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Copyrights and Laws Related to Copyright with Significance to Intellectual Property Rights

RAJVEER SINGH INDA¹

ABSTRACT

Intellectual Property Rights forbids individuals from reproducing any original work for any commercial use. IPR is traditionally divided into 2 parts Copyright and rights related to copyrights and Industrial property. Industrial property deals in the dimensions like patents, geographical indications, trademarks, etc. Whereas copyright laws deals with original literary, dramatic, musical, and artistic work, cinematograph films and sound recordings.

Copyright law is a form of intellectual property which is the creation of a specific statute. It provides monopoly rights to the authors and negative rights to the infringers. The prime object of the copyright law is to forbid individuals from copying an original work. The Copyright Act, 1957 governs the various factors related to original literary, dramatic, musical, and artistic work, cinematograph films and sound recordings. Section 51 of the Copyright Act, 1957 governs infringement of copyright. Section 2 gives the definition of terms applicable in the Act. There are three types of remedies available in the Act which are Civil remedy, Criminal remedy and Administrative remedy. Some flaws and shortfalls are there in the Act which could be corrected; however, the Act provides many benefits to the authors and encourages individuals to create more creative exertions.

I. INTELLECTUAL PROPERTY RIGHTS

In today's era, every asset whether tangible or intangible has the right of ownership. With the growing nation, many developments have been witnessed in technological as well as intellectual rights. The intellectual properties eminently contain state as well as the center's wealth. It is the duty of the government to protect the rights of intellectual property owners. It is basically the inception of human intelligence such as artistic, technical, scientific, literary etc. IP rights protects the creation of a mind, it secures the work from getting misused by other people. The promoters, manufacturers, makers, have the exclusive rights on their creation for

¹ Author is a student at Raffles University, India.

a lifetime period.

In simple words it protects the Intellectual property by forbidding other people from using it for commercial, or any personal uses without the prior consent of the owner or IP rights holder of the property. Intellectual property rights include copyright, trade secrets, patents, geographical indications, industrial design, blueprints, trademarks, models etc. In the modern economy it is very necessary to safeguard IP rights.

IPR is an essential aid which saves time, money and efforts of the IP creators as it prohibits other companies and individuals from copying or using the product/idea. With the help of IPRs the framewokers do not have to worry that their work might get misused and they can fully pay attention towards the formation of IP. Thus, Intellectual property rights compliments economical development by encouraging healthy and fair competition, and promotes industrial growth.²

WIPO is a global colloquium for intellectual properties services, policies, information and corporations. It consists of 193 members of states and is a self funding agency of the United Nations. As per the Article 2 of the World Intellectual Property Organisation (WIPO), “Intellectual Property shall include the rights relating to literary, artistic and scientific works, inventions in all fields of human endeavour, scientific discoveries, industrial designs, trademarks, service marks and commercial names and designations, protection against unfair competition, and all the other rights resulting from intellectual activity in the industrial, scientific, literary or scientific fields.” WIPO is the central organisation which safeguards the laws relating to intellectual property rights and it is a proficient organisation of the UN.

The topic of Intellectual property rights were first discussed in the Paris Convention for the Protection of Industrial Property in 1883, and the Berne Convention for the Protection of Literary and Artistic Works in 1886. Both the treaties were orchestrated by the WIPO.³

The intellectual properties rights are traditionally divided into two main categories, and these are:-

- **Copyrights and Rights Related to Copyrights:** these rights have been given to the creators of any artistic and literary work such as books, painting, sculpture, computer programs, musical composition, films, pictures, other writings, etc. These works are given copyrights for a minimum period of 50 years after the death of the author.

² Diva Rai, *What is copyrights under intellectual property rights?*, I Pleaders, (July 6th, 2021, 4:53 PM), <https://blog.iplayers.in/copyright-intellectual-property-rights/>.

³ Diva *supra* note 2, at 1.

- **Industrial Property:** Industrial property takes a range of forms, the main types of which are outlined here. These include patents for inventions, industrial designs (aesthetic creations related to the appearance of industrial products), trademarks, service marks, layout-designs of integrated circuits, commercial names and designations, geographical indications and protection against unfair competition.

II. COPYRIGHTS AND RIGHTS RELATED TO COPYRIGHTS

The word “copyright” has been derived by adding two expressions - Copy + Right which gives the meaning “right to copy.” In other words, copyright law provides single handed ownership over the project by which no other person will be eligible to get any claims or use any copyrighted work without permission of the creator.

Copyright is an exclusive form of intellectual property. It protects a person’s intellectual labour. It is given to the author of any artistic and literary work, this very right protects the property from getting copied and being used by other names. The prime purpose of the copyright laws is to protect man’s intellectual work such as any writings, painting, films, pictures, computer programs etc, from being taken away from others. It provides monopoly and negative rights to the authors or writers of his original work.⁴

Section 14 of the Copyright Act, 1957 defines copyright as -

“Meaning of copyright.—For the purposes of this 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 thereof, namely:—1[14. Meaning of copyright.— For the purposes of this 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 thereof, namely\:-”

- (a) in the case of a literary, dramatic or musical work, not being a computer programme,—
 - (i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
 - (ii) to issue copies of the work to the public not being copies already in circulation;
 - (iii) to perform the work in public, or communicate it to the public;
 - (iv) to make any cinematograph film or sound recording in respect of the work;

⁴ T.C. James, *Indian Copyright Law and Digital Technologies*, 7 Journal of Intellectual Property Rights 423, 423-435 (2002).

- (v) to make any translation of the work;
 - (vi) to make any adaptation of the work;
 - (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);
- (b) in the case of a computer programme,—
- (i) to do any of the acts specified in clause (a); 2[(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme: 2[(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme\:" Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.]
- (c) in the case of an artistic work,—
- (i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;
 - (ii) to communicate the work to the public;
 - (iii) to issue copies of the work to the public not being copies already in circulation;
 - (iv) to include the work in any cinematograph film;
 - (v) to make any adaptation of the work;
 - (vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);
- (d) in the case of a cinematograph film,—
- (i) to make a copy of the film including a photograph of any image forming part thereof;
 - (ii) to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;
 - (iii) to communicate the film to the public;
- (e) in the case of a sound recording,—
- (i) to make any other sound recording embodying it;
 - (ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the sound recording to the public.”⁵

III. CHARACTERISTICS OF COPYRIGHT

The following are the characteristics of copyright :-

- **Kind of Intellectual Property** - A copyright is a form of intellectual property, it provides protection to a man's intellectual labour. Copyright is given to an artistic and literary work which is a type of intellectual property. ⁶

- **Creation of a Statute** - Copyright was nowhere mentioned in the common law, it is a creation by a specific statute under the present law. Section 16 of the Copyright Act of 1957 says that, no copyright shall be given to any work unless provided in the Act.

- **Monopoly Right**- A copyright provides monopoly right to the author for his original work and restrain others from performance of his intellectual labour. However, the author has the power to pass on his authorship to whomever he wants under certain conditions.

- **Negative Right**- It is a negative right because it interferes with others from exercising the rights which have been granted only to the author by the virtue of the Act. It restrain others from poaching

- **Object of Copyright**- The object of the copyright is to strengthen the author's right over his work. It gratifies artists, composers and authors for their work by providing exclusive rights so that they will hinder others from reproducing or selling any of the work over a certain period of time.

Any work which relates to any artistic, literal, scientific, dramatic, area requires a set of skills, mental capital and labour, sheltering their hard work is the prime object of copyright.⁷

IV. COPYRIGHT IN DIFFERENT AREAS

Section 13 of the Act divides copyright in different classes, the following classes are mentioned below:-

- a. Original literary, Dramatic, Musical, and Artistic work.
- b. Cinematograph films and,
- c. Sound recordings.

⁵ The Copyright Act 1957, § 14, No.14, Acts of Parliament, 1957 (India).

⁶ Diva *supra* note 2, at 1.

⁷ Dr. B.L. Wadehra, Law Relating to Intellectual Property, 364-365, (Universal Law Publishing Co, 2008).

(A) Original Literature

The original literature does not mean any invention or introduction of any topics, it refers to using their own set of expressions while introducing a topic. Copyright does not safeguards origin of the ideas, it puts emphasis on the written format. For example, any research paper written by a science student on gravitational force will be provided by a publisher. The theory of gravitational force is not his fresh idea. Gravity was discovered by Isaac Newton but his theories have been explained by many scholars/ students through books, research papers and other writings. However, those scholars/students will not be given copyright over the gravitational theory but they will be given copyright over their writings.

The copyright law does not concern over the novelty of the writings, it provides copyright to the author as long as the work is not copied or in other words it should have originated from the copyright seeker.

In the case of *Blackwood v. Parasuraman*⁸, it was held that translation of any writings into another language is entitled of copyright, as it requires special skills and labour. It is not considered as copied work. However, translation of any copyrighted work without the permission or license of the author or reproducing or publication in any other language is infringement of copyright.

The copyright can not be given to a single word, it was decided in the case of *Associated Electronics v. Sharp Tools*⁹. As a single word such as name of persons, book, title of any assets can not be copyrighted. However the style of writing any letter or word can be given patent under patent law. For example names of companies, computer softwares, scientific inventions, designs etc are given patent rights.¹⁰

Research papers and dissertations written by students by various experiments performed in laboratories require scientific skill and labour shall be protected from being copied. In the case of *Fateh Singh Metha v. Singhal*¹¹, a student was writing his dissertation under the guidance of his teacher. His teacher copied from his student and used it in his own Ph.D. The court passed an injunction against the teacher and kept a pause on his Ph.D.

The author of a literary work both published and unpublished enjoys copyright over his life and 60 years after his death.

⁸ AIR 1959, Madras 410.

⁹ AIR 1991, Karn 406.

¹⁰ Dr B.L. *supra* note 6, at 4.

¹¹ (1990) IPR 69 Raj.

(B) Dramatic, Musical and Artistic Work

As per Section 2(h) of the Copyright Act, 1957, “Dramatic work includes any piece of recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting, form of which is fixed in writing or otherwise but does not include a cinematograph film”

The dramatic art refers to any film, video, choreography, act, screenplay, dance etc usually prepared for television, theater, cinema and radio; it can be with or without music.

Musical work refers to any combination of graphical notation. It is made for sound recordings, songs, tunes etc. For obtaining a copyright in any musical work, the author can make the tune with or without any words.

The author of musical work is known as a composer. In case of single authorship, the copyright for the musical work extends to the “lifetime of the author plus 60 years after the author dies” whereas in case of joint authorship, copyright extends till the death of the last composer.

According to Section 2(c) of the Copyright Act, 1957 artistic work means,—

- (i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;
- (ii) a 4[work of architecture]; and 1[work of architecture]; and"
- (iii) any other work of artistic craftsmanship.”¹²

Artistic work refers to any work which communicates to the audience. It includes fashion designs, dresses, drawings, architecture work etc. It can be either in 2D or 3D form. The author of the artistic work is known as “artist”.

In the case of Cadbury India Ltd v. S.M. Dyechem Ltd¹³ the court while dealing with the issue of infringement of copyright of artistic work, used and evolved the “*lay observer test*, which is relies on the assumption that if the lay observer, one who is not an expert in artistic work, looks at the visual and it seems to him the work has been reproduced from some other work then it would to infringement of artistic work”

(C) Cinematograph Films

According to the section 2 (f) cinematograph film means “any work of visual recording on any medium produced through a process from which a moving image may be produced by any

¹² The Copyright Act 1957, § 2 (c), No.14, Acts of Parliament, 1957 (India).

¹³ (2006)32 PTC 157 (Del.) and on appeal (2009)40 PTC 519 (Del.)(DB.)

means and includes a sound recording accompanying such visual recording and “cinematograph” shall be construed as including any work produced by any process analogous to cinematography including video films.”

4[(f) cinematograph film means “any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and cinematograph shall be construed as including any work produced by any process analogous to cinematography including video films.”¹⁴

It refers to film making. Cinematographic film is divided into two stages -” pre production” and post production”. Before any film is released enormous efforts have been made by the producers such as script, rehears, location, shoot, screenplay, casting and crewing etc. Even before any film is released, its scenes cannot be forecast without the permission of the producer.

Post production is when the film has been released. After the releasing of a film, a producer enjoys certain rights such as- “Reproduction right”, “Distribution and rental rights”, “Synchronisation rights”, “Derivative working rights”, “Broadcasting rights”, “Right of adaptation and translation”, “Display rights” but the prime obtained by the producer is to right against duplicity of the film.

In the case *Shree Venkatesh Films Pvt Ltd. V. Vipul Amrutial Shah & Ors.*¹⁵, it was said that "collection or collage or ensemble of various works like story, screenplay, dialogue, sound track, video images, lyrics, etc. Each of these works may also enjoy copyright protection. By operation of law or by contract or assignment the producer of the film may be vested with copyrights in the above works...Now when all these works are put together However, not each and every work is entitled to copyright protection. In order to claim copyright there must be some originality in the work. The author of the work may obtain raw materials for the work from any or many sources but will only be entitled to copyright if these raw materials are converted, by use of his labour skill, capital and intelligence to create another material or work which is something different from the raw materials and has an element of novelty.” *Star India Private Limited v. Leo Burnett (India) Pvt. Ltd.*

In the case of *Star India Private Limited v. Leo Burnett (India) Pvt. Ltd.*¹⁶ the honourable judges quoted that “The expression to make a copy of the film would mean to make a physical

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

¹⁵ 2009 SCC OnLine Cal 2113

¹⁶ (2003) 27 PTC 81 (Bom)

copy of the film itself and not another film which merely resembles the film... Therefore, if the film has been filmed or shot separately by a person and it resembles the earlier film, the subsequent film is not a copy of the first film and, therefore, does not amount to infringement of whole of the copyright of the first film.”

(D) Sound Recording

According to section 2 (xx) of the Copyright Act, 1957¹⁷, define sound recordings as - “a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is the method by which the sounds are produced.”

Sound recordings are also called a master recording. A copyright in a song can be obtained by various persons at the same time. For understanding the concept an example has been quoted here- Sara is an individual person and a versatile singer, her friend named Saloni is a lyricist and pretty good in her area. Both of them came up with a new song and recorded in Yash’s recording studio. Now here Sara is the original author where Saloni will have rights in the song as a lyricist and the recording studio will have the rights relating to the recording of the song, unless otherwise any personal agreement between the parties.

The author of the sound recording is regarded as a “producer”. The lifespan of the copyright is contained till the lifetime of the producer and 60 years after his death.

V. INFRINGEMENT OF A COPYRIGHT

Infringement of a copyright means violation of a right which an author of intellectual property enjoys. Section 51 of the Act defines infringement of copyright as-

“Copyright in a work shall be deemed to be infringed—

(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act—

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or,

(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or”

¹⁷ The Copyright Act 1957, § 2 (xx), No.14, Acts of Parliament, 1957 (India).

(b) when any person—

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or

(iv) imports into India any infringing copies of the work except the copy of any work for the private and domestic use of the importer.”¹⁸

While summarising the section, it focuses on the reproduction of a literary, dramatic, musical or artistic work shall be deemed to be an infringing of a copyright. In the case of *William Hill (football) v. Landbroke (football)*¹⁹ the two elements of infringement of a copyright has been observed-

1. “There must be sufficient objective similarity between the infringing work and the copyright work or a substantial part thereof.”
2. “The copyright work must be the source from which the infringing work is derived.”

Therefore the basis of infringement of a copyright is to check the similarity between the original and copied work. The emphasis had been made to the source from which the infringing work is derived.

VI. REMEDIES FOR INFRINGEMENT OF COPYRIGHT

There are three form of remedies available to the plaintiff-

1. Civil remedy
2. Criminal remedy
3. Administrative remedy

(A) Civil Remedies - the civil remedies available to the plaintiff are further divided into three kinds namely-

1. **Anton Pillar Order**- our laws follow the just and fair judicial system which gives equal opportunities to both the parties of a suit which is known as the principle of *Audi Alteram Partem*. However, in case of infringement of copyright ex parte order can be

¹⁸ The Copyright Act 1957, § 51, No.14, Acts of Parliament, 1957 (India).

¹⁹ (1964), 1 ALL ER (465)

given to the plaintiff. Ex parte order can be given against the defendant in the cases where it becomes the ultimate necessity. If the order is not provided the loss will be of immense nature that can never be recovered or irreparable injury.²⁰ For example a movie has been filmed which is not released yet but the defendant claims to be the author and uploads it on a social media website from where the general public can easily download the movie. For deciding the matter, the court needs time to verify all the documents and arguments of both the parties. However, if the original author of the movie is the plaintiff by time of deciding the case, the movie will be viewed by the general public and it will be of no use to release. So in order to safeguard authors' rights in such an immense situation ex parte orders can be made against the defendants.²¹

2. Interim Orders - interim orders can be passed by a court such as interlocutory injunctions. It is passed only when a plaintiff establishes that it is

- a prima facie case,
- Balance of convenience in his favour,
- That refusal to the grant would cause irreparable injury to the plaintiff.

3. Damages or Account for Profits- the author is entitled to damages which he has faced due to the infringement and also he is entitled to the profits that occurred out of his work.

(B) Criminal Remedies

The plaintiff can initiate criminal proceedings against an infringer to procure his rights. Section 63 of the Act says-

“Offence of infringement of copyright or other rights conferred by this Act.—Any person who knowingly infringes or abets the infringement of—

(a) the copyright in a work, or

(b) any other right conferred by this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than

²⁰ Dr. B.L. Wadehra, Law Relating to Intellectual Property, 364-365, (Universal Law Publishing Co, 2008).

²¹ Diva Rai, *What is copyrights under intellectual property rights?*, I Pleaders, (July 6th, 2021, 4:53 PM), <https://blog.iplayers.in/copyright-intellectual-property-rights/>.

six months or a fine of less than fifty thousand rupees.”²²

(C) Administrative Remedies

Administrative remedies: Administrative remedies consist of moving the Registrar of Copyrights to ban the import of infringing copies into India when the infringement is by way of such importation and the delivery of the confiscated infringing copies to the owner of the copyright and seeking the delivery.

VII. CONCLUSION

Copyright is the safe given by law in the possession of the first proprietor or creator of any licensed innovation to be ensured against the entire world. Accordingly, by giving this safeguard administrators energize innovativeness and secure the first work of the maker.

Copyright stays alive in the first work. The multiplication of the transformation will be conceivable just with the assent or permit of the copyright proprietor of the first work. In the event that you are the primary proprietor of a work, you'll partake in some auxiliary rights like proliferation, variation, execution and so forth The Law attempts to find some kind of harmony between various proprietors of various pieces of a sound account and guarantees certain base shields of the privileges of creators over their manifestations.

Copyrights, similar to some other Intellectual Property are worried about human astuteness and the domain is the insurance of scholarly and creative works like compelling artwork, music, compositions, programming and so on In spite of the fact that it covers a ton of things, some which it doesn't cover are ideas and thoughts, names (you can't copyright your name whatever amount of you love it) and normal expressions, information and realities (for example you can't get a copyright for a rundown of telephone numbers and names) and so forth The main region under the copyright completely different from books and works of art is music.

²² The Copyright Act 1957, § 63, No.14, Acts of Parliament, 1957 (India).