

Compulsory Licensing under Copyright Law And Impact On Music Rights

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Abstract

Copyright is among the oldest rights relating that had been in existence. It allows the owner/ author/ artist to multiply the art that he or she created. But, the questions here comes is that what will be system to multiply or commercialize the art either in the form of fictional, creative, melodious or cinematographic creations. The answer to it is the compulsory licensing system. The present paper deals with the compulsory licensing system. In this system we have dealt with basis of grant of copyright. The paper also elaborates the understanding of Musical Works and Copy right. The important case laws are discussed to understand the impact on music rights.

Introduction

Copyright should be understood as rights which are exclusive in nature and which are being given to the person who has created any of the art expressions. The art may include fictional, creative, melodious and cinematographic creations. Once the copyright is being given, the copyright holder becomes the owner and one can use it commercially for a limited time-frame. Copyright was developed as a way of protective creators' rights to several uses of their original protected works, as well as

copy, dissemination, show and-most likely most significant-receiving benefit from that work. With the appearance of the multimedia system, particularly the web and digital technology, there are several changes within the laws governing this basic right.

Every country is obligated to protect the interest of creators who may belong to class of author, composers of music, designers, etc. Every government does this to encourage their citizens. Therefore the authors are given the rights which are

exclusive in nature. The advantages of the creations is for a restricted timeframe. These rights incorporate the privilege to duplicate and to issue those copies of the work to the general population. The rights that are granted to the owner has limitation. This limitation is in terms of duration of the exclusive rights that will remain with the owner. In case of India, the owners of the copyright will be given the exclusivity for sixty years after the death of the author.¹ Moreover, the copyright owner at the same do enjoy the moral rights such as enjoying the privilege to claim authorship of the work and privilege of integrity.

The copyright owner has all the rights to ask others not to use his or her creations. One another important binding related to the use of the content of the copy right matter is that people can to make some free uses of the copyright material for which the law has made the list clear.²

Compulsory Licensing

Licensing system becomes very important when it comes to sharing the rights of something that has been protected under the copyrights Act. In this system the copyright proprietor may grant some rights to second party by licensing. In licensing, when the

rights are being given by the proprietor or any authorized person, a paper need to be signed and thereby allowing the beholder to enjoy some rights without passing the title. The proprietor of the copyright has the freedom whether the licensee will have exclusive rights or will be based on geographic territories or any other criteria. The proprietor decide all these things based on the maximum value either in-terms of monetary or non-monetary.

Licensing can also be categorized into mainly two types. These are non-voluntary licenses and voluntary licenses. In non-voluntary licenses or compulsory licensing, it is obligatory for the owner of the copyright to share the rights for the maximum benefit of the public. In case the owner objects to share the rights without giving proper explanation he or she may be served the notice. In voluntary licensing, on the other hand, is meant for profit or social cause.

Compulsory license allows the person to use the materials for some defined circumstances which in general cannot be used as it is protected by the copyright act. Article 9 of the Berne Paris Text provides the basis for the provisions concerning compulsory licensing.

¹Copyright Act 1957, s. 22.

²Copyright Act 1957, s. 52.

Basis of Grant of Copyright

Under the act the registrar of the copyright grants compulsory licenses on the direction of the copyright board. In general, the basis of the grant of license is:

- An independent inquiry by the copyright board as to suitability of the licence.
- Payment of royalty is determined by the copyright board.
- A fee may be charged by the copyright board for granting compulsory license.
- The copyright board may not grant the license Suomoto; it is on the basis of a complaint application by an interested person.
- The owner of rights is generally given an opportunity of being heard.

Musical Works and Copy Right

Musical work as being defined in the Copyright Act 1957 states that the musical work will have the music depicted in the form of graphical notation which is in custom to express the music. It also implies

that neither any words nor the action, associated with the song will be the part of copyright.³ The way the current act defines the copyright protection to their owner, it indicates that the music first need to be converted into a structure. Along these lines, so as to guarantee copyright assurance for a melodic work in India, it isn't required to be recorded as a hard copy. But it is important to note that for protection of copyright first of all the music need to be unique.⁴

Important Case Laws

Bell (1997), in his article deals with multimedia system and its protection with special focus to fair use doctrine. enjoyment belief as given in Section 107 of the United States of America Copyright Act, 1976, a chunk of proprietary work are often utilized for replica or the other suggests that, if it's being employed for any suggests that like criticism, comments, news reportage, education functions, teaching etc. then it's not infringement of copyright.

Fagin, Pasquale, & Weatherall, (2002) discussed in their paper regarding A&M Records, Inc. v. Napster, Inc., case relating to copyright infringements. In the present

case litigant was sued by the defendants (Napster), for P2P file sharing. The final verdict was against Napster and was the first

³.Copyright Act 1957, s. 2(p).

⁴.Dr. B.L.Wadehra Law relating to Intellectual Property 287 (Universal Law Publishing Company, New Delhi 5stedn., 2013).

Seth Karnika (2013), assumes the multimedia to be integration of multiple works whose ownership is varied. Therefore he suggests that the work on multimedia should not be considered as one work in-itself in all the cases.

The text in circular 55 provides the entire detail concerning what multimedia system work is, and what are the assorted procedure for obtaining such a piece registered. It provides a detail insight of the way to apply for registration of labor along with prerequisites as well as the distinction in procedure for work containing numerous components to be proprietary.

James T.C. (2002), in his work has tried to recollect the origin and the gradual development of Indian Copyright Act in due course of time. James further also focused that how the concerns of international community with regard to the challenges of digital technologies within the WIPO Copyright pact (WCT) and WIPO Performers and Phonograms pact (WPPT)

of its kind case dealing the copy right infringement in case in peer to peer file transferring.

were handled through the copy right act. While concluding the paper the expert still feels that some areas has yet been left unaddressed in the Indian Copy right Act.

Dreier Thomas (2016), assumes the copyright law as a necessary instrument of cultural and economic management within the digital environment. He further states that there is a need of precise standardization so as to wear down the dynamic technological potentialities of exploiting protected works. It is vital to get clear pointers not solely at a national level but worldwide harmonization of copyright law is required.

StamatoudiIrini A. (2002) and Franjić, S. (2018), 'Multimedia' could be a freshly evolved term that brings with it the imponderables like unclearness and uncertainty. Multimedia system merchandise have introduced new kinds of expression by combining the prevailing ones with new technologies, so making a replacement construct. The possession of

knowledge is that the key to the undefeated creation and promoting of a multimedia system product. The knowledge contained in it's the crucial issue once shoppers arrange to purchase.

*In Kelly v.ArribaSoftCorp*⁵, Leslie Kelly's copyrighted pictures were displayed by a
⁵280 F 3d 934 (9th Cir 2002)

While creating only thumbnails could be justified as fair use, but downloading from search engine result full size image amounted to an infringement.

*Gramophone Company of India v. Super Cassette IndustriesLtd*⁶, is worth mentioning here. The honorable court stated in this case that the defendant is guilty of infringement of copy right. The court observed that right of a copyright holder in a recording version to sell, give on hire or offer for sale or hire to public or distribute is not curtailed by the format in which it may be sold online.

*Microsoft Corporation v. YogeshPopat*⁷, The judgment of this case was an eye opener for many of such person who use to use the pirated version of the software without understanding the copyright issues. This case was being decided by the Delhi High Court dealt wherein they ordered payment of approx. Rs.24 lakhs to Microsoft Corporation. The party which was

search engine that not only produced thumbnails but also large size pictures in its search results. This was held by the court to be an unauthorized reproduction of plaintiff's pictures that directly infringed copyright of the plaintiff.

supposed to make the payment was against M/s Compton Computers Private ltd. They were found guilty of uploading pirated software of Microsoft in computers the company sold after assembling parts.

Conclusion

Digital media with numerous latest

technologies have created best access to the proprietary content and therefore the convenient access leads to violation of copyright. Therefore it becomes troublesome for the copyright owners to safeguard their rights. It becomes even harder in multimedia system work as a result of there is variety of aspects which will be protected underneath copyright. Under Indian copyright law, totally different parts of multimedia system work are often protected as literary, Artistic, Cinematographic, Sound and Musical work. Text of a multimedia system program are going to be coated underneath written material, laptop package underneath laptop

⁶2010 (44)PTC 541

⁷2005 (118) DLT 580, followed in *Adobe Systems Inc. v K.Khanna* 2009 (5) AS (Delhi) 954

2. Seth Karnika, (2013), Protecting copyright in the cyberspace. U.S. Copyright Office Library of Congress 101 Independence Avenue SE Washington, DC 20559 www.copyright.gov.
3. Circular 55 reviewed: 10 / 2013 Printed on recycled paper U.S. Government Printing Office: 2013-xxx-xxx/ xx,xxx
4. James T.C., (2002), Indian Copyright Law and Digital Technologies, Journal of Intellectual Property Rights, Vol 7, September 2002, pp 423-435.

programs, pictures, drawings underneath inventive work, animation and video underneath cinematographic film, audio underneath sound and musical work. The author of the multimedia system work has got to take permission to use an antecedently proprietary work.

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