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PROTECTION OF COPYRIGHT INFRINGEMENT IN THE INDIAN MUSIC INDUSTRY: -

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ABSTRACT: -

The music and music industry is the most usurped by the digitalization of technologies. The Indian Copyright (Amendment) Act, 2012 was enforced to solve the underlying copying of the works and provide security to all the composers, artists, and lyricists. In this paper, we will come across the exclusive rights of the authors and owners. We will also get knowledge about the rise of piracy due to the increase in social media use. How these pirated sites degrade the value of the owners and authors. We would also come to know about the Platformisation of music and songs and the reallocation of artists by giving them non-film music platforms. Interference of the telecom industry is the root cause of such Platformisation. We would learn about infringement and its remedies and how far India needs to go to achieve that upper hand in the music industry

-Keywords: music industry, copyright, infringement, piracy, Platformisation, protection, artist`s rights.

INTRODUCTION: -

Whenever a piece of music is made, it involves the effort, skills, and talent of the following people. Such as; lyricists who write the script of the song, composer who makes the music and sound recordings of the song, instrumentalists who give the background tone to the song, and last but not least the singer who sings the song or rather gives his/her voice to the song. Copyright protection is all for the rights of these people and their works.

Copyright is a type of Intellectual property that gives protection to the author, owner, and composer of the music protection against illegitimate copying and reproduction of songs¹. A particular song is a result of the original brainstorming of various people and when their intellects come up together a song is made.

The right of the creator of the music i.e., the composer and all kinds of musical works such as instrumental tones and computer graphics used to enhance the song are all the subject matter of the copyright protection of music.²

¹Sneha Mahawar, 'protection of music under IPR law' (ipleaders.blog), <<https://blog.ipleaders.in/protection-of-music-under-ipr-law/>> accessed on 15 March 2024

²Sreetija Makhal, 'copyright and music industry' (wordpress.com), <<https://csripnusr1.wordpress.com/2021/05/06/copyright-and-the-music-industry/>> accessed on 15 March 2024

The duplication of work is being protected up until the life of the owner plus sixty years after that. If there is more than one author it will be saved till the life of the last author plus sixty years.³

Economically also, this copyright protection helps to have a monopoly over the song. As held by the Madras High Court in the case *M/S Indian Record Manufacturing vs. Agni Music Sdn Bhd (2010)*⁴, if the producer has hired the composer to make the song for his film then, the producer will be the owner, not the composer. The composer will be the author of the song. He will be remunerated for the same. If somebody wants to utilize a certain song for his/her own work, he/she has to take prior permission from the owner. With the permission, it asks for cost also which is to be given to have access to the song. Cost depends upon the number of places where the songs will be used. For example, a song is being made and the owner has obtained rights for the whole lyrics, tone, background music, rhythm, etc. Now, if somebody uses it for different purposes like; advertisement, promotion, or background for any reality show, he/she has to get permission from the owner. The owner will charge money on each use i.e., he will charge for advertisement differently, promotion differently, and use for reality shows differently.

THE PERSONS WHO CAN CLAIM PROTECTION UNDER THE COPYRIGHT LAW: -

Copyright of a music piece in India is not given to one person as a whole but divided into sub-pieces and protection is assigned to different people included in the making of the music individually. However, the producer can have sole ownership of the music if he wants and if all the parties agree to it. The Copyright Act, of 1957⁵ provides protection under copyright to the following people.

- a. The lyricist can claim protection under section 2(d)(i)⁶. It states that whoever writes a literary, dramatic, or musical work is called the author.
- b. The composer under section 2(d)(ii)⁷ would be considered the author of the literary, dramatic or musical work.
- c. A composer adds music and manipulates the graphical notations of the song (musical work) into a fruitful product. Therefore, under section 2(p)⁸, the composer can be the author of the musical work.
- d. Under section 2(qq)⁹, a singer will also be allowed to claim copyright for his work. A singer is a person or performer who adds voice to the musical work and in the end, the music reaches the audience in his voice. It can rightly be put that it is the singer under whom the song is a hit. For example, Arijit Singh.
- e. Until and unless the music producer has an idea of creating music and to execute that work he hires or assigns the musicians, composers, lyricists, and singers the song will never probably be made. He not only takes the initiative but also looks after all the technicalities in recording, equipment or personnel

³ibid

⁴M/S Indian Record Manufacturing vs. Agni Music Sdn Bhd (2010)

⁵Copyright (Amendment) Act, 1957, No. 14, § 13-1, Acts of Parliament, 1992 (India) sec14

⁶Copyright Act, 1957 sec 2(d)(i)

⁷Ibid, sec 2(d)(ii)

⁸Ibid, sec 2(p)

⁹Ibid, sec 2(qq)

required, and also broadcasting rights. Therefore, the producer can claim copyright under section 2(uu)¹⁰ of the Act.

RIGHTS GRANTED UNDER THE COPYRIGHT ACT, OF 1957: -

Section 14 of the Copyright Act, 1957¹¹ provides various rights to all the above persons. These rights basically deal with all kinds of exploitation to make more profit out of it.

1. Economic Rights- To motivate the author and artists of the musical piece and keep their confidence intact in the industry, it is highly important to compensate them properly. Awards and rewards should come parallelly. These economic rights are further subdivided into the following rights.¹²
 - a. Right to Reproduce- It is a right which is only vested in the author. Only the author can produce, reproduce, and preserve the work.¹³ However, if somebody wants to use the song then he has to take prior permission. For example, in the film Rocky and Rani, Saregamapa and the Dharma Productions

have taken prior permission from the original owner of the songs.

- b. Right to Distribute- In this the owner makes available the work for sale, lease, or rent and display in the public domain. It protects from illegitimate duplication of work.¹⁴ For example, when a song from a Hindi film is being played in the serial for background effect. The serial owner buys it or rents it from the original owner.
- c. Right to Adaptation- In this the owner has the alter or modify or allow to adopt to make a new version or sequel of a song.¹⁵ For example, the song sung by Bpraak and Janni Kismat and its adaptation of Kismat 2.
- d. Right to Broadcast- When a song is already been published in the public domain and the owner decides to broadcast it¹⁶. For example, when the full songs are being released on TV, radio, or YouTube.
- e. Right to Rent- When the owner rents a copy of the recorded song to somebody else for his/her own use.¹⁷ For example, when a different music producer is making a sequel or rendition of a particular song for example “gali gali mein phirta hai” is being used in several films but the original recording is being rented from the owner of the original song.
- f. Right to Public Performance- Section 38 of the Copyright Act, 1957¹⁸ provides the rights to the performer to use the songs to be sung at live events and concerts. For this, the performer has to pay some cost to the owner against such use of songs in public platforms. For example, all the songs sung

¹⁰ Ibid, sec 2(uu)

¹¹ Copyright (Amendment) Act, 1957, No. 14, § 13-1, Acts of Parliament, 1992 (India)

¹² Sneha Mahawar, ‘protection of music under IPR law’ (ipleaders.blog),
<<https://blog.ipleaders.in/protection-of-music-under-ipr-law/>> accessed on 15 March 2024

¹³ Ibid

¹⁴ ibid

¹⁵ ibid

¹⁶ ibid

¹⁷ Sneha Mahawar, ‘protection of music under IPR law’ (ipleaders.blog),
<<https://blog.ipleaders.in/protection-of-music-under-ipr-law/>> accessed on 15 March 2024

¹⁸ Copyright Act, 1957 sec 38

by Arijit Singh, Sonu Nigam, Shreya Ghoshal, and Neha Kakkar at live events are all bought from the owner against some cost with permission to use it.

- 2. Moral Rights- section 57 of the Copyright Act, 1957¹⁹, protects all kinds of literary, musical, dramatic, audio, and visual works (as held by the Delhi High Court in the case *Mannu Bhandari vs. Kala Vikas Pictures Pvt. Ltd. and Ors. (1986)*²⁰) from being modified or altered to such a extend that in turn would distort the music piece and hamper the reputation of the original author. This right does not provide any monetary benefit. But allows the author to claim and preserve its authenticity and originality, even if the copyright has been transferred but the author`s rights still subsist.

For infringement to be done under the Copyright Act, 1957, the work must be copied from the original work and the original work should belong to the original author or creator. If any of this is violated, it amounts to copyright infringement.²¹

To determine copyright infringement court has suggested a two-fold test in the case *Eastern Book Co v. Modak*²². It says that firstly to check if the alleged song is exactly similar to that of the original song and second is the alleged song is a copy of the original work²³.

However, with this emerging era of digitalisation and modernisation of trends of taste and use of songs, our Indian Legislature and Courts are still trying to recognise all kinds and ways of unauthorised replication of the songs and their nature of infringement.

Piracy is one of a kind which is of great threat to both the existing and emerging music artists and composers. The free of cost access to all the videos and audio of the musical works has made a significant decrease in the music platforms like Spotify and Jio music etc. It decreases the sales which jeopardises the sustainable earning of an artist. It also devalues the originality and authenticity of the song which in turn disrespects the hard work of all the people who are emotionally involved in the making in the film.

In the case *Pritam Chakraborty v. Iranian Music Band*, the famous composer, Mr. Pritam was alleged to have copied the famous song “pungi baja de” sung by Mika Singh from the film “Agent Vinod” was copied from the defendants Iranian song called “sooshan khanoom”²⁴

¹⁹ Copyright Act, 1957 sec 57

²⁰ Mannu Bhandari vs. Kala Vikas Pictures Pvt. Ltd. and Ors. (1986)

²¹ Sneha Mahawar, ‘protection of music under IPR law’ (ipleaders.blog), <<https://blog.ipleaders.in/protection-of-music-under-ipr-law/>> accessed on 15 March 2024

²² Eastern Book Co. v. Modak, (2007) 1 S.C.C.

²³ ibid

²⁴ (Pritam Chakraborty v. Iranian Music Band), Dr. Manisha Verma, Dr. Tnushri Mukherji and Dr. Vijish Kurup, ‘intellectual property rights and Indian entertainment industry an overview’, <https://www.researchgate.net/publication/318122730_Intellectual_Property_Rights_and_Indian_Entertainment_Industry_An_Overview> accessed on 15 March 2024

Mr. Pritam was also alleged to have copied the music of all the songs from the film ‘Action Replay’ from the Chinese, Syrian, and, Taiwanese songs.²⁵

In another case *TSeries v. Guruji.com*, the defendant had created a musical search engine that redirects the researcher to alleged pirated websites. The plaintiff filed a complaint and Guruji.com was alleged to be a pirated music search engine.²⁶

Another kind is Digital Platformisation. The India Music industry has seen a significant shift from cassettes to tape recorders to pen drives to now all digital platforms like Jiosavaan, Saregamapa Music, Sony Music, Gaana.com, and of course The Youtube Music. All these have provided a platform for further more rampant exploitation of music and devaluing the song. Songs are brought and uploaded to all these streaming sites which

put subscriptions on the usage of the app and earn more money that is much less than the cost in which the song was being made and then subsequently bought. The infringers then further record the song and then publish it on pirated websites and apps.

To describe it in layman`s language, Platformisation is providing a platform to the users for global profits. It amounts to a total of 62% in the world today²⁷. It provides great flexibility to the performers to perform globally and distribute globally.²⁸

To find the root cause of all these Platformisation, to my knowledge, it all started when the telecom industries tried to exploit music to attract customers²⁹. By giving benefits like setting a caller tune of their own choice of song or setting a ringtone of their favourite song is all a plan to expand their business and shadow the rights of the author and owner.³⁰ Today telecom business like Jio Savaan owned by Reliance Jio Infocomm Limited owns the most of the telecom and to some extent the music industry.³¹

But if we look at the brighter side, all the non-film singers now have a chance to come and play on the front foot³². Now that there will no interference of the film producer to claim the music³³. It will solely be owned by the music company and the music label. For example, the album “Gulzar in conversation with Tagore” sung by Shreya Ghosal and Shaan, written and composed by Gulzar was not film songs but just an album by Saregamapa Music India of non-film songs and was widely popularised. It becomes even more flexible if the composer and

²⁵ Ibid, Dr Manisha Verma, Dr Tnushri Mukherji and Dr. Vijish Kurup, ‘intellectual property rights and Indian entertainment industry an overview’,
<https://www.researchgate.net/publication/318122730_Intellectual_Property_Rights_and_Indian_Entertainment_Industry_An_Overview> accessed on 15 March 2024

²⁶(Tseries v. Guruji.com,) Dr Manisha Verma, Dr Tnushri Mukherji and Dr. Vijish Kurup, ‘intellectual property rights and Indian entertainment industry an overview’,
<https://www.researchgate.net/publication/318122730_Intellectual_Property_Rights_and_Indian_Entertainment_Industry_An_Overview> accessed on 15 March 2024

²⁷ ‘the changing shape of the Indian recorded music industry in the age of platformisation’,
<<https://www.tandfonline.com/doi/full/10.1080/09584935.2023.2206998>> accessed on 15 March 2024

²⁸ Ibid

²⁹ ibid

³⁰ ibid

³¹ ibid

³² ibid

³³ ibid

singer themselves start a music label and then release the songs on their channel. For example, Guru Randhawa's non-film songs. All the rights to these non-film songs are owned by Guru Randhawa himself.

WHAT OUGHT NOT BE INFRINGEMENT: -

- If there is fair use of digital platforms such as, for educational purposes in some institution or by a researcher if he is only trying to update data for convenient study, or if the music is copied from an

authenticated source in a CD or pen drive and played within the closed doors for private use³⁴. All these are fair utilisation and do not amount to copyright infringement.

- Remixing songs and creating a new version is the new way of perceiving music today. Section 51 of the Copyright Act, 1957 protects these remixers³⁵. It says that if the remix creator has taken prior permission from the owner and the author and has adhered to all the guidelines of the Copyright Act, 1957 then it would not amount to copyright infringement³⁶. Provided the song should be made after 2 years the original song is being made³⁷. And the writer of the original songs should be allowed to review the remix song³⁸.

REMEDIES: -

- The victim can file a civil suit as well as a criminal suit in case of copyright infringement³⁹.
- The minimum punishment for copyright infringement is Rs.50000/- and if there is a subsequent infringement, the fine shall be imposed up to Rs.100000 and imprisonment up to 1 year⁴⁰.
- Putting digital watermarks on the original work. This helps to make aware the people that it is under protection and infringement of it will cost him heavily.

CONCLUSION: -

We have so far seen how the rise of digitization of music and musical trends has increased the burden on the legislation to make amended laws for the music industry⁴¹. Separate laws should be made for music piracy and suitable guidelines should be set for Platformisation. The punishments should be more harsher and stricter. Due recognition should be given to the performer and artist in the form of good monetary benefit. Proper panel

³⁴ Sreetija Makhal, 'copyright and music industry' (wordpress.com),
<<https://csriprnusr1.wordpress.com/2021/05/06/copyright-and-the-music-industry/>> accessed on 15 March 2024

³⁵ ibid

³⁶ Sreetija Makhal, 'copyright and music industry' (wordpress.com),
<<https://csriprnusr1.wordpress.com/2021/05/06/copyright-and-the-music-industry/>> accessed on 15 March 2024

³⁷ ibid

³⁸ ibid

³⁹ Sneha Mahawar, 'protection of music under IPR law' (ipleaders.blog),
<<https://blog.ipleaders.in/protection-of-music-under-ipr-law/>> accessed on 15 March 2024

⁴⁰ ibid

⁴¹ Harini ganesh 'need for originality: music infringement in india' (the John marshal review of Intellectual Property Right) page 170 to 191, 191

discussion or committee discussion should be done and it should consist of people having knowledge of music, music with technology, and the ways to infringe it. India has a very long way to go now.

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