

COPYRIGHT LAWS IN INDIA

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ABSTRACT

Copyright is a type of intellectual property laws and its involve giving authorship to creators of literary work which can be expressed in words, scheme, codes or any other form. It also includes musical, dramatic work, sound recordings and films. Copyright does not protect the idea but the expression of those ideas. Section 13ⁱ of the copyright act provides for protection of literary work and this right is given or vested in the owner by Section 14ⁱⁱ of the copyright act. The owner can only exercise this right or any other person licenced by the owner in this regard. These bundles of rights include right to publication, right to reproduction, right to adaptation, right to translation, etc. This protection is only conferred on the original work of the owner, meaning it is not copied from somewhere else. It commences from the moment when the work is created and the registration is optional. However, for better protection it is advisable to obtain registration. It is merely a prima facie proof maintained by the registrar and it does not confer rights. Section 17ⁱⁱⁱ of the copyright act provides that the author of the work is the first owner. However, if an employee in the scope of employment creates any work then in that case the employer become the owner.

TYPES OF RIGHTS

The copyright act provides protection to the economic and moral rights of the author. The economic rights by the author under section 14 of the act. The rights are in respect of literary, musical, dramatical and computer programs. The rights include reproducing the work in any form or storing it to perform the work or issue copies to the public or to make nay translation of the work. In computer programs the owner gets the right to give on hire or sell it. In artistic works, the owner gets the right to reproduce the work in material form including depiction of two-dimensional work into three or from three to two dimensional. In films the author has the right to a make copy or photograph of any image which is a part of that movie. It also includes to give on sell or hire or offer for sale or to communicate the movie to the public at large. They are similar in the case for sound recording. In addition, these rights the author of sculpture, painting will have a share in resale price of original copy only if he was the first owner of that work.

Moral rights are envisaged under section 57^{iv} of the act which classifies it as Integrity right and Paternity right. Paternity rights help the author in claiming the ownership of the work that he has done and to prevent other from claiming that piece of work. Right of Integrity helps the owner in preventing distortion, mutilation or any other altercations to his work which would prejudice his reputation.

COURT DOCUMENTS

In *Eastern Book company v. Navin J. Desai*^v, it was held that publication or reproduction of any judgement, or of any judicial authority or published under the control of any tribunal or court shall not constitute infringement of copyright. It is allowed and open for anybody to publish it. However, if there are any comments or commentary written by someone about a judgement then such work is entitled for copyright. Reproduction of any judgement is an exception under section 52(1)(q) ^{vi}of the act. No one can claim on the publishing of such work as well on the grounds that they had published it first. Changes in spelling, addition of quotes etc will not qualify for entitlement of copyright as such mistakes are trivial.

JURISDICTION

In *Caterpillar Inc v Kailash Nichani*^{vii}, it was held that section 62 makes significant and obvious departure that choice of jurisdiction should be governed keeping in mind the convenience of the defendant. The main purpose is to expose the wrongdoer with incontinence instead of forcing the sufferer to chase the former.

COGNIZANCE

In *David Pon Pandian v State*^{viii}, the Madras High court held that if the charge sheet is filed within the limitation period then the court can take cognizance under section 468^{ix} of Cr.P.C. The limitation period starts from the date of commission of the offence. The court cannot entertain the complaint if charge sheet is not filed.

INFRINGEMENT

The Madras High court in *Jolen Inc v Shoban Lal Jain*^x, held that the plaintiff allowing the defendant to carry a business under the same name of plaintiff for 7 years makes him prima facie guilty of acquiescence therefore cannot claim for infringement of the same.

The Andhra Pradesh High court in *Ushodaya Enterprises Ltd v T.V. Venugopal*^{xi}, held that even if the defendant has registered the carton under Trademark act, it will not be beneficial in this case because plaintiff owns the copyright of it and its registration is optional. Therefore, the plaintiff alleging infringement was justified.

FUTURE OF COPYRIGHT

With the amendments in 1994, the situation regarding copyright enforcement has improved. Earlier there were problems because it was required to get a court order for search which gave sufficient notice to the offender and he would have taken defensive steps before the implementation of such order. Now after the changes which made copyright infringement a

cognizable offence, it was possible to make the offender pay for such violation. Copying someone's book or work is equal to stealing someone's jewellery. However, there's a major difference because when a bank is robbed the newspaper is flooded with information but when someone's book is pirated or work is copied there is little or no news and everyone is in a state of oblivion. Copyright laws protect the expression of idea and not idea. Therefore, if a person is stealing idea and giving expression that idea in his own way, he cannot be held liable. Meaning two or more authors can produce work from a common source of information arranging that language in their own way. Strict laws and harsh methods are required in cases of book piracy because despite enforcing copyright to the best of their abilities, piracy hits authors a lot. Another area which needs to be focused is protection of authors from the licensee. There should be a model contract for protecting the author's right in the fast-changing world of technology.

CONCLUSION

The above discussion shows that copyright protection is effective and strong enough to take care of the concerned authors. The protection extends to traditional as well as the modern aspect of it. To face the increasing challenges posed by new and changed technology, the existing laws should be interpreted and expressed in such a manner that all facets of copyright are covered. This should be done in such a manner so that justice is done in every circumstances and facts of the case. Also, the existing laws should be amended as per the requirement of particular situation. The Information technology, 2000 should be used effectively to meet the challenges posed by IPR in this technology age. The judiciary for the protection of these rights should play an active role till the country has a stronger legal base.

REFERENCES

ⁱ See <https://indiankanoon.org/doc/4010217/>

ⁱⁱ See <https://indiankanoon.org/doc/1129646/>

ⁱⁱⁱ See <https://indiankanoon.org/doc/1404402/>

^{iv} see <https://indiankanoon.org/doc/1710491>

^v 2001 (58) DRJ 103

^{vi} the reproduction or publication of—

(i) any matter which has been published in any Official Gazette except an Act of a Legislature;

(ii) any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter;

(iii) the report of any committee, commission, council, board or other like body appointed by the Legislature, unless the reproduction or publication of such report is prohibited by the Government;

(iv) any judgment or order of a court, Tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the court, the Tribunal or other judicial authority, as the case may be;

^{vii} 2002 (24) PTC 405 Del

^{viii} 2001 (2) ALT Cri 344

^{ix} See <https://indiankanoon.org/doc/1599077/>

^x 2005 (30) PTC 385 Mad

^{xi} 2001 (4) ALD 723

