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COPYRIGHT PROTECTION OF SONGS IN INDIA: OWNERSHIP, INFRINGEMENT AND EMERGING CHALLENGES

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ABSTRACT

Music has long been an important form of artistic and creative expression. In contemporary society, music continues to play an important role in creative expression and commercial entertainment. A song consists of multiple creative elements, including lyrics, musical compositions, sound recordings and performances, each of which may receive protection under copyright law. The growth of digital platforms has created new opportunities for music creators while also increasing the risks of unauthorized use and copyright infringement.

This article examines the protection afforded to musical works under the Copyright Act, 1957, including literary works such as lyrics, musical compositions, sound recordings and the performer's rights of singers and musicians. This act also provides rights and protection related to ownership, licensing, assignment and royalties.

The involvement of multiple stakeholders, including lyricists, composers, singers, performers and music producers or record labels, often creates complexities in determining copyright ownership and control, as different rights may vest in different individuals or entities.

The article also analyses various forms of copyright infringement, including unauthorized reproduction, adaptations, remixes, sampling, music piracy and the unauthorized use of copyrighted music on digital and social media platforms. It further examines the concept of substantial similarity and the judicial approach towards determining infringement.

The article further highlights emerging challenges arising from music streaming platforms, social media, digital piracy, remix and sampling culture, AI-generated music and AI-based voice cloning, along with uncertainties surrounding ownership, royalty distribution and copyright enforcement. The article aims to evaluate whether the existing Indian copyright framework adequately protects the rights of music creators in the evolving digital environment. It also examines the need for stronger enforcement mechanisms, clearer contractual arrangements and effective protection of creators' economic and moral rights.

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INTRODUCTION

Music has always been an important form of artistic and cultural expression. Music plays an important role in entertainment, commercial industries and digital media. Songs involve creativity, skill, originality and considerable effort. Over the time there is growth in the Indian music industry which has increased the commercial value of musical works. Now, music is distributed globally through digital platforms. In this scenario copyright becomes important as it protects the original work of individuals. Copyright grants creators certain exclusive rights over the use, reproduction and commercial exploitation of their creations. Copyright protection is very important as it encourages the creativity and innovation of the creators. Also, copyright protection provides economic benefits and recognition to creators. In India, copyright protection is primarily governed by the Copyright Act, 1957.

A song is not necessarily treated as a single copyrighted work. Its lyrics are protected as literary works, musical compositions as musical works, and recorded versions as sound recordings. Singers and musicians may also receive protection through performers' rights. Consequently, different individuals may hold separate rights in the same song.

Music creators frequently face several challenges, including the unauthorized use and reproduction of songs, music piracy and plagiarism. Disputes also arise concerning copyright ownership and royalty distribution. There are several unauthorized remixes, sampling and adaptations. Among the new creators and artist there is lack of awareness about the contractual and copyright rights. Also, one of the major issue the creators face is commercial exploitation without appropriate authorization or payment.

Digital technology has significantly transformed the distribution and consumption of music. Platforms such as YouTube, Spotify and Instagram have made music accessible to a global audience. However, it also increased unauthorized sharing and copyright infringement. AI-generated music and voice cloning have introduced new questions concerning ownership, originality and performers' right. The purpose of this article is to examine the legal framework governing the copyright protection of songs in India. The article analyses the ownership rights of lyricists, composers, singers and music producers. It also examines important judicial decisions concerning musical copyright and identifies emerging challenges arising from digital platforms and artificial intelligence. Finally, the article evaluates whether the existing Indian copyright framework adequately protects the rights and interests of music creators.

LEGAL FRAMEWORK FOR COPYRIGHT PROTECTION OF SONGS IN INDIA

The primary legislation governing copyright protection in India is Copyright Act, 1957. This act protects original literary, artistic, musical and other creative works. The copyright act, 1957 provides exclusive rights to creators over reproduction, distribution, communication, and commercial exploitation of their works. The aim is to balance the interests of creators with public access to creative content. Section 13 of Copyright Act,1957 is a very important provision as it identifies the categories of works in which copyright subsists. Section 13(1)(a) of the act protects original literary, dramatic, musical and artistic works. Section 13(1)(b) protects cinematograph films. Section 13(1)(c) protects sound recordings.

The sections mentioned above collectively provide protection to different elements of the song like lyrics, music composition and etc.

Copyright Act, 1957 provides and explains the exclusive rights granted to copyright owners under section 14. Section 14 includes reproduction, issuing copies, adaptations and communication to the public, subject to the applicable category of work. This section also explains how unauthorized commercial use of lyrics, compositions and sound recordings are prevented by these rights. But there are statutory exceptions which means that copyright protection does not mandate that every use requires permission.

The general rule regarding the first ownership of copyright is established in section 17. In most of the cases the first owner of the copyright is the author. The author may be the lyricist or the composer depending on the work in music. So, identifying the actual author is very important to determine that to who is the copyright owner. However, section 17 provides certain exceptions where the first ownership of copyright may vest in an employer, Commissioning party or another person under other statutory arrangements.

Section 18,19 and 30 are very important provision of the act as is deals with the assignment and licensing. Section 18 deals with the assignment of the copyright. This allows the transfer of ownership of a copyright from the original owner (assignor) to another party (assignee). Section 19 specifies the requirements and mode of assignment. The copyright owner can grant licences which is allowed under section 30 of the act. Many times, big music labels and production companies obtain rights of a song just to commercially exploit that song. So, written agreements become important for determining ownership, duration, territory and royalty arrangements that the copyright owner's right are not infringed.

Section 38, 38A, 38B deals with performers' right. Section 38 recognises performers' right. This helps singers and musicians to control and monetize their live and recorded work. Section 38A gives exclusive rights to performers over specified uses of their performances. Section 38B protect performers' moral rights. It also includes identification and protection against prejudicial distortion or modification. Singers and musicians are protected under performers' rights as they get control over the use and commercial exploitation of their performances, even if they do not own the lyrics or musical composition. Copyrights act,1957 provides rights against copyright infringement. Section 51 specifies and explains when copyright is infringed. Copyright is infringed when there is violation of exclusive rights, permitting profitable public communication and unauthorized commercial dealing and distribution. Section 55 of the act provides civil remedies. It includes injunctions, damages and accounts of profit. These provisions help copyright owners to take legal action against unauthorized copying, distribution and exploitation of musical works.

OWNERSHIP OF COPYRIGHT IN SONGS

A lyricist plays major role in a song. A lyricist creates the words and expression used in a song. Section 13 of the Copyright Act,1957 protect lyrics as literary work. According to section 17 generally the lyricist is the first owner of copyright. The lyricist has rights over reproduction, publication, adaptation and other forms of exploitation of the lyrics.

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A composer creates the melody, tune and musical arrangements of a song. Composer creates overall structure of a song. Musical composition receive independent copyright protection under the copyright act. Composer is generally the first owner of copyright in the original musical work. A composer has economic and moral rights. Composer's economic rights are related to reproduction, public performance/communication, adaptation, arrangements, distribution and rentals, statutory royalties, and etc. Composer's moral rights are right of paternity and right of integrity. Licensing and assignment may transfer certain rights to music labels and production companies.

Singers and musician have performers' rights. Singers and instrumentalists contribute through their performances. They may not own the lyrics or composition. However, Copyright Act, 1957 recognises and protect performers' rights under section 38,38A, 38B. This includes rights related to recording, reproduction, and commercial exploitation of performances. The 2012 amendment to Copyright Act, 1957 balanced performers' rights by managing two core pillars which are consent and remuneration under section 38A and 38B. The importance of performers' consent is preventing commercial exploitation, contractual certainty, and AI and digital alteration. The importance of performers' renumeration is inalienable right to royalties, parity in the value chain which means placing performers on a level playing field with producer and composers, and economic sustainability. Sound recording is separate copyrighted work from lyrics and musical composition. The copyright act, 1957 recognises copyright in sound recording under section 13(1)(c). As per section 17 of the act, producer of a sound recording is generally its first owner, subjected to the statutory exceptions and agreements. Section 2(uu) defines producer as '"*Producer", in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work.*' Section 17 sets out rules for who owns the work and section 2(uu) clarify who qualifies for those rights. Mostly music labels and producer control the commercial distribution and licensing of recorded tracks. Ownership of copyright can be assigned or licensed under section 18,19 and 30 of the copyright act, 1957. Music labels oftens gets rights through agreements with composers, lyricists and performers. The duration, territory, and scope of commercial exploitation is determined through contracts. There is difference between transferring ownership through assignment and granting permission through licensing. An assignment is a permanent or structural sale/transfer of ownership and licensing agreement is merely a grant of permission to use the work under specific conditions. Clear written agreements are very important here to prevent commercial exploitation and misunderstandings. Royalites refer to payments made for the commercial use of copyrighted musical works and performances. Revenue comes from streaming, broadcasting, public performances, and digital distribution. Copyrights societies play a big role in collection distributing royalties as they handle the administration, licensing, collection and distribution of royalties at scale. Section 18(1) is important for copyright assignment to be executed. The provisos of section 18(1) deals with assignment of future works, the future medium restrictions, inalienable film royalties and sound recording royalty protection. So, here the fair remuneration for the creators becomes very important.

In music industry many times ownership disputes arise. One of the reasons is multiples copyright holders. Multiples copyright holders create disagreements over ownership and commercial exploitation. Disputes also arise from unclear contracts, unauthorized and royalty distribution. So, copyright law and contractual arrangements help in resolving these conflicts.

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COPYRIGHT INFRINGEMENT IN THE INDIAN MUSIC INDUSTRY

Copyright infringement occurs when someone uses a protected copyrighted work without obtaining the necessary authorization. The circumstances in which copyright is infringed is defined in section 51 of the Copyright Act, 1957. In music, infringement may involve unauthorized copying distribution, reproduction or commercial exploitation of songs. So, it is important to take permission from the copyright owner before using any copyrighted work because without permission it is illegal to use that work.

One of the major ways for copyright infringement of a song is music plagiarism. It involves copying or reproducing substantial elements of another person's musical work. It may be lyrics, melodies, musical arrangements or distinctive compositions. One important concept that we need to understand is the concept of substantial similarity. Substantial similarity is the legal threshold which determines whether an accused work unlawfully copies protected expression from a copyrighted work. Another thing which is important thing to understand here is distinction between inspiration and infringement. Inspiration is using general concepts, common building blocks, or styles to start for creating something new, original, and distinct. On the other hand, infringement unauthorized use or copying of another creator's work where the new looks very closely to the original work. But, similarities in general ideas, themes or musical styles do not automatically establish infringement.

Another way of infringement in music industry is unauthorized sampling and remixes. When portions of an existing sound recording are used in a new musical composition it is called sampling. On the other hand, modifying or rearranging an existing song to create a different version is called remix. Sampling and remix may require permission from owners of the underlying musical work and sound recording. But if the sampling and remixes are unauthorized then it can result into copyright infringement. With the growth of digital platforms there is increase in music piracy and digital infringement. Unauthorized copying, downloading, distribution or sharing of copyrighted songs refers to music piracy. The major contributors of music piracy are illegal websites and unauthorized streaming platforms. Digital platforms have made it easier to reproduce and distribute music without permission. Music companies, creators and performers face financial losses by music piracy and unauthorized use as they cannot get streaming royalties from this.

In the modern world unauthorized use on social media platforms of any original work or creation is very common. Platforms like YouTube, Instagram and Facebook allow users to upload and share musical content. The use of copyrighted music in videos, reels and other content without appropriate authorization may constitute infringement. Over the time these platforms have started using copyright detection systems, content removal and licensing agreements which protects the copyright to be infringed. The most important thing for the creators is to understand the platform policies and copyright compliance.

There are legal remedies against copyright infringement. Section 55 provide civil remedies which includes injunctions, damages and accounts of profits. Section 63 provides criminal penalties. Section 63 provides remedies when someone knowingly infringe or abetting infringement of copyright or other rights conferred by the act. As per section 64, police officers to seize infringing copies in the

circumstances specified by the provision. These remedies are very helpful in protecting copyright owners against unauthorized exploitation.

IMPORTANT JUDICIAL DECISIONS

Judicial decisions are important as it demonstrates how Indian courts have interpreted copyright ownership, infringement, originality and the rights of music creators. Let's discuss some important judicial decision.

R.G. Anand v. Deluxe Films (1978)[1]

This is an important supreme court judgement. This judgement concerns with copyright infringement and substantial similarity. Supreme court explained the distinction between idea and expression in this case.

1. R.G. Anand v. Deluxe Films, AIR 1978 SC 1613.

The judgement established that copyright does not protect general ideas, themes or concepts but protects their original expression. To establish infringement, similarity must be substantial and relate to protected expression. This principle becomes important when a musical composition is being determined that is it unlawfully copied from another work.

Indian Performing Right Society Ltd. v. Eastern India Motion Pictures Association (1977)[2]

This case deals with rights of composer and lyricist whose music and literary works got incorporated into cinematograph films. Here, Supreme Court examined the relationship between copyright in underlying work and rights of film producers. Supreme held that composer or lyricist retains copyright in their original work, a film producer becomes first owner of the copyright in that work to the extent it is incorporated into a cinematograph film under a contract or service, unless there is an agreement to the contrary. This judgement becomes important to understand ownership disputes involving music created for films. The Copyright (Amendment) Act, 2012 overruled the effect of this judgment by amending Sections 18 and 19 to guarantee that authors and composers retain an inalienable right. The authors will receive royalties for the exploitation of their underlying works outside the cinema hall, which cannot be waived.

Indian Performing Right Society Ltd. v. Aditya Pandey (2012)[3]

This case concerned royalty claims and the rights of authors of musical and literary works incorporated into sound recordings. Court examined the relationship between copyright owners, music companies and users of copyrighted music. The dispute in this case highlighted the complexities of royalty collection and commercial exploitation. Delhi High Court held that once a sound recording is made by a film producer with the consent of the lyricist and composers, a radio broadcaster or any third party playing that sound recording does not require a separate license or payment from the IPRS for the underlying musical or literary works. This case also highlights the importance and need for proper licensing agreements and fair royalty distribution to ensure that the contributors and other copyright holders receive appropriate compensation for the commercial use of their musical work.

2. Indian Performing Right Society Ltd. v. Eastern India Motion Pictures Association, AIR 1977 SC 1443.

3. International Confederation of Societies of Authors and Composers v. Aditya Pandey, (2016) 2 SCC 161.

Tips Industries Ltd. v. Wynk Music Ltd. (2019)[4]

This case is a dispute between a music company and an online streaming platform. The Bombay High Court examined whether Wynk music could rely on statutory licensing provision under section 31D of the copyright act. Court held that Wynk music do not qualify as "broadcasting organizations" under Section 31D of the Copyright Act, 1957 and therefore cannot claim a statutory license without the copyright owner's explicit consent. This judgment addressed the applicability of statutory licensing to internet-based music streaming services. This case highlights the legal challenges created by digital music distribution and the importance of obtaining appropriate licences.

Amar Nath Sehgal v. Union of India (2005)[5]

This case deals with the moral rights of an artist under section 57 of the Copyright Act,1957. The Delhi High Court recognised that how important is an author's reputation and the integrity of their creative work. Although this case is not related to music. It is concerned with visual artwork but the principles are relevant for understanding moral rights in creative industries. This case demonstrates that copyright protection extends beyond economic ownership.

Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd. (2008)[6]

This case dealt with compulsory licensing and the rights of copyright owners in the broadcasting industry. Supreme Court examined the balance between the exclusive rights of copyright holders and public access to creative works. The Supreme Court held that the Copyright Board has the power under Section 31 of the Copyright Act to grant compulsory licenses to multiple broadcasters to prevent monopolies. This Supreme court judgement is relevant for understanding music broadcasting, licensing and the commercial use of copyrighted recordings.

EMERGING CHALLENGES IN THE DIGITAL ERA

Technological developments have created new challenges for copyright owners, musicians and performers. Digital music piracy is one the big emerging challenge for the copyright owners. Music is more easily available and distributable with the digital technology. Unauthorized copying, downloading and sharing of songs remain major concern with the digital technology. Illegal platforms and websites distribute copyrighted music without permission. Composers, lyricists, performers and record labels face financial losses because of music piracy. It is difficult to control unauthorized distribution across the internet.

Music streaming platforms like Spotify, YouTube music and Apple music have transformed music consumption. These platforms operate through licensing agreements with copyright owners and music companies. The disputes here arise related to royalty calculations, revenue sharing and licensing arrangements. Independent artists may face difficulties in understanding royalty structures and ensuring fair compensation.

4. Tips Industries Ltd. v. Wynk Music Ltd., 2019 SCC OnLine Bom 13031.

5. Amar Nath Sehgal v. Union of India, 2005 (30) PTC 253 (Del)

6. Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd., (2008) 13 SCC 30.

Unauthorized use of music on social media platform is becoming very common these days. Social media platforms like Instagram, Facebook, and YouTube allow user to incorporate music into reels, shorts and videos. Unauthorized use on social media platforms of copyrighted songs may amount to infringement. Over the time these platforms have developed content identification systems and takedown mechanisms help protect copyright owners. However, identification of unauthorized use and enforcing rights across multiple platforms remain challenging.

Remix and sampling have become common practices and trend in modern music production. Producers frequently use portions of existing songs into new compositions. But these practices require authorization from the owners for the musical work and sound recordings. It is very difficult to balance artistic creativity, musical inspiration and copyright protection.

AI has evolved so much now that it can generate melodies, lyrics, arrangements and complete musical compositions. Now, the question is regarding the originality and copyright ownership of AI-generated music. Copyrighted songs are used to train the AI models which raises concerns about the unauthorized reproduction. In Indian copyright law there is no comprehensive framework specifically addressing AI-generated music. A clarity is needed regarding authorship, ownership and infringement. AI voice cloning is infringing performers' rights. AI can imitate or copy the voices and singing style of existing artists. Performers' identity reputation and commercial interests may be affected by unauthorized voice cloning. The questions here are about the consent, personality rights and potential copyright infringement. There is need for stronger protection against unauthorized digital imitation. In present times music is distributed across international digital platforms and geographical boundaries. Protection and enforcement of copyright is different in countries. There is legal complication if there is an Indian musical work and in any foreign jurisdiction it used in an unauthorized way. For resolving this complication international cooperation is necessary for effective copyright enforcement.

CHALLENGES AND SUGGESTIONS FOR LEGAL REFORM

Let us examine the shortcoming of the existing copyright framework and also discuss measures which can improve the protection of music creators in India.

There is weak enforcement of copyright laws in India. There is unauthorized copying and distribution of music despite of having legal protection against it. Illegal streaming and digital piracy remain a constant problem and difficult to control. Enforcement mechanism should be stronger and legal proceedings should be faster as it is necessary to protect copyright owners.

Independent artist, lyricists and composers may face unfair royalty distribution. This problem is created by lack of transparency in royalty calculations and this creates dispute between creators and music companies. Clear contract arrangements and transparent royalty distribution system should be encouraged for resolving this issue.

There is also lack of awareness among creators. The emerging musicians lack knowledge related to copyright ownership, licensing and assignment. There should be educational programmes and accessible legal guidance to new emerging and other artists so that they can protect their creative rights.

The current provisions of copyright law leave several questions related to AI-generated music and voice cloning. In this situation Indian copyright law should have clear legal standards and address authorship, consent, ownership, and unauthorized use of copyrighted material and AI training. There should be legal and institutional reforms. Digital copyright monitoring and enforcement mechanism should be strengthened. Improvement is required in music licensing and royalty collection. Fair contractual practices between creators and record labels should be encouraged. Appropriate legal safeguards against unauthorized AI-generated imitation should be developed. Cooperation between digital platforms, copyright societies and government authorities should be promoted. These reforms will make creators more secure related to their work.

CONCLUSION

Copyright protection is important for safeguarding creativity and the economic interests of individuals involved in music production. Copyright Act,1957 provides protection to lyrics, compositions, recordings and performers' rights.

Indian copyright law protects creators' rights but still there are few challenges that creators face. Multiple stakeholders and complex licensing arrangements create problems related to ownership, royalty distribution and unauthorized exploitation. There are also emerging challenges digital piracy, music streaming, AI- generated music and voice cloning which requires greater legal attention. Effective enforcement, transparent royalty systems, greater awareness and appropriate legal reforms are necessary to ensure fair protection of music creators. In conclusion, the copyright law must evolve along with evolving technology and this will ensure that innovation in the music industry does not come the cost of creators' rights.

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