

## Copyright Infringement and Exemption Clause on Indian Copyright Law: Issues and Challenges

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The production or use of copyrighted material without permission of the copyright holder is copyright infringement. Copyright laws grant the owner of the copyright exclusive rights to their own creations, imaginations, and ideas for a limited time. Intellectual property rights protection and enforcement will promote social and economic well-being, protect individual rights, and promote trade, competition, and innovation. Exception and limitations in Copyright Laws are provisions that allow the use of copyrighted works without prior authorisation or a license from its owner in the public interest. But there has been seen that copyright infringement is taking place in the society. As the Clubs, bars and five stars restaurants are playing music by DJs of the famous singers and earning huge money day by day. It is pure economic exploitation of the creativity as per laws where singers should get the royalty benefit out of the income. If these people would get royalty, then they could pay some amount of royalty in the name of taxes to the government which would help and benefit in the country's economy. There is relation between copyright and economy as it is for public welfare because copyright means human being's creativity and the vice versa economy mean public income. So the aim of this research work is to share probable suggestions for the different issues on copyright exemptions clause under Indian copyright laws. This would also helpful to stop the economic exploitation of the singer as well as to raise country's income which leads to public welfare.

**Keywords:** Copyright, Economy, Public, Welfare, Exemption Clause

Intellectual Property Rights is the creativity or creation of a human being. The people living in a society generally appreciate the fruits of human knowledge because they believe that this is for the benefits of the people in the society.<sup>1</sup> IPR is the subject matter about human new ideas and thinking. It values the human beliefs and desire as it considerable for the benefits of the mankind. IP and economy are purely giving the benefits to the creator, owner and inventor. This benefit is only provided with the monetary value. This monetary value of an individual is supported in the economy of a country. Therefore, the country's wealth is vice versa depended in one way connected to Intellectual Property.<sup>2</sup>

Intellectual property (IP) is a natural area for economic law analysis, and copyright is one of the most important types of intellectual property.<sup>3</sup> The fact that intellectual property is a component of the "public good" is one of its distinguishing characteristics.<sup>4</sup> When a work subject to copyright protection is created, the cost of creating the work is often high. This is true whether the work is created by the creator or by those

who have access to it. For example, a book, movie, album, dance, lithograph, chart, business directory, or computer software programme are all examples of works that are subject to copyright protection. The open accessibility of copies gives the user open hand to make more copies which usually leads to drop of demand and cheaper in cost.<sup>4</sup> However, the music and entertainment industry are one of the major stakeholders in copyright law. With this context, its needs to be protected in every single means. The objective behind this paper is not only to unearth the economic aspects of intellectual property but also making a pin point analysis of it with the exemption clause available as per the Indian Copyright Law.

### Exploring the Challenge with Problem of Copyright

The biggest challenge in this area is reflective of the economy and copyright. When in the music and entertainment industry, licencing copyrights is a popular topic.<sup>5</sup> First thing which comes to the mind of people residing in the society is that of the Clubs, Pubs and the dancing bars with that of Restaurants. These places are earning huge money daily because of only one that is the music or the song which they play

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in these places. Such places are mainly decorated with good interior, good foods, highly maintained staffs and D'Js who play music. But the important thing is only the music of singers rather they are just coping the original works and making money. Weekend youths and elderly people can be found visiting the place for fun and to enjoy a good life, which is more commonly associated with the Western culture.<sup>6</sup> But it is to be noticed that though these places are earning money, but 'are they giving any credit or royalty to these singers' answers is straight away no.

Making a song is not a simple task; it requires the efforts of a lyricist, technicians, musicians, and a sound department, before the singer can even begin to perform. When any song become popular or famous the credit always goes to the singer that he or she sings quiet pretty well, even they receive different kinds of award for their achievement and one time money that is being contracted and it is dealt by "Work for Hire Doctrine".<sup>7</sup> What about others people who really or equally worked hard to make that particular song to be famous. In India laws are lacking for application to address these challenges.

### **Interrelation between Copyright and Economy**

An intellectual property concept includes property that results from all intellectual creations.<sup>8</sup> A popular definition can be found in the WIPO Convention, which lists the intellectual property rights. According to this provision:

*"intellectual property' shall include the rights relating to: literary, artistic and scientific works, performances of performing artists, phonograms, and broadcasts, inventions in all fields of human endeavour, scientific discoveries, industrial designs, trademarks, service marks, and commercial names and designations, protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields".<sup>9</sup>*

Even though intellectual property is currently believed to be in the XI century, there are legal scholars who believe that intellectual property has evolved into an 11th century property right. i.e. in the early stages of the "information age, these attributes have clear connections to the new and innovative features sought by various markets."<sup>10</sup> Today, the argument over whether or not there is a strong interdependence between economics and intellectual property is no longer a matter of contention. The standard division of intellectual

property into industrial property and copyrights and related rights applies to both lawyers and economists. Patents, trademarks, designs, and geographical indications, a large segment of each enterprise's 'intellectual capital,' are commonly dealt with in regards to industrial property, however, these legal measures are also important tools in each country's development.<sup>11</sup> Recent scholarly work has increasingly looked at important aspects of patent regulation, with the goal of learning more about their effects on innovation, marketing, and economic growth. Structural issues include issues related to the structure of organisations, as well as previously unplanned aspects, ranging from rules that appear unrelated to patents to translations of patent policy into innovation and R&D.<sup>12</sup>

From the trademark standpoint, the relationship to economics is even more obvious. A trademark's fundamental purpose is to identify and assist the client in selecting the right products or services.<sup>13</sup> In addition to various identity features such as certificates and trademarked names, the integrity of one's quality or standard is further insured by an independent seal of approval, also known as a mutual trademark. Both the trademark's value and the value of the economic benefits it generates are intangible assets to be taken into consideration.<sup>14</sup> Aesthetic and geographic elements such as architecture (as related to the aesthetic dimension) are also an important part of industrial land's overall economic impact. As such, the issue of copyright and neighbouring rights should not be overlooked. The internet and digitised works have contributed to the continual updating of copyright.<sup>15</sup> Economic effects tend to predominate within those systems. There are attributes to decide the economic relation stronger, these here below:

#### **Basic of Economical Relatives**

The purpose of copyright is to help society as a whole because it is generated by human thought and for the human beings. In the course of day-to-day copyright dealings, it is easy to lose sight of this wider context, but it is important to keep in mind, particularly when we consider ways to strengthen the current system of copyrights.<sup>16</sup> Rather, it is to protect and give what authors deserve; in other words, hard work should be rewarded and authors should retain control over the fruits of their labours.<sup>17</sup> Thus, exclusive rights allow creators to profit from their work.<sup>18</sup>

#### **Theories of Copyright-Economy**

There are few theories which are connected with copyright and economy.<sup>19</sup> Theories on personality

look at keeping the artist emotionally attached to their work. The rights derived from personal philosophy include author's rights to be credited, the right to keep one's work out of public view, the right to decide when to publish, the right to demand that work be returned, and the right to be shielded from unfair criticism. Since Civil Law countries, such as, EU member states, incorporate personality theory and associated moral rights, such theory and rights are more prevalent in these countries.

To some extent, copyright theory can be used to promote the overall good of society, and support the best possible benefit for the greatest number of people. To offer the best opportunities to make works and make works available to the greatest number of people for the common good, this method combines producing with providing access (e.g., exclusive rights and subsequent termination of those rights). There is a big contrast between the focus of the theory of welfare on the common good and the other theories of justice and personality, as well as an extreme divergence in approach to intellectual property, which is considered to be a necessary evil in order to promote the development of public goods. Reform that is motivated by the need to help the poor will most likely invalidate copyright protection for certain works, even though they would still be created in "optimal" amounts. For starters, advertisement is produced for the selling of certain goods rather than for any individual meaning. Consequently, commercials will continue to be made with or without copyright rights.

Cultural theory holds that legislation can serve to create a just and desirable society. The belief that the government should promote works intended to improve society tends towards paternalism, as it presumes to promote works without demanding existing demand. While both cultural theory and welfare theory consider how the law influences behaviour, cultural theory sees the law as focusing on the future and welfare theory looks to the past. Copyright policy can have the greatest impact in a number of cultural fields including diversity, literature, education, and democracy. Thus, culture theory-motivated reformers of copyright may try to recognize and reduce barriers placed on educational uses by copyright law. Combined, they provide a partial explanation of how copyright serves many purposes. In exchange for granting individuals economic and moral rights, society receives new

works that benefit the greater community. The theories all boil down to making small changes to the system.

### **Analysis of Exemption Clause**

To gain copyright, creators must show that their work is an original expression of the author's creativity. This serves to protect intellectual property rights, ensuring that others cannot copy another person's work without permission, thus ensuring access to knowledge resources for all. This also requires an overview of the consequences for creativity, and temporary monopoly or limited discrimination. The 'public benefit' dimension is one of the most important economic insights into intellectual property. The produced research involves fairly high cost of the author's time being expressed. And once the copies of the produced work are available on the market, they are subject to very low-cost non-rival consumption.<sup>20</sup> In other words, the information products, including the copyrighted content, have high fixed manufacturing costs and relatively low marginal reproduction and distribution costs. Without restricting copying of the original work, the estimated income from the author will be far below the estimated expense and there will be no motivation for further production for him or her.<sup>5</sup> In general, it is accepted that a lack of copyright would result in underproduction for creators.<sup>22</sup> These two features limited distribution and strict enforcement of copyright protection determine whether or not the creator holds temporary market power in the marketplace.

In such a situation, the principle of 'public good' and the benefits that accrue to the larger public from the creative contribution of the author are set aside, and the larger society is required to bear high social costs to ensure the uniqueness of the author's creative contribution. Because of market power, in this instance, authors and their publishers have an incentive to provide above-marginal speech value. If books are priced at a higher marginal cost, they sell fewer copies. A copy-loving person might instead buy something they value less.<sup>23</sup> A decrease in access to copyrighted material is causing a loss of social utility. It clearly demonstrates the considerable weight that international trade should have on copyright policies in order to keep copyright property owners' rights and copyright users' rights in balance. Copyright rights must therefore be limited in length and period. The copyright scope includes the purposes on which

protected content may be put without authorisation.<sup>24</sup>

For example, a wide range of copyright prohibits any unauthorized use; a narrow copyright allows unlawful uses under fair use exceptions. A vague, often litigated line divides unauthorized copying, for example, fairly and unfairly. Also, as an attempt to minimize the social cost of monopoly, the duration of copyright rights is limited. If the copyright owner can distinguish between consumers by willingness to pay, the dead weight loss could be minimized. Data contained in the intellectual property material can display public good characteristics.

If technological breakthroughs are offered in terms of copyright, improved economic efficiency and greater investment efficiency should be expected, especially in those industries manufacturing products with a large proportion of intellectual property material. Yet there are certain external costs for the society, stemming from the restricted access to copyright users as well as costs of administering copyright protection.<sup>25</sup> In this light of 'Public Good' situation, it is expected to explore the nature of copyright exemption or exception clauses. Therefore, the analysis of the fair dealing and fair use is most important in this regard. Along with that live performance, sound recording and cinematograph film is also connected with this.<sup>26</sup>

#### Fair Dealings and Fair Use

Fair dealing in terms literary, dramatic and musical or artistic works includes different facets of copyrighted work.<sup>27</sup> As per Section 52 of Indian Copyright Act, the exemption in relation to fair dealing is specifically denotes 'not to copy'. This terminology applies in mostly in literary work in academic field. In academia others work should be acknowledged in writing. In other way the fair dealing in relation to dramatic, musical or artistic work a bit different. With these note the fair dealing is intermingled with fair use concept.

Henceforth, this act of fair dealing and as well as fair use in terms of copyright is a myth due to the technological advancement. It is very rampant these days that copying of other works is very easy without acknowledging. The public use with a clause of research purpose and earning benefit out of it cannot be a fair use. The purpose of fair use is also manipulated while the copying of music bite in smaller quantity. In the same light of problem statement, the use/play of recorded songs in the

clubs/pubs also comes under the scanner of doubt in 'Fair Use Doctrine'.

In the case of *Kartar Singh Giani v Ladha Singh*,<sup>28</sup> the High Court held that:

*"two points have been urged in connection with the meaning of the expression fair, in fair dealing (1) that in order to constitute unfairness there must be an intention to compete and to derive profit from such competition and (2) that unless the motive of the infringer were unfair in the sense of being improper the dealing would be fair."*

However, the use of recorded song play in India is not infringement. But the point is that commercial benefit out of it is also tends to violation of copyright. As because of there are no laws to address this issue, no one can get the benefit of it. In another aspect, the copyrighted works on computer program is very common in this technological age. Software coding computer programs is supported by copyright law. Hence it is also help to the companies and the copyright holder of software to get economic benefit out of it. The extended version or the exemption clause of copyright law of India permitted to keep back -up copies purely as a temporary against laws, destruction or damage. Hence in this purpose the use of licensed version software is safeguarded in copyright law.

Turning the other way round the fair use of back-up copy of computer software can be mis-utilised subject to the person concerned. There is no mechanism yet developed in India which can be help to track down to the pirates. The piracy of software or computer related program in India is huge. These developing characteristics may not be the similar practise of other countries.

According to the Hon'ble Judge, in *Gramophone Company of India v Super Cassette Industries Ltd.*<sup>29</sup>

*"What is a version recording? A version recording, we are told, is a sound recording made of an already published song by using another voice or voices and with different musicians and arrangers. Version recording is thus neither copying nor reproduction of the original recording".* Infringing copy with respect to a sound recording is defined in Section 2(m) (iii) as follows:-*"in relation to a sound recording, any other recording embodying the same sound recording, made by any means."*

### Live Performance

The society recognizes performers as critical ties between cultural, literary, dramatic and musical plays. There can be no doubt that artists spend enough skill and work to protect them against copyright.<sup>30</sup> Thus, the actor himself had no remedy against a certain individual if someone recorded a performer's performance unless consented, reproduced it and sold the records or made them publicly. The record producer or a film maker, who is the copyright owner, was protected by the exclusive rights in regard to the records or films once a reputation is recorded on records or in movies. The actor was not granted the right to share the royalties received for public performance or to broadcast records or films by record producers or film producers.<sup>31</sup> This was clearly an unequal circumstance. The safety of performers was therefore the requirement for hours to meet the new technology challenge.

The first important case to deal with such a situation was *John Church Co. v Hi Uard Hotel Co.*,<sup>32</sup>

*“The trial included a musical composition performed in the dining room of an accused hotel. The case referred to 'for profit' and the court held that the performances in question were not for profit insofar as the employers were not charged an admission fee or other direct fee. It was alleged by the complainant that music was a means to attract paying customers in the hotel restaurant and was therefore for profit, although there was no direct charge for the music, but this argument was overturned by the court..”*

### Impact in India

The Act's 2012 amendment acknowledged the performers' rights. Recently, the law has only acted to protect the performers when technical advances endangered the lives of performers. The group of performers comprises musicians, singers, actors, acrobats, etc. Section 2, subsection 2 (qq) of the Act specifies that the “performer” shall comprise an acrobatic, a dancer, a singer, an actress, a juggler, a snake charmer, or any person delivering a lecture. Performing Rights Society (PRS) is a non-profit organisation that acts as an intermediary between owners of intellectual property rights and parties interested in public use of copyrighted work in places like shopping malls, restaurants, etc. Legal purchases of works, like CDs from a music store, grant private performance rights. If a project is used for a

company's purpose, PRS normally charges a fee.<sup>33</sup> The privileges are usually paid directly for work necessary for the benefit holder of an organization, such as the theatres and the radio.

PRSs are referred to in some countries as collecting agencies for copyright. A copyright group is more common than a PRS as it is not limited to success and protects entities for reproduction rights (RROs). Instead of using work in public environments, RROs reflects work transmitted by means of CDs, audio cassettes, or electronic files. In India, the PRS is established as a copyright company under Section 33 of the 1957 Copyright Act by Indian Performing Right Society (IPRS), which in 2012 had lost the registration after the amendment to that Act. The IPRS was eligible to re-register as a copyright corporation, but under the Companies Act of 1956 it preferred to register as a company. The copyright licenses cover live and mechanical/electronic performance. According to its site IPRS carries out its licensing business pursuant to Section 30, as IPRS is the copyright proprietor according to the assignment of copies carried out by its representatives who are the proprietors. The website also provides an insight into what tariffs are received in the form of royalty, specifically categorized in 43 groups including airlines, airports, bowling alley, banks and bureaux, radio transmission, internet karaoke service, gas pumps, etc. In an interesting case, The Honourable Delhi High Court in the matter of *IPRS v Hello FM Radio*<sup>34</sup> grant an injunction by restricting the playing of ‘Hello FM Radio’ from the Indian Performing Rights Limited (IPRS) to music, without obtaining a licence. IPRS is the non-profit organization that is allowed to operate in accordance with the 'musical works' and 'literary works' under Article 33 of the Copyright Act 1957 as a copyright corporation. The decision dates back to 2012, when IPRS was licensed as a copyright society, which was before the Legislation was amended. This impact in the economy of India partly as per the intellectual property domain. It is need to be the legal stand to clear with the legislation amendment.

### Conclusion

In the conclusion, it is vouched that the idea to make the liability fix to the head of organisations those are running this kind of unethical practice is noble one. The economic advantage of the copyright holder needs to be address in a rigid manner. Highlighted issues in this research work are a specific area where copyright of the

recording and music sight holder will get the benefit. It is only possible, when the fair dealing clause of the Indian "fair dealing" legislation is always considered rigid and traditional as an exhaustive list and every infringement act is regarded as any use that falls outside the statutory list. In contrast, the US 'fair use' doctrine retains its doors open to any further exception, the fair and proper use of copyright. Since the Indian courts have studied and expounded the various aspects of fair treatment, they have said that there can be no clear or exhaustive list of uses within the competence of fair treatment, but that this must not be determined on the basis of the facts and circumstances. Without a doubt, "fair dealing" is a doctrine required not only for copyright laws, but also to strengthen citizen protection under Article 19 of the Indian Constitution. But India's fair trade law is extremely limited and confined to the more elaborate and flexible US fair dealing laws. The Indian legislators may wish to see greater clarity with regard to the provisions that are the cause of the conservative approach expressed in Section 52 of the Indian Copyright Act. While courts have occasionally modified the US approach, the author wishes to make this clear.

A probable hunched suggestion provided here to stop the copyright infringement and at the same time benefits for the economy of the country. As in India there is no proper justified law on the exception of Clause 52 of the Indian Copyright Act 1957. This research is seeking to implement laws for the on-going problem of copyright infringement. Firstly, there should be impose of taxes on the clubs, dancing bars and the restaurants as paying in the name of royalty to the singer on whose name they are playing the music in these places. Secondly there should be certification of license to use the recorded music from the Copyright Society Board. Thirdly the mechanism or process to monitor each and every club or organisation by the District/Municipal authority level administrative body to be empowered. This empowerment vested with the power of raid, verification of certification, seize of related articles in relation to copyright.

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