

## **COPYRIGHT SOCIETIES:**

### **Concept of Copyright Societies:**

Collective administration of copyright by societies is a concept where management and protection of copyright in works are undertaken by a society of authors and other owners of such works. No authors and other 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 organisational 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. Because of the country's membership in international conventions, the copyright societies are able to have reciprocal agreements with similar societies in other countries for collecting royalties for the uses of Indian works in those countries. Therefore, it is in the interests of copyright owners to join a collective administration organisation to ensure better protection to the copyright in their works and for reaping optimum economic benefits from their creations. Users of different types of works also find it easy to obtain licences for legal exploitation of the works in question, through the collective administrative society.

### **Copyright societies in India:**

A copyright society is a registered collective administration society under Section 33 of the Copyright Act, 1957. Such a society is formed by authors and other owners. The minimum membership required for registration of a society is seven. Ordinarily, only one society is registered to do business in respect of the same class of work. A copyright society can issue or grant licences in respect of any work in which copyright subsists or in respect of any other right given by the Copyright Act.

The business of issuing or granting license in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered under this Act. This is a kind of compulsory collective licensing for managing of performing rights.

The registration granted to a copyright society shall be for a period of five years and may be renewed from time to time before the end of every five years on a request in the prescribed form and the Central Government may renew the registration after considering the report of Registrar of Copyrights on the working of the copyright society under section 36.

The renewal of the registration of a copyright society shall be subject to the continued collective control of the copyright society being shared with the authors of works in their capacity as owners of copyright or of the right to receive royalty. Every copyright society already registered before the Copyright (Amendment) Act,

2012 came into existence shall get itself registered under this Chapter within a period of one year from the date of commencement of the Copyright (Amendment) Act, 2012.

### **Functions of a copyright society:**

#### **Conditions subject to which a copyright society may issue licences, collect fees and distribute such fees.**

(1) A copyright society may issue licences and collect fees in accordance with its Scheme of Tariff in relation to only such works as it has been authorised to administer in writing by the authors and other owners of rights and for the period for which it has been so authorised.

(2) The distribution of fees collected shall be subject to a deduction not exceeding fifteen per cent of the collection on account of administrative expenses incurred by the copyright society.

#### **Administration of rights of owner by copyright society** (*Section 34 of Copyright Act, 1957*)

(1) (a) a copyright society may accept from an author and other owner of rights exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and

(b) an author and other owner of rights shall have the right to withdraw such authorisation without prejudice to the rights of the copyright society under any contract.

(2) It shall be competent for a copyright society to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act, to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign country by such foreign society or organisation:

Provided that no such society or organisation shall permit any discrimination in regard to the terms of licence or the distribution of fees collected between rights in Indian and other works.

(3) Subject to such conditions as may be prescribed, a copyright society may-

(i) issue licences under section 30 in respect of any rights under this Act;

(ii) collect fees in pursuance of such licences;

- (iii) distribute such fees among author and other owners of rights after making deductions for its own expenses;
- (iv) perform any other functions consistent with the provisions of section 35.

**Control over the copyright society by the authors and other owner of rights.-** (*Section 35 of Copyright Act,1957*)

(1) Every copyright society shall be subject to the collective control of the author and other owners of rights under this Act whose rights it administers (not being author and other owners of rights under this Act administered by a foreign society or organisation referred to in sub-section (2) of section (34) and shall, in such manner as may be prescribed,-

(a) obtain the approval of such owners of rights for its procedures of collection and distribution of fees;

(b) obtain their approval for the utilisation of any amounts collected as fees for any purpose other than distribution to the owner of rights; and

(c) provide to such owners regular, full and detailed information concerning all its activities, in relation to the administration of their rights.

(2) All fees distributed among the owners of rights shall, as far as may be, be distributed in proportion to the actual use of their works.

(3) Every copyright society shall have a governing body with such number of persons elected from among the members of the society consisting of equal number of authors and owners of works for the purpose of the administration of the society as may be specified.

(4) All members of copyright society shall enjoy equal membership rights and there shall be no discrimination between authors and owners of rights in the distribution of royalties.

**Records to be maintained by copyright societies**

Every copyright society shall maintain the following registers at its registered or administrative office—

(i) a register of authors and other owners to be called the "Register of Authors and Other Owners" in respect of right or set of rights in the specific categories of works for which the copyright society has been authorised to issue or grant licences. The register shall contain the names of the authors and other owners, their addresses, the nature of rights authorised to be administered by the copyright society, year of publication of the work, the date on which the copyright society becomes entitled to

issue or grant licences and the duration of such entitlement, the territory for which the authorization has been given and the rights that have been so authorised;

(ii) a register to be called the "Register of Agreements" containing a copy of every agreement entered into by the copyright society with the authors and other owners for the purpose;

(iii) a register to be called the "Register of Royalties" containing particulars of royalties and mentioning the names of persons or organisations and copy of the licence agreements from whom the royalties have been realised, and the amount so realised including the date of realisation;

(iv) a register to be called the "Disbursement Register" containing details of disbursement of royalties made to each author or other owner of right or set of rights in the specific categories of works, category-wise, mentioning the name of the author or other owner, nature of his right and the date and amount of disbursement of royalty made to him.

#### **Tariff Scheme by copyright societies.**

Every copyright society shall publish its tariff scheme in such manner as prescribed in the Copyright Rules, 2013. Any person who is aggrieved by the tariff scheme may appeal to the Copyright Board and the Board may, if satisfied after holding such inquiry as it may consider necessary, make such orders as may be required to remove any unreasonable element, anomaly or inconsistency therein. The aggrieved person shall pay to the copyright society any fee as may be prescribed that has fallen due before making an appeal to the Copyright Board and shall continue to pay such fee until the appeal is decided, and the Board shall not issue any order staying the collection of such fee pending disposal of the appeal. The Copyright Board may after hearing the parties fix an interim tariff and direct the aggrieved parties to make the payment accordingly pending disposal of the appeal.

#### **Distribution Scheme .—**

(1) A copyright society shall frame a scheme to be called the "Distribution Scheme" setting out the procedure for distribution of royalties specified in the Tariff Scheme among the members whose names are entered in the Register of Authors and Owners maintained under clause (i) of rule 59 for the approval of the General Body of the society, as soon as may be, but in no case later than three months from the date on which a copyright society has become entitled to commence its copyright business.

(2) The distribution shall, reasonably, be in proportion to the royalty income of the copyright society derived from the grant of licences for right or set of rights in the

specific categories of works for which it is administering each author and other owners of right.

(3) There shall be no discrimination between authors and other owners of rights in the distribution of royalties by the copyright society.

(4) While distributing the royalties the copyright society shall inform all members about the basis on which such amount of royalties are being distributed.

(5) The Distribution Scheme shall aim to ensure that all royalty distributions are fair, accurate, cost effective and without any unknown or hidden cross-subsidies.

(6) The society shall fix parameters in a transparent manner for determining the share of distribution of its members and reveal the details of the same in a manner that is easily understandable to its members.

(7) The distribution of royalties shall be based on actual use or reliable statistical data that fairly represent the commercial exploitation of the licensed rights.

(8) The Distribution Scheme shall ensure that the royalties to all members are distributed at least once in a quarter.

(9) The copyright society shall not make any payment in the nature of minimum guarantee to its members against the share of royalties due to its members.

(10) The royalties collected based on the Tariff Scheme for the licensing of the rights in the literary or musical works included in a cinematograph film or sound recording shall be shared on an equal basis with the authors of literary or musical works and the owners of rights in cinematograph film or sound recording under sub-section (1) of section 18.

### **Meeting of a copyright societies.**

(1) Every copyright society shall hold a General Body meeting of all its members as its annual General Body meeting before the 31<sup>st</sup> day of March every year.

(2) A special meeting of the General Body called extra ordinary General Body meeting of all its members may also be held, if considered necessary, by two thirds majority of the Governing Council.

(3) The meetings of General Body and Governing Council shall be held in the town or city in which its registered office is situated or such other convenient place as decided by the Chairman of the society.

(4) The notice for General Body meeting shall be issued before twenty-one days of the meeting and it shall specify the agenda, time, date and address of the venue of the meeting and the same shall be posted on the website of the society.

(5) Every member of the society shall have equal voting rights in the General Body meetings.

(6) There shall be no discrimination between members who are authors and other owners of right.

(7) Quorum for meetings of the General Body shall be one third of the total members and in case of lack of quorum the meeting may be adjourned for thirty minutes and then members present shall constitute quorum.

(8) Quorum for the meetings of the Governing Council shall be one third of its total members other than the Chairman with equal number of authors and other owners.

(9) The Registrar of Copyrights shall be invited as an observer to all General Body meetings. The Registrar or his authorised representative on his behalf may attend the said meeting.

### **Documents to be presented in the annual general meeting of owners of rights.**

Every copyright society shall place before its annual General Body meeting the following documents, namely:—

(i) an up-to-date list of the authors and other owners of right or the set of rights in the specific categories of works for which the copyright society has been authorised to issue or grant licences, their names and addresses as recorded in the Register of Authors and Owners maintained by the copyright society, as provided in sub-rule (i) of rule 64;

(ii) audited accounts of the society for the previous year;

(iii) the Tariff Scheme and the Distribution Scheme or any other scheme including the decision of the Copyright Board on the said Schemes, if any;

(iv) annual report as approved by the Governing Council, giving full and detailed account of all its activities during the previous years;

(v) Budget estimates along with programme of action as approved by the Governing Council for the succeeding year;

- (vi) the agreements, if any entered with foreign copyright societies under sub-section (2) section 34 of the Act;
- (vii) any changes made in the instrument of registration of the society; and
- (viii) any other document relating to the society that require approval of the General Body.

### **Returns to be filed by the copyright societies with the Registrar of Copyrights.**

Every copyright society shall file a return called the Annual Return with the Registrar of Copyrights within one month from the date of conclusion of each annual General Body meeting setting out the following details, namely :—

(i) the date of the annual General Body meeting held immediately preceding the filing of the annual return, the number of members who attended the meeting, agenda and the minutes of such meeting ;

(ii) the up-to-date list of the members, their names and addresses as recorded in the Register of Authors and Owners maintained by the copyright society, as provided in rule 64;

(iii) audited accounts of the copyright society;

(iv) the Tariff Scheme, Distribution Scheme and other Schemes, if any;

(v) annual report approved by the General Body giving full and detailed account of all its activities during the year;

(vi) the list of the members to whom royalties are not distributed and the reasons for the same; and

(vii) the list of the members to whom royalties have been distributed together with the amounts so distributed.

### **Code of Conduct for copyright societies**

Every copyright society shall conform to the following Code of Conduct as

follows:-(1 )Every Society shall make available on its website-

(a) certificate of registration as a Copyright Society;

(b) basic documents of governance such as memorandum of association, articles of association, constitution or charter;

(c) list of all members of General Body;

(d) names and address of Chairman, other members of the Governing Council and other officers of the society;

(e) right or set of rights in the specific categories of works for which the copyright society has been authorised to issue or grant licences;

(f) all schemes of the society;

(g) annual report and audited accounts as approved by the General Body;

(h) licence agreement formats;

(i) details of all existing licences other than those clauses in the licence having commercial sensitivity;

(j) foreign societies with whom there are agreements to collect royalties and the details of the agreement other than those clauses having commercial sensitivity;

(k) details of the complaint or Grievances Cell; and

(l) the code of conduct.

(2) The members shall be-

(a) treated fairly, honestly, impartially, courteously, and ensure that its dealings with them are more transparent;

### **Frequently Asked Questions:**

#### **Are individual rights owners are entitled to issue licences and collect royalties who are not members of any copyright society ?**

As per Section 30 of the Copyright Act, 1957, the owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorised agent. Therefore, apart from copyright societies any individual rights owners (e.g. Super Cassette Industries/ Yash Raj Music/ Big Music etc.,) are entitled to issue licences and collect royalties.

However, the business of issuing or granting license in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered

under this Act. This is a kind of compulsory collective licensing for managing of performing rights. Any non-membership in IPRS or individually issuing performing right licences by any music company is illegal as per the Act.

As per Section 52 (a) of the Copyright Act, 1957, copyright in a work shall be deemed to be infringed, when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under the Act.

### **Registered copyright societies in India:**

The following are the registered copyright societies in India:

i. **For musical works:** The Indian Performing Right Society Limited (IPRS)\*, 208, Golden Chambers, 2nd Floor, New Andheri Link Road, Andheri (W), Mumbai- 400 058( Web-site:<http://www.iprs.org/> );

ii. **For sound recording:** *Phonographic Performance Limited (PPL)#* Crescent Tower, 7<sup>th</sup> Floor, Off New Link Road, Andheri (West), Mumbai 400 053. (Web-site:<http://www.pplindia.org/> );

iii. **For reprographic(photo copying) works:** *Indian Reprographic Rights Organization (IRRO)*, 18/1-C, Institutional Area, Near JNU Campus, New Delhi – 110067, (We-site: <http://www.irro.in/> )

iv. **For performers(Singers) Rights:** Indian Singers Rights Association (ISRA)- A registered on 14<sup>th</sup> June, 2013 – Registered Office - 2208, Lantana, Nahar Amrit Shakti, Chandivali,Andheri(E),Mumbai400072.(Web-site: <http://isracopyright.com>);

[\* The Re-registration application filed by IPRS before the Central Government under the Amended Provisions of Section 33 of the Copyright Act, 1957 is still under consideration of the Government and no final decision has been taken on it so far in view of an ongoing inquiry against the IPRS under section 33(4) of the Act under the Inquiry Officer Dr. Y.P.C. Dangay. The letter written by IPRS to the Central Government that they were withdrawing their re-registration application and no more want to work as a copyright society has not been accepted by the Central Government keeping in view the larger interest involved of the Society members.

# The Re-registration application filed by PPL before the Central Government under the Amended Provisions of Section 33 of the Copyright Act, 1957 is also under consideration of the Government and no final decision has been taken on it so far in view of certain allegations labelled against the society. The letter written by PPL to the Central Government that they were withdrawing their re-registration application and no more want to work as a copyright society has not been accepted by the Central Government keeping in view the larger interest involved of the Society members.]

## **Performers' Society**

**Registration and management of Performers' Society.** — (1) For the purpose of carrying on the business of issuing or granting licences in respect of performer's rights under sub-section (1) and proviso to sub-section (2) of section 38A and section 39A , there shall be a separate performers' society for each class of performers such as actors, singers, musicians, dancers, acrobats, jugglers, conjurers, snake charmers, persons delivering lectures or any other group of persons who can make a performance:

Provided that the Central Government may allow registration of a society for performers' of different classes of performers' in cases where the performances are inter-connected or closely related to each other.

(2) Such society shall be called as Performers' Society of that specific category.

(3) In accordance with the provisions of section 39A, any Performers' Society as mentioned in sub-rule (1), having an independent legal personality comprising seven or more performers (hereinafter referred to as "the applicant") may file with the Registrar of Copyrights an application in Form -XI, for submission to the Central Government for grant of permission to carry on such business and for its registration as a Performer's Society.

(4) Chapter XI of these rules relating to Copyright Societies except sub-rule (1) of rule 44 shall with necessary adaptations and modifications shall apply to a Performer's Society also.

*Explanation 1.*—The royalty collected from enjoyment of the performer's right in (i) to (v) of clause (a) of sub-section (1) and proviso to sub-section (2) of section 38A, shall be shared equally between the performer and other owner of copyright.

*Explanation 2.*—Commercial use as mentioned in proviso to sub section (2) of section 38A, means the exploitation of the performers right by way of reproduction, issue of copies or distribution, communication to public including broadcasting and commercial rental of the cinematograph film.

*Explanation 3.*— For the purpose of this chapter performance includes recording of visual or acoustic presentation of a performer in the sound and visual records in the studio or otherwise.

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