

DE JURE NEXUS LAW JOURNAL

Author:

Devna Menon

MIT World Peace University, Pune

2nd Year, BBA LL.B. (Hons.)**CRIMINAL COPYRIGHT INFRINGEMENT****Abstract-**

De Jure Nexus

With the emergence of intellectual property creation and ownership in the contemporary world, intellectual property rights (IPR) were born to protect original works created by authors/creators. Copyright is one such branch of IPR. And is protected under the Copyright Act 1957 (the Act). This type of protection also fosters the environment for creativity by encouraging current and potential creators to keep creating in the future. Since these laws allow an author/creator to restrict and/or prohibit the use of their original work by others, which could harm their goodwill and reputation and/or take financial advantage of their original work. If the violator breaks the rules by no longer infringing, he may be subject to various civil and criminal liability under the law, as well as civil and criminal remedies available to the creator whose work has been infringed.

With above facts, this paper gives an insight into the criminal liabilities envisaged in the Act. Since the legislature rightly recognizes that copyright infringement is not limited to just impairment and a civil law damages claim is barely sufficient and therefore the criminalization of copyright infringement is more than necessary to avoid a loss of credibility, reputation,

goodwill of an organization through literal theft. Criminal sanctions not only exempt from impunity, but also act as deterrents.

Keywords-

Infringement, copyright, criminal offence, protection.

Introduction & History of copyright in India-

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, *inter alia*, rights of reproduction, communication to the public, adaptation and translation of the work. There could be slight variations in the composition of the rights depending on the work.¹

Copyright entered India in 1847 by promulgation under the East India Company regime. Under the law of 1847, the duration of the copyright was for the life of the author plus seven years post mortem. But in no case may the total duration of the copyright exceed the period of forty-two years. The government can grant a compulsory license to publish a book if the copyright owner refuses to grant permission for publication upon the death of the author. The infringement consisted in the unauthorized printing by any person of a copyrighted work for (or in connection with an attempted) "rental purchase or export" or "for sale, publishing or display for sale or rental". The plaintiff's claim for infringement must be brought before the "supreme local court exercising the original civil jurisdiction".

The law specifically states that under a service contract the copyright in "any encyclopaedia, review, magazine, periodical work. Further, the work published in a series of books or volumes is "the property of the "owner, projector, publisher or conductor". Counterfeit copies were considered copies of the owner of the copyrighted work. It is important to note that, unlike today, copyright in a work was not automatic. Registration of copyright with the Ministry of the Interior was mandatory for the enforcement of rights under the law. However, the law also expressly preserved the copyright of the author and his right to sue for its infringement to the extent provided by any law other than the Act of 1847.

¹ <https://copyright.gov.in/documents/handbook.html>

In 1914, the then Indian legislature enacted a new copyright law. In addition, it extended most parts of the British Copyright Act 1911² to India. It did make some minor changes. First, it has introduced criminal penalties for copyright infringement (Articles 7 to 12). Second, it changed the scope of the term copyright; under Section 4 the author's "exclusive right" to "produce, reproduce and perform; or the publication of a translation of the work is only valid for a period of ten years from the date of the first publication of the work. However, the author retained her "exclusive rights" if she published within the ten-year period.

Before the 1957 Act, copyright protection was covered by the Copyright Act 1914³, which was an extension of the UK Copyright Act 1911. The Act was amended in 1983, 1984, 1992, 1994 and 1999 after 1957. In May 2012, both houses of Indian Parliament unanimously passed Copyright Amendment Bill, 2012⁴.

Some of the main changes to the Copyright Law in 2012 are

1. Changes in rights to artistic works, cinematographic films and sound recordings.

The amendments clarify the rights to artistic works, films and sound recordings. In addition, by providing for the right to reproduce an artistic work, to make a copy of a cinematographic film.

2. Amendment of rights relating to WCT and WPPT

The obligation under Article 11 of the TRIPS Agreement⁵, Article 7 of the WCT and Article 9 of the WPPT is to provide for "commercial rental" rights.

The term "rental" in Article 14 (d) and (e) in relation to motion pictures and sound recordings, respectively, is replaced by the term "commercial rental".

3. Changes in favour of the author with regard to the mode of transfer and licensing

Article 18(1) states that the owner of the copyright laws may transfer the copyright to any work. And the provision of this paragraph provides that in the case of future work, an order comes into effect. Another provision of Article 18 (1), through the Amendment Act of 2012, stipulates that the author of a literary or musical work.

² <https://www.irishstatutebook.ie/eli/1911/act/46/enacted/en/print.html>

³ <https://indiankanoon.org/search/?formInput=copyright%20act%201914>

⁴ <https://www.wipo.int/edocs/lexdocs/laws/en/in/in066en.pdf>

⁵ https://www.jpo.go.jp/e/news/kokusai/developing/training/textbook/document/index/TRIPs_Agreement.pdf

4. Changes that Facilitate Access to Works

- Grant of Compulsory Licenses (Section 31, A, B)
- Grant of Legal Licenses (Section 31C, D)
- Copyright Management Companies (Section 33,34,35)
- Fair Trade Provisions (Section 52)
- Access to Copyrighted Works by Persons with Disabilities (Section 31B, 52(1))
- Waiver of Author's Right (Section 21)

5. Strengthening Enforcement and protection against piracy on the Internet

Article 53, concerning the importation of counterfeit copies, replaces a new heading. In addition, provide details on border measures to strengthen enforcement of rights by arrangement for control. In addition, the import of counterfeit copies of the customs service. In addition, the removal of forged copies and the assumption of copyright in the context of civil remedies. The new clause 65A, on protection of technology protection measures (TPM), is administered by copyright holders to protect their rights. Article 65B is introduced to ensure the protection of rights management information, as defined in paragraph (xa) of Article 2.

6. Copyright Board Reform and Other Minor Changes

Given the variety of issues facing the Copyright Board, Article 11 regarding the composition of the Copyright Board is amended to make it a body composed of a chairman and two members.

Protection under Copyright Act, 1957

The Copyright Act, 1957 protects original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized uses. Unlike the case with patents, copyright protects the expressions and not the ideas. There is no copyright in an idea.⁶

Logos and designs used as brand identities to represent companies are protected as trademarks. If they are original works of art that contain an element of creativity, they are also entitled to copyright protection.

⁶ <https://copyright.gov.in/documents/handbook.html>

- In case of infringement of said trademark, the owner can take action under Article 63 of the Copyright Act 1957, which provides for a prison sentence of six months, which can be extended to 3 years and a fine can also be imposed. from fifty thousand rupees which can be extended to 3 lacs.

- The primary benefit of taking copyright action is that under Section 64(1), a police officer without the rank of Deputy Superintendent has the power to seize without warrant and forge copies of a work. Copyright infringement was judged as a recognizable crime in the case of the state government. of Delhi NCT v Naresh Kumar Garg 52011 (46) PTC114 (Del). In that case, the court cited a ruling of the Supreme Court of Gauhati in Jitendra Prasad Singh v. State Assam 2003 (26) PTC 486⁷ (Gau) where the offense was found to be known and uncertain under Section 63 of the Act. The court ruled that it would be helpful to refer to the provision of Section 64 of the Act, which gives a police officer of at least the rank of sub-inspector the power to seize forged copies of any work.

- In the case of recognized criminal offences, the investigating officer has the power to arrest and investigate without a court order in accordance with (Article 156(1) of the Code of Criminal Procedure, 1973. The owner, whose trademark would be infringed, file a criminal complaint citing the charges set forth in Section 420 of the IPC and Section 63 of the Copyright Act The provision of Section 420 of the IPC speaks dearly of fraud by misrepresenting property to another person

Filing copyrights against logos and designs could lead to similar charges under copyright law against the perpetrators instead of filing a trademark infringement lawsuit. However, if it is simply a trademark infringement, then the owner should push for a timely raid on such counterfeit products before seeking an opinion from the registry, which is only required at the testing stage or prior to the prosecution sheet.

Also, FIR must be registered under Section 420 and evidence collected at the same time and then additional fees under the Trademark and Copyright Act could be added prior to trial. In this way, the owner can take action against the perpetrators as quickly as possible and also include the complaints made against him for infringement of intellectual property.

⁷ <https://indiankanoon.org/doc/419330/>

Criminal copyright provisions under the Copyright Act, 1957

Sections 63 to 70 under Chapter 13 of the Act provide for the offences relating to copyright infringement. The principle penal provisions under the chapter are as follows:

1. Section 63: It states that when a person knowingly infringes or abets copyrighted work or any of the neighbouring rights under the Act (such as performer rights, moral rights and broadcast reproduction rights) he/she/they can be imprisoned for a minimum of six months and a maximum term of three years and can be fined between Rs. 50,000 to Rs. 3,00,000.

2. Section 63A provides for an enhanced penalty for second or subsequent convictions with increased imprisonment from one to three years and a fine ranging from Rs.1,00,000 to Rs. 2,00,000. However, if such an offense is not committed for the purpose of profit in trade and business, the court may reduce the sentence to less than one year and a fine of less than 1,000,000 rupees, subject to sufficient reasons and special provisions.

It is important to note that criminal prosecution in such cases does not allow the copyright owner to obtain an injunction, that is, "if a convicted person repeats the infringement, the copyright owner will have to initiate a new proceeding. In such cases, it is therefore advisable to simultaneously initiate criminal and civil proceedings if the stakes are very high.

3. Section 65A stipulates that one should circumvent any of the effective technological protection measures that can be applied to each of the rights conferred by law

In the field of copyright, performance rights are punishable by a maximum prison sentence of two years and a fine.

4. Article 65 B provides that the unauthorized removal or alteration of "rights management information" is punishable by imprisonment for a maximum of two years and a fine. Such removal or modification knowingly includes the unauthorized distribution, broadcast or communication to the public of copies of works.

Articles 65A and 65B that have been inserted via the Amendment Act 2012 can only be punished by criminal measures. These provisions were drafted voluntarily and in a very preliminary manner "and a great deal was left to judicial creativity so that it could be adapted to Indian conditions".

i. other provisions of Chapter 13 provide for penalties for offenses such as possessing or making records to make forged copies of works (Article 65), using forged copies of a computer program (Article 63B) and making false entries in the copyright register (Article 67).

(Note: The above provisions and their remedies effectively apply to electronic and digital media, i.e. internet in the same way as traditional media.)

ii. Section 64(1) provides that any police officer who does not hold the rank of Deputy Superintendent may exercise the power to seize copies of infringing works without a warrant. The offense referred to in this article is considered an offense that can be the subject of knowledge and which cannot be the subject of a filing. Section 64 (2) provides guarantees to the person against whom such seizure has taken place to request the magistrate to return the seized copies within 15 days of such seizure. This provision in no way facilitates or permits infringement by the person accused of having committed an infringement.

Relevant case laws

Krishika Lulla and Ors. vs. Shyam Vithalrao Devkatta & Anr ⁸

In the innovative case of *Krishika Lulla & Ors. Vs Shyam Vithalrao Devkatta & Others*, which is considered the benchmark for violating movie titles and stories, also known as the "Desi Boys Case", the plaintiff wrote a story titled "Desi Boys" and registered the summary with the Association of Filmmakers. He then passed the synopsis on to his friends. He later came across the trailer and promotions for the movie titled "Desi Boyz." Understanding that he could not claim a violation of his idea or story under the Copyright Act, he filed a copyright infringement FIR of the title "Desi Boys" under section 482 of the Code of Criminal Procedure, the section 63 of the law and section 420. of the Indian Penal Code Act. In this case, the question arose as to whether the title of a literary work is itself a copyrighted work that can be infringed under the Copyright Act. The Supreme Court rejected the notion that a film's title was a copyrighted "work" to qualify as an infringement. The title of the film does not fall within the scope of the literary work.

Cherian P. Joseph v. Prabhakaran⁹

In the case of *Cherian P. Joseph v. Prabhakaran*, it was found that "clear and convincing proof of knowledge is required to justify the commission of a crime." Also, a criminal court will not

⁸ Available at- <https://indiankanoon.org/doc/57555980/>

⁹ Available at- <https://indiankanoon.org/doc/560532/>

make a decision on the matter of the offense if it is up to the civil court to make the final decision. In this case, the author alleged that some extracts from the defendant's book in Malayalam were translations of the author's book and "that they were translated and kept for sale without his permission or knowledge, and that the defendant thus infringed his copyright." Books that therefore commit a crime punishable by virtue of article 63 of the Law”.

Conclusion

The criminal liability related to the criminal sanctions provided for in the law is a step in the right direction, especially in light of the changes brought about by the 2012 Amending Act. The legislative intent under -extending criminal sanctions is to punish violations. of particular gravity, accordingly using varying prison terms and fines, and by orders to seize and deliver the infringing copies to the rightful owner, depending on the seriousness of the crime. These provisions also have a deterrent effect because they not only punish, but also aim to prevent such crimes.

References-

<https://www.legalserviceindia.com/legal/article-3581-ipr-law-history.html>

<https://astrealegal.com/copyright/>

<http://automoney.net.br/pzmr1/trtrg.php?ahdszjo=copyright-protects-an-idea-or-expression>

<https://blog.iplayers.in/criminal-liabilities-remedies-copyright-infringement-india/>