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GNOSIS

Victoriam Legalis - Advocates & Solicitors | Newsletter



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We here, at Victoriam Legalis, believe in continuous learning and growth, and agree that one way to do the same is to keep up with the developments and changes taking place around us.

We live in an Information Age, and while there is no dearth of knowledge and information, we, through this newsletter, hope to give you a consolidated account of relevant updates and developments.

In light of the same, we present to you the first issue of our newsletter, which we hope, you find beneficial!

Happy Reading!



Media and Entertainment

1. ZARA vs House of Zana.

The given case falls under the category of identical trademark, the main issue of the case was whether the word Zara and House of Zana are identical enough. Zara had argued the House of Zana trademark application should be refused because it was too similar in name, which could result in customers confusing one trademark for another. Here, the Court held, that the differences between the marks are sufficient to rule out the likelihood of direct confusion, the mental link between the 2 names is too insubstantial and fleeting that it can't cause any exploitation of the ZARA's reputation.

2. Producer Of a Film is Owner of its Copyright, it includes Dubbing in other Languages

Vacating stay on the release of the Hindi-dubbed version of its Telugu remake of the Malayalam film 'Ayyappanum Koshiyum', the Delhi High Court has held that the owners of copyright in a cinematographic work will have the right to both sub-title and dub their work. The Court was at the outset referred to relevant provisions of the Copyright Act and remarked that since the conundrum that is required to be resolved in the present case essentially revolves around the dubbing rights of the respective parties, the expression 'communication to the public' needed to be understood.

3. Theos v. Theobroma: Delhi High Court helps the parties to amicably settle the trademark dispute

The two popular confectionary brands reached an amicable settlement over the use of trademark THEOS. While helping the brands to reach a settlement certain terms and conditions were set out by the Hon'ble Court. For instance, Theobroma shall be free to expand its business across the country. Theos shall not be allowed to make any online sales outside the Delhi-NCR region under the mark THEOS. The online gambling company claims that despite the stay order, the very same day, the authorities illegally and maliciously issued it the show cause notice. The allegation that the petitioner engaged in betting in the guise of rummy goes against all the principles settled and jurisprudence with respect to betting and gambling.

4. Delhi Court says that there is no copyright in teachings of Quran while dismissing a copyright infringement suit

The Islamic Book Service (P) Ltd. filed a copyright infringement suit before the Delhi High Court over the publication of a book titled 'Islamic Studies'. The Court while dismissing the infringement suit filed by the plaintiff held that there cannot be any copyrights on word Islam or Studies. The Court further said that the plaintiff has miserably failed to prove that it had any copyright over the book 'Islamic Studies'. It also failed to show that the defendant committed any infringement of copyright. The court observed that there is no comparison of the books of plaintiff and defendant was given to show either in the plaint or in the evidence. The plaintiff is not entitled to any relief and dismissed the company's suit with a cost of Rs 50,000 which the company has to pay to the defendant for the fees and expenses incurred by him.





Technology and E-Commerce Updates

1. VLC Media player banned in India

The nearly unnoticed restriction has been formally announced by VideoLAN, the company that created VLC Media Player. The formal justification for the ban and blocking has not yet been made public by the government. VLC Media Player, according to some sources, has been outlawed in the nation because Cicada, a hacker organization supported by China, utilized the platform to conduct cyberattacks. Security specialists just recently learned that Cicada, as part of a protracted cyberattack effort, was utilizing VLC Media Player to distribute a malicious malware loader.

2. Meesho digitises 30,000 small businesses in West Bengal

Softbank-backed e-commerce firm Meesho on Tuesday announced that it has digitised more than 30,000 small businesses from West Bengal on the platform. Meesho has witnessed a significant increase in the number of MSMEs from West Bengal joining the platform in the past year. Top categories preferred by the suppliers in the region include apparel, personal care & wellness, consumer electronics and home décor. The company also said in a statement that it has roped in Board of Control for Cricket in India (BCCI) president and former national team skipper Sourav Ganguly for its marketing campaign during the upcoming festive season.

3. Asset Manager for crypto

Asset management is a practice as old as investing. Asset management is all about monitoring, buying and selling investments in order to maintain a portfolio and to balance out the risk. The expansive crypto market is an appreciated addition to an investors collection bringing in modification, long term profitability. A crypto asset management tool is exactly a software platform that helps crypto investors or financial professionals who manage various crypto assets. Launched in June 2022, Kunji is a centralised crypto asset management platform that enables users to make passive crypto investments with the help of digital asset managers (DAMs). Kunji is currently live in the Beta phase with 200 users. DAMs take 30% of the total return from the user as a part of the commission. In the future, it expects to generate revenue through platform fees from DAMs, transaction fees, and fiat conversion or reconversion fees. Therefore, crypto asset management is blowing up because crypto is. Crypto asset management is rising in popularity and importance because it turns what can be an turned from an endeavour into a mission that can be achieved and that helps the investors.

4. Hotel Profitability automated with intelligent use of data

Machine learning is delivering enhanced hotel profitability, continually optimizing pricing and inventory controls using SIHOT and IDeaS. The integration takes advantage of SIHOT's comprehensive hotel management data paired with IDeaS G3 Revenue Management System (RMS) to deliver exceptional results for hotels. The enhanced two-way interface provides unique benefits surfacing more meaningful data from across a property or group. It optimally prices each key product using unique characteristics and relationships between products and room types. This easy-to-use approach ensures analytically priced products to further personalize guests' booking journeys. The new connectivity supports G3 RMS', which has a unique pricing approach that goes beyond rate tiers and fixed offsets to set the optimal price by room type to elevate overall productivity and competitiveness. Using analytics that are advanced for products such as advance purchase, loyalty, packages, promotional rates and more. Hoteliers can record revenue by dynamically adjusting discount percentages or amounts based on demand patterns such as season, days to arrival, day of week and room type.





Fashion & Sports Law Updates

1. FIFA suspends Indian football federation over ‘third-party influences’

FIFA on August 15 suspended the Indian football federation with “immediate effect due to undue influence from third parties”, jeopardising the country’s staging of the U-17 Women’s World Cup in October. World football’s governing body called the infraction a “serious violation of the FIFA Statutes”. The suspension will remain in place until the All India Football Federation (AIFF) regains full control of its daily affairs, FIFA said in a statement.

The AIFF is in disarray and being run by administrators after former chief Praful Patel stayed in office beyond his term without fresh elections, which courts ruled invalid.

The suspension also means that the Under-17 women’s World Cup, which was scheduled to take place in India from Oct. 11-30, cannot be held in the country as planned.

2. Gucci handed a loss in bid to block registration of Japanese trademark

Gucci has been handed a loss in a trademark fight in Japan, with the national trademark office refusing to block the registration of a mark that counsel for Gucci alleges will cause confusion among consumers. The Japan Patent Office (“JPO”) tossed out an opposition proceeding launched by Gucci over an application for registration for “CUGGL” for use on clothing and footwear, among other goods in Class 25. While the word mark on its own is not necessarily a dead-ringer for Gucci’s famous name, the Kering-owned brand argued that the unaffiliated filing party’s use of a pink line across a portion of the word “CUGGL” – which forms part of the mark – is being used to make the goods upon which the mark is used appear as though they originate from or are otherwise affiliated with Gucci.

3. FIFS appoints two former judges as panel members of Fantasy Sports Regulatory Authority (FSRA)

India’s self-regulatory body for the fantasy sports industry, The Federation of Indian Fantasy Sports (FIFS) has appointed Justice (Retd.) Mukul Mudgal, former Chief Justice, Punjab and Haryana High Court and Justice (Retd.) GS Sistani, former Judge, Delhi High Court as panel members of Fantasy Sports Regulatory Authority (FSRA). Furthermore, the company has appointed Justice (Retd.) AK Sikri, former Judge, Supreme Court of India as the chairman of the FSRA. The FSRA is a committee of independent experts constituted by FIFS as an independent self-regulatory authority for the fantasy sports industry in India. The FSRA is empowered to govern the regulatory aspects of the FIFS self-regulatory framework such as formulating and setting best practices, standards, code of ethics along with responsible gaming policies for FIFS members. The body also sets up audit mechanisms to ensure zero violations of the FIFS Charter and take appropriate action for non-compliance.



4. H&M's sustainability marketing is 'misleading' and 'falsified,' lawsuit claims

A new lawsuit alleges that H&M is labelling its products as environmentally friendly though which they are not. The fast fashion brand is being sued for its "misleading" sustainability marketing with plaintiff Chelsea Commodore claiming H&M uses falsified information on the labelling, packaging, and marketing materials for hundreds of its offerings in a practice known as greenwashing. H&M has already been called out once for greenwashing in 2020. The Norwegian Consumer Authority had accused the brand of misleading shoppers with its Conscious collection (which still exists today). The line advertises more sustainable materials like organic cotton, recycled polyester, and Tencel; but it doesn't explain how exactly these materials are better for the environment.





Corporate & Commercial Law Updates

1. Only Creditors Who Triggered Insolvency Resolution Process Can Be Impleaded As A Party: NCLAT Chennai

The National Company Law Appellate Tribunal ("NCLAT"), Chennai Bench while adjudicating an application filed in *V. Venkata Sivakumar v IDBI Bank Ltd.*, has held that the Insolvency and Bankruptcy Code, 2016 ("IBC") has no provision to implead creditors other than the ones which triggered the insolvency resolution process. The Bench observed that no provision in the IBC enables the creditors, other than those who triggered the Insolvency Resolution Process, to be impleaded as Parties. A party can only be impleaded if it is a necessary party, which means that a person is very much necessary to the constitution of Suit or Appeal in a given proceeding before a Court of Law, Tribunal or Authority.

2. Moratorium Under Section 14 Of Insolvency And Bankruptcy Code, 2016 Is No Bar For Initiation Of Proceedings Under Section 66 Of The Code: NCLAT

The National Company Law Appellate Tribunal (NCLAT) held that the moratorium imposed under Section 14 of the Insolvency & Bankruptcy Code, 2016 (Code/IBC) is not a bar for initiation of proceedings against the resolution professional of a company undergoing Corporate Insolvency Resolution Process (CIRP) under Section 66 of the Code. NCLAT held that Section 14 and Section 66 are independent provisions incorporated for different purposes and therefore, these provisions should be construed harmoniously to give effect to the intendment of the Code and to make it workable. NCLAT noted the provisions of Section 14 of the Code and held that Section 14 prohibits institution and prosecution of proceedings against the Corporate Debtor but does not prohibit proceedings against the Resolution Professional of the Corporate Debtor.

3. Hon'ble Supreme Court held that in case of conflict IBC will prevail over Customs Act

On August 26, the Supreme Court ruled that the IBC would take precedence over the Customs Act insofar as once moratorium proceedings under the Code begin, the customs authority lacks the authority to start any recovery actions for unpaid debts from the corporate debtor. The highest court also ruled that once the liquidation procedure has begun, the customs authorities cannot claim title to the commodities or issue a notice to sell them in accordance with the Customs Act. The bench after analysing the IBC and the Customs Act held that the IBC would prevail over The Customs Act, to the extent that once the moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority (CBI-C) only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate the recovery of dues by means of sale/confiscation, as provided under the Customs Act.

4. Threshold Limit Under Insolvency And Bankruptcy Code Will Also Include Interest: NCLAT

The NCLAT noted that originally Section 4 of the Code prescribes a threshold limit of INR One Lakhs however vide notification No. S.O 1205 (E) dated 24.03.2020 issued by the Ministry of Corporate Affairs, the threshold limit under Section 4 of IBC had been increased to INR One Crore. The Bench further observed that the invoices raised by the Operational creditor clearly mentioned that the interest will be charged @18% after the due date of the bill. Thereafter, Appellate Tribunal referred to the definition of Debt as defined under Section 3(11) of the Code and definition of Claim as defined under Section 3(6) of the Code and concluded that since the interest on delayed payment was clearly stipulated in invoices and therefore, the The operational creditor will entitle for right to payment which will clearly part of debt under Section 3(11) of the IBC.



5. Homebuyers Can't Be Defrauded; NCLT Delhi Initiates CIRP Against Som Resorts

The National Company Law Tribunal ("NCLT"), New Delhi Bench has held that under the guise of 'separate legal entity' doctrine, a developer company cannot be permitted to defraud the homebuyers in connivance with its Marketing Agent. The Corporate Veil can be pierced in matters involving public interest and to ascertain the real nature of transactions. The Bench has initiated Corporate Insolvency Resolution Process ("CIRP") against real estate developer Som Resorts Pvt. Ltd upon a petition filed by the home buyers. In the light of the arguments, it was held that the Corporate Debtor was the ultimate beneficiary of all the impugned transactions and had failed to complete the construction as well as refund the monies collected from home buyers. The bench admitted the petition under Section 7 and initiated Corporate Insolvency Resolution Process against the Corporate Debtor.





Hospitality & Real Estate

1. CCI clears acquisition of ACC, Ambuja Cements by Adani Group

The Competition Commission of India (CCI) has given its approval for the acquisition of Holcim's stake in Ambuja Ltd and ACC Ltd by the Adani Group. Holderind Investments owned 63.11 per cent stake in Ambuja Cements and 4.48 per cent stake in ACC and further, Ambuja held 50.05 per cent stake in ACC. The regulator also approved Endeavour's open offer for further acquisition of stake purchase of up to 26 per cent stake each in Ambuja Cements and ACC.

2. Noida Twin Tower to be demolished on 28th August

The Supreme Court ruled in August 2021 that the constructions must be demolished since the minimum distance standard was broken during construction. The structures were erected illegally, the court said, without obtaining the individual flat owners' agreement as required by the UP Apartment Act. Supertech and the Noida Authority participated in "nefarious cooperation," according to the supreme court. It subsequently gave Supertech the go-ahead to destroy the structures at its expense and with the help of the Noida Authority. The authority was ordered by the court in 2014 to demolish the structures at its own expense and within 4 months. After receiving several applications from homebuyers, the Supreme Court reached its verdict.

3. Brigade Enterprises acquires prime land in Chennai and Bengaluru

Brigade Enterprises has signed definitive agreements for prime land parcels in Chennai and Bengaluru, which have a total revenue potential of Rs 4000 crore in the next 4-5 years. The agreement to purchase the Mount Road Property in Chennai from the TVS Group has a potential 1 million sft of mixed used development comprising of office, retail and residential. The Bengaluru joint development property located close to the international schools, near Sarjapur Road has a development potential of over 2 million sft of residential apartments.

4. HDFC raises Rs 8,700 crore to finance affordable housing segment

Mortgage lender HDFC Ltd has raised USD 1.1 billion (around Rs 8,700 crore) from a clutch of investors under 'Syndicated Social Loan Facility' to cater to the affordable housing segment in the country. It has raised the amount by way of external commercial borrowings (ECBs). MUFG Bank Ltd (MUFG) is the lead social loan coordinator for this transaction along with being one of the Mandated Lead Arranger and Borrowers (MLAB). CTBC Bank, Mizuho Bank, State Bank of India and Sumitomo Mitsui Banking Corporation are the other MLABs and joint social loan coordinators. This is India's largest social financing issuance, the largest social loan globally, the first social ECB loan out of India and the largest ECB loan deal from a Housing Finance Company/Private NBFC in India. External Commercial Borrowings are instruments used by domestic entities to raise capital from overseas markets in Indian Rupee or any other permitted foreign currency.





Litigation & Dispute Resolution

1. Civil Case and Criminal Proceedings can be initiated simultaneously when there is “Criminality” involved

In the given Case the Hon’ble Jharkhand High Court upheld that a civil case and a criminal proceeding can go simultaneously in cases where criminality is involved. In the given case, for recovery of the amount in question, both a complaint case as well as a money suit was filed. The complainant had sent legal notices to the petitioner for return of money and filed a criminal case for forgery and cheating.

2. Touching private parts of child will attract POCSO offence; absence of injury irrelevant: Bombay High Court

The Court held that absence of injury on survivor would make no difference in a case of sexual assault as Section 7 of the Act states that even touching private part with sexual intent is enough to attract the offence. "The absence of injury mentioned in the medical certificate will not make any difference to her case because the very nature of the offence of sexual assault defined under Section 7 of the POCSO Act mentions that even touching private part with sexual intent is sufficient to attract the provisions of Section 7 read with Section 8 of the POCSO Act," the Court said.

3. Courts cannot restrain Muslim men from pronouncing Talaq or marrying more than one woman as per personal law: Kerala High Court

The Court held that if talaq is not done in accordance with personal law, the same can be challenged before a court of law after the act but a court cannot restrain a person from performing it in the first place. The right to marry more than one person at a time is prescribed under the personal law. If the law ensures such protection, it is not for the Court to decide that one person should not act in accordance with the personal conscious and belief in accordance with his religious practices. The Court has no role to restrain or regulate one's behavior or decision in accordance with the personal law guaranteed.

4. Bombay HC refuses medical termination of pregnancy to mentally challenged rape survivor

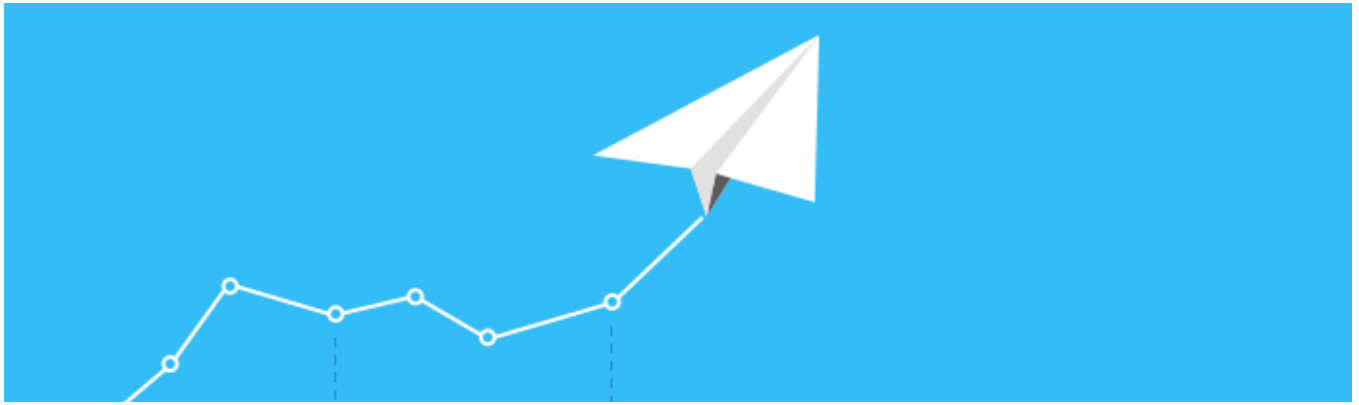
The Bombay High Court has refused to allow a mentally challenged rape survivor to terminate her 35-week (8.5 months) pregnancy after a board of medical experts opined it was a high risk to maternal health. However, as the pregnancy is a result of rape, the HC has said that if the child is born alive, the State should take care of the child in accordance with guidelines under a 2019 judgement on MTP. Besides, the HC has directed that the investigating officer has been asked to remain present at the time of delivery so that “DNA samples can be collected soon after the delivery and be used during the trial”. The HC asked the expert committee at Sassoon General Hospital, Pune to examine the victim and submit the report. The report stated that as per psychiatry evaluation, the patient has a moderate intellectual disability. The guardian of the petitioner has been asked by HC to intimate the investigating officer about the place where the delivery is to take place and the officer will be present so that necessary steps can be undertaken for DNA test.



5. Centre Withdraws Personal Data Protection Bill From Lok Sabha; New Bill Proposed

The Central Government on Wednesday withdrew the Personal Data Protection Bill from the Lok Sabha to present a new bill for the protection of personal data in online space. The bill was intended to provide for a law for protection of personal data. The Bill was introduced on 11th December, 2019. The bill was referred to the Joint Committee of the Houses for Examination and report and the report of the Joint Committee was presented to Lok Sabha. The Bill has been withdrawn to provide for a new bill in the light of the recommendations made by the Joint Committee of Parliament.





Start-Up Advisory & Consultancy

1. Ratan Tata invested in a start-up “Goodfellows”, a startup which aims to provide companionship to the elderly

Ratan Tata has made an undisclosed investment in Goodfellows, a start-up that would provide companionship to senior citizens. The startup will screen each potential "Goodfellow" and put them through exams that gauge their empathy. Once a candidate is selected, a matching procedure is used to make sure the Goodfellow are compatible with each other. The goodfellows can then have each other's company with all of their daily activities, including going on walks, assisting with grocery shopping, going with them to the doctor, educating them about technology, assisting with paperwork, watching movies together, napping together, and more.

2. A door to Web3

It's tough to build accessible Web3 products. In a mobile-first generation, apps in the Web3 space have a subpar mobile experience, and partly why they've struggled to gain prominence, especially in emerging markets. Looking to solve this is ZKX, a startup founded in 2021 by Eduard Jubany Tur, Naman Sehgal, and Vitaly Yakovlev. ZKX is leveraging Zero Knowledge (ZK) to build an accessible and user-friendly 'Layer 3' ecosystem on top of Ethereum. ZKX is building its first product—a decentralised derivatives exchange for traders—which it claims has a waitlist of over two lakh users.

3. Swiggy announces Moonlighting policy to allow workers to take external projects

Food delivery startup Swiggy has introduced a moonlighting policy to allow its employees to take up external projects for pro-bono or economic consideration based on internal approvals. As per the policy, Swiggy employees can take on projects outside of office hours or on weekends as long as it does not impact their productivity or conflict with Swiggy's business. Recently, Swiggy also announced a permanent work from anywhere policy for its employees. Elaborating upon the rationale behind the move, Bengaluru headquartered firm said during the countrywide lockdowns, a significant portion of the working population discovered new hobbies and perhaps even an activity that provides an additional source of income. Projects that pose a higher risk of conflict of interest or interference with the employee's duties to swiggy are subject to an approval process. Swiggy has announced its permanent work-from-anywhere policy for majority of its roles.

4. Convin launches assisted selling platform that improves booking rates for hospitality firms

Bengaluru-based Convin.ai, a leading AI-driven platform that reimagines virtual assisted selling for businesses, today announced that it has launched an AI-powered agent assist platform that automates agents' training by accessing agents' call skills and suggesting them with call recording from its library. Convin's agent assist platform for automating agent training and improving closure rate is supported by two pillars – 1. Automated quality management and 2. Call behaviour analysis. Automated quality management analysis scores the call based on the contact centre's responses, interruptions and custom call parameters, which helps the agents uncover their skill gaps. The platform then suggests call recordings for training. Call behaviour analysis enabled by sentiment analysis helps uncover the outcomes of the deals.





Remix Culture In Music – Impact On Copyright Owner

- Moxy Shah

ABSTRACT

It is inevitable as we age that we will hear old songs that will always remind us of a happier time in our youth, but we will now see remakes or remixes of the same songs with faster and peppier beats that will captivate our attention, but only insofar as it is related to the original song's older version. It is an established fact that the publisher and/or the label of the song owns the copyright of the song.

INTRODUCTION

In general, no copyright can be granted to an intangible idea, but a fair representation of the same idea can. An illustration of the distinction in the idea expression dichotomy can be found in directing a motion picture film in a specific setting with specific actors in color-coded costumes. While directors' thoughts and visual images cannot be copyrighted, actual filming and footage of the same set with the actors in costume in a film reel that can be viewed by multiple people on screen can be copyrighted.

As we approach the digital age, people are starting to strongly advocate for a remix culture that diligently works on content by creating secondary workshops from the original workshop. A recent example of this is the new Instagram dot "Reels", which similar music supports, which not only changes the beat or combines two songs as a mashup, but also pre-made music with lofi music. A short cut of the song can be used. GenZ's popularized transitional video culture.

From the different examples of remixes in the previous illustration, we can conclude that remixes come in many different forms. The most popular of which is the simple idea of sampling bits from other songs or creating musical mashups.¹ A remix consists of rewriting an old song with new lyrics, altering, distorting, transposing the audio, and adding and removing song components as part of the remix.²

¹ Ritesh Khosla, 'Controversies and Legal Position On Remixing & Version Recordings' [2013] NCLJ 98

² Sanjana, 'Remix Music and its Interplay with Copyright Laws' (IIPRD Blog, 25 August 2021) <

<https://iiprd.wordpress.com/2021/08/24/remix-music-and-its-interplay-with-copyright-laws/> > accessed on 14 September 202



The original song would have lasted longer, but artists who wanted to remix the song would pay more attention to the chorus of the song, as it would get more attention from the listener once the remix was done, manipulates the listener's "memory" by connecting new and old songs. An artist trying to remix a song tries to attract an audience only through something out of the ordinary and attractive.

The Indian music industry is seeing an increase in remixes of old hits by new generation artists such as Badshah and Tanishk Bagchi. Think of popular songs like Dus Bahane, Saki Saki, Tamma Tamma, Ankhiyon se Goli Maare. These were all hits in the 1990s due to their catchy melodies and distinctive dance moves. They were remixed and re-released with new beats, but the rhythm and ideas behind the song's image remained the same.

The question then arises as to whether it is legal to create such works of art and utilize the original work of the artist. overlooked. There is currently a growing frenzy for such works, as such remixes spread across the internet, posing a financial threat to the original composers. The question is to define legal positions and laws that protect the interests of both authors.

The crux of Indian copyright law is to protect creators' work that has artistic value in addition to intrinsic value. The creation and/or production of an original thought of conceptualising and developing a product, combined with the use of intellect in the same process, warrants protection from being plagiarised by someone who consumes the same product for monetary gain without subsequent positive authorization from the owner of such product. The Copyright Law rightfully protects such rights and does not allow an individual to profit from another's labour, skill, or capital in order to protect such rights.

LEGAL PROVISIONS

Section 2(p) of the Act is one of the relevant provisions to pay attention to. Under this section, "musical work" has been defined as "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 music". This definition makes it abundantly clear that the term musical work does not include lyrics for a sound that is fixed on any medium.

Section 14 of the Act is another point of interest. The Copyright Act of 1957. "Copyright" is defined in this section as "the exclusive right to do or permit in respect of a work, or any substantial part thereof, to do any of the following:" The "acts" referred to include theatrical, literary, and musical works. Computer programmes are available for purchase or rental. The storage and expression of a work of art. The term "copyright" refers to the collection of rights granted to the owner solely under this section. These rights can only be asserted by the true owner of the copyright or by someone authorized by the owner of the work. These rights include the right to reproduce, edit, translate, publish and communicate to the public.

Section 14 (e) which lays down copyright of a sound recording says “in the case of a sound recording-

- i) to make any other sound recording embodying it [including storing of it any medium by electronic or other means];
- ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;
- iii) to communicate the sound recording to the public.” This proviso thus lays down that a sound recording copyright includes the right to make any additional sound which exemplifies it, the right to sell or give on rent the copy of sound recording and the right to share it with the general public at large.



“Section 51 of the Act deals with the concept of copyright infringement. It lays down that copyrighted work will be considered to be infringed when an individual, without the license conferred by the lawful owner of the copyright or the Registrar of copyrights under the Act or in contravention of conditions imposed by a capable authority –

- i) does anything, the absolute right to do which is by this act granted upon the lawful owner of the copyright, or
- ii) allows for profit any place which would be used for conveying the work to public and such conveying leads to a copyright infringement of the work, unless he was not conscious of and did not have any reasonable position for considering that such conveying would lead to a copyright infringement.”

This type of legal right is granted to the original creator of any literary, musical, or other artistic work. These could be sound recordings, plays, or paintings. According to the preceding section, using copyrighted work without the owner's permission is considered an infringement of copyright. Infringement of intellectual property occurs when a person or group of people forge the owner's work without properly crediting them.

Section 52 of the Act discusses situations that would result in exceptions to copyright infringement. Section 52 (1) (j) of the Act, in particular, deals with an exception to infringement of copyright of a sound recording if the recording of the work was made with a valid licence of permission from the owner of the original sound recording; and ii. the individual producing the recording provided the original owner with notice of intention to make the sound recording and copies of labels in which the recording would be sold. The individual must also pay royalties to the owner of the rights in the manner specified by the Copyright Act.

The above can be an exception as long as no alterations were made without the permission of the rights owner or as long as they did not reasonably prevent the adaptation of the work for the purpose of making the sound recording. If the recording is not released under any label, the public may be misled about its identity. It also states that the recording should not be made until two calendar years have passed since the end of the year in which the work was first recorded.

Other than the provisions of Section 52 (1) (j) of the Copyright Act, it is clear from the provisions mentioned above that producing remixes would result in an infringement of the sound recording created by the owner. This section states that making a sound recording does not constitute infringement if the new creator informs the original owner of his intention and reimburses the owner with the royalty amount determined by the Copyright Board. The creator must take all necessary precautions, such as not altering the recording without the permission of the owner and not selling it through a label that deceives the general public. After the new creator has taken all necessary precautions and met all of the conditions outlined above, his act of remixing the recording will be legal.

Another significant issue concerning the remixing of a work is the author's "moral rights," which are enshrined in Section 57 of the Copyright Act. According to this section, "even after the assignment or the transfer of the copyright the author shall have the right to claim the authorship of the work and as well as he can restrain or claim the damages for any distortion, mutilation, modification or any other derogatory act if such act are hampering the honour and reputation of the author, before the expiration of the term of copyright". As a result, the "substantial similarity" test is used to determine whether a remixed creation is infringing. It is considered an infringement if the average listener is likely to associate the remixed song with the original recording. To



avoid legal ramifications, an author of adapted content must first obtain permission from the original author of the copyrighted work and properly credit the pioneer creator.

The copyright holder also has the right to assign the rights embodied in their works to a third party. This gives the author the freedom to choose and assign their rights in a way that is mutually agreed upon by the author and the assignee. According to Section 30 of the Act, the author of the copyright may grant any interest in his work's rights to another through a valid licence agreement.

GROUND REALITY

It is technically necessary to obtain permission from the rights held by the artist or label who owns the master recording and who is the publisher of the song (usually a publishing company, or in some cases, the artist themselves) in order to record a remix or legally known as a derivative work. This makes official remixes much easier to obtain legally than unofficial or "bootleg remixes."

The likelihood of a legal problem is quite low as long as one can create an official remix, though it is always good if there is any sort of documentation to substantiate the originality of the music production and/or the permission granted to make any further future changes to the same. However, as official remixes become more complex, determining who owns the copyright to the derivative work created becomes more important. When a remix is recorded, at least three different right-holding parties typically join the long-standing transaction: the owner of the master recording, the publisher, and the newest party to the transaction, the musician attempting to remix an existing song.

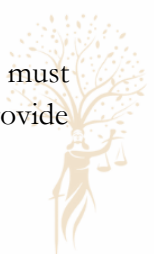
The question of whether a new copyright should be granted for such an adaptation or whether the original song's copyright holder should retain ownership of the recreated song's copyright has long been debated. According to one side of the debate, the original song's copyright holder should retain the rights and be credited for the recreated song, because what the new artist who recreates and/or remixes the song essentially brings to the table is barely a new creation. This is due to the new artist's blind reliance on the old song's popularity and acclaim over the years, despite the fact that the old song's major elements are identical. Such a derivation can be done as an addition to the original song, and there are no restrictions.

On the other hand, legal professionals, scholars, and musicians believe that the alteration and re-recording of the original song with the rearrangement of the song's elements should be classified as a new work of art, and that the author or new artist responsible for this art should be entitled to protection of his work against public exploitation in the form of granting a new copyright separate and distinct from the copyright held by the creator/owner/label/composer of the original old song.

The latter side of the debate has been given more weightage in the current paradigm, and new artists who recreate older songs are granted copyright over their creations in order to protect their versions of the song from public exploitation. This is the practise in the Indian music and film industries, and the current research article explains why this approach is initially problematic for the owners of the original song's copyright.

CONCLUSION

As society has evolved and grown, creators and artists have adapted and evolved. The rightful owners must protect art that has its own process and course. The work may be infringed if the artist or owner fails to provide



such protection. The provisions of the Copyright Act are then invoked. As a result, every artist and creator must become acquainted with the Act's legal provisions, particularly sections 51 and 52.

In this sense, the copyright to a sound recording, which would normally be valid for 60 years, is now only valid for two years after its release. This allows the remixer to produce it under the guise of preserving timeless music by introducing new talent. Even if the lawful owner is dissatisfied with the new remix, the best option is to file a legal notice and engage in a lengthy legal battle with the new creator. This section effectively nullifies a sixty-year-old law of protection to which the owner was entitled.

The owner of the original music suffers a significant loss as a result of the deterioration in the sale of their original music." As a result, in order to protect the legal rights of copyright owners, some key provisions of the Copyright Act must be amended immediately. The first step is to raise the remixing time limit from two to five years. This gives the original owner plenty of time to capitalise on his or her own song or music.



Get in Touch

We hope you enjoyed reading the newsletter, and we would love to hear your thoughts on what you want to be covered in our next edition!

You can get in touch here:

Mumbai Office:

1085, Hotel Sahara Star,
Opposite Domestic Airport,
Vile Parle East,
Mumbai - 400099,
Maharashtra, India

Delhi (NCR) Office:

713, Tower 1,
Assotech Business Cresterra
(ABC Towers), Sector 135,
Noida - 201304,
Uttar Pradesh, India

Phone: 022-39807480

Email: info@victoriamlegalis.com