

INTELLECTUAL PROPERTY RIGHTS AND MUSIC INDUSTRY

ANJALI¹ & DR. LEENA²

Research Scholar, Maharaja Agrasen University, Baddi, H.P
Assistant Professor, School of Law, Maharaja Agrasen University, Baddi, H.P.

ABSTRACT

Music is powerful .It has the ability to bring people together. Music transcends all barriers. That is what makes music so valuable. That is why it is important to ensure that we protect and conserve it. This is where intellectual property rights come in. Musicians, singers, producers earn money through sales of the music or merchandise. Other than these, they can also make money through live performances .The role of intellectual property rights comes in because it is easy to copy and sell music. It is not uncommon to find piracy in the entertainment industry, and even more so in the music industry .In intellectual property rights, there are three things that are usually discussed: Copyrights, Trademarks, and Patents. In the case of music, patents are not used. Copyrights and trademarks are of importance, especially copyrights, since they have a very special role to play for the artist's earning. Imagine a world without music and you will realize it's a fundamental part of our lives. It's something we encounter daily: both in our working lives and leisure time, and is as essential a part of our culture as the written word. As something that is both inherently desirable and necessary for a full life, it's a valuable commodity, and traded as such all over the world.

Keywords - Intellectual property, copyright, patents, music, trade secrets, trademark, global.

INTRODUCTION

Imagine a world without music and you will realize it's a fundamental part of our lives. It's something we encounter daily: both in our working lives and leisure time, and is as essential a part of our culture .The development of the music as an industry was itself a fundamental process in the way consumers accessed music, brought about by the desire of composers and performers in the 18th century to free themselves of the restrictions on their work that were imposed by the princess and bishops who sponsored them. In realizing that people were willing to pay for the privilege of hearing or playing their music, they sold their works in print and charged for their performances, and thus bought their artistic freedom.

Today, the success of an artist is largely defined by the number of streams or downloads their music has. Streaming services have become a significant method of determining the growth of any artist in the music industry. Copyright is a type of Intellectual Property, which protects the expression of ideas that have been reduced to a tangible form. Copyright gives an author or owner, the exclusive legal right to print, publish, perform, film or record literary, artistic, or musical material and to authorize others to do the same .In musical work, there are two forms of copyright: composition and sound recording/masters. Every song, it is possible to have multiple copyright owners, which in turn allows each owner, the right to monetize their copyright and

maximize earnings. Digital streaming platforms further allow for such monetisation of rights, thereby creating various revenue streams for each rights owner.

DEFINITION OF INTELLECTUAL PROPERTY

According to the World Intellectual Property Organization intellectual property refers to creations of the mind, such as inventions: literary and artistic works designs, and symbols, names and images used in commerce. These creations of the minds are protected by law, for example, patents, copyright and trademarks, which enables people to earn recognition or financial benefit from what they invent. According to WIPO by striking the right balance between the interest of innovators and wider public interest, the intellectual property system aims to foster an environment in which creativity and innovation can flourish.

TRADEMARK

Trademark law is also an important form of IPR for the music industry, as it protects the names, logos, and other identifying marks that are associated with musical acts, bands, and record labels. Trademarks allow consumers to easily identify the source of a product or service, and they help prevent consumer confusion and protect against unfair competition.

TRADESECRET

Trade Secret law is another important form of IPR that is relevant to the music industry. Trade Secrets are confidential information that provides a business with a competitive advantage in the music industry; trade secrets can include information such as song writing techniques, business strategies, and confidential financial information.

DIGITAL AGE

In recent years, the music industry has been revolutionized by the rise of digital technology. This has led to new challenges and opportunities for IPR in the music industry, as a digital distribution platforms and streaming services have made it easier for consumers to access and consume music.

COPYRIGHT OF MUSICAL WORK IN INDIA

Section 2(p) of the Copyright Act, 1957 defines musical work. Section 2 of the Act provides copyright protection for both “musical compositions” and ‘sound recordings”. Section 2(p) of the Act, they may be eligible for protection as a literary work, or a song composed of music and words may qualify for protection as a sound recording. There are two distinct types of work: sound recordings and musical pieces. Section 2(xx) of the Act defines sound recording separately. The Indian Copyright

Act, 1957 had been largely developed through the copyright laws of our colonizers, the British. Copyright in Musical works has always since 1957 been giving various interpretations, under the initial act only the composer of the song had a copyright in the musical work, with the act being amended in 1994 the scope of the definition was expanded to include “work consisting of music and any graphical notation but does not include any words or acts intended to be spoken. ‘The author of the copyrightable work is the first owner of the copyright arising out of the said work in the case of original literary, dramatic, music, and artwork. The Indian Copyright Laws over the time have evolved to give separate rights to their due owners right from the lyricists to the band of musicians; all have their rights being protected under The Copyright Act, 1957. The rights of Music Composer as owners of copyright are provided with two sets of rights:

1. Economic Rights

These rights are available to the authors of copyrightable work include-

(i) Right to reproduction-14(a) (i)-

This right can be seen as a subset of the right to reproduction wherein the copyright owner is allowed to distribute his work in any manner that appeases him. The copyright owner has the right to transfer his rights related to the copyrightable work. The music created by the composer can issue copies of the song for public viewing only if they are not already present in the public domain.

(ii) Performance Rights 14 (a) (ii)-

The act gives the copyright owner the right to publicly perform works created by him e.g. .A lyricist has the right to read out the lyrics of the song he wrote in any event.

(iii) Right to make adaptations and Translation 14 (a) (v) & (VI)-

As the first owner of the musical work, the author has the right to make adaptations or translation of his work e.g. .A lyricist has the right to read out the lyrics of the song he wrote in any event.

COPYRIGHT INFRINGEMENT IN MUSIC INDUSTRY REMIXING

The remixing of a musical piece is a process that begins with the isolation of the rhythms, which are subsequently slowed down, speed up, or blended. This electronic alteration of the original composition always results in a reorganization of the actual work. As a result, the remix becomes a musical adaptation. Thus, remixing a musical

piece without the creators' authorization violates the exclusive right of the artist to alter their musical work. This violation strikes at the heart of copyright's dual objectives first, to safeguard the author's voice, and second, to stimulate innovation in works.

RENTING

Renting is the act of making an accessible copy of the work for use on the condition that it will or may be returned for economic or commercial gain, which can be direct or indirect. A person would commit the principal infringement of renting a work to the public if, for instance, they leased a copy of a pirated DVD to a friend for a few days to understand that they would return it later, which is clear monetary benefit.

PIRACY

The internet provides songs in MP3 format that may be downloaded and played on a computer in a matter of minutes. Users may download music and "burn" them onto blank CDs using the proper software, or they may "rip" their CDs into MP3s using a computer equipped, allowing them to share or make accessible that music through the Internet which increases the danger of music piracy and infringe the rights of copyright holders.

INTERNET

The creation of numerous copies of actual work at a very cheap cost is made possible with the usage of digital technology. Additionally, many copies of a song may be instantly created and transmitted without affecting the sound quality. The Internet's culture presents a difficulty for copyright law as it is decentralized, and the content of web page is not limited to any source.

THE INFRINGEMENT OF COPYRIGHT THROUGH JUDICIAL PRONOUNCEMENTS

International confederation of societies of authors and composers v. Aditya Pandey -

In this, the Supreme Court then took the consideration of 2012 amendment, wherein, it considered Section 19(10) of the Act which states that protection to the lyricists and composers to claim an equal share for royalties in any non-film musical work. Thus, they can freely exploit such sound recordings.

Indian Performing Right Society Ltd. V. Entertainment Network (India)Ltd.& Phonographic Performance Limited & Ors. V. Music Broadcast Pvt. Ltd.& Ors.

The former case was dated back in 2001 wherein, ENIL had been licensed for music to be broadcasted in 7 cities. However, it broadcasted to 3 additional cities without permission. Hence, IPRS filed a suit for permanent injunction. The latter case was dated back in 2009 which played music in a banquet hall without obtaining license from the plaintiffs which amounted infringement in both cases. They contended that separate license should be taken for all distinct works. The Delhi High Court after observing the amended sections held that the author of derivative work in sound recordings would require an authorization to the authors of underlying works in literary and musical works.

THE IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS IN MUSIC

It is very important for musicians and the producers to understand intellectual property in order to ensure that their work is protected. This enables musicians to earn money from their own works, either in the actual form or in altered forms. Even though it may seem tedious to get into the legal aspects of the music industry, it is necessary for musicians to make informed decisions in order to ensure that artists, inventors, designers and creators in general, are recognised and financially compensated for their work.

THE GLOBAL MUSIC INDUSTRY

Music is a quintessential copyright industry based on creative talent and highly specialized assets. Although the modern music industry has its roots in the early twentieth century, when technological breakthroughs in recording mean that reproduction rather than live performance became the basis of the industry, its present shape owes much to the rising incomes and personal experimentation of the post-war golden age, and in particular the growing financial independence of young people. The global music market is dominated by Europe and North America, each accounting for around one third of total music sales. Asia-dominated by the Japanese market –accounts for a little under a quarter of the global sales of recorded music. The fastest growing markets, however, are located in the developing world. Historically, the industry has been subject to considerable volatility. On the demand side, the unpredictable nature of the consumer means that non –price factors such as fashion ability, herd behaviour, and experimentation have had a profound influence on the music market. Adapting to and channelling these influences has become a major focus of the leading firms in the music industry and an increasingly dominant influence on investment strategies. The technological development has not only allowed better and cheaper ways of delivering music to the consumer but has also generated new products to enter the market.

CURRENT STATE OF INTELLECTUAL PROPERTY IN MUSIC

According to Smith (2011) one of the most successful systems already in operation for digital data is centred on the commercial exploitation model for the music and record industry. The music industry relies on the service of copyright management associations or performing rights societies, which track and assess the degree of use of all types of music and other published works that are subject to copyright. In some, countries, the performing rights societies are further divided into the domains of written works, recorded music and artist imagery. These organisations monitor the use and payment of licence fees to copyright holders, be these authors, musicians or recording companies.

INTELLECTUAL PROPERTY IN NEW BUSINESS MODELS

When the new business models from spill were presented to the experts all of them did not see a threat for protection of intellectual property rights. The experts work in an organization who licenses recorded music played in public, radio or TV and then distributes the fees to its performer and record company members. By collecting fees the organization protects neighbouring rights of music. The three business models of spill are related to music sales, additional revenue that can be generated by those sales and trying to be known. In these models the experts do not see a threat for intellectual property rights in public places. Where the experts agree that the new business models of Spill do not threaten intellectual property rights directly, they have different opinion about the role a neighbouring rights organization should take in these models. This applies in particular for the social focus model. Regarding the other models, extra value and artist focus; the experts agree that there is no role for a neighbouring rights organization. Where they stress that it is important in these models to maintain a good relationship with the record companies and artist.

COPYRIGHT ACT AMENDMENT, 2012

The Indian Copyright Act of 1957 was successfully amended in May 2012, where both Rajya Sabha and Lok Sabha passed the Copyright Amendment Bill. The World Intellectual Property Organization, including WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty (WPPT).

MUSIC PUBLISHING BUSINESS

The music industry can be broken down into three main businesses; music publications, recording, and live performance. For centuries, music was traditionally passed down through live performance. What has now become an industry within the overarching music business, was once in fact the music business. From ancient theatres to modern day concert halls, the live performance industry is the most profitable portion of the music business, was once in fact the music business. The

recording industry plays an instrumental part in the music industry as well, housing record labels and recording studios, but ultimately, live performance is the main way performers make money.

COPYRIGHTS AND MUSIC REVENUES

Rents in the music industry are generated through the creation of musical ideas with the help of highly specialized assets and market expansion. Much like other intellectual property rights, by establishing rules of access to musical ideas the copyright is essential to this process of rent creation. However, unlike other intellectual property rights, the copyright does not protect the artistic idea itself, only the expression of the idea in fixed form –i.e. rock ‘n roll music (a certain beat, instrumental sound, etc.) Cannot be protected, but its particular expression by, say, the Rolling Stones can. Moreover, unlike patents, the copyright is not issued but simply asserted by the author or publisher. In part, these weaker aspects of property rights reflect the greater extent to which a legitimate level of borrowing is an essential part of a creative artistic culture. But unlike industrial innovations, where an initial rent can be earned by the inventor through ensuring secrecy and charging a very high price for the product which embodies the innovation even at the expense of market size, the songwriter has an interest from the outset in establishing as large a market as possible. The process of income generation in the music industry begins with the intangible musical composition. Within music two principal types of ideas are produced: musical compositions and sound recordings.

A musical composition consists of music, including any accompanying words, and is normally registered in Class PA. The author of a musical composition is generally the composer, and the lyricist, if any. A musical composition may be in the form of a notated copy or in the form of a phone -record.

A sound recording results from the fixation of a series of musical, spoken, or other sounds, and is always registered in Class SR. The author of a sound recording is the performer, whose performance is fixed, or the record producer, who processes the sounds and fixes them in the final recording, or both. The initial focus of music copyright was sheet music and live performance. However, owing to the development of techniques in music creation, recording and delivery, some neighbouring copyrights have been issued. That is, as new sound recording and music playing technologies, computer desks, high fidelity and stereos, video, digital audio technology, and new broadcasting and public performance techniques (e. g radio, t v, cable, satellite, internet, have evolved, the musical copyright, which was originally designed to protect printed copies of musical compositions, has likewise expanded to include mechanical rights.

CONCLUSION

In conclusion, IPR is an integral part of the music industry. Copyright law provides protection for the creative works of artists and creators, trademark law protects the names, logos, and other identifying marks that are associated with musical acts, bands, and record labels, and trade secret law protects confidential information that provides a business with a competitive advantage. As the music industry continues to evolve in the digital age, it will be important to strike a balance between protecting the rights of copyright holders and promoting the public interest in access to creative works.

One of the key ways in which IPR affects the music industry is through licensing and royalties. Copyright holders are entitled to receive royalties for the use of their works, whether it is through physical sales, streaming, or public performances. This revenue is essential for the livelihood of many musicians, songwriters and other creative works authors.

However, the revenue generated from licensing and royalties has been impacted by the rise of digital technology and the ease of access to music online. The proliferation of illegal downloads and streaming services that do not properly compensate copyright holders has led to a decline in revenue for the music industry.

Another issue related to IPR in the music industry is the concept of "sampling" in which an artist uses a small portion of a pre-existing work in their own creation. This can lead to copyright infringement and legal disputes. The copyright laws are not always clear on what constitutes "fair use" and what constitutes infringement, and this can be a source of confusion and uncertainty for music industry professionals.

In conclusion, IPR plays a critical role in the music industry, both in terms of protecting the rights of creators and in terms of generating revenue. However, the digital age has brought new challenges and opportunities for IPR in the music industry, and it is important for copyright laws to be adapted to keep pace with technology and to strike a balance between protecting the rights of copyright holders and promoting the public interest in access to creative works. The music industry is facing the challenge of illegal downloads and streaming services which do not properly compensate copyright holders, and the concept of sampling and the legal disputes it can cause, are also important issues that need to be addressed.

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