

MUSICAL WORKS ON COPYRIGHT: STRIKING THE RIGHT NOTE

Dissertation Synopsis submitted to the Lovely Professional University
in partial fulfillment of the academic requirement
for the award of the degree of Master of Laws (LL.M)

Submitted by:
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CERTIFICATE

I hereby certify that this dissertation entitled “Musical works on Copyright: Striking the right note ” submitted for the award of Degree of Master of Laws (LL.M) is a record of research work done by the candidate “ManjeeraSaikia ” during the period of his/her study under my guidance at School of Law, Lovely Professional University, Phagwara, Punjab, India, and that the dissertation has not formed the basis for the award of any Degree, Diploma, Associateship, Fellowship or other similar titles to the candidate. I further certify that this dissertation represents the independent work of the candidate.

Place: Phagwara
Date:30.11.2017

Ms. Chandrika Tewatia
Assistant Professor
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DECLARATION

I hereby declare that the dissertation entitled “ **Musical works on copyright: striking the right note**” submitted to the School of Law, Lovely Professional University for the award of degree of Master of Laws (LL.M) is a record of original and independent research work done by me under the supervision and guidance of Ms. Chandrika Tewatia, Assistant Professor, School of Law, Lovely Professional University that the dissertation has not formed the basis for the award of any Degree, Diploma, Associateship or other similar titles.

Place: Phagwara, LPU

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INTRODUCTION.

Intellectual property comes with bundle of rights. They are legal rights that safeguard creator and other producers of intellectual goods and services. Copyright is also one among these rights. Copyright is a right of protection, it is provided by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. It is a bundle of rights including, *inter alia*, rights of reproduction, communication to the public, adaptation and translation of the work. There is difference in the composition of the rights depending on the work.¹

Copyright gives safeguards of the rights of authors over their creations, and protect the creativity. Creativity is an important element for progress; no civilized society can afford to ignore the basic requirement of encouraging the same. Society development dependent on creativity be it social or economic. The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more and motivates others to create.²

Seen from the view of western concept Intellectual property rights deals with restrictive monopoly of knowledge which is quite contrary to the age-old Indian belief where 'knowledge' has always been in public domain and 'Copyright' is not an exception to this general rule. Panchatantra's story had been shared freely without creating any monopoly rights in favor of anyone. British rule influenced the knowledge system from the ancient till modern period. It has become necessary to study the copyright by going to the history.³

Copyright is the protection in the hands of creator for the creations of art, The concept of copyright is of foreign origin. Indian history did not recognize it until the advent of British. In the year 1440, the invention of printing press lead to production of books by machines and demands for protection of such books increased. In 1710, the Statue of Anne provided the protection to the authors by granting them the right to control their books being copied. The

¹ PMG Associates, Copyrights in India, available at <http://pmgip.com/copyrightindia.html>. (Visited on 25 November 2017)

² P Narayanan, *Intellectual Property Law* (Eastern Law House, third edn,2001).

³ Copyright Office, India, Rationale of Copyright Protection, available at :<http://copyright.gov.in/document/handbook.html> (Visited on 25 November, 2017).

grant of such rights was called copyright. The first Copyright Act was enacted by congress in 1790.

The first copyright law today is a gift from our colonial rules. Before 1957, there was Copyright act of 1847. The first Copyright Act for Indian and then the Act of 1914 which was heavily tilted towards the UK Copyright Act of 1911 and known as replica of the British Copyright Act of 1911, textually as well as principle wise, though with a few suitable modification.⁴ This new statute, the imperial copyright Act 1911, was the next in the historical pipe made applicable to the Indian polity as it existed during the Queen's regime.

In India, the Copyright Act, 1957 (as amended up-to-date), the Rules made thereunder and the International Copyright Order, 1999 govern the facets of copyright, related rights and neighboring rights. The Act was originally divided into 15 Chapters with 79 sections. Moreover, the Central Government by virtue of Sec. 78 of the Copyright Act is empowered to make rules by its notification in the Official Gazette for carrying out the purposes of this Act. The Copyright is granted and protected as per the provisions of the Act and there exists no common law right.⁵ Under the Constitution of India, the matter of Copyright fall under Entry 49 of List-1⁶ which is the Union list and it is a subject of Central law. Thus, the parliament has the exclusive right to frame laws on this subject. On the international plan, India is a part of the Berne Convention for Protection of Artistic and Literary Works (1886), the Universal Copyright Convention (1952) and the Agreement on Trade and Related Aspects of Intellectual Property Rights, (TRIPs). However, India has not ratified the WIPO Copyright Treaty 1996 and WIPO Performances and Phonogrammes Treaty 1996, till date.

The basic premise to be protected by copyright is originality. The work should be original and not infringing any others copyrighted material to enjoy ones copyright status under the Copyright Act. At the same occasion it is submitted that originality

does not imply literary merit or accuracy standing in the same manner as 'an artistic work is protected even if it lacks artistic quality.'⁷ The copyright criteria is that the work should not constitute unauthorized reproduction from another existing source in substantial terms so as

⁴ Raju, K.D., *Intellectual Property Law, WTO and India* 229 (New Era Law Publication, 2005).

⁵ *Manojah Cine Production Vs A. Sudarshan*, AIR 1976 Mad 22.

⁶ Schedule 7, List I Entry 49, Patent, *Inventions and Design; Copyright, Trade-marks and Merchandise marks.*

⁷ The Indian Copyright Act, 1957 s.(2)(i).

to constitute infringement as per provision of the Act⁸ obviously considering the concessions in favor of public interest⁹ and the constitutional guarantee of freedom of speech and expression.

The minimum terms provided by Berne Convention which is 50 years after the life terms of the author, however the signatories are free to increase the terms of protection, but not to reduce less than the agreed international consensus. For example, in Europe and United States, the term of protection is life plus seventy years. Copyright in India, subsists for a period of 25 to 60 years, depending upon the nature of the work.¹⁰ Copyright for works whether published or unpublished for a lengthy though limited period of 60 years excluding the life of the author which shall commence to run after the death of the author.¹¹ The municipal statute provides a longer term of 60 years post mortem period which is 10 years more than the international requirement under the Berne or the TRIPS agreement. However, in cases where the work falls under the category of a cinematograph film, sound recording, photograph, posthumous publications, anonymous organizations, the 60 years period is counted from the date of publication

"Musical work" means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music. A musical work need not be written down to enjoy copyright protection.

There are many right holders in a musical sound recording. For example, the lyricist who wrote the lyrics, the composer who set the music, the singer who sang the song, the musician (s) who performed the background music, and the person or company who produced the sound recording.

A sound recording generally comprises various rights. It is necessary to obtain the licenses from each and every right owner in the sound recording. This would ,*inter alia*, include the producer of the sound recording, the lyricist who wrote the lyrics, and the musician who composed the music It is important to note that there are two separate copyrightable

⁸ id

⁹ id

¹⁰ Poorva Chothani, Managing Copyright in the Digital Era, *available at*: <http://www.managingip.com/article.aspx> (Visited on 26 November 2017).

¹¹ Term of protection of Copyright in India, *available at* www.ssrana.in (Visited on 25 November, 2017)

components of any single recording of a musical work: the composition and the sound recording. The musical composition consists of the music, as written, including any accompanying words. The author of a musical composition is generally the composer and the lyricist, if there are lyrics. A musical composition can be in the form of a notated copy (for example, sheet music), or in a sound recording, such as a master recording or a phono record, such as an LP, cassette tape, CD or a digital phone record “DPD,” such as an MP3 or other digital file. See: *Modernizing Music Licensing to Promote Innovative Business Mode*. Sound recording copyright is different from musical composition, it results from the fixation of a series of musical, spoken, or other sounds into a tangible medium that can be played back. The author of a sound recording is the performer(s) whose performance is fixed, the record producer/engineer who processes the sounds and fixes them in the final recording, or both.

A separate license must be obtained from the both the copyright owner of the “musical work” and the “sound recording” as described above for analog radio, before a particular sound recording of a musical work can be used. Currently, terrestrial analog radio enjoys an exemption from the requirement to obtain a license for the sound recordings they play (they still have to get a license for the underlying musical works, however).¹²

With the increase of smart phones in India the trend of app downloading have reached a great height. The app for mobile like Saavan and Ganna provides for both Bollywood and Hollywood hits and claims for fourteen million monthly users. Ganna crossed twenty two million downloads, with such an increase the rate of piracy is increasing. Music is largely affected as it finds its way in movies, televisions, clubs, restaurants etc. The process composing or writing a song needs great dedication. They are working hard to earn their living so it is the duty and role of every being to give them the real value they deserve. Laws for music are made which is to be strictly followed.

For music or sound recording, it must be remembered that one must have the authority to either make or distribute copies of the sound recordings, or must have the authority to publicly perform the sound recordings, by means of a digital transmission. In the case of sound recordings, to perform the work publicly by means of a digital audio transmission.¹³

¹² Sallie G Randolph, *Desktop guide to Writers' Rights and Responsibilities*. available at <https://books.google.co.in> (Visited on 26 November 2017).

¹³ Copyright Act 1976 s.106.

The rise of the Internet over the course of the past two decades, along with the technology of digital downloading have harmed in a great way. A study of copyright law internationally would help to understand the best copyright laws to be adopted suitable for India. Making law alone is not sufficient; it must be followed by the people. The Indian scenario is that least people are aware of the copyright laws in music and other section of people do not bother to violate the laws. Infringement is done more and more because of the weak laws.

Statement of Problem

The researcher of the dissertation will research upon the growing dilemma of musical works relating to the culture of copyright in India. The researcher will focus on various Copyright law available for music in India as well as suggest harmonization of laws through International Legislations in USA, UK, Finland.

Objective of the study

- To study the evolution of copyright in music in India.
- To study how the Indian laws regulate the copyright laws on music.
- To study the musical works in India and key players in the music market place.
- To study about the challenges that the music maker face regarding copyright of music
- To make a comparative study of copyright in music in US, UK, China and Finland for adoption of better laws.

Research questions

- What is the scope of protection of music under the Copyright Act?
- What are the issues relating to copyright of music in India?
- What laws are available for copyright in music in India, USA and UK?
- What laws can be adopted in India for the benefit or betterment of copyright in music?

Hypothesis

The copyright laws in India are adequate to address contemporary issues of musical works.

Scope

The main focus of the project is to study the copyright laws in India relating to music. This dissertation extends to all the issues relating to copyright in India from the evolution of copyright till the present day scenario. The importance of copyright in music is high today as compared to old times. Infringement of Copyright is said to be an offence, as it can lead to serious emotional as well as economical damage, so the paper brings to spot all the problems for finding a solution. The scope would only be limited to musical works in context of copyright.

Literature Review

Books

- Marshall A Leaffer, *Understanding copyright* ,Lexis Nexis,18th may2010)

The paper represents a review of literature published in the area of copyright in music. The researcher recommend some changes since the copyright law has changed dramatically it should incorporate all the recent case laws and legislative development focusing on digital age.

- Ann Harrison, *Music the Business*, Random house, 7th edition, July 6 2017

The book gives detailed account of mechanical licensing and royalties, digital downloading, streaming and marketing, the challenges of discovering new music with the case studies. She examines in detail the changing face of music industry and provides absorbing and up to date case studies.

- P.Narayanan, *Intellectual Property Law*, third edition, eastern law house.

The book describes all the Intellectual Property. The author clearly describes about the laws relating to music. The author gives an authoritative commentary on the entire multi faced law and explains that though there is no copyright in ideas, yet the copyright in work giving expression to the idea in a material form automatically subsists as soon as the work comes into existence.

- Jatindra Kumar Das, *Law of Copyright*, PHI Learning Pvt.Ltd, 1st May 2015

The book shows a relation between statutory copyright law as well as case law on the subject, he also said about the development of copyright at international as well as national level, he also wrote about various issues relating to protection of copyright in internet and discussed in detail enforcement of Copyright in India.

Articles

- Reshma Tigga “Copyright Enforcement In Internet: Specific to Music Industry an International perspective”, *available at*: manupatra.com/articles.

The author writes about the impact of internet on global music industry, the huge loss of profit to the music industry because of illegal file sharing. She writes about the foundation copyright laws worldwide starting from the year 1886 Berne convention, Digital Millennium Copyright Act 1998, European Union’s Copyright Directives etc. She also discussed about the liability for Copyright Infringement.

- Aneesha Mathur, “Play the music, face the music: what copyright act says” (10th October 2016).

The author gives her view about the rights of a singer over his/her music basing on two cases of High Court, one south Delhi restaurant case and another a bar in north Delhi. She writes about article 38 of copyright act, 1957 as amended in 2012 that recognized performer’s right of a singer of a commercially recorded song for 50 years. She writes about the commercial utilization of a performance which means both live performance and playing of recording

- Lawyers for Creative Arts, “Legal issues involved in music industry”(Visited on 24 November 2017)

The author gives a clear view about term Copyright, the rights of the Copyright owner Copyright ownership, Music publishing, Mechanical Royalties.

- ILI Supreme Court Bulletin, “Public Performance of Copyrighted Works”, *available at:*<http://www.law.cornell.edu> (Visited on 28 November)

The author has given description of the right of performer in music. He writes about the increase of music in literature and litigation, how the music is becoming a part of litigation.

- BIP Council, “History of Copyright Law in India” available at:[https://:bananaip.com](https://bananaip.com)(Visited on 25 November 2017).

The author gives a clear view of the history of copyright starting from the printing times including the International Conventions and discussed how the Conventions performed.

Research Methodology

The research methodology to be used for the dissertation is doctrinal as well as non-doctrinal research. It is doctrinal research as it includes conceptual analysis of all the relevant legislation and case laws and includes tracing of legal precedents, legislative interpretation, and library works, there will also be reference from legal journal, magazines, statues text. The paper is also Non-doctrinal as there will be collection of primary data/first hand data. The primary data will be collected by serving questionnaires to teenagers, adults and old persons regarding music law in India. The observation method will be applied which involves recording behavior, events and objects.

CHAPTERIZATION

CHAPTER 1: COPYRIGHT

1.1 HISTORY OF COPYRIGHT

1.1 FOUNDATION OF COPYRIGHT LAWS IN MUSIC

1.1.1 EVOLUTION OF MUSIC COPYRIGHT LAWS IN USA

1.1.2 EVOLUTION OF MUSIC COPYRIGHT LAWS IN UK

1.1.3 EVOLUTION OF MUSIC COPYRIGHT IN FINLAND

1.1.4 EVOLUTION OF MUSIC COPYRIGHT LAWS IN INDIA

CHAPTER 2: COPYRIGHT IN MUSIC

2.1 RELATION OF COPYRIGHT AND MUSIC

2.2 RIGHTS PROVIDED BY COPYRIGHT LAW IN MUSIC

CHAPTER 3: CURRENT ISSUES OF COPYRIGHT IN MUSIC

3.1. COPYRIGHT LAW FOR REMIXING

3.2 COPYRIGHT ISSUES ON YOUTUBE

3.3 PRESENT SENERIO OF COPYRIGHT IN INDIA

3.4 COPYRIGT CONCERN FOR DIGITAL DJ'S

3.5 COPYRIGHT ISSUES ON INTERNET

3.6 COPYRIGT OF MUSIC FOR FREE

3.7 MUSIC RIGHTS FOR USE IN FLIMS

3.8 GRATING OF COPYRIGHT IN MELODY

3.9 PRIVATE RECORDING OF MUSIC

CHAPTER 4: COMPARATIVE ANALYSIS

4.1 MEANING

4.2 COPYRIGHT OF MUSIC IN USA

4.3COPYRIGHT OF MUSIC IN UK

4.4 COPYRIGHT OF MUSIC IN FINLAND

CHAPTER 5: CONCLUSION & SUGESSTIONS

BIBLIOGRAPHY