

# **Copyright and Related Rights Law**

**Dr. Rohan Cherian Thomas**

**Faculty of Law**

**NALSAR University of Law, Hyderabad**

**WEEK - 06**

**LECTURE – 30**

**Copyright Society - Part 2**

Welcome back to this course on copyright and related rights law. In today's session, we are going to continue our discussion on copyright societies. We have already seen how copyright societies function. We understood that a copyright society works as a bridge between a copyright holder and the user. And the entire gamut of activities that are necessary for effective management of copyright is undertaken by copyright societies. In carrying forth that discussion, we'll be looking at certain issues in such functioning.

Take a look at this image. We considered this image in the previous session as well. But ask yourself, is only a composer interested in the communication of the music on the plane? We had discussed that a copyright society would connect such an authorization for the communication of music on the plane with the rights holder. So the rights holder will authorize such communication through the copyright society, and the copyright society will then ascertain utilization, collect revenue, and distribute it to the rights holder.

But where such communication happens in the aeroplane, is it only the composer who is interested as a right holder? We must then understand how this communication is happening to passengers. Let us understand that music is not performed on the aeroplane. Rather, music is being played through a device. And where such communication happens, a recording has to be played. And because a recording is being played, it is a sound recording that the passengers are listening to.

In the sound recording is a constituent musical work. You will also realize that for sound recordings that are essentially composite works, we are considering the existence of other underlying works as well. For example, there could also be literary works. But nevertheless, in looking at this particular image and this particular question again, on who is interested in terms of copyright with respect to that communication, we can then see that music labels, composers and lyricists are all interested parties in such a communication. Because when a passenger listens to this sound recording, he is in fact

appreciating not just the sound recording, but he is also appreciating the music and the lyrics as well.

Can we extend this understanding to films as well? When we watch a film, who is the interested stakeholder? Is the scriptwriter the only interested stakeholder? Clearly, he is the only interested person. There are other interested parties as well. For instance, the music producer, the composer, and the cinematographic film producer— all of these entities are stakeholders within the realm of films as well. Therefore, although it is only a sound recording that is being played and although it is only a film that is being shown, the interested parties are also parties who are the underlying work authors. Consider what if the music was being communicated and not the film? In this example, the music that is communicated to the film watchers is being conveyed because the film itself is being shown.

What if the music were separated from the film and then utilized for the music itself? We have seen that the Indian Supreme Court, in a very important decision in 1977 in *IPRS versus Eastern India Motion Pictures Association*, has stated explicitly that a film producer can defeat the right of the musical composer through the application of 17(b) and 17(c). To quickly recall what these provisions stated, you will remember that section 17(b) spoke about the making of a film for valuable consideration, wherein the first owner will be the person at whose instance the work is made, which will be the producer. And second, where it is a contract for service. Even in such a situation, the film producer will be the first owner. We had seen that because the film producer is the first owner of the underlying work, there is no independent usage of that work that can be made by the film or by the music composer.

What the 2012 amendment inserted in section 17 was a proviso that read, as you can see on the screen: 'Provided that in case of any work incorporated in a cinematograph film, nothing contained in (b) and (c) shall affect the right of the author in the work referred to in Section 13(1)(a).' What this proviso has done is override the application of 17(b) and 17(c) to defeat section 13 application. We had seen in section 13, which talks about works in which copyright subsists, that the cinematograph film work will not affect the separate existence of the underlying works. But 17(b) and 17(c) were giving first ownership to the producer, which this proviso has removed. And therefore, if the music is being communicated and not the film itself, then— this is something which the composer can exercise for himself and does not have to depend on the film producer.

Let us consider the alternative query. What if music is not communicated as separate from the film? In such a case, we understand that a cinematograph film, which is a visual recording, would also include the sound recording that forms part of such a visual recording. Which means that when a cinematograph film is shown and the music in that film is heard by audiences through such a showcase, Then it is the film that is being

communicated and not the music that is being communicated for the music itself. Having said this and realizing that cinematograph films are stand-alone works, they are different from the musical work. Is there still a connection that composers have with the communication of the film? Because clearly, when a film is being shown, the music that is heard by the audience, which is part of the film, is not inherently connected to the film itself, but rather to the composer.

Can it be stated that the film is, in fact, completely standalone and completely separate from the composition? We must then understand a very important consideration regarding revenue in copyright systems. Whenever there is an agreement over a professional relationship to contribute to a particular work, such as the relationship between a producer and a composer. There could be a signing amount, as in an amount agreed upon in the terms and conditions between the producer and the composer; a certain signing amount is provided to the composer. Now this signing amount would ordinarily take into context the services that are forthcoming. But because revenue is inherently connected to the utilization of a particular film, the producer would, in effect, be better off sharing percentage revenue from the profits that he is gaining from the market.

And this is where we arrive at a very important term used in copyrights - royalty. The term royalty is not defined within the Indian Copyright Act, but rather, royalty, as we have understood it in practice, means income derived from future utilizations, which, at the point of signing, is not clear. So, for instance, if the agreement states that from the profit, 2% or 5% royalty will come to the composer, then depending on whatever utilization the film is being put through, For example, it could be an OTT agreement, an over-the-top agreement such as with Netflix. It could be DVD sales. Through these, whatever revenue is coming in, there will be a certain percentage that gets connected with the composer, and that amount is what we are referring to as royalty.

In terms of whether this royalty claim will exist even after a film has been released and if this is a mandatory claim, something that cannot be done away with by the producer, it has been the subject of intense debate. As well as consideration by the legislature in the inclusion of a new right, which in itself is being contested, called a right to receive royalty. Because this is contested and requires in-depth study. This is something that we are looking at in much more detail in the later sessions of our course. But coming back to our discussion on copyright societies, different stakeholders are involved in the communication of a work, and these stakeholders have their own common purposes—copyright societies represent different works.

You can see how the registration of copyright societies can therefore be beneficial because the registration of a copyright society can serve as an important tool for regulating copyright societies. Let us now consider the question of the registration of

copyright societies. Section 33 of the Indian Copyright Act states that no person or association of persons, without the authority of the central government and in effect mandating registrations, can carry out the business of issuing or granting licenses. Copyright management organizations, or in other words, copyright societies, you must have understood that this is a collection of similarly minded individuals with a common goal in mind. It's possible that there are different collections existing for the same kind of work.

But it is a matter of policy that a particular country can choose the manner in which copyright societies function in their jurisdiction. In the Indian jurisdiction, Section 33 talks about the registration of copyright societies. This particular framework also requires that ideally there be only one copyright society for a particular kind of work. But with the exception of the central government, there can be more. If we consider the advantage of what this can pose, it is that a single society can serve as a central node of regulation as far as the central government is concerned.

The tariffs that will be generated by the copyright society, because these are being imposed on the public, indicate a direct connection that the central government has with respect to the regulation of such societies. Therefore, where India has required the registration of such societies, it is with a particular policy purpose in mind. In other jurisdictions, such as in the US, for example, copyright societies can be more than one in number with respect to the same work. And there is nothing in the statute which prescribes an ideal number of copyright societies. Let us compare the Section 33 requirement with Section 30.

Section 30 of the Indian Copyright Act provides that copyright owners can engage in licensing. Quite naturally, because copyright owners are interested in authorizations for the purpose of revenue generation, such authorizations would be possible only by way of transactions, and these transactions would be licenses. So in a case where a copyright holder has engaged in an assignment, which means supposing a composer has transferred his ownership of that composition to the copyright society, then we can say that now the copyright society is the owner. So what section 30 is saying is that the copyright society can engage in licensing. You can therefore see the conflict that arises between section 33 and section 30.

Let us consider other businesses that are engaged in the business of issuing or granting licenses where such businesses are not registered copyright societies. Let us consider PPL. PPL is the Phonographic Performance Limited. The members of PPL are music labels such as SareGama and Sony Music. PPL is a registered copyright society.

PPL is one of the oldest businesses that is engaged in the issuance of licenses with respect to works that have copyright in them. Another business that is in the business of issuing

or granting licenses is Novex. Novex also represents music labels such as TIPS and Zee Music. Because these businesses are unregistered copyright societies, it has given rise to the question of whether registration is a mandatory requirement and if, without such registration by a business, it can then engage in licensing. This question was taken up by the Bombay High Court in the case of Novex Communications versus Trade Wings Hotels Limited.

As you can see, the court is considering the question of whether organizations like PPL and Novex could carry on the business of issuing licenses without being registered as copyright societies under Section 33. In other words, does Section 33 prohibit any person or association of persons from carrying on the business of issuing licenses without registration? What we had also considered when we made a distinction between Section 33 and Section 30 was that section 30 empowers copyright owners to engage in the issuance of licenses. If an assignment has been made in favor of such a copyright society, or in other words, if we just call it a business, if an assignment has been made in favor of such a business then section 30 empowers them to engage in licenses. So, the court explains, there is a clear distinction between the rights of copyright owners under Section 30 and the restrictions imposed by Section 33. It is reasoned that carrying on the business of granting licenses cannot be excluded from Section 30, particularly when such granting of licenses is by the owner of the copyright.

The power under Section 30 to grant licenses by an owner has in no manner been diminished by Section 33 of the Act. What the court also remarked was that PPL and Novex had, in fact, filed their suits against rank infringers who had failed to obtain licenses for the works they were exploiting. What you see here is a policy prerogative. If indeed section 33 is to be upheld, then it would mean that owners of copyright who are legitimate owners have a legitimate transaction between, say, the music label and such a business. Then it would invalidate the effect of the licensing provision within the Copyright Act.

According to the court, that cannot be the case. If that is, in fact, upheld, then it will give a kind of license to piracy, to infringement by rank infringers who would consider this as a leeway to not take licenses. Let us also look at a very important transformation that has occurred in the Indian Copyright Act through the 2012 amendment. Prior to the 2012 amendment, copyright societies were under the owners' control.

Owner, as in the copyright owner. The legal reasoning here is very simple: whatever a copyright society undertakes, whatever responsibility a society assumes, such a responsibility must be authorized by the original copyright holder. And therefore, in the management of the society itself, the primary concern is that of the owner themselves. In fact, to supplement this understanding, we can consider the Supreme Court's decision in *IPRS v. Eastern India Motion Pictures* in 1977. We had noted that the role of underlying

works in cinematograph films was something that the Supreme Court had stated very clearly could be defeated wherein 17(b) and 17(c) were used. With the 2012 amendment and the realization that underlying work authors should be given fair treatment. With the understanding that underlying work authors should not be completely separated from their work and that their connection to the work must remain, even if the work is not being communicated separately but rather as a composite whole. The 2012 amendment has brought to the table collaborative sharing of responsibility between authors and owners. As we have seen, an important inclusion made by the 2012 amendment is the right to receive royalties, which makes the underlying work's authors right holders. And therefore, to say that owners of copyright are the only ones responsible for copyright society would be erroneous.

Up until this point, we have discussed authors' interests with respect to copyright societies. But what about performance? Performers such as singers, would it be possible to watch a film without performances? Would it be possible to hear sound recordings without the performances? And therefore, just as a common purpose of copyright management is important for authors, similarly, the management of performers' rights is important for performers such as singers. In fact, performers' society, very similarly to copyright society, can be registered in India. With this, we have come to the end of week six. In these six weeks, we have discussed six types of subject matters, four of which are considered on the anvil of originality and two that are unoriginal but still have copyrights subsisting in them.

We have also understood the functions of copyright societies. Next week, we are going to be looking at related rights, specifically the related rights of performers' rights. Thank you for joining me. See you all in the next session. Thank you.