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WHETHER LIVE CONCERTS AMOUNT TO COPYRIGHT INFRINGEMENT

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ABSTRACT

This study delves into the nuanced intersection of copyright law and live music performances, particularly focusing on whether live concerts constitute copyright infringement. At its core, copyright law grants creators exclusive rights over the reproduction, performance, and distribution of their original works, including musical compositions and sound recordings. The paper explains that when performers render their own creations, no infringement arises. However, performing works owned by others requires obtaining licenses, typically facilitated by Performance Rights Organizations (PROs) such as the Indian Performing Right Society (IPRS). Venues often secure blanket licenses to allow a broad range of performances without breaching copyright law. Nevertheless, unlicensed performances—even in charitable or non-profit contexts—can lead to infringement claims.

The paper further explores the complex nature of copyright in sound recordings, which encompass multiple layers of ownership involving lyricists, composers, music directors, and producers. These intricate rights create challenges in enforcement and licensing, particularly with the advent of digital distribution, remix culture, and AI-generated music. Legal ambiguities also arise in fair use interpretation and international inconsistencies in performers' rights.

Through analysis of recent case law, including IPRS v. ENIL and Novex Communications v. Hyatt, the paper underscores judicial recognition of the distinct rights held in sound recordings and the implications of their unauthorized public use. These cases reinforce the necessity of obtaining proper licenses for both live and recorded music to ensure compliance with copyright law. Ultimately, the study advocates for a balanced legal framework that safeguards creators' rights while embracing technological and cultural evolution.

WHETHER LIVE CONCERTS AMOUNT TO COPYRIGHT INFRINGEMENT

Live concerts are one of the most cherished forms of entertainment, offering a dynamic and immersive experience where artists perform their music in front of a live audience. However, the question often arises whether such performances may amount to copyright infringement. This issue becomes especially relevant when examining the legal rights

associated with musical works and their public performance.

In order to understand the potential for Copyright Infringement in Live Concerts, it is foremost and of prime importance to first understand what copyright protects. Copyright Law grants creators of original works—such as musical compositions and lyrics—exclusive rights to reproduce, distribute, perform, and publicly display their work. These rights can be

licensed or assigned, but unauthorized use typically constitutes infringement.

In the context of a live concert, if an artist performs their own original music, there is generally no question of infringement since the performer holds the copyright or has permission to perform it. However, complications arise when artists perform songs written or owned by others. In such cases, the law requires them to obtain a license from the copyright holder. These licenses are often managed by performance rights organizations (PROs) such as ASCAP, BMI, or, in India, the Indian Performing Right Society (IPRS)

Most venues that host live concerts are required to obtain blanket licenses from PROs, which authorize them to allow performers to use a wide repertoire of copyrighted songs. This system ensures that the rights of original creators are respected and that performers and venues operate within the bounds of the law. Therefore, when proper licensing is in place, a live concert does not amount to Copyright Infringement. On the other hand, performing copyrighted material without obtaining the necessary license constitutes infringement, regardless of whether the performance generates profit.

Even free or charitable concerts must adhere to copyright laws unless they fall under certain exceptions, such as fair use or use in educational settings. Unauthorized live performances can lead to legal action, including claims for damages and injunctions.

Another related concern is the recording or broadcasting of live concerts. If a live concert is recorded and distributed without the consent of the copyright holders—whether the performers, songwriters, or producers—it can constitute a separate act of infringement. This is especially significant in the digital era, where live performances can be streamed globally in real-time.

In conclusion, while live concerts in themselves do not inherently amount to copyright

infringement, the legality of such performances hinges on compliance with copyright law. As long as performers and venues secure the appropriate licenses, they are entitled to perform copyrighted works legally. Conversely, failure to obtain such permissions can lead to infringement. Therefore, adherence to copyright protocols is crucial to protect the rights of creators and ensure the lawful enjoyment of live music by audiences.

THE UNDERLYING CONUNDRUM OF COPYRIGHT IN A SOUND RECORDING:

The realm of copyright law, while grounded in the principle of safeguarding intellectual property, becomes increasingly intricate when applied to sound recordings. At the heart of this legal labyrinth lies a conundrum: distinguishing between the various layers of ownership embedded within a single musical production. Unlike literary or visual works, a sound recording encapsulates a constellation of rights, often divided among multiple stakeholders—each possessing distinct legal entitlements. This complexity gives rise to numerous challenges in enforcement, licensing, and interpretation.

A sound recording is not a monolithic entity; rather, it is an amalgamation of two primary components: the musical composition (including lyrics and notation) and the actual recording of that composition. The former component, that is, the Musical Composition is customarily and ordinarily owned by the Songwriter or Composer, while the latter component, that is, the actual recording is owned by the Producer or Record Label. This bifurcation of rights generates a twofold Copyright Structure, wherein the unauthorized use of either component—individually or in tandem—may constitute Infringement.

One of the central dilemmas is the ambiguous boundary between fair use and infringement, especially in the digital age. With the proliferation of streaming platforms, remix culture, and user-generated content, the reproduction and transformation of sound recordings have become ubiquitous. Yet, the

legal framework often lags behind technological advancements. Courts must grapple with questions such as: does a remix sufficiently transform the original work to merit exemption under fair use? Does a brief sample of a sound recording infringe on the original artist's rights, even if it is manipulated or obscured

Further complicating the issue is the global disparity in copyright regimes. While some jurisdictions recognize moral rights of performers in sound recordings, others emphasize commercial exploitation. For instance, European Law affords a sincere and vigorous protection to secure Performers' Rights, including the right to object to derogatory treatment of their performance. In contrast, the United States adopts a more utilitarian perspective, prioritizing economic incentives over artistic control.

Additionally, the emergence of artificial intelligence in music production has created new dimensions to the copyright discourse. When a sound recording is generated by an AI system trained on pre-existing works, who owns the resulting output? Is the data used for training considered a derivative of copyrighted material? These questions expose the inadequacies of current statutes and underscore the necessity for a revised framework that can accommodate the evolving contours of musical creativity.

Another persistent issue is the enforcement of rights in a digital ecosystem. Piracy, unauthorized sampling, and illegal reproductions continue to plague the music industry, undermining both the artistic and financial interests of creators. Although digital fingerprinting and blockchain-based rights management have emerged as potential solutions, their adoption remains limited and fragmented.

In summation, the Copyright Landscape surrounding sound recordings is riddled with doctrinal ambiguities and practical challenges. As the modes of musical production,

distribution, and consumption evolve, so too must the legal apparatus that governs them. An effective Copyright Sovereignty must harmonize a neutral balance—protecting the rights of creators while fostering innovation and cultural exchange. Only through such nuanced recalibration can the law truly serve the dynamic and multifaceted world of sound recordings.

In the Hon'ble High Court of Delhi at New Delhi a Civil Suit was filed in the case of The Indian Performing Right Society Ltd. Vs. Entertainment Network (India) Ltd. AIR Online 2021 DEL 16 by the plaintiff The Indian Performing Right Society Limited (IPRS), pleading that, (i) the plaintiff is a company limited by guarantee and registered under the Companies Act, 1956 and also registered as a Copyright Society under Section 33 of the Copyright Act, 1957; (ii) the plaintiff was established to monitor, protect and enforce the rights, interests and privileges of its members, comprising of authors, composers and publishers of literary and/or musical works, who are owners of copyright in their literary and musical works, (iii) the members of the plaintiff comprise of authors, composers and publishers of Indian literary and musical works, and have executed deeds of assignment, assigning their public performing rights in respect of the literary and/or musical works in favour of the plaintiff; (iv) the plaintiff is therefore the exclusive owner of the public performing rights in respect of these literary and musical works; (v) the plaintiff is therefore exclusively authorized to license the public performing rights that exist with respect to literary and musical work created by its members.

The literary work in a sound recording is the lyric component of the sound recording and the musical work in the sound recording is the music on which the lyrics are spoken or sung. However it is not as if the sound recording is the sum total of lyrics and musical works only. For the lyrics to be heard, as distinct from being read, a voice is required and which is not contributed by either the lyricists or the music

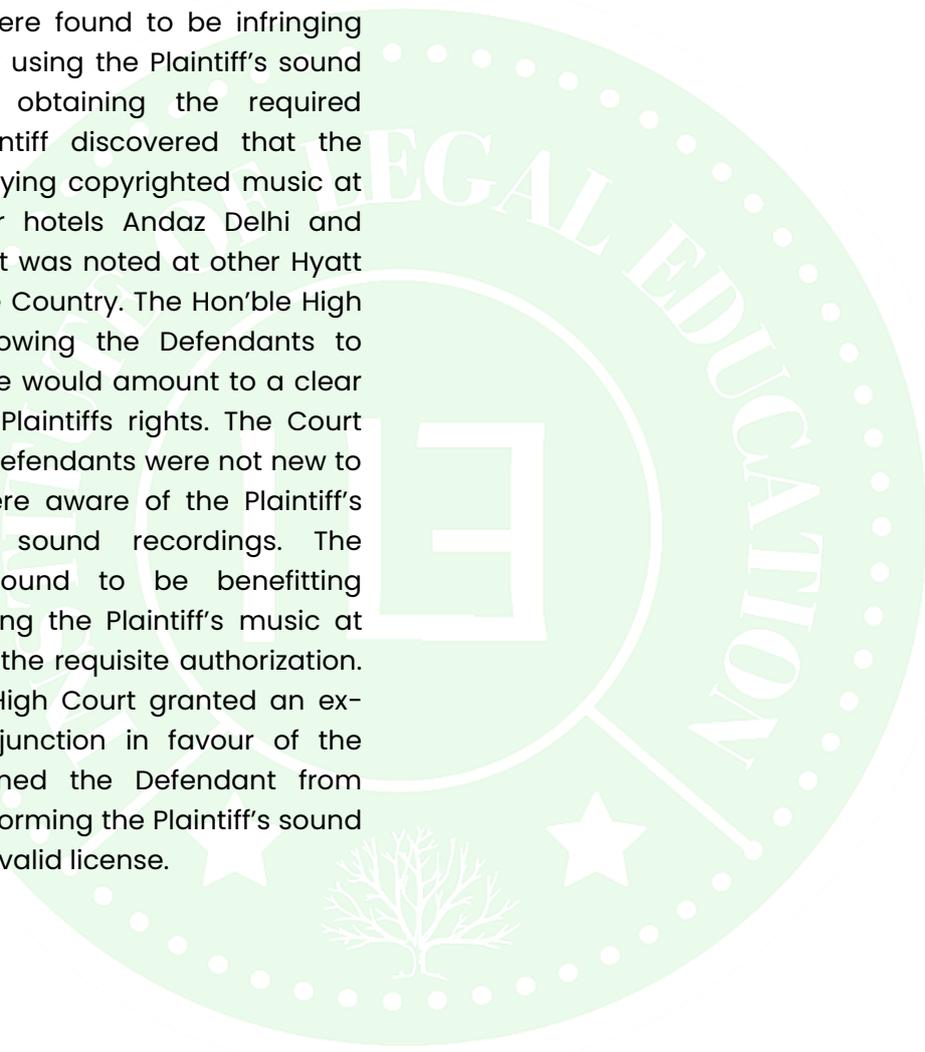
composers. For all three to have an appeal to the human ear, for which it is meant, somebody has to guide proper, appealing, commercially viable amalgamation of the three and which somebody is generally the music director. Yet further, somebody else has to make a recording thereof in a form communicable to the public and which somebody is generally the producer of the sound recording. The sound recording thus, is something more i.e. something besides the literary or musical works therein. To the said more/addition, needless to state, neither the owner of the copyright in the literary work nor the owner of the copyright in the musical works has any claim or right. A sound recording is thus the work of joint authorship within the meaning of Section 2(z) of the Act i.e. a work produced by the collaboration of two or more authors and in which the contribution of one author is not distinct from the contribution of the other author or authors. A sound recording is a collaboration of author of literary work, author of musical works and the author of a sound recording who ultimately directs the merger of the musical work and the sound recording to form one complete whole. The Act recognises a separate copyright in a sound recording besides the copyright in the literary work and musical works, even if the only two components of the sound recording. It is the owner of the sound recording who transforms the literary work which otherwise is a mere collection of words into a sound, capable of phonetic pleasure and who gives the composition of music a sound of various musical instruments.

The Plaintiff also prayed that the Copyright (Amendment) Act, 2012 is clarificatory in nature and has retrospective effect. The Copyright (Amendment) Act 2012 made significant changes to the Copyright Act, 1957, primarily focusing on extending Copyright protection and addressing issues related to the exploitation of underline works in cinematograph and sound recordings. It also introduced statutory licenses and provided a frame work for Copyright Societies. The Hon'ble High Court held that the 2012 amendment does

not alter the provisions of the Act, on interpretation whereof it was held that communication to the public of underlying literary and musical works as part of sound recording, under authorisation/licence from owner of the copyright in the sound recording, does not require authorisation/permission from the owner of the copyright in the underlying literary and musical works of the sound recording. Thus when Section 19(10) provides that assignment of copyright in any work to make a sound recording which does not form part of any cinematograph film shall not affect the right of the author of the work to claim equal share of royalties and consideration payable for any utilisation of such work in any form, it cannot mean that utilisation of the work as embodied in the sound recording also entitles the owner of the copyright in such work to demand equal share of royalties and consideration payable for the sound recording. To read the same otherwise would make the other provisions, on interpretation whereof it was held that no authorisation is required to be taken from owners of copyright in underlying works of the sound recording, while communicating the sound recording under authorisation of copyright in sound recording, otiose. Any interpretation which makes another provision of the statute redundant or otiose, is to be avoided and the rule of harmonious construction has to be applied. Thus Section 19(10) has to be read as not affecting the right of the author of the underlying works in sound recording, to claim share in royalty payable for utilisation of such works though identically as in the sound recording but in any other form. To the said extent, the amendment of the year 2012, is clarificatory. Moreover Section 19(10) provides for sound recordings which do not form part of any cinematograph film.

In another Judgment in the case of "Novex Communications Pvt. Ltd. Vs. Hyatt India Consultancy Pvt. Ltd. 2024 SCC Online Del 7076, The Hon'ble High Court of Delhi at New Delhi vide Judgment dated 9.9.2024 decided the case in the favour of the Plaintiff while recognizing the

right of the Plaintiff over sound recordings from major music labels such as Zee Entertainment Enterprises, Tips Industries, Red Ribbon Entertainment and others. These rights were assigned to the Plaintiff via formal agreements giving it exclusive control over public performances of these sound recordings. But the Defendants, Owners and Managers of Hyatt and Andaz Hotels were found to be infringing upon these rights by using the Plaintiff's sound recordings without obtaining the required license as the Plaintiff discovered that the Defendants were playing copyrighted music at events held at their hotels Andaz Delhi and similarly infringement was noted at other Hyatt Properties across the Country. The Hon'ble High Court held that allowing the Defendants to continue this practice would amount to a clear infringement of the Plaintiff's rights. The Court also noted that the Defendants were not new to the industry and were aware of the Plaintiff's ownership of the sound recordings. The Defendants were found to be benefitting commercially by using the Plaintiff's music at their venues without the requisite authorization. Hence, the Hon'ble High Court granted an ex-parte ad interim injunction in favour of the Plaintiff and restrained the Defendant from using or publicly performing the Plaintiff's sound recordings without a valid license.



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