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**CASE ANALYSIS OF M/S. NOVEX COMMUNICATIONS  
PVT. LTD. V. DXC TECHNOLOGY PVT. LTD., C.S. NO.  
407 & 413 OF 2020 (MAD HC)**

AUTHORED BY – MEHER & DR. KAJORI BHATNAGAR

## **INTRODUCTION:**

Intellectual property has become one of the most sought after properties in the era of data and information. There are business models which solely run on intellectual property. The intangibility of the property makes it easier for exploitation along with giving huge returns to its owner. This very nature of intellectual property compels the creators and the government to create a fool proof mechanism which balances the returns and prevents exploitation. Even in the most infallible laws there are loopholes which powerful organizations and companies deem it worth to exploit. These violations call for societies which plan to protect the interests of the owners of intellectual property in good faith. Then there are the societies which plan to further monopolise. Every time the society and the market tends to take piecemeal measures to build up a perfect competitions market with a proper transparent economy there are the counter forces acting up to monopolise the resources. This is an recurrent loop which is inevitable to have the intellectual property ecosystem running. To soften the blow to the economy the laws brought in licensing. Copyright licensing is one of the most famous among intellectual property licensing because of the array of subject matters it covers. The licensing of anything ranging from music to machines and software made licensing process a national income. Essential licensing should include meeting of minds like any other contract. It is also pegged to be the most rewarding aspects of intellectual property.<sup>1</sup> This case analyses the issuing of licenses and how authors can be manipulated by monopolizing the issue of licenses.

## **FACTS:**

The plaintiff filed the case against the two defendants for infringement of copyright of sound recordings. The plaintiff was assigned the copyright to certain sound recordings by their owners

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<sup>1</sup> Geetanjali Mehlwal, *Intellectual Property Licensing: Discovering its Facets*, 10 JIPR, 214-220 (2005).

eventually making the plaintiff the owner of such sound recordings. The plaintiff claims that the performance rights are also included in the assignment agreement and the defendants have infringed the right by playing the songs in different functions without proper licensing. The defendants claim that the plaintiff has no authority to grant licensing, and is charging exorbitant fee without being registered as a copyright society as under section 33(1) of the 1957 act.

### **ISSUES:**

Whether unregistered third parties can license music and other copyrighted works?

Whether **only** copyright societies can grant licenses?

### **LAWS:**

COPYRIGHT ACT, 1957

SECTION 2(d) defines author with respect to different copyrightable works.

SECTION 2(ffd) defines “copyright society”-- means a society registered under sub-section (3) of section 33.”

Section 18 talks about the assignment of copyright, who is entitled to the royalties and further rights if any. The royalties cannot be waived off, it also talks about the assignee becoming the authorizing agent despite the author being original owner of the copyright.

Section 19 talks about the mode of the assignment and the period of assignment if nothing is mentioned it would be 5 years from the date of assignment.

Section 30: it talks about licensing by the owners of the copyright- The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing by him or by his duly authorised agent: Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence.

Section 33: Registration of Copyright Societies- (1) **No person or association of persons shall**, after coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994) commence or, carry on the business of issuing or granting licences in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (3):

Provided that an owner of copyright shall, in his individual capacity, continue to have the right to

grant licences in respect of his own works consistent with his obligations as a **member of the registered copyright society**: Provided further that the business of issuing or granting licence in respect of literary, dramatic, musical and artistic works incorporated **in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered** under this Act

### **JUDGEMENT:**

The Madras High court disagreed with the previous High court judgements of that of Delhi High court and Bombay high court. The reasoning given by these two courts have different value to the issue at hand, nevertheless are very much relevant to signify the intent of the statute. The interpretation taken by the Madras high Court is completely in dissent with the previous two decisions by other high courts. The Madras High Court signifies the use of the word “only” and emphasizes on the fact that the copyright societies alone are the authorities who can get into the business of granting licenses. The provisos of section 33 are rather complementing each other than making it mutually exclusive. The court lays importance on the fact that the first proviso clearly talks about the authors and license grantors in individual capacities whereas the second proviso talks about organizations like that of Novex communications. Since Novex Communications is an entity which is involved in a business of owning copyrightable material like sound recording it is a prerogative to be registered as a copyright society without which there is no authority to give licenses. The registration and granting of licenses are not contingent to each other but are a mandate established by the statute. Since there is a bar on the organization the fictitious rights violated do not exist. Therefore the court held that there is no liability on part of the defendants, as there is an embargo. The court held that the whole cause of action is misconceived and there is no cause of action. The plaintiff was directed to pay Rs. 1,00,000 to each of the defendants.

### **ANALYSIS:**

The contentions of the parties throw a significant light on how to view the conflicting interests the different sections of the copyright act protects. The contentions of the plaintiff go as follows:

The plaintiff is the rightful owner of the sound recordings as there is an assignment agreement under section 18(2) and according to section 30 the rightful owner can grant licenses. The plaintiff being the owner is exempted from the joining of a copyright society as under section 33 as he has the

authority under section 30. The plaintiff also takes the protection of section 34 of the act which talks about the fact that the joining of copyright society is a voluntary act and nothing can act as an embargo on the organization which is an owner of copyrightable works to grant licenses.

The contentions of the defendant go as follows:

The defendants claim that the section 33 does not give the exception to the owners who are organizations. They also claim that the work so protected by novex communications does not include performance rights, they just own the sound recordings. The defendants also highlight the 2012 Amendment which was brought in to restrict the exorbitant amount of royalties organizations like novex collected. The purpose of section 33 would be nullified if Novex communications was allowed to grant licenses.

From the arguments we can analyse the effect of this case on the copyright law in the following manner:

Compulsion to be a member of a Copyright Society: Copyright societies have already sabotaged the purpose of copyrights. With the increasing amounts of royalties they are charging they are manipulating competition in the copyright market. The unfair trade practices and the predatory pricing has become a common scenario for copyright societies. While the 2012 amendment to section 33 was brought about to prevent this effect where unscrupulous activities were carried on by the big organizations by snatching the rights form the original copyright owners and licensing them at incessantly higher price, even going to the extent of charging per minute. The copyright act sought to curb this practice by bringing in copyright societies but they follow the same track and now it is in the governments' hands to regulate the competition. Seeking to monopolise creations is one of the after effects of copyrights statutes but monopolizing to the extent of even the author not enjoying the benefits is atrocious and against copyrights in their true sense. The mandate of the act to be registered in copyright society is violating the act in various ways but the courts seem to ignore the greater picture. The courts so far have decided on the very myopic issue of interpreting only and the difference between individual and organizational rights when it comes to licensing. The greater picture here is the loss to individual rights and boosting the copyright societies. With this judgement although the courts clarified the legislative intent of the word shall and only in the section 33 they have ignored their duty to the stakeholders involved.

Source of Power: source of power to grant license is obtained from the statute in the case of copyright societies, whereas in the case of unregistered third parties it is the contract of agency. In the present case there is contract of agency unlike the previous case of M/sLeopold Café Stores v Novex Communication<sup>2</sup>. The Bombay High Court in the above stated case nullified the power to grant license on the basis of lack of assignment agreement as that is the contract which gives the ultimate power to grant licensing making the corporations the owners of copyright. Factum of agency is duly established in this case therefore it cannot be a contention for restricting the power. There need to be a harmonious construction to reconcile both conflicting interest of section 33 and section 30. Although they are complementing interests the interpretation should be in way to supplement each other fulfilling the final objective of the act on whole. The same reasoning of source of power goes when there is a question of second proviso being an exception to the first proviso. The present court substantiated with the differentiation between individual capacity and business. When someone is involved in a business they should be registered in a copyright society but an individual is free to grant license even if not registered.

Interpretation of the word 'Business': the court was mainly focused on this word after giving ample importance to the word 'only'. The word of business has been interpreted stating that the same has not been used in section 30 whereas it appears in section 33. This court focused more on section 33 as opposed to the harmonious interpretation given by Bombay High Court. The interpretation can be seen in the paras 27- 30 of the judgement. The court took a two-fold rationale by interpreting business and only. The court further emphasizes on the meaning of business<sup>3</sup> by using certain judgements.

Precedents: this is not the first time the court is faced with the issue of section 30 v. section 33. In the case of Event and Entertainment Management Association (EEMA) v. Union of India<sup>4</sup> the court held that not beign registered under copyright societies proscribes the organization form granting licenses but the court did not substantiate much on the topic. Whereas in the case of Novex Communications Private Limited v. Lemon Tree Hotels Limited<sup>5</sup> the court held the opposite and did not differentiate between the business and individual capacities. The court differentiated between the sound recording

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<sup>2</sup> 2014 SCC Online Bom 4801

<sup>3</sup> State of M.P v.Mukesh, 2006 13 SCC 197.

<sup>4</sup> 2017 SCC Online Del 12740.

<sup>5</sup> 2019 SCC Online Del 6568

and the musical rights in the sound recordings. This case differentiated between the different kinds of copyrightable works and noted that it is hard to decide whether a particular is a business entity, which will nullify the provisos if the licensing authority is granted on that basis.

### **CONCLUSION:**

As of now a Supreme Court Judgment or an amendment will only clarify the stance on this section. The courts have done their course of action which resulted only in the piecemeal bearings on the stakeholders. The courts have tried to clear the ambiguities as always and made it more complex. The courts have to look at the bigger picture rather than sticking to the tradition role of interpretation. The present case is an example as to how detrimental the interpretational duties of courts can prove to be to the ecosystems and markets at large. The harmonious balance in all the interests is hard to obtain but the least the courts can do is to clarify the position without complicating the meaning of the amendments. Another noteworthy part of this judgment is the use of a law commission report to substantiate the claims, and how authoritative it can be when it is the question of interpretational issue. On the whole the case is an addition to the huge literature there is on section 33 and section 30. It being digressing judgement from its predecessors makes it a unique one.

