

BASICS OF COPYRIGHT

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BASICS OF COPYRIGHT

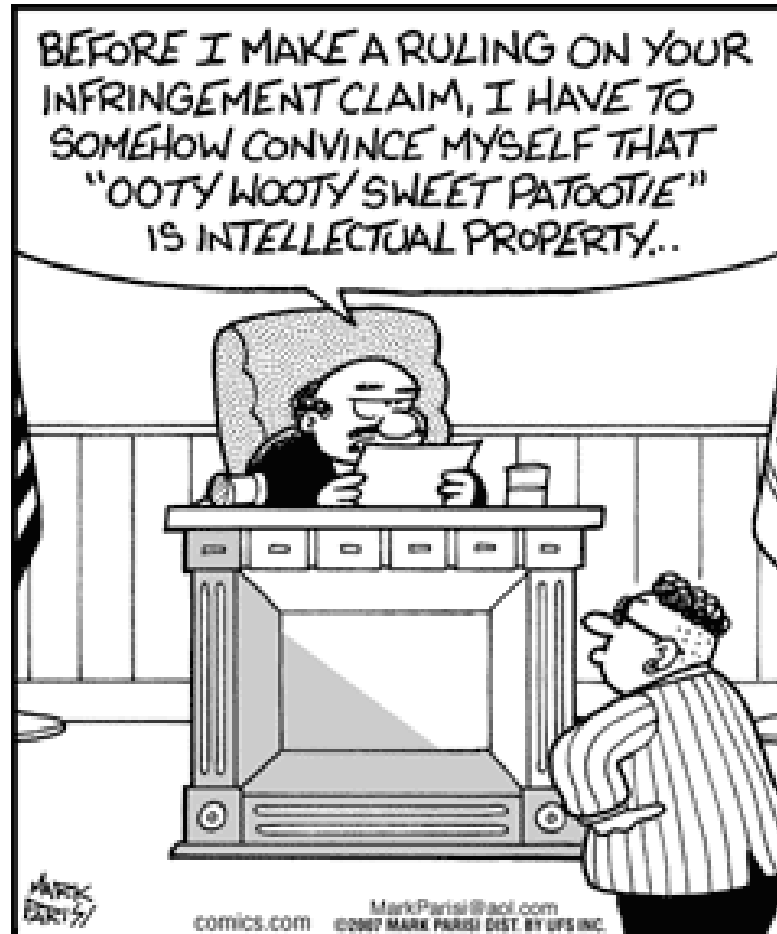
- Copyright is a property right
- It subsists in all original literary, musical, dramatic and artistic works
- It also subsists in sound recordings and cinematographic films
- The law, confers upon the copyright owner certain exclusive rights to do certain things pertaining to the work

BASICS OF COPYRIGHT

Those exclusive rights are:

- The right to make copies
- The right to distribute those copies
- Play/ perform/ show the work in public
- Broadcast the work
- Make an adaptation of the work etc

- If any third party does any of these acts with out the copyright owner's permission then infringement will arise
- It has to be borne in mind that the intention of copyright law is not to foster monopolies
- Theoretically it is very much possible for people to produce identical works



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BASICS OF COPYRIGHT

- Thus if a work is an independent work then naturally copyright will subsist in it
- Another important feature of copyright is that it subsists automatically and there is no need for any formal registration
- However the work should be fixed in a medium , i.e. fixation is a pre requisite , the medium can be a piece of paper, cassette, pen drive etc
- Copyright has a time span, generally it is the life of the author plus 60 years after which it will become part of the public domain

BASICS OF COPYRIGHT

Requirements of copyright

- Originality
- Fixation
- Originality requirement is confined to literary, dramatic, musical and artistic works
- It does not apply to sound recordings, films, broadcasts etc
- Originality does not mean that the work should be inventive novel, stylish or unique,

BASICS OF COPYRIGHT

- There is no qualitative threshold for originality
- The plain meaning of originality is to make sure that the work has originated from the author / creator
- Thus the work should not be copied from some other source
- In other words, originality means that the author must have utilized his skill, judgment and labour in making the work.
- As already noted the standard of originality has been set at a very low level, this is very true in the case of countries like U.K. and India
- There has been a systematic evolution in the judicial interpretation of originality

Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber, 61(1995)DLT 6

- The plaintiff was in the business of publishes mail order catalogues dealing with several consumer items, which were posted, to the select list of the plaintiff's clients.
- The defendant was once an employee of the plaintiff and after leaving his job with the plaintiff the defendant had established himself as a competitor by entering into mail order shopping business.
- Somehow he got a copy of the database, which was a guarded secret of the plaintiff and started making use of the same

Basics of Copyright

- The principal question, which arose for consideration, was whether a database consisting of compilation of mailing addresses of customers could be subject matter of a copyright.
- The court made it clear that a compilation of addresses developed by any one by devoting time, money labour and skill, would result in a literary work, even if the sources might be commonly situated.



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Idea –Expression Dichotomy

- Along with originality, idea-expression dichotomy also plays a lead role in copyright jurisprudence
- To be very simple, idea-expression divide or idea-expression dichotomy is a concept which is generally designed to protect the fixed expression of an idea rather than the basic idea itself.
- This principle has played a lead role in making sure that ideas/principles/concepts, which are considered as the basic building blocks of any work, will always remain in public domain and there can be no monopoly over them

Idea –Expression Dichotomy

- Within any copyrighted work, a line can be drawn between those elements that the copyright protects, i.e. the "expression," and those elements that the copyright does not protect, i.e., the ideas/concepts/philosophies etc
- The idea/expression dichotomy embodies a fundamental principle of copyright law and it balances the interest in guaranteeing appropriate incentives for creation and securing free access to ideas
- The US Copyright law makes it clear that there shall be no protection for ideas, concepts, principles, procedures etc

Idea –Expression Dichotomy

- Thus it is not an infringement if someone takes the idea/concept behind a book or a painting
- Idea in simple words covers different things such as the ideas which inspired the work, the subject matter of the work, or it may be the general style in which a work is created (modern painting, samurai architecture etc)
- Expression means the most detailed plot including the settings, incidents, sequence of events and special characters if any
- The exclusion of ideas from copyright protection is an important technique used to reconcile the interests of the copyright owners against the general public

Idea –Expression Dichotomy

- The origins of the idea-expression dichotomy in U.S.A can be traced to the Supreme Court case of *Baker v. Selden*, 101 U.S. 99 (1880)
- In the said case Charles Selden got a copyright in a book, which dealt with his particular bookkeeping system.
- The book consisted of an introductory essay explaining the system of book-keeping to which were annexed certain forms or blanks consisting of ruled lines and headings, which illustrated how the said system of book keeping had to be carried out.

Idea –Expression Dichotomy

- Later on Baker made accounting books, which made use of a similar plan so far as results were concerned; but made a different arrangement of the columns, and used different headings.
- The allegation was that Baker had used Selden's system of accounting, however there was no allegation that Baker had actually copied the particular forms contained in Selden's book
- The main question before the court was whether the exclusive property in a system of bookkeeping could be claimed, under the law of copyright, by means of a book in which that system was explained

Idea –Expression Dichotomy

- Court held that the copyright of a book on book-keeping could not secure the exclusive right to make, sell, and use account-books prepared upon the plan set forth in such book.
- Although the idea-expression distinction is well recognised in USA, the courts in U.K. and other common law jurisdictions have also refused to extend copyright protection to a mere idea
- In the famous case of *Kenrick v. Lawrence* (1890) LR 25 QBD. 99, the plaintiffs conceived the idea of printing cards bearing a representation of a hand holding a pencil so that it could be used at elections for the guidance of illiterate voters in the marking of their ballot papers.

Idea –Expression Dichotomy

- The plaintiffs published the said drawing and subsequently the defendants published similar cards with a hand holding a pencil with a slightly different position, and it was admitted that the idea was taken from the plaintiffs' cards
- Thus the court in the case refused to grant any protection to the idea.
- The Indian Supreme Court has comprehensively dealt with idea-expression dichotomy in the landmark case of *R.G. Anand v. Delux Films*, A.I.R. 1978 SC 1613.
- The issue involved the copying of a film from a play, the main theme of the play is provincialism and the prejudice of persons belonging to one state against persons belonging to other states.

Idea –Expression Dichotomy

- The play has concentrated only on one aspect of provincialism i.e. whether there can be a marriage between the persons belonging to one state with those belonging to other states
- Whereas in the film the theme revolves around (1) two aspects of provincialism viz. the role of provincialism in regard to marriage and in regard to renting out accommodation (2) evils of a caste ridden society and (3) the evils of dowry
- The Court made it clear that there can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner, arrangement and expression of the idea by the author

Idea –Expression Dichotomy

- In the recent case of *Barbara Taylor Bradford v. Sahara Media Entertainment Ltd* PTC 2004 (28) 474., the appellant sued for infringement of copyright of her 1979 best seller "**A Woman of Substance**" and wanted to stop a serial of the respondent "**Karishma - a miracle of destiny**".
- The only material on which petitioners base their claim is an interview given to a journalist by the producer of the serial wherein he mentioned that the serial has taken the "rags to riches" theme of the book.
- Court made it very clear that there could not be any copyright in the theme and observed that infringement could be established only by comparing and showing similarity of details, events, situations, expressions of language etc

Basics of Copyright

Subsistence of copyright

- Copyright subsists in original literary, dramatic, musical and artistic works
- It also subsists in sound recordings and cinematographic films
- Literary work is any work, other than a dramatic or musical work, which is written, spoken, or sung,
- It certainly includes works like, time-tables, compilations, databases, football coupons, question papers etc
- Thus in the case of a song the lyrics will be considered as a literary work

Basics of Copyright

- The term "literary" work has never implied any requirement that the work must have any literary style or merit
- Rather, the word "literary" refers to the nature of the work, that is, one in which the expression is conveyed by means of words
- In accordance with these principles, virtually every product of writing, speech or song is likely to be a literary work
- A vast array of works have been protected as such, whether the product of substantial creative endeavour such as a novels, newspaper articles or examination papers or more mundane things such as ordinary letters, written advertisements, rules for games and formulae.

Basics of Copyright

- It is not necessary that the work should convey any information to the ordinary reader.
- A work which is written in telegraphic code is a literary work and is thus protectable even though it may mean nothing to the person who does not have knowledge of the same, *Anderson (D. P.) & Co Ltd v The Lieber Code Co* [1917] 2 K.B. 469;
- Under the Indian Law, "literary work" includes computer programmes, tables and compilations including computer "literary data bases, (Sec 2(o))

Dramatic Works

- To constitute a dramatic work, it had to be more than just "dramatic", in particular it had to be a work of action.

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- Generally a dramatic work, means a work of dance, drama or mime
- it is a work of action, with or without words or music, which is capable of being performed before an audience
- A work consisting of words intended to be spoken or sung, whether in costume or not, would not therefore be a dramatic work unless the performance of the words is to be accompanied by action
- Under the Indian definition dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form that is fixed in writing or otherwise
- The Indian law makes it clear that a cinematograph film cannot be a dramatic work.

Basics of Copyright

- In U.K. after the *Norowzian v. Arks Ltd* (2000) FSR 363, a film can also be considered as a dramatic work
- The claimant was a director of advertising films. In 1992 he directed a short film called *Joy*, consisting of a man dancing to music.
- The striking feature of the visual impact of the film was the apparent sudden changes of position of the man which could never have been performed in reality. This effect was produced by the use of an editing technique known as "jump cutting".
- The trial court held that a dramatic work means a work which was capable of being physically performed

Basics of Copyright

- However the court of appeals reversed this and held that a film will often, be a work of action and it is capable of being performed before an audience
- The court of appeals liberally interpreted the requirement that a dramatic work must be "capable of being performed" to include performances by artificial means such as the playing of a film

Whether television formats are dramatic works ?

- The legal position with regard to television formats seems shaky

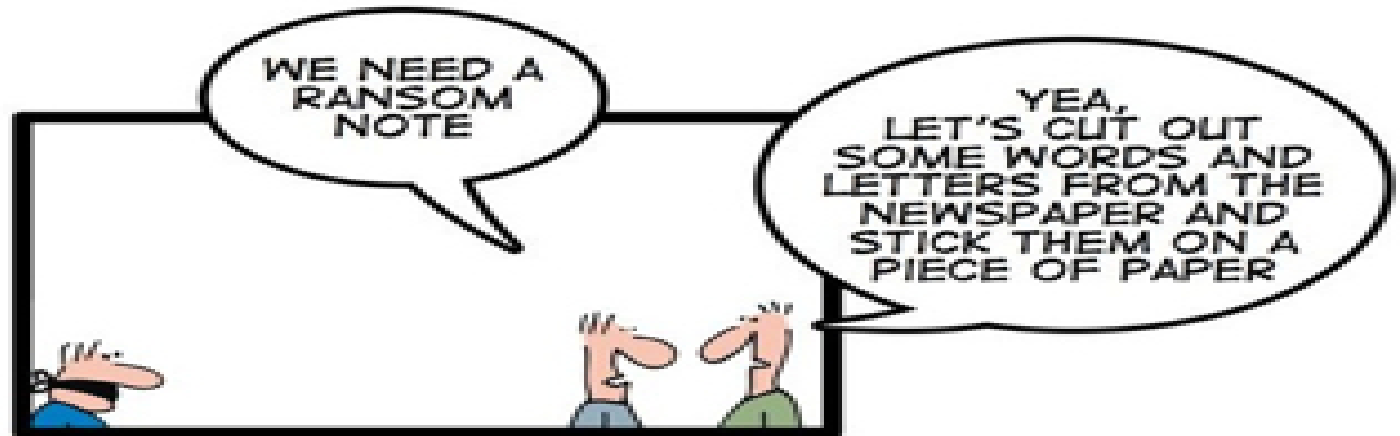
Basics of Copyright

- The Privy Council of the U.K. in *Green v Broadcasting Corporation of New Zealand*, [1989] R.P.C. 700 (PC), dismissed the appeal of Green, the author and compare of a talent quest broadcast titled **Opportunity Knocks** to prevent the Broadcasting Corporation of New Zealand from using a similar show under the same name.
- Apart from the title, the elements which appeared in both shows and which remained constant in all episodes were the use of sponsors to introduce contestants, a "clapometer" as a means of assessing audience reaction and certain catch-phrases, like "*This is your show, folks, and I do mean you*"

Basics of Copyright

- Privy Council refused to recognise that copyright subsisted in the scripts or "dramatic format" of Opportunity Knocks
- It held that a dramatic work must have sufficient unity to be capable of performance, and this was lacking in the said talent show
- Furthermore the format lacked the certainty with respect to the subject matter.

KIDNAPPING MADE EASY



geek & poke



**RULE 1:
HANDS OFF FROM
LAWYERS!**

Basics of Copyright

Musical Works

- It consists of the music notations and excludes any words or action intended to be sung or spoken
- Going by the dictionary definition, music means sounds in melodic or harmonic combination, whether produced by voice or instruments
- While an essential ingredient of a musical work is obviously that it be capable of being sensed by the human ear, mere sounds are not necessarily music

Basics of Copyright

- There is no requirement in the statutory definition of a musical work that the music must be expressed in writing or other notation, however, as with a literary and a dramatic work, for music to be the subject matter of copyright it must satisfy the requirement as to fixation
- The definition of a musical work clarifies that it does not include words intended to be sung or spoken with the music or action intended to be performed with the music
- This provision was introduced to avoid any doubt about the distinction between the music itself, on the one hand, and words to be sung or performed with music on the other
- A dramatic work may include music: then music will be entitled to a separate copyright, notwithstanding that the music also forms an integral part of the dramatic work

Basics of Copyright

Artistic Works

- It includes paintings, drawings, diagrams, charts, plans, photos, maps, engravings, sculptures etc irrespective of artistic quality
- Works of architecture like buildings
- Works of artistic craftsmanship e.g. specially designed jewellery, designer furniture etc
- Works described under the first category are artistic works, regardless of whether they have any artistic quality
- This would safeguard utilitarian/functional works like such as drawings for engineering equipments, photos made for scientific purposes, weather charts etc

Infringement

Infringement can be broadly classified into two

- Primary infringement
- Secondary infringement
- Primary infringement deals with the real act of copying,
- Secondary infringement deals with other kinds of dealing like selling pirated books, importing etc

- In any action for infringement the plaintiff has to show the following:
- Plaintiff is the owner of the work
- Defendant has carried out any of the activities falling within the copyright holder's domain
- The Defendant's work was derived from the copyright work

- Upon being sued for infringement the defendant may rely upon certain defences
- Here the law provides certain exceptions
- Defences come into the picture once the plaintiff establishes that copyright has been infringed
- Upon proving this the burden shifts to the defendant to show that his act comes under any of the exceptions

Exceptions are sometimes beneficial because

- It promotes and encourages the creation of certain works like parodies
- It avoids the need to have cumbersome licensing agreement
- It protects the right of privacy
- It prevents the abuse of monopolies

Fair Dealing

Indian Position

- In India Sec 52 deals with defences to infringement, The Indian Law allows the following
- a fair dealing with a literary (except a computer program), dramatic, musical or artistic work for the purposes of private use, including research
- criticism or review, whether of that work or of any other work*
- Fair dealing for the purpose of reporting current events in a newspaper, magazine or similar periodical*

Fair Dealing

- by broadcast or in a cinematograph film or by means of photographs
 - Publication in a collection, with the bona fide intention for the use of educational institutions, and so described in the title*, Sec 52 (1) (g)
 - Any Act of a Legislature can be reproduced or published together with any commentary thereon or any other original matter
 - Publishing in newspaper magazine or periodical an article on current economic political social or religious topics * Sec 52 (1) (m)
- * Proper acknowledgement needed

Fair Dealing

- *Syndicate of Press of the University of Cambridge & Anr v. B.D.Bhandari & Anr*, PTC 2005 (31) 58
- Defendants printing and publishing three guides in their name, containing a verbatim reproduction of plaintiff's work including complete set of exercises and answer keys, scheme of exercises, answers and placement of topics etc
- Defendants pleaded that they have acknowledged the work and also sought exemption under Sec 52(1)(h),
- As per sec 52 (1)(h) the reproduction of a literary, dramatic, musical or artistic work as part of the questions be answered in an examination or in answers to such questions shall not constitute infringement of copyright

Fair Dealing

- Court rejected both the contentions and held that merely acknowledging authorship of parent work does not by itself confer any right to appropriate copyright of original author
- Sec 52(1)(h) would be applicable only when material from the original is reproduced as a part of the questions to be answered in an examination or in answers to such questions in an examination
- In the present case the reproduction is not made as a part of the questions and answers; rather the complete set of questions and answer keys is copied from the original work

Remedies

- Civil, criminal and administrative remedies can be availed in the case of copyright infringement
- Civil Remedies: Civil remedies for enforcement of copyright includes injunction, damages or account of profits, delivery of the infringing copies etc
- Injunction can be of four types: interlocutory, perpetual, mandatory or Mareva
- Temporary or interlocutory injunction is the most commonly granted remedy
- This is an immediate remedy against infringement available to the copyright owner and is granted after the suit for infringement is filed, and during the pendency of the suit

- For a temporary injunction the plaintiff has to make out (i) a prima facie case for the relief sought, (ii) show that the balance of convenience is in his favour and (iii) that if the temporary injunction is not granted it will cause irreparable injury to the plaintiff
- If the court is satisfied that all the conditions are fulfilled, it may issue a temporary injunction to restrain the defendant from committing infringement
- In case of account of profits, the infringer is required to hand over his unjust gains to the party whose rights he has infringed and in the case of damages, he is required to compensate the party wronged for the losses that the party suffered.

Criminal Remedies

- Under the Copyright Act, infringement of copyright is punishable with imprisonment, which may extend from a minimum punishment of 6 months to maximum of 3 years and with a fine not less than fifty thousand rupees and extending up to two lakh rupees.
- For the second and subsequent conviction the minimum term of imprisonment is increased to one year and minimum fine is one lakh rupees
- Copyright Infringement is a cognizable offence and an officer not below the rank of sub-inspector has the power to seize/search without warrant,
- All infringing copies of books / plates which are used for the purpose of making such copies, can be ordered by the court to be delivered to the owner of the copyright in the mark

Administrative Remedies

- An application can be made by the owner of copyright in any work or by his duly authorized agent, to the Registrar of Copyrights to ban the import of infringing copies into India and the delivery of infringing copies of the work which were earlier confiscated from infringer to the owner of the copyright.

THANK YOU FOR NOT ASKING QUESTIONS?

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