
INFRINGEMENT OF COPYRIGHT AND REMEDIES WITH SPECIAL REFERENCE TO INDIA

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ABSTRACT

Copyright is a subset of Intellectual Property Rights that grants the creator an exclusive legal right over his creation. As a creator (he/she/group) has the legal right to financial and other benefits associated with the creation. Violations of copyright law would result in a number of legal consequences. The present research paper would make an attempt to discuss in detail the laws related to copyright infringement in India and what are the lacunas which are present in the existing law regime.

Keywords: Copyright Law; Copyright Infringement; Copyright exceptions; Copyright and Libraries

Introduction

God gave humans the ability to observe and think, which drives them to search for physical and biological resources on the planet. Using his imagination and creativity, man has created many arts or products to meet the changing needs of his and society's interest, comfort, and convenience, which is important for the country's economic development. Patents, designs, trademarks, copyrights, confidential information, and industrial property are all examples of intellectual property. The current study attempts to discuss the Copyright Act of 1957 through the lens of selected Indian legal cases. The present paper would make an in depth analysis on the legal provision related to copyright infringement and also would try to find out the lacunas present in the Indian copyright act.

If there is no effective way to address a right's violation, the right doesn't even exist. A copyright holder in India is entitled to specific remedies in the event of infringement under the Copyright Act, 1957. According to the Act, there are three different sorts of remedies possible for infringement:

Research question

- what are the important provision and laws mentioned under the indian copyright act which deals with the infringement of copyright violation
- What are lacunas and faults available in the Indian copyright act which needs to be addressed urgently.
- How the copyright laws of Uk and USA are different from India.

What is copyright law?

Copyright is a legal right granted to the creator or a group of individuals to protect their work or creativity from reproduction, adaptation, translation, distribution, and public performance by others without the creator's/person responsible for the work's existence's prior permission.

The purpose of copyright is to protect and reward the general benefits of authors' labour on the produced work. It encourages authors to create and continue with new works on a regular basis.

To get protection from the copyright law the work should possess the following

- The work must be an original one (Original means, the work has been created from inspiration and not copied from any other existing sources. The work must have been created for the first time)
- It must be fixed in any tangible form
- Must be First publication

An original work, should not be published before:

- Work published after the death of author, at the time of death author must own the citizenship in India
- In case, work published out of India, at that time author must be citizen of India

As per Indian Copyright Act section 13¹ of Chapter III, the protection is given to the following works;

- Literary works
- Musical works
- Dramatic works
- Artistic works
- Cinematograph films
- Architectural works
- Sound recordings
- Computer program/software

¹ Indian Copyright Act, 1957, § 13.

The existence of a right is meaningless unless an effective remedy for redressing its violation is provided. In India, a copyright owner is entitled to certain remedies under the Copyright Act, 1957 in the event of infringement. Under the Act, there are three types of remedies available for infringement:

- Civil remedies
- Administrative remedies
- criminal remedies

Civil remedies can be further divided into two types

- preventive civil remedies, and
- compensatory remedies

Preventive civil remedies

These remedies are used before the actual act of infringement occurs or before the damage occurs. As a result, they are also the most widely used remedies.

Interlocutory injunction

The most important remedy for copyright infringement is an injunction. Injunction refers to a judicial process in which one who is threatening to infringe on the legal or equitable rights of another is restrained from beginning or continuing such act, or is ordered to restore matters to the state they were in prior to the action. The copyright owner usually wants quick and effective relief to prevent further infringements of his copyright and further damage to his business, and he cannot afford to wait years for the full trial to take place. As a result, the law grants the plaintiff interim relief in the form of an interlocutory injunction. The plaintiff who obtains an interlocutory injunction has a significant advantage because the defendant is stopped for doing further damage.

Comparison of injunction provision of India with USA and UK

In a case for granting an interlocutory injunction in the United States, a standard four-part test

was established:

- Whether the plaintiff has an adequate legal remedy or will suffer irreparable harm if the injunction is not issued.
- Whether the plaintiff's threatened injury outweighs the defendant's potential harm from the injunction.
- Whether the plaintiff has a reasonable chance of success on the merits; and
- Whether granting an interlocutory injunction will be detrimental to the public interest²

Injunction Provision in UK

In the United Kingdom, the usual approach was to consider whether the plaintiff had established a prima facie case of copyright infringement, taking into account the apparent merits of the defendant's proposed defense at trial. If a prima facie case is established, the court considers whether the balance of convenience favors restraining the defendant until the trial or allowing the plaintiff to recover damages at the trial for any infringements committed by the defendant during the interim period³.

Courts in India have also used a similar three-pronged test to grant interlocutory or temporary injunctions in cases involving infringement.

Mareva injunction

- The Mareva injunction is a type of interlocutory injunction that prohibits the defendant from disposing of assets that may be required to satisfy the plaintiff or claim or from removing them from the court's jurisdiction. In *CBS v. Lambert*⁴ The Mareva injunction was granted, but the main assets were cars, and the order included a provision requiring the defendant to disclose their whereabouts.
- In India, the Copyright Act of 1957 provides for an interlocutory injunction against

² Atari Inc. v. North America Philips Consumer Electronics Corpn., 672 F 2d 607, 613 (7th cir 1932)

³ Harbuns v. Bhairo, I.L.R. 5C 259 (P.C.)

⁴ 1983 F.S.R 127

copyright infringement. Order XXXIX⁵ grants an interlocutory injunction. Rules 1 and 2 of the 1908 Code of Civil Procedure. In India, the principles outlined in English precedents are frequently relied on and followed.

- In *Macmillan and Company Ltd. v K and J Cooper*⁶, the court ruled that the plaintiffs had established a prima facie case for the issuance of a temporary injunction under Order XXXIX⁷. Rule 2 of the Civil Produce Code against the defendant, who had brought out a book containing a selection from the plaintiff's book. In this case, it was determined that there was a prima facie case for the issue of a temporary injunction. The injunction, of course holds good only during the pendency of the proceeding before the trial court.

Some notable cases on injunction

The Supreme Court in *Gujarat Bottling Company Ltd. v. Coca Cola Company*⁸ observed: “The decision whether or not to grant an interlocutory injunction has to be taken at time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence”.

Himalaya Drug Co. V. Sumit

In Himalaya Drug Co. V. Sumit, a permanent injunction was also granted to the plaintiff for the infringement of his copyright in the herbal database, as well as each herbal write up / description that comprised the herbal database. The court stated that the plaintiff expended significant time, labor, skill, and money in preparing this database of ayurvedic herbs, and that because the defendants chose not to appear or refute any of these statements, the same stands were established.

Mirabai Films Pvt. Ltd v. Siti Cable Network and others

The appellant was the producer of the film 'Monsoon Wedding,' and the respondents were cable television operators who provided cable television networks, cable Internet access, and other

⁵ Civil Procedure code ,1908 order 39.

⁶ A.I.R. 1924 P.C. 75.

⁷ Civil Procedure code ,1908 order 39.

⁸ A.I.R. 1995 S.C. 2372

related services throughout the country through their associate/subsidiary companies, distributors, franchisees, assignees, head ends, and cable operators. The appellant claimed that respondents were habitual offenders in broadcasting pirated copies of films and were planning to do so in the case of 'Monsoon Wedding,' causing irreparable harm and loss to the appellant if not restrained.

The court while granting temporary injunction to the appellant held “we have no doubt that appellant had done its part as it claims that it owned the film’s copyright and enjoyed its exclusive right to deal with it, be that in its marketing, distribution or selling it or communicating it by whatever means including through cable networks in the films or any right to indulge in its exhibition or communication had gone uncontroverted in the absence of respondent’s written statement. So has its plea that the balance of convenience was on its side and that it would suffer irreparable loss and injury even by a single telecast of respondents and their distributor, franchisees which could reach several lakhs of homes at one time.”

Anton Pillar Order

The legal procedure always gives both parties an equal opportunity to present their case. However, on the plaintiff's application, the court may issue an ex-parte order requiring the defendant to allow the plaintiff, accompanied by a lawyer, to enter his premises and inspect relevant documents and articles, making copies or removing them for safe custody. This whole process is called anton pillar order . The court will issue such an order only if the plaintiff makes the most complete disclosure of all material facts within his knowledge in his application and the court is convinced.

Compensatory Civil Remedies:

There are three types of compensatory civil remedies for copyright infringement:

- Damages for concession;
- Delivery up of infringing copies; and
- Account of profits.

Damages as a compensatory remedy: The purpose of a monetary award is to return the

plaintiff to his pre-infringement position. As a result, such damages are compensatory. Infringement of intellectual property rights is a tort, and the overarching principle in tort law is that damages should be compensatory. Tort damages seek to rehabilitate the victim. Infringement of intellectual property rights is a tort, and the overarching principle in tort law is that damages should be compensatory. Tort damages seek to restore the victim to his pre-tort position. Damages are presumed if infringement is proven.

Additional Damages -with special comparison with UK

In the United Kingdom, the court has the authority to award such additional damages as justice may require, taking into account all circumstances, particularly the flagrancy of the infringement and any benefit accruing to the defendant as a result of the infringement. Additional damages may be awarded if the defendant's conduct was deceptive and treacherous. Furthermore, the plaintiff's emotional distress, as well as the indignities and distress suffered by the plaintiff, must be considered when awarding additional damages.

The Copyright Act, 1957 in India makes no provision for the award of additional damages in special circumstances such as flagrant infringement or the defendant's fortune reaped as a result of his misdeed. However, courts in India have no prohibition on awarding exemplary or punitive damages in appropriate cases.

Delivery up: damages for conversion: The Copyright Act, 1957 of India states that all infringing copies of any work in which copyright exists, as well as all plates used or intended to be used for the production of such copies, are the property of the owner of the copyright. It then entitles him to take legal action to reclaim possession of the infringing copies and plates or to convert them.

ADMINISTRATIVE REMEDY

Administrative remedies include petitioning the Registrar of Copyrights to prohibit the importation of infringing copies into India when the infringement occurs through such importation, delivering confiscated infringing copies to the owner of the copyright, and seeking delivery of the confiscated infringing copies. This remedy is available under section 53(1) of

the act⁹.

India Ltd. v. Birendra Bahadur Pandey and Others

The Gramophone Company of India Ltd., the appellant in this case, was the owner of copyright in musical records and cassettes. The appellant learned from the Calcutta customs authorities that a shipment of pre-recorded cassettes sent by Universal Overseas Private Ltd., Singapore to M/s Sungawa Enterprises, Kathmandu, Nepal had arrived by ship at the Calcutta port and was awaiting shipment to Nepal. Due to the broken condition of the consignment lying in the Calcutta docks, the appellant discovered that a significant number of cassettes were pirated works. Appellant sought protection under section 53¹⁰ of the act

In an action brought under Section 53¹¹ of the Copyright Act of 1957, the appellant sought the intervention of the Registrar of Copyrights. The appellant filed a writ petition in the Calcutta High Court seeking a writ in the nature of mandamus to compel the Registrar to pass an appropriate order under Section 53 and to prevent the cassettes from being released from the custody of the custom authorities because the Registrar was not acting expeditiously on the applicant's application and because it was anticipated that the pirated cassettes would be released for transportation to Nepal.

Section 53(2)

Section 53(2) of the Act authorizes the Registrar of Copyrights, or anyone acting on his behalf, to (a) enter any ship, dock, or premises where any of the copies mentioned in Section 53(1) may be found, and (b) examine such copies. The purpose of the preceding provision is to determine whether such copies infringe on the applicant's copyright in his or her work. The Registrar or any person authorized by him in this regard is required by Rule 23 of the Copyright Rules, 1958, to take action under Section 53(2) in collaboration with customs authorities.

CRIMINAL REMEDIES

The owner of the copyright can file criminal charges against the infringer. The criminal remedy is distinct and distinct from other remedies, and it can be used concurrently to stop further

⁹ Indian Copyright act, 1957, § 53(1)

¹⁰ Indian Copyright act, 1957, § 53

¹¹ Indian Copyright act, 1957, § 53

infringement and punish the infringer. The existence of a civil suit does not justify the suspension of criminal proceedings involving the same issue. Furthermore, a criminal complaint cannot be dismissed solely because the dispute is civil in nature.

Criminal remedies are more effective than civil remedies because they can be resolved faster. Furthermore, criminal proceedings directly attack an infringer's honor and social status, as a result of which he may seek an out-of-court settlement to save his reputation. the element of mens rea must be present.

Important sections under criminal remedies

Sections 63¹² to 70¹³ of the Act deal with copyright offenses. Section 63 makes it a crime to knowingly infringe:

- the copyright in a work;
- or any other right conferred by the Act (except the resale share right in original copies as provided by section 53A), or to aid and abet such infringement.

It is clarified, however, that the construction of a building or other structure that infringes or would infringe the copyright in the same other work if completed is not an offense and thus not punishable.

Punishment

Infringement of copyright is punishable by imprisonment for a term not less than six months but not less than three years and a fine not less than Rs. 50,000/- but not less than Rs. 2 lakhs. When the infringement was not committed for profit in the course of trade or business, the court has discretion to reduce the minimum term of imprisonment and the minimum fine. For the second and subsequent convictions, the minimum term of imprisonment is increased to one year and the minimum fine is increased to Rs.1 lakh, which may be relaxed for adequate and special reasons to be stated in the judgment where the infringement was not committed for

¹² Indian Copyright act, 1957, § 63

¹³ Indian Copyright act, 1957, § 70

profit in the course of trade or business. The maximum punishment, however, remains unchanged.

The offense under Section 63 of the Copyright Act of 1957 is not bailable. Section 438¹⁴ of the Criminal Procedures Code may be applied in the case of an offense punishable under Section 63 of the Act.

Indian copyright act 1957, a critical analysis (Analyzing the lacunas under the act)

No liability imposed on the internet service provider.

Sections 13 and 67 of the Copyrights Act (1957) prohibit copying of sound recordings, digital images, literary works, and other literary works without the permission of the copyright holder. However, it does not impose any liability for violations committed by Internet Service Providers (ISP). The works of copyright holders are now distributed on the internet via ISPs. There is uncertainty about the scope of copyright laws covering breaches or violations on the internet.

Original act did not covered the provision related to online piracy and fraud

It was clear that the 1957 version of the Copyrights Act was insufficient to deal with online piracy and copyright violations on the internet. As a result, amendments were introduced. Section 65A of the Copyright Amendment Act of 2012 was introduced to address various aspects of online piracy and copyright violations.

Jurisdictional issues

The involvement of multiple people in online copyright infringement complicates determining jurisdiction. In these cases, neither the Information Technology Act nor the Civil Procedure Code specify how jurisdiction will be determined. To make the process more efficient, a clear set of rules or guidelines must be established. In India, infringement proceedings are primarily instituted under Section 62 of the Copyright Act, 1957, but the section needs to be updated to be properly enforced because it only states that proceedings are to be instituted when the infringement occurs from a reasonable distance from the original residence, and the wordings

¹⁴ Criminal Procedure Code, 1973, § 438

are so vague that as of now, the infringement can occur when the person resides in another part of the world. However, there have been Supreme Court decisions dealing with determining internet jurisdiction. However, in order for a change to occur, the Copyright Act of 1957 and the Information Technology Act should be updated to current norms in determining jurisdiction and should follow the jurisdictional theories that are uniformly followed in almost all countries around the world.

Issue in imposing penalty

Imposing liability is a major issue when it comes to copyright infringement on the internet. Because it is necessary to determine to what extent someone is liable or did it intentionally in order to punish any offender. In any internet infringement case, several people are involved, making it difficult to determine who is responsible and who is not. This complicates copyright law on the internet even more.

Conclusion

A country's socioeconomic development is always dependent on its people's creativity and invention, and it cannot be effective without proper administration and enforcement of copyright laws. The new path of global finance development is one of creativity and innovation. Copyright is a serious issue when it comes to protecting intellectual property. Today, there is a large market for piracy literature, which has an impact on the author of the original copyright work. As a result, there is a current need to raise public awareness about the economic, social, and cultural significance of copyright among all segments of society. An ideal copyright protection regime would balance the rights of all stakeholders. On the one hand, India suffers significant economic losses as a result of rampant piracy, particularly online; on the other hand, the country's unique socioeconomic conditions make it necessary to disregard IPRs to some extent for the greater good. In these circumstances, perhaps the emphasis should be on effective implementation of existing remedies rather than introducing new remedies in addition to existing provisions, so that genuine exceptions to IPRs are not eroded. With the paradigm shift in India's legal regime governing the subject, it remains to be seen whether such a balance can be maintained.