

# **Copyright and Related Rights Law**

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**WEEK - 03**

**LECTURE - 12**

## **Meaning of 'Music' - Part 1**

Welcome back to this course on copyright and related rights law. This week, we are focusing on the subject matter category of musical works. In the previous session, we saw how musical works have been defined in various copyright acts in different countries. Something uniform that we have noticed among these definitions is the lack of understanding of what music really is. I'm splitting this into a two-part discussion because understanding music is a complex concept. In this first part, we will look to lay the foundation for a clearer understanding of what this terminology means - and therefore, be better equipped to understand what the subject matter of a musical work really is.

The first question we must ask is whether mere sounds can be considered music. In this image, you can see a person clearly distraught at the hearing of a particular sound. The unpleasant nature of such a sound has made him grimace and has made him want to close his ears. An unpleasant sound is something we call noise.

Certain types of sounds, therefore, can be classified on the basis of an unpleasant perception. Are we saying, then, that a determination of the pleasant nature of sound should be what music is? And it's the perception of the person listening, the perception that is going to decide whether a particular sound is noise or music? What about a cow mooing? Is that music? Music, you'd realize, would be something that is pleasant. Mooing is not unpleasant. But can we say that mooing is pleasant in the nature of music? Are we saying that there are unpleasant sounds that we can call noise? Then there are those types of sounds that are not unpleasant but may not be music. And there is still another category of sounds that we are considering as music.

Take a look at this image, as well. Many of us wake up to the sound of birds chirping. Is chirping music? Is it a pleasant sound that we can categorize within the realm of music?

To understand music better, let us understand what musicality means. The definition of musicality, as you can see, is the quality of having a pleasant sound or melodiousness. What musicality means is that sound by itself can be melodious and, therefore, can have the perception of being musical.

It is not surprising that many chirpings of birds are considered to be musical. But while some sounds can be considered music in itself, what exactly is music? The definition of music according to the Oxford Dictionary is a sound perceived as pleasingly harmonious. If we ask ourselves, "Is all sound pleasingly harmonious?" then clearly we are saying no. Since this is a question of perception, many types of sound might actually hurt our ears, like they are hurting this person's ears. There are still other types of sound that may not traverse the path to a determination of musicality.

But then there are still others that could be considered musical. Would the laugh of a hyena be considered music? I'm sure you are all now at the foundation of your understanding - a very important consideration of how to determine whether a sound is musical or not. Let us look at what a British musicologist, an academic by the name of Michael Spitzer, has to say. He says animals have musicality, but Michael Spitzer explains that behind the making of sounds by animals, there is a purpose involved. This purpose, for example, could be a call for mating; therefore, because this is driven by purpose, there is no willed creation of an expression for itself.

In other words, there is no compositional creativity that seems to be forthcoming from animals. Bear in mind, that we are discussing how certain sounds can be musical in themselves because of the perception that the sound is pleasant. But where such sounds made by animals are being made for the purpose that it is looking to assist; then we can say that the compositional faculty of animals is not present. In fact, this is where human music differs from animal music. Purpose doesn't define sound in humans.

Michael Spitzer explains that this lays the ground for playing with music. It is, after all, humans who have created instruments. But perhaps the greatest of all instruments is a human voice. A voice can be the medium for creating music. But the most important conceptual understanding that we are provided with by Michael Spitzer, is that human sound is driven by a compositional effort.

It is not purpose-oriented as it is in relation to animals. If we then consider another way of looking at music, we can see that the Oxford Dictionary explains music as the art or science of composing or performing music. How do we understand composition? The action or art of producing a creative work, such as a poem or piece of music. When we looked at what kind of expression would qualify as a subject matter of copyright, we understood that it is a creation of the mind. It is then clear that an expression which is the

result of a compositional effort, in other words, a creative work, would be considered a composition.

Or in other words, an expression that is capable of having copyright subsisting in it. We can thus say that some sounds may have musicality, but they are not musical works. Human sounds can be creative expressions. Thus, they are not just sounds; they are compositions that are musical works. Let us quickly summarize what we have understood up to this point.

We are saying that there is a distinction between what music is and what a musical work is. Musical works are a subject matter of copyright. Music in musical works is not just a question of musicality. Some sounds, even sounds such as chirping made by birds, can be considered musical. But because this is not a creative expression, in other words not driven by purpose, we can say that they do not enjoy copyright protection as they are not musical works.

There would have to be a creative expression in the form of a compositional effort. And this is what would lead to the creation of a musical work. Now, can you answer this question? Which human sound is music and which is not? The obvious problem that you must be considering is that, in order for a sound to be considered music—a creative expression, even—it must be determined that the sound is pleasing. It is a question of perception. As we have seen, some sounds can be noise.

But there are those who find certain types of musical genres to also be noise. For instance, Heavy Metal is considered by certain segments of the public to be unbearable. But still, for a large community, it is the kind of music that defines music. Therefore, if we have to consider a particular creative expression and see whether it is musical or not. Whose perception are we considering? On this point, we can take the help of a case we discussed earlier.

In the *George Hensher vs. Rastawhile Upholstery* case, we have discussed how perception can play a role in the determination of whether a work is a work of artistic craftsmanship or not. Let us take another look at the excerpt from this particular case. As 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 or 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.

We had seen from this particular excerpt that it is not relevant that the public feels that a particular tune is musical. Rather, if a substantial section of the public could arrive at such a perception, then that would suffice. What this also tells us is that while every

maker of music might intend it to be musical, that might by itself not suffice to call it a musical work. By analogy, then, if we use this understanding specifically because the perception of music is a very important consideration in whether an expression is a musical work or not, then we find that this excerpt is, in fact, very helpful. What will also help our understanding of music and the consideration of musical works is an understanding of three words: Melody, rhythm, and harmony.

We have seen in the definition of musicality that it is stated that musicality is the melodiousness of sound. What does that mean? Melody, as you can see, is a sequence of single notes that is musically satisfying. What are musical notes? Musical notes, as you can see, are eight notes. Eight notes of sound. In Western music, we refer to these notes as do-re-mi-fa-so-la-ti-do.

In Indian tradition, we say sa-re-ga-ma-pa-dha-ni-sa. The combination of these notes can create a melody. What, then, is a rhythm? The systematic arrangement of musical sounds, principally according to duration and periodic stress, is rhythm. You can see where connections of melodious sounds are made; such connections are referred to as rhythm. Harmony is to play such combinations simultaneously, one over the other.

As you can see, harmony means the combination of simultaneously sounded musical notes to produce a pleasing effect. At its most basic level. We then understand that music is melody, and musical work is that music which is the result of creative expression. You can see in this image that this person listening to a particular sound through her headphones is pleased by what she hears. We can say that the sound she is listening to is music.

Let us look at a case that has made a distinction between sound as music and sound as noise. In *Sawkins versus Hyperion records*, the Court stated that the essence of music is combining sounds for listening to. Music is not the same as mere noise. The sound of music is intended to produce effects of some kind on the listener's emotion and intellect. The sounds may be produced by an organized performance on instruments played from a musical score, though that is not essential for the existence of the music or of copyright it.

Our understanding of music in musical work as a creative expression, then, I hope, is now clearly understood. But something significant that this judgment mentions is the reference to a musical score. Let us take a look at this particular statement once more. It says the sounds may be produced by an organized performance on instruments played from a musical score; though that is not essential for the existence of the music or copyright in it. A way in which we have seen music performed, such as a pianist playing the piano, is a pianist using sheet music.

Many of you must have seen what you are seeing in this image, which is referred to as sheet music, or in other words, the musical score. What we find is that the Court is saying

the presence of a musical score is not essential for the existence of music. What, then, is the score, and is the score something which must be considered different from music? Is the score not representative of the composition? Is the musical score, through its usage of certain symbols, a literary work? And in that case, are we making a distinction between the graphical notation as a literary work and the music that is being carried by it as a musical work? This is something that we will look to explore in the next session. Thank you for joining me.

See you all again in the next session. Thank you.