

## The Interplay between IP Law and Media Rights: The need of a harmonized legal framework

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### Abstract

The world seems closer with what we call 'Internet' where millions of IP rights are seen violated blatantly on a daily basis. This critical study of IPR in Media environment depicts the ways in which economy of Media is being driven by IP. But lately, these IP violations have taken place in seemingly boundless ways all thanks to the nascent stage we are living in, totally delusional from International scenario.

This paper is aimed at highlighting the IP rights available in every profound category of Media be it Internet, Sports Broadcasting, Celebrity Rights, & Music Industry and establish the need for a stronger base for a proper establishment of IP Rights. Therefore, this paper would address the issue of 'Why and How' IP should be contrived with new laws & regulations that might help it to grow in a positive manner when it comes to Media Rights.

**Keywords:** media, IP rights, internet, broadcasting, celebrity rights, copyright

### 1. Introduction

Media is a form of communication, evolving from the ongoing technological changes which are not required to be carried physically. It is no longer restricted to newspapers, magazines, radio. Its scope is getting wider gulping the Digital world which includes Internet, Social Media etc. Transmission technology of the Digital media by the means of Internet is certain to open new doors for the traditional media, culture, law and economics.

Digital Media is the humankind's greatest achievement, all thanks to the advent of Internet, Social Media as these have changed our life fundamentally. Human Life is made easier as it enables to stay in touch globally. Since Media acts as a platform for the third party, the question that arises here is, does media itself faces any violations? If it does, what can be done to curb this practice?

Similarly, Intellectual Property Rights evolving in the digital world is seen to be a new facet to the traditional regimes of the IPR. It acts as an umbrella to several legal claims which are attached to numerous types of information, ideas etc. The owner of the legal claim is authorized to exercise some exclusive rights with respect to the subject matter of the IP. The term 'Intellectual' is derived from the word intellect as the emergence of the IP Rights is for the protection of product or process which has been invented by the human mind or human intellect. Several rights that have been provided for the protection of the interest of the mankind, has a chance of being violated at a certain level by the third party. Further reading of the paper would enunciate the power of IPR over Media and vice versa.

### 2. Music and Copyright

Music is being composed globally like every second and hence, to leave it like that without any registration and protection would invite lot of casualties. Every Lyricist, Music Composer, Entertainment Company keeps a check on registration of his or its work. This protection is possible through Copyright Protection. To understand how this protection is taken care of we need to understand the basics

of Copyright. A Copyright is one of the IP Rights provided to the creators or owners of the literary, dramatic, musical, artistic, cinematographic works and sound recording. The main aim behind the Copyright Protection is to protect the works of artists and provide them several rights, and eventually lead on to an environment conducive to live in and promote economic growth, creativity and innovation. Further reading of this paper would elaborate more on how copyright plays an important role in protection of the works, handling of infringement issues and more with the help of case laws.

Firstly, a clear demarcation needs to be established between the terms 'Musical Work' and 'Sound Recording'. It is to be taken note of the fact that Musical Works refer to the underlying songs itself. It includes the composition of the song with melodies and harmonies, arrangement of instruments and the lyrics. On the other hand, the Sound Recording is simply recording of the musical work whereby the author records his own music.

The Copyright Act, 1957 provides protection for the lyrics or work penned down and not the song sung or performed<sup>[1]</sup>. So as to say, unless the work is reduced to written format, no protection with respect to musical work can be guaranteed. In *Star India Pvt. Ltd. Case*, the court held that the Music only means musical notes found on paper and music heard is sound created by musician by playing instrument as per the notes<sup>[2]</sup>. In *Indian Performing Right Society Case*, Justice Krishna Iyer stated "copyrighted music is not the soulful tune, the superb singing, the glorious voice or the wonderful rendering. It is the melody or harmony reduced to print, writing or graphic form<sup>[3]</sup>."

The words in the form of lyrics and music both can be

<sup>1</sup> Sec. 2(p) of Copyright Act, 1957 - "musical work" means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music.

<sup>2</sup> *Star India Pvt. Ltd. vs. Piyush Agarwal & Ors.* [2013 (54) PTC 222 (Del)]

<sup>3</sup> *Indian Performing Right Society Ltd v. Eastern Indian Motion Pictures Assn.* (1977 AIR 1443)

protected under the definition of Musical Work whereas when it comes to lyrics or words alone then a literary protection can be availed.

The Rights are exclusive in nature and help the creator protect his work. These are mentioned under Section 14(a) of the Copyright Act and are as follows:

“To do or to authorize:”

1. “to reproduce the work in any material form – store in any medium by electronic means;”
2. “to issue copies of the work to the public not being copies already in circulation;”
3. “to perform the work in public, or communicate it to the public;”
4. “to make any cinematograph film or sound recording in respect of the work;”
5. “to make any translation of the work;”
6. “to make adaptations;”
7. “to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi) <sup>[4]</sup>”

Apart from these, the rights of the creator also extend to stopping or preventing others from making any unauthorized use of his/her work.

It's the age of upcoming new artists who have immense talent and have once in their career definitely started with a cover song of an original work. One might question as to how a cover song is different from an original song. For starters, it is a song which is sung by different artist with entirely different voice and notes plus any further addition to the song makes it sound altogether more different. A cover song is neither a new song nor a reproduction of an old song. It is what we call in this age as remix, or revival of an old song or simply cover. This process is called ‘Version Recording’. This has been introduced under Copyright Amendment Act, 2012 vide Sec. 31C. An artist who has composed one of his own cover songs is entitled to the same protection as the original copyright owner. The only condition is to either get a consent from the owner of such work before the cover is produced and leaked all over or get the license of the copyright owner. In *Saregama India Ltd. Case*, it was held that - “It would not be an infringement of copyright in a sound recording if the same has been made with the consent or by license of the copyright owner. If a negotiated consent is not possible, a person becomes legally entitled to make a sound recording of such a copyrighted sound recording by recourse to the procedure prescribed and subject to the conditions that would apply. It is to be emphasized that it, however, does not entitle the person to make a copy or a duplication of the sound recording. But is entitled to produce a ‘version recording’, which is a fresh recording using a different set of performers, musicians and artists and facilities. It would be a ‘sound alike’ recording or a close imitation, of the original sound recording and would not be an infringement of the copyright <sup>[5]</sup>.”

Many must have heard Kenny G playing the Saxophone in elevators. The music that plays in background in many establishments be it in the elevators or rooms of the hotels or in a gym or shop or restaurants or bars or pubs or any commercial establishment, a license needs to be obtained for

the same by the owner of such establishment. This is because you are clearly making the work of the creator available to the ears of many without any prior consent which amounts to infringement of the copyright and if in any case the license is not obtained then heavy penalties can be imposed on to the infringer.

It becomes quite difficult for an artist or singer or an entertainment company being a producer to keep managing the licensing agreements on their own. To make this easy, there are non-profit organizations who manage such transactions and act as a mediator between the third party who wants to acquire the license and the copyright owner. In India, we have PPL (Phonographic Performance Ltd.) which handles the copyright of sound recordings and IPRS (Indian Performing Rights Society) who handles the rights for lyricists and composers. These are Copyright Societies with which the Copyright Owners can register their copyrights and who will then take care of the granting and issuing of licenses. So, for the performance of the song at an event, a license from IPRS is mandatory and for playing the recording of the song, a license from PPL is mandatory.

If music is composed, written and performed by Band Members then the most suitable thing to do is to draw an agreement among the members and make it clear and decide upon in the nascent stage itself as to the royalties and rights over the piece of music. One must know that the Band name is not copyrightable but can be trademarked <sup>[6]</sup>.

### 3. Celebrity and Image Rights

The term ‘Celebrity’ is not defined under Copyright Act, 1957. However, what is actually defined close to this term is ‘Performer’ under Sec. 2(qq) of the Act. A performer cannot always be regarded as a celebrity and a celebrity may not be a performer at all. The word performer comprises of “an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance.” But in all of this, a celebrity can be an actor, a player, a politician, a singer, a dancer, a lecturer, an artist, a model, a youtuber, etc. or any other person who is able to grab the attention of public. Public Perception is what matters a lot while determining the status. Being a public figure, celebrities are given their own set of rights. These rights are as follows:

#### 1. Personality Rights

So as to say, if one tries to define Personality Rights, the following words come into mind - The rights given naturally to a person closely knitted with or associated with his/her identity and his personality which is directly in consonance with his/her reputation can be termed as Personality Rights. But what one looks at it in a simpler way is rather more complicated and unclear in Indian Jurisdiction. The Indian Jurisdiction has focused more on Publicity Rights and Privacy Rights and less stress is given on Personality Rights as it emanates from Public Perception. Hence, one can even say that Personality Rights are recognized through Publicity and Privacy Rights.

In *Milder vs. Ford Motor Co. & Others* <sup>[7]</sup>, a question of Personality Right was raised. In this case, the Ford, a popular car brand wanted to produce a commercial for which they had finalized one of Ms. Milder's songs as a

<sup>4</sup> Section 14(a) of Copyright Act, 1957.

<sup>5</sup> *Mars Recording Private Limited v. Saregama India Limited* (AIR 2015 Kar 72)

<sup>6</sup> UK Copyright Service, “*Music Copyright*”, June 30, 2004, Retrieved on November 23, 2019, <  
[https://www.copyrightservice.co.uk/protect/p07\\_music\\_copyright](https://www.copyrightservice.co.uk/protect/p07_music_copyright)>.

<sup>7</sup> *Midler v Ford Motor Co & others* (1988) 849 F.2d 460 (9th Cir).

background music to be used in the making of the commercial. But even though the license itself was available Ms. Milder turned down the request to use her version in the ad. The company approached one of the background vocalists to sing the same song and sound alike Milder as much as possible. The court held that a performer possesses a Personality Right only in his performance and includes Publicity and Privacy Rights. Hence, even prior to considering version recording, a performer's personality right comes into existence and is handled with care.

## 2. Publicity Rights

As already stated before, the Personality Right includes within itself the Publicity Right. A celebrity is entitled to control the commercial use of his/her identity. This control comes or emanates from a right called Publicity Right. There have been several cases wherein the Publicity right of a celebrity has been violated by the use of the celebrity's identity in the form of posters for commercials that the celebrity didn't agree upon or didn't give his consent to. The basic aim behind this particular right is to protect the celebrity from getting his/her reputation tarnished by unconsented means.

In *ICC Development (International) Ltd. Vs Arvee Enterprises* <sup>[8]</sup>, it was held by the Delhi High Court that "Any effort to take away the right of publicity from the individuals, to the organizer of the event would be violative of Articles 19 and 21 of the Constitution of India. No persona can be monopolized. The right of Publicity vests in an individual and he alone is entitled to profit from it."

In *Titan Industries Limited vs. M/s Ramkumar Jewellers* <sup>[9]</sup>, the photos of Amitabh Bachchan and Jaya Bachchan were used and published without their consent or any authorization. The Delhi High Court had observed that "when the identity of a famous personality is used in advertising without their permission, the complaint is not that no one should commercialize their identity but that the right to control when, where and how their identity is used should vest with the famous personality. The right to control commercial use of human identity is the right to publicity."

## 3. Privacy Rights

The right to privacy was recognized and included under Article 21 of the Indian Constitution under 'Right to Life and Liberty'. Every individual has the right to privacy. But, when it comes to celebrities, it becomes a high ended matter as the celebrity's work is to become famous in the eyes of public and the very same ignites a high terrain of curiosity among the fans and reporters. This leads to uncontrolled chaos whereby the fans and reporters would not think twice and might just cross the line and invade the right to privacy of the celebrities. The whole concept is bogged up in itself wherein the celebrity finds himself to be stuck between the lines to decide on his own where to cross the line and what to reveal and what not to.

Among these lines are some cases which throw some light as to what extent the celebrities are entitled to the protection of their Right to Privacy.

In a recent case, *Rajat Sharma and Another v. Ashok Venkatramani and Another* <sup>[10]</sup>, Delhi High Court ordered for injunction against Zee Media from using Rajat Sharma's name in prints and electronic mediums to circulate their

advertisements. It was observed that the plaintiff being a celebrity as a result of being a host of a famous TV show holds an enforceable right in the identity or persona of a human being.

Apart from protection and recognition in the Indian Constitution, a protection of Celebrity Rights can be done through following ways:

- a. **Trade Marks Act, 1999:** Under this Act, one can register "sign capable of distinguishing goods and services of one person from another, any word (including personal names), design, numeral and shape of goods or their packaging" as trademark. Though this has only little to do with the celebrities but such protection comes in handy. The court even grants protection to movie titles, characters in the films and names under trademark law. Section 14 of the Act prevents a trademark to be registered which forms any connection to the identity of a living person or dead not more than 20 years ago without that person's consent.
- b. **Copyright Act, 1957:** Under this Act, Section 38 which talks about right of performers grants the right to a person to prevent any unauthorized use of one's performance. Also, Section 57 of the Act talks about the Moral Rights of an author. It is generally used to protect the reputation of the author. On similar lines, a celebrity can rest assured through this provision and seek relief if any harm to his reputation has been caused. The famous case of *Amar Nath Sehgal vs. UOI* <sup>[11]</sup> explains the moral right of an author in depth. The case recognizes two more rights under this very same Moral Right namely – Right to Integrity and Right to Paternity. In this case, a creator's work was distorted and damaged after being sold to a museum. It was observed that the work of the creator is closely knitted with the spirit and honor with which the creator worked and holds on to. The court held that even though the creator no longer possessed an ownership right over his work (the sculpture) but he still had the moral right attached to his work and the continuous storing of the sculpture in a store room and allowing it to get damaged, eventually tarnished the reputation of the creator. The court held in favor of the creator and awarded him compensation.
- c. Furthermore, one can even seek relief under Passing Off Action, Privacy and Data Protection, Defamation as a tort, etc.

Nowadays, due to the increase use of internet, the celebrities are more prone to risks of getting their privacy invaded. There have been cases on the internet portal wherein the names of celebs were used as the names of websites by unauthorized users. This also raises a question of whether Article 19 of Indian Constitution works in total contradiction of the given Right to Privacy to celebrities or not. Article 19 grants every individual Right to Information but does this information ends where the Right to Privacy of any celeb begins. Well, the Indian Judiciary has come across cases wherein the celebrities have complained off their invasion of Right to Privacy which clashes with Right to Information of others. Thus, there arises a conflict between Celebrity Rights and Fundamental Rights enshrined under

<sup>8</sup> 2003 (26) PTC 245

<sup>9</sup> CS(OS) No. 2662/2011

<sup>10</sup> CS(COMM) 15/2019

<sup>11</sup> 117 (2005) DLT 717

Indian Constitution <sup>[12]</sup>. Many cases abroad and in India have been decided upon the lines limiting the scope of the Celebrity or rather Privacy Rights when it comes to a topic properly regarded as Public Interest. So, if a photo of Sachin Tendulkar, being a sports celebrity, comes onto a Sports Magazine, a suit for the same in relation to Privacy Rights won't lie. Same with the case of Amitabh Bachchan wherein a news regarding his ill-health when posted in a newspaper would be a subject matter of Public Interest and not in any way invade his Privacy Rights.

One more problem that is faced while dealing with the Celebrity Rights is whether to consider the right as a purely Dignitary Right or as a Commercial Property Right. Delhi High Court in few instances has conceived image rights as the one emanating from human dignity alone and in the process neglected the property right approach. In other words, India has been ignorant in regarding the Image Rights with the status of Commercial Property. Many other countries have followed the Dual Approach taking in consideration both the dignity and property aspect in picture. India needs to adopt the same. Recognizing Image Rights as Property would mean subjecting it to the taxation limits as a capital asset just like any other IP. The celebrities also get to be rewarded for any moral claim that they contribute to from the money they make out of the fame they get.

Another term that fascinates die-hard fans of celebs is 'Necromarketing'. 'Necromarketing' has made a lot of buzz around the corner in foreign countries as well as in India. It's basically using the personality of dead celebs and endorsing it to promote the products or services entailed by a company or an entity. US and Scottish Law have shed some light over the topic while UK is yet to be tested with such experience. India too has not been introduced with such concept. Posthumous and marketing agents often keep with themselves the stakes or rights in celebrity estates. Generally, heirs are asked for the permission before any endorsement is done. Many use holograms to keep the 'delebs' alive among die-hard fans. Sometimes 'delebs' are even made to appear live on stage through resurrection by the help of body doubles or look alike actors. Californian Law provides for pre-approval from the heirs of the dead celebs while under Indiana Right of Publicity Law, a personality is protected against unauthorized use during the lifetime of the celebs and even after their death upto 100 years. Robin Williams, one of the finest actors, when died left a will with a Non-resurrection clause in it which meant that no one is allowed to make him appear in any form on stage, live or at any event after his death via any methods be it holograms, body-doubles, look-alikes, etc <sup>[13]</sup>.

Sachin Tendulkar had assigned his image rights for his biography, 'Playing it My Way' and now more celebs are following on the same lines <sup>[14]</sup>. With this being a trend, there is a need for much strengthened reforms in this particular area.

<sup>12</sup> "Celebrity Rights in India", Retrieved on November 29, 2019, <http://www.legalserviceindia.com/article/1139-Celebrity-Rights.html>.

<sup>13</sup> Joanne Frears, "Im(possible) Performances", February 23, 2017, Retrieved on November 29, 2019, <<https://www.linkedin.com/pulse/impossible-performances-joanne-frears/>>.

<sup>14</sup> Lakshmi Kruttika Vijay & Rohan Sharma, "Celebrities: Just what are their personality rights?" December 26, 2016, Retrieved on November 29, 2019, <<https://www.vantageasia.com/celebrities-just-what-are-their-personality-rights/>>.

#### 4. Sports Broadcasting Rights

In present era the use of satellites has increased for the purpose of distribution of programmes which carry signals, growing at a faster pace in respect of volume and geographical area. This compelled certain changes to be made in order to obstruct distributors from distributing signals which carry programme with the help of satellite not meant for them. At International arena, legal protection has been taken by the broadcasting organizations to protect transmissions made through satellite. These broadcasting organizations enjoy protection against signal theft under certain International regimes such as Satellite Convention 1974, Rome Convention 1961, TRIPS Agreement 1994, WIPO etc.

'Broadcast' is defined under Sec. 2(dd) of Indian Copyright Act, 1957. It states as follows:

*'Broadcast' means communication to the public:*

- a. *By wire and includes a re-broadcast; or*
- b. *By any means of wireless dispersion, in form of sounds, signs, or visual images.*

The term 'Broadcast' can be made use of in 2 different ways, (a.) as a verb explaining the transmission, or (b.) as a term signifying the act of transmitting the broadcast signals. But it is not the broadcaster's right and rather is an author's right to transmit the work and thus conveying to the public. Presuming this, it is said to be believed that the 'broadcast' covers only the signal but not the whole transmission <sup>[15]</sup>. The foreign conventions and treaties including the Rome Convention does not define 'broadcasting' and rather defines 'broadcast' with respect to transmitting of the work via wireless means. Therefore, it can be said that in foreign denotations, 'broadcast' as a term is used as rather depicting the word 'signal', whereas, 'broadcasting' refers to the act of transmitting signals. The same in the Indian context is used as verb to determine the mode of transmitting the signals unlike the usage in Foreign context as noun. Therefore, it becomes the right of the creator to "have the work broadcasted (noun)" and it becomes the right of the broadcasting organization to 'broadcast' (verb) the work. Hence, by looking at this concept, the definition does not elucidate properly on whether the 'diffusion' to be taken into account is through analogue signals itself or additionally through digital as well <sup>[16]</sup>.

Changes in communication technologies developed broadcast sports coverage which allowed people to be the part of major sport events around the world. Copyrights and other related rights concerned with broadcasting organizations are in support of the relationship between sports and Television. Television and Media pay huge amounts to these Broadcasting organizations to get the exclusive right of broadcasting major sports events. This is seen as the greatest revenue earning mechanism as it generates revenue which is needed to organize sports events, and also helps in development of sports at grass root level. Broadcasters receive the Royalty of these footages, which allows them to invest in technical developments of the infrastructure.

The rights of a Broadcaster are never based on an artistic contribution to the work as it is in the case of Copyright.

<sup>15</sup> M Sakhtivel, "Is it Broadcast or Broadcasting?" Journal of Intellectual Property Rights, Vol. 16, January 2011, p.23-26.

<sup>16</sup> Sanjay Pandey, "Neighbouring Rights Protection in India", Journal of Intellectual Property Rights, Vol. 9, July 2004, p. 356-370.

The content underneath the broadcast remains unaffected by the broadcast reproduction right even though broadcast seems to be treated as the same as copyright is in respect of the protection. There are certain Broadcasters rights in context of Sports such as:

1. To safeguard investments which are costly in nature in televising sport events
2. To reward and recognize the efforts of the entrepreneur of broadcasting organizations.
3. To reward and recognize the contributions of the entrepreneur for diffusion of culture and information to general public.

Under the Rome Convention of 1961 that is International Convention for the protection of Performers, Producers of Phonograms and Broadcasting Organizations which have 20 years to hold the exclusive right.

Sports Industry has a huge turnover because of its major part to Intellectual Property Rights and its adjacent cooperation between sponsors, media and sports authorities [17]. Apart from this more urbane communication technologies are available to the general public which allow the public access these events from anywhere on any device. This access to the public has opened the doors for signal theft. Unauthorized transmission of the live sports is the primary target on the internet. Signal theft is seen as a threat to the sale revenue and advertising of these events of the broadcasters who have paid for obtaining the exclusive rights to show the live coverage of these sports events. Also, it decreases the value of that exclusive right which in turn reduces the revenue of the Sports Organization. To put an end to this signal piracy, National law blocks illegal websites and also approach International level for better protection. Broadcasters and Organizations have adopted a new platform to reach out to the general public by broadcasting these Sports event in a different format.

In terms of Indian Scenario, it is pertinent to ask whether Copyright in Sports event broadcast fall under the ambit of Copyright Act 1957? The act provides the right of copyright in "original" literary, dramatic, musical and artistic works, cinematographic films and sound recordings [18]. Copyright Act does not specifically talk about Broadcasting live sports event but it can fall within the definition of Section 37 and Section 38. Section 37 talks about the rights of Broadcasting Organization whereas Section 38 talks about the performers right. Sports event is neither specified under Sec. 2(q) nor under Sec. 2(qq). So, the sports event clearly falls under the ambit of the definition "performance" therefore the players and empires are considered to be the performers.

Similar situation was presented before the Delhi High Court in the case;

***"Star India Pvt Ltd vs. Piyush Agarwal & Ors."***

In this case there was an agreement between Star India Pvt Ltd and BCCI in which Star India broadcasts live matches which are organized by BCCI and it had all information relating to matches and also had the right to broadcast SMS.

Star India claimed the right to provide VAT by text messages up to 72 hours after the live broadcast. BCCI was providing SMS through Star India but the plaintiff claimed the infringement of its rights. It was held that;

- a. The cricket match falls under the ambit of definition of performance, so the players, umpires are all performers.
- b. Agreement between Star India and BCCI cannot give rise to the legal right.
- c. Once the news gets into the public domain it cannot be monopolized
- d. "The principle of fair dealing and public policy would be defeated if there was a monopoly for 72 hours in favour of the plaintiff with respect to news created from an event which is available in public domain [19]."

***"ESPN Stars Sports v. Global Broadcast News Ltd"*** [20]

The case revolved around fair dealing doctrine as an exception wherein the plaintiff claimed that the act of the defendant was an unfair practice and hence a fair dealing doctrine cannot be applied as an exception in the case, on the other hand, defendant tried proving the other way around.

The plaintiff, ESPN Stars Sports, sought for a control against the defendant, vas TV channels restricting them in using the footage captured by the plaintiff's channel. The plaintiff also stated that they have the sole exclusive right over the footage to be broadcasted only by their channel and this right have been obtained by various sports bodies in relation to the India Australia cricket test matches between Dec 26, 2007 and March 8, 2008.

While the suit went on before the court, the defendant alleged that fair dealing doctrine to be used in their favour to excuse them in using the footage. Also, the defendants claimed that the absence of the necessary party, the plaintiff, straight away fails the case in the first instant. The defendant also stated that the plaintiff fails to bring about or produce the entire copy of the right/license which again is of a great concern. Moreover, the defendant pleaded that the fair dealing doctrine to be used as an exception and decide this issue on a case to case basis on its merits rather than relying on some other judgements to reach a conclusion. On the other hand, the plaintiff alleged that according to Sec. 37(3)(a) of the Act, the act of the defendants amounted to re-broadcast and even reproduction as under Sec. 37(3)(d). The exception to this was the fair dealing but the plaintiff exerted that the doctrine cannot be taken into account in this pertinent case as the time period of broadcasting is almost as long as one could imagine being 10 to 16 hrs.

The court held that since the plaintiff was unable to be present for the case and was unable to show or produce before the court the full proofs in the form of licence and other documents, their cause of action is not disclosed on proper grounds and hence, they cannot be granted an injunction sought.

**5. Internet & Intellectual Property Rights**

Intellectual Property Right is an instrument through which a person can protect his creativity, intellect, innovations etc. But in the era where internet has become a major part of our daily life, these IP rights can be infringed at any-time by any person. In the present scenario, our country is focusing on

<sup>17</sup> WIPO World Intellectual Property Organization, "Broadcasting and Media Rights in Sports", Retrieved on November 27, 2019 <<https://www.wipo.int/ip-sport/en/broadcasting.html>>.

<sup>18</sup> "Rationale of Copyright Protection", Government of India Department for Promotion of Industry and Internal Trade Ministry of Commerce and Industry, Retrieved on December 10, 2019. <<http://copyright.gov.in/Documents/handbook.html>>.

<sup>19</sup> Star India Pvt Ltd vs Piyush Agarwal [CS(OS) No.2722/2012& Conn.].

<sup>20</sup> 2008 (36) PTC 492 (Del)

building up relations with other countries so as to bring more and more investments leading to infrastructural setup and boost in economy. Improvement of telecommunication networks and connectivity within the country are some of the main issues. In order to bring connectivity, the government has nodded and given permission to the telecommunication companies to provide the Internet service. As there are many big private companies which are in the business of providing internet services, India has occupied a second place after china in having the highest number of Internet users in the world. Usage of Internet can be seen as a major threat to IP Rights.

There are IP Rights such as Patent, Trademark, Copyright, Geographical Indications which protect the IP Rights of a person. Copyright Law is the most effective instrument by which violation of IP through Internet can be tackled. The Indian Copyright Act 1957 is a masterpiece which can deal with technologies including internet. The Copyright Law has expanded its scope with respect to Cinematographic films, sound recordings so as to adapt itself to digital era<sup>[21]</sup>. The basic issue determined by the Copyright Act is the difference between Private use and Public use when it comes to Internet Usage. Reproduction of any material for the purpose of public use can be done by the permission of the person who holds the right to exploit whereas Reproduction of the material for personal use is acceptable. This distinction gets eroded with the capability of a person to spread any copyrightable work over the Internet to mass users simultaneously from the privacy of his/her home and users being able to download all together a perfect copy of the material transferred, in their homes. Diminishing of thin line that divides the public and private terrains calls for a new set of rules in copyright<sup>[22]</sup>.

Internet is seen as medium through which people can share their work around the world. Publishing is one such tool that needs to be kept on check. For Instance, a writer can publish his/her book online which makes it accessible to readers. Internet empowers every writer to publish in a similar way the printing press does. The question which arises here is “whether the publication made by the writer on the internet will be considered as publication or not?”. Section 3 of The Copyright Act 1957 gives the meaning of the term “Publication”, it says –“For the purposes of this Act, ‘publication’ means making a work available to the public by issue of copies or by communicating the work to the public<sup>[23]</sup>. Since this definition has no restrictive clause so it is presumed that electronic publications can also be considered as Publications. Another question which arises is whether communication by the means of internet should be considered as communication or not. The Copyright Act under section 2(ff) speaks about “communication to the public” which means “making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing physical copies of it, whether simultaneously or at places and times chosen individually,

regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available<sup>[24]</sup>.” The scope of this definition is wide and it includes Internet as the medium of communication within its boundaries.

In recent times there are many cases where there is unlawful distribution of sound recording, cinematographic films, artistic work, scripts etc. Downloading these files is unlawful which results in violating the laws of the country. Ease of downloading through internet has become a major issue as it causes loss to the person who possesses these rights.

One famous case of US in regard to this context was *A & M Records, Inc v. Napster, Inc*<sup>[25]</sup> where Napster acted as a platform to share files. It got popularity as people were able to share songs. On knowing this, major companies sued Napster on the grounds of vicarious infringement of copyright so as to protect the Intellectual Property. It was held that Napster allowed continuous exploitation which was not seen as ‘Fair Use’. This term can be taken as a defence in case where there is infringement (direct infringement). Fair use means when an original work is used for the purpose of research, criticism, teaching etc. In the instant case the music files were being shared in an unauthorized way. Also, the downloads by the viewers from the platform created by Napster affected the sales of the albums. Court ordered to create a suitable injunction on any further acts which lead to infringement.

Going on without stumbling upon YouTube is impossible. We can’t leave out YouTube from this paradigm. When we talk about YouTube for the protection of the rights of the original creator, a question that strikes our mind is can the original creator use somebody else’s work in his video without even licencing it? YouTube in past years has become one of the platforms where people can create, upload, and view uploads of the people. YouTube is opening up opportunities for people but certainly it faces some disadvantages in the form of Infringements. It is recommended to people to create Original work but people tend to ignore it and copy someone’s original work in order to get quick and easy views on their channel. It will not be proper to blame YouTube for the Copyright Infringements done by people, but the only reason as to why YouTube is blamed or why it is sued is because it provides a platform to the people. To stop these Copyright Infringements of the content, YouTube has created some strict policies which include Content ID, Content Verification Program etc<sup>[26]</sup>. In order to protect Copyright Infringement, YouTube provides certain guidelines to the content creators regarding the ‘Fair Use’ which tells them as to how much Copyrighted content can be used by the creator. Now YouTube has amended some of its policies regarding the Infringements.

Effective from July 9, YouTube makes its compulsory for copyright owners to run timestamps for all new manual Content ID claims that is intended to let creators know as to which part of their video is under the claim. The new policy

<sup>21</sup> World Intellectual Property Organization (WIPO), “*WIPO seminar for Asia and the Pacific region on the internet and the protection of Intellectual Property Rights*”, Retrieved on November 21, 2019 [https://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=783](https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=783).

<sup>22</sup> Artee Aggrawal, “*Usage of Internet and the Evolving Challenges of IPR Issues in India: A Review*”, International Journal of Business Quantitative Economics and Applied Management Research (ISSN: 2349 5677), Retrieved on November 21, 2019.

<sup>23</sup> Section 3 of The Copyright Act 1957.

<sup>24</sup> Section 2(ff) of The Copyright Act 1957.

<sup>25</sup> 239 F.3d 1004 (2001).

<sup>26</sup> Debopriya Mukherjee, “*YouTube Redecorates It’s Copyright Claim Policies*”, IIPRD Blog – Intellectual Property Discussions, July 12, 2019, Retrieved on December 1, 2019

[https://iiprd.wordpress.com/2019/07/12/youtube-redecorates-its-copyright-claim-policies/?utm\\_source=Mondaq&utm\\_medium=syndication&utm\\_campaign=View-Original](https://iiprd.wordpress.com/2019/07/12/youtube-redecorates-its-copyright-claim-policies/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original).

applies to manually submitted copyright-infringement claims under YouTube's Content ID system, as opposed to videos that are automatically flagged by content-matching algorithms<sup>[27]</sup>.

One way in which one can protect their IP over Internet is through the Use of Notices & Disclaimers where one can put up a disclaimer and or notices on their websites to make the readers aware of the copyrighted material. These days websites use Encryption to protect the content available on their website from any unauthorized use. This method requires the user to put up their credentials before they can get the access to the full content. The other way is to use Watermarks. This works well for the websites that use lots of images and pictures. The image can be labelled with a prominent watermark and if any user wants to download any image without the watermark then he/she will have to buy it. Apart from taking precautions such like one can simply also issue Cease and Desist Notices to the offending party in case any material or content has been duplicated without prior permission<sup>[28]</sup>.

### 5. Suggested Reforms

Reforms are necessary for country like India to prosper in broadcasting market. Following are some suggestions that can be taken into account:

Suggested Reforms for Music and Copyright:

1. Appellate Board should levy punishments by recommending maximum allowed cut of the sale price where it comes across intentional delays and decreased rates for standard sale.
2. An authority should be established for smooth collection of resale royalties.
3. The term "Fair Use" should be defined properly and there should be proper guidelines regarding the term Fair Use under the Copyright Act 1957.
4. Copyright infringement should be made a non bailable offence. Punishment and fine should be increased for these kinds of infringement acts.

### Suggested Reforms for Celebrity and Image Rights

1. Provisions should be made under the Copyright Act for the better protection of Celebrity Rights when it comes to it being in conflict with Public Interest and Article 19 of Indian Constitution.
2. To develop a new provision restricting the wrongful appropriation of their image as well as to create a limitation on the provision to balance out the interest of general public.
3. Legal system in India should include provisions which deal with modern phenomena of endorsement advertising.
4. Most of the countries such as UK, US follow dual approach (dignity as well as property). The same can be implemented in India.
5. Introducing a new concept called 'Necromarketing' (using dead celebs- 'delebs' for marketing) in India to promote products after obtaining the permission from estate or authorized authority.

### Suggested Reforms for Broadcasting Rights in Sports

1. More clarification with respect to the definition of 'broadcast', 'reproduction', and 're-broadcast' contained under Indian Copyright Act, 1957. This will eventually lay a basic understanding and further the scope of other debatable related topics.
2. Some laws or rules in relation to restricting the monopolies that have been created due to the effect of convergence must be enacted and then further implemented so that it can help in restricting ownership patterns.
3. Most countries like UK, USA, Germany, and Australia have got the feature called as "Restriction on Ownership". The same can be implemented here in India.
4. These days people on social networking sites like Instagram, Facebook, WhatsApp, etc. which work over Internet do put across several works of original author on their page which again is normal. Hence, clarifying that the process of transmitting over the Internet some works does not come within the scope of rules of Copyright Act. UK's Copyright Act has specified this very thing.

### Suggested Reforms for Internet and IP

1. Indirect Copyright Infringement: The important change required is to widen the scope of Indirect Copyright Infringement with the new definition as Indirect Infringement by making available to public. This step will ultimately make it harder for users to find infringing content on Internet.
2. Obtaining identity of the infringer by the Copyright holder: The Copyright Holder gets the power to file a claim to know the identity of the infringer from the service providers.
3. Modifications need to be made in Indian Copyright Act, 1957 so as eliminate the copyright infringement in the physically and also on internet.

### 6. Conclusion

The functioning of IP Rights in relation to Media is a rather cumbersome procedure. We come across so many instances in daily life where we see IP Rights being infringed with respect to Media. Media being a powerful tool has the ability to pierce through wider sections of society but at the same time is sensitive enough to be even left at the hands of commoners. Hence, there arises a need for an authority that would formalize everything. The suggested reforms are mere guidelines in a directory form wherein one gets to draw a line in respect of their own interpretation and apply the same to their preferable conditions. As seen, the laws and rules in India are still at the nascent stage and there are places wherein the legal terms have no existence at all. A precedential approach cannot solve the issue at hand and we also don't have the option to leave out the matter without justice being served which calls for new laws to be introduced. Moreover, this particular area needs to be strengthened enough to cross the boundary limits of expected outcomes be it in the case of broadcasting wherein the signal based approach is what is being followed in India due to which a tussle between the broadcaster's right and Internet falls with a lag or be it celebrity rights wherein India has still not been introduced with the term 'Necromarketing' or be it music and copyright where the

<sup>27</sup> Terms of Service, YouTube, revised on July 22nd 2019, Retrieved on December 2, 2019 <<https://www.youtube.com/static?gl=GB&template=terms>>.

<sup>28</sup> Upcounsel, "Internet Intellectual Property: Everything You Need to Know", Retrieved on December 10, 2019, <https://www.upcounsel.com/internet-intellectual-property>.

market needs a stagnant root cause or be it Internet, a social media, where law is not properly implemented even with lots of efforts.

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