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COPYRIGHT IN THE INDIAN MUSIC INDUSTRY

INTRODUCTION

“We as a music community have our own issues about advocacy, intellectual property, being paid fairly for the work that we do.”

Music is a form of art and copyrighting a song or a music can protect the rights of the creator and can even help them financially and economically. In simple terms, they are original work of the creator or authorship and fixed in any tangible medium of expression which doesn't allow it to be used again by anybody other than the owner, if the owner has not granted the permission to do so.

Anything and everything irrespective of its nature and kind, say literary, dramatic, art, music etc., which is the original work of the creator can be obtained with copyright, in simple terms, copyright is the exclusive right of its creator over its invention.

DEFINITION

According to the Section 14(a) (i) to (vii) of The Copyright Act 1957, The meaning of copyright in musical works defines the exclusive right of the author to do or authorize the doing of the any of the following acts in respect of a work or any substantial part, thereof, namely,

- (i) To reproduce the work in any material form including the storing of it in any medium by electronic means.

There is no perfect definition for the word 'reproduction' in the Act according to the Section 14 (a) of The Copyright Act 1957. The owner of the copyright of the musical work has an exclusive right subject to the provisions of the Act to reproduce the work or authorize the reproduction of the work in any tangible form. Reproduction rights includes the right to store the work in any medium by electronic means. Therefore, the right to store the work in any electronic medium vest with the creator. There is a bundle of options for the author to store the work such as the CD, DVD, pen drive, internet, so on and so forth. There are these many options which has enabled the creator, the libraries and publishers of every medium to store the printed work in an electronic medium.

PROCEDURES TO COPYRIGHT

When we look at music, there are a number of steps to copyright a music. Though copyrighting a work in not a necessary thing but generally, people tend to obtain it to retain the originality and authority over their work. When they want the financial benefit say, they want to make a wholesome money out of their music,

they get a copyright. The basic procedure or steps to follow to get a work copyrighted are: -

1. The first and foremost thing is to record the music or the song in a tangible form.
2. Then there is a need to register for an account at the copyright office or website.
3. When account obtained, pay the registration fee as demanded.
4. Then the music work should be submitted to the council so that they may check the originality of the work.
5. Finally, wait for the registration to be processed and succeed.

These are the basic general steps that has to be followed to obtain the copyright of the music work.

But there are drawbacks as well. The storing in the electronic medium has led to various problems as well, in the traditional approach of the reproduction rights. Say, the problem of copyright infringement. When a person is committing copyright infringement, that is, using other person's work or any other issues relating to copyright, it is considered to be an offense. There is the punishment of imprisonment of minimum six months which may extend up to three years or the accused will be liable to a fine amount up to two lakh rupees or both. For instance, in *Sulamangalam R Jayalakshmi vs Metamusicals*, here the defendant copied then musical work which was composed and owned by the plaintiff and sung and recorded it. Hence, the copyright which was the original works of the plaintiff and owned by him was infringed by the defendant as he reproduced the recorded song from a particular electronic store medium.

INFRINGEMENT OF COPYRIGHT

There are certain divisions of remedies for the copyright infringement such as the civil remedies, criminal remedies and border enforcement. The civil remedies provide for injunctions, damages, rendition of accounts, delivery and destruction of infringing copies and damages for conversion. The criminal remedies provide for imprisonment, fines, the infringing copies can be seized and delivery of the infringing copies to the original creator. The border enforcement provides for the prohibition of import and destruction of imported goods that infringe the copyright of the owner.

The complaint or the report of the copyright infringement should be filed within a specified time, after the elapse of which the remedies will not be available. The period of limitation for filing a suit for damages for infringement of copyright is three years from the date of such infringement. Besides the damages, the owner of the copyright can also claim for rendition of account of profits.

In the case where the court awarded forty lakh rupees to the music company, T-series in two separate cases of copyright infringement of its music and audio-visual works by a cable network operating company in Rajasthan and Chhattisgarh. The then additional district judge, MP Singh directed the Chhattisgarh based Sun cable network company and the Rajasthan based Brij network company to pay rupees twenty lakh each to Super Cassettes Industries Private Limited for unauthorized utilizing and broadcasting its works on their cable networks, as they used to do their business under the label of T-series. Further, the court directed both the companies at fault to handover all the works, the audio, video tapes, copies and negatives to T-series. The court said, as I quote “directing the defendant to deliver and handover to the plaintiff (Super Cassettes) all infringing tapes, copies and negatives etc. bearing the copyrighted materials

of the plaintiff⁹. The court also retained the two cable operators, their agents and partners from further exploitation of any of the music label's works. As per the complaint filed by T-series, both of the cable operating companies had broadcasted movies and audio-visual clips and recordings which included the songs that T-series owns. Hence, T-series claimed that it had suffered financial loss and damage because of the continuous infringement of its copyright and it is disturbing the company's business and finances which depends partly on license income from the use of its copyright works.

ANALYSIS

Therefore, we can say that the registration is not mandatory but it is needed when issues arise just like the infringement of copyright, in the court according to infringement or more than we can use, it as a prima facie evidence in a court of law with reference to disputes or issues relating with the owner of the copyright. The copyright of the music or song hence serves as a clear-cut proof of ownership and originality when challenged by anybody. This registration of the music work will serve as an important evidence so that the case will be in favor of the actual owner of the work. It makes the case and the court proceedings and the decision making a bit easier for the court and the decision makes as well as less harassing for the plaintiff as he or she has sufficient and prima facie proof.

As we now know about the rights of the musical work, similarly, there are rights for the original singer of the song as well. According to the Copyright Act 1957¹, as amended in 2012, recognizer performer's rights where the commercially recorded song for fifty years from the beginning of the calendar year of next following year in which the performance is made. During this period, the

¹ Section 38 of the Copyrights Act, 1957.

performance or the music cannot be recorded nor published without the assent of the singer or the performer. For this to be done, the exclusive and absolute consent of the performer or the singer is mandatory. If not, then it would be considered as a copyright infringement.

The person also have the right to receive royalty, that is, a legally binding payment made to an individual for the ongoing use of his or her originally created assets including the copyright works such as musical works, sound recordings, audio, videos etc., in case the performance or the song or the music are utilized or used in any commercial purposes. But when the singer or the performance signs over his rights to the other person then royalty cannot be claimed when someone has the copyright. Everyone except the copyright holder needs to get permission and pay royalty to the performer of the song or owner of the music.

Infringement by publication rights includes infringement by the issue of copies to the public as well. As per the provisions of the Copyrights Act 1957², which states that copyright in a work shall be deemed to be infringed when any person:

- (i) *“Makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or*
- (ii) *Distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or by way of trade exhibits in public, or imports into India, any infringing copies of the work”.*

There are some exceptions to the law as well. Certain acts are not considered to be the infringement of copyright. According to the Copyright Act 1957³, the

² Section 51 of the Copyrights Act, 1957.

³ Section 52(d) of the Copyrights Act, 1957.

reproduction or publication of a literary, dramatic, musical or artistic in any form prepared by the secretariat of a legislature or where the legislature consists of two houses, by the secretariat of either house of the legislature exclusively for the use of the members of that legislature.

In case of a re sale in original copies which is explained under Section 53A of The Copyrights Acts,1957, resale of a price exceeding ten thousand rupees of the original, a literary, dramatic, musical or artistic works, the author of such work, if he is the first owner of rights have a right to share in the resale price of such original copy or manuscript in accordance with the provisions of this particular section of the Act. In all these, the permission of the original copy right holder holds the utmost importance. If, and only if he or she agrees, then only the original work can be published or circulated again.

Copyright is associated with the characteristic of expiry. Copyright rights are not forever. Copyright protection generally lasts for sixty years and the sixty years period is counted from the year of the death of the author of the particular original work, say literary, music, art etc.

CONCLUSION

Thus, the main purpose of copyright is to avoid copying someone's work and to give the original creator the absolute right over his or her thoughts, invention and work. It helps to deal with the legality and court proceedings as it simplifies by producing the proof of his or her work by means of a copyright. Copyrights grants the absolute right to the creator or owner of the copyrighted music or song to reproduce and distribute the copies of the work and even perform, display and broadcast the work publicly as in print medias, television channels and internet platforms such as YouTube. It also restricts the use of the copyrighted work from

being used in any illegal form by anybody and the owner of the work cannot be held responsible for that. Copyright it's a good and viable source of income and for its owner and not to forget it helps the owner of the work to get recognized by the people as well. Therefore, copyright rights in India has become more effective after the 2012 Amendment in The Copyrights Act, 1957. Hence, we can clearly see that though getting a copyright for an original work is not mandatory but it is very important in the Indian music industry, and not only in the music industry but in all other grounds as well.



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