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## STATUTORY INERTIA AND THE DIGITAL SURGE: THE FUTURE OF COPYRIGHT SOCIETIES IN INDIA

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### Abstract

This paper confronts the growing dissonance between India's dynamic digital media economy and its anachronistic copyright regulatory framework. With a focus on the persistent dysfunction of copyright societies, it diagnoses critical structural flaws—notably the inadequacy of the current law to deal with OTT platforms, agent/licensee exemption and fragmented licensing—that actively undermine the stated objectives of the Copyright Act. Through a comparative analysis with the more responsive and lucid collective management models in the United States and the European Union, this paper underscores the urgent necessity for reform. It concludes by articulating a series of integrated legislative, institutional, and technological reforms, including the abolition of the statutory exemption, the establishment of a centralized digital licensing authority, and the empowerment of the Copyright Office. These proposals are designed to harmonize the Indian system with global best practices and the inexorable demands of the digital age.

**Key words** – Copyright societies, Collective Management, Statutory Exemption, Royalty distribution, OTT platforms

### 1. Introduction

The meteoric rise of India's digital media landscape has subjected the nation's copyright regulatory framework to unprecedented stress.<sup>1</sup> As digital consumption patterns have dramatically shifted with the proliferation of streaming platforms and globalized on-demand content, Indian copyright law has remained anchored to outdated statutory text.<sup>2</sup> This chasm between legislative inertia and technological velocity has engendered profound inefficiencies, obstructing the very goals the Copyright Act<sup>3</sup>, which was designed to achieve: fair protection for authors, equitable remuneration for rights holders, and streamlined accessible licensing for users.<sup>4</sup>

Central to this friction is the beleaguered state of India's copyright societies. Their credibility has been eroded by a history of operational failures, from loopholes in agent representation and fractured licensing practices to a persistent lack of transparency in the collection and distribution of royalties. Critically, these societies have failed to adapt meaningfully to the realities of the Over-The-Top (OTT) era, where traditional models of collective management are increasingly ill-suited to digital commerce.<sup>5</sup>

This paper provides a comprehensive diagnosis of these frailties. It not only identifies the structural and operational deficiencies plaguing the Indian system but also situates them against a backdrop of international best practices. A comparative analysis of the United States and the European Union<sup>6</sup> reveals how more agile, transparent, and technologically sophisticated models of collective rights management can effectively address the challenges India currently faces. Ultimately, this paper proposes a pragmatic reform agenda designed to align Indian copyright societies with contemporary

<sup>1</sup>A Billion Screens: The Future of M&E in India (2024) (quantifying the growth of India's OTT and digital media consumption to over 800 million users); Arul George Scaria, "Copyright Law at a Crossroads: Navigating the Digital Challenge in India," 12 J. NAT'L L. UNIV. 45 (2023).

<sup>2</sup>S. K. Ahuja, "Legislative Inertia vs. Digital Velocity: Why the 2012 Copyright Amendments Are Insufficient for the Streaming Age," 25 J. INTELL. PROP. RTS. 112, 115 (2020) (arguing that the Act is "fundamentally unequipped" to handle on-demand streaming models).

<sup>3</sup>The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

<sup>4</sup>Report of the Review Committee on the Copyright Act, 1957 (2014), Ministry of Commerce and Industry, GOI (discussing the Act's objectives of balancing creator and user interests).

<sup>5</sup>Rohan K. George, "Collective Management in the 'Over-The-Top' (OTT) Age: A Misfit Model for India?," 5 J. INDIAN L. & TECH. 21, 34 (2024) (arguing that traditional blanket licensing models are unworkable for non-linear, on-demand streaming services).

<sup>6</sup>The Digital Millennium Copyright Act (DMCA), 17 U.S.C. § 1201 (United States); Directive (EU) 2019/790 of the European Parliament and of the Council on Copyright and Related Rights in the Digital Single Market (European Union).



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economic and technological demands, thereby enabling the Act to fulfill its true purpose: to strike a delicate balance between the rights of creators and the needs of a rapidly evolving digital economy.

## **2.Literature Review**

### **1. “LEGAL FRAMEWORK OF COPYRIGHT SOCIETIES AND COMPETITION LAW IN INDIA”**

**By Sunaina Mishra & Deepankar Mishra, Indian Competition Law Review, 2024**

This paper provides a comprehensive review of the statutory framework established by the Copyright Act, 1957, and the amendments affecting copyright societies in India. It examines monopoly status, transparency issues, anti-competitive practices, the impact of the 2012 Amendment, and enforcement challenges. The review also compares Indian practice with US and EU regulatory approaches, highlighting India’s lack of transparency and need for improvement.

### **2. “Copyright Societies In India: Legal Framework, Challenges, And Judicial Interpretations”**

**By Amrutha Jayakumar, IJLLR, 2025**

This article critically examines India’s copyright society regulation, focusing on legislative provisions, operational challenges, and significant court cases. It covers evolving digital challenges, the influence of international agreements (Berne Convention, TRIPS), and proposals for reform to increase transparency and dispute resolution in Indian copyright management.

### **3. “Collective Rights Management and Its Regulation in India”**

**Bennett Journal of Legal Studies, 2024**

This review analyzes how copyright societies have developed within India’s collective rights management framework. It discusses issues post-2012 Amendment, focusing on lack of compliance, management opacity, royalty manipulation by large stakeholders, and the limited regulatory role of the Indian State. The article argues for greater government supervision to ensure accountability and fair management.

### **4. “India’s Copyright Societies & Collective Rights Management: Developments, Challenges and Regulatory Evolution”**

**BananaIP Intellepedia, 2025**

This analysis overviews the legal structure and collective rights management, the impact of the 2012 Amendments, licensing practices, and the interaction between statutory and voluntary societies in India. It addresses regulatory gaps, practical realities, and the Bombay High Court’s stance on aggregate licensing.

### **5. “Understanding the Functions of Copyright Societies in India”**

**The Law Institute, 2025**

This article reviews Section 33 of the Copyright Act, compliance requirements, transparency and accountability mechanisms (annual reporting, audits), and operational challenges posed by digital platforms and low public awareness. The review assesses the real-world efficacy of these rules and compliance frameworks.



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## 6. “A Critique of the Provisions on Copyright Societies under the Copyright Act, 1957”

### SCC Online Blog, 2018

This critique assesses statutory reforms since 1994 and 2012, analyzing Section 33 and other provisions related to registration, author rights, report submission, and the Central Government’s regulatory powers. It balances legislative intent with practical and legal challenges for both creators and copyright societies in India.

### 3.Research Question

How can India modernize its copyright society regulation to address digital disruption and ensure transparency in royalty management, drawing lessons from the U.S. and E.U. models?

### 4.Research Objective

The main objective of the research is to critically diagnose the structural and operational weaknesses in India’s copyright society regime, compare it with international best practices (US & EU), and propose integrated reforms—legislative, institutional, and technological—that will modernize the system. The goal is to ensure effective copyright management and fair remuneration for creators in the digital age by closing loopholes, increasing transparency, and building robust infrastructure for digital licensing and royalty distribution.

### 5.Research Methodology

- 1)The paper uses a comparative legal analysis of statutory provisions, regulatory frameworks, and case law from India, the US, and EU to diagnose the shortcomings and challenges faced by Indian copyright societies.
- 2)It develops policy recommendations by synthesizing legislative texts, judicial precedents, and best practices from US and EU models—focusing on reform needs, technological modernization, and improved governance.

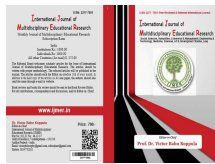
## 6. The Indian Copyright Regime: A Cycle of Conflict and Dysfunction

### 6.1 Historical Context: The Intended Role of Copyright Societies

The concept of collective rights administration in India is not a modern invention; its origins are embedded within the legislative architecture of the Copyright Act of 1957. The Act, from its inception, acknowledged the practical impossibility for individual creators to monitor, license, and collect payment for every use of their works across a vast and complex market. Copyright societies were thus conceived as an essential solution to this market failure—aggregators that could efficiently manage and monetize creative works on behalf of their members.

Initially, the legal structure for these bodies was not explicitly delineated in the statute. The Indian Performing Right Society Ltd. (IPRS), incorporated in 1969, was established not as a statutory "copyright society" but as a company limited by guarantee under the Companies Act, 1956. This corporate form was selected for its non-profit-distributing nature, which mirrored the theoretical objective of a collective body: to collect royalties for members and distribute them after deducting only necessary administrative expenses, rather than generating shareholder profits.

A watershed moment arrived with the Copyright (Amendment) Act of 1994, which introduced specific provisions to formally regulate these organizations. The amendment to Section 33 of the Act mandated that any entity engaged in the business of issuing copyright licenses must register as a formal "copyright society."<sup>2</sup> This transformed these bodies from private corporate entities into statutorily recognized and regulated organizations, subject to government oversight.



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## 6.2 A Legacy of Litigation and Legislative Shortcomings

The history of Indian copyright societies is not one of steady progress but a chronicle of recurring legal battles and administrative breakdowns that have laid bare the deep-seated flaws in the statutory framework. This cycle of conflict, judicial intervention, and incomplete legislative remedies has fostered a dysfunctional and unpredictable market.

The Supreme Court's landmark 1977 decision in *Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Association*<sup>7</sup> inadvertently sowed the seeds of "dual licensing." While affirming authors' rights, the ruling compelled users to secure separate licenses from both sound recording owners and the authors' society (IPRS), fragmenting the market from its inception.

Decades later, in *Music Broadcast Pvt. Ltd. v. IPRS*<sup>8</sup>, the Supreme Court dealt a significant blow to author royalties, holding that radio broadcasters did not require a separate license from IPRS for underlying literary and musical works, as their license from sound recording owners was sufficient.<sup>4</sup> This judgment highlighted the urgent need for legislative clarification and directly precipitated the Copyright (Amendment) Act of 2012<sup>9</sup>. The 2012 Amendment sought to rectify this by introducing Section 31D for statutory licensing and explicitly granting authors an inalienable right to royalties.

However, the 1994 Amendment had already introduced a fatal flaw: the agent/licensee exemption in the proviso to Section 33(1)<sup>10</sup>. This loophole was affirmed in cases like *Leopold Café & Stores v. Novex Communications*<sup>11</sup> and later solidified in *Novex Communications v. Copyright Board*,<sup>12</sup> effectively sanctioning a parallel, unregulated licensing market. The consequence is a perpetual stream of litigation, such as *Novex v. Trade Wings Hotels*,<sup>13</sup> which burdens users and suppresses royalty values.

Compounding these legal ambiguities were severe governance and transparency failures, starkly exemplified by the history of IPRS itself. Amidst allegations of financial mismanagement, the Central Government cancelled its registration as a copyright society in 2013<sup>14</sup>. For several years, the primary society for authors operated without statutory authority, creating profound market uncertainty. Although it was re-registered in 2017 under the condition of systemic reform, this period of de-recognition critically undermined faith in the collective management system and exposed the inadequacy of regulatory oversight.

Even today, the core conflicts persist. The ongoing litigation in *IPRS v. Rajasthan Patrika Ltd.*<sup>15</sup> demonstrates that the inalienable right to royalty introduced in 2012 remains fiercely contested, proving that past legislative fixes have failed to bring lasting clarity. The entire history reveals a system trapped in a self-perpetuating loop, where statutory exemptions, governance deficits, and contested amendments leave the core objectives of the Copyright Act largely unfulfilled.

## 7. International Best Practices: A Comparative Analysis

To properly contextualize the shortcomings of the Indian framework, a comparative analysis with the mature regulatory systems of the United States and the European Union is instructive. While their approaches differ, both jurisdictions have forged robust legal and institutional mechanisms to ensure that collective rights management is transparent, efficient, and accountable.<sup>16</sup>

<sup>7</sup> *Indian Performing Right Soc'y Ltd. v. E. Indian Motion Pictures Ass'n*, (1977) 2 S.C.C. 820

<sup>8</sup> *Music Broad. Pvt. Ltd. v. Indian Performing Right Soc'y Ltd.*, (2011) 4 S.C.C. 81

<sup>9</sup> The Copyright (Amendment) Act, 2012, No. 27, Acts of Parliament, 2012

<sup>10</sup> The Copyright (Amendment) Act, 1994, No. 38, Acts of Parliament, 1994

<sup>11</sup> *Leopold Cafe & Stores v. Novex Commc'ns*, 2014 S.C.C. OnLine Bom 1240

<sup>12</sup> *Novex Commc'ns v. Copyright Bd.*, 2010 S.C.C. OnLine Del 336

<sup>13</sup> *Novex Commc'ns v. Trade Wings Hotels Ltd.*, 2018 S.C.C. OnLine Bom 1324

<sup>14</sup> IPRS Registration Cancellation (2013) *In re Indian Performing Right Soc'y Ltd.*, Order F. No. 16-1/2008-CO (Registrar of Copyrights June 27, 2013)

<sup>15</sup> *Indian Performing Right Soc'y Ltd. v. Rajasthan Patrika Pvt. Ltd.*, 2021 S.C.C. OnLine Bom 132

<sup>16</sup> R. Towse & C. Handke, *Handbook on the Digital Creative Economy* (Edward Elgar, 2013).



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## 7.1 Regulatory Oversight and Enforcement

A fundamental differentiator is the presence of active and stringent regulatory oversight. Where India's framework is characterized by reactive litigation, the U.S. and E.U. models are built upon proactive regulation and mandated accountability.<sup>17</sup>

### A. The United States: Antitrust Decrees and Statutory Collectives

The U.S. approach is a unique synthesis of antitrust law and targeted statutory intervention. Oversight is derived not from a single copyright statute but from decades of judicial and legislative action.<sup>18</sup>

- **DOJ Consent Decrees:** The major Performing Rights Organizations (PROs), namely the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI), operate under consent decrees with the Department of Justice (DOJ).<sup>19</sup> These legally binding agreements function as a powerful regulatory tool, imposing strict obligations such as non-discriminatory licensing and transparent rate-setting, with a "rate court" system to adjudicate fee disputes.<sup>20</sup> This continuous DOJ oversight prevents the abuse of market power—a stark contrast to the relative autonomy enjoyed by Indian societies and agents.<sup>21</sup>
- **The Music Modernization Act (MMA) and the MLC:** Recognizing the failure of song-by-song licensing in the digital age, Congress passed the Music Modernization Act (MMA) in 2018.<sup>22</sup> A cornerstone of the MMA was the creation of the Mechanical Licensing Collective (MLC), a centralized, government-designated body that administers a blanket compulsory license for the mechanical rights of musical works for digital services.<sup>23</sup> The MLC's operation is a model of regulated efficiency: it acts as a central clearinghouse for all digital mechanical royalties, effectively closing the "agent loophole" in this domain. Furthermore, the MLC is tasked with creating and maintaining a comprehensive, publicly accessible database of musical works ownership, a critical piece of infrastructure for ensuring accurate payments.<sup>24</sup>

**Centralized Clearinghouse:** All digital services pay mechanical royalties directly to the MLC. The MLC is then responsible for matching compositions to recordings, collecting the money, and distributing the royalties accurately to publishers and songwriters.<sup>25</sup>

**Elimination of the Agency Loophole:** The MMA's statutory license effectively closes the "agent / licensee exemption" for digital mechanicals. Publishers and private entities cannot bypass the MLC to issue their own direct licenses in this sphere. This ensures that all royalties flow through a single, transparent, and accountable channel.<sup>26</sup>

**Data and Transparency:** The MLC is also tasked with creating and maintaining a comprehensive, publicly accessible database of musical works ownership, a critical piece of infrastructure for ensuring accurate payments.<sup>27</sup>

<sup>17</sup> S. Ghosh, *Copyright and Collective Management in India: A Comparative Study*, *Journal of World Intellectual Property* (2021).

<sup>18</sup> U.S. Copyright Office, *Copyright and the Music Marketplace* (2015).

<sup>19</sup> *United States v. ASCAP*, Civ. Action No. 41-1395 (S.D.N.Y. 1941, amended 2001); *United States v. BMI*, Civ. Action No. 64-3787 (S.D.N.Y. 1966, amended 1994)

<sup>20</sup> U.S. Department of Justice, *Antitrust Consent Decrees in Music Licensing: ASCAP and BMI Review* (2020)

<sup>21</sup> D. Liebowitz, "The Role of the Rate Court," *Journal of Economic Perspectives* (2019)

<sup>22</sup> Orrin G. Hatch—Bob Goodlatte Music Modernization Act, Pub. L. No. 115-264, 132 Stat. 3676 (2018)

<sup>23</sup> U.S. Copyright Office, *Mechanical Licensing Collective Overview* (2021)

<sup>24</sup> Mechanical Licensing Collective, *Public Musical Works Database* (2022)

<sup>25</sup> Ibid

<sup>26</sup> Ibid

<sup>27</sup> Ibid



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## B. The European Union: Harmonization through the CRM Directive

The E.U. has tackled these challenges through legislative harmonization. The Directive on collective rights management (the "CRM Directive") establishes a mandatory, high standard of governance and transparency for all Collective Management Organizations (CMOs) operating within the Union.<sup>28</sup> Its key provisions impose strict rules on fair representation, annual transparency reporting, and royalty distribution policies.<sup>29</sup> The Directive's comprehensive scope effectively bars the operation of a parallel, unregulated system of "agents" as seen in India.<sup>30</sup> To operate, an entity must submit to the full suite of accountability rules. A major innovation is the creation of a framework for multi-territorial licensing, allowing a service like Spotify to obtain a single pan-European license, which drastically red The Directive's goal is to create a more efficient, transparent, and competitive single market for copyright licensing.<sup>31</sup> Its key provisions include:

1. **Strict Governance and Transparency Standards:** The CRM Directive imposes detailed rules on CMOs. These include ensuring fair representation of rights holders in the decision-making process, publishing annual transparency reports, and adhering to strict policies on the collection, deduction, and distribution of royalties. These are not mere suggestions; they are legally mandated requirements that member states must implement in their national laws.<sup>32</sup>
2. **Barring Unregulated Agents:** The Directive's comprehensive scope ensures that only compliant, regulated CMOs can engage in the business of collective licensing. This structure effectively bars the operation of a parallel, unregulated system of "agents" as seen in India. To operate, an entity must submit to the full suite of transparency and accountability rules, leaving no room for a disruptive loophole.<sup>33</sup>
3. **Facilitating Pan-EU Licensing:** A major innovation of the Directive is the creation of a framework for multi-territorial licensing. It enables CMOs to grant pan-European licenses for online rights in musical works, allowing an OTT service like Spotify to obtain a single license for its operations across multiple EU countries. This drastically reduces transaction costs and administrative burdens, fostering an efficient and integrated digital single market.<sup>34</sup>

In conclusion, both the US and EU models, through different means, achieve what the Indian system has failed to: they create a predictable, transparent, and regulated environment for collective licensing. The US relies on antitrust oversight and targeted statutory bodies like the MLC, while the EU uses a comprehensive directive to enforce high standards across all member states. Both systems effectively eliminate the agency loopholes and market fragmentation that plague the Indian copyright landscape.<sup>35</sup>

### 7.2 Market Structure: Monopoly vs. Competition

The market structure for collective rights management profoundly influences organizational behavior. While India's state-sanctioned monopoly model was intended to maximize efficiency, the U.S. and E.U. experiences demonstrate that well-regulated competition can deliver superior outcomes.

<sup>28</sup> Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, 2014 O.J. (L 84) 72 [hereinafter CRM Directive]

<sup>29</sup> European Commission, *Report on the Implementation of Directive 2014/26/EU* (2021)

<sup>30</sup> P. Torremans, *Intellectual Property Law* (9th ed., OUP, 2020)

<sup>31</sup> European Commission, *Digital Single Market Strategy* (2015)

<sup>32</sup> Directive 2014/26/EU, Arts. 7–22.

<sup>33</sup> *Ibid.*, Recitals 9–12.

<sup>34</sup> *Ibid.*, Arts. 28–36

<sup>35</sup> Comparative synthesis based on: U.S. DOJ Consent Decrees; Music Modernisation Act (2018); Directive 2014/26/EU (2014)



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## A. The United States: A Competitive Duopoly

The U.S. market for public performance rights is dominated by a competitive duopoly of ASCAP and BMI. This competition fosters market-driven accountability. Rights holders can choose the PRO they believe offers better service or terms, creating a constant incentive for the PROs to innovate and maximize royalty distributions to attract and retain members. This "yardstick competition" serves as a natural check on inefficiency—a mechanism entirely absent in the Indian context.<sup>36</sup>

## B. The European Union: Fostering a Single Market of Choice

The CRM Directive dismantles monopolies by creating a competitive single market *across* the entire Union. It grants rights holders the freedom to affiliate with any CMO in the E.U., regardless of their own country of residence. This provision effectively breaks the traditional national monopolies, forcing societies to compete for members across the continent by improving their efficiency, transparency, and service levels.

In sharp contrast, India's statutory monopoly under Section 33(3) of the Copyright Act—permitting only one registered society per class of work—removes these crucial market incentives. This structural flaw is a key driver of the governance and transparency deficits that plague the system.

## 7.3 Technological Integration and Data Management

In the digital era, effective copyright management is fundamentally a data challenge. The ability to accurately process billions of daily micro-transactions, like individual streams, is what separates a functional system from a dysfunctional one.<sup>37</sup>

Advanced economies recognize that investment in robust technological infrastructure is a core fiduciary duty. The U.S. MLC's data-matching engine represents a state-of-the-art solution to the historical problem of "black box" royalties. Similarly, ASCAP and BMI have invested heavily in massive data processing systems. In the E.U., the CRM Directive encourages the development of accurate and comprehensive databases to solve data fragmentation.<sup>38</sup> As industry analysts have noted, "clean data is the prerequisite for clean money."<sup>39</sup> India's continued reliance on outdated systems is a primary source of the opacity and inefficiency artists consistently report.<sup>40</sup>

## 7.4 Transparency and Member Rights

Robust legal frameworks for transparency and member rights are the bedrock of accountability. In the U.S., the DOJ consent decrees function as a legally enforceable charter of rights for both members and licensees. The E.U.'s CRM Directive is even more prescriptive, establishing a "bill of rights" for members, including the right to timely and accurate information, a fair distribution policy, and strong governance rights.<sup>41</sup> These legally mandated rights are a far cry from the Indian scenario. While the Indian Copyright Rules, 2013, contain provisions for transparency, their enforcement is weak, and the remedies available to aggrieved members are often impractical and burdensome.<sup>42</sup>

These legally mandated rights are a far cry from the Indian scenario. While the Indian Copyright Rules, 2013, do contain provisions for transparency reports and distribution schemes (Rules 57-61), their enforcement is weak, and the remedies available to a member who suspects mismanagement are often impractical.<sup>43</sup> The US and EU models demonstrate that for

<sup>36</sup> Andrei Shleifer, *A Theory of Yardstick Competition*, 16 RAND J. ECON. 319 (1985).

<sup>37</sup> R. Towse & C. Handke, *Handbook on the Digital Creative Economy* (Edward Elgar, 2013)

<sup>38</sup> Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, *OJ L84/72* (2014)

<sup>39</sup> IFPI, *Global Music Report 2022: State of the Industry*, at 47 ("Clean data is the prerequisite for clean money").

<sup>40</sup> S. Ghosh, *Collective Management and Copyright in India: Institutional Challenges*, *Journal of World Intellectual Property* (2021).

<sup>41</sup> CRM Directive, *supra* note 12, arts. 8, 13, 18.

<sup>42</sup> The Copyright Rules, 2013, R. 57–61 (India)

<sup>43</sup> Copyright Rules, 2013 (India), Rules 57–61; R. Basu, "Collective Management and Transparency in Indian Copyright Law," *NUJS Law Review* (2020).



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transparency to be effective, it must be backed by a credible threat of legal or regulatory action and enshrined as a fundamental, non-negotiable right of the creator.<sup>44</sup>

## 8. Bridging the Gap: A Blueprint for Reform

The preceding analysis reveals a copyright system hindered by legislative ambiguity and a framework ill-suited for the digital age. To realign the Indian system with its core objectives, a series of targeted, multi-pronged reforms are essential.

### 8.1 Legislative Reforms

#### A. Closing the Agent/Licensee Exemption

The single most disruptive element in India's collective management framework is the 'agent/licensee exemption' in the first proviso of Section 33(1). This provision has been interpreted to permit a parallel, unregulated licensing market that directly undermines registered copyright societies.<sup>45</sup> Legal scholars have extensively criticized this structure, noting that it "creates a regulatory vacuum where entities performing the exact same function as a copyright society are exempt from any of the statutory obligations of one."<sup>46</sup> In 2012, the amendment introduced the second proviso to try to solve this issue, but it also failed.

The solution must be a decisive legislative excision. The proviso should be amended to preserve an owner's right to license their work individually while explicitly barring agents from engaging in the *business* of collective licensing. A proposed rephrasing could be:

*Provided that nothing in this section shall affect the right of an owner of copyright to issue or grant a licence in respect of their own work on an individual basis. However, no person or business entity, other than a registered copyright society, shall engage in the business of issuing or granting licences on behalf of multiple copyright owners.*

This amendment would restore the original intent of the 1994 and 2012 reforms, channelling all collective licensing through a single, regulated system.<sup>47</sup>

#### B. Establishing a Centralized Digital Licensing Body

The challenges of the pre-digital era have been magnified to a critical degree by the rise of OTT platforms. The sheer volume of digital transactions makes fragmented licensing practically impossible. Drawing inspiration from the successful U.S. Mechanical Licensing Collective (MLC),<sup>48</sup> this paper advocates for a new section in the Copyright Act to establish a centralized, statutory licensing body exclusively for digital and OTT services.

This non-profit entity would:

1. **Administer a Blanket Statutory License:** All eligible digital services would operate under a single, comprehensive license.<sup>49</sup>
2. **Act as a Central Clearinghouse:** Digital services would pay all royalties into this one body for transparent processing and distribution.<sup>50</sup>

<sup>44</sup> Comparative synthesis based on: Music Modernisation Act, Pub. L. No. 115-264, 132 Stat. 3676 (2018); Directive 2014/26/EU (2014); DOJ Consent Decrees (2020 Review)

<sup>45</sup> Copyright Act, 1957 (India), s.33(1), first proviso.

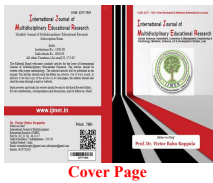
<sup>46</sup> Arul George Scaria, *Regulating Copyright Societies: The Indian Experience*, 10 J. INTELL. PROP. RTS. 371, 380 (2014).

<sup>47</sup> S. Ghosh, *Collective Management and Copyright in India: Institutional Challenges*, *Journal of World Intellectual Property* (2021)

<sup>48</sup> 17 U.S.C. § 115(d) (establishing the mechanical licensing collective)

<sup>49</sup> U.S. Copyright Office, *The Mechanical Licensing Collective: Overview and Operations* (2021)

<sup>50</sup> Mechanical Licensing Collective (MLC), *Public Repertoire Database and Royalty Distribution Overview* (2022)



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3. **Develop a Public Repertoire Database:** It would create and maintain an authoritative, publicly accessible database of all works and their ownership, which is "the infrastructural backbone of a transparent market."<sup>51</sup>

Implementing this "MLC-inspired" model in India would solve multiple problems simultaneously. It would render the agent / licensee exemption and dual-licensing disputes moot in the digital domain, provide OTT platforms with much-needed legal certainty and operational efficiency, and, most importantly, create a transparent and accountable channel for royalty payments to finally reach the creators.<sup>52</sup>

### C. Clarifying the Scope of Section 31D

The ambiguous wording of Section 31D, intended for traditional broadcasters, has led to significant legal conflict over its applicability to digital streaming services. As affirmed by the Bombay High Court in *Tips Industries v. Wynn Music*, applying a statutory license designed for passive "broadcasts" to on-demand, interactive streaming is a "category error."<sup>53</sup> Forcing interactive platforms under a compulsory licensing scheme would amount to "a massive subsidy for Big Tech at the direct expense of the creator."<sup>54</sup>

Section 31D must be amended to clarify its boundaries. A proposed addition could state:

*The provisions of this section shall apply exclusively to broadcasting organizations engaged in linear, non-interactive, and non-on-demand communication to the public... and shall not be applicable to any service that allows a user to receive or access a work at a time of their choosing.*

This clarification would resolve the existing ambiguity, prevent further litigation, and ensure that the new Centralized Digital Licensing Body (proposed above) becomes the appropriate and exclusive venue for licensing in the OTT space.<sup>55</sup>

### D. Enabling Regulated Competition

The state-sanctioned monopoly under Section 33(3) is an outlier among mature copyright economies and fosters complacency.<sup>56</sup> This paper proposes a phased repeal or modification of Section 33(3) to permit multiple, competing societies for the same class of work. This is a call not for deregulation, but for "yardstick competition," where regulators and rights holders can measure the performance of one entity against another. As studies on regulated industries show, "a well-regulated competitive field consistently outperforms a monopoly in terms of innovation, efficiency, and consumer... welfare."<sup>57</sup>

This transition would need to be carefully managed to prevent market instability. However, as numerous studies on regulated industries have shown, "a well-regulated competitive field consistently outperforms a monopoly in terms of innovation, efficiency, and consumer (in this case, creator) welfare." By enabling competition, the legislature would empower creators with choice, thereby introducing a level of market-driven accountability that has been sorely lacking in the Indian collective management ecosystem.<sup>58</sup>

## 8.2 Regulatory and Institutional Reforms

While legislative amendments are crucial, they are not sufficient on their own. The success of any legal framework depends on the strength of the institutions that enforce it. The following reforms are designed to build a more robust, proactive, and accountable regulatory environment for copyright societies in India.

<sup>51</sup> Maria A. Pallante, *The Next Great Copyright Act*, 36 COLUM. J.L. & ARTS 315, 332 (2013).

<sup>52</sup> R. Towse & C. Handke, *Handbook on the Digital Creative Economy* (Edward Elgar, 2013)

<sup>53</sup> *Tips Indus. Ltd. v. Wynn Music Ltd.*, 2019 S.C.C. OnLine Bom 1198

<sup>54</sup> *Ibid*: Paras 62-68

<sup>55</sup> R. Basu, *Statutory Licensing and the Digital Market: Rethinking Section 31D*, *Indian Journal of Law and Technology* (2020)

<sup>56</sup> Copyright Act, 1957 (India), s.33(3)

<sup>57</sup> Richard J. Pierce, Jr., *The Surprising Success of Competitive Enterprise in Regulated Industries*, 34 HARV. J.L. & PUB. POL'Y 621, 625 (2011)

<sup>58</sup> P. Torremans, *Intellectual Property Law* (9th ed., Oxford University Press, 2020)



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## A. Empowering the Copyright Office with Proactive Enforcement Powers

The oversight of copyright societies must shift from passive to proactive. A specialized Enforcement Cell should be established within the Copyright Office, vested with statutory powers to conduct *suo motu* audits, swiftly investigate creator complaints, and impose meaningful financial penalties for non-compliance. A regulator without the power to independently investigate and penalize is "a watchdog with no teeth."<sup>59</sup>

## B. Mandating Stricter Governance Norms

To prevent conflicts of interest, the Copyright Rules should be amended to mandate a balanced governance structure. For societies representing both authors and publishers, the governing board must maintain a strict 50/50 representation between these two classes. Furthermore, the position of Chairperson should alternate between an author and a publisher member on a fixed-term basis.<sup>60</sup>

## C. Standardizing Transparency Reporting

While Rule 57 of the Copyright Rules mandates an Annual Transparency Report, it lacks a uniform format.<sup>61</sup> The Copyright Office should design and mandate a standardized template requiring granular disclosure of collections, administrative deductions, and distributed versus undistributed royalties. This would transform the report from a perfunctory document into a powerful tool for accountability.<sup>62</sup>

## 8.3 Technological and Infrastructural Reforms

In the modern creative economy, copyright management is inseparable from data management.<sup>63</sup> An effective administrative system requires a sophisticated technological backbone to track usage and distribute royalties accurately across billions of digital transactions.<sup>64</sup> The following reforms are essential infrastructural prerequisites for a functional Indian copyright ecosystem.

### A. Establishing a National Repertoire Database

A persistent cause of inaccurate royalty payments is poor data integrity. The proposed solution is the creation of a National Repertoire Database—a comprehensive, interoperable database for all works, detailing ownership information. This initiative, led by the proposed Centralized Digital Licensing Body or the Copyright Office, would drastically reduce unattributable royalties and provide the clean data necessary for automated, large-scale royalty processing.<sup>65</sup>

### B. Mandating Minimum Technological Standards for Societies

It is no longer acceptable for societies to operate with outdated systems. The Copyright Rules should be amended to mandate minimum technological standards, requiring societies to possess the capacity to process large-scale usage reports from digital services, maintain automated royalty-matching systems, and provide members with a secure online portal for near-real-time earnings analytics. Projects like Mycelia by artist Imogen Heap and Blokur, a global registry for music rights, have demonstrated how blockchain can transform music rights management globally.<sup>66</sup>

<sup>59</sup> European Commission, *Report on the Implementation of Directive 2014/26/EU* (2021)

<sup>60</sup> Directive 2014/26/EU, Arts. 10–20

<sup>61</sup> Copyright Rules, 2013 (India), Rule 57

<sup>62</sup> R. Basu, *Transparency and Governance in Indian Copyright Societies*, *NUJS Law Review* (2020)

<sup>63</sup> R. Towse & C. Handke, *Handbook on the Digital Creative Economy* (Edward Elgar, 2013).

<sup>64</sup> U.S. Copyright Office, *Copyright and the Music Marketplace* (2015).

<sup>65</sup> IFPI, *Global Music Report 2022: State of the Industry*, at 47

<sup>66</sup> Imogen Heap, *Mycelia for Music: Using Blockchain for Creators' Rights* (2018), available at [myceliaformusic.org](http://myceliaformusic.org); Blokur, *About Blokur: Data Integrity in Music Rights* (2023), available at [blokur.com](http://blokur.com).



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## 9. Conclusion

The Indian copyright framework is at a pivotal crossroads. The explosive growth of the nation's digital media economy has created immense opportunities, yet the legal structures designed to support creators are buckling under the strain. The persistent inefficiencies within the collective rights management system are not minor operational hurdles but deep-seated structural flaws that obstruct the core objectives of the Copyright Act.

Our analysis has traced a cycle of legislative ambiguity—from the unresolved agent/licensee exemption to the contested scope of Section 31D—that has fragmented the market and neutered the transparency mandates of the 2012 Amendment. The comparative analysis with the United States and the European Union threw this gap into sharp relief, revealing how regulated competition, robust technological infrastructure, and proactive oversight have forged more efficient and accountable systems abroad. The success of targeted interventions like the U.S. Music Modernization Act offers a clear and actionable model for the transformative change India requires.

The multi-pronged reforms proposed herein—legislative, institutional, and technological—are designed as an integrated solution. Closing the agent/licensee exemption, establishing a centralized digital licensing body, and empowering the Copyright Office are not isolated fixes but a holistic strategy to create a modern, transparent, and creator-centric copyright ecosystem.

Ultimately, reforming India's collective rights management is not merely an administrative task; it is an economic and cultural imperative. By aligning its copyright framework with the realities of the digital age, India can ensure that its creators are fairly compensated, its digital markets can innovate with legal certainty, and the nation's vibrant creative economy can finally achieve its full potential.

## 10.Suggestions

Remove the *agent/licensee exemption* in Section 33(1) to prevent unregulated licensing and ensure all collective licensing occurs through registered copyright societies. Create a statutory, non-profit body (on the lines of the U.S. MLC) to manage digital and OTT licensing, royalty collection, and distribution under a single transparent framework. Build a government-supervised, interoperable database of works and rights ownership to eliminate “black box” royalties and enhance transparency. Mandate minimum technological standards, including automated data-matching, blockchain integration, and real-time royalty tracking accessible to creators. Require standardised annual transparency reports (Rule 57) and ensure creators’ right to audit and timely royalty information is legally enforceable. Establish an *Enforcement and Audit Cell* within the Copyright Office with authority to conduct *suo motu* inspections and impose penalties for mismanagement. Modify Section 33(3) to allow multiple societies for the same class of works under strict regulatory supervision to foster accountability and innovation. Amend Section 31D to limit statutory licensing to linear broadcasting and exclude interactive digital streaming platforms, reducing litigation and confusion. Implement mandatory 50:50 board representation between authors and publishers, with alternating chairpersons to ensure equitable decision-making. Collaborate with WIPO and regional CMOs for training, data exchange, and implementation of international standards of collective rights management.

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