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Nexus Between Music Industry and Intellectual Property Rights

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Anybody or most importantly a professional artist with whatever intent be it for public use, for entertainment, for inspiration, for building up a fan base, for spreading their findings, creating music records, or for even research purposes would want their unique creation, innovation, invention, or set of ideas to be used wisely, to own it, and not by anyone else without them being properly recognized and being credited for the same. The music industry relies heavily on intellectual property rights as its foundation. Copyright or Trademarks, in particular, play a pivotal role in protecting the creative works of musicians, songwriters, and other industry stakeholders. The central dilemma within this nexus is the balance between promoting innovation and artistic expression while safeguarding creators' rights. Thus, with the aim and given protecting such ideas and innovations, IPR or Intellectual Property Rights were formed. This article elucidates various dimensions of this intricate relationship. The article highlights and aims at recognizing the nexus between the music industry and Intellectual Property Rights and how the IPRs play an integral role in the music industry.

Keywords: *intellectual property rights, copyright, patent, music industry, violation, relation.*

INTRODUCTION

Before starting directly with the connection, it is important to know, what is 'Property' and what 'Intellectual Property Rights' means. The Supreme Court of India interpreted the term 'Property'

in the case of *Rustom Cavasjee Cooper v Union of India*¹ as, the term 'Property' can include both corporeal goods, which may include, land, moveable or tangible items, and incorporeal things. And thus, for the protection of such incorporeal items, IPR has been put into force. As defined by WIPO, Intellectual property (IP) refers to creations of the mind, such as inventions, literary and artistic works, designs, symbols, names and images used in commerce,² to be more precise, Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period.³

There are various categories of rights under the ambit of IPR, in India, these rights are separately governed by their particular legislations such as The Copyright Act 1957 and The Patent Act 1970 etc.

INDUSTRIES AND IPRs

Intellectual Property Rights (IPR) and industries share a symbiotic relationship crucial for innovation and economic growth. However, the role of IPRs in business is insufficiently understood. It is probably under-valued, under-managed, or under-exploited and there is little coordination between the different professionals dealing with an organization's IPR.⁴

IPR encompasses patents, copyrights and trademarks granting creators and innovators exclusive rights over their creations. Industries benefit from IPR by safeguarding their innovations, fostering healthy competition, and attracting investments. Patents protect novel inventions, driving R&D in sectors like technology and pharmaceuticals. Copyrights benefit creative industries like music and publishing by safeguarding original works. Trademarks build

¹ *Rustom Cavasjee Cooper v Union of India* (1970) SCR (3) 530

² 'What Is Intellectual Property (IP)?' (WIPO) <<https://www.wipo.int/about-ip/en/>> accessed 03 September 2023

³ 'What Are Intellectual Property Rights?' (WTO) <https://www.wto.org/english/tratop_e/trips_e/intell_e.html> accessed 03 September 2023

⁴ Kelvin King, 'THE VALUE OF INTELLECTUAL PROPERTY, INTANGIBLE ASSETS AND GOODWILL' (WIPO) <https://www.wipo.int/export/sites/www/meetings/en/2005/smes_qtc/presentations/wipo_smes_qtc_05_king.pdf> accessed 03 September 2023

brand identity, crucial for consumer trust and loyalty across various industries. IPR enforcement ensures fair competition, enabling industries to reap rewards from their efforts. Conversely, industries' innovation and progress are the driving force behind the evolution of IPR laws and regulations, adapting to the changing technology and businesses. This interplay between IPR and industries is pivotal for fostering innovation, growth and sustainable development.

IPR AND MUSIC INDUSTRY

Notably one of the most engaging industries among the youth today is entertainment. We know that the creation of a song or album is not the work of a single person, but includes several parties such as lyricists, composers, editors, producers, etc., at various stages like writing, composing, editing, mixing, tracking, labeling, distribution of licensing and others.

The need for IPR in the Music Industry: Intellectual property rights provide legal frameworks that protect the creations of the human mind, encouraging innovation and creativity by granting creators exclusive rights to their works for a limited period. Thus, for a lyricist, author, composer, or any person who's a part of the song or album it becomes necessary to protect the originality of their work, especially in an era where movie or music piracy is not uncommon at all.

The nexus between the music industry and intellectual property rights (IPR) is profound and has a significant impact on how music is created, distributed, and monetized. In the context of the music industry, there are mainly two types of intellectual property rights that play a crucial role, that is Copyright and Trademark.

COPYRIGHT & MUSIC INDUSTRY

Copyright as defined by the U.S Copyright Office, is a type of intellectual property that protects **original works of authorship** as soon as an author **fixes** the work in a **tangible form of expression**.⁵ The copyright of any idea, or work, comes into force as soon as the creator fixes it

⁵ 'What Is Copyright?' (U.S. Copyright Office)
<<https://www.copyright.gov/what-is-copyright/>> accessed 03 September 2023

in tangible form. It is denoted by © symbol. Under the 1886 WIPO Berne Convention for the Protection of Literary and Artistic Works⁶, an original work is protected for a minimum of 50 years after the author's death but in many jurisdictions that figure can be 70 years or more.⁷ In countries like India, copyright is granted automatically as soon as the work is created, however, it may not be the same everywhere.

Musicians, songwriters, and composers can secure copyright protection for their works, giving them exclusive rights to reproduce, distribute, perform, and adapt their music. Copyright also extends to the mechanical and digital reproduction of music, including CDs, streaming, and digital downloads. Copyright in music is typically divided into two main components:

Musical Composition Copyright: This covers the written music and lyrics of a song, usually owned by the songwriter or composer.

Sound Recording Copyright: This protects the actual recording of a performance, owned by the record label or the entity that funded the recording.

In India, the Copyright is governed by the Copyright Act 1957. Sections 22-29 of the act provides for terms of copyright to different works. To make interpretation and understanding much more precise about who's who, the act has defined certain terms related to professionals who might claim or own, such as Section 2 (d) defines 'author', Section 2 (ffa) defines 'composer', Section 2 (qq) defines performer and so on.⁸ The purpose of copyright protection, whether it be for a piece of writing, music, a sound recording or even a film is to reward the author for their contribution to the area by protecting their work to be used with due credit.

⁶ 'Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)' (WIPO) <https://www.wipo.int/treaties/en/ip/berne/summary_berne.html> accessed 03 September 2023

⁷ Catherine Jewell, 'Creating Value from Music – the Rights That Make It Possible' (WIPO) <https://www.wipo.int/ip-outreach/en/ipday/2015/creating_value_from_music.html> accessed 04 September 2023

⁸ Copyright Act 1957, s 2

Case Laws:

Section 51 of the Copyright Act 1957⁹, limits the use of copyrighted material without the owner's consent. In the case of *Super Cassettes Industries Ltd v Myspace Inc. 2011*¹⁰, a copyright infringement lawsuit was brought against the site Myspace Inc. by Super Cassettes Industries also known as T-Series. T-Series alleged that Myspace users were able to post and circulate songs with copyright restrictions without first getting the necessary licenses. The court determined that Myspace was responsible for copyright infringement and ordered the website to take steps to prevent the unauthorized sharing of content protected by copyright.

In another recent case of *Warner Brothers Entertainment v http.otorrents.com & Ors, 2019*¹¹, movie production business, Warner Bros. sued Dhoom Torrents, a website that allows for the unauthorized downloading and sharing of copyrighted movies, for copyright infringement. Following a decision in favor of Warner Bros., the court shut down the website and granted compensation¹² for copyright infringement.

These instances show the significance of copyright protection in India as well as the legal repercussions that people and organizations who use and distribute intellectual materials without authorization must endure, stressing the need to uphold IPRs. This highlights the importance of IPRs in the music industry, wherein today everything is available at a single click, and is vulnerable to anti-digital elements, for illegal recreation or unauthorized distribution by way of piracy or other.

TRADEMARK AND MUSIC INDUSTRY

Trademarks used in the music industry are used to protect items like the name of the band, logos or their creative property.¹³ To be specific, a trademark is a sign capable of distinguishing the

⁹ Copyright Act 1957, s 51

¹⁰ *Super Cassettes Industries Ltd v Myspace Inc* (2011) (48) PTC 49

¹¹ *Warner Brothers Entertainment v http.otorrents.com & Ors* (2019) Civil Suit (C) Case No 367/2019

¹² Copyright Act 1957, s 55

¹³ 'Intellectual Property in the Music Industry' (*National Inventors Hall of Fame*®)

<<https://www.invent.org/blog/intellectual-property/music-copyright>> accessed 4 September 2023

goods or services of one enterprise from those of other enterprises.¹⁴ The duration of validity of Trademarks may vary but generally lasts for 10 years, and can be renewed on payment of additional fees.¹⁵ The symbol TM is generally used to show that a particular design or logo has claimed a trademark. However, after the successful registration of the trademark, one can use the symbol ®.

Trademark in India is governed by The Trade Marks Act 1999. As per the Act, 'Trademark' means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include the shape of goods, their packaging, and combination of colors,¹⁶

The justification for trademark protection as a musician is that it stops others from adopting your name or catchphrase to give the impression that such usage is associated with you. The use of a trademark would stop a record company from utilizing your name or mark for publicity if you, as an artist, have a falling out with that label. Another significant function of a trademark is to stop third parties from selling goods bearing your mark, and if any of the following occur, trademark registration gives the owner the right to file a lawsuit for infringement.¹⁷

Registering a trademark, apart from recognition has many other benefits. For instance, the Nike swoosh, the shape of the Coke bottle, or the McDonald's golden arches are a few examples of trademarks. All of them are trademarks because you instantly associate the design with their products without ever thinking about alternatives. The brand is distinguished from the surrounding competition by its mark.¹⁸

¹⁴ 'Trademarks' (WIPO) <<https://www.wipo.int/trademarks/en/>> accessed 04 September 2023

¹⁵ Intellectual Property in the Music Industry (n 14)

¹⁶ The Trade Marks Act 1999, s 2(zb)

¹⁷ Zainab Olawoyin (AcArb), 'Intellectual Property as a Shield and a Sword for Artists in the Music Industry.' (LinkedIn, 09 March 2021) <<https://www.linkedin.com/pulse/intellectual-property-shield-sword-artists-music-zainab-olawoyin/>> accessed 04 September 2023

¹⁸ Bobby Owsinski, 'Why a Trademark Can Be Important to Your Music Brand' (Music 3.0 Music Industry Blog, 06 February 2019) <<https://music3point0.com/2019/02/06/music-trademark/#:~:text=If%20you've%20established%20your,provide%20some%20protection%20as%20well.>>> accessed 04 September 2023

Case Laws:

Several disputes between 1978 and 2007 between Apple Corps (owned by The Beatles) and the computer manufacturer Apple Computer (now Apple Inc.) over issues like logos and brand names, resulted in a competing trademark rights war. Herein, the case involved a trademark dispute between Apple Corps Ltd., the company founded by The Beatles to manage their music-related business interests, and Apple Computer, Inc. (now Apple Inc.), the technology company known for its iconic Apple logo and products like the iPod. The period between 1978 to 2007 saw many settlements, breaches of contracts, and multiple lawsuits between the two.

However, finally, in 2007, there were hopes of improving relations between Apple Corps and the tech giant Apple Inc. The trademark issue between Apple Inc. and Apple Corps was finally resolved on February 5th, 2007, and as a result, Apple Inc. acquired all trademarks relating to the name 'Apple' and licensed certain of those trademarks back to Apple Corps for their continued use. Although newspaper reports at the time said that Apple Computer was purchasing out Apple Corps' trademark rights for a total of \$500 million, the settlement includes provisions that are undisclosed.

In the famous case of *Coca-Cola Company v Bisleri International Pvt Ltd*¹⁹, in 1993, the defendant, Bisleri International, sold the intellectual property rights of Thums Up, Limca, Gold Spot, Citra, and Mazza, along with trademarks, formulation rights, goodwill, and know-how, to Coca-Cola. The defendant company began exporting fruit drinks under the MAAZA label in 2008 after applying for registration of the MAAZA mark in Turkey. Coca-Cola, the plaintiff, sought a permanent injunction as well as damages for passing-off and trademark infringement. To prevent the defendant from violating trademark laws by using the trademark MAAZA both domestically and abroad, the court issued a temporary injunction. Thus, showcasing the importance of trademarks.

¹⁹ *Coca-Cola Company v Bisleri International Pvt Ltd* (2009) 164 DLT 59

In another case, *Sony Music Entertainment India Pvt. Ltd. v Raj Television Network Ltd*²⁰, Raj TV, a television network with its base in Chennai, was sued by Sony Music for using their copyrighted compositions without permission. Sony listed seven films made by Raj TV in which they claimed there was unauthorized use of sound recordings and the underlying artistic creations (referred to as 'works'). The Madras High Court passed a temporary injunction prohibiting Raj TV from conveying to the public any works in which Sony had copyright through networks or channels, its web page or mobile web pages and applications. Raj TV was also prohibited from portraying or presenting new cinematic based on works owned and controlled by the plaintiff under the injunction. This temporary injunction helped Sony regain its previous original content.

CONCLUSION

In conclusion, the relationship between the music industry and intellectual property rights is intricate and essential for fostering creativity, protecting artists' interests, and ensuring a fair economic ecosystem for all stakeholders involved in the production of music. The interplay between the music industry and IPRs is a cornerstone of artistic expression, economic sustainability, and cultural enrichment. By providing a framework for creators to safeguard their works and enabling the industry to flourish through various revenue streams, IPR plays a pivotal role in shaping the vibrant and diverse landscape of music in the modern world.

²⁰ *Sony Music Entertainment India Pvt. Ltd. v Raj Television Network Ltd.* (2009) CS No 321/2016