

IMPORTANCE OF COMPULSORY LICENSING UNDER COPYRIGHT LAW: AND IT'S IMPACT ON MUSIC RIGHTS

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ABSTRACT

Music is an essential part of the Indian history and the country is known for having rich heritage of folk and classic music. Therefore, it is necessary to have compulsory licensing to protect the rights of the owners who composed or wrote such great piece of work in music without getting exploited in the music industry and their work can be used by the third person without damaging their rights. The main aim of the research paper is to describe the importance of compulsory licensing and its impact on the music rights.

INTRODUCTION

India is a diverse country. People in India belong to various tradition, culture and religion. Music has always occupied a central place in the Indian culture. Music in India can be witness from the ancient period to the present modern period which we usually connect it with film music. With increase in popularity in music industry it is necessary to copyright the material so that original work of the composer can't be copied and its originality can be maintained. If we look around our society music which become famous is often played the most, and it is also used by the television during the advertisement to attract the customer for a particular product, therefore to use such music which is already owned by someone in commercial manner, it is necessary for a person to take license, which makes the agreement between the owner and the person who wants to use such music.

Music licensing is the licensed used of copyrighted music. License really depends on what the person want to do with that music for the specific period and the bargaining position of the person with the owner of the music. The process of music licensing is there to ensure that the composers, songwriters and musicians are paid for their work.

MEANING OF LICENSING

License is an agreement between an intellectual property rights owner and who is authorize to use such music in exchange of agreed payment, which means the fee or royalty to be paid in exchange of the music to the music owner.

IMPORTANCE OF MUSIC LICENSING

Music license means ‘protection and permission for the original work’ from the owner of the music. It creates agreement between the musician and the person who wants to use the music.

The benefit for licensing the music is that suppose a part of music piece is played in a film or an album, and artist could use it as a platform to exhibit his talent and make him popular. The popularity of that song will automatically will increase and would be in more demand by the listeners. Due to its popularity, the producer of the TV show, advertisement or movie will contact to the artist to use such music, ultimately it would provide profit to the owner of the music.

TYPES OF LICENSING

A license can be of two types:

- Voluntary Licensing.
- Compulsory licensing.

VOLUNTARY LICENSING

Section 30 of the copyright Act defines the voluntary licensing as:

The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by the license in writing signed by him or by his duly authorized agent.

The copyright owner of any existing work or the prospective owner of any future work can grant any interest in the right by way of a license. But in case of future work, the license will come into force only when the work will come into force.

COMPULSORY LICENSING

Section 31 of copyright Act says that compulsory license is applied to perform an act which is covered by an exclusive right without the prior authority of the owner of the material.

Compulsory licensing is applied when the work is withheld from the public. In case the copyright owner has refused to:

Republish the work or has refused to allow for the performance of the work in public due to which the work is withheld from the public.

The copyright board can after giving reasonable opportunity to the music owner of the copyright to be heard and after conducting inquiry, if satisfied, can direct the registrar of copyrights to grant a compulsory license to the complainant to republish the work, broadcast the work or to communicate it to the public as case may be.

Compulsory license can also be granted in case of unpublished Indian works. In case of an unpublished work where the owner of the work is dead or cannot be traced, any person may apply to the copyright board seeking for a license to publish such work.

The main object of the compulsory licensing is to protect the right and hard work of the owner. Sometimes, the owner of the material doesn't show any interest in giving permission to anyone to use their work, therefore, one can have compulsory license and use the work of the owner without infringing the rights of the owner.

LAW RELATED TO THE COMPULSORY LICENSEING IN COPYRIGHTED WORK

Compulsory licensing provides protection to the right of the owner by giving the license to another person to use the work of the authorized person without violating his rights. Under the compulsory license the person who is taking the license does not required to take the prior permission from the owner.

Article 9 of the Berne convention provide base for the licensing the work of the owner. It states that authors of the literary or artistic work shall have the exclusive right in authorizing the reproduction of these works, in any manner or form.

It further states that it shall be a matter for legislation in the countries of the union to permit the reproduction of such work in certain special cases, providing that such reproduction shall not conflict with legitimate interest of the owner and its work.

Section 31(1) of the Copyright Act of the India provides for the compulsory license of the Indian work and its authority lies with the copyright board. It provides that after the publication of the work on certain satisfactory conditions, the copyright board may direct the registrar of the copyright to grant a license for that particular subject for the payment of the compensation to the holder of copyright.

The conditions which need to be satisfied to grant compulsory license are:

- 1) The work for which the copyright is being claimed must been published or performed in the public.
- 2) The author must have refused to allow the publication or performance of the work in the public or in the case of sound recording has laid down unreasonable conditions.
- 3) The work is held from the public by the reason of the refusal.

The main objective behind such provision is to prevent the monopoly by the copyright holder and to ensure that general public is not deprived of the copyrighted work just because of the unreasonable demand of the copyright holder.

POWERS OF THE COPYRIGHT BOARD

The powers of the copyright board are as follows:

- Summoning and holding the attendance of any person and examining him on oath.
- Requiring the discovery and production of any document.
- Receiving evidence on affidavit.
- Issuing commission for the examination of witnesses and document.

- Requisitioning any copy or record from the court or office.
- Any other matter which may be prescribed.

FUNCTIONS OF THE COPYRIGHT BOARD

The functions of the copyright board are as follows:

- To decide the issue of publication and its date in order to determine the term of copyright.
- To settle the dispute related to assignment of the copyright.
- To grant compulsory license for Indian work.
- To grant compulsory license to publish the unpublished work.
- To grant compulsory license to produce and publish certain categories of literary, scientific or artistic work for certain purposes.
- To rectify the registrar of copyrights or any aggrieved person.

Other than these functions registrar of copyright board maintains register of copyright containing the names and titles of works and the names and addresses of authors, publishers and the owners of the copyright and its copy is kept in six parts:

1. Literary work other than computer programs.
2. Musical work.
3. Artistic work
4. Cinematography
5. Sound recording
6. Computer programs, tables and compilations including computer database.

THE INDIAN COPYRIGHT (AMENDMENT) ACT, 2012

The copyright act, 1957 was amended in 2012 with ratification in all categories. The major reason for the amendment was to eliminate the unequal treatment for the lyricists and the music composers of the copyright work. The music composers and the lyricists were assigned all the rights in the work to the producer of the film for one time lump-sum payment, which means that after the payment of the amount to the lyricist and the music composers they had no further right on the

royalty on the copyrighted work, even if their work has been used in other field other than cinematography.

Therefore, the amendment was made in copyright Act to eradicate the inequality, faced by the music composers and the lyricists.

The significance of this amendment was to clarify the performing rights of lyricist and the music composers and recognizing their right to receive 50% royalties collected by the copyright society which cannot be waived and are non-transferable.

The act also provide right to performers including actor, singer, a musician, a dancer, a magician, a conjurer, and a snake charmer to receive the royalties. If anyone uses his or her work for making money, then the royalty must be paid to the original performer, also the performer can claim damaged for any alteration made to his work which Detroit his reputation.

With such amendment, several petitions and cases were filed against such amendment.

In *Devendra Dev vs. Union of India*, according to the Bhojpuri musicians, the Bhojpuri music industry is smaller as compared to the film music industry; the Bhojpuri musicians generally produce devotional and Bhojpuri music, which is different from main stream market of film industry. The petition was mainly against the section 18 and section 33 of the copyright Act. The first provision deals with the mandatory royalty sharing provision which mandate the sharing of the royalties with the composer and song writers. The second provision under challenge requires everybody in the music industry to transact their business through a copyright society. The contention was made under this petition was Bhojpuri music composer are from such music industry which is less popular and most of the artists depend upon the entire upon the lump-sum payment rather than depending upon the payment of the royalties. Therefore, section 18 of the act violates the article 19(1) (g) and article 21 of the Indian constitution.

Therefore, the petitioner wanted the complete freedom to license their work without statutory restrictions.

Similar, type of writ petition was filed in *Bharat Anand vs. Union of India* challenging the constitutionality of the amendment.

The music companies of the industries don't seem to be happy.

According to the copyright lawyer Amit sibal, the legal provision for lifelong royalty payments to the artist has a flip side. He further said that earlier the producers used to give the lump-sum payment to the lyricists and the composers, but after the amendment in the act such thing is not possible.

After such amendment the music company who is looking to buy any piece of work will try to negotiate harder for a lower price. Even if the artists needs a lump-sum payment the producers will not be able to pay the amount and at the same time there is always an uncertainty regarding to the success of the song, therefore, the amount of royalty will be uncertain in the future.

MODERNISATION OF MUSIC INDUSTRY IN INDIA

In recent years, digital music industry in India has been grown. The mobile internet users mostly devote their time on social media and entertainment. Out of total time spent on digital media by the youth, 21% is exhausted on audio and video entertainment. Services like ringtone, ring back tone, downloads and mobile radio streaming services, on internet help to generate additional fees from mobile subscriber and more licensing revenue for record companies. Modernization of the music industry has not only grown in past few years but has provided large number of employment in the music industry. The amendment of 2012 is somehow connected with the digitalization of the music industry.

Digital music technology helps the consumer to download the music from anywhere on their hardware, but the question is whether such download is authorized or not. Such download has led to the illegal distribution of the work, which is known as piracy. After the amendment in the copyright Act 2012, it can be said that, the act somehow able to control the piracy by providing the license to the third party by adding section 65A and 65B in the copyright Act which deals with punishment and protection of personal details of the owner.

The amendment of 2012 has introduced the liability of ISP with safe harbor provision to curb the unauthorized circulation of online content these amendments have protected the digital distribution of films and provided protection in containing online piracy of film.

THE MUSIC ROYALTY SCAM

The songwriters, composer or lyricists owe performance royalty, which means that every time when the music will play on radio stations or used on television show or commercials or performed at live venue the performance royalty has to be paid to the real owner of the work. As per the amendment in the copyright Act, 2012, 50% of the royalty collected has to be paid to the music composer and the lyricists.

The PPL is a copyright society for soundtrack recording companies and it also issues license to the users of sound or music recording for public performance on behalf of the members of the music companies.

According to the amendment of 2012, the musicians and lyricists have to be paid equal shares of the royalty. A complaint letter was sent by the Javed Akhtar, which was signed by other eminent singers to the Kapil Sibal in 2010 and FIR was filed by Shubh Mudgal which clearly state that despite the amendment in section 18 and 19 of the copyright Act, the lyricists and the composer have not received an equal share of royalty collected by the music companies.

In FIR it was also stated that IPRS is also accused of appointing fake members who were neither authors nor composers.

The question here arises that if royalty money is being collected by IPRS and also not being shared between the artists where is money going?

On the basis of the criminal complaint ED had raided many offices which also include the big companies of the industries like T-series, Sony Music, Yashraj Films and Saregama.

It was alleged that these companies have not paid the royalties to their artists since 2012 and the outstanding amount ran into crores.

In 2018, 13 crore royalty is been distributed by Javed Akhtar ,who is the chairman of the Indian Performing Rights Society (IPRS) which was submitted by the companies like T-series, Sony Music and many others.

If we talk about the amendment in copyright Act of 2012, the bill was passed by the Lok Sabha with members of all parties supporting the changes which would entitled them a share of the future revenue earned by the right holder.

It can be witness that most of the lyricists and composers are happy with the amendment in the copyright act.

According to Javed Akhtar who supports such amendment said that such amendment will support the new comers as well as those lyricists who are not very established in the industry, the amendment will help the lyricists and the composer to get share of income in their work

According to the G.R.Raghuvendra, who is the registrar of the copyright, the following amendment would eradicate the exploitation, faced by the artists and that's the reason it has been opposed so much.

Similarly, Malayalam Music lyricists Kaithapram Damodaran Namboothiri said that they get only single payment of few thousand which is mostly around 10,000 to 15,000 for a song, though that song generates huge revenue for the producers as well as the rights buyers in the future.

Although he was not aware about the latest amendment in Act, he wanted the amendment in the Act.

CONCLUSION

From the above point of view the researcher would like to conclude that despite of opposition from the music industry against the compulsory license, it can be said that though the amendment still have some lacunas but the positive effect of the amendment can be seen in long-term as it not only protect the rights of the lyricists and the composer by providing them the royalties but also give protection from infringement of copyright in digital environment by adding section 65A and 65B.