

Legal Issues in ‘Intellectual Property in the Hospitality Sector’

Topic: ‘Can an entity carry on the business of licensing sound recordings without obtaining copyright society registration?’

Relevant Legal Provisions

❖ Section 30, The Copyright Act, 1957

Licences by owners of copyright.—

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 by him or by his duly authorised agent:

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Relevant Legal Provisions

❖ Section 33, The Copyright Act, 1957

Registration of Copyright society.— (1) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994) commence or, carry on the business of issuing or granting licences in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (3):

Provided that an owner of copyright shall, in his individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society:

Provided further that the business of issuing or granting licence 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: ...

Relevant Case Laws (Contd.)

- ❖ **Novex Communication Pvt. Ltd. v. Lemon Tree Hotels Ltd. & Anr. [2019:DHC:218 in the High Court of Delhi, decided on January 11, 2019]**

*“8(iii). In my opinion, the latter part of the first Proviso to Section 33(1) of the Act whereby it is stated that the owner has an entitlement to grant a license consistent with his obligation as member of the registered copyright society, **this can only mean that if the owner of the copyright work has granted exclusive license to the copyright society to grant further licenses, then in such a case, the owner of the copyright could/can take away from himself the right of granting licenses,,** if an individual owner gives such a right to the copyright society that the individual owner though the owner of the copyright, he will not license the copyright works owned by him except to the copyright society, only in such a case would the individual owner of the copyright work not have a right to grant further license... [Emphasis Supplied]*

8(iv)(c). In my opinion, when the second Proviso to Section 33(1) talks of issuing or granting of license with respect to the musical work in sound recordings, it is only for the musical work in the sound recording and not the sound recording itself.”

Relevant Case Laws (Contd.)

- ❖ **Novex Communication Pvt. Ltd. v. Lemon Tree Hotels Ltd. & Anr. [2019:DHC:218 in the High Court of Delhi, decided on January 11, 2019]**

“15(i). Ld. counsel for the respondent no.1/defendant no.1 has very vehemently argued that the entire scheme which is brought about by the Amendment Act 2012 to the Act is to create a situation whereby no exploitation takes place of the licensee of the copyright works for taking licenses and the payment of use of copyright works is on the payment of a reasonable tariff, and therefore, it is argued by the respondent no.1/defendant no.1 that... Sections 33 to 35 of the Act should be so read that no one except a copyright society can collect license fee or royalty for the copyright works, and that once only a copyright society can license copyright works and collect license fee/royalty for the licensed copyright works, then such a person such as the appellant/plaintiff who is not a copyright society, cannot claim payment of license fee or royalty and sue for the infringement of the copyright with the further claim of damages for such infringement.

15(ii). The arguments of the respondent no.1/defendant no.1, in my opinion, if accepted, will lead to various undesirable consequences... if only a copyright society can collect the license fee/royalty, and if no such society exists, which is the admitted position on facts today, then it would mean that the infringers of copyrights will make merry and keep on violating the rights of the owners of the copyright works, simply on the ground that a copyright society does not exist and no other person or entity except a copyright society can collect license fee or royalty, and also therefore there cannot lie a suit for infringement of a copyright... it is implicit that a copyright society need not legally be the only one exclusive authorized entity/person to give out licenses.” [Emphasis Supplied]

Relevant Case Laws (Contd.)

- ❖ **Phonographic Performance Ltd. v. Canvas Communication [CS(COMM) 671/2021 in the High Court of Delhi, decided on December 17, 2021]**

“8. The plaintiff is engaged in the business of issue of licenses for public performance/ communication to the public of sound recordings, on the basis of assignments made to it by its members, who own copyright in such recordings...

*18. Clearly, the coordinate Bench of this Court has interpreted the provisions of Section 33 to hold that **the owner of a copyright does not cede, at any time, the right to issue licenses in respect of the copyright, unless the owner grants exclusive right in that regard to a copyright society.**” [Emphasis Supplied]*

Relevant Case Laws (Contd.)

- ❖ **Novex Communications Pvt. Ltd. v. Trade Wings Hotels Ltd. [2024:BHC-OS:1428 in the High Court of Bombay, decided on January 25, 2024]**

“132. In the present case, that [sic] PPL and Novex have been partially assigned the copyright under the Sound Recording Agreements i.e. to communicate the sound recordings to the public.

133. ...Ownership of copyright can be acquired in 4 broad ways including through an assignment under Sections 18 & 19 of the Act which is relevant in the present case. These confer full and absolute ownership on the author/owner/assignee, as the case may be.

135. Whereas Section 18 (1) of the Act specifically recognizes the owner’s right to assign his copyright either wholly or partially, to any person.

136. Thus, in my view a partial assignment created as in the present case in favour of PPL and Novex i.e. to communicate sound recording to the public, to the extent of the right so created, the assignee is an ‘owner’ of the copyright in the work.” [Emphasis Supplied]

Relevant Case Laws (Contd.)

- ❖ **Novex Communications Pvt. Ltd. v. Trade Wings Hotels Ltd. [2024:BHC-OS:1428 in the High Court of Bombay, decided on January 25, 2024]**

“137. PPL and Novex as assignees/owners of copyright license their work under section 30 of the Act...

138. Thus, Section 30 of the Act is the source, which gives an "owner" of a copyright who may be an assignee, the power to grant any interest in the copyright by license... Thus, it follows that PPL and Novex as owners/assignees have the power to grant any interest in the copyright by license which would include the interest of communicating the sound recordings to the public.” [Emphasis Supplied]

Relevant Case Laws (Contd.)

- ❖ **M/s. Novex Communications Pvt. Ltd. v. DXC Technology Pvt. Ltd. & Anr. [C.S.Nos.403 & 407 of 2020 in the High Court of Madras, decided on December 8, 2021]**

“8. The plaintiff in these suits traces their right, either as the owner of the copyright by virtue of the assignment agreements, or is acting as an agent for the actual owner of the copyright. The preliminary issue that has been raised by the defendants is that the business activities of the plaintiff will amount to carrying on the business of issuing or granting licenses which is statutorily barred under 33 of the Act, as the plaintiff is admittedly not a copyright society or a member of any copyright society.

17. As stated supra, the claim of the plaintiff in these suits is premised on their rights held by them as assignees of the copyright under Section 18(2) of the Act. This is so except in one case where the plaintiff is the authorised agent for one of the owners of sound recording rights, namely, Yash Raj Films.” [Emphasis Supplied]

Relevant Case Laws (Contd.)

- ❖ **M/s. Novex Communications Pvt. Ltd. v. DXC Technology Pvt. Ltd. & Anr. [C.S.Nos. 403 & 407 of 2020 in the High Court of Madras, decided on December 8, 2021]**

“28. It is no doubt true that the assignee becomes an owner by virtue of Section 18(2) of the Act and is, therefore, legally entitled to issue licenses under Section 30 as the owner of the copyright. Section 30 merely recognises the right of the owner to grant a license and does not make a distinction between individuals and business entities in the matter of granting license. That distinction is, however, at the heart of Section 33 which clamps a prohibition on the “business of issuing or granting licenses” except through copyright societies [Clause(1) and second proviso to Section 33], while retaining the right of the owner, in his individual capacity, to exercise the right of licensing his works conferred on him by Sections 18(2) and 30 of the Act.

*29. The expression “business” implies continuity (See State of M.P v. Mukesh, 2006 13 SCC 197) and is defined as “a commercial enterprise carried on for profit” (See Black’s Law Dictionary, Ninth Edition, West Publishing). **To put it in simple terms, the right of an owner, in his individual capacity, to exploit a right by issuing a license remains untouched. However, when it comes to the “business” i.e., a commercial enterprise of issuing licenses, the law, as it presently stands, requires it to be routed only through a copyright society registered under Section 33(3) of the Act.” [Emphasis Supplied]***

Relevant Case Laws (Contd.)

❖ **Phonographic Performance Ltd. v. Azure Hospitality Pvt. Ltd. & Ors. [2025:DHC:1376 in the High Court of Delhi, decided on March 3, 2025]**

*“2.1. The plaintiff, Phonographic Performance Limited, (PPL) is a company limited by guarantee, registered under the provisions of the Companies Act, 2013, which is engaged in the **business of issuing licences for public performance of sound recordings on the basis of the assignments granted to it by its various member record labels**. The plaintiff owns and/or controls the public performance rights of 400+ music labels, with more than 4 million international and domestic sound recordings.*

2.2 The plaintiff has executed assignment deeds under Section 18 of the Copyright Act, 1957 (hereinafter “Copyright Act”) with its assignors in respect of the assignors’ sound recordings, wherein they have assigned the public performance rights of the sound recordings to the plaintiff.

37. The right of giving a license in his works is an inherent right of a copyright owner under Section 30 of the Copyright Act. This right would necessarily include the ‘business of issuing or granting licence’, the expression which occurs in Section 33 (1) and the second proviso thereto. Therefore, the second proviso to Section 33 (1) cannot put any fetters on the inherent right of a copyright owner to grant licenses in respect of his works or engage in the ‘business of issuing or granting licence. [Emphasis Supplied]

39. Therefore, in my considered view, Section 33 cannot override the provisions of Section 30 of the Copyright Act which gives an absolute right to an owner of the copyright to grant any interest in the copyrighted work by way of a license.”

Relevant Case Laws (Contd.)

❖ **Azure Hospitality Pvt. Ltd. v. Phonographic Performance Ltd. [2025:DHC:2561-DB in the High Court of Delhi, decided on April 15, 2025]**

“8. The assignment deeds executed by the original first owners of the sound recordings in favour of PPL assigned, to PPL, the public performance rights in respect of the sound recordings. This also entitles PPL to grant licenses to others who desire to publicly perform the said sound recordings.

*19.12. Section 33(1) is worded in proscriptive terms. **It unequivocally proscribes any person, or association of persons, from “carrying on the business of issuing or granting licences in respect of any work in which copyright subsists or in respect of any other rights conferred by (the Copyright) Act”, except to, or in accordance with, registration granted under Section 33(3). Section 33(3) deals with registration of copyright societies,***

*19.14. In Assistant Commissioner v Hindustan Urban Infrastructure Ltd, **the Supreme Court held that the expression “carrying on business” is to be understood in a wide sense, and not merely restricted to the activity of buying and selling.***

*19.23. Reverting back, now, to Section 33(1), **the main body of the sub-section prohibits the carrying on of business of issuing or granting licences in respect of (i) any copyrighted work or (ii) any other rights conferred by the Copyright Act, except under or in accordance with the registration granted under Section 33(3) to a copyright society.** [Emphasis Supplied]*

Relevant Case Laws (Contd.)

❖ **Azure Hospitality Pvt. Ltd. v. Phonographic Performance Ltd. [2025:DHC:2561-DB in the High Court of Delhi, decided on April 15, 2025]**

“19.24. It is important to understand this provision, and the best way to do so would, perhaps, be to apply it to the facts before us. PPL is an association of persons. It is, admittedly, carrying on the business of granting licences in respect of the copyrighted works assigned to it under Section 18(1) and forming its repertoire. The sub-section, therefore, clearly applies to it. PPL is, therefore, proscribed from granting any licence in respect of the said assigned work, or in respect of the right to communicate it to the public, except under or in accordance with the registration granted under Section 33(3).

20.5. ...PPL is, unquestionably, the owner of the sound recordings in its repertoire, of which copyright stands assigned to it under Section 18(1). To that extent, PPL’s stand is unassailable. The two Novex decisions would, therefore, grant him an absolute right to issue licenses in respect of such recordings, on its own terms.

20.6. Such an interpretation would, however, undisputedly render the words “except under or in accordance with the registration granted under sub-section (3)”, in Section 33(1), completely otiose. Indeed, Section 33(1) would be rendered completely redundant, as it is intended only to introduce this restriction, on persons who desire to carry on the business of issuing or granting licenses in respect of copyrighted work.

20.7. It is a cardinal principle of interpretation of statutes that the Court must not adopt an interpretation which renders any part of the statutory instrument redundant or otiose.” [Emphasis Supplied]

Conclusion

- The licensing of sound recordings in India sits at the intersection of two key statutory rights: the inherent right of a copyright owner or assignee to grant licences under Sections 18 and 30 of the Copyright Act, and the regulatory mandate under Section 33 which governs the business of licensing through registered copyright societies.
- Over the years, courts have drawn a critical distinction between licensing in an *individual capacity* — which remains protected and unrestricted — and engaging in the *commercial business* of issuing licences, which is subject to the registration requirement under Section 33(3).
- Judicial decisions have reflected divergent interpretations: some recognize the right of assignees like PPL and Novex to license works based on partial ownership or agency relationships, while others warn that allowing unregistered entities to carry on licensing as a business would render the purpose of Section 33 ineffective and compromise copyright regulation.
- The Delhi High Court’s recent decisions in 2025 emphasize that even if an entity owns the rights to the sound recordings, it cannot carry on the business of licensing without registration as a copyright society — reinforcing a stricter view of compliance with statutory safeguards.
- In conclusion, while the law permits owners and assignees to license works individually, the moment such licensing takes the form of a systematic, profit-driven enterprise, it triggers the regulatory threshold of Section 33. Until resolved by the Supreme Court, this duality in legal position necessitates a cautious and compliance-oriented approach from copyright assignees, licensees, and businesses operating in this domain.

THANK YOU!

Questions?

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