

## Legal Protection of Song Copyrights in Digital Form

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**Abstract**

The development of advanced technology and faster, ease of accessing the virtual world leads to equal public access to information collected on the internet, one of which is a song, a recording of rhythmic sound that was originally shaped physics from the record vinyl then to become a tape cassette for radio tape and now evolved along with technology into digital media like DVD, Flash disk, and Hard disk. The Internet connects the global world to a single location. Based on this case KEMENKOMINFO (Ministry of Communication and Informatics) has attempted to enforce the closure of a number of sites that commit illegal acts such as uploading, downloading and reproduction of songs on the internet without the permission of the author and copyright holder. From the problematic law is written this thesis about copyright protection of songs on the internet, what the copyright standards of songs on the internet together with the form of copyright infringement of songs on the internet and recovery efforts.

**Kata Kunci:**

Lagu Digital;  
Internet; Daring;  
Hak Kekayaan  
Intelektual;  
Hak Cipta;  
Perlindungan  
Hukum.

**Abstrak**

Perkembangan teknologi canggih dan lebih cepat, kemudahan mengakses dunia maya mengarah pada kesetaraan akses publik terhadap informasi yang dikumpulkan di internet, salah satunya adalah lagu, rekaman suara berirama yang awalnya berbentuk fisika dari piringan hitam kemudian menjadi kaset tape untuk radio tape dan sekarang berkembang seiring dengan teknologi menjadi media digital seperti DVD, Flash disk, dan Hard disk. Internet menghubungkan dunia global ke satu lokasi. Berdasarkan kasus ini, KEMENKOMINFO (Kementerian Komunikasi dan Informatika) telah berupaya untuk memberlakukan penutupan sejumlah situs yang melakukan tindakan ilegal seperti mengunggah, mengunduh, dan mereproduksi lagu di internet tanpa izin dari penulis dan pemegang hak cipta. Dari undang-undang yang bermasalah ini ditulis tesis ini tentang perlindungan hak cipta lagu di internet, apa standar hak cipta lagu di internet bersama dengan bentuk pelanggaran hak cipta lagu di internet dan upaya pemulihan.



### Introduction

In November of 2015 the Ministry of Communications and Informatics (KEMENKOMINFO) decided to shut down 22 download sites of illegal tracks commonly accessed in Indonesia that were active as a means of downloading

illegal songs.<sup>1</sup> The closure is in collaboration with the Creative Economy Agency (BAKREF) and the Recording Industry Association of Indonesia (ASIRI) and with the help of *internet service provider (ISP)*, with the aim that people will switch to downloading songs through the official website. The closure of sites provider of digital track illegal because causing a copyright infringement action songs on the internet like, download, upload, multiplication without the permission of the author or the copyright holder of songs on the internet and potentially harm the music industry. The loss of the music industry is estimated to be around Rp12 trillion per year<sup>2</sup>, taking the example of a music group from New Jersey, USA called ' *My Chemical Romance*' who switched to a digital album titled ' *Black Parade*' , with *Hit Song* or the main song *I Don't Love You* created the members of the music group that is Mikey Way, Gerrard Way<sup>3</sup> and carried by ' *Warnerbros records* ' suffered losses from illegal song *downloads*, this paper will discuss about copyright protection of songs on the internet.

### **Research methods**

This type of research uses normative research methods. Problem approaches used in this study include, statutory approach and conceptual approach. The Statute Approach by reviewing the governing law and regulations with the issues in the perusal, whereas the conceptual approach is derived from the opinions of experts and the literature that related to legal issue. Sources of legal materials used are in the form of primary legal materials and secondary legal materials. The primary legal material consists of The Berne Convention for the Protection of Literary and Artistic Works (hereinafter: Berne Convention) 1886, on Law Number 28 Year 2014 About Copyright, Agreement Trade Related Aspects of Intellectual Property Rights

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<sup>1</sup> Yoga Hastyadi Wirdiantanto, 'Kemenkominfo Blokir 22 Situs "Download" Lagu Ilegal' (Kompas.com, 2015) <<http://tekno.kompas.com/read/2015/11/23/12175047/Kemenkominfo.Blokir.22.Situs.Download.Lagu.Ilegal>> accessed 29 September 2017.

<sup>2</sup> Investor daily Indonesia, 'Unduh Ilegal Musik Rugikan Industri Rp12 Triliun', (BERITA SATU, 2015) < <http://id.beritasatu.com/home/unduh-ilegal-musik-rugikan-industri-rp12-triliun/44879>>, Accessed 15 November 2017.

<sup>3</sup> Wikipedia, 'I Don't Love you by My Chemical Romance', (Wikipedia, 2017) <[https://en.wikipedia.org/wiki/I\\_Don%27t\\_Love\\_You](https://en.wikipedia.org/wiki/I_Don%27t_Love_You)> accessed 11 Desember 2017

Included Trade in Counterfeit Goods (TRIPs) which have been ratified by Law No. 7 of 1994. Secondary legal materials include legal materials supporting primary legal materials, in the form of literature related to research. The procedure for collecting legal materials is done through library research by classifying the legal material related. All legal resources that have been collected are then analyzed normatively to produce prescriptions to answer the legal issue.

### ***Standard of Copyright's Ability Songs on Internet***

Copyright protection is given to the creation of a personal nature to meet the requirements of originality, based on the ability of the mind and imagination creativity in the form of a typical fixation. However, if it is consistent with the legal tradition of the Civil Law System, the requirements of originality and creativity should be of a high degree whereas the requirements of the fixation are not absolute. Indonesia that inherits the legal tradition of the *Civil Law System* should be the starting point of the copyright arrangement of the *Author Right System*.<sup>4</sup> In Copyright Act No. 28 of 2014 for digital-shaped creations such as the *Black Parade* digital album on the song *I Don't Love You* with the information technology based for its standardization is governed by the provisions of Article 53 (1) of Creation or Related Rights products using production and / or data storage facilities based on information technology and / or high technology, shall comply with the licensing rules and production requirements stipulated by the authorized institution. The meaning of "competent agency" in this provision includes ministries conducting governmental affairs in the field of communication and information; here is an explanation of the fulfillment of the standard of creation on the *Black Parade* digital album.

In this paper will analysis the certain case that occur in Indonesia which called *Black Parade* digital album with song titled *I Don't Love You* and the protection for its author with copyrights of their song if their song fulfilled the standard of

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<sup>4</sup> Rahmi Jened, *Hukum Hak Cipta (Copyright Law)*, (Citra Aditya Bakti,2014) (hereinafter mentioned as Rahmi Jened II) [80].

copyrights ability namely;<sup>5</sup>

1. Originality;
2. Creativity;
3. fixation.

Besides that, the analysis will be organized under the applied Copyrights Act in Indonesia No. 28 year 2014 as the new Copyrights Act.

Originality in song *I Don't Love You on Digital Black Parade* album, under the provisions of *Article 2 (3) Berne Convention*, originality is essential in order for a work to get copyright protection. This is because the requirement of originality is a direct result of the origin of the Creation<sup>6</sup> the element of originality is also related to the conception of Copyright with a *property*, which has a value. The degree of originality in Copyright is not the same as the *novelty* in the field of Patent as an invention. Associated with the terms of originality according to Rahmi Jened suggests that:<sup>7</sup>

*"The essence of copyrights is originality, which implies that the copyright owner or claimant originated the work. By contrast to a patent, however, a work of originality needs not to be novel. An author can claim copyright in a work as long as he created it himself, even if a thousand people created it before him. Originality does not imply novelty: it only implies that the copyright claimant did not copy from someone else...."*

The Author can claim copyright over a work as long as he creates even if a thousand people have created the same works as before. Originality does not require novelty, but it implies that the person does not imitate others.<sup>8</sup> The concept of *originality* also indicates that originality is not the originality of an idea, but the expression of an idea, information or thought that poured in a concrete form; it also put forward by James Lahore, namely:<sup>9</sup>

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<sup>5</sup> Lectured by Prof. Dr. Rahmi Jened., S.H., M.H., on 11 January 2018.

<sup>6</sup> *ibid.*[80].

<sup>7</sup> *ibid.*, (citation of Arthur R. Miller and Michael H. Froms, *Intellectual Property. Patent, Trademarks and Copyrights*, West Publishing,1990,[290]). [81].

<sup>8</sup> Rahmi Jened II, *Loc.Cit.* [80].

<sup>9</sup> *ibid.*, Rahmi Jened II(citation of from James Lahore, *Intellectual Property Law in Australia: Copyright*, Butterworths,1997).[82].

*“Thus the originality for the purpose of expressing ideas or thought”.*

The song in *Black Parade* digital album entitled *I Don't Love You* commercialized on online media on the internet is also an idea of the will of the Author of the band *My Chemical Romance* is poured in the form of a physical song that is text notation, the lyrics of music group songs *My Chemical Romance*, and the vocal sounds of *My Chemical Romance* music group as well as the sound of the music instrument group *My Chemical Romance* group that has been converted in digital form and can be heard since then automatically in Indonesia, because the song *I Don't Love You* was introduced in 2007 also in accordance with Copyrights Act No. 28 Year 2014 in article 1 (1) explaining that Copyright is an exclusive right of the authors who automatically arise by principle declarative after a work is manifested in its tangible form without prejudice to restrictions in accordance with the provisions of laws and regulations, has been granted copyright protection since the Act is enforced by prioritizing national interests and taking into account the balance between the interests of the Author, Copyright Holder or the owner of the Related Rights, with the public and to observe the provisions of international agreements in the field of Copyright and Related Rights. Thus the song on the internet *I Don't Love You* uploaded *Warnerbros records* on the internet media has fulfilled the element of *originality* as one of the requirements in terms of copyright compliance standards. Then, in chapter 2 verses (6) of the Berne Convention says that: *“The works mentioned in this article shall enjoy protection in all countries of the Union. This protection will operate for the benefit of the author and his successors in title.”*

The principal requirement of originality is that the Work does not as a whole mimic another Creation, but must come from Author who does his own will to make the creation,<sup>10</sup> therefore the songs uploaded on internet media should also be made different from other Creations as well as based on the wishes of *My Chemical Romance's* music group.

Creativity on Digital *Black Parade* Album, terms of creativity in relation to

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<sup>10</sup> Rahmi Jened I, *Op.Cit.*[81].

their personal intellectual creations which means that the Work is formed with creativity, initiative and a sense of man, and not a creation beyond humans, such as a computer or an animal.<sup>11</sup> Uploading *I Don't Love You* song on internet is a commercially available *Black Parade* digital album that does not automatically own copyright but its Author is Mikey Way and Gerrad Way member *My Chemical Romance* band who makes the couple's story with a complicated relationship, thus becoming the idea that arrangement in *I Don't Love You* song intact on digital bundle *Black Parade album* and could be heard and getting Copyrighted, thus upload songs on the internet digital album qualify creativity as one of the requirements in terms of standards of copyrights ability.

Fixation on Digital Album *Black Parade*, The concept of creativity requirements is related to the concept of *material form* which refers to a Work as the objective of copyright protection. Accordance with the form of the song *I Don't Love You* created by two people then if a Work consists of several separate parts created by two or more people, who are considered as the Author is the person who leads and oversees the completion of the entire Creation. Copyright protects the expression already expressed in material form, not the idea or information.<sup>12</sup> The opinions put forward by the judges to be examples of this concept are:<sup>13</sup> "A person may have a brilliant idea for a story, or a picture ...., But .... the protection which is the result of the communication of the idea .... is the copyright of the person who has clothed the idea form ....".

Songs that have been converted and uploaded to the *online* media created by the music group *My Chemical Romance* collected in a digital album as follows is a proof of the Fixation of the idea. 14 songs in digital form on the digital album *Black Parade* in internet media, the song *I Don't Love You* become plumping elements of the Fixation (*fixation*) as one of the requirements in terms of copyright compliance standards, according to the provisions of article 53 of Law

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<sup>11</sup> Rahmi Jened I. *Op.Cit*,[83].

<sup>12</sup> *ibid*. [84].

<sup>13</sup> Rahmi Jened II, *Loc.Cit*, (quoted from Jill Mc. Keough and Andrew Stewart, *Intellectual Property In Australia*, Sec. Edition, Butterworths, 1997.).[82].

No. 28 Year 2014 About the Copyright that the fixation of the song *I Don't Love You* in digital albums as above is stored through computer media with internet network in *intangible* form on digital internet storage media such as *server* or cloud computing storage. Computer program is the form of an expression is a form of expression in a language, code or notation that causes a tool that has the ability to process information can display certain functions. Computer programs in the form of *source code* (source code) and *object code* (object code) is a creation that is protected by copyright. Broadly speaking, the process of making computer program work takes place in two stages namely:<sup>14</sup>

- 1) Planning in the form of writing notes or *flowchart* which is casting the basic idea of creation. By using a special language in the form of codes that can only be read with computer language.
- 2) *Source code* / converted to *object code* so that it is possible to be used to operate computer equipment through its magnetic signals.”

With all of this fulfilled criteria Standard of Copyrights Ability, song titled *I Don't Love You* already prove its worthiness which means the author Mikey and Gerrad Way from My Chemical Romance Band shall get copyrights protection of their creation by the law.

The form of material as a medium of expression does not have to be defined as a particular storage material, but includes all forms of storage that are not normally visible, such as electronic and magnetic storage forms capable of producing production of such works.<sup>15</sup>

### **Recent Acquisition of Songs Copyright on the Internet**

In the Copyright Act Number 28 of 2014 in Article 2 jo. Article 36 which regulate what copyright actually is, and if protection is cross-border in which its

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<sup>14</sup> Rahmi jened, *Perlindungan Hak Cipta Atas Program Komputer*, Warta Advokat, Surabaya, 2000 (citation of from Henry Soelistyo Budi, *Beberapa Permasalahan Hukum, dalam Perlindungan Hak Cipta di Biandg Komputer Program*, Seminar Hak Cipta dalam Industri Perangkat Lunak Komputer and Penggunaannya di Indonesia, FH UNAIR - Perhimpunan Masyarakat HAKI Indonesia and PT Microsoft Indonesia, FH UNAIR, 1999), *Op. Cit.*[3]. (hereinafter mentioned as Rahmi Jened III).

<sup>15</sup> *ibid.*[7].

role is directly automatic, it must also fulfill all requirements for its fulfillment as set out in *Article 5 Berne Convention* which states:

- (1) *Authors shall enjoy, in respect of which they are protected, in the United States of America. rights specially granted by this Convention.*

The consequence of this provision is that the extension of protection shall be exclusively regulated by the State from which the copyright protection is claimed or requested<sup>16</sup> including arrangements regarding *downloads, uploads, and reproduction of songs on online media* . There are criteria for the acquisition of rights (*criteria of eligibility*) recognized remain in force by *Article 1 (3) of the TRIPs bis* that enforcement should remain based on *Article 3 (1) of TRIPs* provides that:<sup>17</sup> *"Each Member shall accord to the nationals of other Members of the Convention on the Convention (1967), the Berne Convention (1971), the Rome Convention ..."*

Furthermore, *Article 3* stipulates that copyright protection is given by:<sup>18</sup>

- a. *Nationality of author;*
- b. *place of publication of work;*
- c. *residence of author*
- d. *published work;*
- e. *Simultaneously published works,*

In Indonesia accordance with the provisions *the criteria of eligibility* are applied to Copyrights Act No. 28 Year 2014 explanation of *Article 64* where the registration has changed the terminology creation recording requires:

*"Recording of Works and Related Rights products is not a requirement for the Author, Copyright Holder or the owner of the Related Rights. The protection of a Creation begins at the beginning of the Creation or is manifested and not due to recording. This means that both recorded and unrecorded Works are protected".*

Pursuant to two arrangements concerning the acquisition of either international or national to protect Copyright in creation of songs that have been uploaded into digital form on the Internet, since the song has been created and has been converted and uploaded into a complete digital sound and can

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<sup>16</sup> Rahmi Jened II, *Op.Cit.*[103].

<sup>17</sup> Rahmi Jened I *Op.Cit.*[93-94].

<sup>18</sup> *ibid.*[94].



be heard, this song has been protected by the laws of the Republic of Indonesia automatically, so the song *I Don't Love You* in the digital album *Black Parade* after becoming tangible digital sound recording because it can be heard in Indonesia and the United States is also a member of the World Trade Organization so that the Authors of Gerard and Mikey Way have been protected by copyright. Regulation of recording of digital album creation on internet media as copyright at copyright registration agency is as *prima facie evidence of ownership of rights from Author*, strengthened by Directorate General of Intellectual Property, Ministry of Communication and Information, and Ministry of Law and Human Rights. Registration is not a requirement, but as a proof of evidence proof as in the Civil aspect according to Article 1866 *Burgelijk Wetboek* (BW) jo. Article 164 *Herzeine Indlandsch Reglement* (HIR), while in the criminal aspect under article 184 of the Criminal Procedure Code.<sup>19</sup>

### **Copyright Holder Subject of the Song on the Internet**

According to the tradition of *Civil Law System*, based on the *author right system* in principle the first and main author (*prima facie*) must be *natural person* according to *Hegel's* philosophy that Copyright is the personality for which a human being exists. However, in *Civil Law Tradition*, based on *author right tradition* where in principle the first and main Author must be *natural person*. The other party may act as the Copyright Holder if there is a legal presumption of transfer of exploitation rights to do with the contract that are specifically interpreted to assist the Author in order to obtain a remuneration.<sup>20</sup>

The protected Common Law is the object of creation and whereas in the Civil Law as protected Indonesia is the Subject of a song creation because the song *I Don't Love You* was introduced in 2007 In this case the band 'My Chemical

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<sup>19</sup> Rahmi Jened II, *Op.Cit.*[104].

<sup>20</sup> Rahmi Jened I, *Op.Cit.*,[98] (quoted from Martin Stentfleben, *Copyright, Limitations and Three Step Test in International and EC Copyright Law*, Kluwer, 2003).

*Romance'* (MCR) has been disbanded since 2013<sup>21</sup> as the copyright holder Gerrad Way and Mikey Way from their song *I Don't Love You* on MCR's third album, "*The Black Parade*", where the recording and selling of the song is being carried by record label *Warnerbros Records*. From this example 'MCR' is as the Author as well as the copyright owner of their song, and *Warnerbros Records* as the recorder company of the album that brought it into digital form on the internet can be said as the Copyright Holder. The application of subjects that can be said to be the Author of Gerrad Way and Mikey Way in the Copyright Act Number 28 of 2014 in Article 1 Paragraph 2 states that "The Author is a person or several persons who individually or together produce a creation characteristic and personal". In the case of a common property arising in which a work is created out of the cooperation of two or more persons, their contribution cannot be separated to exploit. The rights that arise must also be made and agreed together, except in other agreements.<sup>22</sup> In accordance with the provisions of such legislation the subject of the Song on the Internet *I Don't Love You* on *Black Parade*'s digital albums can be divided into two, the songwriters Gerard and Mikey Way as Author and promoter or digital recording company *WarnerBros Records* who commercialize through the *website* for official downloading of songs on the internet as an album Copyright Holder digital *Black Parade*.

### **Exclusive Rights of Song on the Internet**

The *exclusive right* protection perspective begins from and to protect the Author. This is different from the *Common Law System* that does not regulate the rights of the Author, but emphasizes the limited rights (*restricted*) right that should not be done by the community associated with the Creation. Such an arrangement is based on the fact that every individual member of society in particular and society is generally free to do anything except forbidden. The *Common Law*

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<sup>21</sup> Delta Lidina Putri, 'Empat Tahun Bubar, Vokalis My Chemical Romance Isyaratkan Reuni Band?' (TRIBUNSTYLE.COM, 2017) <<http://style.tribunnews.com/2017/06/07/empat-tahun-bubar-vokalis-my-chemical-romance-isyaratkan-reuni-band>> accessed 20 Oktober 2017.

<sup>22</sup> Rahmi Jened II, *Op.Cit.*,[101].

*System Perspective of the interests to protect Creation.*<sup>23</sup>

In the opinion put forward by Henry Soelistyo,<sup>24</sup> exclusive rights contains two essential rights, namely the economic rights and moral rights, the moral rights owned by the Author of the well-known terms *right paternity and the right of integrity* where the Author has the moral right to be named in its creation as well as the right of the Author to forbid others not to alter their creations, including title or title when using their creations.

In article 54 letter b of Copyrights Act No. 28 of 2014 to prevent copyright infringement and related rights through information technology-based facilities, the government has the authority to cooperate and coordinate with various parties, both domestic and foreign in preventing the manufacture and dissemination of copyright infringement content and Related Rights, including protection of moral rights and exclusive rights to the song *I Don't Love You* in the *Black Parade* digital album.

Related rights are governed in Article 49. Related Rights are rights relating to copyright which are exclusive rights to actors, phonogram producers or Broadcasting agencies. (Article 1 number 5 Copyrights Act No. 28 Year 2014) Exclusive rights are the right to exclude other parties within a certain period of time taking into account the applicable restrictions.<sup>25</sup> As a follow-up which Indonesia must comply with to contribute to the protection of foreign works, TRIP's participating States shall provide protection to other participating citizens, shall not be less than the treatment of that country to its own citizens.<sup>26</sup>

The concept of legal protection of the creations listed above is of course very difficult for the government in applying the effectiveness to exercise the protection of the Author, automatically having the exclusive and automatic rights in obtaining protection even without registering the work to the copyrighted work.<sup>27</sup> The right

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<sup>23</sup> Rahmi Jened I, *Op,Cit.*,[105].

<sup>24</sup> Henry Soelistyo Budi, *Hak Cipta Tanpa Hak Moral* (RajaGrafindo Persada, 2011).[ 47].

<sup>25</sup> *ibid.*[115].

<sup>26</sup> Klinik Konsultasi HKI Direktorat Jenderal Industri Kecil and Menengah, *Panduan Pengenalan HKI (Hak Kekayaan Intelektual, (Departemen Perindustrian, without years).*[5].

<sup>27</sup> Rahmi Jened, *Hak Kekayaan Intelektual Penyalahgunaan Hak Ekklusif* (Airlangga University Press 2010).[74].

protected in copyright is an exclusive right which contains two rights, namely moral rights and economic rights. Economic Rights songwriter *I Don't Love You* Gerard Way and Mikey Way's entitled to perform acts like the original in Article 9 of Copyrights Act No. 28 of 2014 in the rights of the rights holder namely, publication creation, multiplication of creation in all its forms, creation translation, adaptation, rearrangement of creation, or transformation of creation, distribution of creation or copy, the show's creation, the announcement of the creation, communication and leasing, the digital album *Black Parade*. Based on Copyrights Act Number 28 Year 2014 at the deliberation of Article 4 What is meant by Exclusive Right, is a right that is reserved only for the Author, so that no other party can utilize that right without the Author's permission. In the context of Economic Rights, the author reserves the right to freely upload his / her work on the official website online, as well as perform any other activities necessary to fulfill the economic right. This is legitimate because the author is the legal owner and has the right to perform legal acts on the results of his creation.<sup>28</sup>

By granting a permit to the manufacturer (any person commercially importing or re-importing) that will reproduce the creation of a digital song, by reproduction that is *downloading* in the *hardware* to then transfer from one media to another, *Rights of reproduction* is provided by the Author provided that a reasonable payment is fulfilled.<sup>29</sup> Author has the Exclusive Right to grant permission to others to derogate his creation and to exploit it on the basis of the related rights of others to his creation.<sup>30</sup> In connection with the creation of digital songs on the internet that is the album *Black Parade* then Gerard and Mikey Way as a digital songwriter *I Don't Love You* has Exclusive Rights wherein there is a Right to Earn a royalty from the official downloads of digital songs on the internet.

The moral rights of the Author apply indefinitely in the case of a permanent or unspecified name on copies relating to the use of his creations to the public, using

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<sup>28</sup> Iqbal Ahmad Dhuha, *Pelanggaran Hak Cipta Melalui Media Online Youtube* (Skripsi Fakultas Hukum Universitas Airlangga 2017).[27].

<sup>29</sup> Rahmi Jened II, *Op,Cit.*[125].

<sup>30</sup> Eddy damian, *Hukum Hak Cipta* (Alumni 2009).[135].

aliases or aliases, and defending his rights in the event of distortion of creation, mutation of creation, modification, or otherwise harm his reputation. Meanwhile, the moral right of the Author to change his created fit in society, changing titles, and other matters relating to his creation, is valid for the duration of the copyright period of the creation concerned.<sup>31</sup>

The Oral Rights are includes the right of the authors to be named in the work and the right to prohibit others from altering their creations.<sup>32</sup> So someone is forbidden to transfer the song *I Don't Love You* on the internet on a digital album *Black Parade* without the permission of the Author of Gerrad Way and Mikey Way or the promoter of the song *WarnerBros Records* where both as copyright holders of digital albums. For now in Copyrights Act Number 28 Year 2014 Article 58 describes the period or period of validity of a copyrighted song *I Don't Love You* including the period of protection that is, during a lifetime if only one and continues for 70 (seventy) years after the author has died, whereas if the creation is owned by 2 (two) or more persons , the protection of the creation shall last the lifetime of the last deceased Author and lasts 70 (seventy) years later, for copyright protection held by a legal entity valid since it was first announced for 50 (fifty) years.

Copyright Restrictions on the Internet, Author or Copyright Holder has a monopoly (*legalized monopoly*) on the work of his creation, only it must be remembered that this Right has a social function. Therefore, in the Copyright Act regulated issues of Copyright restrictions called *fair dealing*<sup>33</sup> But on Copyright Songs on the Internet Limitations for exploitation by copyright holders are not enforceable except on song creations that are beneficial to education and knowledge to the wider community, all acts of use of the work shall be cooperated or licensed by the copyright holder in order to fulfill the royalties. However, there is the testing procedure so that if the Copyright may have restrictions not overextending regulation under *Agreement on Trade-Related Aspects of Intellectual*

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<sup>31</sup> Tim Visi Yustisia, *Panduan Resmi Hak Cipta* (Visimedia 2015).[17].

<sup>32</sup> Henry Soelistyo, *Plagiarisme: Pelanggaran Hak Cipta and Etika* (Kanisius 2011).[56].

<sup>33</sup> Bahan Ajar (Teaching Material), *Hak Kekayaan Intelektual (Intellectual Property Rights)*, (Fakultas Hukum Universitas Airlangga, 2004) (Rahmi Jened IV).[14].

*Property Rights (TRIPs) on Article 13 which describes Limitations and Exceptions*:<sup>34</sup>  
“Members shall confine limitations or exceptions to exclusive rights to certain things which do not conflict with the legitimate interests of the right holder”.

This method enforces three stages of testing to see if there are no restrictions that are violated in order to avoid abuse of the main purpose of providing a balance between the exclusive Right giver and the *limitation* of Exclusive Rights. This test confirms that it is in line with teleological argumentation because of the location of this test as a limitation of the Author's Exclusive Rights with privileges and primary balance proponents in use (*privilege to use*). The test covers three stages that are cumulative and sequential as follows:<sup>35</sup>

1. *Criterion 1:*  
*Basic Rule: limitation must be certain special cases.*
2. *Criterion 2:*  
*First condition delimiting the basic rule: no conflict with normal exploitation compulsory licenses impossible.*
3. *Criterion 3:*  
*Second condition delimiting the basic rule: no unreasonable prejudice to the legitimate interest-compulsory licenses possible “.*

The first step naturally associated with the general principle that the restrictions are not in all cases and is only possible with certain specification ambiguous because there is no commercial purpose in it. An example is the result of downloading songs unofficial I Don't Love you -owned companies 'Warnerbros Records' on the pretext of where it's use for their own consumption and not commercialized. The second step, which is ambiguous cases, had to be analyzed “Does the act of using a work of others without permission, but not for commercial purposes are not contrary to the normal exploitation the owner or holder of Copyright”?<sup>36</sup> restricted by reason of personal use looks very contradictory given the digital technology is growing rapidly and is very easy person has a creation of the Author on the pretext of privilege personal use, and therefore should be

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<sup>34</sup> Rahmi Jened II, *Op.Cit.*[157].

<sup>35</sup> Rahmi Jened II (citation of from Martin Stentfleben, *loc.Cit.*) *Op,Cit.*[157].

<sup>36</sup> *ibid.*[158].

restricted by way of a substantial order to keep improving democracy and still remember in generational equity so that people do not become lazy creative.<sup>37</sup> Step three, an analysis of the ambiguous case was “Does the act of using the creation of another without permission, but not for commercial purposes does not diminish the legitimate interests of the Author?”<sup>38</sup> Interests here could be economic reasons and not economic purposes or not for profit, but the Moral rights violations over the objective at noneconomic interest or not for profit<sup>39</sup> of the downloaded songs I Don’t Love You digital to aim at self-consumption. In Indonesia in the Copyright Act No. 28 of 2014 related restrictions song downloads on the Internet that use is not for personal gain contained in Article 43 paragraph d stating:

“The act does not constitute a violation of Copyright include: the creation and distribution of copyright content through the medium of information and communication technologies that are not commercial and / or lucrative Author or parties, or the Author expressed no objection to the creation and dissemination”.

In the bundle song *I Don’t Love You* when the song or album is played or sung by others but already the copyright holder’s permission is Gerrard Way and Mikey Way or promoter songs Warnerbros Records then that pertained not constitute copyright infringement. Used Term Limitation (Limitation) in the draft *Civil Law System* therefore the view Copyright in this system aims to protect the Author who is the subject of the owner of Exclusive Rights, while the legal concept of the Common Law System used terminology differs namely fair use (fair use or fair dealing) Because the protection is more focused on the results of the work of creation rather than the Author, and therefore the public has access to use the work of Creation naturally.<sup>40</sup> The setting related to restricted (*limitation*) on copyright was first set out in *Article 9 and 10 Berne Convention* which specifies that reproduction, manufacture and use of quotation creation does not constitute a violation if it does not conflict with the practice of reasonable or normal exploitation. In the

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<sup>37</sup> *ibid.*

<sup>38</sup> *ibid.*

<sup>39</sup> *ibid.*

<sup>40</sup> Rahmi Jened II, *Op.Cit.*[161].

implementation of the Berne Convention, restrictions (limitation) associated with the de minimis doctrine or de minor reservations doctrine.<sup>41</sup>

### **Copyright Infringement Form of Songs on the Internet**

Illegal downloading of digital songs, the digital song belongs to the Author uploaded again by the other for use on personal websites without the permission of the owner or holder of copyright has been very clearly have violated the copyright in the song as defined in Article 1 of the Copyright Act No. 28 of 2014 that fixation can be heard. Taking the example of the piracy of digital song I Don't Love You illegal digital album Black Parade of music group My Chemical Romance by perpetrators of internet sites that do not clearly identified which can be heard and enjoyed as well as freely to anyone who visits the website, from actions like this that the more often will cause economic losses on the owners material and song creation.

The Government of Indonesia has to block websites without identity and without the right base in the uploaded digital song, but because of the increasing sophistication of technology the more new sites are still separated from the sweeping by Kemenkominfo and Kemenkumham on implementation of Joint Regulation of the Minister of Justice and Human rights and the Minister of Communication and Information Technology Number 14 Year 2015 Number 26 Year 2015 on the implementation of Closure Content And / Or rights User access Copyright infringement And / Or Related rights in Electronic Systems, so that there are violations of the rights copyrighted digital song on the internet where it will be very detrimental to the manufacturer's creation as a copyright holder and also the Author.

Piracy Songs on the internet are traded , embracing songs on the internet directly related to the commercialization action that is rampant is on karaoke business because the internet facilitates downloading of songs for karaoke free of charge on a large scale both national and international songs,

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<sup>41</sup> Rahmi Jened I, Op.Cit.[138].



this violation action is to do download the songs illegally on the internet which later commercialized through storage media digital objects intangible object such as DVD, flash, and hard drive and entrepreneurs of the business using the name of a song for karaoke content services as well as to listen to the full version with vocal voice singer, following the example the promotion of establishment without the right base to commercialize digital songs.

Although the work being imitated is only a small fraction of the work, if a substantial part, then it is a violation and in this case determined by the court. Direct copyright infringement that is most commonly found is piracy of copyrighted material without permission (piracy)<sup>42</sup> where businesses reproduce digital song downloads were then packaged in storage media DVD, flash drive, hard drive. Violations indirectly infringement often causes confusion with direct infringement. The benchmark used in the indirect infringement is that "the offender knows" or "should know" that the goods associated with them are the result of the multiplication of an offense. One example is granting an entertainment venue as the venue of a copyrighted work to the public which is the result of copyright infringement where the site manager should know or should know that such actions are violations.<sup>43</sup>

Cover songs without permission for *I Don't Love You* written by Gerard Way and Mikey Way, including infringement on copyright songs that Announcing Rights creations by uploading his own record by singing the song without permission on the Internet either for personal benefit or for commercial interests, because with these things in Indonesia acts to sing back the song without the approval of permits or license of musicians concerned can be sanctioned according to the regulations applicable at the present time violating Moral Rights Author of Article 5 of the Copyright Act No. 28 year 2014.

### **Recovery Efforts for Breach of Copyright Songs on the Internet**

To recover and get remuneration worthy of losses copyright in the digital

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<sup>42</sup> Rahmi Jened II, *Op.Cit.*[215-217].

<sup>43</sup> *ibid.*[220].

music on the internet in order to restore the economic rights of Authors and copyright holders are violated, it can take action in the form of means of control technology and also alternative completion dispute, recovery efforts on copyright has been observed by WIPO and WCCT on condition of members to assure that adequate enforcement procedures are available under national law so as to be effective against violations of intellectual property rights contained therein copyrights. TRIPs Agreement shall determine the law enforcement in the field of Intellectual Property Rights, Article 42 Determining:

*“Members shall make available to right holders<sup>11</sup> civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the base of the claims..... “*

Where this provision requires that countries party to the TRIPs agreement provides a means of national law for the enforcement of IPR protection, enforcement must be fair, equitable, inexpensive and not difficult in proper time. In regard to the other defendants are also entitled to be accompanied by legal counsel until the case is completed. Technological tools can provide active protection on the creation of works of sound recordings<sup>44</sup> which is displayed digitally via the Internet, the effective protection can be used and controlled by the Author through the implementation of access or protection process, such as secret codes, passwords , barcode , serial number , encryption , decryption , scrambling or a mechanism controller copying the to guarantee the protection of Creation objectively<sup>45</sup>, and with close access to the provider’s website downloading illegal by blocking action by the Ministry of Communication. The legal protection of copyright the creators of songs downloaded through the internet done in a way that the administration, through the instrument of criminal law and civil lawsuit.<sup>46</sup>

It also includes a practical means for the prevention of violations, in particular

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<sup>44</sup> *ibid.*[220].

<sup>45</sup> Rahmi Jened II, *Op.Cit.*[143].

<sup>46</sup> Habi Kusno, *Perlindungan Hukum Hak Cipta Terhadap Pencipta Lagu Yang Diunduh Melalui Internet*, Jurnal Ilmu Hukum Universitas Lampung, Home > Vol 10, No 3 (2016) > Kusno, <https://jurnal.fh.unila.ac.id/index.php/fiat/article/view/789>, accessed 18 February 2020.

to prevent the multiplication of whole or create derivative works quality worse quality than the original so that violations be futile, and as a deterrent so that offenders cannot break into the access and content<sup>47</sup>, the official website of a digital song provider can secure digital song content so that it cannot be accessed by others freely unless it meets the requirements of the website manager concerned. Taking example on the official website that can provide song downloads after registering and having an account and activating premium account prepaid feature, an online-based app that allows users to use and play songs without violating Copyright but instead supporting and giving appreciation to Copyright holders, one of which 'Spotify' which has been officially present in Indonesia since 2016.<sup>48</sup>

Alternative Dispute Resolution, according to Article 95 of the Copyright Act No. 28 of 2014 states the rules to resolve disputes with following alternative, dispute resolution Copyright can be done through alternative dispute resolution, arbitration or court. The competent court referred to paragraph (1) is the Commercial Court. Other court in addition to the Commercial Court referred to paragraph (2) is not competent to deal with the settlement of disputes Copyright. In addition to the infringement of Copyright and / or Related Rights in the form of Piracy, as long as the parties to the dispute are known to exist and / or reside in the territory of the Unitary State of the Republic of Indonesia shall first settle dispute settlement through mediation before committing criminal charges.

Managing Author copyrighted creation legally in *YouTube* by following correct requirements such as;<sup>49</sup> Submit a copyright takedown notice, if your copyright-protected work was posted on YouTube without authorization, you may submit a copyright infringement notification. Be sure to consider whether fair use, fair dealing, or a similar exception to copyright applies before you submit. These requests should only be sent in by the copyright owner or an agent authorized

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<sup>47</sup> *ibid.*[235].

<sup>48</sup> Adi Fida Rahman, 'Spotify Resmi Hadir di Indonesia', (detikInet,2016) <<https://inet.detik.com/cyberlife/d-3175469/spotify-resmi-hadir-di-indonesia>> accessed 30 Oktober 2017.

<sup>49</sup> YouTube Help, 'Copyright and rights management and How to manage your copyrights on YouTube', (YouTube, 2018) <[https://support.google.com/youtube/answer/2807622?hl=en&ref\\_topic=2778544](https://support.google.com/youtube/answer/2807622?hl=en&ref_topic=2778544)> accessed 14 februari 2018

to act on the owner's behalf. The fastest and simplest way to submit a copyright takedown notice is through our webform, this easier on a desktop or laptop computer than on a mobile device or tablet. The name that entered as copyright owner will be published on YouTube in place of disabled content. If you are able to provide a valid legal alternative, such as a company name, or the name of a representative you have authorized to act on your behalf, we will review and apply it, if appropriate. This will become part of the public record of your request, along with your description(s) of the work(s) allegedly infringed. All other information, including your full legal name and email address, are part of the full takedown notice, which may be provided to the uploader. Choose to submit a copyright takedown request is initiating a legal process.

Copyright Disputes may be settled as provided for in Law Number 30 Year 1999 concerning Arbitration and Alternative Dispute Settlement. However, neither civil suits nor alternative dispute settlements do not diminish the right of States to commit criminal charges against copyright infringement<sup>50</sup> on Article 105 of the Copyright Act No. 28 of 2014, under this provision, the Author or copyright holder of the creation of digital songs on the internet which suffered losses on illegal downloading with copyright infringers can use alternative dispute resolution to resolve the dispute and not just forward track litigation. ADR chosen by the parties to the dispute with the purpose of:<sup>51</sup> reduce court congestion, enhancing community involvement dal am dispute resolution processes, improving the courts, gave path of opportunity for a settlement of disputes which resulted in a decision acceptable to all parties.

Alternative Dispute Resolution in the Act No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (hereinafter referred to as the Act PSA). Under Article 6, paragraph (1) of the PSA, completion submitted by the parties to the dispute is civil in good faith wanted to resolve the dispute with the exclusion of the

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<sup>50</sup> Rahmi Jened II, *Op, Cit.* [235].

<sup>51</sup> I Gusti Agus Agung Brahmarawan, *Perlindungan Hak Cipta Atas Karya Musik Atau Lagu Yang Dimainkan Di Kafe*, (Thesis Fakultas Hukum Universitas Airlangga, 2005) (quoted from M. Zaidun, *Handout Kuliah Penyelesaian Sengketa Alternative*, Fakultas Hukum Universitas Airlangga, 2001 [2]).[41].

litigation settlement, here is the authority of the Commercial Court.<sup>52</sup> Despite the efforts of non-litigation can be asked to speed up the process but is also available through the domain of the courts recovery efforts that may be submitted as follows; Prioritizing civil law compensation for injured the exclusive rights of copyright holders and to provide a deterrent effect on perpetrators of violations download, upload and commercialization of illegal song downloads digitally on the Internet , as well as the destruction of the tool that is used to double the creation violated.

Civil evidentiary rule in Indonesia is set in 1365, which requires BW to show evidence when will affirm their rights, and the evidence itself under Article 1866 BW. Plaintiffs must prove the truth of a lawsuit his civil court. In Copyrights Act No. 28 Year 2014 On the Rights authority filed a lawsuit related to the pad there is an origin 105. Can also imposed criminal sanctions on any person who knowingly commit offenses uploading downloads or even commercialization of songs on the internet illegally, to prevent further violations. Punishment may include a fine and / or imprisonment consistently on a serious criminal offense, especially for the criminal act of repetition, in this case refers to the provisions of *Article 61 TRIPs which determine*:<sup>53</sup> *“Members shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on commercial scale ....”*.

Penal provisions stipulated into Article 112 till 114 and article 120 of Copyrights Act Number 28 of 2014 may be imposed on a minor infraction that does not harm a direct to personal use on a massive scale. Recovery efforts of other very useful to tackling illegal act in copyright is to request that the court ordered the infringing products and tools for a foul to be destroyed, this recovery efforts associated with the element of fault offender and also in consideration of the balance (balance of convenience consideration).<sup>54</sup>

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<sup>52</sup> *ibid*,[43].

<sup>53</sup> Rahmi Jened II, *Op.Cit.*,[230].

<sup>54</sup> *ibid*. [234].

## **Conclusion**

Copyright protection form the song on the Internet I Don't Love You invention Gerrard Way and Mikey Way member's music group My Chemical Romance with promoters Warnerbros Record in digital album The Black Parade Indonesia include Exclusive Rights that essence in its form Moral rights and economic rights are also related rights can be protected using instrument Copyright for the development of the now switch on the Copyright Act No. 28 of 2014 as well as from efforts Kemenkominfo using Joint Regulation of the Minister of Justice and Human Rights and the Minister of Communication and Information Technology Number 14 Year 2015 Number 26 Year 2015 on the Implementation of Closure Content and / Or Rights User access Copyright infringement and / Or Related Rights In Electronic Systems , Copyright infringement on the work of digital songs that occur are uploading and downloading without permission over the internet which is then downloaded digital song sold the storage medium DVD, flash drive, hard drive without permission is a violation of the exclusive rights, namely the right of reproduction ( reproduction rights ) to benefit also personal Moral rights violated by the announcement of the song I Don't Love You without permission uploaded on internet media either for personal use or for profit. Mason a recovery that can is the way litigation and non-litigation. How to litigation can be through a civil suit, suits and criminal sanctions as well as the provisional decision of the commercial court, whereas in non-litigation can be reached by way of apology and asked for permission to songwriter and follow the development of information technology through the means of control technology through the application site online Spotify that use features prepaid royalties to protect Authors and copyright holders, YouTube Help feature, and alternative dispute resolution (ADR).

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