

- IP

INTELLECTUAL PROPERTY

COPYRIGHT LAW

On 25th August 2010, the Copyright Board ("Board") put an end to the nine –year saga of compulsory licensing dispute between the radio stations and collecting society¹, in the matter of Music Broadcast Private Ltd ("MBPL") V. Phonographic Performance Limited ("PPL") and other connected applications [Case Nos. 1², 2³ and 6⁴ of 2002

along with Case Nos.(3-1, 3-2, 3-3)⁵, 3-4⁶, 3-5⁷ and 3-6⁸ of 2008], which had all the elements of a courtroom drama including testimonies by expert witnesses, by arriving at the magical figure of 2 % of net advertising revenue as the compulsory licensing rate.

¹ Collecting society herein referred to as ("PPL") is engaged in the administration of exploitation of sound recordings owned by record companies and individual artists.

² M/s Music Broadcast Pvt. Ltd. (Applicant) v. M/s Phonographic Performance Ltd.(Respondent)

³ M/s Entertainment Network (India) Ltd. (Applicant) v. M/s Phonographic Performance Ltd.(Respondent)

⁴ M/s Radio Mid Day West (India) Ltd. (Applicant) v. M/s Phonographic Performance Ltd.(Respondent)

⁵ CRB(NZ) Puran Multimedia Pvt.Ltd (Applicant) v. M/s Phonographic Performance Ltd.(Respondent)

⁶ CRB(NZ) M/s Entertainment Network (India) Ltd (Applicant) v. M/s Phonographic Performance Ltd.(Respondent)

⁷ CRB(WZ) Synergy Music Entertainment Ltd. (Applicant) v. M/s Phonographic Performance Ltd.(Respondent)

⁸ CRB(NZ) Rajasthan Patrika Pvt. Ltd. (Applicant) v. M/s Phonographic Performance Ltd. (Respondent)

BRIEF FACTS OF THE CASE

The applicants in all the above-referred cases had approached the Copyright Board requesting grant of compulsory license under Section 31(2) of the Copyright Act, 1957; as they found the then existing royalty rate excessive and burdensome. The disputes in 2002 had arisen because of PPL raising its royalty rate for broadcast of sound recordings to Rs. 1500 per needle hour or 20% of net advertising revenue.

ISSUES BEFORE THE BOARD

Issue 1 : Whether there should be compulsory licensing of sound recordings⁹ for the purpose of broadcast by radio stations?

Issue 2 : What model of compulsory licensing should be adopted – revenue sharing or absolute figure method? And at what percentage should it be pegged?

DETERMINATIONS BY THE BOARD

The Board considered a myriad of factors like unreasonableness and exorbitant nature of the current tariff of the copyright society but the

⁹ The PPL tariff for private FM Radio stations existing at the time of the decision was Rs. 2400 per needle hour or 20 % of net advertisement revenue whichever was higher.

‘public interest’ factor was the clinching element behind the Board’s decision that radio stations should be granted a compulsory license. The Board concurred with the argument advanced that private FM broadcasting agencies have been conceived as not just commercial profit driven ventures but they are also to serve an important public function in their social role as an instrument of nation building, providing not just entertainment but also dissemination of socially relevant information. The Board was also largely influenced by the fact that radio stations were bound by the government directive to be a ‘free to air’ service.

When it came to the question of determining the model to be adopted and the rate at which nascent FM industry should pay royalties to the recording companies, the Board considered factors including current modes of exploiting sound recordings in India i.e. digital media and role of veteran market players like Television and AIR, lack of restrictions on them with regard to revenue generating activities and their current market share. It even considered factors like piracy in determining the impact of radio on music industry, as one of the major arguments of the recording companies in charging the present tariff was that popularity of radio has resulted in loss of market share in physical formats like CDs. The Board was also swayed by the fact that even the Government had adopted license fee structure of revenue

sharing model¹⁰ in Phase II of its policy on expansion of FM radio broadcasting services.

Considering the aforesaid factors alongwith the aspects like government restrictions on radio as regards income generation, the loss at which industry is running currently, and the social development goal of the industry, the Board came to the conclusion that the only reasonable license model would be one based on a fixed percentage of net advertisement revenue. The Board also gave due consideration to the licensing rates world wide, to fix the compulsory licensing rate at 2% of net advertisement earnings and the license has been granted until the year 2020. The Board foresees the finally arrived at model of compulsory licensing as a sustainable one.

The rationale of the Board can be summarised as below:

“Product price linkage with the advertisement has ultimate linkage with volume of listeners. More listeners lead to more advertisement revenue which in turn leads to more price as a percentage to be paid to the licensor.”

For more information please refer to:

http://copyright.gov.in/Documents/Copyirgight_Board_orders_on_music_royalties_dt_25_8_2010.pdf

¹⁰ Annual license fee payable to government is 4% of gross revenues.

DSK Legal Knowledge Center

Contact Details: dsklegal.knowledgecenter@dsklegal.com

Mumbai Office
4th Floor, Express Towers,
Nariman Point,
Mumbai 400 021
India
Tel: (91 - 22) 6658 8000
Fax: (91 - 22) 6658 8001

Delhi Office
46, Aradhana, Chanakyapuri,
New Delhi 110 066
India
Phone : (91 - 11) 2687 1122; 2687 1133;
2687 1144
Fax : (91 - 11) 2687 1155

Disclaimer

The update is intended for your general information only. The information and opinions contained in this document are derived from public sources which we believe to be reliable and accurate but which, without further investigation, cannot be warranted as to their accuracy, completeness or

correctness. It is not intended to be nor should be regarded as legal advice and no one should act on such information without appropriate professional advice. DSK Legal accepts no responsibility for any loss arising from any action taken or not taken by anyone using this material.