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**THE CHALLENGING RELATIONSHIP BETWEEN CONTEMPORARY
ART AND INTELLECTUAL PROPERTY**

ABSTRACT

The Intellectual Property Right is a powerful tool for protecting the innovation involved in a corporate activity. The intellectual property right is an area of law that emphasises an artist's creativity and expertise. It asserts that it is critical to acknowledge the artist in relation to their art and protect them from being used to replicate work without permission. Contemporary art refers to artwork created in the twenty-first century. This includes conducting commercial activities, trade secrets, and contracts that must be protected from unethical copying by a third party. In today's commercial environment, artistic labour and innovation are direct means of success and competitive advantage. To ensure expansion and commercial growth, it must be protected from copying. The study emphasises the vital link between modern art and its preservation through intellectual property legislation. As a result, it is proposed in this article that specific changes be made to the Copyright Act to provide copyright protection for such excluded artistic works. The article lays down the advantages of Intellectual Property rights and also refers to few case laws to have a better insight into how the real-life situations are dealt with under the law.

Keywords

Intellectual Property Right

Contemporary art

Artistic works

Unethical copying

Copyright Act

Innovation

INTRODUCTION

Contemporary art is “the art of today”, the art created by the artists in the late 20th century and in the 21st century. It reflects the complex issues that shape our diverse, global, and rapidly changing world. Today the market is not how it was 20 years ago. At the start of the 21st century, the global art world changed substantially as large numbers of new millionaire buyers joined the Market, and China decided to develop its own market. The artists have increased to 32,000 and it has grown and expanded geographically, from 39 to 64 countries active in auctions.¹ The contemporary art market raked in a record-breaking \$2.7 billion in sales between June 2020 and June 2021.² The rising value of the market and the emergence of new opportunities, as well as the amount of creative freedom afforded by the modern art sector through paintings, sculptures, and other art forms, allow an individual to express themselves in a way that is easily approachable by others.

With an increasing number of people from this generation participating in contemporary art forms, it becomes more difficult to regulate them since they entail personal ideas and approaches that are unmistakably distinct from one person to the next.

Intellectual property rights are unquestionably an efficient means of protecting such outstanding works of art and property. With so many diverse art forms emerging and a quickly growing pool of work in a world where information can be shared at one click, it's a difficult task to ensure that the original artists retain ownership of their work. This section of the law contains a one-of-a-kind characteristic that allows artists of many creative genres to claim ownership and legitimate title to their work. Not only that, but such regulations also operate in favour of artists, ensuring that they receive the appropriate monetary compensation for their efforts and creativity.

What are Intellectual Property Rights?

¹ Available at: <https://www.artprice.com/artprice-reports/the-contemporary-art-market-report-2020/the-contemporary-art-rush> (last visited on 7 November 2021)

² Available at: <https://www.artnews.com/art-news/market/artprice-annual-art-market-report-art-world-rebound-1234605607/> (last visited on 8 November 2021)

Intellectual property strives to safeguard a person's ability to think creatively. It helps to safeguard one's creations, livelihood, and finances from exploitation. Patents, copyrights, and trademarks are examples of intellectual property rights that have become increasingly important as technology and resources have advanced, making it easier for someone to steal the credit of the deserving with a few modifications. Intellectual property rights arose as a means of protecting and rewarding creativity. This area of law is very important to artists. It ensures that artists are properly recognised. Intellectual property law also protects artists from unauthorised use and copying of their work, as well as their right to be compensated for their work. For artists, such a branch of rights is critical. Such acclaim for their work and arts provides them with a source of income and protects them from unlawful use. It guarantees that employees are sufficiently rewarded for their originality and talent in terms of respect, salary, and future opportunities.³

The issue of infringement of Intellectual Property Rights

People or artists are frequently inspired by numerous things around them, including diverse art forms, and they keep that inspiration in mind as they work on their art form with a hint of their imagination and originality. This is the crux of the conundrum. This is where all of the issues begin. Contemporary art, in particular, believes in revisiting or enhancing existing works of art and presenting them in a fresh light. It is difficult to define the rights to such artworks when such an idea serves as the foundation of the creative form.

When does one artist's right to create end and another's right to create begin?

While it is possible that the rights of the artist who intends to borrow be restricted, the main criticism of this solution is that it is unnecessarily simplistic. Almost all art draws on a pre-existing body of information in some way. As a result, this isn't a realistic option. The rights of the artist whose work is being borrowed must also be respected. This would defeat the whole point of intellectual property legislation.

It can be argued that the original artist must have complete control over their work, which I agree with, but isn't every art or creation an imitation because it arose from some other pre-existing pool of knowledge, and won't this lead to an artist who has simply gained some inspiration from your work being unaware of my rights? Isn't that going to be a breach of the

³ Available at: <https://www.juscorpus.com/relationship-between-contemporary-arts-and-intellectual-property/> (last visited on 6 November 2021)

very purpose of the IP law? But, what's the answer, exactly? Is it a possible solution to resort to the problem of rights involved if the test of sustainability is used?

Is it possible to employ the substantial similarity test in the above-described case?

The sustainability test is a method of determining an artist's or creative form's uniqueness. In this test, the element of reimagination and recreation is valued. The test is used to see how much work by the artist in question is potentially similar and is reinterpreted and recreated by the current artist from artwork that was viewed and kept as an inspiration by another artist. If the replicated work surpasses a specific permitted limit, the artwork's rights revert to the original artist. This test would necessitate a look at the level of borrowing. If an author borrows from another artist and creates a work that is substantially similar to the previous work, his rights should be limited. The difficulty with this strategy is that modern art, which is obsessed with finding new ways to interpret old works, will necessitate a lot of borrowing.

Examining the degree of uniqueness of the new work generated is one recommended viable answer to this challenge. If a work borrows heavily from another in order to recreate and re-characterize a concept, he should be permitted to do so. Because defining a precise set of standards in the sphere of art would be unnecessary, each case must be decided on its own merits. The art form is considered as an original work of the artist if the level of similarity is not considerable and does not reflect the entire precise idea of the previous work, but the artist portrays it with their own talents in a unique and non-similar way.

However, the more practical solution is to accept that there is no one-size-fits-all criteria for establishing artistic uniqueness. Examining the level of originality rather than the amount of resemblance is the best way to approach such a situation. Every art form's originality must be observed, and consideration should be given to the introduction of a new perspective or the origin of a new essence in the art piece if the piece of art form under consideration has a unique feature that distinguishes it from any other existing piece and should be considered an artist's original work. This will vary from artist to artist and artwork to artwork, but the point is to look at each piece on its own merits. We can't get to the right answer by following a rigorous rule.

Challenge to Intellectual Property posed by contemporary art.

Lack of knowledge

People are being provided with a well-built road for the future of entrepreneurship through contemporary art in its distinctive form. With an increasing number of people exploring their

skills and launching small enterprises to serve others with their varied arts skills, these firms are typically limited in their exposure and understanding in the early stages. Their restriction drags them down a rabbit hole of ignorance and miseducation.

As a result of their lack of knowledge of IP laws, they infringe on IP rights and end up in a lawsuit against well-established and large firms, which is an expensive and time-consuming task to resolve, adding to the difficulties faced by small businesses and leading them into trouble they didn't intend to be in. IP actions for infringement are fairly widespread nowadays, and they can be brought for a variety of reasons, including:

If the trademark is similar in class, involving a name that is already a well-known brand name among the general public, and adopting a tagline that is similar to that of any other brand.

These are only a few instances; there are a number of other faults that allow major organisations to exploit small artists, and adequate awareness of these issues is vital in order to avoid such issues.

Conflict between the objective of modern art and intellectual property legislation

The true goal of intellectual property law is to prevent future innovation and recreation of the protected work. However, the foundation of contemporary art lets us know that it entails reworking, bringing a new viewpoint to an existing work of art or a specific creation. People frequently associate contemporary art's creativity with the goal of reimagination. It is difficult to define the concept of intellectual property in the current hesitant art form that requires us to ponder and limit our creations with law. People are frequently left with the worry of receiving a black slash from a specific wealthy and popular person on brand claiming the concept and the work to be theirs, which raises various questions in the minds of the artist about the culture that is followed for contemporary arts and works. People are frequently left with the worry of receiving a black slash from a specific wealthy and popular person on brand claiming the concept and the work to be theirs, which raises various questions in the minds of the artist about the culture that is followed for contemporary arts and works.

Advancing technologies

With such a big amount of data available and the availability of online photographs, how secure is one's information or artwork? Online artworks are frequently viewed as a source of inspiration, which raises the issue of the rights of both the recreated artist and the original artist.

Technology should be used wisely, and artists reproducing any art form in the form of contemporary art must acknowledge that the original artists' rights are not violated.

In today's digitised world, intellectual property (IP) theft has become all too widespread. Theft of a creative concept without the approval of the artists is a common and simple occurrence that results in tremendous losses for the original owner. Because these are intangible assets, they can be quickly copied. Strong IP rules are required in such circumstances where the threat is so great that exploiting any artist is so simple and stealing ideas from anywhere in the world with just a few clicks has now become a thing.

Advantages of Intellectual Property Protection

- Increase the market worth of your company.

IP can produce revenue for your company by licencing, selling, or commercialising protected items or services. This, in turn, can increase your market share or earnings. Having registered and protected intellectual property assets can increase the value of your firm in the event of a sale, merger, or acquisition.

- Convert your ideas into revenue-generating assets.

Ideas have little value on their own. However, intellectual property (IP) can assist you in turning ideas into commercially successful products and services. Licensing your patents or copyright, for example, can result in a continuous stream of royalties and extra cash, which can help your company's bottom line.

- Promote your company's products and services.

IP is critical in establishing a brand image for your company. Consider your company's trademarks, logos, and product designs. IP can assist you in differentiating and promoting your products and services in the market.

- Access or raise capital for your company.

You can monetize your intellectual property assets by selling them, licencing them, or using them as collateral for loan financing. Furthermore, you can utilise your IP to your advantage when applying for public or government assistance, such as grants, subsidies, or loans.

- Increase your company's export potential.

Intellectual property can boost your competitiveness in export markets. You can use brands and designs to promote goods and services internationally, enter into franchise partnerships with foreign enterprises, or export patented products.⁴

Few cases related to intellectual property have been discussed below to get a better insight into the view point of judges in these matters.

In the case of *Amar Nath Singh v State of India*, in the year 2005, it was chosen to decide on the noteworthy sculpture characterised as a "Indian national treasure." It has been destroyed and mangled as a result of careless treatment of the artwork. After two years of investigation, the court has finally ordered the destruction of the artwork. They said that such destruction of artwork could jeopardise an artist's moral rights. As a result, the existence and integrity of the artist's body serve as the very foundation of his or her reputation and livelihood in society.⁵

In another case of *Rewal Rajwal v Union of India*, 2019 the court rejected the assertion of an author's moral rights by damaging or changing the building and taking over the priority of the building's owner. As a result, the court, in rejecting the artist's request for an injunction, found that preventing the destruction of the building amounts to a restriction of a property owner's ability to deal with his property and land with full liberty and without any limits.⁶ The Court held that the creator's right to prevent bending, mutilation, or alteration of its work under Section 57 did not allow a creator to completely prevent the decimation of work, because "what can't be seen, seen, heard, or felt, can't be defective and can't influence the creator's honour or notoriety." The Court determined that a designer's rights are limited to preventing the structure's owner from making changes to the structure and broadcasting that the designer is the developer of the modified structure.

It is really important to note that the case of *Raj Rewal* cannot be read under the examples discussed above because the issue for this situation was a piece of engineering that was at an unanticipated balance in comparison to a show-stopper. Under Indian copyright law, the assurance granted to physical constructions is smaller than that granted to compositional designs for the structure.⁷

⁴ Available at: <https://www.nibusinessinfo.co.uk/content/advantages-protecting-intellectual-property> (last visited on 8 November 2021)

⁵ *Amar Nath Singh v State of India*, 2005(30), PTC 253 (Del)

⁶ *Rewal Rajwal v Union of India and Ors.*, 2019 CS(COMM) 3/2018, IA No.90/2018

⁷ Available at: <https://www.juscorpus.com/relationship-between-contemporary-arts-and-intellectual-property/> (last visited on 7 November 2021)

Is there a need for IP reform?

With the different problems that exist in this regard, certain gaps must be filled in order to familiarise modern artists with IP culture and promote the use of various protections that IP rights provide. There must be a correct distribution of rights, as well as a passage of comparable artwork being copied with a different perspective, to make modern art inclusive in the classification of art forms under IP rules. It is critical to educate people on the benefits of intellectual property and to foster respect for intellectual property material. We all know that intellectual property is, by definition, international, and thus thefts can occur anywhere in the world, which can frequently create hurdles of language, area, and other factors in seeking redress and addressing the issue. As a result, policies and strategies that take a more holistic approach should be implemented, not only to reassure contemporary artists that intellectual property is crucial for the protection of their works, but also to provide solutions to a variety of challenges and problems.

Conclusion

Reading the above instances, it is clear that Indian courts appear to be isolated as they wish to consider one of the most contentious issues involving copyright law, 'Does complete annihilation of a piece of craftsmanship add up to the infringement of a craftsman's ethical rights?' Even if the Delhi High Court responded to this enquiry with a resounding 'yes' in *Amar Nath Sehgal*, the stance chosen in *Raj Rewal* is by all accounts a complete departure from the established legal standards maintained by the courts over the previous 20 years.

Currently, Indian legislation on moral rights is reassuring for crafters because courts have usually guaranteed professionals' ethical rights and can likewise grant damage after preliminary in circumstances with realities like these, where the work has just been significantly changed.

Also, everyday, people face problems that require answers in the field of intellectual property. Artists confront challenges as a result of the non-inclusiveness of contemporary art in the IP, which is undoubtedly a problem that must be rectified with a good understanding and attitude to the art forms, as well as assessing cases on their merits rather than through a rigorous guideline or formula. To achieve all of this, policies and frameworks must be developed and offered to existing contemporary artists so that the art they make, the imagination they employ, and the amount of acknowledgment their work requires are all safeguarded by the IP laws that are enforced.

The intellectual property law challenge given by contemporary art must be addressed, and an appropriate solution must be found to ensure that artists' rights do not infringe on one another.⁸



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⁸ Available at: <https://www.intepat.com/blog/intellectual-property/intellectual-property-law-contemporary-art/> (last visited on 9 November 2021)