

DE JURE NEXUS LAW JOURNAL

Author:

Ritik Dhankhar

Army Institute of Law, Mohali, Punjab

2nd Year, B.A. LL.B.

COPYRIGHT INFRINGEMENT ON SOCIAL MEDIA**1. INTRODUCTION**

The evolution of human mankind has been one of the most ever-growing and evolving species the world has ever witnessed. From creating fire to driving electric cars, from scribbling on stones to publishing books, from creating sounds from a wooden flute to releasing song albums, the extravagant innovations and works of humans have made an everlasting impact for each generation. But for a person to be identified in the public eye for his creation, there is a system of law called “Copyright” which he can avail to get sole ownership of his creation and if any person tries to copy another person’s creation, it would be termed as “Copyright Infringement”. Therefore, to be protected from infringement, many creators try to obtain a legal right for publication and distribution of a particular creation.

2. MEANING**a) Copyright**

Copyright is a legal right given to a creator for publication and distribution of his/her original work. It is an intellectual property right which means that no other person can publish and distribute any material of the original individual creator without his/her requisite permission. The purpose of copyright is to give creators the reward and incentive for sharing their original work which encourages the creator to create more original content and try to earn a living out of those works.

i. Literature Works-

Literature works cover all works which are published online as well as offline. Some of the examples of literary works are poems, stories, articles, blogs, novels,

biography, autobiographies etc. But a mere collection of words written informally with no original framework will not be constituted as copyright.

ii. Musical Works

Musical works cover all those works which involves lyrical as well as the musical melodies. Songs created by operas and bands are also under the ambit of copyright.

iii. Dramatical Works

Dramatical works cover all those works which involve on stage theatrical arts. Dialogues written for these performances as well as for any movie are also covered under copyright.

iv. Audio Visual Works

Audio Visual works include all those works which involves the assets used in the making of movies, television shows, stage shows, video games, choreography etc.

b) Copyright Infringement

Violation of copyright is subjected to a copyright infringement. Copyright infringement is the violation of the original content creator's artistic or literary works by reproducing, publishing and distributing the said work without the permission of the original creator. In other words, it is subject to piracy and stealing arbitrarily of the works of an original creator for someone else's benefit.

3. THE COPYRIGHT ACT, 1957

The first copyright law was introduced in the British era when the British Parliament passed the Indian Copyright Act, 1857. With the increase in the number of innovations, due to the advancement in technology that was not protected under this law, the British Government replaced it with The Copyright Act, 1911. After 3 years some provisions were modified and were replaced with The Indian Copyright Act, 1914. After independence, The Copyright Act 1957 is the first post-colonial copyright law that came into force on 21st January 1958 with fresh provisions as well as punishments to protect the works of content creators. The Act protects the dramatic work, literary work, musical work and all other works which involve its rearrangement and alteration. Some major amendments were made to this act in the year 1983, 1984, 1992, 1994, 1999 and 2012 so that it should be parallel to the provisions of Berne Convention for Protection of Literary and Artistic Works, 1886, Universal Copyright Convention, 1952 and Geneva Convention for the Protections of Rights of Producers of Phonograms, 1971. The important provisions in this Act are as follows: -

a) Definitions

- i. According to Section 2 (y), “work” means any of the following works:
 - a. a literary, dramatic, musical or artistic work
 - b. a cinematograph films
 - c. sound recording
- ii. According to Section 2 (d), “author” is a person who has the creation of the following works:
 - a. a literary or dramatic work, the author of the work;
 - b. a musical work, the composer;
 - c. an artistic work other than a photograph, the artist;
 - d. a photograph, the person taking the photograph;
 - e. a cinematograph film or sound recording, the producer
 - f. any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created
- iii. Copyrighted material is that what is created by the author by his own skill, labour and investment of capital, maybe it is a derivative work which gives a flavour of creativity. The copyright work which comes into being should be original in the sense that by virtue of selection, coordination or arrangement of pre-existing data contained in the work, a work somewhat different in character is produced by the author.¹

b) Jurisdiction

- i. As per Section 62 of the Act, every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.
- ii. It includes a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.
- iii. Section 62 cannot be read as limiting the jurisdiction of the District Court only to cases where the person instituting the suit or other proceeding, or where there are more than one such persons, any of them actually and voluntarily resides or carries

¹ Eastern Book Company v D.B Modak, (2008) 1 SCC 1

on business or presently works for gain. It prescribes an additional ground for attracting the jurisdiction of a court over and above the “normal” grounds as laid down in Section 20 of the Code of Civil Procedure, 1908.²

c) Applicability of Copyright

As per Section 13, copyright shall be applicable in the territory of India in these classes of works: -

- i. Original literary, dramatic, musical and artistic works
- ii. Cinematograph films
- iii. Sound recording
- iv. It will apply if the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India.
- v. It will apply in the case of work of architecture if the work is located in India.
- vi. It will also apply in in the case of an unpublished work other than a work of architecture if the author is at the date of the making of the work a citizen of India or domiciled in India.

d) Rights of Copyright Holder

- i. Economic Rights:** It is the exclusive right which is given to the copyright holder to not only use his works (literary, dramatic, or musical work) but authorize others to:
 - a. to reproduce the work in any material form including the storing of it in any medium by electronic means
 - b. to issue copies of the work to the public not being copies already in circulation
 - c. to perform the work in public, or communicate it to the public
 - d. to make any cinematograph film or sound recording in respect of the work
 - e. to make any translation of the work
 - f. to make any adaptation of the work
- ii. Moral Rights:** A unique creation by a creator should be appreciated and duly acknowledged in this world. This Act provides such recognition and respect to

² Exphar v Eupharma Laboratories, (2004) 3 Supreme Court Cases 688

the creator in Section 57 which says grants the Right to Paternity and Right to Integrity.

a. Right to Paternity: It is the sole right given to the author to claim ownership.

b. Right to Integrity: It is the right given to the author to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation.

e) Term of Copyright

i. For Literary, Dramatic, Musical and Artistic Works

An imperative provision that this Act provides is that an author's works can be valid and protected for a lifetime. However, if the author dies, then the term of copyright is valid only for 60 years which is counted from the year following the death of the author.

ii. For Cinematograph Films, Computer Programme, Photographs, Sound Recordings, Government Works, Public Undertakings and International Organizations

In the case of the following works, copyright shall subsist for 60 years starting from the beginning of the calendar year next following the year in which the film is published.

f) Remedies for Copyright Infringement

Every action has consequences. Therefore, there are consequences for copyright infringement if a person tries to plagiarize an author's work without his permission. A copyright holder can seek civil remedies as well as criminal remedies under this Act.

i. Civil Remedies: As per Section 55, if copyright in any work has been infringed, the copyright holder will have the right to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right. However, if the defendant proves that at the date of the infringement, he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant through copyright infringement.

ii. Criminal Remedies: As per Section 63, whoever knowingly infringes a copyright or abets copyright infringement shall be punishable with imprisonment

for a term which shall not be less than six months and can be extended to three years along with a hefty fine which shall not be less than fifty thousand rupees and can be extended to two lakh rupees. If a person is convicted again under Section 63 shall face imprisonment for a term which shall not be less than one year but which may extend to three years along with a hefty fine which shall not be less than one lakh rupees and can be extended to two lakh rupees. As per Section 64, the police, without warrant, have the right to seize all copies of the work and all plates used for the purposes of making infringing copies of the work, wherever found, and all copies and plates so seized shall be produced before a Magistrate.

g) Exceptions to Copyright Infringement

Not all acts can be deemed as copyright infringement. The following are:

- i. Private or personal use, including research.
- ii. Criticism or Review of any work.
- iii. Reporting of current events and current affairs.
- iv. Making Copies of a Computer Programme in order to utilise the computer programme for the purpose for which it was supplied along with exceptional reasons.
- v. Reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding.
- vi. Reproduction or publication of any work prepared by the Secretariat of a Legislature or, where the legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature.
- vii. Reproduction of any work in a certified copy made or supplied in accordance with any law for the time being in force.
- viii. Reading or recitation in public of reasonable extracts from a published literary or dramatic work
- ix. Publication in a collection, mainly composed of non-copyright matter, bona fide intended for instructional use, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for such use in which copyright subsists.

h) Other Provisions

- i. A dramatic work may also come within the purview of literary work being a part of dramatic literature. However, the provisions of the Copyright Act, 1957 make a distinction between a “literary work” and “dramatic work”. Therefore, copyright in respect of performance of “dance” would not come within the purview of the literary work but would come within the purview of the definition of “dramatic work”.³
- ii. Copyright in India is a statutory right and it has to satisfy statutory conditions. Protection is available only if claimed work is a literary work. Title comprising of a few words generally has not been considered as literary work.⁴

4. COPYRIGHT INFRINGEMENT ON SOCIAL MEDIA

In the ever-growing, ever rising and the booming techno savvy world of the 21st century where with a click of a button, one can get famous, lives can change forever or dreams can be shattered and you may end up regretting your actions which may last forever.

Communication is not even an issue anymore because of the diversified change after the beginning of the social media era. Facebook, Instagram and Twitter are the most famous social networking sites which have become the medium for government and private agencies as well to share important news.

The influence of social media is something which has a good as well as a bad side. The good side being where all the users are coming together to try to fight for a particular cause and eradicate social evils out of the society. The recent case of “Baba ka Dhaba”, where hundreds of people gathered outside a food stall of an 80-year-old when a video of him telling his financial struggles during the ongoing lockdown got viral.

However, the daily rise of fake news being uploaded and the reposting of original content by some stranger without the owner’s consent i.e., copyright infringement is one of the major problems that social media networking sites are struggling with.

³ Academy of General Education v. B. Malini Mallya, (2009) 4 SCC 256

⁴ Krishika Lulla v. Shyam Vithalrao Devkatta, (2016) 2 SCC 521

One of the most common copyright infringement cases in social media is the reuploading of photos by users without the knowledge and consent of the original uploader. Professional photographers, journalists, video creators and singers are the biggest victims when it comes to copyright infringement.

In 2013, a Haitian photographer was awarded a sum of \$1.22 million after companies started posting his photos of Haiti earthquake which he had already posted on social media.

In recent years, the concept of memes has emerged on social media to spread satirical representation in the form of images. Meme creators usually take a video clip or an image from a movie or any other copyrighted representation and publish them with certain context to make them look funny. YouTubers, especially commentary-based YouTubers, also tend to react to a certain YouTube video in order to create their own content and then later publish them on their YouTube channels. A lot of small YouTube channels are harassed by big corporate companies as they copyright strike the videos of these YouTubers even if they use their content within “fair use” of the YouTube guidelines.

If any creator wants any relief pertaining to copyright infringement made by any other user without his/her knowledge or consent can approach a civil court and get that particular relief with compensation. However, if the person accused of copyright infringement believes that whatever he/she has published is not violating any laws needs to fulfill two conditions.

The first condition is that the intention to compete with the copyright holder must not be there. The second condition is that the improper usage of the content must not be there. For e.g.- If a meme creator proves that he had no intention of competing with the original creator and that whatever he has published was only for the purpose of satire and comedy, then there would be no copyright infringement and would be considered as “fair use”.

Further if the case involves a huge monetary compensation, then the courts have to apply the doctrine of “fair use” given in The Copyright Act, 1957.

The Copyright Act, 1957 gives four different factors to determine the use of copyright work. They are as follows: -

- i. Purpose and the character of the use,

- ii. Nature of the copyrighted work,
- iii. Amount and substantiality of the portion used in relation to the copyright works as a whole.
- iv. Effect of the use upon the potential market in regard to the copyrighted work.

The court therefore has to use these factors and interpret the concept of “fair use” in cases of big copyright cases between companies and individuals.

5. Conclusion

The concept of copyright is not exhaustive in nature. Changing times and the technological advances will have a severe impact on the use of copyright in the future. The current problem which lies in our country is not the intention to copy other people’s work for content but the lack of awareness about the copyright laws. Many people do not know what all comes under the ambit of “fair use” and what is not and later have to suffer the consequences for copyright infringement through time consuming court procedures. Therefore, it is necessary to procure requisite permissions and licenses and pay royalties if necessary, in order to use someone else’s original creation.

De Jure Nexus
LAW JOURNAL