

## Recording that Different Version – An Indian Raga

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This paper discusses and critically examines the law relating to version recording rights, in the light of the contemporary trends in the Indian music industry. Version recording rights have been the subject to intense scrutiny with the music industry lobbying for deleting the provision. Certain amendments to the Copyright Act have been proposed by the Human Resources Development Ministry which has been examined. The paper, divided into five parts, gives a brief overview of the concept of copyright in the introductory part, the second part deals with the concept of adaptation in musical work which forms the basis for the concept of version recording. The third part deals with the origin of version recording rights in Indian law, under Section 52(1)(j) of the Copyright Act, and attempts to assess its impact on the music industry. The fourth part discusses the Indian case laws. The final part, conclusion, critically examines the proposed amendments with this regard and also covers authors' views.

**Keywords:** Version recording, musical work, adaptation, copyright

The Indian music industry has been witnessing a new lease of life with the onset of new talent and the booming market for remixes. However, their advent has several implications for the music industry, chief among them being the legal issues involving copyrights held by original composers of the songs, which are the subject of remixes. The Indian law provides for 'version recording' which permits adaptations of the sound recordings by third parties, without the consent of the owner, subject to fulfillment of certain conditions. The provision has been criticized in recent years by the music industry as it is seen as legitimizing blatant copying of original soundtracks, at a fraction of the cost thereby causing losses to the music industry.

### The Concept of Copyright

The significance of copyright can be best described in the words of Chinnappa Reddy J, as:

'An artistic, literary or musical work is the brainchild of the author, the fruit of his labour and so, considered to be his property. So highly is it prized by all civilized nations that it is thought worthy of protection by national laws and international conventions?'<sup>1</sup>

Copyright refers to the exclusive right to do or authorize others to do certain acts in relation to

literary, dramatic, musical and artistic works. The right also subsists in cinematographic films and sound recordings.<sup>2</sup> The two essentials of copyright can be said to be the originality of work and the fixation of this original work in a particular medium. Copyright confers certain exclusive rights on the owner, namely, right to: make copies of the work, distribute them, play, show or perform his work in public, broadcast the work and make adaptations in relation to the work. By conferring these exclusive rights, copyright law prevents third parties from carrying any of the above mentioned acts which fall in the copyright holder's exclusive domain. Copyright in a work does not subsist in perpetuity, but is usually limited for a prescribed period, after which the works are free to be used by any one. It is thus, a negative right exercised by the author to the exclusion of all others.

The essential element in every copyrighted work is an original expression. Though no standard of originality can be set, the basic requirement must be met, that the author must have spent sufficient independent skill, labour and judgment to create a new work in a fixed or a tangible medium be it on paper, canvas, tape, disk, film or other recording medium which is capable of reproduction.<sup>3</sup> The concept of originality means the requisite amount of skill or labour or talent in the work to merit protection.<sup>4</sup> It is thus, a matter of degree which will be examined when it is sought to be established.<sup>5</sup>

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Unlike the other intellectual property rights, such as, patents and trademarks, registration is not a pre-requisite for claiming these rights. The moment a work is produced it is deemed that the author of the work has the right over it.

Copyright has in the last century acquired more of an economic dimension as it provides protection to the traditional beneficiaries of copyright, like the individual writer, composer or artist by enabling them to exploit their work commercially and recoup the investment made for the creation of works. Today copyrights are held by major industries, publishing, film, broadcasting and recording industries, and computer software industry. Copyright is thus, important for individuals and industries which depend on it for their livelihood besides impinging upon the daily life of the members of the public and business.<sup>6</sup> Today no business can afford to be ignorant of the implications of copyright in its daily work.<sup>7</sup> Copyright in short is nothing but the right to copy or reproduce the work in which copyright subsists. Section 14 of the Copyright Act, 1957 discusses the meaning of copyright.<sup>8</sup>

The Indian film industry undoubtedly thrives on music, and it is estimated that the size of legitimate music industry in the country is approximately Rs 620 crore.<sup>9</sup> It becomes imperative therefore, that it is complemented by a legal regime which promotes and protects musical compositions and enables copyright-owners to reap the benefits of their work. The Copyright Act, 1957 provides protection for musical works. Section 2(p) of the Act defines ‘musical work’ 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 the music’. Thus, protection is given to musical notations even though it has not been fixed in any material form. This proposition receives support from Article 2(2) when read with Article 2(1) of the Berne Convention.<sup>10</sup>

### Adaptation in Musical Work

The right of adaptation is an exclusive right of the copyright owner. In relation to musical works<sup>11</sup> adaptation means ‘any arrangement or transcription of the work’.<sup>12</sup> This is done by adding accompaniments, new harmonies, and new rhythm including transcribing it for different musical forces.<sup>13</sup> Acts such as selecting and re-arranging older tunes or scores, orchestrating or making a piano reduction may qualify for its own copyright.<sup>14</sup> The author in case of a

musical work is ‘the composer’<sup>15</sup> of the work, which means the person who composes the music regardless of its recording in any form of graphical notation.<sup>16</sup> In case of a copyright over an original song, there may be two persons involved, who will be entitled to separate sets of rights - first, the one over the lyrics as a literary work and the other over the musical notations as a musical work. However, if both, lyrics and music are authored by a single individual, that person has copyright over both the lyrics as a literary work as well as the musical work. The right to adaptation is an exclusive right of the copyright owner and can be obtained only with the prior permission of the copyright holder in accordance with the procedure laid down by the Act.<sup>17</sup>

Adaptations or arrangements in musical works are usually made to suit a particular performer or a particular language. ‘Arrangement’ refers to the contribution of original expression to a musical work before it was completed such as the composition of an instrumental accompaniment or an instrumental passage that linked verse and chorus.<sup>18</sup> If a musical arranger decorates, develops, transfers to a different medium or otherwise changes the simple music of a popular song to make his arrangement fall within the description of an original musical work, such arrangement or adaptation is capable of attracting an independent copyright. There is no need for the ideas embodied in the arrangement to be novel.<sup>19</sup> Each such adaptation or arrangement is a musical work provided there is a sufficient element of intellectual creation.<sup>20</sup> Even the word ‘transcription’ is used sometimes for musical adaptations but it has not been defined in the Copyright Act of 1957. However, if we go by the dictionary meaning of the same, in context of music it means ‘an arrangement of a musical composition for some instrument or voice other than original’.<sup>21</sup> The onus of proving existence of originality falls on the person claiming the copyright over the work.

The landmark case on adaptation in a musical work is *Wood v Boosey*<sup>22</sup>, which was decided under the Copyright Act of 1911. A piano reduction by Brissler of Nicolai’s Opera, ‘The Merry Wives of Winsor’ was held to be an independent composition and attracted a separate copyright in the arrangement and copyright in the piano reduction belonged to the arranger as the author. There seems to be no Indian decision as to what constitutes an arrangement of a musical work.

Another case, which deals with the scope of adaptations, in particular, parodies which have

become quite popular with audiences, was discussed in the landmark US Supreme Court decision of *Cambell v Acuff Rose*.<sup>23</sup> Respondents, Acuff Rose filed a suit against petitioners, who were members of a rap music group '2 Live Crew', claiming that their song 'Pretty Woman' infringed the respondent Acuff Rose's copyright in the song 'Oh Pretty Woman'. The petitioners pleaded fair use on the ground that their work parodied the respondent's work. The District Court and the Court of Appeals rejected the defence of fair use, as they found that the petitioner is intended to make commercial gain of their work to the detriment of the respondents. The Supreme Court overruled the decision observing that, in determining whether fair use is applicable, enquiry must focus on 'to what extent was the work transformative, i.e. altering the original with new expression, meaning or message.' The Court observed that 'more transformative the new work, less would be the significance of factors like commercialism.' This landmark case established that in evaluating whether a use is fair, commercial factors are not determinative of the use, but they are only one of the many factors that ought to be considered.

## Version Recording

### Origin

Section 51 of the Copyright Act, 1957 enumerates acts which would constitute infringement. Section 52 carves out exceptions to Section 51 by deeming certain acts, which would otherwise constitute infringement, to be outside the purview of Section 51 and hence not amounting to infringement. Section 52(1)(j) is one such exception, that permits creation of what are popularly called 'version recordings'. A version recording is a sound recording made of an already published song by using another voice or voices and with different musicians and arrangers.<sup>24</sup> Version recording is thus, neither copying nor reproduction of the original recording.<sup>24</sup> It has also been defined as 'singing of a well known song by a lesser-known singer'.<sup>24</sup>

Section 52(1)(j) provides that making of sound recordings of any literary, dramatic or musical work would not constitute infringement if

- Records recording that work have previously been made by, or with the licence or consent of the owner of the copyright in the work; and
- The person making the records has given a notice and has paid to the owner of the

copyright in the work royalties in respect of all records proposed to be made by him, at the rate fixed by the Copyright Board.

This provision was introduced into the Copyright Act by way of an amendment, the Copyright Amendment Act, 1983.<sup>25</sup> The rationale for the introduction of this provision was to encourage small music companies to enter the industry and de-monopolize the industry which was dominated by few players like HMV.<sup>9</sup> The significance of the amendment lies in the fact that permission of the copyright owner is not required to make adaptations of the recording, a right which is otherwise conferred exclusively on the copyright owner. Thus, any person can make adaptations of the recordings after the expiry of two years from the date of release of the original recording, by giving notice to the copyright owner and paying royalty at a rate fixed by the Copyright Board.

There are other requirements that are to be met by the person intending to make version recordings, namely, (i) Only such alterations can be made to the original recordings, which are reasonably necessary for the adaptation of the work for the purpose of making sound recordings; (ii) The sound recordings must not be issued in any form of packaging or with any label which is likely to mislead or confuse the public as to their identity. These requirements are intended to safeguard the moral rights of the author of sound recordings as well as exclusive rights conferred on the copyright owner, by virtue of Section 14.

The Copyright Rules, 1958, also prescribe the procedure for making sound recordings. Rule 21 of the Copyright Rules, 1958, talks of the procedure employed in making the sound recordings under the clause (j) of sub-section (1) of Section 52 of the Copyright Act, 1957.<sup>26</sup> The Rule provides that not only the person making the records would inform the actual owner in advance of the intention to copy but would also ensure that the royalty is paid fifteen days in advance at the rate to be fixed by the Copyright Board. In addition to this, they are also expected to provide the labels and covers with which the sound recordings are to be sold. Information has to be provided regarding the particulars of the work, alterations, identity and other details of the copyright-owner of the work, particulars of the earlier recording, number of copies and most importantly the amount paid as royalty.

In the recent past, a profusion of remixes flooded market ostensibly to cater to the tastes of the younger generation by remixing old songs. The question arises as to what are remixes? There are two types of version recordings, namely, medleys and remixes. The term version recording has become synonymous with remixes. A version recording refers to any adaptation made to a sound recording and is distinguished by the two ingredients it has, different singers and different orchestra. Medleys are a musical selection where the music is one or two minutes long and is basically an arrangement of snippets of original songs according to the arranger's choice. Remixes are a form of version recordings where old tunes are adapted to a new musical arrangement. It basically involves repositioning of an old hit song to suit the present-day musical tastes.<sup>26</sup> Instead of old traditional musical instruments like tanpura and tabla, instruments used in a remix are digital drums and synthesizers, and even the voice of the singer is electronically manipulated.<sup>26</sup> It has been suggested in the US and Australia that remixes may encounter legal issues if a whole or substantial part of the original work is copied or used<sup>27</sup>, but the Indian Copyright law under Section 52(1)(j) permits adaptations of the original sound recording in the absence of a license and does not permit making of substantial alterations or omissions<sup>28</sup> unless reasonably necessary for the purposes of adaptation, a standard which has been rigidly interpreted by courts.

#### Assessment of its Impact on the Music Industry

Version recording is believed to be a result of the nature of 'copyculture'.<sup>29</sup> The rapid advancements made in technology imply that it only takes a single evening to get the entire album done and sent to the particular market where such version recordings are in demand. The high returns and small investments has made version recording a highly lucrative business and at the same time a competitive one.<sup>30</sup> The provision undoubtedly dilutes the 60 year protection that is conferred on the copyright owner. Opponents of Section 52(1)(j), the music industry in particular, feel that the provision unjustly dilutes the rights of the copyright owner and has resulted in huge losses. The music industry has lost about Rs 1,800 crore in the last three years due to 'illegitimate music'.<sup>9</sup> That comes to about Rs 600 crore a year, of which Rs 450 crore is due to piracy and Rs 150 crore due to remixes.<sup>9</sup> Amounts paid as royalty are abysmal (3-5%)<sup>31</sup> which makes a mockery of

section 52(1)(j).<sup>32</sup> This concept has also attracted criticism from the authors of the sound recording as the moral rights of the author are violated, by what they see as the 'unjust mutilation' of timeless classics.

At the other end of the spectrum are those who are in favour of version recording arguing that remixes have caught the fancy of the younger generation. Alternative Law Forum (ALF), a reputed NGO that works on various aspects of law, legality and power argued that Section 52(1)(j) has allowed small companies to emerge, and produce for marginalized language markets in diverse geographical locations thereby benefiting under-served languages and genres and significantly enhancing the domain of folk culture.<sup>33</sup>

#### Indian Cases

There have been very few cases so far as version recording is concerned even in India, the earliest being the case of *Gramophone Company of India Ltd v Super Cassette Industries Ltd*.<sup>34</sup> In this case, the plaintiff had produced audio records titled 'Hum Aapke Hain Kaun' under rights alleged to have been assigned to it by Rajshree Production Pvt Ltd who were the copyright owners of the cinematographic work. The plaintiff claimed that as they had sold 55 lakh audio cassettes and 40,000 compact discs titled 'Hum Aapke Hain Kaun', the title 'Hum Aapke Hain Kaun' when used on a record, would come to be associated with the plaintiff alone.

The plaintiff's alleged that the defendants launched an audio cassette by adopting 'Hum Aapke Hain Kaun' as its title with its design, colour scheme, get-up and lay-out which were deceptively and confusingly similar to that of the plaintiff's and also used a photograph of Salman Khan and Madhuri Dixit on the inlay cards. Hence, a suit for permanent injunction was filed by the plaintiff seeking to restrain the defendants from manufacturing, selling, or passing of audio cassettes under the said title or from using a carton or inlay card identical or deceptively or confusingly similar in design, colour scheme, lay out and get up, to the packaging used by the plaintiff. Along with the suit, the plaintiff company also moved an application under Order 39 rules 1 and 2 for grant of ad-interim injunction.

It was decided by the Court that as the Act permitted version recording, the defendants were entitled to record the music subject to the condition that they should not use the carton or the inlay card or any other packaging material similar to that of the

plaintiffs. The Court noted that an alternate title should be given with a declaration in sufficiently bold letters that the record is not the original sound track but only a version record with voices of different artists. The Court specifically held that the words stating that the second work is not an original work should be clearly underlined so that the buyer notices it and there is no confusion.

This case was followed by a similar case in the Delhi High Court, *Gramophone Company of India Ltd v Super Cassette Industries Ltd.*<sup>35</sup> In this case; the plaintiff was the owner of a copyright in the sound recordings embodied in an audio cassette. It was also the owner of the copyright in lyrics embodied in the sound recording and had also designed a unique inlay card with distinctive design, colour combination, layout and get up for the said audio cassette which constituted as an artistic work under provisions of the Copyright Act. The inlay card contained along with the photo of Lord Ganesha, the photos of Lata Mangeshkar and Usha Mangeshkar.

The defendants later launched an audio cassette in the market with the title 'Ganpati Aarti Ashtvinayak Geete' which was identical to plaintiff's audio cassette. The design, the colour scheme, the get up and the layout of the defendant's audio cassette was deceptively similar to that of the plaintiff. Further the songs also were in an identical sequence as that of the plaintiffs. However, the singer in the defendant's audio cassette was Anuradha Podwal. The plaintiffs filed a suit against the defendants on the grounds that the defendants were passing off their goods as that of the goods of the plaintiff and sought an action for restraining the defendants from issuing its sound recordings and from using the inlay card that was deceptively and confusingly similar to the inlay cards used by the plaintiff and from packing or using the labels which would infringe the copyrights of the plaintiff.

The defendants interestingly did not deny the plaintiffs title to the original works. However, they contended that they had sent necessary information to the plaintiffs that they were using the original works for recording the songs to be rendered by another singer and had also enclosed a cheque for Rs 2,230 by way of royalty to make 5000 cassettes. They claimed that they were entitled to indulge in version recording under Section 52(1)(j) after payment of the necessary fees to the plaintiffs. It transpired that the plaintiffs returned the cheque and they had informed the defendants not to make version recording of their songs.

The Court held that no doubt Section 52(1)(j) permits the version recording but it had to be read in harmony with the provisions conferring exclusive rights over the original copyright owners. The Court held that the version recording cannot be considered as an infringement of the copyright within the meaning of Section 51 as the singers are different. However, the fact that the plaintiffs had returned the cheque and given clear instructions that it did not permit the version recording, gave the plaintiffs the right to seek an injunction restraining the defendants from any further sound recordings which would infringe the copyrights of the plaintiffs. The Court held in favour of the plaintiffs as on the facts it was clear that the plaintiff would suffer irreparable injury if the injunction was not granted. The Court thus, gave necessary directions to restrain the defendants from issuing any sound recording of the audio cassettes which would infringe the rights of the plaintiff.

In 2001, in the case of *Gramophone Co of India Ltd v Mars Recording Pvt Ltd*,<sup>36</sup> Supreme Court discussed various issues underlying the concept of version recording. The respondent had allegedly taken away the right of copying which the appellants had sought from them. It was related to the three titles called 'kallusakkare kolliro', 'maduve maduve' and 'chinnada hadugalu'. The Trial Court had granted an injunction in favour of the original copyright owner which was again reiterated by the High Court and the Supreme Court. Even though the facts were simple and the judgement not too technical, arguments on behalf of the respondents were quite convincing and further elaborated on this entire issue. It was argued whether an entity which makes 'version recording' or 'cover versions' of an earlier sound recording' required the consent of the owner of the copyright. The answer was traced in the interpretation of Sections 2(m)(iii) and 52(1)(j) of the Act. 'Cover versions' or 'version recordings' are fresh recordings made using a new set of musicians.

It was again argued that there was a clear distinction between voluntary licenses and non-voluntary licenses. While Section 30 of the Act refers to voluntary licenses, in which case the consent of the party is required. As opposed to this, there are two types of non-voluntary licenses, namely, compulsory license as dealt in Sections 31 and 31A of the Act and statutory license as dealt in Section 52(1)(j) of the Act. The only ingredients to be satisfied to attract

Section 52(1)(j) of the Act as was convincingly argued was that there should be a literary, dramatic or musical work from which a person desires to make sound recordings, sound recordings in respect of such works have been previously made with the consent of the copyright owner and that the person making such sound recordings has given a prescribed notice and paid the prescribed royalty at the rate fixed by the Copyright Board.

The first condition of Section 52(1)(j) of the Act is that it must be 'with the consent of the owner' whereas the owner's consent is not a pre-requisite for the sound recording. Moreover, a combined reading of clause (iii) of the proviso to Section 52(1)(j) with Section 52(1)(j)(i) of the Act, makes it clear that the consent requirement is only for the first recording. He submitted that a statutory license of the nature contemplated under Section 52(1)(j) of the Act is considered to be in public interest and is recognized in most of the countries in the world and is resorted to as the appropriate from the licensing. Hence, it was finally held that where the respondent or any party as such had not violated the requirements of Section 52(1)(j) of the Act and Rule 21 of the Rules, it has not violated the literary and musical works embodied in the sound recordings.

The most recent decision on version recording is the case of *Super Cassette Industries Limited v Bathla Cassette Industries Pvt Limited*.<sup>37</sup> The plaintiff moved an application for injunction alleging that the defendant had infringed the plaintiff's sound recording which itself was a version recording of an original musical soundtrack of song 'Chalo Dildar Chalo' from the film 'Pakeezah' with minor and insignificant variations. The Court held that, a version recording made under Section 52(1)(j) is incapable of acquiring any independent right as the recording itself is an adaptation of an original recording and hence lacks the essential pre-requisite for asserting copyright, namely, that of originality. The Court also observed that the plaintiff had in its sound recording, made substantial changes to the original soundtrack and hence, the proviso to Section 52(1)(j) was also not satisfied which postulated that only such alterations or omissions are permissible which are reasonably necessary for making adaptations of the recording. The Court opined that as the plaintiff had changed the singer, it tantamounted to a substantial change which was clearly impermissible according to the proviso to Section 52(1)(j) as, in the Court's

words 'a change of the singer in a vocal rendering is a change in the most vital constituent of a recorded song.'<sup>37</sup> This interpretation suggests that Courts will construe the permissible alterations and omissions to the original sound recording narrowly and if there is a substantial change in the 'new' arrangement, it will amount to infringement. It is uncertain as to what constitutes 'substantial change', and the Court suggests that the question was whether from the prism of the original copyright owner, the change was substantial or not.<sup>37</sup> It follows then, that under this open textured standard, remixes may in most cases fall outside the purview of Section 52(1)(j) as they involve substantial alterations to the music as well as substitution of singers.

The principle being laid down was that copying from an already copied work would not be an infringement. The Court held that Section 52(1)(j) was not independent of prohibition imposed under Section 13(3)(b) and hence, anyone whose version recording violates mandate of Section 13(3)(b) cannot secure a mandate in his or her favour. Therefore, where no license has been granted by the original copyright owner and the only claim forwarded is under Section 52(1)(j), it cannot *ipso facto* confer any right entitling such a person (plaintiff in this case) for independent protection for its musical works. The Court stated that a version recording which involved substitution of another singer in place of the original singer would constitute a substantial change and protection of Section 52(1)(j) cannot be availed of. This interpretation may lead to copies of the original sound recording being made, with minor and insignificant variations.

### Conclusion and Proposed Amendments to the Act

Section 52(1)(j) although achieved the purpose of de-monopolizing the music industry,<sup>38</sup> it has not succeeded in striking a balance, as copyright owners' are unjustly deprived of their right to recoup their investment. The losses suffered by the industry owing to piracy are staggering<sup>39</sup> and this coupled with illusory amounts of royalty that are paid, defeat the object of conferring exclusive rights on the copyright owner and dilutes the 60 year protection that is conferred. A perusal of the case law, itself bolsters this fact, as royalty amounts paid have ranged from as low as Rs 400 to Rs 2,230. The royalty currently paid ranges from 3-5% of the retail price of a cassette which is abysmal compared to the 25-30% that is

demanding in the US, where version recording is legal.<sup>9</sup> At such rates, it is hardly surprising that we find dubious remixes flooding the market.

Section 52(1)(j) can hardly be justified from the legal standpoint, under the doctrine of fair use, which is a well established doctrine in copyright law. Fair use is usually not allowed as a defence to infringement, where the defendant intends to commercially exploit the plaintiff's work. Even under the modified standard laid down by the US Supreme Court in *Cambell v Acuff Rose*, where commercial motives of the defendant must be balanced with the extent to which the work is transformative i.e. more transformative the work, factors like commercialism become insignificant, Section 52(1)(j) fails to pass the litmus test. The reason being, according to the interpretation given by the Delhi High Court in *Super Cassettes v Bathla Industries*, if there is a substantial change made in the original sound recording, the proviso to Section 52(1)(j) requiring only such alterations to be made which are reasonably necessary for purposes of the sound recording would not be satisfied and hence, there would be infringement. Consequently, if the work is transformative i.e. it is altered with new meaning and expression, the protection afforded by Section 52(1)(j) ceases to apply. Thus, Section 52(1)(j) cannot be justified under the doctrine of fair use, assuming that principles evolved by US Courts are applicable in India, as there is little judicial exposition in Indian cases on this point.

The paradoxical result is that, Section 52(1)(j) prevents owners of original sound recordings from recouping their investment and also stifles creativity by legitimizing copying of songs with insignificant variations. It also throws into serious question, whether this provision satisfies the three step test for permitted exceptions laid down at the Berne Convention as well as the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement. Article 13 of the TRIPS Agreement provides that states shall be permitted to place limitations on or create exceptions to exclusive rights provided they are confined to certain special cases and do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

The object of copyright law is to strike a balance between the need to encourage creativity while at the same time promote dissemination of information. The adverse consequences of provision like Section

52(1)(j), can hardly be underestimated as big recording companies like Saregama and Sony Music, which are the copyright owners of many original recordings have now joined the remix bandwagon at the cost of creativity.<sup>9</sup> This disconcerting trend indicates that Section 52(1)(j) discouraged creativity and legitimized copying, a trend which must be reversed by making suitable changes to the existing legal framework.

In this context, the proposed amendments to the Act,<sup>40</sup> by the Registrar of Copyrights, Copyright Division of the Department of Secondary & Higher Education under the Ministry of Human Resources Development are significant. The amendments in the form of Section 52(1)(j)(vi) extend the restriction from the existing three years to five years. Section 52(1)(j)(vii) of the amendment also provides that a minimum royalty of 50,000 copies has to be paid to the owner for such version recording, annually, regardless of the number of copies made or sold. Alternative Law Forum has criticized these amendments, in particular, the requirement that royalty must be paid for 50,000 copies, by noting that it would not be feasible for small music companies to make version recordings in marginalized languages. It is submitted that while this requirement may be quite drastic, it has to be acknowledged that the royalty currently paid is abysmal. It is also unclear, as to how this might adversely affect creation of songs in marginalized dialects and languages as the proviso incorporates a safeguard that empowers the Copyright Board to fix a royalty lower than the stipulated minimum with regard to the extent of circulation of the recording in that language and dialect.

The amendment also significantly, proposes to extend the time period for making a version recording from two to five years, which would undoubtedly hamper version recording entities from capitalizing on the success of the original recording. It may have an adverse impact on the remix market, but the provision may be necessary in order to promote creativity, a virtue which seems to have taken a backseat in the music industry.

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- 4 *C Cunniah & Co v Batra & Co*; AIR 1961 Mad 111.
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