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# WITNESS

Volume 9 Issue 12 | July 2018

₹65 US \$6 UK £4

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# Copyright, Cover Versions and the Muddle

■ Aishwarya Chaturvedi

**K**nowledge flourishes only if shared. However, writing anything in this era where censure is celebrated more than skepticism, always poses great risk for an author. But, diversified views and conflict of opinions have brought about a new acceptance and tolerance in the knowledge sector. Those who fall on the side of the "tolerant", argue that cover versions of a work of musical art represent a diversity of expression, which should be encouraged; on the other hand, there are those who consider cover versions to be a clear violation of the original artist's intellectual property.

The advent of cover versions has positively challenged the existing framework of copyright law. The quest to strike a balance between the need to protect artists from audio piracy and the aim to encourage new artists to draw on previous media has provoked a lot of legal controversies within the music industry.

Gramophone Co. Of India Ltd. Vs Super Cassette Industries Ltd.<sup>1</sup> is considered as one of the earliest cases of version recordings. In this case, the Plaintiff had produced audio records (version recordings) titled Hum Aapke Hain Kaun under rights alleged to have been assigned to it by Rajshree Productions Pvt. Ltd. Their grievance was that the defendants too had launched an audio cassette by adopting "Hum Aapke Hain Kaun" as its title with its design, colour scheme, get-up and lay-out deceptively and similar to that of the plaintiff's.

The most significant aspect of this case was the perusal of the meaning of the phrase "records recording that work" in Section 52(1)(j). Interestingly, the Hon'ble Court observed that "records recording that work" refer to such records only in which sounds are embodied & the word "records" is not related to printed or written records, but graphically produced combination of melody and harmony. The Hon'ble Court was of the opinion that an alternate title must be given with a declaration in bold letters that such record is not the original soundtrack.

Furthermore, in a subsequent case Gramophone Co. Of India Ltd. Vs Super Cassette Industries Ltd., the Hon'ble Delhi High Court was of the view that even though Section 52(1) (j) permits version recordings, it has to be in consonance and accordance with the rights of the copyright holder.

It was only in Gramophone Co. Of India Ltd. Vs Mars Recording Pvt. Ltd. that the Hon'ble Supreme Court of India explicitly avowed its opinion on "version recordings". It was observed that version recordings are fresh recordings, which are made using a new set of musicians and could be made only in conformity with Section 52(1) (j) of the Copyright Act.

Next significant fork on the road of cover versions was in the case Super Cassette Industries Ltd v. Bathla Cassettes India (P) Ltd.<sup>2</sup> It was in this case that the question of copyrightability of version recordings came up for consideration before the Court of law. In this case, the plaintiff moved an application for injunction alleging that the defendant had

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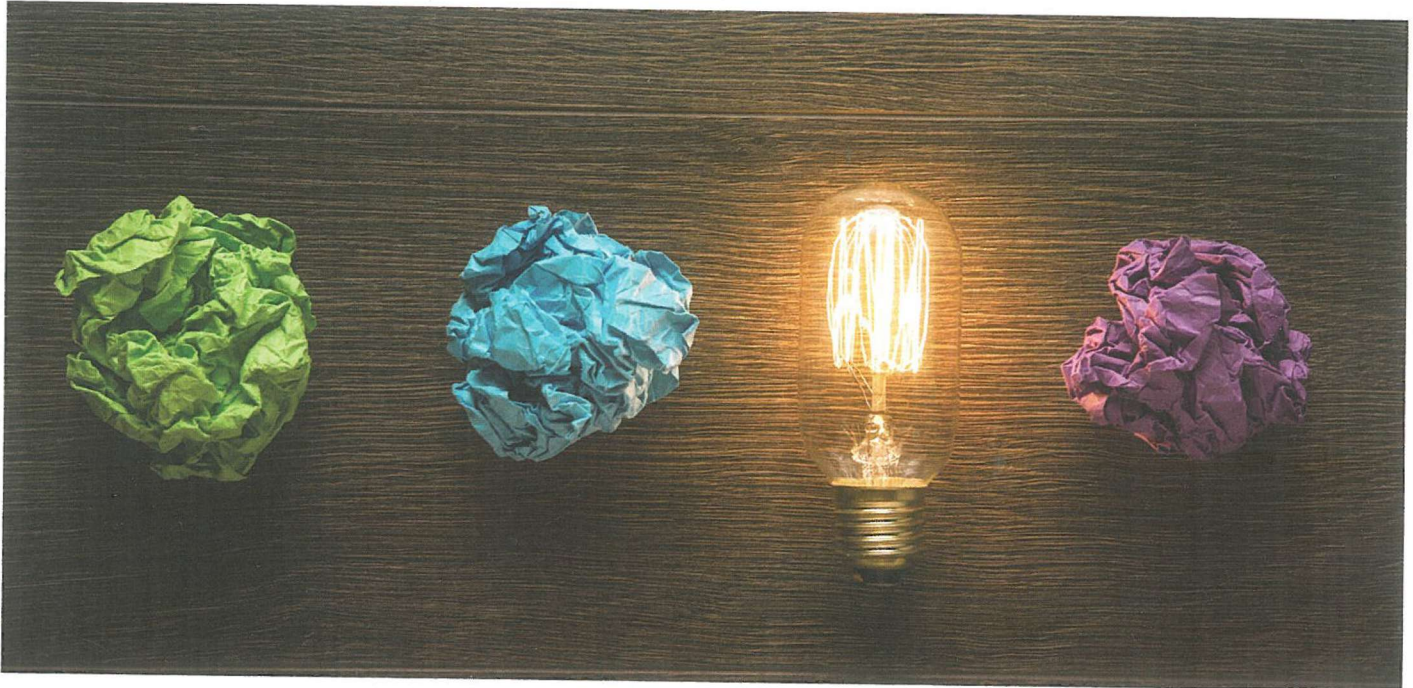
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infringed the plaintiff's sound recording, which itself was a version recording of an original musical soundtrack of song 'Chalo Dildar Chalo' from the film 'Pakeezah' with minor and insignificant variations.

This case goes a step further and enumerates the nature and manner of rights, which accrue to a musical work created under Section 52(1)(j). The principle that was laid down in this case was that copying from an already copied work would not be an infringement. In other words, a version recording made under Section 52(1)(j) is incapable of acquiring any independent right as the recording is an adaptation of an original recording, and hence, lacks originality. Therefore, the most plausible interpretation that culled out of this judgment was that no one can claim a copyright infringement in cover versions.

The erstwhile Section 52 (1) (j) of the Copyright Act, 1957 provided an exception from infringement in relation to cover versions.<sup>3</sup> However, the Copyright

(Amendment) Act, 2012 has repealed the said section and added a new section in the form of Section 31C, which provides statutory license to make cover versions.<sup>4</sup> This provision states that such cover version can be made only of such literary, dramatic or musical work, in relation to which a sound recording has already been made by or with the license or consent of the owner of the work. In simple words, it means that the artist covering the work would be required to take permission from the original artist prior to releasing the cover version.

Further, as per the Amendment Act, the person making a cover version would not be permitted to alter the literary or musical work in a way: "in which it has not been altered previously either by or with the consent of the copyright owner unless the alteration is technically necessary for the purpose of making the sound recording and a cover version may not be made under the provisions of this Section until five years have expired from

the end of the year in which the first sound recording of the work was made."<sup>5</sup>

This implies that a person is only allowed to make those alterations, which enhance the quality of the original work by using technology. Distinctions of relative creativity are subjective. Hundreds and thousands of cover versions are uploaded every day on YouTube even before the expiry of 5 years of the first release of the song/musical work, in contravention to the Act.

It would be apposite to say that the license system in practice, reflects the economic power of the music industry rather than the objective of the Copyright law or the desires of artists. More often than not, it happens that only successful songs, like the Verve's "Bitter Sweet Symphony" are responded to by lawsuits, exemplifying the phrase "where there's a hit there's a writ."<sup>6</sup> The present system views songwriting or lyrics as the genesis of a new song with no connection to previous melodies and types of music.



Technically, no music is completely original and thus, the concept of absolute ownership and authenticity is questionable.

In this age of karaoke versions and millions of aspiring singers and pop-stars, it will be pertinent to see whether these cover song videos on YouTube violate the Copyright law? Covering a celebrated song enhances the chances of the video being viewed by the masses and thereby, providing an opportunity to young talent to prove their mettle in the music industry. However, YouTube does not actually deal with copyright ownership issues. It only forwards the complaints to the parties involved and then steps away.<sup>7</sup>

Usually, obtaining a “sync license” from the publisher of the song allows one to pair their composition with moving images in their cover song video. So, one only needs to negotiate with the publisher and not with the entity which owns the master recording. But, the publishers do not grant such requests easily except upon payment of heavy royalty. This is often problematic for artists who upload new cover videos on YouTube almost every week.<sup>8</sup> Thus, almost no one secures these licenses to upload their cover videos on YouTube. So, do they get sued? The answer is generally in the negative.

YouTube mentions it in their FAQ section that, “Recording a cover version

does not necessarily give you the right to upload it on YouTube. You may need permission from the owner of the underlying music in order to upload the recording legally.”<sup>9</sup> Also, YouTube’s efficient Content ID system scrutinizes elements of every single video uploaded to the platform to scan if a video contains any copyrighted material. If it does, then this system places a claim on that video on behalf of the rights holder.<sup>10</sup> To put it in simple words, if you upload a cover song video, YouTube would be able to discern and inform you that you do not own the rights to the songs and you will see a claim placed on the video by the publisher. Also, any ad revenue generated by your video will be

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<sup>1</sup>58 (1995) DLT 99, <sup>2</sup>(2003) 107 DLT 91

<sup>3</sup>“INDIAN COPYRIGHT ACT 1957,” <http://www.ircc.iitb.ac.in/webnew/Indian%20Copyright%20Act%201957.html>.

<sup>4</sup>India: The Copyright (Amendment) Act, 2012,” [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=342028..](http://www.wipo.int/wipolex/en/text.jsp?file_id=342028..), <sup>5</sup>*Ibid.*

<sup>6</sup>“Where There’s a Hill There’s a Writ: Plagiarism in Electronic Music,” Resident Advisor, <https://www.residentadvisor.net/features/1124>.

<sup>7</sup>“What Is Best Way to Upload YouTube Videos to Avoid Copyright Issue,” Digital Point, accessed January 19, 2018, <https://forums.digitalpoint.com/threads/what-is-best-way-to-upload-youtube-videos-to-avoid-copyright-issue.2677640/>.

<sup>8</sup>“Posting Cover Songs on YouTube Legally - Music Licensing Law Explained,” DIY Musician Blog (blog), July 19, 2017, <http://diymusician.cdbaby.com/youtube/posting-cover-songs-on-youtube-music-licensing-law-explained/>.

<sup>9</sup>*Ibid.*, <sup>10</sup>*Ibid.*, <sup>11</sup>*Ibid.*

<sup>12</sup>“Now You Know Everything About Music Publishing...,” Digital Music News (blog), February 28, 2014, <https://www.digitalmusicnews.com/2014/02/28/understandpublishing/>.



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<sup>12</sup>"Where There's a Hill There's a Writ: Plagiarism in Electronic Music," Resident Advisor, <https://www.residentadvisor.net/features/1124>.

<sup>13</sup>"What Is Best Way to Upload YouTube Videos to Avoid Copyright Issue," Digital Point, accessed January 19, 2018, <https://forums.digitalpoint.com/threads/what-is-best-way-to-upload-youtube-videos-to-avoid-copyright-issue.2677640/>.

<sup>14</sup>"Posting Cover Songs on YouTube Legally - Music Licensing Law Explained," DIY Musician Blog (blog), July 19, 2017, <http://diymusician.cdbaby.com/youtube/posting-cover-songs-on-youtube-music-licensing-law-explained/>.

<sup>15</sup>Ibid., <sup>16</sup>Ibid., <sup>17</sup>Ibid.

<sup>18</sup>"Now You Know Everything About Music Publishing...", Digital Music News (blog), February 28, 2014, <https://www.digitalmusicnews.com/2014/02/28/understandpublishing/>.

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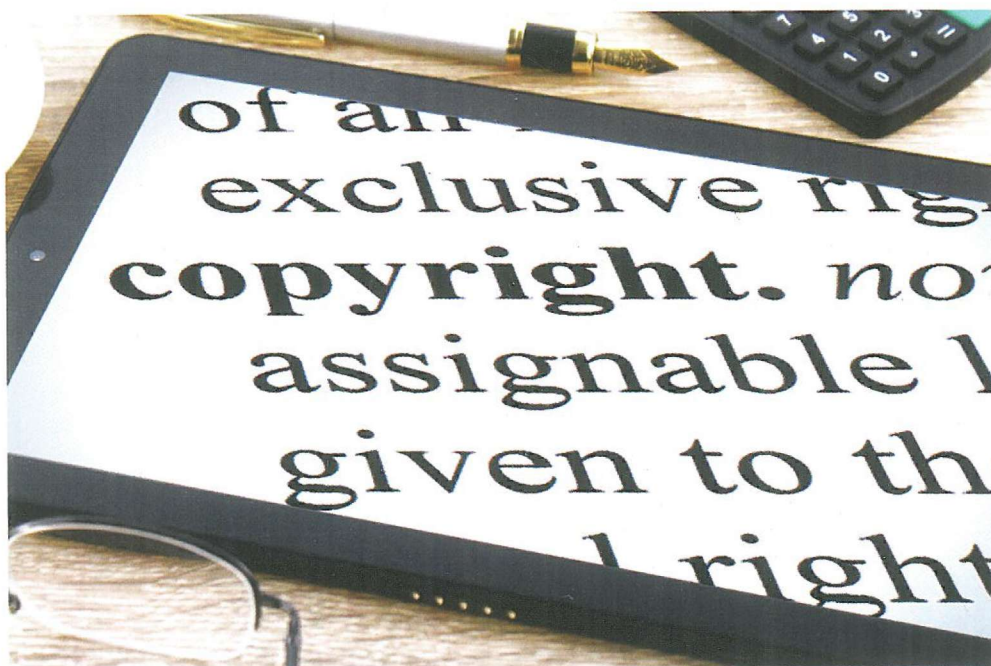
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paid to that right holder. This is a monetization system created by YouTube to allow right holders and content creators to overlook the usual licensing process required for uploading cover videos. Content ID system gives publishers the right to block videos, restrict viewing in certain territories/countries, mute videos and even block certain platforms such as ascertain apps or websites. However, most publishers understand that monetizing cover videos through YouTube advertisements can add up to real revenue<sup>11</sup>. They feel it's better to mint money from new zealous artists who want to earn a name than spend time and resources combating unlicensed cover song videos through the official sync channels. For instance, in 2012 YouTube signed deals with various U.S. music publishers, which allowed creators to keep their covers on the site while publishers took upwards of 50 percent of the revenue generated from them.<sup>12</sup>

Copyright law aims at spreading knowledge and encouraging new artists. This is the very reason why abridgements, concept notes, cover versions and the like are legal under

the law. But, having analyzed the current position of cover videos on YouTube, it is evident that the new artists often end up either having their videos taken down or paying large sums of money as royalty to publishers. YouTube's monetization system rewards the publishers instead of the artist/creator of the cover video. This generally points towards the trend that under the current system, capital is rewarded over talent, whether original or inspired.

As is evident, the question of obtaining consent of the copyright owner prior to making a cover version has always been contentious and often litigious. However, amidst all the debate over original or inspired, consent or no consent, the Indian Copyright Act has always successfully achieved its objective of spreading all literary, musical and artistic works. The Act aims to safeguard the interests of copyright owners as well as new aspiring artists. Therefore, it can be said that we are now moving towards striking a balance between the need to protect artists from audio piracy and encouraging new artists to draw on previous media. [w](#)



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