

NCS MUSIC AND IT'S IMPACT ON COPYRIGHT

*Sriradha Rai Choudhuri**

ABSTRACT

Royalty Free or Copyright Free music is becoming the trend nowadays. Several online sites are available that provide such music. The objective behind this is to promote creativity and the flow of ideas in public which also forms the backbone of any Intellectual Property Right granted.

NCS Music seems to have started this trend back in 2011 and still going strong. However, NCS Music may not be the same as every royalty-free music. The debate that forms is whether NCS Music is more towards the concept of Creative Commons Licensing and Copyleft or is it simply 'royalty free'. Moreover, the base is still weak when it comes to the rights of performers/ artists whose songs are used by NCS Music and infringement issues. There being no specific model in India to deal with such versions of 'no copyright', it may become hard to tackle the copyright problems stemming from it in the future.

In this paper, the concept of NCS Music, its use, and certain issues of NCS Music about copyright would be discussed by the author. The paper would first highlight how NCS Music is used, then the conflicts that can arise between NCS Music use and the performers' rights and would further deal with how NCS Music is different from Royalty Free music and is more inclined towards Creative Commons Licensing and Copyleft. Finally, the paper would sum up the concept by pointing out the possible infringement and moral rights violation areas of NCS Music, pushing the Government to bring up some concrete set-up to tackle such issues.

Keywords: NCS Music, Royalty Free, Artists' Rights, Creative Commons Licensing (including Copyleft), Infringement

* *Sriradha Rai Choudhuri, 4th year Student, Hidayatullah National Law University, sriradha.192139@hnlu.ac.in*

1. INTRODUCTION

NCS Music or ‘NoCopyrightSounds’ is a record label launched in 2011 by Billy Woodford as it initiated its journey through YouTube. NCS Music is a pioneer in providing independent creators with free musical content (both regular and instrumental sound recordings as well as musical compositions) across various genres and moods. Its motto is “Music without Limitations” and it designates itself as “a record label for creators”.¹ It mainly provides background electronic music. NCS Music can be found on its website, YouTube, Spotify, Apple Music and other such digital music service providers. NCS Music is not that it does not own any copyright. It functions similarly to a normal traditional label.² They own the copyright in the music that is made available for use, but there is no Content ID claim when the same is used- so they are more of a No Content ID record label.³

2. THE USAGE POLICY OF NCS

Coming to the usage policy, it states certain things-

1. NCS Music can be used on two platforms, that is, YouTube and Twitch. Apart from these two, it is also in talks with Twitter, Instagram, Snapchat, TikTok and Facebook to see whether the system of Content ID can work on these sites too. Content ID is a YouTube system that identifies any matching work and thereafter applies a copyright strike on it. Till the same can be sorted out, copyright claims on these sites may arise.
2. The music can be used for free- the only requirement is an attribution that must be given to NCS for that use.
3. The use of NCS music is not for big commercial giants, but for small independent creators to support their work.
4. The use of NCS music is quite vast- some of which are its use in beauty, reviews, educational, gaming, vlogging, comedy, travel, technology, pop culture, and design among others.
5. Video compilations could also make use of NCS music as a background.
6. NCS music use is disallowed in simple music re-uploads after download.
7. Also, NCS music cannot be used in content involving hate speech, sexual content and other illegal works.
8. The use of NCS music is temporary only for the creation of the particular content and the user does not buy any rights to that music, that is there is no subscription policy.
9. It is a non-exclusive use- which means that the same NCS music can be used by several creators at the same time freely.

¹ NCS <<https://ncs.io/> > accessed 2 September 2022.

² Ilhem G., ‘Is NCS No Copyright?’ (*Famuse*) <<https://famuse.co/is-ncs-no-copyright/> > accessed 2 September 2022

³ Stuart Dredge, ‘How NoCopyrightSounds went from YouTube channel to indie label with 1.2bn streams’ (*Musically*, 15 February 2018) <<https://musically.com/2018/02/15/nocopyright-sounds-youtube-indie-label/> > accessed 4 September 2022.

10. The usage of NCS music is not for direct commercial benefit, particularly from that use. This has exempted monetization of the work through the generation of ad revenue as that is a part and parcel of platforms like YouTube. Hence, we can say that NCS music is allowed for non-commercial purposes. In case, any corporation wants to commercialise its use as a primary activity, it needs to apply for a separate commercial license from NCS. Only when NCS grants the same, can it be accomplished. Moreover, the ones in the 'commercial license' category are not referred to as 'independent creators' by NCS.
11. The NCS music cannot be used only as NCS music, but only as a part of the User Generated Content that is created by the user. Without any UGC available, the usage will bring in a copyright strike.
12. Modification of NCS music is allowed to the least extent possible- that is just for synchronisation of the background music with the video sequencing- no alteration to the music itself is allowed.
13. Advertisements may be allowed while using it on the specified platforms- but any external product endorsement by way of the use of NCS music is strictly prohibited.
14. NCS takes action against those companies who fraudulently try to put a copyright claim against proper uses by showing that the music belongs to them.

2.1. The Link Between NCS Music And The Artists: Record Contracts And Licensing Deals

NCS Music helps to promote the songs of several artists- like 'Faded' by Alan Walker, 'Stardust' by Rex Hooligan. Many artists have launched their careers through NCS Music. When the artist makes the music, he as the author of it, holds the copyright to the same.

The artist creates the master record, which is then licensed to the record label through a record deal. Once licensed, now the record label, like NCS Music can utilise that sound recording in the way it wants, provided it is within the licensing deal and the license persists. It may be stated that a 'music license' is a "temporary assignment of the rights of the work".⁴ To make this more permanent, master licenses can be entered into.

Master use licenses entered through record deals can allow the record label to acquire the delegated or waived off rights of the musical composition from the artist- thereby also indirectly taking the artist in the possession of the record label. However, whether the artist can still claim back these master rights, is a matter of his negotiating power with the record label.⁵ On analysing the

⁴ 'How to buy music rights?' (*Legis Music*, 3 October 2022) <<https://legismusic.com/buy-music-rights/>> accessed 4 September 2022

⁵ Aashita Khandelwal, 'Master Recording License' (*Ipleaders*, 27 April 2021) <<https://blog.ipleaders.in/master-recording-license/#:~:text=A%20master%20license%20is%20a,other%20sound%20and%20audio%20projects>> accessed 5 September 2022

functioning of NCS, it seems as if NCS also enters into such deals with the artists to then transform the same into copyright claim-free music. Such licensing agreements may specify the product that is shared, the duration and exclusivity of the contract, distribution of royalties, sub-licensing and synchronisation rights among others.⁶

2.2. Effect On the Independent Creators If the Artist Takes Back His Rights Cancelling the Licensing Deal

In NCS music, the artist could take back complete ownership of the copyright by ending the licensing deal or not renewing it further. This could be visible from Alan Walker declining to renew his agreement with NCS for the trio- 'Faded', 'Force' and 'Spectre', as he now wants to take independent control over his music. This has resulted in NCS Music removing these songs from the YouTube channel.⁷ Now, when one goes on YouTube to visit the NCS releases of these songs, they would find the tag of 'Copyrighted NCS Music' or 'Privated NCS Music', which means that one could listen to such NCS releases, but not use it freely now.

The next question that follows is what would then happen to the creators who made free use of such music back when the same was copyright claim free. Taking the case of Alan Walker, Sony Music has been sending copyright claims to such independent creators who used the song back in 2016, when the copyright lied with NCS Music.⁸ If we look at both Indian and UK law, it mentions that 'copyright infringement' occurs when you make use of any exclusive rights granted without any license or authorisation. When first made use of by the independent creator before the expiry of the license, there was no infringement. Once the work got created, the creator got a copyright over that UGC and exclusive rights to then distribute or communicate that work. But, even if this is true, once the basic license expires, all other licenses built on it would end. This does not mean that one needs to pay damages for the previous communications, but further communications of those creations on YouTube could now require permission from Sony.

2.3. Source Of Income of NCS Music For Supporting the Artists and Itself

Most record labels further license it to some persons who then provide an amount of royalty to the record label, which gets equally distributed between the record label and the artist. Certain record

⁶ 'Licensing Agreements in the Music Business' (*Imusician*, 24 February 2014) <<https://imusician.pro/en/resources/blog/licensing-agreements> > accessed 6 September 2022

⁷ Cameron Sunkel, 'Alan Walker Declines To Renew Trio Of Early NCS Releases, Citing Desire To Take Ownership Of His Music' (*EDM*, 16 November 2021) <<https://edm.com/news/alan-walker-ncs-youtube-releases-removed>> accessed 28 September 2022

⁸ 'SONY Is Now Claiming and Monetizing Alan Walker's NoCopyrightSounds (NCS) Songs!' (*Youtube Help*, 27 June 2019) <<https://support.google.com/youtube/thread/8775487/sony-is-now-claiming-and-monetizing-alan-walker-s-nocopyrightsounds-ncs-songs?hl=en> > accessed 2 October 2022

labels engage in providing royalty-free music, but this means that the users pay a one-time royalty fee for unlimited use. So, the record label can earn its funds from that purchase.

When it comes to NCS music, it neither takes recurring nor a one-time royalty subscription from its users. Its use is completely free if it complies with its terms of use. The question that then strikes is how is NCS funding itself or paying the artists.

The strategy is quite simple and is four-fold-

1. Through streaming services revenue earned- NCS Music played on Spotify, Apple Music, Google Play Music etc.
2. Ad revenues from YouTube.
3. Attribution results in promotion which results in indirect revenue generation in the long run.
4. Revenue earned through 'Commercial licensing' for external usage apart from that of YouTube and Twitch.⁹

2.4. Effect On Performers' Rights Once Master Recording Is Licensed To NCS

It is generally the case that when an actor performs in a cinematograph film, he gives away all his performer rights to the producer of the cinematograph film. Similarly, when record labels enter into record deals and master use licensing agreements with the artist, the performer rights are also transferred by consent. If this is not done, it would be very difficult for the record label to make use of that music. The same should be the case with NCS Music.

3. COMMERCIAL USES AND COMMERCIAL LICENSING

NCS Music does not allow commercial use of its work. The commercialisation of NCS Music and monetizing through ad revenue on YouTube is completely different. Certain examples of commercial use could be-

1. Commercial release of NCS tracks through re-uploading.
2. Use of releases in video games, even if the game is free to download.
3. Using NCS track for promotional purposes of any product or service brand.¹⁰

⁹ Tom Newman, 'How does NCS Music make money from copyright free music' (*Routenote* 11 April 2020) <<https://routenote.com/blog/how-does-ncs-music-make-money-from-copyright-free-music/>> accessed 5 October 2022

¹⁰ 'Can I monetize my video if I've used NCS music?' (*Audio By Ray*) <https://audiobyray.com/faq/can-i-monetize-my-video-if-ive-used-ncs-music/#elementor-toc__heading-anchor-5> accessed 6 October 2022

It is not that NCS music cannot be used at all for such commercial purposes. They can be used, but one would require to fill up a commercial licensing form. If such use is there without a commercial license, it will be a copyright infringement. An NCS Commercial License request is to be done for “usages that fall outside their UGC-free policy”.

4. CREATIVE COMMONS LICENSING AND NCS MUSIC

Creative Commons licensing is the essence of NCS Music. It is by way of this license that NCS can allow the free use of its music without any copyright claim. Creative Commons Licensing helps in the legal use of some ‘Copyright Reserved Rights’ with no payment as such- all free. Such types of licenses are common in the music world, where free music availability is required for remixes, background effects, videos etc.¹¹

There are certain terms used in Creative Commons Licensing, based on which 6 types are there-

	Copying	Attribution	Commercial Use	Modification & Adaptation	Change of License
CC-BY	Available	Available	Available	Available	Available
CC-BY-SA	Available	Available	Available	Available	Not Available
CC-BY-ND	Available	Available	Available	Not Available	Available
CC-BY-NC	Available	Available	Not Available	Available	Available
CC-BY-NC-SA	Available	Available	Not Available	Available	Not Available
CC-BY-NC-ND	Available	Available	Not Available	Not Available	Available

Considering NCS Music, the most appropriate Creative Commons Licensing would be CC-BY-NC-SA. This is because in NCS Music-

1. attribution is required,
2. one can download the music without any copying claim,
3. one cannot use the music for commercial purpose,
4. one can adapt the music in any different format and synchronise it- other derivative work,

¹¹ ‘Legal Music For Videos’ (*Creative Commons*) <<https://creativecommons.org/about/program-areas/arts-culture/arts-culture-resources/legalmusicforvideos/>> accessed 12 October 2022

5. same license would work for all works- one cannot choose which license he/she prefers for the adaptation
6. CC licenses are non-revocable- violation by one licensee of usage policy will not stop use by other licensees. NCS music also follows this.

5. COPYLEFT AND NCS MUSIC

Copyleft is a type of Creative Commons Licensing (CC-BY-SA), that allows for freedom to study, use, and modify a work, but restricts its usage on the same terms and conditions as fixed by the original author. Mostly, in copylefted works, the origin would always remain free for the public to use and is in vast use in the creative domain.¹²

In NCS Music, the original NCS sound still remains free to use, and the User Generated Content formed by the use of NCS also must be only non-commercial. This follows the ‘reciprocity’ principle of Copyleft.

6. NCS MUSIC UNJUSTIFIED AS ROYALTY-FREE MUSIC

There is this thought that why NCS music is not referred to as Royalty Free Music here. This is because there are, major two differences between Royalty Free Music and Creative Commons Licensing which do not match with NCS Music. They are-

- 6.1. Royalty-Free Music requires payment- a one-time subscription for unlimited use- no downloads of music are possible without that payment- if we would look at the websites of certain renowned royalty-free music providers like- Motion Array and Epidemic Sounds- they ask for a subscription and have a subscription plan. For example, Motion Array has a ‘Pricing’ option which states, “All plans are for single users only. Assets from Motion Array are licensed to the user with the paid subscription.” Here royalty-free means recurring payment free.
- 6.2. Royalty-Free Music does not require mandatory attribution- Certain sites may desire attribution, while some do not. But that is not a primary element. But if we view the usage policy of NCS Music, one would realise that attribution is essential for its use and a major chunk of its revenue also is derived from attribution.

7. NCS MUSIC UNJUSTIFIED AS COPYRIGHT-FREE MUSIC

This is because NCS Music has a ‘copyright’ owned by NCS that it has got through the record deal. The music is not in the ‘Public Domain’. It still has copyright, but NCS provides a mechanism

¹² Ken Friedman, ‘Copyleft’ (*Britannica*) <<https://www.britannica.com/topic/copyleft>> accessed 30 October 2022

of use without copyright claim. With ‘Copyright Free Music’ one can do anything with it, without following any usage policy or restrictions as such.¹³

The major way to distinguish between ‘Public Domain’ music and NCS Music is that where the latter requires attribution to avoid any infringement, ‘Public Domain music’ would not face any lawsuit if it fails to provide attribution, as the owner of the work himself does not possess any right to it any longer.

8. NCS MUSIC AND FAIR USE

Whether Fair Use will apply or not depends upon how one is making use of the NCS music. If one is providing a review or a criticism of the UGC generated by an independent creator and in it, the NCS Music also is played, that can be accepted as fair use. Under UK law, if you are converting NCS Music for the benefit of the disabled- maybe the deaf- that can be considered fair use. Even a parody version of it would be fair dealing.¹⁴ Where NCS music is used for a video presentation for educational purposes, it would fall under NCS usage policy- signifying that NCS usage policy takes into account fair use.

But on the other side of it, it can be argued that when an independent creator is using NCS Music in his YouTube video and also generating ad revenue out of it through views, that is not fair use, but a result of the creative commons licensing.

9. NCS MUSIC AND MORAL RIGHTS VIOLATION

Yes, even moral rights come into the scene when we deal with NCS Music. Dealing first with the Right of Integrity- NCS Music does allow adaptation of NCS music in a different expression, but its usage policy mentions that the NCS Music itself cannot be modified in a way that destroys its fundamental character.

Secondly for protecting Paternity, NCS Music has a strict policy against fraudulent organisations that give a copyright claim by claiming that NCS Music belongs to them.

¹³ Jonathan Bailey, ‘The Difference Between ‘Copyright Free’ and ‘Royalty Free’’ (*Plagiarism Today* 10 June 2020) <<https://www.plagiarismtoday.com/2020/06/10/the-difference-between-copyright-free-and-royalty-free/>> accessed 4 November 2022

¹⁴ ‘Exceptions to Copyright’ (*Gov.UK*, 4 January 2021) <<https://www.gov.uk/guidance/exceptions-to-copyright>> accessed 14 November 2022

CC rights help to preserve moral rights, but not to the extent that it defeats the conditions of use of licensing agreements.¹⁵

10. NCS MUSIC AND COPYRIGHT INFRINGEMENT

Following circumstances amount to copyright infringement:

1. If one has not given attribution.
2. If one has re-uploaded the music.
3. If one has modified the NCS music to destroy its fundamental character and is using the same.
4. If one is using NCS music for commercial purposes without having a commercial license.
5. If for music, the agreement between NCS and the artist expires, and then any independent creator uses that 'Copyrighted or Privated video'.
6. If one is using NCS music for purposes other than what is mentioned in the usage policy.
7. If one is using NCS music on platforms where NCS itself does not have any agreement.
8. There is no User Generated Content with which the NCS music is being used.

10.1. Rights To File Suit of Infringement- Artist or NCS Music

As NCS Music owns all the master rights of the artist through the record deal, NCS Music would sue for infringement until the contract continues. Once the contract expires, the artist is independent and will have all rights to sue for infringement.

Apart from infringement, if there is any misuse of the music of the artist or the NCS version of it, NCS music, as well as the artist, can sue for moral rights.

11. CONCLUSION

Hence, to conclude, NCS Music is an upcoming and quite famous record label that helps independent creators take the help of free music to use in their UGC. NCS Music helps to improve creativity among the public. Its detailed usage policy helps it to maintain a balance between the copyrights over the music, the rights of the artists and the enhancement of public domain creativity. NCS Music can affect several areas of copyright-like licensing, creative commons, royalty payment, artist and performers' rights, moral rights, and unauthorised use resulting in copyright

¹⁵ 'Frequently Asked Questions' (*Creative Commons*) <<https://creativecommons.org/faq/#who-gives-permission-to-use-material-offered-under-creative-commons-licenses>> accessed 30 November 2022

infringement, fair use, non-commercialisation, attribution and acknowledgement among certain others.

The problem that remains is the absence of any specific model to deal with the copyright issues generated by NCS Music. Moreover, proper categorisation of these record labels into 'royalty-free music', 'no copyright music', and 'labels using Creative Commons Licensing' must be created to prevent confusion about its functioning. Hence, developing a proper framework for record labels like NCS Music would help in better copyright management in such areas.