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Bill To Protect Indian Musicians, Change Copyright Act Mooted

By [Preethi J](http://www.medianama.com/author/preethij/) on January 4, 2010

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Despite opposition from broadcasters, the Indian government has approved (<http://www.pib.nic.in/release/release.asp?relid=56443>) the introduction of a bill to amend the **Copyright Act of 1957**

http://www.naavi.org/cl_editorial_09/copyright_amendment_draft.pdf) in a far-reaching step that will give artists and musicians protection, long overdue recognition and locus standi. The amendments will usher in a new era for not just composers but creators of literary, musical, dramatic and artistic works in India.

In 2005, the ministry of human resource development, assisted by international standards body World Intellectual Property Organisation (WIPO), (<http://www.wipo.int/>) set up a 30 member core group headed by the education secretary to extend copyright protection to digital media. In November, when the first draft of 26 changes to the copyright act by the **Indian Copyright Office** (<http://copyright.gov.in/>) came to notice on activist **Naavi** (<http://www.naavi.org/>)'s site (the first draft of amendments is [here](http://www.naavi.org/cl_editorial_09/copyright_amendment_draft.pdf) (http://www.naavi.org/cl_editorial_09/copyright_amendment_draft.pdf)), the music and film industry went up in arms on not being invited to share their opinion before the government finalised it.

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The advertisement features the Goibibo logo at the top left. The main content is a dark background with a room scene. Two white boxes are overlaid: the left one says 'Instant discount 65% OFF' and the right one says 'Cashback 100% *'. A plus sign is between them. Below the boxes is an orange 'BOOK NOW' button. At the bottom left, it says '*T&C Apply'.

When It Might Come Into Effect; No Retrospective Applicability

The bill has received approval from the union cabinet but it is yet to go through the parliament, which could happen by Budget session. It will still not come into effect until it receives the President's assent and is published in the official gazette. "This could happen in two months," said **Pavan Duggal, Advocate, Supreme Court of Delhi and President, Cyberlaws.net** (<http://cyberlaws.net/>).

When it comes into effect, the new Act will not have a retrospective effect – so content that has been produced already will not be protected by it – generally Indian law is only prospective in nature.

Impact: Clarity, Revenue Share, More Litigation

The rules of the game will completely change: where artists, singers and performers were losing crores to the film, radio and television industry, they will be able to demand royalty fees and their independent rights. According to the government's communique, the "Amendment is proposed to give independent rights to authors of literary and musical works in cinematograph films, which were hitherto denied and wrongfully exploited, by the producers and music companies."

Extending the ownership of songs to FM Radio is also being planned, which will mean that artists will, for the first time, receive a share of revenue from FM stations. The amendment proposes "to introduce a system of statutory licensing to ensure that the public has access to musical works over the FM Radio and Television networks and at the same time the owners of copyright works are also not subject to any disadvantages."

An amendment “in relation to operational facilities, such as registration of Copyright Societies by providing that only authors can register and procedure for tariff schemes of copyright societies and commercial distinction between assignment and licence,” the government **could be* stating that owners of content could now be exclusive rights holders to their work – only they are allowed to register copyright, which means that broadcasters and companies are not.

**Duggal informs us that the term “author” may or may not include broadcasters so we surrender, for now, to legalese.*

Online music stores will be forced to share their revenues with artists and any digital distribution will require the creator’s assent. Currently, artists do not reap benefits and this is set to change with the new laws lending clarity to the ecosystem.

Duggal believes the law will make people far more cautious and careful about rights and we can expect more litigation in the industry. Currently, most of the litigations in India are against record label (publishers) companies.

Rising Up To International Standards

The government plans to bring conformity with the Internet treaties with these changes:

- A new section will be added to the Performers’ Rights that will provide exclusive rights compatible with WPPT.
- Another new section titled “The Moral Rights of Performers” will be introduced
- The period of copyright for photographers is proposed to be enhanced to “Life plus sixty years” instead of only sixty years as at present.

The amendments are in line with international treaties such as the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty. Though India has not signed either treaty as yet, it is trying to align its laws with them.

Duggal says many developing countries have not signed the Internet treaties as they are called. Cause? Lack of political will. “It is a political question, the government has to decide if it should sign the treaty. The advantages are that India will receive far more information exchange and reciprocity from other members of WIPO. Some governments choose to sign the treaty and then amend their domestic laws, others do it in reverse,” he said.

Impact On Broadcasters, More Power To Copyright Societies

Broadcasters were distressed that the proposed amendments would grant more power to copyright societies. The **Indian Broadcasting Federation** (<http://www.ibf-india.com/>) which constitutes broadcasters in the country claimed in the **Economic Times** (<http://economictimes.indiatimes.com/news/economy/indicators/Many-ills-in-draft-Copyright-Act/articleshow/5277213.cms>) that the new amendments would “vest draconian powers with the Copyright Societies.”

There are three copyright societies currently in existence:

- [Society for Copyright Regulation of Indian Producers for Film and Television](http://www.scriptindia.com) (<http://www.scriptindia.com>) for cinematograph and television films
- [The Indian Performing Right Society Limited](http://www.iprs.org/index.asp) (<http://www.iprs.org/index.asp>) for musical works
- [Phonographic Performance Limited](http://www.pplindia.org/) (<http://www.pplindia.org/>) for sound recordings

Fair Use Provisions; IBF’s Demands

The act previously gave a free hand to news channels and TV programmes to make version recordings of contemporary music tracks, and offer them constitutional protection under freedom of speech and expression. The amended clause states that only those sound recordings that have been made by or with the licence or consent of the owner and which have been paid for through royalties at the rate fixed by the Copyright Board will not be penalised. The [IBF \(http://www.ibf-india.com/\)](http://www.ibf-india.com/) opined that this would hurt them and impact the quality of programmes aired by TV channels and radio stations, [DNA \(http://www.dnaindia.com/money/report_channels-move-govt-over-copyright_1316538\)](http://www.dnaindia.com/money/report_channels-move-govt-over-copyright_1316538) reported.

The IBF asked for a single-window regulator in the music sector, an independent copyright board and insertion of statutory licensing provisions that will allow broadcasters more authority over copyright owners and societies.

Download:

— [Copyright Act 1957 \(http://copyright.gov.in/Documents/CopyrightRules1957.pdf\)](http://copyright.gov.in/Documents/CopyrightRules1957.pdf) (pdf)

— Also read the official [Study On Copyright Piracy In India. \(http://copyright.gov.in/Documents/STUDY%20ON%20COPYRIGHT%20PIRACY%20IN%20INDIA.pdf\)](http://copyright.gov.in/Documents/STUDY%20ON%20COPYRIGHT%20PIRACY%20IN%20INDIA.pdf)

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Read: the Indian Government's [Copyright Handbook \(http://copyright.gov.in/Documents/handbook.html\)](http://copyright.gov.in/Documents/handbook.html).

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– From Spicy IP India Blog: [Indian Copyright Collecting Societies and Foreign Royalties: Whither Transparency? \(http://spicyipindia.blogspot.com/2008/11/indian-copyright-collecting-societies.html\)](http://spicyipindia.blogspot.com/2008/11/indian-copyright-collecting-societies.html)


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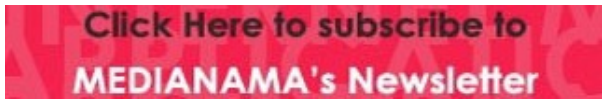
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**samratb** · 6 years ago

The change in the law could affect very few people compared to the change of music and sound recordings available online and all over the world. The govt and industry people fail to take notice of this fact.

Also most record companies in India (which sell bollywood music) are continuously losing their market to the internet .. and most of them don't even know how to sell music.

read this and learn a lil more .. perhaps

<http://en.wikipedia.org/wiki/Copyleft>

Copyright is a bygone concept .. slowly yet steadily

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**Atul Chitnis** · 6 years ago

In general all good from the artists' perspective, with the exception of the greater powers being given to the copyright societies such as the IPRS and the PPL. These societies often exceed their brief, acting independently without instructions from the artists they are supposed to be working for. This includes demanding fees in a mafia-like fashion from bands playing covers at college functions, private parties, etc., all of which has had a discouraging effect on budding musicians.

I would strongly recommend that these societies, especially the PPL, be reigned in and given a clear and limited brief. If not, this act amendment will result in exactly the opposite effect intended.

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**@chupchap** · 6 years ago

One question... What will happen to Anu Malik?

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