

COPYRIGHT PROTECTION OF PRIVATE HOME RECORDINGS OF MUSICAL WORK

Mounika Chelamkuri*

ABSTRACT

In the current scenario, there has been a rise in the legal protection and value accorded to musical works. This has been accomplished through the issuance of multiple copyrights to safeguard the audio and textual works of a variety of musical performers. In the latest days, the number of artists who have covered songs has steadily increased. This has generated a substantial amount of discussion and debate regarding the current copyright legal system. This has fuelled the ongoing search for a balance or equilibrium between the need to protect artists from illegal acts such as audio piracy and the desire to encourage and permit aspiring musicians to draw inspiration from current musical works. The recent increase in public discourse regarding the recording and performance of music at private gatherings has the potential to be utilised constructively. Prior to the passage of sweeping legislation, it is possible to discuss the concerns with the numerous stakeholders and identify common ground through controlled and sustained public debate. Considering the rise of content creators in our country, especially in recent years, the issue of YouTube covers must also be addressed. Moreover, steps must be taken to comprehend the meaning of certain copyright provisions that are unclear or impractical in application. Our future will be brighter if we have copyright regulations that are more realistic and effective.

Keywords: Musicals Works, Copyright, Sound Recordings, Infringement, Copyright Societies, TikTok, Youtube.

INTRODUCTION

It has always been common for private individuals to create audio recordings of copyrighted works at home. With the advent of videotape recorders and the development of a variety of other technologies, off-air home recording of copyrighted material has also become commonplace. Copyright law, particularly the sections pertaining to music, is generally tricky. The first right safeguards the underlying musical composition, which includes the exact

*BA LLB, DAMODARAM SANJIVAYYA NATIONAL LAW UNIVERSITY, VISAKHAPATNAM.

structure and arrangement of musical notes, chords, rhythm, harmonies, and song lyrics. The legal term for this area of copyright is "musical work." The actual recording of a musical composition; concept is known as the sound recording under copyright law. Also referred to as the master or recording. This study will investigate in depth the protection of such home-recorded musical works.

IMPORTANCE OF COPYRIGHTS

The term "Knowledge of goods" refers to intellectual property. It was created by a man's intellect. The right to intellectual property is a claim over the product of a person's mind, which is an intangible right. Copyright is one of these rights that the majority of individuals understand. It grants the author or creator of the work exclusive rights to enjoy the work and generate revenue from it. Copyright is a crucial component of the nation's development. Copyright is an unfavourable right. Copyright confers a plethora of rights on the copyright holder, however, these rights are not permanent. There is a period of time during which the author or creator can exercise these rights, after which the work enters the public domain. According to the Copyright Act 1957, it is restricted to the author's lifetime and the 60 years following his death. Following the expiration of the specified time period, the copyrighted work enters the public domain, where anybody may access it without permission. Copyright exists in India for original literary works, dramatic works, musical and creative works, cinematograph films, sound recordings, computer programmes, and databases. During the duration of his ownership, if someone attempts to replicate his work or alters it in any way, he has the right to file a lawsuit for copyright infringement. In accordance with the law, they must compensate the copyright holder. If the owner of the copyright transfers all of his rights with the exception of his moral rights. This could apply to an individual, a group of individuals, or a company. The transferee will receive all of the copyright holder's rights and will file a lawsuit against anyone who violates their exclusive rights. This is a reward for the original copyright holder so that he can earn money from his work and invest a portion of that money in other endeavours. Copyright is a vital intellectual property right that the vast majority of people are aware of. Copyrights play a significant part in the film industry as well. It is crucial to expand the scope of this type of intellectual property rights since it contributes to the growth of society and frequently raises the standard of life for the general population. It promotes originality and innovation and allows manufacturers to profit monetarily. You've probably seen the phrase "copyright protected" on a variety of products you've purchased. DVDs containing movies,

music, books, computer software, and a multitude of other items are included. In the past, it was typical for products manufactured in industrialised nations to violate copyright laws. However, as the significance of copyright has become more widely recognised, the number of reported cases has decreased. The government has been compelled to take a firm stance against copyright violations due to pressure from overseas counterparts and corporations. The Copyright Act of 1957 governs intellectual property rules in India. There have been at least five amendments to the Act and the Copyright 2012 Act is the most significant and brings the legislation in line with two WIPO Internet treaties signed in 1996.¹ Section 55 of the Act allows for a variety of remedies in the event of a copyright violation. Included among these are injunctions, financial redress, and imprisonment². In India, persons convicted of copyright infringement face up to three years in prison or a fine of up to Rs 2 lakh.

Copyright Protection of Private Home Recordings of Musical Work



The subject of whether or not a copyright licence is necessary in order to play any musical work, film or sound recording at events such as weddings, birthday celebrations, and other similar occasions is one of the most commonly asked questions. The response to this question is primarily determined by two factors: i) whether or not a copyright already exists for the work in question, and ii) whether or not any act would constitute reproduction or public performance of the work. Because it is a criminal offence to violate the Copyright Act of 1957, it is of the utmost importance to ascertain whether an act, performance, or reproduction of a work requires a copyright licence, from whom such licences must be obtained, and the status of any copyright society that applies to that particular work. It is required to have an understanding of the meanings of the terms "copyright," "musical work," and "sound recording" in order to make a determination regarding the existence of copyright in a specific musical work.

Musical works under the Copyrights Act

There has been a recent uptick in the legal world that serves to preserve and promote musical works. Different copyrights have been established to safeguard the works of various musicians and authors. A song consists of the lyrics, the music, and the vocal performance. There are a total of three players. Each component—the lyricist, musician, and singer—plays an essential

¹ Dr. Daniel Seng, World Intellectual Property Organization, *Copyright and Related Rights Cases in the Field of Music in the Asia-Pacific Region* (2011) 128.

² Copyright Act 1957, s 55.

role in the finished product. A musical work is a collection of musical elements, including but not limited to rhythm, melody, and harmony. What we call "musical works" encompasses both the actual performance and the notation of that music. In other words, it doesn't have any lyrical content or choreography to go along with the music. Not a single lyric or choreographed movement is included to be performed in time with the music. A "work" can be anything from a piece of writing to a piece of music to an artwork of any kind.

A song's composer is the legal owner of the song's copyright and can assign that copyright to whomever they choose.

Court of Appeal in *Sawkins v. Hyperion Records Ltd.*³ held that the figuring of the bass, ornamentation, and performance directions were all integral parts of the musical work. Unless a specific legal definition of music exists, a common understanding can help fill in the gaps according to dictionaries, music is essentially the blending of sounds for the purpose of listening. There is a big difference between music and background noise. It is the goal of musical composition to move listeners in some way, both emotionally and intellectually. Music and the right to protect it need not involve a live performance on instruments according to a musical score. A distinct line needs to be drawn between music and the fact and form of its fixation as a record of a musical composition. Music and the right to protect it need not involve a live performance on instruments according to a musical score. A distinct line needs to be drawn between music and the fact and form of its fixation as a record of a musical composition. The score is the most common and practical method of fixing music, and it satisfies the need for copyrighted work to be recorded physically. However, the copyrighted music does not include the act of fixating it in a written score or on a record. When considering copyright, there is no reason to exclude recordings of improvised sounds made by a group of people with or without musical instruments, such as singing, whistling, or humming. The words and any action intended to be sung, spoken, or performed with the music are explicitly excluded from the definition of "musical work" in Section 2(p).⁴ Consequently, the statute distinguishes between musical works and songs that may or may not contain music. However, even if a song with music is sung, it will not be considered a musical work under this section.

³ *Sawkins v. Hyperion Records Ltd.* [2005] EWCA Civ 565.

⁴ Copyright Act 1957, s 2 (P).

Sound Recordings

A sound recording is any recording of sounds that can be played back, regardless of the medium on which it is stored. Production technique; this naturally encompasses piano rolls and other mechanical instruments used to create jingles. Independent works which are Copywritten, namely sound recordings and cinematograph films, are created once the literary and musical works are incorporated therein.⁵ As a result, rights under Section 14 in respect of each sound recording and cinematograph film are created, and the owner of the sound recording or cinematograph film may exploit those rights without interference from the owners of copyright in the undisclosed literary or musical works. A sound recording's owner has the sole discretion over any and all public performances of the recording. It is true that the public learns about the underlying works through the exercise of such rights. If the underlying works are communicated to the public as part of a sound recording, this does not violate the copyright of such communications. The creators of any works sampled or used in a sound recording do not have the right to distribute copies of that work to the general public.

The owner of the copyright in the works upon which the sound recording is based retains all copyrights not expressly granted in the sound recording itself.

Sound recordings are also protected by copyright, but this is in addition to the rights associated with the original musical or literary work. The term "version recording" is used to refer to any recording that was created using the musical work and literary work/lyrics after the initial recording was created.

When sound recordings of a literary, dramatic, or musical work have been made under license or with the consent of the owner of the right in the work, any interested party may create a cover version, which is a sound record. Such audio recordings must be made using the same medium as the previous one unless that medium is no longer commercially viable.

The person making the sound recordings must provide the Copyright Board with a notice of his intention in advance to make the sound recordings, as well as advance copies of any covers or labels that will be used to distribute the sound recordings. The Copyright Board will also set the royalty rate that he must pay to the original creator of each work in advance of making any

⁵ V K Ahuja, *Intellectual Property Rights in India* (3rd edn, 2017) 64.

copies.⁶ The creator of the sound recording may not alter the literary or musical work in any way without the permission of the work's author or composer unless such alterations are necessitated by the recording process itself. Until the end of the fifth calendar year after the year in which the first audio recording of the work was completed, no additional audio recordings of the work are permitted. In the event that a work is reproduced in excess of 50,000 copies per year, a single royalty payment in respect of such sound recordings shall be made.

COPYRIGHT LICENSE FOR PLAYING MUSIC

It is unheard of for an Indian wedding or engagement party to occur without blaring music and lively dance. According to the Copyright Act of 1957, playing recorded sound recordings on any medium during these ceremonies has always been considered a violation of the copyright of the original owner's work. According to Section 51 (a) I of the Copyright Act of 1957, any act by a person that is not authorised by the owner of the copyright or the Registrar of Copyrights or that violates the terms of an authorised licence granted by a competent authority under this Act constitutes an infringement of the owner's copyright. The Indian Performing Rights Society Ltd. (IPRS), the sole arbiter of public performance rights and radio broadcasting rights, requires a licence for a set fee before any music or pre-recorded songs can be played for profit at events, parties, hotels, or other functions. This provision prevents owners from incurring financial losses in the event that their work is broadcast or performed without their consent. However, as of the clarifications issued by The Copyright Registry on August 27, 2019, these safeguards have been relaxed. In conclusion, it was stated that the Act does not grant the owner of a musical work absolute "Vis a Vis" rights; rather, it provides necessary exemptions in situations where the infringement is clearly innocent and unintentional. Literary, theatrical, or musical works performed or communicated to the public in the course of a real religious/sacred rite or an official celebration or function held by the Central or State Government or any local authority are exempt from the terms of Section 52 (1) of the Act. Not only do religious ceremonies encompass the rituals performed by religious leaders, but also the associated social celebrations, such as wedding processions. In such instances, the government has made it clear that the IPRS will issue a licence at no cost (FOC). In spite of this, the IPRS guidelines state categorically that hotels, banquet halls, lawns, etc. may not publicly perform music via any medium without a licence, which can be obtained by paying a royalty fee.

⁶ BORCHARD, WILLIAM M. 'Copyright Protection for Sound Recordings' (1975) 11 (2) JSTOR<<http://www.jstor.org/stable/44029245>> accessed 16 June 2023.

Depending on your location, a different tariff may be in effect. It depends on a vast array of factors. One of these is the city's classification and the hotel room rate.

COPYRIGHT SOCIETIES

Copyright Societies were made to make it easier to get licences for songs and sound recordings and to protect the rights of singers, artists, lyricists, sound recording companies, and other people involved in making a song. Section 33 of the Copyright Act says that Copyright Societies must be registered in order to be able to give licences on behalf of the owners to people who need them. Currently, active Copyright Societies include the following:

(i) Society for Indian Performing Rights (IPRS)

IPRS issues licences to users of music and collects royalties from them on behalf of its members, who are authors, composers, and publishers of music. After deducting administrative costs, IPRS distributes this royalty to its members. The IPRS licence governs both live performances and electronic performances.

(ii) Phonographic Performance Limited (PPL) claims ownership and exclusive control over public performance rights and radio broadcasting rights for more than 5 lakh songs (sound recordings) in Indian languages. These songs span genres as diverse as Ghazals, devotional music, folk songs, pop music, classical music, and more.

(iii) The Indian Singers Rights Association (ISRA) is a distinct copyright organisation composed of performers. It asserts the authority to collect royalties on behalf of musicians.

ONLINE APPS AND COPYRIGHT INFRINGEMENT

YouTube music and copyright infringement

YouTube has one of the strictest copyright practices in the industry, these copyright rights are used to regulate how visitors handle the platform, to avoid abuse or violation of individual rights on work e.g. copyright infringement. These policies also ensure that users comply with the “Digital Millennium Copyright Act,” which is used as a YouTube copyright strike system and has grown to become a standard for global best practices for music streaming. Because of the strictness of the YouTube music policy, nobody would like to be a defaulter of YouTube music policy infringement. So, it will be important to know what these policies contain and

how to abide by the rules so that they can avoid becoming a victim of the violation of copyrights, especially the updated YouTube music policies 2021. The YouTube music policies are not different from what is obtainable in other music streaming platforms, but what may seem different is their implementation. A little YouTube music policies search will save you the trouble of falling victim to YouTube copyright infringement. To YouTube, each section of their policy covers or protects each branch of the activities going on in their music platform. For Monetization, the company designed it in such a way that since the original owner(s) of the song has chosen to monetize the song, Ads may appear on their videos.⁷

But if one really needs to upload these videos, then one must have to seek permission from the original owners. YouTube is not in a position to help people find or contact the parties who may be in a position to grant you the copyright permission they need. So, contacting the original owner(s) directly might just be the best way out. As YouTube music continues to be the source of daily music exploration to over 2 billion people on the face of the earth, their strict policies seem to be the only working measure deployed to checkmate the workings and make sure they comply with international best practices. But while the videos are uploaded on YouTube it's important to see that they comply with the policies.

Music Recordings Copyrighted On TikTok

TikTok is a new and popular platform for sharing all types of content, including DIY videos and memes. Despite the fact that its popularity skyrocketed during the 2020 lockdown, it is evident that it will not disappear anytime soon. TikTok is still subject to copyright laws in Australia, but they appear to be less strict in India. IP and copyright on TikTok are fascinating for a number of reasons. On the one hand, it encourages collaboration between creators – for instance, stitches, sounds, and duets – which allows users to freely reuse the content of other creators. On the other hand, improper use of copyrighted material appears to be relatively difficult to detect, such as when users include visual/audio recordings of copyrighted material in their videos (including recordings of a TV or laptop screen). Copyright infringement laws and royalties would be heavily scrutinised on any platform with voluminous amounts of organic content. It is essential to understand how the copyright act operates on a platform such as TikTok. In general, TikTok's music can be utilised without the risk of copyright infringement. When creating videos on TikTok, it is safe and legal to use music from within

⁷ Robert H. Woody, 'Copyright Law and Sound Recordings' (1994) 80(6) JSTOR
<<https://doi.org/10.2307/3398708>> accessed 17 June 2023.

the app rather than from outside sources. To use the artists' and labels' music on the service, it has entered into a Copyright Licence Agreement or an Intellectual Property Licensing Agreement. This merely denotes the artist's approval. TikTok to use their intellectual property in exchange for royalties, subject to the terms of the agreement. Songs from TikTok videos have dominated the charts. Approximately 50% of the music on the platform is unlicensed, however (i.e., used without the permission of the copyright owners). This poses a potentially fatal threat to the app's profitability. Due to the fact that the owner of the copyright can prevent others from performing his or her music. Infringement may happen if someone were to perform without permission. Furthermore, those found guilty of copyright violations are susceptible to statutory damages. Because of this, it appears that the range of permissible monetary damages is fixed by statute. Infringement of intellectual property can result in statutory damages of several hundred to tens of thousands of dollars under the Copyright Act. In copyright matters, even if the copyright owner suffers no actual damages, the court may nonetheless award statutory damages per infringed work. The amount TikTok might be held liable for in cases of infringement is staggering, considering the prevalence of illegal activity on the platform. The music industry was initially concerned about copyright infractions by record companies and publishers. Specifically, TikTok has short-term deals with Sony, Universal, and Warner. The Transparency Report also shows that copyright holders have profited from TikTok's efforts to prevent infringement. It is unclear, however, whether or not these measures were truly essential to safeguard the app from infringements of copyright. In the event of a copyright violation, TikTok would presumably raise the fair use theory as a defence. Fair use may not be enough to guarantee success, though.

CONCLUSION

The recent increase in public discourse regarding private parties recording and playing music has the potential to be utilized constructively. That is to say, prior to the passage of sweeping legislation, it is possible, through public debate that is both controlled and sustained, to discuss the problems with the various stakeholders and find common ground. Given the recent increase in the number of content creators in the United States, the issue of YouTube covers must also be addressed. Furthermore, steps must be taken to better understand the nature of certain copyright provisions that are ambiguous or impractical in practice. Our collective future will be brighter if we have copyright laws that are more effective and practical.