

## MUSICAL INDUSTRY IN THE RESONANCE OF COPYRIGHT LAW

\*Aryaknath Bhattacharya

\*Siddharth Addy

### ABSTRACT

*The researcher analyzes the emphasize of copyright law in the music industry; they did their foundational research from the golden era of classical composition composed by i.e. Mozart, Beethoven and many others that lacked copyright protection and worked its way up to the new era of digitalization and discussed various protections and development which have been extended to the musical composers. The researchers discuss the scope of “what music is & what’s not” they study the modern musical industry and analyze the limitation and drawbacks faced by the composers in copyrighting a musical composition; the researchers further highlight and suggest potential solutions which could be adopted by the legislators to overcome the drawback and safeguarding the interest of the composers. The researchers also highlight the need for flexibility in the industry for promotion and creation of musical composition among the young members of the society and to carry the legacy of the art.*

### INTRODUCTION

Copyright law has been in the focal point of debate and has actively involved in protecting the intellectual efforts of the authors/composers since it has been emerged to be called as “intellectual property” The research paper gives a systematic analysis of the economic rights enjoyed by the creators in the neo-classical regime of music and deals with the status of classical music which was nevertheless considered as absolute best of their time. The musical Copyright emerged in the year from 1750 – 1850 in Europe<sup>1</sup>; however, it did not copyright the work of Wolfgang Amadeus Mozart, Ludwig van Beethoven, Fredric Chopin, Bach and many more. It is presumed that Amadeus Mozart was one of the most famous among others, which is considered an important figure in the era of "Free Lance Musical Composition"

---

\*Amity Law School, Kolkata

\*\*Amity Law School, Kolkata

<sup>1</sup> F.M. Scherer, The Emergence of Musical Copyright Law from 1709 – 1850,(1<sup>st</sup> August,2020), <file:///C:/Users/bum%20dev/Downloads/SSRN-id1336802.pdf>.

however, we see the composers of classical music had very little imprinting on their musical posterity [see: Table 1]. These top ten composers accounted for 49.4% of the total sample linear coverage.<sup>2</sup>

COMPOSERS	BIRTH YEAR	SCHWAN CATELOG(CM)
Wolfgang Amadeus Mozart	1756	1600
Ludwig Van Beethoven	1770	1200
John Sebastian Bach	1685	1200
Johannes Brahms	1833	700
Tchaikovsky	1840	600
Joseph Hayden	1732	500
Fredric Chopin	1810	500
Franz Schubert	1797	500
Robert Schumann	1810	500
Antonio Vivaldi	1678	400

*Table 1[composers recording song according to their birth year]*

However, the history of music in India is very wide in comparison to European music its origin could be traced back into the Vedic periods of Aryan, the Negroid, the Dravidians which adds complexity to its musical culture; its long tradition of music dates back to the period of mythological stories which state that the highest honors were enjoyed by the musician of that time.<sup>3</sup>The Cultural esteem of our music and traditions have been given sacrosanct over the monetary benefits as a major incentive i.e. in ancient times composers use to write music for earning fame rather than for making a living. However, with the advent of British rule in India it brought about the change in the personality theory recognized in the Indian context and substituted it with the Labor theory. The former theory established the Copyrights Act 1957.<sup>4</sup> Through this research paper the authors highlight the golden age of musical composition that occurred in the era that lacked the copyright protection for musical workers and discuss the new developments and protections extended to new composers.

<sup>2</sup> Ibid .

<sup>3</sup> B.R. Bakshi, Ancient History of India, ( B.R. Publishing Corporation Vol 1 1955), pg. 55.

<sup>4</sup> Copyright Music, Shodhganga,(1<sup>st</sup> August,2020), <https://shodhganga.inflibnet.ac.in/bitstream/10603/199650/6/chapter%20-%204.pdf>.

## EMERGENCE OF COPYRIGHT FROM 18<sup>TH</sup> CENTURY TILL TODAY

The musical and other forms of artistic work were covered under the definition of ‘book’ for the purpose of the literary work<sup>5</sup>. However, the artistic work was not protected till 1833, after which the famous Bulwer Lytton Act was introduced which extended copyright protection to authors for a period of 28 years however the act was uncertain as to the timeframe of protection it extended to its composers in case of unpublished work. The 1833 act was amended with the introduction of Copyrights Act 1842; this act protected the work of the neo classical composers under section 20 of its act which stated that the performing rights of the composers are extended for a period of 42 years from the first publication or performance, in case of infringement of copyright act the act fixed penalty of forty pound. This led to introduction of new act termed as Copyright (Musical Composition Act 1882) this act stated that any new act/music/composition shall be subjected to publication in order to get it copyrighted, also the new act repealed the old provision of the penalty and left it to be decided at the discretion of the court. Finally, the major Copyright Act, 1957 was introduced which repealed the old copyrights laws which were in force [see: Table 2] this act was modified enforced as per the Indian condition.<sup>6</sup> It introduced several major changes; one of the major change was it extended a protection of 60 years from the date of death of the author/composer.<sup>7</sup> However those hymn/songs which are older than a period of 60 years or more depending on the country are available in public domain and it can be used without worrying for copyright infringement however if the composer takes the song and adds distinct features to it the same can be protected under the copyright law for example a Rabindra Sangeet written by Rabindranath Tagore expired in the year of 2001<sup>8</sup> therein its work are in public domain or the composition such as Fur Elise of Ludwig Beethoven<sup>9</sup> are also available in public domain and can be easily accessed by public at large.

NAME OF THE LEGISLATION	FEATURES
1. Bulwer Copyright Act 1833	Extended <i>copyright protection for 28 years</i> .
2. Literacy Copyright Act of 1842	Extended <i>copyright protection for 42 years</i>

<sup>5</sup> Bach v. Longman, (1777), 2 Cowp 623.

<sup>6</sup> R. Dhiraj, The Copyright Laws in India, SAPR, (1<sup>st</sup> August, 2020), [http://www.saprlaw.com/taxblog/copyright\\_final.pdf](http://www.saprlaw.com/taxblog/copyright_final.pdf).

<sup>7</sup> Section 22, of the copyrights act 1956.

<sup>8</sup> IPRS, Indian railways, Rabindrasangeet, SpicyIP, (1<sup>st</sup> August, 2020), <https://spicyip.com/2015/01/guest-post-iprs-indian-railways-rabindrasangeet.html>.

<sup>9</sup> Section 12 – 15, Copyright Design & Patent Act, 1988.

	and a penalty amount for copyright infringement were fixed at 40 Pounds.
3. Copyright (Musical Composition Act 1882 & 1888)	The penalty amount was removed and was left to be decided at the <i>discretion of the court</i> .
4. The Musical(Summary Proceedings Act) 1902	The act was introduced to <i>aid summary trails</i> in copyright infringement cases.
5. Copyright Act of 1957	This was the most remarkable act enacted to suit the Indian scenario; it involved providing <i>copyright protection to the composer during his lifetime + for a period of 60 years</i> from the death of the composer.

***Table 2[Summary of legislation from the 18<sup>th</sup> century till today]***

The copyright act 1957 was introduced with the following objectives as listed below: -

- A. It encourages musicians, artists and composers to produce original work by granting them exclusive rights.
- B. To stop misuse of Copyright.
- C. It acts as “right in rem” to its original owners against the copyright violators.
- D. It helps to provide civil as well as legal remedies to the copyright users.
- E. It provides methods for acquiring Copyright.

This legislation has played a crucial role of shaping the musical industry in the neo classical era extending protection to their artistic work and protecting the same from infringement.

## **COPYRIGHT LAW AND MUSIC REVENUE**

Profit in music industry is earned through creation of musical ideas with the help of market expansion. Music like other forms of intellectual property right is essential to be copyrighted for the purpose of earning profit out of the creation; however, it is essential to know that Copyright only protects the expression and not the artistic idea itself for example: the genre of "neoclassical music" cannot be copyrighted but the song "Signs of Life" is copyrighted.

The processes of income generation through musical composition have two principle types of ideas: namely musical composition and sound recording.<sup>10</sup>

A. *Musical Composition* – A musical composition includes music accompanying words and is normally registered as performing art. The author of the musical work is generally considered as the composer. [see: Table 3]

B. *Sound Recording* – A sound recording is result from the fixation of series of spoken words and other sounds it is normally registered as sound recording. The author of the sound recording is the performer. [see: Table 3]

Once the composition are recorded into a noted sheet or record; the musical record becomes “Copyrightable” under section 22 of the Copyright Act 1957, however there are certain terms and conditions for copyrighting the work which are needed to be satisfied by the composer such as “originality” and “creative effort” in order to make the work copyrightable.<sup>11</sup>

MUSICAL IDEA	CLASSIFICATION OF RIGHTS	DIVISION OF MUSIC CREATOR	PHYSICAL OBJECT IN WHICH MUSIC WORK CAN BE FIXED
Musical Composition	Performing Art	<ol style="list-style-type: none"> <li>1. The Composer</li> <li>2. The Lyricist</li> </ol>	Music sheet, LP, CD
Sound Recording	Sound Recording	<ol style="list-style-type: none"> <li>1. The Performer</li> <li>2. Producer</li> <li>3. Both</li> </ol>	Tape, Disk, LP, CD

**Table 3[Anatomy of Musical Ideas for Copyrights]<sup>12</sup>**

The initial focus of musical Copyright was on the basis of musical sheet and live performance however with the change of time and modernization of technological development the situation is different.

<sup>10</sup> Copyright, competition and Development, UNCTAD,(2<sup>nd</sup> August,2020), [https://unctad.org/en/docs/dp\\_145.en.pdf](https://unctad.org/en/docs/dp_145.en.pdf).

<sup>11</sup> *Supra*.

<sup>12</sup> Anderson & Miles (1999) .

- A. There is new form of sound and music recording techniques owing to the growth of technology such as Magnetic tapes, stereos, Audio technology, and video.
- B. With the modernization of technology and access to internet connection new method of broadcasting and public performance methods have been evolved such as satellite, cable, Television.

In earlier times the musical work was initially copyrighted to protect published copies of musical composition however with evolvement of music the rights have been broadly extended to Mechanical rights and synchronization rights. The Copyright provides basis for collecting various types of royalty and license fee [see: Table 4].

TYPES OF MUSIC USE	TYPES OF LICENSE REQUIRED
1. Commercial broadcast of non-dramatic music	Public Performance License
2. Music video production used for broadcaster cable TV	Mechanical License
3. Movie, Music video or rented to individual for home use	Synchronization License
4. Motions picture for theater	Public Performance License
5. Live performance	Public Performance License
6. Cable TV	Compulsory License
7. Radio	Synchronization License
8. Internet (Online song distribution)	Synchronization License

*Table 4/Music License in India*

Copyrighting songs ensure future income of the musical composer based on the popularity of the song.

### **THE SACROSANCT OF COPYRIGHTING MUSICAL COMPOSITION**

Copyrighting is of sacrosanct importance not only to ensure future income but also to protect the artistic work of the composer from the infringement. In United States of America, a major

act was passed in the year of 2018 termed as Music Modernization Act of 2018<sup>13</sup> this act was passed with intent to affect the music royalties passed since 2018. It is important for the composer to take necessary steps to make sure their compositions are copyrightable. In the Indian context copyright provides several protections such as section 63, 65A, 65B, 63A of the copyright act 1957 which would broadly be discussed in the later parts of the research are very useful for the composer in matters of copyright infringement. [See: Table 5]

OBJECT: -
1. Copyright of musical composition is important to ensure protection of original work from intellectual property right infringement.
2. To ensure wealth creation and steady flow of income with the growth of the musical composition in future.

*Table 5[Two main object of Copyright]*

We discuss two major case-study which are of sacrosanct importance to understand the importance of Copyright for musical composition and remedies in case of infringement.

### Case Study (1)

**The Gramophone Co. of India v. Super Cassettes Industries Ltd.**<sup>14</sup>

**Citation:**(2010) Delhi H.C. CS(OS) Nos.1625/1999 & 399/2005

The court observed *“The limited rights conferred by Section 14 (e) on the owner of Copyright in a sound recording (viz. the exclusive right to make other sound recording embodying it; to sell or hire any copy of the sound recording; or to communicate the sound recording to the public) harmonizes with the rights which vest in the owner of the primary literary, dramatic and musical work utilized to make a sound recording. The owner(s) of Copyright in the literary, dramatic and musical works can make or authorize the making of a new sound recording by utilizing the same literary, dramatic or musical work which may earlier have been utilized for making an earlier sound recording. This right is not abridged or taken away by the said provision.”*

<sup>13</sup> Do Musician really need Copyright, D 4 music marketing,(3<sup>rd</sup> August 3, 2020), <https://d4musicmarketing.com/music-copyright-basics-for-musicians/>.

<sup>14</sup> (2010) Delhi H.C. CS(OS) Nos.1625/1999 & 399/2005.

## Case Study (2)

### TIPS INDUSTRIES LTD. V. WYNK LTD. AND ANR<sup>15</sup>

Citation: NMCD/72/2019

#### ***Facts of the case: -***

The plaintiff, herein Tips Industries Ltd. licensed its 25,000 songs to the defendants on 22<sup>nd</sup> August, 2015 by the Copyright Society. The license was valid till 31<sup>st</sup> August, 2018, as the license expired both the parties went on to have some kind of negotiation to renew the license which ended to be a failure.

Wynk Ltd., the defendant was asked to deactivate the songs by the plaintiff, but they did not comply with it, to this omission of the defendant the plaintiff had sent a legal notice to Wynk to which Wynk replied that they are invoking Section 31D of the Copyright Act and claimed themselves to be the broadcasting organization who are entitled to statutory licensing under Section 31 D.

#### ***Judgment***

*It was observed by Justice Kathawalla that the 2012 Act is a cutting edge statute, and subsequently the legislature was very much aware about the presence of pervasive computerized innovations and patterns which is very apparent from articulation of article however to be straightforward the quantity of spilling administrations and the quantity of clients utilizing these administrations were far less in 2012 so such considerations probably won't have crossed the thoughts of the legislature, additionally the way that the legal permitting arrangement of the Copyright is drawing in contentions since 2012 can't be denied. Tips v. Wynk is one such case and another significant tussle is going on among Spotify and Warner Brothers which is as a rule definitely observed by IP devotees around the world.*

*According to this judgment the position is evident that the music spilling specialist co-ops are required to get a permit from the copyright holders which as indicated by us is completely legitimized.*

#### **COURTROOM TREATMENT OF MUSICAL COPYRIGHT INFRINGEMENT:-**

---

<sup>15</sup> NMCD/72/2019.

In the present day law, the musicians and the composers can be held liable for infringement of Copyright when they knowingly or not knowingly incorporate pre-existing musical piece of other labels or composers in the creation of their new musical piece, the musician can also be held liable if the musician's piece of work is found to be substantially similar to any of the existing work by other composers or labels. If any work is found to be substantially similar or a part of one existing musical piece is found to be in the new work, without any prior permission from the existing musical piece's copyright holder, then the work will be infringing the Copyright of the piece's copyholder.

To make it clear how the courts deal with copyright infringement throughout the world we have to look in some of the landmark cases related to copyright infringement of music, the table below discusses some of the land mark cases related to this topic.

## I. **Skidmore v. Led Zeppelin**<sup>16</sup>

### ***Facts of the Case: -***

Randy Craig Wolfe Trust, filed suit against Led Zeppelin, individual members of the band, Super Hype Publishing Inc, Warner Music Group Corp., Atlantic Recoding Corporation and Rhino Entertainment Company for copyright infringement and violation of Right of Attribution.

The Plaintiff Michael Skidmore a trustee of Randy Craig Wolfe Trust alleged that the defendants' song "Stairway to Heaven" was similar to another song "Taurus" written by Randy Craig Wolfe and has infringed the rights of the rock band Sprit, of which Randy Craig was a member.<sup>17</sup> The Wolfe's estate filed a suit with the hope that they will get the co-writing credits and royalties.

### ***Judgment: -***

The case went to trial to two years later in 2016 in front of a jury. The jury was not allowed to listen the songs. All that the jury had access was the arguments in the court and the sheet

---

<sup>16</sup>No. CV 15-3462 RGK (AGRx), 2016 U.S. Dist. LEXIS 51006 (C.D. Cal. Apr. 8, 2016).

<sup>17</sup>Law School Case Brief, LexisNexis,(Aug. 6,2020, 6 P.M.)  
<https://www.lexisnexis.com/community/casebrief/p/casebrief-skidmore-v-led-zeppelin>.

music. The jury favored the rock band, Led Zeppelin.<sup>18</sup> The plaintiff again appealed in the Superior Court, the Court of Appeals for Ninth Circuit, the court held that the jury instructions of the district court were prejudicial. The superior court found that the district court failed to instruct the jury that the selection and arrangement of unprotected musical elements are protectable and the court's instruction was prejudicial. The court also saw that the scope of protection of unpublished musical works under the Copyright Act of 1909 was defined by the deposit copy, as the work was not published or registered, the district court's ruled it correctly that Spirit's "Taurus" could not prove substantial similarity with Led Zeppelin's "Stairway to Heaven". The Court of Appeals was also in favour of Led Zeppelin and others.<sup>19</sup>

## II. *Baxter v. MCA, Inc.*<sup>20</sup>

### *Facts of the case: -*

The defendant, John Williams and the plaintiff, Baxter were acquaintance and they worked on a musical piece called 'Joy' which was copyrighted in 1954. The defendant, John Williams had knowledge about 'Joy'; the defendant played the piano part in the song. The plaintiff filed the suit against the defendant saying that the theme of E.T. infringed the Copyright of 'Joy' as the music was similar.

### *Judgment: -*

The Jury on presentation of all the facts and evidences in front of the United States Court of Appeals, Ninth Circuit concluded that there was no substantial similarity between the two musical pieces that they could hear and without any substantial similarity the new piece could not have infringed the Copyright of the old piece. Therefore, the court granted the defendants motion for summary judgment.<sup>21</sup>

---

<sup>18</sup> Andrew Limbong, Led Zeppeling Wins Copyright Dispute Over 'Stairway To Heaven', NPR News,(Aug. 6, 2020, 6 P.M.) <https://www.npr.org/2020/03/09/813763864/led-zeppelin-wins-copyright-dispute-over-stairway-to-heaven>.

<sup>19</sup>Law School Case Brief, LexisNexis,(Aug. 7,2020, 12 P.M.) <https://www.lexisnexis.com/community/casebrief/p/casebrief-skidmore-v-led-zeppelin-562814067>.

<sup>20</sup> 812 F.2d(9<sup>th</sup> Cir. 1987).

<sup>21</sup>Baxter v. MCA, Inc., Case text, (Aug. 7, 2020, 2 P.M.) <https://casetext.com/case/baxter-v-mca-inc>.

### III. Saregama India Ltd. v. Viacom Motion Picture &Ors.<sup>22</sup>

#### *Facts of the case: -*

The plaintiff Saregama India Ltd. had filed a suit against the defendant Viacom 18 Motion Pictures on the grounds that Viacom 18's film 'Special 26' which was released in 2012 had infringed the Copyright of the plaintiff by copying the lyrics and music of the song 'Mere Sapnoki Rani' which featured in the film Aradhana. The plaintiff alleged that its Copyright has been infringed as one of the lead actors of 'Special 26', Anupam Kher uttered about 4 to 5 words from 'Mere Sapnoki Rani' for a time span of less than 7 seconds.

#### *Judgment: -*

The Calcutta High Court denied any relief to the plaintiff Saregama India Limited on three grounds, first being that there was no infringement of music as the words were not narrated in the rhythm in which the original song was made, secondly there was no originality of the words 'Mere Sapnoki Rani' as these words could have been used by anyone in general the company cannot copyright these words and thirdly the words were used for a time period of less than 7 seconds which means it was de minimis and not worthy of a legal claim.<sup>23</sup>

### IV. India TV Independent News Service PVT. LTD. &Ors. v. Yashraj Films Pvt. Ltd.<sup>24</sup>

#### *Facts of the case: -*

A suit was filed by the plaintiff, Yash Raj Films, in the suit the plaintiff sued for copyright infringement, as the defendant used the first line of the lyrics of a hit song, copyrighted by the plaintiff in an advertisement of the defendant.

#### *Judgment: -*

The court observed that the only a small portion of the song was actually used in the program by the defendant, which did not amount to infringement of the Copyright rather it was fairly

<sup>22</sup>TA No. 29 of 2013, T. No. 62 of 2013.

<sup>23</sup>IPRMENTLAW, (Aug. 7,2020, 6 P.M.) <http://iprmentlaw.com/wp-content/uploads/2018/01/Saregama-vs-Viacom.pdf>.

<sup>24</sup>2013 (53) PTC (Del).

used, as the same is de minimis, which is very little usage compared to the entire show. The Court favored the defendant.<sup>25</sup>

## V. MySpace Inc. v. Super Cassettes Industries Ltd.<sup>26</sup>

### ***Facts of the case: -***

MySpace, the defendant, a social networking platform allowed its users to upload and share Super Cassette's, the plaintiff's copyrighted work without any prior permission in the defendant's platform. The plaintiff alleged the defendant of copy right infringement. MySpace on the other had had took down the content within 36 hours of having 'actual knowledge' of the infringement.

### ***Judgment: -***

Despite having no knowledge of the infringement MySpace was held liable by a single Bench in 2012, the decision of the single Bench of the Court was over turned by the Division Bench of the same Court where it was decided that according to Section 51(a) (ii) of the Copyright Act, 1957, actual knowledge of the infringement has to be there rather than genial awareness. The judgment relieved MySpace from pre-screening the content which are been generated by the users.

The above cases gives us the knowledge of how the courts decide whether a content or piece of work is infringing the Copyright of any existing work or not. The concepts followed in United States have three different tests to check whether it is infringing a copyright or not and in India there the test of '*De minimis non curatlex*<sup>27</sup>', which means the law does not take any account of the trivial matters.

The tests followed in the United States are: -

- i) reasonable listener
- ii) expert opinion

<sup>25</sup>India TV Independent News Service Pvt. Ltd. &Ors vs. Yashraj Films PVT LTD., Indian Case Laws, (Aug. 7, 2020, 7P.M. 0 <https://indiancaselaws.wordpress.com/2014/09/11/india-tv-independent-news-service-pvt-ltd-ors-vs-yashraj-films-pvt-ltd/>).

<sup>26</sup>C.M. APPL.20174/2011.

<sup>27</sup>AnushreeRauta, Precautions to be taken while making an audio- visual content: Part 1- Trademark and Copyright, IPRMENTLAW, (Aug. 8, 2020, 9.P.M.) <http://iprmentlaw.com/2018/01/20/precautions-to-be-taken-while-making-an-audio-visual-content-part-1-trademark-and-copyright/>.

- iii) Substantial similarity between the two pieces of music.<sup>28</sup>

The question of actual knowledge of infringement is also necessary. In India if the case has '*de minimis non curat*' in it, then it does not amount to infringement of Copyright otherwise it is an infringement. '*de minimis non curat*' can be considered as 'fair use'. The question of actual knowledge of infringement is also necessary.

## LIMITATION OF MUSICAL COPYRIGHTS

Copyright is essential in the musical industry so that one does not have to compromise with his or her work, but with this protection there comes some consequences which do not make the content inaccessible but tough to reach; we have discussed some of the unique limitations which copyright laws create. They are discussed as follows: -

***Rigidity in recreating or remixing an existing musical piece:*** - Creation of a new version of the same musical piece is not allowed if the piece is copyrighted, until or unless the cause of recreation is defined in Section 52<sup>29</sup> of the Copyright Act 1957. To create a remix or to add something new to the existing songs the remaking party have to take formal permission from the copyright holder, only if the copyright holder allows the artist to make any changes to the existing song only then the new artist can recreate a new form of the existing song. Even the creator of the song is not allowed to recreate a new form of the song if the Copyright is with the commissioner.

***Ambiguity of Copyright:*** -The copyright laws not only in India but throughout the world are ambiguous and are open to interpretation. Like the Article 13 of the TRIPS agreement Section 52 of the Copyright Act, 1957<sup>30</sup> and the Fair Use Doctrine<sup>31</sup> of the United States, all of these talks about "Fair dealing" which mean the acts of remaking a new form using the original piece is not an infringement of the Copyright. This concept of fair use is open to interpretation of the Judges and the Counsels.

---

<sup>28</sup>J. Michael Keyes, Musical Musings: The Case of Rethinking Music Copyright Protection, Michigan Telecommunications and Technology Law Review, (Aug. 9, 2020, 9 P.M.) <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1127&context=mttlr>.

<sup>29</sup>The Copyright Act, 1957 § 52 (India).

<sup>30</sup>The Copyright Act, 1957 § 52 (India).

<sup>31</sup>The Copyright Act, 1978 § 107 (U.S).

**Authorship is not ownership:** -The creator is not the copyright holder of the piece of work. The creator of a piece of music is not always the copyright holder. Normally Copyright is held by an enterprise, so the creator more or less does not have any say on what happens after the production is over, the creator cannot restrict the copyright holder from reusing it somewhere, where he or she does not like it, at the creator cannot allow others to use that music or he himself cannot use the music for making a new form of the existing music without the permission of the copyright holder.<sup>32</sup>

**A barrier to creativity:** - Copyrights can be a barrier to creativity, the creators might create a new creative version of the existing song but the copyright holder might file it for infringement of their Copyright, copyrights can demotivate new creators.

**Copyright can be expensive:** - India Copyrights are not known to be expensive with just Rs. 500 per work but Copyright over the world is known to be expensive which is problematic for new and small creator, like copyrights in the U.S where copyrights might cost at \$20000+.<sup>33</sup>

## **SUGGESTION & RECOMMENDATION: -**

The advancement of technology combined with rigid copyright laws has resulted in several pressing issue in the field of regulating the copyright laws and safeguarding the rights of composers. The researchers have tried to provide potential solutions which might be adopted overcome the same.

- i. **Flexibility:** - With the rapid growth and advancement of technology and enhanced scope of digitalization the old copyright laws need an amendment to efficiently and effectively regulate and safeguard the interest of the composers as well as promote music in the minds of new generation, strict copyright laws and red-tapism tend to demoralize youth for creation of new compositions therein the need of the hour is to

---

<sup>32</sup> Anonymous writer, Copyright: Advantages and Disadvantages, Copyright Kills (creativity), (Aug 8, 2020, 8 P.M.) <http://copyrightkills.blogspot.com/2009/12/copyright-advantages-and-disadvantages.html>.

<sup>33</sup> Edward Hasbrouck, Copyright registration should be easier, less costly, National Writers Union, (Aug. 9<sup>th</sup> 2020, 2 P.M.) <https://nwu.org/copyright-registration-should-be-easier-not-more-expensive/>.

bring flexibility in the existing legislation thereby safeguarding the interest of the composers and promote creation of new composition.

- ii. ***Establish a Copyright Ethics committee:*** - The concept of “Fair use” over the years have been interpreted by various attorney to achieve unfair objects, the ambiguity of law have been utilized by many to their own advantage the same must be curbed and for the said purpose it is of sacrosanct importance to establish an Copyright Ethics Committee who will look after the matter to have a check on the “fair use” of section 52 of the Copyright Act 1957 or Article 13 TRIPS Agreement.
- iii. ***Enhanced degree of control:*** - In many cases the creator has very lesser degree of control over the extend of use of their musical composition, this means the composer in many cases don't have the power to question where, how and for what purpose their composition shall be used. These acts of the enterprise tend to degrade the moral and standards of the composer and to avoid the same the composer shall be given a higher degree of control over their musical composition through an establishment of contract between the label house and the independent composers. The agreement between the parties must have clause to ensure that sufficient royalty is been provided to the composer and the same must be decided taking into due consideration the legal, cultural, social and economic aspect.
- iv. ***Removing Emphasis on Melody:*** - The “musical work” is antiquated and remains in the traditional era and thereby in the growing era of digitalization it needs amendment therein the emphasis on *melody* should be removed; in order to promote creativity among the youth and modern composers. It is important to remove the rigid guidelines on “*what is music? & what's not!*” and enhance the scope of music for a broader aspect to define the adequately what is music.
- v. ***Achieve Uniformity:*** - The amount paid for copyrighting must be made uniform throughout the world after considering the “PESTEL” Model [see: Fig 1].

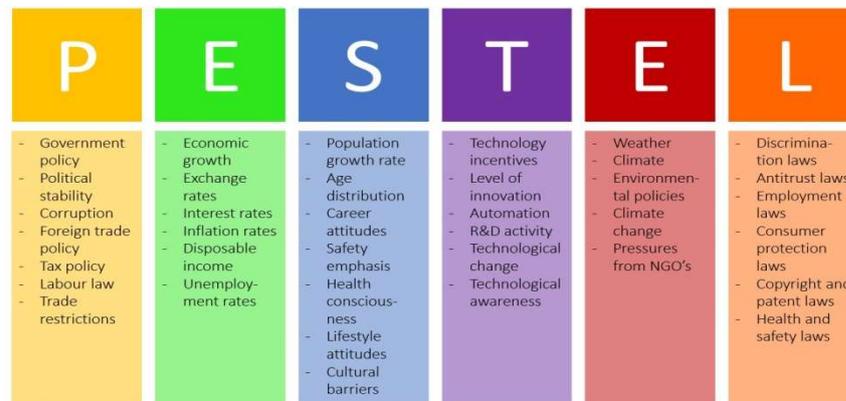


Fig 1[PESTEL MODEL]<sup>34</sup>

## CONCLUSION

In last 20 years the world has changed drastically, letters are almost on the verge of extinction; use of records, cassettes and Compact Discs (CD) are decreasing day by day, inaccessible things are becoming accessible for everyone and not only the rich but everyone can access the label; these has happened due to the internet. Today when a song is released in the United States, we do not have to wait for weeks or months to get the CDs or cassettes of the songs, we can easily get the song at our finger tips on a music app in our phone at the same time when the song is released at the United States. All the credit for making inaccessible things accessible goes to the internet. The internet has changed more or less everything that we see around us today. Internet revolutionized the world in ways which law makers' decades ago could not predict. The gray-haired copyright laws made in the mid 1900s are not sufficient in this era of internet. The lawmakers should rethink about making some change in copyright laws firstly the issue of broadcasting has to be noticed. Music got revolutionized with internet and now the listeners of the songs are not confined to one geographical location, with no confined geographical location of the listener the law needs to be uniform throughout the world so that no one can misuse or infringe the Copyright of a song anywhere in the world. We saw how there was no question of Copyright till 1833, so the work of the composer were not protected but since 1833 the composers or artists have received some sort of protection on their works but with the introduction of internet the

<sup>34</sup> PESTEL ANALYSIS, Business 2 you, (9<sup>th</sup> August,2020), <https://www.business-to-you.com/scanning-the-environment-pestel-analysis/>.



# INDIAN JOURNAL OF LAW, POLITY AND ADMINISTRATION

protection provided by the current copyright laws are not enough, it needs a change which will protect the composers as well as encourage the young creative minds to come up with new ideas.

