

Intellectual Property Laws: Copyright and Remedies and Actions for Infringement of Copyright

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I. INTRODUCTION

The term “intellectual property” has come to be globally recognised as covering patents, industrial design, copyright, trade mark, and confidential information. Patent, design and trade mark considered as different kind of industrial property. But copyright and confidential information were included in the term “intellectual property”.

The scope of intellectual property is expanding rapidly. The laws relating to intellectual property are based on certain basic concept 1. The patent laws centers round the concepts of lack of anticipation and lack of obviousness 2. Design laws based on originality of design not previously published in any country 3. Substantives laws and trade mark is based on the concept of distinctiveness and similarity of marks and similarity of goods 4, copyright is based on the concept of originality and reproduction of work in any material form. These all concept has significance in intellectual property law.

These rights protect creations or work from unfair use by others. These laws help in protection of all inventions, literacy, or artistic work.

Intellectual property rights are divided into four categories:-

1. Copyright
2. Patent
3. Trademark
4. Design rights

We will discuss copyright and fair use in this paper at large.

II. COPYRIGHT:-

Copyright is a legal rights which grants the exclusive right to do or authorise others dramatic, works, cinematograph film and sound rewarding etc. in basic term copyright is a right to copy or reproduce the work in which copyright subsist, the original creator of a product and anyone be gives authorities to use the only ones with the exclusive right to reproduce the work. The various acts for which copyright extends is listed in section14 of the act. Copyright does not extend to any right beyond the scope of section14.

Copyright is a part of intellectual property, its importance has increased enormously in today's time due to rapid technological development in field of painting, music, computer industries, communication, entertainment etc.

The main objectives of copyright law is to encourage people to create original works by rewarding them with the exclusive rights for a limited period to exploit the work for monetary gain.

Chinnappa reddy mentioned in case gramophones co. v. Birendra Bahadur pandey¹ that an artistic work is the invention of an author, the fruit of his labour and so, considered to be his property. So highly is it prized of all civilised nations that it is through worthy of protection by national laws and international conventions.

III. IMPORTANCE OF COPYRIGHT LAW AT NATIONAL AND INTERNATIONAL LEVEL

There are many departments in which the law of copyright plays a part and the wide variety of acts which may constitute infringement of copyright make this branch of law one which in a literate society ought to be known to everyone.

In recent times copyright serves a variety of industries all over the world which includes production and distribution of books, magazines and newspapers i.e. the information industry, media of entertainment. That is dramatic and music works for performance, publication of music works and cinema i.e. entertainment industries and industrial designs i.e. manufacturing industry.

Copyright issues in some respects are international problems. Copyrights, being intellectual property, travel from country to country more easily and quickly than other kinds of property. Technological progress has made copying of copyright material simple. Consequently the control of copyright infringement has become very difficult and sometimes impossible. Many recorded tapes, books, videos or computer programs can be taken from one country to another without any problem or difficulty and thousands of copies made from it and distributed country to country. Unauthorised taping of radio and television programs have become common all over the world. Photocopying has made unauthorised copying of copyright material simple and inexpensive.

¹ AIR 1984 SC 667 at p.676

The protection of authors, whether it is work of art or literary compositions, is the object to be attained by all patent and copyright laws, the acts are to be constructed with reference to the purpose. On the other hand, care must always be taken not to allow them to be made the instruments of oppression and extortion it is held in *Hansfistaengle_V. Empire palace*² quoted in *British Leyland_V. Armstrong*³.

IV. INTERNATIONAL CONVENTIONS:

In international scenario various countries have joined to form conventions for the protection of copyrights owned by its nationals in other countries. The barne convention and universal copyright convention are the examples of such joint effort. Many countries all our world are the members of these conventions. India is the member of both conventions, Indian copyright owners can protect their copyright in almost any country all over the world.

V. GENERAL PRINCIPLES OF COPYRIGHTS:

The basic protection under copyright laws lies in tight commandment: “the shall not steal⁴. The law does not permit one to appropriate to himself what has been produced by the labour, skill, capital of another⁵.”

The general principles of copyright is discussed in article 27 of universal declaration of human rights.

Copyright is one form of what is in detail described in today’s legal term as “intellectual property”. The discussion of many legal points relating to intellectual property rights are mentioned in *Michael health Nathan Johnson v. subash chandra*⁶.

VI. REMEDIES AND ACTIONS FOR INFRINGEMENT OF COPYRIGHT

There are three types of remedies against infringement firstly civil, secondly criminal and thirdly administrative.

Civil remedies include injunction, damages, and accounts, delivery of infringement copies and compensation for convention. In section 54 to 62 it has been held that the relief of damages and accounts will not both be granted but only one of them. It was also mentioned in case *Lakshmikantan v. Ramakrishna pictures*⁷.

Criminal remedies provide imprisonment of the accused or imposition of fine or both, seizure of infringing, copies to the owner of the copyright. Administrative remedies consist of proving the registrar of copyright to

² 1894 3 ch.109 at p.128

³ 1984 FSR 591 at P.608 CA

⁴ Lord Atkinson in *Macmillan v. cooper* 1924 40 TLR 186 at P.187

⁵ *Walter V. Lane* 1900 AC 539 HL

⁶ 1995 PTC 300 (dell)

⁷ AIR 1981 AP 224

ban the import of infringing copies into India and delivery of infringing copies confiscated to the owner of the copyright. It is discussed in section 53.

A. JURISDICTION OF COURT

A suit or other civil proceeding to infringing of copyright should be instituted in the district court having jurisdiction it is mentioned under section 62(1). However it has been held that the expression district court will include the high court having original jurisdiction. It was held in case *peiguin buons vs India boon distributors*⁸.

In case *TATA oil mills vs reward soap work*⁹, *Glaxo vs rema bhakhta*¹⁰. And *galxo vs samoat*¹¹ mentioned that district court having jurisdiction includes a district court within the local limits of whose jurisdiction, at the time of institution of the suit, the person instituting the suit and anyone of them accidentally carries on business of defendant.

Ordinary jurisdiction of court embraces all kinds of act of coverts letter patent appeal was held maintainable even though no past of cause of action arose within the territorial jurisdiction of the high court, it was discussed in *Arte indiara vs mithulaul lalah*¹².

Exclusive licence

Where the plaintiff is claiming under an agreement exclusive right to the exclusive of all other reproduce a copyright work, such right will come within the definition of “exclusive license” as defined in the act. The violation of the term of contract can be entertained only by the district court for infringement of copyright and not an ordinary civil court as a suit her breach of contract it was mentioned in the case *George vs cheriyan*¹³.

In case *defiepp music vs stuart brown*¹⁴ followed the similar principle that an action for alleged infringement of Indian copyright by acts done outside India cannot be brought before courts in India.

The question of jurisdiction being mixed question of fact and law cannot be decided at the interlocutory stage. If the plaintiff has pleaded the necessary facts in the plaint to invoke territorial jurisdiction that is sufficient.

B. FOREIGN COPYRIGHT

The question whether British courts could entertain an application for declaration of no subsisting copyright and injunction to prevent the making of proprietary assertions in U.S.

⁸ AIR 1985 DEL 29 at P.38 DB

⁹ AIR 1985 DEL 29 at p. DB

¹⁰ 1991 IPCR 45 at p. 49 MAD

¹¹ 1984 PTC 66 DEL

¹² 2000 PTC 140 at 88.166,168 BOM DB

¹³ AIR 1986 KER 12

¹⁴ 1986 RPC 273 at p. 276

In case maheshwar swami v. bidynt_prabha Act press¹⁵. It was held that a suit for injunction, damage etc. If the value of less than Rs. 50000 can be entertained in Calcutta_only by the city civil court, and in the mofussil in the district court.

Dharmalinga v. balasubramania¹⁶. It was held that the suit cannot be instituted in the city civil court_but_it can be instituted in the high court if the plaintiff or the dependent resides there.

C. COMBINED SUIT FOR INFRINGEMENT OF COPYRIGHT AND TRADEMARK

Under section 62 of copyright act (95) gives jurisdiction to entertain a suit infringement to the court within whose jurisdiction the plaintiff is caring business and where the plaintiff is owned the copyright in a trade mark.

In case dupchand Arya industries v. kiran soap works¹⁷. Mentioned that the some court can entertained a combined suit for infringement of copyright and trademark since the two causes of action are interconnected although the court will have no jurisdiction to entertain the suit for infringement of trademark alone.

D. DECLARATION AS TO OWNERSHIP

Dismissing_the jurisdiction of case Everest pictures circuit vs. karuppannan¹⁸. A civil court has jurisdiction to determine as to who is the owner of the copyright but it is only the district court which has jurisdiction to take a suit for infringement of copyright and grant remedies.

E. LIMITATION FOR FILLING SUIT:-

The time period of limitation for filling a suit for compensation for infringement of copyright is three years from the date of infringement according to article 88 of the limitation act 1963.

Niladeri v. satis¹⁹ mentioned that plaintiff cannot recover compensation in respect of infringement of copyright for any time beyond three years from institution of the suit.

F. QUIA TIME + ACTION:-

There is no worldwide applicable standard as to the degree of probability arrest injury to the right of plaintiff, or as to the degree of seriousness of such injury, which is necessary to established to found quia time+ relief²⁰

¹⁵ AIR 1971 Cal 455

¹⁶ AIR 1937 mad 94

¹⁷ 1980) IPLK 91 (del) AIR 1983 del 286

¹⁸ AIR 1982 mad 244

¹⁹ AIR 1934 cal 668

²⁰ Copyright agency v. Haines (1982) FSR 331 at P. 342.

VII. DEFENCES

A. STATUTORY DEFENCES

Statutory defences are those defences which do not constitute infringement.

Section 52 of the act gives a list of acts which do not constitute infringement. They may be termed statutory defences.

B. OTHER DEFENCES

There are many defences which are available to the defendant these are

1. No copyright subsists in the work alleged to be infringed
2. The plaintiff is not entitled to sue
3. The alleged copyright work is fake or not original
4. The alleged copyright work is not entitled to protection being immoral, seditious or otherwise against public policy or public interest.
5. The defendant's work is independent and is not copied from the plaintiff's work.
6. the defendant's action does not constitute infringement of the plaintiff's work and is permitted by virtue of section 52(1),
7. the suit is barred by limitation,
8. the plaintiff is guilty of laches,
9. consent

Now we will discuss it all briefly.

Usage not a defense: any usage not in conformity with the exceptions provided under the act cannot be pleaded as a defense against infringement. In case *Backwood v. Parsuraman*²¹ same mentioned.

The standard reply to the defendant's challenge: you say that what the plaintiff did is so easy you could do it yourself with very little effort is very well then do it and you will have a copyright but if you copy it from the plaintiff instead you must pay for it it is held in case *Ladbroke (Football) v. William Hill (Football)*²².

Copyright does not subsist: the subsistence of copyright in different categories of work has already been dealt with in chapters 3 to 5.

²¹ AIR 1959 MAD 410

²² 1964 ALLER 465 HL

Plaintiff not entitled to sue: the defendant has to establish that plaintiff does not come under any of the categories of persons listed in parts 19, 16.

Alleged copyright not original: as to what constitutes originality in respect of each work. Mentioned in chapters 3 and 5.

Plaintiff's work immoral, seditious etc. mentioned in the case *beloff v. pessedram*²³.

Period of limitation: in case *ratnasager v. trisca*²⁴ publications guided that defendant's book under the title unique science held infringement of copyright in plaintiff's book living science. Want to prove of assignment of copyright to plaintiff's does not justify infringement by defendants

Estoppel, laches and acquiescence: in case *cairncross v. lorimer*²⁵ we can found the classic exposition of the defense of estoppel

Issue estoppel for the application of the doctrine of estoppel three requirements have to be fulfilled:

1. The judgement relied upon must have been final,
2. There must be identity of subject matter and
3. There must be identity of parties or alternatively privity of interest between parties this mentioned in the case *Gleeson v. wippell*²⁶.

Cause of action estoppel and issue estoppel cause of action estoppel arises where the cause of action in the latter proceedings is identical to that in the earlier proceedings, the latter having been between the same parties or there privies and having involved the same subject matter. In such a case the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgement. The invention of new factual situations which could not have been found out by reasonable diligence for use in the earlier proceedings does not, according to law of England permit the later to be reopened.

Cause of action estoppel extent also to points which might have been but were not raised and decided in the earlier proceedings for the purpose of establishing or negating the existence of a cause of action it is discussed in case *Arnold v. national westminister bank*²⁷.

Laches: in determining whether there has been such delay as to money to laches, the chief points to be considered are:

²³ 1973 ALLER 241 at 260

²⁴ 1996 PTC 597 DEL

²⁵ 1860 3 LT 130 at p. 130-131

²⁶ 1977 1AC 853

²⁷ 1991 3 ALL ER 41 at p.312-313

1. Acquiescence to the plaintiff's part
2. Any change of position that has occurred on the defendant's part

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the plaintiff has become aware of it.

Estoppel by acquiescence according to case *Willmott v. Barber*²⁸ has set out five requisites to establish acquiescence. There are

1. The plaintiff must have made a mistake as to his legal rights
2. He must have expended some amount or must have done some act on the faith of his mistaken belief
3. The defendant, the processor of legal right, must know of the existence of his own rights which is inconsistent with the right claimed by the plaintiff, for the doctrine of acquiescence is founded upon conduct with the knowledge of legal rights mistaken belief of his rights.

In the case *Low v. Bouverie*²⁹ mentioned that a statement as to the representor's belief can lead to an estoppel only if the statement can be construed as an assertion that the facts were as the representor's belief.

Innocent infringement: innocent infringement is not a defense against infringement as such. But if the defendant proves that at the date of infringement he was not aware and had no reasonable ground for believing that the copyright subsisted in the work, the plaintiff will be entitled to only an injunction and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may deem reasonable as mentioned in section 55.

Knowledge-necessity of proof: the words 'has reason to believe' should be construed in accordance with their ordinary meaning and proper construction we can see this in case *L.A. Gear Inc v. Hi-Teesports*³⁰.

Consent: there is no infringement if the owner of the copyright has consented to the infringing act according to article 51A. A consent should be distinguished from a license.

²⁸ 1880 15 CH D 96 at p. 105

²⁹ 1891 3 CH 82

³⁰ 1992 FSR 121