Reading Resource: Infringement of Copyright

This is a free reading resource for our Copyright Law course.

Check out our course here!

1. Introduction

The term "infringement" means violation of a law, an encroachment upon the rights of others. This concept has garnered not only legal attention but media attention as well. Everyday, we hear or read about a script writer or an author who alleges that a film company has infringed upon or stolen their idea.

In the realm of copyright law, it is a golden rule to never forget that a mere idea can never be granted copyright registration. It is only when an idea is developed or written down or given a structural format, it is considered eligible for copyright registration. **Chapter XI** under the Copyright Act 1957 deals with infringement of copyright.

So when does the Applicant know that his work has been infringed? This may happen at two stages:

a. Pre-Registration stage

When it comes to the knowledge of the Applicant that his work with the same title has been applied for registration, he may write an application to the Registrar objecting to the registration of the possible infringed work. The Registrar may then appoint a hearing wherein both the parties discuss the case. In this situation, the possible infringement is cut at the roots, at the beginning itself.

b. Post-Registration stage

Most of the literature available in India deals with infringement at the post registration stage. Also, this happens to be the most fertile landscape for infringements.

Did You Know?

Article 16 of the Berne Convention, 1886 deals with infringement of copyright. It reads as:

"(1) Infringing copies of a work shall be liable to seizure in any country of the Union where the work enjoys legal protection.
(2) The provisions of the preceding paragraph shall also apply to reproductions coming from a country where the work is not protected, or has ceased to be protected.
(3) The seizure shall take place in accordance with the legislation of each country"

2. Landmark case laws on copyright infringement

In ***R.G. Anand v. Delux Films and Ors***[1], the plaintiff, R. G. Anand, an architect by profession and also a playwright, dramatist and producer of several stage plays, wrote and produced a play called '*Hum Hindustani*' in 1953 which ran successfully and was re-staged in 1954, 1955 and in 1956. Aware of the interest of the plaintiff in filming the play in view of its increasing popularity, the second defendant, Mr. Mohan Sehgal, contacted the plaintiff.

In January, 1955, plaintiff met the second and third defendants and had detailed discussions about the play and its plot and the desirability of filming it. However, after this discussion, the plaintiff received no further communication from the second defendant. In May, 1955, the defendants started to make the film '*New Delhi*', which, the plaintiff gathered, was based on his play, "*Hum Hindustani*'. The defendant, however,

[1] See: https://indiankanoon.org/doc/1734007/

assured him that it was not so. In September, 1956, the movie was released and after viewing it, the plaintiff filed a suit for infringement of his copyright in his play 'Hum Hindustani'. His claims included damages, account of profits and a permanent injunction against the defendants restraining them from exhibiting the movie.

It was held by Hon'ble Supreme Court that:

> "*the play and the film revolve around the same theme of 'provincialism' but it is well established that* ***a mere idea cannot be the subject matter of copyright****. The story of the film portrayed two concerns of provincialism that it is firstly the function of provincialism with respect to marriage and secondly in relation to renting out accommodation. Further, it also dealt with issues such as evils of a society dominated by caste and the ills of dowry. The latter two issues have not been dealt in the play at all. Also, the play was restricted only to one aspect of provincialism which is regarding the marriage between people belonging to different states. Thus, in many ways the story and its depiction is quite different from the one in the play.*

It was not a case of violation of copyright. The similarities were trivial and not a 'substantial' or 'material' copy of the original play and the dissimilarities outweighed the similarities*.*

After seeing the play as well as the film no prudent person would conclude or consider the film to be a replica of the original play. If the play and the film is compared closely from scene to scene, circumstance to circumstance and with regards to climax to anti-climax, in consistency, management, purport and representation, the picture is significantly different from the play".

Another famous case was that of ***Barbara Taylor Bradford vs. Sahara Media Entertainment Ltd***[2]. The Appellant was a celebrated British American author of the book named "*A Woman of Substance*". The copyrights in this book were allegedly

[2] See: https://indiankanoon.org/doc/757852/

infringed. Claims for infringement were also made regarding two sequels of the said book and the serialized television version thereof which were produced by the authors' husband namely the 2nd appellant. The complaint was against a serial called "*Karishma - The Miracle of Destiny*" that was ready to be produced and televised by the 1st Respondent, a public limited company. In this case, the Calcutta High Court observed that:

> "*The interview mentions that the serial has taken the rags to riches theme of the book. It mentions some four other characters common to the serial and the book.* ***The Copyright Law does not protect basic plots and stock characters.*** *If it granted such protection, four or five writers writing 15 or 20 novels with stock characters and stock plots could stop all writers of pop literature from writing anything thenceforth. It is enough to refer in this regard to R.G. Anand's case (supra), paragraph 46, proposition No. 1 :- "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 and arrangement and expression of the idea by the author of the copyrighted work". Respondent No. 2, who granted to his woman friend journalist the interview, admitted to borrowing only the plot and some characters. Copyright infringement cannot be established on this alone. There is no prima facie case at all yet. Infringement can be established only by comparing and showing similarity of details, events, situations, expressions of language and imagination. Learned leading counsel of both sides had not even read the book. How can infringement be established when even the book has not been read ?*"

3. Tests for determining copyright infringement

The Indian Courts through a number of judgements have laid down or formulated various tests to gauge or determine copyright infringement. **The determination and**

extent of similarity, which becomes substantial, presents one of the most difficult questions in copyright law.[3] In other words, there should be enough resemblance between the two works that a layman can easily be confused regarding the origin or ownership of the work.

Another test could be the target group or the consumers who are the subject or core group of the infringing work. **Reach or access of a person** to another person work can also be a determining factor while determining infringement,

The Kerala High Court in ***Civic Chandran v. Ammini Amma***[4] followed an approach that could assist in deciding whether a parody is a copyright infringement or not. The Court took into consideration the following factors –

(i) **the quantum and value** of the matter taken in relation to the comments or criticism;

(ii) **the purpose** for which it is taken; and

(iii) **the likelihood of competition** between the two works (such an approach can provide the Courts with the necessary assistance to resolve the conflict between parody and copyright infringement).

Another three factor test has also been laid down in ***Ashdown v. Telegraph Group Ltd.,***[5] wherein it was held that:

"The success or failure of the defense depends on three factors: (a) whether the alleged fair dealing is in ***commercial competition*** *with the owner's exploitation or work, (b) whether the work has already been published or otherwise exposed to the public and (c) the amount and importance of the work which has been taken",*

---

[3] Yashojit Mitra,"*Copyright Protection of Indirect Copying of Computer Programs: Suggestions for Indian Courts*" Journal of Intellectual Property Rights Vol 8, March 2003, pp 103-111

[4] See: https://www.casemine.com/judgement/in/56e66b08607dba6b534374a3

[5] See: https://www.casemine.com/judgement/uk/5a8ff71760d03e7f57ea7612

4. Conclusion

Hence, as can be inferred from the preceding discussion, there is no one golden test of infringement that could be blindly applied in all cases. The Courts have to take into consideration different factors while delivering their judgment or observation. The key takeaway is that in order to avoid infringement of someone's hard work, it is always encouraged to give financial and moral credit to the author/owner of the copyright work.

This is the reason why most Hindi and English language cinematograph works often share the name of the author on whose work the particular film or web-series are based. Popular examples include '*The Zoya Factor*', '*Sacred Games*', '*Game of Thrones*', etc.

Further Reading

1. Infringement of Copyright, page 419, Shodhganga, available at ,https://shodhganga.inflibnet.ac.in/bitstream/10603/52362/15/15_chapter%2010.pdf.;

****

- *Constant follow-ups by a dedicated learning manager over email and WhatsApp to ensure that our courses have rigour and an element of care in an online environment*

*Check our course **here**.*