

Critical Analysis of Copyright Infringement in India

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Abstract: In theory, a copyright infringement investigation entails three basic steps: determining whether the work is protected by copyright; (ii) determining whether the allegedly infringing act falls within the scope of distinctiveness available for that work; and (iii) determining whether the act is infringing in nature. This article's scope is confined to express copyright infringement. According to Section 13 of the Indian Copyright Act, copyright exists in “original” literary, dramatic, artistic, and musical works, as well as cinematographic films and sound recordings.

Keywords: Copyright; Infringement; Protection; Circulation; Creation of work

1. INTRODUCTION

Copyright is a well-known concept. With the arrival of machines in the field of printing, which supplanted handwriting at the same time, it became a protected right. The earliest law dates from 1223, when the rules of the University of Paris permitted for the duplication of texts purely for the university's use. Because religious literature was authored only and there was no concept of a market system in society for its propagation, there were no concerns with copying in the early days. The idea that an author

should have exclusive “copyright” to his work began to take shape at the turn of the eighteenth century.¹

1.1 The Origin of the Copyright Act

In India, the first copyright law was enacted in 1914. This was just a duplicate of the Copyright Act of 1911 in the United Kingdom, with changes to make it applicable to British India at the time. The Copyright Act of 1957, which is still in effect today, incorporated many of the

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concepts and clauses of the United Kingdom Act of 1956, as well as a few new ones. The current copyright legislation in India is the aforementioned Copyright Act, 1957, as amended. The scope of the works, on the other hand, has been the subject of a number of legal interpretations.²

2. ESSENTIAL INGREDIENTS OF INFRINGEMENT OF COPYRIGHT

A copyright infringement occurs when one or more of the following acts occur in a work:

- a) Duplication of the work;
- b) Publication of the work;
- c) Communication of the work to open;
- d) Recitation of the work to the public;
- e) Making of variation and transformation of the work

To put it another way, the following are the circumstances surrounding copyright infringement, according to the Supreme Court of India in the landmark case of R.G. Anand v. Deluxe Films:

- i. When an idea, topic, storyline, historical or legendary truth is recreated, copyright is not infringed.

- ii. When the same concept is expanded in a number of ways, it is evident that resemblance is unavoidable because the base is shared.
- iii. A better test is to check if an onlooker or spectator is obviously of belief with an inimitable appearance after reading or seeing both works, yet the next work turns out to be a replica of the original.
- iv. Where the subject matter is the same but is presented and processed in a different way, the subsequent work is an entirely new work, there is no possibility of copyright infringement.

3. STANDARD FOR RESOLVING THE CONTRAVENTION

The defining clause of the 1957 Act does not define infringement; nonetheless, Section 2(m) descriptions of an “infringing copy” provides certain standards and criteria for assessing whether an infringement has occurred. It means:

- (i) Any reproduction of a literary, dramatic, musical, or artistic work that is not in the form of a cinematograph film;
- (ii) In the case of a cinematograph film, any copy made on any medium and by any method;
- (iii) In the case of a

² *Id*

sound recording, any additional recording created by any means that contains the same sound recording;³

There is no breach of the plaintiff's rights when a defendant exerts such intellectual effort on what he has taken, according to the universal view. The ultimate test, however, is whether a significant part of the plaintiff's work was copied in the defendant's work. "We received Sunlight on the stated", started the plaintiff's song in the case of **Glyn v. Weston**. In his song, the defendant said, "We got coffee, we got tea". A petition for an injunction against the defendant had been filed with the court by the plaintiff. The court imposed a temporary restraining order.

4. REMEDY FOR INFRINGEMENT OF COPYRIGHT

Under the Copyright Act of 1957, copyright infringement can result in both civil and criminal penalties, including:

- i. **Civil Remedies:** Sections 54 through 62 of the Copyright Act concern civil remedies. As a result, Copyright owners are entitled to all civil remedies,

including as injunctions, damages, and accounting.

- ii. **Criminal Remedies:** The criminal remedies are covered by Sections 63 to 70 of the Copyright Act 1957.⁴

5. CONCLUSION

A copyright violation occurs when someone other than the copyright owner copies the "work." This means that while the content of the work isn't protected, the manner in which the idea is expressed is. There have been many pirate movies, but just one about Jack Sparrow. The plaintiff must establish that the defendant duplicated his work in any way possible, and such proof prevents the defendant from escape liability by claiming ignorance of the copyright-protected work.⁵

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https://shodhganga.inflibnet.ac.in/bitstream/10603/17248/1/13/13_chapter%207.pdf

⁴ *Id*

⁵ Dr. B.L. Wadehra, Law Relating to Intellectual Property, Universal Law Publishing Co., 2010, 4th Edition