

Warner Bros. Enterprise Inc. vs. Otorrent.com & Ors.

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Abstract

Warner Bros v Otorrent.com & Ors.: Copyright is a type of intellectual property that protects the works of the artists. It protects the legal right of the owner/creator of any artistic work like painting/sound or visual recording etc. It means that it has given the right to copy to those whom it has approved to reproduce the original work made by the owner. Copyright law gives the artist and creators the exclusive right to protect their works and products from duplication of their work. It gives a sense of relief and protection to the original work of the creators. The Delhi High Court in the case Warner Bros. Inc. vs. Otorrent.com & Ors., CS(COMM) 367/2019 & I.A. 9854/2019, 9856/2019, and 6469/2022 have been granted summary judgement in accordance with CPC Order XIII A, which states as follows: The "Summary Judgement" rule, which is relevant to business lawsuits as defined by the business Courts Act, outlines the process by which the court may adjudicate a claim pertaining to any Commercial Dispute without recording oral testimony. According to Rule 2 of that document, an application for summary judgement may be submitted at any moment following service of the summons on the defendant and up until the framing of issues. In accordance with Rule 3, the court may grant summary judgement against a defendant or plaintiff on a claim if it determines that: (a) neither the plaintiff nor the defendant has a realistic chance of prevailing on the merits of the claim, as the case may be. (b) The defence should be dismissed without recording oral testimony if there are no additional compelling causes to do so. Followed by other Rules of the order which is enumerated in the Civil Procedure Code (Hereinafter referred as "CPC" for sake of brevity and convenience). As according to Rule 3 sub rule (a) which clearly state the grounds for seeking summary judgement is very much satisfied in the present case. The Honourable Court also issued an order allowing the plaintiff to include any resemble, redirect, or a numerical website that serves as an entry point to the websites of the defendants nos. 1–51 by submitting proper application in accordance with Order 1 Rule 10 of the CPC.

Keywords: CPC order XIII A, business courts act, oral testimony, civil procedure code

INTRODUCTION

Facts

Following Delaware law and the laws of the United States of America (hence referred to as "the United States of America" or "USA"), the party suing in this case is a global entertainment company/production house, for the sake of brevity and convenience), and has been engaged in the business of creating, producing, and distributing of motion pictures; moreover, the plaintiff is a very famous production house in Hollywood, headquartered in Burbank, California. The business is also well-known for its Warner Bros. film studio branch. Pictures Group, which includes a wide range of different production houses which are subsidiaries of the parent company/production house Warner Bros. The plaintiff company has also received many reputed awards like the Academy Award for 'Best Motion Picture' for *Agro* 2012.

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The plaintiff has an online presence that permits streaming any number of shows, television shows,

or animated films. It has impacted virtually all major and minor film and television production companies and businesses. The website allows streaming, downloading, and broadcasting, all of which are strictly prohibited, and it has been engaging in these illegal activities without first authorization or consent permission of the original owner and copy right holder of the said content as the movies and soundtrack or songs or video visuals are very much important to a production house as it is a discovery.

According to Section 2(f) of the Copyright Act of 1957 (from here on out referred to as "the Act" for brevity and convenience), a cinematograph movie is defined as a photographic recording that also encompasses sound recording that is associated with such visual recordings. The plaintiff/production house is a major maker of motion photographs. The producing company/plaintiff protects all copyright of its movies, films, cartoons, songs or video recordings which have been used or played or viewed or allowed it to be streamed on or download from the Defendant's website which has resulted in infringement by the Defendant, here the said movies, films, and cartoons or sound recordings or video recordings are available to stream and download for free by the Defendant website Otorrent.com which is being used by huge number of online viewers in India and around the Globe. By this it has infringed the copyright which is protected by Plaintiff/production house and due to which Plaintiff is sustaining huge losses in its business of online streaming from its own website or/and affiliated website as the said movies of the Plaintiff production houses are available for free on the website of the Defendant to download or stream online, for which the Plaintiff is charging some amount of money from the customer for watching the movies, shows, films and cartoons and earning profits. As the defendant is providing all the work of the plaintiff on its website Otorrents.com for free of cost to the customer, it is harming the profits and reward for hard work of such production which the plaintiff/production house is the true custodian of and is directly going into the pockets of the Defendants, here the LD. Counsel for the Plaintiff has not gone into much deep explaining this Hon'ble court, on how the Defendants are earning the profits which is based on technical operations and internet but have satisfied this Hon'ble court regarding the same.

In this case, the responding party is unlawfully and without permission streaming rebroadcasting, and disseminating content created by the plaintiff, who is the only owner of the copyrights that govern the material and which has been granted protection according to the Copyright Act.

According to the plaintiff, Defendant Nos. 1 and 51 are "rogue websites" (hence referred to as "rogue websites" for comfort and brevity"). Insofar as the fraudulent websites have violated the plaintiff's copyright under the provisions of the Act in the original content by streaming or hosting and by facilitating the use of the rogue websites, including by downloaded and streaming the plaintiff's original films, songs, and cartons for commercial use, the plaintiff has learned the extent of the copyright-infringing activity of the rogue websites through an inquiry conducted by a third party that the applicant appointed. The plaintiff also put forth that a cease-and-desist notice was served upon the rogue websites calling them to cease from engaging in such infringing activities and to shut the streaming of the said movies or songs or video recordings for which the copyright vests with the plaintiff. Although receiving legal notification, fraudulent websites continue to violate the plaintiff's legal entitlements to its original created content through releasing films, videos, or cartons from which the complaining party has obtained copyrights. The plaintiff has filed IA (Interlocutory Application) 6469 of 2022 under Order XIII-A of Code of Civil Procedure, 1908 (CPC), which is applicable to commercial matters, seeking a summary judgment. Further, an order was passed by the Hon'ble Court dt. 28.04.2022 and notice was issued to the defendant under the above application.

Issues Before the High Court

1. Whether or not the plaintiff's claim that Defendant's website has infringed its copyrights?
2. Whether a permanent injunction restraining Defendant No.1 on their web pages, or through the internet, in any way whatsoever, any cinematographic work, content, programme, or show over which Plaintiff owns copyright, from transmission, replicating, distributing, making available to the public, or aiding transportation?

Contentions of the Parties

According to the plaintiff's production company's position, the motion picture they produced qualifies as a cinematograph film under Section 2(f) of the Act since it is a work of art, a visual recording that also includes sound recordings. Since the plaintiff's works, films, and video images are distributed in, the plaintiff argues that the HC has jurisdiction to decide and hear this infringement matter under Sections 13(1), 13(2), and 5.

India would be entitled to all the rights and protections provided by the Act for the aforementioned works, films, videos, and audio recordings made by the plaintiff.

The lawsuit brought by the plaintiff is based on the allegation that the defendant(s) distributed, broadcasted, rebroadcasted, transmitted, streamed, and/or downloaded the defendant's content in violation of laws 1 and 51, referred to as the "rogue websites" for convenience and brevity. Additionally, the plaintiff claims that the rogue websites' unauthorised transmission and distribution of their content violated its copyright in the original works it generated, which were guaranteed protection under the Act. The plaintiff also contended that an investigation was conducted by an independent investigator, by which it came to the knowledge of the plaintiff that the Defendant is undertaking infringing activities, insofar as the rogue websites have violated the plaintiff's copyright under the Act's provisions for the original content by internet streaming, presenting, and/or facilitating, among other things, by downloading and streaming the plaintiff's original produced or created films for which copyright vests. The fraudulent websites received a cease-and-desist notification requesting that they cease their infringement-related activity. Despite receiving legal notification, the malicious websites persisted in violating the plaintiff's rights in connection with its work.

The senior attorney for the plaintiff refers to the decision in UTV Software Communication Ltd. v. 1337X & Ors. v. Coordinate Bench of this Hon'ble Court dated 10.04.2019, which deals with the identification of rogue websites [1].

DECISIONS AND FINDINGS

The HC noted that, first, the Court had granted an ex-parte ad-interim injunction against Defendant No. 1 and other similar domains, owners, website administrators, and entities that were to have been exposed during the course of the decisions and found to have been violating the plaintiff's private intellectual property rights. In the text of the Hon'ble Court, "Defendant No. 1 and comparable domains, the proprietors, website operators, and entities" *"they are hereby being restrained from hosting, streaming, reproducing, distributing, making available to the public and/or communicating to the public, or facilitating the same, in any manner, on their websites, through the internet any cinematograph work/content/show in relation to which plaintiff has copyright"*. The court has also put reliance on UTV supra judgment which was passed by the Coordinated Bench of this Hon'ble Court, as far as rouge website are concerned, moreover this Hon'ble Court by the same order directed Defendant nos. 2 to 10 of blocking the domain name 'Otorrents.com' and its URL <https://otorrents.com> with IP Add. 185.112.157.243 and also directed Defendant No. 11 and 12 to hang the abovementioned name of domain registered by the Defendant no. 1 and issue the required notification to various telecom service providers. Subsequently, the defendant Nos.1 and 51 were not appearing, despite notice having been issued to them, the Hon'ble Court decided that the suit can be heard and decided summarily if the opponent does not appear to present their side of the case. The plaintiffs have further decided not to contest the charge of copyright infringement despite having no genuine chance of successfully and fruitfully defending it. The present circumstance mainly concerns the enforcement of injunction orders that go into effect against shady websites that use the internet's anonymity to engage in illegal activities, like the copyright infringement in the current case, despite having no defence to the claim of counterfeiting. The Hon'ble Court issued the order based on the evidence submitted to the record and in consideration of the factors mentioned

by this Hon'ble Court in the case of UTV Software (supra). The HC determined that the case at hand is a good candidate for a summary judgement under Order XIII A of the CPC as it relates to the commercial dispute because defendants Nos. 1 through 51's website is rouge. Accordingly, the HC which was dealing with IA No. 6469 of 2022 which was filled under Order XIII A, as applicable to commercial disputes, seeking a summary judgment was allowed and all pending proceedings were also disposed of and the suit was decreed in the terms of prayer as mentioned therein in the plaint. By completing a suitable application under Order 1 Rule 10 of the CPC, which shall be backed by affidavit and proof as ordered in UTV Software (above), the plaintiff was also given the freedom to introduce any mirror/redirect/alphanumeric websites that allow access to Defendant Nos. 1 and 51.

WHAT IS COPYRIGHT IN CRUX?

Copyright is a type of intellectual property that protects the works of the artists. It protects the legal right of the owner/creator of any artistic work like painting/sound or visual recording etc. It means that it has given the right to copy to those whom it has approved to reproduce the original work made by the owner. Copyright law gives the artist and creators the exclusive right to protect their works and products from duplication of their work. It gives a sense of relief and protection to the original work of the creators [2].

Copyright includes in following original works:

- Dramatic works;
- Artistic works;
- Cinematographic works;
- Sound recording;
- Literary works; and
- Musical works.

Importance of Copyrights

1. *Security from Copyright infringement:* Copyright shields authors from copying, distributing, or using their works without permission. It acts as a deterrent to plagiarism, counterfeiting, and piracy, preserving the integrity of creative expressions and ensuring that creators receive recognition and reward for their efforts [3].
2. *Motivating Creators:* Copyright protection incentivizes creators by ensuring they have the exclusive right to profit from their creations. This encourages artistic and intellectual endeavours, fostering a vibrant cultural landscape and driving innovation in various fields.
3. *Business Value:* It has significant economic worth. It allows creators and copyright holders to monetize their works through licensing, sales, and other commercial arrangements. In then this promotes increased employment, economic expansion, and historical tourism [4].

COPYRIGHT INFRINGEMENT

When an original piece of work is duplicated, copyright is violated. It happens when someone makes use of a copyrighted work without getting the owner's consent. It includes sharing or distributing the original work without permission by the owner whether it is for commercial or non-commercial [5].

Consequences of Copyright Infringement

- *Monetary damages:* In case of proven infringement, the infringer will have to pay for the damages that has been done by his act to the owner of the product. The infringer will have to compensate for the losses in terms of penalty or by giving him the gained profit by sale of his product [6].
- *Legal action:* Owners of copyrights have the right to file a lawsuit against a violator. It may lead to legal action, financial penalties, and orders to stop the infringement.

- *Loss of Control*: Copyright infringement can strip the copyright holder of their exclusive rights and control over their work. This undermines their ability to monetize and exploit their creation fully [7].
- *Reputation damage*: Copyright infringement can damage the reputation of the owner by the infringer because it may lead to questioning his credibility, especially in the creative industry [8].

Remedies for Copyright Infringement

1. *Civil remedy*: Under Section 55 of The Copyright Act, 1957, provides for such remedies which can be availed by the owner of any artistic work like sound recordings/video or painting, etc. The person who is the proprietor of the copyright shall be entitled to all such injunctive, monetary, and other relief [9, 2].
2. The copyright holder may pursue criminal action against the offender under Section 63 of The Copyright Act, 1957, in which case a 6-month prison sentence may be requested for the offending. If the nature of the offense is such that it has or will harm the business of copyright holder or the wrongdoer is habitual offender, which may be extended to 3 years and with a fine of Rs. 50,000, which may extend to Rs.2 lakhs [10].

CONCLUSION

From the above understanding about copyright and the consequences which will have to be faced by the person who infringes the right of the holder with regards to the original work. The above case of Warner Bros. v. Utorrent.com is a limestone case in matters of copyrights and infringement. The Hon'ble HC of Delhi has rightly observed that the website which was showing the content which is protected under the provisions of the Copyright Act has infringed said rights, the website despite knowing of such infringement activity by it and its related website continued to showcase/download/stream the content of the production house. Being the world-famous production house having a catalogue of different types of content being protected under the production house name in India as well different nations of the world, it is the real owner of the said work which can be very much included in the list of artistic work under the Copyright Act; same needs to be prevented to be telecasted without the permission of the production house.

Banning the rouge website by the Hon'ble HC can be said to setting an example for those who have been doing such infringement activities, the court also gave liberty to the production house to file an additional application for that website which is also using its content without due permission and that the said non-included website would also be liable to be prosecuted under the provision of the Copyright Act and can be tagged with the current plaint.

REFERENCES

1. UTV Software Communication Ltd. v. 1337X & Ors. v. Coordinate Bench. 2019 (SCC Online Del 8002).
2. Legal service India (2022). Copyright Law in India - Copyright Office, Copyright act [Online]. Legal service India. 2022 [cited 2023 Aug 18]. Available from: <https://www.legalserviceindia.com/article/1195-Copyright-Law-in-India.html>
3. Mitali. (2021 Nov 1). Importance of copyright registration in India. [Online]. Maklaw. [cited 2023 Aug 18]. Available from: <https://maklaw.in/importance-of-copyright-registration-in-india/>
4. Smith Gordon V, Vladimir Yossifov. (2013 Aug). Monetization of Copyright Assets by Creative Enterprises Creative Industries -Booklet No. 7. [Online]. Available from: https://www.wipo.int/edocs/pubdocs/en/copyright/955/wipo_pub_955.pdf
5. Acharya M. (2022 Oct 28). Copyright Infringement: Meaning, Examples, Cases in India. [Online]. ClearTax. [cited 2023 Aug 18]. Available from: <https://cleartax.in/s/copyright-infringement>
6. Bytescare Blog. (2023 Jun23). Assessing Intellectual Property Infringement Damages: A Comprehensive Guide. [Online]. Bytescare Blog. [cited 2023 Aug 18]. Available from: <https://bytescare.com/blog/intellectual-property-infringement-damages/>

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7. Ibid.
 8. Diganth Raj Sehgal. (2019 Aug 22). Copyright Infringement. [Online]. iPleaders. [cited 2023 Aug 18]. Available from: <https://blog.ipleaders.in/copyright-infringement/>
 9. Suhani Dhariwal. (2022). What Is Copyright Infringement and Its Remedies in India [Online]. Writing Law. [cited 2023 Aug 18]. Available from: <https://www.writinglaw.com/copyright-infringement-and-its-remedies-in-india/>
 10. Advocate Khoj. (2023). Copyright Act, 1957: Bare Acts: Law Library. [Online]. Advocate khoj. [cited 2023 Aug 18]. Available from: <https://www.advocatekhoj.com/library/bareacts/copyright/index.php?Title=Copyright%20Act,%201957>