

COPYRIGHT INFRINGEMENT BY INDIAN HOTELS AND RESTAURANTS

Recently, the Mumbai High Court, in an application filed by Phonographic Performance Limited (“PPL”), passed an order restraining five prominent hotels/pubs/restaurants in Mumbai from playing copyrighted music on the New Year’s Eve. Further, PPL also sent notices to about 15 defaulting pubs, discotheques, lounge bars, hotels and other venues in Goa from using copyrighted music for commercial purposes without paying licensing fee. Similar notices were also sent to about 485 such users in nine other India cities.

Under India’s Copyright Act, 1957 (“Act”), The owner of a copyright in sound or music recording has the exclusive right to (i) make any other sound or music recording embodying it, (ii) sell or give on hire, or offer for sale or hire, any copy of the sound or music recording and (iii) communicate the sound or music recording to the public.

Playing of sound or music records in public places such as hotels, restaurants, pubs, discotheques, lounge bars, etc. requires a mandatory license from, and payment of copyright license fees to the copyright owner. Failure to obtain the aforesaid mandatory license is a criminal offence under the Act. The minimum punishment for infringement of copyright is imprisonment for 6 months, which may extend to 3 years and a minimum fine of Rs. 50,000, which may extend to Rs. 200,000. (Section 63 read with Section 68A)

The copyright owner may grant a license of any of his aforesaid rights to a copyright society to legally and commercially exploit his copyrighted work. By granting license, the copyright owner also gets the advantage of 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 organizational 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.

The PPL is a copyright society registered under the Act, and the apex-licensing arm of Indian music industry with over 120 music companies as its members. PPL *inter alia* issues or grants license to hotels, restaurants, pubs, discotheques, lounge bars, etc., to play copyrighted sound or music records in public. PPL is also

authorised to collect license fees on behalf of copyright owners and distribute it amongst the copyright owners.

Many hotels, restaurants, pubs, discotheques, lounge bars, etc., in India play music without obtaining the mandatory copyright license and payment of the requisite license fee thus eating into the earnings of the music companies who make significant investments in promoting music.

PPL has been very effective in preventing the hotels, restaurants, pubs, discotheques, lounge bars, etc. from infringing the rights of the copyright owners. Although it may be difficult to combat the large-scale music piracy in India, joining hands with PPL may help to prevent the unauthorized use of music by the hospitality industry and ensure adequate economic benefits for the copyright owners.