

MODERNIZING COPYRIGHT: PROTECTING CREATORS IN DIGITAL INDIA



The interplay between technological advancements and copyright law has always been pivotal. In India, this relationship began with the introduction of copyright law in 1847 under British colonial rule. As technology evolves, it becomes crucial to rework and expand the law.

India's copyright law has seen numerous amendments to keep pace with technological developments. The 2012 Amendments brought significant changes, notably concerning the rights of authors to receive royalties. A central question arising from these amendments is who is liable to pay the royalties to the authors. Other issues include whether the author's royalty entitlement is included in the royalty paid by the utilizer of the principal work (such as a sound recording or a cinematographic film) to the assignee under a contract and whether the author, who is not a signatory to a contract between the producer, assignee, and utilizer, can benefit from the said contract.

The Amendment Act aimed to eliminate the unfair treatment of music composers and lyricists of copyrighted works used in films. Industry convention required lyricists and music composers to assign all rights in their works to the film's producer for a single, lump-sum payment, even when their work was used in media other than films. To address this, the Amendment Act added a proviso to Section 17, clarifying that clauses (b) and (c) would not affect the author's right to the work incorporated into the film. This overturned a previous Supreme Court ruling, distinguishing between the use of literary and musical works for films and other uses. Several writ petitions have challenged the constitutional validity of these amendments by producers and major music companies.

Typically, the utilizer/broadcaster and the assignee/producer are the only parties to the contract in copyright licensing. The producer grants a direct license for the sound recording's use without considering the writers' rights. For authors who struggle to get royalties from producers with disproportionate bargaining power, copyright societies like IPRS become crucial. Due to ambiguity in the provisos' language, authors are unable to assert their right to royalties from the utilizer or broadcaster. There are over 60,000 creators, but only 13,500 are registered with IPRS, just 22.5% of the total.

In *IPRS v. Eastern Indian Motion Pictures*, the Supreme Court ruled that authors' rights cease to exist once their work is included in a film, as per Sections 17(b) and 17(c) of the Copyright Act, 1957. This ruling was criticized for its interpretation. Despite the 2012 Amendments aiming to acknowledge authors' rights for works used in derivative works, courts failed to see the amendment's essence. It was only in 2022, in *IPRS v. Rajasthan Patrika*, that courts acknowledged the legislative changes and held that authors should be paid royalties whenever their creations are shared with the public, including when aired on radio.

In the landmark case *Vodafone Idea Limited vs Saregama India Limited & Anr*, the Calcutta High Court reinforced the copyright royalties owed to authors of music and literary works in sound recordings. This ruling is significant in acknowledging and defending authors' rights. According to the ruling, writers are entitled to royalties when their works are used commercially, with the exception of movie theatres. This decision upholds creators' right to royalties and promotes more equitable treatment of artists in the digital era.

In a related development, the decisions of the Bombay HC and Calcutta HC could impact another copyright dispute involving composer Ilaiyaraaja. In *M/s Echo Recording Company v. Ilaiyaraaja (OSA 51 of 2024)*, an appeal against the 2019 single-bench order of the Madras HC is pending to be heard in June. The Division Bench must decide on the Single-bench ruling that Ilaiyaraaja has special and moral rights over his musical work but is not the owner. Similar controversies have surfaced recently, where Ilaiyaraaja has sent legal notices to makers of the Tamil film "Coolie" and the Malayalam film "Manjummel Boys," alleging unauthorized use of his songs. The recent Calcutta HC ruling, which discusses how an author's contractual waiver of rights cannot be held against future claims, may influence these decisions. An interesting and important series of decisions are much awaited.