

Copyright society in India: Understanding its functions and role in creative work management

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Abstract

The creations of literary and artistic nature act as a unique feature for humans. The objective of the copyright is to protect the writer or creator of the original work from the unauthorized reduplication or exploitation of his accouterment as the copyright law grants the exclusive right on the creative work. In general sense, copyright society can be referred to as a legal body whose object is to protect or safeguard the interest of owners of the work in which copyright subsists. Further, it gives assurance to the creative authors of the commercial management apart from protection. Thus, a Copyright Society is an intermediary that links creators and users of copyrights in such a manner that promotes an equitable and profitable environment for holistic growth by way of providing the management of royalties and licensing facilities to the former and a diverse market to the latter. The Indian Copyright Act, 1957 covers the regulation of Copyright Societies in a clear and concise manner and further establishes that it is foremost the copyright owners and authors, who benefit from the membership in said associations. Despite the ever-present challenges and the increasing technological requirements to keep these societies functional, the need of the same still remains indispensable with its significant contribution to the global economy and the cultural development.

Key words: copyright society, Collective Management, registration of copyright society, Functions, Rights and liabilities of the copyright society, Anomaly

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1. Introduction

The creation of literary, musical, cinematograph films and artistic nature acts as a unique feature for humans. Such intellectual creativity has been honored and defended by law in the form of copyright. The objective of the law is to protect the writers or creators of the original work from the unauthorized reproduction or exploitation of his accouterment. The right so extends to prevent others from exercising without authority any other form of relative rights. The field of copyright and related rights have expanded enormously with the technological progress in the last several years, which has brought in new ways of spreading creations. All these technological innovations and developments have on the one hand created new opportunities for the economic exploitation of intellectual work, but on the other hand have posed serious challenges to effective protection of these new opportunities. Individual control of creator's copyright has become impracticable or even impossible due to expansion of number of users, the infringers are too many for the copyright owners to deal with them individually and management of joint works

involve several owners of copyright. To overcome this problem, the copyright owners restored to collective administration of rights through the copyright societies formed for administering their rights. Collective control and reward through collective societies or collective management organizations called copyright societies has become not just desirable but necessary.² Collective administration of rights through copyright societies was adopted to address the challenge of individual copyright owners effectively managing and protecting their rights, especially in situations where numerous users might want to utilize their works, making it impractical for them to negotiate licenses individually with each one. By joining a copyright society, creators pool their rights, allowing the society to negotiate and collect royalties on their behalf, ensuring fairer distribution and protection of their intellectual property. This collective approach has become essential due to the complexities of modern copyright management, particularly in the digital age where uses of copyrighted works can occur across various platforms and borders.

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² International Federation of Reproduction Rights Organizations-'General Papers', collective administration' File: //IFFRO%20%Detailed%20papers, html

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Collective right management is the licensing of copyright and related rights by organizations acting on behalf of the rights of owners. Collective Management Organizations (CMOs) are, in most cases, not-for-profit entities; their legal form can be either private or public. Depending on the repertoire they represent, they can also be called Music Licensing Companies (MLCs), Mechanical Rights Organizations (MROs), Performers' Collective Management Organizations (PMOs) or Reproduction Rights Organizations (RROs). Various types of collective management approaches exist, including statutory/mandatory collective management, as well as contractual/voluntary collective management.³

2. Meaning of Copyright Society

In general sense, copyright society can be referred to as a legal body whose object is to protect or safeguard the interest of owners of the work in which copyright subsists. Further, it gives assurance to the creative authors of the commercial management apart from protection. Interestingly, the Copyright Act, 1957 did not define copyright societies beyond saying that a society is one that is registered under Section 33(3)⁴ The Copyright Act says that any **person** or association of persons carrying on the **business** of granting licenses in respect of copyrighted works has to do so **in accordance with** the registration granted under Section 33(3)⁵. That sounds simple, but it has given rise to several questions. Courts have not always agreed on what the words 'person', 'business, or 'in accordance with' actually mean. For example, in a case⁶, the Bombay High Court said the term 'person' does not include the owner of copyright. But, the Division Bench of the Delhi High Court⁷ in the Azure case noted that owners do fall within its ambit.

The meaning of 'business' is also debated. Undoubtedly, it covers a broad scope of activities and can be said to refer to a systematic or organised course of activity with a view to making profits. In a case⁸, the Madras High Court had observed that once the grant of license moves from the owner in his individual capacity and transcends into the realm of business, the registration requirement is triggered.

And then, there is the phrase 'in accordance with'. In the Azure case⁹, the Division Bench interpreted this to mean that the association of persons issuing or granting licenses must either be a registered copyright society or a member of a registered copyright society. But this interpretation raises problems, especially when we look

at the Copyright Rules, 2013. Copyright Rule¹⁰ states that membership in a copyright society is open to authors and other rights owners. It does not contemplate one copyright society becoming a member of another. Furthermore, another Rule¹¹, which sets out the conditions for granting permission to carry on copyright business, explicitly prohibits the sub-licensing or transfer of royalty collection or distribution rights to any other person or copyright society.

3. Evolution of Copyright Society in India:

In India, Section 33 -36A of Chapter VII of the Indian Copyright Act, 1957 and Chapter XI- Rule 44- 67 of the Copyright Rules, 2013 regulate the copyright society. Prior to coming into force of the Copyright (Amendment) Act, 1994, the provisions of the Copyright Act, 1957¹² dealt with performing rights societies which carried on the business of issuing or granting licenses of the performances in India of any work in which copyright subsisted. The activities of this society were limited to copyright subsisting in literary, dramatic and musical work which can be performed in public. The 1994 amendment extended the operation of legal provisions in respect of all rights relating to all classes of work. The Copyright (Amendment) Act, 2012 was enacted with an underlying objective to establish a just and equitable framework of copyright administration and revenue sharing for protecting rights of authors of works incorporated in sound recordings and films. This amendment inserted onerous burdens [in addition to the obligations set out by the Copyright (Amendment) Act, 1994 with respect to "issuing or granting license" in respect of the said works. Added by the 1994 Amendment, the Copyright Act 1957¹³ stipulated that only copyright societies can carry on the business of issuing or granting copyright licenses. As part of the 2012 Amendment, a new section¹⁴ was inserted which lays down that to be a valid copyright society an entity (carrying on the business of issuing or granting copyright licenses) must newly register itself under Section 33 within a year from the commencement of 2012 Amendment. Thus, if a copyright society existed by virtue of a pre-2012 registration, there would not be a bar under this section¹⁵ operating on such a society unless there was a new registration within one year after the aforesaid enactment. At the same time, no punishment was prescribed for non-registration as a copyright society in the given time.

4. Registration of the Copyright Society:

³ <https://www.wipo.int/en/copyright/collective-management>

⁴ Section 2 (ffd) of the Copyright Act, 1957

⁵ Section 33(1) of the Copyright Act, 1957

⁶ *Novex Communications v. Trade Wings Hotel* 2024 SCC OnLine Bom 252

⁷ *Phonographic Performance Limited v. Azure Hospitality Private Limited & Ors.* [CS(COMM) 714/2022

⁸ *Novex Communications v. DXC Technology* 2021 SCC OnLine Mad 6266

⁹ *Phonographic Performance Limited v. Azure Hospitality Private Limited & Ors.* [CS(COMM) 714/2022

¹⁰ Rule 45 of the Copyright Rules, 2013

¹¹ Rule 46(2) of the Copyright Rules, 2013

¹² Section 33 -36 of the Copyright Act, 1957

¹³ Section 33 of the Copyright Act, 1957

¹⁴ Section 33(3-A) of the Copyright Act, 1957

¹⁵ Section 33 of the Copyright Act, 1957

In India, copyright societies operate under the provisions of the Copyright Act of 1957. These societies serve as important entities responsible for granting licenses, collecting royalties, and taking legal action against copyright infringements on behalf of copyright owners. The provisions relating to copyright societies are enshrined in the Copyright Act and rules thereunder. Copyright Act, 1957 says¹⁶ that no person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 commence or carry on business of issuing or granting licenses in respect of **any work** in which copyright subsist or in respect of other work carrying on the business of granting licenses in respect of any other rights conferred by this Act except under or in accordance with the registration granted under the provisions¹⁷ of the Copyright Act.. The first proviso¹⁸ specifies that the copyright owner will continue to have the right to grant licenses in his individual capacity, provided that such exercise of right is consistent with his obligations as a member of a registered copyright society. The second proviso¹⁹, introduced in 2012, says that when it comes to literary, dramatic, musical, and artistic works embedded in films or sound recordings, the business of issuing licenses must be carried out only through a registered copyright society. This has added another layer of confusion. The main part of Section²⁰ already talks about “any work” under copyright, so why name specific categories? Some argue that this was intended to close existing loopholes and delineate more precisely the areas warranting closer regulatory scrutiny. But it has also given unregistered entities room to argue that the restriction only applies to the underlying works, not the sound recordings themselves.²¹

4.1 Formalities:

Any group of individuals, comprising seven or more authors or copyright’s owners set up to conduct business related to the grant or issuance of the license relating to any class of works for which it is registering may furnish an application to the Registrar of Copyrights in the prescribed form²². Form should be accompanied by the following documents along with an undertaking declaring that the instrument is set up or incorporated ensures the same to the Act’s provisions and these rules :

- (i) An original application’s copy by which the applicant is incorporated or established
- (ii) Permission of all the members enlisted in the application form to serve as members of the Governing body of the application,
- (iii) A declaration comprising the applicant’s objectives, the bodies through which it shall perform its

undertakings, and arrangement for auditing and accounting

The registration timeline for a copyright society is for five years, which may be re-registered on a timely basis before the completion of said tenure via application filing with Registrar of Copyrights under the prescribed form²³. But, discretion rests on the Government to re-register or renew the registration after considering the Registrar of Copyright’s report on the working of the copyright society under the provisions²⁴ of the Copyright Act, 1957. If any society registration is detrimental to the interest of the owners of rights then the Central Government has the authority to cancel the registration. For the purpose of business, ordinarily there should not be more than one society that is registered. The association of owners submit the application to the Central Government for permission to carry business and to be registered as a society. The applicant only commits to only deal in copyright business and other activities ancillary thereto. Once the application is made to the Central Government then within 180 days the application is settled either by registering the society or rejecting due to some discrepancies but only after giving a hearing opportunity to the applicant. Once the Copyright Society is registered the Registrar of Copyright will issue a Certificate of Registration. From the date of its registration as mentioned in the Certificate of Registration, the Copyright Society will be authorized to commence and carry on the permitted copyright business in the name by which it has been registered.

4.2 Functions of the Copyright Society:

The copyright societies have the following functions:

4.2.1 Issue of license and collection of fees– The prime function of copyright societies is issuing license, collecting fees and distributing the collected fees to the respective authors. The society is to collect fees in accordance with the scheme of tariffs. The right for such collection must be given by the authors to the societies in writing for a specified period of time. The fee so collected should be distributed to the authors after deducting a fee not exceeding 15% of the total amount collected. The Copyright Society will provide regular, full and detailed information concerning all its activities in relation to the administration of their rights. As per Section 34 of Indian Copyright Act,1957, a copyright society may accept from an author and other owner of rights, exclusive authorization to administer any right in any work by issuing of licenses or by collecting of license fees or both. Further, an author and other owners of right shall have the right to withdraw such

¹⁶ Section 33(1) of the Copyright Act, 1957

¹⁷ Section 33 (3) of the Copyright Act, 1957

¹⁸ Proviso to Section 33(1) of the Copyright Act, 1957

¹⁹ Proviso to Section 33(1) of the Copyright Act, 1957

²⁰ Section 33(1) of the Copyright Act, 1957

²¹ Santosh Vikram Singh “Legal Uncertainties of Unregistered Copyright Societies in India” May 29,2025 Published on <http://foxmandal.in>

²² Form VIII

²³ Form IX

²⁴ Section 36 of the Copyright Act, 1957

authorization without prejudice to the rights of the copyright society under any contract.

4.2.2 Administration of rights of the owners by the copyright society- This function of the copyright society is covered under the provisions of the Copyright Act, 1957. According to the section²⁵, the copyright society has the discretion to accept the authorization to administer the issue of license or collection of fees or both in writing by the author and/or any other owner. The author or the owner has the right to revoke or withdraw the authorization given to such a society and the society is to comply with the same.

4.2.3 Distribution of collection of fees: According to the Section, the copyright society will distribute the collecting fee among the authors and other owners of rights in proportion to the actual use of their works after making such deductions for its own expenses.²⁶ All members of copyrights society shall enjoy equal membership rights and there shall be no discrimination between authors and owners of right in the distribution of royalties.

4.2.4 Agreements with foreign societies- The copyright society will have to get into agreements with foreign societies in order to entrust the right to collect royalties from the users of that foreign country. Provided that such a country shall not discriminate in regards to the terms and conditions of licensing or distribution of royalties between Indian authors and other authors.

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5. Rights and Liabilities of Copyright Society:

Copyright societies in general, are saviors of copyright owners. It is a legal body which protects or safeguards the interest of owners of the work in which copyright subsists. The copyright societies give assurance to the creative authors of the commercial management of their works apart from protection. Though the rights and duties or in the shape of liabilities are indispensable but as a matter of convenience it is being separated to understand the rights and liabilities of the copyright societies in proper way. The rights and liabilities of the copyright society are as under:

5.1 Rights:

The prime function of copyright societies is issuing license, collecting fees and distributing the collected fees to the respective authors. The society is to collect fees in accordance with the scheme of tariffs. The right for such collection must be given by the authors to the societies in writing for a specified period of time. A copyright society may, subject to certain prescribed

conditions, accept from the author and owner of the rights exclusive authorization to administer any right in any work by issue of license or collection of license fee or both.²⁸ Thus, the Act gives the choice to the right owners to authorize the copyright society for either full collective administration or partial collective administration.²⁹ Full collective administration is based on the exclusive rights and includes negotiations of remunerations to be paid for, and other conditions of, uses, authorizations for uses, monitoring of uses, enforcement of rights and collection of remunerations and its distribution to right owners. Partial collective administration of exclusive rights is also possible e.g. the owner of rights may give authorization directly and a collective administrative organization may collect and distribute remuneration.³⁰

After obtaining the authorization, the copyright society, subject to certain prescribed conditions, may:

- (i) Issue licenses under section 30 in respect of any rights under this Act;
- (ii) Collect fees in pursuance of such licenses;
- (iii) Distribute such fees among owners of rights after making deductions for its own expenses
- (iv) Perform any other functions consistent with the provisions of Section of 35

The Copyright society shall frame a scheme of tariff to be called the tariff scheme setting out the nature and quantum of fees or royalties which it proposes to collect in respect of such copyright or other rights administered by it.³¹ Any person aggrieved by the Tariff scheme may appeal to the commercial court and the commercial court shall determine the Tariff Scheme of the copyright society after taking into the the prevailing standard of rights in regard to such commercial exploitation of works. The commercial court shall dis[pose off the appeal within a period of three months from the date of filing.³² A copyright society may accept from an author or other owner of rights or his duly authorized agent, exclusive authorization to administer the right or the set of rights in the specific categories of works for which the copyright society is registered, if such author or other owner or such agent enters into an agreement, in writing, with the copyright society specifying the rights to be administered, the duration for which such rights are authorized to be administered, the quantum of royalty agreed to and the frequency at which such royalty shall be paid by the copyright society in accordance with its Schemes of Tariff and Distribution: Provided that in case of literary or musical works included, in a cinematograph film or sound recording the share of royalty other than for communication of the work along with the cinematograph film in a cinema hall shall be on equal basis between the author of the work and the

²⁵ Section 34 of the Copyright Act, 1957

²⁶ Section 34 (3) and Section 35 (2) of the Copyright Act, 1957

²⁷ Section 34 (2) of the Copyright Act, 1957

²⁸ Section 34 (1) of the Copyright Act, 1957 r/w Rule 54 of the copyright Rules, 2013

²⁹ Copyright and related rights: National and International Perspectives by Alka Chawla, 2008, Mcmillan India Limited

³⁰ Collective Administration of Copyright and Neighbouring Rights, WIPO publication No 688 € Geneva, 1990 at p. 87

³¹ Section 34 (3) of the Copyright Act, 1957

³² Rule 57 of the Copyright Rules, 2013

owner of film or sound recording, as the case may be.³³ The right for such collection must be given by the authors to the societies in writing for a specified period of time. The fee so collected should be distributed to the authors after deducting a fee not exceeding 15% of the total amount collected and a further deduction not exceeding 5 % for the welfare scheme under rule 67.³⁴ A copyright society may during the initial period of two years of its registration deduct up to 20% of the annual total collection on account of administrative expenses incurred by the society.³⁵

The copyright society shall not impose any condition for distribution of royalties collected to author or other owner of rights. (3) The author or other owner of rights shall without prejudice to the rights under the agreement and subject to the condition of a prior notice of sixty days, be free to withdraw such authorization in case the copyright society fails to fulfil its commitments as laid down in the agreement. (4) The right to receive royalty, for any literary or musical work included in the cinematograph film, shared on equal basis with the assignee of copyright for the utilization of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall shall not be assigned to any other copyright society other than to the society for which it is intended to be registered. (5) The right to receive royalty, for any literary or musical work included in the sound recording which does not form part of any cinematograph film, shared on equal basis for any utilization of such works with the assignee of copyright shall not be assigned to any other copyright society other than to the society for which it is intended to be registered.

55. Conditions subject to which a copyright society may issue licenses, collect royalties and distribute such royalties.— (1) A copyright society may issue licenses and collect royalties in accordance with Tariff Scheme in relation to the right or the set of rights in the specific categories of works for which the copyright society is registered as it has been authorized to administer in writing by the members for the period for which it has been so authorized. (2) The royalty so collected shall be distributed in accordance with the Distribution Scheme subject to a deduction not exceeding fifteen per cent. of the annual total collection on account of administrative expenses incurred by the copyright society and a further deduction not exceeding five per cent. for the Welfare Scheme under rule 71: Provided that a copyright society may during the initial period of two years of its registration deduct up to twenty percent of the annual total collection on account of administrative expenses incurred by the society. 56. Tariff Scheme.— (1) 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, it shall frame a scheme of tariff to be called the “Tariff Scheme”

under section 33A of the Act setting out the nature and quantum of royalties which it proposes to collect in respect of the right or the set of rights in the specific categories of works administered by it. (2) Every copyright society shall display its Tariff Scheme by posting it on its website. (3) The Tariff Scheme shall indicate the separate rates for- (a) different categories of users; (b) different media of exploitation, such as telephone, broadcast or internet; (c) different types of exploitation whether by an individual or by groups or whether single or multiple use or for advertising; (d) different durations of use and territory; and (e) any other differentiation factor indicated by the society, as it may deem fit. (4) While fixing the tariff the copyright society shall follow the guidelines issued by any Court or the Board, if any, and may consult the user groups. (5) The copyright society shall collect the royalties from a licensee in advance where the Tariff Scheme provides for lump sum payment of royalties. In cases where the Tariff Scheme provides for payments in installments, each installment shall be collected in advance. However, in cases where the Tariff Scheme provides for the payment of royalties based on actual use, the copyright society may collect an advance at the time of issue of license and settle the final payment based on actual use at the end of the period for which the license is issued or granted. Provided that the copyright society shall not receive any payment in the nature of minimum guarantee from a licensee whose royalty payments are based on actual use which are to be settled with the society at the end of the license period except where, any exceptional circumstances are specifically included in the Tariff Scheme and the individual case has been approved by the Governing Council. (6) The copyright society may revise the Tariff Scheme periodically but not earlier than a period of twelve months by following the rules. It shall publish the date of coming into of the revised Tariff Scheme at least before two months in advance and the same shall be posted on its website. Further, every copyright society shall submit to the Registrar of Copyrights such returns as may be prescribed. Any officer duly authorized by the Central Government in this behalf may call for any report and also call for any records of any copyright society for the purpose of satisfying himself that the fees collected by the society in respect of rights administered by it are being utilized or distributed in accordance with the provisions of this Act.³⁶ Nothing shall affect any rights or liabilities in any work in connection with a copyright society which had accrued or were incurred on or before the day prior to the commencement of the Copyright (Amendment) Act, 2012 (27 of 2012), or any legal proceedings in respect of any such rights or liabilities pending on that day.³⁷

According to Rule 44 of the Indian Copyright Rules, 2013, any group or organization that is established with the intention of engaging in the issuance or granting of

³³ Rule 54 of the Copyright Rules, 2013

³⁴ Rule 55 (2) of the Copyright Rules, 2013

³⁵ Proviso of Rule 55 (3) of the Copyright Rules, 2013

³⁶ Section 36 of the Copyright Act, 1957

³⁷ Section 36 A of the Copyright Act, 1957

licenses for specific categories of works may submit an application to the Registrar of Copyrights for registration as a copyright society.

5.2 Liabilities of the Copyright Society:

The liabilities of the copyright societies are as under:

5.2.1 Carry on the permitted copyright business and maintain the information:

On and from the date of its registration as specified in the certificate of registration, the copyright society shall be entitled to commence and carry on the permitted copyright business in the name by which it has been so registered and the applicant shall-

(a) maintain its own website giving all information pertaining to its activities; and

(b) have proper infrastructure such as office building and necessary officials for management such as Chief Executive Officer, licensing officers, legal officers and accountants and other required staff appointed at the time of applying for registration.

(4) The Copyright Society shall carry on business of issuing or granting licenses only in respect of the right or the set of rights in the specific categories of works for which it is registered and shall not issue or grant license in respect of any other right or set of rights in those or other categories of works for which it is not registered.³⁸

5.2.2 Framing of procedure for distribution of royalties under Distribution Scheme:

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 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.³⁹ The distribution shall, reasonably, be in proportion to the royalty income of the copyright society derived from the grant of licenses for right or the set of rights in the specific categories of works for which it is administering each author and other owners of right.⁴⁰ Further, there shall be no discrimination between authors and other owners of rights in the distribution of royalties by the copyright society.⁴¹ While distributing the royalties, the copyright society shall inform all members about the basis on which such amount of royalties are being distributed.⁴²

The Distribution Scheme shall aim to ensure that all royalty distributions are fair, accurate, cost effective and without any unknown or hidden cross-subsidies.⁴³ Further, 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.⁴⁴ The Distribution Scheme shall ensure that the royalties to all members are distributed at least once in a quarter.⁴⁵ If the royalties cannot be distributed within the time due to non-identification or non-location of author or other owner, such royalties are kept separate in the accounts of the copyright society.⁴⁶ 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 assignment of copyright under subsection (1) of section 18.⁴⁷ In case, the royalty due to author and other owners remains undistributed at the end of the period of three years from the end of the financial year in which collection of the royalty occurred, the copyright society shall transfer such amount to the welfare fund of the copyright society.⁴⁸

5.2.3 Management of copyright society:

Every copyright society shall have a general body and governing body. The General Body consisting of all the authors and other owners of a right or set of rights in the specific categories of works for which the copyright society has been authorized to issue or grant licenses.⁴⁹ A Governing Council with a Chairman and a minimum of six other members⁵⁰ and a Chief Executive Officer, who may or may not be a member of the society.⁵¹ The General Body shall be the decision making body of the society. All the powers necessary for the purpose of effective management of the society shall be with the General Body and the Governing Council may act as per the directions of the Governing Body.⁵² (3) The Chairman shall be elected by two-third of the majority of all the members present and voting in the General Body meeting of the Copyright Society.⁵³ The Chairman of the Governing Council shall chair the General Body and shall have the right to vote in the General Body and the Governing Council.⁵⁴ The members other than the Chairman of the Governing Council shall represent equally from authors and other owners, elected from the General Body by the majority of members present and

³⁸ Rule 49 (3) of the Copyright Rules, 2013

³⁹ Rule 58 (1) of the Copyright rules 2013

⁴⁰ Rule 58 (2) of the Copyright rules 2013

⁴¹ Rule 58 (3) of the Copyright rules 2013

⁴² Rule 58 (4) of the Copyright rules 2013

⁴³ Rule 58 (5) of the Copyright rules 2013

⁴⁴ Rule 58 (6) of the Copyright rules 2013

⁴⁵ Rule 58 (8) of the Copyright rules 2013

⁴⁶ Rule 58 (11) of the Copyright rules 2013

⁴⁷ Rule 58 (10) of the Copyright Rules, 2013

⁴⁸ Rule 58 (13) of the Copyright rules 2013

⁴⁹ Rule 59 (1) (a) of the Copyright Rules, 2013

⁵⁰ Rule 59 (1)(b) of the Copyright Rules, 2013

⁵¹ Rule 59 (1) (c) of the Copyright Rules, 2013

⁵² Rule 59 (2) of the Copyright Rules, 2013

⁵³ Rule 59 (3) of the Copyright Rules, 2013

⁵⁴ Rule 59 (4) and (5) of the Copyright Rules, 2013

voting in the General Body meeting of the Copyright Society.⁵⁵ Further, the Chairman and other members of the Governing Council shall be elected for a period of two years and the members shall not be eligible for re-election for a period of two years from the date of completion of their term as members. The General Body may create sub-committees for preparing Tariff Scheme, Distribution Scheme, Welfare Scheme and such other matters relating thereto, under the supervision of the Governing Council.⁵⁶ Further, the General Body shall approve the instrument of the society including any subsequent changes made to it.⁵⁷

5.2.4 Call a General Body meeting for Approval of Schemes: The copyright society shall call a General Body meeting to approve any Scheme, as soon as it has been prepared by the Governing Council in these rules.⁵⁸ A notice of not less than twenty-one days for the meeting shall be given to every member and a copy of the proposed Scheme together with a note explaining the guiding principles followed in the making of the said Scheme shall be annexed to the notice and the same shall be posted on the website of the society.⁵⁹ The notice shall specify that any member who objects to the Scheme shall be entitled to withdraw the authorization given to the copyright society to administer any right in his work from the date of commencement of the said Scheme.⁶⁰ The copyright society shall keep a record of the members who have given their approval and those who have objected the scheme.⁶¹ Approval of the Schemes shall be by a majority of members present in person and voting.⁶² The copyright society shall not amend any approved Scheme except with the prior approval of the General Body.⁶³

5.2.5 Meetings of the Society: Every copyright society shall hold a General Body meeting of all its members as its annual General Body meeting before the 31st day of March every year.⁶⁴ It is further said that 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.⁶⁵ 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.⁶⁶ Every member of the society shall have equal voting rights in General Body meetings and there shall be no discrimination between members who are authors and

other owners of right.⁶⁷ The Registrar of Copyrights shall be invited as an observer to all General Body meetings. The Registrar or his authorized representative may attend the said meeting.⁶⁸

5.2.5 Documents to be presented in the annual General Body meeting: Every copyright society shall place before its annual General Body meeting the 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 authorized to issue or grant licenses, their names and addresses as recorded in the Register of Authors and Owners maintained by the copyright society, (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 Commercial Court on the said Schemes, if any; (iv) annual report as approved by the Governing Council, giving a 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 (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.⁶⁹

5.2.6 Maintenance of Accounts and audit: Every copyright society shall maintain proper accounts of the royalties collected in a financial year, payments made out of such collections to the members and other recurring and nonrecurring expenditure incurred for meeting administrative and related matters, including the cost of litigations. Further, the books of account shall be kept in the registered office of the society and shall be open for inspection of the members from time to time as per the conditions laid down by the General Body and Every copyright society shall get its accounts audited by a chartered accountant annually.⁷⁰

5.2.7 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 the right or the set of rights in the specific categories of works for which the copyright society has been authorized to issue or grant licenses. The register shall

⁵⁵ Rule 59 (6) of the Copyright Rules, 2013

⁵⁶ Rule 59 (8) of the Copyright Rules, 2013

⁵⁷ Rule 59 (9) of the Copyright Rules 2013

⁵⁸ Rule 60(1) of the Copyright Rules, 2013

⁵⁹ Rule 60 (2) of the Copyright Rules, 2013

⁶⁰ Rule 60 (3) of the Copyright Rules, 2013

⁶¹ Rule 60 (4) of the Copyright Rules, 2013

⁶² Rule 60 (5) of the Copyright Rules, 2013

⁶³ Rule 60(6) of the Copyright Rules, 2013

⁶⁴ Rule 61 (1) of the Copyright Rules, 2013

⁶⁵ Rule 61 (2) of the Copyright Rules, 2013

⁶⁶ Rule 61 (4) of the Copyright Rules, 2013

⁶⁷ Rule 61 (5) and (6) of the Copyright Rules, 2013

⁶⁸ Rule 61 (9) of the Copyright Rules, 2013

⁶⁹ Rule 62 of the Copyright Rules, 2013

⁷⁰ Rule 63 of the Copyright Rules, 2013

contain the names of the authors and other owners, their addresses, the nature of rights authorized 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 licenses and the duration of such entitlement, the territory for which the authorization has been given and the rights that have been so authorized. (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 organizations and copy of the license agreements from whom the royalties have been realized, and the amount so realized including the date of realization; (iv) A register to be called the “**Disbursement Register**” containing details of disbursement of royalties made to each author or other owner of the 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.⁷¹

5.2.8 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; (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.⁷²

5.2.9 Code of Conduct for copyright societies.—Every copyright society shall conform the Code of Conduct such as the 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 the set of rights in the specific categories of works for which the copyright society has been authorised to issue or grant licenses; (f) all schemes of the society; (g) annual report and audited accounts as approved by the General Body; (h) license agreement formats; (i) details of all existing licenses other than those clauses in the license 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/Grievances Cell Further, the members shall be treated fairly, honestly, impartially, courteously, and ensure that its dealings with them are more transparent and provided with a copy of its basic documents of governance such as memorandum of association, articles of association, constitution, charter, Tariff Scheme and Distribution Scheme at the time of joining and or at any time on request.⁷³

5.2.10 Comply with procedure for dealing with complaints and grievances: A copyright society must comply with procedure for dealing with complaints and grievances by way of constituting a complaint or grievances cell and shall post the same in its website with all information regarding how to make the complaint and reasonable assistance in the formulation and lodging of a complaint. The society shall give the acknowledgement of the receipt of the complaint immediately upon receipt of the complaint and verify the nature of the complaint and the details of the complainant. The copyright society shall examine the complaint and, if necessary, give an opportunity of hearing to the complainant and dispose of the complaint, with a period of two months and provide a written response to the complainant and make available adequate resources for handling and resolving complaints.⁷⁴

5.2.11 Welfare fund of copyright society: Every Copyright society may frame a scheme for the welfare of its members as determined by its General Body and keep not more than five per cent. of its total royalties collected for implementing the scheme effectively and the amount that could not be distributed on account of non-accessibility of the members concerned.⁷⁵

6. Challenges and criticisms of copyright societies: Although the importance of Copyright Societies has been mentioned previously. A Copyright Society is an intermediary that links creators and users of copyrights in such a manner that promotes an equitable and profitable environment for holistic growth by way of providing the management of royalties and licensing facilities to the former and a diverse market to the latter. Despite the ever present challenges and the increasing

⁷¹ Rule 64 of the Copyright Rules 2013

⁷² Rule 65 of the Copyright Rules, 2013

⁷³ Rule 66 of the Copyright Rules, 2013

⁷⁴ Rule 66 (8) of the Copyright Rules, 2013

⁷⁵ Rule 67 of the Copyright Rules, 2013

technological requirements to keep these societies functional, the need of the same still remains indispensable with its significant contribution to the global economy and the cultural development. Some of the major criticism and challenges facing Copyright Societies are transparency in managing the collecting fee and fair distribution of royalties due to large membership. Further, an adequate and functional accounting system as well as honest administration is requisite for a society to maintain errorless and honest accounts and reporting systems. Despite the ever present challenges and the increasing technological development, the number of advanced technical pathways of material distribution introduced which seriously challenge the copyright issue and its infringement. Unless a Copyright Society has well-equipped itself to match today's digitization, the monitoring and reporting of copyright infringement becomes next to unfeasible and half the purpose of such an Organization stands defeated. And last but not the least, the collaboration with foreign copyright society with fair dealing and collecting the royalties is another challenge looking the jurisdictional problem and its trans-border issues and its regulation. Although it is important to mention that various organizations, such as CISAC – the International Confederation of Societies of Authors and Composers, are engaged in managing copyright societies all over the world, with CISAC alone overseeing over 227 member societies in more than 116 countries, and representing more than 5 million creators from all geographic areas and all artistic repertoires; music, audio-visual, drama, literature and visual arts.

7. Anomaly between Section 30 and Section 33:

Currently there is a controversy regarding issuing of license and collecting the royalty between copyright society and agent empowered by the author or owner of the work. These provisions of the copyright Act, 1957 are Section 30 r/w Section 18 (agent through Assignment) and Section 33 (Copyright society). It has been learnt that there are certain unfortunate discrepancies in the 1994 and 2012 Amendments seriously jeopardise rights and interests of non-author owners of copyright in creative works. The 1994 Amendment inserted Section 33 which mandates that only copyright societies can carry on “the business of issuing or granting licenses” in respect of creative works. However, it is silent about the matter of assignment of rights in copyrightable works. Further, Section 18 of the Copyright Act, 1957 stipulates that a copyright owner/author of creative works has the right to assign copyright to any “person” of their choice and while they have the right to license a work under Section 30 of the Act. Logically, an author can assign his copyright to a production company and the same can further assign it to other persons. In such an assignment, a copyright society is not necessary. However, Section 33 creates a specific bar on any other entity that may be assigned such rights as laid down in Section 18 to issue such licenses as a copyright owner of copyrightable works.

The anomaly is that due to Section 33, only a copyright society has the right to engage in business of issuance of licenses, even though under the scheme of the Copyright Act, copyright owners have the right to license a work under Section 30. Section 30 describes that 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 license in writing by him or by his duly authorized agent. The impact upon these provisions due to the addition of Section 33 is not clarified by either the statute or its Amendments. If we look at these provisions, copyright society is not necessary. Further, If we look at the provision of Section 33 (1) which says that no person or association of person shall after coming into force of the Copyright (Amendment) Act, 1994 commence or carry on the business of issuing or granting licenses 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). The second proviso of this section says that 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. Thus, Section 33 restricts any other entity not registered as a copyright society to issue licenses. It is not clear whether Section 33 should prevail over Sections 18 and 30 or the other way round. Resultantly, adjudication of licensing/assignment related disputes become the subject of enormous legal ambiguity. Indian Courts have not always agreed on what the words ‘person’, ‘business, or ‘in accordance with’ actually mean as mentioned in Section 33 of the Copyright Act, 1957. If we see, the provision relating to registration of copyright society, it stipulates that no person or association of persons shall after coming into force of the Copyright (Amendment) Act, 1994 commence or, carry on the business of issuing or granting licenses 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). But in the Sub clause (2) of Section 33 mentioning only any association of persons deleting the word “No person”. This creates the problem regarding the functioning of the copyright society to collect the royalties and the person as author or owner of the work to issue license under assignment of copyright. Most of the organisation like Novex, who holding authorization as agent in terms of Section 30 or assigned rights in terms of Section 18 for licensing purposes and administration of copyright. An agent is a person who has been legally authorized to act on behalf of another person, group, or entity. If a relationship between author or owner of the copyright and organization collecting royalties is agency and authorization as agent, the agent cannot become the agent of so many different authors or owners. By virtue of this, the organization cannot by pass the provisions as mentioned in Section 33 (3) of the Copyright Act and collect royalty not registered as a copyright society.

For example, in a case, the Bombay High Court⁷⁶ said the term ‘person’ does not include the owner of copyright. But, the Division Bench of the Delhi High Court in the PPL-Azure case⁷⁷ noted that owners do fall within its ambit. The meaning of ‘business’ is also debated. Undoubtedly, it covers a broad scope of activities and can be said to refer to a systematic or organized course of activity with a view to making profits. In a case, the Madras High Court⁷⁸ had observed that once the grant of license moves from the owner in his individual capacity and transcends into the realm of business, the registration requirement is triggered. And then, there is the phrase ‘in accordance with’. In the PPL-Azure case, the Division Bench interpreted this to mean that the association of persons issuing or granting licenses must either be a registered copyright society or a member of a registered copyright society. The recent Azure case brought these complexities to the forefront by way of giving direction to pay an unregistered entity (PPL) using the tariff rates of a registered society (RMPL). The Supreme Court has stayed of that direction. A legal vacuum persists upon the rights and interests of third-party licensing and collecting entities which carry on the business of granting/issuing licenses in respect of creative works. The 2012 Amendment could have clarified the statutory position. On the contrary, it has only enhanced the ambiguity by adding a new second proviso to the sub-section (1) of Section 33. The conflict of Section 33 vis-à-vis Sections 30 and 18 of the Act is yet to come before the Supreme Court of India for a decisive judgment. One may hope that the current ambiguity may eventually be resolved in a legally sound manner in times to come.

7. Conclusion

The Copyright Societies have been in an ambiguous position since the 2012 amendment. Copyright being at a nascent stage in India will surely provide the High Court or possibly Supreme Court enough opportunities to lay down an appropriate law. Until then, copyright societies seem to be the only feasible option governing licensing work. However, a good start would be focusing on securing free and open competition among several licensing entities with broad regulations in place to regulate their work. Flexible and broad licensing models targeting creators and consumers must be encouraged. In today’s tech driven world, the focus should be more on the results rather than on the process.⁷⁹ Despite the ever present challenges and the increasing technological requirements to keep these societies functional, the need of the same still remains indispensable with its significant contribution to the global economy and the cultural development. Recent court rulings have increasingly favoured copyright

societies in India, affirming their role in managing and protecting copyright interests.

⁷⁶ Novex Communications v. Trade Wings Hotel, 2024 SCC OnLine Bom 252.

⁷⁷ Phonographic Performance Limited v. Azure Hospitality Private Limited & Ors. CS(COMM) 714/2022

⁷⁸ Novex Communications v. DXC Technology 2021 SCC OnLine Mad 6266

⁷⁹ Gagan Chaudhary “Copyright Societies in India- What do the law say?” published in the blog www.lawessentials.com