

Legal Issues in ‘IP & Pop-Culture’

Issue: Do compositions based on traditional ragas qualify as “original musical works”?

Relevant Legal Provisions

❖ **Section 2(p), The Copyright Act, 1957 –**

2. Interpretation.— In this Act, unless the context otherwise requires,—

(p)“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;”

❖ **Section 13(1)(a) The Copyright Act, 1957**

13. Works in which copyright subsists.— (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,-

(a) original literary, dramatic, musical and artistic works;

(b) cinematograph films; and

(c) sound recording.

Relevant Judicial Decisions

❖ *Eastern Book Company and Ors. vs. D.B. Modak and Ors., AIR 2008 SC 809 (Supreme Court of India, Division Bench, December 12, 2007)*

“38. ... the copy-edited judgments would not satisfy the copyright merely by establishing the amount of skill, labour and capital put... **original or innovative thoughts are necessary to establish copyright in the author's work**...The Copyright Act is not concerned with the original idea but with the expression of thought. Copyright has nothing to do with originality or literary merit. Copyrighted material is that what is **created by the author by his own skill, labour and investment of capital, maybe it is a derivative work which gives a flavour of creativity**...The copyright work which comes into being should be original in the sense that by virtue of selection, co-ordination or arrangement of pre-existing data contained in the work, a work **somewhat different in character is produced by the author**... We make it clear that the decision of ours would be confined to the judgments of the courts which are in the public domain as by virtue of Section 52 of the Act there claim copyright in a compilation, **the author must produce the material with exercise of his skill and judgment which may not be creativity in the sense that it is novel or non-obvious, but at the same time it is not a product of merely labour and capital**. The derivative work produced by the author must have some distinguishable features and flavour to raw text of the judgments delivered by the court. The trivial variation or inputs put in the judgment would not satisfy the test of copyright of an author.”(**emphasis supplied**)

Relevant Judicial Decisions

- ❖ ***Indian Performing Right Society Ltd. v. Eastern India Motion Pictures Association And Others, 1977 AIR SC 1443 (Supreme Court of India, Division Bench, March 14, 1977)***

24. “Musical work”, as defined in Section 2(p), reads: “(p) musical work means any combination of melody and harmony or either of them printed, reduced to writing or otherwise graphically produced or reproduced.” Therefore, **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.** The Indian music lovers throng to listen and be enthralled or enchanted by the nada brahma, the sweet concord of sounds, the raga, the bhava, the laya and the sublime or exciting singing. Printed music is not the glamour or glory of it, by and large, although the content of the poem or the lyric or the song does have appeal. Strangely enough, “author”, as defined in Section 2(d), in relation to a musical work, is only the composer and Section 16 confines “copyright” to those works which are recognised by the Act. **This means that the composer alone has copyright in a musical work. The singer has none. (emphasis supplied)**

Relevant Judicial Decisions

❖ *Ustad Faiyaz Wasifuddin Dagar vs Mr. A.R. Rahman & Ors., CS(COMM) 773/2023 and I.A.21148/2023 (High Court of Delhi, Single Bench, April 25, 2025)*

123. A composition in Hindustani classical music would have to follow the structure and rules of a Raga to identify as a composition within the said Raga. However, the various possibilities and choices available to a composer within the structure of a Raga are several in number. There are millions of compositions which are composed, sung and rendered in different Ragas and in different traditions/Gharanas. However, each of the said compositions would be original compositions so long as they are not copied from an existing composition...***It is not the individual note or swara of the Raga that the composer may claim copyright on, rather, it is this original expression in the form of selection and arrangement of the common building blocks, requiring a high level of skill and understanding of the nuances of Hindustani classical music, that the composer enjoys copyright in.***

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128. An original work may include or incorporate elements taken from prior works or works from the public domain. However, any elements from prior works or the public domain are not considered original parts and not protected by copyright. Instead, the original part of the plaintiff's work is limited to the part created: 1. independently by the work's author, that is, the author did not copy it from another work; and 2. by use of at least some minimal creativity. (emphasis supplied)

Relevant Judicial Decisions

- ❖ *Ustad Faiyaz Wasifuddin Dagar vs Mr. A.R. Rahman & Ors., CS(COMM) 773/2023 and I.A.21148/2023 (High Court of Delhi, Single Bench, April 25, 2025)*

138...The change of even one Swara make a difference in the musical composition. Further, the taal is also not alleged to be the same for both compositions...The suit composition, having been prima facie established as an original work of the Junior Dagar Brothers, falls in the first category, i.e., an original musical work. The suit composition, which is referred to as 'Shiva Stuti', does not include the lyrics (asthayi) performed with the music nor the voice of the Junior Dagar Brothers. It refers only to the musical composition, which forms part of the suit composition i.e., musical notes (swaras), which is then blended with other elements of the Raga Adana and the sul taal in a unique, creative and distinctive manner. The notes of this composition may have never been written down by the Junior Dagar Brothers, but they cannot be deprived of the copyright in the said work for this sole reason, especially since the recording of their performance of the suit composition is sufficient to satisfy the requirement of fixation." (emphasis supplied)

Relevant Judicial Decisions

❖ **Mr A.R. Rahman v. Ustad Faiyaz Wasifuddin Dagar & Ors. [FAO(OS) (COMM) 86/2025 & CM APPL. 27354/2025] (High Court of Delhi, Division Bench, September 24, 2025)**

123. Section 13(1) of the Copyright Act, 1957 unequivocally provides that copyright shall subsist only in original literary, dramatic, musical and artistic works. Read conjointly with Section 2(p), which defines a ‘musical work’, Section 2(ffa), which defines a ‘composer’, and Section 2(d), which declares that **in relation to a musical work, the author is the composer, the legislative intent leaves no scope for doubt that originality is not to be understood in abstraction but must necessarily flow from the authorial act of composition. The requirement of originality is thus anchored in the independent skill, labour, and judgment of the composer, without which no copyright can subsist.....** Therefore, copyright protection in a musical work requires a demonstrable nexus between originality and authorship, **ensuring that what the law protects is not the raw material of tradition, but the intellectual creation of the composer.**

128. Adverting to the facts of the case, on the aspect of originality, the **impugned judgment, after a rather limited musicological analysis, observed that although the individual elements in the composition may not be protectable, the selection and arrangement of the common building blocks of Raga Adana enjoy copyright protection...uses specific taal-sultaal (10 beats) instead of the chautaal (12 beats) which is more common in compositions of Raga Adana. Further, the impugned judgment relied on the dragging of the swara “g” to hold that even a minor alteration can produce originality in a musical composition**...The reliance of the impugned judgment on the absence of contrary evidence, rather than a demonstration of originality by the plaintiffs, is legally untenable. **(emphasis supplied)**

Relevant Judicial Decisions

- ❖ ***Mr A.R. Rahman v. Ustad Faiyaz Wasifuddin Dagar & Ors. [FAO(OS) (COMM) 86/2025 & CM APPL. 27354/2025] (High Court of Delhi, Division Bench, September 24, 2025)***

129...Furthermore, Hindustani classical music compositions are built upon common building blocks and a framework of rigid rules. Therefore, **before undertaking any analysis of originality, it becomes imperative to filter out the commonplace, generic, non-distinctive, and non-original elements that necessarily flow from the grammar of the Raga system...This principle underscores that the foundational grammar of a Raga belongs to the public domain and cannot form the basis for copyright protection. If originality is inferred merely from the dragging of a single swara or a minor modulation within the confines of a Raga, such recognition would unduly extend copyright protection to minimal variations and risk monopolising essential elements of the public domain. Thus, it is necessary to exclude such common elements and focus on whether there is a substantial and material similarity in the original expression, arrangement, or presentation, thereby stifling the improvisational essence of classical music. Overprotection of minor alterations would not only curtail artistic freedom but also would render the very process of learning and transmission of this art form vulnerable to infringement claims. This Court is therefore cautious in holding that originality in classical compositions must be assessed only after filtering out elements dictated by the grammar of the Raga system and recognising copyright, if at all, only in the distinctive arrangement or pattern that reflects the composer's independent creative contribution. (emphasis supplied)**

Relevant Judicial Decisions

- ❖ *Mr A.R. Rahman v. Ustad Faiyaz Wasifuddin Dagar & Ors. [FAO(OS) (COMM) 86/2025 & CM APPL. 27354/2025] (High Court of Delhi, Division Bench, September 24, 2025)*

135. Applying these principles, it is evident that elements such as the use of Raga Adana, devotional invocations of Lord Shiva are mere ideas, themes or scenes a faire flowing necessarily from the grammar of Hindustani classical music, and thus forming part of the public domain. Copyright protection, therefore, cannot extend to such common elements but only to their distinctive arrangement or expression by an identifiable author...

137...It is this fusion of authorship with originality that lays the foundation stone of copyright protection, ensuring that what is protected is not mechanical labour alone, but the expression of the author's individuality. **(emphasis supplied)**

Conclusion

- ❖ Compositions based on traditional ragas do qualify as original musical works under the Copyright Act, 1957, provided they satisfy the **foundational requirement of originality through authorship**.
- ❖ As per reading of Sec 13(1)(a) of the Copyright Act, 1957, copyright subsists in “original musical works”. The Act does not require novelty or non-obviousness; rather, the originality requirement is satisfied when work results from “independent skill, labour and judgement” of the author reflecting their individual intellectual creation.
- ❖ As per earlier judgments of the Supreme Court, such as Eastern Book Company case, ***originality requires more than mere labour and capital; it demands “a flavour of creativity” through selection, coordination, or arrangement that produces a work “somewhat different in character”***.
- ❖ In Ustad Faiyaz Wasifuddin Dagar case, ***the Liberal Approach***- recognizing that creative choices within established frameworks.
- ❖ In A.R. Rahman v. Dagar Brothers case, the Division Bench significantly tightened the originality threshold for raga-based compositions, introducing critical safeguards, including

(1) Burden of Positive Proof (2) Filtration Doctrine (3) Minor Variations –Public Domain (4) Authorship-Originality Nexus

THANK YOU!

Questions?

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