

An Analysis of the Rights and Remedies Available to Copyright Holders

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Abstract

Just like the Median Strips running down the middle of the road that safely guides a lonely passenger traversing the dark roads less travelled, similarly, Copyright Laws act like a beacon of hope for innovators who aim to push the boundaries of their fields without hesitation or concern. The Global economy is expanding at an inconceivable rate that astonishes even the most astute economist who tries to predict any future growth rate. This phenomenon is occurring due to the rapid pace of innovation being carried out by the brightest minds across the globe. Although innovation is a boon, any innovation without rights to protect them would only hamper our growth, as individuals would be discouraged from innovating if they are left unsure whether their inventions and any vested rights would be protected or not. Protection would refer to proper recognition of the creator (of the invention) and the economic and moral rights that come attached with the creation of an invention. This is where the concept of Copyright Law comes into existence. This paper highlights the author's research on the topic of the rights of copyright holders and remedies available to them in case of copyright infringement and the effectiveness of such remedies in modern times.

Keywords: Copyrights, rights, remedies, copyright infringement, invention, WIPO, TRIPS

INTRODUCTION

World Intellectual Property Organisation (WIPO) defines Copyright (also known as author's right) as "a legal term used to describe the rights that creators have over their literary and artistic works [1]." It is a form of **Intellectual Property** law that protects original works of authorship including literary, dramatic, musical, and artistic works. Strong copyright laws foster innovation in an economy, encouraging modernisation and promoting growth. Trespassing over such rights results in copyright infringement, which the governments try to avoid by establishing serious punishments for the offender. Thus, it is usually necessary for a legal system to have strong Copyright law frameworks in place to ensure proper protection of a creator's works. In India, as per Section 17 of the Copyright Act of 1957, the creator of a work is really the first owner of the copyright, unless the employer gets rights to the copyright in case the employee produces the work in the course of scope of employment.

The Indian copyright legislation is in line with international copyright norms outlined in various international agreements like the TRIPS and the Berne Convention [2]. In this paper, the author would first discuss the various rights of the copyright owners under Indian legislation. The second chapter would discuss the various remedies available to an individual against copyright infringement, and the various punishments available against offenders under the Act. In the final chapter, the author would examine the effectiveness of the remedies available against copyright infringement as provided by our legal system and give his comments on the matter. The

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author would then sum up the paper with his closing remarks at the end. Along the course of the paper, the author would also discuss various landmark case laws which he feels would highlight the significance of the present topic. For the purpose of writing this paper, the author used a qualitative approach to research methodology.

CHAPTER I: RIGHTS AVAILABLE TO COPYRIGHT HOLDERS

As introduced in the paper, the term ‘Copyright’ refers to a bundle of rights that protects a creator’s right over his/her literary and artistic works from being copied and sold by other parties without their express permission. Literary and artistic works include creations such as novels, poems, computer programs, musical compositions, paintings, drawings, motion pictures, etc, and also include dramatical productions, sound recordings, and architectural plans. This protection afforded by the law to the creators is only limited to expressions, and not simply to ideas, procedures, etc. However, before we discuss the remedies available against copyright infringement, let us first discuss the rights given to the creators by the Indian legal system via The Copyright Act 1957 (hereinafter referred to as the act), supported by the Copyright Rules 1958.

Firstly, under copyright laws, a creator has two types of rights, namely economic and moral rights. Section 14 of the Act confers this bundle of exclusive rights onto the creators of such works if such creators are duly licensed as owners of the copyright in question. Economic rights are those which allow the creator to derive a financial benefit from their work when used by others. This also includes the creator’s right to authorise or prohibit the use of their work by other parties. Under this, the creator of these works has economic rights to reproduce the work in any medium, as well as perform it in public or communicate it to the public. The creator also enjoys the right to hire, sell, or give on hire a copy of the computer program, if that is the copyright in question. The same rights apply to artistic work as well so as to reproduce, modify, or communicate with the public about their work. The creator of a cinematograph film has the right to make and sell a copy of the film or to give or sell a copy of the film, to the public or to a third party. The same rights are granted to the author of sound recordings.

On the other hand, moral rights are those which protect the non-economic interests of the creator. Section 57 of the Act divides the moral right into two sub-parts, namely (i) Right of paternity and (ii) Right of integrity. The right of paternity (also known as the Right of Attribution) simply refers to the creators right to claim authorship of his/her work, whereas the right of integrity enables the creator to prevent distortion, mutilation, or any other type of alteration to the work, which would be prejudicial to his honour or reputation. An example of the same would be if a creator opposes changes to his cinematographic work if he feels that such changes may harm his reputation as a scriptwriter due to the indecent nature of the change, then in such a situation he would be protected by copyright laws and allowed to make his own decisions.

In the international scenario, the concept of IP laws and in relation copyrights came into existence for the first time in the Berne Convention of 1886, wherein the first international agreement was approved by various countries to maintain a system of protection for artistic and literary works which worked to ensure that a creator would always get protection for their works in their respective countries. The system further strengthened under the dual branches of the Geneva Convention 1961, wherein protection was granted to producers and phonograms restricting unauthorised access and duplication for a period of 20 years, and the Rome Convention 1961, which solely focused on the protection of producers, phonograms, another broadcasting organizations. Then came the TRIPS Agreement of 1994, which extended the period of protection in the case of producers and phonograms to 50 years, and twenty years for broadcasting organizations. The TRIPS Agreement also prohibited any individual from accessing a copyright holder’s work without their consent. Such international agreements in turn strengthen the various IP and copyright laws across the globe, allowing innovation to flourish at an astonishing pace.

Under the broad umbrella of the afore-mentioned rights in India, various other sub-rights also exist, which helps a creator to have firm control over his/her works, namely:

Right of Reproduction

After the creator has registered his work as his copyright, the right to reproduction is one of the most important rights that he gains under copyright laws. This right allows the creator of the copyright to make unlimited copies of the protected work in any format. For example, an artist makes copies of his own songs on a CD after he has registered his work with the concerned authorities. Under copyright laws, other parties need to have the creator's prior permission for copying such works, unless they can show that such copying is not done to generate any financial gain.

Right to Distribute

The right to distribute directly stems from the right to reproduction. Under this right, the creator has the freedom to disseminate his work in any manner he deems fit and also has the ability to transfer all or some of his rights regarding the copyright to another individual if he feels inclined to do so.

Right to Publicly Perform

As the right clearly states, the copyright holder has the right to publicly perform any of his works. He may, for example, present plays based on his work or perform at public concerts in regard to his works. This right also includes the creator's right to broadcast his work and make his work publicly available on the Internet. Thus, this right gives the creator control over the terms and conditions under which his work can be accessed by other parties.

Right to make Derivative Works

Under this right, the creator has the ability to utilise his work in a variety of ways, including making adaptations or translations of his works. A prime example of this right can be seen in the Indian cinema industry, wherein Bollywood a lot of movies are adapted from Kollywood, and the former needs to take proper permission from the latter before adapting their works.

Right to Follow

Also known as *Droit de Suite*, this right allows the author or artist to obtain a percentage of the subsequent sales or resale of his work.

Sui Generis Rights

Due to their unique and modern nature, computer software and databases were not protected by copyright laws at the beginning of their introduction. Therefore, the law of *sui generis* was created to address the problem of protecting databases. As databases lack one of the fundamental and key aspects of an invention or work, i.e., innovation, it was pretty hard to protect them under copyright laws. However, they can still be classified as private works that need to be protected from unauthorised copying by other parties, and therefore need to be included under the broad umbrella of copyrights. One of the most notable features of this is that any such right, when afforded to a database is only valid for a period of 15 years.

The only exception available under copyright infringement comes under the Doctrine of 'Fair Use' or fair dealing. Mentioned under Section 52 of the Act, this doctrine states that a copyrighted work can be used for certain specific purposes without taking the permission of the copyright holder, like research and study purposes, report making, case analysis, etc. This doctrine is used to motivate individuals for using the copyrighted work for fair utilitarian purposes like judicial proceedings, news events, reviewing and criticising certain works, and reproduction of such work for non-profit purposes or disabled people. The concept of intention to gain has also been discussed by the court in the case of *Katar Singh Giani v. Ladha Singh* [3].

CHAPTER II: REMEDIES AVAILABLE AGAINST COPYRIGHT INFRINGEMENT

Now that we have discussed the various rights of copyright holders, let us analyse the concept of copyright infringement. Copyright infringement is the unauthorised use or production of copyright-protected work without the permission of the copyright holder, resulting in the infringement of the copyright owner's exclusive rights over his work. Such infringement can be done either directly, contributorily, or vicariously. Section 51 of chapter XI of the Act defines it as "any person using any copyrighted work without a license granted by the owner, or the Registrar of Copyrights is infringement". This means that if an individual or a party displays, reproduces, or through anyway presence the copyright holder's original work without the permission of the copyright holder, then there would be a solid case of infringement. The recent introduction of the Internet has also exacerbated the situation, as with the relative ease of the Internet, a person can access another individuals work from the comfort of their homes, and usually has the tools to display or reproduce such works without the copyright owners permission. Therefore, strong measures have been put into place by the legislature to ensure that other parties respect the rights of copyright holders and do not violate these rights in pursuit of their own goals, thereby strengthening IP in the economy.

In the Indian legislation, there exist three types of remedies an individual can avail for copyright infringement in India, namely civil, criminal, or administrative remedies. In the present chapter, the author would only focus on the first two remedies. First, let us discuss the civil remedies. Civil remedies are mentioned under Section 55 of the Act and are considered to be one of the most effective remedies available under the Act. This is further divided into preventive civil remedies, which protect an individual before actual harm is caused, and compensatory remedies, which as the name implies, compensate an individual for the harm caused to him after an act. Under civil remedies, there are six different types of remedies available to an individual against copyright infringement of his/her work.

Interlocutory Injunction

An injunction is an order by the court prohibiting a party from carrying out a certain act. The main objective of interim relief is to maintain the status quo till the conflicting claims of parties to a case are resolved and to prevent any alteration till final disposal of a suit [4]. The same concept is also applied to an interlocutory injunction, which is given under Rules 1& 2 Order 39 of the CPC [5]. Over here the court directs the opposite party to abstain from acting in a certain manner till the final disposal of a case or for a specified period of time. The courts can grant such injunctions based on their description; however, such discretion cannot be exercised in a way manner, and has to be done legally [6]. The court also laid down the key elements which must be present in a case for the court to grant an interlocutory injunction to party in the case of *Best Sellers Retail Pvt. Ltd. v. Aditya Birla Nuvo Ltd* [7] and *Kishore Sinha v. Maruti Corporation* [8]. The key elements were:

- i. The plaintiff must have a Prima Facie case.
- ii. In case of denial of the injunction by the court, irreparable damage would be caused to the plaintiff
- iii. Plaintiff should be in favour of the Balance of Convenience.

Permanent Injunction

As the name states, a permanent injunction is used by the court to permanently prevent a party from taking a particular action. Usually, the courts do not grant such an injunction unless the matter at hand has grave consequences. This injunction is usually used to punish an infringer and also to protect the subjective value of the copyrighted work.

Anton Pillar

It is an ex-parte order passed by the court wherein the court directs the plaintiff to enter the defendant's premises before such an individual destroys any infringing material or evidence without any prior notice. Both the plaintiff and his solicitor get the right to enter the defendant's premises under this remedy to secure evidence of copyright infringement. The court directs the defendant under

this remedy to mandatorily give consent to the plaintiff to enter his premises, and if he refuses to do so the defendant would be held liable for contempt of court. However, if the plaintiff enters the defendant's premises without the defendant's consent, then such an act would be treated as an offense of trespass [9].

Mareva Injunction

The Mareva Injunction is provided under Order XXXIX Rule 5 of the CPC and is used by the court to prevent a defendant from disposing of assets in a case wherein they could be required to satisfy the claims of the plaintiff. Its main aim is to secure appropriate compensation for any damages sustained by the plaintiff and to prevent unfair infringement on behalf of the defendant.

John Doe Order

John Doe is an English term that translates to "unknown person". These orders are used by the courts when copyright infringement has been done by unknown infringers. The court refers to the offender as John Doe until his identity is revealed and he's brought before the court.

Norwich Pharmacal Orders

These orders are passed by the court when certain information needs to be discovered in relation to a case between two individuals from a third party.

The compensatory remedies, also known as pecuniary remedies, are given under Section 55 to 58 of the Act. Under this, the plaintiff is allowed to:

- a. Discover the amount of profit made by the infringer through unlawful conduct, which lets the copyright holder recover the same amount from the infringer.
- b. Seek compensatory damages suffered by the copyright holder due to the unlawful actions of the infringer.
- c. Seek conversion damages which are calculated according to the value of the work.

In case a copyright holder does not wish to pursue the civil remedies available to him under the prevalent laws, he has the option of availing the support of criminal remedies as mentioned under Section 63 of the Act. Under this section, a copyright infringer can be punished by:

- a. Imprisonment of a period of at least six months extending up to three years.
- b. Fine of rupees 50,000, which may extend up to rupees 20,00,000.
- c. Search and seizures of the infringing products, including any other device used for printing or reproducing copies of the copyrighted work.
- d. Delivery of the infringing copies or devices to the copyright holder.

According to the legislation, infringement, or abetment of any protected work under the Act will be regarded as a criminal offence and will be punished accordingly. Police officers are authorised to confiscate infringing copies from the copyright infringers without a warrant and present them in front of a magistrate as evidence, however, in such cases, the police officer must be at least at the rank of a sub-inspector.

CHAPTER III: EFFECTIVENESS OF REMEDIES

The various remedies mentioned under the Act have proved to be strong deterrents to stop copyright infringement. An individual (the copyright holder) has the first solution of applying for a civil remedy under the Act, in the form of some injunction or order. If not satisfied with a civil remedy, the copyright holder also has the option of using the criminal remedies available to him, which he can use if he seriously wants to punish the offender. Finally, if the copyright holder wants to recover the monetary benefit taken unlawfully by the infringer, he has the option for applying for pecuniary remedies as given under the Act.

Since India is a common law country, this means that present cases are not just decided on the basis of pre-existing legislation but are also based on previously decided judgements of the courts i.e., precedents set by the High Courts or the Supreme Court. Therefore, it is important to analyse the various case laws decided by the High courts or the Supreme Court to determine whether the remedies as laid down by the Act are indeed effective or not. The first case is the case of *Hindustan Pencils Ltd v. Alpna Cottage Industries* [10], wherein the court held that if there are fundamental and substantial similarities in two pieces of artwork, then it would result in a violation of the copyright holder's rights. The court further explained the fundamental or substantial aspects of the mode of expressions in the case of *R.G. Anand v. M/s Delux Films* [11], wherein the court stressed upon their ability to properly judge what is fundamental and substantial while analysing similarities. The court also talked about the need for exhausting alternative remedies in the case of *Khajanchi Film Exchange v. State of MP* [12], wherein it held that if a copyright holder has enough time to request for an alternative remedy and the court can also implement the same without any damage being done to the copyright holder's work, then the holder should first exhaust his alternative remedies before approaching the court for a writ of Mandamus. A copyright holder also loses his right to avail a remedy if he/she had previously but reluctantly accepted the use of the work without any protest. In the case of *Jolen Inc. v. Shoban Lal Jain* [13, 14], the court held that the petitioner was guilty of acquiescence and therefore could not claim for the relief of an injunction against the defendant. These various judgments go on to show that the Indian judiciary is in strong favour of copyright frameworks in India.

CONCLUSION

The above-mentioned research just goes on to show that IP laws, and in turn, copyright laws are very strong in India. Both the legislation and the judiciary support IP laws in India and are promoting copyrights for the economy's welfare. A lot of rights have been given to the copyright holders in tandem with the international agreements of which India is a part. These rights, which form the basic framework of copyright protection in India, are also supplemented by the various remedies available under the Act.

The protection is extended not just to copyright in the classic sense, but also to Copyright in its modern sense. The Copyright Act, in association with the IT Act, have amply covered any problems that arose with the dawn of the new technological age, covering all bases and strengthening the framework, ensuring that innovation does not hamper the process of copyright protection.

Although at the present time, no gaping holes exist in the present system, this does not mean that no future problems would crop up in the existing legislation. The rapid pace of innovation across the globe shows the need for copyright protection in the first place, however, it is innovation that would ultimately result in changes being needed for copyright protection in future times. It is the duty of the legislature to keep up with the current times and update or implement new laws to keep copyright protection robust. Until then, it is the duty of the judiciary to use its powers wisely and direct the flow of copyright protection in the right direction for the beneficial growth of the Indian economy.

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