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POSITION OF AUTHORS UNDER THE COPYRIGHT (AMENDMENT) ACT, 2012

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ABSTRACT: With the passage of the Copyright (Amendment) Act, the year 2012 saw the introduction of additional copyright protections. It also altered the protections that authors had access to, among other things. Even while those protections were always in place, the Act had greater author protection restrictions before it was modified. The reason for the revision of Sections 17, 18, and 19 of the Act was to make sure that the works of creators would always be protected, no matter what circumstances could arise. The purpose of the article is to conduct a rapid examination of the rights and protections afforded to authors prior to and following the 2012 amendment, as it tries to present a comparison that is both unambiguous and all-encompassing of the two periods.

Keywords: Copyright (Amendment) Act 2012; author rights; Sections 17–19; copyright protection; assignment of rights; legislative reform; creator safeguards; comparative analysis.

1. INTRODUCTION

In order to protect and preserve the rights of authors, the sections of the Act that are concerned with the transfer and original ownership of rights—sections 17, 18, and 19—have been changed. The Copyright (Amendment) Act of 2012 made some significant modifications to the copyright law in India, especially with relation to the protection of writers' rights. It becomes effective on the date of June twenty-first, 2012. The limitations that are imposed by copyright societies have been made more stringent in order to safeguard authors. This is because authors frequently do not have the financial means to hire legal counsel or the means to battle against huge record labels and production companies.

2. RECOGNIZING AUTHOR AS OWNER OF WORKS IN CINEMATOGRAPH FILM

The 2012 edition of the document had a new definition of "first owner" that was more detailed in connection to copyright. In addition, the 2012 edition included an additional requirement that was added to Section 17. The ownership of the copyright for a particular work is held by the work's author, according to the fundamental assumption that underlies this section. However, it also refers to a number of instances in which, according to the specifics of each situation, ownership is rapidly transferred to a different individual. In accordance with the recently implemented law, "Incorporating a musical, literary, artistic, or dramatic work into a cinematographic film does not diminish the author's ownership of those works." As a result of this modification, authors now have the ability to regain control over their works, even if those works have been used in a film.

The newly implemented criteria restricts the scope of the first clause to only the works that are considered underlying. Fourth, the newly added paragraph clarifies that the ownership of a composer's or lyricist's work remains unchanged even when it is used in a film. Even if they

provide their consent for their work to be featured in a movie, their rights will still be safeguarded, and they will be able to profit from it in addition to the movie. Despite the fact that the first condition enumerates certain circumstances in which the creator does not hold ownership of the work, this remains accurate.

3. LIMITING THE SCOPE OF THE ASSIGNMENT FOR THE BENEFIT OF THE AUTHORS

The author's rights while relinquishing a copyright are specified in sections 185, 19, and 19A of the Copyright Act. Both sides stand to benefit from the completion of the task. The assignor is now able to benefit from his or her own labor in ways that were not feasible in the past, whilst the assignee has the opportunity to earn money from something that they did not even create.

The only criterion for an author to relinquish their rights to a work that was still in progress before to the 2012 amendment was that the work had begun to materialize. In the year 2012, Section 18 of the Act was changed, and as a result, three additional stipulations were added. These provisions provided a significant amount of protection for the author, who frequently encountered an unjust and irrational contract. Through the introduction of revisions to Sections 19 and 19A, the original language that was added to Section 18, the Safeguard Concerning Technology, saw an expansion of its scope.

The Amendment Act of 2012 introduced a section to Section 18 of the Act, which states that it is not permissible to delegate any assignment in a medium that did not have commercial usage at the time it was assigned. This mandate effectively restricts the distribution of labor to a particular media or mode of exploitation, hence limiting their ability to benefit from future technical advancements, due to the fact that it prohibits authors and composers from surrendering their copyright without any conditions.

The authors were required to forfeit all rights to any future technology prior to the implementation of the amendment. Authors are no longer able to do tasks that are of a technical nature without first getting permission from the technical staff as a result of the aforementioned change. The only options available for assigning work were preexisting technology or those that were expressly stated in the contract. The author was required to sign a new assignment agreement whenever a new form of exploitation came to light, and this agreement was tailored specifically to that particular approach. Even though the provision might result in some disruption and bewilderment, it is evident that authors will reap benefits from it because they will have the ability to charge for their work as new technologies are released. To begin with, it would make it illegal for authors to grant authorization for their works to be used in future technologies. This would prevent them from doing so on their own terms. In addition, whenever a novel method of profiting from work presented itself, it would be essential to obtain permission from thousands of writers in order to utilize their work in conjunction with the new technology.

Securing inalienable right to royalty to authors of underlying works in cinematograph film (second proviso added to Section 18)

The lawmakers added an additional provision to Section 187 that guaranteed that authors and composers would be able to receive royalties for their contributions to films as long as the films were not presented simultaneously in theaters. In order to facilitate the process of

collecting and distributing royalties, authors have the option of assigning their rights to copyright organizations or to their legal successors. In the event that any one of those terms is not fulfilled, the contract will no longer be of any value. The burden of distributing any proceeds from the work to the original creator is on the copyright holder. The purpose of this regulation is to guarantee that authors and composers who contribute their works to movies would receive a steady income, with the exception of their legal heirs or a copyright organization. The only exception to the rule that an assignee must equally split royalties with the original writers is when the underlying work is displayed in a theater with the cinematic film; this right cannot be transferred or renounced in any other circumstances.

The copyright of a work is not impacted in any way by the non-assignment or non-waiver provision; it only has to do with the assignor's or author's claim to royalties. Despite the fact that they are no longer the legal owner of the work, the copyright assignor retains the ability to earn royalties on the work.

In light of this, we can conclude that the standing of the original authors of the work has been improved by the addition of the second proviso to Section 18 as well as the proviso to Section 17. Despite the fact that Section 17 makes it clear that the copyright for a work that is incorporated in a cinematograph film is held by the author, Section 18 goes on to clarify that the assignee is entitled to receive a comparable amount of financial compensation as the creator of the underlying musical or literary work. The conclusion that can be drawn from this is that the producer does not automatically have the rights to these pictures.

Securing right to receive royalty to authors of underlying works in a sound recording (third proviso added to Section 18)

Finally, in the event that the assignee and the author of any literary or musical work that is included in a sound recording (but not in a film) share equally in the copyright for any use of the work (excluding public dissemination and theatrical exhibition of the cinematograph film), the author of that work has the right to receive a royalty (i.e., to share equally with the assignee). This has been the case since 2008. The individuals who are legally entitled to collect and distribute these works are the author's legitimate descendants or a copyright organization.

It appears that the first and second conditions are comparable to one another. In spite of the fact that there are some variations, it has an effect on sound recording producers that is equivalent to that of film producers. When the cinematographic films are exhibited in theaters in conjunction with other films, the most significant distinction is that the assignee does not have an obligation to distribute royalties to the original creators of the works on which the films are based. On the other hand, if music or sound effects are utilized outside of a film in which they were first created, the author of the original work is required to give the writer half of the profits made from their use. This disclaimer is more comprehensive due to the fact that it takes into consideration every possible usage of the work.

Short comings in provision

Despite the fact that these phrases have bolstered the thesis of the authors, they have also brought about a significant amount of uncertainty and complexity. This has several issues associated with it, as stated by the author of the study.

The ability to collect royalties is not the same as possessing copyright. This is due to the fact

that the regulation only prohibits the transfer of the "right to receive royalty" and does not prohibit the transfer of copyright in and of itself. The likelihood that the modification will not succeed in achieving this goal is not out of the question, given that the right to seek royalties is not covered by copyright rules.

Secondly, a restriction such as this one makes it more difficult for a writer to get into a private contract. Authors were typically paid a lump amount for the rights they forfeited in the past. This ensured that they were shielded from any difficulties that could have arisen had their work not been favorably welcomed. However, now that they have made the change, they will have to wait until their contributions begin to generate royalty payments. In addition, they will be taking on the risk associated with the assignee. In the long run, this approach to distributing royalties may prove to be successful. However, authors who are just starting out require financial assistance at this moment in time more than they desire to be acknowledged as the creators of their work, which would entail receiving payments on a regular basis.

According to the plain reading of the clause, the author or publisher of a work, regardless of whether it is musical or literary in nature, retains exclusive rights to compensation for the use of such work. To put it another way, if a movie includes a book or music, the author is compensated only for the role they played in the movie, not for the entire work. It is possible that the lawmakers considered it a prudent decision to restrict the scope of the provision to authors of literary and musical compositions, so excluding those who author works of art or drama. The investigator contends that authors from other disciplines may have been able to derive advantages from incorporating this term into a cinematic production because of the importance of this phrase.

4. INTRODUCTION OF SUB- SECTION (8),(9)AND(10)TO SECTION 19

The royalties that are present in assignments have a long and interesting history, which was taken into consideration when the modifications to Section 199 of the Act were made. The "right to receive royalties" that an author has is distinct from the concept of copyright. When subsections (8), (9), and (10) are added, which are all part of Section 19, this becomes evident.

Priority to the contract with copyright societies

According to Subsection (8) of Section 1910, any assignment that is in direct contradiction with an author's prior assignment to a different copyright society is considered null and void. This is done in an effort to protect the interests of copyright societies. This law was enacted in order to protect the continuous legality of contracts between authors and copyright entities in the event that their works were altered for movie adaptations, which was the primary purpose for the law's enactment. The phrase becomes more straightforward and easy to comprehend if it is considered in the context of the disclaimer attached to provision 17. The disclaimer in question stipulates that the individual who is the author of any underlying work retains ownership of that work even after it has been used in a cinematographic film.

In addition to this, Section 19(8) stipulates that any agreement that exceeds the set terms and conditions of the rights granted to copyright societies is regarded as illegitimate, regardless of whether it is between the creator of the film and its producer or any other party. The bill was designed to provide protection to the monetary remuneration of authors whose musical or literary works were exploited in cinematic productions by giving preference to copyright

societies above any other assignments that were made by the authors.

Royalties for works underlying works in films and sound recordings

In accordance with Section 19(9),11, the person who created the work is entitled to compensation and royalties if the work is publicly displayed in an auditorium as part of an event apart from the cinematic film in which the work was first utilized. According to Section 19 (10), if someone else uses the work of the author, the author of the work is entitled to royalties and any other remuneration that is owed to them. This applies even if the work is just utilized to produce a sound recording that will not be featured in a film. Amendments that have been made to Section 18 of the Act by way of provisos in regard to sound recordings and cinematographic films are to be supplemented by Sections 19(9) and (10) of the Act.

According to these modifications, the individuals who are the original writers of the works that are utilized as a basis for a film or an audio recording are entitled to compensation for their contributions in all circumstances, irrespective of the nature of the assignment. It is important to note that in order to make the application of these laws more straightforward, Section 19(3) has undergone a modest but significant revision. This criterion must be taken into consideration while determining the quantity of royalties that are due to be paid to a writer as well as to their lawful successors throughout the course of the assignment. Before the year 2012, the assignee was able to make a decision on the payment of royalties, as the rule required that the assignment include a reference to the amount that was owing to the author or to their legal heirs, "if applicable." The assignment is now required to include not only the royalty for the entire assignment but also any subsequent financial reparation that is owed to the author or their lawful successors, as per the new Section 19(3). According to an examination of these statutes, the limitations were implemented in order to safeguard the rights of writers against assignees who would repeatedly misuse such rights. The preceding sections demonstrate that the inclusion of a work within a cinematic film requires that the work be made available to the general public in conjunction with the film, regardless of whether or not it is screened in a movie theater. These sections also have a significant impact on the distribution of the underlying work. The original creator ought to receive a share of the royalties and any other benefits that result from the usage of a work that has been integrated into another work.

5. CONCLUSION

Although these enhancements are a positive starting step, the question of whether or not they will be successful is contingent upon the writers' ability to safeguard their work. Under the proposed amendments, record companies and producers will be obligated to give songwriters and artists a percentage of their profits. Due to the fact that there has never been a legal right to royalties, the Indian film and music industries have always had difficulty with the equitable distribution of royalties. The individuals who generate music and film have been in opposition to these modifications since their inception, which means that it is improbable that they would voluntarily relinquish the royalties that they have accumulated. It is very likely that they would make an attempt to discover methods by which they may exploit these regulations.

The amendments that were made to Sections 17, 18, and 19 of the Act in 2012 proved to be

quite beneficial for authors. The primary function of copyright law is to safeguard the interests of both the authors of written works and the those who utilize those works. In addition to bolstering their financial status by earning as much money as they can, they have also made certain that they would have a consistent stream of income coming in via a "right to royalty" that is separate from the job assignment.

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