

Our Ref: CLM 1128

29th July 2014

Mr. Agneshwar Sen,
Advisor (B & CS)
Telecom Regulatory Authority of India
Through email asen@traf.com and sapnatrai@gmail.com



Ref: Submissions on the TRAI TRAI Consultation Paper on "Regulatory Framework for Platform Services" dated 23 June 2014 (hereinafter "Said Consultation Paper")

Dear Sir,

1. We act for Super Cassettes Industries Pvt. Ltd. having its registered office at E-2/16, White House, Ansari Road, Daryaganj, New Delhi 110002 (hereinafter referred to as "Our Client").
2. Our Client is a highly regarded music company in India, often referred to by its trademark "T-Series" and is the proprietor of a quality catalogue in relation to sound recordings as well as the underlying works being the literary works and musical compositions which are incorporated in the sound recordings. Our Client also owns a catalogue of audio visual-recordings as well. Our Clients have been instrumental in granting opportunities and helping build the careers of several performers, lyric writers and music composers in the industry.
3. Our Client's license the content owned by them directly to FM Stations. At present there are about 132 FM stations that have licenses from our client. These FM stations regularly play content owned by our clients.
4. The Licenses granted to the FM Stations only permit them to broadcast our clients content on the FM channel and not through any other medium or mode. The License Agreements at present take into consideration the restrictions of the FM channels in relation to the broadcast and the Grant Of Permission Agreement (at times referred to as GOPA) between the Government of India and the relevant FM station.
5. It may also be relevant to add that Copyright is a bundle of rights and the owner grants specific rights to a license/user. It may also be relevant that Our Client have different agreements for different platforms and Our Clients' content is made available to the

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public through all the different platforms including but not limited to Radio, Television, Mobile, Digital, Internet besides physical sales.

6. The licenses granted are specific rights granted to the user (such as FM) and to increase a footprint or usage without the license of the owner of Copyright would amount to an infringement of Copyright. In other words if a FM station has the rights to broadcast music (or any content if which there is Copyright) on an FM channel, it would not imply that the FM channel could allow the use of content in any other medium except as an FM Channel. Any use besides what is licensed would amount to an infringement of Copyright and could also infringe exclusive rights granted to third parties by the owner of Copyright.
7. Under the Copyright Act, licenses can also be granted territorially which is what is usually done in terms of FM Licenses. By permitting an FM station to use a platform that goes beyond territory, this would result in an infringement of rights granted as besides medium and mode of distribution, an FM station will be restricted by territory will not be the case if an FM stations permits third parties to communicate music on other platforms as these platforms would not be restricted to the territory that restricts an FM Station.
8. It may also be borne in mind that FM stations are free to air whereas some DPO's ^{are} not and therefore to permit one medium to supply to another would mean, besides an infringement of Copyright, for the music industry and more particularly our clients to re look at the entire licensing scheme with the FM Stations and could impinge upon the licenses granted to third parties by Our Client in relation to other mediums of exploitation.
9. With this background as a basis Our Clients would like to make comments in relation to Issue 13 and 14 in the above reference consultation paper.

Issue No. 13 and 14 raised in the said Consultation Paper read as follows -

Issue No. 13: What other obligations/ restrictions need to be imposed on DPOs for offering Platform Servicers ("PS")?

Issue no. 14: Should DPO be permitted to re-transmit already permitted and operational FM radio channels under suitable arrangement with FM operator? If yes, then should there be any restrictions including on the number of FM radio channels that may be re-transmitted by a DPO?

Our submissions in relation to Issue No. 13, 14 are as follows –

Our Clients reiterate what was stated in the preceding paragraphs and further set out as under :

10. The **broadcast/re-broadcast/communication to public of any copyrighted content is an exclusive statutory right provided to a copyright owner** under the Copyright Act,

1957. Every owner of copyright has been provided with a bundle of exclusive rights under Section 14 of the said Act. These exclusive right under the Copyright Act can be exploited by the owner itself or through a Licensee/Exclusive Licensee but not otherwise.

11. Any use/exploitation of a copyrighted by a Licensee is dependent upon and restricted to the terms of the License granted by the copyright owner. Any use, including any broadcast or re-broadcast of a copyrighted content by any person either **in absence of a written License from the owner or in excess of the terms of the License granted to him amounts to copyright infringement** under the Copyright Act which is punishable with civil as well as criminal consequences.
12. Whether an FM operator which has been permitted to broadcast/transmit copyrighted content over his radio FM channel can also broadcast/transmit the same content to other modes and mediums such as DTH, HITS, IPTV and other Platform Services (PS) or not, is subject to the terms of the License Agreement between such FM Channel and the Licensor (or the Copyright Owner). Permitting any DPO or an FM operator to re-distribute or re-transmit any FM radio channel over any of the Platform Services in absence of a voluntary License from the owner of Copyright or in excess of the terms of an already entered License Agreement with the Copyright owner shall amount to an infringement of the exclusive copyright of the copyright owner.
13. The right to grant a License in any copyrighted work for its exploitation on any mode or medium of exploitation including especially the Platform Services is vested exclusively with the copyright owner, which power, is found within the four corners of the Copyright Act itself. The right to issue a copyright License on any particularly mode or medium of exploitation or modify the terms thereof is within the exclusive domain of a copyright owner.
14. It has been repeatedly held by various courts across India that Copyright Act is a complete code in itself and all issues relating to copyright have, including use, exploitation, transfers, violations thereof have to be dealt with within the four corners of the Copyright Act. Furthermore, section 16 of the Act clearly illustrates the intention of the Legislature that there shall exist no copyright outside of what has been provided within the Copyright Act.
15. The Consultation Paper claims: "*Should DPO be permitted to re-transmit already permitted and operational FM radio channels under suitable arrangement with FM operator?*" This implicitly assumes that FM radio channels have the right and authority to permit re-transmission of their music airplay to DPOs regardless of the terms of their License Agreement with the copyright owner.
16. Above assumption in Issue 14 is untenable, wrong, without jurisdiction and void. This, it is submitted, goes contrary to letter and spirit of the Copyright Act and undermines the exclusivity of the copyright owner's rights and further renders the terms of a copyright owner's voluntary License with any FM Radio operator meaningless.



FACTS ABOUT AIRPLAY OF MUSIC BY FM RADIO STATIONS:

17. As present it is estimated that about 70-75% of the content aired by FM radio stations is music i.e. Film and non-film songs. The remaining 25-30% of content consists of advertisements/commercials, RJ talk, listener interaction, weather/traffic information, radio interviews. The Government has decided to permit FM radio stations to broadcast news content also. It is estimated that even after this, music content will remain take up a considerable time or air-play.
18. Our Clients have created and/or acquired the sound recording content after putting in hard work, skill and talent, identifying and promoting skill and talent which they undertake the risk, creativity, costs and investments towards creation and marketing, all financial risks, etc. It is also estimated that a significant portion of music content created is not successful commercially and therefore Our Clients often do not recover costs of the music they have created.
19. It is well-settled law that a radio broadcaster has to obtain a License prior to playing any music from the owner of Copyright, before broadcasting a sound recording and the terms of the license would contain the consideration to be paid to the music owner.
20. As per GOPA agreement executed between the FM radio station and Central Government, territorial restrictions have been imposed. Further, under GOPA, the FM radio station has no right to re-transmit or parallel-transmit say through internet simulcast or through cable operator or DTH or otherwise.
21. Even now certain cable operators and other platforms are transmitting songs/music, without a License from the owner of Copyright and this amounts to an infringement of Copyright.

RECOMMENDATIONS:

1. FM Stations do not have the right to permit DPO's to re-transmit any content that is owned by Our Client. THE FM Stations themselves are licensee's of Our Client's content and the license restricts it in terms of medium and geography and therefore these cannot be ignored. In the event that a DPO wishes to exploit some content owned by Our Client, it should obtain a license directly from Our Client/Copyright Owner.
2. No DPO or FM Radio provider should be given the permission to re-transmit or re-broadcast copyrighted content under already permitted licenses without express permission/consent of the owner of the copyrighted content. TRAI must correct and



clarify that any permission from FM radio station for re-transmission cannot include copyrighted music content.

We would be willing to assist with any further details that you require in relation to this matter including meetings if so required.

Yours sincerely,

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Neel Mason

(Regn No. D/615-R-1997)