

still around are there more out of love and passion than out of pure business interest. But even they are finding it difficult to survive in the current market scenario.

The national exchequer is losing huge revenue that can be earned from legal sale of music. The shutting down of iconic music stores because of non-existent physical sales is caused mainly because of piracy and unethical downloads from illegal websites that enjoy the liberty and freedom to carry on with their illegal and unethical business in the absence of stringent laws on the one hand and the absence of application of available laws on the other. Music Labels show little or no interest in recording new music and talents. The morale of many artists is also at an all-time low. This will affect the listeners who will be denied the privilege of listening to new generation of talents and to their favourite singers and music makers.

CHAPTER II

COPYRIGHT-BASED INDUSTRIES AND NATIONAL ECONOMY: AN ANALYSIS

THE FRAME

Copyright law has provided the necessary incentives to the creative industries to further the cultural progress of the nation. Copyright protection is viewed as the ‘reward’ given to the authors for their contribution in the society in the form of original and creative works. The exclusive property rights, granted by the provisions of the Copyright Act, 1957, to the authors allow them to exploit their creative works. It allows them to retrieve the investment, they have made in the form of time, energy, money, skill, etc. The copyright law enable the authors to transfer their ownership of the works by way of assignment and licensing for effective appropriation of the market value of their works. This assignment and licensing of copyrighted work lies at the core of the music industry and helps in deriving appropriate economic benefits. World Intellectual Property Organisation has broadly classified the copyright industries into three major categories: Core copyright industries, Copyright-dependent industries and other Copyright industries.

Copyright law sets the suitable legal framework for generation of wealth. The value of copyrighted works keeps growing with the increasing copyright protection. Apart from value creation, it also facilitates employment of significant number of persons in the industry. Not only the core copyright industries get benefitted from this, but also the industries, which are partially dependent on the core copyright industries, receive the advantage in the value chain system. Emergence of digital technology has expanded the role of the copyright based industries in respect of revenue generation. Internet has enabled a paradigm shift in the music business model with the ease of wide dissemination of music to the consumer. With the ease of copying of music and its further dissemination, it becomes very much important to effectively enforce the nation’s legal regime related to copyright protection to continue the generation of national income from the creative industries.

THE FOCUS

The present study intends to analyse the wide-scale copyright infringement of sound recording and the consequent economic loss caused to the film music industry due to the same. Keeping this intention in consideration, this chapter will primarily focus on understanding the role the copyright based industries play in strengthening the national economy. The exclusive rights conferred by the provisions of copyright law allow the right holders to commercially exploit the copyright protected

work. The transfer of these rights to the producers and other stakeholders further the commercial appropriation of the work. This industry is a source of livelihood for songwriters, composers, lyricists, producers of sound recordings and all those who are related to the entertainment industry. Therefore this chapter will give emphasis in studying the economic perspective and economic functions of music copyright as well as the importance of copyright based industries in the national economy.

THE OBJECTIVE

The present chapter aims to elucidate the major economic characteristics of music copyright. It also intends to study the economic functions and consequences of music copyright. It attempts to classify different categories of copyright based industries and their specific contributions. Moreover, the chapter seeks to elaborate the contribution of Indian media and entertainment industry and also highlight the revenue generated by this industry in the national economy. All these objectives are in consonance with the central theme of the study. This chapter intends to establish the economic significance of the copyright based industries in the development of the national economy and consequently wants to argue for the effective enforcement of copyright law. The piracy of copyright protected material results into loss of the revenue that these industries are expected to create. Enhanced copyright protection will secure increased revenue leading to overall economic growth of the nation.

II.1. The economic perspective of copyright

Copyright is the livelihood for millions of creators – individuals or companies – who are enriching the world with their talent, imagination and emotions. Nothing is more fundamental to copyright law than the concept of incentives.¹³² The primary way in which the law promotes creativity is by providing creators with the incentives to create and to distribute copies of their work to the public. In this context, it is very much pertinent to focus on economic incentive perspective. The United States Constitution employs incentive theory in vindicating protection of intellectual property rights. The Constitution expressly conditions the grant of power in the copyright clause to promote the progress of arts. The Supreme Court of United States in *Mazr v. Stein*¹³³ observed that “the

¹³² Sara K. Stadler, *Incentive and Expectation in Copyright*, 58 *Hastings L.J.* 58 (2006).

¹³³ 347 U.S. 201 (1954)

economic philosophy behind the clause empowering Congress to grant copyrights is the conviction that it is best way to advance public welfare through the talents of the authors in useful arts. Sacrificial days devoted to such creative activities deserve rewards commensurate with the services rendered.” Moreover, according to the European Directive on Copyright in the Information Society¹³⁴, the principal aim of copyright is to promote “innovation and creativity” in the regulated sector.

It is pertinent to understand the consequence of absence of intellectual property protection to justify granting exclusive rights to the creators of original works. Creation involves the investment of different types of resources in the form of the time of an author, expenditure on facilities and supplies, etc. In a private market economy, investment will not made for production of creative works except the expected return from doing so surpasses the cost of doing so. Therefore, copyright protection is *sina qua non* to encourage investment in the process of creation. In the absence of copyright protection, others will copy or otherwise duplicate the creative work without making the necessary costs and effort of creation. This hinders the original creators from making a profit in the form of return of the investment made.

The existence of intellectual property rights encourages creators to pursue their creative efforts. If they can obtain the right to prevent others from copying their creations, then they stand a much better chance to reap a profit. Hence they will be much more inclined to make the initial investment in creation. In the end, not only will the creators be wealthier, but the public will be enriched by the new and better creations brought forward by intellectual property protection.

In order to make a positive contribution to the socio-economic development of the country, it becomes very much important to recognize and reward the creator as well as protecting the rights of those, making investment in the process of making creative works. Therefore well enforced copyright system is one of the strong requirements in for economic reform and also in liberalizing and restructuring of the economic and trade policies. Consequently this results into national growth and development in terms of economy.¹³⁵ In the economies of industrialized countries, copyright protected works and the industries are important contributors. The economic significance of

¹³⁴ DIR 2001/29/EC, Sec. 4

¹³⁵ Shahid Alikhan, *The Role of Copyright in the Cultural and Economic Development of Developing Countries*, 7 *Journal of Intellectual Property Rights*, 489, 490-91 (2002).

copyrighted works is increasing immensely because information and communications technologies provide the basis for value creation in different industries in developed societies.

Creation of knowledge as well as development, processing and use of information have put copyright in the prime focus, because the industries that produce copyrightable work provide the central communication links and content that are used in other economic sectors of the information society.¹³⁶

The utilitarian justification of copyright protection brings the supply of protected works closer to a socially desirable level. Copyright is considered to be a ‘natural right’ of creators in the output of their work. The economic approach to copyright is grounded on two notions: first, copyright is subject to trade-offs with other objectives and values; second, copyright is worth discussing whether this function is attained efficiently.

Traditionally copyright has been studied from its legal perspective. However, recently the focus of study has moved towards the economic characteristics of copyright. It is very apparent how copyright plays a pervasive role in the arena of production, distribution and consumption of creative works. From the commercial point of view licensing, investment, trade and transfers have generated a fair amount of attention. Copyright is a part and parcel of the legal system ensuring an effective environment for creative works in different markets.¹³⁷

This increasing interest is due to several reasons. First, in the post-industrial society copyright has achieved significant recognition, where focus is more given to non-material factors. Particularly, in respect of growth and productivity of employment, investment made in production of creative works, copyright plays a pre-dominant role. Secondly, digital technology has expanded the scope of subject matter for copyright protection. As a result, economic gains from multimedia and technology based commodities gained new heights. Thirdly, digital revolution has placed copyright protected material as an important element in commercial and digital transaction.

¹³⁶ Robert G. Picard and Timo E. Toivonen, *Issues in Assessment of the Economic Impact of Copyright*, 1 Review of Economic Research on Copyright Issues, 27, 30-31 (2004).

¹³⁷ World Intellectual Property Organisation, WIPO Guide on Surveying the Economic Contribution of Copyright Based Industries.

In studying the intersection between law and economics, the economic analysis of the doctrines in copyright law is an emerging field. The economic theory of copyright law provided a strong basis for copyright based industries. With the growth of such industries more researchers and practitioners became increasingly involved in connecting theory with practice to show how the copyright protection is a significant factor of the economy, expanding more quickly than the rest of the economic sector. Several countries and scholars have done studies, reflecting and providing indication for the remarkable role of copyright and related rights, by way of strengthening the cultural and information industries to the national economy. By different surveys and measurement of the benefits, value and growth of the copyright and related rights based industries have been established.

II.2. Major economic characteristics of copyright

In many respect the characteristic of copyrighted works are different from that of tangible property and economists have always considered these differences in their analysis.¹³⁸ The following economic features of copyright are required to be elaborated in the present context.

II.2.i. Copyright is a property right

Copyright is recognized as a private property right. In a literary or artistic creation or work. Property rights refer to the ability of individuals to own, buy, sell and use their property in a market economy. In case of copyright this right acquires more significance since it confers the sense of probability of excluding others from the use of property. Therefore, the copyrighted work obtains a measurable value and also assists it to put the work into commercial use effectively.

II.2.ii. Copyright is different from means of delivery

The copyright protected work and the “means of delivery” by which the work appears in the market and is made available for consumption has to be distinguished carefully. For instance, a song is protected by copyright, but a music CD is a means of delivery. In this present context, the principal difference is that the copyrighted work has the feature of a public good, whereas the means of delivery is a private good. The expression ‘copyright’ basically refers to the intellectual property

¹³⁸ Richard Watt, *The Past and the Future of the Economics of Copyright*, 1 Review of Economic Research on Copyright Issues, 151, 155-56 (2004).

aspect of the work and not the means of delivery. Generally, the copyright-based industries and the cultural activities in general are connected with the means of delivery. So, the means of delivery performs the purpose of an intermediary between the original copyright and the market.

Two more additional differences can be discussed here. Firstly, although copyright has a statutory duration, the means of delivery in which the protected work exist, extend beyond their product life a long time before the expiry of duration of copyright. Secondly, the means of delivery contain different other types of works. This situation can be explained through the instance of a Compact Disk. The lyricist(s), composer(s), the record company and the performers, all the stakeholders here pursue different rights and possess varied significance in the pertinent markets. The existence of multiple rights poses a hindrance in measuring the precise value contributed in respect of each of the rights involved herein. This connection between the copyrighted content and the means of delivery is mutually complementary and increase each other's value mutually.

II.2.iii. Copyright has some “public good” aspects

Cultural creations retain some public goods feature. Works protected by copyright can be put into use simultaneously at the same by several users. Moreover, this does not reduce the consumption of the work by individual user separately since the present user does not possess less when new users start consuming the work. In addition to this it is impossible to eliminate free riders, except at a particular cost. This public goods aspect convey cultural, social and economic benefits to the community. The benefits create a sense of identity and determine social values.

II.3. Economics of copyright & economics of copying

The distinction between economics of copyright and the economics of copying has been elaborated by William Landes and Richard Posner¹³⁹. The economics of copying is concerned with its consequence on the economy, imposed by the technical means of reproduction. The economics of copyright concentrates on the result of the legal framework. If there is a loss of welfare, it will result in some intervention in the market, such as copyright law. Today copying has become easier and cheaper over a period of time because of the advancement of copying technologies. Consequently, the relative costs of creating, reproducing and consuming copyright works are also

¹³⁹ W.M. LANDES AND R.A. POSNER, THE ECONOMIC STRUCTURE OF INTELLECTUAL PROPERTY LAW (1st ed. 2003).

taking new dimensions. Increase of the cost of unauthorised copying, leads to welfare loss. This effect appears to be less critical where the cost of copying is very low.¹⁴⁰

The effect of the emergence of the newer technologies, which has enabled copying easier and cheaper is dealt with by the economics of copying.¹⁴¹ It also gives emphasis on the connection between “the fixed costs of creating the work in the first place and the marginal cost of making copies”. This situation is broadly connected with the state of existing technology. Initially the concern was limited to copying of books and printed material. However, with the advent of photocopying, it was replaced by type-setting. During late 1970s and early 1980s the focus changed to video and VCR home copying technology. Digitisation paved way for the next big step.

In the due course of time, the loss of quality caused by copying was significantly brought down. As a result the illegitimate copy became a close substitute for the original one. After the appearance of CD-burners on personal computers and home computers, the copying of digitalised content for private use became very convenient. The recent use of peer-to-peer (P2P) and MP3 technologies has enabled fast downloading of copyright works from the internet. Therefore the end of the twentieth century, brought a paradigm shift in the domain of private copying. It brought the marginal costs of making private digital copies to be virtually zero.

II.4. Economic functions and consequences of copyright

When the copyrighted work is put into its commercial use, it performs its economic functions, which have different ramifications on the economy. The law of copyright intends to set the right balance between different economic effects. On the one hand, there is involved investment in the creation of original works and the effective distribution of the works. On the other hand, there is protection and enforcement of the copyright. This balance sought to be maintained by way of the principal functions and consequences of copyright law.

¹⁴⁰ C. Handke, *The Economics of Copyright and Digitisation: A Report on the Literature and the Need for Further Research*, (Nov. 14, 2013, 5 PM) <http://www.ipo.gov.uk/ipresearch-economics-201005.pdf>

¹⁴¹ Ruth Towse, Christian Handke and Paul Stepan, *The economics of Copyright Law: A Stocktake of the Literature*, 5 Review of Economic Research on Copyright Issues, 1, 5-6 (2008).

Firstly copyright law protects the copyright of original works. It identifies the types of works to be put in commercial work and prescribed the legal framework for this commercial use. Therefore, copyright law enables the trade with the protected works and is a pre-requisite for the transactions in the market. Lack of copyright protection makes the trade in creative works less profitable for the right holders. Secondly, copyright balances productive efficiency with distributive efficiency. For obtaining the economic value, the cultural products are required to be disseminated in a continuous manner. This in turn leads to economic sustainability providing adequate reward to the creator.

Therefore, copyright protection ensures returning the appropriate market value of their works to the creators. The market guarantees the economic value of the work by providing the statutory protection. The efficiency of copyright law depends on the extent to which the economic functions of copyright are successfully performed. The economic nature of copyright law has the following consequences: Firstly, copyright owner can set the market price at a “monopoly” and not at a competitive level¹⁴² and secondly the copyright holder can make price discrimination according to the level of accesses, depending on the other market participants.

Law of copyright ensures creation of optimal amount of creative works and permit the efficient distribution of the intellectual property by way of market transactions. The creators of original creative works are required to be rewarded adequately for further creation of content. Creation of original works involves an initial fixed cost. When the intellectual property is attached to a delivery good and the same is produced and marketed, it involves a variable cost. Lack of protection of intellectual property leads to easy reproduction of the delivery goods and as a result the illegal goods of delivery will compete with the original one. This will result in loss of profits and will not bring adequate remuneration to the creators. Moreover, there will be an increase in the marginal cost of reproduction. If there is an effective legal system for the protection of the rights of the creators, the market price will not fall. Consequently, original copies will compete effectively with the pirated copies and creators can will be benefitted with just reward.

¹⁴² The monopoly in this case is not of a traditional type. In some literature the monopoly that copyright creates is assessed as no different from the monopoly that a worker has over his efforts. This is also a main reason for limiting copyright in time – in order not to enable the copyright holder to be a monopolist and price discriminator for an indefinite period of time.

II.5. Copyright in the milieu of the national economy

II.5.i. Multiple effects on the economy

As a result of addition of value¹⁴³ production of creative work characterises an economic activity. This economic effect is connected to the entire value chain in the market process. These results are produced on the creation, production, distribution and consumption of the creative works. Estimating the economic contribution of a copyright product includes studying the activities related to the multiple effects of copyright on the economy those of the stakeholders in the value chain in the entertainment industry. In the present context, the various stakeholders are creators, the right-holders, the distributors, users, equipment manufacturers, advertisers, etc.

II.5.ii. Economic organisation and the role of the government

Copyright law helps the right owners to control the commercial uses of their works. In this way the right holders get economic benefits from the commercial distribution of their copyrighted works. The supply and demand of the protected work in the market helps the right holders to fetch the proper commercial value of the work, not merely conferring of the rights by the statute. If the dissemination costs are too high and the demand is too low, copyright will produce no economic value. Therefore it is seen that, the economic consequences of the industries producing creative works bear an important effect on the involvement of those works in the economic transaction and ensures fair returns to the creators in the forms of royalties, wages, fees, etc.

II.6. The copyright based industries

Copyright based industries are based on certain aspects: Firstly, it is to be determined which are the industries to be studied and secondly, arrangement of them into definite categories as per the degree in which the activities of the industries are related to copyright. The existing studies follow different categories: core, partial, copyright dependent, etc. The expressions keep on changing depending on the country in which it is used. No uniformity is observed as such. The different

¹⁴³ By “value added”, is understood the difference between the values of goods produced and the cost of materials and supplies used in producing them.

categories are used to keep separate the industries, which are largely used on copyright from other industries which depend on copyright protected materials to a lesser extent

In this juncture, “industries” refers to clusters of activities which can be traced and are capable of being estimated by statistics. It also includes those activities which have a certain scale and structure. The surveying of the copyright based industries can be done by two ways – firstly by “examining the creation, manufacturing and distribution of works or copyrighted products” or secondly, “by describing those in terms of core, interdependent, partial and non-dedicated support industries.”

The WIPO Guide on Surveying the Economic Contribution of the Copyright Industries provides for four categories of copyright based industries – core, interdependent, partial and non-dedicated support industries.

II.6.i. Core copyright industries

The core copyright industries are referred to as those industries “that are wholly engaged in creation, production and manufacturing, performance, broadcast, communication and exhibition or distribution and sales of works and other protected subject matter.” The core copyright industries include activities, such as press and literature, music, theatre and opera, motion picture and video, radio and television, photography, software and databases, visual and graphic arts, advertising services and copyright collective management societies.

Core copyright industries function exclusively with copyrighted works and other subject matter. The principal task of these industries is creation, production and distribution of copyrighted material and related subject matter.¹⁴⁴

| Table: Copyright Industries | | |
|-----------------------------|---|---|
| Category | Definition | Industries |
| Core Copyright Industries | Industries that produce copyrighted works and other | Literature and press, music, theatre, film and video, |

¹⁴⁴ Robert G. Picard and Timo E. Toivonen, *Issues in Assessment of the Economic Impact of Copyright*, 1 Review of Economic Research on Copyright Issues, 27, 30-31 (2004).

| | | |
|--|---|--|
| | subject matter. Industry that would not exist without copyrighted works and other subject matter | photography, visual arts, radio and T.V., software and databases, architecture, advertising, industrial design. |
| Copyright Dependent Industries (required hardware) | Industries whose operations essentially depend on copyrighted works. Industries that would be considerably smaller without copyrighted works and other subject matter | Manufacture and distribution of electronics (TV sets, radios, VCR and CD players, etc.), manufacture and distribution of computers, manufacture and distribution of musical instruments, photographic and cinematographic equipment. |
| Other Copyright Industries | Industries whose operations are related to production, distribution or use of copyrighted works. Part of industry's output is copyright related. Industries that would be moderately smaller without copyrighted works and other subject matter | Jewellery, furniture, household china and glass, clothing and footwear, toys and games, wall coverings and carpets, engineering. |

II.6.ii. Interdependent copyright industries

The products that are consumed jointly with the products of the core copyright industries are produced by. These interdependent copyright industries are traced through identifying the

backward linkages,¹⁴⁵ as well as the forward linkages.¹⁴⁶ In certain cases, the term ‘independent copyright industries’ is referred in place of ‘non-core’ to establish the relationship between ‘core’ and related industries. This category includes manufacture, wholesale and retail of TV sets, radio CD recorders, computers and equipment, musical instruments, but also photographic and cinematographic instruments, photocopiers, blank recording material, etc.

II.6.iii. Partial copyright industries

The industries that deal only with part of production output, connected with copyright protected material, belong to the category of partial copyright industries. The subject matter of such industries includes design, architecture, jewellery, furniture or other crafts, etc. The last category, i.e., non-dedicated support group includes those industries that distantly depend on copyright material. However, these industries are still pertinent, since copyright makes some part of the trade.¹⁴⁷

II.7. Necessity of measuring value of copyright

Copyright law intends to prevent the loss of economic value accruing from the piracy of copyrighted materials. This loss from unauthorised dissemination of protected material differs from one copyright industries to the other. With the increase of copyright protection from zero, the total value from copyrighted material starts rising. However, with this increasing protection, after a certain point the total wealth produced by copyright starts to come down. The costs of enforcement and consumption increase with the rise in degree of copyright protection. The failure in market occurs in the form of rising copyright infringement and consequent declining demand for copyrighted work.

The national policy makers always intend to attain the optimum point of wealth creation from the commercial use of the copyrighted work. However, it is very difficult to identify and maintain a

¹⁴⁵ The relation between a copyright product and the business services, transportation, purchase of production factors, investment goods, machinery

¹⁴⁶ wholesalers and other consumer entities

¹⁴⁷ Dimiter Gantchev, *The WIPO Guide on Surveying the Economic Contribution of the Copyright Industries*, 1 Review of Economic Research on Copyright Issues, 5, 9-10 (2004).

very stable optimal copyright policy, since such conditions are dependent on number of varied unstable social conditions.

In order to comprehend how the use of creative works brings economic advantage to the society, it becomes very pertinent to estimate the economic contribution of the copyright based industries. In market economics, the focus of the national economic policies remains on bringing economic growth. The increase brought in wealth resulting from the activities of copyright based industries is kept in focus subsequently.

The contribution made by copyright based industries in the economy of a nation have been documented by a number of studies. These studies have reflected that in some nations, the production value generated by copyright based industries is more than many of the traditional industries, while in several other countries, copyrighted works have produced substantial export income. After establishing the economic value of copyrighted work, the policy makers can develop the suitable legal framework, which protect the value of copyright protected work as well as encourage the copyright based industries.

II.7.i. Measurement of the contribution of copyright in national economies

Gross Value Added (GVA) is taken into consideration while estimating an industry's economic importance. In terms of a good or service, GVA estimates the contribution of an industry. This is known as turnover (or production value) minus the cost incurred by the inputs, coming from other industries. The total of the GVA from all industries is equivalent with the GDP. In studying economic contribution, GVA is considered to be an important indicator of the wealth, generated by an industry. Most of this studies in this respect have used such approaches by way of categorising different copyright based industries and estimating value added by respective category. However, in other studies numbers of employees, turnover, and exports have also been taken into consideration.

II.7.ii. Issues in methods of measurement

II.7.ii.a. Value creation

A majority of the existing studies on the importance of copyright industries broadly adopt the same basic method for measuring value creation. Their point of departure is gross domestic product

(GDP), which measures the total output of goods and services produced by the residents of a particular country in a given year. GDP includes profits but excludes property income from abroad.

When property income from abroad is added to GDP, the result is gross national product (GNP). GDP and GNP include the output of capital goods, but these measures overstate the value of resources unless a deduction is made for depreciation of existing assets. Depreciation is, however, to some extent arbitrary and therefore hard to measure. GNP and GDP are therefore normally used as measure of the economy's output. They are measured at factor cost, excluding taxes. GDP has been chosen in previous studies on the national impact of copyright as the figure against which the copyright industries' value creation are measured.

In assessing an industry's value creation, gross output can be used to measure the industry's value of sales in a year, adjusted for changes in stock. It is normally measured at wholesale prices. Gross output of an industry, however, overestimates an industry's contribution to national income because it includes the value of inputs produced by other industries. As a result, gross value added (GVA) is used to represent the true contribution to the national economy. It is the value of gross outputs less the value of input from other countries.

II.7.ii.b. Employment

Another widely used method to assess the economic importance of industries based on copyright is measuring the number of persons employed. These figures should include persons employed by firms in the copyright industries as well as self-employed persons who play significant roles. Economic importance is expressed as the proportion of total employment in the economy provided by the industries. Assessment of industry employment is problematic, however, because statistical data in most nations do not make distinctions between full-time and part-time labour or reported full-time person years that adjust for part-time employment.

II.7.ii.c. Trade balance

Some studies on copyright impact have included the foreign trade of copyrighted material. Some studies have included only the export of copyrighted material, others count the trade balance for copyright and copyright-dependent industries respectively.

II.8. WIPO studies on economic contribution of copyright industries

World Intellectual Property Organisation has published a report, based on the data from 30 different studies on contribution of copyright based industries in 2012. The analysis and conclusions demonstrated the overall performance of the copyright based industries and elaborated the pattern of their economic contribution. The report showed there is an existence of a significant sectors of different copyright based industries. It is perceived that copyright belongs to the legal category. Overall, the copyright industries have contributed significantly in respect of the national economies.

The contribution of the copyright based industries to the national GDP varied from nation to nation. Among the other countries, the share of United States, Australia and Korea in their respective GDP was higher than average. The countries in which the economic growth is rapid, an average share of GDP has been attributed to copyright industries. As far as the contribution of copyright based industries in respect of the national employment is concerned, it was observed that the share of national employment varies from the share of GDP. In respect of labour forces in the copyright forces, it was found that, Mexico and the Philippines had the highest share. Most of the countries are exhibited to show above average share of employment.

Among the different groups of copyright industries, the report showed that the core copyright industries account for more than half of the total contribution of the copyright industries to GDP and employment. It was reported that Press and Literature is by the biggest contributor to generating added value. 55% of the share is held by other industries – Software and Databases, Radio & TV, Music & Theatre, Advertising, Motion picture and Video. However, this observation is not applicable for all the countries. Therefore it was seen that the economic contribution of Copyright industries is not evenly distributed between different industries, according to the report approximately half of the labour force in the core copyright industries is employed in Press and Literature. The most labour intensive sectors are Software and Databases and Radio & TV and they provided higher contribution to GDP.

In many countries the copyright based industries is more substantive in size in comparison to the traditional economic sectors, like agriculture with tourism, hotels and restaurants. The analysis made by the report suggested variability to larger extent among countries in respect of the overall contribution of the non-core copyright industries to GDP and employment. Non-dedicated

industries had exhibited secondary impacts and spill over effect of the copyright industries on the economy. The contribution of these industries is weighted with a copyright factor. Moreover, general wholesale and retail assures almost half of the contribution to GDP of this group of copyright industries.

II.9. Economics of music copyright

The demand for music has changed among the users by heaps and bounds. It is evident by the demand for the use of music by music users in the terrestrial and satellite radio, local, cable and satellite broadcast television, Internet and mobile phone industries. The increasing demand is also observed in many other places, ranging from hotels, restaurants, shopping malls, music channels on different vehicles to music on hold over telephone.¹⁴⁸ Innumerable number of songs titles produced by song-writers and composers have been added to the repository of titles in the entertainment industry of a nation.

It is observed that, “the compact disk (CD) has appeared as both a blessing and a curse in the music industry by the late 1980s”. The change in the consumer’s music preference from physical to digital format has caused a significant economic as well as technological changes. Sale of music CDs have changed the business pattern in the music industry. The consumers also started to replace their older music collections with better portable and enhanced sound quality of digital music.

However, the flipside of this technological progress exhibited a different picture. With the emergence of digital format of music, especially MP3, the traditionally long established structure of the music industry is facing an existential threat. Previously, music was purchased at the speciality stores like Music World. However, after the emergence of the internet, with the ease of procuring music online, many music retailers have been driven out of business.

Undoubtedly, digital technology has eased the dissemination of music has opened a wider market for the copyright based industries. The advantages digital music has brought to the stakeholders has led to the shift of newer music business models. Different studies have identified use of compact disk as one of the main factors in the music industry which increased the music sales to a larger extent. Although in the beginning sales of CD used it bring good amount of revenue as

¹⁴⁸ IVAN L. PITT, ECONOMIC ANALYSIS OF MUSIC COPYRIGHT – INCOME, MEDIA AND PERFORMANCES, (1st ed. 2010).

music consumers started buying music CDs, with the widespread use of internet, sales of CD started to drop since internet offered easy transfer and share of music files.

II.9.i. The economics of the music recording industry

Generally, the music industry is comprised of different sectors, which are interconnected. Primarily it includes music recording in the sound recording studios, then the publishing of the same; after that comes artist management, merchandising and retailing of the music recording. The role of performers, song writers, composers as well as promoters are also important in this regard. The expression ‘music industry’ refers to all the sectors, mentioned above, combined to just one sector, that is recording industry.¹⁴⁹ In this context, ‘market’ is referred to as” a group of firms selling goods or services that are close substitutes to a group of consumers.”

II.9.i.a. The creation and production process

In the music industry, a song, i.e., the musical work is considered to be the basic material. In order to produce a sound recording, musical work is the basic ingredient. The final product of the music industry is the sound recording. Apart from the sound recording, the remaining outputs of the music industry are live performances, radio broadcasts, music videos and sheet music. A musical work includes two main elements – the lyrics and the musical composition. A successful sound recording is a valuable asset capable of generating tens (or even hundreds) of millions of rupees in revenue. The song writer typically enters a contract with a music publisher that is responsible for the commercial application of the songwriter’s musical work. In order to record the musical work, the publisher enters a contract with a recording company. The record companies pay recording advance to the artist performing the musical work. Collaborating with the record company, the artist involves a record producer to record the musical work and produce a master recording. Either in CD pressing plants or in audiocassette duplication plants, multiple copies of the sound recording are produced, from the master recording.

II.9.i.b. Economic characteristic of music production

¹⁴⁹ Theo Papadopoulos, *The Economics of Copyright, Parallel Imports and Piracy in the Music Recording Industry*, Victoria University (2002).

In entertainment industries, demand for licensed songs is estimated by the consumption habits of the music users. Generally, the music publishing business follows the business cycle fluctuations in consumer spending, which is again driven by personal income.

The music sales keep on rising with the increase of disposable income and consequently this brings profits to the record companies. In case, there are downturns and recessions, it is observed that there is a decline in music sales since consumers spend less. Moreover, there is a shift to other forms of entertainment and consequently company profits decrease. The record labels and music publishers are required regularly develop, sign and promote new performing and non-performing songwriters with potential of selling millions of records to keep on the demand and supply of labour in music.

In the following three aspects artistic labour is different from other types of labour:

- a. The financial rewards given to a professional artistic practice are usually lesser, compared to other occupations having similar features;
- b. The degree in which artistic earnings vary is generally more, compared to other similar occupations;
- c. In case of allocating an artist's time between alternate labour markets, non-pecuniary motives are significant. In certain cases, the financial incentives may get dominated by the 'inner drive' to create art may dominate.

Today with technological change, the costs of production and dissemination of digital music are far lower today comparing the costs of physical products such as the CD. After the creation of master copy, the marginal cost of producing an additional unit of a song or album is comparably not so significant. The marginal cost of producing an additional unit, in the case of digital recordings, may be only the cost of physical compact disk itself when it is distributed in the physical format.

The lyrics and melody can be stored, copied and disseminated by different transmission modes, including mobile phone, iPod, etc. After the initial investment is made for creation of new song title, music publishers seek to recover investment. Music has a limited substitutability effect and

generally it is not the case with other products in which capital can be substituted for other key inputs. The reason behind this is that the copyright laws seeks to protect each song title by prohibiting the unauthorised dissemination or sale of copies. This monopoly of each composer or songwriter and their unique work is also referred to as so-called 'no-substitutes' rule.

Sometimes, it is difficult for independent labels to make an entry into the market for music distribution. The overhead costs, like retaining, cross promotions, advertising, etc. are mainly responsible for this. However, internet, computers, CD burners, camcorders, iPods have significantly changed the underlying economics of music distribution. This change in the economic structure has made it much for convenient and easier for independent artists and labels to disseminate music to thousands of listeners.

II.9.ii. Economic analysis of music copyright: from music publishers' perspectives

In the music industry, generally music content companies are the music publishers. The recorded music libraries are the sources of their content. This libraries include their catalogues of best-selling records and albums and also a roster of established and emerging song-writer and composers spanning all musical genres and time periods. The songwriters and composers focus on the content creation; the musical compositions and the publisher as well as the record label concentrate on distribution and marketing.

The content of the music catalogues have a unique set of characteristics. The publishers or the record labels bear the majority of the cost of creating the content. After that the costs of producing the work and disseminating it are comparably minor Majorly, small number of titles fetch most of the revenue from record sales and the royalty payments from public performances. This small number of revenue generating titles will then offset the losses of the vast majority of titles released by the publisher.

The business model of a particular music publishing company can be categorised into two sectors: Recorded Music and Music Publishing. By way of selling music in different channels and also by licensing of recorded music in various formats the recorded music segment generates revenue. The second category obtains the rights to musical compositions from songwriters and composers. In this way the music publishers produces income in the form of royalty payments or fees for their

use by music users. The music publisher also make commercial use of the work by way of licensing the artist's name, image and likeness for things like perfumes, clothing and beverage advertising.

The record labels, as a subsidiary of a major publisher and house, arrange financing and manufacturing of the CDs, DVDs, cassette tapes and also the distribution of a songwriter's song in as many domestic distribution channels as possible such as music stores, radio broadcast television, cable television, motion pictures, the Internet, ringtones, etc. In some cases, other services such as record production, marketing promotions and artist management and development are combined in a single roof.

Generally the music publisher deals with certain facets of the performance rights and print rights of their copyrighted songs and the record labels manages the sound and audio recording rights. Primarily the record producer selects the material suitable for the performing artist, direct the studio musicians on what to play to support the artist and interface with the record label. In certain cases, the producer helps in developing an artist with commercial opportunity for record.

II.9.iii. Economic analysis of music copyright - from songwriters' and composers' perspectives

The creative process for a songwriter initiates with spending of several months of rigorous planning and writing lyrics for the song. Subsequently, the songwriter, composer or lyricist collaborate with other participants in the music industry, such as, the record labels, music managers, agents, producers, attorneys, sound studio owners and publishers for production and marketing of the song. Once a song has been recorded and released, the song-writer/composers then expects a flow of income from the commercial use of the composition.

Two categories of songwriters are generally found in the music industry. They are the non-performing song-writer and the performing song-writer.

II.9.iv. Division of labour among composers, song-writers and lyricists

Based on the talents of the individuals involved, the division of labour on writing a song varies. The division of labour among song-writers, composers and authors is depicted in the table below. As discussed previously, it is the lyrics and melody that are given copyright protection.

| Participant | Activities |
|-------------------|--|
| Author / Lyricist | Song title and lyrics |
| Composer A | Solos, riffs and hooks |
| Composer B | Melody, harmonisation, voicing, rhythmic movements, tempo and dynamics |
| Producer | Directs studio musicians on what to play or co-writes a song. |

In respect of a particular song, a recognised writer is the main wordsmith, who provides life to the song title and lyrics used in the song's verses and choruses. The solos, riffs, hooks or the signature instrumental part heard at the beginning of a song, supporting the melody, makes the listener interested in hearing the rest of the song. Generally, another writer is responsible for scoring or composing the melody, harmonisation, rhythmic movements, voicing and dynamics.

The issues of the intent to create a joint work, the joint ownership of a work, the independent contributors of a work and who has the right to license a song often become copyright infringement disputes in the music industry. Under copyright law, irrespective of the amount of contribution to the song, a joint author can license the rights to another party without the consent of the other joint author.

II.10. Contribution of music copyright industries in Indian economy

Both in respect of foreign and domestic field, India is one of the world's leading legitimate markets for the creative industries. As discussed in the first chapter, India produces a significant number of films in the world¹⁵⁰. It comprises of a creative and diverse music market. Other key economic studies¹⁵¹ also showed the continuation of growth in the music market.¹⁵²

¹⁵⁰ Estimated at nearly 1000 full-length feature films per year

¹⁵¹ Studies made by international organisations like UNCTAD and the Motion Picture Distributors Association

¹⁵² International Intellectual Property Alliance, Special Report on Copyright Protection and Enforcement, 2013.

The overall size of Indian Media and Entertainment Industry grew from INR 728 billion in 2011 to INR 821 billion in 2012. The overall growth was 12.6%.¹⁵³ The real GDP growth is expected to be in the range of 6.1 to 6.7% in 2013-14.¹⁵⁴ Several factors, such as the drive brought by digitisation, consistent growth of regional media, strength in the film sector and fast increasing new media businesses, it was assessed that the growth rate of 11.8% in 2013 to reach INR 917 billion. It was also projected that this sector will have a growth of a steady CAGR of 15.2% to reach INR 1661 billion by 2017.

In 2013, the Indian Media and Entertainment (M&E) industry recorded a growth of 11.8% over 2012 and touched INR 918 billion. Gaming and digital advertising recorded a strong growth in 2013 in comparison to the last year. According to the report, the industry was expected to register a CAGR of 14.2% to touch INR 1785.8 billion by 2018. In the music industry streaming and downloading services experienced growth, with the growth in mobiles, especially smartphones. This growth contributed significantly towards increased consumption of music 'on-the-go'. In 2013As a result of continued decline in physical music sales, aggravated by the significant decline in revenues from ringbacktone, this segment of the music industry suffered an overall decrease in size by 10%. It was projected that digital revenues are will drive the growth in the sector.

Steady growth has been registered in the sector of animation/VFX. Significant growth was observed in the Films. 21% growth was registered in 2012 over 2011 vis-à-vis 11% per growth in 2011 over 2010. With the benefits of digitisation, music sectors experienced growth. 18% growth was seen in 2012 over 2011 in comparison to 4.7% growth in 2011 over 2010.

India is one of the fastest growing economy in the world. India is one of the biggest economy in the world in respect of the purchasing power parity. Indian is a key market in respect of the media works. With the growth of Indian economy, Indian middle class has expanded considerably. This Indian middle class with greater earning power and a higher disposable income are the chief factors that determines the development of the Indian entertainment industry. In comparison to other several nations, the Indian middle class spends a significant percentage of their monthly expenditure on entertainment. The amount of expenditure consumer directly spends on

¹⁵³ FICCI-KPMG, Indian Media and Entertainment Industry Report, 2013.

¹⁵⁴ Economic Survey 2012-13

entertainment and advertising revenue is on the rise. The share of younger generation in respect of Indian population is significant and consequently the expenditure on non-essentials the entertainment industry has grown drastically.¹⁵⁵ The average Indian is getting richer and as a result, their expenditure on discretionary items, like media and entertainment works, also rises. India is the sixth largest market for mobile handsets (16 million units per annum) and is growing at 50% a year.¹⁵⁶

Considering the existing penetration levels in comparison to the other countries, the expenditure on entertainment & media by the consumers in India is on the higher side. The average annual spend (per capita)¹⁵⁷ is estimated at a low 6.6 USD in 2011, when the same in China is 22 USD in China and 65 USD in Brazil. In respect of media and entertainment, the consumer spend as a percentage of income.¹⁵⁸ In addition to that the increasing household incomes in India is driving fast growth in consumer expenditure on entertainment and media.

- **Segment Revenue Contribution**¹⁵⁹:

| Segment | Revenue – 2010 (billion INR) | Revenue – 2011 (billion INR) | Y-o-y growth (%) | Contribution to the Industry (%) |
|--------------------|------------------------------------|------------------------------------|---------------------|--|
| Television | 294 | 340 | 15.7 | 42 |
| Print | 178 | 190 | 7.2 | 24 |
| Internet Access | 74 | 116 | 57.2 | 14 |
| Film | 88 | 96 | 9.4 | 12 |
| OOH | 14 | 16 | 10.7 | 1.9 |
| Radio | 13 | 14 | 10.8 | 1.7 |

¹⁵⁵ CII-KPMG, Indian Entertainment Industry Focus: Dreams to Reality Report, 2010.

¹⁵⁶ Ibid.

¹⁵⁷ Calculated as total consumer spend on entertainment and media for each country, divided by its total population. The population figures are based on World Bank estimates.

¹⁵⁸ Calculated as total consumer spend on entertainment and media for each country, as a percentage of its GDP per capita (total GDP divided by total population). The GDP per capita and population figures are based on World Bank estimates.

¹⁵⁹ Ibid.

| | | | | |
|----------------------|-----|-----|------|-----|
| Music | 10 | 12 | 25 | 1.5 |
| Gaming | 8 | 11 | 32.6 | 1.4 |
| Internet advertising | 8 | 10 | 30.9 | 1.3 |
| Total | 685 | 805 | 17.5 | |

Over the last decade the steady economic growth has been stimulated by the constant economic reform. GDP of India has been pushed beyond 5% because of the emphasis on making an investment friendly environment for the full realisation of the inherent potential of the Indian economy.¹⁶⁰

| Country | GDP (in billions) | GDP Growth | GDP per capita |
|---------|-------------------|------------|----------------|
| India | 4,735 US\$ | +5.4% | 3,900 US\$ |

Presently, the entertainment and media market in India is the 14th largest in the world and the revenue generated by this industry contributes about 1% of its GDP. Industry stakeholders understand and acknowledge that India has the potential to achieve path-breaking growth over the next few years; possibly to reach a size of 100 billion USD.¹⁶¹

II.10.i. Indian music industry

Music is a significant component of the Indian entertainment industry. The Indian Music Industry has a century old history. Film and devotional music dominated the entertainment industry till 1990. Non-film albums and remixes have become popular simultaneously after the emergence of satellite television and increasing consumer exposure to non-film music channels. Comparing other global markets, the Indian music sector is quite distinctive.

Indian Music Industry is popular for the rich musical tradition. Every genre of the music industry generates considerable amount of revenue for India. A combination of classical music, pop music

¹⁶⁰ International Federation of Phonographic Industry, Recording Industry in Numbers, 2013.

¹⁶¹ KPMG-FICCI, India Entertainment and Media Outlook, 2012.

constitutes popular contemporary Indian film music. In India, existence of different genre of music can be observed. Moreover, the music of Indian films has always been full of entertainment for their song and dance sequences. Music has been integral part of Indian movies right. The popularity of music in Indian films drives every filmmaker include at least four to five songs in the movies which are enjoyed by one and all.

Film music dominates approximately 65% of music sales in India.¹⁶² Bollywood dominates at least half of that, followed by regional film music markets. In most of the cases, success of the films depends on the success of these music albums. Moreover, they have the backing of strong promotional spends by the film fraternity. This strong symbiotic relationship with music and film is evidenced the wide pre-launch of music albums for wide publicity of the film. In the recent times, the music preferences of the Indian consumer is found to be changing. They have been widely influenced by the contemporary and western interpretations of the traditional sounds of Bollywood songs.

The bulk consumption of music video in social and media sites comprises of Bollywood movie music. One Digital Entertainment recently launched a live music channel 24x7, nonstop Punjabi music feed for Speed Records, with built in chat, reflecting the demand for video based and interactive content. Some of the popular channels with significant music content include:

The costs of acquisition of film music generally and Bollywood music particularly, is high. For A+ films with superstar casts, the costs remain in the range of INR 70-100 million and INR 40-60 million for the next tier of films. What is more challenging is to maintain profitability at these levels. For example, it is reported that T-Series have paid INR 70 million for the music of Shah Rukh Khan's Chennai Express, INR 210 million for Salman Khan's movies, Kick and Mental, INR 50 million for Hrithik Roshan's Krrish3 and another Rs 50 million for Ranbir Kapoor's Besharam.¹⁶³

II.10.ii. Indian recorded music market in 2012

¹⁶² KPMG-FICCI, Frames Report: The Stage is set, 2014.

¹⁶³ 'After Tips and Venus, T-Series abstains from purchasing music rights.' Mumbai Mirror, October 23 2013.

Music sales in India reached their highest-ever level in 2012, growing by 22% with digital accounting for 60% of revenues. The Indian music market has gone through significant transformation over the past 10 years. Revenue streams have diversified and more recently subscriptions and streaming services have taken off, accounting for a growing share of the market. Mobile operator services dominated the digital space in India. Operators such as Airtel, Vodafone, Idea and Tata Docomo offer a range of mobile music products, ranging from ringtones, ringbacktones, MP3 downloads and mobile streaming services. These products were sold on a unit basis or bundled into a subscription for a small fee. Airtel's mobile radio retails for a monthly fee of US\$0.6, including 300 minutes of listening time per month.

Another important player in the Indian market is Nokia's Music Unlimited, launched in December 2011, offering 'all you can eat' DRM-free music downloads to consumers purchasing a Nokia phone. Through a partnership with Reliance Communications, India's second largest ISP, the cost of the service is integrated into the mobile tariff, removing the need for a credit card. iTunes launched its store in India in December 2012, but downloads remained relatively smaller part of the digital sector.

II.10.iii. Snapshot of Indian music industry performance in 2013:

The music industry trends show clearly how technology has transformed the production, distribution and monetization of music. In 2013, consumption of music was increasingly 'on the go'. The increasing uses of mobile devices, especially smartphones, affordable data plans and the popularity of streaming services and mobile applications are regarded as the major factors behind this changing scenario. In case of monetization of digital consumption through subscription services, some amount of lagging back was noted. Adoption of slow 3G networks, low willingness to pay and hurdles in online payments were identified as the main reasons for the decline in generating revenue from digital music. Further, with the significant fall in CRBT (call back ring tones) revenues and continued decline in physical sales, the overall size of the industry in 2013 declined for the first time in many years, by 10% to reach INR 9.6 billion.¹⁶⁴ The shutdown of

¹⁶⁴ KPMG-FICCI, Frames Report: The Stage is set, 2014.

players like Flyte and Dhingana also indicated that the industry is still in the process of fine-tuning digital business models and collaborations.

Going forward, digital revenues are expected to be driven by the rapid growth in mobile devices, with increased connectivity as 3G/4G networks advance. Digital revenues, which already contribute 53% of the industry are expected to contribute close to 62% by 2018. The music industry is trying to tap its full potential by shifting the business to the digital platform:

- a. Increasing use of digital platforms, such as download and streaming services.
- b. Giving due consideration to the interests of the consumer as well in every aspect; from digital product design, to content curation, to exploration of hybrid payment models to enable growth of subscriptions.
- c. Collaborations within the industry to innovate new ranges of services across different devices and platforms.
- d. Expansion of the business model to develop new music related services – exploitation of music rights through artist management and sync revenues from placement in advertisements, videos, gaming etc.
- e. Expansion of the format of Business to Business in the music industry – particularly, packaging and licensing music with electronic devices.

Digital channels have facilitated greater access for the key global players in the music industry. Major licensed stores and services now operate in over a 100 countries in 2013 vis-à-vis 24 countries in 2012.¹⁶⁵ Although not in higher scale, Indian media and entertainment industry is one of the higher growth markets. This development is driven by growth of digital revenue. This progress is quite evident from the record published by International Federation of Phonographic Industry. In the global recorded music market, India's position has shifted to 23rd in 2004 rank from 14th position in 2012 (9th rank for digital segment).¹⁶⁶ The report also indicated a growing importance of Indian music for global music labels as well. In the four key revenue streams in the

¹⁶⁵ International Federation of Phonographic Industry, Digital Music Report, 2013.

¹⁶⁶ Industry Discussions, based on IFPI reports.

Indian industry; digital, physical, royalties from Radio and TV broadcast and royalties from public performances, the following growth had been observed.

- Globally, India is having one of the largest mobile base. Approximately 130 million accessed the internet via mobile devices. According to the International Data Corporation (IDC), India became the third largest smartphone market in the world in 2013, in terms of smartphone shipments of 44 million units.¹⁶⁷
- It was estimated that Android OS was having 90% of the market share of smartphones. Data plan rates have been reduced to a greater extent. The telecom operators are now focusing on increased data usage; music appeared to be a main element. In the last quarter of 2013, streaming service Gaana saw an increase of approximately 50% in mobile consumption.¹⁶⁸
- According to Comscore India Digital Future in Focus 2013, “24% of users access music on the go (mobile or tablet) vis-à-vis 76% on PC.”¹⁶⁹ In respect awareness and availability of music based applications. This has been a significant driver overall, for digital music services.
- Overall, there has been a shift in composition of digital revenues. The fall in RBT (Ringback tone) revenues due to TRAI guidelines has been compensated to some extent by growth in other revenue streams, but given its dominance over digital revenue market till now, this has resulted in all overall decline in revenues by 15% to INR 5.1 billion in 2013.¹⁷⁰

II.10.iv. Growing revenue through streaming business

At global level, streaming services has experienced a significant growth. According to estimates from IFPI, there was a 44% growth in 2012, resulting in 20 million paying subscribers globally.¹⁷¹ In Europe, comparatively streaming services are well established. In 2012 in Scandinavia, subscription revenues account for approximately 20% total digital income vis-à-vis the global average of around 10%. Streaming services, especially Gaana, Hungama, Saavn, Raaga have recorded a significant increase in traffic in India, in 2013. In respect of Gaana consumption through

¹⁶⁷ IDC Press Release, February 26 2014.

¹⁶⁸ Gaana Management

¹⁶⁹ Comscore India Digital Future in Focus 2013.

¹⁷⁰ KPMG in India analysis.

¹⁷¹ IFPI Digital Music Report 2013.

streaming grew 2.5 times.¹⁷² Initially the services had been offered without charging any price for the consumption, subscription services were offered from 2013. The beginning phase of the service did not experience significant growth. However, the industry speculated that with price discovery and experimentation with hybrid models (including elements of free and paid, download and streaming) these business structures will experience increased uptake eventually. The hybrid models include free and paid streaming and downloading. Video streaming, especially on YouTube in particular, has also evolved strongly as one of the significant revenue streams for the music industry.

This changing business model, offered mostly through the digital subscription played a crucial role is in getting legal customers. However, the music industry still struggles with widespread piracy in the market. Monetizing of the potential consumption of these web based music websites is essential for the successful operation of the subscription model. The industry saw the shutdown of the major player Dzingana in 2013. A significant portion of digital revenues comprises of downloading. Now, global major players such as Apple, Google and Amazon have extended the market for download stores. Unfortunately, In India, Flipkart's digital music service, Flyte was shut down in 2013. Apple still has just 2.3% market share in the price sensitive Indian market.¹⁷³ Hurdles continue to be online payments, as less than 2% of the Indian population has a credit card and low and slow broadband access.

II.11. Chapter conclusion

Law of copyright provides the necessary incentive to create original works. It gives the necessary impetus to the creative industries to foster creativity and to contribute to the development of national economy. It provides a source of livelihood to all those concerned people who are involved in the value chain of the music industry. This in turn help in strengthening the GDP of the nation. The copyright based industries are playing a significant role in developing the culture as well as economy of the nation. With the progress of technology, the modes of music dissemination has changed and consequently the economies related to music. Downloading and

¹⁷² Gaana management

¹⁷³ KPMG-FICCI, Frames Report: The Stage is set, 2014

music streaming online has increased digital revenue. In this way the music business is going through a paradigm shift.

The increasing digital consumption of music, through legal and illegal channels, has continued occupied the share of physical sales. Sales of physical music continued to decline approximately at the rate of 13% in 2013 to reach INR 2 billion.¹⁷⁴ In 2013 the music industry witnessed further retail shutdowns. The music sales of MusicWorld chain or several Reliance TimeOut Stores significantly reduced. The other music retail chain which suffered similar consequences include Tata's Landmark, Shopper's Stop Crossword and Videocon's Planet M.¹⁷⁵ Now record labels are focusing more on measures to expand the digital market, and as a result there are lack of titles available in the physical market.

At the same time, physical sales are still having hold in the markets, where lower internet penetration has resulted in slow development of digital services. However, continued sales of physical music has been observed in some of the regional language markets and genres such as devotional, classical and fusion. While this phenomenon of declining sales of physical music has exhibited the global trend, physical sales still comprises a significant contribution of the global market. In 2012 it was estimated to be 58%.¹⁷⁶ In some cases, innovations have brought about some renewed interest. Indian players also have been found innovating with formats, such as kiosks inside other stores, for digital content or shop in shop. For example, Giri Traders, a retailer with origins in South India, set up over 40 music download kiosks across Tamil Nadu, leveraging a model where albums are updated online and distribution is still physical across locations.¹⁷⁷ Another example is Sony DADC that has consolidated catalogues of Sony and Saregama, which has tied up with over 100 Nilgiris stores in South India to retail music and is considering non-traditional outlets as well. Vinyl records is another small but growing space with dedicated fan base that has increased their collections.¹⁷⁸ Amazon.in launched its music store in India in February 2014. It has positioned it as the largest online physical album store in India, with options to

¹⁷⁴ Ibid.

¹⁷⁵ Soundbox.co.in, 'Are the shutters rolling down', October 2013.

¹⁷⁶ IFPI Digital Music Report 2013.

¹⁷⁷ Retail Plus Chennai, Music Add-on

¹⁷⁸ Industry discussions with KPMG in India

purchase over 400000 Indian and international albums including the Warner Music repertoire from Sony DADC, digital downloads are currently not an option.

CHAPTER III

INFRINGEMENT OF COPYRIGHT IN SOUND RECORDING BY TECHNOLOGY: A STUDY OF THE EMERGING CHALLENGES

THE FRAME

Invention of movable type mechanical printing technology, credited to German printer Johannes Guttenberg in 1440, is considered to be a milestone in the development of copyright law. Before invention of printing press, there was little practical need for legal protection of authors. It is asserted that there is a symbiotic relationship between technology and copyright law. Technological advancement was the prime reason copyright law came into existence. However, with development of technology, newer modes of dissemination of copyrighted material came into existence. They facilitated easy copying and further distribution of the protected work. In turn, through this wider dissemination of works, the copyright owners started to have better reach to the consumers in the market. The way consumers can purchase and experience music is undergoing sea change. However, the flipside of the same technological advancement helped the counterfeiters and the pirates to make unauthorised copies of the protected materials and sell the same in the market at a reduced rate. This resulted in revenue loss to the concerned right holders. Emergence of internet has made the situation even worse. Now, it becomes absolutely impossible to trace the