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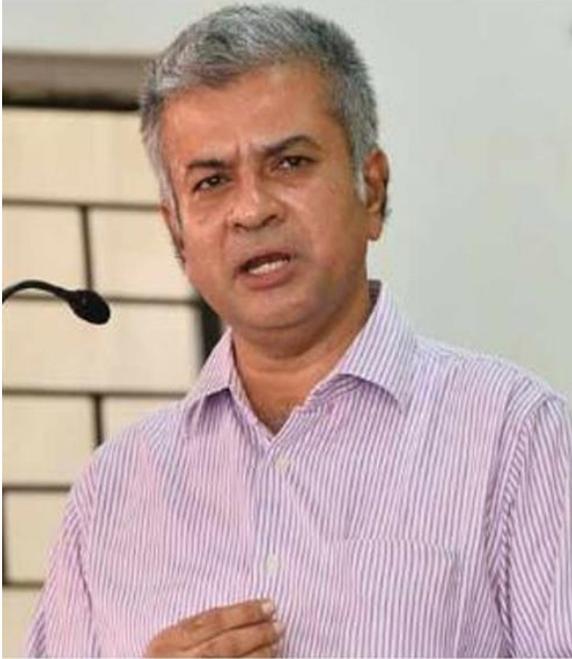
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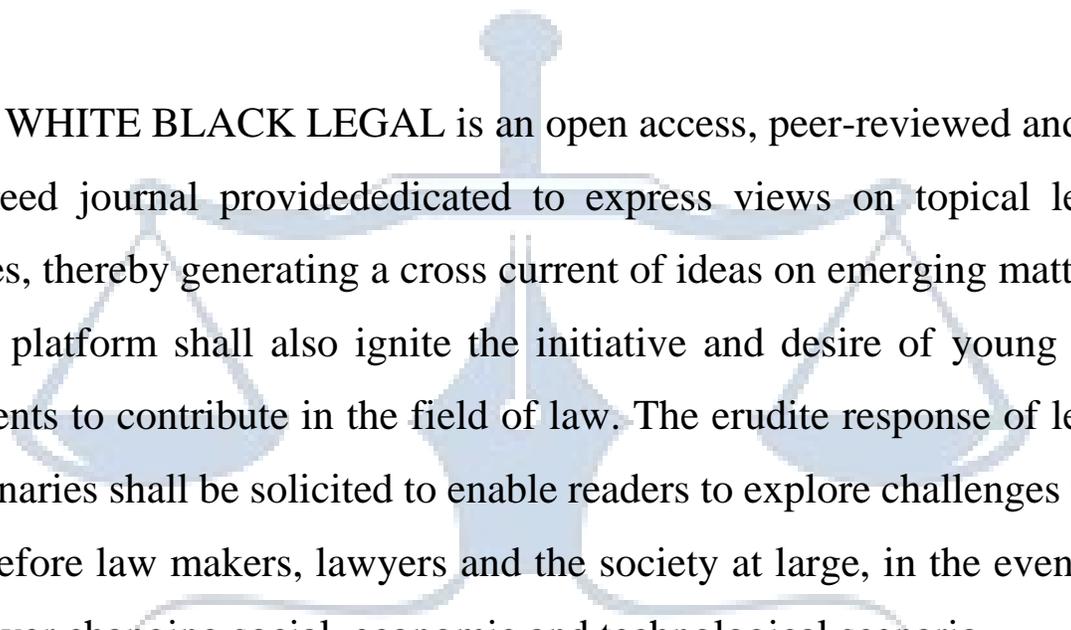
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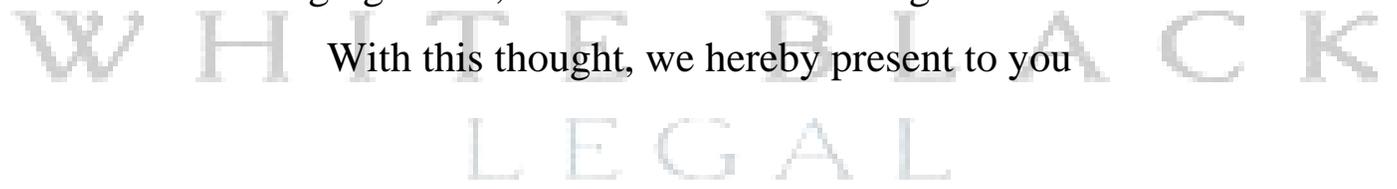
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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



COPYRIGHT AND MUSIC INDUSTRY*

AUTHORED BY - ADEEBA FAHEEM

In the music business, musicians compose tunes that arouse feelings and hold our interest. India's copyright laws safeguard musical works and guarantee that people who contribute to their creation are duly acknowledged and compensated financially. In addition to defending the rights of artists, copyright protection is critical for encouraging creativity and innovation. A copyright and its owner are the people behind every royalty, streaming payout, and sync license. You must be aware of your copyright rights if you ever hope to make money from sound recording or musical composition, as well as if you wish to safeguard that right and make sure that no one is copying your creations. However, the world of music copyright is infamously convoluted. Separate portions of a musical work are covered by separate copyrights, and publishers, labels, artists, and songwriters share copyright ownership and royalties (the exact nature of those shares is a matter of negotiation). Then, there are other middlemen that help rights holders collect royalties, such as distributors and collection organizations.¹

What is Musical Work under Copyright Act?

The Indian Copyright Act's definition of "musical work" is given in Section 2(p). The following is the definition:

"Musical work" refers to any composition that consists solely of music, including any accompanying visual notation, but excludes any words or actions meant to be chanted, spoken, or performed in conjunction with the music; Legal ownership of a musical composition or sound recording is designated by music copyright. In addition to the exclusive right to duplicate and redistribute the work, this ownership also grants the copyright holder the ability to license the work and receive payments.

What is Copyright in Musical Works in India?

* Submitted by Adeeba Faheem (LLM IPR) student of Amity Law school, Noida

¹ "India. The Copyright (Amendment) Act, 2012 (Act No. 27 of 2012)". WIPO Lex of the World Intellectual Property Organization. Archived from the original on 2019-07-25.

In India, the term "copyright" refers to the legal protection afforded to those who compose original music. It gives the authors—composers, lyricists, and music producers—exclusive rights to their musical works. This safeguard makes sure that their creations cannot be copied, shared, performed, or shown to the general public without their consent. The Copyright Act, which acknowledges music as a form of artistic expression deserving of legal rights and safeguards, protects musical works in India.

The Act addresses melody, lyrics, arrangements, sound recordings, and other elements of musical works.

In musical works, copyright gives creators the ability to manage and profit from their works, encouraging artistic pursuits, encouraging originality, and protecting the financial interests of musicians and other stakeholders.

Who is the Author of the Musical Work?

The Act's Section 2(d)(ii) designates a musical work's author. This section defines an author as the person who composed the aforementioned work.²

In Section 2(ffa), the definition of "composer" is summarized. The following is outlined in this section:

In the context of a musical composition, "composer" refers to the individual who writes the music, regardless of whether he records it in pictorial notation;

An application may be submitted jointly when many authors or composers work together on a collective musical piece.

A "work of joint authorship" is described in Section 2(z) as a composition produced by two or more writers working together, with each author's contributions being equally significant.

It guarantees that each contributor has the same ownership rights over the collaborative work.

² section 2(d)(ii) of copyright act,1957.

Duration of Legal Protection

Section 22 of the Act specifies how long musical works in India are protected by copyright.³

Individual's piece of work

This clause states that a musical composition published while the author is still alive is protected by copyright for sixty years after the author's passing.

Joint Authorship

When the last living author of a collaborative musical work passes away, the work's legal protection ends.

The copyright period begins to run on the day of the last author's death.

This clause guarantees the protection of a musical work's rights for a predetermined amount of time, giving the creators and their heirs the authority to manage the work's use, distribution, and reproduction throughout that time.

Difference Between Musical Work & Sound Recording

It can be difficult for some people to understand the difference between Sound Recording Works and Musical Works when submitting applications for copyright registration.

The Hon'ble Supreme Court ruled in *Indian Performing Rights Society v. Eastern Indian Motion Pictures Association*⁴ that copyright does not just apply to the melody, vocal delivery, quality of performance, or singing in a musical work.

It has to do with harmony or melody conveyed through writing or visuals.

Sound recording, regardless of the medium or technique employed, is defined in Section 2(xx) as the recording of sounds that are able to be replicated.

³ section 22 of copyright act,1957.

⁴ [AIR1977 SC 1443]

The collection of sounds recorded on a physical medium, like phonograph discs, tapes, cassettes, or digital formats, is covered by a sound recording copyright.

A sound recording is a visual depiction of music that has been captured to generate audible noises.

While the composer is regarded as the author of a musical composition, the producer is the author of a sound recording.

The functions and rights connected to each kind of work in the context of copyright protection are made clearer by this distinction.

Producers are granted legal ownership rights for musical works and recordings by music copyright regulations.

In addition to receiving royalties, the copyright holder is able to distribute, reproduce, and license their work.

Master copyright and composition copyright are the two primary categories of copyright for music.

1. **Master Copyright:** This speaks about the ownership of the sound recording's copyright. Because they own the master copyright, producers have the authority to manage how recorded music is distributed and reproduced.

2. **Composition Copyright:** This relates to who owns the melody, lyrics, and arrangement of the underlying musical composition in terms of copyright. The composition copyright, which gives them authority over how the work is used and performed, is still held by the composer or songwriter.

The copyright for music or lyrics is automatically established when they are recorded, written down, or otherwise documented.

This preserves the rights of creators and gives them authority over their musical works, allowing

them to profit from their creative pursuits.

Exploring the Transformation of Original Songs: Legal Considerations and Artistic Adaptations

Questions concerning the legitimacy of such artistic exploitation arise when an original song is embellished, modified, and adapted into a new work.

A new piece of music is made by utilizing methods like audio mixing and adding or deleting specific parts from the original song.

Copyright law's Section 52 (1) (j) addresses particular uses and modifications of works, including sound recordings and music.⁵

This clause emphasizes how crucial it is to have the copyright owner's permission before engaging in such activities.

It creates a legal framework that permits the use of a copyrighted work in a particular way in exchange for payment of the required fees and adherence to legal requirements they have to understand the legal ramifications of copyright and secure the required authorizations to make sure they are functioning inside the law.

Legal Perspectives on Consent and Modification in Musical Works: Case Analysis

The court emphasized the value of getting the original owner of a musical work's authorization in the *Gramophone Co. v. Super Cassettes* decision.

In contrast, the court in the *Gramophone Co. v. Mars* case held that there may not be an infringement and that consent is not necessary as long as the requirements outlined in Section 52 (1) (j) of the Act are fulfilled.⁶

The court particularly decided in *Super Cassette Industries Limited v. Bathla Cassette Industries Pvt.*

⁵ Section 52 of Copyright act,1957.

⁶ Section 52 of Copyright Act,1957.

Limited that a singer's vocal performance should not be changed because it is an essential component of the music.

This ruling emphasized the need to get the owner of a musical work's prior consent in accordance with Section 52. These examples emphasize the significance of adhering to the precise restrictions and standards established in the law by highlighting the legal difficulties and differing interpretations around the modification and use of musical works.

Benefits of Music Copyright

For artists in the music business such as composers and musicians, copyright offers numerous advantages.

1. **Legal Protection:** The unique rights granted by copyright shield the authors of creative musical compositions against unauthorized use, duplication, dissemination, or performance. It offers a foundation for the law to uphold their inventions' ownership and control.
2. **Financial Rewards:** It gives authors the right to get paid for using their music, enabling them to make money off of it. Royalties are paid to musicians through a variety of channels, such as music sales, streaming, live performances, TV and film synchronization licenses, and more.
3. **Creative Control:** It gives artists the ability to keep control over their creations. They control the circumstances around the performance, usage, and location of their music. It guarantees that their integrity and creative vision are upheld.
4. **Recognition and Attribution:** It makes it possible for musicians to be acknowledged as the true authors of their compositions. It validates their authorship, enhancing their credibility, reputation, and future employment prospects.
5. **Incentive for Innovation:** In the music industry, legal protection fosters innovation and originality. The knowledge that they will be able to enjoy the results of their labor and earn rewards for their efforts encourages artists to dedicate their time, energy, and resources to creating new and original music.
6. **Licensing Opportunities:** Musicians can get into license arrangements with other people, groups, or businesses thanks to their copyright ownership. These contracts allow their music to be used legally in a variety of settings, including movies, TV shows, video games, and live performances, which creates new cash streams.
7. **Market Exclusivity:** It grants authors the sole right to profit from their creations, giving them

authority over the availability and distribution of their music on the market. This uniqueness can maximize the value of their creations and provide them a competitive edge.

Two types of music copyright: Master and composition

If you listen to a song on the radio, you could assume that the musician whose voice you hear owns the exclusive copyright to that song. However, that isn't the case in reality. It's possible that the recording artist didn't get any money at all from that radio broadcast in some regions of the world.

The reason for this is that every recorded musical work is protected by two distinct sets of copyrights: one for the actual sound recording and one for the musical composition.

Composition

An underlying musical composition, which is the placement of notes, melodies, and chords in a particular order, is covered by compositional copyright. Songwriters, lyricists, and composers own it, and their music publishers—who also own a portion of the copyright—manage it.

Master Recording

A "master recording" is a specific sound recording that includes a particular expression of the underlying musical composition made by recording or performing artists. This specific sound recording is covered by the master copyright. Usually, the performing artists and their label own this copyright.

Now, in the case of a band that composes and records their own music, the songwriter and the artist may occasionally be the same individual. Even so, though, the recording artists and songwriters will be handled differently by the music industry. It's seldom that easy, either; consider cover songs, samples, lyrics that are quoted, outside producers, helping lyricists, and so on. The specific song's music copyright structure can get intricate very quickly.

When are copyrights created?

Putting it simply, copyright protection starts the moment music is fixed in a tangible format. That could, however, imply rather various things depending on the kind of music copyright.

If music or lyrics are recorded, written down, or otherwise included in a document, even if it's just a

folded napkin or a tweet, the copyright for that work is automatically created.

However, master recordings are subject to the US Copyright Office's definition of copyright, which states that a sound recording is considered to be "fixed" when the sounds are preserved in a way that allows them to be viewed, reproduced, or communicated in some other way. A digital track, disk, cassette, or other media could be used for this.

Even though the copyright is generated as soon as the musical composition is fixed, there are times when you'll need to take further precautions to make sure the copyright is upheld. Depending on where you live, you may need to register your copyright with the Copyright Office in order to receive full copyright rights in the US, while in Europe, no further copyright registration is required to enforce copyright laws.

6 exclusive rights held by copyright owners

1. Reproduce the copyrighted work: The first right that copyright holders possess is the ability to duplicate the work by publishing it on CDs or vinyl and distributing it to the general public through streaming services. In a technical sense, when a user hits play on a particular song on a streaming service, they are initiating a replication of both the underlying musical work (the composition) and the sound recording (also known as the master).

Therefore, in order for streaming services to duplicate any music from their repertoire, copyright owners must provide them permission. While composition owners receive mechanical royalties, master copyright owners are compensated through streaming payouts.

2. Prepare derivative works based upon the copyrighted work

The exclusive right to produce a derivative work of a musical composition (or to allow others to do so) belongs to the copyright holder of that composition. Any musical work that incorporates significant copyrightable elements from an earlier, original work is considered a derivative work.

A synchronization license (on the composition side) or a master use license (on the master side) are needed if a third party want to make a derivative work of a composition or master recording. The majority of derivative works are audio-visual mashups that include songs as a component of a bigger

work, such as TV series, movies, video games, and ads.

However, musical works that are derivative (such as remixes or cover versions) are a little more intricate: In order for the work to be deemed derivative.

To establish a new, distinct work that is protected by copyright, it must include a portion of the underlying work. As a result, master use and sync permissions are needed for things like remixes and song samples, which produce new copyrighted works by using the underlying master and composition.

Typically, copyright holders and licensing parties (or their respective representatives) negotiate sync and master use licenses one-on-one.

3. Distribute copies of the copyrighted work to the public

In addition to granting copyright holders (or other authorized parties) the ability to sell newly made copies of a composition or recording to the general public, copyright also safeguards the author's right to make new copies of the work.

These days, streaming payouts encompass the right to distribute the sound recording. Simultaneously, compositions are distributed only insofar as the composition is sold and distributed (e.g., sheet music sales).

4. Perform the work publicly

The author has the sole right to publicly perform the work thanks to the copyright. This does not imply that it must be "performed" by a live person; any audio broadcast in a public setting is acceptable. Public performances include radio and television broadcasts, live performances, music played in public places like bars and clubs, and even Spotify audio streaming. One of the main sources of income for publishers and songwriters is performance rights; however, country-specific regulations may determine whether recording artists earn performance royalties.

Both composition owners and master copyright holders have performance rights in most of the globe (recording artists' performance rights are sometimes referred to as "related rights" or "neighboring

rights"). The adjacent rights are qualified for all appearances in nations that have ratified the Rome Convention of 1961, provided that the recording artist resides in one of those nations.

There are two ramifications for the US not being one of them. First off, master owners do not receive royalties from public performances in the United States. Secondly, even if the recording is aired on the radio in the UK, the US residents who made it do not receive any royalties from other countries.

5. Perform the copyrighted work publicly by means of a digital audio transmission

This right, referred to as "digital performance rights," is unique to the United States and a select few other nations. Its purpose is to compensate for the absence of neighboring rights pertaining to digital radio.

Digital performance rights work much like neighboring rights do in the US, except that they only cover webcasts and digital services like Pandora and SiriusXM. Traditional radio (or any other kind of public performance) is not covered by these rights. Accordingly, performance royalties will only be paid to recording artists in the US when their songs are aired on digital radio.

6. Display the work publicly

Possession of a copyright also grants the less frequently used right to publicly display the work. This right applies more to literary or visual arts creations; in the case of music, it makes up very little of the real royalties received. First off, since sound recordings cannot truly be "displayed," they are not covered by "print rights." On the other hand, it might be pertinent if a label wishes to publish the lyrics of a song—that is, a portion of the composition—on a CD or if a music streaming service wants to show lyrics to its customers. In this case, a print license (which is usually not expensive) needs to be obtained.

Basically, all forms of royalties in the music business, whether they pertain to mastering or composition.

The 6 basics of music copyright law:

1. Copyrighted work must be original: The foundation of music copyright is that it is an exclusive outcome of the creator's creative process; it need not be new or innovative (the Copyright Office

won't be your judge), but it must be unique.

What, therefore, defines originality? In the event of a legal dispute, this is decided in court. The most popular defense in cases involving music copyright infringement is the assertion that the underlying work isn't original and isn't covered by copyright. The copyright holders of one work cannot allege that another has violated their copyright if two or more works use the same idiom in their lyrics, for example.

2. Violation of Copyright Law must be established in court: Copyrighted work that has been replicated

The duplicate is "sustainably similar" to the source material.

The second point is typically investigated using a combination of quantitative and qualitative analysis, so in order to determine how much and how closely the work has been copied, as well as if this has made the work sufficiently similar to the original, the court will need to consult outside experts. The extent is typically more significant than the amount; if the original composition's "character" has been replicated, a court may find copyright infringement for samples shorter than two seconds.

It is a little more intriguing to demonstrate that the copyrighted work has been replicated. First off, it's not necessary for copyright infringement to be deliberate. Suppose you have utilized a sample from a collection you accessed online, which mentioned that each sample was released under a creative commons license, making it unrestricted for use. Even though you didn't intend to violate anyone's copyright, you will still be held accountable if it turns out that the sample you used was actually a portion of a work that was protected by a copyright.

On the other hand, the court must also prove that the possible violator had access—that is, the capacity to view or acquire the copyrighted content. Two individuals can independently come up with the exact identical content on paper. Therefore, even though the work they have produced is exactly the same, they will both end up having legal copyrights if neither of them got access to the other's work—let's suppose it was kept in a bunker and never publicized. While it is obviously an implausible scenario, copyright law does allow for the possibility of it.

But take note: the prosecution does not need to demonstrate that the infringer has actually accessed

the copywriter's work in order to establish the idea of access. In the event that the work has been hosted on an open platform like as YouTube, for instance, it must instead demonstrate that the infringer has the capability to do so.

3. Master recording copyrights are administered (and, often, owned) by record labels : In addition to granting copyright holders (or other authorized parties) the ability to sell newly made copies of a composition or recording to the general public, copyright also safeguards the author's right to make new copies of the work.

These days, streaming payouts encompass the right to distribute the sound recording. Simultaneously, compositions are distributed only insofar as the composition is sold and distributed (e.g., sheet music sales).

4. Compositional copyrights are administered by publishers: Publishers are usually in charge of managing compositional copyrights, just like labels are with master copyrights.

But compositional copyrights function in a different way than masters. First and foremost, the writer (or writers) of the composition will always be entitled to a writer's share, which is a portion of copyright. Typically, it is half of the copyright, however this might vary based on the nation or even the kind of royalty.

The publisher is entitled to 50% of the remaining copyright, with a portion of this share also going to the songwriter. In exchange for their services, songwriters who sign publishing deals give publishers a portion of their publisher's share. This is how it works. That division can be between 10 and 100% of the publisher's share, and the rights can be exercised for a full copyright period or only a few years. Everything relies on the kind of publishing agreement.

5. Copyrights last 70 years past the owners lifetime: Copyright protections usually expire seventy-five years from the end of the year the last living writer passes away. This time frame may extend to 120 years from creation or 95 years from publishing under certain circumstances. It then enters the public domain.

6. Cover versions require only a mechanical license — and only in the US: Sync or master use

permissions are not needed for covers, however in certain nations, releasing them for profit will necessitate obtaining a mechanical license.

Simple covers are not derivative works because they replicate the full composition (which is protected by a mechanical license rather than a sync license) and don't take any elements of the master recording (thus requiring no master use permission).

There are no more licenses needed, and no permissions are needed if your live performance just consists of cover songs.

How to copyright a song:

1. **Make sure the song is fixed in a tangible form:** You cannot copyright a song that is only in your brain; it must be recorded or written down in a way that allows it to be submitted to the US Copyright Office.

2. **Fill out an application form with the US Copyright Office:** Master copyrights and compositional copyrights come in two varieties:

When composing, using the PA form.

Use form SR for sound recordings.

3. **Pay the filing fee:** Submitting an online application costs \$35, while a physical application costs \$65.

4. **Submit copies of the work:** This will be a copy of the sheet music for compositions in music. When it comes to audio recordings, it's usually an audio file or a tangible copy, like a CD.

Conclusion:

In the case of musical works, Indian copyright laws are crucial in defending the rights of producers and artists.

With the development of technology and the increasing popularity of remixes, it is essential to

comprehend the copyright laws.

Respecting the rights of original music composers and lyricists is crucial, even when a well-known song may inspire feelings of nostalgia and admiration.

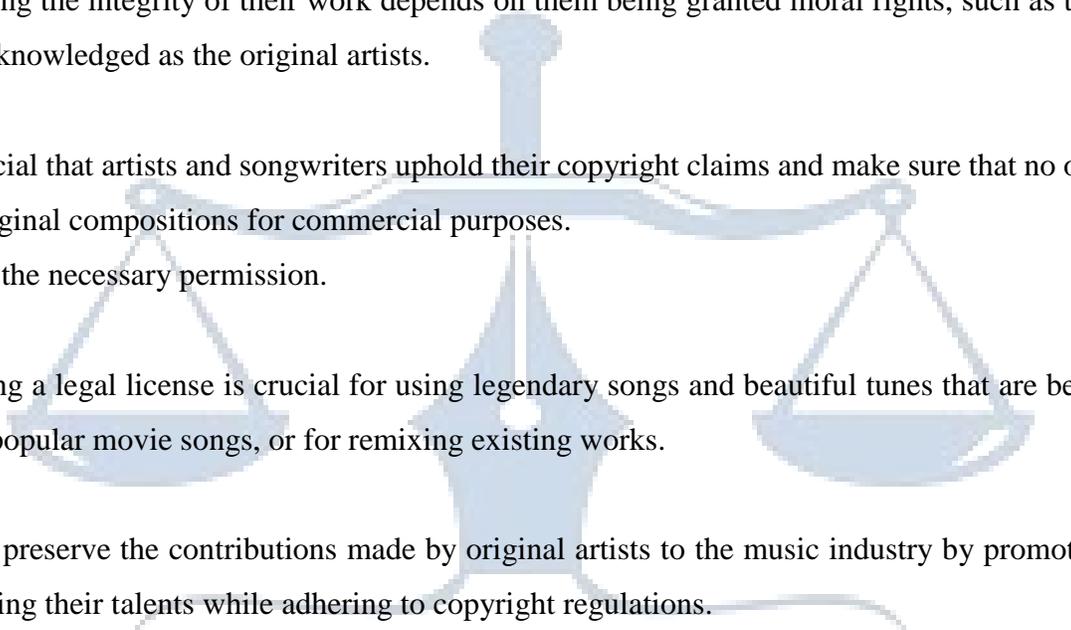
Creators are able to assert ownership rights over their artistic works through copyright action, and they can pursue legal action against any infringement.

Upholding the integrity of their work depends on them being granted moral rights, such as the right to be acknowledged as the original artists.

It is crucial that artists and songwriters uphold their copyright claims and make sure that no one uses their original compositions for commercial purposes without the necessary permission.

Obtaining a legal license is crucial for using legendary songs and beautiful tunes that are becoming part of popular movie songs, or for remixing existing works.

We can preserve the contributions made by original artists to the music industry by promoting and celebrating their talents while adhering to copyright regulations.



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