

INFRINGEMENT OF COPYRIGHT AND THE CIVIL AND CRIMINAL REMEDIES AVAILABLE AGAINST THE INFRINGEMENT OF COPYRIGHT

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Abstract

Copyright is a legal protection granted to creators of original literary, artistic, musical, and dramatic works, conferring upon them exclusive rights to use, reproduce, and distribute their creations. Infringement of copyright occurs when these exclusive rights are violated without authorization, amounting to an unlawful appropriation of another's intellectual property. The Copyright Act, 1957 in India provides comprehensive mechanisms to address such violations through both civil and criminal remedies.

Keywords : Copyright ,infringement , Intellectual Property Rights (IPR) ,Copyright Act, 1957 , exclusive rights , Civil & Criminal Remedies , injunction ,damages ,penalty ,piracy

Introduction

Infringement of a copyright is a trespass on a private domain owned and occupied by the owner of the copyright therefore it is protected by law. Infringement of copyright or piracy which is a synonymous term in this connection consists in the doing by any person without the consent of the owner of the copyright of anything the sole right to do which is conferred by the statute on the owner of the copyright.⁸⁸⁸

Copyright is a form of private property it belongs exclusively to its owner. Any unauthorized use of it by another person is similar to trespassing on private property. Therefore, the law provides protection to the copyright owner.

Copyright infringement is not merely a moral wrong but a legal wrong (civil and criminal offence).The law protects the owner's exclusive rights and provides civil remedies (like injunction, damages, delivery up of infringing

copies) and criminal penalties (like imprisonment and fine).

The owner of a copyright enjoys a bundle of exclusive rights conferred by the Copyright Act, 1957. These rights include the authority to publish, reproduce, store, adapt, translate, perform, or communicate the work to the public, among others. Such rights are proprietary in nature and vest solely in the copyright holder.

When any of these acts are performed by a person other than the copyright owner, without obtaining a valid licence from the owner or authorization from a competent authority under the Act, it amounts to an infringement of copyright. In essence, infringement occurs when there is an unauthorized use of any of the exclusive rights granted to the owner.

Section 51 of the Copyright Act, 1957 explicitly provides that copyright in a work shall be deemed to be infringed if any person, without licence or consent, does anything which only the copyright owner has the exclusive right to do. Such unauthorized acts encroach upon the

⁸⁸⁸ Observed by the U.S. Supreme Court in the case of *Bobbs-Merrill Company V. Isidor Straus and Nathan Straus* (1907) 210 US 339; and quoted by the Supreme Court in *R.G. Anand V. Delux Films*, AIR 1978 SC 193

private intellectual domain of the author, and therefore, constitute a legal wrong.

The law recognizes this infringement as both a civil and criminal offence, enabling the owner to seek civil remedies such as injunction, damages, and delivery up of infringing copies, as well as criminal sanctions including imprisonment and fines. The protection thus ensures that creative efforts are not exploited without due recognition and authorization.

Section 51 – Infringement of Copyright

Section 51 of the Copyright Act, 1957 envisages the circumstances under which copyright in a work shall be deemed to be infringed. It provides that copyright is violated when any person, without a licence, or in contravention of the conditions of a licence, performs any act that is exclusively reserved to the copyright owner under the Act.

(i) Violation of Copyright

Copyright is said to be infringed when any person, without authorization from the copyright owner, does any act that only the owner has the exclusive right to do. This includes the publication, reproduction, adaptation, translation, or communication of the work to the public.

Further, infringement also occurs when any person, with or without a licence, permits for profit any place to be used for communicating the work to the public, where such communication amounts to infringement of copyright. However, this liability is subject to the exception that the person must have been aware or had reasonable grounds to believe that such communication would constitute an infringement.

(ii) Infringing Copies

Section 51 further provides that the making, sale, or distribution of infringing copies of a copyrighted work also amounts to infringement. The following acts constitute infringement of copyright:

- (a) Making for sale or hire, or selling or letting for hire, or offering or displaying for sale or hire any infringing copies of the work;
- (b) Distributing infringing copies for the purposes of trade or to such an extent that it prejudicially affects the copyright owner;
- (c) Exhibiting infringing copies in public by way of trade; or
- (d) Importing infringing copies into India, except where such importation is for the private and domestic use of the importer.

Substantial Similarity

The courts have clarified that an exact or verbatim reproduction is not necessary to establish infringement. A work may still be considered infringing if it bears a substantial resemblance to the original, sufficient to suggest that it has been copied.

In the landmark case of R.G. Anand v. Delux Films, AIR 1978 SC 1613, the Supreme Court held that if the theme, idea, and expression of the two works are substantially similar, and an average viewer gets an unmistakable impression that the subsequent work appears to be a copy of the original, then infringement is established.

Importation and Other Instances of Copyright Infringement

The term “imports into India” under Section 51 of the Copyright Act, 1957 signifies the act of bringing infringing copies of a copyrighted work into the territory of India from outside the country. This importation, when done for purposes of trade or commercial distribution, constitutes an infringement of copyright, unless it falls within the limited exception of private and domestic use⁸⁸⁹.

1. ⁸⁸⁹ The Copyright Act, 1957, Sections 13, 14 & 51 — defines exclusive rights and when they are infringed.
2. B.L. Wadhwa, Law Relating to Intellectual Property (2016) — explains the nature of copyright as a bundle of exclusive statutory rights.
3. Narayanan, P., Copyright and Industrial Designs (2017) — elaborates on statutory protection and the scope of “exclusive rights.”

In **Gramophone Company of India Ltd. V. Virendra Bahadur Pandey, AIR 1984 SC 667**, the Supreme Court clarified that the expression “imports into India” connotes the introduction of goods from a foreign country into Indian territory. Hence, bringing infringing copies from abroad into India, regardless of their place of origin, amounts to an act of infringement.

Similarly, in **Penguin Books Ltd. V. India Book Distributors, AIR 1985 Del 291**, the Delhi High Court held that the importation into India of books published in the United Kingdom and shipped from Africa, followed by their sale within India, constituted an infringement of the publisher’s copyright. The Court emphasized that even indirect importation through third countries does not absolve the infringing party of liability.

Furthermore, in **K.E. George v. C. Cherian, AIR 1986 Ker 12**, the Kerala High Court reiterated that copyright in a work is deemed to be infringed when any person performs an act which, under the Act, is exclusively reserved to the copyright owner, without proper authorization or licence.

These judicial pronouncements collectively affirm that unauthorized reproduction, distribution, or importation of a copyrighted work amounts to a direct violation of the statutory rights conferred upon the owner, and such acts are actionable under both civil and criminal provisions of the Copyright Act.

Factors Determining Copyright Infringement

Determining whether copyright infringement has occurred is essentially a question of fact and must be assessed in light of the circumstances of each case. Courts have evolved certain guiding factors to ascertain whether the defendant’s work amounts to an infringement of the plaintiff’s copyright.

The following considerations are generally taken into account:

(a) Copying

The primary test for infringement is copying. The plaintiff must establish that the defendant has

copied the work, either directly or indirectly. Even sub-conscious or unintentional copying may constitute infringement if there exists a causal connection between the plaintiff’s and the defendant’s works. It is not necessary to prove that the defendant had the intention to copy; what matters is whether the defendant had access to the original work and whether the similarities are the result of such access rather than coincidence. 1

(b) Substantial Copying

It is not essential that the entire work be reproduced. Substantial copying of the material or essential part of the work is sufficient to constitute infringement. The question of substantiality depends on the quality and importance of the part copied rather than on its quantity. Courts consider the following aspects in assessing substantial copying:

-Unaltered copying: Whether significant portions of the original have been reproduced without modification.

-Nature and extent of the plaintiff’s work: Whether the copied part represents the core creative or intellectual component of the original.

-Character of the plaintiff’s and defendant’s works: Whether both works serve the same purpose, appeal to the same audience, or convey similar expressions.

-Extent of the defendant’s alteration: Whether changes or adaptations made by the defendant are sufficient to create a new, independent work.

-Manner in which the defendant used the plaintiff’s work: Whether the use was fair, incidental, or commercial in nature, and whether it competes with or substitutes the original.

Elements of Copyright Infringement

To establish an allegation of copyright infringement, two fundamental elements must be proved. Both are essential preconditions, and

the absence of either will defeat the claim. The courts have recognized these twin tests to determine whether infringement has occurred.

(i) Sufficient Objective Similarity

The first requirement is that there must exist a sufficient objective similarity between the alleged infringing work and the original copyrighted work. This means that the two works must resemble each other in their material or substantial features, not merely in general ideas or themes. The similarity must be of such a nature that it would lead a reasonable observer to conclude that one work is a copy or reproduction of the other.

However, copyright law protects the expression of an idea, not the idea itself. Therefore, mere similarity in concept, subject matter, or theme does not amount to infringement unless the form, structure, and expression of the work are substantially similar.

R.G. Anand v. Delux Films, AIR 1978 SC 1613⁸⁹⁰ – the Supreme Court held that there can be no copyright in ideas, themes, or plots, and infringement arises only when there is a substantial and material resemblance in the expression of ideas.

Ladbroke (Football) Ltd. V. William Hill (Football) Ltd., (1964) 1 All ER 465 – the test of substantial similarity must consider the quality rather than quantity of what has been copied.

ii) Source

The second element is causal connection or source, meaning that the copyrighted work must be the origin or source from which the infringing work has been derived. It is not necessary that the infringing work be a direct copy; even indirect derivation through an intermediary source will suffice.

The key requirement is proof of a reasonable possibility of access – that the alleged infringer had access to the plaintiff's work and could have drawn inspiration or material from it. If the

similarity between the two works is purely coincidental and there is no evidence that the defendant had access to the original, there can be no infringement, even if the works appear alike.

Francis Day & Hunter Ltd. V. Bron, (1963) Ch 587⁸⁹¹ – held that subconscious or indirect copying, where access to the original can be shown, is sufficient to establish infringement.

Substantial copying

In order to decide whether a work is substantial copying of the original one, following four factors have to be considered.–

(i) Material Taken : The volume of material taken must be vital, keeping in mind that quality is more important than quantity.

(ii) Quantum of subject-matter : How much of such material is the subject-matter of copyright and how much is not.

(iii) Animus Jurandi : Whether there has been an animus jurandi on the defendant's part, i.e., an intention to take for the purpose of saving himself labour.

(iv) Competing Extent: the extent to which the plaintiff's and defendant's work are competing.

Fair Dealing :

There are certain acts which do not constitute infringement of copyright. Fair dealing is one of them (see section 52). In all cases of fair dealing , the reproduction of extracts of the work, or its recitation of performance is involved. How much of the reproduction may be deemed as fair is a question which can be determined only having regard to the circumstances of each case.

Remedies Against Infringement:

The owner of copyright may avail of both civil and criminal remedies under the Act against infringement of his copyright ,-

⁸⁹⁰ R.G. Anand v. Delux Films, AIR 1978 SC 1613.

⁸⁹¹ Francis Day & Hunter Ltd. V. Bron, (1963) Ch 587

(A) Civil Remedies :

The owner of a copyright on infringement of work shall be entitled to all such remedies by way of injunction , damages ,accounts , and otherwise.

However, if the defendant proves that at the date of infringement he was neither aware nor had reasonable ground for believing that copying subsisted in the work , the plaintiff shall be entitled for remedy of injunction or a decree for the whole or part of the profits made by the defendant by sale of infringing copies(vide Section 55).

M/s Pearson India Education Service Pvt. Ltd. Bangalore V. M/s New Public Solutions LLP, Bangalore, AIR 2016 Kar.25 – temporary injunction can be granted where right of plaintiff is sought to be infringed by defendant by using or referring test results.

Section 56 provides for author's special right. It envisages that independently of the author's copyright and even after the assignment either of wholly or partially of copyright, the author of a work shall have the right –

(a) to claim authorship of the work, and

(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work.

Section 60 of the Act provides for remedy in the case of groundless threat of legal proceedings. Where any person claiming to be owner of copyright , by circulars, advertisements or otherwise threatens any other person with any legal proceedings, thereby such person aggrieved, may notwithstanding anything contained in Section 34 of the Specific Relief Act, 1963, institute a declaratory suit that the alleged infringement of any legal rights of the person making such threats and may in any such suit ,may obtain an injunction against the continuance of such threats and recover damages, if any.

The remedy of injunction can be joined either with that of damages or accounts, but the

remedies of accounts and damages can in no case be joined.⁸⁹²

Section 57 speaks of author's special rights only and it does not provide for publisher's or owner special rights. Further the 'action prejudicial to his honour or reputation' , within the ambit of Section 57(1)(b) is also referable to the author only.⁸⁹³

Once a suit filed for infringement of the copyright by the person who has given the threat, the suit under Section 60 becomes infructuous as the section ceases to apply in such a situation.⁸⁹⁴

Hawkins Cookers Ltd. V. Mazylook Appliances Co., AIR 2001 DEL 191.– The civil remedies as provided under Section 55 are aimed to protect copyowner.

Manu Bhandari V. Kala Vikas Picture (P) Ltd., AIR 1987 Del 13.– Section 57 recognizes and protects the intellectual property of an author at most.

Exfer S.A. V. A.U. Pharma Laboratories Ltd., AIR 2004 SC 1682.– The suit for infringement of copyright may be instituted by the copyright owner or its manufacturing agent.

(B) Criminal Remedies : The Copyright Act, 1957 , provides for various criminal remedies against infringement of copyright,–

(a) Offence of Infringement, – Section 63 of the Act provides that any person who knowingly infringes abets the infringement of the copyright in a work or any other right conferred by this Act except the right conferred by Section 54-A shall be punishable with imprisonment and fine.

(b) Seizure of infringing copies,– Any police officer may seize infringing copies of work without warrant wherever found and as soon as practicable be produced before a magistrate.

⁸⁹² P. Lakshminathan V. Ram Krishna Pictures, AIR 1981 AP 224.

⁸⁹³ Wiley Eastern Ltd. V. Indian Institute of Management, 1995 PTR 53.

⁸⁹⁴ Super Cassette Industries Ltd. V. Bathla Cassettes India (P) Ltd ., AIR 1994 Del 237.

Any person who knowingly makes or has in his possession, any plate (which includes any device or equipment used for reproduction) for the purpose of making infringing copies of any work in which copyright subsists shall be punishable with two years imprisonment and with fine (vide Section 65). More so, Section 66 of the Act empowers Courts for disposal of infringing copies or plates for purpose of making infringing copies.

(c) Offences by Companies, – In a case where offence under the Act has been committed by a company, every person who at the time the offence was committed was in-charge of, and was responsible to the company, for the conduct of the business of the company, as well as the company shall be deemed to be guilty of such offence, and officer of the company shall be liable to be proceeded against and punished accordingly. (vide Section 69).

(d) Cognizance of Offences, – no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence under the Copyright Act, 1957.

(i) Prosecution for infringement. – Unlike suits for infringement of copyright which can be instituted at the place where the plaintiff resides, etc. A prosecution for the offence of infringement of copyright can be tried only at place where the offence is committed and not anywhere else.⁸⁹⁵

(ii) Restoration of Seized Infringing Copies. – Section 64(2) provides safeguards when the person aggrieved can make an application to the Magistrate within 15 days of such seizure by the police officer for restoring the seized copies to him. It does not permit or facilitate infringement of any of the rights of the person alleged to have committed infringement.⁸⁹⁶

(c) Liability of Partnership Firm in Copyright Infringement. – Under Section 69 of the Copyright Act, 1957, the term “company” has been given an extended meaning through the

Explanation appended to the section. According to this provision, the expression “company” includes a partnership firm or any other association of persons.

Consequently, a partnership firm is equally liable for acts of copyright infringement committed in its name or on its behalf. Such liability is distinct and independent of the individual liability of its partners. The firm can therefore be prosecuted and penalized in its own name, similar to a corporate entity.

J.N Bagga V. ALL India Reporter Ltd., AIR 1969 BOM 302. – the Bombay High Court held that a partnership firm, being included within the meaning of “company” under Section 69, can be made criminally liable for infringement of copyright or related offences under the Act. The Court emphasized that the statutory definition ensures that the protection and enforcement mechanisms of the Copyright Act extend to all organized entities, including firms and associations, not merely incorporated companies.

Jurisdiction of Courts to Try Suits in Copyright Infringement Cases :

Under Section 62(2) of the Copyright Act, 1957, a suit for infringement of copyright may be instituted in the district court having jurisdiction, not only under the general law but also where the plaintiff resides or carries on business. This provision grants an additional forum to the copyright owner, independent of the defendant’s location.

Further, Section 20 of the Code of Civil Procedure, 1908 (CPC) lays down the general rule of territorial jurisdiction, stating that a suit may be filed where the defendant resides, carries on business, or where the cause of action, wholly or in part, arises.

Accordingly, courts within whose territorial limits the infringing copies of the work are being sold, distributed, or offered for sale are competent to try a suit for infringement, as the act of sale constitutes part of the cause of action.

⁸⁹⁵ Mobarik Ali V. State of Bombay, AIR 1957 SC 857.

⁸⁹⁶ Girish Gandhi V. Union of India, AIR 1997 RAJ 78.

In **P.M. Diesels Ltd. V. Patel Field Marshal Industries, AIR 1998 Del 225**, the Delhi High Court held that the place where the infringing goods are marketed or sold gives rise to a part of the cause of action, thereby conferring territorial jurisdiction on such courts under Section 62(2) of the Copyright Act, 1957, read with Section 20(c) of the Code of Civil Procedure, 1908.

Conclusion

The law of copyright plays a vital role in protecting the intellectual and creative efforts of authors, artists, and inventors by granting them exclusive rights over their works. Infringement of copyright is not merely a private wrong but an unlawful interference with a creator's proprietary rights, undermining both individual creativity and public interest in innovation. The Copyright Act, 1957 provides a robust framework to deter and remedy such infringements through both civil and criminal measures. Civil remedies under Sections 55 to 62—including injunctions, damages, accounts of profits, and delivery-up of infringing copies—aim to restore the rights of the owner and prevent further violations. On the other hand, criminal remedies under Sections 63 to 70 ensure deterrence by imposing imprisonment, fines, and confiscation of infringing materials. Judicial precedents, such as *R.G. Anand v. Deluxe Films* (AIR 1978 SC 1613) and *P.M. Diesels Ltd. v. Patel Field Marshal Industries* (AIR 1998 Del 225), have reinforced the principles governing infringement and jurisdiction, ensuring effective enforcement of copyright protection in India. In essence, the balance maintained by the Act between the rights of the author and the interests of the public promotes a culture of respect for intellectual property. Effective enforcement of both civil and criminal remedies is therefore essential not only to protect individual ownership but also to encourage creativity, innovation, and cultural growth in society.