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Music Industry and Indian Laws

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Music is a dynamic art and the greatest asset of a creator which involves various talents and contributions from professionals. Essentially music creation incorporates composers, lyricists, musicians, performing artists, sound recording, etc. The ownership of the track provides exclusive rights to the owner. To get the copyright for music the work ought to be unique and original and to protect this right of the creator, the Copyright Act, of 1957 was made which got evolved with time according to the prerequisite. Copyright for music acquired significance in the period of digitalization where copying, piracy and duplicating has become a simple errand. Amendments were done to the act in 2012 which perceived lyricists and inspired versions of the song. There are certain associations like ISRA, IPRS, and PPL which are registered copyright societies by the Central Government under the Copyright Act, 1957. They're created to help owners of copyrighted work and collect royalties on behalf of the singers while acting as a middleman.

Keywords: *music, copyright, creator, art, singer, royalty.*

INTRODUCTION

The music industry is one of the most powerful and versatile industries. The Indian music industry has been on another way of returning to old music with their newfound youth talents. Making harmony between the support for creativity and advancing the spread of information is the best objective of copyright law. It safeguards the exclusive rights of

individuals working and making new works in the field of music, dance, literature, or some other artistic work. This protects their work from being copied or misused or utilized without the creator's prior permission. India being a member of the Berne Convention and the Universal Copyright Convention has passed the International Copyright Order, 1958 which enables any work published in India to be treated the same if it were published in any of the member countries of these conventions.¹ The Indian Copyright Act, of 1957 has developed largely through the laws. It has always been providing several interpretations regarding the musical work.

MUSIC INDUSTRY

For many of us, music is an almost steady piece of daily existence; it's playing in the background while eating, driving, shopping, and so on, but how is it made, how does it move from a plan to an item? The music industry is an umbrella that covers everything involved in the creation, recording, promotion, performance, and distribution of music. It includes various professional careers. It is an overall term for everyone associated with the music business. Musical work means a work that consists of music and it is made of a combination of graphic notations or graphic score that represents music through visual symbols².

Professional careers in the music industry are divided into four categories-

- **Creative professionals** - Creative professionals are the core of the music business. It includes songwriters and composers.
- **Performance professionals** - This category includes every individual who makes a recording or live performance. This incorporates the primary star and the numerous staff members dealing with the non-performing subtleties. Whenever we consider a music industry, we consider artists or entertainers who sing and sometimes the person who plays instruments to make music.

¹ Trayaksha Pathak, 'Laws Relating to Music Industry in India' (*Legal Desire*, 24 December 2020) <<https://legaldesire.com/laws-relating-to-music-industry-in-india/>> accessed 21 March 2022

² Kakoli Nath, 'Music Industry and Copyright Law in India' (*Finology Blog*, 18 October 2020) <<https://blog.finology.in/intellectual-property-law/music-industry-copyright-law-in-india>> accessed 21 March 2022

- **Business professionals** - It incorporates every individual who handles the cash and arrangements. The key business experts incorporate distributors, producers, and managers.
- **Releasing & Promoting** - Generally there are 4 stages in releasing and promoting- Tease, launch, Campaign, and Tour. The tease is to scrounge up a little consideration in a direction leading to the release of the collection, Launch means when the music is released, Campaign is where a big push for the album is organized and Travel is when the team travels and performs at different places.

Often we hear music by famous artists in a public spot, however very few know that the owners of the public space need a permit to play it as only the owner of the copyright can play or perform the work openly.

EVOLUTION OF COPYRIGHT LAW

Initially, the Copyright Act only protected the composer in the musical work. The act characterized "Music work" as any blend of song and harmony or both of them printed, compressed to writing, or in any case graphically produced or reproduced. This definition prohibited the presence of voice and lyrics as a feature of a 'music work' accordingly out projecting the rights of the singers and the lyricist. The 1994 amendment was more inclusive and expanded the scope of the definition to include "work consisting of music and any graphical notation but does not include any words or actions intended to be spoken". This amendment didn't assist with dispersing the vagueness in respect of the protection of lyrics and the authenticity of the inspired versions of the songs with similar lyrics which could be made with an alternate composition or music. Until the new order, authors typically allocated the rights to producers of movies or sound recordings in return for a payment of the lump-sum amount. The royalties' payment has not been important for plans in the Indian music industry since its practice and legal points of reference after the 1970s appeared to command that the "authorizing" of an author by a film producer gave first ownership to the producer for music, script or author's lyrics. Since film music represents a stunning piece of the music market in India, sovereignty-based developments of action were the exemption in India as

conflicting with the standard. While Indian copyright social orders dispersed royalties to creators, it was expected that this was a "commitment" by music companies to creators as opposed to an authoritative or legal right prepared for judicial assertion in India. The copyright law was changed in the year 2012 to manage the advancement of the music and entertainment world and to strike off the old-fashioned segments of the act.

The new regulation would require the licensor to guarantee that licenses for the exploitation of sound recordings or films reject royalty payable for the misuse of the hidden works. This practice is regularly continued in global partnership and licensing agreements. Copyright laws have evolved over the period to give separate rights to their owners including lyricists, bands, and musicians, everyone's right is protected under the present law. Music License is a requirement for all the businesses where activities such as pre-recorded music/songs in the form of music Cassette, Gramophone records, Radio, TV, CDs, or in Audio-Visual form, etc are carried out or live songs are performed, as per the Copyright Act, 1957.³

PROVISIONS RELATED TO MUSIC IN INDIA

Section 2⁴ of the Copyright Act

- (p) states about musical work, its different categories, and graphical notation. Only the original work can be copyrighted.
- (qq) defines "performer" which includes singer, dancer, actor, musician, conjurer, juggler, lecturer, or any person who is performing.
- (uu) defines "producer" as a person who takes the responsibility and initiative for making work about cinematographic or sound recording.

Section 13⁵ provides various kinds of work that come under the copyright act i.e., Original – literary, Musical, Artistic, Cinematographic works, etc.

³ Lasya Pamidi, 'PPL & IPRS Music Licence Registration Procedure' (*Learn by Quicko*, 9 October 2020) <<https://learn.quicko.com/ppl-iprs-music-licence-registration-procedure/amp>> accessed 24 March 2022

⁴ Copyright Act, 1957, s 2

⁵ Copyright Act, 1957, s 13

In *Super Cassettes Industries Ltd. v Bathla Cassettes Industries Pvt. Ltd.*⁶, it was held by the Delhi High Court that changing the singer of any particular song which had been sung previously amounts to an alteration of the song. It was considered that a singer is the most crucial part of any song or sound recording and re-recording his song without his permission amounts to copyright infringement.

In the case of *Gramophone Company of India Limited v Super Cassettes Industries Limited (1995)*,⁷ a Version recording was defined by Delhi High Court as a sound recording that is made of any song already published by using another voice and with a different team of musicians.

Section 14⁸ states the rights given to the Author or originator in the field of drama/music/literary work – Reproduce, Present, Perform, Publish work in public. It includes work in cinematographic film and also language translation in such work. Authors can make the copy, present, or sell the work to the public.

In the case of *Eastern Book Company v Navin J. Desai*,⁹ the court mentioned the conditions under which a creation amounts to copyright.

- If sufficient alterations are done;
- Sufficient contribution is made;
- Comes under the definition of “Adaptation”.
- It does not confuse or mislead the consumers.

Section 17¹⁰ recognizes the author or the person who considers the work as the first owner of the copyright. Sub-section (c) states that the employer becomes the first owner of the works that are made by his employee during their course of employment unless there is any agreement against the same between the parties. In the landmark case of *Indian Performing*

⁶ *Super Cassettes Industries Ltd. v Bathla Cassettes Industries Pvt. Ltd.* (2003) 27 PTC 280 Del

⁷ *Gramophone Company of India Limited v Super Cassettes Industries Limited* (1995) IAD Delhi 905

⁸ Copyright Act, 1957, s 14

⁹ *Eastern Book Company v Navin J. Desai* (2001) 58 DRJ 103

¹⁰ Copyright Act, 1957, s 17

Rights Society v Eastern Indian Motion Pictures Limited,¹¹ a composer can allot rights over his future work. Section 30 of the Copyright Act sets out an assignment of work perhaps by giving a license for the prospective owner of the copyright. When the composer signs the document of the task of his work to the production house he loses his command over his piece and the production house turns into the new owner. The composer loses all his rights to the composition whenever it and the producers of the cinematographic film come into an agreement in which the song is being fused for some consideration. Section 17(c)¹² lays down that where the composition is given thought and loses all his control over his creation, the producer naturally turns into the composition's owner.

In the case of *Vicco Laboratories v Art Commercial Advertising Pvt. Ltd.*,¹³ a suit for permanent injunction and declaration of title to Television serial was claimed by the plaintiff on the ground that the defendant produced the serial as an agent of the plaintiff. The pleading and proof showed that the defendant was not the plaintiff's agent and the sum paid to the defendant by the plaintiff was a fixed cost for sponsoring the serial and isn't the expense of its production. In such cases defendant is not liable. The defendant was displayed as a producer in the titles of every episode of the serial. It was held that the serial had no title to the plaintiff.

Section 18¹⁴ states about the assignment of copyright in any work existing or in the future, which can be done wholly or partially. If the work is assigned then the Assignee will become the owner of the copyright, till then the Assignor will remain the owner. Here "Assignee" also includes the legal representative of the original assignee in case he dies before the creation of the work.

Section 22¹⁵ states the term of copyright in musical work, dramatic, artistic, and published literary which subsists until 60 years after the author dies and the calculation shall begin from

¹¹ *Indian Performing Right Society v Eastern India Motion Pictures*, (1977), AIR 1443

¹² Copyright Act, 1957, s 17(c)

¹³ *Vicco laboratories v Art commercial advertising pvt. Ltd.*, (2001), AIR 1990, Bom. 123

¹⁴ Copyright Act, 1957, s 18

¹⁵ Copyright Act, 1957, s 22

the year next to the following year when the author died and if there is more than one author then copyright is valid until 60 years after the death of the last author.

Section 38¹⁶ states that where any performer shows up or participates in any performance, he will have an extraordinary right to be known as the "performer's right" corresponding to such performance. The performer's right remains alive until 50 years from the start of the calendar year next following the year where the performance is done. Any individual during the continuance of that right without the assent of the performer does any of the acts given below in regard to the performance or a significant part thereof he will be considered to have violated the performer's right-

- a) making a sound or visual recording of the performance.
- b) reproduces the sound or visual recording of that performance which was –
 - made without his assent;
 - made for the reason not the same as those for which the assent was given;
 - made for purposes not the same as those alluded to in section 39.¹⁷
- a) broadcasts the performance except from where the transmission is produced using a sound or visual recording other than one made as per section 39 or rebroadcast by that same organization.
- b) communicates the performance to the public by some other means than broadcast.

Section 51¹⁸ provides that whenever a person does anything contrary to the exclusive rights of the Author which is given to him by this act, without his consent, it is deemed that copyright has been infringed. It does not amount to infringement if:

- Prior permission has been taken and advance royalty is paid to the owner before copying his musical, artistic, or any other work.
- The new work must not be misleading in nature about the identity of the artist

¹⁶ Copyright Act, 1957, s 38

¹⁷ Copyright Act, 1957, s 39

¹⁸ Copyright Act, 1957, s 51

- The new work is made after the expiration of two years following the year in which the work was originally created.
- Inspection of all books of account related to new work is done by the original author himself.

Section 52¹⁹ lays down the exception of Copyright infringement, also known as fair dealing with dramatic, musical, artistic, or literary work-

- not being a computer program, for the grounds-
 - (I) "private or individual use, including research;
 - (II) criticism or review, either of that work or some other work;
 - (III) the detailing of recent developments and current affairs, including the updating of a lecture, conveyed in public.

- i) temporary or incidental storage of a work or performance absolutely in the specialized process of electronic transmission or conveying to the general public;
- ii) temporary or incidental storage of a work or performance to give electronic connections, access, or joining, where such connections, access, or mix has not been explicitly prohibited by the right holder, except if the responsible individual knows or has reasonable grounds for accepting that such capacity is of an infringing copy:
- iii) the multiplication of any work with the goal of a judicial proceeding or with the aim of the report of a legal procedure;

In the case of *Gramophone Co. of India Ltd, v Mars recording Pvt. Ltd.*,²⁰in sound recording copyright one needs to follow provisions of section 51(1)(J)(ii)²¹ and make payment for recording and for circulating record tapes.

¹⁹ Copyright Act, 1957, s 52

²⁰ *Gramophone co. of India v Mars Recording Pvt. Ltd*, (2001) PTC 681 (SC)

²¹ Copyright Act, 1957, s 51(1) (J) (ii)

Section 55²² provides the right to the author of copyrighted work to institute a suit seeking injunction and damages against the infringement of copyright as a remedy.

Section 63²³ states the penalty of copyright infringement which is imprisonment for a minimum of six months which can be extended up to three years and a fine which shall not be less than fifty thousand rupees and can be extended to two lakh rupees.

Section 63A²⁴ states the penalty for repeated copyright infringement which is imprisonment for a minimum of 1 year which can be extended up to three years and a fine which shall not be less than fifty thousand rupees and can be extended up to two lakh rupees.

ISRA (Indian Singers' Rights Association) was founded in 2013 as a limited liability company under the Companies Act of 1956 and has distinguished singers on its board who fought for the rights of performers or artists shortly after the 2012 amendment that brought about collection and distribution of royalties.²⁵ It is a registered copyright society that collects royalties on the behalf of Indian singers. Being a collecting society, it delivers licenses for the commercial usage of protected work of the performers under the copyright act.

PPL (Phonographic Performance Limited), founded in 1941, also known as PPL India, is India's largest organization licensing and monetizing 'Public Performance rights' and 'Radio Broadcasting Rights' for over 3 million national and international songs across 340+ top-notch music labels²⁶. It represents the world's and India's largest record labels including T-Series, Sony Music Entertainment, Universal Music, etc. Every individual or business entity needs to take permission from the owners before any public performance under the Copyright Act, 1957. PPL India is a non-profit organization that collects royalty by delivering licenses to commercial premises, establishments, venues like clubs, hotels, malls, etc. **IPRS**, (Indian

²² Copyright Act, 1957, s 55

²³ Copyright Act, 1957, s 63

²⁴ Copyright Act, 1957, s 63A

²⁵ Bhavna Nair, 'Music and Law in India' (*Indian Law Portal*, 21 November 2020)

<<https://indianlawportal.co.in/music-and-law-in-india/>> accessed 22 March 2022

²⁶ 'Play By The Rules With Phonographic Performance Limited India' (*India Education Diary*, 26 December 2019)

<<https://indiaeducationdiary.in/play-by-the-rules-with-phonographic-performance-limited-india/>> accessed 22 March 2022

Performing Rights Society) is a registered Copyright Society under Chapter VII of the Copyright Act, 1957 is an association of artists, including composers, lyricists, music owners, and publishers of music registered under the copyright act, 1957. It is the only copyright society in India that represents the composers, authors, and publishers of music. It is a non-profit making body and all the royalties collected by it are distributed amongst its members and affiliated societies as per the IPRS Distribution Scheme.

CONCLUSION

Copyright Protection not just protects hard work from being infringed and violated by unapproved sources but also enables him to resort to legal remedies if there is any infringement and prove that originally the work was created by him. Any individual getting unjust advancement from others' work should not be permitted to get profit from it, therefore, the right of the authors to get royalties and advantages should be secured and cases of commercial abuse of the work by an author ought to be followed by him getting acknowledge along with the payment of royalties. It tends to be concluded that since music production includes incredible diligence, creative mind, and specialty, it must be protected in the best way and the law guarantees that the music and rights of the artists are protected by the Copyright Act.