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**COPYRIGHT LAWS ON INTERNET: CAN COPYRIGHT OWNERS AND
AUTHORS EFFECTIVELY PROTECT THEIR RIGHTS ONLINE?**

INTRODUCTION AS TO WHAT IS COPYRIGHT?

Copyright is a form of Intellectual Property Rights of the original work done by the author that in turn would include dramatic, musical, architectural, and artistic and other such intellectual work. Whereas, we all know that the entire world is fighting the COVID – 19 pandemic and hence everything has been done through online – mode. Similarly, the digital era has also brought forward e- books, writing and other artistic works. Hence, the issue here arises is whether the work of original authors or artists are protected by providing them with Copyright of the work done.

This article shows as to how the Internet copyright laws give the original authors or artists the right to exclude others from copying their work or claiming it as their own. On the other hand, it is pertinent to note that the online copyright protection does not protect facts, ideas, systems or any form of operational method; it only protects the way these things are expressed.

COPYRIGHT IN GENERAL

The protection of copyright covers a wide array of human creativity. Under the Berne Convention¹ a copyright covers all including literary and artistic works. Generally, the various rights included under copyright are the rights of authorship, reproduction, distribution, communication to the public, broadcasting, adaption and translation. These mentioned rights allow the copyright owner to control the use of these protected works. In India, we have the Copyright Act of 1957 which was many a time amended and recently was amended in the year 2000.

BASIC PRINCIPLE FOLLOWED

The basic principle on which copyright rests is that creativity needs to be rewarded like manual work and individuals who produce intellectual property should be able to live by their creative skills and efforts. Copyright ensures the owner the control over and participation in the proceeds of the commercial exploitation of their works.

While granting exclusive statutory rights to the owners, the copyright also ensures to balance the interests of society as a whole to fully participate in the scientific and cultural progress of mankind by two mean, firstly by limiting the time frame for which a work enjoys copyright protection, and secondly, by allowing certain uses without specific authorization by the holder of copyright, known as “*fair use*” provision in copyright parlance.

COPYRIGHTS LAWS ON INTERNET

The shape of copyright law has always been drawn by the development in the digital world, the emergence of digital technologies towards the concluding decades of the 21st century has raised a whole new set of challenges to the copyright regimes. All the work have been digitalized comprising of texts, images, sound, animation, video, and once digitalized the various elements are all “*equal*” and can be merged, transformed, manipulated or mixed to create an endless variety of new works.

¹ The Berne Convention for the Protection of Literary and Artistic Works, (1886) and the Paris Act of the Berne Convention (1971).

Before it so use to happen that the affect was only on the tangible physical copies of work. Some features of the digital media that have a bearing on copyright are mentioned below:

(1) REPLICATION

The way in which works is done in digital form can be replicated and there that is where the difficulty arises for the provisions of law to handle. In the existing copyright regime, there is a perception that making copies for personal or private use is considered fair – use and lawful. While the technology of reprography has improved dramatically, in digital domain, “*perfect*” multiple copies can be produced by the same technology which is employed for the use of digital product. Hence, it is difficult for the copyright owners to exercise control over replication of their works and to obtain compensation for the unauthorised replication. Although the copyright system in the print world has generally focused on sales of copies of copyrighted works, in the digital world the trend is to reap the financial rewards for creating and disseminating intellectual products by charging for access to and use of digital works and limiting rights to use and copy these products. The older technologies of photocopying and taping allowed only mechanical copying by individual consumers, but in limited quantities, requiring considerable time, and of a lower quality than the original. Moreover, the copies were physically located in the same place as the person making the copy. On the Internet, in contrast, one can make an unlimited number of copies, virtually instantaneously, without any degradation in quality. The result could be the disruption of traditional markets for the sale of copies of computer programs, music, art, books and movies.

(2) EASE OF TRANSMISSION

Digital technologies have brought in a new form of transmission of copies of a work. Traditional transmission of a work was material copy based, which could be on paper in the case of a book, or a tape or film in the case of a phonogram, or a motion picture. This has now been replaced by material-less transmission, through computer bits and bytes. The physical carrier of content has been done away with and Internet is being used for transmitting all kinds of copyright works like books, music, movies, computer software, and many more. This is a characteristic of digital media that poses problems for traditional Intellectual Property Rights systems for the ease with which digital works can be transmitted and used by multiple users, compared to paper and analogue versions of the works. A pirated version of a digital work can be loaded into a

computer connected to the Internet and hence can be made available and transmitted across the globe in a matter of seconds. Digital transmission of copyrighted works has enabled new services in the form of specialized news and data services, commercial online services and new emerging services like video – on - demand, television and music services. All these services function with Internet as the delivery medium.

TEST OF ORIGINALITY – VITAL TO PROVE

A database is eligible for copyright protection if it is a result of great deal of effort, skill and labour. For getting such protection it has to satisfy the test of “*originality*”. Compilation of non-original works may also possess the requisite originality. Original does not mean the expression of original or inventive thought. Copyright laws are not concerned with the origin of ideas, but with the expression of thoughts and in the case of literary work with the expression of thoughts in print or in writing.

The compiling author makes his selection of individual items of the database to include them in an -

1. Orderly manner
2. Arrangement in a effective way for users
3. Direction of compilation is sufficiently original.

The originality, which is required, is related to the expression of thought, but copyright law does not require that the expression must be in original or novel form only that work must not be copied from another work and it should originate from the author. Over the centuries Courts have examined whether or not a work has “*originality*” to determine if it may receive copyright protection. *Kamar International v. Russ Berrie And Company*² held that originality is the sine qua non of copyright. Originality requires an author to contribute something more than a “*merely trivial*” variation which is recognizably his own”.

THE ISSUE OF OWNERSHIP

² *Kamar International v. Russ Berrie and Company*, 657 F.2d 1059, 1061 (9th Cir. 1981).

Under the Indian Copyright Law, the right of first owner is very essential and the same can be determined as follows –

In the case of artistic work, dramatic or literary work created during the course of employment or under a contract of service or apprenticeship, for the purpose of publication of a newspaper, book, magazine, blogs, journals the author of such publication shall, in the absence of a contract to the contrary, be first owner of the copyright.

On the other hand, such ownership shall vest with the proprietor of the publication only for the limited purpose of publishing the said work or a reproduction of the work in a publication and, for all other purposes, the copyright shall vest with the author of the work.

In case of a photograph, painting or portrait has not been made for the purposes of publication in a periodical but has been made for any other purpose, in case of an absence of a contract to the contrary, the copyright in such work shall vest with the person at whose instance the work was created.

Whereas, in case of a cinematograph film, in the absence of a contract to the contrary, the copyright in the cinematograph film shall vest with only the producer of the film, since he or she is the only person at whose instance the film was made for a valuable consideration.

In case if a particular work is being made during the course of employment or under any contract of service or apprenticeship, the employer shall, in the absence of a contract to the contrary, be first owner of copyright. In case the work done is under the supervision of government, then the copyright of the work done will always vest with only the government.

COPYRIGHT – CAN IT BE JOINTLY OWNED BY AUTHORS?

With reference to the provisions of the Act, work of joint authorship means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from that of the contribution being made by the other author or authors. Hence, the provision of the Act recognizes joint authorship (even in form of online). The term copyright of a work of joint authorship is calculated with respect to the author that dies last.

REGISTRATION – IS IT REQUIRED?

Under Indian law, registration is not prerequisite for acquiring a copyright in a work. A copyright in a work is created when the work is created and given a material form, provided it is original work.

Therefore, the Act provides a particular procedure to be followed while registration. Such registration does not confer any special rights or privileges with respect to the registered copyrighted work. It is however suggested that the owner of such original works register it as the certificate of registration of copyright and the entries made on the Register serve as prima facie evidence in the Hon`ble Court when in case a dispute arise with relation to ownership of the work.

WHETHER ONLINE CONTENT ARE COPYRIGHTED?

We have observed as how now a day huge amount of content is being generated by using social media and internet. Every individual is an author of its own and the content created by him assuming the same to be an original work.

Hence the issue arose as to whether the content posted on social media site or any online medium be copyrighted. The answer to same is no. The online content or feed in the form of textual message, video or music sent by an individual is not original and hence cannot be entitled to copyright.

Some precautionary steps must be taken to deter potential infringers from copying any content by posting a notice that you assert copyright in the content. Technology must be used to detect copying of any online content elsewhere on the web.

CONCLUSION AND A WAY FORWARD

It is essential for the Internet users to keep in mind that copyright laws preclude most uses of other individual`s work. For example – internet users cannot transfer graphic images or works from works from websites and post the same elsewhere without permission from the owners. Similarly it is pertinent to note that they cannot scan materials published in periodicals or books and post the same on the web page. Although it is not an issue to use or reproduce some information found on the internet, it is always to be kept in mind to ask the relevant author or

creator for permission to use the original work done by him. Any kind of infringement done the person would be civil or criminally liable.



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