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UNDERSTANDING SOME HIDDEN ASPECTS OF ASSIGNMENT OF COPYRIGHTS AND INFRINGEMENT OF COPYRIGHTS

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ABSTRACT

This paper talks about the some of the key yet latent aspects of Assignment of Copyrights and the Infringement of Copyrights. The paper will initially go through the basics of assignment and infringement of copyrights to give readers a brief yet clear understanding of the same. It will then move on to talk about and analyse the exclusive right of the assignor when it comes to assignment of copyrights, and the advantageous position that the owner of the copyrights holds with respect to the usage of his or her work for making derivative works. Even though the owner of the copyrights can assign the copyrights of his work to a person of his wish, it'll only be to the extent of the usage of the work and not the modification. There will also be case laws explained in that regard to help the reader get a better understanding of such. The paper will then talk about the position of the assignee with regard to suing of infringement of contracts and the necessity of the presence of accrued causes of infringement for the benefit of the assignee. It will also talk about the loophole of the Copyrights Act that have caused the emergence of an immoral practice of backdating and how it can be dangerous to back date a contract without valid reasoning. This will also be explained with the help of a case law. The paper will conclude with recommendations and references.

Keywords: *Assignment of Copyrights, Infringement of Copyrights, Exclusive Right of Assignor, Accrued Causes, Backdating*

INTRODUCTION

Humans are beings with highly creative minds that develop great ideas nearly every day and are always curious to learn and explore more ideas and options. With such ingenious minds, humans have produced countless inventions and works in a myriad of disciplines such as art, literature, music, technology, science, and many more. As much as humans can develop advanced and original pieces of work, they need to protect their work to prevent it from being credited, converted or copied to another person who holds no contribution or rights to it.

This is the incentive of the Copyrights Act, 1957 (hereinafter referred to as 'the Act'). The Copyrights Act, 1957, came into force on January 21st 1958, as an improved version of The Copyrights Act, 1911. It enhanced the importance

of establishing a Copyright Board to handle disputes concerning Copyright issues and a copyright office under the Registrar of Copyrights, which would enable an agile process for acquiring copyrights. The Act was amended again to Copyright Societies And The Copyright (Amendment) Act in 2012. The primary intent of this amendment is to formulate a fair and reasonable framework for the administration of copyrights and the appropriate sharing of income to safeguard the interests of the owner or owners of the original work.

With respect to the main topic of Copyrights, this research paper will dive deeper into it and discuss in detail about the assignment of copyrights, its meaning, and the respective sections that govern the assignment of copyrights. The paper will also discuss about

the infringement of copyrights, its meaning and ways in which copyright is infringed. This paper's main analysis will be based on the assignment and infringement of copyrights, discussing some of the overlooked aspects of copyrights that are usually least talked about. It will talk about the non-negotiable rights of the assignor and the ability of prosecution of the assignee.

PART- I

Meaning of Assignment of Copyrights:

Firstly, let's look at the meaning of copyright to understand the basics. A copyright is a type of legal protection given to the intellectual property owner. It provides the owner with the right and liberty to copy and distribute their material for a period of time. The creative work can be in the form of writing such as a book or a novel, it can be in the form of art such as a drawing or painting, it can be in the form of sound such as music, songs, background scores, and it can be in the form of visual content like cinematograph films.

Now, Assignment of Copyrights means that the owner of the work, to whom the copyrights of the work were given, decides to assign his/her copyright to any other person of choice. This means that the assignee will be able to enjoy all the rights related to the work of the owner. The owner can decide to assign all of the copyrights related to the work or only certain selected rights to the person of choice. In that case, if the person is only granted the permission to publish or sell the work of the owner, that will not amount to assignment of copyrights but will rather only amount to publishing rights.

Similarly, if the person who has been assigned certain rights will be known as the owner of the assigned rights and the original creator of the work will be known as the owner for the unassigned rights. In case of the death of the assignee before the publication or establishment of the work, the legal representatives of the assignee will acquire the rights that have been assigned.

Sections of the Copyright Act 1957 that deal with the Assignment of Copyrights:

Part IV of the Act deals with the Ownership of Copyright and Rights of the Owner, under which, Sections 18 to 20 deal with the Assignment of Copyrights. Section 18 is concerning the basics of Assignment of Copyrights which has already been expressed. Section 19 is about the Mode of Assignment of Copyrights. According to this section, the assignment of copyright is acceptable only if it prevails in written format in which the assignee or his/her authorized agent has signed. It should identify the work and clearly specify which rights have been assigned to the assignee. It should also clearly specify the duration of the rights, territorial extent of rights, the amount of royalty payable, if any, and the mutually agreed terms on which it can be terminated, extended or revised. In case the duration or the territorial extent of rights is not mentioned, it will be regarded as 5 years for duration, and within India for the territorial extent.

Disputes regarding the assignment of copyrights will be handled by the Copyright board on receipt of the complaint by the assignor. The Appellate board will conduct the necessary inquiries and either revoke the assignment, order for a recovery of royalty or may pass any order as it deems fit of the situation.

Section 20 talks about the assignment of copyrights by operation of law whereby the death of the owner of a copyright will result in the assignment of copyright to his personal representative, provided that it has not been mentioned otherwise in any of the owner's will or codicil.

What is Copyright Infringement?

Copyright Infringement is the action of using a person's copyrighted work in an unauthorized way, thereby infringing the copyright owner's rights to copy, reproduce, and distribute his work. Section 51 of the Act, specifies the ways in which copyright can be infringed. They are:

- An act of copyright infringement has taken place when a person who does not own the copyright to a work, does an act which can only be done by the owner of the copyright.
- A person with knowledge, allows the display, selling or distribution of infringing work. The person is not liable if he or she was not aware or had no reason to believe that such allowance would lead to infringement of copyright.
- When a person imports infringing copies copyrighted work, he or she is said to have committed copyright infringement
- When a person reproduces the copyrighted work of someone without actually gaining consent or authority to do so

Issues that can arise in Copyright that can lead to Infringement:

There are three kinds of issues that can arise with respect to copyrights. They are Plagiarism, Ownership and Derivative works.

- Plagiarism is the act of copying someone's copyrighted work and not giving credit to them, thereby pretending it to be an original work of the infringer. Any copyrighted work which is taken or referred to, must be duly credited to avoid such mishaps.
- Ownership is an issue that arises when the creator of an original work is employed by an organization rather than being a freelance. When he or she is an employee of an organization then the work may be copyrighted in the name of the organization with the consent of the creator but if the person is a freelance, then he or she becomes the owner of the material and its copyrights.
- Derivative works is a tricky subject involving the usage of a work of an original copyrighted work with a little change, such as a new version but its origin being rather identifiable. A person creating new versions of an original copyrighted work should obtain due

permission or consent to do so from the owner of the copyright if he or she do not want to deal with a copyright infringement lawsuit.

PART-II

Exclusive Right of the Owner:

As mentioned before, the owner of the copyrights can either assign his rights wholly or partially to the person or organization of his choice. For example, this means that the composer of a song, who is the first copyright owner of the original work, may assign the copyright of the work to the producers. Producers usually have the upper hand in these situations and thus accept to pay a sum of royalty in exchange of the copyright of the work from the owner. However, this does not mean that the producers who have gained the copyright of the work can make derivative works from the original. This is an exclusive right of the owner that is non-assignable. This is mentioned under Section 106 (2) of the Copyright Act of the US Code and in Section 57 of the Indian Copyright Act.

There have been cases of which this point has been emphasized and brought to the notice of those dealing with such copyrighted works, or works that can be copyrighted. One of the most prominent cases is the *Zee Entertainment v. Ameya Khopkar*¹⁰⁶⁹. In this case, the Bombay High Court held that, even if there has been a blanket assignment of rights, unless it has been specifically mentioned that the owner would like to transfer the right to make a sequel in the assignment deed, it cannot be assumed that such an assignment has taken place. Similarly, any general assignment of rights which is vaguely written cannot mean that the owner has assigned all underlying rights of the work, which exceed the intended amount by the owner.

Another example being the widely talked about Masakali 2.0, a song which is the remake of an original song called Masakali by AR Rahman for

¹⁰⁶⁹ *Zee Entertainment Enterprises Limited v. Ameya Vinod Khopkar Entertainment*, 2020 SCC OnLine Bom 11301

the movie Delhi 6. This song was remade by the popular record label and film production company T-Series. Even though this was the same record label to release the original song Masakali, the rights to make derivative work of the original without the consent of the composer who retains the rights to derivative work, became a huge question to be answered. The rights of the composer, lyricist and the singer of the original song is protected by Sections 13(1)(a) and Section 38 of the Copyright Act respectively. The act of T-Series making a derivative work without appropriate permissions and transfer or assignment of the rights to do so is a threat to the rightful owners of the original work and infringement of copyright. The 2012 amendment of the Copyright Act has included a particular Section, namely Section 17, to clear the ambiguity with regard to the first owner of a musical work. It states that if a composer has composed a musical work while under commission or a contract of service, the first owner of the work would be the employer, in absence of contrary agreement. However, if the same had been incorporated in a cinematograph work, the first owner of the work would be the author. The assignment of copyrights by the composer to the producers or production company under Section 18 of the Copyrights Act would only be to the extent of usage and not modification of the same. Hence, T-Series should not have remade the song without acquiring appropriate permissions from the original composer of the work, AR Rahman.

PART-III

Accrued Causes and Backdating:

When an assignor is assigning his copyrights to the assignee, it is a must that he or she should explicitly include the accrued causes of copyright infringement because without the inclusion of the accrued causes of infringement the assignee will not be able to prosecute for the infringements that had occurred when he or she was not the owner. This usually means that people will resort for immoral yet common ways

to secure their intentions, one of which is backdating. The law remains silent about backdating and thus it is in the advantage of those who would like to make use of it. Usually when a person asks for backdating it would only address the fact that an oral agreement was made on the date that has been passed and the client would like to have it written on the same date in itself. But sometimes the backdating is done to evade liability or a suit which would make it immoral. For example contracts which were supposed to be in writing to be valid are made at a later date and backdated to the time of the oral agreement.

When it comes to backdating of assignment of copyrights, it dodges the actual purpose of the law, which is to prevent a situation where 2 parties could potentially sue for a copyrighted work. And since copyright law doesn't talk about this basic principle, it would mean that the courts have to apply other statutes to consider a suit with a backdated contract which would be an anomaly and rather troublesome from the perspective of the court.

The case of *Harmony Consulting Ltd. V. G.A. Foss Transport Ltd*¹⁰⁷⁰, the dangers of backdating copyright assignments can be well inferred. Harmony, the plaintiff of the suit, claimed ownership of some computer programs that the defendant company were using. She claimed the President and Vice-President of the company infringed her copyright. Harmony's sole shareholder and director, Mr. Chari was introduced to the President of the defendant firm and the defendant firm acquired the services of the plaintiff company to create some programs that would help the defendant firm to record and better provide its services of invoicing and dispatching. Their relationship was acceptably cordial until the programs had malfunctioned due to some actions performed by Mr. Chari. There was a termination of the contract to avail the services of the plaintiff company. The defendant company then acquired services to correct the programs and

¹⁰⁷⁰ Harmony Consulting Ltd. V. G.A. Foss Transport Ltd., 2011 FC 340

continued using them. However, the plaintiff company filed a suit alleging the infringement of copyrights of the programs. They also alleged that the defendant company copied the programs into their computers without permission thereby infringing copyrights.

With further perusal of the case, it was found that one of the programs was backdated to the date of the incorporation of the plaintiff company. This was found out through Mr. Chari, an incredible witness. Soon, Mr. Chari testified that during the incorporation of the company he made a mental assignment of the copyright of that program. Since the case was held in Canada and Canada's copyright law does not validate a mental assignment, the court deemed both mental assignment and the backdated assignment to be invalid.

CONCLUSION

This paper firstly talks about the basics with regard to assignment of copyrights and infringement of copyrights by providing its meaning, sections governed by the Copyright Act and some other necessary basic information. This has been done so that the reader of the paper can understand the paper with ease and without much difficulty.

The paper then continues to talk about how the Assignment of Copyrights and Infringement of Copyrights affects the assignor and assignee. It talks about the exclusive right of the assignor when it comes to derivative works and gives some case laws for the better understanding of such. It clearly conveys that the assignment of copyrights by the owner of the copyright to a producer or production company does not mean that the owner has assigned or transferred the right of modifying the original work and making a derivative work. When the owner of the work assigns the copyrights of the work to a producer or production company, he or she only assigns the copyrights necessary of the usage of the work and not the modification of the work. The right to make derivative work from the original is an exclusive right of the owner that cannot be assumed to be assigned

and can only be authorised by the owner of the copyright.

The paper also talks about the rights of an assignee when it comes to suing for copyright infringement. It has been expressed that the accrued causes of the infringement of the copyright must be specifically and explicitly mentioned so that the assignee can sue for the infringement of the copyright when he or she was not the owner. Similarly, the loophole of backdating copyright assignments have been expressed in the paper along with the help of a case law for the better understanding of the dangers of backdating the copyright assignment. Backdating is an immoral yet quite commonly practiced way of registering contracts which can be very dangerous and the copyright act being silent about such will lead the courts to have a difficult time with the suits having the presence of the same.

RECOMMENDATIONS

It is always recommended that appropriate and necessary amendments are made whenever necessary to protect the rights and interests of the copyright owners and also to help the courts be able to effectively judge the proceedings of the filed lawsuits and complaints of assignment of copyrights and infringement of copyrights. Loopholes of the previous amendment can be taken into account to provide a better amendment in the future.

Readers are recommended to further read and research the aspects of their interests on their own and make better studies and analysis for the benefit of themselves and everyone who reads your paper.

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