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*Journal of Emerging Knowledge on Emerging Markets*  
Volume 3  
November 2011

# Copyright liability and performing rights organizations in the United States and India: A comparative analysis

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Volume 3  
November 2011

**I**t is hard to deny that music's presence in the retail function is nearly ubiquitous. Whether it is used as background music in retail establishments or as foreground music in bars and restaurants, research suggests that music has the ability to influence the attitudes and behaviors of consumers. In several instances, however, the cost to use music extends beyond the expenses incurred from purchasing CDs, stereo equipment or from engaging musicians to perform. Most industrialized nations have statutes that protect music under copyright. The owners of the copyright, usually the composer or publisher, must grant the music user permission to play or perform their music. In exchange for allowing entities to perform or play their music, publishers and composers receive monetary compensation in the form of performance royalties. They often enlist performing rights



organizations (PROs) and societies to make licenses available to music users and collect royalties on their behalf.

Performing rights organizations and societies exist in countries all over the world. Businesses that use music to enhance their service experience are responsible for obtaining the clearance to perform copyrighted music. The owner of the business is liable for ensuring that copyright protection has been secured for all music played or performed in the establishment—whether CDs are played, a band performs or in some cases, a radio or television program is “retransmitted.” Not obtaining copyright permission can be deleterious. Heavy fines can be imposed on businesses for copyright infringement, and in some countries offenders can be imprisoned.

The present research presents a review and comparative analysis of the licensing efforts of performing rights organizations in two industrialized nations—the United States and India. The United States currently has three PROs: (1) ASCAP (American Society of Composers, Authors and Publishers), (2) BMI (Broadcast Music, Inc.), and (3) SESAC (previously referred to as the Society of European Stage Authors and Composers). Performing rights organizations have been in existence for almost a century in the U.S. Collectively, these organizations have nearly a million songwriter, composer and publisher members. Of the \$4 billion generated worldwide in royalties each year, the three U.S. PROs account for over \$1.5 billion in collections (ASCAP 2010). However, due to lack of awareness and some consumer confusion, the U.S. performing rights organizations’ collection efforts have not escaped criticism from music users over the years, including small businesses and retailers.

Alternatively, India, with a burgeoning entertainment industry spurred by the success of Bollywood, presently has only one performing rights organization, the Indian Performing Rights Society Limited (IPRS). However, galvanizing high standards towards copyright protection has been an arduous journey in India. In 1995, with a change in the Indian Copyright Act, more aggressive procedures have been taken to heighten awareness of copyright. Nonetheless, as more active moves towards enforcement of copyright are made, contention among small businesses and retailers has surfaced, similar to that of the U.S.

While the value of intellectual property to its owners has been established (O’Connor 2005; Fontenot and Wilhelm 2005), the strong possibility exists for unintended consequences of this protection. Currently, the U.S. has a well-established licensing system for performance rights under the administration of its three PROs. In this vein, as India continues to emerge as an economic force globally, its treatment and enforcement of copyright protection is rapidly evolving. In this research, India’s nascent licensing efforts are compared to those of the U.S.

In addressing copyright protection and the licensing efforts of the PROs, this paper is organized accordingly. First, a review of the literature regarding music’s value to the service environment is presented. Next, the history of copyright law internationally as well as in the U.S. and India is discussed. A review of the performing rights organizations along with their licensing practices in each country is subsequently presented. Challenges facing

PROs from both countries along with impacting environmental factors are then addressed. Finally, recommendations are offered for resolving the sometimes contentious environment between the PROs and business music users.

### **Music's Added Value**

In the purchase decision process, consumers respond not only to the tangible product, but also to the total product offered by a business entity. Within the total product purview, advertising, services, packaging, warranties, as well as the store's atmosphere, are included. The atmosphere of a store refers to the physical characteristics that a store embodies which help it to project an image that either attracts or repels customers (Kotler 1973). Strategically manipulating the environment's arousing qualities via scents, colors, and sounds can help retailers differentiate their stores from otherwise similar competitors (Matilla and Wirtz 2001; Turley and Chebat 2002).

Since music has become a major component of consumer marketing, use by retailers to create more arousing and appealing environments is frequent. For example, background music can serve to improve store image, patronage intentions, and stimulate customer demand (Baker, Grewal and Levy 1992; Grewal et al. 2003). Studies have examined how varying the different properties of music affect purchase behavior. Milliman (1982, 1986) found that variation in music tempo could significantly affect the pace of in-store traffic flow. For example, slower music tends to slow customer movement, keeping them in the store longer. The desired outcome is that they purchase more. Milliman (1986) also found that both music tempo and musical preference significantly influence the amount of money spent on food and drink in a restaurant. Spending on the food and drink was higher when people indicated that they liked the music being played and the music was slower.

Music has also been shown to influence service evaluation and purchase intentions (Morin, Dube and Chebat 2007). Studies have demonstrated that music can positively influence a consumer's emotional evaluation of a service encounter, helping to facilitate approach behaviors towards a service organization (Hui, Dube and Chebat 1997; Oakes and North 2008). Additionally, research has found that music can impact estimates of wait times and temporal perceptions (Kellaris and Kent 1992). Bailey and Areni (2006) found that respondents waiting idly in a store reported shorter estimates of duration when they heard familiar music. The use of music in the service environment suggests that music might help to mitigate the negative affect associated with waiting (Hui, Dube and Chebat 1997).

Further, studies have shown that music that matches the objective of the business and the specific market situation can influence consumers' behavior (Smith and Curnow 1966; Bruner 1990; Mattila and Wirtz 2002). More specifically, whether consumers like the genre of music being played can influence their shopping behaviors (Yalch and Spangenberg 1990). According to Herrington (1996), music preference and the liking of contextual features is a strong predictor of spending in service environments.



Music can be used by businesses as an attention arousing mechanism, to project a certain image, or to help create a desired “affect” at the point of purchase. However, businesses that use music during the course of doing business should be aware of the cost implications. In addition to securing the music, whether it be a live performance or recorded music, permission to perform copyrighted music must be procured.

### **International Copyright and Licensing**

The Berne Convention (also known as the International Union for the Protection of Literary and Artistic Works) is the oldest international copyright agreement, formed in 1886 in Berne, Switzerland. The Berne Convention bestows a system of equal treatment among member countries, or signatories. Specifically, it requires its signatory countries to recognize the copyrighted works of authors from other signatory countries in the same way it recognizes the copyright of its own nationals (WIPO 2010). An author need not “register” or “apply for” a copyright in countries adhering to the Berne Convention. When countries join the Berne Convention, they make the commitment of applying the same level of copyright protection to works of members from other nations as they do for domestic authors’ works (Langenderfer and Kopp 2004).

Under the Berne Convention, copyrights for creative works are automatically in force upon their creation without being asserted or declared. The Berne Convention states that all works except photographic and cinematographic works shall be copyrighted for at least 50 years after the author's death, but member countries may provide longer terms. In the case of cinematographic works, the minimum term of protection is 50 years after the work is released. The minimum term for a photographic work is 25 years (WIPO 2010). Currently, 164 countries are members of the Berne Convention, which is administered by the World Intellectual Property Organization (WIPO 2010). The United States joined the Berne Convention in 1989 and India joined in 1998.

### **Performance Rights Organizations and Societies**

It is a formidable task for copyright owners to track all uses of their work. PROs exist to ensure optimum protection of copyrighted works. The first performing rights organization, Societe des Auteurs, Compositeurs et Editeurs de Musique (SACEM) was founded in France in 1851. Performing Rights Organizations represent their members or affiliates, comprised of composers and publishers, by licensing and distributing royalties for the non-dramatic public performances of copyrighted music. Performance licenses are issued to radio and television stations, nightclubs and concert halls and allow for the performances of music in a manner that is nondramatic in nature. Dramatic performances, on the other hand, are performances of dramatico-musical works, which may include performances of musical compositions as part of stories, dance, stage action, opera, oratorios, or ballet (ASCAP 2010).

Writers and publishers grant performing rights organizations the “nonexclusive right” to license nondramatic public performances of their works. These writers and publishers may also reserve the right to license users of their music directly (Korman and Koenigsberg 1986). Performing rights organizations are authorized by their writer and publisher members to bring suit (in their name) against infringers. There are nearly 100 PROs worldwide (ASCAP 2010). Many of these PROs have reciprocal agreements with each other and license music users and collect royalty payments on behalf of members in other countries. The PROs in the U.S. and the Performing Rights Society in India have reciprocal arrangements with most of the PROs worldwide. A discussion of copyright and the licensing practices of the PROs in the United States and India follows next.

### Copyright in the United States

*Congress shall have the power...To promote the Progress of Science and useful Arts, by securing for limited time to authors and inventors the exclusive right to their respective writings and discoveries.” (United States Constitution Article I, Sec 1)*

In 1790, Congress enacted the first copyright statute, but the statute protected only books, charts and maps against unauthorized duplication (1 Stat. 124 [1790]). In 1831, musical compositions received protection under the law, but the revision in the law only pertained to the duplication of works in copies (4 Stat. 436 [1831]). The Act of 1831 placed no limitations on performance or on mechanical reproduction of a musical work (Langenderfer and Kopp 2004). Finally, as dramatic performances such as light opera and operettas began to amass “economic value,” protection was extended to dramatic performances of music (11 Stat. 138, 139 [1856]). Congress extended protection to the public performance of both dramatic and nondramatic musical works by establishing the copyright owners’ “exclusive right” of public performance in 1897 (29 Stat. 482 [1897]).

In 1909, the copyright law was amended by placing a restriction on the right of performance, stating that a license from the copyright owner is required only if the performance is “public” and “for profit.” Specifically, the 1909 Act addressed three questions surrounding public performances: (1) Was the musical rendition a performance? (2) Was the performance public? (3) Was the public performance for profit? U.S. Court interpretations and rulings were that a license was required only if an admission fee was charged. If no admission fee was charged, then the entity would not be considered “for profit” and no license would be required for the use of copyrighted music (35 Stat 1075 [1909]).

As changes in technology brought about radio and then later television and cable television, the 1909 Act became outdated (M. Witmark & Sons v. L Bamberger & Co. 1923; Jerome H. Remick & Co. v. American Automobile Accessories Co. 1924, 1925; Twentieth Century Music Corp. v. Aiken, 1975; Colombia Broadcasting System, Inc. v Teleprompter Corp.,



1974). Later Congress enacted the 1976 Copyright Act, effective January 1, 1978. The 1976 Copyright Act reaffirmed the interpretations of the 1909 Act but also significantly expanded the nondramatic performance right for music. The Act clearly stated that every rendition of copyrighted music constituted a separate and distinct performance and it defined a “public performance” for the first time. Exemptions from obtaining copyright protection were made for certain entities, while cable television transmission, jukebox and public broadcasting became subject to copyright licensing. The Copyright Royalty Tribunal, an administrative agency responsible for supervising the operation of statutory compulsory licenses, was also created as a provision of the Act (17 U.S. C. sec 101 et seq). Under the 1976 Copyright Act, virtually every user of music had to obtain a license to use copyrighted music and the onus was placed on the user (not on the copyright owner) to secure copyright permission (Shemel and Krasilovsky 1985).

U.S. copyright law has been amended and updated over the years. More recent additions to U.S. copyright law have been the 1998 Copyright Term Extension Act (CTEA), the 1998 Digital Millennium Copyright Act (DMCA) and the 1999 Digital Theft Deterrence and Copyright Damages Improvement Act. A discussion of the extent to which these changes to the copyright law have impacted the three U. S. performing rights organizations (ASCAP, BMI and SESAC) follows next.

## United States PROs

### ASCAP

In 1914, the American Society of Composers, Authors and Publishers (ASCAP) the first performing rights organization in the United States, was formed by a group of songwriters and composers (see Table 1). The initial impetus for forming a performing rights organization in the U.S. came from the urging of Italian opera composer, Puccini. On one of his visits to America, he was appalled to discover that American composers and publishers had no mechanism in place for collecting fees for the performance of their music (Korman and Koenigsberg 1986). Puccini’s emphatic stance influenced leading composers like Victor Herbert, Irving Berlin, Gene Buck, James Weldon Johnson, Jerome Kern and John Philip Sousa to form ASCAP. The group established a nationwide policing organization, which offered licenses to amusement establishments.

In the early 1900s, there was a widely held belief that the public performance of music stimulated the sale of sheet music (Kohn and Kohn 2002). Music publishers often placed a printed notice on the sheet music that granted the purchaser of the sheet music the right to perform the composition in public. However, according to the 1909 Copyright Act, music users still had to obtain permission from the copyright holder when music was performed in public for a profit.

In its formative years, ASCAP met with great resistance, particularly since music users were accustomed to enjoying music performances for free. The group filed a lawsuit against a restaurant located in Times Square in New York called Shanley's for the unauthorized performance of "Sweethearts" by Victor Herbert (Kohn and Kohn 2002). The lower court found for the users (*John Church Co. v Hilliard Hotel Co.*, 221 Fed. 229, 2d Cir 1915; *Herbert v. Stanley Co.*, 222 Fed S.D. N. Y. 1915). However, the case went to the Supreme Court and the court reversed the lower court's decision that the business of a restaurant was to make a profit, and the music was part of the service which the restaurant rendered to make a profit. Justice Oliver Wendell Holmes wrote that a direct charge for music was not necessary, because the purpose of using music "is profit and that is enough" (*Herbert V. Stanley*, 242 U.S. 591 1917).

ASCAP is an unincorporated membership association, founded under the laws of New York (Korman and Koenigsberg 1986). ASCAP has over 390,000 U.S. writers and music publishers, who are referred to as members (ASCAP 2010). The Board of Directors of ASCAP is elected by its membership and is comprised of composers, lyricists and music publishers. Revenues from royalties collected by ASCAP in 2009 totaled \$995 million. ASCAP's administrative costs in 2009 were about 13% of its annual revenue (ASCAP 2010).

## **BMI**

In 1923, in a landmark decision, the Supreme Court upheld that even though a broadcast was free of charge, performances by radio broadcasters were "for profit" and therefore required a license for copyright protection (*Witmark & Sons v. L Bamberger & Co.* 1923). Up until this time, radio broadcasters had resisted paying for performance of copyrighted music. The Court's decision proved to be auspicious for ASCAP. Once a small collective of composers that had difficulty getting businesses to pay for the use of their music, ASCAP's leverage was increasing. However, radio broadcasters gradually became apprehensive about ASCAP's virtual monopoly in the field. As negotiations between the broadcasters and ASCAP became increasingly difficult, and a breakdown in negotiations was anticipated, a group of major radio networks and 500 independent radio stations established an organization known as Broadcast Music Incorporated (BMI).

Founded in 1939, BMI collects license fees on behalf of its writers and composers, which are known as affiliates (BMI 2010). BMI represents approximately 475,000 songwriters, composers and music publishers in all genres of music. It is a nonprofit company and no dividends are paid to the shareholders of BMI. After operating expenses are deducted, amounts collected are paid to its affiliates (Kohn and Kohn 2002). BMI collected \$905 million on behalf of its affiliates in 2009. Its 2009 operating costs were roughly 13% of its revenue (BMI 2010).





## SEASAC

SESAC is the smallest of the three organizations but has a growing membership. Its catalogues account for about 3-5% of the music in the United States (Blume 2006). It was founded in 1930—making it the second oldest performing rights organization in the United States. SESAC's repertory, once limited to European and gospel music, has diversified to include popular music (SESAC 2010). SESAC is a privately held company and was founded by Paul Heineke, a European music publisher. It was originally known as the Society of European Stage Authors and Composers and considered itself a publisher-oriented organization. In 1970, SESAC began to affiliate writers and composers (Baskerville 1985). Prior to this time, only publishers were affiliates. SESAC collects between \$5-\$8 million dollars annually (Blume 2006) on behalf of its 10,000 affiliates (SESAC 2010).

Today, ASCAP, BMI and SESAC represent writers and publishers in the United States by licensing music users for the use of their members' copyrighted music. Although these PROs have generated sizable revenue streams for some of its membership, their licensing practices have undergone scrutiny by music users. Generating the most controversy, which involved intervention by the federal government, has been the exorbitant fees charged by the PROs and the tying features of the blanket license, which are now discussed.

## Controversy and the U.S. PROs

### Antitrust Violations

In the 1930s and 40s, ASCAP represented the lion's share of writers and publishers in the United States; consequently, it exerted considerable power over broadcasters and the motion picture industry in licensing negotiations. It was not long afterwards that ASCAP's method of licensing was found to violate antitrust laws. In 1941, the United States Department of Justice filed an antitrust lawsuit against ASCAP (United States v. ASCAP, 1940-1943 Trade Cases). To help protect against antitrust abuses, the government and ASCAP agreed on terms embodied in a consent decree entered into in 1941. The Consent Decree of 1941 was then superseded by a new consent decree in 1950 after ASCAP's method of licensing motion pictures similarly was found to violate antitrust laws (Alden-Rochelle, Inc v. ASCAP 1948; United States v. ASCAP, 1950-1951 Trade Cases). Per the ASCAP Consent Decree of 1950, each ASCAP member has the right to enter into direct license agreements with music users for the performance rights of their respective work while maintaining ASCAP membership status. In addition, any music user that believes the fees quoted by ASCAP are unreasonable may apply to the federal court, also known in the industry as "rate court," for an equitable fee determination. The burden of proof is placed

upon ASCAP to prove the reasonableness of the fee it seeks. The Courts have amended ASCAP's consent decree twice, in 1950 and in 2001 (Entertainment Law Reporter 2005).

In 1966, BMI entered into a consent decree with the government (United States v. BMI, 1966 Trade Cases). In 1994, the Court amended the BMI Consent Decree to include a rate court mechanism for determination of appropriate license fees (New York Law Journal 1996). Hence, BMI and ASCAP (who have the majority of the market share of musical works in their respective catalogues) are governed by consent decrees that limit their abilities to levy "supra-competitive" fees on the music user; however, SESAC is not governed by a consent decree (Entertainment Law Reporter 2005).

### **U.S. Performing Rights Organizations and Small Businesses**

In addition to practices which spurred government intervention, the U.S. PROs have long suffered caustic criticism from music users. Despite the PROs' rationale for their existence and licensing practices, contention between the PROs and small businesses exists. This adversarial relationship partially stems from the controversial marketing communication efforts of the PROs, the blanket license, and consumer confusion. Additionally, the advent of new media, especially via the Internet, have brought new challenges for the PROs.

#### *Consumer Confusion*

The United States is one of the few countries in the world that has three performing rights organizations. Some small business owners may not be aware of their obligation to obtain copyright protection for music used in their establishment and even if they do, they may not be aware that more than likely they must be licensed by all three PROs. This is because multiple parties may have ownership of the copyrights to songs.

Even though three PROs co-exist in the U.S., a composer or songwriter cannot belong to more than one PRO at a time; however, this does not preclude the composer or songwriter from changing PROs throughout the course of his or her musical career. In fact, the PROs are always vying for writers and aggressive efforts are sometimes made to encourage prolific composers to join or even change PROs.

To make matters more interesting, a piece of music can exist in more than one PRO's catalogue. Such would be the case if the composer of the music to a song belonged to BMI, but the lyricist was a member of ASCAP. Copyright clearance would then have to be sought from both PROs. For this reason, businesses that use music must be licensed by all three organizations to avoid copyright infringement. Securing licenses from all three PROs can result in a substantial financial outlay for many small businesses.

#### *Controversial Marketing Communications*



The PROs have also been criticized for their poor public relations efforts and have been accused of engaging in aggressive telemarketing in the course of attempting to “sell” licenses to music users (Corbin Ball Associates 2005). Complaints have surfaced for years that the PROs have “blanketed America with music spies” listening for the unauthorized use of copyrighted music and accusations have been made that the PROs routinely threaten music users with lawsuits (Smith 2003).

In the mid-90s, Representative F. James Sensenbrenner, Jr. responded to complaints from bar owners and retailers about some of the heavy-handed licensing tactics of the PROs and introduced the Fairness in Music Licensing Act. The bill was voted into law in 1998 (105 P.L. 298 [1998]). Some state governments have also responded to similar concerns of business owners and have adopted legislation that requires performing rights organizations to provide certain information when issuing music performance licenses to retail establishments (Acts of 1999, 76th Leg., ch. 388, § 1).

#### *Fairness of the Blanket License*

Retail establishments, bars, restaurants and nightclubs that use music must acquire a blanket license from the PROs in order to play music lawfully. Blanket licenses (also known as General Licenses) entitle the licensee to perform an unlimited number of nondramatic performances of all the songs in a PRO’s catalogue. The fee for the blanket license is usually determined by the seating capacity of the venue, whether it charges admissions, the number of hours of musical entertainment provided and whether the music is live or recorded (ASCAP 2010).

The blanket license has received caustic criticism from small business owners for being high-priced, confining and anti-competitive. Many small business owners believe that they will never perform all of the music in the PRO’s catalogue; hence the license “ties them in” to unwanted material. However, because of the tedious nature of securing copyright protection from publishers, the Courts have traditionally sided with the PROs that the blanket license is the only feasible and efficient way of handling the large flow of information involved in collecting fees and distributing royalties to writers and publishers.

According to the consent decrees that govern both ASCAP and BMI, those who dispute the fees charged by ASCAP and BMI can go to rate court. From the time that the consent decrees were put in place, broadcasters had the ability to take advantage of this provision due to the resources afforded them. However, restaurants, taverns, and small business owners argue that the legal fees and expenses associated with contesting the PROs make any challenge a virtually impossible option.

Finally, with the advent of new media and music that is “streamed” or listened to during its transfer, the PROs face challenges in licensing users (Nill and Geipel 2010). A number of music users argue that technology creates new playing fields and that some creative formats should not be subject to performance rights. In fact, digital media corporations, including

Yahoo, AOL and MySpace, have challenged the rate structures and licensing efforts of the PROs (ASCAP 2010).

### Copyright in India

Unlike copyright law in the United States, which has undergone incremental changes from its inception, Indian copyright has undergone significant and sweeping developments. In 1847, a copyright statute was enacted during the East India Company's regime. According to the 1847 enactment, a copyright was for the lifetime of the author plus seven years after the author's death (Copinger 1904). Later in 1914, the Indian legislature enacted a new Copyright Act which extended most portions of the United Kingdom Copyright Act of 1911 to India. However, the 1914 Copyright Act imposed criminal sanctions for copyright infringement and changed the scope of the term *copyright* where the copyright holder only retained the "sole right" of ownership for a period of ten years from the first date of publication. Exceptions were only made if the work was published again in another language within the ten year period (Indian Department of Education 1914).

By 1957, independent of colonial rule, India created its own copyright law, repealing the Act of 1914. The Copyright Act of 1957 represents "modern copyright" for India. It protects original literary, dramatic music, artistic works, cinematograph films and sound recordings from unauthorized use. Under the Copyright Act of 1957, copyright comes into existence as soon as a work is created and no formal filing of authorship is required for copyright. However, a work can be registered in the Register of Copyrights (Copyright Office 2010).

Critics charged the 1957 Act with having little usefulness to authors. As a result, several amendments were made to the 1957 Act, with the 1994 amendments being the most influential (Copyright Office 2010). The 1994 amendments increased the term of copyright to sixty years after the copyright holder's death. It extended the copyright to new types of works including computer programs and performances. It also redefined and clarified cumbersome and arcane language in the law (e.g., replacing "radio diffusion" with "broadcast"). The Copyright Act of 1957 and its subsequent amendments brought copyright protection in India in line with international treaties and conventions (Borthakur 2009).

Indian copyright law provides for collective administrative societies. A copyright society can issue or grant licenses for any copyrighted work that exists. Additionally, copyright societies' may issue licenses and collect fees in accordance with the societies Scheme of Tariffs. The copyright society's administrative expenses (not to exceed fifteen percent of collections) can be deducted from its collection revenue before distribution (Copyright Office 2010). Four copyright societies exist in India. They are the Society for Copyright Regulation of Indian Producers for Film and Television (SCRIPT), Phonographic Performance Limited (PPL), the Indian Reprographic Rights Organization (IRRO) and the



Indian Performing Right Society Limited (IPRS). The Indian Performing Rights Society is the only copyright society in India that represents songwriters, composers and publishers and grants copyright clearance to music users on their behalf.

### **Indian Performing Rights Society LIMITED (IPRS)**

The Indian Performing Rights Society Limited (IPRS) was founded in 1969. The Society is a non-profit making organization and is a company limited by guarantee and registered under the Companies Act, 1956. IPRS is also registered under Section 33 of the 1957 Copyright Act as the only copyright society in the country permitted to represent the interests of songwriters, composers and publishers. IPRS has its registered and corporate office in Mumbai with branch offices in Delhi, Chennai and Kolkata. IPRS's policies and administration are controlled by a Governing Council of Directors elected by its members. The Council is equally represented by publishers and writers.

IPRS has evolved over its relatively short period of existence. Lack of clarity in the copyright law as well as lack of knowledge and information among both music users and copyright holders gave rise to confusion over ownership rights. IPRS has credited itself with better educating music users and creators of music about copyright ownership (IPRS 2010). Additionally, it lobbied for changes to the copyright law that were included in the 1995 Amendments to the Copyright Act of 1957.

IPRS collects royalties from entities such as event organizers, hotels, restaurants, clubs, shopping plazas, hospitals, DJs, gyms and doctors' clinics. IPRS is empowered to take stiff action against copyright offenders, which can include heavy fines and even imprisonment from six months to two years (Seth 2009). IPRS reported 2,233 members in 2009. It collected 2653 Lacs (\$5,945,617 U.S. dollars) on behalf of its members in 2009. Operating expenses for 2009 were about 15% of total revenue collections (IPRS 2010).

### **Challenges and Opportunities for IPRS**

Increased recognition of intellectual property rights in India has been attributed to the prevalence of digital music as well as the growing number of independent labels in India (Borthakur 2009). Nonetheless, heightening awareness and enforcement of copyright is revamping the way business is done in the entertainment industry in India. Undoubtedly, IPRS too, faces both challenges and opportunities in such a developing environment.

In the U.S., PROs have been in existence for nearly a century; however, despite their presence, some music users still are unaware that performance rights have to be obtained for copyrighted music. IPRS's dilemma is no different, particularly since licensing for performance rights is in its formative stages for many regions of India.

IPRS is the only PRO in India and does not have to vie with other PROs in its licensing efforts, unlike in the United States; nevertheless, creating awareness about copyright

protection is a major challenge. IPRS has reported that in some Indian cities, less than 10% of music users are licensed (Seth 2009). IPRS is empowered to impose heavy fines and imprisonment terms for noncompliance; however, albeit effective in the short-term, these alternatives do little to foster amiable relations between the performing rights society and music users.

Additionally, just as the PROs in the U.S. have been ridiculed for offering a blanket license that sometimes imposes stiff fees on music users, IPRS must be careful to communicate the value of the blanket license it currently offers to music users. Complaints have surfaced from business owners that an arrangement similar to a blanket license is extraneous and an imposition, especially if music users play a limited repertoire of music in their establishments (Bristol Evening Post 2004).

Despite impending challenges, cultural shifts in the way that intellectual property is now viewed in India might be slowly working in IPRS's favor. This may be due to efforts by the Indian government and various entities in the entertainment industry to educate the public about copyright protection. In fact, IPRS has aligned itself with the government sponsored Copyright Enforcement Advisory Council. The Council was created to strengthen and streamline enforcement of copyright in union territories in India as well as educate music users about copyright protection (Ludhiana 2009).

### **A New Direction for the Pros**

The licensing efforts of the U.S. PROs to small businesses and retailers have been a source of criticism for years. As India heightens its copyright protection efforts, contention from small businesses mount. As presented, there is evidence to suggest that retail outlets subject to the general license offered by the PROs in both countries suffer from lack of information about obtaining copyright clearance as well as discontent over the fairness of the blanket license. Subsequently, the PROs in both the U.S. and India might benefit from considering the needs of their customers (licensees) and fostering more of a marketing orientation. By implementing a market orientation, particularly in licensing the small business segment, the PROs could help to reduce consumer confusion and lack of knowledge, enhance perceived value of the blanket license and perhaps foster more positive attitudes about licensing from business owners.

According to Kotler (1988), the core themes of a market orientation are customer focus, coordinated marketing and profitability. Ultimately, the organization benefits by employing a marketing orientation because the organization's needs are served by learning about exchange partners and tailoring product offerings to their needs. Additionally, applying a marketing orientation serves the objective of producing maximum long-range corporate profits (Houston 1986).

For the PROs, a key element in fostering a marketing orientation is creating awareness about copyright protection. In addition to partnering with government agencies to educate



music users, as has been done in India, the private sector might be used to further communication efforts. For example, trade organizations could be key agents in disseminating information and encouraging members to license with PROs. Businesses that are members of trade organizations could have the option of licensing through such a trade organization. Providing such an option and having an endorsement from such an organization might help to increase source credibility.

Further, assessing the attitudes of business owners about the licensing efforts of the PROs would help the PROs to better tailor and promote their products (the licenses). From this information, the PROs might glean insight into how to better present licensing options such as the blanket license and communicate the transactional value that such a bundling strategy provides. Also, ascertaining and learning more about possible points of contention and resistance business owners might have about the license could be helpful in providing direction for developing persuasive messages to encourage music users to take licenses. Techniques such as these might foster better relations between the PROs and the business community rather than using threatening and punitive tactics.

## Conclusion

The fact that music has become an important part of consumer marketing gives credence to the maxim that “music is the universal language.” It is used as both background music in retail establishments and as foreground music in bars and restaurants for its ability to influence the attitudes and behaviors of consumers. PROs exist all over the world to grant performance rights to music users. The well-established PROs in the United States have received censure for years for their licensing efforts of small businesses and retailers. Similarly, India’s licensing society is not escaping criticism from businesses. If the PROs adopted a marketing orientation in their licensing efforts, such an approach could serve the interests of both small businesses and the PROs.

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