



CASE COMMENT ON TIPS INDUSTRIES LTD. V. WYNK LTD.

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BACKGROUND

The Copyright law in India saw a huge breakthrough in 2012 vide The Copyright (Amendment Act), 2012 which came into effect on June 21, 2012. The main schema of the amendment was to correct the legislative imbalance of rights assigned to composers and lyricists and was a path-breaking remedy for the copyright regime in India.¹

One of the most important changes brought in by this amendment was the provision of Section 31D, which gave leeway that any broadcasting organization which wants to broadcast a literary, musical or sound recording already published may do so subject to various conditions mentioned in the section. Due to widespread growth of internet all over the globe, 'communication to public' via internet is much more prevalent and thus, on September 05, 2016, the Department of Industrial Policy and Promotion (DIPP) issued an Office Memorandum² clarifying the scope of section 31 D of Copyright Act, 1957 by construing that "any broadcasting organization desirous of communicating to the public" may not be restrictively interpreted to be covering only radio and television broadcasting, as definition of "broadcast" read with

"communication to the public" appears to include all kinds of broadcasts including internet broadcasting. Therefore, bringing 'online broadcasting' under the ambit of section 31 D of Copyright Act, 1957.

This section has been heavily criticized, and has been a matter of constitutional challenge on various grounds such as

- Not allowing commercial negotiations to determine royalty rates favors broadcasters at the expense of the copyright owners.
- The copyright owners are not given the authority to negotiate terms of royalties with the broadcasters.

The provision is violative of Art. 19 (1) (g) of the Constitution as it provides the Appellate Board the power to fix rates for radio broadcasting. This is not a reasonable restriction.

BRIEF FACTS

The Plaintiff - Tips Industries Ltd, had claimed to be the owner of the copyright in over 25,000 sound recordings. The Defendants owned and operated WYNK, an Over the Top Service available on the internet, smart phones and smart media. Through this service, upon payment of a subscription fee, the Defendants' subscribers could access numerous sound recordings and audio-visual recordings including, inter alia, the Plaintiff's Repertoire. Tips' Repertoire was earlier licensed to the Defendants by the

¹ Prashant Reddy T., *The Background Score to the Copyright (Amendment) Act, 2012*, 5 NUJS L. Rev. 469 (2012)

² Dipp.gov.in, https://dipp.gov.in/sites/default/files/OM_Copyright Act_05September2016.pdf (last visited Jun 14, 2019)



copyright society - Phonographic Performance Limited. After the end of the aforementioned license, negotiations ensued between the Tips and Wynk to arrive at terms for a renewed license but there was a failure to do so. On or around 22nd March 2017, in a meeting between the Wynk and Tips' representatives, a License Fees of Rs. 4.5 crores towards the Tips' Repertoire was agreed upon for a term of 2 years i.e. Rs.2 Crores for the first year and Rs.2.5 Crores for the second year. Wynk disputed that the said figure of Rs.4.5 Crores was never agreed upon. According to Wynk, the said figure was not acceptable to the company as the same was excessive and hence the same was rejected. Wynk then invoked Section 31-D of the Copyright Act, 1957 by claiming themselves to be a broadcasting organization. In short, Wynk claimed that they were a broadcasting organization and that they were entitled to a statutory license under Section 31-D of the Act to communicate the work to the public by way of broadcast of the Tips' musical work and sound recordings. This was the main bone of contention for the both parties during the subsequent hearing.

ANALYSIS OF ARGUMENTS AND THE JUDGEMENT

The Ld. Senior Advocate for Tips' had submitted that Section 31-D of the Act does not contemplate a right or entitlement to commercially rent out or sell copyrighted works. The said section only contemplates a statutory license for 'broadcasting'. He submitted that Section 31-D of the Act does not enable or permit a person to sell or commercially rent out sound recordings. He submitted that even otherwise, broadcast is a species of activity that falls within the scope of 'communication to the public'. Ld. Advocate for Tips' submitted that the right to

commercially rent / sell sound recordings is a separate right carved out under Section 14(1)(e)(ii) of the Act and is independent to the right to communicate to the public as provided in Section 14(1)(e)(iii) of the Act. It was submitted that if there is a combined reading of Sections 2(dd), 2(f) and 31-D of the Act along with Section 14(1)(e) of the Act, it can be made clear that intention of the Legislature to exclude the right to commercially rent / sale of sound recordings from Section 31-D is apparent and what is covered is only the communication of sound recording to public. Meanwhile, seeking to claim benefit of Section 31-D, Wynk's representatives had contended that they were a broadcasting organization and that they were communicating to the public by way of broadcast of the Tips' Repertoire over the Internet.

Hon'ble Justice S.J. Kathawalla stated that he was in agreement with Tips' that the provisions of Section 31-D read with Rules 29 to 31 coupled with the legislative history preceding the passage of Copyright Amendment Act, 2012 clearly supported the submission that Section 31-D contemplates only television and radio broadcasting and not internet broadcasting and thus the suit filed by Tips' was allowed by the court.

CONCLUSION

This judgment has been considered as an extremely important decision for the entire recorded music industry existing in India, and IMI, the trade body which represents the benefits of the music industry in India, has welcomed the verdict. This decision confirmed IMI's consistent stand that INTERNET streaming services are not covered under Section 31D of the Copyright Act, 1957. The intention of the Parliament



was to provide involuntary licensing benefits under the Copyright Act, 1957 and it is very encouraging now that the Hon'ble Court has clarified the intention of our lawmakers which did not include streaming services under the statutory licensing scheme.

