

## **Copyright and Related Rights Law**

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**WEEK - 03**

**LECTURE - 11**

### **Statutory Definitions of Musical Work**

Welcome back to this course on copyright and related rights law. In the previous discussions, we have looked at two types of subject matter under copyright law: literary works and artistic works. The format of our discussion on these subject matters has primarily focused on the definitions of these works in various copyright legislations in different countries; followed by an understanding of what the terms literary and artistic signify. And subsequently, we have also looked at certain types of literary and artistic works, that do not conventionally sit within the scope of these works. We will follow a similar format for musical works, as well. In this session, we are going to focus on the statutory definitions of musical work.

Take a look at this image. You see a guitar. A guitar is a musical instrument played by an instrumentalist called a guitarist, a skilled individual. In a music band that often consists of a lead guitarist and a bass guitarist, there are different types of guitars.

In playing the guitar, the guitarist is creating music. But is the guitarist, in fact, the creator? As the guitarist falls within the domain of a performer, Is the music, in fact, created by someone else? Since we are referring to a work, the creator being the author, shouldn't the creator of the music be the author and not the performer? Consider this image. You can see a piano. Similar questions that we have asked regarding a guitar can be asked here as well. A pianist who plays the piano is surely creating music.

But is he the creator of music? If he is not, who created the music? As we have been attempting to understand, in identifying whether a work is original or not, we need to verify whether the work is in fact originating from a person claiming to be its author or not. Thus, if the origination of music is not from the pianist, where is it from? Consider this image. Similar to a guitar and a piano, there is another musical instrument here. The drummer is also creating some music. When we had seen literary works and artistic

works, we did not see the need for a separate individual to express the work in such a manner for the authors.

The fact that an author of a book was writing the book was sufficient for its publication and perception. Similarly, for an artistic work, when a painter made a painting, the painting itself was enough to satisfy the objective of visual perception. But it seems that, for musical works, there is a category of persons who are facilitating the expression of the music. In facilitating such music, are they actually the creators of it? That's an interesting question that we must consider. Let us consider the three images that we just saw.

What we will be able to say without any doubt in our minds is that by itself the guitar is just an object. By itself, a piano is just an object. By itself, the drum kit is just an object. But when played, does it create music? Ask yourself. There are many of us who are not trained in musical instruments.

Many of us do not know how to play a guitar or how to play a piano. But many of us have tried, nonetheless. When you tried, do you think it was music that you generated? If it weren't music, what was it? Can we make then some kind of distinction between - sound as music and sound as not music? And does that, in fact, play some role in the determination of an expression as a musical work? When we say that a musical instrument by itself is an object, can we compare a musical instrument to a pen? If the musical instrument is generating music, it is the pen that is generating a literary work. Similarly, it is a paintbrush that is generating a painting. Therefore, can we say that a musical instrument is a tool for creating music? Let us look at another dimension.

In this image, we see an individual who seems to be engaged in presenting the graph displayed on the screen behind her. The fact that she is making a presentation means she is using her voice. Is the mere fact that she uses her voice making it some kind of music? Therefore, can we in some way consider voice in the same manner that we have considered instruments? That is, voice by itself might not amount to music. It could simply be some kind of sound. But a voice like a guitar or like the piano can be used to generate music.

Can we say that? Let us consider our understanding of works of artistic craftsmanship. In the previous week, when we discussed artistic works, we discussed that artistic works are split into three categories. If we look at the UK Act and the Indian Act, they make a distinction between graphic works, works of architecture, and works of artistic craftsmanship. You would recall that specifically with graphic works, the question of artistic quality being a consideration for an expression to be considered an artistic work has been explicitly stated. But this separation has not been stated with respect to works of artistic craftsmanship.

In fact, we understood from the George Hensher versus Restawhile Upholstery judgment, that two considerations need to be brought forth for a work of artistic craftsmanship to be considered an artistic work. One, the skill; and second, the artistic quality. Similarly, can we say that music requires some skill and also some musical sense or quality? Let us take a look at the excerpt from George Hensher that we considered in the previous week. Lord Reid had explained, it is I think of importance that the maker or designer of a thing should have intended that it should have an artistic appeal, but I would not regard that as either necessary or conclusive. If any substantial section of the public genuinely admires and values a thing for its appearance and gets pleasure or satisfaction, whether emotional or intellectual.

From looking at it, I would accept that it is artistic, although many others may think it meaningless or common or vulgar. Imagine a music creator. In the intention of the music creator, his expression may be music. But there are many genres of music that many segments of the public do not find very pleasing. For instance, some subgenres of Rock are not very pleasant to some segments of the public.

But just because these segments of the public do not feel that the expression should be called music, does it mean that it is not music? Therefore, this extract seems to have a reasonable connection with the assessment of what a musical work should be. Let us consider the definition of a musical work under the UK Copyright Act. What it says is that a musical work means a work consisting of music exclusive of any words or actions intended to be sung, spoken, or performed with the music. What is the most striking feature of this definition? It doesn't tell us what music is. It's rather focused on what considerations fall outside the scope of musical works.

We will then, in this session particularly, look at the exclusions that have been made within the provisions. As you can see, it excludes words and actions that are intended to be sung, spoken, or performed with the music. If we consider this along with the Indian Copyright Act, we see that it is similarly worded but has an important distinction. This provision reads, "musical work means a work consisting of music and includes any graphical notation of such work, but does not include any words or any action intended to be sung, spoken, or performed with the music." You would have noted the commonality here among these provisions.

Both do not define what music is. Both seem to be excluding certain considerations from the musical work. But the Indian Copyright Act specifically talks about graphical notations as well. What are graphical notations? If you look at this image, you can see several notations that have been made as an expression on this sheet, also referred to as sheet music. These notations can be read by a person with knowledge of graphical notations as music.

To the uninformed, this would possibly just look like an artistic work with visual appeal. But graphical notations have found a specific inclusion in the Indian Copyright Act and its understanding of musical work. This has a specific significance and something that we will also be looking at in the following sessions on musical work. Let us look at another interpretation of a musical work in a different Act. The Canadian Copyright Act defines a musical work as any work of music or musical composition, with or without words, and includes any compilation thereof.

Now, quite unlike the interpretation in the UK and in India, an inclusion of compilations has been made in Canadian copyright. What are compilations? You would recall that in our discussion on the subject matter of literary works, we considered how the selection and arrangement of information can lead to the creation of a literary work. Thus, in countries such as India, a compilation would be considered a literary work. So in this specific context, a compilation of music would be such that the content, which is music, would be a musical work, and the compilation would be a literary work. But in this particular definition, compilations of music are considered musical works themselves.

Let us consider the point of composition. It seems that any understanding of a musical work is incomplete without an understanding of what composition is. Composition is understood to mean a creative work, especially a poem or a piece of music. It is used as if it were synonymous with music. Is it? And if that is the case, is composition different from performance? Consider this image.

You can see a performance where a group of singers is singing before an audience. This is a performance. As we discussed earlier, like an instrumentalist, if we consider the voice to be an instrument, the singer through that performance is also generating music. So, if we are to answer these questions, what does a singer on stage do? Where a singer is singing lyrics, the singer is not presenting those lyrics in the same way that this person is presenting information from the graph on the screen behind them. The singer is presenting the lyrics in a particular way.

And that way - is that music? Similarly, what does an instrumentalist do? The instrumentalist is using his skills to play the instrument in creating sounds in a particular manner. Now, when we consider the question of whether a composition is, in fact, synonymous with a piece of music, we must consider a possible distinction between an author and a performer. In composing music, is performance necessary? If music could be composed through graphical notations, where would the performance be? In fact, if graphical notations were synonymous with the music itself, isn't graphical notation the expression of symbols? You would again recall when we discussed literary works, we discussed how in determining whether an expression can be considered a literary work or not. We would see whether the expression contains words, numbers, or other symbols. Can these not be considered symbols? And therefore, is this not some kind of literary

work? But as we have seen, even though such an expression would fall within the ambit of something like a literary work having instructional value; on account of the meaning of a musical work under a provision such as this, graphical notations would be considered as musical works.

Meaning what? The composition is, in fact, synonymous with the music itself. But the author is clearly different from the performer. Graphical notations would suffice; no performance would be necessary. Now, importantly, the singer and the instrumentalist are both communicating music to the public. Something that need not be done at the point at which graphical notations are made.

How the singer and the instrumentalist seem to be assisting the author is by helping his work reach out to the public in a better manner. When only those persons who are experts in understanding musical notations would be able to understand what those notations say - the singer and the instrumentalist bring out that magic before the audience. Therefore, we could say that a singer and an instrumentalist provide an acoustic presentation that conveys the music to the audience. In the definition of a musical work, we also saw that words are specifically excluded. Words intended to be sung, spoken, or performed.

They are specifically excluded. Consider this image. A singer who is singing would more often than not use words to sing. What, then, is the point of excluding words? Our understanding of literary works has been that expressions comprised of words would be literary works. But as we saw, a certain type of expression that would otherwise fall under literary work has been categorized as a musical work, but not the words. Words are literary works that are not covered under musical works.

What about action? What could the action component be with respect to music? An action component could include dance that accompanies the music. The performer grooving to the music could be engaging in a dance performance. But the dance itself is a kind of performance that is not directly connected to the music. When a singer sings, the singing can be connected to the making of sound, which can be categorized as music. The case is similar with an instrumentalist.

But this cannot be compared to dance. As dance does not lead to the generation of sound that could be categorized as music, the exclusion of action from the purview of musical works seems to be a sensible exclusion. While we can say that we have understood the exclusions from these definitions of what could be considered musical works, we still do not know what exactly music is. And that is something that we will take a look at in the next session, in which we will understand what can constitute music. And is any sound equivalent to music, or is there a distinction? Thank you for joining me. See you in the next session. Thank you.