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PUBLIC INTEREST ISSUES IN COPYRIGHT

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ABSTRACT

The present century will predominantly be known by its knowledge and information based economy, and therefore, the importance of Intellectual Property cannot be ignored. “Thou shall not steal”. This is the moral basis of the protective provisions of the law of Copyright. In this new and modern digital era and with tremendous technological development, the subject of Copyright has become more significant. It has to play a vital role in the modern economic system. If the work is reproduced or exploited by the person other than the author, the person will be discouraged and demotivated to further produce new work. The copyright protection, therefore, has been extended to promote educational standards, social welfare, and intellectual creativity. The research paper would deal with the rights of the copyright owner, rights of the broadcasting owner, performer’s rights and Doctrine of Fair Deal. The expression ‘fair dealing is not explained anywhere in the Act. In Hubbard Vs. Vosper [1972] 2 Q.B.84 at 94-95, Lord Denning held that fair dealing is inevitably a matter of degree. In this regard, the recent case on fair dealing in Super Cassettes Industries Vs. Hamar Television Network Pvt.Ltd. (2011) (45) PTC 70 (Del), would also be analyzed. The researcher will also highlight the famous D.U. Photocopy case and public interest issues relating to the judgement. Undoubtedly piracy has become a worldwide problem and it is increasing at an alarming rate. The countries in the world are trying their level best to control it by taking stringent steps and measures. The development of technology has greatly helped the pirates. Moreover, the widespread use of the internet has triggered a sea-change in copyright law giving rise to the new challenges in the field. Hence the paper would come up with appropriate recommendations and suggestions.

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I. INTRODUCTION

Mahatma Gandhi died in 1948, bequeathing the Copyright in his works to a trust that he helped establish, the Navjivan Trust. A prolific writer, Gandhiji had authored several books and articles including his autobiography in Gujarati “Satya Na Prayogo”, “The Story of My Experiments with Truth” that has been translated into several other languages. Under Copyright Act, the copyright in his works was to remain for a period of sixty years after his death (Section 22). So from the year 2008, i.e. after 60 years of his assignation, his work will fall into public domain. As written by Shyamkrishna Balganesh¹ in his article “Gandhi and Copyright Pragmatism” as a leader of the Indian freedom movement, whose ideas and philosophy has influenced many people including Nelson Mandela to Martin Luther King Jr.’s role in civil rights movement, granting Gandhi’s work additional protection through an extension remained both politically expedient and morally justifiable. The United States had succeeded in effecting a similar extension for Walt Disney’s copyright in Mickey Mouse and India for Nobel Laureate Rabindranath Tagore's work in 1991.” Few Gandhi scholars wanted the term of the copyright to be extended, as they fear free use of his works would lead to exploitation of his writings by other publishers. The Navjivan Trust announced that they will not go for the extension of the term, but would allow Gandhi’s work to enter the public domain.² Ownership of Gandhi’s copyright was a huge source of income for the trust; it was willing to sacrifice this income in order to abide by Gandhi’s own principles and beliefs.

“Thou shall not steal.” This is the moral basis of the protective provisions of the Law of Copyright. The principle is that no one shall steal what belongs to another. The law does not permit anyone to make a profit and to appropriate to himself that which has been produced by the labour, skill and capital of another. ³

Copyright is a property right akin to the right to property under Article 300-A of the Constitution and is subject to reasonable restrictions.⁴ The right to property under Article 300-A is not confined to land alone and includes intangible assets.⁵

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² Gandhi’s work to go public 60 years after his death. (an article in Times of India)

³ *Walter v. Lane* 1990 AC 519 (HL), per Lord Halsbury

⁴ *Entertainment Network (India) Ltd v Super Cassette Industries Ltd.* (2008) 13 SCC 30.

⁵ *K.T.Plantations (P) Ltd v. State of Karnataka* (2011) 9 SCC 1; AIR 2011 SC 3430.

The law of Copyright is intended to prevent plagiarism and unfair exploitation of creative work. It is a natural extension of the freedom of speech and expression protected under Article 19(1)(a) of the Constitution. If an individual enjoys the freedom of speech and expression, he must also be guaranteed protection of the intellectual property in his expression, be it in the form of literary, dramatic, musical, artistic work, or a film or sound recording.

Copyright protection and a guarantee of material benefit to the creator of an original work is essential to ensure encouragement of creative work in all walks of life so that society can make cultural progress. Absence of such protection could demoralise creative artists to create new things. Also, since copyright protection is afforded not only to authors but to publishers and assignees of such work, if others were entitled to copy their works and profit from their sale, such persons would be hesitant to invest their resources in publishing and circulating original works.⁶ Writes G. Davis in Copyright and the Public Interest⁷ that “Copyright serves the public interest in freedom of expression. By enabling the creator to derive a financial reward from the work, his artistic independence and right to create and publish according to his own wish and conscience is assured”. Alternative methods of rewarding creators, such as patronage, whether by the State, or by individuals, carry the risk of control or censorship.

In recent times, with the tremendous technological development and economic growth in Industrial sectors, the subject of copyright has become more significant. It plays a vital role in the modern economic system.

In respect of Copyright, the Supreme Court of India in case of *Gramophone Co. v. Birender Bahadur Pandey*⁸ has observed, “An artistic, literary and Musical Work is the brain child of the author, the fruit of his labour and so, considered to his property. So highly, it is prized by all civilized nations that it is thought worthy of protection by national laws and international conventions.”

Copinger and Stoke James in copyright⁹ have expressed themselves on the nature of copyright as follows:

⁶ Madhavi Goradia Divan, *Facets of Media Law*(Eastern Book Company, 2006).

⁷ IIC Studies, Munich, 1994 XIV 173)

⁸ AIR 1984 SC 667

⁹ 13th Ed.1991 Edn., Sweet and Maxwell.

‘Copyright law is concerned, in essence, with the negative right of preventing the copying of physical material. It is not concerned with the reproduction of ideas, but with the reproduction of the form in which ideas are expressed.’

Originally Copyright Law was concerned with the field of literature and the arts, but to keep up with advances in technology, the protection given by copyright law has been considerably expanded over the years. Thus, today, protection has extended to (computer programs being protected as literary works), sound recordings, films, broadcasts, cable programmes and the typographical arrangements of published editions.

According to Black’s Law Dictionary the term “Copyright” is the property right in an original work of authorship (such as literary, musical, artistic, photographic, or film work) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform and display such works. The term ‘copyright’ is coined from its own ingredients, viz., ‘the right to copy’. The concept of copyright comprises the exclusive right of the owner of the works to make copies thereof, and to exclusively exercise various other rights granted to him by law.¹⁰

II. RIGHTS OF OWNER

The word copyright is not a single right, but it refers to a bundle of three rights namely,

A. THE EXCLUSIVE ECONOMIC RIGHT

As enumerated under section 14 of the Copyright Act, 1957, the author has the following economic rights:

- (a) The economic rights,
- (b) The adaptation rights,
- (c) The public performance rights,
- (d) The broadcasting right,
- (e) The cable casting right,

¹⁰ Sec 14 Copyright Act, 1957

- (f) The rental right.

B. MORAL RIGHTS OR SPECIAL RIGHTS OF THE AUTHOR

Even after the transfer of the economic rights, the author has certain moral rights.¹¹ These moral rights include:

- (a) Right to claim authorship of the work, and
- (b) Integrity right or the right to object to any distortion, mutilation, or other modification of the work.¹²

*Amarnath Sehgal v. Union of India*¹³ is a landmark case decided by the Delhi High Court, which for the first upheld the moral right of an author under the Indian Copyright Act and awarded damages. The government was also asked to return his mural. The plaintiff, Amar Nath Sehgal is a renowned artist and sculptor, who in the year 1957 created a mural in the lobby of Vigyan Bhawan, Delhi on the direction of appropriate authority. The Bronze sculpture so commissioned, of about 140 ft. long and 40 ft. in height took five years to complete and was placed on the wall of the Lobby in the Convention hall. This embellishment on a national architecture became a part of the Indian art heritage. However, in 1979, the mural was pulled down and consigned to the store room in damaged and dismantled condition without notice or prior permission of the plaintiff. He filed a petition under Section 57 of the Copyright Act, 1957 in the Delhi High Court that his moral right as an artist was infringed by the defendant. The Court held that the Moral rights are the soul of the author's works.

“The author has a right to preserve, protect and nurture his creations through his moral rights. A creative individual is uniquely invested with the power and mystique of original genius, creating a privileged relationship between a creative author and his work.”

Further, Section 57 of the Copyright Act, 1957 includes ‘destruction of a work of art’ as a ground as it is the extreme form of mutilation and reduces the volume of the author's creative corpus and affects his reputation prejudicially as being actionable under said section. Further, in relation to the work of an author, subject to the work attaining the status of a modern national

¹¹ Section 57 refers to the moral rights as “author's special rights.”

¹² *Amarnath Sehgal v. Union of India* 2005 (30) PTC 253 (DEL)

¹³ *Ibid*

treasure, the right would include an action to protect the integrity of the work in relation to the cultural heritage of the nation. The Court held that the plaintiff has a cause to maintain an action under Section 57 of the Copyright Act, 1957 even though the copyright in the mural stands vested in the defendants. It was further held that the defendants have not only violated the plaintiff's moral right of integrity in the mural but have also violated the integrity of the work in relation to the cultural heritage of the nation. The Court ordered the defendants to return to the plaintiff the remnants of the mural permanently with no rights vesting with the defendants henceforth and ordered the defendants to pay damages with costs. The decision taken by the single bench of the Delhi High Court was instrumental in determining the course of moral rights in the country.

C. NEIGHBOURING RIGHTS

Special rights are given to broadcasting organisations and performers under section 37 and 38 of the Copyright Act. These rights are referred to as “neighbouring rights” under international conventions.

The term ‘neighbouring rights’ is translated from the French words, “*Droits voisins*” that means “near to the musical work”. Neighbouring rights have developed parallel to the copyright and are also called “related rights” or “secondary rights.” The development of the technology resulted in the need not only to ensure protection of rights of authors of literary, dramatic, musical or artistic works but also to establish effective protection for the various intermediaries associated with the dissemination and broadcasting of works.¹⁴

In India, the Copyright Act nowhere uses the term “neighbouring rights” or “related rights”. However, the Copyright (Amendment) Act, 1994 incorporated sections 37 and 38 providing special rights to broadcasting organizations and performers, respectively. The producers of phonograms were granted copyright in 1994 by including “sound recordings” under section 13 dealing with works in which copyright subsists and enumerating the rights of the producers of sound recording in section 14 of the 1957 Act. The Amendment Act of 2012 inserted a new section 38A giving exclusive rights to performers and section 38B granting moral rights to the performers for the first time.

¹⁴ Alka Chawla *Law of Copyright and comparative Perspectives* (Lexis Nexis)

D. BROADCASTING RIGHTS

Section 37 of the Act confers a special right to every broadcasting organisation for its broadcasts, which is known as ‘broadcasting reproduction right.’ This right subsists until 25 years from the beginning of the calendar year next following the year in which the broadcast is made.¹⁵ During this period if any person, re-broadcasts the broadcast, causes the broadcast to be heard or seen in public on payment of any charges, makes any sound recording or visual recording of the broadcast, makes any reproduction of such sound or visual recording without any license, or sells or gives commercial rental or offer for sale such sound or visual recording amounts to infringement of broadcasting rights. However, there would be no infringement where the recording is for the private use of the person making the recording or is for bonafide teaching or research.¹⁶ Similarly, use of excerpts of a broadcast in the reporting of current events for bonafide review, teaching or research also would not amount to infringement.¹⁷

Now a days with innumerable TV and private FM radio channels there is a cut-throat competition among the sponsors to broadcast the programmes. With the help of Satellite transmission, broadcasting has become simple and effortless. Any event happening anywhere in the world can be broadcasted live on your TV channels. The Channel giants like Sony and Star TV takes broadcasting rights and will telecast the said programme. If for e.g.: Star TV has taken the broadcasting rights from BCCI for showing the cricket match live; only Star TV can show the cricket match to the viewers. If any other channels re-broadcast it, or cause the broadcast to be heard or seen by the public on payment of any charges, makes any sound recording or visual recording of the broadcast, makes any reproduction of such sound recording or visual recording without any license or sells or gives such sound recording or visual recording for commercial rental, then all such unauthorized actions will amount to infringement of the broadcasting rights.

In a recent broadcasting rights battle between Sony TV and Star TV, Star TV had won the Indian Premier League media rights including broadcast and digital rights for whopping price of Rs 16,347.50 crore for a five-year period from 2018 to 2022.¹⁸

¹⁵ Sec 37(2) of the Copyright Act, 1957

¹⁶ Sec 39(a) of the Copyright Act, 1957

¹⁷ Sec 39(b) of the Copyright Act, 1957

¹⁸ <http://cricket.rediff.com/commentary/2017/sep/04/liveupdates.htm> (last visited on 5th December 2017)

E. RIGHTS OF PERFORMERS

In olden days, there was a tremendous craze regarding live performance of the artists in the field of music, dance, and drama. Huge audience was attracted to see their favourite artist performing live on the stage. Also, it was of great pride for the artist to give live performance before their fan following. People used to wait in a long queue to see their favourite artist performing live on the stage. Unfortunately with the technological innovations performers are replaced by their recordings. It is cheaper for the sponsors to play their recordings instead of inviting the performer and paying him huge amount. This has resulted in a kind of technological unemployment for the performer.

Section 2(qq) was inserted in the Act for first time by the 1994 amendment, that defines “performer” to include an actor, singer, musician, dancer, acrobat, juggler, conjuror, snake charmer, a person delivering lecture or any other person who makes performance. A performer is conferred with a special right in relation to his performance known as the ‘performer’s right.’¹⁹ This right subsists for a period of 50 years.²⁰ Exceptions of infringement are same as that of the broadcast reproduction rights.²¹

III. DOCTRINE OF FAIR DEALING

The expression “fair dealing” is not defined anywhere in the Act. In *Hubbard v. Vosper*²² Lord Denning held that fair dealing is inevitably a matter of degree and one must consider the use made of them. Under section 52 of the Copyright Act, 1957 deals with nearly forty actions which shall not constitute an infringement of copyright. *Chancellor Masters and Scholars of University of Oxford v. Narender Publishing House*²³, the plaintiff claimed copyright of the book “Oxford Mathematics Part A and B” based on the syllabus of Class IX. Defendants copied all the questions from the Plaintiff’s book and prepared a guidebook titled “Teach Yourself Mathematics (fully solved).” The guide book provided step by step approach to finding answers to the questions. The defendants claimed the exemption under section 52(1) (a) of their work fell

¹⁹ Section 38(1)

²⁰ Section 38(2)

²¹ Section 39.

²² [1972] 2 Q.B. 84 at 94-95.

²³ 2008 (38) PTC 385 (Del)

under the ‘review’ of the book. In *Super Cassettes Industries v. Hamar Television Network Pvt. Ltd.*²⁴ the plaintiff who carries on the business under T-Series Brand of music cassettes sought an injunction against the defendant, a Bhojpuri channel restraining it from broadcasting its copyrighted works. The defendant took the defense of section 52(1)(a)(i) and (ii) by claiming that the alleged broadcast was in the nature of “review” for reporting current events. The court decided in favour of the plaintiff and summarised 13 broad principles of law which were enunciated in the judgments cited before him in the aspect of “fair dealing.” wherein it was stated that it is neither possible nor advisable to define the exact contours of fair dealing and it is a question of fact, degree and at the end of the day overall impression carried by the court. It was further stated that, the principle of freedom of expression will protect both information and ideas. It includes the right to publish and receive information. Public interest may in certain circumstances be so overwhelming that courts would not refrain from injuncting use of even ‘leaked information’ or even the right to use the ‘very words’ in which the aggrieved person has copyright, as at times, public interest may demand the use of the ‘very words’ to convey the message to the public at large. ‘Public interest’ and what ‘interests the public’ need not be same.

The public interest considerations in IP law have helped Indian courts when deciding infringement cases, and courts have leaned towards upholding socio-economic ideals such as access to education and public health. Issues such as lack of affordable medicines and access to knowledge are concerns which affect millions of lives in a country like India and therefore, cannot be overlooked when deciding to what extent limitation (if any) should be placed on private rights such as intellectual property rights. However, when public interest exceptions are interpreted too broadly by Indian courts, it raises concerns of abuse of public interest provisions as was in *The Chancellor Masters & Scholars of University of Oxford & ors. Vs. Rameshwari Photocopy Services & ors.*²⁵ popularly known as *DU photocopy case*. Rameshwari Photocopy shop, located in the precincts of the Delhi School of Economics was sued by International Publishers over the preparation and distribution of course packs to University students. The Plaintiff claimed that the course packs only contained the copyrighted material and the same were sold to the students. The defendants argued that the making of course packs by DU was

²⁴ 2011 (45) PTC 70 (Del)

²⁵ CS(OS) 2439/2012, I.As. No. 14632/2012 (of the plaintiffs u/O 39 R-1&2 CPC), 430/2013 (of D-2 u/O 39 R-4 CPC) & 3455/2013 (of D-3 u/O 39 R-4 CPC) decided on 16th September, 2016.

covered by educational exception. The outcome of this case is quite desirable one. The contours of the educational exception invite concerns of the misuse of this right at the expense of copyright holders. Further, an unfettered right to copy (as recognized by the Delhi High Court) risks exposing India to criticism in international forums for weak protection of intellectual property rights.

IV. CONCLUSION

Public Interest fundamentally refers to the recognition, protection and advancement of the general welfare and rights of the public. Despite the realization towards common well-being and general welfare there exists little consensus on the constitution of public interest.²⁶In the words of Justice Bhagwati while defining public interest quoted that:

“Redressing public injury, enforcing public duty, protecting social, collective, ‘diffused’ rights and interests or vindicating public interest.”²⁷

As quoted by RIAA’s²⁸ Neil Turkewitz

“Copyright protection advances the public interest, and good public policy must properly consider the role of intellectual property as a tool for economic emancipation, a catalyst for cultural diversity, and a powerful protector of individual dignity and fundamental human rights,”

Several cases related to public interest are filed in the court. Challenge before the court is to balance the needs of the citizens with the needs of the right holders. Nowadays, copyright infringement is a prevalent phenomenon throughout the globe and India is not an exception to this menace. Moreover, as a result of the advancement of technology, piracy has become a worldwide problem. It is increasing at an alarming rate all over the world. The countries in the world are trying their level best to control it by taking stringent steps and measures. The piracy of books, sound recording, and films has become very easy and common. The development of

²⁶ Rishika Taneja and Sidhant Kumar, *Privacy Law Principles, Injunctions and Compensation* (Eastern Book Company, Lucknow)

²⁷ *S.P. Gupta v. UOI* AIR 1982 SC 149.

²⁸ Recording Industry Association of America. is a trade organization that represents the recording industry in the United States. (Source Wikipedia) (last visited on 9th December, 2017).

new techniques of sound recording, audio/video-programming has greatly helped the pirates. In order to control the piracy, the Act was amended in the year 1983. Again, the Act was amended in the year 1992 for increasing the term of the copyright from fifty to sixty years from the death of owner of the copyright in all works. These days, everyone acknowledges the revolution in information access and delivery. Electronic information has changed the way we live, the way we work, the way we solve problems and at a basic level, it has changed the way we think.