

## **Legal Issues in 'Media and Legislature'**

**Issue: Do Internet Streaming Services Fall Under the Ambit of  
"Broadcasting Organization"?**

## Relevant Provisions of the Copyright Act, 1957

- ❖ **Section 2(dd)** – “*“broadcast” means communication to the public— (i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or (ii) by wire, and includes a re-broadcast;*” [Emphasis supplied]
- ❖ **Section 2(ff)** – “*“communication to the public” means making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing physical copies of it, **whether simultaneously or at places and times chosen individually**, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available.*

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*Explanation.-For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public;”* [Emphasis supplied]

## Relevant Provisions of the Copyright Act, 1957 (Contd.)

❖ **Section 31D – “Statutory license for broadcasting of literary and musical works and sound recording.—**

*(1) Any **broadcasting organization** desirous of communicating to the public **by way of a broadcast** or by way of performance of a literary or musical work and sound recording which has already been published may do so subject to the provisions of this section....*

*(2) The broadcasting organization shall give prior notice ...*

*(3) The rates of royalties for radio broadcasting shall be different from television broadcasting and the Appellate Board shall fix **separate rates for radio broadcasting and television broadcasting.**” [Emphasis*

3  
supplied]

## Relevant Provisions of the Copyright Rules, 2013

- ❖ **Rule 29** – *“Notice for Communication to the Public of literary and musical works and sound recordings.....*

*(3) Separate notices shall be given for communication to the public by way of **radio broadcast or television broadcast** or by way of performance of a literary or musical work and sound recording which has already been published.” [Emphasis supplied]*

- ❖ **Rule 30** – *“Maintaining of records –...The broadcasting organization shall maintain separate records for **radio broadcasting and television broadcasting.**” [Emphasis supplied]*

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- ❖ **Rule 31** – *“Manner of determining royalties-..... notice shall be given separately for **radio and television broadcasting.**” [Emphasis supplied]*

## Relevant Case Laws

- ❖ ***Warner/Chappell Music Ltd. v. Spotify AB* [Leave Petition No. 46 of 2019, COMIP (L) No. 256 of 2019, Bombay High Court, February 26, 2019]**
  - Spotify AB invoked the compulsory licensing scheme under Section 31D through a notice to the IPAB of its intention to broadcast the works of Warner Chappel Music Ltd. [WCM] as an “internet broadcaster”.
  - WCM in response to the notice and anticipating infringement of copyright, sued Spotify.
  - Peculiar interim arrangement - Spotify to deposit a sum of 6.5 Crores with the High Court and refrain from pursuing their statutory licensing application before the IPAB.
  - 5 • The Court’s order appears to allow Spotify, *in the absence of a voluntary or statutory license*, to use WCMs catalogue of musical works, subject to the remuneration being offset upon the final disposition of the suit.
  - Out of court settlement – multi-territory licensing agreement in 2020.

## Relevant Case Laws (Contd.)

- ❖ ***Tips Industries Ltd. v. Wynk Music Ltd. and Ors.* [Commercial Suit IP (L) No. 113 of 2018 & Commercial Suit IP (L) No. 114 of 2018, Bombay High Court, April 23, 2019]**
- Defendants took recourse under Section 31D of the Act, 1957 by claiming themselves to be a broadcasting organisation by virtue of which are entitled to a statutory license.
- **1. Whether the Defendants can invoke Section 31-D of the Act to exercise a Statutory License in respect of their download/purchase business?**
  - *“..the commercial rental/sale of sound recordings and broadcasting of sound recordings are **two distinct activities...**”*
  - *“...Since the right to commercially rent and/or sell a sound recording is a separate and distinct right as against the right to communicate the sound recording to the public, the Defendants cannot exercise a Statutory License under Section 31-D in respect of the download and purchase features provided by them...” [Emphasis supplied]*

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## Relevant Case Laws (Contd.)

- ❖ ***Tips Industries Ltd. v. Wynk Music Ltd. and Ors.* [Commercial Suit IP (L) No. 113 of 2018 & Commercial Suit IP (L) No. 114 of 2018, Bombay High Court, April 23, 2019] [Contd.]**
- **2. Whether the Defendants can invoke Section 31-D of the Act to exercise a Statutory License in respect of the Plaintiff's Repertoire for internet broadcasting?**
  - “...the provisions of Section 31-D read with Rules 29 to 31 coupled with the legislative history preceding the passage of Copyright Amendment Act, 2012 clearly support the submission that Section 31-D contemplates only television and radio broadcasting and not internet broadcasting ...” [Emphasis supplied]
  - 7 ▪ “Seeking to claim benefit of Section 31-D, the Defendants have contended that they are a broadcasting organization and that they are communicating to the public by way of broadcast of the Plaintiff's Repertoire over internet. The question that stems now is that, whether a Statutory License under Section 31-D available to internet broadcasters such as the present Defendants? A joint reading of the Act and the Rules suggests the answer is in the negative. ...”

## Limitation of Regulatory Framework

Inclusion of internet  
broadcasters in S.31D?

Legislative intent?

Central Government's  
clarifications?

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## Limitation of Regulatory Framework (Contd.)

- ❖ **Office Memorandum [OM] released by the Department of Industrial Policy & Promotion on September 5, 2016:**

*“...the words “any broadcasting organization desirous of communicating to the public...” may not be restrictively interpreted to be covering only radio and TV broadcasting as definition of ‘broadcast’ read with ‘communication to the public’, appears to be including all kind of broadcast including internet broadcasting...”*

- 1. Does the Central Government have the right to issue such an OM and is it binding?*
- 2. Is the OM legally sound?*

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## Conclusion

- ❖ Is the interpretation of the law narrow?
- ❖ The Copyright (Amendment) Rules, 2019
  - Wherever the words “*radio and television broadcasting*”, the words “*each mode of broadcast*” shall be substituted - Rules 29,30 & 31
  - To expand the scope of statutory licenses to include all types of broadcasting services.
- ❖ Do we need a Music Modernisation Act?

# THANK YOU!

## Questions?

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