



# PARLIAMENT OF INDIA RAJYA SABHA

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**DEPARTMENT-RELATED PARLIAMENTARY STANDING  
COMMITTEE ON HUMAN RESOURCE DEVELOPMENT**

**TWO HUNDRED TWENTY-SEVENTH REPORT**

**ON**

**THE COPYRIGHT (AMENDMENT) BILL, 2010**

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**(PRESENTED TO THE RAJYA SABHA ON 23<sup>RD</sup> NOVEMBER, 2010)  
(LAID ON THE TABLE OF LOK SABHA ON 23<sup>RD</sup> NOVEMBER,, 2010)**

**RAJYA SABHA SECRETARIAT  
NEW DELHI**

**November 2010/ Agrahayana, 1932 (SAKA)**

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\* will be appended at the printing stage.

**COMPOSITION OF THE COMMITTEE ON HRD  
(2010-11)**

**RAJYA SABHA**

1. Shri Oscar Fernandes — *Chairman*
2. Shrimati Mohsina Kidwai
3. Dr. K. Keshava Rao
4. Shri Prakash Javadekar
5. Shri M. Rama Jois
6. Shri Pramod Kureel
7. Shri N.K. Singh
8. Shrimati Kanimozhi
9. Dr. Janardhan Waghmare
10. Shri N. Balaganga

**LOK SABHA**

11. Shri Kirti Azad
12. Shri P.K. Biju
13. Shri Jeetendra Singh Bundela
14. Shri Angadi Suresh Chanabasappa
15. Shrimati J. Helen Davidson
16. Shri P.C. Gaddigoudar
17. Shri Rahul Gandhi
18. Shri Deepender Singh Hooda
19. Shri Prataprao Ganpatrao Jadhao
20. Shri Suresh Kalmadi
21. Shri P. Kumar
22. Shri Prasanta Kumar Majumdar
23. Capt. Jai Narain Prasad Nishad
24. Shri Sheesh Ram Ola
25. Shri Tapas Paul
26. Shri Brijbhushan Sharan Singh
27. Shri Ashok Tanwar
28. Shri Joseph Toppo
29. Dr. Vinay Kumar Pandey 'Vinnu'
30. Shri P. Viswanathan
31. Shri Madhu Goud Yaskhi

**SECRETARIAT**

Smt. Vandana Garg, Additional Secretary  
Shri J. Sundriyal, Director  
Shri Arun Sharma, Joint Director  
Shri Sanjay Singh, Assistant Director  
Smt. Himanshi Arya, Committee Officer  
Smt. Harshita Shankar, Committee Officer

(i)

## PREFACE

I, the Chairman of the Department-related Parliamentary Standing Committee on Human Resource Development, having been authorized by the Committee, present this Two Hundred and Twenty-seventh Report of the Committee on the Copyright (Amendment) Bill, 2010.\*

2. The Copyright (Amendment) Bill, 2010 was introduced in the Rajya Sabha on 19 April, 2010. In pursuance of Rule 270 relating to Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha, referred\*\* the Bill to the Committee on 23 April, 2010 for examination and report within two months.

3. A Press Communiqué was issued by the Committee inviting memoranda/representation from the public. A total of 68 memoranda were received from the stakeholders which were forwarded to the Department of Higher Education for clause wise comments.

4. The Committee considered the Bill in fifteen sittings held on 26 May, 4, 15, 22, 29 and 30 June, 15, 16 and 22 July, 18 and 26 August, 1 and 13 October and 9 and 18 November, 2010

5. On 26 May, 2010, the Committee heard the Secretary, Department of Higher Education on various provisions of the Bill. The Committee interacted with a number of organizations/associations from the film, music and publishing industry, organizations/associations representing the disabled, News Broadcasting Associations, Association for Radio Operators for India, Authors' organizations, lyricists/music composers, Artists organizations, Internet service providers, Copyright Board and other organizations. The Committee heard the Secretary again on 22 July, 2010 on some core issues relating to the Bill.

6. The Committee, while drafting the Report, relied on the following:-

- (i) Background Note on the Bill and Note on the clauses of the Bill received from the Department of Higher Education;
- (ii) Presentation made and clarifications given by the Secretary, Department of Higher Education,
- (iii) Memoranda received from the stakeholders including their oral deposition before the Committee and feedback; and
- (iv) Feedback received from the Department on the questionnaires and the memoranda of the stakeholders.

7. The Committee considered the Draft Report on the Bill and adopted the same in its meeting held on 13 October, 2010. However, subsequently the Committee received suggestions from some members relating to clauses 6 and 7 of the Bill. The Committee heard the Secretary again on these two clauses. Based on the oral evidence and the written submission of the Department, required modification was made in the Report which was duly approved by the Committee in its meeting held on 18 November, 2010.

8. For facility of reference, observations and recommendations of the Committee have been printed in bold letters at the end of the Report.

NEW DELHI;  
OCTOBER 13, 2010  
Asvina 21, 1932 (Saka)

OSCAR FERNANDES  
Chairman,  
Department-related Parliamentary  
Standing Committee on Human Resource Development.

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\*Published in Gazette of India Extraordinary Part II Section 2 dated the 19<sup>th</sup> April, 2010

\*\* Rajya Sabha Parliamentary Bulletin Part II No. 47174 dated the 23<sup>rd</sup> April, 2010

## **REPORT**

### **1. Introduction**

1.1 The Copyright Act, 1957 was enacted to amend and consolidate the law relating to copyrights in India. The Act has been amended five times, since then, once each in the years 1983, 1984, 1992, 1994 and 1999 to meet with the national and international requirements. Though the amendments in the year 1994 were quite comprehensive, only minor changes were introduced through the amendment made in the year 1999 to comply with the obligations under the Trade Related Aspects of Intellectual Property Rights (TRIPS). The Copyright (Amendment) Bill, 2010 was introduced in Rajya Sabha on 19 April, 2010 and referred to the Department-related Parliamentary Standing Committee on Human Resource Development on 23 April, 2010 for examination and report thereon within two months.

1.2 The Copyright (Amendment) Bill, 2010 seeks to amend the Copyright Act, 1957 with certain changes for clarity, to remove operational difficulties and also to address certain newer issues that have emerged in the context of digital technologies and the Internet. The Bill also seeks to bring the provisions of the Copyright Act, 1957 in conformity with the two World Intellectual Property Organization (WIPO) Internet Treaties, namely, WIPO Copyright Treaty (WCT), 1996 and WIPO Performances and Phonograms Treaty (WPPT), 1996 to the extent considered necessary and desirable. The WCT and the WPPT were negotiated in 1996 to address the challenges posed to the protection of copyrights and related rights by digital technology, particularly with regard to the dissemination of protected material over digital networks such as Internet. The WCT deals with the protection for the authors of literary and artistic works such as writings, computer programmes, original databases, musical works, audio-visual works, works of the fine art and photographs. The WPPT protects certain "related rights" which are the rights of the performers and producers of phonograms. In order to extend protection of copyright material in India over digital networks such as Internet and other computer networks in respect of literary, dramatic, musical and artistic works, cinematograph films and sound recordings works of performers, the Copyright (Amendment) Bill, 2010 seeks to harmonise the Copyright Act, 1957 with the two WIPO Internet Treaties.

1.3 As enumerated in the Statement of Objects and Reasons appended to the Bill, besides amendments in various provisions, a number of new provisions are proposed to be included in in the Act. The most significant amendments seek to:-

- (i) make the provisions of the Act in conformity with World Intellectual Property Organization's WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT);
- (ii) provide for definition of new terms, namely "commercial rental", "Rights Management Information" and "visual recording" and to amend the existing definitions of the terms "author",

- "cinematograph films", "communication to the public", "infringing copy", "performer" and "work of joint authorship";
- (iii) make provision for storing of copyrights material by electronic means in the context of digital technology and to provide for the liability of internet service providers;
  - (iv) give independent rights to authors of literary and musical works in cinematograph films;
  - (v) clarify that the authors would have rights to receive royalties and the benefits enjoyed through the copyright societies;
  - (vi) ensure that the authors of the works, in particular, author of the songs included in the cinematograph films or sound recordings, receive royalty for the commercial exploitation of such works;
  - (vii) allow the physically challenged persons to access to copyright material in specialized formats;
  - (viii) introduce statutory licensing for version recordings of all sound recordings to ensure that while making a sound recording of any literary, dramatic or musical work the interest of the copyright holder is duly protected;
  - (ix) introduce a system of statutory licensing to broadcasting organizations to access to literary and musical works and sound recordings without subjecting the owners of copyright works to any disadvantages;
  - (x) make provision for formulation and administration of copyright societies by the authors instead of the owners;
  - (xi) make provision for formulation of a tariff scheme by the copyright societies subject to scrutiny by the Copyright Board;
  - (xii) provide for continuous payment of royalties by aggrieved party pending the appeal before the Copyright Board and the Copyright Board may fix interim tariff pending appeal on the tariff scheme; and
  - (xiii) strengthen enforcement of rights by making provision of control of importing infringing copies by the Customs Department, disposal of infringing copies and presumption of authorship under civil remedies.

1.4 Keeping in view, the very comprehensive amendments proposed by the Department in the Copyright Act, 1957, extensively affecting the rights of a large number of entities, the Committee decided to seek opinion of all concerned. Accordingly, a Press Release inviting memoranda/suggestions on various provisions of the Bill from all the stakeholders involved in copyright work was issued on 21 May, 2010. The Press Release elicited tremendous response from the stakeholders. Out of the 68 memoranda received, prominent were from the Film industry, (Film & Television Producers Guild of India, Mumbai, Indian Motion Picture Producers' Association, Mumbai, South Indian Film Chamber of Commerce, Chennai, Motion Picture Association and Film Federation of India); Music Industry (RPG Enterprises-Saregama, Kolkata, Indian Music Industry, Mumbai, South India Music Companies Association, Chennai and Phonographic Performance Ltd, Mumbai); Publishing Industry (Association of Publishers in India, New Delhi, Federation of Indian Publishers, New Delhi and Indian Reprographic Rights Organisation, New Delhi); Organizations/Associations representing visually impaired (Inclusive Planet, Kochi and Xavier's Resource Centre for the Visually Challenged, Mumbai); News Broadcasting Associations (News Broadcasters Association, New Delhi and Indian Broadcasting Foundation, New Delhi); Association of Radio Operators in India, Author's organizations (Authors' Guild of India and

CISAC); lyricists/music composers (Sh. Javed Akhtar, Smt. Shubha Mudgal and others); Artists organizations (Indian Performing Right Society Limited, Mumbai); Internet service providers (Yahoo India, Google India, Ebay India) and other organizations such as Internet and Mobile Association of India, Business Software Alliance.

1.5 The Committee started its deliberations with a preliminary discussion with the Secretary, Department of Higher Education on 26 May, 2010. The Committee was informed that India has been a member of the World Intellectual Property Organisation (WIPO) since 1975. The two WIPO Internet Treaties, namely, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) which were negotiated in 1996, address the challenges posed to the protection of copyrights and related rights by digital technology, particularly with regard to the dissemination of protected material over digital network such as the Internet. The member countries of the WIPO agreed on the utility of having the Internet Treaties in the changed global technical scenario and adopted them by consensus. In order to sign these treaties, a country has to amend its domestic legislation and fulfill the treaty obligations before signing these treaties. It was clarified that conformity with the WCT and WPPT provisions did not warrant any major overhauling of the national laws of the countries which were signatory to the Berne Convention, 1971 and TRIPS, India being one such country. The Secretary apprised the Committee that the proposed amendments, besides bringing the Act in conformity with the WCT and WPPT could be categorized as those addressing the concerns of music and film industry; specific amendments protecting the physically challenged; and those protecting the interests of authors and amendments relating to operational difficulties and enforcement of rights. The Secretary, further apprised the Committee about the main features of the Bill.

1.6 Subsequent to preliminary interaction with the Secretary, Department of Higher Education, the Committee held a series of meetings with a number of organizations/associations/NGOs/legal experts as well as some renowned artists concerned with different aspects of copyright law having a direct impact on their domain of work. Besides holding extensive deliberations with all these stakeholders, the Committee also received detailed memoranda from them. Keeping in view the wide-ranging impact of proposed amendments touching upon very complex issues, all these memoranda were forwarded to the Department for ascertaining its views. Not only this, based on its interactions with different stakeholders, detailed questionnaire was also sent to the Department on four occasions along with few pertinent issues raised by some Members. The Committee also held a final meeting with the officials of the Department on some core issues relating to the Bill. Feedback received from the Department has proved to be of immense help to the Committee in formulating its views on various provisions of the Bill.



## II. Consultation Process

2.1 In the introductory meeting held on 26 May, 2010, the Secretary had dwelt at length on the wide-ranging consultations carried out by the Department with all the stakeholders. The Committee was informed that a thirty member Core Group was constituted in 2000 under the Chairmanship of the then Education Secretary with representatives of various Ministries/Departments like Information and Broadcasting, Science and Technology, Communications and Information Technology, Industrial Policy and Promotion, Culture, Customs, Defence Research and Development, Legal Affairs, organizations such as the Indian Performing Right Society Limited (IPRS), Phonographic Performance Limited (PPL), Film Federation of India (FFI), Federation of Indian Publishers (FIP), Federation of Publishers' and Booksellers' Association in India (FPBAI), Authors Guild of India, National Association of Software Service Companies (NASSCOM), Indian Newspaper Society, audiovisual performers such as, Smt. Asha Bhosle, singer and Smt Shubha Mudgal, classical singer, National Institutions like, Sahitya Academy, Sangeet Natak Academy, National School of Drama and Film and Television Institute of India (FTII), Academic institutions such as Indian Institute of Technology (IIT), Delhi and National Law School of India University (NLSUI), Bangalore, representatives of persons with disability, subject experts such as Prof.(Dr.) N.S.Gopalkrishnan, Prof. HRD Chair on IPR & Director, Inter-University Centre for IPR Studies, Cochin, University of Science and Technology, Cochin and Shri Jagdish Sagar, Advocate and Professional IPR lawyers, Shri Pravin Anand and Shri Hardeep Singh Anand.

2.2 Thereafter, the first draft of the Bill prepared by the Drafting Committee was circulated in May, 2005. Draft Bill was also put on the public domain through advertisements, Copyright Office Web-site, along with comments sought from Vice-Chancellors, Heads of Institutions, Bar Council of India and State Bar Councils. Based on the wide-ranging consultations held with various stakeholders, the Bill was revised after inclusion of provisions relating to fresh issues.

2.3 The Committee observes that the major distinctive features of the present Bill when compared with the previous draft relate to the following:-

- changes made in the definition of terms 'Author' and 'work of joint authorship';
- term of Cinematograph work and joint authorship of films;
- independent rights to authors and composers in cinematograph films;
- statutory licensing for broadcasting;
- compulsory licence for published orphaned works; and
- registration of Copyright Societies.

The Committee also takes note of the fact that three important issues raised by the stakeholders relating to physically challenged, joint authorship for producer and principal director and extension of term for cinematograph films and independents rights to authors and composers in films have remained unresolved.

**2.4 During the course of its extensive deliberations with various stakeholders, one issue which was raised again and again was their non-involvement in the consultation process and their concerns not being addressed fully. From the very detailed feedback received from the Department as well as its interactions with all concerned, the Committee is constrained to observe that perhaps the present Bill was not shared with the stakeholders at the same level as the 2005 draft Bill. However, the Committee feels that by undertaking a very intensive consultation drive by issuing a Press Release followed by giving an opportunity to all the stakeholders to present their views in person as well as in writing has now left no scope for any stakeholder being denied the opportunity to have his say. Not only this, the Committee has also obtained the response of the Department on all the issues raised/ apprehensions voiced by a large number of witnesses.**

**2.5 The Committee has also observed that, by and large, many witnesses working in different areas touching upon different copyright related domains were primarily concerned with the safeguarding of their professional interests. Overall impact of copyright law did not seem to be an issue pertinent enough. The Committee can only say that it is the primary duty of the Government, as the law maker, responsible for both domestic interests and international commitments to do a balancing act. Similarly, the Committee is mandated to make an objective assessment of all the proposed legislations referred to it. It is against this backdrop, the Committee is making its observations/recommendations in the succeeding paragraphs.**

### **III. Clause 2: Section 2(d) (v) and (z), Clause 5: Section 17 and Clause 12:Section 26 Joint authorship for producer and principal director in cinematograph films**

**3.1 With the objective to recognize the intellectual contribution of principal director in cinematograph films, concept of joint authorship of producer and principal director has been proposed. Accordingly, while clause 2(d) (v) provides that both the producer and the principal director will be authors of a cinematograph film, sub-clause (vi) lays down that in relation to a sound recording, the producer shall be the author. Secondly, clause 2(z) defining the term 'work of joint authorship' is proposed to be modified by insertion of an Explanation clarifying that cinematograph film is to be treated as a work of joint authorship except in cases where the producer and the principal director would be the same person. Further, clause 5 seeks to amend section 17 relating to the first owner of copyright, whereunder producer and principal director shall be treated jointly as the**

first owner of copyright after the commencement of the Copyright (Amendment) Act, 2010. In the case of a cinematograph film produced before the commencement of the Act, the principal director shall enjoy the copyright for a period of ten years after the expiry of the duration of copyright in the cinematograph film. A proviso providing that in the case of a principal director, the copyright shall subsist until 70 years is proposed to be added to section 26 relating to term of copyright in cinematograph films.

3.2 The Committee was given to understand that at present, principal director is only paid fee for his work and the producer does not share rights with him. Principal director's creativity has not yet been recognised in spite of his intellectual contribution in the creation of the film. While admitting that such a provision did not exist in most of other jurisdictions like USA, it was pointed out that the US industry was addressing this issue through 'union contracts'. Under this system, royalties were shared with all the stakeholders in the film-making. Not only this, the European Directives implemented by 27 European States introduced 'work of joint authorship' in cinematograph films by making principal director, script writer, dialogue writer and music composer as joint owners unlike the producer who only initiated the process of film making. It was also clarified that the proposed amendments were absolutely in strict conformity with the international treaties and conventions like the Berne Convention, the Rome Convention and the TRIPS Agreement. Another reason emphatically advanced was that a well-designed contractual agreement between the producer and the principal director, clearly stipulating the nature and content of the enjoyment of rights jointly owned before the start of the film production would solve many problems on the exploitation of films in future.

3.3 The proposal to include principal director as an author in case of a cinematograph film was opposed in very strong terms by all the stakeholders appearing before the Committee. The representatives of **Film and Television Producers Guild of India** held that the proposed co-ownership to principal director was absolutely unfair and unjustified as it was the producer who faced the potential risk of loss as compared to a principal director charging upfront fee for his services. It was the producer who was entrusted with the task of making a film, organizing finance, employing artists, technicians, story writer, music director, lyric writer, distributor, exhibitor etc. and taking all their liabilities/responsibilities. In such a scenario, making the director a co-owner/partner was totally unjustified. Another apprehension voiced by the Guild was that such a practically unworkable proposition would result in producers not entering into contracts with directors and denying break to new talent. Committee's attention was also drawn to the fact that it may so happen that the director instead of assigning the rights to the producer may assign/sell his rights to third party which may not agree with the producer's commercial plans. Existence of a level playing field in the film industry for these two entities was also cited as a factor not necessitating such a proposal. It was emphasized that a contract negotiated freely

between the producer and the director which may include percentage of profit also took full care of the rights of director.

3.4 Endorsing the views of the Film and Television Producers' Guild, the **Indian Motion Picture Producers Association** submitted that it was the producer alone who suffered all the losses in case a film failed, with the director being paid his remuneration/fee beforehand. In contrast, the investment risk of producing a movie solely rested with the producer. If a film proved to be a hit, it benefited everybody including the director. Representatives of the **South Indian Film Chamber of Commerce** also pointed out that inclusion of principal director as author of a cinematograph film was totally unwarranted as the process of film making involved a number of crafts handled by different agencies/individuals. Identifying only principal director could not be considered justifiable.

3.5 Voicing their strong reservations, office-bearers of the **Indian Reprographic Rights Organisation** termed the proposed amendment as conceptually untenable, discriminatory, challengeable and ultra-vires of Article 14 of the Constitution. Committee's attention was drawn towards an anomalous situation where the principal director may choose to assign his copyright to another party, resulting in the other party enjoying the copyright for a longer term than the producer himself by virtue of proposed amendment in section 26.

3.6 Opposing the amendment, the representatives of the **Indian Broadcasting Foundation** opined that the proposal would affect the broadcasting organizations in terms of both buying the movies and producing television content. For buying movies, broadcaster would now need to negotiate assignment/licensing contracts with both producer and principal director of such movie, thereby making such procurement cumbersome and a costly affair. For producing television content, despite being a producer and owner of television content, it would be difficult for a broadcasting organization to have absolute and unrestricted commercial rights, due to sharing of its revenue with the principal director of the concerned television content.

3.7 **The Committee shares the apprehensions of the stakeholders about the proposed inclusion of principal director as author in clause 2 (d) (v) of the Act. Department's admission that "such a provision is not prescribed in most of the jurisdictions like USA" and the matter is taken care of through other means corroborates such apprehensions. It is again intriguing that none of the international treaties namely WCT and WPPT or even Rome Convention stipulate such a concept. It is well established that the producer is the kingpin who invests substantive money, raises finance through institution, utilizes persons/expertise and brings out a product i.e film. He takes such initiative and responsibility for making the work and chooses the director on certain offer. It is also an undisputed fact that a director plays a major role in the making of a film but in co-ordination with the producer only. The Committee is also**

surprised to note that nowhere in the proposed Bill, the term "principal director" has been defined whereas the definition of the term "producer" has been provided under section 2 (uu) of the Copyright Act, 1957. The Committee feels that this definition of producer ought to have been modified in the context of the proposed amendment. It was also pointed out that the term 'principal director' was not defined under the Berne Convention also. The Committee is not convinced by the contention of the Department that such a definition is not required due to the clear understanding in the film world about the identity of principal director as there are different directors responsible for different aspects of film making like music director, art director, action director etc. More so there is no word as 'principal director' in the parlance of the cine industry at all as 'director' is the term used for any person who coordinates 'in general way' while others are on specific work as music, art, dance etc.

3.8 The Committee observes that opportunity to have partnership in a cinematograph film is being given to an undefined person i.e principal director without any liability/responsibility being assigned to him. In fact, in the film industry today, directors are getting huge money as fee under a mutual contract drawn with the producer without any pressure whatsoever, leaving no cause for marginalization. The Committee has been given to understand that even in Hollywood, fee is allowed and certain profit is shared under a system/agreement whereunder no equal partnership between the director and the producer is there. Such a system can exist in Indian cinema also. The Committee endorses the apprehensions that the proposed amendment will create a lot of uncalled for and unnecessary problems in the Indian cinema. The Committee is in agreement with the contention of some stakeholders that this may lead to a situation when the producer may not engage directors and may become director, script writer etc. himself. Further directors may not work in the same capacity and they may be pushed down as assistant directors, which will stop the upcoming directors to reach the top in industry.

3.9 The Committee was informed that the Film Producers and Film Federation of India had sought for extension of copyright term for cinematograph films by amending section 26, specially to exploit old films in new medium and also help the Producers of such films economically. Accordingly, a sub-committee was constituted by the Department on 6 November, 2006 which held two meetings on 29 December, 2006 and 4 January, 2008 to discuss the issue. A detailed study report was also submitted by Ministry of HRD IPR Chair, Cochin on term extension. One of the options considered was to include director as 'author' along with producer by amending section 2 (d) (v) in order to extend the term of cinematograph film. Creative contribution of principal director in the films was also recognised by the representatives of film industry during these discussions. Thus, introduction of the term, principal director was primarily meant to extend the copyright term

of cinematograph film by ten years. Any direct increase would have led to increase in the copyright term of other works also.

**3.10 Nobody can deny the fact that interest of producers of old films needs to be fully protected. But the Committee fails to comprehend the rationale behind the proposed introduction of a new stakeholder, i.e., principal director that too for films produced 50 years ago. The main objective of this exercise was to protect the producers of old films economically. It seems remedy proposed is worse than the problem.**

**3.11 In view of the above, the Committee is of the view that the proposed amendment to include principal director as author of a cinematograph film along with producer may create confusion and lead to uncalled for situations instead of serving the purpose intended for. Committee's opinion rests on the premise that there is a system existing presently whereunder producers and directors are free to negotiate on their own terms and conditions. Under these negotiations/contracts, directors are not only paid their negotiated salary/fee but also certain rights in perpetuity relating to the script. Further, as per the existing system, the principal director is not taking any equity risk in the production/performance of a film and it is the producer alone who runs the risk of his investment not being recovered. The Committee strongly feels that the proposal of joint ownership is unfair. It, therefore, recommends that the proposal to include principal director as author of the film along with producer may be dropped altogether.**

#### **IV. Clause 2: Definition of the term 'cinematograph film'**

4.1 Clause (f) of section 2 of the Act defines the term, "cinematograph film" as follows:

"any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video film."

The Bill seeks to omit the words "on any medium produced through a process from which a moving image may be produced by any means" from clause (f).

4.2 The Department has clarified that the definition of the term "cinematograph film" is being revised to tackle the exploitation of works in digital medium. **The Committee, however, feels that the amendment cannot be accepted as future systems of electronic format/formation will be left out.**

#### **V. Clause 2: Definition of the term 'commercial rental'**

5.1 The Bill seeks to insert a definition of the term 'commercial rental' after Section 2(f) of the Act as indicated below:

'(fa) "commercial rental" does not include the rental, lease or lending of a lawfully acquired copy of a computer programme, sound recording, visual recording or cinematograph film for non-profit purposes by a non-profit library or non-profit educational institution.'

5.2 Obligation under Article 11 of the TRIPS Agreement, Article 7 of WCT and Article 9 of WPPT to provide for "commercial rental" rights for computer programmes and cinematograph film was cited as the basis for bringing the definition of the term 'commercial rental'. Committee's attention was also drawn to the fact that this right was introduced in 1994 in section 14 relating to 'Meaning of Copyright' using the words 'hire'. However, keeping in view the possibility of interpreting this term to include non-commercial hire and lending by libraries and educational institutions, the term 'hire' in section 14 (b) for computer programme was replaced with the term 'commercial rental' in the 1999 Amendment. The term 'hire' in section 14 (d) and (c) with regard to a cinematograph film and sound recording respectively is now proposed to be replaced with the term 'commercial rental'. Committee was informed that specific definition of the term 'commercial rental' is proposed to be inserted with the objective of expressly clarifying that this right was not applicable to non-commercial activities of libraries and educational institutions.

5.3 Representatives of organizations, namely Indian Music Industry, Indian Reprographic Right Organisation, South India Music Companies Association and Indian Motion Picture Association of America, Saregama- RPG Enterprises and Indian Operations Business Software Alliance appearing before the Committee voiced their serious reservations on the proposed definition of the term 'commercial rental' and other allied amendment in section 14 (d) and (e) on the following grounds:

- Definition is too wide and provides an indeterminate meaning. The range of possible misuses in the name of non-commercial rental is vast, in view of numerous large users of copyrighted works being technically 'non-commercial'.
- Illegal internet web-sites/services streaming songs unauthorizedly free of cost would misinterpret the law to mean that in the absence of any fees/rental charged by them, they cannot be termed as infringes.
- It would be possible for anyone to effectively infringe copyright by the simple device of registering a society (non-commercial body) and distributing infringing copies on a nominal one-time payment of non-commercial rent.
- It would prove to be extremely harmful to the music industry as it would dilute the market for legally sold digital copies.
- It would add to the burden of enforcement authorities charged with combating the widespread availability of pirated products.

- Courts understand the term 'non-commercial' and thus there is no apparent need for the open-ended definition which can only create difficulties in interpretation.

5.4 The Committee also takes note of the clarifications given by the Department on the above apprehensions of the stake-holders. It has been pointed out that by virtue of this definition, normal activities of public libraries and educational institutions will not be affected by granting rental rights to the authors. As the copies used by the libraries/educational institutions would be legal copies, interests of copyright owners would remain fully protected. Finally, this benefit would be available only if the purpose is non-profit for non-profit making institutions.

**5.5 The Committee finds merit in the apprehensions voiced by different stakeholders. It is apparent that the definition of the term 'commercial rental' is too wide and open ended. Mere assurance of interests of copyright owners remaining fully protected would serve no purpose. The Committee would also like to point out that the absence of any clarity on the non-profit character of a public library or an educational institution is likely to result in different interpretations and resultant legal complications. The Committee, therefore, is of the view that in the light of very convincing facts put forth by the stakeholders based on their experience as copyright holders and service-providers, the proposed amendment needs to be reexamined from all conceivable aspects. One option can be to clearly spell out the criteria for designating a library/educational institution as non-profit based. The other option could be to restrict the application of this clause to only Government recognised libraries/educational institutions. Either way, such specification needs to be there in appropriate place either in the Act itself or in the relevant rules.**

## **VI. Clause 2: Definition of the term 'communication to the public'**

6.1 Section 2 (ff) of the Act defines the term "communication to the public" as follows:-

"making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available."

The Bill seeks to amend the definition by adding the words 'or performance' after the word 'work' and extending the communication to the public simultaneously or at places and times chosen individually.

6.2 According to the Department, the definition has been revised to tackle the exploitation of works in digital medium, thereby bringing the same in conformity with WCT and WPPT. The Committee notes that the proposed amendment in the definition of the term 'communication to the public' has not found favour with



music companies represented by the South India Music Companies Association, the RPG Enterprises Saregama, Indian Music Industry and also the Association of Radio Operators for India. Attention was drawn to the following factors having an adverse impact on the music industry and radio operators:

- subscription to caller tunes and authorized websites permitting streaming/downloading of copies etc. will be considered “communication to the public” inspite of it being a sale of the copy;
- no rationale in exclusion of only physical copies from the purview of “communication to the public” in an age where commercialization and sale of music is taking place extensively through the medium of internet and transfer of files through computers/blue tooth;
- creation of a transient electronic copy in the course of or for the purpose of “communication to public” under current law is treated as an infringement. While such act by a legitimate TV/Radio station would be lawful, the section will be misused by unauthorized websites treating it as an activity during the course of “communication to the public”.
- free radio broadcast which is a service to the public and is also in the interest of artists as it promotes their compositions will be brought under the definition. Therefore, the word 'performance' should be excluded from the provision.
- proposed amendment will be misinterpreted by certain quarters when even issuing “digital” copies would amount to 'communication to public'. It would be wrong to consider digital sales such as iTunes as “communication to the public” In reality, it is only a sale, but on a different medium.

**6.3 The Committee feels that the reservations of the stakeholders are unfounded. Issuing physical copies or legitimate digital downloading music or video recording by payment cannot be considered a communication to the public. The Department has justified the proposed amendment for exploitation of digital mediums. As the amendment is in tune with the technological advancement, the Committee accepts the amendment. The Committee is also of the view that the copyright societies can play a proactive role in resolving problems, if any, arising due to the proposed changes in the definition.**

## **VII. Clause 2: Definition of the term 'infringing copy'**

7.1 Clause 2 (m) of the Act defines the expression 'infringing copy' as a reproduction of a literary, dramatic, musical or artistic work or a copy of a cinematograph film made on any medium by any means or any other recording embodying the same sound recording, made by any means or the sound recording or a cinematographic film or broadcasting of a programme or performance if reproduction of sound recording is made or imported in contravention of the provisions of the Act. The Bill seeks to insert the following proviso to this clause:-

"provided that a copy of a work published in any country outside India with the permission of the author of the work and imported from that country into India shall not be deemed to be an infringing copy".

7.2 The Committee received memoranda on the proposed insertion of a proviso to the definition of the term 'infringing copy' from a large number of organizations/associations. The Committee also had the opportunity to interact with the representatives of these bodies. Very strong objections were raised on the proposed amendment.

7.3 The **South India Music Companies Association** pointed out that such a move would act as a huge disincentive for sound recording labels to obtain license from foreign producers. The **Indian Motion Picture Producers' Association** were of the view that it would result in copies of a work published outside India to be imported without consent of the owner thereby divesting the rights of owner of copyright in such works and diluting the commercial potential of exploitation of a work. The viewpoint of the **Motion Picture Association** was that repealing India's long-existing national exhaustion rule for copyright would not be a good policy choice as all the important copyright producing nations in the WTO have the rule of national exhaustion for copyright national. The national exhaustion is beneficial to the economy as it allows exclusive distribution arrangements to be formed and respected and at the same time, keeps the prices low in the country and helps build a strong domestic copyright industry. It was suggested that the concerns over impact of the existing rule on persons bringing in small quantities of parallel imported copy-righted material for personal use can be taken care of by an amendment creating an exception which could be narrowly crafted.

7.4 Creation of a parallel market of foreign contents/works in India was the main objection raised by the **Indian Broadcasting Foundation**. It was apprehended that it would be possible for any person to buy a copy of a foreign work including a movie and other media content in any country and import and resell it in India before the work in question could be formally released in India. Any content specifically produced or edited for a foreign audience could be freely imported by anyone in India without license/permission from the broadcaster.

7.5 Similar serious concerns were raised by the Publishers. The **Association of Publishers in India** pointed out that the books published in one country could be freely made available and sold in India without amounting to infringement of copyright. Publishers/agents/authors would hesitate from designating India as an exclusive territory in which (cheaper) Indian Editions could be produced as India would not be a "secure" market. It would not be possible for Indian publishers to sell Indian Editions into protected markets abroad since other countries recognize territoriality. According to them, it was a retrograde step diluting the ability of

various stakeholders in the publishing industry to uphold and enforce the territorial division of rights, the very basis upon which the publishing industry operated.

7.6 Clarification given by the **Federation of Indian Publishers** was that the rights were commonly split up and assigned territorially. Indian publishers often enjoyed the right to publish and sell a book in India, while some other publishers did so in some other country(ies). Author was given the right to allow parallel imports regardless of whether or not he was the current owner of copyright. It was mentioned that as the amendment would be benefitting authors at the disadvantage of the publishers and it would also give rise to litigation between authors and publishers. The **Indian Reprographic Rights Organization** contended that the provision was likely to upset the whole pattern of commercial exploitation of most kinds of copyright works, by legitimizing the circumvention of territorial rights acquired by assignees at some cost.

7.7 Equally strong objections were raised by another stakeholder i.e., the **Business Software Alliance**. According to them, such a move would cause serious imbalance of trade, counterfeiting activities across borders and total disruption of authorized distribution channels. It would be impossible for customs and border police to apprehend illegal copies. Further, this would make working and enforcement of Licence Agreements for computer programmes more complex and burdensome for users, software publishers and the courts.

7.8 The **Authors Guild of India** was the only body which welcomed the provision. According to them, copy of a work published in a foreign country with the permission of the author and on being imported to India, not being considered as infringing copy, was a step taken in the right direction. It was pointed out by them that in the age of globalization where the borders were becoming highly irrelevant, this was the need of the hour.

7.9 During the course of the oral evidence before the Committee, the **Federation of Indian Publishers** and the **Association of Publishers in India** further elaborated upon their opposition to the insertion of a proviso in section 2 (m). According to them, in the publishing industry, the internationally accepted business model was the territorial division of rights wherein the publisher had the right to publish territory (country), specific editions. It was also contended that other stakeholders including the authors and consumers benefitted from territorial division of rights. The existing provision had an added advantage in cases of books meant for academic purposes. With the proposed amendment, the student community would be hit the hardest. It was pointed out that in higher education, especially in medical and engineering, a lot of foreign books were being made available in India at low prices in spite of their being priced at much higher rate in the country of their origin. With this amendment, the low priced editions meant for Indian sub-continent could be exported back to the country of their origin where they were priced at much higher rates. Consequently, the publishers would lose the incentive to sell books in India or in the Indian sub-continent at subsidized prices. Reason being that foreign

publishers would not like to grant the reprint rights to Indian publishers fearing low priced Indian editions flooding and diluting their own markets.

7.10 All the reservations/objections raised by the various stakeholders were taken up by the Committee with the Department with the intent of having full understanding of the background necessitating the proposed amendment and its exact impact on the various stakeholders. As clarified by the Department, the main purpose of this amendment was to allow for imports of copyright materials (e.g. books) from other countries. It was in accordance with Article 6 of the TRIPS Agreement relating to exhaustion of rights whereunder developing countries could facilitate access to copyright works at affordable cost. Exhaustion of rights (popularly called as parallel import) was a legal mechanism used to regulate prices of IPR protected materials. This was viable only if the price of the same works in the Indian market was very high when compared to the price in other countries from where it was imported to India.

7.11 Committee's attention was drawn to the fact that majority of educational books used in India were imported from other countries particularly from US and EU. There was an increasing tendency by publishers to give territorial licence to publish the books at very high rates. The low price editions were invariably the old editions than the latest ones. This provision would compel the Indian publishers to price the works reasonably so that it would not be viable for a distributor to import same works to India from other countries. This would also save India foreign exchange on the payment of royalties (licence fee) by the Indian publishers to foreigners.

7.12 Committee was also given to understand by the representatives of the publishing industry that Scheme of the Copyright Law was entirely different from the Trade Marks Act, 1999 and the Patent Act, 1970. The application of the standards and principles of these two laws through the proposed amendment of section 2(m) would completely dismantle the business model currently employed, rendering several industries unviable. On a specific query in this regard the Department informed that the concept of international exhaustion provided in section 107 A of the Patent Act, 1971 and in section 30 (3) of the Trademarks Act, 1999 and in section 2 (m) of the copyright law were similar. This provision was in tune with the national policy on exhaustion of rights.

**7.13 After analysing the viewpoints of all the stakeholders along with the clarifications given thereupon by the Department, the Committee is of the view that proposed inclusion of the proviso in the definition of the term 'infringing copy' seems to be a step in the right direction, specially in the prevailing situation at the ground level. The present practice of publishers publishing books under a territorial license, resulting in sale of books at very high rates cannot be considered a healthy practice. The Committee also notes that availability of low priced books under the present regime is invariably confined to old editions. It has been clearly specified that only those works published outside India with the permission of the**

**author and imported into india will not be considered an infringed copy. Nobody can deny the fact that the interests of students will be best protected if they have access to latest editions of the books. Thus, apprehensions about the flooding of the primary market with low priced editions, may be mis-founded as such a situation would be tackled by that country's law. The Committee would, however, like to put a note of caution to Government to ensure that the purpose for which the amendment is proposed i.e to protect the interest of the students is not lost sight of.**

## VIII. Clause 2: Definition of term 'Rights Management Information'

8.1 The Clause seeks to insert a new clause (xa) in section 2 in order to define the term "Rights Management Information" as follows:-

"(xa) 'Rights Management Information means-

- (a) the title or other information identifying the work or performance;
- (b) the name of the author or performer;
- (c) the name and address of the owner of rights;
- (d) terms and conditions regarding the use of the rights; and
- (e) any matter or code that represents the information referred to in Sub-clauses (a) to (d), but does not include any device or procedure intended to identify the user.

8.2 The Committee was informed that the inclusion of definition of the term 'Rights Management Information' which has been brought in conformity to Article 12 of the WCT and Article 19 of the WPPT, would help the film, music and publishing industry to fight piracy. It was clarified that the modern technology facilitated management of rights digitally. However, attempts were sometimes made to remove these contractual terms from the digital copies of the work to prevent detecting the violations of contract terms by the copyright owner. The proposed provision would help in preventing the removal of information regarding management of rights in the digital copies of the work.

8.3 The Committee takes note of the following apprehensions raised about the efficacy of the definition of the term 'Rights Management Information' by stakeholders like India Operations Business Software Alliance, Indian Reprographic Rights Organisation and Indian Broadcasting Federation.

- one key element of Subscriber Management System (SMS) deployed by Broadcasters is the identification of the end-subscriber of the channels. Any removal or alteration of SMS would deprive a broadcaster of his legitimate revenue and would also enable MSOs/LCOs in infringing copyright and not being caught.
- non-inclusion of device/procedure intended to identify the user in the definition is not a requirement of WCT. It would not only create problem for users of devices in which the RMI has been tampered with, but could also potentially affect treaty compliance.

8.4 On drawing the attention of the Department to these issues, the Committee was informed that the proposed definition of the term 'Rights Management Information' includes all kinds of information including Subscriber Management System'. It was based on the WCT and WPPT mandate whereunder Rights Management Information does include device or procedure intended to identify the user. **The Committee is of the view that in the light of clarification given by the Department, the proposed definition of the term 'Rights Management Information' is in order.**

## **IX. Clause 6: Section 18: Assignment of copyright**

9.1 Clause 6 of the Bill seeks to amend section 18 relating to assignment of copyright. Sub section (1) of section 18 of the Act provides that the owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright, either wholly or partially generally or subject to limitations and for the whole of the copyright or any part thereof. However, in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence. Following two provisos to sub-section (1) are proposed to be inserted:

"Provided further that no such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work."

"Provided also that the author of the literary or musical work included in a cinematograph film or sound recording shall not assign the right to receive royalties from the utilization of such work in any form other than as part of the cinematograph film or sound recording except to the legal heirs or to a copyright society for collection and distribution and any agreement to the contrary shall be void".

9.2 Very serious objections were raised by a large number of stakeholders on the proposed amendments in section 18 relating to assignment of copyrights. Not only detailed memoranda was received from all of them, the Committee also held extensive deliberations with representatives of different associations/organizations. The Committee also received memoranda from world-renowned artists, lyricists, authors, music composers and artists working both inside and outside the Indian Film Industry in the context of protection of their copyrights. The Committee also had the opportunity to interact with a renowned composer and an artist representing the entire community. As a result, the Committee could get an idea about the status of artists, specially those working in the film industry. To have an objective assessment about the very complex issues involved against the background of existing copyright law and resultant impact of proposed amendments, the Committee also sought the views of the Department. As a result of this exercise, the Committee could identify some contentious issues and analyse their viability and exact impact on the different stakeholders.

9.3 The **South India Music Companies Association** opined that the first proviso would take away the entire scope for private negotiation in respect of assignment of rights of exploitation in future media/mode which was highly unfair and violative of the freedom of business under Article 19(1)(g) of the Constitution. The Committee was given to understand that in this age of fast evolving technology, a particular medium of use/mode of exploitation may last only for a period of six months at the most or one year and after the expiry of such period, some new technology could come. It would, therefore, be extremely unfair to confine the assignment of rights in a work to only the medium/mode in existence or commercial use. The second proviso would also affect the right of the producer/sound recording label to enter into private agreements with the music

composer/lyricist/script writer for the purpose of collecting royalties on their behalf. This would render the licensing of a film/music extremely unworkable since the licensee would have to make separate payments to different entities, to producer, music composer, lyricist, script writer etc. It would make much more commercial sense to permit the producer to enter into agreements with each of these stakeholders where the producer could collect the royalties on their behalf as well.

9.4 The **RPG Enterprises-Saregama** were of the view that the proposed amendment would have an unintended effect of nullifying all existing contracts, in respect of pre-amendment copyrights taking an adverse toll on the very survival and viability of the music industry. It would debar assignment of rights into any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made. Every time a new medium or technology or mode was to be introduced, the owners would have to trace hundreds and thousands of authors and enter into fresh agreements. Voicing similar concerns, the **Indian Performing Right Society Limited** pointed out that the proposal had far-reaching consequences. In the era of rapidly changing technology, it was difficult for a film producer or music company or publisher having copyright in a work today to know the mode of exploitation in future or even in the next 5-10 years. The amendment was also silent as to whether the future exploitation of existing repertoire would be subject to the amendment or not. If made effective retrospectively, it would lead to tremendous litigation, taking away existing valuations/properties ownerships. Further, the amendment would seriously affect the liability of authors and film producers/music companies/publishers to do business and monetize their rights.

9.5 The **Film & Television Producers Guild of India** was of the view that restricting mode and medium of exploitation in a world where technology was rapidly changing was unfair to licensee/assignee to have such limited technology rights. The proposed second proviso would also be detrimental to the lyricists and composers as whether the person to whom the author opting to assign his copyright would actually be author's legal heir or not was a contingent event. Hence, the proposed clause would prove to be unworkable. Voicing similar concerns, the **Indian Motion Picture Producers' Association** opined that the amendment would prevent authors from monetizing their rights as restrictions on assignment will adversely affect the author's commercial bargaining power with the producers.

9.6 Pointing out similar impact on authors, the **South Indian Film Chamber of Commerce** contented that this amendment will prevent the authors from monetizing their rights. Producers had the network, infrastructure and resources to monetize the works incorporated in cinematograph films. However, the restriction on assignment would adversely affect the authors of musical and literary works or credits being accorded to such authors in relation to their works. Endorsing similar views, the **Motion Picture Association** opined that



assignments would no longer apply to a medium or mode of exploitation not in existence or “not in commercial use” at the time of the assignment unless that medium or mode was “specifically” mentioned in the assignment. This change would preclude even “all rights” assignments, which in a fast-moving new technology environment, would severely complicate the ability of the producer/copyright owner of the film to exploit the work in new areas, particularly in the digital environment. Therefore, restrictions on assignments should be deleted from the Bill.

9.7 The **Indian Broadcasting Foundation** was of the view that currently, broadcasters and media organizations paid lump sum amount to the producers/rights holders to obtain assignments/licences to exploit films/TV programmes on any medium or mode, whether in existence or subsequently developed. Most of these rights were bought upon payment of exorbitant amounts. With the inclusion of this proviso, it would become difficult to freely exploit the rights obtained in film/TV programmes on newer exploitation modes even when a complete assignment of rights has been made. The Copyright Act grants economic and moral rights to the authors of literary and musical works to exploit their economic rights in a manner most desirable to them. The proposal would restrict the authors of literary and musical works from freely assigning the right to receive royalty for an appropriate consideration agreed between them and the assignees.

9.8 According to the **Federation of Indian Publishers**, modes of exploitation existing at the time of original assignment might go completely out of use within the term of copyright, thus creating lottery situation whereby the rights of the assignor (author) and assignee (publisher) would become subject to unpredictable technological change eg. before the term of copyright in many recently published works would expire, e-books might become the main commercial format. The second proviso may not affect the rights of the producers in the script /screenplay which is a dramatic work, not a literary work. It makes the copyright situation change completely in regard to a novel, once the novel was used for a film. Voicing similar concerns, the **Association of Publishers in India** submitted that the assignment of rights could only be with respect to known forms of exploitation and in contemplation at the time of entering into the assignment agreement. The proposal would severely limit the scope of an assignment of copyright.

9.9 The **Indian Reprographic Rights Organization** informed the Committee that the amendment was likely to result into completely unintended consequences. The technology is changing rapidly and as the modes of exploitation existing at the time of original assignments may go completely out of use within the term of copyright, it would create a lottery situation subjecting the rights of the assignor (author) and assignee (publisher) to unpredictable technological change. According to them, author's right of assignment was limited to two persons, his legal heirs and a copyright society. The proposed second proviso would not be workable as

the persons to whom the author opted to assign his copyright would be the author's legal heir or not would not be known before the author's death. Further, it would make the author completely dependent on a copyright society which was not in his control. The proposal could create anomalies if a lyricist assigned his right to anyone before the lyrics had been included in a film/sound recording.

9.10 The **Business Software Alliance** were of the view that the amendment would severely limit the scope of possible assignment of copyright in any work including software considering the manner in which technology was leaping forward in recent times. Moreover, it was not possible to specify all modes and media of exploitation. The proposal should, therefore, be reconsidered as it would subject the rights of the assignor (author) and assignee (publishers) to unpredictable technological changes.

9.11 Renowned artist, **Shri Javed Akhtar** was of the opinion that the inclusion of “sound recordings” in the proposed amendment to Sections 18 and 19 would mean that when music and lyrics were exploited as part of sound recordings, the ‘right to royalty’ would not arise. Since sound recordings were the main medium through which lyrics and music were exploited on various platforms, authors would be denied royalty in respect of such exploitation. He further mentioned that the effect of the language “other than as part of the cinematograph film” in sections 18 and 19 would lead to a situation where television/cable broadcast of films and even the distribution and exhibition of films on mobile platforms through 3G technology would result in a denial of royalties to authors.

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

9.13 **When a song or music is incorporated in a film, it is relating to synchronization right of author and music composer which is assigned to the producer of the film as per section 17 (b) or in the absence of agreement, film producer is the first owner. However, film producer is also getting other independent rights of author and music composer of their works envisaged in section 13 of the Act. As per section 17 (b), he further assigns these rights to the music companies for upfront lump-sum amount. When the films**

songs are performed separately and independently through TV/Radio, restaurants, airlines, auditoriums or public functions etc. film producer becomes the first owner and authors/music composers lose economic benefits of exploitation of their works to music companies who become ultimate owners of these works.

9.14 The Committee also takes note of the fact that independent rights of authors of literary and musical works in cinematograph films are being wrongfully exploited by the producers and music companies by virtue of Supreme Court judgment in *Indian Performing Rights Society vs. Eastern India Motion Pictures Association* (AIR 1977 SC 1443) which held that film producer is the first owner of the copyright and authors and music composers do not have separate right. The Committee, however, observes that in the footnote of this very judgement, Justice Krishna Aiyar also advised as follows:

"the authors and music composers who are left in the cold in the penumbral area of policy should be given justice by recognizing their rights when their works are used commercially separately from cinematograph film and the legislature should do something to help them".

9.15 It was also clarified through this judgement that the right of producer in a film as entitled under section 14(1) (c) cannot trench on the composer's copyright given under section 14(1) (a) when the music is separately played in a restaurant/aeroplane/radio station/cinema theatre. If producer enjoys synchronisation right, authors/composers should enjoy performing right. The footnote of the judgement also states that the twin rights can co-exist, each fulfilling itself in its delectable distinctiveness.

9.16 The Committee can only conclude in the light of the long standing infirmity in the copyright law outlined above that proposed amendments in section 17 and 18 were overdue. It has taken more than thirty years for the legislature to act upon a Supreme Court directive which indeed is a very sad state of affairs. The Committee emphatically recommends that this long standing infirmity in the copyright law needs to be removed without any further delay.

9.17 The Committee observes that some of the apprehensions of film producers are not well-placed. The Committee finds that authors/composers are paid fee for creation of their works and not upfront guaranteed royalties as mentioned by film industry. The Committee would also like to point out that promoting of new talent is the hallmark of the film industry which gives incentives to producers as well. In case of non-film music, specially in the case of upcoming artists, if music companies launch them by flooding their records in the market, it would be a good exposure for them, finally leading to the growth of music industry.

9.18 Committee's attention has also been drawn to section 13 (3) (a) of the Act which provides that copyright shall not subsist in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work. Section 13(4) further provides that copyright in a cinematograph film or sound recording shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film or sound recording is made. The proposed amendments in section 17, 18 and 19 are the reiteration of what is already provided in section 13 of the Act. In short, the proposed amendments in section 18 will protect interests of authors in the event of exploitation of their work by restricting assignments in unforeseen new mediums and henceforth author of works in films will have right to receive royalties from the utilization of such work in any other form except to the legal heirs or to a copyright society and any other contract to the contrary shall be void.

9.19 The Committee also observes that many countries permit the assignment of rights in a musical or literary work in past, present and future works. As this assignment pertains to the public performance, communication to public, broadcast and cable transmission rights, it is immaterial whether any new mode/medium of use which was not there at the time of assignment provided that these rights in the literary/musical works have been assigned to the legal heirs and also to a copyright society. As a rule, the copyright society will simply proceed to license new uses, collect royalties and distribute them back to copyright owners. This institutionalized system will greatly benefit the authors/lyricists and the composers as individually they may not be in a position to collect their royalties.

9.20 The Committee would like to add a note of caution here that the system of institutionalized societies needs to be strengthened as everybody may not be in a position to negotiate contracts with equity and there is a vast difference between contract of service and contract for service. Established names may negotiate and demand equity but beginners may remain at the receiving end and their contribution may go unnoticed and unrecognized. The Committee feels that the film industry needs to address this issue urgently and also evolve a viable profit sharing system for other categories of craftsmen/technical experts engaged in the making of a film.

#### **X. Clause 7: Section 19: 'Mode of Assignment'**

10.1 Clause 7 of the Bill seeks to amend section 19 of the Act, relating to mode of assignment. This section provides that no assignment of copyright in any work is valid unless it is in writing signed by the assignor or his duly authorized agent. The assignment of copyright in the work shall also specify the rights assigned and the duration and territorial extent of such assignment and it shall also specify the royalty, if any, payable to the

author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties. If the assignee fails to exercise rights assigned to him within a period of one year from the date of assignment, the same shall expire unless otherwise specified in the assignment. If the period or the territorial extent of assignment is not specified it shall be deemed to be five years from the date of assignment and the territorial extent shall be within India, as the case may be.

10.2 The Bill proposes to amend sub-section (3) to provide that the assignment shall specify the other considerations besides the royalty, if any, payable. The Bill further proposes to insert a new sub-section (8) to provide that any assignment of copyright in any work contrary to that of the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member, shall be deemed to be void. It is also proposed to insert a new sub-section (9) providing that no assignment of copyright in any work to make a cinematograph film or sound recording shall affect the right of the author of the work to claim royalties in case of utilization of the work in any form other than as part of cinematograph film or sound recording.

10.3 The Department has justified the proposed amendments in the backdrop of royalty in assignments. Any assignment of copyright in any work to other than a copyright society will be deemed to be void and non-film songs will also get the right to receive royalty when included in cinematograph film or sound recordings in case of concerned exploitation. It was pointed out that when the authors created work for film/sound recording, producers insisted for the transfer of all rights to them. This deprived the authors from the benefits they enjoyed from the rights assigned to copyright societies. It also led to the taking over of the administration of copyright societies by the producers. The proposed amendment would enable the authors to retain their rights assigned to societies and also retain their control on societies.

10.4 Attention of the Committee was drawn to a number of concerns on the proposed amendments by various stakeholders appearing before the Committee. Advocating deletion of proposed addition of sub-sections (8) and (9), the **South India Music Companies Association** was of the view that sub-section (8) would impose highly unreasonable restrictions on the producer's freedom of contract. Even if the music composer was willing to assign the right of exploitation of the work to the producer, the producer could only take such assignment on terms similar to those on which the assignment had been made to the copyright society administering the rights of the music composer. This would affect the music industry in manifold ways. Firstly, sub-section (8) had retrospective operation on existing arrangements where money had already been paid based on the existing assessment of the market. Secondly, composers could not assign their rights to producers for exploitation for a new medium/mode without assigning such rights to their own copyright society which could give rise to a form

of militant unionism. Thirdly, the rights already assigned to producers/label could not be exploited by them in future on the initial terms.

10.5 The **Motion Picture Association** opined that section 19(8) would undermine the ability of producers to use works in films. It should not be made applicable to all rights in musical works/literary works. Section 19(9) allowed contributors of works to films to retain their right to assign (and under Section 30 A to license) all uses other than the use in the film. This would further limit the ability of the producer to benefit economically from the use of these works.

10.6 The **Indian Broadcasting Foundation** informed that broadcasting and media organizations paid lump sum amounts to producers/rights holders to obtain an assignment/licence to exploit a cinematograph film/sound recording/TV programmes and all the work contained therein in any format. With the inclusion of sub-section (9) it would become difficult to freely exploit the rights obtained in a film/sound recording/TV programmes in any format other than in conjunction with the relevant cinematograph or sound recording. Therefore, sub-section (9), should be deleted. According to the **Federation of Indian Publishers** the proposed amendment was violative of Article 9(2) of Berne three step test.

10.7 The **Indian Reprographic Rights Organisation** held that the amendment seemed to create possible anomalies, besides limiting the author's ownership rights. Author's right of assignment was to be limited to two persons, namely his legal heirs and a copyright society. But the question remains as to whether the person to whom the author opted to assign his copyright would actually be the author's legal heir or not. The proposal would thus make the author completely dependent on the existence of an effective copyright society, which was not in his control.

10.8 The **Confederation of International Society for Authors and Composers (CISAC)** was of the view that amendment would serve to reinforce the existing legal principle that any assignment which was contrary to a prior agreement was null and void. The **Authors Guild of India** supporting the amendment opined that the proposed amendment protected the interests of the author in case of any ambiguity or confusion. Sub-section (9) was also satisfying to the authors according to which the royalty claims of the author remained intact in case the work was used in film or sound recording.

10.9 Committee's attention was also drawn to the fact that inclusion of the words 'sound recording' along with cinematograph film in sections 18 and 19 would mean that the 'right to royalty' would not arise when music and lyrics were exploited as part of sound recording. This would prove to be detrimental to the interests of authors. On a specific query in this regard, the Department informed that the inclusion of 'sound recording' was to cover non-film music also within the scope of the section. The definition of 'cinematograph film' given in section 2(f)

included sound recording accompanying the visual recording. Accordingly, a clear term in the contract at the time of transferring the synchronizing right regarding the terms and conditions of the separate making of the sound records of the music included in the film could protect the interests of the author of the works.

10.10 Another objection raised by authors pertained to the inclusion of words 'other than as part of the cinematograph film' in sections 18 and 19. Impact of such an amendment would be such that authors would be denied royalties arising out of television/cable broadcast of films and even the distribution/exhibition of films on mobile platforms through 3 G technology. They would also be denied their share of the normal licence royalty arising out of music used in advertisement films. However, it was categorically pointed out by the Department that rights of authors/music composers in respect of a song being played independently would remain fully secure.

10.11 Reservations were also expressed to use of words or any other consideration' along with 'royalty'. It was pointed out that non-assignable right to royalty would be rendered useless as producers would be free to choose the mode of payment to authors.

10.12 At the concluding stage of its deliberations, the Committee received specific suggestions with regard to sections 18 and 19 from some members of the Committee. It was pointed out that the proposed amendments to these two sections leave great scope for ambiguity which could defeat the very purpose for which these provisions were made. The term 'sound recording' which has been used twice in the proposed second proviso to section 18, should only be used once by deleting the second use of the term. It was a well-known fact that main vehicle of utilisation of musical and lyrical works was through sound recording. The amendment should, accordingly, provide to the authors the ability to assert their copyrights and rights as granted by the amendment in respect of the use of the lyrics and musical works as part of sound recording.

10.13 Second suggestion made was that the words "other than as part of cinematograph film or sound recording" should also be amended to allow the author to exert the "right to claim royalty" when the literary work and musical work is used as part of a cinematograph film and should only exclude a situation when the literary and musical work is communicated to the public as part of a cinematograph film in a cinema hall. It was also emphasized that the provision should clarify that the royalty claimed by the author is "to be shared equally with the assignee of copyright". This would lead to removing the ambiguity with regard to the right of royalty as claimed by an author and an assignment of copyright (granted by an author) as well as addressing concerns of all the stakeholders by securing an equal share in royalties to them. Similar changes were suggested in proposed section 19(9).

10.14 Committee's attention was also drawn to the fact that the language of the proposed section 19(9) inadvertently provides an option between royalty and consideration. Such a provision was likely to weaken the "right to royalty" granted by the second proviso to section 18. Accordingly, the word "or" used between the words "royalties" and "consideration" should be replaced by the word "and", thus confirming the compulsory nature and sanctity of the authors' right to royalty.

10.15 All these suggestions were deliberated upon by the Committee at length. The Committee also had the opportunity to seek clarifications in this regard from the representatives of the Department of Higher Education and Legislative Department at its meeting held on 9 November, 2010.

10.16 It was clarified by the Ministry that the term "sound recording" was introduced in order to extend the right of authors and music composers to claim royalties who create non-film musical works apart from film music. However, keeping in view the possible misinterpretation of the words "sound recording", the same may be removed not only from the second part but also from the first part. It was also pointed out that it would be imperative to introduce a new provision to protect the right of authors and music composers to claim their royalties in non-film works.

10.17 With regard to the suggestion for modification of the words "other than as part of cinematograph film or sound recording" in the second proviso to section 18, the following clarification was given by the Ministry:

"Synchronisation right" is that when a musical work or song is synchronized to a film, video, television or commercial. Synchronisation right and sound recording rights are owned by producer or a recording company who takes initiative to make a record. But, when a song is played/performed independently in broadcasting (TV/Radio), restaurants, airlines, auditoriums or public functions or through ring tones etc., author, music composers are entitled for royalties. The proposed amendment is to discourage the current practice of compelling the authors and music composers to assign all rights to the producers of film or sound records when they are engaged because of the weak bargaining power. The proposed provision ensures that the authors and music composers receive economic returns when their work is exploited through different modes other than as part of film or sound recording".

10.18 The Committee was also apprised by the Ministry that sharing of performing rights royalties by authors and music composers equally with music publishers (Producers) is an international non-legislative practice which is supported by the International Confederation of Societies of Authors and Composers (CISAC), Paris.

10.19 With regard to implication of the word 'or' as used between the words 'royalties' and 'consideration' in the proposed section 19(9), the Committee was given to understand that the word 'or' used between the words "royalties and consideration" in section 19(9) gives the literal meaning of another possibility and it does not



exclude 'royalty' for 'consideration' and vice-versa. Therefore, the word 'or' means both royalty and consideration. However, in order to avoid confusion, the word "and" could also be used in place of the word 'or'.

**10.20 The Committee observes that one of the main objectives of the proposed legislation is to ensure that the authors of the works, in particular authors of songs included in cinematograph films or sound recordings, receive royalty for the commercial exploitation of such works. With a view to remove any element of ambiguity which may give rise to complications or different interpretations in future, and also to protect the right of authors and music composers to claim their royalties in non-film works, the Committee recommends following amendments in clauses 6 and 7 of the Bill:**

**Proposed Second Proviso to section 18 may be revised as follows:**

**"Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilisation of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the author's legal heirs or to a copyright society for collection and distribution and any agreement to contrary shall be void".**

**Third proviso as indicated below may be added to section 18:**

**"Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilisation of such work except to the author's legal heirs or to a collecting society for collection and distribution and any assignment to the contrary shall be void".**

**Proposed sub-section (9) of section 19 should read as follows:**

- (9) **"No assignment of copyright in any work to make a cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilisation of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall".**

**sub-section (10) as indicated below may be added to section 19:**

- (10) **"No assignment of the copyright in any work to make a sound recording which does not form part of any cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable for any utilization of such work in any form".**

## **XI. Clause 8: Section 19 A: Disputes with respect to assignment of copyright**

11.1 Clause 8 seeks to amend section 19 A relating to disputes with respect to assignment of copyright. This section provides that, on receipt of a complaint from the aggrieved party, the Copyright Board may hold inquiry and pass orders as it may deem fit, including an order for the recovery of any royalty payable. Second proviso is

proposed to provide that pending disposal of an application for revocation of assignment, the Copyright Board may pass any order as it deems fit regarding implementation of the terms and conditions of assignment, including any consideration to be paid for the enjoyment of the rights assigned.

11.2 The Committee observes that amendment in section 19A is meant for providing protection to the author of any work regarding the payment of consideration for any work by empowering the Copyright Board to decide on the amount of consideration to be paid for the enjoyment of the work during the pendency of any dispute.

11.3 The Committee takes note of certain reservations expressed about the implications of the proposed amendment. It was pointed out by the **South India Music Companies Association** that such a move may lead to situations when music composers/lyricists may file frivolous applications for revocation and still continue to get royalty on the basis of an interim order of the Copyright Board. **The Committee feels that these apprehensions are somewhat misplaced as Copyright Board, a statutory authority is fully competent to assess the merit of a case filed with it. The Committee is, however, of the view that with a prescribed time-limit for adjudication of an application by the Copyright Board, there is little likelihood of any undue delay or any deliberate attempt on the part of a complainant. The Committee, accordingly, recommends that necessary provision in this regard may be added at the appropriate place.**

11.4 Committee's attention was also drawn to another pertinent problem regarding the functioning of the Copyright Board. As pointed out by the Phonographic Performance Ltd., Mumbai, the Copyright Board was responsible for handling of legal, economic, financial, costing and valuation issues. With added responsibilities, the Copyright Board presently functioning as a part time Board needed to be strengthened and institutionalized so as to function full time, meeting at regular intervals. The Committee would be making specific suggestions in this regard in the later part of the Report.

## **XII. Clause 15: Section 31: Compulsory licence in works withheld from public**

12.1 This clause seeks to amend section 31 of the Act dealing with compulsory licensing in works withheld from public. This section provides that if the owner of copyright in any Indian work has refused to republish or allow the republication or has refused the performance in public of the work and the work is withheld from the public or has refused to allow communication to the public by broadcast of the work recorded in sound recording, the Copyright Board may on basis of the complaint and after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, direct the Registrar of Copyrights to grant to the complainant, a licence. Applicability of this Section is proposed to be amplified from 'Indian work' to 'any work'. 'Explanation' relating to the definition of 'Indian

work' is also proposed to be omitted. It is also proposed to substitute the word 'complainant' with the words 'such person or persons who, in the opinion of the Copyright Board, is or are qualified to do so'. Sub-section (2) is also proposed to be omitted so as to enable the Copyright Board to grant compulsory licence to more than one person.

12.2 The Committee notes that this amendment is intended to help the Indian industries to negotiate voluntary licences for publication of foreign works in India on better terms. Indian industries will also be in a position to seek compulsory licence in case of failure to negotiate voluntary licence. Some implications of proposed amendment of compulsory licensing in all works- both Indian and foreign being withheld from public were pointed out by a number of stakeholders like Motion Picture Association of India, Indian Music Industry, South Indian Music Companies Association, Indian Performing Right Society Ltd, Federation of Indian Publishers and Indian Reprographic Rights Organisation. It was alleged that such a move would make Copyright Board non-compliant with the Berne Convention and consequently TRIPS Agreement, exposing India to the possibility of sanctions in WTO.

12.3 On taking up this issue with the Department, the Committee was informed that the concept of compulsory licence in the Indian Copyright Law has been introduced as per the facility of 'Special provisions regarding Developing Countries' provided in the Appendix of the Berne Convention, 1886 (revised Paris Act, 1971). India is one of the few member countries which utilised this facility. It was further clarified that although the existing provision is confined to Indian works only, there is an increasing need for access to foreign works. There is tendency to price the works very high and not publish it in the Indian market forcing distributor to import it from foreign markets. The proposed amendment will help the Indian industries to negotiate voluntary licences for publication of foreign works in India on better terms.

**12.4 While welcoming the spirit behind the proposed amendments, the Committee strongly feels that all grey areas in respect of compliance of TRIPS Agreement and WTO commitments need to be made very clear. Reason being is that queries raised by the stakeholders have not been responded fully and any ambiguity in such an area may lead to unnecessary complications.**

12.5 The Committee also takes note of the other objections raised by the stakeholders indicated below:

- replacing the word 'complainant' by 'such person or persons who in the opinion of the Copyright Board is or are qualified to do so' is arbitrary as there is no qualification parameters mentioned in the Bill.
- it gives sweeping powers to the Copyright Board
- to grant compulsory licences to persons other than the complainant. It is potentially dangerous for the interests of the copyright owners.

12.6 The Committee has been given to understand that the Supreme Court and various High Courts interpreted this provision to facilitate issue of multiple compulsory licences. The Committee, however, finds merits in the above objections specially in view of the present set-up of the Copyright Board. **The Committee is of the view that criteria qualifying a person to file a complaint before the Copyright Board needs to be specifically provided for, if not in the Act then in the Rules. A time-frame for disposal of such complaints also needs to be laid down in the Rules, if not already done.**

12.7 **The Committee also takes note of the proposed amendments in section 31 A relating to compulsory licence in unpublished Indian works. The provision of compulsory licence for orphaned works available under this section is proposed to be extended to published works as well. Like in the case of section 31, extension of applicability to all foreign works (including film, DVDs, etc.) could be violative of Berne Convention and TRIPS Agreement and seem to fall short of the minimum obligations imposed by such instruments. The Committee is of the view that future implication of proposed amendment in Section 31A vis-à-vis India's commitment to international agreement needs to be free from any ambiguity so as to prevent any negative fallout.**

### **XIII. Clauses 17 and 31: Section 31B: Compulsory licence for benefit of disabled**

#### **Section 52(zb): Certain acts not be infringement of copyright.**

13.1 The proposed new section 31 B seeks to provide compulsory licence for the disabled. It provides that an organization, registered under section 12A of the Income Tax Act, 1961 and working primarily for the benefit of persons with disability and recognized under Chapter X of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1951 may apply to the Copyright Board for compulsory license to publish any work in which copyright subsists for the benefit of such persons, in a case to which clause (zb) sub-section (1) of section 52 does not apply. The Copyright Board shall, after inquiry to establish credentials of the applicant and after giving to the owners of rights in the work a reasonable opportunity of being heard dispose of such application within two months from the receipt of the application and direct the Registrar of Copyrights to grant to the applicant such a licence to publish the work that a compulsory licence needs to be issued to make the work available to the disabled. Every compulsory licence issued under this section shall specify the means and format of publication, the period during which the compulsory licence may be exercised and the number of copies that may be issued. The Board may on a further application and after giving reasonable opportunity to the owners of rights, extend the period of such compulsory licence and allow the issue of more copies as it may deem fit. The Copyright Board may specify the number of copies that may be

published without payment of royalty and may fix the rate of royalty for the remaining copies. Clause 52(zb) seeks to provide that the adaptation, reproduction, issue of copies or communication to the public of any work in a format including sign language, specially designed only for the use of persons suffering from a visual, aural or other disability that prevents their enjoyment of such works in their normal format shall not constitute an infringement of copyright. The Department clarified that the section has been introduced to facilitate access to works for disabled persons other than in special format as covered under section 52 (i) (zb). The provision will facilitate the issue of compulsory licence for the conversion of work in any format for the use of the disabled persons.

13.2 The Committee received written memoranda from organizations working for the welfare of disabled like Inclusive Planet, Kochi and Xavier's Resource Centre for the Visually challenged, Mumbai as well as other stakeholders on the proposed provisions. The Committee also held extensive interactions with all the stakeholders on this issue. While the organizations representing the cause of the disabled apprised the Committee about the inherent shortcomings in the proposed provisions going against the targetted beneficiaries, its attention was also drawn towards their potential misuse by the other stakeholders . Views/apprehensions of all the stakeholders were shared by the Committee with the Department. This exercise enabled the Committee to examine the complexities involved in the proposed provisions not only from the point of view of disabled, but also those working for their cause as well as the other concerned stakeholders working in their separate professional domains.

13.3 The Committee takes note of the following shortcomings as pointed by the representatives of two organizations working for the disabled:

- licensing system as envisaged in section 31 B would prevent educational institutions, Self Help Groups, other NGOs and reading disabled individuals from undertaking conversion and distribution.
- time-consuming and cumbersome procedure for obtaining permissions from Copyright Board.
- time involved in subsequent conversions will result in further delays causing hardships for students.
- it would discriminate between blind persons knowing Braille and those not knowing.
- exception as envisaged in Section 52(1) (zb) in favour of only 'specially designed' format does not benefit persons affected by cerebral palsy, dyslexia and low vision.

13.4 On taking up these problem-areas with the Department, the Committee was informed that section 31B has been introduced to facilitate access to works for disabled persons other than in special format covered under section 52 (1) (zb). Many restrictions have been included in section 31B so as to prevent possible misuse of such facility. These restrictions would also facilitate to identify the institute which was making conversion of works in normal electronic format for the use of print-disabled. It was further clarified that any individual disabled person with the help of his next friend could convert any work for the purposes of private and personal

use, including research and study as provided under the proposed amendment to Section 52(1) (a) (i) of the Bill. With regard to expected delay in disposal of applications by the Copyright Board, it was informed that applications for compulsory licence were to be disposed of within two months of receipt.

13.5 It was emphasized by other stakeholders like **Federation of Indian Publishers, Business Software Alliance, Indian Reprographic Rights Organization** that potential misuse of the proposed provision for disabled also needed to be tackled. It was suggested that restriction on the extent of copies to be issued or work may be adapted/reproduced or communicated to the public needed to be imposed. Non-commercial use needed to be ensured so that the impact on the revenue stream of the copyright owner was mitigated. Response of the Department to these concerns was that restrictions included in section 31B were meant to check possible misuse.

13.6 **After analysing the proposed amendments as envisaged in section 31B and 52 (1) (zb) in the backdrop of interactions held with various stakeholders and the Department, the Committee strongly feels that concerns raised by the organizations working for the disabled are indeed very genuine. The Committee would like to point out that the real objective behind these two provisions is to facilitate the cause of the disabled. Every attempt needs to be made to remove all the drawbacks highlighted in the proposed amendments.**

13.7 **The Committee is of the firm opinion that all physically challenged need to be benefitted by the proposed amendments. It would be very discriminating if envisaged benefit remains restricted to only visually impaired, leaving out persons affected by cerebral palsy, dyslexia and low vision. The Committee takes note of fact that even regular Braille users complement Braille with other accessible formats like audio, reading material with large fonts and electronic texts. The Committee also observes that the modern day Braille production is dependent on the material being first converted into mainstream electronic formats such as MS Word because Braille translation software requires inputs in such formats. The Committee hopes that the request of organisations for extending access of works to all accessible formats instead of special formats presently under consideration of the Department will result in a positive outcome. The other request for widening the scope of compulsory licence to allow other entities working for disabled in case it is not possible to withdraw section 31 B also merits a sympathetic consideration by the Department.**

13.8 Committee's attention was drawn to another negative aspect arising out of fees (royalty) likely to be charged for copies going beyond the number of free copies to be specified by the Copyright Board. Committee is well aware of the fact that as only 'not for profit' organizations are involved in this area, the issue of potential

ness may prove to be a very discouraging factor. Department's response to this apprehension that an organization registered under section 12A of the Income-Tax Act, 1961 and working primarily for disabled and recognised under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 need not pay fee and may get compulsory licence free of charge does not seem to be very convincing. Such a provision needs to be specifically provided in the Act itself.

**13.9 The Committee would finally reiterate that the Department needs to bring out the required modifications in section 31B and 52 (1) (zb) based on very pertinent concerns raised by the organizations working for the cause of the disabled.**

#### **XIV. Clause 17: Section 31C: Statutory licence for cover versions**

14.1 This section seeks to provide statutory licence to any person desiring to make a cover version of a sound recording in respect of any literary, dramatic or musical work, where sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work in the same medium as the last recording, unless the medium of the last recording is no longer in current commercial use.

14.2 Committee's attention was drawn to the following drawbacks of the proposed amendment by organizations representing Music companies i.e., **South India Music Companies Association, Indian Music Industry and Indian Motion Picture Producers Association:-**

- the proposed provision sets at naught the bargaining power of the producer as it permits a person to make a version recording without first approaching the producer/sound recording label and entering into private agreement with the latter for obtaining rights to a version recording.
- it does not explicitly state that it is meant only for physical format. In physical format, packaging in the form of an album containing 5-6 songs establishes the genuineness of the product to the consumer. In digital format, consumer can be easily confused by a 'cover version' song as original song.
- it reduces the commercial potential of exploitation of sound recordings and thereby repair the producers' rights to recover his investment in relation to the cinematograph film and sound recording.

14.3 When these issues were taken up with the Department, the Committee was informed that there have been complaints from music Industry about infringement of their rights by other record companies by bringing cover versions by misusing Section 52(1) (j) and 'version recordings' were being made without paying proper royalties and without maintenance of proper accounts. The problems being faced by Music Industry related to this provision have been highlighted in case relating to Gramophone Company of India Ltd. vs. Super Cassette Industries (1945 PTR 64). It was further clarified that Section 31 C was not a new provision for statutory licence for cover version, but replacement of section 52(1) (j) for better clarity.

14.4 The Committee is inclined to agree with the Department's view that continuation of fair use clause with statutory license under 52 (1) (j) needs to be removed from the list of fair dealing under section 52 and be placed under Chapter VI i.e., licences. **The Committee has been given to understand that the proposed provision will lead to protection of interest of music industry engaged in the creation of original music and certain additional safeguards through a statutory licencing provision have been provided to suit the needs of the music industry in digital environment and to ensure that while making sound recording of any literary, dramatic or musical work, the interest of the copyright holder is duly protected. The Committee fails to understand the reservations of music companies specially in view of proposed provision being incorporated in place of existing provision that too in the background of judicial pronouncements.**

**XV. Clause 17: Section 31D: Statutory licence for radio broadcasting of literary and musical works and sound recording**

15.1 The proposed new Section seeks to deal with statutory licence for broadcasting of literary and musical works and sound recordings. It provides as follows:

- any broadcasting organization desiring to communicate to the public by way of a broadcast or by way of performance of a literary or musical work, including sound recording which has already been published may do so.
- the broadcasting organization shall give prior notice, by stating the duration and territorial coverage of the broadcast and shall pay an advance to the owner of rights in each work royalties in the manner and at the rate fixed by the Copyright Board.
- the names of the authors and the principal performers of the work shall be announced with the broadcast.
- no fresh alteration to any literary or musical work, which is not technically necessary for the purpose of broadcasting, other than shortening the work for convenience of broadcast, shall be made without the consent of the owners of the rights.
- the broadcasting organization shall maintain records and books of account and allow the owners of rights or his duly authorized agent/representative to inspect all records and books of account relating to such broadcast.
- the provision shall not affect the operation of any licence issued or any agreement entered into before the commencement of the Copyright (Amendment) Act, 2010.

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

15.3 Divergent views were expressed by different stakeholders on the viability of this amendment. Welcoming it as a positive move, the **Indian Broadcasting Foundation** pointed out that with pre-worked terms and conditions, a broadcasting organization would have far greater certainty in terms of its operation cost. Also



number of disputes arising due to arbitrary and unreasonable demands of copyright owners would likely to be quite low. However, very strong reservations were expressed by organizations like South India Music Companies Association, Indian Music Industry, Phonographic Performance Ltd., Indian Performing Right Society Ltd. and RPG Enterprises- Saregama on the following grounds:-

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

15.4 When asked to clarify their stand on the aforesaid reservations, the Department apprised the Committee that at present, the access to copyright works by broadcasters in the light of the new system of auction of licences for FM operators was dependant on voluntary licensing. As a result, unreasonable terms and conditions were being set by the copyright societies and owners. This has also led to divergent views by the courts in interpreting the existing compulsory licensing provisions under section 31. There were litigations pending before various High Courts as well as the Copyright Board regarding the nature of licence and the rate of royalties to be paid when works particularly songs were used for broadcasting. Automatic licence or non-voluntary licence such as proposed statutory ensuring adequate return to the owner of works was the best solution to make access easy for broadcasting. The Committee is inclined to agree with the contention of the Department. Fast-growing industry like broadcasting industry needs to have hassle-free access to works. The Committee also notes that this provision is similar to that of statutory licensing for cover version.

15.5 While agreeing with the justification given by the Department for bringing in Section 31 D, the Committee would like to point out that there should be no ambiguity in its applicability. **The Committee also takes note of the that following procedural shortcomings specially taking into account ground realities-**

- **viability of payment of royalty in advance.**
- **Practicability of compulsory mentioning of artists' names**
- **Requirement of maintenance of agreement between the radio broadcaster and the copyright society may form part of relevant rules.**

**The Committee would be happy if a viable solution of the aforesaid shortcomings is arrived at.**

**XVI. Clauses 18: Section 33: Registration of copyright society  
Clause 20: Section 34: Administration of rights of owner by copyright society.**

**Clause 22: Section 35: Control over the copyright society by the owner of rights.**

16.1 Clause 18 of the Bill seeks to amend section 33 of the Act relating to registration of copyright society by providing that registration of copyright society shall only be done by authors and they would re-register in accordance with the provisions of this section within a period of one year from the date of commencement of the Copyright (Amendment) Act, 2010. Clause 20 of the Bill seeks to amend section 34 of the Act which deals with administration of rights of owner by copyright society. It provides that any owner of rights may authorize exclusively a copyright society to administer any right in any work by issue of licenses or collection of licence fees or both and he shall have the right to withdraw such authorization without prejudice to the rights of the copyright society under any contract. Clause (iii) of sub-section (3) of section 34 provides that a copyright society may distribute the fees among owner of rights after making deductions for its own expenses. It is proposed to amend section 34 by providing that administration of a copyright society shall be by the author of works and not by the owner of rights. Similarly, clause 22 of the Bill seeks to amend section 35 of the Act relating to control over the copyright society by owner of rights by making administration of copyright society only by author of works.

16.2 The Committee notes that one of the objectives of the Bill is to make provision for formulation and administration of copyright societies by the authors instead of the owners. Accordingly, amendments are proposed in sections 33, 34 and 35. International Scenario and the prevailing situation in the country in the context of copyright societies have been cited as the two main factors necessitating these amendments. The Committee was informed that internationally, performing rights belonged to authors and composers. The International Confederation of Societies of Authors and Composers (CISAC), Paris de-recognise performing rights societies set up without authors and composers. The copyright societies are intended to help authors to issue licence and collect royalties and distribute the same for various commercial use of their works.

16.3 The Committee was informed that a joint representation from some of the world-famous and renowned authors and composers of film lyrics and music compositions was received by the Department in 2008 and 2009. Serious concerns had been voiced by them about exploitation /non-protection of rights and interests of authors and composers by Film Producers and Music Companies. The Department was aware of the problems in the functioning of the copyright societies. It was further informed that in the background of the amendment was the functioning of the Indian Performing Rights Society, a copyright society founded by authors and music composers including music publishers. As per the existing provisions, owners of rights were to administer the society. In 1993, there was an agreement between IPRS authors, composers members and recording companies to share performing right royalties collected by IPRS on 50:50 basis between the owners of rights i.e. recording

companies and authors and composers. There was some internal trouble between these parties due to some court cases in 2007. In 2008, the owner members under sections 33 to 38 of the Act and rules made thereunder decided to change the nature of membership of IPRS. They made only owner of rights as members and authors and composers as ordinary members thereby debarring authors and composers from attending the Governing Council and thus dominating IPRS by virtue of their numbers. They also amended the Memorandum of Association and Articles of Association of IPRS by introducing these changes in the memberships of IPRS. This led to a few recording companies owning music rights dominating IPRS, a copyright society meant for authors and composers. The owner members further created trouble in distributing the royalties collected by them by making a condition that authors and composers had to give an undertaking stating that they did not own any rights in the songs for which they were receiving royalties. Against this backdrop, the amendment has been proposed to make clear that the societies can only be formed by the authors and not by the owners. The idea is to streamline the functioning of the copyright societies by ensuring adequate transparency in fixing and distributing the royalties as uptill now there was arbitrariness in fixing the rates and their distribution. The amendment will ensure collective administration of works by authors on reasonable terms.

16.4 The stakeholders strongly opposed the proposed amendments through their written memoranda as well as while deposing before the Committee. The **South India Music Companies Association** pointed out that disempowering owners of copyrights from forming a copyright society was a flagrant violation of their right under Article 19(1)(g) of the Constitution to freely associate and, therefore, owners of works should be permitted to set up copyright societies. The **Indian Music Industry** was of the view that the amendment ignored the basic fact that there were many non-author owners who were members of these copyright societies. Besides making the rights of the producers in relation to sound recording and underlying works therein effectively nugatory, such a move was liable to boost piracy. Stand taken by the **Phonographic Performance Ltd.** was that replacement of owner by author would defeat the very purpose of having copyright societies.

16.5 The **Indian Broadcasting Federation** pointed out that the copyright societies have been created to administer the rights granted by the Copyright Act and the only un-assignable right with regard to the relevant work granted to the author was the right given under section 57. It was, accordingly, suggested that the existing scheme, pertaining to administration of rights of the owners, be retained.

16.6 **Shri Javed Akhtar** representing the lyricists contended that by mandating “authors’ societies” in sections 33, 34 and 35 rights owners, such as film producers, were excluded from the membership of the society. This would create an anomalous situation where users of music would be forced to approach multiple owners for license for works created prior to the commencement of the instant amendments. He further

contended that by not specially allowing copyright societies to institute legal proceedings for recovery of unpaid royalties, the authors' right to royalty would be rendered 'toothless'. It was suggested that the present sections 33, 34 and 35 may be retained in the Act and a proviso be added mandating that the registration of copyright societies would be subject always to authors retaining equal share of collective control over the society with other categories of members.

16.7 The **Motion Pictures Association** informed that no country limited collecting societies to only authors of works. The amendment would make no sense as authors' rights were often initially owned by, assigned or licensed to other than authors who then exercised such rights. Allowing only authors of works to form or be members of collecting societies was, therefore, completely unnecessary and unprecedented. The **Indian Performing Right Society Limited** expressed the view that the proposed amendment does not protect the rights of the owners which had been granted under the present Act and would be prejudicial to the rights of the owners, who were also members of the existing copyright societies. The provision would also increase the multiplicity of licenses for the users to be obtained from different right owners/authors. According to the **Indian Motion Picture Producers' Association**, the authors of works are entitled to constitute and administer copyright societies irrespective of whether they are owners of such work or not. The amendment proposes to divest rights of owner of copyright and confer unwarranted and unjustifiable powers in the authors of works to unilaterally administer the copyright societies.

16.8 Opposing the proposed amendment strongly, the **Association of Publishers in India** stated that under the current law, copyright owners may also become members. The amendment would result in authors (who may not own any copyright) becoming members of and managing copyright societies for which they had no rights to manage. Expressing similar views, the **Federation of Indian Publishers** opined that under the existing law even publishers could become member of copyright society but the purposed amendment would deprive these stakeholders from the membership of the copyright societies. The amendment would be taking away all the rights of the publishers who under the contract with authors become owners of rights thus rendering the contract between the publishers and authors meaningless. The **Indian Reprographic Rights Organisation** was of the view that the proposals appeared to create anti-author provisions. At present, section 33 provides that "no person or association of persons" may carry on the business of copyright licensing, except through a copyright society. Now, the proposed amendment would limit this restriction to authors, and others would be free to set up shop as commercial licensors of third-party works. This would also mean that assignees (and heirs) would have no access to copyright societies, effectively depriving an existing copyright society, the Indian Reprographic Rights Organisation, of its rights.

16.9 The **Onmobile Global Limited** opined that the amendment would result in a situation where any association of persons other than authors was totally removed from the purview of the Copyright Act. The **Google India** opined that administration of rights should remain with owners of rights rather than only authors of right as they were already covered within the expression 'owners of rights'. Exclusion of all prospective owners of rights in a work would limit the scope of collecting societies to administer such works. It would prevent copyright owners from simplifying the licensing process to the detriment of licensees and consumers.

16.10 The **Authors Guild of India** while welcoming the proposed replacement of phrase *owner of rights* with author of works in the section underlined that the copyright is vested with the authors. Therefore it was advisable that they should control the copyright society. This would also result in the removal of many malpractices which were invariably adopted by the publishers. The copyright society would also be able to regulate the royalties and ensure that the authors were given their dues.

16.11 **The Committees notes that there are inherent problems in the administration and functioning of copyright societies which have been continuing since long. Situation has deteriorated to such an extent that the owners of works/music companies are dominating these societies denying equity shares to the performers/authors. The basic reason for such a dismal scenario is obviously entirely different considerations and interests of the owners and authors. The Committee further notes that due to the subjective functioning of the copyright societies authors are being invariably put to disadvantages. The Committee, after hearing the views of all the stakeholders representing both owners and authors is aware about the specific but very different concerns of both these parties. The Committee also takes note of the justification given by the Department that in view of owner members taking control of the copyright societies, formation and administration of copyright societies was required to be placed under the control and supervision of the authors.**

16.12 **The Committee, after analyzing the pros and cons of the proposed amendments feels that obliging only authors to form and register a copyright society may not prove to be a right decision as it may lead to serious practical consequences. Firstly, it will keep the owners of rights viz recording companies, music publishers, book publishers etc out of the ambit of these societies leading to a vacuum. It would not be wrong to say that it would be a remedy worse than a malaise. Secondly, the complete handover of the copyright society to the authors alone would not be fair and balanced. Legally and practically the owners of rights have been the owners of copyright and there would be no harm if they also remain members of the copyright societies. The Committee takes note of the fact that this was a suggestion made by some of the stakeholders. Composition of the copyright society should be such that both authors and owners get**

**their rightful share. The Committee further feels that there is no denying the fact that authors need protection of their rights. However, the way to achieve this protection is not by excluding the other stakeholder i.e owners of rights. A mechanism has to be evolved whereunder both authors and owners are allowed to form and administer the copyright societies with all the members having equal rights and powers.**

**16.13 The Committee is well aware of the fact that the author of work is the original person who authors. Equally true is the fact that the subsequent owner could be any other person. If the word owner of copyright is removed from the existing provisions, it would simply mean that subsequent owner would have no right and would not be entitled to any benefits. Therefore, the blanket removal of the word “owners of right” cannot be considered an appreciable move. The Committee, therefore, recommends that the proposed amendments in Sections 33, 34 and 35 may not be carried out. At the same time, the Committee would like to emphasise that composition of the copyright societies should be balanced, with equal rights for all categories of members. The Committee would also like to draw the attention of the Department to section 33(4) whereunder the Central Government can cancel the registration of a copyright society if it is satisfied that it is being managed in a manner detrimental to the interests of the concerned owners of rights. The Committee strongly feels that with such a specific provision already existing, situation with respect to functioning of IPRS could have been easily handled.**

#### **XVII. Clause 19: Section 33A: Tariff Scheme by copyright societies**

17.1 Clause 19 of the Bill seeks to insert a new section 33A in the Act providing for Tariff Scheme by copyright societies. The proposed section mandates that every copyright society shall publish its tariff scheme in such manner as may be laid down by rules. Any aggrieved person may appeal against the tariff scheme to the Copyright Board which may, after holding enquiry, make orders to remove any unreasonable element, anomaly or inconsistency therein. The aggrieved person shall continue to pay such fee that had fallen due before making the appeal until the appeal is decided and the Board shall not stay the collection of such fee pending disposal of the appeal. However, the Board may, after hearing the parties, fix interim tariff to be paid by the aggrieved party.

17.2 The Committee was informed that presently, there was no provision to govern or regulate fixation, collection and distribution of royalties under section 33 of the Act. As a result, the tariff scheme of the copyright societies was often a matter of controversy between owner of rights and users. In the absence of a transparent tariff scheme, copyright societies were often found indulging in arm-twisting negotiations, resulting into different agreements with different companies. Therefore, a system for formulation of tariff scheme by the

Collective Administrative Societies of Copyrights has been proposed. Under the proposed amendment, the aggrieved person shall pay to the copyright society any such prescribed fee that has fallen due before making an appeal to the Board and shall continue to pay such fee until the appeal is decided and the Board shall not stay the collection of such fee pending disposal of appeal. The Committee was given to understand that the objective of this provision was to introduce a system of transparent formulation of a tariff scheme by the collective administrative copyright societies, which would be subject to scrutiny by the Copyright Board on receipt of appeal from the aggrieved party. This would not only remove tariff rate related disputes but would also avoid harassment of users of works by the copyright societies.

17.3 Divergent views were expressed by the various stakeholders on the proposed amendment. Its negative impact was highlighted by organisations representing music industry like **South India Music Companies Association, Indian Music Industry** and copyright societies like **Phonographic Performance Ltd. and Indian Performing Right Society Ltd.** in the following manner:

- this provision can result in unreasonable hindering of the rights of producers / sound recording labels to enter into private agreements with licensees wishing to exploit the work.
- conditions imposed on the copyright societies would be extremely burdensome. As the tariff would be perennially open to challenge by any person anywhere in the country, the owner of the copyright will be burdened with litigations.
- it will encourage owners / authors not to join the society and license their rights directly as their license fees will not fall under the jurisdiction of the Copyright Board.
- insertion of Section 33A appears to be contrary to the Amendment Act of 1994, whereunder copyright societies were given a free hand to deal with and value the work of owner of copyright.

17.4 The **Indian Broadcasting Foundation, On Mobile Global Ltd.** and the **Association of Radio Operators for India**, while welcoming the proposed amendment as a positive step, made a number of suggestions primarily relating to procedural matters as indicated below:

- process of fixation of tariff needs to be transparent and periodicity of changes therein infrequent.
- amendment in relevant rules required whereunder Tariff Scheme including Volume Discounts are published and made applicable uniformly to all parties.
- clarity on interim relief to be granted by the Copyright Board is required.
- time-line and procedure for disposal of tariff-related matters by the Copyright Board need to be laid down.

17.5 **The Committee notes that various stakeholders including the existing copyright societies had certain reservations against the proposal. Committee's attention has been particularly drawn by the apprehension about copyright societies coming up with high tariff schemes drawn up solely at their discretion. The Committee was also given to understand that at present there was no check on the formulation of tariff scheme but merely a requirement of publication by the society. With the proposed amendment coming into effect, the aggrieved person would have no alternative but to pay the fee as per**

**the tariff scheme and may face unnecessary hardships before the appeal was decided and the relief, if any, at the end of the appeal may not prove be sufficient for the loss caused.**

17.6 The Committee would like to point out that even during its deliberations with the copyright societies especially the Phonographic Performance Ltd (PPL) and the Indian Performing Rights Society Limited (IPRS), it was felt that they were not very forthcoming about their tariff schemes in spite of specific queries in this regard. The only information which was shared with the Committee was that tariff scheme was negotiated with the users and the same was available not only on their respective websites but published in the Official Gazette also. However, on being asked, other stakeholders categorically pointed out that no tariff scheme of these societies was put in the public domain either on their website or in the Official Gazette.

**17.7 The Committee, taking into account the viewpoint of both the stakeholders i.e the copyright societies and the users, observes that there is no denying the fact that the process of fixing tariff by the copyright societies is not transparent. As per the existing system, the copyright societies are free to fix tariffs without any visible basis / criteria. There is no system of broad-based consultations by these societies as is done in other sectors such as telecom, insurance, broadcasting and electricity. The Committee observes that in these sectors, stakeholders are consulted before tariff is fixed and notified. However, such a system is completely lacking in case of copyright societies. As a result, there are instances of arbitrariness, arm twisting and negotiations by these societies.**

17.8 The Committee is of the firm view that the proposed amendment will result in the introduction of a system of a transparent formulation of tariff scheme by the collective administrative copyright societies, which will be subject to scrutiny by the Copyright Board on receipt of appeal by the aggrieved party. At the same time, the Committee would like the Department to take note of the concerns of the various stakeholders and provide for a transparent process of tariff fixation by the copyright societies with necessary changes in the relevant rules. The Committee would also take the opportunity to observe that for putting in place a well-defined and balanced tariff scheme, functioning of Copyright Board as well as copyright societies also needs to be regulated, strengthened and made foolproof so as ensure that all the stakeholders are benefited. The Committee would be giving its recommendations in this regard in the later part of the Report.



**XVIII. Clause 25 :Section 38 : Performer's Right**  
**Clause 26 :Section 38A : Exclusive right of performers**  
**Section 38B : Moral rights of the performer.**

18.1 Clause 25 seeks to omit sub-sections (3) and (4) of Section 38 relating to performer's right as a consequential to the insertion of new Section 38A. Clause 26 seeks to insert Section 38A which provides that the performer's right as the exclusive right to do or authorize the doing of any of the acts in respect of the performance, without prejudice to the rights conferred on authors, namely

- to make a sound recording or a visual recording of the performance or to certain acts in respect of such recording;
- to reproduce it in any material form including the storing of it in any medium by electronic or any other means;
- to issue copies of it to the public not being copies already in circulation;
- to communicate it to the public;
- to sell or give on commercial rental or offer for sale or for commercial rental any copy of the recording and;
- to broadcast or communicate the performance to the public except where the performance is already a broadcast performance.

18.2 The proposed new section 38 B seeks to deal with moral rights of performers. The performer will have the right to claim to be identified as the performer of his performance. He will also have the right to restrain or claim damages in respect of any distortion, mutilation or other modifications of his performance prejudicial to his reputation.

18.3 The Committee takes note of the factors necessitating the insertion of provisions relating to exclusive and moral rights of performers. The term 'performer' as per Section 2 (qq) of the Act includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any person making a performance. The term 'performance' as defined in Section 2(q) of the Act means any visual or acoustic presentation made live by one or more performers. These two definitions read together protect both audio visual and musical performers under the Act. Sections 37 and 38 relating to Broadcast Reproduction Right and Performer's Right are in harmony with Article 14 of TRIPS Agreement. The Committee was informed that the new provision under Section 38A substitutes existing Performers' Rights under Section 38 which provides only right to prohibit. The proposed section providing exclusive rights to performers has been inserted so as to make it compatible with Articles 6 to 10 of the WPPT. Similarly, Section 38B introducing moral rights of performers is in conformity with Article 5 of the WPPT.

18.4 Feedback on these two additions to the Copyright Law received by the Committee from a number of stakeholders representing Film Producers, Broadcasting Industry and Music Companies depicted an entirely different scenario. Their apprehensions were based on the following factors:

- amendment dilutes ownership and rights of owner of the sound recording / visual recording
- performer would be entitled to receive royalties in addition to lumpsum consideration.
- it would undermine and disregard the rights and efforts of producers by vesting undue rights in favour of a performer.
- in addition to fixed fees / charges paid to performer for providing his services to the producer / broadcaster / media organisation, performer shall be entitled to claim royalty for commercial exploitation of his performance.
- a performer, having taken permission of the authors, but not that of producer may perform a song already published by the producer and make a recording of it for sale.
- duplicate recordings will flood the market as performer himself may authorize multiple recording labels to make different sound recordings of his performance.

In the light of the above, it was emphasized by the stakeholders that existing provisions under section 38(3) and (4) needed to be retained as they were serving the interests of performers well. Addition of sections 38A and 38B would only result in increasing number of legal disputes.

18.5 When these concerns raised by the stakeholders were taken up with the Department, it was clarified that proposed rights of performers were subject to the rights of authors of the work, thus clearly implying that the performers have to take permission from the author before performing the work. Rights of both producers and performers will run parallel as both are entitled for economic benefits from the commercial use of the performance. It has also been expressly provided that the performer cannot object to the enjoyment of the rights by the producer once there is a written agreement. Besides that, section 38(4) has been retained as section 38 A(2).

**18.6 The Committee is inclined to agree with the justification given by the Department for inclusion of new provisions, sections 38A and 38B. The Committee feels that apprehensions of film producers and music companies are not well-placed, being guided by their commercial interest. By deleting section 38 (3) and (4) and bringing in very specific provisions for exclusive and moral rights of performers, the Department has only made an attempt to protect the interests of stakeholders in line with the international commitments.**

**18.7 The Committee would, however, like to draw the attention of the Department to one ground reality highlighted by the Association of the Radio Operators of India. It was emphatically mentioned that defining ‘performance’ as including communication by any means to public of any sound recordings virtually over-rules the current judicial deliberations on whether free broadcast through radio constitutes performance. Playing of recorded songs cannot be construed as performance and this matter is currently under review of courts. The Committee is of the opinion that contention of the Association needs to be looked into and provision modified in the light of court rulings.**

## **XIX. Clause 31: Section 52: certain acts not to be infringement of copyright**

19.1 Clause 31 of the Bill seeks to amend section 52 of the Act relating to certain acts not to be infringement of copyright. The Bill seeks to substitute certain clauses of section 52 as follows:-

- clause (a) seeks to provide that a fair dealing with any work, not being a computer programme for the purpose of private or personal use, including research; criticism or review, whether of that work or of any other work and the reporting of current events, including the reporting of a lecture delivered in public shall not constitute an infringement of copyright. An Explanation is also proposed to be inserted so as to clarify that storing of any work in any electronic medium for aforesaid the purposes including the incidental storage of any computer programme which is not itself an infringing copy for the said purposes, shall not constitute infringement of copyright.
- clause (b) seeks to provide that the transient and incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public shall not constitute an infringement of copyright.
- clause (c) seeks to provide that transient and incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy also shall not constitute an infringement of copyright

19.2 According to the Department, section 52 deals with fair dealing and certain acts which are not infringement and it does not deal with infringement per se. Any transient and incidental storage of any work through the process of 'caching' has been provided exceptions as per the international practice. Any deliberate storing of such works and unauthorized reproduction and distribution of such works is infringement under section 51 of the Act attracting civil and criminal liability. Exceptions under this section have been extended for education and research purposes as works are available in digital formats and internet. The scope of these proposed provisions ensure that any introduction of new technology will also be covered under this proposed section. The proposed amendment in clause (c) introduces liability of internet service providers. The practice of making available the works on internet and websites in unauthorized manner without licence from the author or right owner is infringement. This leads to suspension of the service provider's activity. However, in order to provide a safe harbour as per international norms to the service provider to take down such unauthorized works upon receipt of notice from the authors and right owners and any abuse of suspension, it is provided that an order within 14 days from the competent court to be produced for the continued prevention of such storage.

19.3 The proposed amendments to section 52 have been vehemently opposed by the stakeholders particularly the ones dealing with fair dealing. According to **Saregama RPG Enterprises**, the amendments in section 52 (1) (a), (b) and (c) will prove to be a God-sent opportunity to pirates to falsely plead that music files illegally stored by them on their computers, mobile phones etc. are for their private or personal use or for criticism or review. This will bring to halt the anti-piracy activities being carried out by organizations.

Expressing similar views, the **South India Music Companies Association** mentioned that sections 52(1) (a),(b) and (c) make it very easy for any online pirate/person making infringing digital copies such as in chips, mobile phone etc. and will get away with such conduct by pleading that the storage was incidental while in the process of transmission or the copyright holder did not expressly prohibit such work and that infringer was not aware of the infringing nature of his conduct. Therefore, section 52 (1) (b) and (c) should be deleted and section 52(1) (a) be modified by adding a second explanation whereby copies of the work, whether physical or electronic found in the premises/electronic network of any organization, shop etc. run for commercial purpose will not be covered and presumption would be that such a copy is an infringing copy.

19.4 An ISP namely **eBay.India** expressed that sections 52(1) (b) and (c) are entirely inadequate to address the issues faced by intermediaries in the course of their routine activities. They suggested that the words 'transient and incidental' in both the provisions should be changed to 'transient or incidental'. Another ISP, **Yahoo India** submitted that the proposed amendments have been loosely worded and may not specifically cover certain areas such as search, hosting, information retrieval and caching. In the absence of such clearly defined exceptions, the proposed amendments would defeat the purpose it has sought to achieve. The Copyright Act should clearly specify that an ISP will be liable only if it has knowledge of the infringing activity and has failed to remove the infringing material on receiving notice from the concerned content owner or if it induces, causes or material contributes to the infringing conduct of another. The Act should clearly define the extent and parameters of ISP liability otherwise every ISP is subject to unlimited liability for third party actions. It is submitted that ISP should not be held responsible for words, pictures and videos they did not create and before an ISP is held liable an effective Notice and Takedown (NTD) mechanism should be followed. NTD is a kind of self regulatory measure where parties hosting content agree to remove content in case of a legitimate notice by content owner. Further, criminal liability in case of infringement of copyright should apply to direct infringers and not to ISPs which merely provide the platform or means of communication for the end users. The **Google India** was of the opinion that fair dealing provision should be updated to keep in pace with Indian Court decisions and international developments for flexibility in interpreting fair dealing principles.

19.5 The **Indian Broadcasting Federation** pointed out that in section 52(1)(c), period of 14 days should be replaced with 90 days and a proviso to section 52 (1) (b) be provided to require that safe harbour will not be available if it is known that such storage is of an infringing copy and electronic transmission of infringing work to public be immediately stopped upon being notified unless an order is obtained within 90 days from court for continued prevention of such storage/transmission.

19.6 The **Authors Guild of India** was of the view that suitable changes should be made in section 52 (b) and (c) to give retrospective effect to the said sections. Proviso to section 52(c) prescribing the procedure for preventing storage of a work should be made simpler rather than asking the author to obtain order from the competent court.

19.7 The **Indian Motion Picture Producers Association** suggested that the amendment under 52(1) (c) imposes an additional burden on owner of copyright to procure court order within 14 days to continue prevention of unauthorized storage should not be given effect. The **Motion Picture Association** opined that films are extraordinarily vulnerable to Internet piracy and it must be made clear in the Bill that any “private and/or personal” use of a copyrighted work is subject to “fair dealing” as limited by the three-step test. Nowadays, “home uses, including downloading or streaming to computers and mobile devices is increasing. Moreover, it should never be considered “fair dealing” to make a copy of a work when accessed from unauthorized sources, or when doing so would violate the terms on which access to the film was obtained (for example, it should not be permitted to make a copy of a film that one has rented for a limited period). It further said that India’s Internet penetration is growing and the government has recently just approved 3G licensing plans for mobile devices. Investing in these new methods of distribution while also combating piracy in this new environment is particularly challenging. The current proposal, which envisages allowing ISPs up to fourteen (14) days to act upon a notification of infringement, is excessively long, particularly since in the case of India the majority of a film’s revenues are realized within three days of its theatrical release. ISPs would be required to act expeditiously upon such notifications. Similar views were expressed by the **Indian Music Industry**.

19.8 The **Business Software Alliance** opined that Proviso to section 52 (1) (c) is burdensome to ISP owners since it imposes on the copyright owner the near impossible onus of getting a judicial order in favour within 14 days. Such *ex parte* injunctions/orders are highly discretionary in nature which cannot be claimed as a matter of right. The provision is inconsistent with section 55(2) which is a presumption in favour of copyright owner. It further said that the proposed amendment is against Berne Convention/TRIPS Agreement.

19.9 The Committee noted that the stakeholders particularly the internet service providers (ISPs) had certain reservations against the proposed provisions in section 52 (1) (a), 52 (1) (b) and 52 (1) (c). Section 52 (1) (a) which relates to fair dealing and other exceptions was opposed on the ground that the electronic storage for private use would only help pirates as they would safely plead that the electronic contents illegally stored by them on their computers, mobiles etc. were for their private or personal use and such other false excuses. They alleged that the words personal or private use were very vague, wide and undefined and that it was not

reasonable to extend the fair dealing provisions for private use. Further, the words 'any work' used in the section also came in for criticism. It was pointed out that under the existing provisions of the Act the exception applies only to literary, dramatic, musical and artistic works. Now with the words 'any work' the proposed exemption has become too wide and broad and therefore subject to misuse in the context of exempting copies stored on computers in electronic form. The Committee noted that another area of concern for the stakeholders was websites escaping responsibilities in spite of facilitating infringement on their websites by claiming exception under section 52 (1) (b) because of the words "or communication to the public". The stakeholders further expressed their unhappiness on the requirement of a court order on the part of the copyright owner within 14 days to continue prevention of unauthorized storage. According to them it was not possible for the copyright owner to get a court order within 14 days. The Committee noted that the Department has stated on the issue that this provision introduces liability of internet service providers. The practice of making available of works on internet and websites in unauthorized manner without license from author or right owner is infringement. This leads to suspension of the service provider's activity. However, in order to provide a 'safe harbour' as per international norms to the service provider to take down such unauthorized works upon receipt of notice from authors and right owners and any abuse of suspension is it provided that an order within 14 days from the competent court to be produced for the continued prevention of such storage. In view of the above the Committee feels that apprehensions of the stakeholders on this particular aspect are mis-founded.

**19.10 In the light of the divergent views expressed by the stakeholders particularly with regard to the stipulation of 14 days period under 52 (1) (c) the Committee is of the view that the viability of the duration of 14 days may again be reviewed by way of balancing the views of the stakeholders as well as the legal requirement in the matter. As for the words the "transient and incidental" occurring in section 51 (1) (b) and 52 (1) (c) the Committee recommends that the word 'and' may be replaced with the word or in both the clauses so as to read "transient or incidental". The Committee feels that this will take care of the concern of ISPs for unlimited liability for third party actions.**

**XX. Clause 36: Section 65 A: Protection of technological measures  
Section 65 B: Protection of Rights Management Information**

20.1 Clause 36 of the Bill seeks to insert new sections 65 A and 65 B in the Act relating to protection of technological measures and protection of rights management information. Section 65 A reads as follows:-

(1) Any person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by this Act, with the intention of infringing such rights, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) shall prevent any person from,-

(a) doing anything referred to therein for a purpose not expressly prohibited by this Act;

Provided that any person facilitating circumvention by another person of a technological measure for such a purpose shall maintain a complete record of such other person including his name, address and all relevant particulars necessary to identify him and the purpose for which he has been facilitated; or

(b) doing anything necessary to conduct encryption research using a lawfully obtained encrypted copy; or

(c) conducting any lawful investigation; or

(d) doing anything necessary for the purpose of testing the security of a computer system or a computer network with the authorization of its owner; or

(e) operator; of

(f) doing anything necessary to circumvent technological measures intended for identification or surveillance of a user; or

(g) taking measures necessary in the interest of national security.

20.2 The Department clarified that section 65 A has been inserted to provide for prevention of circumvention keeping in mind the public interest in access to works.

20.3 Divergent views were expressed by the various stakeholders on the viability of proposed provision. According to the **Indian Broadcasting Federation**, the provision would have a positive impact as the person tampering with encryption of content would be punished. However it required some modifications for making it more effective. Increase in the imprisonment term from 2 years to 3 years for first offence, 5 years for second offence and all offences to be treated as cognizable and non-bailable was the first suggestion made. It was also mentioned that anyone circumventing the technology should be deemed to have circumvented the same with the intent to infringe copyright so as to shift the burden of proof to infringer. Also, copyright owner should be entitled to seek damages from the offender. The **Business Software Alliance** underlined the need to make this provision fully compliant with the WPO Treaties; and both civil and criminal liability needed to be imposed. However, the **Google India** wanted the act of unlawful circumvention to be made a civil wrong punishable by damages and not a criminal offence. It was also pointed out that record requirements in proviso to section 65 A (2) on persons facilitating circumvention by other be reduced or removed. The **Motion Picture Association** expressed the view that section 65A would appear to allow unlimited acts of circumvention of TPMs for the viewing of movies on all digital devices by individual viewers, since, among other things, “access controls” are not covered and the viewing of a work streamed to digital devices may never involve an infringement by the person viewing that film.

20.4 Advocating the deletion of section 65 A, **Yahoo India** mentioned that this section introduces the concept of 'Technological Protection Measures' which are measures used to enforce restrictions on the use of copyrighted material. It is believed that digital rights management technology considerably interferes with a consumer's right to 'fair use'. The resultant effect of DRM technology is that it gives copyright owners the right to create their own copyright protection mechanisms through technological means. For instance, DRM

could impose restrictions on the right of consumers to freely play a particular type of legally purchased media which could be, *inter alia*, in the form of restrictions on the number of computers on which download music can be played. In such instances such restrictions result in exceeding the scope of protection granted under the Act by technologically blocking even legitimate activities which users are otherwise permitted to do under the copyright Act. It further said that imposition of criminal and monetary liability for circumvention of DRM technology could adversely affect entities or individuals who adapt, reproduce or issue copies of any copyrighted material into a format specially designed for the use of persons suffering from any disability could adversely affect consumers and entities engaged in creating copies of any copyright material into a format specially designed for persons suffering from any disability should be deleted.

20.5 The **RPG Enterprises-Saregama** opined that the provision was vague as it would be difficult to establish such intentions. It should therefore be for punishing only those acts of circumvention of technological measures of protection carried out with intention to infringe. The **Indian Music Industry** was of the opinion that the proposed TPM provisions did not comply with WPPT standards and were inappropriate and ineffective TPM protection. It was necessary to create either civil or criminal liability or both for such circumvention in order to accede to WCT. The provision needed to be redrafted so as to make the very act of interfering with technological measures itself an offense; and also provide for both civil and criminal liabilities. **The Indian Performing Right Society Limited** opined that this provision sought to create criminal liability for circumvention of technological measures. As drafted this provision did not actually create a new criminal act, since an attempt to infringe copyright was criminally punishable anyway. It was necessary to redraft the provision in such a way so as to make the very act of interfering with technological measures itself an offence.

20.6 Majority of the stakeholders were of the view that the provisions as contained in section 65 A were inadequate. To them, the very act of interference with technological measures of protection should have been made punishable. This was a lacunae that the law proposed only criminal action for such circumvention whereas both civil and criminal liability should have been provided to make legal option effective.

20.7 When these concerns were taken up with the Department it was clarified that one of the drawbacks of digital technology was the possibility of high rate of infringement (digital piracy) and the technological solutions were used to prevent this. Digital locks (technological protection measures –popularly known as TPM) were invented to prevent infringement of works. At the same time, duplicate keys (circumvention technology) were also developed to unlock the digital locks used by owners of copyright to prevent infringement. The use of TPM had a significant impact on users since the freedom to use the work (fair use of works) permitted by law was considerably regulated through these measures. In the absence of the owner of the



works providing key to enjoy fair use, the only option was to circumvent the technology to enjoy fair use of works. There was considerable demand to protect the TPM from circumvention by banning manufacture and sale of devices used for circumvention. On the other hand, the users argued that this would prevent the development of dual use technology and also prevent the enjoyment of fair use permitted by law. The major problem of use of law in preventing circumvention was the impact on public interest on access to work facilitated by the copyright laws. Attention was drawn to the WIPO treaties which provided a very flexible provision to protect TPM. This provision allowed member countries to develop laws to prevent circumvention of technological measures, keeping in mind the public interest of access to works. Developed countries like US, EU, Australia, Japan etc. have enacted laws to prevent circumvention resulting in abuse and affecting public interest. The unintended consequences of these laws resulted in blocking research and development of new technologies. It was pointed out that India was yet to face major problems of circumvention due to low level of penetration of digital technology. **Taking note of experience of developed countries in developing laws for prevention of circumvention of technological measures, the Committee agrees with the approach as enshrined in section 65 A to give limited legislative guidelines and allow the judiciary to evolve the law based on practical situations, keeping in mind the larger public interest of facilitating access to work by the public. The Committee takes note of the fact that many terms have been consciously left undefined, given the complexities faced in defining these terms in the laws of developed countries. The Committee would, however, like to emphasize that a constant watch would have to be kept on the impact of this provision and corrective measures taken as and when required.**

20.8 Section 65B provides for Protection of Rights Management Information as under:-

- 'Any person, who knowingly-
- (i) removes or alters any rights management information without authority, or
  - (ii) distributes, imports for distribution, broadcasts or communicates to the public, without authority, copies of any work, or performance knowing that electronic rights management information has been removed or altered without authority.

Shall be punishable with imprisonment which may extend to two years and shall also be liable to fine:

Provided that if the rights management information has been tampered with in any work, the owner of copyright in such work may also avail of civil remedies provided under Chapter XII against the persons indulging in such acts.'

20.9 According to the Department, the modern technology facilitates management of rights digitally. On line contracts governing the terms and conditions of use of copyright are becoming prominent. There are attempts to remove these contractual terms from the digital copies of the work to prevent detecting the violations of the terms of the contract by the owner of copyright. Therefore, the present provision prevents the removal of the information regarding the management of rights included in the digital copies of the work. It was pointed out

that the proposed section would provide protection to the right holder against any attempts to remove Rights Management Information (RMI) without authority or by distributing the work fixed performance or phonogram and provides for the punishment. Conforming to Article 12 of the WIPO Copyright Treaty and Article 19 of the WIPO Performers and Phonograms Treaty the provision would help film, music and publishing industry in fighting piracy. It was pointed out that the parties responsible for distribution or broadcasting or communication to public through authorized licence from the author or rights holder and who did not remove any rights management information deliberately for making unauthorized copies did not need to worry about this provision as long as their act was as per the framework of this provision.

20.10 Taking strong exception to the insertion of section 65B Yahoo India emphasized that the same should be deleted in entirety as the imposition of criminal and monetary liability could adversely affect consumers and entities engaged in creating copies of any copyright material into a format specially designed for persons suffering from disability. The **Indian Reprographic Rights Organization** were of the view that section 65 B was basically a good provision necessary for WCT/WPPT compliance. However, the whole provision would be rendered meaningless if the copyright owner could not trace out the persons tampering with the Rights Management Information. It was crucial to trace out the users of copies in which RMI has been tampered with.

**20.11 The Committee is of the view that the parties responsible for distribution or broadcasting or communication to the public through authorized licence from the author or rights holder and who do not remove any rights management information deliberately for making unauthorized copies need not worry about this provision as long as their act is as per the framework of this provision.**

## **XXI. General Observations**

### **Functioning of copyright societies:-**

21.1 A number of stakeholders who deposed before the Committee were not satisfied with the functioning of the copyright societies. Issues relating to the Societies membership, administration, control, royalty distribution licensing and tariff schemes came under a lot of criticism during the deliberations of the Committee. It was emphasized again and again that the copyright societies were not functioning in a transparent manner and that there were no regulations to control their functioning.

21.2 To have a proper understanding about the functioning Copyright Societies, the Committee sought details in this regard from the Department. The Committee was informed that at present there were four Copyright Societies registered under section 33 of the Act, as follows:-

- Society of Copyright Regulation of India Producers for Films and Television (SCRIPT) for managing rights of Producers or Cinematograph Films and Television Works;

- Indian Performing Right Society Limited (IPRS), for managing rights of musical works created by authors (lyricists), music composers and music publishers (Film Publishers). Other rights owners such as music companies owning rights are also members.
- Phonographic Performance Ltd (PPL) for managing rights of Sound Recording. Music or recording companies are members and
- Indian Reprographic Rights Organisation (IPRO) for managing rights of Photocopy/reprographic rights. Authors and publishers are its members.

21.3 On a specific query about the guidelines/norms or rules/regulations governing the functioning of Copyright Societies, the Committee was informed that a copyright society is a collective administration Society formed by copyright owners registered under section 33 of the Act. The minimum membership required for registration of a society is seven. As provided in section 34 of the Act, a copyright society has the power to issue license in respect of rights administered by it, collect fees in pursuance of such licenses, and distribute such fees among owners of copyright after making deductions for the administrative expenses. The Committee was also informed that every copyright society has to submit to the Registrar of copyrights under section 36 such returns as may be prescribed. The administration of Copyright Societies is regulated by Rules 12 to 14 P of the Copyright Rules, 1958. Rule 14 P clearly lays down that every copyright society has to file an annual return with the Registrar of Copyrights giving details of the annual meeting of owners held immediately preceding the filing of return, the up-to-date list of owners of rights, audited accounts. Tariff scheme and the Distribution scheme etc.

21.4 The Committee's attention was drawn to the functioning of IPRS in the recent years, going against the interests of some stakeholders, particularly authors and composers. A few recording companies owning music rights taking control of IPRS was cited as the main factor responsible for this disturbing situation. Tracing the background of this dispute, the Department informed the Committee that in 1993, there was an agreement between IPRS authors and composers members and recording companies to share performing right royalties collected by IPRS on 50:50 basis. However, later on, in 2007, due to some internal trouble between these parties, court cases cropped up. Situation deteriorated further in 2008, when owner members called a Governing Council meeting and decided to change the nature of membership of IPRS. While owners of rights became members, authors and composers have given the status of ordinary members. As a result, a few recording companies owning music rights starting dominating IPRS. Not only this while distributing royalties, a condition was imposed that authors and composers have to give an undertaking stating that they did not own any rights in the songs for which they were receiving royalties. The Committee was given to understand that it was against this backdrop, amendments in the membership or copyright societies have been proposed.

**21.5 The Committee observes that inspite of there being provisions in the Act and rules framed thereunder regulating the copyright societies, over the years a disturbing trend in their functioning has**

been developing which has led to disputes between the major stakeholders and resultant court cases. The Department has also admitted that the administration of copyright societies has been taken over by the owners whose interest is different from that of the authors and in many cases authors are being deprived of their benefits. Another area of concern noticed by the Committee is the Tariff Scheme for the Copyright Societies. Although as per Rule 14J of the Copyright Rules, 1958, a Copyright Society has to frame a Tariff Scheme setting out the nature and quantum of fees or royalties, no provision is there for governing or regulating the system of fixation, collection and distribution of royalty under section 33 of the Act. A system of formulation of a Tariff Scheme by the Collective Administrative Societies has accordingly been brought as section 33A under the proposed legislation. The Committee feels that this is a step taken in the right direction and will put an end to the arms-twisting negotiations of Copyright Societies.

21.6 The Committee would like to draw the attention of the Department to Section 33 of the Act which empowers the Central Government to regulate the functioning of Copyright Societies. As per this provision the registration of a Copyright Society can be suspended for not more than one year or cancelled by the Central Government after conducting an inquiry, in the event of it being managed in a manner detrimental to the interests of owners of rights. Not only this, Section 36 clearly provides that every Copyright Society has to submit to the Registrar of Copyright Society annual returns. Under this very section, any officer duly authorized by the Central Government can call for any report or records of any Copyright Society so as to inquire that the fees collected by it in respect of rights administered by it are being utilized or distributed in accordance with the provisions of the Act the purpose for highlighting all these provisions is that had the Central Government played a more pro-active role, perhaps things would not have reached such an alarming level. The Committee can only conclude that with the proposed provision relating to Tariff Scheme and use of powers already there in the Act/rules by the Central Government through its authorized officers, copyright societies will be functioning as envisaged under the Copyright Law.

### **Copyright Board**

21.7 The Copyright Board constituted under Section 11 of the Copyright Act, 1957 has been given several important powers such as deciding compulsory licensing disputes and also matters relating to assignment of Copyright. It has the power to regulate its own procedure, including the fixing of place and time of its sittings. The Act further provides that the Copyright Board may exercise and discharge its powers and functions through benches constituted by the Chairman of the Copyright Board from amongst its members.

21.8 During the course of its interactions with various Stakeholders, storing reservation were expressed about the functioning of the Copyright Board and other allied issues. The Committee also had the opportunity to hold discussion with the Chairman of the Board about its functioning. The Committee also sought clarification on various related issues from the Department. This exercise enabled the Committee to have a fair idea of the present set up of the Copyright Board and existing problem areas in its functioning faced by the stakeholders as well as the Copyright Board.

21.9 Following drawbacks in the composition and functioning of the Copyright Board were pointed out by various stakeholders:-

- The Act specifies the criteria for appointing only the Chairperson of the Copyright Board and the Central Government has the unbridled discretion in determining the membership of the Board.
- The Copyright is deemed to be a Civil Court under section 12 of the Act serving officers cannot be members of any tribunal or court as independence of the judiciary cannot be compromised by appointing members of the Executive to tribunal or courts.

21.10 Response of the Department to the above concerns was that the present Copyright Board a quasi-judicial body, under the Chairmanship of Dr. Raghbir Singh has 14 members having legal knowledge/knowledge in Copyright law which includes two Joint Secretaries of Central Government, Seven Law Secretaries and five Director/Vice Chancellors of National Law Institutes.

21.11 Another area of concern highlighted by the stakeholders related to changes required in the composition of the members of the Board. It was pointed out that in view of manifold responsibilities assigned to the Copyright Board, members of the Board needed to be full time members, instead of ex-officio members. Another suggestion made was that experts and specialists having the understanding of publishing and entertainment industry and also competition law policy have to be there on the Board. When this issue was taken up with the Department, the Committee was informed that appointment of full-time members in the Copyright Board was under its active consideration. Further a five member committee has already been appointed to draft the rules of procedure relating to the functioning of the Board.

21.12 While interacting with the Chairman of the Copyright Board, a number of suggestions for strengthening the Copyright Board were put forth before the Committee. Committee's attention were drawn to section 12 whereunder the Board was authorized to hear the proceedings zone wise as specified under the States Reorganisation Act, 1956. It was mentioned that consequent upon creation of new States and Union territories, the Act has been amended several times leading to practical difficulties being faced even by the trained lawyers. It was, accordingly, suggested that the Explanation to section 12 may be substituted so as to provide different

zones along with the States falling thereunder on the same pattern as done for the Patent Offices and Trade Marks Offices under the Patent Act, 1970 and the Trade Marks Act, 1999.

21.13 When the attention of the Department was drawn to the practical problems being faced by the Copyright Board in the present set up of zones it was clarified that to far no serious complaint has been received. However, it was assured that inclusion of North-Eastern States, not included in the zonal system envisaged in section 15 of the States Re-organisation Act, 1956 would be examined.

21.14 Another anomaly highlighted by the Chairman of the Board related to the status of the Registrar of the Board. Registrar of Copyrights is also the Secretary of the Copyright Board. It was contended that a person manning the quasi-judicial organ at the lower pedestal as against whose decisions appeals are to be heard by the organ at the higher pedestal cannot concurrently by superintending the registry of the appellate forum. Similarly, in matters relating to the rectification of the register, the Registrar of Copyright is a necessary respondent, being the keeper and custodian of the Register. It was, accordingly, suggested that amendment of section 11(4) of the Copyright Act on the pattern of Section 90 of the Trade Marks Act, 1999 relating to the Intellectual Property Appellate Board providing for separate group of officers for the Board could be considered.

21.15 The Committee was informed that the Registrar of Copyright, head of the Copyright Office and a quasi-judicial authority himself has continued in this capacity since 1958 when the Copyright Board came into existence. It was contended that so far no objection had been raised in this regard. However, it was also admitted that keeping in view likely increase in the workload of the Copyright Board relating to licensing, the proposal for making the Board to function on full-time basis was under consideration. Accordingly, the present dual role of the Registrar in administration of Copyright Office and providing Secretarial support to the Board needed re-examination.

**21.16 The Committee observes that the responsibilities of the Copyright Board, a very important statutory body assigned very crucial powers and functions, have increased manifold over the years. Not only this, in the light of changing global scenario with emerging areas coming under the Copyright Law, the need for strengthening the Copyright Board is being increasingly felt. It has to be a full time Board with inclusion of experts in specified areas related to Copyright law. The Committee is happy to note that exercise in this direction has already been initiated by the Department. The Committee will appreciate if all the corrective measures are taken at the earliest by the Department. Besides that, the Committee is also of the firm view that all the provisions in the Act as well as in the rules relating to the Copyright Board may be reviewed and amendments carried out in the light of suggestions put forth before it.**

21.17 **The heart and soul of copyrights depends on three mechanisms such as (i) Copyright Societies (ii) Registrar of Copyright and (iii) Copyright Board. If all the three are independent and dynamic then only the copyright justice will be perfect and reliable. The Committee, therefore, recommends that the Government should act emergently to revitalize these three institutions by formulating clear rules and appointing fulltime experts and professional with accountability clubbed with sufficient powers. More so all the three organizations are to be fully modernized with all e-management system and manned by professionals and technical experts.**

### **Internet Piracy**

22. **A number of stakeholders who appeared before the Committee were of the opinion that the amendment Bill hardly addresses the issue of internet piracy. It was pointed out that the spread of internet in India was of utmost importance and effective protection to copyright works in digital form needed to be given. Music Industry is particularly plagued by large scale piracy as several websites host pirate music. The law enforcement on this particular issue has been quite lax. It was pointed out that the existing and proposed amendments will not be able to curb piracy unless the copyright legislation is brought in tune with the Information Technology Act, 2000 which provides for power to intercept, monitor or decrypt information through any computer source on certain grounds mentioned therein. The Committee therefore urges the Department to bring the copyright law in tune with the Information Technology Act, 2000 so far as internet piracy is concerned. A designated authority for managing copyrights issues and piracy is to be created with sufficient policing powers.**

23. The Committee adopts the remaining clauses of the bill without any amendments.

24. The enacting formula and the title are adopted with consequential changes.

25. The Committee recommends that the Bill may be passed after incorporating the amendments/additions suggested by it. The Committee would also appreciate if the revised provisions as recommended by it are made available to it before the Bill is again brought before the Parliament.

26. The Committee would like the Department to submit a note with reasons on the recommendations/suggestions which could not be incorporated in the Bill.

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## RECOMMENDATION/OBSERVATION AT A GLANCE

### II. Consultation Process

During the course of its extensive deliberations with various stakeholders, one issue which was raised again and again was their non-involvement in the consultation process and their concerns not being addressed fully. From the very detailed feedback received from the Department as well as its interactions with all concerned, the Committee is constrained to observe that perhaps the present Bill was not shared with the stakeholders at the same level as the 2005 draft Bill. However, the Committee feels that by undertaking a very intensive consultation drive by issuing a Press Release followed by giving an opportunity to all the stakeholders to present their views in person as well as in writing has now left no scope for any stakeholder being denied the opportunity to have his say. Not only this, the Committee has also obtained the response of the Department on all the issues raised/ apprehensions voiced by a large number of witnesses. (Para 2.4)

The Committee has also observed that, by and large, many witnesses working in different areas touching upon different copyright related domains were primarily concerned with the safeguarding of their professional interests. Overall impact of copyright law did not seem to be an issue pertinent enough. The Committee can only say that it is the primary duty of the Government, as the law maker, responsible for both domestic interests and international commitments to do a balancing act. Similarly, the Committee is mandated to make an objective assessment of all the proposed legislations referred to it. It is against this backdrop, the Committee is making its observations/recommendations in the succeeding paragraphs. (Para 2.5)

### III. Clause 2: Section 2(d) (v) and (z), Clause 5: Section 17 and Clause 12:Section 26 Joint authorship for producer and principal director in cinematograph films

The Committee shares the apprehensions of the stakeholders about the proposed inclusion of principal director as author in clause 2 (d) (v) of the Act. Department's admission that "such a provision is not prescribed in most of the jurisdictions like USA" and the matter is taken care of through other means corroborates such apprehensions. It is again intriguing that none of the international treaties namely WCT and WPPT or even Rome Convention stipulate such a concept. It is well established that the producer is the kingpin who invests substantive money, raises finance through institution, utilizes persons/expertise and brings out a product i.e film. He takes such initiative and responsibility for making

the work and chooses the director on certain offer. It is also an undisputed fact that a director plays a major role in the making of a film but in co-ordination with the producer only. The Committee is also surprised to note that nowhere in the proposed Bill, the term "principal director" has been defined whereas the definition of the term "producer" has been provided under section 2 (uu) of the Copyright Act, 1957. The Committee feels that this definition of producer ought to have been modified in the context of the proposed amendment. It was also pointed out that the term 'principal director' was not defined under the Berne Convention also. The Committee is not convinced by the contention of the Department that such a definition is not required due to the clear understanding in the film world about the identity of principal director as there are different directors responsible for different aspects of film making like music director, art director, action director etc. More so there is no word as 'principal director' in the parlance of the cine industry at all as 'director' is the term used for any person who co-ordinates 'in general way' while others are on specific work as music, art, dance etc. (Para 3.7)

The Committee observes that opportunity to have partnership in a cinematograph film is being given to an undefined person i.e principal director without any liability/responsibility being assigned to him. In fact, in the film industry today, directors are getting huge money as fee under a mutual contract drawn with the producer without any pressure whatsoever, leaving no cause for marginalization. The Committee has been given to understand that even in Hollywood, fee is allowed and certain profit is shared under a system/agreement whereunder no equal partnership between the director and the producer is there. Such a system can exist in Indian cinema also. The Committee endorses the apprehensions that the proposed amendment will create a lot of uncalled for and unnecessary problems in the Indian cinema. The Committee is in agreement with the contention of some stakeholders that this may lead to a situation when the producer may not engage directors and may become director, script writer etc. himself. Further directors may not work in the same capacity and they may be pushed down as assistant directors, which will stop the upcoming directors to reach the top in industry. (Para 3.8)

Nobody can deny the fact that interest of producers of old films needs to be fully protected. But the Committee fails to comprehend the rationale behind the proposed introduction of a new stakeholder, i.e., principal director that too for films produced 50 years ago. The main objective of this exercise was to protect the producers of old films economically. It seems remedy proposed is worse than the problem. (Para 3.10)

In view of the above, the Committee is of the view that the proposed amendment to include principal director as author of a cinematograph film along with producer may create confusion and lead

to uncalled for situations instead of serving the purpose intended for. Committee's opinion rests on the premise that there is a system existing presently whereunder producers and directors are free to negotiate on their own terms and conditions. Under these negotiations/contracts, directors are not only paid their negotiated salary/fee but also certain rights in perpetuity relating to the script. Further, as per the existing system, the principal director is not taking any equity risk in the production/performance of a film and it is the producer alone who runs the risk of his investment not being recovered. The Committee strongly feels that the proposal of joint ownership is unfair. It, therefore, recommends that the proposal to include principal director as author of the film along with producer may be dropped altogether.

(Para 3.11)

**IV. Clause 2: Definition of the term 'cinematograph film'**

The Department has clarified that the definition of the term "cinematograph film" is being revised to tackle the exploitation of works in digital medium. The Committee, however, feels that the amendment cannot be accepted as future systems of electronic format/formation will be left out.

(Para 4.2)

**V. Clause 2: Definition of the term 'commercial rental'**

The Committee finds merit in the apprehensions voiced by different stakeholders. It is apparent that the definition of the term 'commercial rental' is too wide and open ended. Mere assurance of interests of copyright owners remaining fully protected would serve no purpose. The Committee would also like to point out that the absence of any clarity on the non-profit character of a public library or an educational institution is likely to result in different interpretations and resultant legal complications. The Committee, therefore, is of the view that in the light of very convincing facts put forth by the stakeholders based on their experience as copyright holders and service-providers, the proposed amendment needs to be reexamined from all conceivable aspects. One option can be to clearly spell out the criteria for designating a library/educational institution as non-profit based. The other option could be to restrict the application of this clause to only Government recognised libraries/educational institutions. Either way, such specification needs to be there in appropriate place either in the Act itself or in the relevant rules.

(Para 5.5)

**VI. Clause 2: Definition of the term 'communication to the public'**

The Committee feels that the reservations of the stakeholders are unfounded. Issuing physical copies or legitimate digital downloading music or video recording by payment cannot be considered a

communication to the public. The Department has justified the proposed amendment for exploitation of digital mediums. As the amendment is in tune with the technological advancement, the Committee accepts the amendment. The Committee is also of the view that the copyright societies can play a proactive role in resolving problems, if any, arising due to the proposed changes in the definition. (Para 6.3)

#### **VII. Clause 2: Definition of the term 'infringing copy'**

After analysing the viewpoints of all the stakeholders along with the clarifications given thereupon by the Department, the Committee is of the view that proposed inclusion of the proviso in the definition of the term 'infringing copy' seems to be a step in the right direction, specially in the prevailing situation at the ground level. The present practice of publishers publishing books under a territorial license, resulting in sale of books at very high rates cannot be considered a healthy practice. The Committee also notes that availability of low priced books under the present regime is invariably confined to old editions. It has been clearly specified that only those works published outside India with the permission of the author and imported into india will not be considered an infringed copy. Nobody can deny the fact that the interests of students will be best protected if they have access to latest editions of the books. Thus, apprehensions about the flooding of the primary market with low priced editions, may be mis-founded as such a situation would be tackled by that country's law. The Committee would, however, like to put a note of caution to Government to ensure that the purpose for which the amendment is proposed i.e to protect the interest of the students is not lost sight of. (Para 7.13)

#### **VIII. Clause 2: Definition of term 'Rights Management Information'**

On drawing the attention of the Department to these issues, the Committee was informed that the proposed definition of the term 'Rights Management Information' includes all kinds of information including Subscriber Management System'. It was based on the WCT and WPPT mandate whereunder Rights Management Information does include device or procedure intended to identify the user. The Committee is of the view that in the light of clarification given by the Department, the proposed definition of the term ' Rights Management Information' is in order. (Para 8.4)

#### **IX. Clause 6: Section 18: Assignment of copyright**

The Committee observes that the main contention between authors/composers of film lyrics and music compositions and Film/Producers Music Companies is about the rights relating to film music. Film music rights are bundle of copyrights which include synchronization right, performing rights, mechanical

reproduction right and sound recording right. Synchronisation right is that when a music or song is synchronised to a film, video, television or commercial etc. Performing rights are right to perform music in public specially in broadcasting (TV/Radio), restaurants, airlines, auditoriums or public functions etc. Mechanical reproduction rights are a royalty paid to a song writer whenever a copy of one of their songs is made. Sound recording rights are owned by producer or a recording company. (Para 9.12)

When a song or music is incorporated in a film, it is relating to synchronization right of author and music composer which is assigned to the producer of the film as per section 17 (b) or in the absence of agreement, film producer is the first owner. However, film producer is also getting other independent rights of author and music composer of their works envisaged in section 13 of the Act. As per section 17 (b), he further assigns these rights to the music companies for upfront lump-sum amount. When the films songs are performed separately and independently through TV/Radio, restaurants, airlines, auditoriums or public functions etc. film producer becomes the first owner and authors/music composers lose economic benefits of exploitation of their works to music companies who become ultimate owners of these works. (Para 9.13)

The Committee also takes note of the fact that independent rights of authors of literary and musical works in cinematograph films are being wrongfully exploited by the producers and music companies by virtue of Supreme Court judgment in Indian Performing Rights Society vs. Eastern India Motion Pictures Association (AIR 1977 SC 1443) which held that film producer is the first owner of the copyright and authors and music composers do not have separate right. The Committee, however, observes that in the footnote of this very judgement, Justice Krishna Aiyar also advised as follows:

"the authors and music composers who are left in the cold in the penumbral area of policy should be given justice by recognizing their rights when their works are used commercially separately from cinematograph film and the legislature should do something to help them". (Para 9.14)

It was also clarified through this judgement that the right of producer in a film as entitled under section 14(1) (c) cannot trench on the composer's copyright given under section 14(1) (a) when the music is separately played in a restaurant/aeroplane/radio station/cinema theatre. If producer enjoys synchronisation right, authors/composers should enjoy performing right. The footnote of the judgement also states that the twin rights can co-exist, each fulfilling itself in its delectable distinctiveness.

(Para 9.15)

**The Committee can only conclude in the light of the long standing infirmity in the copyright law outlined above that proposed amendments in section 17 and 18 were overdue. It has taken more than thirty years for the legislature to act upon a Supreme Court directive which indeed is a very sad state of affairs. The Committee emphatically recommends that this long standing infirmity in the copyright law needs to be removed without any further delay. (Para 9.16)**

**The Committee observes that some of the apprehensions of film producers are not well-placed. The Committee finds that authors/composers are paid fee for creation of their works and not upfront guaranteed royalties as mentioned by film industry. The Committee would also like to point out that promoting of new talent is the hallmark of the film industry which gives incentives to producers as well. In case of non-film music, specially in the case of upcoming artists, if music companies launch them by flooding their records in the market, it would be a good exposure for them, finally leading to the growth of music industry. (Para 9.17)**

**Committee's attention has also been drawn to section 13 (3) (a) of the Act which provides that copyright shall not subsist in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work. Section 13(4) further provides that copyright in a cinematograph film or sound recording shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film or sound recording is made. The proposed amendments in section 17, 18 and 19 are the reiteration of what is already provided in section 13 of the Act. In short, the proposed amendments in section 18 will protect interests of authors in the event of exploitation of their work by restricting assignments in unforeseen new mediums and henceforth author of works in films will have right to receive royalties from the utilization of such work in any other form except to the legal heirs or to a copyright society and any other contract to the contrary shall be void. (Para 9.18)**

**The Committee also observes that many countries permit the assignment of rights in a musical or literary work in past, present and future works. As this assignment pertains to the public performance, communication to public, broadcast and cable transmission rights, it is immaterial whether any new mode/medium of use which was not there at the time of assignment provided that these rights in the literary/musical works have been assigned to the legal heirs and also to a copyright society. As a rule, the copyright society will simply proceed to license new uses, collect royalties and distribute them back to copyright owners. This institutionalized system will greatly benefit the authors/lyricists and the composers as individually they may not be in a position to collect their royalties. (Para 9.19)**

The Committee would like to add a note of caution here that the system of institutionalized societies needs to be strengthened as everybody may not be in a position to negotiate contracts with equity and there is a vast difference between contract of service and contract for service. Established names may negotiate and demand equity but beginners may remain at the receiving end and their contribution may go unnoticed and unrecognized. The Committee feels that the film industry needs to address this issue urgently and also evolve a viable profit sharing system for other categories of craftsmen/technical experts engaged in the making of a film. (Para 9.20)

**X. Clause 7: Section 19: 'Mode of Assignment'**

The Committee observes that one of the main objectives of the proposed legislation is to ensure that the authors of the works, in particular authors of songs included in cinematograph films or sound recordings, receive royalty for the commercial exploitation of such works. With a view to remove any element of ambiguity which may give rise to complications or different interpretations in future, and also to protect the right of authors and music composers to claim their royalties in non-film works, the Committee recommends following amendments in clauses 6 and 7 of the Bill:

**Proposed Second Proviso to section 18 may be revised as follows:**

**"Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilisation of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the author's legal heirs or to a copyright society for collection and distribution and any agreement to contrary shall be void".**

**Third proviso as indicated below may be added to section 18:**

**"Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilisation of such work except to the author's legal heirs or to a collecting society for collection and distribution and any assignment to the contrary shall be void".**

**Proposed sub-section (9) of section 19 should read as follows:**

- (9) **"No assignment of copyright in any work to make a cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilisation of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall".**

**sub-section (10) as indicated below may be added to section 19:**

- (10) "No assignment of the copyright in any work to make a sound recording which does not form part of any cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable for any utilization of such work in any form". (Para 10.20)

**XI. Clause 8: Section 19 A: Disputes with respect to assignment of copyright**

The Committee takes note of certain reservations expressed about the implications of the proposed amendment. It was pointed out by the South India Music Companies Association that such a move may lead to situations when music composers/lyricists may file frivolous applications for revocation and still continue to get royalty on the basis of an interim order of the Copyright Board. The Committee feels that these apprehensions are somewhat misplaced as Copyright Board, a statutory authority is fully competent to assess the merit of a case filed with it. The Committee is, however, of the view that with a prescribed time-limit for adjudication of an application by the Copyright Board, there is little likelihood of any undue delay or any deliberate attempt on the part of a complainant. The Committee, accordingly, recommends that necessary provision in this regard may be added at the appropriate place. (Para 11.3)

**XII. Clause 15: Section 31: Compulsory licence in works withheld from public**

While welcoming the spirit behind the proposed amendments, the Committee strongly feels that all grey areas in respect of compliance of TRIPS Agreement and WTO commitments need to be made very clear. Reason being is that queries raised by the stakeholders have not been responded fully and any ambiguity in such an area may lead to unnecessary complications. (Para 12.4)

The Committee has been given to understand that the Supreme Court and various High Courts interpreted this provision to facilitate issue of multiple compulsory licences. The Committee, however, finds merits in the above objections specially in view of the present set-up of the Copyright Board. The Committee is of the view that criteria qualifying a person to file a complaint before the Copyright Board needs to be specifically provided for, if not in the Act then in the Rules. A time-frame for disposal of such complaints also needs to be laid down in the Rules, if not already done. (Para 12.6)

The Committee also takes note of the proposed amendments in section 31 A relating to compulsory licence in unpublished Indian works. The provision of compulsory licence for orphaned works available under this section is proposed to be extended to published works as well. Like in the case of section 31, extension of applicability to all foreign works (including film, DVDs, etc.) could be violative of Berne



Convention and TRIPS Agreement and seem to fall short of the minimum obligations imposed by such instruments. The Committee is of the view that future implication of proposed amendment in Section 31A vis-à-vis India's commitment to international agreement needs to be free from any ambiguity so as to prevent any negative fallout. (Para 12.7)

**XIII. Clauses 17 and 31: Section 31B: Compulsory licence for benefit of disabled  
Section 52(zb): Certain acts not be infringement of copyright.**

After analysing the proposed amendments as envisaged in section 31B and 52 (1) (zb) in the backdrop of interactions held with various stakeholders and the Department, the Committee strongly feels that concerns raised by the organizations working for the disabled are indeed very genuine. The Committee would like to point out that the real objective behind these two provisions is to facilitate the cause of the disabled. Every attempt needs to be made to remove all the drawbacks highlighted in the proposed amendments. (Para 13.6)

The Committee is of the firm opinion that all physically challenged need to be benefitted by the proposed amendments. It would be very discriminating if envisaged benefit remains restricted to only visually impaired, leaving out persons affected by cerebral palsy, dyslexia and low vision. The Committee takes note of fact that even regular Braille users complement Braille with other accessible formats like audio, reading material with large fonts and electronic texts. The Committee also observes that the modern day Braille production is dependent on the material being first converted into mainstream electronic formats such as MS Word because Braille translation software requires inputs in such formats. The Committee hopes that the request of organisations for extending access of works to all accessible formats instead of special formats presently under consideration of the Department will result in a positive outcome. The other request for widening the scope of compulsory licence to allow other entities working for disabled in case it is not possible to withdraw section 31 B also merits a sympathetic consideration by the Department. (Para 13.7)

The Committee would finally reiterate that the Department needs to bring out the required modifications in section 31B and 52 (1) (zb) based on very pertinent concerns raised by the organizations working for the cause of the disabled. (Para 13.9)

**XIV. Clause 17: Section 31C: Statutory licence for cover versions**

The Committee is inclined to agree with the Department's view that continuation of fair use clause with statutory license under 52 (1) (j) needs to be removed from the list of fair dealing under section 52

and be placed under Chapter VI i.e., licences. The Committee has been given to understand that the proposed provision will lead to protection of interest of music industry engaged in the creation of original music and certain additional safeguards through a statutory licencing provision have been provided to suit the needs of the music industry in digital environment and to ensure that while making sound recording of any literary, dramatic or musical work, the interest of the copyright holder is duly protected. The Committee fails to understand the reservations of music companies specially in view of proposed provision being incorporated in place of existing provision that too in the background of judicial pronouncements. (Para 14.4)

**XV. Clause 17: Section 31D: Statutory licence for radio broadcasting of literary and musical works and sound recording**

15.5 While agreeing with the justification given by the Department for bringing in Section 31 D, the Committee would like to point out that there should be no ambiguity in its applicability. The Committee also takes note of the that following procedural shortcomings specially taking into account ground realities-

- viability of payment of royalty in advance.
- Practicability of compulsory mentioning of artists' names
- Requirement of maintenance of agreement between the radio broadcaster and the copyright society may form part of relevant rules.

The Committee would be happy if a viable solution of the aforesaid shortcomings is arrived at.

(Para 15.5)

**XVI. Clauses 18: Section 33: Registration of copyright society  
Clause 20: Section 34: Administration of rights of owner by copyright society.  
Clause 22: Section 35: Control over the copyright society by the owner of rights.**

The Committees notes that there are inherent problems in the administration and functioning of copyright societies which have been continuing since long. Situation has deteriorated to such an extent that the owners of works/music companies are dominating these societies denying equity shares to the performers/authors. The basic reason for such a dismal scenario is obviously entirely different considerations and interests of the owners and authors. The Committee further notes that due to the subjective functioning of the copyright societies authors are being invariably put to disadvantages. The Committee, after hearing the views of all the stakeholders representing both owners and authors is aware about the specific but very different concerns of both these parties. The Committee also takes note of the justification given by the Department that in view of owner members taking control of the copyright

societies, formation and administration of copyright societies was required to be placed under the control and supervision of the authors. (Para 16.11)

The Committee, after analyzing the pros and cons of the proposed amendments feels that obliging only authors to form and register a copyright society may not prove to be a right decision as it may lead to serious practical consequences. Firstly, it will keep the owners of rights viz recording companies, music publishers, book publishers etc out of the ambit of these societies leading to a vacuum. It would not be wrong to say that it would be a remedy worse than a malaise. Secondly, the complete handover of the copyright society to the authors alone would not be fair and balanced. Legally and practically the owners of rights have been the owners of copyright and there would be no harm if they also remain members of the copyright societies. The Committee takes note of the fact that this was a suggestion made by some of the stakeholders. Composition of the copyright society should be such that both authors and owners get their rightful share. The Committee further feels that there is no denying the fact that authors need protection of their rights. However, the way to achieve this protection is not by excluding the other stakeholder i.e owners of rights. A mechanism has to be evolved whereunder both authors and owners are allowed to form and administer the copyright societies with all the members having equal rights and powers. (Para 16.12)

The Committee is well aware of the fact that the author of work is the original person who authors. Equally true is the fact that the subsequent owner could be any other person. If the word owner of copyright is removed from the existing provisions, it would simply mean that subsequent owner would have no right and would not be entitled to any benefits. Therefore, the blanket removal of the word “owners of right” cannot be considered an appreciable move. The Committee, therefore, recommends that the proposed amendments in Sections 33, 34 and 35 may not be carried out. At the same time, the Committee would like to emphasise that composition of the copyright societies should be balanced, with equal rights for all categories of members. The Committee would also like to draw the attention of the Department to section 33(4) whereunder the Central Government can cancel the registration of a copyright society if it is satisfied that it is being managed in a manner detrimental to the interests of the concerned owners of rights. The Committee strongly feels that with such a specific provision already existing, situation with respect to functioning of IPRS could have been easily handled. (Para 16.13)

**XVII. Clause 19: Section 33A: Tariff Scheme by copyright societies**

The Committee notes that various stakeholders including the existing copyright societies had certain reservations against the proposal. Committee's attention has been particularly drawn by the apprehension about copyright societies coming up with high tariff schemes drawn up solely at their discretion. The Committee was also given to understand that at present there was no check on the formulation of tariff scheme but merely a requirement of publication by the society. With the proposed amendment coming into effect, the aggrieved person would have no alternative but to pay the fee as per the tariff scheme and may face unnecessary hardships before the appeal was decided and the relief, if any, at the end of the appeal may not prove be sufficient for the loss caused. (Para 17.5)

The Committee, taking into account the viewpoint of both the stakeholders i.e the copyright societies and the users, observes that there is no denying the fact that the process of fixing tariff by the copyright societies is not transparent. As per the existing system, the copyright societies are free to fix tariffs without any visible basis / criteria. There is no system of broad-based consultations by these societies as is done in other sectors such as telecom, insurance, broadcasting and electricity. The Committee observes that in these sectors, stakeholders are consulted before tariff is fixed and notified. However, such a system is completely lacking in case of copyright societies. As a result, there are instances of arbitrariness, arm twisting and negotiations by these societies. (Para 17.7)

The Committee is of the firm view that the proposed amendment will result in the introduction of a system of a transparent formulation of tariff scheme by the collective administrative copyright societies, which will be subject to scrutiny by the Copyright Board on receipt of appeal by the aggrieved party. At the same time, the Committee would like the Department to take note of the concerns of the various stakeholders and provide for a transparent process of tariff fixation by the copyright societies with necessary changes in the relevant rules. The Committee would also take the opportunity to observe that for putting in place a well-defined and balanced tariff scheme, functioning of Copyright Board as well as copyright societies also needs to be regulated, strengthened and made foolproof so as ensure that all the stakeholders are benefited. The Committee would be giving its recommendations in this regard in the later part of the Report. (Para 17.8)

XVIII.            Clause 25 :Section 38    :    Performer's Right  
                      Clause 26 :Section 38A   :    Exclusive right of performers  
                      Section 38B :    Moral rights of the performer.

The Committee is inclined to agree with the justification given by the Department for inclusion of new provisions, sections 38A and 38B. The Committee feels that apprehensions of film producers and

music companies are not well-placed, being guided by their commercial interest. By deleting section 38 (3) and (4) and bringing in very specific provisions for exclusive and moral rights of performers, the Department has only made an attempt to protect the interests of stakeholders in line with the international commitments. (Para 18.6)

The Committee would, however, like to draw the attention of the Department to one ground reality highlighted by the Association of the Radio Operators of India. It was emphatically mentioned that defining 'performance' as including communication by any means to public of any sound recordings virtually over-rules the current judicial deliberations on whether free broadcast through radio constitutes performance. Playing of recorded songs cannot be construed as performance and this matter is currently under review of courts. The Committee is of the opinion that contention of the Association needs to be looked into and provision modified in the light of court rulings. (Para 18.7)

**XIX. Clause 31: Section 52: certain acts not to be infringement of copyright**

In the light of the divergent views expressed by the stakeholders particularly with regard to the stipulation of 14 days period under 52 (1) (c) the Committee is of the view that the viability of the duration of 14 days may again be reviewed by way of balancing the views of the stakeholders as well as the legal requirement in the matter. As for the words the "transient and incidental" occurring in section 51 (1) (b) and 52 (1) (c) the Committee recommends that the word 'and' may be replaced with the word or in both the clauses so as to read "transient or incidental". The Committee feels that this will take care of the concern of ISPs for unlimited liability for third party actions. (Para 19.10)

**XX. Clause 36: Section 65 A: Protection of technological measures  
Section 65 B: Protection of Rights Management Information**

When these concerns were taken up with the Department it was clarified that one of the drawbacks of digital technology was the possibility of high rate of infringement (digital piracy) and the technological solutions were used to prevent this. Digital locks (technological protection measures – popularly known as TPM) were invented to prevent infringement of works. At the same time, duplicate keys (circumvention technology) were also developed to unlock the digital locks used by owners of copyright to prevent infringement. The use of TPM had a significant impact on users since the freedom to use the work (fair use of works) permitted by law was considerably regulated through these measures. In the absence of the owner of the works providing key to enjoy fair use, the only option was to circumvent the technology to enjoy fair use of works. There was considerable demand to protect the

TPM from circumvention by banning manufacture and sale of devices used for circumvention. On the other hand, the users argued that this would prevent the development of dual use technology and also prevent the enjoyment of fair use permitted by law. The major problem of use of law in preventing circumvention was the impact on public interest on access to work facilitated by the copyright laws. Attention was drawn to the WIPO treaties which provided a very flexible provision to protect TPM. This provision allowed member countries to develop laws to prevent circumvention of technological measures, keeping in mind the public interest of access to works. Developed countries like US, EU, Australia, Japan etc. have enacted laws to prevent circumvention resulting in abuse and affecting public interest. The unintended consequences of these laws resulted in blocking research and development of new technologies. It was pointed out that India was yet to face major problems of circumvention due to low level of penetration of digital technology. Taking note of experience of developed countries in developing laws for prevention of circumvention of technological measures, the Committee agrees with the approach as enshrined in section 65 A to give limited legislative guidelines and allow the judiciary to evolve the law based on practical situations, keeping in mind the larger public interest of facilitating access to work by the public. The Committee takes note of the fact that many terms have been consciously left undefined, given the complexities faced in defining these terms in the laws of developed countries. The Committee would, however, like to emphasize that a constant watch would have to be kept on the impact of this provision and corrective measures taken as and when required. (Para 20.7)

The Committee is of the view that the parties responsible for distribution or broadcasting or communication to the public through authorized licence from the author or rights holder and who do not remove any rights management information deliberately for making unauthorized copies need not worry about this provision as long as their act is as per the framework of this provision. (Para 20.11)

## **XXI. General Observations**

### **Functioning of copyright societies:-**

The Committee observes that inspite of there being provisions in the Act and rules framed thereunder regulating the copyright societies, over the years a disturbing trend in their functioning has been developing which has led to disputes between the major stakeholders and resultant court cases. The Department has also admitted that the administration of copyright societies has been taken over by the owners whose interest is different from that of the authors and in many cases authors are being deprived of their benefits. Another area of concern noticed by the Committee is the Tariff Scheme for the Copyright Societies. Although as per Rule 14J of the Copyright Rules, 1958, a Copyright Society has to

frame a Tariff Scheme setting out the nature and quantum of fees or royalties, no provision is there for governing or regulating the system of fixation, collection and distribution of royalty under section 33 of the Act. A system of formulation of a Tariff Scheme by the Collective Administrative Societies has accordingly been brought as section 33A under the proposed legislation. The Committee feels that this is a step taken in the right direction and will put on end to the arms-twisting negotiations of Copyright Societies. (Para 21.11)

The Committee would like to draw the attention of the Department to Section 33 of the Act which empowers the Central Government to regulate the functioning of Copyright Societies. As per this provision the registration of a Copyright Society can be suspended for not more than one year or cancelled by the Central Government after conducting an inquiry, in the event of it being managed in a manner detrimental to the interests of owners of rights. Not only this, Section 36 clearly provides that every Copyright Society has to submit to the Registrar of Copyright Society annual returns. Under this very section, any officer duly authorized by the Central Government can call for any report or records of any Copyright Society so as to injure that the fees collected by it in respect of rights administered by it are being utilized or distributed in accordance with the provisions the Act the purpose for highlighting all these provisions is that had the Central Government played a more pro-active role, perhaps things would not have reached such an alarming level. The Committee can only conclude that with the proposed provision relating to Tariff Scheme and use of powers already there in the Act/rules by the Central Government through its authorized officers, copyright societies will be functioning as envisaged under the Copyright Law. (Para 21.12)

### Copyright Board

21.17 The Committee observes that the responsibilities of the Copyright Board, a very important statutory body assigned very crucial powers and functions, have increased manifold over the years. Not only this, in the light of changing global scenario with emerging areas coming under the Copyright Law, the need for strengthening the Copyright Board is being increasingly felt. It has to be a full time Board with inclusion of experts in specified areas related to Copyright law. The Committee is happy to note that exercise in this direction has already been initiated by the Department. The Committee will appreciate if all the corrective measures are taken at the earliest by the Department. Besides that, the Committee is also of the firm view that all the provisions in the Act as well as in the rules relating to the Copyright Board may be reviewed and amendments carried out in the light of suggestions put forth before it. (Para 21.17)

**The heart and soul of copyrights depends on three mechanisms such as (i) Copyright Societies (ii) Registrar of Copyright and (iii) Copyright Board. If all the three are independent and dynamic then only the copyright justice will be perfect and reliable. The Committee, therefore, recommends that the Government should act emergently to revitalize these three institutions by formulating clear rules and appointing fulltime experts and professional with accountability clubbed with sufficient powers. More so all the three organizations are to be fully modernized with all e-management system and manned by professionals and technical experts.** (Para 21.18)

### **Internet Piracy**

22. A number of stakeholders who appeared before the Committee were of the opinion that the amendment Bill hardly addresses the issue of internet piracy. It was pointed out that the spread of internet in India was of utmost importance and effective protection to copyright works in digital form needed to be given. Music Industry is particularly plagued by large scale piracy as several websites host pirate music. The law enforcement on this particular issue has been quite lax. It was pointed out that the existing and proposed amendments will not be able to curb piracy unless the copyright legislation is brought in tune with the Information Technology Act, 2000 which provides for power to intercept, monitor or decrypt information through any computer source on certain grounds mentioned therein. The Committee therefore urges the Department to bring the copyright law in tune with the Information Technology Act, 2000 so far as internet piracy is concerned. A designated authority for managing copyrights issues and piracy is to be created with sufficient policing powers. (Para 22)

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# MINUTES

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**XVIII**  
**EIGHTEENTH MEETING**

The Committee on Human Resource Development met at 3.00 P.M. on Wednesday, the 26<sup>th</sup> May, 2010 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

**MEMBERS PRESENT**  
**RAJYA SABHA**

1. Shri Oscar Fernandes — *Chairman*
2. Dr. E.M. Sudarsana Natchiappan
3. Shri Vijaykumar Rupani
4. Shrimati Mohsina Kidwai
5. Shri N.K. Singh
6. Shri M. Rama Jois
7. Shri Brij Bhushan Tiwari
8. Dr. Janardhan Waghmare

**LOK SABHA**

9. Shri Suresh Angadi
10. Shri P.K. Biju
11. Shri Jitendra Singh Bundela
12. Shri P.C. Gaddigoudar
13. Shri Rahul Gandhi
14. Shri P. Kumar
15. Shri Prasanta Kumar Majumdar
16. Capt. Jai Narain Prasad Nishad

**SECRETARIAT**

Smt. Vandana Garg, Additional Secretary  
Shri J. Sundriyal, Director  
Shri Arun Sharma, Joint Director  
Shri Sanjay Singh, Assistant Director  
Smt. Himanshi Arya, Committee Officer  
Smt. Harshita Shankar, Committee Officer

## LIST OF WITNESSES

### I. Representatives of Department of Higher Education, Ministry of HRD and Legislative Department, Ministry of Law and Justice.

- |        |                      |  |  |
|--------|----------------------|--|--|
| (i).   | Smt Vibha Puri Das   | Secretary                                      |  |
| (ii).  | Shri Sunil Kumar     | Additional Secretary                           |  |
| (iii). | Shri Amit Khare      | Joint Secretary                                |  |
| (iv).  | Shri Narayan Raju    | Joint Secretary<br>(Legislative<br>Department) |  |
| (v).   | Shri G.R.Raghavendra | Deputy Secretary                               |  |

- |    |     |     |     |     |     |     |
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| 2. | *** | *** | *** | *** | *** | *** |
| 3. | *** | *** | *** | *** | *** | *** |
| 4. | *** | *** | *** | *** | *** | *** |
| 5. | *** | *** | *** | *** | *** | *** |

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\*\*\* Relates to other matter

6. The Committee, then heard the views of Secretary, Department of Higher Education on the Copyright (Amendment) Bill, 2010. She briefed the Committee about the various aspects that necessitated amendments to the different sections of the Bill. She also made a power point presentation during the briefing. The Members put forward their queries which were replied to by the Secretary. The Chairman wanted to know whether the Department has identified any specific problem areas in the operation of the Bill and sought a status note on the court cases regarding the Bill. The Committee decided to send a questionnaire for written replies of the Department

7. \*\*\* \*\*

8. A verbatim record of the proceedings was kept.

9. The Committee then adjourned at 5.10 p.m. to meet again at 3.00 p.m., on Friday, the 4<sup>th</sup> June, 2010.

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\*\*\* Relates to other matter

**XIX**  
**NINETEENTH MEETING**

The Committee on Human Resource Development met at 3.00 P.M. on Friday, the 4<sup>th</sup> June, 2010 in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi.

**MEMBERS PRESENT**  
**RAJYA SABHA**

1. Shri Oscar Fernandes — *Chairman*
2. Dr. E.M. Sudarsana Natchiappan
3. Shrimati Mohsina Kidwai
4. Shri Penumalli Madhu
5. Shri Brij Bhushan Tiwari
6. Dr. Janardhan Waghmare

**LOK SABHA**

7. Shri Suresh Angadi
8. Shri Kirti Azad
9. Shri P.K. Biju
10. Shrimati J. Helen Davidson
11. Shri Jitendra Singh Bundela
12. Shri P.C. Gaddigoudar
13. Shri Prataprao Ganpatrao Jadhav
14. Shri P. Kumar
15. Shri Prasanta Kumar Majumdar
16. Capt. Jai Narain Prasad Nishad
17. Shri Tapas Paul
18. Shri Brijbhushan Sharma Singh
19. Shri Ashok Tanwar
20. Shri Joseph Toppo
21. Shri Madhu Goud Yaskhi

**SECRETARIAT**

Smt. Vandana Garg, Additional Secretary  
Shri J. Sundriyal, Director  
Shri Arun Sharma, Joint Director  
Shri Sanjay Singh, Assistant Director  
Smt. Himanshi Arya, Committee Officer  
Smt. Harshita Shankar, Committee Officer

## LIST OF WITNESSES

- |        | <b>Name</b>           | <b>Designation</b> |
|--------|-----------------------|--------------------|
| (i).   | Shri Javed Akhtar     | MP, Rajya Sabha    |
| (ii).  | Shri Ameet Datta      | Advocate           |
| (iii). | Sai Krishna Raj Gopal | Advocate           |
2.     \*\*\*               \*\*\*               \*\*\*               \*\*\*               \*\*\*               \*\*\*
3.     The Committee first heard the views of Shri Javed Akhtar, Member, Rajya Sabha, Shri Ameet Datta, Advocate and Sai Krishna Raj Gopal, Advocate on the Copyright (Amendment) Bill, 2010. The witnesses shared with the Committee their views on copyright issues pertaining to authors and lyricist. The Committee directed them to furnish additional points if any including the copies of contracts between writers and producers as mentioned by them during their deposition.  
(The witnesses then withdrew)
4.     \*\*\*               \*\*\*               \*\*\*               \*\*\*               \*\*\*               \*\*\*
5.     \*\*\*               \*\*\*               \*\*\*               \*\*\*               \*\*\*               \*\*\*
6.     A verbatim record of the proceedings was kept.
7.     The Committee then adjourned at 5.20 p.m. to meet again at 11.00 a.m., on Tuesday, the 15<sup>th</sup> June, 2010.

**XX**  
**TWENTIETH MEETING**

The Committee on Human Resource Development met at 11.00 A.M. on Tuesday, the 15<sup>th</sup> June, 2010 in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi.

**MEMBERS PRESENT**

**RAJYA SABHA**

1. Shri Oscar Fernandes — *Chairman*
2. Dr. E.M. Sudarsana Natchiappan
3. Shrimati Mohsina Kidwai
4. Shri M. Rama Jois
1. Shri Penumalli Madhu
2. Dr. Janardhan Waghmare

**LOK SABHA**

3. Shri Suresh Angadi
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5. Shri P.K. Biju
6. Shrimati J. Helen Davidson
7. Shri P.C. Gaddigoudar
8. Shri Prataprao Ganpatrao Jadhav
9. Shri P. Kumar
10. Shri Prasanta Kumar Majumdar
11. Capt. Jai Narain Prasad Nishad
12. Shri Joseph Toppo
13. Shri P. Viswanathan

**SECRETARIAT**

Smt. Vandana Garg, Additional Secretary  
Shri J. Sundriyal, Director  
Shri Arun Sharma, Joint Director  
Shri Sanjay Singh, Assistant Director  
Smt. Himanshi Arya, Committee Officer

## LIST OF WITNESSES

Association	Name
The Film & Television Producers Guild of India Ltd., Mumbai	Shri Manmohan Shetty Shri Yash Chopra Shri Ramesh Sippy Shri Mahesh Bhatt Shri Mukesh Bhatt Shri Bhushan Kumar Shri Siddharth Roy Kapur Shri Ameet Naik
Indian Motion Picture Producers' Association, Mumbai	Sh. T.P. Aggarwal Ms Sushama Shiromanee
Federation of Indian Publishers, New Delhi	Shri Anand Bhushan Shri Shakti Malik Shri Asoke K. Ghosh Shri B.K. Sharma
Association of Publishers in India, New Delhi	Shri Sanjeev Goswami Shri Manas Saikia Shri Vivek Govil Mr. Mike Brayan Shri Saikrishna Rajagopal
Inclusive Planet, Kochi	Shri Rahul Cherian Shri Shamnad Basheer
Xavier's Resource Centre for the Visually Challenged, Mumbai	Dr. Sam Taraporevala Ms Neha Trivedi Shri Ketan Kothari Ms Kanchan Pamanai Shri Dipendra Manocha

2. \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*

3. The Committee first heard the views of representatives from the Film and Television Producers Guild of India Ltd., Mumbai and Indian Motion Picture Producers' Association, Mumbai. The witnesses shared with the Committee certain apprehensions they were having with regard to proposed relevant amendments in the Copyright (Amendment) Bill, 2010. The Chairman and the members sought certain clarifications on the issues raised by them which were answered by the experts. The Committee decided to send a questionnaire, based on the deliberations of the day and the issues remained unanswered, to witnesses for replies within a fortnight. (The witnesses then withdrew)

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\*\*\*Relates to other matter



The Committee then adjourned for lunch at 1.00 p.m.

4.       \*\*\*                   \*\*\*                   \*\*\*                   \*\*\*                   \*\*\*                   \*\*\*

5.       Resuming its series of interactions on the Copyright (Amendment) Bill, 2010, the Committee then heard the views of representatives from Inclusive Planet, Kochi, Xavier's Resource Centre for the Visually Challenged, Mumbai, Federation of Indian Publishers, New Delhi and Association of Publishers in India, New Delhi in two separate sessions. After some discussion the Committee decided to forward a questionnaire on the Bill to each of the representatives with the direction to respond within 15 days.

(The witnesses then withdrew)

6.       A verbatim record of the proceedings was kept.

7.       The Committee then adjourned at 5.20 p.m. to meet again at 3.00 p.m., on Tuesday, the 22nd June, 2010.

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\*\*\* Relates to other matter

**XXI**  
**TWENTY-FIRST MEETING**

The Committee on Human Resource Development met at 3.00 p.m. on Tuesday, the 22<sup>nd</sup> June, 2010 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

**MEMBERS PRESENT**  
**RAJYA SABHA**

1. Shri Oscar Fernandes — *Chairman*
2. Dr. E.M. Sudarsana Natchiappan
3. Shrimati Mohsina Kidwai
4. Shri M. Rama Jois
5. Shri Brij Bhushan Tiwari
6. Shri Prakash Javadekar

**LOK SABHA**

7. Shri Suresh Angadi
8. Shri Kirti Azad
9. Shri P.K. Biju
10. Shri P.C. Gaddigoudar
11. Shri P. Kumar
12. Capt. Jai Narain Prasad Nishad
13. Shri Tapas Paul
14. Shri Joseph Toppo
15. Shri P. Viswanathan
16. Shri Madhu Goud Yaskhi

**SECRETARIAT**

Smt. Vandana Garg, Additional Secretary  
Shri J. Sundriyal, Director  
Shri Arun Sharma, Joint Director  
Shri Sanjay Singh, Assistant Director  
Smt. Himanshi Arya, Committee Officer  
Smt. Harshita Shankar, Committee Officer

## **LIST OF WITNESSES**

### **I. Motion Picture Association, Mumbai**

Shri Rajiv Dalal, Managing Director

### **II. Confederation of Societies of Authors and Composers (CISAC)**

- (i) Mr. Ang Kwee Tiang, Regional Director
- (ii) Mr. Achille Forler

### **III. Authors Guild of India, New Delhi**

- (i) Shri Upendra Kumar, Vice-President
- (ii) Shri S.S. Awasthi, Secretary-General,
- (iii) Smt. Sarojini Pritam, Writer
- (iv) Dr. H.L. Bachhotia, Author and Educationist
- (v) Shri R.P. Gupta, Advocate

2. At the outset, the Chairman welcomed Shri Prakash Javedkar, M.P., Rajya Sabha who was recently nominated as member of the Committee. He then apprised the Members about the day's agenda on the Copyright (Amendment) Bill, 2010.

3. The Committee first heard the views of Mr. Rajiv Dalal from the Motion Pictures, Mumbai. The Members sought certain clarifications which the witness replied to. The Committee decided to send a questionnaire based on the deliberations of the day and the issues which remained unanswered to the witness for replies within a fortnight.

(The witness then withdrew)

4. Thereafter, the experts from International Confederation of Societies of Authors and Composers (CISAC) shared their views and apprehensions on the Bill with the Committee. The Chairman and members raised certain queries which were replied to by the experts. The Committee decided to send a questionnaire based on the deliberations of the day and other issues which remained unanswered, to witnesses for replies within a fortnight.

(The witnesses then withdrew)

5. The Committee then heard the views of the representatives of the Authors Guild of India. They replied to certain queries raised by the members.

6. A verbatim record of the proceedings was kept.

7. The Committee then adjourned at 5.00 p.m. to meet again at 11.30 a.m., on Tuesday, the 29<sup>th</sup> June, 2010.

**XXII**  
**TWENTY-SECOND MEETING**

The Committee on Human Resource Development met at 11.30 p.m. on Tuesday, the 29<sup>th</sup> June, 2010 in Main Committee Room, Ground Floor, Parliament House Annexe, New Delhi.

**MEMBERS PRESENT**  
**RAJYA SABHA**

1. Shri Oscar Fernandes — *Chairman*
2. Dr. E.M. Sudarsana Natchiappan
3. Shrimati Mohsina Kidwai
4. Shri N.K. Singh
5. Shri M. Rama Jois
6. Shri Brij Bhushan Tiwari
7. Shri Prakash Javadekar

**LOK SABHA**

7. Shri Suresh Angadi
8. Shri Kirti Azad
9. Shri P.K. Biju
10. Shrimati J. Helen Davidson
11. Shri P. Kumar
12. Shri Prasanta Kumar Majumdar
14. Capt. Jai Narain Prasad Nishad
15. Shri Tapas Paul
16. Shri Brijbhushan Sharan Singh
17. Shri Joseph Toppo
18. Shri P. Viswanathan

## **LIST OF WITNESSES**

### **I. The News Broadcasting Association (NBA)**

- (i) Shri Shazi Zaman, Editor, Star News
- (ii) Shri Satish K. Singh, Editor, Zee News
- (iii) Shri Ajay Kumar, Executive Producer, Aajtak
- (iv) Shri Pradeep Ganapathy, NDTV
- (v) Shri Anup J. Bhambhani, NBA Counsel
- (vi) Smt. Annie Joseph, Secretary General, NBA
- (vii) Shri Chanderlok Nainta, Manager, NBA

### **II. The Indian Broadcasting Foundation, New Delhi**

- (i) Shri Jawahar Goel, President, IBF
- (ii) Shri Rajat Sharma, India TV
- (iii) Smt. Pratibha Singh
- (iv) Shri Sudeep Chatterjee
- (v) Shri A. Mohan, Zee TV
- (vi) Shri Venkatraman, Zee TV
- (vii) Shri Mani Kumar, EENADU
- (viii) Ms. Sheenaz Dastur, Star India
- (ix) Shri Ashish Chandra, Star India
- (x) Shri Rohit Gupta, MSM
- (xi) Ms. Dipti Kotak, MSM
- (xii) Shri Amod Gupte, Zoom/Times Now
- (xiii) Shri N.P. Nawani, Secretary General, IBF
- (xiv) Mr. K. Aravaudhan
- (xv) Shri Ajay Kumar

### **III. RPG Enerprises-Saregama, Kolkata**

- (i) Shri G.B. Aayeer
- (ii) Shri Neil Mason
- (iii) Shri Harshad Barde

### **IV. The Indian Music Industry**

- (i) Shri Kumar Taurani, Chairman
- (ii) Shri V.J. Lazarus, President
- (iii) Shri Suresh Srinivasan, COO
- (iv) Shri Neil Mason, Legal Retainer

### **V. South India Music Companies Association, Chennai**

- (i) Shri S. Kalyanasundram, Vice President
- (ii) Shri J. Swaminathan, Secretary
- (iii) Shri S. Rajesh Dhupad, Joint Secretary
- (iv) Shri Jagdeep Grover, Joint Treasurer
- (v) Shri B. Premchandran, Executive Member (Kerala)

(vi) Shri Ananth Padmanabhan, Legal Officer

**VI. Business Software Alliance, New Delhi**

- (i) Ms. Lizum Mishra
- (ii) Shri Keshav Dhakad
- (iii) Shri Saikrishna Rajgopal

**VII. Yahoo India Private Ltd., Bangalore**

- (i) Shri Amitabh Lal Das, General Counsel
- (ii) Shri Nandan Pandey

**VIII. eBay India Pvt. Ltd. Mumbai**

- (i) Shri Rajendra Pundey

**IX. Internet and Mobile Association of India, New Delhi**

- (i) Shri Sailesh Rao, Chairman
- (ii) Dr. Subho Rajy, President
- (iii) Smt. Chitrita Chatterjee, Associate Vice- President
- (iv) Smt. Vasanthika Srinath
- (v) Shri Siddharth Sharma
- (vi) Shri Vakul Sharma

**SECRETARIAT**

Smt. Vandana Garg, Additional Secretary  
Shri J. Sundriyal, Director  
Shri Sanjay Singh, Assistant Director  
**Smt. Himanshi Arya, Committee Officer**  
**Smt. Harshita Shankar, Committee Officer**

2. \*\*\*                    \*\*\*                    \*\*\*                    \*\*\*                    \*\*\*                    \*\*\*

3. Thereafter, the Committee heard the views of the representatives of News Broadcasting Association and Indian Broadcasting Foundation on the Copyright (Amendment) Bill, 2010. The members sought certain clarifications which the witnesses replied to. The Committee decided to send a questionnaire based on the deliberations of the day to the witnesses for replies within a fortnight.  
(The witnesses then withdrew)

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\*\*\* Relates to other matter

4. The Committee then interacted with the representatives of the RPG Enterprises-Saregama, Kolkata, the Indian Music Industry and the South India Music Companies Association, Chennai on the Bill. The members raised certain queries which were replied to by the witnesses. The Committee decided to send a questionnaire regarding the unanswered queries and issues to the witnesses for replies within a fortnight.

(The witnesses then withdrew and the Committee adjourned for lunch)

5. The Committee re-assembled after lunch at 2.30 p.m. to hear the views of the representatives of the Business Software Alliance, New Delhi on the Bill. Clarifications were sought by members which were replied to by the witnesses. The Committee decided to send a questionnaire based on the deliberation of the day to the witnesses for replies within a fortnight.

(The witnesses then withdrew)

6. The Committee then held discussion with the representatives of Internet and Mobile Association of India, Yahoo India Private Limited and e-Bay India Private Limited on the Bill. Certain queries which were raised by the members were replied to by the experts. The Committee decided to send a questionnaire to these associations also for replies within a fortnight based on the unanswered queries and issues raised during the deliberation of the day.

7. A verbatim record of the proceedings was kept.

8. The Committee adjourned at 4.30 p.m. to meet again at 11.00 a.m., on Wednesday, the 30<sup>th</sup> June, 2010.

## RECORD OF DISCUSSION

The Committee on Human Resource Development met at 11.00 p.m. on Wednesday, the 30<sup>th</sup> June, 2010 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

### MEMBERS PRESENT

#### RAJYA SABHA

1. Shri Oscar Fernandes — *Chairman*
2. Shri N.K. Singh
3. Shri Prakash Javadekar

#### LOK SABHA

4. Shri Kirti Azad
5. Shri P.K. Biju
6. Shri P.C. Gaddigoudar
7. Shri Prasanta Kumar Majumdar
8. Capt. Jai Narain Prasad Nishad
9. Shri Sis Ram Ola
10. Shri Brijbhushan Sharan Singh

### LIST OF WITNESSES

#### I. Copyright Board

1. Dr. Raghbir Singh, Chairman

#### II. The Phonographic Performance Ltd.

2. Sh. Vijay Lazarus, President,
3. Sh. Vipul Pradhan, Chief Executive Officer
4. Sh. Suresh Srinivasan, COO
5. Sh. J. Ribeiro
6. Sh. Neil Mason, Legal Retainer
7. Sh. Ram Prakash Gupta, Vice-Chairman
8. Sh. G.B. Aayeer

#### III. Indian Reprographic Rights Organization (IRRO)

9. Sh. Anand Bhushan, Secretary General
10. Sh. Shakti Malik, Treasurer
11. Sh. Arun Singh, Legal Adviser



## SECRETARIAT

Smt. Vandana Garg, Additional Secretary  
Shri J. Sundriyal, Director  
Shri Sanjay Singh, Assistant Director  
Smt. Himanshi Arya, Committee Officer  
Smt. Harshita Shankar, Committee Officer

2. At the outset, the Chairman welcomed the members to the meeting which was in continuation of the series of interactions held with the stakeholders on the Copyright (Amendment) Bill, 2010. He informed the members that the memoranda received from all the witnesses who appeared before the Committee have been referred to the Ministry of Human Resource Development to furnish clause-by-clause comments on the Bill so as to facilitate the deliberations on the subject.

3. Thereafter, the Committee heard the views of the Chairman of Copyright Board on the role of the Board, the strength and weaknesses of the Copyright Management System and the conflict of issues amongst various stakeholders on the Copyright matters. The Chairman and the members raised some queries which were replied to by the witness. The Committee decided to send a questionnaire for replies within a fortnight.

(The witness then withdrew)

4. The Committee then interacted with the representatives of the Phonographic Performance Ltd and the Indian Reprographic Rights Organization. The Chairman and the members raised certain queries which were replied to by the witnesses. The Committee decided to send questionnaire to the witnesses for replies within a fortnight.

(The witnesses then withdrew)

5. Thereafter, Shri Kirti Azad on behalf of the members of the Committee and also on his own behalf thanked the Chairman for his noteworthy contribution as Chairman of the Committee to its working. Shri Azad also placed on record appreciation of the Committee for the Chairman giving opportunity to all the members to air their views and encouraging them to actively engage in examining the important Bills which have been referred to the Committee.

6. A verbatim record of the proceedings was kept.

7. The Committee then adjourned at 1.02 p.m.

**XXIII**  
**TWENTY-THIRD MEETING**

The Committee on Human Resource Development met at 3.30 p.m. on Thursday, the 15<sup>th</sup> July, 2010 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

**MEMBERS PRESENT**  
**RAJYA SABHA**

1. Shri Oscar Fernandes — *Chairman*
2. Dr. Janardhan Wagmare
3. Shri Prakash Javadekar

**LOK SABHA**

4. Shri Suresh Angadi
5. Shri Kirti Azad
6. Shri P.K. Biju
7. Shri Jitendrasingh Bundela
8. Shrimati J. Helen Davidson
9. Shri P.C. Gaddigoudar
10. Shri P. Kumar
11. Shri Prasanta Kumar Majumdar
12. Capt. Jai Narain Prasad Nishad
13. Shri Sis Ram Ola
14. Shri Brijbhushan Sharan Singh
15. Shri Joseph Toppo
16. Shri Madhu Goud Yaskhi

**LIST OF WITNESSES**

**I. The Indian Performing Right Society Limited**

1. Shri Hasan Kamaal, Chairman
2. Shri Omi Sonik
3. Shri G.B. Aiyeer, (M/s Saregama India Ltd.)
4. Shri Rakesh Nigam, CEO
5. Shri Neel Mason, Lawyer

## **II. Association of Radio Operators for India (AROI)**

1. Ms. Anuradha Prasad, President AROI & Chairperson Radio Dhamaal
2. Mr. Rahul Gupta, Director, Radio Mantra
3. Mr. Prashant Pandey
4. Mr. Harish Bhatia, CEO, My FM
5. Ms. Nisha Narayanan, Sr. VP Kal Radio (Sun Group)
6. Mr. Rohit Lal, Commercial Head, Red FM
- 7.. Ms. Reshma Khalid, CEO, Radio City
8. Mr. Ashok Naraayan, VP, Small Operators, AROI
9. Mr. Uday Chawla, Secretary General, AROI
10. Mr. G. Krishnan, CEO,Aajtak/Radio Today
11. Mr. Puneet Jain, Coy. Secretary, Aajtak/Radio Today
12. Mr. Soumen Choudhury, Business Head, Big FM
13. Mr. Ashwin Padmanabhan, Delhi Station Head, Big FM

## **III. South Indian Film Chamber of Commerce**

1. Dr. Dasari Narayana Rao, M.P., Leading Director and Former President
2. Mr. C. Kalyan, President
3. Mr. L. Suresh, Hon. Secretary, Film Federation of India
4. Mr. Ravi Kottarakara, Hon. Secretary, Vice-President, Film Federation of India
5. Mr. D. Suresh Babu, Director, Rama Naidu Studios
6. Mr. S.S.T. Subramaniam, General Secretary, Kerala Film Chamber of Commerce
7. Mr. A.R. Raju, Executive Committee Member, Karnataka Film Chamber of Commerce
8. Mr. K.V. Gupta, Executive Committee Member, Karnataka Film Chamber of Commerce
9. Sri K.S. Srinivasan, Treasurer

### **SECRETARIAT**

Smt. Vandana Garg, Additional Secretary  
Shri J. Sundriyal, Director  
Shri Arun Sharma, Joint Director  
Shri Sanjay Singh, Assistant Director  
Smt. Himanshi Arya, Committee Officer  
Smt. Harshita Shankar, Committee Officer

2. At the outset, the Chairman welcomed the members to the meeting which was scheduled to hear the representatives/experts on the Copyright (Amendment) Bill, 2010. The Chairman mentioned that as per the direction of Hon'ble Chairman, Rajya Sabha, the Committee has to present the report on the Copyright (Amendment) Bill, 2010 by 15<sup>th</sup> August, 2010 and sought the cooperation of members of the Committee in finalizing deliberations on the Bill.

3. The Committee, then heard the views of the representatives of the Indian Performing Right Society Ltd. Mumbai on the proposed amendments in the Copyright (Amendment) Bill, 2010. The Chairman and members sought certain clarifications on the issues which were replied by the witnesses. The Committee decided to send a questionnaire to the witnesses for replies within a week.

(The witnesses then withdrew)

4. Thereafter, the Committee heard the views of the representatives of Association of Radio Operators for India, New Delhi. The members raised certain queries which were replied to by the witnesses. The Committee decided to send a questionnaire to the witnesses for replies within a week.

(The witnesses then withdrew)

5. The Committee then heard the views of the representatives of the South India Film Chambers of Commerce on the Bill. The Chairman and members sought certain clarifications which were replied to by the witnesses.

6. A verbatim record of the proceedings was kept.

7. The Committee adjourned at 5.50 p.m. to meet again at 11.00 a.m., on Friday, the 16<sup>th</sup> July, 2010.

**XXIV  
TWENTY-FOURTH MEETING**

The Committee on Human Resource Development met at 11.00 A.m. on Thursday, the 16<sup>th</sup> July, 2010 in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

**MEMBERS PRESENT  
RAJYA SABHA**

1. Dr. Janardhan Waghmare — *in the Chair*
2. Shri Prakash Javadekar

**LOK SABHA**

3. Shri Suresh Angadi
4. Shri Kirti Azad
5. Shri P.K. Biju
6. Shri Jitendrasingh Bundela
7. Shrimati J. Helen Davidson
8. Shri P.C. Gaddigoudar
9. Shri Prataprao Ganpatrao Jadhav
10. Shri P. Kumar
11. Shri Prasanta Kumar Majumdar
12. Capt. Jai Narain Prasad Nishad
13. Shri Brijbhushan Sharan Singh
14. Shri Joseph Toppo
15. Shri Madhu Goud Yaskhi

## LIST OF WITNESSES

### I. EXPERTS ON COPYRIGHT (AMENDMENT) BILL, 2010

1. Shrimati Shubha Mudgal, Classical Singer
2. Shri Sanjay Tandon

### II. EXPERTS ON THE NATIONAL INSTITUTES OF TECHNOLOGY (AMENDMENT) BILL, 2010

#### DEPARTMENT OF HIGHER EDUCATION

1. Smt. Vibha Puri Das, Secretary
2. Shri Ashok Thakur, Additional Secretary
3. Shri Sunil Kumar, Additional Secretary (HE)
4. Shri S.K. Ray Additional Secretary & Financial Advisor
5. Shri N.K. Sinha, Joint Secretary
6. Prof. P.N. Singh, Chairman, BOG, NIT – Agartala
7. Shri H.R. Joshi, Director
8. Prof. Sandeep Sancheti, Director, NITK – Surathkal
9. Prof. S.S. Gokhale, Director, VNIT – Nagpur
10. Prof. N. Sathyamurthy, Director, IISER – Mohali
11. Dr. V.P. Goel, DDG

#### SECRETARIAT

Smt. Vandana Garg, Additional Secretary  
Shri J. Sundriyal, Director  
Shri Arun Sharma, Joint Director  
Shri Sanjay Singh, Assistant Director  
**Smt. Himanshi Arya, Committee Officer**  
**Smt. Harshita Shankar, Committee Officer**

2. \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*
3. \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*

4. Thereafter, the Committee interacted with Shrimati Subha Mudgal, classical singer and Shri Sanjay Tandon on the Copyright (Amendment) Bill, 2010. Members sought certain clarifications which were replied to by the witnesses.

5. A verbatim record of the proceedings was kept.

6. The Committee adjourned at 1.10 p.m. to meet again at 3.30 p.m., on Thursday, the 22<sup>nd</sup> July, 2010.

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\*\*\* Relates to other matter

**XXV**  
**TWENTY - FIFTH MEETING**

The Committee on Human Resource Development met at 3.30 pm. on Thursday, the 22<sup>nd</sup> July, 2010 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

**MEMBERS PRESENT**  
**RAJYA SABHA**

1. Shri Oscar Fernandes — *Chairman*
2. Shri N.K. Singh
3. Shri M. Rama Jois
4. Shri Prakash Javadekar
5. Shri N. Balaganga

**LOK SABHA**

6. Shri P.K. Biju
7. Shri Jitendrasingh Bundela
8. Shrimati J. Helen Davidson
9. Shri P.C. Gaddigoudar
10. Shri P. Kumar
11. Shri Prasanta Kumar Majumdar
12. Capt. Jai Narain Prasad Nishad
13. Shri Sis Ram Ola

**LIST OF WITNESSES**

**I. DEPARTMENT OF HIGHER EDUCATION**  
**MINISTRY OF HUMAN RESOURCE DEVELOPMENT**

- (i) Smt. Vibha Puri Das, Secretary
- (ii) Shri Amit Khare, Joint Secretary, (Book Promotion and Copyright)
- (iii) Prof. N.S. Gopalkrishnan, MHRD, IPR Chairperson
- (iv) Prof. Ramakrishna, MHRD, IPR Professor, NLSUI, Bangalore
- (v) Prof. V.C. Vivekananda, MHRD, IPR Chair Professor, NALSAR, University of Hyderabad

**II. MINISTRY OF LAW AND JUSTICE**  
**(LEGISLATIVE DEPARTMENT)**

- (i) Shri N.K. Nampoothiry, Additional Secretary
- (ii) Shri R.K. Pattanayak, DLC

## SECRETARIAT

Smt. Vandana Garg, Additional Secretary  
Shri J. Sundriyal, Director  
Shri Arun Sharma, Joint Director  
Shri Sanjay Singh, Assistant Director  
Smt. Himanshi Arya, Committee Officer  
Smt. Harshita Shankar, Committee Officer

2. At the outset, the Chairman welcomed the members to the meeting of the Committee to continue the examination of the Copyright (Amendment) Bill, 2010. Recapitulating the progress made so far on the mandate before the Committee, the Chairman complimented the members for their useful contribution in the series of interactions with various stakeholders. He reminded the members about the deadline fixed for submission of report on the Bill and sought their cooperation and wisdom on finalization of Committee's deliberation. Some of the members wanted adequate time for going through voluminous documents and the feedback received during interactions for judicious scrutiny and to arrive at conclusions/observations on the Bill. It was felt that though the Committee would attempt to finalise its report by the 15<sup>th</sup> August, 2010 but for any eventuality, extension of time may be considered depending on assimilation of further feedback that might be required from the Department.
3. The Committee, then, heard the views of the Secretary, Department of Higher Education and other officials of the Legislative Department on different provisions including the core issues of the Copyright (Amendment) Bill, 2010. The Chairman and members raised certain queries which were replied to by the witnesses. The Committee decided to sent a questionnaire to the Department of Higher Education for replies within a week.
4. A verbatim record of the proceedings was kept.
5. The Committee adjourned at 5.10 p.m



**XXVIII**  
**TWENTY - EIGHTH MEETING**

The Committee on Human Resource Development met at 3.30 p.m. on Wednesday, the 18<sup>th</sup> August 2010 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

**MEMBERS PRESENT**  
**RAJYA SABHA**

1. Shri Oscar Fernandes — *Chairman*
2. Shri M. Rama Jois
3. Dr. Janardhan Waghmare
4. Shri Prakash Javadekar
5. Shri N. Balganga
6. Dr. E.M. Sudarsana Natchiappan

**LOK SABHA**

7. Shri P.K. Biju
8. Shrimati J. Helen Davidson
9. Shri Prasanta Kumar Mazumdar
10. Dr. Vinay Kumar Pandey
11. Shri Tapas Paul
12. Shri Ashok Tanwar
13. Shri Joseph Toppo
14. Shri Madhu Goud Yaskhi

**SECRETARIAT**

Smt. Vandana Garg, Additional Secretary  
Shri J. Sundriyal, Director  
Shri Arun Sharma, Joint Director  
Shri Sanjay Singh, Assistant Director  
Smt. Himanshi Arya, Committee Officer  
Smt. Harshita Shankar, Committee Officer

2. \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*
3. \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*

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\*\*\* Relates to other matter

4. Thereafter, the Committee took up for consideration a statement prepared by the Secretariat on various provisions of the Copyright (Amendment) Bill, 2010. Members gave their suggestions on some provisions of the Bill. In view of comprehensive changes/amendments, the Committee decided to continue its deliberations on the Bill in its next sitting

5. The Committee adjourned at 6.00 p.m. to meet again on Thursday, the 26<sup>th</sup> August, 2010.

**XXIX**  
**TWENTY - NINTH MEETING**

The Committee on Human Resource Development met at 3.30 p.m. on Thursday, the 26<sup>th</sup> August 2010 in Room No. '63', First Floor, Parliament House, New Delhi.

**MEMBERS PRESENT**  
**RAJYA SABHA**

1. Shri Oscar Fernandes — *Chairman*
2. Shri M. Rama Jois
3. Dr. Janardhan Waghmare
4. Shri Prakash Javadekar
5. Dr. E.M. Sudarsana Natchiappan

**LOK SABHA**

7. Shri P.K. Biju
8. Shrimati J. Helen Davidson
9. Shri P.C. Gaddigoudar
9. Shri Prasanta Kumar Mazumdar
10. Dr. Vinay Kumar Pandey
11. Shri Joseph Toppo

**SECRETARIAT**

Smt. Vandana Garg, Additional Secretary  
Shri J. Sundriyal, Director  
Shri Arun Sharma, Joint Director  
Smt. Himanshi Arya, Committee Officer  
Smt. Harshita Shankar, Committee Officer

2. At the outset, the Chairman welcomed the members to the meeting which was convened to continue clause by clause discussion on the Copyright (Amendment) Bill, 2010. He sought their views on various provisions of the Bill so that the line of reporting on the Bill would be finalized. The Committee, then, resumed consideration of the unfinished portion of a statement prepared by the Secretariat on the various provisions of the Copyright (Amendment) Bill, 2010. The Chairman suggested that the members of the Committee may sit again on 30<sup>th</sup> August to finalize the deliberations.

3. Thereafter, the Committee considered the status of six Bills referred to it for examination in the context of large mandate, the time constraints for its completion and the impending re-constitution of the Committee.

The Committee decided to seek extension of time for five Bills excluding the National Institutes of Technology (Amendment) Bill, 2010. It was decided that extension of time up to 15<sup>th</sup> October, 2010 may be sought in respect of Copyright (Amendment) Bill, 2010. As for the remaining four Bills i.e. the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010, the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010, the National Accreditation Regulatory Authority for Higher Educational Institutions Bill, 2010 and the Central Educational Institutions (Reservation in Admission) Amendment Bill, 2010, extension of time be sought till 31<sup>st</sup> December,2010.

4.       \*\*\*               \*\*\*               \*\*\*               \*\*\*               \*\*\*               \*\*\*

5.       The Committee adjourned at 5.30 p.m.

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\*\*\* Relates to other matter

**III**  
**THIRD- MEETING**

The Committee on Human Resource Development met at 3.30 p.m. on Friday, the 1<sup>st</sup> October, 2010 in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

**MEMBERS PRESENT**  
**RAJYA SABHA**

1. Shri Oscar Fernandes - **Chairman**
2. Dr. K. Keshava Rao
3. Shri Prakash Javadekar
4. Shri Pramod Kureel
5. Dr. Janardhan Waghmare
6. Shri N. Balaganga

**LOK SABHA**

7. Shri P.K.Biju
8. Shrimati J.Helen Davidson
9. Shri Rahul Gandhi
10. Shri P.Kumar
11. Shri Prasanta Kumar Majumdar
12. Capt. Jai Narain Prasad Nishad
13. Shri Sheesh Ram Ola
14. Shri Brijbhushan Sharan Singh
15. Shri Ashok Tanwar
16. Shri Joseph Toppo
17. Dr. Vinay Kumar Pandey 'Vinnu'
18. Shri P. Viswanathan

## LIST OF WITNESSES

### I. DEPARTMENT OF HIGHER EDUCATION MINISTRY OF HUMAN RESOURCE DEVELOPMENT

- (i) Smt. Vibha Puri Das, Secretary
- (ii) Shri S.K. Ray, Addl. Secretary & F.A
- (iii) Ms. Pratima Dixit, Director
- (iv) Prof. K.P.Singh, Director, Institute of Technology(BHU)
- (v) Prof. A.K. Tripathi, Professor, Institute of Technology (BHU)
- (vi) Prof. P.K. Mukherjee, Professor, Institute of Technology (BHU)

### SECRETARIAT

Smt.Vandana Garg, Additional Secretary  
Shri Sanjay Singh, Assistant Director  
Smt. Himanshi Arya, Committee Officer  
Smt. Harshita Shankar, Committee Officer

2. \*\*\* \*\*

3. \*\*\* \*\*

4. The Committee felt that consideration of the Report on the Copyright (Amendment) Bill, 2010 would require at least two meetings in view of very comprehensive nature of the Bill. The Committee, accordingly, decided to seek extension of time till the 31<sup>st</sup> October, 2010 for presentation of the Report to Hon'ble Chairman, Rajya Sabha.

5. \*\*\* \*\*

6. \*\*\* \*\*

7. \*\*\* \*\*

8. \*\*\* \*\*

9. A verbatim record of the proceedings was kept.

10. The Committee then adjourned at 5.45 p.m. to meet again on Wednesday, the 13<sup>th</sup> October, 2010.

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\*\*\* Relates to other matter

**IV**  
**FOURTH-MEETING**

The Committee on Human Resource Development met at 3.30 p.m. on Wednesday, the 13<sup>th</sup> October, 2010 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

**MEMBERS PRESENT**  
**RAJYA SABHA**

1. Shri Oscar Fernandes - Chairman
2. Shrimati Mohsina Kidwai
3. Dr. K. Keshava Rao
4. Shri M. Rama Jois
5. Shri N.K. Singh
6. Dr. Janardhan Waghmare
7. Shri N. Balaganga

**LOK SABHA**

8. Shri Kirti Azad
9. Shri P.K.Biju
10. Shri Jeetendrasingh Bundela
11. Shri Suresh Chanabasappa Angadi
12. Shrimati J.Helen Davidson
13. Shri P.C. Gaddigoudar
14. Shri Rahul Gandhi
15. Shri Prataorao Ganpatrao Jadhav
16. Shri P.Kumar
17. Shri Prasanta Kumar Majumdar
18. Capt. Jai Narain Prasad Nishad
19. Shri Sheesh Ram Ola
20. Shri Brijbhushan Sharan Singh
21. Shri Ashok Tanwar
22. Shri Joseph Toppo
23. Shri P. Viswanathan

## SECRETARIAT

Smt. Vandana Garg, Additional Secretary  
Shri J. Sundriyal, Director  
Shri Arun Sharma, Joint Director  
Shri Sanjay Singh, Assistant Director  
Smt. Himanshi Arya, Committee Officer  
Smt. Harshita Shankar, Committee Officer

2. At the outset, the Chairman welcomed the Members to the meeting to consider and adopt draft 227<sup>th</sup> Report on the Copyright (Amendment) Bill, 2010. The Chairman informed the members that the Hon'ble Chairman, Rajya Sabha had acceded to the request of the Committee for extension of time till 31<sup>st</sup> October, 2010 for the presentation of the Report on the Copyright (Amendment) Bill, 2010. He also mentioned that as oral evidence on the Institutes of Technology (Amendment) Bill, 2010 has already been completed, the Secretariat may prepare a draft Report on the same for consideration of the Committee.

3. The Committee then took up for consideration draft 227<sup>th</sup> Report on the Copyright (Amendment) Bill, 2010 and after some discussions adopted the same. The Committee, decided to present the 227<sup>th</sup> Report to the Hon'ble Chairman, Rajya Sabha before 31<sup>st</sup> October 2010, the deadline fixed for presentation.

4. \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*

5. The Committee then adjourned at 4.15 p.m. to meet again on Tuesday, the 19<sup>th</sup> October, 2010.

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\*\*\* Relates to other matter



**VII**  
**SEVENTH-MEETING**

The Committee on Human Resource Development met at 3.30 p.m. on Tuesday, the 9<sup>th</sup> November, 2010 in Room No. '63', First Floor, Parliament House, New Delhi.

**MEMBERS PRESENT**

**RAJYA SABHA**

1. Shri Oscar Fernandes - Chairman
2. Shri Prakash Javadekar
3. Shri M. Rama Jois
4. Shri Pramod Kureel
5. Shri N. K. Singh
6. Shrimati Kanimozhi
7. Dr. Janardhan Waghmare
8. Shri N. Balaganga

**LOK SABHA**

9. Shri Kirti Azad
10. Shri P.K.Biju
11. Shri Jeetendrasingh Bundela
12. Shrimati J. Helen Davidson
13. Shri Rahul Gandhi
14. Shri Deepender Singh Hooda
15. Shri P.Kumar
16. Shri Prasanta Kumar Majumdar
17. Capt. Jai Narain Prasad Nishad
18. Shri P. Vishwanathan

## **LIST OF WITNESSES**

### **DEPARTMENT OF HIGHER EDUCATION**

1. Smt. Vibha Puri Das, Secretary Higher Education;
2. Sh. N.K. Sinha, Additional Secretary, Ministry of HRD;
3. Sh. N.K. Nampoothiry, Additional Secretary, Legislative Deptt.;
4. Sh. Amit Khare, Joint Secretary, Deptt. Of Higher Education;
5. Prof. E.F.N. Ribeiro, Chairman School of Planning & Architecture, Bhopal;
6. Dr. Shovan K. Saha, Director, School of Planning & Architecture, Vijayawada;
7. Ar. J.R. Bhalla, Former President of Council of Architecture;
8. Ar. K. Rajagopalan, Eminent Architect and Member of Council of Architect;
9. Ar. Vijay Garg, Jt. Hony, Secretary, Indian Institute of Architecture;
10. Prof. S. M. Akhtar, Dean, Faculty of Architecture, Jamia Milia Islamia University;
11. Prof. N.S. Gopalkrishnan, MHRD IPR Chair, CUSAT, Cochin;
12. Dr. Harvinder Singh, Director, Ministry of HRD;
13. Sh. G.R. Raghavender, Director, Deptt. Of Higher Education;
14. Sh. B.K. Bhadri, Assistant Educational Advisor, MHRD; and
15. Sh. K.K. Mishra, Consultant, MHRD.

### **SECRETARIAT**

Smt. Vandana Garg, Additional Secretary  
Shri J. Sundriyal, Director  
Shri Arun Sharma, Joint Director  
Shri Sanjay Singh, Assistant Director  
Smt. Himanshi Arya, Committee Officer  
Smt. Harshita Shankar, Committee Officer

2. At the outset, the Chairman welcomed the Members to the meeting of the Committee which was convened to hear the views of the Secretary, Department of Higher Education on the Architects (Amendment) Bill, 2010. The Chairman also informed the members that he has received some suggestions relating to clauses 6 and 7 of the Copyright (Amendment) Bill, 2010 amending sections 18 and 19 of the Copyright Act, 1957 from Shri N.K. Singh and Shri Prakash Javadekar, members of the Committee, incorporated in the Report relating to the Copyright (Amendment) Bill, 2010. The Committee ascertained views of the Secretary, Department of Higher Education so that the said Report is finalized and presented in the Parliament at the earliest.

3. The Committee, then, heard the views of the Secretary, Department of Higher Education with respect to amendments in Section 18 and 19 of the Copyright Act, 1957. Members sought certain clarifications to which the Secretary replied. The Committee directed the Secretary to send the response of the Department within one or two days. In view of the circumstance, the Committee decided to seek extension of time till 26<sup>th</sup> November, 2010 for presentation of the Report on the Copyright (Amendment) Bill, 2010.

4. \*\*\* \*\*

5. A verbatim record of the proceedings was kept.

6. The Committee then adjourned at 5.45 p.m.

\*\*\* Relates to other matter

**VIII**  
**EIGHTH-MEETING**

The Committee on Human Resource Development met at 3.30 p.m. on Thursday, the 18<sup>th</sup> November, 2010 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

**MEMBERS PRESENT**

**RAJYA SABHA**

1. Shri Oscar Fernandes - Chairman
2. Dr. K. Keshava Rao
3. Shri Prakash Javadekar
4. Shri M. Rama Jois
5. Shri Pramod Kureel
6. Shri N. Balaganga

**LOK SABHA**

7. Shri P.K.Biju
8. Shri Suresh Chanabasappa Angadi
9. Shri Deepender Singh Hooda
10. Shri Joseph Toppo
11. Dr. Vinay Kumar Pandey 'Vinnu'

**LIST OF WITNESSES**

**REPRESENTATIVES OF THE COUNCIL OF ARCHITECTURE**

1. Prof. Vijay Shrikrishna Sohoni, President, Council of Architecture
2. Prof. Uday Chandrakant Gadkari, Member, Council of Architecture
3. Prof. Inderjit Singh Bakshi, Member, Council of Architecture
4. Shri Prakash Deshmukh, Member, Council of Architecture
5. Mr. Bharat Thakordas Sheth, Member, Council of Architecture

## SECRETARIAT

Smt. Vandana Garg, Additional Secretary  
Shri Arun Sharma, Joint Director  
Shri Sanjay Singh, Assistant Director  
Smt. Himanshi Arya, Committee Officer  
Smt. Harshita Shankar, Committee Officer

2. At the outset, the Chairman welcomed the members to the meeting of the Committee convened for hearing the views of the representatives of the Council of Architecture on various provisions of the Architects (Amendment) Bill, 2010. The Chairman also made a reference about the discussion held with the Secretary, Department of Higher Education with regard to suggestions of two members on clauses 6 & 7 of the Copyright (Amendment) Bill, 2010 during the meeting of the Committee held on the 9<sup>th</sup> November, 2010. Based on the deliberations and subsequent response received from the Department, necessary modifications had been carried out in the Committee's Report on the Bill.

3. Thereafter, the Committee gave its approval to the aforesaid modification made in the 227<sup>th</sup> Report on the Copyright (Amendment) Bill, 2010.

4. \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*

5. The Committee decided to present its 227<sup>th</sup> Report on the Copyright (Amendment) Bill, 2010 in both the Houses of Parliament on the 23<sup>rd</sup> November, 2010.

6. A verbatim record of the proceedings was kept.

7. The Committee then adjourned at 4.45 p.m. to meet again on Thursday, the 25<sup>th</sup> November, 2010.

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\*\*\* Relates to other matter