

WHEN YOU COMPOSE IT BUT NOT OWN IT – COPYRIGHT INFRINGEMENT IN INDIAN MUSIC INDUSTRY

Aastha Priya¹

ABSTRACT

Music is the love in search of word. Music is the one less could hate in the world. While music, without music there is nothing we could hear. But for some of them, it is the lyrics. It hearing music whom do you think the most important? Like whom owns the song. For me the differs based on the opinion. The person who owns the music is non-other than the Music producer. Yes, the production company who produces the music owns it. India has big production company on its own like T-series, think music, saregama, zee music company. And other big international companies like Sony owns half of the music copyrights in India. This is the article Recently you may hear lots of music companies remaking old Bollywood numbers into a new one. Do you think they got permission or given prior notice to the composers? In some cases, yes but in lot more situations they don't even consider it as they owned the sole ownership of the music. In India, the copyright of the music dealt with under the copyright act 1957. After a long period, it got amended in 2012 which paved new rights to the composers which is not enough. The rights of the music composers were reduced with royalty and authorship rights. This article discusses the ownership of the music and the rights of the composers. It also debates the recent copyright infringements in the Indian music industry.

KEYWORDS

Copyrights, Copyright Infringement, Composers, Royalty, Amendments, Indian Music Industry.

INTRODUCTION

The Music industry in India now suffering through lots of remixes and recreation of songs without the permission of the original composer. But do composers have full rights to the music work they created? The rights of the music largely owned by the Music producing

¹ Law Student, 2nd Year, B.A.LL.B., SRM University, Lucknow.

companies in India. According to the copyrights act 1957, the word musical work means the graphical notation of the work, not any word sung, spoken, or written. section 2(p) clarifies the song without music will not come under musical work below this section. There is a long battle between the music producers and composers on the ownership rights of the music produced. But in the case of Indian performing rights vs Eastern Indian motion pictures association, justice Krishna Iyer said, “the copyrighted music is not a soulful tune, the superb singing, the glorious voice, and the harmony in the writing form includes the term music”. But unfortunately, the singers, performers have less right to do with the whole music album. The recent rift that happened between Ilayaraja and S.P.B is the perfect example of it.²

COMPOSERS VS PRODUCERS

The million-dollar question is who owns the whole rights of the music. The continuous rift between the music producers and composers created a ruckus in the industry. But the actual truth is that the rights of the music owned by the major music producing companies. The music directors will get royalties and a right to perform anywhere. Indian copyright law emerges after post-independence with some amendments in 1957. The 1914 law was the extension of 1911 British copyright law. The Indian Copyright law 1957 introduces us to new legislation and amendments which are not so protective for the creators and producers. The Amendment in 2012 was desired to bring copyright laws with global importance. The copyright act 2012 introduced some of the amendments like which is connected the whole act to the Wipo copyright treaty (WIPO) and the WIPO Performers and phonograms treaty (WCCT). The copyright holders should follow the guidelines of WIPO and WCCT. New rules implemented to acquire a grant of license. Revision in right to artistic work like cinematograph films and sound recordings.

But all these amendments don't guarantee any actual rights to music composers still a lot of remixes happening without the permission of music composers themselves. A Year back a popular song “*Masakali*” by A.R. Rahman in the movie called Delhi 6, remixed by Tanishk Bagchi as “*Masakali 2.0*” for the same production company T-series as they owned the Copyright of the music recording. Though Remix is not a violative one as it

² V.K. AHUJA, LAW RELATING TO INTELLECTUAL PROPERTY RIGHTS pg.18-20 (LexisNexis, 3rd Edition 2021)

defines the new alteration of the same song with different beats. The remix makers rights will be protected under section 51 of the act,

- If a person copies that work and paid royalty money in advance with prior notice
- The remix work should be made after two-year release of the original work.
- The creator of the original work has the right to inspect the books of the remix one.³

But in most cases the musical composers haven't got their royalty paid. In the issue of masakali, they don't need permission to remake the song as the rights owned by T-series, but they haven't considered getting permission from the real composer. These are the actual problems. And there is no measure to fix the amount of royalty in copyright law that also a big worry to music composers.

The rights of the composers and the songwriters are in constant trouble even after the amendments. In the case of *IPRS vs Aditya Pandey*, it is a classic example again where the rights of the producers prevail even after all odds. The IPRS argued that the composers and lyricists are the first owners of the copyright but the responded proceeded the 2012 amendment granted independent sound recording on the producer. The composer and lyricist will receive their rights in the name of royalty and benefits. Once they authorize a music producer the sole ownership of the copyright is under the Music producer. The court held in this case that the assignment of the copyright in non-film musical work shall not affect the rights of the composers and lyricists. The court is also valid the music producers communicating the song in public.

Most of the analysis said that the judgment is discriminating and provides a silver lining. By giving royalty and money to the composers, it didn't guarantee any rights of ownership. it also forgets the important line in Berne convention where according to 9(1), the authors of the literary work hold exclusive rights in authorizing the reproduction of works in any form. According to the Sec. 11(1) of the Copyright Act, 1957 the author of the musical work will enjoy the rights of the benefit arising from authorizing the work to the public.⁴

³ Ibid

⁴ *Indian Performing Right Society v. Aditya Pandey*, CS(OS) 1185/2006

ILAYARAJA CONTROVERSY AND CONFUSION

Ilayaraja, the world's most important composer who composed over 7000 songs for 1000 movies. He filed a complaint against the echo recording company which exploited his music and sold it to other firms without his knowledge and royalty. He also complained about several companies who sold his music without prior notice to him. Everybody was just shocked when he started to send legal notice to all the singers who have sung his song on-stage performance, FMs, TV channels and, to his Best Friend also legendary singer S.P.B accusing of copyright infringement. Now everybody got confused and started to debate about who owns the copyright. Performers have their copyrights; they are entitled to perform in stages. May the composer share the royalty but not full rights? Now the time has come for the Music industry to decide the royalties and copyrights.⁵

The copyright societies engaged in the work of giving license to the music, art, literary and dramatic work. Songwriters and singers transfer their right to Indian performing right society (IPRS). IPRS approach the big events and inform them about the licensing of the required artist's songs who are registered with them. Online streaming platforms also should register with IPRS and be licensed to use the song. The IPRS sent letters to the media platforms to pay 50% of the royalty amount to the artist. In the Ilayaraja case, the Madras high court held that the composers have moral and exclusive rights over his music. He has every right to take action if his music is subjected to any kind of infringement, modification, or distortion. At the same time, the court said that the Echo recording company also has equal rights to exploit the sound recordings brought from music producers of his music. This judgement makes no difference as it creates only authorship rights to the composer, the ownership rights automatically go into the hands of producers just like before. Because of the 2012 amendment, music composers can gain benefits and royalty but no ownership rights.⁶

RIGHTS OF THE MUSIC COMPOSERS

⁵ *Sushila Ravindranath, Ilayaraja, music and everlasting confusion over copyright*, FINANCIAL EXPRESS (July 11 2019) <https://www.financialexpress.com/opinion/ilayaraja-music-and-the-everlasting-confusion-over-copyright/1639948/>

⁶ *Pankhuri Agrawal, why the Ilayaraja verdict is boon for producers*, DECODING INTELLECTUAL PROPERTY LAW (June 11 ,2019) <https://spicyip.com/2019/06/why-the-ilayaraja-judgment-is-a-boon-for-producers.html>

There are other rights of the music directors that they can receive as the copyright owner,

1. **Economic Rights** – according to Sec. 14 of the copyright act the composer have the right to reproduce his work in any form of material work, he can issue copies of his work in any manner like giving distribution rights to a music label. The composer has the right to transfer his work under copyright law. The composer can publicly perform his/her work at any stage. The composer has the right to adapt his work.⁷
2. **Moral rights**- these are the natural and independent rights arising from the composer's exclusive work.
3. **Right to Paternity**- Sec. 57(b) which comes under Sec. 57 of the Copyright Act, provides authorship to the composer. Through this he has the right to claim his work.

Another one is called the right to restraint where the music composer could sue if somebody distorted, mutilated, or modified his work. Under this section, only the court held Ilayaraja's case.

MUSIC CONTRACTS

The negotiations between music composers and producers in the process of the contracts decide the rights of the composers in most cases. Failing to document of contract may lead to confusion because the whole process includes lots of money transactions.

- Work made for **Hire Agreement**, which means the music company will cover hire agreement with both the composers and singers as they should not accidentally renounce their rights to other music contributors. For example, the composer should not leave their rights to singers.
- **Split Sheet Agreement** – which means it is an agreement form that shows the distribution of shares from the profit gained by selling composition. This will be very helpful while getting Intellectual property rights. Without the agreements the singers and composers can't get a royalty.

⁷ Ahuja, *Law relating to intellectual property Rights*, pg. 62.

- **Music Collaboration Agreement** – It is a very important agreement between the music producer and the artist. This agreement announces that a particular music director is signed with one producing company to produce a single track or album.
- **Side Artist Agreement** – This is an agreement between the producers and side artists like songwriters. This allows them to have their written lines with them.
- **The Record company and producer agreement** – it happens when the producer delivers the master recording of the music to a music recording company and agrees to get royalty from them. The music label should give royalty to them.

CONCLUSION

The Music Industry in India has come through long developing stage. The composers and artists should know their rights and compensations to avoid exploitation by Music producing company. Giving the credit and paternity to the composer is the great respect given to him for his artwork. After 2012 amendment the music companies are required to give fifty percentage royalty to the artist. It introduced international treaties and agreements to reform the copyright industry. Though there are exclusive rights for the music composers, no right covers his ownership. The music labels which enter a contract with the composers enjoy most of the ownership. The rights of the ownership of the music got confused even more after the digitalization of music. Music directors like A.R. Rahman, Ilayaraja became the victim of such incidents the measure of the royalty money is also not clear in the law. The biggest confusion is whether the amendments in 2012 covers the music produced before 2012. The loopholes and unanswered questions in the copyright law make the big giant corporate music industry own more rights in the songs.⁸

⁸ Mitali Srivastava, *Music Industry in India: Economic and legal issues and challenges* (September 15, 2012) https://plu.mx/ssrn/a/?ssrn_id=2149853