

INDIAN BROADCASTERS AND COMPULSORY LICENSES

The government of India has been in the process of privatising the broadcasting sector and has recently issued 37 licenses to private players to run radio channels in different parts of the country covering about 19 cities.

Majority of these private radio channels play Hindi film songs, FOR which they should obtain a license from a copyright society to play the film songs by paying a certain amount as royalty. The royalty received by such copyright society is shared with the original owners of the copyright.

The Phonographic Performance Ltd. (“PPL”) is such a copyright society with majority of music companies as its members. Recently, some of the private radio channels filed a complaint in the Copyright Board (the “Board”) alleging that PPL was demanding an unreasonable fee for allowing them to play film songs. The prayer in the complaint was for an order under section 31 of the Copyright Act, 1958 (the “Act”) for issue of a compulsory license. (*Music Broadcast Pvt. Ltd. and others v. Phonographic Performance Ltd.* MANU/CP/0006/2002, which can be accessed at www.manupatra.com) Section 31 of the Act provides for grant of a compulsory license at the rates to be decided by the Board, when the owner of a copyright refuses broadcast of works and withholds them from the public.

After hearing the counsels of both the sides, the Board observed that the Board can exercise its jurisdiction in this regard, only if the copyrighted work in issue is, (a) an Indian work; (b) has been published or performed in public; (c) the owner of copyright has refused to allow communication to the public by broadcast of such work or sound recording on such terms which the complainant considers reasonable; (d) complaint is made to the Board. It also observed that the term “Indian work” will include sound recording made or manufactured in India.

Further, in order to fix a license fee the Board did not have a comparable license fees to set as a benchmark for the license fees to be charged by PPL. Therefore, in the absence of adequate data the Board decided to give a judgment for a limited period from November 2002 to October 31, 2004 and directed the Registrar of Copyrights to issue compulsory licenses to all complainants on following terms:

Each complainant to deposit Rs. 20 lakhs per radio station by way of security in favour of PPL. They may furnish a bank guarantee as a substitute to deposit.

Every radio station to submit a monthly log sheet to PPL to enable it to prepare a debit note or invoice and for making payments to its members.

PPL to submit monthly invoices to each party showing the amount of royalty payable for the relevant previous month. On receipt of the invoice, the party will make payment to PPL through normal banking channels.

If invoice submitted by PPL are not paid for 2 consecutive months, PPL would be entitled to deduct the amount due from the security deposit. If the outstanding is not cleared for 3 consecutive months, PPL may terminate the license by giving 30 days notice to the party.

- (e) rate of royalty payment during the prime time broadcast shall be Rs. 1,200/- per needle hour. The rate for the day time and for night time shall be at a reduced rate.

The radio channels immediately furnished the bank guarantees and started playing film songs.

In the circumstances, the copyright owners approached the Bombay and Delhi High Courts to set aside the Board's order. They have challenged the Board's power to grant a compulsory license, its terms and the amount of royalty payable. Further, one of the radio channels has challenged the amount of royalty fixed by the Board. In view of the complexity of the matter, the High Courts proposed to move all the cases to the Supreme Court and issued notices in this regard to the copyright holders. Therefore, a final decision in this regard can be anticipated from the Supreme Court shortly.