

TRADEMARK OR INTELLECTUAL PROPERTY-RELATED CONCERNS IN THE MUSIC INDUSTRY

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ABSTRACT

Music forms an essential part of our daily lives, but thinking about the efforts and labour that are put in to create a kind of music that will prove to be appealing in the ears of the masses is the main focus of this article. The article focuses on the various kinds of Intellectual Property Rights owned or held not only by the music composers or producers but also by the labels publishing such songs or the performing artists. The article further talks about the stand of India with regard to Intellectual Property Rights as well as the Laws and legislations available in India that deal with Intellectual Property and their rights.

INTRODUCTION

Music as we all know, plays an important and essential role in our day-to-day lives. We often find ourselves listening to music not only while jamming in our cars or doing basic household chores of cleaning, or washing the car, but also while undergoing huge amounts of external pressure during workout sessions. Some people might also find music to be therapeutic and use it as a therapy to calm down their raging nerves or anger, while some listen to music because of their simple adoration and appreciation of the same.

However, few thoughts often turn up and secure a wider space in our heads, such as, how much do these music producers earn? How do the makers and lyricists get the ideas for creating such masterpieces? So on and so forth. These kinds of questions often address the labour and efforts that go behind the Music, as we listen to it today, but these types of questions are not all, the major concerns that relate to the production and protection of any kind of art are also dealt behind the music album, by the virtue of Intellectual Property Rights available almost across the whole of the globe.

For a producer or creator, a lyricist, or any person working behind a music album or a song, the most essential element of the art they create is that the said art belongs to them, it is owned or created and brought forward by them. Therefore, this element shall undoubtedly

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and necessarily be protected, for which different countries came up with the Legislation related to Intellectual Property Rights.

WHAT IS INTELLECTUAL PROPERTY? WHAT ARE INTELLECTUAL PROPERTY RIGHTS?

Property as generally defined, is of two types, tangible property (which can be seen by the eyes or touched by the hands) and intangible property (which cannot be seen by the eyes or touched by the hands). Music or any other form of art which cannot be specifically touched can often be related to Intellectual Property.

In other, technical words, Intellectual Property is that which originates from the mind, like inventions, paintings or other artistic works, designs, logos, audio or other visual content so produced, etc. We as humans protect all our properties with the utmost caution, for e.g., the money lying in our lockers, our house or cars, the jewellery we own and possess, etc. Likewise, the Intellectual Property shall also be protected and preserved with due care and utmost caution.

In various countries we have had laws to protect our belongings or properties that are tangible in nature for a long, for e.g., the provision of theft, misappropriation, cheating, etc, however, the need to protect the intangible property one owns was felt at a much later stage, after which different countries started drafting and enacting legislations that might protect the intangible or the Intellectual Property by way of patents, copyrights, trademarks, etc. These forms of safeguarding one's Intellectual Property, have not only helped them gain name and fame but have also helped them to acquire great financial benefits.

WHAT ARE THE DIFFERENT TYPES OF INTELLECTUAL PROPERTY RIGHTS AVAILABLE ALMOST ACROSS THE WHOLE GLOBE?

There are various kinds of Intellectual Property Rights available throughout the world, however, those which are most commonly and popularly used have been listed below:

PATENTS: Such a right is one that is explicitly given with regard to the Inventions of that person. Patency gives the right to the patent owner/inventor to decide whether or how their invention can be used by other people or institutions.

COPYRIGHT: The right that creators or artists might hold over their artistic or literary works, is often termed as the Copyright. All forms of art can be included within the ambit of Copyright, for e.g., paintings, drawings or sketches, books or poems, music, photographs clicked by a person, films so produced, etc.

TRADEMARK: As the name suggests, a trademark relates to the special mark which is put on the goods or services provided by an individual or an institution, in order to distinguish the said goods or services from those of other providers.

TRADE SECRETS: Creating or discovering something by way of mind undoubtedly involves high amounts of confidential information which may or may not be sold to other individuals or institutions, as decided by the holder. Any unauthorised acquisition of such information by any individual leads to the unfair and immoral practice of stealing a trade secret or violating its protection.

When the number of cases related to Intellectual Property started to take rise, the various active countries of the world came up with the idea of establishing an international organisation that shall pertain to the needs, laws, rules and information relating to Intellectual Property Rights. Such an organisation was established in 1967 by the name of 'The World Intellectual Property Organisation' (WIPO), whose headquarters lie in Geneva, Switzerland. Currently, the WIPO has 193 member countries.

WHAT IS THE STAND OF INDIA IN INTELLECTUAL PROPERTY RIGHTS?

India as an Independent, sovereign country, had a much wider acceptance of the Intellectual Property Rights of an individual. There have been various legislations pertaining to Intellectual Property Rights have been executed and implemented within the Indian subcontinent, commonly called Intellectual Property Laws. Some of these commonly used legislations are:

- *The Copyright Act, 1957*¹
- *The Patents Act, 1970*² (amended in 2005)
- *The Trade Marks Act, 1999*³
- *The Geographical Indication of Goods (Registration and Protection) Act, 1999*⁴

¹ The Copyright Act 1957

²The Patents Act, 1970

³The Trade Marks Act, 1999

- *The Designs Act, 2000*⁵
- *The Information Technology Act, 2000*⁶

There have been various cases relating to the infringement of Intellectual property laws, decided by the higher judiciary. Some of which are reproduced hereinunder:

Marico Limited v. Abhijeet Bhansali (2020) Bombay HC⁷

In this case, the defendant, a YouTuber and social media influencer, utilised the bottle of parachute hair oil in one of his videos and made offensive and disrespectful remarks about it. The owner of the Parachute Oil Brand, Marico Ltd., has filed a request to have the video removed on the grounds that the YouTube user breached the company's trademark "Parachute" and damaged its goodwill through his video. When interpreting Section 29 of The Trademarks Act, 1999⁸, the court determined that the defendant had breached the plaintiff's exclusive trademark rights by failing to obtain the plaintiff's permission or authorization in advance. As a result, the court ordered the removal of the video.

Novartis v. Union of India (2013) SC⁹

In this particular case, the Indian Patents Office denied Novartis Pharmaceutical Company's request to patent the medication "Gleevec." All of the denials were contested by Novartis in the highest court. The Supreme Court ruled that because Novartis's substance was a modified version of a well-known medicine that has been in the public domain since 1993, it does not meet the patent law's criteria for innovation. As required by section 3(d) of the Patents Act of 1970¹⁰, Novartis has also failed to demonstrate any therapeutic efficacy of its modified medicine over the drug that is currently on the market. The court concluded that no innovation had been made and that the finding of an already-famous medicine did not qualify as an invention. The court accordingly dismissed the application.

⁴The Geographical Indication of Goods (Registration and Protection) Act, 1999

⁵The Designs Act, 2000

⁶The Information Technology Act, 2000

⁷*Marico Limited v. Abhijeet Bhansali (2020) Bombay HC*

⁸The Trade Marks Act, 1999, s 29

⁹*Novartis v. Union of India*, [2013] SC [(2013) 6 SCC 1]

¹⁰The Patents Act, 1970, s 3(d)

F. Hoffman-La Roche Ltd. v. Cipla Ltd. [2012]Delhi HC¹¹

This issue arose from a dispute regarding a generic medicine called "Erlopic," which was produced using a polymorphic compound of erlotinib hydrochloride, and for which Cipla submitted a patent application. While Roche, another business, already had a patent for erlotinib hydrochloride. As a result, Roche has asked for infringement against Cipla. However, Cipla asserted that it had merely utilised a polymorphic form of erlotinib hydrochloride in its drug 'Erlopic' and not the actual drug itself. Finally, it was determined that Cipla had violated Roche's Erlotinib Hydrochloride patent because any preparation of a polymorphic form of Erlotinib actually begins with the production of Erlotinib Hydrochloride. Erlotinib Hydrochloride's patent application further states that any polymorphism versions of its compound form that exist will be covered by the invention.

WHAT ARE THE TRADEMARK OR IP-RELATED CONCERNS IN THE MUSIC INDUSTRY?

Copyright Infringement: Copyright as a form of intellectual property right, delves into its holder the right to decide whether or how their artistic creation is to be used by other individuals or institutions. With copyright protection in the music industry, artists and producers get the right as well as the advantage to prevent their music from being used in an unauthorised or illegal manner by other individuals or institutions like YouTube Videos or commercials, Shows or Movies.

There are two separate kinds of copyright protections available in the music industry. These are:

- Copyright related to Sound – Such right/protection is broadly given, after the sound or song is produced, to the producers or the record label that represents such producers.
- Copyright related to Musical Composition –Such a right is acquired by the songwriter or the lyricist when they compose the song's music and lyrics.

Once the music is released and is streamed popularly across various streaming platforms like YouTube, Spotify, iTunes, etc., every time, a small sum or token amount of money so received is given to the copyright owner of that particular song.

¹¹ *F. Hoffman-La Roche Ltd. v. Cipla Ltd. [2012] Delhi HC [2012 OnLine Del 4704]*

Trademarks related to Music or the Music Industry: Trademarks are, often used in the music industry to protect intellectual properties like the name and logos of bands or artists, etc. Trademarks invariably give access to the listeners or the public at large so that they can recognise and identify the source or label of the music.

CASES RELATED TO THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS IN THE MUSIC INDUSTRY

Dua Lipa v. Artikal Sound System [2022] C.D. Cal.¹²

A lawsuit was brought against Dua Lipa by Artikal Sound System in March 2022 over her song "Levitating." The reggae group says that it violates the rights of their 2017 song "Live Your Life." Hear the opinions of musicologists on the subject from a Rolling Stone article. The reggae single peaked at number two on the Billboard Reggae charts, indicating that Lipa might have had access to the tunes. However, it is never easy to demonstrate intention. Check out this Music Business Worldwide article for more details.

BTS & Big Hit Entertainment (HYBE) v. Bryan Kahn [2021] C.D. Cal.¹³

In the year 2020, BTS made a cameo appearance on the television programme I-Land. Florida citizen and self-described "engaged in the business of creating and producing television series and audio music," Bryan Kahn, believes his concept for a comparable show was stolen. The "Island Hip Hopping" television programme had its Writers Guild of America registration back in 2013. In order to prepare for the show, he travelled to many Asian nations to understand more about the local culture. Production on the show was reportedly scheduled to start in 2020. The key concern seems to be whether the concept for a reality show may be protected by copyright.

Vanilla Ice v. Queen and David Bowie [1990] C. D. Cad.¹⁴

Queen and David Bowie filed a lawsuit against Vanilla Ice, alleging that the bass line in "Ice Ice Baby" was an exact replica of the one in "Under Pressure." Due to his addition of one additional beat, Vanilla Ice claimed they weren't the same. Queen and David Bowie won their case in court, and Vanilla Ice was ordered to make an undisclosed payment.

¹²Dua Lipa v. Artikal Sound System [2022] C.D. Cal.

¹³BTS & Big Hit Entertainment (HYBE) v. Bryan Kahn [2021] C.D. Cal. [2:2021cv03230]

¹⁴Vanilla Ice v. Queen and David Bowie [1990] C. D. Cad.

CASES AND INSTANCES WITH REGARD TO THE EXISTING IP LAWS IN INDIA

The court ruled in *Gramophone Co. v. Super Cassettes [1995] Delhi HC*¹⁵ that it is important to seek the original owner's consent before using any of his creative musical work.

The court held the opposing view in *Gramophone Co. v. Mars. [2002] SC*¹⁶, where it was decided that provided Section 52(1)(j) of the Copyright Act of 1957¹⁷ is complied with, there may not be any instances of copyright infringement and there is no need to get the owner's permission (permission is only needed for the first recording).

Folks have listened to both Yo Yo Honey Singh's version of the iconic Dheere Dheere Se Meri Zindagi Mein Aana from the 1990s and its stars Rahul Roy and Anu Agarwal. Now, the question is: Is it OK to use an artist's original creative work in this manner? In this case, the original song's elements are added to and removed from the new music or remix utilising audio mixing. A licence must be obtained from the owner before using or altering any creative works, including music and sound recordings, in accordance with Section 52(1)(j) of the Act. It discusses getting a legal licence to use a copyrighted work in a certain way, provided that the person or organisation (i.e., the licensee) pays the requisite fee and abides by the law.

CONCLUSION

Although the entire field of music copyright law is obviously complex, it is not particularly difficult to protect a piece of musical work and receive royalties for it. Only your copyright registration, joining the required debt collection agency, and distributor selection is required. Remember that registering your copyright will safeguard your creative work and guard against misuse, infringement, and theft. Because it safeguards pricey music and picture recordings, trademark registration is essential in the entertainment industry. The entertainment industry makes use of the Trademark Act of 1999, which is less strictly enforced but is equivalent to international trademark laws. Both song titles and movie or image names should be original with no chance of plagiarism. Trademarks must be carefully protected because they contribute to the development of brands.

¹⁵Gramophone Co. v. Super Cassettes [1995] Delhi HC, 1995 SCC OnLine Del 154

¹⁶Gramophone Co. v. Mars. [2002] SC, [(2002) 2 SCC 103]

¹⁷The Copyright Act 1957 s. 52(1)(j)