

COPYRIGHT AMENDMENT ACT, 2012 TURNS SIX!

By **Anushree Rauta** - June 21, 2018



The Copyright Amendment Act, 2012 came into effect on June 21, 2012. As our beloved Copyright Amendment Act, 2012 turns six today, here is what our industry experts have to say:

Ashish Chandra, Director – Technology & Transactions, Netflix India*-

"These were very progressive and forward-looking amendments at that time. I was part of the team that appeared before the Parliamentary Standing Committee. Industry had high expectations, but technology and business models have changed manifold since these amendments came in force. I would suggest such socio-economic and technological laws to be revisited every year for relevance checks and updates, in order to make them fit for purpose."

*views expressed are personal and are not attributed to my present and previous employers

Mandar Thakur, COO- Times Music-

"The Copyright Amendment Act of 2012 was a new dawn for the creative community when it got put out 6 years ago. Unfortunately, many users of these musical copyrights blatantly abused the wording of the law and interpreted it their own way. It is indeed heartening to

see societies like the IPRS take up the moral cause on behalf of owners and creators of copyrights to have their works rightfully compensated”

Mr. Amit Khanna- Writer, Film Maker, Lyricist and Industry Veteran

“When the Copyright Act was overhauled 6 years ago it marked the beginning of a new chapter in IPR in India. However subsequent implementation is patchy and tardy. Legislation should be responsive to technological change. All stakeholders must benefit from new revenue streams. India must sign some of the new Copyright treaties and tariffs and quotas must be fought. More importantly Copyright societies must function in harmony and optimise returns. In India, Police and Judiciary need to be sensitive to Copyright theft.”

Mr. Raghavender G.R. – Joint Secretary, Department of Justice, Ministry of Law & Justice

*“**Hit:** The Copyright Amendment Act 2012 provided performers with right to receive royalties and allowed them to form a performers society. This led to registration of a collective society of singers, namely ISRA which is a big achievement.*

*“**Miss:** The non-implementation of statutory licensing for broadcasting and approval of tariff scheme of the copyright societies is causing serious problems in use of content by the broadcasters.”*

Sanjay Tandon, MD & CEO-Indian Singers Rights Association-

“The Amendment Act has started an era where copyright is now a serious and well-known issue. Any new Amendment is always accompanied with teething problems and so it is with this excellent piece of legislation. It’s time that stake holders convene and sort out and adapt to the new and correct way of doing copyright business. The Judiciary has to step in and decide cases expeditiously in areas of ambiguity as it’s a new law requiring several clarifications on ambiguous provisions.

All in all the 6 yrs since Copyright Amendment Act came into force has achieved a lot and now Copyright issues are maturing. Great and Exciting times ahead.”

Aashish Rego, General Secretary- Music Composers Association of India (MCAI)-

"6 years ago, when the Copyright Amendment Bill was passed unanimously in Parliament, Authors and Composers across the country celebrated. They celebrated as they felt reassured and secure, that their right to royalty would see them through any eventuality. 6 years since, they still have to receive any royalty. Large corporates and vested interests among users have stonewalled the practical execution of the Amendment Act on various fronts by either refusing to pay and/or challenging the very provisions of the Amendment Act in the courts of law.

However, the positives of today are that IPRS has amended its articles of association and has Javed Saab at the helm with a pan India representation of author/composers.

IPRS has just received its unconditional certificate of registration that enables it to officially conduct business and execute the collection of royalties with the full force of the law

Finally, it seems that albeit late, the intention of the Bill will soon become a reality and "Acche Din" for the authors and Composers are finally here.

The industry is moving quickly towards unity and recognition of the fact that it is only a United industry that can take care of the interest of all stakeholders be it author, composer or publisher."

Rajat Kakar, President & CEO- Phonographic Performance Limited (PPL India)-

"The Copyright Amendment of 2012 brought in clarity and conformity to International treatment of flow of Copyright. A well-functioning copyright system consists of legislation, management and enforcement. Once the amended legislation came into play it was followed up with a renewed focus on collective management of rights for the benefit of rightful owners and a premium on good corporate governance at CMO's (Collective Management Organisations) for the same. Like with any modern legislation it needs to be updated from time to time to ensure adequate compensation for right owners and safeguards from opportunistic users of these rights with adequate enforcement measures. Also at every stage we need to ensure majority of right-holders come together, under one, professionally run, transparent CMO and the landscape benefits from simplified licensing tariffs and single window clearances for a particular right being administered."

Atul Churamani, Managing Director- Turnkey Music & Publishing Private Limited-

"Despite being poorly worded and confusing, the Copyright Amendment of 2012 has its heart in the right place and is an attempt to bring India up to speed with developed copyright markets. I am extremely happy that things have changed and are changing for the better in the last six years."

Gautam Sarkar- Business Head-South Asia, Ditto Music

6 years longtime and enormous expectations. Hope the mechanical payouts gets disbursed soon without re-calibrating current collection to labels"

Rodney D. Ryder- Founder, Scriboard, Senior Partner- ANM Global-

"The Amendment Act balances exclusion with access. Under the present system, the existing checks and balances mean that skilful rights management and a framework for innovation is the key!"

Vanditta Malhotra Hegde- Founder and Managing Partner, Singh & Singh | Malhotra & Hegde

"Hits and misses too many.. it hasn't kept pace with the changing world – this law too hasn't been able to keep pace with tech developments..

Anyhow what comes on top of my mind is...

What these amendments did (leave aside what it could have done) is:

gave the creators – the artists their throne back! Their rights back – ability to monetise what they created after toiling for years and years...Which is fantastic!

What it also did is give the consumers the right to enjoy the copyright! Yes the much debated SL! Which again is super!

What it's not done is:

put in a good mechanism to set up the regulator...

The problem with copyright enforcement is that when the parameters aren't incredibly well defined, it means, whoever has deeper pockets (and maybe better lawyers), can get what they want...

If you create something, you don't want someone else to go and profit from it; and of course you have your right to make a living and everything. So everyone must respect copyright but what about copyright extremism, that too by business owners and not the creators...The copyright amendments have attempted to balance just that..the creators need and the users need."

Jagdish Sagar- Independent practitioner-IPR, Copyright and Entertainment

"The enactment of these amendments was accompanied by fanfare but also by controversy that, I think, has yet to die down. They remain under Constitutional challenge and as I have been saying are ambiguous and unclear, and could have been better drafted.. But possibly the different industry interests have in the meanwhile reached some sort of modus vivendi in actual practice."

Ankita Malviya- Sr. Manager, Legal, Shemaroo Entertainment Ltd.

"6 years from the 2012 amendment of the Copyright Act has definitely changed the perception of copyrights, not only amongst the producers, content owners, but also the authors and performers.

People have become more vigilant and cautious about their rights and have started taking measures to avoid any conflict of rights.

The recognition of the rights of authors of the underlying works and the royalty distribution is definitely a positive change, though it has created anguish amongst many producers,

content houses and music industry.

Still many provisions of the amendment are left open to interpretation as a result of which the industry is struggling in several litigations, conclusion of which would bring the much-sought clarity.

Much has been said over these years both in favour and against. While the reform sought to be brought in is positive, the implementation still remains an issue, with so many administrative challenges, gap in understanding the issues at hand, registration of societies and their actual role in the entire ecosystem.

A joint consultation amongst the fraternity members to discuss these issues is the need of the hour."

Abhishek Malhotra- Partner, Bharucha & Partners

"6 years of Copyright Amendment – with the rules yet to be amended and notified, will we have to wait for the 7 year itch to kick in before we see implementation?"

Ankit Relan, Partner- Mason & Associates-

"I think the provisions relating to mandatory sharing of royalties with lyricists and composers have had a positive impact on the industry and have changed the way music contracts are executed in India now. Also, the newly inserted fair dealing clauses under Section 52(1)(b) and 52(1)(c) have provided a much needed breathing space to ISPs against liability for infringement. However, in my view, the Copyright Act ought to have introduced the concept of strict liability for copyright infringements to curb piracy and unauthorised exploitations. That apart, the legislature could have also introduced some sort of statutory damages for infringements. This would have not only detracted the habitual infringers from illegally exploiting the copyrighted contents of owners but would have also given the owners the much needed assurance and encouragement that their creations will not be misused. Instead the legislature ended up introducing statutory licenses under section 31D to weaken the exclusivity of owner's rights and give the broadcasters a free run at using songs without needing the copyright owner's permission."

Ayan Roy Chowdhury- Director Legal- SPE Films India Pvt. Ltd (Sony Pictures)

"Amendments were passed with good intentions but open ended language and very poor implementation. The ambiguity has created jobs for lawyers, scholars and businessman alike but has left the real stakeholders without getting the real benefit of the Amendments. It is high time the Amendments are re-looked, reworked and realigned."

Chandrima Mitra-Partner, DSK Legal-

"While the copyright amendment was a progressive step towards protecting the rights of authors, but even today on its 6th anniversary, there is much ground to be covered in terms of implementation of the amendments, sadly leaving the amendments to a large extent as ineffective."

Sankalp Dalal, Legal Head- Zee Music

"The amendments continue to pose more questions than answers and we are no closer to obtaining clarity on various provisions such as statutory licensing etc. than we were in 2012. However, it appears that progress is being made on the issue of royalty payments for underlying works which will be a substantial achievement for the industry. All stakeholders need to arrive at a common platform to ensure the overall growth of the music industry especially in light of the rapid technological developments which we have experienced since 2012"

Lavin Hirani- Media and entertainment attorney, Legal Head- Red Chillies Entertainment Pvt. Ltd-

"As they say time does fly... I still remember the constant conundrum around the amendments being brought about to the Copyright Act as it stood prior to the 21st June 2012 just in time before the onslaught of various platforms monetising content through the digital mediums moving away from the traditional physical mediums.

The changes brought in to the Act were primarily for the betterment of the various artists including authors/performers in relation to various content falling under the realm of the Act. While there was great optimism and little confusion on the benefits and interpretations

being attached to the amendment the positive effects of the amendments are yet to be seen. I hope 2018 is a horizon year for the same.

On the other hand the bigger industry players continue to run their businesses without being in compliance with the Act by circumventing the amendments by finding loopholes at every possible juncture.

We still have a long way to go to being in tune with international practices including in terms of collection and disbursement of royalties and protection of author rights and we can only hope the right systems are brought in place to achieve the real purposes of the amendments sooner than later.”

Sneha Jain- Associate Partner, Saikrishna & Associates-

“The 2012 amendments have had the positive effect of encouraging creativity by at least providing a potential regular source of income for author/composers for their creative products. While many disputes could have been avoided with clearer streamlined provisions, some amendments could have benefitted with a more thoughtful approach – like exclusion of only “physical copies” from scope of communication to public under Sec.2(ff) and amendments in Chapter V thereby creating a vacuum for artistic works published posthumously. However, overall, the amendments are a step in the right direction – towards a more aware right owner and user.”

Aarushi Jain-Co-head IP practice group- Nishith Desai Associates

“Copyright Amendment Act may be turning an year older, but issues with the law are far from being considered wiser! There are still open ended loops, royalty payouts being one of them. In 6 years, the concept of rights have also dramatically changed. Viewership was earlier referred to in the context of television, and satellite rights were key in distribution deals. Now, thanks to a recent surge in consumption of online content, new media rights are the talk of the town. Inter-play of existing law and new age rights is another interesting discussion point. At 6, maybe it’s time to look at the law once again and bridge some gaps.”

Himanshu Upendra Bhatt- General Secretary- Cine Singers' Association, Mumbai

"From my perspective, both personal (having completed 31 years of my Professional Singing Career) as well as in my capacity as the Gen. Secretary of the esteemed Cine Singers' Association, Mumbai (1997-2014 & 2016-till now), this Act has come with a lot of hopes & expectations for the entire fraternity of Singers, whether they be Lead Singers or Back-up Singers (commonly known as Chorus Singers) who earlier had no such rights as the Performers Rights, in spite of a lot of efforts put in especially by the legendary Singers of the Hindi Film Industry in the early seventies.

I take this opportunity to convey my sincere thanks to Smt. Sonia Gandhi, Shri Kapil Sibal, Smt. Sushma Swaraj, Dr. Shashi Tharoor, Shri Javed Akhtar, Shri Raghavender G. R., Shri Sanjay Tandon and a host of Composers, Writers, Singers, Bureaucrats for their combined efforts in giving us this Act.

I hope that whatever shortcomings are there in its effective implementation, would be overcome soon enough so that all the stakeholders start getting their rightful & legitimate dues in the near future.

(Detailed comments and views to follow soon in my interview)"

Tanvi Misra- Copyright lawyer

"What started out as the most defining moment in the modern history of copyright law in India has not found its feet yet in the Industry. Great thoughts and ideologies do not always match up to the practical requirements of the industry. Six years since performer's rights, the R3 right (and the ambiguous sharing of this right), the DRM's, new and robust statutory and compulsory licensing regime, revamped contours for CMOs but we are still struggling with the age old problem of copyright ownership and exclusive rights, not to mention the ongoing constitutional challenges to the amendments. It is the time to enforce copyright law in India the way it should be and not at the whims and fancies of a select few!"