

INTELLECTUAL PROPERTY LAWS IN THE MUSIC INDUSTRY

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I. Abstract

The music industry plays a vital role in the global economy, providing entertainment, cultural expression, and employment opportunities to millions of people worldwide. To establish regularised coherence in society, laws are necessary. For this reason, in the current internet-driven era, intellectual property rights, or IPR, are becoming more and more necessary. With a variety of government efforts to prevent IP infringement through laws like the Copyright Act, 1957 and the Copyright (Amendment) Rules, 2021, there have been numerous cases of IP rights violations in industries in India and around the world that are expanding steadily, particularly in the music sector. The entertainment business as a whole faces a greater issue because of the industry's diversity, which makes it harder for the legal system to support IP rights abuses.

Keywords: Intellectual Property Rights, Copyright Act 1957, Music Industry, Copyright, Copyright (Amendment) Rules, 2021, IP infringement

2. Introduction:

Copyright is a type of intellectual property that grants the owner the ability to prevent unauthorised use of his or her creations, including software, drama, literature, cinematography, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, government publications, and works of international organisations. In contrast to the US, where copyright registration is required, in India and other nations like the UK, copyright is given as soon as the artistic work is created, so long as it is captured in a tangible form. Copyright for literary and musical works lasts for the owner's lifetime plus 60 years after the death of the owner, and if the work includes the contribution of more than one person, the term is 60 years from the death of the last author/artist.

The Copyright Act of 1957 governs copyright laws in India. Music is a combination of many components and the intellectual contributions of many people. A song goes through several stages of development, including the lyricist writing the lyrics, the composer contributing the music, and finally the vocalist performing the song. The vocalist and the song's producer are now recording this song in a studio. Thus, it may be said that it is the result of several people working together.

3. Provisions in copyright laws for music:

According to copyright regulations, a song is separated into multiple parts, and the owner of each part may only assert their rights to that portion of the song. Music is not regarded as a whole. According to Section 2(d) (i) of the Act, the author of a literary or theatrical work is the person who writes it; similarly, the lyricist is the creator of a song, allowing him to claim his copyright over the song's lyrics as an author.

Section 2(d)(ii) of the Act states that in relation to musical works, the composer would be considered the author of the work. Further, Section 2(p) describes "musical work" as a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken, or performed with the music. A composer is a person who adds music to the lyrics of a song, and therefore he has the right to claim copyright over the music of the song.

Section 2 (qq) describes "performer" as an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture, or any other person who makes a performance. Thus, under this Section, a singer can claim his copyright over the work for which he made contributions.

Section 2(uu) of the Copyright Act of 1957 defines a producer in connection with a sound recording or cinematograph film. An individual who takes the initiative and accountability for creating the work is known as a producer. The music producer is the owner of the song's recording since he is the one who handles the recording and broadcasting duties in addition to other creative and technical leadership roles.

Berne Convention

The Berne Convention is the primary international agreement that allows copyright recognition across sovereign borders. It establishes minimum standards for author rights, work protection, and protection length. "Every creation in the fields of literature, science, and the arts,

It falls under the category of protected works regardless of how it is expressed. Authors are allowed a variety of unique rights, such as the capacity to translate, reproduce, perform publicly, transmit, recite publicly, and modify. Under the agreement, exclusive rights may be subject to unpaid exceptions or limitations, such as for particular kinds of quotes, reproductions, current affairs reporting, and temporary recordings meant for broadcast.

By convention, the reproduction right is subject to the first international version of the so-called "three-step test," which consists of three criteria determining the imposition and permissible amount of copyright limitations. Not to mention, copyright usually lasts for 50 years after the author's death.

Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement:

A substantial amount of intellectual property protection in trade-related businesses is covered under the TRIPS Agreement, which is regarded as a comprehensive framework that sets criteria for intellectual property protection. The relationship to the Berne Convention is explained in Article 9; computer programs and data compilations are protected by Article 106; the right to rent is granted in Article 11; the duration of protection is specified in Article 12; and performers, phonogram producers, and broadcasting organisations are protected in Article 14.

Since many nations have copyright laws that permit private duplication, it is legal to make copies of CDs, albums, and other materials for one's own use. However, because there are rental companies that rely on private copying, this lowers CD and record sales and deprives copyright holders of their just revenues.

Because of this, countries now recognise rental rights, which enables copyright holders to grant licenses for the rental of their works and receive compensation. The right to rent at least computer programs, films, and music must be granted by TRIPS Agreement parties. International agreements like the TRIPS Agreement call for strict enforcement measures, but in order to effectively handle these challenges, a multifaceted strategy combining public awareness campaigns, technological developments, and accelerated legal proceedings is required.

Digital Rights Management Systems (DRM)

The main reasons for the increase in copyright infringement in the virtual world are the

advantages of digital copies of the copyrighted work over physical copies, which are more identical, easier, and faster to copy. WIPO developed the WIPO Copyright Treaty (WCT) and the WIPO Performers and Phonograms Treaty (WPPT) in 1996 in response to the growing issue of digital copying. 10. In accordance with Articles 12 and 19 of the WIPO Copyright Treaty, contracting parties shall have "adequate and effective" legal remedies to deal with copies of tampered rights management information and prevent the owner from tampering with it without authorisation.

Sections 65A and 65B of the Indian Copyright Act 1957 provide comparable protection to copyrighted works. These two additional clauses made it easier for WIPO internet treaties to be included in the copyright system.

Section 65A addresses protection against circumvention of technological measures, whereas Section 65B addresses the security of rights management information. Section 65A(1) states that anyone found to have wilfully violated any of the rights given by the Copyright Act by evading technological safeguards for those rights is punishable by up to two years in prison and a fine. However, according to Section 65A(2), it won't prevent anyone from utilising the cited content for any purpose that isn't expressly prohibited by the Copyright Act. Third parties are allowed to circumvent under the same clause, provided they maintain a detailed record of the person and the cause.

Indian Legislation

In the landmark case, *R.G Anand v. Delux Films*, The play "Hum Hindustani," written by the plaintiff, became quite popular in the industry and among the masses. The plaintiff received a letter from the defendant, Mohan Sehgal, in 1954 expressing his interest in making the play into a movie. When they met, the plaintiff and defendant talked about the play as a whole. But no official promise was given. The plaintiff subsequently learned that the defendant had produced a film called "New Delhi." The complainant thought the movie's plot closely

matched the plot of his play after watching it. As a result, the plaintiff sued the defendant, requesting damages and a permanent injunction. The Supreme Court held that: "Copyright doesn't extend to ideas, subject matter, themes, plots, or historical facts; infringement pertains to how these elements are expressed by the author. The focus is on whether similarities involve fundamental aspects of expression in the copyrighted work. Substantial or significant copying is necessary for infringement. The test involves determining if, after experiencing both works, a clear impression emerges that the subsequent work is a copy of the original. When the same theme is presented differently, infringement isn't applicable. Material differences alongside similarities indicate no intent to copy. Incidental coincidences in a work do not constitute infringement if they are clearly unrelated to copying the original." The focus is on the creative process itself, making sure that the finished product showcases the author's original inventiveness and isn't just a copy or rip-off of someone else's work. For a work to be considered unique, it must be the product of sufficient independent labour, skill, and judgment exercised by an author or composer, even if that author or composer used recognized sources for inspiration.

Challenges and loopholes in the legal framework

Remixes of songs

Remixing is a material practice that involves combining parts from an existing record to create a new and updated version. It is a physical practice that depends on an existing audiovisual piece, drawing on its components and history. Remix culture involves altering, combining, rearranging, and remixing using technology to create new works. However, there are divergent viewpoints on whether remix culture constitutes copyright infringement or complies with copyright laws. Some argue that creating new works and altering existing ones constitutes copyright violation. However, Section

51 of The Copyright Act, 1957 states that any act that violates the owner's right without a license is considered an infringement. Sound recordings of musical works are not illegal if they are directly related to the original author and the person wishing to copy it has given adequate notice that they intend the second user to be the original owner. Various changes can be implemented, such as minimum royalty benchmarks by creators, a statutory license system, and protection of creators from exploitation to remedy the ill effects of remixing. The current law is vague on the amount of royalty and the scope of changes allowed when generating remixes, so a separate provision should be created for sound recordings.

Legality of Song Covers

Section 52(1)(j) of the Copyright Act has caused confusion regarding permission required for individuals to cover a musical work. However, Section 31C21 grants a compulsory license for those who wish to create cover versions of sound recordings, provided they adhere to its regulations. Covers must be made with the owner's permission or approval, and even if someone else has permission, the copyright holder still has the ability to create additional copies or cover versions.

The High Court of Delhi ruled that cover versions are prohibited unless permission is explicitly requested, leading to an order prohibiting the sale of version recordings. However, the High Court of Karnataka diverged from this judgment in *Gramophone Company of India Limited v Mars Recording Pvt Ltd*, where the court ruled that the owner's consent was irrelevant once requirements for notice, labels, and royalties were satisfied. The case was returned to the trial court after an appeal to the Supreme Court, but the situation remains unclear.

In the "big crook" case in Hong Kong, a Hong Kong resident, Chan was found guilty of violating copyright by using BitTorrent file sharing software. Chan was found guilty of three counts of attempting to distribute an infringing copy of a copyright work, violating

sections 118(1)(f) and 119(1) of the Copyright Ordinance Cap 52832 and section 159G of the Crimes Ordinance (Cap 200). Chan filed an appeal against the sentence, arguing it was irrational and harsh. However, his appeal to the Court of Final Appeal was denied on May 18.

Music Piracy

Piracy is a popular method of acquiring content without paying, as it saves consumers' income and allows them to access products without paying. This has a significant impact on content creators financially, as they are able to seize the opportunity presented by pirate websites and online platforms. However, piracy by low-value customers does not lower sales; instead, it converts deadweight loss into consumer surplus.

The amount of unpaid, pirated consumption far outweighs the amount of paid consumption from the days before piracy. A large portion of this unpaid consumption results from circumstances where the customer's assessment is lower than the price that existed before the Internet. In nonrival cases, theft is considered a valid solution, as it won't harm the original copyright holder.

There is also the market of pirated cassettes and CDs, where songs are duplicated and copied onto a cassette or CD from several legal cassettes or CDs. These are then packed to appear different from the original items and put on the market. This is considered infringement of copyright in sound recordings.

Factoring is another form of piracy, where songs are copied and packaged to resemble the original CD or cassette while keeping the same label and branding. These counterfeit goods give the impression that they are authentic items to common consumers, violating both the audio recording and the creative piece on the CD cover.

Section 79 of the IT Act

Section 79 of the IT Act allows ISPs to be released from liability for data or information provided by third parties if they had no

knowledge of the offense or took "all due diligence" to prevent any violation. However, unless the situation is covered by one of the two exemptions (due diligence and no knowledge of infringement), ISPs are accountable for copyright violations and other infractions that occur on their websites, even when the infraction is committed by subscribers.

The ambiguous wording of Section 79 may lead the government to use the exceptions listed in the IT Act more as a means of intimidating businesses. The question of "due-diligence" should have been stated more clearly, as different ISPs would interpret "all due diligence" differently. Additionally, the term "network service provider" ought to have been defined more clearly to avoid a broad definition that may be more expansive than intended. One requirement that ISPs must meet is "due diligence," which can be released from liability once they have shown reasonable diligence. However, there is no clear definition of how much care is expected of ISPs, which could lead to uncertainty. It is unjust to require ISPs to carefully examine each content transmission signal, but it is questionable if it is wise to grant them immunity from the duty of care.

To make decisions related to copyright, a high degree of technical expertise and specialized knowledge are needed. Therefore, it is imperative that the phrases "due diligence" and "due care" be defined to balance the interests of copyright holders and avoid giving Internet service providers unattainable obligations about Internet policing.

Enforcement Challenges

The Copyright Act and enforcing existing rules have become significant obstacles in India's efforts to improve copyright protection, particularly in the digital space. The absence of a physical source in the online space makes it difficult to access and enforce copyright laws, as digital media's cross-border operations often clash with territorial copyright laws. The creation of copyrighted works by machines using artificial intelligence (AI) is still in its

infancy, and the issue of who gets "authorship" in such works is still debated. Historically, there has been no discussion about who owns "works" made with computers, but since AI has been around, ownership has been contentious. Copyright laws in India are lagging behind other countries in terms of scope, inclusion, penalties, and liabilities, potentially leading to a gap between India and other countries with advanced copyright laws. State governments in India are often responsible for conducting piracy investigations due to the country's federal structure, making anti-piracy enforcement effectiveness more dependent on subnational initiatives. Piracy is considered low in priority by law enforcement agencies, and the International Intellectual Property Alliance reaffirms that local enforcement lacks appetite and significant time delays make it "very daunting."

Conclusion:

India's music copyright laws are a complicated and dynamic nexus of legal systems, technology disruption, and artistic expression. By identifying their contributions and giving them a portion of the ownership, the Copyright Act of 1957 establishes the framework for defending the rights of creators, including lyricists, composers, performers, and producers. Indian jurisprudence has attempted to strike a balance between the necessity for public access and creative freedom and the protection of intellectual property through a number of statutory provisions and seminal rulings.

International agreements like the TRIPS Agreement and the Berne Convention have improved the enforceability of rights internationally by bringing Indian copyright standards into line with international norms. But problems still exist. The distinction between infringement and invention is still muddled by ambiguities involving digital rights management, remix culture, and cover versions. Furthermore, enforcement delays, a lack of technical competence, and poor coordination

among authorities all contribute to the continued prevalence of piracy, both online and offline.

The distinctions between content producers, distributors, and consumers are becoming more hazy in the digital age. It is imperative that legal frameworks be updated, intermediary responsibilities be clearly defined, and enforcement mechanisms be strengthened as India progresses. At the same time, it is essential to raise knowledge of rights and obligations among artists, platforms, and customers. Maintaining the integrity of musical works while facilitating a vibrant, innovation-driven cultural economy requires a nuanced, tech-aware, and creator-friendly strategy.

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