

Legal Issues in ‘Amortization of Royalties’

Issue: Whether Separate Royalties need to be paid for Sound Recordings,
Cinematographic Films and Underlying Works?

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Relevant Statutory Provisions

❖ *Section 13: Works in which copyright subsists –*

“...(4) The copyright in a cinematograph film or a [sound recording] shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or, as the case may be, the [sound recording] is made...” [Emphasis supplied.]

Pre 2012 Amendment v. Post 2012 Amendment

❖ *Section 18: Assignment of copyright –*

“...(1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof:

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Relevant Statutory Provisions (Contd.)

Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilization of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void

Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilization of such work... [Emphasis supplied.]

3 ❖ Section 19: Mode of assignment -

“...[(9) No assignment of copyright in any work to make a cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilisation of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall.

Relevant Statutory Provisions (Contd.)

[(10) No assignment of the copyright in any work to make a sound recording which does not form part of any cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable for any utilization of such work in any form....] [Emphasis supplied.]

❖ ***Section 31D: Statutory license for broadcasting of literary and musical works and sound recording –***

“...(2) The broadcasting organisation shall give prior notice, in such manner as may be prescribed, of its intention to broadcast the work stating the duration and territorial coverage of the broadcast and shall pay to the owner of rights in each work royalties in the manner and at the rate fixed by the [Commercial Court]... ” [Emphasis supplied.]

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Indian Performing Right Society v. Eastern India Motion Pictures, [1977 SCR (3) 206]

❖ Held –

“*the author (com-poser) of lyric or musical work who has authorised a cinematograph film producer to make a cinematograph film of his work and has thereby permitted him to appropriate his work by incorporating or recording it on the sound track of a cinematograph film cannot restrain the author (owner) of the film from causing the acoustic portion of the film to be performed or projected or screened in public for profit or from making any record embodying the recording in any part of the sound track associated with the film by utilising such sound track or from communicating or authorising the communication of the film by radio-diffusion.*” [Emphasis supplied.]

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Music Broadcast Private Ltd. v. Indian Performing Right Society Ltd., [2011 (47) PTC 592 (Bom)]

❖ Held –

- “Once the **musical** and literary works are subsumed in a cinematograph film or a sound recording, qua that cinematograph film or sound recording and as embodied in such recording, they do not have a separate existence....” [Emphasis supplied.]
- “...**Once a sound recording is made, it is only the producer, as the owner thereof, who can exploit it exclusively in the manner provided in Section 14(1)(e). However, those rights are confined to that particular sound recording and that sound recording alone. The owner of the sound recording can communicate the same to the public, inter-alia, by broadcasting it or playing it in public places. The owners of the underlying musical and literary work embodied in such sound recording cannot interfere with these rights of the owner of the sound recording qua that sound recording...**” [Emphasis supplied.]

Indian Performing Right Society Ltd. v. Aditya Pandey and Ors. [2012 (50) PTC 460 (Del)]

❖ Held -

- “... Section 13(4) recognizes that there is separate copyright in the underlying musical and literary works which are embodied in a cinematographic film or sound recording. Such underlying works do not lose their existence upon a sound recording or any number of sound recordings being made...”
- “... the **communication of a sound recording** to the public by the owner of the recording in **no way encroaches upon the right of the owner of the underlying literary and musical works to perform said underlying works in the public....**” [Emphasis supplied.]

Music Broadcast Ltd. & Ors. v. Tips Industries Ltd. & Ors., [OP (SEC-31-D)/3/2020/CR/NZ & 9 others]

❖ Held –

- “...The provisions of Section 13(4) read with Section 14(a)(iii), Section 18 (third and fourth proviso), Section 19(9) and (10) of the Act along with Section 31D clearly mandate a **separate rate of royalty** to be fixed for underlying works... Section 31D also contemplates **separate payment to Owners of i) rights in underlying works and (ii) rights in sound recordings...**” [Emphasis supplied.]
- “...the separate payment of the royalty to the owner of the sound recording as well as the owner of the lyric and musical composer right arises due to the reason that the **rights in the sound recording whether incorporated in the film or otherwise than of film are recognized separate works within the meaning of Section 2 (y), the author and owner of which is the producer as per Section 2 (d) and the rights of the same also distinctly recognize and flow from Section 13 and 14 respectively....**” [Emphasis supplied.]

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The Indian Performing Right Society Ltd v. Entertainment Network (India) Ltd., [2021 (85) PTC 190 (Del)]

❖ Held –

- *“The 2012 amendment does not alter the provisions of the Act, on interpretation...that communication to the public of underlying literary and musical works as part of sound recording...**does not require authorisation/permission from the owner of the copyright in the underlying literary and musical works of the sound recording.**” [Emphasis supplied.]*
- *“...when Section 19(10) provides that assignment of copyright in any work to make a sound recording which does not form part of any cinematograph film shall not affect the right of the author of the work to claim equal share of royalties and consideration payable for any utilisation of such work in any form, “...cannot mean that utilisation of the work as embodied in the sound recording also (contd.)*

The Indian Performing Right Society Ltd v. Entertainment Network (India) Ltd. (Contd.)

- *entitles the owner of the copyright in such work to demand equal share of royalties and consideration payable for the sound recording. To read the same otherwise would make the other provisions, on interpretation whereof it was held that no authorisation is required to be taken from owners of copyright in underlying works of the sound recording, while communicating the sound recording under authorisation of copyright in sound recording, otiose... ” [Emphasis supplied.]*
- *“...To the said extent, the amendment of the year 2012, is clarificatory.” [Emphasis supplied.]*

THANK YOU!

Questions?

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