

News

Music, marriage, and the boundaries of copyright exemptions



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Because of its broad application, Section 52(1)(za) of the Copyright Act is susceptible to abuse by those attempting to pass off commercial acts as religious or marital rituals.

It is customary to play music during social gatherings like weddings, parties, and business meetings. However, whether a license is needed to play or perform the copyrighted music may depend on the event's nature and character.

Section 52(1)(za) of the Copyright Act, 1957 ("***the Act***") provides for some built-in

exclusions, including marriage ceremonies and associated religious social festivities, even if a copyright license is necessary under the Act's framework. This exception is not unqualified, though.

In actuality, various public authorities have attempted to interpret the aforementioned Act exception, including in more recent times. But in the past, the courts have invalidated these kinds of public announcements and circulars. This problem dates back to 2011, when the Additional Director General of Police, Punjab, issued an order telling the state police not to require public performance licenses for DJ performances at wedding functions. In effect, the order treated wedding functions as exempt from the licensing requirement. In the case of PPL v. State of Punjab, Phonographic Performance Limited ('PPL'), an assignee of public performance rights, contested this order. The Punjab and Haryana High Court noted that "the tariff regime applies to performances at such functions even if it has a religious overtone," rejecting the idea that DJ-played sound recordings during wedding festivities automatically have the protection of Section 52(1)(za).

Likewise, in *Novex Communications v. Union of India*, the Punjab and Haryana High Court invalidated another such case concerning a public notice dated September 27, 2019, issued by the Registrar of Copyrights under the Department for Promotion of Industry and Internal Trade ("DPIIT") interpreting the scope of Section 52(1)(za). According to the Court, the Registrar was not authorized to interpret the Act or to rule that no license was needed for any activity pertaining to marriage. It further ruled that the scope of Section 52(1)(za) and the fair-use considerations under Section 52(1) must be evaluated on an individual basis, taking into account elements including whether entry prices were levied for the event and any underlying commercial purpose or intent. Since executive notices cannot limit the statutory or constitutional rights of copyright owners or take the place of a judge's decision regarding the applicability of the exception, it was further explained that the issued notice breached the concept of separation of powers.

A second circular outlining the parameters of this exception was subsequently released by the Central government via DPIIT on July 24, 2023. On the basis of this, the Home Department of Goa issued a circular on January 30, 2024, asking the police to take "strict action" against royalty demands, stating that performances at religious ceremonies, including weddings, do not constitute infringement, and advising hotels and copyright societies not to demand licenses or NOCs. In the case of PPL v. State of Goa, this circular was contested. The Bombay High Court ruled that a plea of non-

infringement under Section 52(1)(za) is an exceptional defense and that the provision is a statutory exception whose applicability must be assessed case-by-case. Since such decisions cannot be made in advance through executive circulars, the Court ruled that the contested circular unlawfully enlarged the scope of Section 52(1)(za), unlawfully restricted the rights of copyright societies, and interfered with the Act's enforcement mechanism. As a result, the circular was quashed.

Additionally, the Delhi High Court examined a case in *Ten Events & Entertainment Pvt Ltd v. Novex Communications Pvt Ltd* in which an event management company that planned upscale destination weddings used Section 52(1)(za) to request a declaratory exemption from any licensing requirements for such events. The business contested requests for licenses to publicly perform copyrighted music at wedding festivities from Novex, PPL, and the Indian Performing Rights Society. This strategy was rejected by the Delhi High Court, which ruled that Section 52(1)(za) merely serves as a defensive exception to infringement and does not grant any enforceable substantive rights. It found that statutory exceptions only establish "negative rights" and cannot be utilized to acquire prior declarations of non-liability, citing *Warner Bros. v. Santosh V.G.* and *K.T. Plantation v. State of Karnataka*. "Section 60 of the Copyright Act applies only in respect of threats of liability and legal proceedings held out in respect of acts of alleged infringement of copyright which already stand committed," the Delhi High Court ruled, interpreting the Act's 60th section narrowly.

The Delhi High Court further held that, although marriage processions and associated social celebrations are considered "religious ceremonies" under the Act, the exemption is subject to bona fides and must be evaluated on an individual basis, taking into account the event's nature and the presence of any profit-making or commercial intent. This is in accordance with Section 52(1)(za). The Delhi High Court also cited the *Devendrakumar Ramchandra Dwivedi v. State of Gujarat* decision, which dealt with commercial Navratri/garba events and found that the aforementioned exception might not apply to acts that were intended to make money. The Delhi High Court did not, however, address whether opulent, commercially planned destination weddings would be exempt from this rule. The Court denied declaratory relief under Section 34 of the Specific Relief Act and denied the plaintiff's request for an omnibus declaration.

In conclusion

A broad exception is established under Section 52(1)(za) that exempts the performance of copyrighted music at specific events from the need for a license. Its broad scope, however,

also makes it susceptible to abuse by those looking to pass off commercial performances as religious or marital rituals, which might jeopardize the system of revenue that musicians, composers, vocalists, and artists rely on. As a result, courts have continuously emphasized the need for bona fides, including whether the event has any underlying profit-making or commercial aim. The Delhi High Court described Section 52(1)(za) as a "shield" rather than a "sword," further establishing that the provision only serves as a defense against an infringement allegation and not as a foundation for requesting omnibus or all-encompassing declaratory relief.

In order to ensure that Section 52(1)(za) operates as a purpose-driven exception rather than a loophole, courts have attempted to strike a balance between the legislative intent behind the provision and the necessity to protect legitimate copyright interests by insisting on a case-by-case factual assessment.

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