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To,
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Subject: *IPRS and IMI's Comments on TRAI Consultation Paper on formulating a Digital Radio Broadcast Policy for Private Radio Broadcasters - 2024*

Dear Sir,

We thank the Telecom Regulatory Authority of India ("**TRAI**") for the opportunity provided to the Indian Performing Rights Society ("**IPRS**") and Indian Music Industry ("**IMI**") to provide their comments to TRAI's Consultation Paper on formulating a Digital Radio Broadcast Policy for Private Radio Broadcasters – 2024.

About the IPRS:

The IPRS was constituted in the year 1969 to protect, monitor, and enforce the rights of its members comprising of Authors (Composers & Lyricists) and Owners/Publishers of musical and literary works. At present, IPRS has over 14,400 of the most luminary Authors (Composers and Lyricists) and major Owners/Music Publishers as its members.

IPRS also represents millions of international authors, music composers and music publishers associated with millions of international Works by virtue of its reciprocal representation agreements for performing rights as well as mechanical rights with sister copyright societies and collective management organizations from across the world such as PRS (UK), ASCAP (United States of America), GEMA (Germany), APRA (Australia), SACEM (France), JASRAC (Japan), KOMCA (South Korea) etc.

About the IMI:

IMI is the apex body representing the interest of the recorded music industry in India since 1936 whose membership consists of 173 music companies. It is affiliated with the International Federation of Phonographic Industry (IFPI) which is the apex body of the global recording industry.

IPRS and IMI's Comments on the TRAI Consultation Paper on Inputs for Formulation of National Broadcasting Policy - 2024 are as follows:

Q8. Should private radio broadcasters be permitted to simulcast their live terrestrial channels on the Internet? If yes, what should be the terms and conditions for such a simulcast? Please provide your comments with detailed justification.

Paragraph 3.34 and 3.35 under Chapter III of the CP raise concerns for the rightsholders as it suggests review of the existing Phase III Radio Policy Guidelines to enable existing private radio broadcasters authorised by MIB to simulcast their live terrestrial channels on Internet with no additional cost to such broadcasters.

Simulcast of a live terrestrial channel amounts to use of a different technical means to that of the original communication i.e. analogue radio broadcasting, therefore, resulting in disseminating of copyright protected works to “new listeners” which was not considered by the rightsholders while providing authorising for the original communication. Berne Convention for the Protection of Literary and Artistic Works ratified by India confirms that any existing license for communicating the copyright works to the public granted by the author to the broadcasting station does not cover communication of work to listeners other than contemplated by the rightsholder when his permission was given.¹

In light of the above, we recommend that any review of the existing policy guidelines or introduction of new policy guidelines allowing for simulcast of live terrestrial channels on Internet must require such broadcast permission holders to obtain a separate licence for simulcast of copyright works forming part of live terrestrial channel from owners of copyright under the Act.

Private radio broadcasters may be permitted to simulcast their live terrestrial channels on the internet subject to them seeking voluntary licenses from the IPRS and members of IMI. It is humbly submitted that no radio broadcast and internet simulcast should be permitted without requisite license from IPRS and members of IMI. In this context, TRAI should be cognizant of the following issues while considering any framework for permitting simulcast of FM Radio channels on the internet:

(A) Statutory Licensing Mechanism Should Not Be Imposed

(1) Background

It is important to understand that “Music Rights” in the context of broadcasting or music streaming comprise separate works and separate rights.

The general licensing flow as regards television, radio or music streaming services comprises of **two separate licenses** namely for sound recording and for the works underlying sound recordings namely lyrics and musical compositions.

IPRS represents creators of Music and Lyrics i.e. Lyricists and Music Composers and represents the Music Companies and Film Producers who own copyright in Lyrics and Musical Compositions. IPRS administers the “works” (i.e. lyrics and musical composition/musical works).

As the sole copyright society representative of creators i.e., authors, music composers and music publishers in India, the creator and publisher members of IPRS will be directly impacted by any regulation mandating non-voluntary licensing for broadcasting of musical works.

Any policy that proposes to introduce non-voluntary licensing framework would discourage sound recording rightsholders to continue to invest in new talent and their music, thereby

¹ Available at https://www.wipo.int/edocs/pubdocs/en/copyright/615/wipo_pub_615.pdf

preventing radio broadcasting sector to utilise the robust connection between music and Indian consumers to reach new listeners and promote diverse music across the country.

(2) Statutory Licensing under Section 31-D of the Copyright Act, 1957²

Section 31-D entitles a broadcasting organization to a statutory license to communicate the work to the public by way of broadcast of the musical work and sound recordings by paying the separate royalty rates established by the Court. Section 31-D was inserted *vide* Copyright (Amendment) Act, 2012³. The Amendment Bill was scrutinised by the Department Related Parliamentary Standing Committee on Human Resource Development in its 227th Report wherein it made the following observations:

*“9.12 The Committee observes that the main contention between authors/composers of film lyrics and music compositions and Film/Producers Music Companies is about the rights relating to film music. Film music rights are bundle of copyrights which include synchronization right, performing rights, mechanical reproduction right and sound recording right. Synchronisation right is that when a music or song is synchronised to a film, video, television or commercial etc. **Performing rights are right to perform music in public specially in broadcasting (TV/Radio), restaurants, airlines, auditoriums or public functions etc.** Mechanical reproduction rights are a royalty paid to a song writer whenever a copy of one of their songs is made. Sound recording rights are owned by producer or a recording company.*

*15.2 The Committee finds that **the introduction of a system of statutory licensing has been proposed so as to ensure that public has access to musical works over the FM radio networks** and at the same time, the owner of copyright works is also not subject to any disadvantages. The Committee has been given to understand that this system would work in favour of users of copyright works who would then not be subject to lengthy, expensive and monopolistic negotiations by the owners of the work.*

15.3 Divergent views were expressed by different stakeholders on the viability of this amendment. Welcoming it as a positive move, the Indian Broadcasting Foundation pointed out that with pre worked terms and conditions, a broadcasting organization would have far greater certainty in terms of its operation cost. Also number of disputes arising due to arbitrary and unreasonable demands of copyright owners would likely to be quite low. However, very strong reservations were expressed by organizations like South India Music Companies Association, Indian Music Industry, Phonographic Performance Ltd, Indian Performing Right Society Ltd, and RPG Enterprises-Saregama on the following grounds:

- the new regime of ‘statutory licensing’ of music to broadcasters appears to be discriminating as the copyright owner/author has been denied any say in the fixing of royalty.*
- **like music industry, the broadcasting (except AIR) industry is in the private sector***
- radio industry is risk-free and solely profit-oriented and already offered concessions by the Government, Reasons for music industry which takes risks in bringing out music being singled out are not known.*
- **television industry is a long established industry, not needing any support. However, with such a provision for broadcasting industry, Television industry may also seek concessional licensing***
for their programmes as well.

² Available at <https://copyright.gov.in/documents/copyrightrules1957.pdf>

³ Available at https://copyright.gov.in/Documents/Notification/Copyright_Amendment_2012.pdf

- it will drastically reduce the number of works, societies can administer by excluding all those works where the author has already assigned his rights”.

It is evident from the above paragraphs that the Parliamentary Standing Committee itself understood that ‘broadcast’ under Section 31-D was limited to either ‘radio’ or ‘television’ broadcasting only and that the object of such a provision was to ensure that the public had access to FM radio networks.⁴

Chapter VIII (Rules 29-31) under the Copyright Rules, 2013⁵ deals with **statutory licenses** for the broadcasting of literary and musical works and sound recordings. A perusal of Rules 29 (i.e. Notice for Communication to the Public of literary and musical works and sound recordings) and 31 (i.e. Manner of determining royalties) of the Copyright Rules supports the view that Section 31-D is a statutory licensing regime meant only for ‘radio’ and ‘television’ broadcasting and not internet broadcasting. Rule 29 of the Copyright Rules, 2013 only contemplates issuance of notice for these categories (i.e. radio/television broadcasting), it supports the view that Section 31-D covers only radio broadcasting and television broadcasting. Further, such a view is also fortified by Rule 31 of the Rules which contemplates the determination of royalties only in respect of television and radio broadcasting.⁶

The Bombay High Court in *TIPS Industries Ltd. v. Wynk Music Ltd. and Anr.*⁷ also held that “*The Legislature was well aware of the existence of prevalent digital technologies and trends, including the sharing, streaming and downloading of music when the Copyright (Amendment) Bill, 2010 was before it. The same is evident from a reading of the Statement of Objects and Reasons of the Copyright Amendment Act, 2012. The expropriatory nature of Section 31-D cannot be denied. The rights of such owner of a sound recording are given under Section 14(1)(e) and Section 30 of the Act. Section 31-D acts as a statutory exception to the rule that a copyrighted work is the exclusive property of its owner and the may deal with it as he may deem fit..... The absence of express words in Section 31-D providing for a Statutory License in respect of internet streaming and/or downloading, was a conscious legislative choice....the legislation enacting the subject section is relatively recent and the Legislature was aware of services such as the services offered by the Defendants. Clearly, the Legislature did not intend to include internet broadcasting within the ambit of Section 31- D.*”⁸

Relying on the above-mentioned Parliamentary Standing Committee Report, perusal of Rules 29 & 31 of the Copyright Rules 2013 along with the absence of an express verbiage under Section 31-D providing for a Statutory License in respect of internet streaming and/or downloading, the Bombay High Court held that “*The internet broadcasting organizations cannot enjoy the benefits of a Statutory License under Section 31-D. The intention of the Legislature while enacting the amending legislation viz. the Copyright (Amendment) Act, 2012, was to restrict the grant of Statutory License under Section 31-D to radio and television broadcasting organisations. The facts of the matter do not occasion the application of the doctrine of contemporaneo expositio.*”⁹

Subsequently, the division bench of the Bombay High Court in *Wynk and Anr. v. TIPS Industries*¹⁰ upheld the judgement rendered by the Single Judge above. The Division bench specifically held that “*Statutory licenses under Section 31D are restricted to traditional non-internet-based radio*

4 Paragraphs 76 & 77, *TIPS Industries Ltd. v. Wynk Music Ltd. and Anr.* [2019 SCC OnLine Bom 13087]

5 Available at https://copyright.gov.in/Documents/Copyright_Rules_2013_and_Forms.pdf

6 Paragraphs 75 & 76, *TIPS Industries Ltd. v. Wynk Music Ltd. and Anr.* [2019 SCC OnLine Bom 13087]

7 *TIPS Industries Ltd. v. Wynk Music Ltd. and Anr.* [2019 SCC OnLine Bom 13087]

8 Paragraph 72, 73, *TIPS Industries Ltd. v. Wynk Music Ltd. and Anr.* [2019 SCC OnLine Bom 13087]

9 Paragraph 93, *TIPS Industries Ltd. v. Wynk Music Ltd. and Anr.* [2019 SCC OnLine Bom 13087]

10 *Wynk Ltd. and Anr. v. TIPS Industries Ltd.* [2022 SCC OnLine Bom 11807]

and television broadcasting and performances alone. Section 31D has no application to any internet-based offering".¹¹

Pursuant to the judgment rendered by the Bombay High Court, the Department for Promotion of Industry and Internal Trade, in 2024, rescinded its erstwhile office memorandum extending the scope of Section 31-D to internet transmissions¹².

(B) Back door entry to National radio license

The Policy Guidelines on Expansion of FM Radio Broadcasting Services through Private Agencies (Phase III)¹³ regulate the issuance of authorizations for various FM Radio channels within urban areas across India. Should internet simulcasting of live FM Radio channels be permitted, such channels could potentially function as de facto nationwide radio licenses. To prevent the circumvention of existing restrictions on multiple authorizations within a city *"Every applicant shall be allowed to run not more than 40% of the total channels in a city subject to a minimum of three different operators in the city"*¹⁴, therefore it is advisable to implement appropriate safeguards, such as geo-blocking, to ensure that internet simulcasting does not serve as a conduit for unauthorized national-level radio broadcasting.

Further, if internet simulcasting of live FM Radio channels is allowed, FM Radio broadcasters may provide their services to users outside of India. This would run afoul of contractual restrictions placed on FM Radio Broadcasters by copyright societies and other owners of copyright which limit their ability to broadcast licensed sound recordings and musical works only within the territory of India.

(C) Potential for increased online piracy

The entertainment industry in India loses up to USD 2.8 billion of revenue annually due to digital piracy.¹⁵ A prevalent method of online piracy that has proliferated in the era of streaming services involves the unauthorized recording and distribution of streamed content, a practice commonly referred to as 'stream-ripping' which facilitates the unauthorized streaming and downloading of copyrighted material. A report issued in 2022 by IMI noted that *"Stream ripping has been the most prominent music piracy method globally for several years and it is particularly prevalent in India where 70 percent of respondents to IFPI's Engaging with Music Study 2022 said they had acquired music in this way."*¹⁶ Further, the TRAI itself in 2024 had noted that *"that the Indian music is highly prone to digital piracy. As per reports, India ranks second in music piracy (11.5%) based on visits to music piracy websites"*.¹⁷ Any regulatory allowance for internet simulcast of live FM Radio Channels must be accompanied by adequate measures to prevent the circumvention of effective technological measures such as Digital Rights Management, encryption and digital watermarking, blockchain technology, etc. to prevent unauthorized distribution and combatting piracy to protect music copyright in the online world.

11 Paragraph 73, *Wynk Ltd. and Anr. v. TIPS Industries Ltd.* [2022 SCC OnLine Bom 11807]

12 Available at https://copyright.gov.in/Documents/Office_Memorandum/Office_Memorandum_dated_21_08_2024.pdf

13 Available at <https://mib.gov.in/broadcasting/private-fm-radio-phase-iii-policy-amendments>

14 Clause 7.1, Page 50, Policy Guidelines on Expansion of FM Radio Broadcasting Services through Private Agencies (Phase III).

15 Available at <https://timesofindia.indiatimes.com/blogs/voices/digital-piracy-jeopardises-indias-flourishing-creative-economy/>

16 Page 13, Indian Music Industry's Annual Report (2022). Available at <https://indianmi.org/wp-content/uploads/2023/02/IMI-Annual-Report-2022.pdf>

17 Paragraph 3.96, TRAI's Recommendations on Inputs for formulation of National Broadcasting Policy 2024. Available at https://www.traai.gov.in/sites/default/files/Recommendations_20062024.pdf

Q9. Should the provisions relating to eligibility criteria prescribed in FM Phase-III Policy guidelines be adopted for Digital Radio Broadcast Policy?

Any eligibility criteria formulated for the purpose of Digital Radio Broadcast Policy must provide for following provisions:

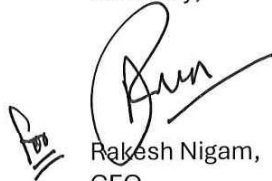
1. "A company is eligible if the services provided are limited to offering broadcast of a licensed radio channel via internet where such broadcast:
 - a. Is simultaneous with the broadcast of such live terrestrial channel; and
 - b. Is hosted by the applicant company on the data servers owned or controlled (directly or indirectly) by such applicant company.
2. Failure to obtain license for simulcast of FM radio terrestrial channel broadcasting copyrighted works from owners of such copyright under the Copyright Act shall be a valid ground for disqualification from bidding and obtaining permission for FM radio channels."

Q23. Should the provisions regarding the Programme Content provided in the existing policy guidelines be adopted for Digital Radio Broadcasting?

Similar to Programme code prescribed under the Cable Television Network Rules, 1994,¹⁸ any policy on programme content adopted for digital radio broadcasting must prevent a broadcaster from carrying any programme in respect of which copyright subsists under the Copyright Act, 1957 (14 of 1957) unless granted a licence by owners of copyright under the Act in respect of such programme.

IPRS and IMI respectfully request that the TRAI give due consideration to the comments submitted in response to its Consultation Paper. We stand ready to provide any additional information or participate in further discussions as may be required by the TRAI.

Sincerely,



Rakesh Nigam,
CEO,
Indian Performing Rights Society



Blaise Fernandes,
President & CEO,
Indian Music Industry

¹⁸ Available at https://mib.gov.in/sites/default/files/pc1_0.pdf