

# MORAL RIGHTS OF AUTHORS –A CRITIQUE IN THE CONTEXT OF COPYRIGHT IN MUSIC

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The existence of moral rights is consistent with the traditional *raison d'etre* of copyright: to recognize and encourage the results of intellectual creativity on a level with other forms of property. The ownership of these rights is independent of copyright ownership and continues even after the assignment of copyright in whole or in part.

Under the Copyright Act of 1957, moral rights have been christened as Author's Special Rights<sup>1</sup>. They are:

- i) Right of paternity i.e. to claim authorship of the work;
- ii) Right of integrity which is to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work, if such distortion, mutilation, modification or other act, would be prejudicial to his honour or reputation.

Performers were previously not entitled moral rights but an amendment was made in 2012 which has conferred moral rights on them under Section (38B). In the context of moral rights of the singers, remixes pose a great problem. The following example would illustrate the point. Imagine a singer enjoying great respect and reputation. His song is subsequently remixed. The song is then picturized in a vulgar manner, considerably undermining his reputation and lowering his image in the eyes of the general public. Thus moral rights assume crucial importance, particularly in the present age, where songs are seen more than they are heard.

Moral Rights, are also available to performers under the WIPO Performances and Phonograms Treaty, 1996 (WPPT). Article 5 of the WPPT confers on the performer, the right of paternity and the right to object to any distortion, mutilation or modification of his

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<sup>1</sup> Section 57, Copyright Act 1957

performance that would be prejudicial to his reputation.

The Delhi High Court in *Neha Bhasin v. Anand Rai Nand*<sup>2</sup> examined whether a performer is entitled to protection of her moral rights based on the principles of equity and common law. Ms. Neha Bhasin, a singer, alleged that her voice has been used by the defendants for the three versions of the song "ek look ek look" in the film "Aryan-unbreakable". It was also alleged that the defendants in connivance with the music director had shown her to be the singer along with another person and treated her as backup vocalist in all the three versions and this was evident from the jacket/inlay of the CD produced by the defendants. The defendant admitted in his correspondence to the plaintiff that there was a mistake and he would correct the same which he refused to carry out. According to the plaintiff, her voice was stolen and falsely attributed and hence she was entitled for injunction and damages. She filed a suit under order XXXIX Rules 1 and 2 of CPC alleging infringement of her performer's right under the Copyright Act. The defendant argued that the sound engineer while re-mixing with the help of the software "Nuedo" used the technology to create "layering" of sounds of more than one singer. Since more layers were created using the voice of the other singer, her name was given as the lead singer rather than that of the plaintiff. On examination of evidence produced by the parties, the Court found that the allegation of the plaintiff was correct and the defendant was trying to mislead the Court. The Court concluded that the plaintiff had a prima facie case based on violation of performer's right under Section 38 of the Copyright Act and Section 70 of the Contract Act. On the question of refusing the due credit as a singer, the Court relied on the principles of equity and the Supreme Court's decision in *Suresh Jindal v. Rizdoli Corrier Della Sera Prodzioni T.V.S.P.A*<sup>3</sup> and observed.<sup>4</sup>

...but what is more is that the plaintiff also has a right in equity for being given proper credit for the song by her. If her voice is

<sup>2</sup> 2006 (32) PTC 779 (Del).

<sup>3</sup> 1991 Supp (2) SCC 3. In this case the Supreme Court recognized the right of a co-producer to show his name in the film

<sup>4</sup> 2006 (32) PTC 779 (Del) at 808.

used and commercially exploited she has the right to prevent it being attributed to somebody else... The damage and injury caused and being caused to the plaintiff is twice over. First, she is not described as the lead female singer and in her place the name of the defendant No. 3 appears as the lead main female vocalist. Second, the plaintiff, who indeed was the lead/main singer has been demoted to the status of mere backup singer. The later act in itself is likely to cause grave harm and injury to the reputation of the plaintiff as a singer, her aspiration to rise as a female vocalist would receive a big jolt if in the market she is perceived merely as a backup singer and not as lead singer.

It is important to note that the case was decided by the Delhi High Court prior to the amendment of 2012. It was only by the Amendment Act of 2012 that moral rights were conferred on performers under Section 38B. Therefore, the case was decided in favor of the moral rights of the performer only on the basis of common law and principles of equity.

*In Morrison Leahy Music and Another v. Lightbond Limited and others*<sup>5</sup>, the defendants had produced a sound recording that was a medley or 'megamix' of words and music from five compositions, of which the second plaintiff (the singer and composer George Michael) was author and the first plaintiff, copyright owner. These were interspersed with fill-in music composed by others. The defendants claimed they were permitted to do this pursuant to a copyright clearance they had obtained from the Mechanical Copyright Protection Society, of which the first plaintiff was, a member. The plaintiffs denied that any clearance applied to the defendants' actions, and as well as suing for infringement of copyright, they claimed that the defendants' actions infringed their moral rights under Section 80(2) of the Copyright, Designs and Patents Act (CDPA).

Morrison J held that what the defendants had done clearly amounted to treatment within the meaning of Section 80(2)(a) of the CDPA; it was also arguable that such treatment amounted to distortion or mutilation within Section 80(2)(b). However, this was an interlocutory decision

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<sup>5</sup> (1993) EMLR 144.

for an injunction pending full trial, so the matter as to whether there was in fact derogatory treatment was left by the judge as a question of fact at trial.

*Confetti Records v. Warner Music*<sup>6</sup>, involved music copyright and sound recordings; the treatment at issue involved adding a rap line and additional parts of another track to an existing recording. In considering the wording of Section 80 of the CDPA and Article 6 bis of the Berne Convention, the judge came to the conclusion that in Article 6 bis, the author can object to distortion, mutilation or modification of his work only if it is prejudicial to his honour or reputation. He did not believe that the framers of the 1988 Act meant to alter the scope of the author's moral rights in this respect, so he held that the mere fact that a work has been distorted or mutilated gives rise to no claim, unless the distortion or mutilation prejudices the author's honour or reputation.<sup>7</sup> In this case, there was no evidence relating to prejudice to the author's honour or reputation, so on the facts, applying what appeared to be an objective test, the judge did not find any derogatory treatment.<sup>8</sup>

Clearly... the stress is on derogatory action that would be prejudicial to the artist's honour or reputation. The adjective 'derogatory' appears to imply a subjective standard? but this is made subject to the more objective criterion of prejudice to honour or reputation. Indeed, it has been argued that 'honour' and 'reputation' are more objective concepts, being analogous to the personal interests protected by the law of defamation.<sup>9</sup>

It is evident that the distortion, mutilation or modification must be such which would be prejudicial to the honour or reputation of the author. In other words, it is only when the work of the author is subjected to derogatory treatment, that he is entitled to bring an action to restrain or claim damages in respect of the distortion. It

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<sup>6</sup> (2003) EWCH 1274 (Ch.)

<sup>7</sup> Ibid, para 150 (per Lewison J).

<sup>8</sup> Ibid, paras 145-62,

<sup>9</sup> Simon Stokes, *Art and Copyright*, 94 ( Hart Publishing. Oregon, 2012).

is submitted, that any distortion, mutilation or modification in itself is an affront to the honour or reputation of an author. Therefore, it is submitted that any distortion, mutilation or modification of the work should be treated as violation of the author's moral rights without subjecting such distortion, mutilation or modification to the further criteria of being prejudicial to the honour or reputation of an author.

