

All you need to know about cover versions!

LexOrbis INTELLECTUAL PROPERTY ATTORNEYS

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Cover versions are new recordings of a previously recorded or commercially released song by someone other than the original artist or composer. Usually non-commercial in nature, cover versions are often created by amateurs and have no negative impact on the market value of the original work. With the advancement of digital technologies it has become easy for people to create and publish cover versions online. Usually amateur creators make videos of cover versions to gain recognition but a majority of these videos are posted without the consent of the original author of the work, which may land these young talents in copyright infringement suits.

Legal framework

The Copyright (Amendment) Act, 2012, brought many changes in regard to musical, literary and dramatic works, including changes in the stand on cover versions. The amendments were seen as a major victory for copyright holders, granting them better ownership controls. The amendment act of 2012 inserted section 31C in the Copyright Act, 1957, regarding the statutory licence that is to be obtained before reproducing any dramatic, literary or musical work. However, the parties always have a choice to negotiate and draft their own terms and conditions while entering into any agreement to make or allow the making of any cover version.

The terms for a statutory licence as provided in section 31C can be summarized as follows: (a) prior consent of the author of the original work has to be obtained; (b) the time period after which a cover version can be made is extended to five years from

two years; (c) the cover version must now be in the same medium as the original, for example if the original work is on a CD then the cover version must also be released on a CD, the person making the cover version cannot opt for any other medium; (d) the person making the cover version must pay in advance a royalty for a minimum of 50,000 copies, however this can be negotiated to a lesser amount by the Copyright Board; (e) the cover version must not mention or refer to the original author of the work on its label, so the public is aware that the cover version has no connection with the original artist; (f) it must always be stated that the work is a cover version; (g) cover versions are allowed only for note-for-note and word-for-word reproduction, creative alterations are not permitted; (h) alterations in the original sound recording are allowed only if they are technically necessary for the purpose of making the cover version; (i) a book of accounts has to be maintained by the author of the cover version, which may be inspected by the author of the original recording at any time.

Judicial pronouncements

In the case of *Gramophone Company of India Limited v Super Cassettes Industries Limited* (1995), Delhi High Court defined version recording as a sound recording made of an already published song by using another voice or voices and with different musicians and arrangers.

Limiting the scope of copyrightability of cover versions the court in *Super Cassettes Industries Ltd v Bathla Cassette Industries Pvt Ltd* (2003) held that the owner of the version recording cannot claim copyright for its version recording as version

recording cannot be considered to merit an independent copyright.

In the case of *Gramophone Company of India Limited v Super Cassettes Industries Limited* (2010), the court held that the cover or label of the version recordings must not be deceptive. The consumer must know that what is offered for sale or hire is a version recording and not a recording from the original author.

Conclusion

It is evident that recording a cover version and publishing it online without the consent of the author of the original work amounts to infringement. An author can also file a suit seeking relief for mutilation and modification of work.

The amendment in regard to the legality of cover versions brought stringent laws into the picture. Copyright holders saw this as a motivational move as it made their position stronger.

However it should be remembered that the original objective of intellectual property protection is to facilitate the flow of innovation and creativity and stringent laws like the one we are discussing make it difficult for people who wish to be creative. In the digital environment, the IP laws are so solid and deeply rooted that any act can come under the laws' definition of a crime. It becomes impossible for upcoming talents to develop without doing something which is illegal. A balanced approach weighing equally the needs of copyright holders and the general public would serve the purpose best.

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