

Legal Issues in ‘Media and Judiciary’

Issue: Whether Compulsory Licence Requires Absolute Refusal by the Copyright Owner?

Relevant Legal Provisions

- **Section 31 of the Copyright Act, 1957**

“(1) If at any time during the term of copyright in any work which has been published or performed in public, a complaint is made to the Appellate Board that the owner of copyright in the work –

*(a) **has refused to republish** or allow the republication of the work or **has refused to allow the performance in public** of the work, and **by reason of such refusal the work is withheld from the public**;*

*Appellate Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard .., may, **if it is satisfied that the grounds for such refusal are not reasonable**, direct the Registrar of Copyrights to grant to the complainant a licence to republish the work, perform the work in public or communicate the work to the public ..., as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Appellate Board may determine; and thereupon the Registrar of Copyrights shall grant the licence ..., on payment of such fee as may be prescribed.*

Relevant Legal Provisions

- **Section 33A of the Copyright Act, 1957**

(1) Every copyright society shall publish its tariff scheme in such manner as may be prescribed.

*(2) Any person who is aggrieved by the tariff scheme may appeal to the Appellate 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**:*

- **Rule 6 of the Copyright Rules, 2013**

(3) Every application to re-publish the work or perform the work in public shall be accompanied with adequate evidence to show that the owner of copyright has refused to re-publish or has allowed the re-publication of the work or has refused to allow the performance of the work in public, and the reasons for such refusal.

Relevant Legal Provisions

- **Rule 8 of the Copyright Rules, 2013**

The Board shall determine the quantum of compensation or royalties payable to the owner of the copyright under section 31. The Board may while determining quantum of compensation or royalty shall take into consideration—

(i) in case of re-publishing the work or performing the work in public—

(a) the proposed retail price of a copy of the work or rate on which the work is performed in public;

(b) the prevailing standards of royalties with regard to publication of works or performance of the work in public; and

(c) such other matters as may be considered relevant by the Board.

(ii) in case of communication of any work to the public by broadcast—

(a) time slot in which the broadcast takes place and different rates for different time slot including the repeat broadcast;

(b) different rates for different classes of works;

(c) the prevailing standards of royalties payable in this regard for such works; and

(d) such other matters as may be considered relevant by the Board

Relevant Judicial Decisions

❖ ***Pune Video Theaters Association Vs. Cinemaster on August 29, 2001 [2002(24)PTC242(CB), Copyright Board At New Delhi]; Division Bench***

“6. The first requirement as a precondition is that the owner of the copyright in any Indian work should have refused to allow the performance in public of the work... The refusal to allow performance in public of the work should have caused the work being withheld from the public. In this case, the grievance of the petitioners is that they are not able to exhibit video copies of the films because the licence fee charged makes it uneconomical for them to do so. The licence fee according to the petitioner is prohibitive. In view of the position stated by the respondents it is seen that they had not refused to allow the performance in public of the cinematographic films. In facts, hundreds of video parlours (including some members of the petitioners) in the State of Maharashtra are licencees of the Respondents and are exhibiting films to the public. Hence it cannot be claimed that the films are being withheld from public. The respondents are prepared to allow the works being performed by the petitioners also on payment of the licence fee which the petitioners are not willing to do. This would not therefore amount to refusal as envisaged in Section 31 of the Act. (emphasis supplied)

Relevant Judicial Decisions

❖ *Pune Video Theaters Association Vs. Cinemaster on August 29, 2001 [2002(24)PTC242(CB), Copyright Board At New Delhi]; Division Bench*

“6. Refusal to allow means refusal to everyone and such refusal would result in the work not being published or performed. Here it is not so. The work is being exhibited by a large number of persons and it is not withheld from public so as to come within the four corners of the section...”

*“8...The object behind this section is to issue compulsory licence to publish, etc. of a work which the author has refused to republish, etc. and by reason of such refusal the work has been withheld from public. In other words, **the licence to be issued under this section is to allow the licensee to republish or perform the work in public which is not otherwise available to enable the public to make use of the work generally and this is required to be done by the owner of the copyright.. The Respondents are owner of valuable rights and they are as much entitled to earn profits from it in a legitimate manner.** If the Respondent withhold the films and do not allow them to be exhibited their earnings would be nil. The fact that they are making profits itself is evidence of the fact that the films are being shown to the public. **(emphasis supplied)***

Relevant Judicial Decisions

❖ *Entertainment Network (India) Limited v. Super Cassette Industries Limited & Ors., on May 16, 2008 [(2008) 13 SCC 30 , Supreme Court]; Division Bench*

“108....Only because an offer is made for negotiation or an offer is made for grant of licence, the same per se may not be sufficient to arrive at a conclusion that the owner of the copyright has not withheld its work from public. When an offer is made on an unreasonable term or a stand is taken which is otherwise arbitrary, it may amount to a refusal on the part of the owner of a copyright.

109. When the owner of a copyright or the copyright society exercises monopoly in it, then the bargaining power of an owner of a copyright and the proposed licensee may not be same. When an offer is made by an owner of a copyright for grant of licence, the same may not have anything to do with any term or condition which is wholly alien or foreign therefor. An unreasonable demand if acceded to, becomes an unconstitutional (sic unconscionable) contract which for all intent and purport may amount to refusal to allow communication to the public work recorded in sound recording. **(emphasis supplied)**

Relevant Judicial Decisions

- ❖ *Entertainment Network (India) Limited v. Super Cassette Industries Limited & Ors., on May 16, 2008 [(2008) 13 SCC 30 , Supreme Court]; Division Bench*

124. The right to property, therefore, is not dealt with its subject to restrict when a right to property creates a monopoly to which public must have access. Withholding the same from public may amount to unfair trade practice. In our constitutional scheme of statute monopoly is not encouraged. Knowledge must be allowed to be disseminated. An artistic work if made public should be made available subject of course to reasonable terms and grant of reasonable compensation to the public at large. (emphasis supplied)

Relevant Judicial Decisions

- ❖ *Super Cassettes Industries Limited v. Music Broadcast Private Limited*. on September 10, 2014, [AIR 2012 SC 2144, Supreme Court]; Division Bench

82. *The core of Section 31 is that the owner of a copyright has: (1) either refused to “republish” or “allow the republication” of his work or “refused to allow the performance in public” of the work; (2) by reason of such refusal the work is withheld from the public; and (3) the grounds for such refusal are not reasonable. It is in the aforementioned circumstances if the copyright board is satisfied at the grounds of refusal are not reasonable the copyright board is authorised by law to take steps for the grant of compulsory license ”*

83. *...To succeed in their claim for a compulsory license they must first established at the work is “withheld from the public” because of the owners “refusal to republish the work”, etc; secondly the owner refusal is on ground which are not reasonable in law... (emphasis supplied)*

Relevant Judicial Decisions

- ❖ *Super Cassettes Industries Limited v. Music Broadcast Private Limited*. on September 10, 2014, [AIR 2012 SC 2144, Supreme Court]; Division Bench

85. The power under Section 31 to grant a compulsory licence meant for avoiding the withholding of the republication or refuse to allow the performance in public of some "work", is essentially for the benefit of the public. Commercial benefit to the "publisher" is incidental. **Unless it is demonstrated that failure to imply such power to direct immediate republication or performance of a work in public would be detrimental to public interest, the power to grant ad hoc compulsory licence cannot be implied.** No such detriment is demonstrated. **(emphasis supplied)**

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Relevant Judicial Decisions

❖ *Al Hamd Tradenation Vs. Phonographic Performance Limited on May 13, 2025, [2025:DHC:3695, High Court of Delhi]; Single Bench*

24. ...If the petitioner is required to pay the licence fee for each event that the petitioner organises, as per the tariff rate of the respondent, it will not only place an undue burden on the petitioner, but also on the general public. **The licence fee as demanded by the respondent is not commensurate with market standards**, as compared to RMPL, which is charging considerably lesser licence fee for their repertoire of songs.

25. ...**This Court does not agree with the submission on behalf of the respondent that there is no withholding of copyrighted work by the respondent, as the same is available to the public on the tariffs as available on the website of the respondent.** This Court cannot ignore the fact that the respondent holds a vast repertoire of sound recordings. Therefore, there is an obligation to charge fair and reasonable licence rates. **(emphasis supplied)**

Relevant Judicial Decisions

❖ *Al Hamd Tradenation Vs. Phonographic Performance Limited on May 13, 2025, [2025:DHC:3695, High Court of Delhi]; Single Bench*

28. The respondent cannot be given a free hand to procure any arbitrary and unreasonable licence fees. **The respondent has to be held accountable for ensuring that it charges a fair and reasonable licence fee for its repertoire.** Accordingly, this Court is within its authority to direct compulsory license to check an abuse of monopoly.

29. The rights of the public to republish, perform and have access to the published works on fair and equitable terms, cannot be denied. **The respondent cannot be allowed to take advantage of its market leadership in having ownership of repertoire of songs in order to create an arbitrary licensing regime, which cannot be permitted. (emphasis supplied)**

Conclusion

- ❖ Courts have recognised that even unreasonable or prohibitive licensing terms can constitute “refusal,” expanding the provision’s scope beyond outright denial. The provision seeks to prevent the withholding of works from the public domain and operates to secure access on fair and equitable terms, rather than to facilitate private commercial benefit.
- ❖ Recent jurisprudence, including Al Hamd Tradenation Case, reflects a move toward ensuring that copyright owners exercise their monopoly responsibly, maintaining a balance between proprietary rights and the public interest.
- ❖ While recognising the copyright owner’s proprietary rights, courts have consistently emphasised that such rights are not absolute and must align with the public interest through transparent, reasonable, and non-discriminatory licensing practices.

THANK YOU!

Questions?

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