

Copyright Act and Laws – A Critical Analysis

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PART A

INTRODUCTION

In the wake of globalisation, it is utmost important to be ahead in innovations and creativeness to compete the stiff competitions in technology and trade. India is well recognised for its intellectual skills in the fields of software engineering, missile technology, Moon or Jupiter mission and other technological areas as well. However, India lags in generation of IPR assets in terms of registered patents, industrial design, trademarks and also copyrights. In a recent report by the US Chamber of Commerce, India is at 29th position among 30 countries in total.

On the basis of types of invention and creation made by human mind and their applications, the intellectual property rights are classified under following sub-categories which are patents, trademarks, industrial designs and other unique designs, rights related to copyright such as literature, artistic rights, photography and musical rights etc and geographical indications as well.

OBJECTIVE OF RESEARCH

The Prime Objective of the research article is to provide the conceptual outline of Copyright acts and laws in India and also, we focussed on the position of India and the historical development of the act.

SIGNIFICANCE

This research paper consists of case analysis in brief that puts forward different circumstances of infringement of copyright ownership and also the punishments associated with the same. The paper also encompasses those types of cases in which there were no infringement of copyright laws and policies.

SOURCES OF DATA

The Researcher in the present research paper mainly focussed on the data available in secondary sources and also there were so much efforts for citing different categories of cases from same field.

PART B

DEFINITION OF COPYRIGHT

Copyright is the set of rights that are granted to the author or the original creator of the work once the work gets completely done. The rights that are assigned to the author are of two different types. First right which is granted to author is Right related to Economics and the Second right is the Rights related to morality. To regulate two prime and several other rights and remedies, Copyright Act was enacted by the government in the year 1957. It is the oldest existing IPR act.

The copyright act of 1957 covers & protects the wide range of works such as literary works, artistic works, works related to musical field, films & other cinematic works as well. Original creators become eligible to registered if their work have very less similarity with the works of others or we can say that mostly the work should be original. The duration for which the copyright granted to the work of the author is up to lifetime of the author and additional 60 years after the death of the creator or the author of the work. After the end of this period, the copyright cannot be granted over the same work. In Copyright act, along with the right to authorship, the author also have several other rights like the author cannot be duplicated or circulated in market without the prior consent and permission of the original author. Copyright act also provides the remedies to the authors, if their rights were infringed which are mentioned under the act.

Copyright Act 1957 defines the copyright under section 14¹. According to section 14 of the act, “*Copyright means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part (a) in case of artistic, musical, dramatic work and (b) in case of computer programming.*”²

CONCEPT OF COPYRIGHT.

Copyright protects the idea of the creator, artists that concerned with mass idea. Being creative is one of the prime requirements of development of society as well as country. The works that are protected under copyrights are as follows:

- 1) Literary and Scientific Work – Under this, novels, poems, newspapers, plays and stories, magazines and journals are included.
- 2) Musical Work – Musical works of different musicians like, songs, instrumental songs and tunes, bands, rock band & pop bands are included and also gets protection under this category.
- 3) Artistic Works – In this category, paintings, portraits, fashion photography, drawings, advertisements are included.
- 4) Computer Programs – Any types of computer programs which are new and recently created/ developed can gets protection under this category.

Therefore, if any person has produced or created any of this works and it is fully original then that person gets the sole protection under copyright act. Without the permission of the original creator any other person cannot duplicate or copy the work and even after that, the infringement takes place, then authors or the creators were entitled to sets of remedies. The remedies can be of Civil and criminal nature.

HISTORY OF COPYRIGHT ACTS AND LAWS IN INDIA:

Copyright laws in modern Indian Society developed over a large span of time i.e., around 150 years. Yes, it is astonishing but this much of time is actually needed for any law to get established copiously. Initially, the East India Company brought the concept of Copyright law in India in the year 1847. The terms and conditions of that act is solely according to British

¹ Section 14, Copyright Act 1957.

² Section 14, Copyright Act 1957.

copyright laws. According to the act of 1847³, the period of Copyright was for the whole life of the author or the creator of the work and 7 years after the death even, but the twist here arrives that the rights and protection under this act could not exceed more than 42 years. It means the maximum period up to which author gets the protection is 42 years at that time. At that time even, the author gets the protection from infringement of the work. If anyone infringes the work under copyright protection then the case may be lodged against the wrongdoer in the local court which exercises original jurisdiction of civil type. The acts and circumstances that lead to infringement are – (I) unlawful printing of a work under copyright protection. (II) Selling or exporting the same work (III) Publishing the work to earn some money without the prior consent of the creator. In 1847 or during the rule of East India Company, the copyright for any work not get awarded automatically like in today's modern Indian Society. At that time, the author or the creator have to get registered their work with Home Office and it was mandatory if they want the protection from any types of infringements. After the act of 1847, the Copyright act of 1911⁴ introduced in all colonial countries of Britain including India. Several changes were also made by British administration for the Indian Copyright act that further continues in Indian Copyright Act of 1914. Finally, after the independence of India in 1947, the act of 1914 got replaced completely with the act of 1957. Copyright act 1957 amended several times in the year 1983, 1984, 1992, 1999 and 2012. The most important amendment among these is of year 1999. In this year, the rules of International Copyright act was also embedded in the copyright act 1957.

PROTECTIONS OF DIFFERENT MATTERS UNDER COPYRIGHT LAW:

The subjects which gets protected under copyright law is nearly same throughout the world as the way of infringement and advantages taken from the infringed work are also more or less similar. This is solely because the advancement in technology across the world. For example, a boy who is expert in technologies can infringe the work of U.S, U.K, Canada or any such country. According to Section 2⁵ of Copyright act 1957 and judicial reviews of different tiers of court, the items or the works which are being protected is as listed below:

³ Copyright Act 1847.

⁴ Copyright Act, 1911.

⁵ Section 2, Copyright Act 1957.

Literary Works, Dramas, Musical tones, Instrumental Musics, Paintings, Architecture, Art works of any types, Films & Sound recordings, Dramatic work or literary work even in the form of Computer programming or using different software, Works of International Organisation, Research articles prepared by students and others, Poems, fictional stories, encyclopaedia, different forms of computer program etc.

RIGHTS OF THE COPYRIGHT OWNER:

Copyright provides the set of exclusive rights to the owner. It consists of Economic as well as Moral Rights.

(I)Economic Rights – Those rights that helps the author / creator of the original work to get the economic benefit from the work. The provisions for the economic rights is in Section 14 of the copyright Act 1957.

Economic Right Consists of: Right to Reproduce – This right gives the authority to make multiple copies in any form,

Right to Distribute the work – The owner of the copyright have full powers to transfer any part or whole part of the work to any person he wants.

& Right to Publicly Perform the work – The owner have the full right to perform his or her work publicly in the form of plays, stories, drama etc. The owner of the copyright have full authority to decide the terms and conditions of the performance.

(II)Moral Rights⁶ – Those rights that protects personal reputation and rights of the author or owner of the work. Moral rights mainly defends the integrity of the work and use of their names. Section 57 of Copyright Act 1957, provides the provisions of Moral rights of the author.

Moral Right Consists of: Authorship claim over the work, restrain or claim damage caused due to any infringement.

INFRINGEMENT AND REMEDIES UNDER THE COPYRIGHT LAW:

⁶ Section 57, Copyright Act 1957.

The infringement of the copyright protected work defined and explained under section 51⁷ of Copyright Act, 1957.

To infringe the work protected under copyright act, the following actions should takes place:

- (I) Duplicating the original work and publishing the same in market without any prior consent and permission of the original author or creator of the work.
- (II) Communicating the work to the large no. of population.
- (III) Doing any particular act that depicts the exact story of book which is yet to published, and also without the consent , can lead to infringement of the work.

So, for the offence of infringement to get commenced, any of the above three conditions should be followed.

As the infringement takes place , so there, must be some remedies available to the creators of the work. Copyright Act of 1957 is very much concerned in these matters and hence the act provides both civil and criminal remedies to prevent infringement further. Section 54 to section 70 deals with the different form of remedies available to the original author or creator of the work.

- 1) Civil Remedies: Section 54⁸ to Section 62⁹ of the Copyright Act 1957 provides the provisions of civil form of remedies. According to section 55 of the act, the owner is allowed to take remedies in the form of injunction, damages, accounts or in any other ways. Injunction is one of the most important remedy which is used in the copyright infringement suits. It means to restrain the defendant from doing any such acts further by the decree of the honourable court. But there are exceptions as well in this type of remedy. If the defendant here proves that he was not aware of the fact that the work in under protection then the plaintiff cannot recover damages from the defendant. However, the court may order to pay the plaintiff the profit he/she made from using the work accordingly.
- 2) Criminal Remedies: Section 63¹⁰ to Section 70¹¹ of the Copyright Act 1957 deals with the criminal remedies. According to Copyright Act of 1957, it is an offence if any

⁷ Section 51, Copyright Act 1957.

⁸ Section 54, Copyright Act 1957.

⁹ Section 62, Copyright Act 1957.

¹⁰ Section 63, Copyright Act 1957.

¹¹ Section 70, Copyright Act 1957.

person who intentionally or knowingly uses the work which are protected under the law. In this cases, court awards the punishment for wrongdoer but the plaintiff didn't get the compensation. Although, court of law may order compensation from the fine even, but they are very low as compared to monetary compensation provided under civil remedies.

ANALYSIS OF DIFFERENT CASES RELATED TO COPYRIGHT AND ITS INFRINGEMENT:

(1) Anil Dasgupta v Kunal Dasgupta¹²:

In this case the appellant have the idea of producing a reality TV show in which common people would participate before the audience. The TV show is the process of match making and selection of spouse by the girls. Appellant called the show as 'Swayambar'. In 1998, under Confidential agreement, the appellant disclosed this idea to the respondent of the present case. After some period of time, the appellant (Anil Dasgupta) in present case, came to know about the idea of the respondent (Kunal Dasgupta) to produce the same kind of show by the name of 'Subha Vivah'. Anil Dasgupta then filled a petition against Kunal by stating that, initially this was my idea and hence I have the copyright over this. The respondent replied by stating that, the idea was in public domain and secondly, there were no copyright over the ideas itself.

The court in the present case held that , "The Idea has no copyright, but if the idea is developed with the adequate details then the same will be capable of getting protection under the copyright act. In this case the scenario is almost similar and hence here the idea should be protected." Thus, the court first time in the history of Indian Judiciary held that Concept or the idea might be protected under Copyright Protection act.

(2) Ushodaya Enterprises Ltd. v T.V. Venugopal¹³:

This is the case in which the Plaintiff were the proprietors of the trademark EENADU written in unique artistic style for newspaper. They also have many different kinds of business. This mark of EENADU acquired a great reputation in the market place. But

¹² Anil Dasgupta v Kunal Dasgupta, AIR 2002 Delhi 379.

¹³ Ushodaya Enterprises Ltd. v T.V. Venugopal 2001 (4) ALD 723.

soon after getting the reputation, the defendant started using this EENADU in the same artistic manner for agarbatti company. The newspaper company lodged the case against the owner of Abarbatti company for infringement of copyright and trademark. The trial court in this case passed an order of permanent injunction but that is confined to the state of Andhra Pradesh only. On subsequent appeal to divisional bench, the bench grants an permanent injunction without any territorial confinement.

(3) Kesari Maratha Trust v Devidas Tukaram Bagul¹⁴:

Initially the case filled in lower court by Devidas Bagul against the Kesari Maratha Trust. Here, the plaintiff Devidas Bagul captured the image of a well known author with his permission in a very artistic manner. The same photo was published with the prior permission of the photographer on the cover page of “Rang Maza Vegale” The name of the photographer was also their at the bottom of the photo. The defendant i.e Kesari Maratha Trust published the same photo without the consent of the owner and also without his name. Initially the photographer sent a legal notice to the trust for public apology and on refusal, the photographer lodged a case demanding permanent injunction and nominal damages against the Trust. The trial court awarded the same. Further, Kesari Maratha Trust (now plaintiff) appealed in High court against the order of lower court by arguing that there were no notice of copyright and the use was a fair use as well. The High Court rejected the arguments of plaintiff and held that ‘In such cases where the name of owner appeared below the photograph then it would be sufficient notice to the other parties that he/she have copyright over the image. Hence the court is of opinion that, this was the ignorance of law from the side of other party and there is no excuse for the same in the laws.

(4) Govindan v. Gopalakrishnan¹⁵:

In this case, the honourable court expressed the view on the abridgement. Abridgement means reproduction in much more precise way. If the abridgement is performed genuinely then the work is considered as original one and the same should be protected under copyright act. Here the court also mentioned that amount of originality doesn't matter at all, if it is small or at very high proportion.

¹⁴ Kesari Maratha Trust v Devidas Tukaram Bagul, Civil Suit No 6 of 1976.

¹⁵ Govinda v. Gopalakrishnan, AIR 1955 MAD 391.

CONCLUSION

Copyright laws primarily protect the original work of the creator from getting copied and published in market without the consent of the owner. Therefore, we can presume that Copyright laws protect the creativity and inventions and both of these are very much important for socio-economic advancement of the country. The main reason behind the increase of infringement cases of the copyright laws is the broadening of economic gap, weak economic backgrounds and lack of education & knowledge among some writers.

Therefore, to develop the country in social, economic and cultural manner we need to educate the people and specially inform them about the rights and remedies provided under Copyright acts. Further we also need to strengthen and enforce our laws more strictly to prevent unlawful events, because today with developing world the fraud and piracy markets are also developing speedily.

Hence, for the overall development of nation as well as the growth of individual we need to create and spread awareness among large group of people about intellectual laws and specially about copyright laws that protect their creativity and ingenuity, because protecting the work is very much crucial and important for promoting the self-believe as well as self-confidence of any group or the individuals.