

Copyright and Related Rights Law

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LECTURE – 29

Copyright Society - Part 1

Welcome to this course on copyright and related rights law. This week, we have discussed sound recordings and cinematographic films. We have understood how copyright can subsist in such works despite their not satisfying the criteria of originality. What we will be looking at in two sessions, today and the next, is the understanding of copyright societies. A copyright society provides an important link between the creator and the users. We will understand how such copyright societies function and in what manner there are issues surrounding such copyright societies and their functioning.

Let us start with a thought on what it is that a composer would like to spend his time doing, or rather, what a lyricist would spend his time doing. As we have discussed, subject matters and our understanding of originality lead us to think that a composer and a lyricist are both creative professionals, and therefore their time would ideally be spent developing creative expressions. Would a composer have the kind of skill and the time to engage in an effort to monitor the usage of their composition? To make a sweeping statement such as that would not be right, because there could be certain composers who have such capability and such an interest. But wouldn't it be very troublesome for a composer to identify each such usage irrespective of where it is happening, as opposed to the time and effort he would rather spend creatively?

We have discussed how, in *IPRS versus Eastern India Motion Pictures*, a 1977 Indian Supreme Court decision, the court explained that where music is played for the music itself, Say, for instance, it is played on an aeroplane for its passengers; then, who would be eligible for the revenue generated from that particular music and its communication? In other words, who is going to be authorizing such usage? Is it the composer? Is it the sound recording producer? But irrespective of who has to authorize the communication of the music, one thing is clear that the composer generally wouldn't have the kind of logistical ability, to assess whether such usage has happened and the means to ensure that collection is done and it is received by him in a way as he desires.

Communication of music on an airplane is just one example. There are several such communications happening across various bodies, such as restaurants, hotels, and cafes. Identifying usage is a tough task, and therefore, for a composer to engage himself completely in such an endeavor would take up a lot of time and involve a lot of stress. He could essentially place this task under the responsibility of another body that can represent his interests. Which is where we must consider that if this is the goal of a composer, then all composers or many composers are sharing this goal.

Thus, if these composers can come together, pool their resources, and create a body that can exclusively deal with matters of copyright management as opposed to copyright creation, then such a body can take care of their common goal of monitoring, monitoring usage and revenue collection and distributions. The same would be true for other authors as well. Lyricists, for example, can come together. Scriptwriters can come together. Sound recording producers can come together.

The important point we must keep in mind is that there is a common purpose for the creation of such a body. Let us look at some of the dimensions of this common purpose. First and foremost, the most important purpose is the authorization of usage. Any potential user who is looking for authorization from the owner of the copyright will be greatly facilitated if there is a set body from which such authorization can be obtained. It would cut costs; it would save time for the potential user.

Where, instead of searching for who has the copyright over a particular work, he can simply take such authorization from a particular body. So, if a specific composition has to be authorized or a specific composition is being sought for authorization, then, because a representative body is authorizing compositions generally and the composition for which authorization is sought is something that this body will authorize, it saves a lot of time and effort for such potential use. As you must have understood, such an authorization would take into account whatever rights are given by the copyright holder to the copyright society. Because the copyright society, as we understand it, is a link between the copyright holder and the user. Therefore, the authorizations permitted by the copyright holder are the only authorizations that the copyright society can make.

The second important function that a copyright society undertakes is that once authorization is granted, its role doesn't end. It will then have to see whether the authorizations are being abided by. Why is this necessary? Any authorization could come with limitations. For example, consider licensing for music communication on an airplane. Now, how many passengers are we considering for an airplane? If the license is given for 30 passengers, but the music is actually being communicated in a large airplane with, say, 200-300 passengers, then clearly there is going to be a violation of the agreement.

Therefore, a copyright society must also keep track of whether the agreement is being abided by, and it does so through monitoring. Monitoring requires its own specific set of skill, for instance tracking it through agencies which record usage for example over broadcast, or sending their own agents physically to establishments such as cafes as you can see in this image, where they can go to the cafe, and see whether communication is in fact in line with the agreement or not is something that copyright societies can undertake. Nevertheless, monitoring, as you must have understood, plays a very important role in seeing whether the agreement between the potential user and the agreement between the user and the copyright society is being abided by or not. With respect to utilization, we must understand that any utilization of a work comes with a payment that needs to be made in consideration of such usage. Collection of revenue, because it is based on utilization, could be done in two ways.

One where perceived utilization can be made beforehand and a blanket amount can be paid. On the other side, if utilizations are dynamic and cannot be decided on a predetermined manner, then based on the actual utilization, if payment is made, then collection of that revenue becomes increasingly difficult, but be it at the time of the agreement that the consideration is paid or at the time of utilizations, this is also a task that copyright societies must undertake. Once collection has been made, it is then also the task of copyright societies because you would realize copyright societies, at the end of the day, are collections of members. Members share a common purpose because they are creative professionals. Since their work is being used for which revenue is collected, the money should come back to those creators.

Therefore, the copyright society effectively carries forth a circular duty. It comes back to the point at which it starts, which is it starts with representing the work in terms of authorization and it goes around, and completes the connected tasks to come back to the creator with the money collected from the utilization of his work. Therefore, if we understand a copyright society as a bridge, it serves as an important or easy example for us to understand such societies. A copyright society connects the right holder with the user, and because we are considering it as a bridge, the bridge also needs its own maintenance costs. This is to say that the society itself need not function on a profit basis.

It is a not-for-profit body that is working with the common purpose of undertaking tasks that creative professionals would otherwise not have the ability, time, or patience to spend effort on. Let us now consider the scale of usage. Imagine that the usage of a work is spread out across a particular state. In this case, let's consider Rajasthan. Rajasthan is a large state.

To undertake monitoring of usage in the state of Rajasthan would require a large scale operation. But that is just one state. What if we consider an entire country? Music communication, for instance, is not restricted by borders. The communication of music

generated by a composer in Rajasthan isn't just restricted to Rajasthan. If it is communicated in Telangana, operations which can monitor utilization and collect revenue from Telangana must also be present.

What about usage around the world? Since we said that music is not restricted by borders, the composer from Rajasthan will have a market not only in Rajasthan, not only in wider India, but also across the world; therefore, any such representative body would have to not only represent the interests of such composers in their home state, but also in the country and around the world. Let us then consider a question that will help us understand how this can happen. The question is how a foreign author can earn from the use of their work in India. Let us understand that intellectual property abides by a general principle called the doctrine of territoriality. What this enunciates is that an intellectual property right holder does not automatically gain intellectual property rights in other parts of the world simply because he has been granted intellectual property protection in his home state.

So if copyright is granted to an individual who is a citizen of India in India, it does not automatically mean that this author has a copyright in the US, the UK, or Brazil. This is very clear from Section 13, which we have discussed in the previous sessions as well. Section 13 is a provision that talks about works in which copyright subsists. Under Section 13, as you can see, it is very clearly provided that, with respect to published works, the work must be first published in India and the author must be a citizen of India. With respect to unpublished works, it states that authors must be citizens of India.

In the case of architecture, because architectural works are present on the building itself, it is more a question of where the building is located. And therefore, it states with respect to an architectural work that the work must be located in India. This is a representation of the doctrine of territoriality, but what section 13 provides is that if under section 40 of the Indian Copyright Act, there is an extension of application of copyright to foreign authors on account of international obligations, then such an extension would apply. In that context, under section 40, we must consider the international copyright order, an executive order that was passed by the central government. And under this order, for instance, if a work is published by a citizen of a country that is a member of the World Trade Organization, then it is as if the work is first published in India.

The international copyright order is a complex system in terms of its application. I am merely providing an example of how foreign authors can earn from the use of their works in India. Illustratively, if we understand that an author who is not a citizen of India publishes a work in the UK, because the UK is a member of the WTO, it will be as if that work is first published in India. Therefore, copyright would be protected in India through the Copyright Act, despite not satisfying this groundwork under the doctrine of territoriality. What this means is that if foreign authors can earn from the use of their

work in India, similar arrangements exist for Indian authors to also earn in foreign countries for the use of their work in those countries.

Therefore, because a copyright society based in India is extending logistical abilities in the country, it would make sense for such a copyright society to be in agreement with copyright societies in other parts of the world. To ensure that this common purpose, which is shared among composers around the world, for example, is satisfied. Let us consider the IPRS. IPRS is the Indian Performing Rights Society. It is a representative body of composers, lyricists, and publishers of music.

IPRS is an Indian company. IPRS, as you can see, is a representative body. It is working toward the goal of monitoring usage, authorizing usage, collecting revenue, and distributing revenue. Importantly, it is also the sole authorized body for issuing licenses with respect to musical works and literary music in India. IPRS engages in reciprocal agreements with other copyright societies and representative bodies in various parts of the world. For example, IPRS has a reciprocal agreement with the Brazilian Union of Composers (UBC).

The way this will work, as I have explained, is that if an Indian composer whose music is being utilized in Brazil is to gain revenue from such utilization— UBC will enable such utilization, monitoring, and collection of revenue. Similarly, for a Brazilian composer to earn from utilization in India, IPRS will enable such usage. Let us also consider the question of what happens if there is a violation of copyright. Because we have understood that copyright societies are monitoring usage, they are authorizing usage, and therefore, If they find unauthorized usage, then what happens? Can copyright societies take action on behalf of their members? Yes, they can because copyright societies work as either owners. That is through an assignment agreement between the rights holder and the copyright society or as exclusive licenses.

The copyright society can bring infringement suits where there is unauthorized use. So you can see a copyright society serves a wholesome purpose for a composer who does not have the ability to monitor utilizations, even if he can grant utilizations. He cannot possibly be doing the task of monitoring collection and distribution individually himself; therefore, it serves as a common goal and purpose where composers can come together. Where authors can come together, they can empower a body, which is a Copyright Society, to do these tasks for them. In the next session, we are going to continue our understanding of Copyright Societies, where we will look at some more important issues.

Thank you for joining me. See you all in the next session.