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OF DOT, TELECOM TIGERS, REVENUE SHARING & HON SUPREME COURT RULING

ROYALTY RIGHTS AND OFF BEAM PRAXIS

The Copyright Act, 1957 aims to encourage talent and make copyrightable works available to the public at large by striking a balance between the interests of all the stakeholders involved therein



Law is a reflection of a society and amendments are the essential reforms which are required at regular intervals to make a society progressive. Prior to the Copyright Amendment Act, 2012, the authors could not retain their right to receive royalties inasmuch as they were obligated to assign all the rights in a work created by them to the person/entity at whose instance such work was created. The said practice resulted in concentration of profits, generated through commercial exploitation of such works exclusively in the hands of the producers, rendering the authors of the underlying works unaided and forsaken. The legislature befittingly took cognizance of the plight of the authors at the time and accordingly, amended the Copyright Act, 1957 to bring about the following significant changes which are pertinent to the aforesaid issue:

- give independent rights to authors of literary and musical works in cinematograph films and ensure that the authors of the works, in particular, author of the songs included in the cinematograph films or sound recordings, receive royalty for the commercial exploitation of such work.

It is imperative to mention at this juncture that the legislature consciously amended Sections 18 and 19 of the Copyright Act, 1957 to confer upon the authors of underlying works the right to receive royalties even after assigning all other rights in a work to the copyright "owner", thereby reserving the right to receive royalties in all circumstances and the same is discernable from the Statement of Objects and Reasons appended to the Copyright Amendment Bill, 2010. The said amendment entitled the authors of underlying works such as lyricists, music composers, singers, etc., to receive royalties for their contribution to the work as a whole in the form of sound recordings which are incorporated in a cinematograph film as well as sound recordings which do not form a part of cinematograph films. Therefore, copyright societies registered under Section 33 of the Copyright Act, 1957 usually collect royalties on behalf of music labels and/or authors of underlying works and distribute it to them consequently. Interestingly, the present industry norm is to collect royalties on behalf of such authors only upon exploitation of underlying works as part of a sound recording bereft of or independent of a cinematograph film while the Copyright Act mandates that the author shall also receive royalties for underlying works which form a part of cinematograph film in the form of a sound recording or otherwise, when such film is communicated to the public outside of a film theater. However, before delving deeper into the conundrum of author's right to receive royalties, it is fundamental to understand the concept of royalties itself and the difference between license fee and royalty.

What are Royalties?

Royalty in the context of copyright refers to the monetary remuneration paid to people involved in creating a particular song/a piece of music, script etc., which includes the lyricist, music composer, singer, scriptwriter etc. for



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using their intellectual property. The music industry relies on these royalties as a primary form of compensation to such authors and musicians. Moreover, contracts and assignment agreements pertaining to copyrighted works specifically acknowledge, ascertain and enunciate the terms of royalty payable to the authors and/or musicians of underlying works.

It is pertinent to know that a song typically has two types of copyright. These are as follows -

1. copyright for the sound recording which consist of the underlying musical and any lyrical works;
2. copyright for the "master recording" used for reproduction and distribution.

Generally, artists/authors/music composers provide exclusive rights to production houses to use their recordings in barter for royalties. This lets the production houses to release the recording or issue rights to either a record label or mechanical rights agency to release the song. Royalties are essential to acknowledge and reward the artist/author/music composer for their contribution in creating a "work" by fashioning a fundamental component of such work in the form of composition, lyrics, voice etc.

Now, it is important to understand the right to receive royalty is different from the producers' and/or copyright owner's right to receive license fee. A license gives the right to a third party to use a "work" owned by someone else upon payment of certain consideration as agreed upon by the parties, while royalties are the payments generated for the ongoing use of those works. Essentially, it is a percentage of gross revenue or net profit brought in by exploiting the licensed work by the licensee. Therefore, the copyright owner as well as the author of underlying literary and musical works is entitled to receive royalties from the licensee for utilization of their work.

Broadly speaking, following categories of people are entitled to receive royalties under the Copyright Act, 1957:

No.	Work	Persons	Amount	Use
1	Cinematograph Film	Scriptwriter, Lyricist, Composer, Singer	Royalties to be shared on an equal basis with the assignee of copyright	Non-theatrical use
2	Cinematograph Film and/or sound recording	Performer (who in the case of a film is not an 'extra')	Unspecified	Commercial use of their performances
3	Non-film sound recordings	Lyricist, Composer, Singer	Royalties to be shared on an equal basis with the assignee of copyright	Any commercial utilization of the underlying works in any form

Now, sound recordings are not just limited to singles and albums. They are also used in cinematograph films and even though, there are specific provisions under the Copyright Act, which entitle the author of underlying literary and musical work to receive royalty for their works when communicated to the public along with a cinematograph film which is broadcasted outside the precincts of a film

theater, they do not always receive their due. Unfortunately, the rights of authors of underlying literary and musical have long been neglected, even though they have equal right to receive royalty as per Section 18 of the Copyright Act, 1957. The relevant portion of the said provision is as follows:

"18. Assignment of Copyright.- (1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole of the copyright or any part thereof:

Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilization of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void:

Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilization of such work except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void.

Furthermore, Section 19 of the Act reaffirms the said position in the following manner:

"19. Mode of Assignment.— (1) No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorized agent.

(2) The assignment of copyright in any work shall identify such work, and shall specify the rights

assigned and the duration and territorial extent of such assignment.

(3) The assignment of copyright in any work shall also specify the amount of [royalty and any other consideration payable], to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

...

(9) No assignment of copyright in any work to make a cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilization of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall.

(10) No assignment of the copyright in any work to make a sound recording which does not form part of any cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable for any utilization of such work in any form.]”

A perusal of the aforementioned provisions elucidates the fact that the authors of underlying literary works are entitled to receive royalties for the utilization of their work as part of sound recordings and/or as part of a cinematograph film when broadcasted on any medium such as digital media, television, internet etc., and the right of

such authors to receive royalties is only restricted in the scenario when their work is communicated to the public along with a cinematograph film in the confines of a theater. However, the prevalent practice in the industry is that the producers license the broadcasting rights of the cinematograph film to satellite and/or digital channels and receive the license fee and royalty due thereof and the authors of the underlying literary and musical works therein do not receive their due.

It is not a latent fact that the legislature deliberately and consciously introduced the amendments to Sections 18 and 19 of the Act, as reproduced hereinabove. Therefore, the intent of the legislature cannot be disregarded by depriving the authors of underlying works to receive royalties for works which are communicated to the public along with a cinematograph film of television, internet and other digital media platforms. It would not be inapposite to say that the aforesaid prevalent practice also adversely impacts the economic logistics of the music industry inasmuch as more royalties become due for payment to authors with respect to underlying works which form a part of a cinematograph film as the same is broadcasted multiple times on numerous platforms. The Copyright Act, 1957 aims to encourage talent and make copyrightable works available to the public at large by striking a balance between the interests of all the stakeholders involved therein. Therefore, the rationale and objective behind each provision of the Copyright Act is to be understood and accordingly, the implementation of the Act needs to be in complete harmony with the aims and objectives of the Act.



SINGH & SINGH

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He joined the firm in the year 2005 as an associate. In the year 2012 when the firm was restructured into a LLP, he became a partner. He has his own team of one Principal Associate, one Senior Associate and 8 associates. He handles all infringement matters relating to copyright and trademarks and domain-related issues including filing of UDRP complaints. He has handled various high-profile cases in the field of Copyright, Trademarks, Data protection, anti-counterfeiting and UDRP. He regularly conducts Civil and Criminal raids vis-à-vis Counterfeiting. He was a part of the Parliamentary Standing Committees which was constituted to look into the Copyright Amendment Bill, 2010. He regularly gives advise to the DIPP on copyright related issues and is also on their panel. He is the Secretary of the Asian Patent Attorneys Association (Indian Group) and is also a member of the Association's Copyright Committee besides being a Council Member of APAA.

Since the year 2008, he has been a part of the INTA Committees and has served in the Trademarks Committee as well as in the Non-traditional marks committee. Currently, he is a member of the INTA Copyright Committee (2018 – 2019) and is also a member of the INTA - India Global Advisory Council. In the year 2015, he was awarded the "Rising Star below 40" by Legal Era. WIPR has recognized him as "Leader in Trademarks" for four consecutive years from 2016 onwards while "Chambers & Partners" has ranked him as "Band 3 Intellectual Property Litigation Lawyer in India" for three consecutive years from 2017 onwards as well as "Highly recommended lawyer for IP Litigation" in the year 2019. He also got the Clients Choice Award for Copyright in 2018. He has also been ranked by Managing IP as an IP Star for Trademarks for 2018-19. He was also awarded the "Young Achievers Award of the Year" by Legal Era in 2019.



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