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WITHDRAWAL OF OFFICE MEMORANDUM ISSUED BY DPIIT EXTENDING THE SCOPE OF SECTION 31D TO INTERNET TRANSMISSIONS

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On 21 August 2024, the Department for Promotion of Industry and Internal Trade (DPIIT) withdrew its controversial Office Memorandum No. 14-35/2015-CRB/LU (IPR-VII) dated 5 September 2016 (Office Memorandum). The said memorandum included internet broadcasters within the scope of entities covered under Section 31D of the Copyright Act, 1957 (Section 31D).

Background

Section 31D had been introduced by way of the Copyright (Amendment) Act, 2012 (2012 Copyright Amendment) and provided a mechanism for broadcasting organisations to approach the Copyright Board (now Commercial Court) for a statutory license to exploit literary works, musical work or sound recording by way of broadcast. The DPIIT, by way of the Office Memorandum, issued a clarification stating that Section 31D may not be restrictively interpreted to be covering only TV or radio broadcast but would include all kind of broadcast, including internet broadcasting.

Proceedings before the Bombay High Court

In January 2018, Tips Industries Limited approached the Hon'ble High Court of Bombay against Wynk Industries Limited seeking injunction against the unlicensed use of copyrighted works by Wynk on its streaming platform, i.e. Wynk Music. In its defence, Wynk relied on the Office Memorandum to state that it can take the benefit of Section 31D, as it is involved in internet broadcasting.

However, the Learned Single Judge of Hon'ble Bombay High Court, vide order dated 23 April 2019 (Tips Industries Limited v Wynk Industries Limited [2019 SCC OnLine Bom 13087]) held that a statutory license under Section 31D is not available to internet broadcasters such as Wynk. The Hon'ble Court noted that at the time of the 2012 Copyright Amendment, the legislature was well aware of digital technologies and music download/streaming, but, in its wisdom, only included radio and television broadcasting within the scope of Section 31D. The Hon'ble Court further noted that the mechanism provided under the Copyright Rules for implementation of Section 31D was only limited to radio and TV broadcasting.

Wynk preferred an appeal against the said judgement before the Division Bench of Bombay High Court, which upheld the order of the Single Judge vide judgement dated 20 October 2022. The matter now stands settled between the

parties vide order dated 18 June 2024 with Wynn agreeing to pay INR 12 crores plus taxes for its use of Wynn's repertoire.

Withdrawal of the Office Memorandum

The DPIIT, taking into account that the issue of whether internet broadcasting could be included within the ambit of the statutory licensing scheme by the Hon'ble Bombay High Court, withdrew its Office Memorandum vide another Office Memorandum dated 21 August 2024 for clarity of all stakeholders, such as Indian and foreign internet streaming platforms as well as right holders.

Comment

The withdrawal of the Office Memorandum by the Department of Promotion of Industry and Internal Trade is a positive step in ensuring clarity with regard to the scope of Section 31D. The withdrawal also ensures that no party wrongly attempts to rely on the Office Memorandum to avoid compliance with the provisions of the Copyright Act, 1957.

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