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Public Performance Liability of Hotels and Restaurants: Analysing Section 33 of the Copyright Act in PPL v. Azure Hospitality

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Abstract

The public display of copyrighted musical recordings in commercial hospitality establishments *(hotels, cafes, & restaurants)* emerges as an ever-increasing site of litigation concerning Indian copyright enforcement. The dispute is over Phonographic Performance Limited or PPL. PPL holds ownership through assignments over a large portion of India's copyrighted sound recordings. But PPL has not been registered as a copyright society since 2014. Two decisions from the Delhi High Court have added uncertainty. One is a Single Judge order dated 03.03.2025. The other is the order of the Division Bench dated 15th April, 2025. Both cases deal with how to read Section 33 of the Copyright Act, 1957, especially for the hospitality industry. In the Single Judge view, PPL can license its catalogue even without Section 33(1) registration. The court reasoned that, because PPL is an assignee-owner under Sections 18 and 30, it has an inherent right to grant licenses for its repertoire. The Division Bench took a different position. It said that if an entity is not registered under Section 33(1), it should be treated as a third party to the copyright owners. On that basis, such an entity cannot run licensing work under the mandatory collective management system in Chapter VII. This restriction would apply even if the entity holds the copyright title. The Supreme Court, while dealing with the appeal, has paused only the part in paragraph 27 of the Division Bench order. It also said that the Single Judge's interim injunction will not be effective during this time. Because of this, the main issue about whether Section 33 applies to PPL is still not decided, and it will wait for the final round of adjudication. In the meantime, the hospitality industry is left without clear guidance on what it must do for licensing. This paper uses legal analysis and compares the situation with the United States. In the US, there is a *"homestyle exception"* under 17 U.S.C. §110(5). The paper says the basis for that exception is a specific statutory carve-out aimed at small commercial places. The paper argues that this does not fit well with

India's licensing system. India does not have an equivalent carve-out. So, the paper says any similar exemption in India would need a clear law change made by the legislature first. The paper also says that the Division Bench's approach, focused on purpose, has made enforcement unclear. Because of that, the paper calls for a law-based licensing route that works like a single place to apply. It suggests this should be for unregistered repertoire aggregators. It also asks that a clearly named regulator run the system, with rules on tariffs, clear transparency steps, and limits meant to stop monopoly-like behaviour or anti-competitive conduct.

Keywords: Copyright Act 1957, Section 33, copyright society, public performance, sound recordings, infringement liability, hospitality sector, PPL

I. Introduction

On 2025, several well-known restaurant franchises including *Mamagoto, Sly Granny, Dhaba and Fox Trot* were restrained by Delhi High Court from playing copyrighted music without a licence, in the decisive and commercially significant case of *Phonographic Performance Ltd. v Azure Hospitality Pvt Ltd*.[1] Within roughly six weeks of that decision, the basis for the Delhi High Court's order was appealed to, and stayed by, the Supreme Court sitting as a two-judge bench, with uncertainty floated throughout the entire Indian Hotel, Café and Restaurant community about *whether a license would ever again lawfully issue them the ability to use music as a background for commercial purposes.*[2]

The question might appear relatively easy to answer: *can Phonographic Performance Limited ('PPL') grant licenses to businesses for licensed public performances of the whole of its extensive catalogue of sound recording works when it holds the public performance rights in these works by way of assignment from all the major record companies, but without being registered as a copyright society under Section 33 of the Copyright Act 1957?* This question has created a three-way split in the reporting courts: the Delhi High Court single judge said yes; the Delhi Division Bench said no; the Bombay High Court[3] and Madras High Court reached different conclusions; and the Supreme Court has, thus far, stayed only specific procedural directions arising from the Delhi Division Bench's judgment, without ruling on the merits of the underlying question.

The uncertainty created by this dispute is not just hypothetical; it is very much a reality. The primary market for the non-broadcast public performance of sound recordings is made up of hotels, cafés and restaurants. Hospitality businesses encounter to equally disabling alternatives daily as long as there is a challenge regarding their legal standing, i.e., pay PPL via tariffs that might be ultra vires, pay RMPL, the only copyright society that has registered its tariffs, then stop playing music at risk of experiencing competitive loss; they are also deprived of having

[1] *Phonographic Performance Ltd. v. Azure Hospitality Pvt. Ltd.*, No. CS(COMM) 714/2022 (Del. H.C. Mar. 3, 2025) (India).
[2] *Azure Hospitality Pvt. Ltd. v. Phonographic Performance Ltd.*, No. FAO(OS)(COMM) 41/2025 (Del. H.C. Apr. 15, 2025) (India).
[3] *Novex Commc'ns Pvt. Ltd. v. Trade Wings Hotels Ltd.*, No. COMP-264-2022 (Bom. H.C. Jan. 24, 2024) (India).

any statutory protection for their rights from the egregious acts of admitted infringers. The civil remedies *(injunction, damages and accountants' renditions)* found in the Copyright Act and the criminal penalties set forth in Sections 63 and 64 can be called upon, but the likelihood of them being enforced is uncertain.

The objective of this research is to determine how Section 33 of the Copyright Act, 1957 limits the ability of unregistered entities, like PPL, to collectively license sound recordings for commercial use in places like hotels, cafes and restaurants. Furthermore, how do we manage any resulting legal uncertainty or infringement liability?

The paper puts forward that the Delhi High Court Division Bench's decision in *PPL v. Azure Hospitality,* while supporting the requirement for collective management under Section 33, has introduced gaps in enforcement that could create increased risks of infringing the Copyright Act for rightsholders and those in the hospitality industry; legislation or clarification from the Supreme Court is needed to bring clarity and predictability to this licensing system.

II. Literature Review

A. Collective Management Organisations

In copyright law, *collective management organisations (CMOs)* share an economic rationale. Copyright scholarship describes the economic basis for CMOs, *Watt*[4] *and Kretschmer*[5] articulating and elaborating their insights around high transaction costs associated with bilateral negotiations for the *licensing of performance rights or music.* The creation of CMOs as a function of aggregate rights in the form of standardised tariffs and collective enforcement of licences lowers these transaction costs and establishes functioning markets for musical works. Conversely, one such review states that the historical structure and operations of CMOs in India have been characterised by systemic dysfunction, where the distribution of royalties is opaque, governance fails, and regulatory capture exists; such dysfunction arguably precipitated the passage of the Copyright (Amendment) Act, 2012.[6]

Post-Amendment scholarship has focused on whether the legislative amendments made by the Copyright (Amendment) Act, specifically with respect to Section 33A *(mandating record keeping and transparency in royalty distribution),* addressed these structural deficiencies of Indian CMOs. Notably, Senftleben and others argue that enforcement of the Copyright (Amendment) Act remains *insufficient,*[7] while an empirical study of IPRS governance between 2013 and 2020 demonstrates continued challenges to the member oversight function of IPRS

[4] Richard Watt, Copyright and Economic Theory: Friends or Foes? 112–37 (Edward Elgar 2000).

[5] Martin Kretschmer, *The Failure of Property Rules in Collective Administration: Rethinking Copyright Societies as Regulatory Instruments*, 24 Eur. Intell. Prop. Rev. 126 (2002).

[6] Balaji Subramanian, *Collective Rights Management under the Indian Copyright Act*, 53 Econ. & Pol. Wkly. 20, 20–24 (2018)

[7] Martin Senftleben et al., *Collective Management in the Age of Streaming: A Comparative Assessment*, 50 Int'l Rev. Intell. Prop. & Competition L. 1 (2019).

and the processing of royalties.[8] The literature generally supports stronger CMO regulation; however, there is significant disagreement regarding the necessity of CMO-exclusive licensing as an appropriate remedial action.

B. Section 33 and the Threshold of Ownership

An analysis of Section 33 in isolation reveals a major void in the way it has been presently analysed. The vast majority of scholarly literature deals with the provision in relation to CMO governance, rather than investigating the preliminary issue of who can engage in the "business" of licensing. The main author to address this question adequately (or at least to some level) is *Narayan*,[9] who, although discussing the Copyright Act generally, explains that Section 33(1) *'imposes a regulatory obligation on Aggregators'*, but does not impose a regulatory obligation on Owners who are exercising their rights *"in their individual capacity"* as a result of the first proviso. Narayan's view, which was cited by the single judge who heard *PPL v. Azure Hospitality*, views the first proviso as creating a large exception from the 'regulatory obligation' constraint, as limited by Section 33, that would apply to Owners if they are engaged in licensing via an aggregator.

A very different interpretation of the First Proviso is provided by a study in which it is stated that the first proviso is limited to those Owners who are also members of a registered Copyright Society and are exercising rights that are otherwise to be handled by the Copyright Society through the Copyright Society.[10] The purposive view adopted by the Division Bench is strengthened by the previous legislative history of the 1994 and 2012 amendments to the Copyright Act; both amendments had as their explicit intention to create a mechanism for regulating licensing through regulated Copyright Management Organisations.

C. Hospitality Sector Liability Remains Unstudied

While hotels, restaurants, and cafes play an important role in the public performance of recorded sound, it is surprising how little research has been conducted on the liability of hospitality businesses for copyright infringement under Indian law. The majority of the existing literature discusses this issue primarily from the perspective of broadcasting (e.g., the PPL vs. Hotels and Restaurants Association decision in the 1980's and the subsequent PPL vs. FICCI-Multiplex Association of India cases) and does not include consideration of individual hospitality venues performing background music. There are fundamental differences between the hospitality sector's exposure to copyright liability compared to broadcasters; every hotel, restaurant, or café is an independent infringer if it plays music without the proper license, the number of licenses required for each venue is extraordinarily high, and it is extremely difficult to enforce this liability in practice.

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[8] Anubha Sinha, *Collective Management Organizations in India: Evaluating the Post-2012 Governance Deficit and Royalty Gridlocks*, 25 J. Intell. Prop. Rts. 142, 148 (2020).

[9] P. Narayan, Law of Copyright and Industrial Designs 302–15 (Wadhwa 5th ed. 2018).

[10] Ctr. for Innovation, Intellectual Prop. & Competition, Nat'l Law Univ., Delhi, *Report on the Collective Administration of Copyright in India: Regulatory and Structural Challenges* 48 (2018).

Most legal scholarship has not addressed the lack of empirical work in the above area (most studies focus on rights-holders). This paper provides the missing piece by analysing restaurants/hotels/cafes that are playing (performing) music in public (i.e. under PPL v Azure Hospitality) to address liability to them (who play music publicly) and how these businesses are affected due to the uncertainty caused by PPL v. Azure.

D. Legal Gaps That Were Identified

In the existing literature, these three issues have not been examined fully: a systematic analysis of how Section 33 interacts with Section 18(2) in relation to sound recordings; whether hospitality operators using validly issued PPL licenses will be held liable for infringement based on subsequent invalidity of those licenses; and *whether the US homestyle exemption model would provide any useful insights for reforming Indian law on this matter*. These issues form the backdrop for the analysis contained herein.

III. Methodology

This paper takes a primarily doctrinal approach. Doctrinal analyses are made up of the detailed analysis and evaluation of statutory rules, which requires the examination of the relevant sources of law (including legislative text, decisions by courts and legislation history). From these sources of law, doctrines are created so as to determine what the meaning and application of the sources of law are to be. The Copyright Act, 1957; the Copyright (Amendment) Act, 1994; and the Copyright (Amendment) Act, 2012; and respective Object and Reasons the Copyright Act and the Copyright (Amendment) Act; the 1984 Report of the Committee of Experts on Copyright Law (the Committee Report) published prior to the Copyright (Amendment) Act 1994; and the decisions of *PPL v. Azure Hospitality* at all levels will be used in this analysis. The public case law will be sourced primarily through *Indian Kanoon, SCC Online and Manupatra.*

Two supplementary methodologies support the doctrinal analysis. Comparative analysis, as described in Section 7, is used to analyse *how public performance licensing has been addressed in US commercial establishments*, particularly how 17 USC §110(5) (the home-style exemption) has expanded due to the *Fairness in Music Licensing Act (FMLA) of 1998.* The limitations and context of the comparative analysis are noted: the US system should not be viewed as a model; rather, it serves as a reference point to demonstrate divergent policy approaches, particularly concerning the shared tension between rights holders' interests and stakeholders' practical realities in the hospitality sector, which both jurisdictions are facing. Secondly, the analysis of the policy is used to evaluate the consequences of contrasting interpretations of Section 33 of the Copyright Act. However, the comparative analysis does not resolve the questions of the construction of the stature, and the policy analysis shows such outcomes that are uncertain.

IV. The Copyright Act and the Architecture of Public Performance Rights

A. Nature of Sound Recording

Copyright law acknowledges that copyright applies to original works of literature, drama, music and art, as well as all sound recordings and films made with cameras (or cinematically). Section 13(1)(c) identifies *"sound recording"* as including any recording capable of reproducing sounds regardless of the source from which the recorded sounds were created. Thus, while musical composition or song lyrics may be pursued by way of one source, a sound recording as defined by the Act is distinct from a music work and lyrics as defined by the Act and requires both an independent license to use those two distinct rights.[11]

Under Section 14(1)(e) of this Act, the exclusive rights of a sound recording copyright holder are provided for, including but not limited to the right to communicate (use and publish) the sound recording to the public. As defined under Section 2(ff), *"communicating to the public"* means *"the way that any type of work (or parts of any work) is made available to the general public for their enjoyment or experience, with or without fee, regardless of whether copies of the work are distributed to the public"*. The performance of recorded music or the playing of music recordings in hotels, cafes, or restaurants obviously meets this definition: sound recordings made available through the use of audio speakers, amplifiers and other sound reproduction devices to the general public are considered to *be "communicated to the public"*.[12]

B. Assignment and Licensing: Sections 18 & 30

The Copyright Act's Section 18 sets out the legal framework for the assignment of copyright. It enables an owner of copyright, whether regarding an existing or a future work, to assign the copyright to a third party either in whole or in part (with or without conditions); the rights can also be assigned for the entirety of the copyright term, or for the remainder of it. Section 18(2) was recently added by the Copyright (Amendment) Act, 1994, and specifies that an assignment of copyright made under Section 18(1) to an association of individuals is deemed to be made to each of the individual members of that association. The most important point to take from this section is that it grants an assignee the status of *"owner"* (under the Copyright Act) based upon the terms of the assignment.[13]

As per Section 30 of the Copyright Act, an owner of copyright (or any other person acting with the owner's written authorisation) has the capability of granting any interest in that copyright through a signed writing by themselves or their agent. Accordingly, Section 30 provides the basic legal right to express an interest in the copyright through a writing that is signed by the owner or their agent. The PPL litigation crystallises the question of whether Section 33 merely qualifies this ownership-derived right of assignment under Sections 18 and 30, or instead

[11] Copyright Act, 1957, §§ 13(1)(c), *2(xx); Indian Performing Right Soc'y Ltd. v. E. Indian Motion Pictures Ass'n*, (1977) 2 S.C.C. 820 (India).

[12] Copyright Act, 1957, §§ 14(1)(e), 2(ff); *Federation of Hotels & Restaurants Ass'n of India v. Phonographic Performance Ltd., 2011 SCC OnLine Del 2362.*

[13] Copyright Act, 1957, § 18(1)-(2)

operates as an independent, superseding condition that displaces it once licensing is conducted on a systematic, commercial scale.[14]

C. Section 33: The Gateway for Collective Licensing

The Copyright (Amendment) Act 1994 contains Section 33, which states that after the Copyright (Amendment) Act 1994 comes into effect, no person or persons shall start or continue any business involving the licensing or issuing of licences for any work in which a copyright exists, or for any other rights under this Act, without first obtaining registration under subsection (3).[15] The *second addition* to Section 33, made under the 1994 Amendments, states that copyright owners of works included in sound recordings will be treated *as members of the copyright association for that class of works.*

The Registrar administers the registration requirement under s.33(3) of the Copyright Act and refers requests for registration by copyright societies to the Central Government for decision. Under s.33(3), the *Central Government* will normally not approve *more than one Copyright Society to conduct business* as a Copyright Society with respect to works in a given class. As such, the way in which the identified class of sound recordings is MONOPOLIZED is through an administrated collective monopoly structure. RMPL currently holds the only registered Copyright Society for the class of sound recording works granted in June 2021.

D. Section 33A: Tariff Regulation & Transparency

The Copyright (Amendment) Act, 2012, added a new requirement for registered copyright societies to follow - Section 33A, which imposes a series of significant governance requirements. The new section requires all registered copyright societies to issue a public tariff scheme, keep detailed records of royalties being collected and distributed, and provide an annual report to the Registrar of Copyrights. Most importantly, it allows any party to challenge the copyright society's public tariff scheme in front of the Copyright Board (which is now the Intellectual Property Appellate Board). The Division Bench in *PPL v. Azure Hospitality* attached great significance to the provisions of Section 33A when it noted that if PPL were allowed to continue to license works without being registered, its tariff rates would be unreviewable, preventing the entire system of regulation created in Section 33A from achieving its goals.[16]

E. Infringement and Exceptions of Sections 51 and 52

Section 51(a)(i) of the Copyright Act states that a person or persons who performs any act or thing (other than a licensee) that would be considered copyright infringement may do so unless they have obtained a license from the owner of the copyright or the *Registrar of Copyrights.* Consequently, the performance of sound recordings in a hotel, cafe, or restaurant without a proper license is also considered a violation of Sections 51(a)(i) and 14(1)(e). The potential consequences of such violations are substantial, and can include obtaining an injunction (civil

[14] Copyright Act, 1957, § 30.
[15] Copyright Act, 1957, § 33(1).
[16] Copyright Act, 1957, § 33A.

remedy) under Section 55 of the Copyright Act; recovering damages (including an award for punitive damages) as determined by the Court; obtaining an accounting of profits made by a violator; and being subject to criminal prosecution under Section 63 of the Copyright Act (imprisonment for a maximum of three years, and/or a fine).[17]

Sec 52 (1) (l) of the Copyright Act 1957 recognises the *performance of any written, dramatic or musical work by a society or club of amateur performers before a non-paying audience as an exception to copyright infringement.* This exception cannot apply to commercial hospitality venues because they do not fit into these definitions; at the same time the religious ceremonies exemption under Sec 52 (1) (za), which allows *performances in connection with a religious ceremony* such as a wedding procession to be exempted from copyright violations, does not provide any relief to hotels or restaurants, and there are no similar types of exemptions in Indian law.

India does not spell out a hospitality exception like the US *"homestyle"* idea in 17 USC § 110(5). In the US, certain small spots can avoid licensing if they use ordinary home-style receiving gear and they stay below a set size cap. Making a close match in India would be hard. At the moment, Section 52 does not draw a line by venue size. It also does not look at what receiving equipment is used. On top of that, Chapter VII seems to work through group licensing. It does not look like it was meant for a wide carve-out from liability. If lawmakers wanted an exemption, Section 52 would have to be changed. The law would need clear limits. It would need to say how big a venue can be and what equipment is allowed. It would also have to fit with the duties already listed in Section 33 and Section 33A, such as registration rules and tariff oversight.

V. PPL v Azure Hospitality: A Critical Analysis

A. Background and Origin

In order to grasp the best understanding of the current litigation on PPL, it is essential to know the history of PPL as a corporation. For the period 1996 to May 2014, PPL was a registered society that provided copyright protection for sound recordings as a copyright society under the Copyright Act. The Copyright (Amendment) Act, 2012, created a second proviso to Section 33(1) of the Act that required all copyright societies to re-register within one year of the date the Act came into force. PPL submitted an application in May 2013 to have itself re-registered as a copyright society; however, it subsequently decided in May 2014 to withdraw its application on the basis that it determined itself to be a private company under the Companies Act of 2013 and thus did not wish to continue to operate as a copyright society. The Registrar of Copyrights denied PPL's application for re-registration.[18] Subsequently (June 21), RMPL was registered as a copyright society for sound recordings by the Central Government with a

[17] Copyright Act, No. 14 of 1957, §§ 51(a)(i), 55, 63, India Code (India). *Cf. Garware Plastics & Polyester Ltd. v. Telelink,* AIR 1989 Bom 331 (India).
[18] *Phonographic Performance Ltd. v. Union of India*, No. W.P.(C) 9203/2014 (Del. H.C.) (India) (pending).

membership of approximately 700 members. PPL filed an appeal at the Delhi High Court against the rejection of its application for re-registration in separate writ proceedings.

In turn, in 2022, PPL sued Azure Hospitality Private Limited (the owner/operator of some of Delhi's most well-known restaurant and bar establishments) in the Delhi High Court's Civil Suit (Commercial) 714 of 2022, alleging that Azure was communicating PPL's repertoire to the public by means of the publicly accessible speakers in its restaurants without first obtaining a licence from PPL.[19]

B. Ex Parte Ad Interim Injunction

The pre-judicial (ex parte) interim order was granted to PPL by the single Judge on 14/10/2022. The Single Judge found that there was a case of infringement. Azure's application, IA 17272/2022, was subsequently filed to have the prejudicial order vacated on the basis that PPL had no authority to issue licensing for performance without being registered as a Copyright Society, thereby raising the central Section 33 jurisdictional/threshold issue. This application was adjudicated substantively during the course of 2 years.[20]

C. Single Judge Ruling

On March 3rd, 2025, Azure's application was dismissed by a single judge (Justice Amit Bansal)'s decision along with PPL's injunction; therefore, PPL's copyright in accordance with section 18(1) of the Copyright Act was deemed validly assigned, which conferred upon PPL ownership of many sound recordings from different music labels. The Court found that the statutory right of an owner to license out their copyright cannot be limited by s.33(1) because the purpose of s.33 was to set regulations governing copyright societies as collective management organisations and not to limit the ability of users (individuals or businesses) to license.[21]

In his interpretation of the clause, the Single Judge construed the term "in his individual capacity" under the first proviso in Section 33(1) narrowly - as meaning that an 'owner' exercising rights directly (i.e. not through a society) is covered by the proviso. Thus, PPL would be seen to hold licensing rights directly in its own name as the assignee owner and hence come under the first proviso concerning individual capacity and fall outside the requirement to register under the main clause of Section 33(1). The judge based his finding on the structure of Section 34 (which provides for the withdrawal of authorisations by copyright owners from a copyright society) as indicating that the Act anticipated owners would have the ability to retain direct licensing rights regardless of the copyright society structure. The Court expressly stated: *"Section 33 of the Copyright Act applies only if the owners, who are members of a copyright society, have assigned their right to grant licences to the copyright society".*[22]

The Single Judge's methodology exhibits a considerable favouring of policy. In his interpretation of copyright societies, he sees them as being voluntary/can choose to deal with

[19] *Phonographic Performance Ltd. v. Azure Hospitality Pvt. Ltd., supra* note 1.
[20] *PPL v. Azure (Single Judge), supra* note 1, para 2.
[21] *Id.*, paras 20–28.
[22] *PPL v. Azure (Single Judge), supra* note 1, para 27.

others through letting companies unite, but can equally choose to license interests/rights as individuals. This finding resolves the chronic licensing void arising from unregistered control of major works by PPLs, and is consistent with the Bombay High Court's approach to this issue as articulated in *Novex v. Trade Wings Hotels.* As the Division Bench will later point out, it is challenging to illustrate how this interpretation correlates with the explicit wording contained in section 33(1), which contains the mandatory prohibition "no person or company shall… issue or grant licences or otherwise commerce…other than in accordance with licences issued pursuant to section 33(3)".

D. Division Bench Ruling

Azure took its appeal from the Single Judge's decision to a Division Bench of the Delhi High Court composed of Justice C. Hari Shankar and Justice Ajay Digpaul, which issued a 49-page judgment on April 2025, reconsidering the issue of "Section 33". The Division Bench proceeded through a number of stages in its analysis.

The first stage involved rejecting the Single Judge's interpretation of the first proviso to Section 33(1), which was that the term "in his individual capacity" in the proviso was understood as being a contrast to acting as a collective society, rather than being a contrast to acting as a member of the society. In the case of a careful examination of the reading, the Division Bench found that the intention of the proviso was to protect an owner who has become a member of a registered copyright society from having their individual licensing rights extinguished due to their membership in the society; rather than extinguishing all remaining individual rights to a society member because of their society membership. However, it has been confirmed that the first proviso does not create a separate and distinct right for a person who is not a member of the society to license their rights.[23]

Second, the Division Bench considered PPL's assertion that it was an owner pursuant to section 18 of the Copyright Act and determined, in principle, that an assignee of copyright could be regarded as an owner for the purposes of the Copyright Act. However, it also found that being an owner did not give rise to an exemption from the obligations set out in Section 33(1). The essential issue to be determined is not the status of the licensor, but rather what actions the licensor has been engaged in. PPL carries on the 'business' of issuing licences in a systematic, commercial and large-scale manner. A plain reading of section 33(1) - *'no person or association of persons shall ... carry on the business of issuing or granting licences'* - applies to PPL as much as it does to any other organisation.[24]

Thirdly, the Division Bench considered the policy implications of both approaches. If the Single Judge's interpretation is accepted, the tariff regulation framework provided under Section 33A can be fully bypassed. Therefore, any entity can acquire an extensive portfolio of assignments and then impose any rate they wish without the risk of being reviewed by the IPAB. The Division Bench stated that, if the Single Judge's interpretation were true, then a person who wanted to perform copyrighted sound recordings would have no recourse to

[23] *PPL v. Azure (Div. Bench), supra* note 2, paras 16.3-16.5.
[24] Id., para 16.6

challenge unreasonable tariff rates imposed by PPL and would completely nullify the core of Section 33(1). If this occurs, the consequences would not only eliminate the principal portion of Section 33(1) but would also entirely undermine Chapter VII of the Copyright Act and place the law in the position it occupied prior to 1994.[25]

Fourth, notwithstanding what it said about PPL's authority to issue licences, the Division Bench sort of decided not to just dissolve the injunction right away, and let Azure go ahead to play PPL's repertoire without payment. Instead, it tempered the injunction by asking Azure to keep paying PPL, but only using the tariff rates that apply to RMPL, as the registered copyright society, like PPL, was effectively a participant in RMPL. The idea behind this equitable tweak was that Azure had been, and kept being, taking advantage of PPL's repertoire in its own establishments, so it shouldn't be allowed to enjoy that advantage for free while everything is still pending final determination.[26]

E. The Paradox of the Division Bench's Intermediate Order

The Division Bench's intermediate order has this sort of inherent tension to it. While it first held that PPL cannot lawfully issue licences without registration with a copyright society, the Bench still told Azure to pay PPL, the very entity it had effectively found to be lacking the authority to take licence fees, using RMPL's tariff rates. Yet that direction isn't really a licence. The court said it outright; it did not find that PPL had actually licensed Azure. Instead, it reads more like an equitable duty to pay, kept in suspension until the final determination. But the legal position of that payment setup is a bit opaque. If PPL can't lawfully run the licensing business, then it is hard to see what lawful footing it has to receive what, in real economic effect, are essentially licence fees. This contradiction, it feels like, mirrors the larger problem the courts have hit throughout this litigation: under the current Act, there just isn't any real mechanism for handling the case where a major rights holder sits outside the copyright society framework, and at the same time sits outside the individual owner exemption, even while it still holds rights that commercial establishments plainly need.

F. The Supreme Court Stay and Clarification (2025)

PPL moved the Division Bench order to the Supreme Court of India. On 21 April 2025, a bench with Justices Abhay S. Oka and Ujjal Bhuyan heard PPL's special leave petition.[27] The court issued notice and granted interim relief to Azure Hospitality. It stayed the direction in paragraph 27 of the Division Bench judgment. That paragraph had said Azure must pay PPL at the RMPL tariff rate. The Court also said that the Single Judge's injunction order from 3 March 2025 would not take effect right away. So, until the case is decided at the end, Azure Hospitality has no active injunction against it, and it does not have any payment duty at this stage.

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[25] Swasti Chaturvedi, *PPL Can't Grant Licences For Sound Recordings Without Registering Itself As Copyright Society Or Becoming Its Member: Delhi High Court*, Verdictum (Apr. 16, 2025).

[26] *PPL v. Azure (Div. Bench)*, supra note 2, para 27.

[27] *Phonographic Performance Ltd. v. Azure Hospitality Pvt. Ltd.*, SLP(C) No. 10977/2025 (Apr. 21, 2025) (India)

In June 2025, the Supreme Court gave more details about what its stay covers. It did this after PPL asked for guidance. The court said the stay only works between the parties in the Azure case. It does not stop other hospitality businesses from facing possible liability. Those businesses still must follow the rules and get the licences that apply[28]. This clarification did reduce some of the confusion. But it did not settle the main issue. The question is still open: can PPL issue licences in the first place in a lawful way? That matter is still before the Supreme Court.

G. The Downstream Effects

As a result of the ruling by the Division Bench of the Delhi High Court (the "Division Bench"), fresh litigation immediately popped up throughout the country, all picking up on Division Bench rulings and using these rulings to support their opposing contentions. For example, at the time of the Division Bench's ruling, the *Pass Code Hospitality dispute* was pending before the Delhi High Court (since 2022, with Pass Code depositing an *ad hoc amount of ₹30 lacs per court order);* however, following the Division Bench ruling on Azure, the Division Bench ruling was cited as a basis *for withdrawing (or voiding) the entire payment arrangement*. *Justice Tejas Karia* found that, since no higher court had yet overturned the Division Bench's ruling on the merits, the parties had created an alternative, equitable payment mechanism that was functioning well; to shut off the ad hoc mechanism prematurely would upset the balance of payments already agreed to by the parties.[29] In the Pass Code ruling, there seems to be a broader issue, that is, courts continues to create ad hoc payment mechanisms in the absence of any clear statutory support or any specific court mandate, and furthermore, no consistency exists between the judges as to how they weigh the various factors or considerations in assessing the need for or whether to grant parties the interim payment or ad hoc based on the specific facts and circumstances of each case.

VI. The Inter-High Court Conflict between Bombay, Madras and the Supreme Court

A. Novex Communications v Trade Wings Hotels (Bombay High Court)

One of the most important counters to Delhi's Division Bench ruling was this Bombay High Court judgement in the case of *Novex Communication Pvt. Ltd. v Trade Wings Hotels,* which was heard and decided by *Justice R.I. Chagla*.[30]

The central question before the Mumbai High Court was whether *Novex Communications and PPL, as unregistered copyright assignees, would have been able to conduct licence issuance*

[28] *Phonographic Performance Ltd. v. Azure Hospitality Pvt. Ltd.*, I.A. No. 129037/2025 in SLP(C) No. 10977/2025 (June 19, 2025) (India).
[29] *Phonographic Performance Ltd. v. Pass Code Hospitality Pvt. Ltd.*, CS(COMM) No. 267/2024, 2026:DHC:140 (Del. H.C. Jan. 9, 2026) (India).
[30] Tejaswini Kaushal, *The Sweet Sound of Victory? BHC Clarifies That Organisations Not Registered as Copyright Societies Can Also Issue Licenses*, SpicyIP (Jan. 30, 2024), https://spicyip.com/2024/01/the-sweet-sound-of-victory-bhc-clarifies-that-organisations-not-registered-as-copyright-societies-can-also-issue-licenses.html.

without registration as copyright societies. The Bombay High Court pre-emptively ruled in favour of Novex and PPL.

While *Justice Chagla's* textual analysis took a different path from that of the Delhi Single Judge, the outcome was consistent: the Bombay High Court stated that the term *"person"* under Section 33(1) does not include an *"owner"* of copyright. If it did, the first proviso to that section would be rendered completely meaningless, because if persons were included, then owners would have to be registered to conduct any licensing business, resulting in the first proviso being without purpose. As such, the Bombay High Court ruled that Section 33(1) governs *copyright societies* and *third-party licensing entities*, but not owners licensing in their own names at scale.[31]

The Delhi High Court stated in *PPL v. Azure Hospitality* that it did not support the interpretation of the Bombay High Court. It said that the way the Bombay Court interpreted Section 33(1) means that the main part of Section 33(1) would not apply, but rather, the only thing the Bombay High Court's interpretation would do is make useless either the main part or the second part of Section 33(1), and that the reason why Section 33(1) was made was to prevent individuals or companies such as PPL and Novex who have thousands of recordings from making money off of their recordings without the benefit of any regulation whatsoever.[32]

B. The Madras High Court's Approach

In *Novex Communications v. DXC Technology,* the Madras High Court held that in determining whether the copyright owners of sound recordings were subject to the *restrictions* imposed by Section 33(1) of the Copyright Act,[33] it would treat such copyright owners as being members of the Copyright Society by virtue of the *second proviso to Section 33(1*) and that as a result of the operation of that deeming provision that they would be subject to the restrictions created by Section 33(1) and that they would therefore be allowed to operate as licensed copyright owners through the Copyright Society only. The Bombay High Court in *Trade Wings Hotels* disagreed with the Madras High Court by holding that the second proviso to Section 33(1) was meant to apply to the underlying musical work copyright holders (the composers and lyricists), and not the copyright owners of the sound recordings.

C. Assessment of the Judicial Conflict

The judicial conflict over three High Courts shows how genuinely ambiguous the language of Section 33 is in *three internally coherent ways.* The Delhi Single Judge and the Bombay High Court arrived at the same result (that PPL may license) but were able to do so using different textual bases. The Delhi Division Bench and the Madras High Court, on the other hand, found that *PPL could not license unless they had registration, again using different textual bases.* Only the Supreme Court can resolve this judicial conflict. The purposive interpretation of the act of the Division Bench is more persuasive from a legislative intent perspective

[31] *Novex v. Trade Wings, supra* note 3, at paras 40–55.

[32] *PPL v. Azure (Div. Bench), supra* note 2, para 16.7.

[33] *Novex Communications Pvt. Ltd. v. DXC Technology Pvt. Ltd.*, CS No. 407 of 2020 (Mad. H.C. Dec. 8, 2021) (India).

because it takes into consideration Chapter VII's prohibition of circumvention; however, it creates considerable practical problems, which will be discussed in Section 7 of this paper.

In April 2025, a bench of *Justices Abhay S. Oka and Ujjal Bhuyan* stayed the payment direction contained in paragraph 27 of the Division Bench's decision, under which Azure had been required to pay PPL at the RMPL tariff rate. On 19 June 2025, the Supreme Court clarified that this stay applied only between the parties to the Azure litigation and was not intended to excuse other hospitality businesses from liability as third parties or from the need to seek PPL or other applicable licences. Courts hearing related disputes have also fashioned *ad hoc* payment arrangements for most proceedings connected to this litigation, such as the case of *PPL v Pass Code Hospitality* in the Delhi High Court, which is still pending a final resolution.[34] A key issue is still before the Supreme Court. As of the latest hearing in January 2026, there is still no final decision. This leaves a regulatory hole for the hospitality industry.

VII. Comparative Analysis and Policy Recommendation

A. Infringement Liability of Hospitality Businesses (The Legal Gap)

The ruling of the Delhi Division Bench has significant implications for cafés, restaurants and others in the food and drink industry operating in Delhi, because they may no longer be able to enter into their usual contractual relationship with PPL to obtain public performance licences for playing sound recordings. This creates a very serious legal situation for hospitality establishments, because the normal way for a hotel, cafe or restaurant to play background music in India was to obtain: (a) a licence from IPRS covering the use of the musical works by the composers or lyricists, and (b) a licence from PPL covering the use of the sound recordings. Under normal circumstances, when PPL issued a licence, they would have established a tariff for the licence based upon various criteria (for example, the size of the establishment, the number of rooms in an establishment, and whether the music is played in public areas or individual rooms). If PPL were to lose the ability to issue licences, these types of businesses would have grounds to challenge any PPL-issued licence as being ultra vires if PPL attempts to sue these businesses, based upon such PPL issued licences.

Three different aspects characterise how hospitality is liable to the law. The first aspect is that the establishment that has acquired a PPL licence and has acted in good faith and relied on it will be regarded by the courts as not having validly obtained that licence because the PPL didn't have the correct authority to provide it. Section 51(a)(i) applies strict liability even though the person didn't have a reasonable belief or reasonable reliance on the infringing act that was produced by the hospitality establishment in the same manner as a tortious interference claimant would have to establish their claim. The second aspect relates to hospitality establishments which did not apply or obtain a licence from PPL and concluded incorrectly that because PPL did not have the authority to grant the licence, the business did not need a licence from PPL; however, if the establishment plays recordings that are included in the repertoire of RMPL, the only legal licence issuer in India, then it is liable for RMPL's repertoire

[34] *PPL v. Pass Code*, supra note 33 (Jan. 9, 2026).

of works irrespective of whether or not the establishment has applied for or obtained an agreement to obtain a licence from RMPL. Thirdly, the establishment that has applied to RMPL for a licence will still have an application made against it by PPL as a copyright holder of the works being used for copyright infringement, even if an agreement for a licence with RMPL has been obtained. The reason for this is that both copyright holders and licence holders have the right to sue for copyright infringement regardless of whether the court subsequently rules that PPL had no right to issue licences.

B. The Tariff Vacuum and Its Consequences

The most immediate and practical result of legal decisions made regarding the public performance tariff of sound recordings in the hospitality sector is that there is no currently established IPAB-reviewed public performance tariff. RMPL, as the Registered Society, publishes tariffs that are IPAB reviewable under Section 33A, while PPL has published its own tariffs, but these tariffs are not IPAB reviewable. If the ruling of the Division Bench is upheld by the Supreme Court, PPL will no longer have valid historical tariffs. Hospitality establishments that paid these historical tariffs did so based on the belief that this was a requirement of law, but they will NOT be able to recover that payment in the real world. There is no current RMPL-administered public performance tariff in place, although when PPL rejoins RMPL, there will be an RMPL-administered public performance tariff. These RMPL tariffs are likely to differ significantly from historical PPL tariffs, with large hospitality establishments paying significantly higher tariffs and smaller hospitality establishments paying significantly lower tariffs.

Another result of the lack of a public performance tariff is the impact it has on the Creative Economy. Royalties that PPL collects from *Hospitality Establishments* will be distributed to Music Labels, which distribute royalties to artists and producers. When PPL cannot collect royalties, but RMPL has not yet entered into royalty collection agreements with the same music Labels as PPL, a portion of the sound recording repertoire will be effectively unlicensed for the purpose of public performance, allowing anyone to play this music without legal recourse. However, the outcome was contemplated duly by the Bench during modification of the injunction that it is harmful to the right holders but particularly to smaller/independent labels whose works are not yet recognised in RMPL's ambit.[35]

C. The US Model: Homestyle Exemption and Collective Licensing

America has some value as an example for comparing copyright laws around the world, not only because of the exemptions allowed under 17 U.S.C. § 110(5) after 1998, through the *Fairness in Music Licensing Act,* to small businesses who broadcast music utilizing a single receiver similar to those that consumers use at home; but also because such exemptions were

[35] *PPL v. Azure (Div. Bench), supra* note 2, para 27.

created to assist hospitality businesses with compliance issues due to pressure from major performing rights organizations such as ASCAP, BMI and SESAC.[36]

On the other hand, copyright law in India differs fundamentally from that in the U.S., especially since no similar exemption exists in India, and copyright infringement is not limited by the size of the business. Nevertheless, the existence of consent decrees regulating tariffs at ASCAP and BMI provides two more important lessons to Indian copyright law. First, in the absence of oversight, collective licensing results in excess and anti-competitive tariffs, and thus demonstrates that tariff regulation is necessary both in theory and in practice. Secondly, if we gaze upon the US Fairness in Music Licensing Act, we see that small businesses end up facing disproportionate burdens due to compliance with such a policy demanding music licensing, supporting the policy argument that Indian copyright reform should also consider a threshold exemption, if not, then a simple compliance mechanism for small hospitality units.

A valuable counterexample is the UK's set-up, which is principally handled by PRS for Music (which administers music works) and PPL (for sound recordings). Since 2018, both of these organisations have worked together to create a joint venture called PPL PRS Ltd., which provides a single *TheMusicLicence* in order for establishments like pubs, hotels, restaurants, and cafes to offer public performance of music without having to administer multiple licenses separately.[37] This *one-stop-shop* approach greatly reduces compliance burden on users yet continues to have clear, regulated tariffs and a strong reporting system for paying royalty distributions.[38] Therefore, the fact that the UK system works effectively demonstrates that it can work in a way that efficiently utilises resources by having the major rights administrators collaborate to provide a workable model for the implementation of India's proposed single-window portal.

D. Reform Proposals

This paper's analysis demonstrates that there are four key connected reforms that can resolve the uncertainty around licensing for the business of music licensing without negatively affecting the rights of copyright owners.

a. The definition of business in Section 33(1) should be modified to cover the meaning of business; where a legal presumption exists that any entity who (i) holds more than, say, 100 sound recordings, and (ii) is systematically issuing licences for a fee is in the "business of issuing or granting licences," thereby removing the ability for entities such as PPL to claim that they are not in the

[36] 17 U.S.C. § 110(5)(B) (2018)

[37] *TheMusicLicence*, PPL PRS https://pplprs.co.uk/themusiclicence/ (last visited Sept. 29, 2026); Press Release, PPL PRS, *PPL and PRS for Music Joint Venture Officially Launches* (Feb. 28, 2018), https://pplprs.co.uk/in-the-press/ppl-and-prs-for-music-joint-venture-launch/.

[38] *TheMusicLicence*, PPL PRS, pplprs.co.uk (last visited Sept. 29, 2026) (quoting "One contact. One invoice. One licence."); *Licensing of Music in the UK Hospitality Industry*, Reed Smith (Jan. 24, 2023), https://www.reedsmith.com/articles/tomorrows-hospitality-a-z/licensing-of-music-in-the-uk-hospitality-industry/.

"business" of licensing, but rather are simply involved in being the owner of rights;

b. Parliament should create a single-window licensing mechanism, administered by the Registrar of Copyrights or a dedicated licensing authority constituted under the Copyright Act, through which a hospitality establishment could obtain one composite licence covering all participating copyright societies and major repertoire holders in a single transaction, thus vastly reducing the cost for the hospitality industry in complying with copyright laws and eliminating the need for establishments to deal with multiple licensing authorities. To stop this system from stacking too much unchecked power in one place, the tariff part should follow the same rules as Section 33A. That means public disclosure and proper records. It also means the tariff should be open to review, with a chance to challenge it before the IPAB, or whatever court replaces it. On top of that, the authority that runs this should not be left alone. It should get regular checks from the Competition Commission of India. This is needed because Chapter VII sets up collective licensing. For each type of work, that setup can act like a managed monopoly, as noted in Section 4.3 of this paper.[39]

c. The Supreme Court should instruct the Central Government to immediately assist PPL in joining RMPL during the transition period before the proposed reforms occur so that PPL's repertoire can be licensed in a regulated and tariff-reflecting manner. The division bench of the Supreme Court noted that RMPL has approximately 700 members and that PPL can grant licenses to RMPL's members at the published tariff rates, resulting in the least resistance and greatest legal certainty for PPL to license its repertoire.

d. The Parliament of India should create an exemption for hospitality establishments with very small customer-present areas to play background music through a standard domestic audio system without licensing burdens, similar to the US homestyle exemption. This exemption would help small independent cafes and tea shops comply with licensing requirements and eliminate the otherwise disproportionate compliance burden for the applicant that would result from playing background music.

E. The Broader Impact on the Indian Music Industry

The uncertainty of the current legal landscape has consequences that reach far beyond the hospitality industry. If repertoire aggregators that have not registered with PPL are unable to enforce their licensing rights against commercial users in a systematic way, there will be reduced economic motivation for music labels to assign their public performance rights to any entity, whether it's PPL or a successor.

Thus, music labels may choose to hold their rights individually and pursue lawsuits based on infringement directly, which will cost them significantly more money and time than pursuing their claims through PPL or a successor. Furthermore, the music business may unify around RMPL as the sole channel for obtaining performance rights, but this requires RMPL to create

[39] Subramanian, *supra* note 6, at 22.

the operational infrastructure, the membership base, and the fee schedules that PPL has created over the past several decades. As a result of the transition period, rights holders will be at greater risk for infringement than ever before, and hospitality companies will find themselves facing legal uncertainty and ambiguity in the enforcement of their rights. This is precisely what the hypothesis has identified as the short-term enforcement gap in the enforcement of performance rights.

VIII. Conclusion

This paper has examined the extent to which Section 33 of the Copyright Act bars *unregistered entities such as PPL from collectively licensing sound recordings for public performance in commercial establishments*, and the legal uncertainty that this restriction has generated.

In the above analysis, it has been demonstrated that the Delhi HC's interpretation in the landmark case of *PPL v. Azure Hospitality* held that the mandatory registration in Section 33(1) applies to *entities carrying on the business of licensing, regardless of whether such entities hold copyright through assignment*. The Division Bench correctly noted that if PPL were allowed to bypass the registration requirement of Section 33 (1) by claiming that it is an owner-licensor and not a copyright collective management society, the entire regime set forth by Chapter VII, especially the important provision in Section 33A providing for the establishment of a tariff framework, would be rendered meaningless. In addition, the proviso to Section 33 (1) allowing for the licensing of sound recordings on an individual capacity is best read as a limited exemption for a member of a copyright collective management society who retains residual rights, rather than as a broader exemption for any owner of sound recordings who licenses copyrighted sound recordings systematically.

The thesis of the proposed paper is thus confirmed: the Division Bench's decision not only reinforces the mandatory collective management regime, but it also creates a short-term enforcement gap that increases the risks of infringement and uncertainty for rights holders and hospitality businesses. Hotels, cafes, and restaurants find themselves in a position where they are unable to obtain a legally authorised licence from the company that owns the most commercially valuable sound recording repertoire in India and are liable for infringement if they play that repertoire without any licence. While hospitality businesses may rely on PPL licences obtained in the past, they cannot escape liability under Section 51 strict liability.

The paper proposes four reform measures: clarification of what constitutes business in Section 33(1) to prevent large repertoire providers from circumventing it; establishment of a portal for licensing that provides a single point of entry for licensing purposes, such as for hospitality businesses; transitional membership of PPL in the RMPL; and an exemption with a modest threshold for very small businesses. At the least, the Supreme Court should, in deciding the appeal in PPL v. Azure Hospitality, clarify the meaning of the first part of Section 33(1) and the current status of licences issued by PPL so that the hospitality sector can respond to compliance requirements, while rights holders can exercise their rights.

Two major limitations of the paper include, firstly, the fact that the *paper fails to anticipate the ruling of the case, and hence certain recommendations made by the paper have to be modified*

considering the outcome of the case. Secondly, the *paper does not consider another aspect of the issue related to public performance rights, that being the right of composers and lyricists of music, which runs parallel to the sound recording right addressed herein*. Future research can perhaps study how compliance costs will be impacted by multiple license regimes applicable in the hospitality sector.

It is important to understand that sounds played in India's hotels and cafes, such as popular Bollywood tracks, regional movie soundtracks, and international songs, are the result of considerable investments, both in terms of creativity and money spent on them. It is imperative that the licensing system, which has failed to reward these investments, is put back into place.