

Intersection Between Intellectual Property Regime And Music Industry In India

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ABSTRACT

Patents, Copyrights, Trademarks, and other Intellectual Property Rights protect inventions, creative or literary works, names, symbols, and pictures. Since music is an artist's artistic expression, it is protected by copyright laws. The music industry is not a new one; it has been there for a long time.

Sampling is when you take a section of music from one song and put it into another. When producers stopped re-creating and reproducing their works and instead began doing the same with music that they had never owned in the first place, the practice of sampling took an unexpected turn. This approach was brazenly exploited by music producers before the adoption of copyright laws, with no proper credit given to the original composition.

The act of sampling had been frowned upon until sampling methods were governed by proper frameworks. The paper discusses the origins of sampling in the music industry, its legality about copyright laws and intellectual property issues, and a few of the major legal disputes that have arisen about sampling and plagiarism in the last few decades, both from an American perspective and the implications that have arisen in India concerning the Copyright Act, 1957.

Key Words: - Intellectual Property Rights; Copyright; Music; Sampling; Plagiarism

1. Introduction

Although it gained popularity in the '90s and was brought to the common consciousness of music connoisseurs with the rise of the internet in the early 2000s as music producers made a paradigm shift from analog recording to digital recording, Sampling has existed within the music industry for decades and was practiced blatantly until copyright laws were enacted or amended to curb its use and appropriate the fair share of credits to the actual creative work of the original musicians. For instance, within the genre of techno and dance music, the British DJ Fatboy Slim sampled James Gang's "Ashes, Rain and I" for his 1999 single 'Right here, Right now' which grew to be an international sensation and is also voted as the 10th greatest dance record of all time. Similarly, Eminem sampled LabiSiffre's 'I got the', (originally produced in 1975) in his acclaimed single "My Name Is" and the list goes on.

Sampling, according to Merriam Webster refers to 'the act, process, or technique of selecting a suitable sample which interpreted by US lawmakers under the Copyright law translates plainly into 'the process of taking a length of music from one song and inserting it into a new song manipulating the melodic, harmonic, rhythmic or vocal characteristics of the song in its course'. However, since original creative and artistic forces are involved in making

music, the practice of sampling music until regulated, is frowned upon. The article addresses the origins of sampling in the music industry, the legality of it vis-à-vis copyright laws and intellectual property issues and discusses a few of the major legal disputes that have emerged over the last few decades pertinent to sampling and plagiarism, both from an American frame of reference, and the implications that arose in India about the Copyright Act, 1957.

1.1 Evolution of Sampling

Sampling, in one form or another, had affirmed its roots as early as in the 1960s. And one of the major reasons behind its rather slower rate of growth was the rare forms of technology coupled with an expensive price tag on the equipment that preceded its importance to the artists of an era where musical awakening and renaissance were on the horizon. Therefore, Digital sampling became a skill available only to a few groups of people ready to pay a high price to satisfy their artistic whims. Harry Mandell's Computer Music Melodeon and Firelight's CMI (Computer Musical Instrument) were among the first sampling machines, but the Akai S950 and E-MU SP-1200 were the only affordable options for studios.

This revelation came to facilitate the emergence of several genres in the late '80s as renowned artists and producers such as The Prodigy and Joey Beltrami who would record

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sounds on their synthesizers and later re-arrange and reproduce their work by altering the sequences in search of a new track, however, this rather innocuous and ethical version of sampling isn't the concern when the discussion is strictly about copyright law and intellectual property.

1.2 Legality of Sampling

The practice of sampling took a sharp turn when the producers ceased to re-create and re-produce their works, instead when they began doing the same to music, they never owned in the first place. Au contraire, most producers and artists sampled music from the 1920s 1930s, 1940's to a large extent and never even bothered to give due credit to the original creators and artists. This includes many of the popular domineering forces of the rock culture that famed in the early '70s including The Beatles; Led Zeppelin; Johnny Cash etc. Whereas the notion of the young imitating the old initially didn't lead to any fervor, the law became involved once the respect ceased and justified, appropriate credits were denied.

Opponents of sampling in the music industry argue on two points: first, those owners of copyrights to recordings and compositions should be adequately rewarded for their creative works when they are sampled, and second, that even if sampling is legally regulated without infringing on the use of IPR, there should be a minimum level of approval. This leads to a standoff of interests where the modern-day artist demands the right to rework the elements of any existing recordings or songs at a just and reasonable price, thus restoring artistic integrity without putting an expensive price tag on sampling as purchasing the exactly appropriate licenses to do so, which is when facilitated a complex web of record companies and artist representatives can be overly expensive since it requires considerable administrative compliances and financial costs, thus impacting the eventual quality of music thus produced.

Furthermore, due to the high costs of sampling and the high percentages of royalties required, there are only two defenses available to an artist who refuses to pay for these licenses: *de minimis* and a claim of fair use. The *de minimis* defense relies on the argument of triviality as a justification although there is no clear definition of 'triviality' and such uses, thus shadowing a certain form of vagueness to the test of determining whether such sampling could be guarded within the confines of trivial use or not, as the courts will determine this from the consumer's point of view, i.e. whether a layperson might discern a significant resemblance, or whether the significant appropriation of components from the original recording is needed. The alternative defense is of fair use, relying on the idea of using the original creations to an extent if they justify the ends of criticism, commentary, or

parody and the defense of fair use has been successful only in cases where the new musical works parodied pre-existing recorded works of authors/creators.

On a wider frame of reference in legal protection available, international prevention to authors/artists stems from the Bern three-step test,

Fair use was certified in the Indian case of *Macmillan and Company v. K. and J. Cooper* in the following categories:

- Dealing fairly with a literary, dramatic, musical, or artistic work for research or private study; analysis or evaluation of that or any other work, as the judge ruled.
- A faithful representation of a literary, dramatic, musical, or artistic work to reflect current events by broadcast, motion picture film, or photography, or in a newspaper, magazine, or other print publication.

2. Notable Cases of Sampling Disputes

2.1 Verve vs. the Rolling Stones (1997; Settled in 2020)

Regarded as one of the greatest and drawn-out legal battles which ensued over copyright law, the tie dispute was finally resolved in 2020 after two decades. In 1997, "Bittersweet Symphony," a worldwide hit for The Verve, was a great success. The song's lyrics were written by vocalist Richard Ashcroft, the orchestral backdrop was primarily sampled from the Andrew Oldham Orchestra's symphonic arrangement of the 'Rolling Stones' "The Last Time" from 1965. The Verve agreed to license a five-note portion of the song in exchange for half of the income, but according to former Rolling Stones manager Allen Klein, the band breached the deal by exploiting a bigger section than they had committed to using. Klein and songwriters Mick Jagger and Keith Richards were sued for plagiarism by Klein's parent firm, ABKCO Records.

In exchange for the song credit being reinstated to Jagger and Richards, The Verve finally handed up all of their song writing income and publishing rights to ABKCO. In 1999, the band was sued for \$1.7 million in mechanical royalties by Andrew Loog Oldham, a former Stones manager who owned the sampled recording. The Verve's most renowned song was finally taken away from them. It was utilized in a Nike commercial without their will, resulting in a loss of revenue from their biggest success and a breach of creative integrity.

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2.2 The case of Grand Upright Music v Warner Bros. Records Inc. (1991)

The lawsuit is often regarded for putting a stop to unlawful digital sampling in the music business, in the Grand Upright case, Biz Markie was sued for copyright infringement by the copyright owners of Gilbert O'Sullivan's 1972 song Alone Again (Naturally). Biz Markie, his publishing company, and his record label were liable for the unauthorized use of an eight-bar sample. This sample was taken from Alone Again (Naturally) and used in one of Markie's songs on her album "I Need a Haircut." The court also found that the defendants knew they needed to clear the sample with O'Sullivan and that the defendants showed a "callous disregard for the law" by failing to clear the sample before releasing the album. The defendants argued that their conduct should be excused because unauthorized sampling is also practiced by others in the "rap" music industry. The court simply dismissed this argument as being "its reputation." The court also ordered an injunction of further sales of the album, a worldwide recall of all unsold copies, and even for a possible criminal prosecution, the matter was forwarded to the Southern District of New York's United States Attorney's Office. Because Grand Upright decision was based upon copyright law, it allayed existing fears claiming the Copyright Act 38 is unable to deal with the challenge of digital sampling.

2.3 Lana Del Rey vs Radiohead Controversy (2017)

Another landmark case that discussed the implications of sampling, where Lana Del Rey's song 'Get Free' was sued by Radiohead for plagiarism whereas she admitted only to the extent of drawing inspiration from their works, Radiohead further demanded 100% of the publishing rights while Lana agreed to give up to 40 and further said if the artists failed to reach an agreement, then the song will be shelved from her album 'Lust for Life'. It's hilarious that the band Radiohead was once accused of plagiarising their iconic song. Shortly after the publication of "Creep" in 1992, Albert Hammond (father of Strokes guitarist Albert Hammond Jr.) and Mike Hazelwood sued the group, claiming that the song was too similar to their 1974 hit "The Air That I Breathe". The dispute was resolved outside of the courtroom, and today the song is credited to both Hammond and Hazelwood.

The matter was never heard in court, as parties reached an out-of-court settlement, but many artists came in support of Lana Del Rey citing her song followed a popular chord progression of I-III-IV-iv which is a standard chord progression and doesn't merit a lawsuit.

3. Conclusion

The debate for and against the use of sampling has existed since its inception and will continue to do so, owing to the

massive incorporation of technology in the music industry of today where music can be authored on a Smartphone, from the comforts of one's home. Taken together with the blatant use of covering and copying over someone else's work, the intricacies of deciphering where exactly sampling has taken place will become even more crucial and instrumental. The structure, educational usage, and economic approaches appear to favour sample artists disproportionately while keeping copyright owners largely unpaid. However, because it is not much different from the current system, the voluntarily structured bargaining approach has little promise. Ultimately, the optimal option meets these parties' financial needs while limiting their connections.

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