

COPYRIGHT AMENDMENT ACT 2012 TURNS 10!- INDUSTRY EXPERTS SPEAK

By **Anushree Rauta** - June 21, 2022



A decade ago on this very day, the Copyright Amendment Act of 2012 came into effect. This amendment brought with it some sea changes which changed the landscape of the way the media and entertainment industry especially the music industry was functioning. As we celebrate the tenth year of this Amendment, we asked some of our industry experts on “What change would they like to see in the Copyright Act?”. Here is what they had to say:

KUMAR TAURANI, CHAIRMAN & MANAGING DIRECTOR, TIPS INDUSTRIES LIMITED

“Laws need to evolve with changing technological landscape and ensure that adequate safeguards are in place for rights holders to enforce their rights. The last few years have seen a steep rise in emergence of short video format apps who make billions of dollars in valuation but still shy away from having safeguards in place to ensure that unauthorised content is not uploaded on their platforms. Despite existence of technology to detect such usage, the current legal framework makes it easy for such platforms to find a way out and makes it cumbersome for right owners to enforce their rights. This needs to change. Piracy in any form and manner should not be allowed to continue”

”

MANDAR THAKUR, COO, TIMES MUSIC

“ Would love to see a well-balanced copyright act , considering the peculiarities of the Indian marketplace”

”

SANJAY TANDON, CEO, ISRA

“Let’s celebrate the completion of a Decade of the Copyright Amendment Act. A Decade that brought in seriousness to Copyright in India. Let’s look forward to the next Decade for better & effective Enforcement possible with another important round of Amendments.

Copy Enforcement

Right will be respected

Culture will flourish”

”

ATUL CHURAMANI, MANAGING DIRECTOR, TURNKEY MUSIC & PUBLISHING PVT. LTD

“The Act needs clarity on a lot of fronts that are hampering business. For example:

1) The right to receive royalty for the underlying work in a sound recording included in a cinematograph film is still not clear enough to prevent the matter going to court for adjudication.

2) The clause on ‘equal royalty’ to composers and authors needs to clarify equal royalty of what?

3) Similarly, a sweeping clause about sections pertaining to composer and authors rights also being applicable to broadcaster’s and performer’s rights needs far greater detailing since there is a lot of confusion regarding performer’s royalties.

4) The stipulation on cover versions needs serious alteration for the digital world we live in.

These are some very basic issues that hamper payment and collection of royalties to authors, composers and copyright owners because of the way the Amendment was worded”.

”

VIVEICK RAJAGOPALAN, MUSIC COMPOSER & PERCUSSIONIST

“Copyright with regards recording of live concerts especially in the traditional music vertical, needs to be looked at with a finer lens. It’s a huge industry which needs to be represented now than ever before”.

”

AASHISH REGO, MUSIC COMPOSER

“ *While on paper the Copyright Amendment Act 2012 promised a lot, it has failed to deliver on several counts :*

1) Compliance from certain broadcasters in paying royalties

2) Compliance of venues in payment of license fees

3) Lack of regulation of CMOs leading to arbitrary functioning

4) Discrimination against background score composers by “publishers” and songwriters in IPRS.

5) Record labels sitting on the board of IPRS in the guise of being publishers without performing any functions or duties of publishers and genuine publishers kept out

6) Royalties from radio yet to be received by music creators

These are primary issues amongst many others that I would prefer to see resolved first. Accountability, Transparency, strict transparency and quick enforcement needed to avoid the purpose of the amendment becoming a farce like it has become since the past 10 years. Stringent penalties for defaulters need to be put into place to provide some teeth to a toothless Act”!

”

LOHITA SUJITH – SR. DIRECTOR, COPYRIGHT AND DIGITAL ECONOMY, MOTION PICTURE ASSOCIATION

“ *It is imperative to protect the creative economy in a digital age from economic losses caused by online piracy. The Copyright Act should include a definition of effective technological protection measures that expressly includes access control measures and prohibits manufacture, importing and dealing in illicit streaming devices (circumvention devices) as well as the piracy applications and services that rely upon such devices.”*

”

ACHILLE FORLER, ADVISOR TO THE BOARD OF IPRS

“Leave this Act alone! I am willing to do shîrshâsana on a supârî for a whole year if it can bring correct interpretation of the Act by some courts and recalcitrant corporate users to pay their dues to the IPRS.”

”

HARSH KAUSHIK, COUNSEL, SUPREME COURT OF INDIA

“It is high time that the provisions under the Copyright Act be amended to remove the ambiguity around exploitation of underlying works through a society or by an individual/entity on its own. This will help the industry in streamlining their business arrangements and also reduce unnecessary litigation”.

”

HIREN KAMOD, IP COUNSEL, BOMBAY HIGH COURT

“As we complete 10 years of the revolutionary amendments to the copyright law, the question still remains as to whether it has achieved the desired purpose? Their heart was in the right place but I believe the amended provisions could have been more specific and definite as the Courts in the country are still interpreting the provisions introduced by the amendments ten years ago, primarily due to the ambiguity of the amended provisions.

Further, our copyright law needs to gear up for the digital era that is going to come or which has already arrived. The next decade is going to be interesting. With bitcoins, cryptos, NFTs, Metaverse and AI, the existing copyright law may be left behind if it is not modernised”.

”

RITESH KHOSLA, DEPUTY GENERAL COUNSEL & HEAD – STANDARDS & PRACTICES, SONY PICTURES NETWORKS INDIA

“The reforms introduced by the Copyright Amendment Act of 2012 completes ten years. Of the many changes this Amendment Act introduced, it codified authors’ right to receive royalties and linked it institutionally to the copyright societies, while reforming their functioning at the same time, for regulated and well administered economic benefits to the authors. However the Amendment Act could not crystalize the language of its provisions to deal with the layered nuances which emerged in the long enough period of a decade to test a statute. Consequently, this has led to contentions, disputes and challenges in Courts. There is still no authoritative jurisprudence that settles any of the multitude of these nuances. So I would like to see the Copyright Act bringing about the clarity and harmonization in its provisions to address these nuances.”

”

PRITI DESHPANDE, VICE PRESIDENT – LEGAL & BUSINESS AFFAIRS, HEAD – MUSIC PUBLISHING– UNIVERSAL MUSIC GROUP INDIA & SOUTH ASIA

“*In 2012, the Copyright (Amendment) Act sought to address some important industry issues in the then existing copyright regime and was thought to be progressive in its approach. It will always be considered a watershed moment for authors as the amendments granted authors an inalienable ‘right to royalty’ and changed the way music publishing business is conducted in India. However, for other stakeholders, the ambiguity in the legislation and the Copyright Rules notified thereafter, seems to have only added to the melee. Further, the statutory licensing provision under Section 31D has enabled end exploiters to use copyrighted content such as music, at throwaway prices and build lucrative business models at the cost of content creators. Provisions intended by the amendments to offer safe harbours to websites that offer technical / passive services to their users are being misused by platforms to avoid obtaining the required copyright licenses. Technological advancement over the last decade requires an ‘upgrade’ of certain statutory provisions. It is time the stakeholders reassessed the decade old amendments and bridged the gaps in the legislation.*”

”

DOMINIC DSOUZA, LEGAL HEAD (CONSULTANT) BALAJI TELEFILMS LIMITED

“*While change may be too harsh a word, perhaps a fine tuning of the understanding of music, musical works and royalties payable thereto would surely help the music industry go a long way in such emerging times*”.

”

KINAT SISODIA, DIRECTOR LEGAL – STUDIOS, FILMS AND MUSIC, ZEE ENTERTAINMENT AND ENTERPRISES LIMITED

“*The Amendment came with great intent but achieved with only creating ambiguities. I wish the Amendment could clear out the understanding on the provisos of section 18*”.

”

ISHA RATHNAM, CLO (DIRECTOR – LEGAL AFFAIRS) SOUTH ASIA & NETWORKS – EMERGING MARKETS ASIA AT LIONSGATE INDIA

“Summarising ten years of analysis, discussions, debates on the interpretation, effective implementation of the amendments to the Copyright Act as follows : “Simplified, clear and express guidelines around royalties and a transparent mechanism for its roll out which would be beneficial to all stakeholders of the IP pie. For an industry expanding at an enviable growth rate, clarity and coherence around this is a bygone conclusion.”

”

BISHWARUP CHAKRABARTI, GENERAL COUNSEL, EROS GROUP

“The position on royalties remains as obscure and incomprehensible as ever. Right from the incidence of accrual to royalties being shared on an equal basis with the assignee of copyright or an ‘equal share of royalties’ in Sections 18 and 19 there is no clarity within the statute about what these terms actually mean. It also remains unclear as to who is liable to pay eligible authors and performers and given the fact that non-payment of royalties could be interpreted as a criminal offence, an amendment is not just essential, it is long overdue”.

”

SAEE JONDHALE- HEAD LEGAL, BELIEVE (INDIA)

“The speculation of 31D being applicable to internet platforms needs immediate attention. Without diving into the merits of the matter or the interpretation of statute, it is evident that such applicability will put the very existence of labels into question. How will they bear or recover the production cost? In my opinion, bringing the internet platforms under the ambit of 31 D is an one sided approach.

”

RUPEN THAKKAR- ASSOCIATE VICE PRESIDENT, LEGAL, UNACADEMY

“Inclusion of provisions with respect to mandatory registration of title deeds of the cinematograph film with the Registrar of Copyrights in the Copyright Act. All assignment and production agreements with respect to cinematograph film and all works associated therewith, and agreements creating encumbrance of any nature on such cinematograph film shall be compulsorily registered with the Registrar of Copyrights under unique intellectual property ID, to make it effective and binding. It will pave the way towards robust and transparent ecosystem under existing regulatory regime, which will record and monitor rightful authors, owners and lien holder of the cinematograph film and include each subsequent assignment and / or license. It shall certainly facilitate the potential assignee, licensee or lenders, to do thorough due diligence before commercial commitments, which may result

in reduction in disputes and litigations arises amongst contracting parties due to non-availability of such transparent and reliable information”.

”

ANKITA MALVIYA, GENERAL MANAGER, LEGAL, SHEMAROO ENTERTAINMENT LIMITED

“ *“One radical shift in the past 10 years is the change in perception of numerous people dealing with copyrights, more awareness, recognition, and acceptance of the interests of various stakeholders. The amendment does lack clarity in letter, giving rise to conflicting interpretations and thereby litigations. Many issues are pending in the courts which need to be put to rest to achieve the actual intent of the amendments. Like the royalty payouts, which continues to pose a challenge for all and even performers rights. This gives rise to temporary solution beings offered in agreements which continue to create ambiguity. Also, it would be even more challenging with the growth and advancement in technology, especially with the world moving towards AI and metaverse etc. On the positive side, efforts of institutions like IPRS in setting up processes for administering royalties and implementing the amendments, cannot be completely ignored”.*

”

MRIDULA DALVI, LEGAL ASSOCIATE, INDIAN MUSIC INDUSTRY (IMI)

“ *“The recorded music industry loses revenues to the tune of 1000 cr due to the unfair exemption on public performance revenue collection when sound recordings are played in weddings (Section 52 z (a) of the Copyright Act, 1957). It is high time that this exemption be re-looked at, and only the truly traditional aspects of weddings be exempt from public performance fees”.*

”

SANDHYA SURENDRAN, ENTERTAINMENT, MEDIA & TECH LAWYER

“ *“With the 2012 amendment, performers were granted economic rights and therefore the ability to collect royalties.. however, the conflict here is that given the ‘one copyright society per category’ mandate, the only society that allows performers to collect royalties is limited to singers. If the law allowed more copyright societies per category, performers across the board would have the opportunity to collect royalties”.*

”

AARUSHI JAIN, LEADER IP, MEDIA AND EDUCATION PRACTICE, NISHITH DESAI ASSOCIATES

“*So much has changed in the way we perceive and structure rights. With NFTs, Metaverse and the like being a reality, copyright law as it stands today will pose more questions than provide answers. The current version of the law had a good run. But it's time to think ahead, to shape the copyright law of the future”.*

”

VANDITTA MALHOTRA HEGDE, MANAGING PARTNER AND FOUNDER, VMH & ASSOCIATES

“*Last decade one has seen a sea change in the world of Copyright. Par Yeh dil mange much more:*

1) Decriminalisation of certain offences under the Copyright Act – Let's see that happen.

2) Need of the hour is also the addition of provisions that can:

penalise companies/people for wrongfully claiming to be copyright owners thereby depriving rightful copyright owners of their due.

Will make a huge economic impact for legit copyright owners”.

”

P.S.

These are Vanditta Malhotra Hegde's personal views and not that of VMH&ASSOCIATES

GEETANJALI VISVANATHAN, PARTNER, IRA LAW

“*The gusto and novel intentions with which the Copyright Amendments 2012 were passed, brought with them both positive and negative changes in the law. On the one hand the right of royalty of authors and musicians was recognised which is a welcomed change but on the other hand I feel draconian provisions like 31D were introduced in an age when I believe the radio industry in India did not need the support. One change which would be welcomed would be tweak 31D in a manner where only those radio broadcasters who are small and have not crossed a certain threshold of revenues ought to be given subsidy in the form of royalty rates set by the Board. Else the policy that “Music is*

not free” ought to be strictly implemented as every player involved whether it is the lyricist, composer or record label each deserve to be paid their dues”.

”

JAHAN SINGH DHALIWAL, ADVOCATE, (JSD LEGAL, CHANDIGARH)

“*“Ambiguities in sections 19(9) and (10) of the Act with regard to equal share of royalties for various stakeholders should be clarified so as to clearly identify the right and share percentage of each stakeholder.*

In addition, the Act should have an option to clearly allow the assignee/licensee to have an option to pay a one time consolidated sum as consideration for assignment/license”.

”

RAHUL AJATSHATRU, COUNSEL & HEAD OF CHAMBERS, AJATSHATRU CHAMBERS

“*“Copyright Amendment Bill 2010 was drafted in a hush-hush manner and swiftly passed by Parliament. The Copyright Amendments of 2012 fell terribly short of what was expected from it. It has given more complications than solutions. Copyright law in India needs re-writing, de novo. Undoing the chaos of 2012 Act and making things simple and clear is the need of the hour.”*

”

KAIZAD IRANI COUNSEL, FOUNDER KBI LAW

“*“Copyright Board to IPAB to Commercial Court .. God knows what next? and hopefully this is the full stop now.*

Phew ! I am so glad finally Radio Broadcasters could invoke their statutory right to broadcast sound recordings ..after hmm.. more than 8 years when IPAB passed its land mark ruling fixing rates.

But Govt killed IPAB for its good work.

Be as it may the Act and the Rules which I believe in some cases are more ambiguous are tailor made for various interpretation which leads to Courts for adjudication.

Well good for us as what is fair use to me may not be fair use to you. Let Court decide 😊

The ambiguity of sections 18 and 19 need to be addressed .. who will share royalty? by whom?

The License agreements the issue on royalty who will pay, burden on whom, will be subject to Judgment of Court has given in house lawyers ample brain storming time.

The area of Single window licensing needs to be addressed.

Either the Govt takes a stand that it shall allow multiple registration of copyright society in same class of work or make it abundantly clear that sorry it cannot happen .. like I remember they refused SIMCA on the ground PPL existed.

The Govt needs to address the interplay of section 30, 33 of the Act ,Rule 54 instead of matters going to courts on the right of PPL / Novex to issue license/ carry out business of issuing license etc.

And Govt should stop issuing office memo or public notice giving clarification without either amending the Act or Rules which invariably gets thrashed by Courts.

I believe the Act and Rules certainly need a relook and must include the definition of Virtual Digital Assets which includes NFT as well and sections/ rules need to be in place for their sale/ distribution as a part of the Act”.

”

We at Iprmentlaw have been campaigning since the last few years on the need to revamp the Copyright Act. See the coverage here:

2018- <https://iprmentlaw.com/guest-column/copyright-amendment-act-2012-turns-six/>

2020- <https://iprmentlaw.com/2020/06/18/iprmentlaw-virtual-roundtable-conference-need-to-revamp-the-copyright-act/>

2021- <https://iprmentlaw.com/back-to-basics/#videos>

Image Source: Here