
INFRINGEMENT UNDER COPYRIGHT LAW AND THE INCREASING COURT CASES

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Introduction

Copyrights Law is amongst the newer laws enacted in jurisprudence. The sudden explosion of content in the electronic media in the recent years and the ease with which original content can be refurbished and reproduced has resulted in numerous copyrights infringements leading to increase in litigation worldwide. This article examines the issues in a brief manner both in the context of India, USA and UK.

Indian Context

The history of copyright law in India can be traced back to its colonial era under the British Colonial Rule. The (Indian) Copyright Act, 1957 was the first post-independence copyright legislation in India and it has been amended six times since 1957. Pursuant to the Amendments in 1999, 2002 and 2012, it fully reflects the Berne Convention for Protection of Literary and Artistic Works, 1886 and the Universal Copyrights Convention, to which India is a party. Through this act, copyright protection is conferred on all original literary, artistic, musical or dramatic, cinematograph and sound recording works. Here 'Original' means that the work has not been copied from any other source.

The 'Baadshaho' Controversy

The 'Baadshaho' film had a remix song 'Socha Hai' which was picturised on Emraan Hashmi and Esha Gupta. It was a recreated remix version of the hit song 'Keh Doon Tumhe' sung by Kishor Kumar in the film 'Deewar' (1975) and was picturised on Shashi Kapoor and Neetu Singh. Mr Rajiv Rai of Trimurti Films, the producer of the film 'Deewar', filed a case of infringement of copyrights against the music company Super Cassettes Industries, owned by Mr Bhushan Kumar, just before the release of the movie. On 28 August 2017, the Bombay High Court ruled in favour of Mr Rai and restrained the makers of Baadshaho from using this song in their movie on the grounds of copyright infringement. Consequently, the song was dropped from the film and removed from all networks.

This case highlights the complexities involving copyrights. Trimurti Films, the producer of the film, had bought all rights to this song from the lyricist Sahir Ludhianvi and the music composer RD Burman. As the owner of the rights to the lyrics and music of the song 'Keh Doon Tumhe' and all other songs of this film, they later on signed an agreement with Polydor (now Universal Music India) to make and sell gramophone records and the mechanical reproduction rights for this limited purpose. In a clarification to the newspaper 'mid-day', Mr Rai stated, "When you make a song, you sometimes give the remix rights to the music company. But, in this case, we had not given the rights to Polydor. So when T-Series took the remix rights from Universal, the company told them categorically that if Trimurti Films sues them, they will have to fight it out. It's not just a fight for me, but for all producers in Bollywood." Mr Bhushan Kumar, the MD and Chairman of T-Series, told the 'mid-day', "We've bought recreation rights from the respective music companies. This is the first time that the rights were fractured. We have dropped the song from the movie and pulled it down from all networks". On the other hand Mr Rai commented on the frequency with which songs are being remixed without completing the necessary procedures and clearance from the original copy right owners who lose out on making legitimate money from their works. So here is a case of the original owners of copyright namely the lyricist and music composer selling all rights to Trimurti, the producer of the film. Trimurti (the Second Owner) in turn sold to Polydor (the Third Owner) the right to make and sell gramophone records and the mechanical reproduction rights for this limited purpose. T-Series (the Forth Owner) in turn bought the recreation rights and created a remix song spending time, effort and money but were unable to use it due to infringement of copyrights.

So an issue now arises, 'What is the legality of remix songs?'

Remixed Songs and The Copyright Laws

In the case of 'Gramophone Co. Of India vs. Super Cassettes Industries of India Ltd., the learned Single Judge of the Delhi High Court held: "What is a version recording? A version recording, we are told, is a sound recording made of an already published song by using another voice or voices and with different musicians and arrangers. Version recording is thus neither copying nor reproduction of the original recording" ('Gramophone Co. Of India vs. Super Cassettes Industries of India Ltd., 1996 PTC (16) Page 2520). In common parlance, remix are version recording of songs. Although a copyright may hold the view that a remix song violates his 'right to reproduce'. The purpose of the Copyright Law is an attempt to "promote the progress of the sciences and useful arts" and it attempts to balance public interest with the

rights of the individual author or creator. Musical renditions put out in the public domain enjoy a lesser degree of protection and the lock in period is two years after which any person can make version recordings after informing the original copyright holder and paying the royalties fixed by the board of Copyright. The 'right to remix' a song is not covered or explicitly stated as a right of the copyright owner in the Copyright Act. The Karnataka High Court also allowed 'cover version' (version recording) without the consent of the copyright owner in the case of Mars Recording Pvt. Ltd. vs. Saregama India.

Other Issues of Copyright

Increase in the electronic media and enhanced capabilities due to technological advancement have led to multiple methods of creating original works. Earlier the main beneficiaries of copyright safeguards were authors, painters, music composer and later on films. Patent laws protected original creations in design and manufacture. Laws need to be applied and interpreted in keeping with the technological developments and this is increasingly applicable to Copyright Law. Electronic and Digital media though separate from conventional media, will be covered by the same provisions as were applicable to the conventional media. Same will apply for copyright infringement on the internet. 'Indian Intellectual Property Statistics Report, 2021' by Banani P Counsels has collected and published data for IP related issues for India. The data for Copyright applications in the year 2021 has shown an increase of 29.71%. While 21,882 copyright applications were filed in 2020, the numbers increased to 28,385 for 2021 i.e. an increase of 6,503 applications. The Copyright Office received an average of 2,365 applications per month in the year 2021. The majority of applications filed were for literary/dramatic works and artistic works and the least number filed was for musical works. Talking about the report, Dr Kalyan C. Kankanala stated, "IP filings in India have been steadily increasing since 2014, and the increase in 2021 is not surprising. What is interesting is the fact that patent, trademark, and other IP filings increased despite the negative consequences of COVID-19". The increase in numbers is in sync with increased enforcement, licensing and litigation.

Some Important Indian Copyright Cases, 2021

Sony Pictures Network India Pvt. Ltd. vs. www.sportsala.tv and Others [High court of Delhi, CS(COMM) 289/2021]: The case pertained to the cricket matches during India's tour of England and Sri Lanka. Sony Pictures filed the suit against numerous defendants primarily praying for a permanent and a temporary injunction to prevent broadcasting, reproducing,

distributing etc of the cricket matches played during the series. The court ruled in favour of Sony Pictures granting the necessary injunctions. The court also directed the Government of India to give appropriate directions so as to prevent infringements of copyright of Sony Pictures in the matches.

Krishna Kishore Singh vs. Sarla A. Sarogi and Others, [High Court of Delhi, CS(COMM)187/2021]: The case pertained to blocking of films etc on Sushant Singh Rajput by his father petitioning the court. The Delhi High Court refused to grant an interim injunction against publication and release of films purportedly related to Sushant Singh Rajput because the plaintiff failed to make out a prima facie case, and because balance of harm and balance of convenience were in favour of the defendants. Since the plaintiff was not aware of the contents of the film, the defendants were not using the likeness or name of his son and because the films had appropriate disclaimers, the court came to the conclusion that the plaintiff failed to make out a valid case for violation of celebrity or publicity rights.

Dassault System Solidworks Corporatio & Anr. Vs. Spartan Engineering Industries Pvt Ltd., (High Court of Delhi, CS(COMM) 34/2021): This case is about infringement of copyrights for software developed by the plaintiff companies. The plaintiffs claimed that the software 'Solidworks' was developed by their employees as work for hire and hence the copyright belongs to them since the software and its instructional manual are literary work under the Copyright Act 1957 and hence was eligible for copyright protection. Though the software was first published in USA but is entitled to protection in India under Section 40 of the Copyright Act. The Plaintiffs received information regarding commercial use of pirated and unauthorised versions of this software in May 2018 and since August 2020 the unauthorised use has increased. The plaintiffs approached the court for infringement under Section 51 and Section 63B of the Copyright Act. The court granted the plaintiff an interim ex-parte injunction restraining the defendants from all uses of the software and remarked that, "Software infringement is a serious issue, and deserves to be nipped in the bud".

How 'Hollywood' copied 'Bollywood'

Most of the movies are copied from one another specially the movies of Bollywood and Hollywood. For example, 'Sleepless in Seattle' is a copy of famous Bollywood movie 'Kuch Kuch Hota Hai'. The poster of Kuch Kuch Hota hai was uncannily copied by Canadian duo XYZ instrumental song poster. Similar are the cases of other popular Indian films e.g. the film

'A Wednesday' was later remade as 'A Common Man'; 'Fear' was inspired by the immensely popular film 'Darr' and 'Jab We Met' was remade as 'A Leap Year' in Hollywood. All of these Movies were word to word copy and Artificial Intelligence (AI) can help solve these issues through Blockchain designed to help artist from financial exploitation by analysis of Copyright Infringement Theory followed in the USA Supreme Court.

USA Infringement Cases

In 1987 Nike created the "Jumpman logo" which is still used as a logo on shoes and all kinds of sporting gear until today and has become one of Nike's most well-known trademarks. In 2015 Jacobus Rentmeester filed a lawsuit against Nike for copyright infringement. Nike used a photo of Jordan shooting a basket and later the silhouette of this was used as their brand logo for Nike's, 'Air Jordan' products. In 1984, photographer Jacobus Rentmeester had taken a photograph for 'Life' Magazine of Jordan, then a college student, 'shooting for the basket' in a 'never-before-used pose, inspired by ballet' to generate Jordan's appearance of weightlessness and power, which was later ranked by 'Times' Magazine as amongst the hundred most Influential Images of all time. Rentmeester claimed that Nike copied "virtually every original element" of his photo and had violated Copyright Law. While the courts upheld Rentmeester's copyright of his photo, the 'copying' and 'unlawful appropriation' was not found to be tenable after applying the "extrinsic test" and the case was dismissed by the lower courts and finally by Supreme Court of USA in April 2019 who refused to hear the case upholding the verdict of the Ninth Circuit Court. This case upheld the doctrine of 'Fair Use'.

Similarly, in 'Leibovity v. Paramount Picture Corporation' the court upheld 'Fair Use' since the photo copied was a parody. Photographer Annie Leibovitz had taken a photo of Demi Moore published on the front page of 'Vanity Fair' Magazine where she is shown bare naked while pregnant. For their movie 'Naked Gun 33+1/3 The Final Insult', Paramount Picture Corporation had used a pregnant model who struck the same provocative pose that Ms. Liebovitz had chosen for the shot of Ms. Moore but substituted the head with that of the comic actor Leslie Nielsen. The company claimed that it did not need Ms. Leibovitz's permission because the ad was a parody. Parodies qualify for the "fair use" exception to copyright law allowing the use of copyrighted material in criticism, commentary, news reporting, teaching or scholarship. Courts consider parodies to be criticism or commentary. Hence there was no Copyright Infringement. The Judgment also found the "Naked Gun" ad to be "vastly different" from the original Leibovitz photo.

Commercial Parodies can qualify as 'Fair Use' was established in the 'Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994) judgments by the Supreme Court. This case established that the fact that money is made by a work does not make it impossible for fair use to apply; it is merely one of the components of a fair use analysis (Copyright Act of 1976 in § 107).

UK Copyright Law and Infringements

Copyright Law in England has a long history since 1556 Charter for publishers, the Licensing Press Act of 1662 till the present times of the Copyright, Design and Patents Act 1988. Landmark judgments have shaped, refined and developed the concepts and application of this law. Gyles v Wilcox (1740) was a judgment which established the doctrine of Fair Abridgment which later evolved to the doctrine of Fair Use. It shifted copyright away from publishing rights and towards the idea of serving the greater good by encouraging the production of new, useful works by recognising an author's right to a work through the nature of labour it took to produce it. Bach v Longman 2 (1777) is another landmark judgment bringing music under this law creating a more stable performing environment and growth of freelance musicians. Keeping pace with scientific developments Broadcast copyright, Sound recording, Digital Copies, Database right are some of the later inclusions.

A significant case in UK music copyright law infringement was pertaining to the song 'In A Little Spanish Town' written in 1926 by Mabel Wayne, with lyrics by Samuel Lewis and Joseph Young who issued a writ against Sydney Bron of Debmar Publishing Company Limited, concerning distribution of the song *Why*, which had been composed in 1959 by Peter de Angelis, with lyrics by Bob Marcucci. The writ sought an injunction to prevent reproduction and distribution of the song *Why*, without their consent, and also an inquiry over the damages for infringement of copyright. It was the first time that plagiarism of an original musical work had been considered. The case brought up the issues of subconscious copying, musical considerations of chord progression and melodic shape. The court applied the 'substantial reproduction' test and found that the similarities that did exist were commonplace and although de Angelis could potentially have had access to the original work, this could not be proven. Copying could therefore also not be proven and the case was dismissed.

Recently in April 2022 Pop Music singer Ed Sheeran has won a copyright battle in UK court over his chart-topping 2017 his "Shape of You," which spent 12 weeks atop the Hot 100, after a judge ruled that the star did not copy the song from a little-known track "Oh Why" released

by an artist named Sami Chokri, who performs as Sami Switch, and music producer Ross O'Donoghue. Honourable Justice, Antony Zacaroli ruled there was no evidence that Sheeran had intentionally or “subconsciously” copied from “Oh Why” when he wrote “Shape of You.” He said that “while there are similarities” between the two songs, “there are also significant differences.” “The use of the first four notes of the rising minor pentatonic scale for the melody is so short, simple, commonplace and obvious in the context of the rest of the song that it is not credible that Mr Sheeran sought out inspiration from other songs to come up with it,” the judge wrote. Similarities and coincidence are bound to happen if 60,000 songs are being released every day on electronic platforms like ‘Spotify’.

Conclusion

The Copyright Law is gaining importance since modern science has provided worldwide instant connectivity, created many ways for people to express new ideas through various mediums and put these in public domain to fulfil various purposes including commercial gains. Rapid progress in information technologies poses new issues for copyright law. Today, a digital file can be copied and instantaneously distributed worldwide through the Internet, thus potentially depriving the copyright holder of revenue from licensed sales. At the same time, worldwide consumers are beginning to chafe at copyright owners' use of digital technologies to prevent or deter copying and other unauthorized uses of copyrighted works. In modern times, copyright protection has been extended to websites and other online content. However, in this digital era, infringement of copyright can easily be done. At present the most frequent copyright infringement happens on internet by persons sharing music, movies, software or any other programmes under cutting the expected revenues. Music and movie industries are amongst the biggest losers. Governments across the world have established cyber security cell as a specialized branch of police for pursuing those who are performing illegal and unauthorized downloads on internet and other cyber crimes.

Music and other performing arts throw up a different set of issues for the courts who quite often have to bring in domain experts to establish whether copying or plagiarism has occurred. While protecting the copyrights of an individual, the courts have to remain mindful of the larger purpose of these laws which is to ensure advancement of the human society. The increased awareness of the protections provided by the Copyright laws of each nation and the proliferation of original content developers has resulted in the affected people standing up for their rights and demanding justice through litigation in courts. This is especially so when huge

sums of money are involved in likely unlawful gains or loss. Thousands of lawsuits have been filed in many countries in the world. Copyright is complicated and dense and it doesn't even apply to all those countries who have not signed any international treaty.

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