

PERVASIVE TECHNOLOGIES:
ACCESS TO KNOWLEDGE IN THE
MARKETPLACE

INDIA CHAPTER:
ACCESS TO MUSIC THROUGH
THE MOBILE

METHODOLOGY DOCUMENT (DRAFT 5)

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CONTEXT

Like its predecessors the vinyl, the cassette tape, the CD, and the MP3 player, the mobile phone as the most recent musical carrier have been well documented to be a disruptive technology, one which has made earlier carrier technologies virtually obsolete. The mobile phone has transformed the music industry and its supporting infrastructure — dramatically altering the roles of various intermediaries and stakeholders who enable the creation, distribution, and consumption of musical content.

For the first time in 13 years, the music business is growing again, with consumption of musical content at an all time high due to innovations which have provided more affordable and convenient platforms for accessing music than ever before. These include web-based and mobile-based applications which have arisen to compete with piracy through "free", "feels-like-free" and "fermium" business models.¹

Given the pervasiveness of the mobile phone, especially in India where it is the only mode of access for over 50% of the population², these innovations along with expanding broadband and data services seems to be a mark of success in bringing access to music and other media content to those formerly priced out, and geographically excluded from the legal market.

However, Indian web and mobile-based applications such as Gaana and Saavn, and its U.S. counterparts like Spotify and Pandora have continuously operated at a loss, often sustained by venture capitalist funding or a larger corporate backing.³ Although many online platforms, such as the recently shut down Flyte (funded by Flipkart) cite piracy as the official reason for its closure, industry insiders have allegedly noted exorbitant licensing fees demanded by rights holders as the case.⁴

RESEARCH PROBLEMS:

1. It is uncertain whether legal access to affordable music through the mobile will remain.

As an access issue, this is problematic due to the potential disappearances of these platforms, which have with varying success provided an alternative to unauthorized file sharing while increasing the ease of consumers' access to a larger volume and variety of legal content. Some of these

1 Amba Kak, *Fighting Free with Free - The Legal Music Market in India as a Response to the Digital Age* (Centre for Internet and Society, to be published.)

2 Avendus Capital, *India's Mobile Internet: The Revolution Has Begun: An Overview of How Mobile Internet Is Touching the Lives of Millions*, Industry (Avendus Capital Private Limited, September 2013), http://www.avendus.com/Files/Fund%20Performance%20PDF/Avendus_Report-India's_Mobile_Internet-2013.pdf.

3 Amba Kak, *Fighting Free with Free - The Legal Music Market in India as a Response to the Digital Age* (Centre for Internet and Society, to be published.)

4 Nikhil Pahwa, "Why Flipkart Shut Down Flyte Music," News and Analysis of Digital Media in India, *MediaNama*, (May 29, 2013), <http://www.medianama.com/2013/05/223-why-flipkart-shut-flyte-music/>.

applications provide a "direct-to-fan" platform for musicians to upload their own music online without having to 'break in' to a relatively closed entertainment industry, particularly in the Indian market where the mass majority of music is dominated by the film industry. Access to increased volume and variety is also not a guarantee, particularly in light of some musicians' indignation over the intermediaries' profits from their content, and the little revenue received in return.

2. Numerous stakeholders are entering the technologically advancing, digital music industry resulting in uncertainty of optimal business models and increased complexity of revenue and royalty distribution.

Thus, given evolving business models due to the transitioning physical to digital music industry, no consensus has yet been found on which platforms or revenue models offer an optimal solution for access to, and production of music. The potential for monetization in all levels of the value chain - from production, to content aggregation, to content distribution, and consumption -- has resulted in an increase in the number of intermediaries, further complicating the ecosystem.

All stakeholders fulfill different roles in the industry while expressing the common challenge of 'monetization'.

Web and mobile based **content distributors** are attempting to find the right price points at which Indian consumers are willing to pay, particularly in a market whose billing model is largely based on mobile credits and cash-on-delivery since only 1% of the population have access to credit.⁵ Globally, criticisms for streaming distributors like Spotify are highly publicized, not paying enough royalty to artists despite claims that 70% of their revenue is spent on content licensing.⁶

Content aggregators are attempting to monetize services such as music fingerprinting, meta-data tagging, and other analytics tracking to identify and capitalize on consumer behavior and consumption trends. Meanwhile, telecom companies and mobile phone manufacturers are attempting to provide integrated services and music bundle packages to increase the interoperability of these platforms for a more frictionless experience for consumers.

Content owners – vast majority being music labels -- are attempting to maintain their relevance in the industry through its powerful artist and repertoire marketing role, amidst criticisms that stakeholders like multi-channel networks and self-publishing content distributors (i.e. SoundCloud, Youtube, etc.) will deem it irrelevant. Many distributors globally note the vast ownership of content

5 Reserve Bank of India, as cited in IFPI, *India: Nearing an all-time high* <http://www.ifpi.org/india.php>

6 James Duffett-Smith, Music Licensing Study: Notice and Request for Public Comment (United States Copyright Office 2014).

leading to the potential abuse of bargaining power, as exemplified by the Competition Commission of India's recent ruling that Super Cassette Industries' (or T-Series, who own 70% of Hindi film music) practiced unfair and discriminatory charging practices for a radio broadcasters due to their demand for minimum guarantees.⁷

The **content producers** -- lyricists, composers, performers, and more are struggling to monetize and finance the production of their music. Down the valuation stream, the contractual agreements between content owners and distributors affect the livelihoods of these artists. India's music industry is particularly unique in that the vast majority of content are film music, which means the common financier of music production are the film industry, rather than music labels or publishing houses. Additionally, given a one-time, work-for-hire agreement was commonplace in the Indian film industry during music production, a contractual agreement stipulating royalty division was slow to materialize.

3. Continued violation of law due to lack of legitimacy of Copyright Board, Copyright societies, and 2012 Copyright Amendment.

The entire music ecosystem is governed by the framework of copyright, which necessitates **legal mechanisms** to ensure proper regulation and balance between the protection of rights holders and access to content for consumers.

The 2012 Copyright Amendment attempted to address the imbalance of bargaining power through preventing the first author's transfer of right to royalty, amongst others. This amendment was also passed in response to alleged corruption and collusion between the content owners (music labels), various judiciaries, and the former copyright societies (Indian Performing Rights Societies ("IPRS") and the Indian Phonographic Publishing Limited ("PPL")), resulting in an absence of royalty payments to lyricists and composers for many years.⁸

Despite this, the Copyright Amendment have not been as effective in correcting the issues on the ground, and are still allegedly being circumvented via advanced royalties, backdated agreements, and waiver of performance royalty rights.⁹ Other inefficiencies cited have been poor transparency of royalty payments, lack of publicly available analytics on web and mobile-based platforms, and

7 Ashok Chawla, M.L. Tayal, and S.L. Bunker, *HT Media Limited v. Super Cassettes Industries Limited* (Competition Commission of India 2014).

8 Prashant Reddy, "Did the Big Music Companies on IPRS & PPL Collude to Deny Lyricists and Composers Crores of Rupees in 'ringtone Royalties' – An Investigation," <http://spicyip.com/2011/02/did-big-music-companies-on-iprs-ppl.html>, *SpicyIP*, (February 14, 2011)

9 Anonymous, "Ghost Post: The myriad ways in which the Copyright Amendment Act, 2012 is being circumvented" <http://spicyip.com/2014/01/ghost-post-the-myriad-ways-in-which-the-copyright-amendment-act-2012-is-being-circumvented.html>, *SpicyIP*, (January 18, 2014)

untimely responses by the Copyright Board to conduct investigations into the allegations.

Amidst these allegations, some industry analysts also claim the Copyright framework itself needs to catch up with the technological potential that the internet, and these new services provide. This may be an alternative perspective to be explored.

***(Tentative) Research Questions and Methodology**

Thus, given uncertainty of the sustainability of affordable, legal access; the increasing complexity of business models and royalty distribution, and the continued violation of Copyright law due to lack of legitimacy, the policy question is:

How can legal and institutional mechanisms ensure an enabling environment for access to, and production of music for all mobile phone users in India?

- **"Legal mechanisms"** - Copyright Act, Copyright Board, licensing mechanisms
- **"Institutional mechanisms"** - Copyright societies, music industry norms, corporate policies
- **"Access"** - equitable, fair, easy access to quality and quantity of music
 - Potential barriers to access (to music, through mobile):
 - Political: Legal constraints (Goonda Act?), intermediaries prevent copying, licensing bodies
 - Economic: Lack of availability of older repertoire, access to mobile device
 - Social: Use or access of materials involving loss of privacy, lack of quality production
 - Technological: TPMs, compatibility, broadband/data access, payment gateways, geographic barriers, lack of net neutrality
- **Access necessitates "production"** - ability to create content with little entry barriers; balance right of artists to earn, and consumer access
 - Barriers to production and distribution:
 - Uncertainty of business models in age of digital music
 - Ineffectiveness of Copyright regulation: Copyright societies, Copyright board
 - Controversy surrounding Copyright Act
 - Lack of finance/income -- intermediaries taking share of pie ?? Inefficiencies in music industry?
- **"Mobile phone users in India"** - smartphone users able to access web and mobile based platforms

1. How do the stakeholders in the Indian music industry work together to facilitate access to music via the mobile phone?

- **Who are the stakeholders of the music industry in India?**
- **What are their roles and their objectives?**
- **How have their roles changed given the digital transition of the music industry?**

Method: Conduct a stakeholder analysis mapping the physical to digital transition. Secure information via literature review (academic and grey) and expert interviews secured via snowball sampling.

- **Content Creation**
 - Lyricists/composers (film, non-film)

- Performers (film, non-film)
- Film Producer
- Sound Producer
- Publisher
- Self-production (Remix artists, DJs, independents)
- **Content Aggregation and Distribution**
 - Content Aggregation:
 - Music labels (International/film/indie)
 - Mobile aggregators (VAS companies)
 - Tech aggregators (back-end for digital platforms: meta-data tagging, analytics, etc.)
 - Content distribution (digital)
 - Online stores (e.g. iTunes)
 - Mobile/Web-based
 - Webcast/Radio (e.g. MumbaiOne Radio)
 - Digital Stores (e.g. Amazon, iTunes, eMusic, Google Play, Flyte, OKListen, etc.)
 - Interactive streaming (e.g. 8tracks, Gaana, Hungama, Raaga, Rdio, Spotify, etc.)
 - Bundled telco-music stores (*formerly Nokia MixMusic*)
- **Customer Environment and Devices**
 - Legal regulators/organizers
 - Copyright Board
 - Copyright societies (e.g. IPRS (Indian Performing Rights Society), PPL (Phonographics Performance Limited, ISRA (Indian Singers Rights Association))
 - Associations (e.g. MCAI (Music Composers Association of India), SIMCA (South Indian Music Companies Association), IMI (Indian Music Industry - ass. of producers), etc.)
 - Financiers:
 - Venture capitalists
 - Brands/advertisers
 - Corporate backing
 - Multi-channel networks
 - Technical intermediaries
 - Telecom operators
 - Internet service providers
 - Data providers
 - Payment gateway providers
 - Mobile phone manufacturers
- **Consumers**
 - Types of music listeners (Ovum research taxonomy)
 - Active fans (lean forward/niche)
 - Core enthusiasts (lean forward/mainstream)
 - Indie followers (lean back/niche)
 - Lean-back listeners (lean back/mainstream)
 - Class distinction/price sensitivity?

2. What are the current business models for web and mobile-based content distributors? How does this impact each stakeholder in the music industry?

- **What are the new business models of the digital music industry in India?**

- **How are the new intermediaries/stakeholders in the web/mobile targeted music industry impacting business models?**
- *Literature review (media, industry reports) and expert interviews*
- **What is the revenue distribution in the music production value chain for the web/mobile-based platforms in India?**
 - *Method: International comparison of new digital music business models worldwide:*
 - *Online MOOC Course & lectures (Coursera - West Virginia University¹⁰; YouTube - Future of Music Coalition¹¹)*
 - *Literature review (academic, white, grey, media, industry reports, etc.)*
 - *Method: Replicate FMC's study for Indian context: Music and How Money Flows¹²*

3. Who are the consumers that access music via mobile/web-based platforms in India?

- **Is there a socio-cultural-economic dimension distinguishing those willing and able to pay? Who actually pays and how much?**
 - *Method: Literature review, expert interviews, surveys??*
- **Are there different levels of musical engagement which translate to consumer behavior (active fans, core enthusiasts, indie follower, lean back listeners) and subsequent willingness to pay? What percentage of listeners fall in each category in India?**
 - *Method: Questionnaire to current users of web/mobile-based music distributors supplemented by expert interviews*
- **What kind of economic good is digital music in India? Inferior, luxury, normal? Complementary, substitute? Public, merit, private, free?**
 - *Method: Literature review, theoretical economic analysis supplemented by user survey and expert interviews*

4. Considering the stakeholders in the digital music industry, consumer behavior in India, how should music copyrights be regulated to provide optimal access of music through the mobile to consumers and fair remuneration to first authors?

- **What role do legal mechanisms currently play in the distribution of royalty revenue in the music industry (on the ground)?**
 - *Method: Mapping of copyright processes and agreements (oral, contractual, or otherwise) between stakeholders in the music industry, noting specifically role of Copyright Board, and (former) Copyright societies; expert interviews*
- **What role do codified laws (2012 Copyright Amendment, case law) stipulate should be the legal mechanisms to distribute royalty in the music industry?**
 - *Method: Legal literature review, expert interviews*
- **How have the 2012 Copyright Amendment impacted the stakeholders in the music**

¹⁰ <https://www.coursera.org/course/gpsmusic>

¹¹ <https://www.youtube.com/playlist?list=PL471E012D03E9BA03>

¹² <https://futureofmusic.org/blog/2013/06/18/music-and-how-money-flows>

industry? Are the laws effectively enforced? Has the Copyright Amendment been designed/defined/articulated in an optimal way for all stakeholders? Why or why not?

○ *Method: Literature review*

- **How *should* copyright be organized? Who should distribute royalty revenues? What process?**

○ *Method: Consider stakeholder analysis, context of India music/film industry, consumer demand and price-sensitivity, and conduct cross-jurisdictional comparison*

- **What industry norms should be set for a more transparent, efficient supply chain to ensure rights holders receive fair compensation?**

○ *Method: International comparison of industry norms for copyright organization and distribution*