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Copyright: What Constitutes Infringement

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ABSTRACT

The essence of the law of copyright is that it doesn't permit a person to make profit and appropriate to himself the labour, skill and capital of another and the interest of the author of original work should be protected by restraining the others from copying of the original work, which, if permitted, would not only lessen the value of the original work but also hamper the interest of the author and by this way discourage indirectly the creativity in the society.

Key words: Copyright, profit, creativity, society.

Introduction

On the basis of this contention many authors are of the view that, being prohibitory in nature, it is a negative right. Because it prevent others from copying or reproducing the work of the original author. But, in fact the nature of the copyright has both negative as well as positive aspect. In its negative sense it doesn't permit others to copy or to reproduce the original work of the author. Whereas the positive aspect of it is that it confer various rights upon the author such as right to reproduce the work, right of adaptation, right to make his work public etc. so that he can enjoy the fruits of his labour, skill and capital which was used to create the 'Original Work'. 'Original' doesn't mean that the field should have never been exploited by others, but only that it

should not have been copied.

The area in which copyright subsist are:

(a) An original piece of artistic, theatrical, musical, or literary production.

(a) Cinematography and film in general,

(c) A recording of the sound.[1]

Copyright law is not concerned with the idea but with the expressions of ideas. In effect, what is prevented is copying of the original work and not the idea, if ideas are protected, all avenues of research, scholarly activity and all frontiers of human knowledge would suffer incalculable loss.[2]

Since copyright is a statutory incorporation so there exist no copyright in any other work except as provided by this act. Any act, by the person other than the original author,

which violate-the copyright will amount to infringement. The act of violating a person's rights is what the term "infringement" means when taken in its most literal definition. In the context of intellectual property law, it is used to refer to the unauthorized use of works that are protected by intellectual property laws. The degree to which two works are similar can be an important factor in determining whether or not an infringement has occurred. The requirements that must be met for an act to be considered an infringement are laid out in Section 51 of the Copyright Act of 1957. Section 51 does not specify what constitutes an infringement. The following actions are considered to be in violation of an author's copyright, as outlined in Section 51 of the Copyright Act of 1957:

(a) When a person uses a location for the purpose of communicating a work to the public without receiving permission from the work's owner or the registrar of copyrights, that action constitutes a copyright infringement of the work, unless the person was unaware and had no reason to suspect that the action was a copyright infringement, in which case he or she must be held accountable.

(b) When somebody

(1) produces, sells, or lets for hire, or trades, displays, or offers for sale or hire any copies of the work that infringe on the rights of others, or offers such copies for sale or hire;

(2) copies of the work that have been altered in a way that violates the copyright and are then distributed, either for the aim of making a profit or in a way that is intended to cause injury to the owner of the copyright;

(3) copies of the work that have been altered or changed without authorization, and then either

(4) Any infringing copies of the work may be imported into India, with the exception of a single copy of each work that may be kept by the importer for their own personal and domestic use.[3]

The defining clause of the Copyright Act of 1957 does not define infringement as such; nevertheless, the definition of infringing copy that can be found in Section 2(m) gives some standards and criteria that can be used to determine whether or not an infringement has taken place. Infringing on copying is defined by Section 2m as the following:

1. A replication of a literary, dramatic, musical, or artistic work that is not in the form of a film made specifically for the purpose of cinematography.
2. In the context of motion pictures, a copy of the film or a record containing the recording of any portion of the film's sound track that may be purchased separately.
3. With regard to the record, any such record that contains the same recording; and

4. In connection with a program for which a broadcast reproduction right is recognized under Section 37, a record recording the program that is owned by the broadcaster.[4]

This section defines infringing copy to mean reproduction of copy or import in contravention of the provisions of Copyright Act 1957 of any of the following:

(a) Reproduction of literary, dramatic, musical or artistic work otherwise than in form of cinematography film;
(b) Copy of cinematography film by any means;
(c) Record embodying 'sound recording' by any means
(d) Sound recording or musical recording of a program or performance where 'broadcast reproduction rights' or 'performers rights' subsist.

Additionally, for the purposes of Section 51, the reproduction of a literary, dramatic, musical, or creative work in the form of cinematography film is also considered to be an act of infringement.[5]

When a defendant has expended such mental labor on what he has borrowed and has subjected it to such revision and alteration as to produce an original work, there is no infringement of the plaintiff's right, as this is the general principle that governs the situation, according to which the plaintiff's rights have not been violated.[6] A literal limitation of a copyrighted work with minor alterations here and there would surely be considered an act of infringement with reference to books and other forms of written literacy. However, the majority of the instances included scenarios in which the criterion of "substantial reproduction" required to be explicated, and quantitative criteria should not be held as the deciding factor.[7] To put it another way, the amount of words, paragraphs, or phrases that were copied shouldn't be a deciding factor. However, determining the significant portion of the work to be done is not an easy task. In situations where the defendant has reworked on the materials provided by the plaintiff, there comes a time after which the plaintiff is no longer able to make a claim. The question of whether or not a substantial part of the plaintiff's work survives in the defendant's work, to the extent that it appears to be a copy of it[8], is not resolved by the fact that the defendant has himself added enough in the way of skill, labor, and capital to secure copyright for his effort, regardless of what the situation may have been in the past. Rather, the issue is whether or not the defendant's work appears to be a copy of the plaintiff's work. In the case of Joy Music Vs. Sunday Pictorial[9], song lyrics were mimicked in an attempt to find Prince Philip; however, only one repeating line from the song was taken, and even then, it was altered in a number of specific ways. The judge ruled that there was no violation of the terms of the agreement. In this judgement, the question of whether the defendant had put in sufficient mental effort into what he had taken and subjected it to sufficient modification and alteration in order to make an original work was considered.

A rather similar difficulty relates to resumes - summarized plots of play, abridgement of novels and so on. In this regard there was a tendency, at least in earlier case law, to treat

a substantial precise of contents as permissible - because it was useful or because it did not seriously interfere with the plaintiff's interest. Here, it may be asked whether the defendant has really produce a 'new work'[10].

In most cases there exist no direct evidence of copying; it can only be deduced by inference from all the surrounding circumstances. The general principle in determining the infringement it that "has there been a reproduction of the plaintiff's work in substantial from[11]. In this regard the Supreme Court of India, in R.G. Anand Vs. Deluxe films[12], has adopted the doctrine of "Dominant impact". It means that if the viewer watches the movie and comes away with the overall sense that the movie is essentially a replica of the play that was originally produced, then it is possible that copyright violations have been proven. In the R.G. Anand case, which dealt with the law relating to copyright and its infringement, the highest court in the land established the criterion for what constitutes a "substantial taking." It means that in order for the copy to be actionable, it needs to be a significant and material one that immediately leads to the conclusion that the defendant is guilty of the act of piracy. In addition to this criterion of "substantial taking," it is sufficient to determine that an act of infringement has occurred if the copyrighted work seems, at first glance, to be a duplicate of the original work. That, if the reader, viewer, or spectator, after having read or seen both works, receives the clear sense that the later work looks to be a copy of the original, then the subsequent work is considered to be a copy of the original.[13]

In the case of "Francis Day and Hunter Vs. Bron[14] it was held that the infringement of copyright in musical work is not to be determined by note comparison, but should be determined by the ear. Since · copyright subsist in various fields it is not possible to lay down general rule as to what constitutes infringement". However some criteria may be laid down as a test to determine infringement;

l. There must be sufficient objective similarities between the infringing work and the copyrighted work or a substantial part thereof.

2. Copyrighted work must be the source from which the infringement is derived; but it need not be the direct source.[15]

CONCLUSION:

Further, in case of Jerrold Vs. Hourton[16], a third element was identified by the court that is "Animus Furandi". It means that the intent to commit fraud on the part of the defendant or the purpose of saving labour should be considered as an important factor in arriving at the conclusion of occurrence of any infringement. But this animus furandi is not so important in determining the infringement. It would be better to consider this element at remedial stage to mitigate the quantum of punishment. Of course, interest of author, may play a vital role in considering the question of infringement. In those cases where the pirated work is on the threshold of infringement, but it effects prejudicially the interest of the author and the

defendant has not bestowed such mental labour, skill and capital to produce a new work, the doctrine of "Dominant Impact" should not be the sole criteria.

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