

Copyright Amendment Rules 2019

written by Sindhuja Kashyap | July 1, 2019

The Department of Promotion of Industry and

Internal Trade introduced the draft Copyright Amendment Rules 2019 ("Draft Rules") vide their press

statement dated May 30, 2019. This was introduced to adapt the copyright law in

light of the technological advancement in digital era and to bring them in uniformity with other relevant legislations. The copyright regime is governed by the Copyright Act, 1957 ("Act")

and the Copyright Rules, 2013 ("Rules").

The Copyright Rules, 2013 was last amended in 2016 and the present Draft Rules

are open for objections and suggestions.

Key Highlights - Copyright Amendment Rules 2019

In this Article we shall

discuss the salient features of the Draft Rules as follows:

- Shift from Copyright Board to Appellate Board

The Draft Rules proposes

to replace the 'Copyright Board' with the Appellate Board which shall mean all

the matters being presently handled by the Copyright Board shall be shifted to

the Intellectual Property Appellate Board and the members to be appointed shall

be as per the provisions of the Trade Marks Act, 1999. This proposal comes in compliance to Section 160 of the Finance Act^[1].

- Digitization

Notice

for various applications were required to be served on the owner of the copyright or such other person by registered post. However, the Draft Rules brings about a medium of serving notice through electronic means as well.

Further, all grant of licenses and such other permissions or information as were required to be notified in the official gazette are now required to be published on the website, thereby making it more public friendly. The Rules required the copyright societies to maintain the registers in physical format at their registered or administrative office. However, the Draft Rules proposes

that every copyright society shall maintain the registers in physical or digital format.

- Copyright Societies

Earlier,

a copyright society was required to be registered by the Central Government within sixty days from the date of receipt of the application by the Registrar

of Copyright. However, such a strict timeline is proposed to be deleted in the

Draft Rules, leaving the Central Government with a capricious timeline to keep

an application for registration pending for approval.

Further,

following functions of copyright societies have also been amended by the Draft Rules:

- Tariff scheme

Draft Rules proposes to amend Rule 56, dealing with tariff scheme wherein while the Rules required the copyright society to follow

the guidelines issued by any Court or Board and consult the user groups if required while determining the tariff, the Draft Rules has brought in additional guideline of considering the following:

1. Cross-sectional tariff comparisons
2. Economic research
3. The nature and scope of the use of the work
4. The commercial value of the rights in use
5. The benefits to licensees

Further, in case of an appeal against a tariff scheme, the Draft Rules do not provide for any interim tariff to be determined

or paid by the appellant pending disposal of the appeal.

- Annual Transparency Report

Every copyright

society is mandated to hold a general body meeting and certain documents to be

placed during the same. The Draft Rules had introduced a new document called the 'Annual Transparency Report' ("Report") which is required to be placed before the general body meeting and has been dealt in detailed in Rule 65A, a new insertion by the Draft Rules. The copyright society is required to draft a

special report for each financial year within six months following the end of that financial year, which is mandated to be published on their website for public review for at least three years. The Draft rules provide for list of disclosures and information mandated to be made part of the Report. This is the

first time, copyright society have been brought under direct scrutiny of the public and an attempt to create a transparent system has been made.

- Royalty distribution

Copyright societies are responsible for collection

and distribution of royalties on the basis of the tariff schemes. The Rules had

for long failed to determine the process and dealing with the undistributed royalty as collected by the copyright society and the same has been rectified by the Draft Rules. The Draft Rules mandate the copyright society to keep such

royalties that could not be distributed in a quarter, to the authors or other owners due to them being not identified or located, in a separate account.

Further, the copyright societies have an onus to ensure necessary measures in

determining the author and owner are taken and the relevant information of the

same are published on their website at the end of every quarter. In case the royalty due to the author and owners remains undistributed at the end of the period of three years calculated from the end of the financial year in which collection of the royalty was completed, the Draft Rules mandate the copyright

society to refund such amount to the licensee within three months. It is pertinent to note, any such refund does not limit the right of the author or the owner to claim such an amount from the copyright society or the licensee within the limitation period as applicable to such civil proceedings.

- Voting Rights

Each member of the society was provided with equal voting rights in general body meeting. However the Draft Rule proposes a change

in the voting rights which are determined and applied in a fair and proportionate manner on the basis of one or more of the following criteria:

1. Number of works and rights or set of rights authorised by the owner
2. Duration of the membership
3. Amounts received or due to a member

- Performance

The

Rules provided that for the purpose of Performers' society and performer's rights, performance included recording of visual or acoustic presentation of a

performer in the sound and visual records in the studio or otherwise.

However, the inclusive definition of

performance has been done away with by the Draft Rules and is left for a wider

interpretation. It would be interesting to note how the same shall be interpreted by board and various courts in future.

- Statutory Licensing on Internet Broadcasting

The Draft Rules have arrived right after the decision by the Bombay High Court in the case of *Tips Industries Ltd vs Wnyk Music Ltd and Anr*^[ii] wherein the Court had clearly stated that statutory licensing under Section 31D of the Act is meant only for radio and television broadcast and excludes internet broadcasting. Further the Court also rejected the Office Memorandum issued by the Central Government^[iii] wherein internet broadcasting was interpreted to be covered in Section 31D. This case was discussed in detail by us.

The Draft Rules have

attempted to replace the broadcast from being limited to radio and television and has extended it to each modes of broadcast in rules 29, 30 and 31 of the Rules that dealt with the issuance of statutory licenses for broadcasting.

The amendment is likely to bring a turbulence

in the internet broadcasting giving ample opportunities to claim benefit under statutory licensing.

Conclusion - Copyright Amendment Rules 2019

While the amendments and insertions are all made with true intent to adapt the law with the present technological advancement in the society, the concern only lies with regard to the statutory licensing and the broadening of scope there under. It is a well settled principle of law that rules drafted to any act obtain its power from that act and can at no point be ultra vires to the same act. In case of issuance of any such rules that are ultra vires to the act, such rules are required to be quashed as void. A rule must be in accord with the parent statute as it cannot travel beyond it.[iv] A Rule to have the effect of a statutory provision, it must fulfill two conditions, firstly it must conform to the provisions of the statute under which it is framed and secondly, it must also come within the scope and purview of the Rule making power of the authority framing the Rule and if either of these two conditions is not fulfilled, the Rule so framed would be void.[v] Further, where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy.[vi] This implies that if a rule is directly hit for being violative of the provisions of the enabling statute, then the Courts need not have to look in any other direction but declare the said rule as invalid on the said ground alone.[vii] It would be interesting to see the views of the Court in case of a dispute on the statutory licensing for internet broadcasting, in the absence of any amendment to the parent act but presence of a mere amendment in the rules.

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[i] <http://www.dhc.co.in/uploadedfile/1/2/-1/Finance%20Act%202017.pdf>

[ii] <https://drive.google.com/file/d/1A97o4SBgaNYT2hNRZ7DCl0fVwtaNF9s6/view>
[iii]

https://dipp.gov.in/sites/default/files/OM_CopyrightAct_05September2016.pdf

[iv] *Union of India v. S.*

Srinivasan : (2012) 7 SCC 683

[v] *General*

Officer Commanding-in-Chief v. Dr. Subhash Chandra Yadav: AIR

1988 SC 876

[vi] *State of T.N. and Anr. v. P. Krishnamurthy*

and Ors., (2006) 4 SCC 517

[vii] *ibid*

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