

Intellectual Property Management

Assignment -3

Multimedia Products and IP Rights

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Introduction

Technological developments in recent years have greatly increased the number of options available to visual artists for conceiving and creating art works.

Multimedia has divergent definitions within the business community. The computer industry has one definition; the entertainment industry another; and the telecommunications industries yet another.

Definitions of multimedia differ largely because the intended application of multimedia in each industry requires that certain aspects of multimedia are more important to each industry than are others. Despite our reluctance to place a singular definition upon multimedia, most industry groups seem to recognize that significant legal issues arise regarding the rights of ownership and use of pre-existing material for multimedia content.

Multimedia can be defined as follows:

Interactive software stored and transmitted in digital form which incorporates multiple forms of audio, video, graphics, text, animation, photography and special effects for display and performance on computer controlled video screens and sound systems.

In the Film & Music industry some artists chose to go digital or to stay traditional or experiment somewhere in between. There are those artists using traditional media who have not yet recognised the possibilities of digital technology as a valuable tool or who have chosen not to explore the possibilities based on subjective bias. Music sites only offer music from a couple of record labels at most, making it hard to find exactly what you are looking for within the same site. Customers may waste hours surfing the Web to find what they want, if the legitimate download even exists at all. Customers want the right to control their music the way they want, which means the right to copy music onto a CD or MP3 player without the fear of breaking copyright laws.

In the 21st century Bollywood music is getting involved in copyright issues from abroad. Indian copyright laws are leaner towards preventing piracies and infringements which show multiple loopholes in the law system. Barring all these issues Bollywood music are still audiences prime favorites and every year it is generating handsome revenues.

Nowadays journalism is not far behind in the race of plagiarism & IP rights as the number of news channels increases and with lack of content often infringement of news articles or content keeps happening around.

Original Print

The multimedia capabilities of the Internet have provided major appeal for some artists wanting to present video or sound clips of their work. Freely available software allows

compressed video and audio to be streamed on most computers without download delays.

The increased use of streamed sound and video as well as remote interaction are transforming the level of Web-based interaction. The evolving environment of the Web provides a unique challenge for artists to explore these conjunctions of cyberspace, media and audience feedback. While on the one hand shrinkage of royalty payments threatened traditional artists and the musicians signed up with the record companies, the incredible distribution network offered by the Net has helped launch others who may have not received openings into the market. It could be argued that in this way the Net is resulting in an expansion of the market.

Concern for the Music Industry

Since the late 1990s the explosion in file sharing on the Net has escalated music piracy to astonishing levels. Legitimate or illegitimate sound recording can be electronically transported around the world and downloaded directly into computer hard drives and copied onto CD-R disc.

Piracy affects every sector of the music industry from retailers to distributors, artists, composers, publishers, record companies and ultimately the consumer. Illegal Internet file-sharing services most commonly using Peer-2-Peer networks have taken the lead in forming an electronic marketplace, giving music consumers exactly what they want, when they want, and all distribution without any cost or at minimal charge which does not go to the artist. Music can be downloaded without authorisation or compensation to the artist. The global pirate music market totalled 1.9 billion units in 2001. Discs make up the majority of pirate sales overtaking cassettes for the first time, and reflect the switch in piracy to recordable CDs (CD-R) discs.

The International Federation of Phonographic Industry (IFPI) estimates that 28 percent of all CDs sold in 2001 were pirate. The total is split roughly evenly between CD audio discs made on factory production lines and those made in smaller scale CD-R operations in garages and labs. Worldwide sales of pressed pirate CDs were 500 million units, up from 475 million in 2000, with pirate CD-R discs estimated at around 450 million units, up from 165 million in 2000. The major trend in music piracy around the world is the growth in CD-R demand. Using the UK market as an example, CD-R demand in 2001 has seen 308m blank recordable CDs sold. Independent sources estimate that 128m of these were used to record music.

The Internet provides artists with more control over how their work is represented than conventional printed catalogues and relieves the pressure of recouping expenses.

INTERNET AND PLAGIARISM IN JOURNALISM

In the field of journalism, journalists and reporters find it easy to copy a story from a source and pass it as their own. Now, the confusion may arise, what to do when a number of journalists are covering the same news. In such a case, understanding when one's work is considered plagiarism is necessary. For example, when two journalists are covering the story of the Prime Minister of India's speech, they can use the same quotes and even same leads. That will not be counted as plagiarism. But, if a journalist uses a picture of the prime minister in a particular posture, the other journalist cannot simply download the picture from the internet and use it. This will be considered plagiarism and plagiarism is considered as a violation of the journalist ethics code.

With the advent of the internet and widespread use of blogging and a competitive market, the journalist profession calls for reporting 24*7. Reporters find it easy to plagiarize and meet the news demand. It is not true that before the internet, there was no plagiarism in journalism. The concept of plagiarism always existed and history shows us how it affected the then society.

The traditional media had the medium of printed newspapers and television to reach out to their consumers. The advances of the internet have risen above the constraints of the customary media and the clients both understood the benefit of the web when it came to web hunting down, scattering and gathering data. This web hunting gave both the access to the journalists to plagiarise content and the readers to identify the plagiarized one through the availability of online tools.

Ideas need to be unique and the news content requires authenticity. The New Communication Technology (NCT) has brought forth a set of opportunities and challenges for conventional media. The interactive and more social mode of operation, the close proximity between the sender and the receiver in the virtual sense, instantaneous feedback, extreme flexibility and simplicity of the medium and huge accessibility gives the new media great advantages over the traditional media. New Media is the reason that people are finding accessing news content easily, but this at the same time is directly hitting the plagiarized contents.

REASONS BEHIND THE RISE OF PLAGIARISM IN JOURNALISM

Plagiarism is on the rise both in Indian media as well as globally, it is essential to understand the reasons which are leading to its rampant use. Capitalism always seeks for profit by exploiting the labours. During the age of colonialism, the focus was on finding markets for selling of the finished products. In the era of globalization, capitalism is colonialializing markets in the garb of 'digital colonialism'. Globalization and digital colonialism have given rise to a competitive market. Traditionally, there were a handful of media agencies which were the sole sources of news content. But, now the sources for

news content spring up like mushrooms, which have led to an intense competition and have also affected many media companies and publications. Many media houses are running on losses and are scaling back. To deal with plagiarism, the basic requirements are good editors, proper plagiarism detection tools. These require money and since, the companies, owing to intense competition are already running on loss, it becomes difficult to check the issues of plagiarism. Another constraining factor for the rise of plagiarism is time. Previously, the newspapers were printed at night, circulated in the morning and there was specific time for news on the television. But, internet has brought with it the demand for news 24*7. This means the journalists are continuously under pressure to produce news content. Thus, when the reporters are out of unique ideas, they tend to lift stories from other websites and claim it to be their own. The nature of journalism is in a dynamic process. It is changing continuously. The journalism employment feature has undergone a major change, which has also to some extent contributed its part to the rise of plagiarism. Nowadays, more and more people are into freelancing i.e., journalism follows the model of freelancer often. This reduces the cost of hiring an employee on the part of the management and at the same time, reporters find freelancing a better option. The editors hence do not put efforts to maintain a good relation with the freelancers and most of their work goes unchecked of plagiarism. Another possible reason that can be cited is again on the basis of trust between the editor and the journalists. The editors mainly check for errors, look after the authenticity of the content etc. and the reporters mainly do all the field work. But, in the field of media, the editor-journalist relationship is not like that of a teacher-student or an author-publisher relation. In journalism, some relations are based on trust and when a journalist works for a media house for long, the editors put their full trust on them and often their news contents go unchecked. These are a few reasons that are making plagiarism getting increased in journalism.

Dispute Prevention and Resolution in The Film And Media Industry

The Film and Media Industry of India is heading towards a great growth. At the same time the Film and Media Industry is also facing issues of Piracy, Copyright Violations, etc. New Digital and Technological Measures have been adopted to prevent unauthorized and illegal use of works of Film and Media Industry. In fact, India has been planning to formulate laws on the line of Digital Millennium Copyright Act (DMCA). However, the Film and Media Industry of India cannot be protected unless we adopt Techno Legal Measures to prevent unauthorized use and distribution of their works. Film and Media Industry of India is also frequently found in disputes with others for violation of its Legal and Intellectual Property Rights (IPRs).

The traditional methods of Litigation in India are not very encouraging. We have to devise methods like Alternative Dispute resolution (ADR) and Online Dispute Resolution

(ODR). At the International level, the World Intellectual Property Organisation (WIPO) has been providing world class Dispute Resolution Services for a long time. One such Service is known as WIPO Mediation and Expedited Arbitration for Film and Media. Surprisingly, Asian Film and Media Industry are not considering utilizing the Services of WIPO in this regard. They are still taking their disputes before traditional Courts. A great deal of ADR and ODR Disputes are "Referred" by Law Firms and Practicing Legal Professionals. They incorporate suitable "ADR and ODR Clauses" in the Technology Agreements, Film and entertainment related Agreements, etc. If these Firms and Professionals do not incorporate proper Arbitration Clause, a Dispute can never reach to International Organizations and would land up in a Court of Law.

However, WIPO's Mediation and Expedited Arbitration for Film and Media initiative cannot succeed till it is a part of "Holistic Effort" comprising Law Firms and Professionals spread all over the globe.

The Entertainment Law or Media Law, is a set of relevant laws, rules, policies, and regulations, formed for providing necessary legal services to people, agencies, companies, institutions, and organizations of the entertainment industry on the whole. It applies to the entertainment media of all types including Film Industry, Television, Music, Advertisement, Internet, Publishing, and other industries in connection with these.

It is observed that the majority of the legal services for media and entertainment fall under the two categories - Transactional services, and Litigation services. Our full-fledged globally famous legal organization, Global Jurix, provides entertainment media law services for matters, disputes, and litigations relating to all these fields of entertainment law, in India and abroad.

Media Law Services

Many media law services across the world provide entertainment media law services, for the following categories:

- Intellectual Property matters
- Real Estate and Corporate Issues
- Labour and Employment
- Contracts and Agreements
- Compliance under all Governmental and Regulatory Authorities
- Advertisement and Publicity
- Broadcasting
- Corporate Finance
- Privacy
- Defamation and Contempt
- Confidentiality or Breach in it

- Taxation
- Insurance
- Negotiations, Mediations, and Litigations

According to section 13 of the Copyright Act, 1957 copyright subsists in the following works:

- (a) original literary, dramatic, musical and artistic works;
- (b) cinematograph films; and
- (c) sound recording.

Section 13 of the act stipulates that right to claim copyright is subject to the provisions of the said section and the other provisions of the act and does not exist de hors and outside the act. It is the right created under the statute and no right outside the said act can be claimed. Following are some of the subject matters of copyright:

- The computer programme is subject matter of copyright. They are the set of instructions, expressions, words, codes, schemes etc. in any form which can be readable by machine. It must be original or recorded in writing or otherwise. Such a programme must be unique and novel. It must be the result of the modest amount of skills and labour of the originator.
- It includes music graphical notation of any such work but it doesn't include any word or action intended to be spoken or performed with music. It must be the original work of the author. It should be only music in itself.
- 'Cinematograph film' means any work of visual recording and includes a sound recording accompanying such visual recording and 'cinematograph' shall be construed as including any work produced by any process analogous to cinematography including video films. Visual recordings are also included in it. As per the new definition sound track is protected as a part of cinematography and not as sound recording.
- Copyright subsists in a sound recording. "sound recording" means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced.

Sound recording covers any recording of literary, dramatic or musical work or other sounds (birds song, the noises of a motor-race, etc.) regardless of medium, and so will include disc, tape, compact disc, digital audio tape and future technical development. There is, however, no copyright in any sound recording which is a copy of another, authorized or unauthorized.

- The research of an author is also a subject matter of copyright, only when it is the original work of the author and is related to any innovation or is important to fulfilling any present or future need.

The new section 52-A has been added in 1984 in copyright act after seeing the need of amendment in past laws. It states that “the following particulars have to be displayed on the sound recording and its container:

- a) The name and the address of the person who has made the sound recording;
- b) The name and the address of the owner of the copyright in such work; and
- c) The year of its publication.

A person publishing a video film has to display the following in the film when exhibited and on the video cassette or on any other container:

- a) If the work is a cinematographic film required to be certified for exhibition under the cinematograph Act, 1952, a copy of the certificate granted by the Board of Film Certification under Section 5-A of that Act;
- b) The name and address of the person who has made the video film and a declaration by him that he has obtained the necessary licence or consent from the owner of the copyright for making such videofilm;
- c) The name and address of the owner of copyright in the work.”

Copyright subsists in a sound recording separate and apart from any copyright that may subsist in a musical work, the performance of which is embedded in the sound recording. The term of copyright in a sound recording is different from the term of copyright in a musical work. In general, the term of copyright in a sound recording is 50 years after the end of the calendar year in which the sound recording was first recorded.

Musical works include both a musical composition and lyrics. A composer and a lyricist may own copyright in their separate contributions to a musical work. The term of copyright in musical composition is for the life of the composer and a period of 50 years from the end of the year in which the composer died. The term of copyright in the lyrics is for the life of the lyricist and a period of 50 years from the end of the year in which the lyricist died. As an example, although copyright in the musical composition may have expired, copyright may still subsist in the lyrics.

INTERNATIONAL COPYRIGHT CONVENTIONS AND AGREEMENTS

Berne Convention- It is a convention for the protection of Artistic and literary works. It was developed by Victor Hugo and accepted at Berne, Switzerland in the year 1886. Berne Convention is an international agreement for governing copyright laws. This

convention basically protected the works and the rights of their author. The prime aim of this convention was to endorse the ability of copyright regulations to be able to interpret and apply at an international level and most importantly between countries. Berne Convention was proposed to curtail the inter-country infringements like when one country refused to recognise another country's copyright of works and reproduced and distributed them freely. It is a copyright protection for the single term based on the life of the author.

The Universal Copyright Convention (UCC) - In the year 1952, this convention was adopted at Geneva, Switzerland. It was developed by UNESCO as an alternative for those states which disagreed to sign the Berne Convention. The United States, Latin Americans and some Developing Countries disagreed to follow the Berne Convention. But, on March 1st, 1989 US has signed the Berne Convention and at present UCC is of limited importance because most of the countries are now part of Berne Convention.

The Rome Convention- It is a convention for the protection of Performers, Producers of Phonograph and Broadcasting Organisation. World Intellectual Property Organisation (WIPO) used to administer this convention jointly with the International Labour Organisation (ILO) and UNESCO.

According to **WIPO**:

1. Performers (actors, singers, musicians, dancers and those who perform literary or artistic works) are protected against certain acts to which they have not consented, such as the broadcasting and communication to the public of a live performance; the fixation of the live performance; the reproduction of the fixation if the original fixation was made without the performer's consent or if the reproduction was made for purposes different from those for which consent was given.
2. Producers of phonograms have the right to authorize or prohibit the direct or indirect reproduction of their phonograms. In the Rome Convention, "phonograms" means any exclusively aural fixation of sounds of a performance or of other sounds. Where a phonogram published for commercial purposes gives rise to secondary uses (such as broadcasting or communication to the public in any form), a single equitable remuneration must be paid by the user to the performers, to the producers of the phonograms, or to both. The Contracting States are free, however, not to apply this rule or to limit its application.
3. Broadcasting organizations have the right to authorize or prohibit certain acts, namely the rebroadcasting of their broadcasts; the fixation of their broadcasts; the reproduction of such fixations; the communication to the public of their television

broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

TRIPS Agreement-TRIPS stands for Trade-Related Aspects of Intellectual Property Rights. Article 14 of this agreement protects the producers of sound recordings and performers. India is a member of the TRIPS Agreement with the United States and others.

INDIA COPYRIGHT LAWS AND THE CONVENTIONS

In India, the Copyright Law is governed by the Copyright Act, 1957. At present, the Indian Copyright Act is compliant with most international conventions and treaties in the field of copyrights. Initially, India was a member of Berne Convention as well as the Universal Copyright Convention. But, in 2012 the Indian Copyright Act was amended which made the law compliant with WIPO Copyright Treaty (WCT) and WIPO Performances and Programmes Treaty (WPPT) to protect the Music and Film industry.

Section 51 of the Copyright Act, 1975

This section talks about Copyright Infringement:

Copyright in a work shall be deemed to be infringed—

- a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act
- b) When any person—
 - i. makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or
 - ii. Distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or
 - iii. by way of trade exhibits in public

Section 19 of the Copyright Act, 1957

This section talks about the mode of assignment. It says:

- (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 authorised 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 payable, if any, 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.
- (4) Where the assignee does not exercise the right assigned to him under any of the other subsections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.
- (5) If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.
- (6) If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.

COPYRIGHT CASES IN INDIA

1. SHREE KRISHNA INTERNATIONAL FILM PRODUCTIONS VS. GOOGLE INDIA AND YOUTUBE LLC:

In the case of M/s Shree Krishna International & Ors (“Plaintiff”) Vs Google India Pvt. Ltd & Ors (collectively “the Defendants”), the District Court of Gurgaon disposed off an application for interim injunction filed by the Plaintiffs for copyright Infringement. The Plaintiffs represented by RK Dewan & Co. were granted an interim injunction against the Defendants.

M/s Shree Krishna International & Ors are the owners of the copyright of various cinematograph films, audio & video visual songs as well as sound recordings. Their primary contention against Defendant nos. 1, 2 & 3 namely Google India Pvt. Ltd. , Youtube LLC and Google Inc. respectively was that the Defendants were infringing copyrights of the Plaintiffs. The Plaintiff stated that whenever a user searched for any of the Plaintiff’s films on the website Google India Pvt. Ltd & Google Inc. the search engine directed the user to YouTube which contained material for which copyrights were owned by the Plaintiff. The content were being uploaded on YouTube and downloaded by users using a facility called “Youtube Downloader” without obtaining

any permission or consent from the Plaintiff. These activities of Defendants resulted into huge financial loss to the Plaintiff as most of the revenue earned by Plaintiff comes from its films, their content such as songs, etc.

The Plaintiff contended that all the three Defendants had common interests, were operating for each other and had used the copyrighted work without any license or any authority which amounted to primary acts of infringement. The Plaintiff also contended that the Defendants had absolute and complete knowledge of the infringing materials on their website as each & every video was examined thoroughly by their huge team of specialists/Data Analysts before being uploaded on the website.

Google India Pvt. Ltd. submitted that although it is a subsidiary of Defendant no. 3 it had an independent management from the parent company and was not an agent for the same in India. Therefore, Google India Pvt. Ltd. was in no position to control or maintain services offered by Defendant no. 3 such as Google search & Youtube.com. Youtube LLC was owned by Google Inc. and Google Inc. had not appointed Google India as its agent in India, therefore, they both should have been served in their own capacity and their summoning could not be done through Google India. It was further clarified by the counsel for Defendant no. 1 that Google search was an automated search engine and merely performed the task of indexing information available across the world in response to a search query that was entered by a user. The content/material was already available on independent third party websites and hence was beyond the control & supervision of Google. The counsel for Defendant no.1 also clarified that Youtube respected the valid & subsisting Intellectual Property Rights of third parties and has always discouraged & disapproved of any attempts to infringe such rights through its websites.

The Hon'ble Additional District Judge observed that the Plaintiffs held copyrights in respect of numerous films, audio-visual sound recordings, underlying lyrics and musical components in said audio visuals songs. The Hon'ble Judge also held that the works of the Plaintiffs were being reproduced and communicated to the public by the Defendants without the Plaintiff's permission or consent.

Dispensing with the requirement of the specific knowledge of infringing content, the court held that once the Defendants were aware of the title of works of Plaintiff, it was upon them to locate the URL and take down the allegedly infringing content. Also, the Court discarded the Defendant's argument that proper take-down request procedure, with specifications of the specific URLs which are being claimed to have been infringing was not complied with or produced, is sufficient to render this claim of infringement invalid.

After an eight year-long copyright battle, Suneel Darshan, proprietor of the Shree Krishna International film production company, has won a copyright infringement suit against Google India and YouTube LLC. The District court of Gurgaon has awarded damages of Rs. 50,000 in favor of the production company and has restrained Google and YouTube from displaying the disputed content on its platform.

2. Ram Sampath V. Roshan Brothers Case

Plaintiff is a music composer and the owner of a proprietary concern 'The Mint' claimed infringement of the theme tune entitled 'THE THUMP' for which they hold copyright. Defendant No. 1 is a music director/composer of repute. Defendant No. 2 is the brother of defendant No. 1 and is a director of defendant No. 3 company which is engaged in the production of feature films and has produced a cinematographic film titled as 'KRAZZY 4'. Defendant No. 4 is a manufacturer and distributor of compact discs (CDs) and audio tapes containing the sound track of music contained in the film 'KRAZZY 4'. Defendant No. 5 is a foreign company engaged in the entertainment business including sale, distribution and exhibition of cinematographic films and audio and video CDs. Defendant No. 6 is an advertising agency acting for defendant No. 5. Defendant No. 7 is a proprietary concern engaged in the media and advertising business.

In March 2007, the defendant No. 7 engaged the plaintiff for producing a musical composition theme tune which was proposed to be used as an audio clip in the advertisement it was to produce for the defendant No. 5. As per the agreement, the plaintiff produced the musical composition/theme tune titled 'The THUMP'. Under the agreement between the plaintiff and the defendant No. 7, the copyright in the musical composition/theme tune remained with the plaintiff and the defendant No. 7 was given a licence to use the same in its advertisements for a period of one year.

The defendant No. 3 has produced a cinematographic film 'KRAZZY 4' and the music for the film is given by the defendant No. 1. The film is said to be due for release (for public exhibition) on 11th April 2008. The defendant Nos. 1 to 3, have given a licence of producing the CDs and audio cassettes of the music/songs contained in the soundtrack of the film 'KRAZZY 4' to defendant No. 4. According to industry practice, audio cassettes and CDs of the music/songs in 'KRAZZY 4' were marketed earlier from the end of February 2008.

In March 2008, the plaintiff was astonished to notice that the music contained a copy of his musical composition/theme tune 'THE THUMP'. He then purchased a CD produced by the defendant No. 4 from market and played and heard it. He noticed that four songs titled on the cover of the C.D as 'KRAZZY 4', 'Break Free', 'KRAZZY 4 remix' and 'Break Free remix' contained copies of his musical composition/theme tune 'THE THUMP' then he filed suit on 1st April 2008 for injunction and damages.

The motion came up before me on 7th April 2008 and on request of the parties the matter was posted in Chambers on 8th April for hearing of the plaintiffs musical composition 'The THUMP' as also the music/songs contained in the audio CD of 'KRAZZY 4'. The musical CDs were played and heard in the presence of the counsel and representatives of the parties present and the matter was fixed for hearing today. In view of the urgency, counsel for the parties were heard briefly and the order was dictated and pronounced in the open court immediately.

In particular, the music of two songs viz. 'KRAZZY 4' and 'Break Free' contained copies of the theme tune 'The THUMP'. The defendants 1 to 3 had infringed the plaintiffs copyright in his musical work 'The THUMP'. The plaintiff was therefore entitled to an injunction preventing any infringement.

Counsel for defendants 1 to 3 made following submissions:

i) The plaintiff was not the owner of the copyright in the musical work 'The THUMP'. Plaintiff had assigned the copyright in the musical work to the defendant 7. It was the duty of the plaintiff to produce on record the agreement between him and the defendant 7 for proving that he was the owner of the copyright in the musical work 'The THUMP'. As the plaintiff had failed to produce the copy and prove that he was the owner of the copyright he was not entitled to an injunction.

ii) The musical work 'The THUMP' was not copied by the defendants in the sound track of their film 'KRAZZY 4'. The musical work in the soundtrack of the film 'KRAZZY 4' was independent musical work of the defendant 1. It was neither a copy nor was it deceptively similar to the plaintiff's work 'The THUMP'. The defendants were not plagiarist as alleged.

iii) Assuming without admitting that the plaintiff's musical work 'THE THUMP' was copied in the defendants' musical work, it was a copy of an infinitely small portion of the musical work 'The THUMP' of the plaintiff. The musical work 'The THUMP' was of a duration of one minute whereas the entire film 'KRAZZY 4' was about 2.15 hours. The two songs 'KRAZZY 4' and 'Break Free' with two remixes thereof were of 4 1/2 and 2 1/2 minutes respectively. The music in those songs which was allegedly similar to the plaintiff's work 'The THUMP' was not of more than a few seconds. At the most it was a copy of a small part extending only a few seconds and therefore plaintiff was not entitled to an injunction. Balance of convenience was in favour of the defendants.

In the event the court comes to the conclusion that there has been an infringement, then instead of granting a relief of injunction the damages would be an adequate remedy and the defendants were willing to provide a security/bank guarantee of Rs. 25 lakhs or such other sum as the court thought fit.

Section 17 of the Copyright Act, 1957 says that an author of a work shall be the owner of the copyright therein. Section 2(d) defines the word 'author' in relation to a musical work as the composer. Section 2(ffa) defines a 'composer' in relation to a musical work to be the person who composes the music. In respect of a musical work the person who composes the music is the composer, author and the owner of the copyright in that musical work. It is not disputed that the musical work titled 'The THUMP' was composed by the plaintiff. The plaintiff was thus the first owner of the copyright in the musical work 'The THUMP'. Under the agreement, he had only granted a licence to the defendant 7 to use and incorporate the musical work in any advertisement for a period of one year commencing from 1st May 2007 to 30th April 2008. The defendant 7, through its counsel admitted that the plaintiff was the composer and the owner of the copyright and that the defendant 7 claimed no ownership in the copyright of the musical work 'The THUMP'. In view of this admission the contention of the defendants 1 to 3 that plaintiff is not the owner of the copyright in the musical work 'The THUMP' is required to be rejected.

The plaintiff has produced on record an affidavit dated 5th April 2008 of Mr. Shiv Mathur as his witness. In his affidavit, Mr. Mathur has stated that he has studied music in London, Vienna and Austria and is an Associate of London College of Music and Licentiate of Trinity College of London. He has undergone rigorous training as a musician and is well conversant and acquainted with Indian and western music. In paragraph 7 of his affidavit, he has stated that he was requested by the plaintiff to give his opinion as to whether the four songs of film 'KRAZZY 4' were in any way a substantial reproduction and/or plagiarized version of the musical composition 'The THUMP'. In the affidavit Mr. Mathur gives opinion in the following words:

The Thump track and the four songs of film KRAZZY 4 share the same musical cadence, rhythmic structure and phrasing, genre of music and melodic structure. It is an uncommon resemblance that goes way beyond the ordinary, for many factors are similar. Both tracks are constructed around one melodic refrain which is of 8 bars. They are exactly the same but with variations in degrees of repetition, obviously due to the different durations for which they were made.

Mr. Mathur has further stated that the main melodic frame of the songs 'KRAZZY 4' and Break Free is exactly the same as 'The THUMP' Track. The expert opinion as produced by the plaintiff thus is that the musical work contained in the musical work 'KRAZZY 4' shares the same musical cadence, rhythmic structure and phrasing, genre of music and melodic structure which goes way beyond the ordinary. The main melodic frame of the songs 'KRAZZY 4' and 'Break Free' are exactly the same as 'The THUMP' track. In short, the expert opinion is that the musical work contained in 'KRAZZY 4' is a copy of the musical work 'The THUMP'. The defendants have not filed any affidavit of any expert in reply to controvert the expert opinion of Mr. Mathur.

Learned Counsel for the defendants submitted that no injunction can be granted on the basis of the opinion of an alleged expert that the musical work in the songs 'krazzy 4' and 'Break Free' contain copies of the musical work 'THE THUMP' of the plaintiff. Expert opinion is weak evidence and until it stands the test of cross examination at the stage of trial, the court cannot rely upon the expert opinion at all.

Although Section 45 of the Evidence Act makes expert opinion admissible as evidence a decision of a court may not solely rest upon an expert opinion. When the Court has to form an opinion upon a point of foreign law or of science or art, or as to the identity of hand writing or finger impression, the opinions upon that point of persons specially skilled in such foreign law, science or art or in questions as to the identity of handwriting or finger impressions are relevant facts.

The expert opinion on a musical work (which undoubtedly is an art) is thus admissible and is one of the relevant circumstances to be taken into consideration while deciding the question whether the musical work of the defendant No. 1 is identical with or is a plagiarism of the musical work of the plaintiff. No doubt the expert opinion would have to stand the test of a scrutiny at the stage of trial, but when the matter is at the interim stage where the motion is decided only on the basis of affidavits and none of the parties have asked for a permission to cross examine any of the witnesses, the expert opinion cannot be ignored only on the ground that it is not yet subjected to cross examination which is due at the stage of trial.

No difficulty arises in grant of an injunction where the defendant infringes copyright of the plaintiff by copying the whole or substantially the whole of work of the plaintiff in his work, whether such work is a literary work, a musical work or a work of any other type, in which copyright exists. A difficulty may however arise when the defendant takes a small portion of the work of the plaintiff and uses it in his work. Section 52 of the Copyright Act provides what shall not constitute an infringement. No defence under Section 52 was raised either in the affidavit in reply or in the oral submissions. I would therefore examine the submission that infringement, if at all there by any, was of a small portion of about 6 seconds.

Finally Defendant 7 accepted infringement of music and later on other defendants also and Bombay High Court initially restrained Rakesh Roshan (Defender 2) from releasing the movie without first deleting its plagiarized part but eventually allowed settlement by between Plaintiff & Defendant.

A cheque of Rs. 1,77,34,600 (after tax deduction) for demand of 2 Crore was handed over to Plaintiff by Roshan Brothers and this case got settled at this point.

Conclusion

Many artists have made critical presentations that attempt to reveal the parameters of computer-mediated communications and the potential for representing pre-existing material, the online textual, visual, multimedia mix (collage) and the hybrid use of images, text, sound and video.

In order to address the risk of unauthorised use of material over the Net, we can refer to existing IPR law and associated remedies for breach of copyright and patent protection. In the instance of false claim of ownership, the true originator would understandably want to exercise his/her rights under copyright law -- abandonment of economic protection does not mean an equal waiver of moral rights. Piracy has always been a major concern for the music industry and can range from individuals making several replicas of legitimate CDs and tapes to the millions sold to help fund criminal or even terrorist activity of organised gangs. In territories such as China, Russia, Brazil and Mexico piracy levels are so high it is exceptionally difficult to develop a legitimate market for recorded music. The music industry loses more than \$1 billion per year from illegal activities conducted in these countries, not including losses due to Internet piracy. There is need to make more improvement and strict implementation of Laws made to protect infringement of multimedia products. Techniques like **Encrypted Codes** and Watermark helps a lot nowadays in prevention from infringements.

Most of the people around the globe are unaware of Copyright and infringement and they think that it's alright to use other's artwork without asking and some people who can feel infringement but not take it seriously gives more space to people who are involved in piracy.

We can see many Bollywood movies with exact copy of South Indian movies and Hollywood movies and a very few audience got to know about it also gives a boost to copying in bollywood as well.

People have to know about IP and also have to respect artwork of the original owner to have a better balance in society.

The issue to properly and efficiently deal with plagiarism in news content is a difficult task as the editors and sub editors, due to their busy schedule often overlook such content. Comparatively, the issue of plagiarism in academia gets caught as there are some tools available online for checking it. It has to be admitted that the grey areas in journalism are increasing at an alarming rate. The call for media debates and discussions on plagiarism can be the first step to fight this issue. The Press Council of India should also intervene for an effective result. Plagiarism is not only the fault of the reporters, but of the whole set up of modern journalism. A journalist must adhere to

original news, that he gathers from the spot and his/her understanding and bring it before the viewers, irrespective of any kind of coercion and pressure.

In India, another problem is the political pressure. Content, harming the image of the political party is not allowed. This has become the reality and when news content goes against the influential people, they tend to buy the content and force the reporters to alter it. In this process, often the reporters end up plagiarizing the news content. The biggest impact that such kinds of plagiarism has on the readers is that they are misled of the ownership and authorship of the news content. It directly affects the trust that the readers have on journalism. Also, one important point necessary to mention here is that it can also affect the research of a country. Students often take help from old newspapers for their research work and if the news contents are plagiarized themselves, then it will directly have a great deal of impact on the research of the student.

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