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Can Copyright be Obtained over a Blog?

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“Copyright? Copy RIGHT: Steal ideas, Steal facts but do not Steal words.”

- Dan Poynter

ABSTRACT

The prime object of this paper is to manifest a meticulous reply to the query ‘can copyright be obtained over a blog?!’ This paper reveals a clear picture about blogs and displays a comprehensive overview of Copyright under the purview of Indian Copyright Act of 1957. It also elucidates what all can add up and does not add up to infringement of Copyright, the forms of work which cannot be copyrighted in India, the term of Copyright protection in India, and also delineate about the registration process of Copyright. After sharing the deep knowledge about Copyright, it responds to the main query. Indubitably, blogs can also obtain Copyright protection which is also supported by The Indian Copyright Act of 1957. Their work should also be protected from being illegally used by anyone as the creator put his utmost effort to bring out a creative work.

I. INTRODUCTION

Blog: An online journal or informational website exhibiting information in an inverse sequential order, with the newest posts emerging first at the peak, is called a blog (shortened version of ‘weblog’). The term ‘weblog’ was first employed and made familiar by Jorn Barger, an American blogger, whereas, the short form ‘blog’ was coined by Peter Merholz.

Blog is platform where a writer or a group of writers share their own perspectives on a subject-matter where there will be a regular update by an individual or a small group operating it. At times, it will also allow readers to comment their own ideas. The first blog in India, which was noted over the internet was Labnol by Amit Agarwal who is widely accepted as India’s first professional blogger.

Copyright: Copyright is a form of Intellectual property which provides absolute rights to its holder to make copies of his productive work. The main aim of this ‘Copyright’ concept is to legally secure an authentic expression of an idea in the form of created work and the main mention is that the copyright is meant only for securing the created work and not the idea

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itself. Copyright can safeguard the blog entries and even the full websites.

Legal definition of Copyright (Indian Copyright Act of 1957): Section 14 of Copyright Act of 1957 defines the meaning of ‘Copyright’. Copyright is an exclusive right to do or authorize the doing of any Act in respect of any work in the case of literary, dramatic or musical work, computer program, artistic work, cinematograph film, sound recording which should be original in nature comes under the virtue of Section 14 of Copyright Act of 1957.

II. INFRINGEMENT OF COPYRIGHT

WHAT ADDS UP TO INFRINGEMENT OF COPYRIGHT

The following acts result in infringement of copyright:

- i. Translation or adaption of work without seeking prior permission from author.
- ii. Communication or performance of the work to the public without taking prior permission from the author.
- iii. Issuance of copies of the work to the public without taking prior permission from the author.
- iv. Reproduction of work in any material form.
- v. Utilization of copyrighted work for any other commercial gain.

WHAT DOES NOT ADD UP TO INFRINGEMENT OF COPYRIGHT:

“The copyright law allows us as students and educators some wiggle room for scholarly us.”

The acts which do not add up to the infringement of copyright are elucidated in the Section 52 of the Copyright Act of 1957.²

- ‘Fair Dealing’ – used for the purposes of :
 - i. Private or personal use, including research.
 - ii. Criticism or review related to that work.
 - iii. Report of current events or current affairs.
- Making of copies of a computer programme by the lawful holder of such computer program.
- Employing the computer programme for serving its purpose.

²The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

- Doing any act to obtain necessary information for operating an independently created computer programme.
- Doing any act for the purpose of any Judicial proceedings.
- Reading or reciting the any part of the work in public.
- Replicating or publishing the work for any purposes of Legislation.
- Reproducing the work in a certified copy according to law which is in force at that time.
- Recitation or reading of the work or any part of the published literary or dramatic work.
- Representing any literary, dramatic or musical work in an educational institution.
- Using recordings of any musical, dramatic or literary work in a hall or a closed room which is not in a hotel.
- Exhibiting literary, musical or dramatic work for free by any society.
- Utilizing any literary, dramatic, musical or artistic work in a film where the copy right has expired.
- Publishing the judgements passed by the Courts, Tribunals or any other judicial authority without prior permission of that particular Judicial authority.
- Publishing the translation of any Indian Language, if such translation is not accessible to public only if there is a statement at an eminent place which says that the translation has not been accepted by the government.
- Publishing the report of any committee, council, or commission or any other appointed by the Government without taking prior permission from the Government.
- Using of any musical, literary, dramatic or artistic form in public, if the copyright term has expired.
- Reconstructing a building according to architectural drawings or plans with reference to the originally created buildings or structure only with prior permission of the possessor of copyrights of such drawings or plans.
- Preparing 3-dimensional object from 2-dimensional artistic work.

The above acts do not amount to violation or infringement of copyrights under Indian Copyright Act of 1957. In United States of America, these acts are known as 'fair use' while in India these acts are known as 'fair dealing'.

FORMS OF WORK WHICH CANNOT BE COPYRIGHTED IN INDIA

The works which cannot get copyright protection under Indian Copyright Act, 1957 are:

- i. Works other than in written or tangible form.
- ii. Works for which the copyright term was expired.
- iii. Titles, symbols, designs, short phrases, factual information, methods, slogans or names.
- iv. Works which are already found in public domain and the authorship is not found or does not come under the purview of copyright law.

III. THE TERM OF COPYRIGHT PROTECTION IN INDIA

The term of Copyright protection in India is enshrined in Section 23 of the Copyright Act of 1957. It propounds that the term of copyright protection is for the lifetime of the author and sixty years counted from the year following the death of the author. For example, if the work was published on 12th December 2020, then the term of copyright protection begins from 1st January 2021 for the whole life time of the author adding sixty years from the death of the author.

Can a blog obtain copyright?

On a Legal sense, there is no explicit provision stating that copyrights can be obtained over blogs. But Section 2(o) of Indian Copyright Act of 1957 propounds that 'literary work' comprises of computer programmes, table and compilations including computer database. Moreover, the work should be the outcome of substantial proportion of toil and diligence, so that it appears to be original in nature. So Computer programmes can be protected as a form of literary work under the Indian Copyright Act. Thus, any literary work can obtain copyright when a substantial amount of toil and diligence has been put and which appears to be original in form.

In *Shashank Shekhar Mishra vs. Ajay Gupta*³, the defendant robbed a laptop containing computer software and some confidential information from the plaintiff. The Delhi High Court held that the plaintiff is the author of the computer programmes in the software and

³ *Shashank Shekhar Mishra v Ajay Gupta*, (2011) 48 PTC 156 (India).

thus the plaintiff is the possessor of the copyrights in the computer programmes which is also considered as literary work. So, the defendant had no legal right for utilizing the copyrighted work for any commercial gain, if anything is done contrary to this, it amounts to the infringement of copyright. Thus the Delhi High Court passed a permanent injunction to the defendant restraining him from infringement of copyright possessed by the plaintiff in his created work.

On a Moral sense, it is an undeniable fact that the bloggers put the utmost of their energy on the web on a periodic basis to create eminent posts. The same goes for all the contents they create to intensify their blog and take it to a wide spectrum of people. It is legitimate that they want to shield their toil against expropriation. Even now, there are some bloggers who are unaware of the copyright issues. The Copyright safeguards the blog posts as well as the contents that are created for the blog like – e-books, materials, music, videos, software, photos etc. as the bloggers are the creator it. Though the ideas cannot be copyrighted, the form which they are rendered can be defended.

IV. HOW CAN BLOGS OBTAIN COPYRIGHTS IN INDIA?

Registration process of Copyrights:

As we are predominantly discussing about Blog's Copyrights, we can take mainly in the case of bloggers. In most of the cases, the blogs obtain copyrights automatically once they publish their posts. Bloggers invariably receive the guardianship of Copyrights once they bring out their full-fledged work online and tap the 'publish' button. Also, in these circumstances it is not even necessary to have a little circled 'C' symbol i.e. (©).

But in some cases, there is a need to register it manually which may be a tiresome process. Though the copyright protection has been automatically received by the bloggers once they publish their creative work, it still seems to be not adequate to authenticate the blogger's title or ownership in case of any copyright infringements. In simple terms, so as to achieve absolute protection i.e to obtain the right to sue anyone for copyright infringement, it is mandatory to formally register the published work. Also the bloggers have several options, either they can protect their entire blog which includes all the posts he created or even he can protect his selected most important influential posts alone within the ambit of registration date. The Copyright protection for the posts put up after the registration date requires additional registration processes. To avoid such difficulties, the bloggers can periodically make registrations for his entire blog i.e., monthly or yearly or he can also register for copyright protection for his important posts once he creates it.

The manual registration of Copyright protection involves the following steps:

- The application has to be filed at the Copyright office either in person or through post. E-filing of application for Copyright is also available online at the website of Copyright Office, Government of India (copyright.gov.in).
- The filing of application can either be done by the applicant himself or by the person who has been given the power of attorney.
- The prescribed processing fee has to be paid by the applicant for registration. The processing fee has been stipulated individually for all kinds of work mentioned in Indian Copyright Act of 1957.
- A diary number will be issued to the persons whose application has been propitiously filed.
- After this step, there will be a 30 days stay where the application will be put at stay for any raise of objections. If there is no objection, then the application will proceed with the next step. But if there are any objections, the notice will be issued to both parties (i.e., the applicant and the person who have raised objection against the applicant) and they will be judged with a fair hearing in which both parties are given the opportunity to respond and they are heard by the Registrar and he will decide the matter.
- After clearance of this case, there will be an analysis by the examiner. If he finds any disparities again, he will refer it to the Registrar who will further hear the particular case. If there are no disparities, then the registration will be approved by the Deputy Registrar and the inference derived from the Registrar will be sent to the applicant which results in successful registration of Copyright.

V. REMEDIES FOR INFRINGEMENT OF COPYRIGHT OVER BLOG

Copyright Infringement: Copyright Infringement is an illegal utilization of copyrighted work, intentionally or unintentionally, without obtaining prior permission from the originator i.e. the person who has created the work and obtained copyright protection.

⁴The remedies that are available for the infringement of Copyright are:

Civil Remedies:

The blogger or publisher can claim for monetary damages from the person who has

⁴ Arti Gosavi, *Can copyright be obtained over a blog*, IPLEADERS (Apr. 16, 2020), <https://blog.ipleaders.in/remedies-available-copyright-infringement-india/>

plagiarized the creator's work and also prevent him from using thereafter. In addition to damages, the creator or the copyright owner can also claim rendition of account of profits. In general, the holder of copyright can claim for interpretation of accounts, damages, injunctions, delivery and destruction of infringing copies and damages for conversion.

Criminal Remedies:

Chapter 3 of The Indian Copyright Act of 1957 stipulates through a series of penal provisions. It provides for the following punishments:

- Imprisonment which may extend to three years, but not less than six months
- Fine which may extend to 2,00,000 but not less than 50,000
- Search and seizure of infringed goods
- Delivery of infringed goods to the holder of Copyright

Limitation period: The period of limitation is three years from the date of Infringement for filing the suit for damages for infringement of Copyright.

VI. CONCLUSION AND RECOMMENDATIONS

Security of the blogs is necessary on the part of the bloggers. Even sometimes, the Copyright advocates face some complexities in elucidation and discussion on the delicate technicalities of the Copyright Law. In such situations, it becomes very essential that all obligatory steps should have been taken before for acknowledgement and possession. It is also very much advocated that, if anyone faces a kind of copyright issues, legal advice should be taken at a right time.

Hence, a blog can be deemed to be a form of literary work as it has been made with a considerable amount of toil and hardwork and of original in nature and thus Copyright can be obtained over a blog.

**“I feel that Copyright should be far more embraced in discussions as
an enabler of creativity,
an enabler of the diversity of what we publish, or
an enabler of innovation.”**

- Michiel Kolman
