



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

[www.ijlra.com](http://www.ijlra.com)

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# **PRIVATE OR HOME RECORDING OF MUSICAL WORKS: COPYRIGHT ISSUE**

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## **Abstract**

In many countries, copyright law grants the copyright holder exclusive rights to control the reproduction of their musical works. This means that making copies of a copyrighted song without permission from the copyright owner could potentially infringe upon their rights. However, most jurisdictions also recognize certain exceptions or limitations to copyright, such as fair use or fair dealing provisions, which can vary in scope and applicability. In some cases, private or personal use of copyrighted material may be considered fair use or fair dealing, allowing individuals to make copies for their own personal enjoyment or educational purposes. This typically means that you can make recordings of copyrighted music for your personal use, such as creating a mixtape or playlist for yourself or for a limited circle of family and friends. However, it's important to note that sharing or distributing those recordings, even among friends or family, may not fall under fair use or fair dealing exceptions. If you were to upload or share those recordings publicly or use them for commercial purposes without permission, it could potentially infringe upon the copyright holder's rights. It is also worth mentioning that the advent of digital technology and the internet has significantly changed the landscape of copyright law and enforcement. Many countries have

implemented specific legislation to address digital copyright issues, including unauthorized downloading, sharing, or streaming of copyrighted material. To ensure that you are complying with copyright law, it is advisable to familiarize yourself with the specific laws and regulations in our country, as they can vary significantly. If you have any doubts or concerns, consulting with a legal professional who specializes in copyright law would be the best course of action. Basically, private and home recordings means that the music is used for the fair dealing but when it is used for commercial purpose than it will come under the ambit of copyright infringement likewise if artist work is recorded by his family member and it was put on YouTube it will be termed as copyright infringement. This research mainly focuses on whether private or home recording of musical work will be termed as copyright infringement or not.

## **Introduction**

In recent years the copyright as an area flourished under intellectual property rights and musical works, private recordings, movies come under copyright domain of Intellectual Property Rights In recent years the copyrights law has gained mere importance and the cases of musical copyright infringement is increased the rapidly. This comes under copyrights which protects the sound and written works of various musical artists. Private home recordings of musical works increased rapidly due to Covid-19 as it was impossible to move out of homes so all the artists were putting their songs and many of them has recorded the songs at home studio. Before talking on copyright issue first of all it is important to know about copyrights The term copyright can be understood as 'the right of the owner to produce copies of his work to the exclusion of others.' The right to reproduce a piece of work is one of the most important copyright protections granted to the owner. When a person develops a unique product, the product is regarded as original with the assistance of substantial mental and intellectual skills. A copyright is a protection preventing duplication of an original work and exploitation of the copyright material. The law of copyright protects expressions of ideas rather than ideas. The idea-expression dichotomy was formulated in order to safeguard an idea's manifestation (i.e., an expression) rather than the idea. An idea is formulated from thinking about a certain concept, whereas an expression represents the implementation of that idea. Although several individuals can come up with the same idea, they can only claim copyright in the form of an expression. The first right is to protect the basic composition of music — referring to a structure and combination of musical notes, every musician follows the basic rights whenever any musician is creating anything first and foremost thing that musician expects the lyrics would be protected, Composition to be protected whenever we talk about music the tune

should be unique, mixing and mastering of a song with beats should be unique so that the audience like the combinations of chords should be crisp. whenever any person who is a musician produce the original song than he will become the sole owner of the song. The law refers to this area of copyright as "music work<sup>1</sup>." This is called music composition "musical composition" or "song." The second basic right concerns the actual recording of the song, a concept that is sometimes referred to as copyright law as "sound recording." Another word for this is mixing and mastering it is a final touch of a song. It is a common practice for music publishers to own or control the copyright of a music project, as well as record companies to own or control over the copyright of audio recordings. Whether copyrighted music is a work of music or audio, it should complement some of the following basic techniques: The work in question should be the first activity. There should have a portable or visual presentation,

## Historical Background of Copyright law

The world's first copyright law turned into Anne statement, enacted in England in 1710. The Act for the primary time added the concept that the writer of the e book changed into the owner of its copyright, and imposed strict security measures. In terms of the Act, copyrighted works needed to be positioned in copyrighted libraries, and registered at Stationers' hall. there has been no automatic copyright safety for unpublished works.

regulation primarily based on Anne's announcement gradually emerged from different nations, consisting of the Copyright Act of 1790 within the United States, but copyright regulation became not compiled at the global stage until the 19th century. In 1886, but, the Berne conference become introduced to offer for the recognition of worldwide copyright, and to promote the improvement of global requirements for the protection of copyright, and it's been followed via almost all international locations of the sector (extra than one hundred forty out of one hundred ninety regions worldwide). After the us ratified the treaty in 1988 the convention now covers almost all fundamental nations. The Berne convention stays in pressure to this present day, and it keeps to provide the basis for international copyright regulation.

one of the main changes initiated by using the adoption of the Berne convention became to increase patent safety to unpublished works, and to get rid of the requirement for registration. in the international locations of the Berne convention which means that the individual (or the

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<sup>1</sup> <https://blog.ipleaders.in/legal-complications-recording-musical-work-private/>

business enterprise he or she works for) has the right to copy any paintings that he or she produces as soon as its miles recorded in a certain manner, be it in writing, drawing, recording, etc.

even though the adoption of the Berne conference has been of first-rate benefit to the creators of the original works, the systems for protecting unpublished works continue to be worldwide, with a few states offering non-compulsory registration offerings locally, at the same time as others do not offer any shape of registration. without registration, it can be tough to decide who's the felony proprietor of a copyrighted work. country wide registration systems might not be willing to provide dispute assist in another country. The intellectual belongings Rights workplace (additionally known as the office of IP Rights and IPRO) became created on the way to create a worldwide centre for the guide of unpublished works from round the world, through its Copyright Registration service. hopefully this may offer a common point of registration for all residents of the nations of the Berne convention.

## **Music Covers and Remixes**

Recently there was a consistent increase in the range of songs and covers composed by using artists. This has resulted in a lot of debate about the modern framework of applicable copyright regulation. due to Covid-19 many artists started producing the songs at home. The person who is remixing the song or just remixing the song by putting extra reverb will get the exclusive right of the song because remixing the song in a new way will give the exclusive right to the owner. Music covers are also like it whenever any musician sings any music cover that artist has his vocals in the song this gives exclusive rights to the artist.

## **Gramophone Co. Of India Ltd. Vs Super Cassette Industries Ltd<sup>2</sup>**

The gist of the case was based on the definition of “record that records the work” **listed in Section 52 (1) (j) of the Copyright Act of 1956<sup>3</sup>**. Instead of arousing interest, the high Court stated that “records recording the work” for all purposes referred to the circumstances in which the sounds is

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<sup>2</sup> <https://indiankanoon.org/doc/109874394/>

<sup>3</sup> Section 52(1)(j) of **The Copyright Act, 1957** deals with making the performance of literary, dramatic, or musical works, by staff and students of the institution in the course of activities of an educational institution which is subject to the audience being limited to such staff and students, parents or guardians of students and person connected with the activities of the institution.

compiled with a tune and further stated that the term “records” had nothing to do with recorded things, regardless of music and harmony. The Court further insisted that another title should be provided with a clear written declaration that the record in question was not an actual song.

### **Cassette Industries Ltd. Vs Bathla Cassettes India (P) Ltd<sup>4</sup>**

On the choice, of the court docket upheld the fame quo via defining the character and manner of rights, referring to the song career created below the provisions of section 52 (1) (j). The goal that become set, in this case, became that copying the copied paintings might not be a contravention of the law. certainly put, a recording of a translation created below the provisions of phase section 52 (1) (j) cannot be granted any copyright rights as the recording is copyrighted through the authentic recording, so there's no real copyright required. As an end result, what can be considered from this selection is that declaration for copyright infringement within the case of cover versions will not be taken into consideration in a court of law.

despite the fact that phase 52 (1) (j) of the previous Copyright Act, 1957 furnished exceptions to the law for the inclusion of variations, the subsequent change (amendment) Act, 2012 repealed the above-cited segment and replaced it with a new phase 31C., which gives for the provisions of the official license to make cowl versions. The said offer shows that versions of the cover can simplest be performed for writing, drama or tune, where there is already a pre-recorded sound or a stated license or work proprietor's permission. basically, which means that the artist compiling the work wishes to have the previous of the unique artist before liberating the cover version of his song. Approval

### **Recording and playing music in private ceremonies.**

Songs are played by Disk Jockeys (DJs) in Marriage ceremonies, engagements, Family functions this music is been used for commercial purpose usually songs are been played by the DJ in functions in return they are getting royalty or money this is termed as copyright infringement there should be proper rules and regulation specifically for DJs so that music is not sold for commercial purpose. There should be proper licence which should be issued to the disk jockey so that the music company should get the brief Idea about how many DJs are using there work there should be minimal fees for DJs so that they can obtain licence there should be some terms and conditions

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<sup>4</sup> <https://indiankanoon.org/doc/303252/>

that music should be used in a fair manner not sold for commercial purpose.

## How Private and home recordings is Copyright Issue

Private or home recording of musical works are increased nowadays due to covid-19 due to bad situation the many of young new talents and artists started recording their songs at their home that is also called home recordings now people prefer to do the home recordings or enjoy to do the private which is easy way to reach the audience from the comfort of the home. The validity of the copyright of a music or any literary work 60 years. The rights can be sold by the original owner before the period of 60 years also in lieu of some fees. The home recordings or private recordings should have the mechanism so that there no issue of song leaks or any literary or dramatic work. All the artist should govern their rights under Indian law like The Audio home recording act of 1992 amended the United States copyright law by adding chapter 10, Digital Audio Recording devices and Media". The act enabled the release of recordable digital formats such as Sony and Philips' digital Audio Tape without fair of contributory infringement. In India the home recordings musical works dramatic or literary work are governed under **Section 52 of Copyrights act 1957**<sup>5</sup>. All the songs and pre recordings are violative in nature when it is played in wedding ceremonies or public place original artist should be benefitted which is in debate. There should be proper mechanism to stop this violation.

### Conclusion

After Analysis of the issue whether private or home recording of musical works it is copyright issue or not if it is used for ourself than it will not be termed as copyright infringement if some family member shares the music of the person on YouTube of any family member who artist will be considered as copyright Infringement.

It is been also noticed every marriage or family gathering or in some party has some sort of music playing now the issue comes does playing of the music in marriage leads to copyrights infringement or not but as per my opinion I think It is copyright infringement if the law governs the artist or a music company than the disc jockeys should also be given a proper license to operate the music of that company in exchange of some minimal money so that at the end of the day the music company which produced the song has a note who all are playing the music.

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<sup>5</sup> <https://indiankanoon.org/doc/1013176/>