

GUEST POST

ROYALTIES FROM ONLINE STREAMING SERVICES: THE INDIAN LEGAL FRAMEWORK

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In this article the author analyses internet broadcasting and streaming services vis-a-vis royalties. The article outlines the scope of Section 31 D, Indian Copyright Act, 1957 alongside two major decisions namely, *Tips Industries Ltd Vs. Wynk Music Ltd & Ors* and *Warner/Chapell Music Ltd. v. Spotify Ab*.



In the past few decades, there has been a sharp increase in the use of technology. This increase in technology has increased people's access to various forms of entertainment and media, such as music, movies and so on. Internet Streaming of media and entertainment has achieved new heights with the introduction of compa-

nies like Spotify, Netflix, Amazon Prime, YouTube etc. India has seen an increasing growth in the usage of these online streaming websites since the beginning of this century. While the broad availability of online streaming of music is an excellent product of digitalisation and a marvel of internet services, it has been realised that not many

benefits are enjoyed by the artists in the music industry. They often do not receive requisite amounts of royalties for their hard work.

Please visit [<https://www.jusip.in/online-streaming-royalties-and-statutory-licensing-in-india/>] to read the complete article.

TRIVIA

ACROSS THE GLOBE

2014 | When Taylor Swift removed her Albums from Spotify



During the COVID-19 pandemic, Taylor Swift released two albums over the internet and we could stream the same on Spotify. But in the year 2014, she removed her entire catalogue from Spotify, only to put it back in 2017. In fact, Spotify also promoted a playlist called *"What to play while Taylor's Away"* alongside a public note addressing the conflict.

The reason why this is relevant to the debate surrounding music royalties is because she at that time felt that online streaming was not fairly compensating the producers, artists, and creators of music. In 2015 she put her entire catalogue except the album *"1989"* on Tidal Streaming Service which streamed music for a subscription fee; later also taking a critical take on Apple Music that announced a 3-month free subscription. In July, 2015, Spotify acquiesced to Swift's request and also granted royalties to every artist during their free trial.

2015 | The Story of JayZ and Tidal



JayZ bought Tidal, a Norwegian subscription - based streaming platform, in the year 2015 with view to introduce an online streaming service which compensates the artists who hosted their music on it, better than other streaming platforms available such as Spotify and Apple. He was critical of the same as well, stating that artists were paid way less than they deserved.

JayZ claimed Tidal to be different than other Streaming Platforms since, *firstly*, it was a platform for artists, *secondly*, it was largely owned by artists, and most *significantly*, it proposed to pay larger sums in royalties to the artists. The launch of TIDAL streaming service is relevant to the debate surrounding music royalties and online streaming as it steered focus on how artists were dissatisfied with the royalties paid to them by various platforms.

2018-2020 | The American Royalty Rates Battle



The US Copyright Royalty Board (CRB) in 2018 ordered a 44% rise for streaming and mechanical royalties for publishers and writers who stream their music on online platforms and applications for the year 2018 and 2022. The same came as a huge relief for songwriters in the US. In the year 2019, popular streaming platforms such as Google, Amazon, Spotify and Pandora appealed against the same before the US Court of Appeals. The two grounds for the appeal were, *firstly*, that the increased rates for royalties would act detrimental to both copyright owners and music licensees and *secondly*, that the same raised procedural and substantive concern. The artists and other streaming platforms who did not appeal to the same such as Apple Music and Tidal alongside the National Music Publishers Association criticised the move of filing the appeal tremendously.

In the year 2020, in a major win for the streaming platforms, the US Court of Appeals rejected the model proposed by the CRB for *"failing to provide adequate notice of rate structure"* and ordered a review of the reasoning of the CRB for reaching their decision to review in rate structure in the first place.

INTELLECTUAL PROPERTY RIGHTS



Draft Bill Proposed to Shut Down IPAB

In an interesting turn of events, a draft Bill titled *The Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021* was introduced in the Lok Sabha, with the purpose to shut the Intellectual Property Appellate Board (IPAB) down. While proposing to dismantle the IPAB, the Bill also seeks to transfer the power and authority of the IPAB to High Courts for the issues of Patent, Trademarks, GI and to the Commercial Courts for matters relating to Copyright. The Statement of Objects and Reasons of the aforementioned Bill state that tribunals in several sectors have not necessarily led to faster justice delivery and they are

also at a considerable expense to the exchequer. Therefore, further streamlining of tribunals is considered necessary as it would save both time & money. Accordingly, the Bill proposed to abolish IPAB tribunals and transfer the jurisdiction exercised by them to the High Court and Commercial Courts.

The DPIIT publishes Designs Amendment Rules, 2021

The Ministry of Commerce and Industry (DPIIT) has modified the term “*Start-up*” in the newly published *Designs Amendment Rules, 2021*. It also has an amended version of the term Forms and Fees. According to the new rule, “*Start-up*” means an organization in India that is recog-

nized as a *startup* by the competent authority as per the *Startup India initiative*. In case of an international organization, any entity meeting the criteria for a period of incorporation or registration as per the “*Startup India Initiative*” along with submitting a declaration to that effect will be called a ‘*Start-up*’. The following are the features of the amendment:

- a. Revised criterion for recognition of Start-Ups.
- b. Reduction and Simplification of Fees for Small Entities Further, the difference in fee may be paid where there is transfer of rights.
- c. The Amendments finally adopt the Locarno Classification as published by the WIPO.
- d. The Fourth Schedule outlines the costs allowed in

proceedings before the Controller.

e. Service by mobile phone and email.

Samsonite receives favourable decree in suit for Infringement of their registered trademark "AMERICAN TOURISTER"

Samsonite IP Holdings,

received a favourable verdict by the Delhi District Court (Tis Hazari) in a suit for infringement and passing off seeking injunction against the defendant from using their registered trade mark "AMERICA TOURISTER" or any deceptively similar/identical mark. The court observed that for reason that the plaintiff *firstly*, was registered proprietor of

the trade mark "AMERICAN TOURISTER" and *secondly*, since the defendant has been found using the trade mark by "falsifying the mark of the plaintiff and passing off his product as that of the plaintiff", there was sufficient cause to show that the defendant was guilty of trademark infringement and passing off.

ARBITRATION LAW



Non-Payment of Stamp Duty does not invalidate Arbitration Agreement

The Supreme Court, in *M/s N. N. Global Mercantile Private Limited V. M/s Indo Unique Flame Limited and Ors*, was faced with the issue of whether an arbitration agreement was valid and enforceable even if the same was unstamped. The Court

while deciding the matter observed and analysed the legislative intent and statutory scheme of the Stamp Act. The Court, reversing an earlier decision in *SMS Tea Estate Case*, observed that the law pertaining to non-arbitrability of unstamped commercial contracts and invalidation of arbitration agreements for voidable contracts was improper. Further, the Court

held that since the agreements are of standalone nature meaning thereby, i.e., they are only between the two parties, the non-payment of stamp duty would not altogether invalidate the main contract. Therefore, the invalidating of a Commercial Contract does not have any bearing on the independent existence of the Arbitration Agreement.

Bombay High Court simplify conundrum surrounding choice of Seat and Jurisdiction of Courts

The Bombay High Court in the case titled *Aniket SA Investments LLC V. Janapriya Engineers Syndicate Private Limited & Ors*, resolved the issue surrounding whether two courts may have concurrent jurisdictions and wheth-

er a choice of Seat of arbitration has a legal effect on exclusive jurisdiction of courts. The Court held that when the parties choose a seat, that act in itself points towards '*party autonomy*' and resultantly, has an effect of conferring jurisdiction exclusively on the courts where the seat is situated. It was further held that the when the contract itself cate-

gorised a Seat for arbitration in another place, only the courts of such territory as described and selected by the parties will have jurisdiction to entertain a petition for interim measures or any such directions before the enforcement of an arbitral award as outlined under Section 9, Arbitration and Conciliation Act, 1966.

INSOLVENCY AND BANKRUPTCY LAW



No TDS on buying property under liquidation: NCLAT

Liquidation of companies is set to get more comfortable with NCLAT observing in the case of *Om Prakash Agarwal Vs. Chief Commissioner of Income Tax and Ors.* that the liquidator has to get tax deducted at source while

liquidating a bankrupt company. In the afore mentioned case, the NCLAT ruled the liquidator must not prepare a balance sheet and profit & loss account and get it audited during the liquidation process. The order states that any buyer of property from a liquidator under IBC, 2016 shall not be required to

deduct and pay 1% TDS from the sale consideration under Sec 194-IA of the Income-tax Act, 1961. The bench also observed that TDS once deducted could not be claimed as a refund during the liquidation process without the filing of the company's income under liquidation.

The scheme of IBC and regulations does not require a liquidator to prepare audited financial statements during the liquidation process, and filing of ITR is not possible under the income tax law without preparing an audited annual financial statement and other documents. This landmark case will set a precedent and make the liquidation process easier.

Pledge Holders Are Not Financial Creditors: Supreme Court

The Supreme Court has held that if a corporate debtor has only offered security by pledging shares, without undertaking to discharge the borrower's liability, then the creditor in such a case will not become 'financial creditor' as defined under the Insolvency and Bankruptcy Code. The Court held that such a creditor could be a secured creditor but will not be a financial creditor under the IBC entitled to take part in the insolvency resolution process. Referring to precedents, the bench held that:

"a person having only security interest over the assets of corporate debtor even if falling within the description of 'secured creditor' by virtue of collateral security extended by the corporate debtor, would not be covered by the financial

creditors as per definitions contained in sub-section (7) and (8) of Section 5".

This order came from an appeal from the case of *Phoenix Arc Pvt Ltd v Ketulbhai Ramubhai Patel*, where the appellant challenged the orders of NCLT and NCLAT which refused to allow its participation in the resolution process of a corporate debtor.

Proceedings against Corporate Debtor for Cheque Dishonour covered under Section 14 IBC

The Supreme Court in *P Mohanraj and Ors V. M/s Shah Brothers Ispat Ltd & Connected Cases* held that the declaration of moratorium under Section 14 of the IBC will cover criminal proceedings for the dishonour of cheque under Section 138 of the Negotiable Instruments Act against the corporate debtor.

It was held that continuation of criminal proceedings under section 138 of NI Act is barred during the pendency of liquidation proceedings before the NCLT against the Corporate Debtor, while there was no such bar qua initiating cheque bouncing proceedings against natural persons-in-charge of the Corporate Debtor company.

Insolvency and Bankruptcy

Code resolution timeline averages 440 days.

With the insolvency law entering the fifth year, a leading resolution agency has emphasised the need for focusing on efficiency to ensure time-bound resolution as it averaged 440 days for resolving 277 cases approved by the NCLT as on September 2020. An Alvarez & Marsal India report called upon all IBC stakeholders to focus on improving efficiency to resolve cases in a time-bound manner because wherever the resolution time increased, the recovery percentages also fell sharply to 15-25 per cent.

The report blamed multiple litigations initiated by stakeholders during the process, administrative delays at NCLTs and inconsistencies in judgments across benches as the major driving forces for the slower resolution process. The rate of filing of new cases far exceeded the rate of closure of ongoing cases.



CORPORATE LAW



LLPs may get till June to reform governance

Decriminalising various offences, introducing a new concept of small LLP's and permitting LLP's to issue non-convertible debentures are among the few changes being proposed under the Limited Liability Partnership Act. To make matters of business easier, the corporate affairs ministry has sought

comments on the recommendations of a high level committee regarding LLP Act. The Ministry had set up the Company Law Committee in September 2019. After studying the existing framework under the LLP Act, the panel has suggested decriminalising 12 offences and shifting them to an in-house adjudication mechanism, and also omitting atleast one offence. The committee has also proposed the

concept of small LLP as well as provisions for LLPs to issue non-convertible debentures. The Parliament has given the green light to the corporate affairs ministry's amendments to the Limited Liability Partnership Law. Limited Liability Partnerships in India will get two to three months to disclose ownership and improve governance after a set of proposed changes to the LLP Act are notified.

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