



MUSIC INDUSTRY: LEGAL ISSUES INVOLVED

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Topics Covered

Unit-2: Evolution and development of copyright law in the context of Film Industry

- **Music Industry and Copyright Laws**
- **Musical work under Indian Copyright Act, 1957**
- **Kinds of Music Copyrights**
- **Distinguishing Between Copyrights in Sound Recordings and Musical Works**
- **Copyright Ownership in Musical Works**
- **Refashioning original songs**
- *Various ways in which an original song can be refashioned:*
 - **Music Sampling**
 - **Mashups**
 - **Remixes**

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MUSICAL WORK UNDER INDIAN COPYRIGHT ACT, 1957

Section 2(p) defines **musical work** as:

“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 music.”

For a work to be protected under copyright, it must be:

- 1) **“original”** which means that it was not copied from any other source;
- 2) **“fixed in a tangible medium of expression”** which means that it exists in some reasonably permanent or stable form so that a person can perceive it and reproduce it; and
- 3) have a **minimum degree of creativity**.

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For the musician, copyrights can protect both songs (which usually consists of a *melody and includes lyrics* if the song has words) and *recordings* (CDs, mp3s, cassettes, and any other recording). The “**fixed**” requirement means that *there is no protection for a song that is only in your head. A song may be "fixed" by writing it down, recording it (even on a handheld recorder), or saving it to a hard drive on a computer.* Playing a song live does not meet the “fixed” requirement. But, if you record the live performance, you have now "fixed" the song.

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By virtue of **Section 14(a)**, the copyright holder of musical work and literary works has the following *exclusive right*:

- To reproduce the work;
- To issue copies of the work to the public;
- To perform the work in public;
- To communicate the work to the public;
- To make cinematograph film or sound recording in respect of the work;
- To make any translation of the work;
- To make any adaptation of the work.

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KINDS OF MUSIC COPYRIGHTS

The Two Kinds of Music Copyrights: There are two different kinds of music copyrights:

- **Sound Recordings:** A sound recording is a simply a work comprised of recorded sounds. For example, the recorded performance of a song that appears on a compact disc is a sound recording.
- **Musical Works** (that is, “Musical Compositions” or "Songs"): Both the music and the lyrics to a song, or each of them separately, can constitute a copyrightable musical work.

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DISTINGUISHING BETWEEN COPYRIGHTS IN SOUND RECORDINGS AND MUSICAL WORKS:

Sound recordings and musical works are separately copyrightable works that can be owned by one or more authors. It is important to be able to distinguish between the two: a musical work, or a song, usually means a melody and often (but not always) lyrics; a sound recording is the actual recorded performance of that song. *For example*, if a songwriter composes and writes the lyrics to a song and Madonna records a version of the song and includes it on her new album, the songwriter owns the copyrights in the musical work (because she wrote the music and lyrics) and Madonna, or more likely her record label, owns the copyrights in her recorded version of the song (the sound recording) which is contained on a compact disc sold in record stores. The copyrights in sound recordings and musical works create two different revenue streams for their owner(s) in the form of royalties from record sales and music publishing royalties. In the above example, the songwriter would be entitled to the publishing royalties resulting from any performances of Madonna's version of her song on the radio while Madonna would get the royalties from the actual sales of the compact disc containing her recorded version of the song.

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COPYRIGHT OWNERSHIP

The copyright in the work is owned by the author, who can transfer it to anyone else, but the transfer must be in writing. The owner can also license the work, which means giving someone certain rights to use their music without giving them actual ownership of the copyrights.

The exception to this is a *“Work Made for Hire.”* If the author creates a work of music while an employee of an employer, and as an integral part of the employment (i.e. it is his job to create the music) then it will be considered a “Work Made for Hire.”

The second kind of “Work Made for Hire” is a work that is specially ordered or commissioned for use in different types of works identified in the Copyright Act. For musicians, a song that is recorded specifically for inclusion on a compilation or in a motion picture or other audiovisual work may under certain circumstances be considered a “Work Made for Hire.”

REFASHIONING ORIGINAL SONGS

There are various ways in which an original song can be refashioned:

- By music sampling
- By making mashups
- By making remixes

Refashioning the authentic musical work without permission of the original underlying copyright owner results into:

- Breach of copyright of the original sound recorder.
- Breach of copyright of the original lyricist.
- Breach of copyright of the original music composer.
- Violation of the perpetual moral right of the underlying copyright owners.

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MUSIC SAMPLING

Music Sampling is *the re-usage of a substantial portion of a pre-existing song by integrating that part of song in a new musical work.* Samples may comprise *rhythm, melody, speech, sounds, or entire bars of music, and maybe layered, equalized, sped up or slowed down, pitched, looped, or otherwise manipulated.* It is done digitally by extracting a part of the pre-existing song using samplers and incorporated into another.

The term “**substantial portion**” has to be construed according to the facts of each case. In the case of musical works, the substantial part is not determined note by note, but whether the substance and elementary part of the original work has been incorporated.

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UK case: Hawks & Son v Paramount

The use of 20 seconds of a 4-minute long piece of musical work was enough to constitute a substantial part, as the 20 seconds were acknowledged as a crucial and rudimentary part of the original song.

US case: Newton v Diamond & Others (2003)

“It was held that there was no infringement because the use of the flute sample was minimal and there were no substantial similarities between the two works or that the average person would recognize the appropriation.”

Sampling music without taking prior permission or license from the copyright owners of the original song violates their exclusive right of making any derivative work. Failure to obtain license enables the copyright holder to sue the infringer. In order to file a copyright infringement suit, the plaintiff has to prove the following points:

- ***He is the owner of the musical work in dispute.***
- ***The defendant has incorporated a substantial part of his work.***

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MUSIC SAMPLING CASES IN THE UK AND THE US

The UK and the US deals with music sampling a bit differently. In the US, the doctrine of fair use can be applied. The defence of 'fair use' is very limited and can be used only in specific purposes which includes parody, criticism, news reporting, research, education and similar non-profit use.

In *Acuff-Rose Music v. Campbell*

The US Supreme Court reversed the decision of lower court stating that the use of pre-existing work in a new song could be 'fair' and what is fair has to be construed according to the facts of each case.

UK case of *Produce Records Ltd vs BMG Entertainment Ltd*

The usage of a 7.5-second sample of '*Higher and Higher*', a track originally recorded by the Farm and owned by Produce Records, constituted infringement for being the substantial part of the song, when incorporated in their song '*Macarena*' by veteran Latino duo Los Del Rio.

Bappi Lahiri dragged Truth Hertz to US courts for incorporating a part of his musical work '*Thoda resham lagta hai*' in his debut single 'Addictive' without taking license and without paying any royalties to Bappi Lahri. The federal court directed to remove the song from the shelves until the composer is acknowledged as the author of the musical work.

MUSIC SAMPLING IN INDIA

Though there is no legal provision explicitly dealing with sampling of sound recording in Indian Copyright Act, 1957; **Section 14** provides the owner of copyright certain exclusive rights in order to protect their entire work or a substantial part of the work. The owner of musical work, by virtue of **Section 14(a)**, has exclusive **right to make any adaptation of the work**. Adaptation under Indian copyright Law is analogous to Section 106(2) of US Copyright Law, derivative work. Adaptation involves the making of a new work from a pre-existing work. Transcription of musical work or any act involving re-arrangement or alteration of an existing work will infringe the copyright holder's exclusive right to make any adaptive work.

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MASHUPS

A mashup is a piece of recorded music that is comprised entirely of samples taken from other recordings and remixed to create a single new track.

A standard mashup encompasses sample from two or more pre-existing songs, involving different artists, integrated into one track by manipulation of elements like tempo and pitch of the vocals as well as the instruments. *Mashups are exclusively made by combining pre-existing tracks whereas in remix, samples are combined with a new content.*

In the case of *Bridgeport v. Dimension*, the court observed that it is possible for mashup artists to be guilty of copyright infringement even if one second sample of music is used.

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REMIXES

A song remix is done by making modifications in the original song by altering the pitch and rhythm and certain other technical elements of the vocals and instruments. In a nutshell, remix is an alternative version of the original song.

A legal notice was sent to *Hindustan Coca-Cola Beverage Pvt. Ltd, Hindustan Coca Cola Holdings Pvt. Ltd, Viacom 18 Media Pvt. Ltd*, and a compensation of 1 crore was claimed for infringing copyright by remixing the popular Sambalpuri song 'Rangabati' by adding English-Tamil rap and Orissa Anthem to it and telecasting it on MTV Coke Studio.

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