

Copyright and Related Rights Law

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WEEK - 03

LECTURE - 15

Music v Sound Recording

Welcome back to this course on copyright and related rights law. This week, we have been looking at the subject matter of musical works. We started by understanding what the definitions of musical work are in various copyright acts in different countries. What we found is that there was no clear explanation of what music is in these definitions. These definitions provided certain exclusions, such as the exclusion of words and actions, but did not tell us what music is. In order to understand what music is, we devoted two sessions to looking at the distinction between sound perceived as unpleasant and sound perceived as pleasant.

We then looked at the distinction between the fact of music and the form of music. In today's discussion, at the end of this week, we make a distinction between musical works and sound recordings. This image is one we have considered in previous sessions this week. You know what this image is now.

This image shows sheet music. It is a musical score, a combination of graphical notations, and a composition containing music. Now all of you must be able to clearly state that this musical sheet, the graphical notation in itself, is different from the music. But what is sound recording? Isn't music a sound? And doesn't sound recording mean the sound recording of a musical work or music? When we say sound recording, it is important to note that this is not a musical recording and uses the generic term sound; from our previous sessions, we understand that something like noise is also a sound. Something need not be pleasant or unpleasant in order to be called a sound.

Therefore, sound may or may not be music, and the constituents of sound recording may simply be any kind of sound that may be music or not. Consider this image. You can see a person delivering a sermon. The recording of this sermon can be done in two ways. One, it could be an audiovisual recording.

What do we mean by audiovisual recording? Both the visual and the sound are recorded onto a medium. Thus, whatever this person is professing in his sermon can be seen in a video in which the sound is also captured. Another way is through a purely sound recording. For example, a tape recorder in which only the sound is recorded would obviously not capture any visuals. But a common element in both of these is that the sound has been recorded.

What is the sound here? The sound here comprises the voice of this individual, which has been used to constitute the words of his sermon. What about this image? If a recording of sounds were made at this location, what kind of sounds would get recorded? The sound of falling water, the sound of insects, such as the chirping of crickets. Several sounds that we associate with nature will be recorded in this sound recording. None of this needs to be a musical work. The mere fact that sound of any nature is being recorded is a sound recording.

Let us take one more example. What you can see here is a type of construction activity. As it is, this activity and the sound that it produces are not very pleasant sounds for many, but its recording is also going to be considered a sound recording. But what is sound? Sound is a vibration that travels through the air or another medium and can be heard when it reaches a person's or animal's ear. This is how the Indian Copyright Act defines a sound recording.

It states: 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. You can see from this definition of sound recordings that there is no mention of sound as music. This is very important for us to understand because creating a distinction between sound by itself and music separately creates a kind of distinction between the type of work. There are several other factors that distinguish a musical work from a sound recording. But because we are looking to understand musical works in their entirety, one part of that which we must distinguish is how, despite being called a sound recording, a musical work is different from it.

In this image, you can see a cassette. Now cassettes are not being used as much as they were in decades past. But a cassette, as you can see in this particular definition, is a medium on which such recordings are made. If you play the cassette, you will require a cassette player such as this, in which a certain method is used to produce music from the cassette. Neither the cassette nor the method of producing the sound is a sound recording.

Therefore, what constitutes a sound recording is two considerations. One, the presence of sound—any sound, pleasant, unpleasant, or neither unpleasant nor pleasant—and recording. If these two aspects are present, then that recording is called a sound recording. But the sound recordings that we usually listen to are these sound recordings—

recordings of construction, recordings of nature—they are not. The sound recordings that we listen to are sung by famous singers, such as the recording of Arijit Singh singing.

Arijit Singh's performance covers musical works as well as literary works. Therefore, a sound recording that we generally encounter in our daily lives are not recordings in which there is no clear work embedded. Sound recordings that we usually hear incorporate some or the other work which is being presented by a performer. Consider this image. You can see a studio setting.

In a studio setting, the performer is presenting the lyrics, which are being accompanied by a musical work. Now the recording is being done simultaneously. Studio recordings such as this find their way onto CDs on OTT platforms when they are released by publishers. But at their very basic level, sound recordings cannot be done unless there is a performance in such a setting. What we have understood from our previous session is that a performance such as humming or singing, even if spontaneous, can create a musical work.

There is no requirement for a graphical notation to precede such a performance. Thus, when a recording is made at the studio, if there is no prior existing composition, the performer can create a musical work as he sings. And if any fixation requirement is mandatory for copyright to subsist, then the sound recording can satisfy that fixation requirement. You would note that in our understanding, therefore, musical works accompany the singing. Singing is a presentation, an acoustic presentation made by the singer, and because of its pleasing nature, we know that this is music.

If it's a creative expression, then it is a musical work. Therefore, musical works are only an element in the sound recording. There are other elements, such as the voice of the singer, which is also a sound. The instrumentals, which are either present while the singer is singing or merged by the technician, are also sounds. Therefore, a musical work is just one of the elements in such sound recordings.

What are the other elements? Think about the other elements that constitute sound. As discussed, the voice of the performer is a unique sound. The instrumentals could be many. The guitar, the drum, the piano, and any other instrument. They are all sounds being recorded.

But something that connects all these different elements together is the composition. Therefore, even though musical work is only one element in such sound recordings, it could be the most important element that potentially connects all the other elements. Take a look at this image. What do you see? You can see two musicians, two guitarists, who are performing on the street. It's a kind of activity called busking.

In this activity, performers perform on the street or in other public places for the pleasure of the public and often for payment. But something you can see here is that for such a performance to take place, for such performers to perform, there need not be any sound recordings. There are some other types of public interaction in which an individual would play music in public, say through a cassette player. This will not amount to a performance because there is no performer presenting anything live. Rather, this would be the communication of the recorded sound to the public.

Consider this statement and see whether it is correct. Musical works do not need any sound recordings to exist. If you are saying that this is correct, then you are correct. Musical works do not require any kind of sound recording. You will recollect that musical works are simply comprised of creative musical expressions, which may be created by way of performance.

There need not be any kind of sound recording in order for a musical work to exist. But why is the fixation of musical works important? And those copyright acts which mandate fixations, or in other words, require recording in some form in order for copyright to subsist in the musical work - Why are they mandating such a requirement? As you can see, they require it for the purpose of providing evidence. Evidence of what? If any musician is going to claim that he has a copyright in a musical work. Then we have understood that a musical work will have copyright only if it originates from the composer. Therefore, the expression will have to be original in nature.

There will have to be some distinctiveness in that particular expression as compared to the others. We also understand that it is theoretically possible for different people to arrive at substantially similar compositions. But practically, this might not happen often. But nevertheless, if anybody had to prove that their musical work is comprised of a sequence of notes expressed in a particular way. The best way to do this is through fixation.

We have noted that under the Indian Copyright Act, it has moved away from the requirement of fixation. The specific exclusion that has been made in the interpretation of "composer" is that a composer is a person who composes music regardless of whether they notate it in any form of graphical notation. While graphical notation is not something that is followed in the Indian tradition of music; if recording is done of the musical work, then such recording can serve as a very good piece of evidence and as a practice, this must be something which musicians could use to their benefit. Therefore, fixation is a beneficial consideration, and fixation in the form of sound recording can serve as a way for musical works to be recorded. The only element that must be considered here is, that a performance of this music will be needed in order for the generation of sound, and a sound recording to take place.

Now that we have a sound recording, that is different from the musical work, and that a sound recording can only result once there is a performance of the music - Is the making of the sound recording a copyright of the musical work? Author's copyright? Is the making of the sound recording the composer's copyright? it is. We see in Section 14 of the Indian Copyright Act - it states, copyright means the exclusive right to do or authorize the doing of the following acts in respect of a work or any substantial part thereof, namely to make any sound recording in respect of that work. Therefore, we understand that the composer's copyright not only includes the right to authorize the performance of that composition but also the authorization for making the sound recording. Lastly, let us consider this issue in the context of films. A film is, at its basic, an audio-visual recording, which means that there is a visual recording or a visual perception to which sound is accompanying.

Since this is the consideration. The sound recording, if it comprises music, will accompany the visuals in such an audio-visual recording. Just like how in a sound recording, a musical work could be just one element, similarly, in an audiovisual recording such as a cinematographic film, a musical work could be one of the elements. With this, I hope we have understood musical works in detail. We are now clearly able to make a distinction between literary, artistic, and musical works. Literary works provide informative value, instructional value, or the pleasure of literary enjoyment.

Artistic works provide visual appeal, and musical works provide hearing pleasure. With this, we end this week of our understanding of copyright, specifically the subject matter of musical works. Next week, we will look at the fourth subject matter, which is dramatic works.

Thank you for joining me. See you next week. Thank you.