

*Dancing through
copyright*

Safeguarding Dance Influencers in Musical Minefield



LawPickle

www.lawpickle.com

Third Research - Protection under Transformative Use

In the digital era, the doctrine of transformative use provides a legal safeguard for user generated content that sufficiently alter the original composition to produce a new expression, or is used for a different primary purpose than the original. With the proliferation of digital platforms facilitating the creation and dissemination of remixes, mashups, and parodies, courts have increasingly scrutinized the extent to which such works are infringing invoking the doctrine of transformative use. Judicial determinations hinge on whether the new work merely supplants the original or contributes a novel perspective that transcends mere reproduction.

In case of **Syndicate of the Press of the University of Cambridge on Behalf of the Chancellor, Masters and School vs. B.D. Bhandari & Anr.**¹, the division bench of Delhi High Court categorically laid down the test of transformative use while determining whether Guide Books fulfils the test of Transformative Use. The court held 'In writing this guide book, if the contribution of aforesaid nature is made, it may be treated as a work which is somewhat different in nature. This is the crucial test which is to be applied and has been characterized as the transformative character of the use by the American Courts. Therefore, the task would be to ascertain as to whether the purpose served by the guide book is substantially different from the purpose served by the textbook. If the guide book is different in character and not a mere substitute of the original work/textbook, it would be treated as transformative. However, the character must be substantially different and it is not sufficient that superficial changes are made with basic character of the textbook creeping in the guide book. In that eventuality,

it would not qualify as a work of transformative character. If this subsequent work has assumed different character, it would not amount to infringement of the original work, though it would have been drawn, to certain extent, from the original work.

Thus, the protection afforded under the doctrine of transformative use is fundamental in navigating the intricate interplay between creativity and copyrights. As digital platforms continue to evolve, the transformative use doctrine serves as a critical legal tool that both protects the creative contributions of original artists and fosters innovation through reinterpretation and remix culture. This balance is essential for maintaining a vibrant and dynamic musical ecosystem, where the interests of rights holders and emerging creators are judiciously aligned.

Moreover, in the case of **Super Cassettes Industries Ltd vs Hamar Television Network Pvt. Ltd. & Anr**², the Delhi High Court determined as to as to what constitutes "substantial takings". The court held while the extent of extract, that is, the "quantitative" test has its part to play in determining infringement of a copyrighted work the "quality" is equally important. This is especially so in the case of a musical work. A single note may in certain cases lead to an infringement if it forms an "essential" part of the copyrighted work. The test will have to be that of a "lay hearer".

References

¹2011 SCC OnLine Del 3215, ¶ 79.

²2010 SCC OnLine Del 2086, ¶ 11.



LawPickle

www.lawpickle.com