music industry, influencing the creative economy and contributing to cultural and economic growth. Ensuring a fair and efficient licensing system is essential for the sustainability and growth of the music industry in India.

References

1. The Copyright Act, 1957, India.
2. Super Cassettes Industries Ltd. v. Music Broadcast Pvt. Ltd., (2008) 37 PTC 166 (Del).

3. Gramophone Company of India Ltd. v. Super Cassettes Industries Ltd., 1996 SCC Online Cal 285.

4. Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1.

5. Indian Performing Right Society (IPRS), <https://www.iprs.org/>

6. Phonographic Performance Limited (PPL), <https://www.pplindia.org/>

7. ASCAP (American Society of Composers, Authors, and Publishers), <https://www.ascap.com/>

8. BMI (Broadcast Music, Inc.), <https://www.bmi.com/>

9. SESAC (Society of European Stage Authors and Composers), <https://www.sesac.com/>

10. Music Modernization Act of 2018, United States.

11. Copyright Directive, European Union.

12. Collective Rights Management Directive, European Union.

13. Spotify Licensing Agreement with IPRS, <https://www.spotify.com/>

14. Digital Fingerprinting Technology in Music, <https://www.drm.org/>

15. Blockchain Technology and Music Licensing, <https://www.musicbusinessworldwide.com/>

16. Automated Content Recognition, <https://www.audiblemagic.com/>

17. Licensing Music for Public Performances, <https://www.iprs.org/>

18. Licensing Music for Radio and TV Broadcasting, <https://www.pplindia.org/>