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What is Blanket Licensing?

SHIKHAR KUMAR[1]

ABSTRACT

Intellectual Property (IP) is a creation of human mind which is artistic, innovative and different. Intellectual Property laws has always been considered to be dynamic and different from other forms of laws because of its nature of changing very rapidly. The specific paper focuses on the evolution of copyright law through the means of "Blanket licensing". The objective of this paper is to analyses the IPR laws in India and the current situation of laws regarding blanket licensing. In this paper the researcher tries to point to out the need of changing the laws regarding blanket licensing in India and also provides the mechanism to improve the legal structure of blanket licensing.

Keywords: *Blanket licensing, Status in India, WIPO, IP laws, Intellectual property.*

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I. INTRODUCTION

With the beginning of 19th-20th century the term "intellectual property'' started getting a limelight, and became a new word in the minds of the people. But the term intellectual property started creating a series of doubt in the minds of the people, as how can the term "property'' can be used, with intellectual thinking of a person, as a thought, is not a physical thing which can be touched or feel, unlike the property which they have witness in their whole life. The simple answer to their questions was the definition of intellectual property which is been stated by many scholars from time to time. Intellectual property can be defined as "to the creations of the mind, such as inventions, literary and artistic works, designs, and symbols, names and images used in commerce."[2]

The intellectual property's concept is not a new one as Renaissance northern Italy is thought to be the framework of the intellectual property system. A Venetian Law of 1474 made the first methodical attempt to protect inventions in a form of patent, which allowed right to an individual for the first time. The invention of the printing press and movable type by Johannes Gutenberg around the year 1450, helped in the origin of the first copyright system in the world.[3] The history of the intellectual property can also be traced long back in 500 B.C.E. when chefs in the Greek colony of Sybaris were granted year-long monopolies for creating particular

[1] Author is a student at Asian Law College, Noida, India.
[2] WIPO.
[3] All you need to know about the IPR Laws in India, ipleaders.

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culinary delights.[4] Later on in 19th and 20th century many countries like U.S.A., Britain, etc. started farming their own IPR laws.

The term "Intellectual Property'' has always been a cluster of different sets of laws, which contain different regulations for different disparities which arises during a legal dispute. In India, if there is an artistic dispute, the laws are been governed by Copyrights Act, 1957, and if, a dispute arises where there are differences over the invention of a particular thing, then they are been handled through Patens Act,1970, and if there is a tussle for the symbol, phrase, or word that denotes a specific product, then it will be sought through the regulations stated under Trademarks Act,1999.

The great words of Plato ***"need is the mother of all inventions''***, led to the invention of another revolution in the history of mankind, that is "internet". In the year 1983, life of the people changed upside -down. Internet not only provided a new way of living but also raised the number of new creations and ideas. Internet provided new sets of thoughts which led to the growth of the intellectual property. Earlier before the internet when the music was developed in a particular region, then that music used to remain in that particular region only, but after the evolution of internet, if some music has been created by one artist in Canada, then it could also be listened in India at the same time. But, as rightly stated by French novelist and playwright Honore de Balzac that, ***"Behind every great fortune lies a great crime''***. With the evolution of internet and circulation of creations and specially music also led to the rise in the number of IP crime. A musician has the whole sole right over his creation, and has all the means to claim copyright over his work. But, what if the work of an artist is been used by a person who owns a band, a restaurant or an online radio etc. earns a certain amount of revenue by the work of an artist, in such situation can an artist claim copyright over the usage of his work from such people, in such situations, a concept comes into the picture which we call "blanket licensing".

II. HISTORY OF BLANKET LICENSING

In the late 19th and early 20th century the Congress of United States of America, established the right of the copyright owner to control the public performance of their work. In, the year of 1914 ASCAP (American Society of Composers, Authors and Publishers) was established by a group of composers and publishers so that "they can enforce their small performance rights, and to create a joint pool of musical compositions that could be sold in bulk to music users. Soon thereafter, ASCAP created the so-called "**blanket**" license that gave the user the ability

[4] Intellectual Property, First published Tue Mar 8, 2011; substantive revision Wed Oct 10, 2018, Stanford.

to utilize any musical composition within its entire repertory by paying a single license fee to ASCAP. ASCAP was then responsible for distributing these payments to its members."[5]

III. SITUATION OF BLANKET LICENSING IN UNITED STATES OF AMERICA

In United States of America after the establishment of ASCAP (American Society of Composers, Authors and Publishers) which introduced the concept of blanket licensing led to the creation of another organization which is named as BMI (Broadcast Music, Inc.). BMI was established in the year 1939.The main reason for establishment of BMI was that "ASCAP's demands for compensation were too high and its limitations on membership were too restrictive. BMI provided radio broadcasters and other music users with an alternative source to ASCAP for music performance rights, and offered composers open enrollment."[6]

IV. RISE OF THE LEGAL WAR

Before the establishment of BMI, ASCAP was having the monopoly in the market of blanket licensing in the United States of America. Having monopoly in the market of the United States of America is not a crime, but obtaining it by *coerce* or predatory acts may raise antitrust concerns, which was exactly been done by the ASCAP. ASCAP was lavishly using its position for licensing. "In 1941, the DOJ filed a complaint against ASCAP, alleging that its blanket license was an illegal restraint of trade under section 1 of the Sherman Act, "eliminating competition among ASCAP's member-affiliates and allowing them to fix prices for their music".[7] Therefore ,in the judgement given by Antitrust Division three conditions were imposed on ASCAP , which were " to offer a PPL as an alternative to the blanket license ,to allow broadcasters to enter into license agreements, upon request and to allow membership to any artist who had composed at least one musical work.[8] , which were same agreed by the BMI in the same year .But, the tussle for ASCAP and BMI didn't end over here. In, 1950 two suits were been brought against ASCAP and BMI, first one was Alden-Rochelle v. ASCAP[9]and second one was M. Witmark & Sons v. Jensen[10], in both the cases honourable court held that both ASCAP and BMI which were following identical conditions for their working were violation section 1and 2 of Sherman Act, therefore they were violating antitrust law. Suits against ASCAP and BMI in 1950, were just starting of a big and long legal fight. Again, in the year of 1970 another suit was brought against both ASCAP,BMI and members affiliated by

[5] The History of Broadcast Music Performance Rights
[6] The History of Broadcast Music Performance Rights
[7] The Fordham Intellectual Property, Media and Entertainment Law Journal, Brontë Lawson Turk
[8] United States v. Am. Soc'y of Authors, Composers & Publishers, 870 F. Supp 1211
[9] 80 F. Supp. 888, 890 (S.D.N.Y. 1948), amended by 80 F. Supp. 900 (S.D.N.Y. 1948).
[10] 80 F. Supp. 843, 844 (D. Minn. 1948)

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Columbia Broadcasting System, "Although the district court upheld the blanket licenses, the Second Circuit reversed, holding that they constituted illegal price fixing and were a per se violation of federal antitrust law."[11] Both, ASCAP and BMI challenged the judgment of second circuit in the honourable Supreme Court of United States of America, the court held that, it reversed again, however, agreeing with the district court that blanket licenses were a practical solution to an incredibly complex marketplace where thousands of copyright holders and millions of compositions must be efficiently licensed."[12] The fight is still on against ASCAP and BMI to improve the system corrupted by them.

V. INDIA AND BLANKET LICENSING

India has a vast and dynamic legal system in itself. Earlier before 1994, the copyright law in India was only limited to films, books, and painting, but after the amendment of 1994 the copyright also started focusing on computer software and completion of data. Before, the amendment of 1994 the performers rights were not given any importance in India. Therefore, with advancement in the technology demanded a major change in the IPR laws of India, or to be more specific to implement the terms of blanket licensing. In, India the terms of blanket licensing are been covered under the concept of "Performer Rights". Performers Rights are stated under section 38 of Copyrights Act[13].According to the legal definition of section 38 of Copyrights Act, states that, "as Performer's Rights, provides exclusive right or authority to the Performer for doing any act in respect of the performance without prejudice to the rights conferred on its authors. This provision enables the performers for payment of royalties which are subjected to committed use."[14] Section 38 of Copyrights Act introduced a path to the performers, but this path was direction less without an organization, therefore by the amendment of 2012 under Copyrights Act amended, section 33 of Copyrights, Act. By, the preview of section 33 of Copyrights Act "copyright Societies" were introduced. The main function of these copyright societies is to provide blanket licensing. In India this process of licensing is controlled by IPRs (Indian Performing Right Society Ltd). "The licenses cover both – live performances as well as performances by any mechanical/electronic means. As per there website, IPRS conducts its business of granting licenses per Section 30, as the IPRS is an owner of the copyrights as per the assignment deeds executed with its members who are owners and have assigned the same to it."[15]But as rightly been said ***"where there is law, there is an***

[11] Columbia Broad. Sys., Inc. v. Am. Soc'y of Composers, Authors & Publishers, 562 F.2d 130 (2d Cir. 1977).
[12] Broad. Music, Inc. v. Columbia Broad. Sys., Inc., 441 U.S. 1 (1979)
[13] Copyright Act, 1957
[14] Copyright Act, 1957
[15] Delusion over Indian Performance Rights Society being a part of Copyright Society.

exception". The right of copyright also has certain exceptions under Indian law, where a performer doesn't require any blanket licensing or rights for using any copyrighted property. The exception is stated under section, 52 of Copyrights Act[16]The foremost exception is "fair dealing". The term fair dealing means when any copyrighted property has been used without the intension of generating any kind of revenue with the use of the IP property. The concept of fair dealing governs educational institute, religious institution's etc. The concept of fair dealing has been coined from Berne Convention just as the TRIPS Agreement. "Berne Convention, Berne also spelled Bern, formally International Convention for the Protection of Literary and Artistic Works, international copyright agreement adopted by an international conference in Bern (Berne) in 1886 and subsequently modified several times (Berlin, 1908; Rome, 1928; Brussels, 1948; Stockholm, 1967; and Paris, 1971). Signatories of the Convention constitute the Berne Copyright Union."[17] Under Berne Convention of 1886 article 10 states the fair use and quotes "(1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.(2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.(3) Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source, and of the name of the author if it appears thereon." [18]And article 10bis also states that "(1) It shall be a matter for legislation in the countries of the Union to permit the reproduction by the press, the broadcasting or the communication to the public by wire of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character, in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed. (2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, literary or artistic works seen or heard in

[16] Copyright Act, 1957
[17] Berne Convention copyright law, Britannica
[18] Berne Convention,1886, WIPO

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the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public.[19]

VI. CONCLUSION

The concept of blanket licencing has always been into a lot of discussion also in its origin country or anywhere as where this concept has been implemented. During the course of 1941 in United States of America when the concept of blanket licensing was coming into force, it was been highly criticised for creating a certain unrealistic pressure over the use of the copyrighted property by the commoners like small restaurants, bands, small public performers etc, through imposing a cost barrier for the use of the IP property. Earlier when the license was issued by only by the PROs without any government intervention in United states, the PROs were also highly criticised for creating monopoly and lavishly using their position and corrupting the system. The criticism was only stopped only when the Department of Justice (DOJ), came into action, and the process of improving the condition of PROs and blanket licensing is still been improved by DOJ in the United States of America. Where on the other hand the condition of blanket licensing in India is same as it is, what is in U.S.A. According to section 33 of Indian Copyright Act, the copyright society can be formed but , if we clearly analyse section 33 of Indian Copyrights Act, it clearly states that "government may" not " government shall", which means that the government is not bound to take any action if any misconduct is been done by these societies, which again raised the same question which were raised in the United States of America in the year 1941, was, if the government doesn't have a strong holding on these PROs, then this provides these PROs an indirect monopoly in the market. The concept of intellectual property in India is a bit new, if it is been compared to the old practised laws in India. The understanding of the concept of copyright in India also raised the marks of worry, as in one of the leading and landmark judgment of **University of Oxford vs Rameshwari photocopy**[20], the honourable High Court of Delhi held that, "that such photocopying qualifies as reproduction of the work by a teacher in the course of instruction and thus does not amount to copyright infringement by virtue of Section 52(1)(i) of the Act."[21]The judgment of honourable High Court of Delhi, raised a series of questions, on the validity of section 52 of Indian Copyrights Act, as the section clearly states the exception of fair use, and expressly states that there should not be any kind of revenue generation from the use of copyright IP property, were the defendants were clearly violating this principle by

[19] Berne Convention,1886, WIPO
[20] CS(OS) 2439/2012, I.As. No. 14632/2012
[21] University of Oxford vs Rameshwari photocopy, CS(OS) 2439/2012, I.As. No. 14632/2012

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photocopying the IP property, knowingly or non-knowingly they were infringing the copyright rights.

Indian legal system is a glorious and has always been an adopting legal system, which has been changed from time to time, starting from the time of independence to till today. IPR laws in India are at the stage of growing and spreading its branches, therefore the concept of blanket licensing needs to be talked and discussed more. And, as rightly been said by Heraclitus, ***"Change is the only Constant",*** we need to make our laws more strengthen, because there is only one thing in this entire universe which is not consent and that is "time", and change in time will bring new questions, on which our legal system will be challenged.

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