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# Intellectual Property Rights in India: A Study with Special References to Music Industry

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## ABSTRACT

*The Indian experience of Intellectual Property Rights (IPR) in music is a complex view of the development of copyright law in conjunction with age-old cultural practice and technology. Tilak Purohit of the Copyright Society of India, in a journal paper, describes how Indian music had up until that point traditionally been seen as a shared inheritance, not something owned by an individual; the advent of commercialization due to recorded music, however, changed this dramatically, and a system of organised copyright was necessary. The Copyright Act of 1957 soon mirrored this property acquirement, with readjustments to conform to the changing nature of technology and the recognition of international treaties, multiple amendments later. A key element of contemporary copyright, most especially for this topic, is the doctrine of fair use or 'fair dealing' as it's called in India. A useful paradigm for measuring the equilibrium between property owner and user, it helps balance control and access to copyrighted material. As creativity and innovation become ever more dependent on the internet and technologies that facilitate sharing of content, this is of the utmost importance. Over generations, fair use and the modern equivalent, 'fair dealing', have worked to bring the necessity of protecting traditional owners' rights into legal agreement with the needs of the public to use, access and adapt content. The music industry, then, has been at the forefront of disagreement over fair dealing. Content-heavy, brimming with technological gadgetry, identity issues and all manner of discourse, the nature of music and 'fair dealing' has become especially contentious, with technology, not creators, at the core of the battle. With the onset of new technologies such as MP3s and digital music, 'ownership' of music eroded the traditional relationship that existed between the listener and the tune.*

**Keywords:** Intellectual Property Rights, Copyright Act, Fair Use, Music Industry, Digital Copyright, Technology Impact.

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## **I. INTRODUCTION**

Even though it isn't codified in all jurisdictions, fair use is a foundational mechanism for balancing the generation and preservation of culture – the rights of copyright-holders with the rights of the public to create and innovate, and for access to information. The term is broadly consistent with what is referred to as 'fair dealing' under Sections 52 of the Indian Copyright Act, 1957. The origins of fair use can be traced back to English common law in relation to the concept of 'fair abridgment', but the most significant development of the principle took place in the United States, and its formulations have dominated intellectual property norms, including in India, on a truly global scale.

The US Copyright Act of 1976 codified fair use as an affirmative legal defense for using another's work, where the law sets out four factors that need to be balanced – the use's purpose, such as in the case of criticism, comment, news reporting, teaching, scholarship or research; the nature of the use – whether it is commercial or non-profit; the nature of the copyrighted work; how much of the work is taken and whether it's substantial; and whether it has a negative effect on the market for the original work. The Indian copyright framework includes a concept known as fair dealing, which is identical to fair use, though India's framework expressly lists the purposes for which copyrighted works can be used without authorization: these include criticism, review and scholarly reporting, among other uses. Interpretations and applications vary, but the general principle is that there ought to be a robust protection of copyright, without harming public participation and creativity.

Fair use in particular is especially important in the music industry, probably the sector of the economy that is the most creative and technologically innovative. Digital music and relevant technologies are blurring the boundaries of music composition, distribution and use. Music artists often compose remixes or sampled tracks by using existent music. But digital platforms can also change other music in ways that were neither thought of nor legally sanctioned when broader copyrights were first granted: such activities often exist as an amalgam of fair uses and freeride activity.

In the case of the music industry, fair use as a principle permits a degree of innovation — which is essential in a culture where the production of new works relies increasingly on past works as sources of inspiration — by guiding the use of influences and elements from existing works in new creations without exposing the artists and producers to immediate and automatic infringement of the copyright owner's right. Consider the issue of sampling, whereby artists use pieces of sound recordings as building blocks for new works. Sampling has become endemic in

genres ranging from hip hop and funk to electronic music. It has also spawned high-profile litigation regarding its legality: the seminal case involving the hip hop group the Beastie Boys (who in 1994 reused guitar riffs from a 1968 Spiral Stairs song in the recording of 'Pass the Mic' off their album *Ill Communication*) originally ruled against the group, but that decision amounted to finding copyright infringement due to the use of too much of the original source. Although the outcome at first indicates a 'fair use' violation, the ruling was later reversed on appeal, due in large part to the judge finding that the small portion of the 10-second Spiral Stairs sample used by the Beastie Boys constituted permissible use under fair use principles.

Furthermore, fair use is a crucial component in our digital era of media sharing and audience participation. Many of the videos, or 'covers' posted on YouTube, for example, could not exist without fair use – including a vast amount of user-generated content that forms the bedrock of digital-music services such as YouTube, Spotify, SoundCloud and more. Users encounter so much music in sharing, copying, developing, or remixing content in ways that are protected by fair use. Many online experiences with music are defined by these practices – from cover songs, to mashups, to reaction videos, to TikTok's. Fair use provisions allow these services and their users to operate within a digital common where music exists as a living, breathing participatory practice rather than a static, regulated commodity.

Similarly, as the economists Timothy B Lee and Michael Mandel point out, fair use can have beneficial economic consequences for the industry, by opening up realms of creativity and use not requiring a license to access. 'Fair use... reduces barriers to new artists and smaller labels entering the industry,' they write in *The National Review*. When there are multilayered rights claims – as there so frequently are in music – fair use can aid the courts in determining the outer bound of rights. Finally, fair use can also foster new sources of creativity and innovation.

The changing landscape of intellectual property rights (IPR) in India within the confines of the music industry shows how culture and law have engaged with each other in an ever-evolving fashion. At first, the music industry in India was characterized by the absence of the same copyright law regime that exists today. Traditionally, music, whether in its folk or classical forms, was believed to be a public good that belonged to everyone, as it was often orally transmitted across generations without any claim to ownership. But this soon started to change with the advent of recorded music and the commercialization of the music industry in the early 20th century.

While the Government of India Patents Act of 1911 had the narrow focus of prohibiting inventors from patenting in India what they had previously patented in other countries, the

Indian Copyright Act of 1957 provided the first detailed and expansive legal standards for copyright in India that followed British laws – thanks to India’s colonial history. This Act was India’s first modern copyright statute that dealt with a broad variety of works, including literature, drama, music and other creative works. As India’s music industry was evolving (ideally alongside the robust film industry known as the industry of dreams, better known as Bollywood), this numbering system is due to the various Acts concerning patents, design, and trademarks that were concurrently being considered.

Since then, the Copyright Act has been amended several times, most recently in 1994, 1999 and 2012, in response to changes in the music industry. These amendments were largely driven by international treaties, such as the Berne Convention for the Protection of Literary and Artistic Works, which India signed up to in 1928, and the latter with the World Intellectual Property Organization (WIPO) Copyright Treaty, which came into effect in 1996. These international agreements have had a direct influence on the way copyright law is interpreted and implemented in India.

The regulation of rights pertaining to intellectual property in Indian music industry today, while based on a principle of underlying private property – thus following the copyright regime, rather than, say, copyright regime in socialist countries that believed in taking profits earned by authors as public revenue – is dependent on the provisions of the Copyright Act, 1957, which addresses regulation of copyright in music – and has been amended multiple times. Composers, lyricists, singers, etc all have exclusive rights of reproduction, performance in public, adaptations, sound recordings, etc.

Key provisions relevant to the music industry include:

- Section 13. Works of authorship in general.—The works of authorship include the following classes: Class 1. musical works (including any accompanying words) and the sounds recordings. Musical works shall be understood as compositions consisting of music, including any accompanying words.
- Section 14: This sets out the exclusive rights given to owners of musical works and sound recordings. These are the right to make copies: right to make copies: to reproduce the work or, in the case of a sound recording, to make another sound recording embodying the work in the same or substantially the same manner as the original ; right to authorize or issue copies to the public: right to authorize or issue to the public copies of the work for sale or other distribution to such an extent as to affect prejudicially the owner of the right; right to perform in public: right to perform in public or to

communicate to the public; and right to publish, play or broadcast in public.

- Section 17: This section is about who owns copyright. When a composer creates a music for a person, such as a patron, the composer is the first owner of copyright unless he has agreed otherwise.

Along with the Copyright Act, other acts of legislation and judicial precedent are essential to the regulation of IPR in the music industry. For example, the Copyright (Amendment) Act 2012 brought in a set of changes that included a considerably significant change in that copyright in sound recordings, now known as performer's performances and authors' contributions — which is really anyone who performs on a sound recording, including ringtone singers and the composers — as well as in musical compositions was hiked up to 60 years from 50 years after the death of the author. This put India's copyright law into closer conformity with international copyright standards.

A similar regime governs the Indian music industry as well, where performers such as singers and musicians are protected under Sections 38A and 38B of the Copyright Act and compensated for the commercial use, pursuant to the terms prescribed under the Performers' Right Society of India.

Moreover, the role of technology and the internet in copyright enforcement is entrenched in the multifaceted Information Technology Act, 2000, which covers the rights and regulations of electronic and digital information to combat the modern menace of music piracy and digital copyright infringement in today's technological time.

These laws taken together constitute a structured framework for the protection of intellectual property rights in modern-day Indian music industry and, thus, provide a strong legal basis for not only the enforcement of such rights in the name of the artists and producers but also the proliferation of a diverse, creative and legally compliant atmosphere for the successful flourishing of music culture.

## **II. UNDERSTANDING FAIR USE DOCTRINE**

Fair use, the concept that grew up as common law and was enshrined in the US constitution to preserve the right to the free flow of ideas and information in a society where the means of dissemination requires making copies of things that rightly belong to other people, is essential to creativity and innovation, as well as knowledge creation and dissemination. In a number of different jurisdictions, fair use – also known as fair dealing in some Commonwealth countries – dictates that limited use of copyright materials does not require express permission of the

rights holders to be legitimized, if the use falls under one of a number of statutory limitations.

The fair use analogue in India is known as ‘fair dealing’, and the boundaries of fair dealing are laid down in section 52 of the Indian Copyright Act 1957, which describes the various purposes for which copyright works may be used fairly: such as for purposes of criticism or review, reporting current events or short quotations for purposes of teaching or for the purpose of inclusion in any newspaper, magazine or similar periodical. According to the law, the following must be met for an act to amount to fair dealing:

- **Purpose and Character:** The purpose and character of the use should be for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research.
- **Amount and Substantiality:** The portion used should be appropriate to the purpose stated above and should not exceed what is necessary for that purpose.
- **Effect upon the Potential Market for or Value of the Copyrighted Work:** The effect of the use upon the potential market for or value of the copyrighted work is imperceptible.
- **Nature of the copyright work:** the nature of the work is relevant and affects the fair use assessment, so published works are more likely to be considered fair dealing than unpublished work, for example.
- **Quantity and Quality:** The quantity and value of a portion of the work in relation to the entire work is assessed. If a small, non-vital part of a work is used, this might be seen as weighing in favor of fair dealing.
- **Impact on Market:** If the fair dealing use is adversely impacting the market for the work or harming the potential value of the copyrighted material, then it is less likely that the use will be considered fair dealing.

These tests provide a regulatory framework in which the fair dealing balance can be measured, between copyright owners and the wider public interest, and between copyright owners and the right of other creators and users.

### **III. COMPARISON WITH OTHER JURISDICTIONS: COMPARE INDIA’S FAIR USE PROVISIONS WITH THOSE IN THE UNITED STATES AND THE EUROPEAN UNION**

By comparison, the U S fair use provisions are codified in Section 107 of the U S Copyright Act, which is slightly more permissive than India’s fair dealing. Like Australia’s fair dealing, the US law doesn’t identify the purposes for which fair use can be claimed. But it does provide a non-exhaustive list of purposes similar to the four identified in India. The tripod test in the US

is a four-factor test that is broadly analogous to the tripod in India. But the factors can be applied to facts and circumstances in a flexible manner. The result is that the doctrine gives significant leeway to the US courts in applying fair use on a case-by-case basis in legal matters. This means the US doctrine is more flexible in adapting fair use to new forms of expression and technology. In contrast to the US' unwieldy concept of fair use, which has been applied on a case-by-case basis, the EU operates a system of exceptions and limitations to copyright, outlined in a number of directives adopted by the European Parliament and Council since the early 1990s, most recently the InfoSoc Directive in the 2000s. The EU's exceptions are narrower, more limited and more specific than the US fair use protections. They offer less flexibility, as EU member states are free to introduce all or none of them within their territory. In effect, this means there is a patchwork of application in the EU states. The application is far less unified than the broad-brush, principle-based approach seen in the US.

India's fair dealing rules, coupled with prohibitions against 'undue restriction' on rights holders and 'intolerable' prejudice against the public, are more specific than the US fair use doctrine, but less so than the EU's hodgepodge of copyright exceptions. India's greater specificity helps to avoid the vagueness of what is fair use, but might also leave the law less capable of adapting to emerging types of media and technology-driven changes in the industry.

This comparison reflects the weighing of interests protected by copyright against public access to culture, education and information. While the US regime gives the courts absolute flexibility with respect to case-by-case balancing, the Indian and EU systems give the courts more predictability with respect to access matters, through the clear enumeration of standards (India) and exceptions (EU). Of course, each system carries its institutional victories and frustrations, mirroring the intellectual property, policy and technology, as well as culture, that **characterize** the fields in the US, India, and across the EU.

#### **IV. LEGISLATIVE FRAMEWORK GOVERNING FAIR USE IN INDIA**

##### **(A) Copyright Act**

These users are generally covered by the broader concept of fair dealing under the Copyright Act of 1957, as amended several times to keep pace with technological and international copyright developments. Under this Act, fair use per se falls under a general framework of 'fair dealing' that is both narrower than the American idea of fair use and far broader than the idea of fair dealing found in other British Commonwealth countries. The specific provisions of the Act that define what is 'fair dealing' are crucial to understanding how these provisions are applied.



The most important section is Section 52 of the Copyright Act, which outlines the circumstances where you can use a copyright work without permission. These are the purposes for which copyright materials might be used:

- Criticism or review: this permits the quotation or reproduction of copyright works when commenting upon or criticizing that work or another work, provided that there is sufficient acknowledgement.
- Reports of Current Events (Section 107): ‘The fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.’ This section allows for exercising our fair use rights to use copyrighted musical works in newspapers, magazines or similar periodicals, as well as in broadcast or other media (e.g., reproduced in copies or phonorecords, or performed live) for purposes such as news reporting or documentary.
- Research and Private Study: Reproduction by users for purposes of research or private study; this is particularly relevant in the academic world.
- Teaching: The reproduction of works for teaching in nonprofit educational institutions is permitted, using music clips in a lecture or classroom setting, etc.
- Music performance: Section 52 commits work to use without charge also for performance of the work – and again only for ‘a recital or other performance by students, members of the staff or parents, provided that no charge is made that is calculated to make a profit’ in an educational setting.

All of these uses are, in turn, subject to limitations and conditions, generally centering on quantity when using verified works and substantiality when using unidentified works, as well as the effect on the market for the work in question.

- Amendments and Updates: Comment on Any Recent Amendments or Updates to the Fair Use Legislation Pertaining to Music.

In the years that followed, the Copyright Act was amended three times on technical grounds to deal with the challenges of technological innovation and international copyright treaties. The most significant of these affecting fair use and the music industries came in 2012.

The Copyright (Amendment) Act, 2012 brought in the following relevant amendments in regard to music sounds:

- Further expansion of the Fair Dealing Provisions: These were expanded in 2012 to allow for the electronic storage of a work in any medium whatever that store.
- Copyright in Performers: Before the amendment performers had no right of exclusive commercial exploitation of their performances. The amendment gave performers rights called ‘moral rights’ and ‘media rights. These rights have an important effect on how music performances are copyrighted and how they are used through the operation of the fair dealing provisions.
- Copyright in Sound Recordings: The amendment provides that the owners of sound recordings will have rights for the term of 60 years to commence from the year of publication (previously 50 years); this relates to the value in recorded music as well as how long does it voluntarily remain in copyright before entering the public domain.

These changes balance copyright and the rights of the copyright owner with the needs of users and consumers by putting fair use on the proper footing in a digital world and bringing copyright protections into line with international standards while maintaining vibrant provisions for education, research and public access to cultural materials.

In totality, the legislative scheme for fair dealing contained in the Copyright Act, and the myriad of amendments it has undergone since 1921, articulates an ordered if often harshly unforgiving equilibrium between the rights of creators in relation to music, and the public interest in relation to musical works, without completely ignoring any possibility that both are in constant flux with new technological advancements and the evolving, and sometimes increasingly disunited, world of copyright internationally. The law does not stand still.

## **V. FAIR USE IN THE CONTEXT OF SOCIAL MEDIA**

### **(A) Social Media’s Impact on Music Distribution**

Social media – YouTube, Instagram, TikTok and the like – have consolidated their position as primary conduits for delivering and absorbing music in India and around the world. These platforms are fast becoming the go-to-market mechanism for music promotion, discovery and seduction. Performers without disposable financial resources are able to reach a global community without recourse to record labels, publishers, broadcasters and distributors.

The immediacy and reach of social media mean that artists can reach fans directly, enter reciprocal feedback loops with them, and create community around their work – steps that can take advantage of disintermediation by bypassing the need for bigger labels to distribute or promote your music, and reduce the need for radio or payola. And now, the virality of social

media means that hits spread rapidly and gain global citizen-driven reach in videos – in the form of memes, challenges, fan covers and so on.

Furthermore, social media has extended the domain of music listening to include creation and curation – users don't just listen to music, but also create and share creations involving music such as videos of themselves dancing, lip-syncing to the music, and using music as the soundtrack to post videos. In summary, the dominance of social media in the modern era can be attributed to the fact that it meets all the biological and social needs that are critical for our survival – sustenance, safety, sex, and sociality.

### **(B) Challenges Posed by Social Media**

A clear advantage of the fair use doctrine is that it encourages creativity by Copyright Act and copyright holders. But the proliferation of social media also has significant drawbacks to fair use, especially with regard to unauthorized sharing and sampling. Because music is so accessible and easy to share and alter, copyright-protected works are used on social media without permission or compensation to copyright owners.

One of the biggest problems is 'promiscuous' sampling, in which users take clips of copyright-protected music and insert them into their Google videos without licenses – most often relying on the hazy demarcations of fair use or fair dealing. Some uses of copyright music would be fair dealing according to the fair-dealing standards of criticism, review or private use, but others might not be, making them copyright infringement.

A second is the effective use of automatic content-recognition technologies deployed by the service providers to police uploaded content. In the effort to protect and enforce copyright, these systems morally and legally may not be up to interpreting the specifics of fair use. Perhaps they would not recognize the miniature soup cans on the wall. The worry here, again, is that the effort to protect copyright would be at the cost of deterring creativity and fair use.

### **(C) Legal Disputes and Resolutions**

Legal challenges over fair use of music in social media mark the growing tension between copyright law and digital media as the remix article mentioned above demonstrates, it's unsurprising that social media has birthed an explosion of fair-use lawsuits swirling around the creation, circulation and consumption of songs. Take the global rise of the 'mashup' – taking, say, one bar of Beyoncé's 'Single Ladies' (2008), running it backwards, then rearranging it with an unfortunate Eminem sample, Dolly Parton chants and Rihanna hollers to create a totally new track, generally on YouTube or SoundCloud – which has prompted scores of legal challenges. Artists and labels say that spicing up their copyrights constitutes clear infringement; producers

argue that they are fashioning new works under the doctrine of fair use.

In India, specific cases have pushed the limits of fair use in social media space. In *Super Cassettes Industries Ltd v. MySpace Inc*<sup>3</sup>, a case involving copyright infringement over MySpace (then recently launched in India), the Delhi High Court originally ruled against the social media platform for songs uploaded by its users, because it lacked any license for the music generated by the users. However, on appeal, the judgment was revised to reflect that MySpace had no control over the end-user content, and in certain conditions can act as an intermediary rather than a copyright infringer per se, reflecting a nuanced understanding of copyright enforcement in the digital space.

For another, it saw the music juggernaut T-Series file suit against Airtel Xstream, an undisputedly mass streaming service (which allows users to download movies, sports, web series and more to their mobiles, tablets and TVs) for copyright infringement – of user-generated content containing T-Series' copyrighted songs, thereby raising the question of how a streaming service that allows users to upload can prevent unauthorized use of copyrighted material.

These cases show that, as individuals and companies continue to push at the edges of social media, interacting with each other and expressing their opinions, they will lay bare the legal and ethical complexities produced by the intersection of the dual frameworks of social media and copyright law. It remains critical for governments to respond with well-defined frameworks and robust laws that will account for both the realities of production and re-sharing of digitally created content, and the need for balance between the rights of copyright holders and the public rights to fair use and creative expression.

#### **(D) Key Case Laws Shaping Fair Use in Music**

But India has its share of precedent-setting cases that help define fair use for the music industry. Over the years, judges have ruled in landmark fair-use cases, developing a coherent and progressive body of law on fair use.

*Indian Performing Right Society Ltd (IPRS) v. Eastern India Motion Picture Association (EIMPA)*<sup>4</sup>: This landmark case concerned the application of copyright in the context of the music industry. Primarily, this was a matter of what rights in a soundtrack in a film belongs to. The Supreme Court of India ruled that copyright in the soundtrack of a film might not be the property of the (then widely applied) joint copyright of the composer and lyricist of the film,

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<sup>3</sup> MIPR 2011 (2) 303.

<sup>4</sup> AIR 1977 SC 1443.

and might belong to the film producer, who is the authority to license any re-creation of the soundtracks. In the music industry, this ruling has far-reaching practical implications in administering music copyrights and licensing and distribution of film music.

*Super Cassettes Industries Ltd. v. MySpace Inc.*: This decision concerned digital rights, and the responsibility of online intermediaries to prevent infringement of user-generated content to the extent possible. The Delhi High Court decided in the first-instance that MySpace's algorithms had inadequate filters, and MySpace was held liable for copyright infringement. On appeal, MySpace's liability was drastically reduced due to its intermediaries and a precedent was laid out for how platforms should handle copyright-related user content on social media platforms.

*Saregama India Ltd. v. Next Radio Ltd.*: Here, the Calcutta High Court decided the case based on plaintiff's copyright in music broadcasted in radio stations. The judgment was an important reaffirmation of the statutory licensing regime, stating that radio stations needed licenses from the copyright owner.

These instances not just trace the shifting line of fair use in the Indian music industry but also expose the legal breakpoints that emerge as the way of absorbing music through modes and means of its dissemination transform them over time in parallel to altered modes of technological reproduction.

These decisions are still cited as the leading judgments in this area, resulting in a cautious approach to the application of the fair-use doctrine in the music business. In the *IPRS v. EIMPA* case, the mixed collaboration in the film form was explicitly upheld, while the diverse stakeholders in the industry affirmed their varying, sometimes competing interests in copyright ownership. The judgment established copyright ownership in composers and lyricists in the Indian film industry. However, it restricted composers or lyricists from reserving important rights against their producer of the film, including the right to refuse fair use of their work.

Looking forward, professional content creators had the most to gain from the *Super Cassettes v. MySpace*<sup>5</sup> case. The appellate decision shifted caselaw by providing legal cover for platforms as intermediaries, which has helped define when a platform is liable for infringement of user-generated content. This has important ramifications for fair use because it shapes how users may share and remix music content on social media without the fear of being sued.

Although the reinforcement of statutory licensing ultimately helped Saregama in *Saregama v. Next Radio*, it would be a disservice to copyright owners to stack even more such protections

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<sup>5</sup> 2017(69) PTC1(Del).

for them. This is because copyright law grants a very powerful monopoly over creative works – it is a benefit to society to ensure that creators are compensated, but it is also a benefit to allow the public to access those works. The idea is to keep this balance alive.

It is why comparison with international cases is particularly useful to see where Indian fair use is headed in a very different trajectory from other jurisdictions. Take the case of the *US Capitol Records v. MCA Inc* of 1966, which revolved around the question of sampling in music. The court determined that if even a minor portion of a copyrighted work has been sampled without clearance, that amounts to infringement. For that matter, it wouldn't take more than even a line or two of a song – according to the law laid down in the *Bridgeport Music, Inc v. Dimension Films* case of 2005. By contrast, in India, fair dealing provisions may focus on the amount and substantiality of the portion used in context.

Another example is the European Union case of *Infopaq International A/S v. Danske Dagblades Forening*, in which the European Court of Justice held that the copyright in a copyright work had not necessarily to be extensive to reach the level of protection, in certain cases even short excerpts could be protected if they were sufficiently original. This can be seen as a more purist view than Indian fair dealing, in which the fairness of the purpose and effects and the impact on the market are both balanced.

These comparisons show that, while big international standards certainly affect the contours of Indian copyright law, how fair use is enforced in the music industry remains deeply entangled with the pitches of locally nuanced judicial interpretations and sounds of cultural belonging. This knowledge is key for any music industry stakeholder trying to navigate the globalised regulation of intellectual property rights in wired world.

## VI. THE ROLE OF ENFORCEMENT AND COMPLIANCE

### **(A) Enforcement Agencies: Discuss the Role of Various Enforcement Agencies in Overseeing Fair Use Compliance**

These include not just the courts, but a wide range of agencies and organisations, all dedicated to the maintenance and enforcement of intellectual property rights. The struggle for the preservation of fair use in the music industry, as well as the rest of the important copyright issues of our time, demands protection at all levels of enforcement.

- The Indian Copyright Office (ICO): Known as the 'authority' to regulate copyright law in India, the ICO that deals with all copyright-related matters: copyright registration, enforcement, copyright awareness promotion, copyright administration and government

policy-making. Thus, it is a central repository of various resources to enable music-industry stakeholders to understand their rights and obligations under the copyright regime.

- **The Indian Performing Right Society (IPRS):** A private non-governmental body, the IPRS represents composers, lyricists and music publishers of the country's music industry in the collecting society. It collects royalties for its members from coins or airplays, and enforces the law by initiating litigation against offending entities.
- **Police and Judiciary:** The third arm of enforcement of copyright laws is the Indian police and judiciary. The police act on complaints of copyright infringement. The judiciary adjudicates these cases. Courts in India have the power to issue cease and desist orders, impose fines and, in the most egregious cases, punish the offenders with imprisonment.
- **Customs authorities:** in the event of an import or export of suspiciously copyright-infringing goods, India's Customs officials, under the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, have the authority to halt clearance of suspects goods.

Analyze: How could practical enforcement of the fair use provisions in music be improved?

Yet the existence of a strong legal framework and of several different law-enforcement authorities won't uproot the following practical issues, which make application of the fair use provisions virtually unenforceable in the music business:

- **Poor understanding:** Lack of understanding in relation to fair use provisions is one of the big issues, and the 'rights and responsibilities' of stakeholders (type of users and creators) are not fully understood. For example, many users and creators in the music industry don't realize that they're entitled to make certain uses without permission.
- **Advancing technologies:** Technologies of musical production and broadcast – such as used in the making of a music sample or remix – act as an additional blurring between permissions and infringement.
- **Lack of resources:** At the rights-holder end, companies don't have the same number of people or technical resources to keep close tabs on how their copyright has been used. We know from working in the music business that this can lead to inefficient complaint management systems and a difficulty keeping tabs on infringement because of the fast-pace of the music business.
- **Overlapping international jurisdictions:** As the globalization of music creates many

overlapping jurisdictions, infringements will frequently cross borders, and copyright law is often difficult to enforce. Second, overlapping copyright legal regimes can create complexity, as most countries recognize copyrights through international treaties, but there are still differences in copyright law between states. Within India, there are still many enforcement issues against foreigners and foreign entities.

- **Ambiguities in Law:** There are ambiguities as to what is fair use in the Indian Copyright Act – the interpretation of fair use is at different levels of breadth; what is considered fair use will inevitably result in different outcomes from case to case. This leads to inconsistency in levels of enforcement and in the decisions of judges. This uncertainty around the act of fair use can then have implications for actors in the music industry.

All of these issues need to be continually acknowledged and responded to by enforcement authorities and policymakers alike. Solving them in the long term requires not just expanding the manpower and resources of enforcement agencies, but also copyright education of creators and users in the industry. Moreover, the development of international co-operation and reform of legal frameworks to adapt to technological changes are extremely important for better enforcement of the fair use regime in India's vibrant music industry.

## **VII. FUTURE OF FAIR USE IN THE INDIAN MUSIC INDUSTRY**

Advances in technology, such as artificial intelligence and blockchain, might also change how fair use applies.

The evolution of fair use in the future of Indian music is intimately bound up with the evolution of technology. New developments in the fields of Artificial Intelligence (AI) and blockchain will bring in a revolution in the way music is produced, circulated and consumed, and fair use doctrinal application and interpretation will be dramatically impacted by these changes.

- **AI (artificial intelligence):** AI-driven musical creations, remixes and music analyses and mastering are becoming more popular, leading to new problems for copyright and fair use. For instance, an AI can analyse vast databases of prior musical creations to itself create new compositions that sound very much like something a person created. In addition to identifying a use, the fair use analysis itself pushes up against the age-old notions of creative authorship. Is an AI-authored piece creative enough? Is it sufficiently 'transformative' to be considered fair use? We are still engaged in active debates about these issues.
- In addition, AI supports systems for automatic content recognition (ACR), such as the



third-party systems that YouTube uses to identify and flag content for potential copyright infringement. These technologies also strengthen possible over-enforcement and misidentification (such as identifying a fair use, such as commentary, criticism or parody, as an infringement).

- **Blockchain:** Blockchain technologies provide the potential to fundamentally change the way that copyrights are managed in the music business with transparent and distributed registries of who owns what copyrights and who has the rights to use what parts of copyrighted works whose rights must be cleared for use or licensing. Blockchain-based accounting and royalty distribution systems could also enable more granular or auditable tracking of music usage and the automated distribution of royalties based on agreements baked into smart contracts. Greater clarity of rights and permission could reduce fair-use disputes. But the very nature of smart contracts is that they are rigid, inflexible and driven by the reductionist logic that comes from coding. This could make it harder to determine fair use in exceedingly subtle cases. So, opportunities challenge, too.

#### **(A) Suggestions**

As technology continues to evolve in ways that influence fair use in the music industry, policymakers can turn to particular strategic initiatives in their approach:

- It's time to modernize and tailor the copyright laws we already have to the technological complexities imposed by AI and blockchain. This means the legislation must engage with AI-created content and tackle the use of blockchain tech for copyright management on the terms set by fair use, rather than through a punitive mindset.
- **Increasing flexibility in fair use determination:** Policymakers should consider increasing 'flexibility' with regard to the fair use provisions of the Copyright Act because technological developments and inherent differences in market conditions related to technological innovations necessitate market flexibility in the statutory framework. This might require Congress to tweak Section 52 of the Copyright Act to include more tailored language in discussions of fair (digital, technologically driven and the like) use.
- **Judicial capacity-building,** including training and new resources, should be provided to assist the judiciary in familiarizing themselves with the latest technologies and understanding what the laws of copyright and fair use mean in the context of specific emerging technologies.
- Policymakers should facilitate collaboration among technology developers, copyright

owners, artists and legal experts to promote a common understanding of how technological change affects fair use, and foster better anticipation of technological change before it affects copyright law and practice.

- Getting consumers, creators and intermediaries talking can ease ongoing conflicts, and education about fair use and its value is a great way to start these conversations. Public discussion of and education about the meaning of fair use should be an ongoing activity, and include everyone from content creators to intermediaries as well as consumers. Each should learn about the limits and value of the rights they and others have: because the less including-and-excluding we do, the easier it'll be to include.

If these recommendations were implemented, policymakers would not only improve the transparency and efficacy of the fair use doctrine in the Indian music industry, they would guarantee the doctrine's viability in a fast-evolving technological landscape. This institutional forethought will secure creators as well as consumers and safeguard the nation's cultural economy from cobwebs and calamity.

## VIII. CONCLUSION

The legal protection of intellectual property rights in the Indian music industry has evolved. It depicts the hard fight for finding the fine balance between three competing factors: the need for the existence of copyright on the one hand, and the necessity of recognizing fair use on the other, and encouraging the growth of creativity in the music sector. The article describes how the Indian music industry, like all other cultural forms such as movies and literature, has evolved from a spirit of sharing of a public domain, to a professionally produced commodity, and how laws and judicial decisions have adapted over the years to recognize and protect the intellectual property of artistes and their works, including music. It focuses on the protections that are recognized and enshrined in India's Copyright Act, enacted in 1957, which was augmented and amended over the years to keep pace with how music content is now packaged, distributed and listened to, due to rapid scientific and technological advancements. Western standards feature in the legal system through India's adherence to various international treaties concerning copyrights.

The catch-all fair use (or fair dealing, as it is known in India) is especially important: it maintains a legally permissible tension between the growth of creativity and the need to protect creators' rights to their works. In the 21st century, particularly in an age of digital technologies, this is of central significance, since this surpasses argument, since considerable numbers of people are copying and transforming original works widely, and are doing so every day. The article notes

that, while the US and EU have a different approach to fair use, India has a less flexible, more balanced approach that arguably offers more clarity, but less adaptability to new forms of media and technological change.

Furthermore, the issues raised by the work of enforcement agencies and the difficulties involved in their efforts to protect rights in an environment where music is easily accessible and distributed informally online also highlight the compromises that continue to recur in a balancing act between rights and innovation. The air, then, becomes wayfaring – legal cases seem to suggest that fair use applications do not stand still, but are continuously creating the need for the law to play catch-up.

Online battles over copyright, waged by the likes of YouTube, TikTok and others, see massive copyright enforcement as a major focus, against the backdrop of problems like ‘dirty sampling’ and ‘content moderation’ tools that enforce digital public spaces with automated listening devices. Interactive engagement with music, which is unique to the digital era, creates complexities in enforcing fair use.

In conclusion, it is predicted that, ‘the success of fair use in the Indian music ecosystem will largely depend on the ability of the law to keep up with technology, particularly in the case of creative technologies like AI and the blockchain. Policymakers would need enhanced judicial understanding of these technologies and also facilitate an ecosystem that puts technology at the center of creative collaboration between the diverse stakeholders, encourages public debate to make the fair use doctrine a steadfast companion in the increasingly digital cultural economy that respects the rights of creators and also facilitates free access to creative works in the public interest.’ Adaptation to changing technological landscapes will be a continuous process and ultimately decide the fate of the music industry in times to come.

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