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Chapter- 11

COYRIGHT INFRINGEMENT IN ENTERTAINMENT INDUSTRY

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1. COPYRIGHT INFRINGEMENT IN ENTERTAINMENT INDUSTRY

"Millions of people toil in the shadow of the law we make, and much of their livelihood is made possible by the existence of intellectual property rights."- Alex Kozinski

ABSTRACT

The legal rights protecting the artistic works such as graphic designs, literature works, scientific findings is known as Intellectual Property Rights. It basically includes the Copyright, Patents, Trademarks and Trade secrets. The main motive of these laws is to encourage and motivate the people to create their own form of art. Therefore, to protect and achieve this motive the law is enforced and legalized. Nowadays, people can claim their own rights on the products or creatives they make and further to protect their works we also have certain laws.^[1]

HYPOTHESIS

We can understand that protecting the works of people is very important nowadays and there are also different laws regarding the same. Sometimes while working and studying we may wonder various things or might come across few things which requires an explanation or proof. Technology is both a boon and a bane, one can use it for creating their own works while other may simply copy it. For example, China is a very famous country known for its innovation but really China is inventing its products from their original idea? It is understandable to get inspiration from someone and try inventing own products but exacting copying one's idea and giving it another name while it functions all the same could also be considered as copyright infringement. As, we can see that China is a country that copies from everyone around the globe, ofcourse they are having the manpower as wel the finances but the country has its own search engine same as google, own version of YouTube which is named as "YouKu.com" as YouTube is inaccessible in China, the app FaceBook which connects with one's loved ones across cities and countries is also banned/inaccessible in China as the country is having its own version of the app. It is quite confusing to understand the claims as it could be also considered as infringement until and unless there persists any proofs. Further, nowadays the songs are quite popular and various applications like Instagram reels and Tik Tok use few seconds of songs. Various talented user's singing video songs is further converted into an audio and used by different other people in their own videos without permission or giving credits, this also draws the attention towards copyright infringement. Along with it, we know the application Tik Tok is quite famous for 15 seconds videos in which the content creators post different types of content one of them being dance hook steps which is later copied by lakhs and millions of people on Instagram, facebook as well tik tok upon being viral. So, one could also put

copyright on the dance video/hook steps to maintain the originality and recognition of the owner. Everyone is using one or other social media applications and we now are having a feature of GIFs or short video clippings used by the meme accounts on facebook and Instagram. After a movie is released people start cutting short clips of a part of the movie to use it as a fun reaction or make GIFs out of it which further violates the copyright. In case the owner provides license for the same then the copyright is not violated but if does not then it could be firmly believed that it is also a copyright infringement. We all do know the famous Indian reality show “Big Boss” hosted by famous Bollywood actor “Salman Khan” it was originally launched in the language Hindi is an adaptation of English reality show “Big Brother” and was launched in 2000s. Ever since of its release it had gained massive popularity by the audience which further led to release of Big Boss in different languages in India like Tamil, Telugu and Kannada. Hence, it has led to infringement of the producer of the original big boss. These are few observations which may cross our minds and further in this article we will see different copyrights, the laws, ways to curb infringement and possible analysis of the issues related to copyright infringement in the entertainment industry.

Copyright

Copyright is an intellectual property which gives exclusive rights to the author/owner of a specific creation.^[2] The creation could be any form of art such as poems, music, drawing, songs or films. Copyright aims to protect the original expression of an idea in shape of creative work, but not the idea. Certain jurisdictions which requires the work protected by copyright be "corrected" in a tangible form.^[2] It is often given to different authors having the licensed works. Such rights often involves controlling derivative works, performing publicly, distributing and moral rights such as attribution.^[2] The symbol for Copyright is © .

History

During the 15th and 16th centuries printing press was invented in Europe when the concept of copyright arose. It was made far more affordable to create art forms, as there was no copyright protection at the time so anybody rented or brought any form of text.^[3] Competitors rapidly re-published and re-set popular new works, hence the printers needed a fresh materials. Also, the amount paid to authors for new creatives were huge which helped in academics wages greatly. The invention of printing resulted in significant social transformations.^[4] When the literacy rose in Europe it led to significant increase in the demand for reading materials. The reprint prices were quite low allowing even the poorest people to purchase it which resulted into number of enthusiast readers. Following the establishment of the Copyright Act (1710 in England

and Scotland and 1840s in German speaking regions) the cheap mass market disappeared.^[3]

2. THE STATUE OF ANNE

In 1710, the statute of anne by the british parliament was the first ever copyright law in the world. It's objectives were to promoting and recognizing the people's interest by abolishing printing monopoly and granting the access to owner all the rights. Further, due to this different other countries were inspired and the idea spread. In 1741, Denmark made the ordinance, recognizing author's rights.^[4] US enacted its first federal copyright act in 1790. During the 19th century there was lots of debates regarding the statue of anne act as people raised objections for wanting a better way to regulate the copyright laws. In the latter half of 19th century the balance between competing interests started to change when both economic interest holders ie. entrepreneurs and authors worked together to establish IPR. Various other European countries had different types of Copyright laws. There was a need for an international arrangement to protect the works outside the initial boundaries which became quite urgent. Therefore, due to the pressing situation *The Paris Convention for the Protection of Industrial Property of 1883*, and *The Berne Convention for the Protection of Literary and Artistic Works of 1886* (Berne Convention) was introduced.^[3]

3. BERNE CONVENTION

For the first time berne convention introduced the notion of "originality" as decisive threshold for protected matter of subject and hereby increasing the cope of exclusivity. The threshold of originality of involved protection from acts of reproducing parts of work or making adaptations for protecting from copying/duplication was not correct. Berne convention has two main elements : minimum rights and national treatment.^[3]

4. TRIPS AGREEMENT

The TRIPS Agreement was introduced in 1994 as part of the Uruguay Round of negotiations under the WTO (World Trade Organization). It also has the provisions on the copyright protection. It requires all member countries abide by the substantive provisions of the Articles 1 to 21 of the 1971 Paris Act of the Berne Convention. Further, the TRIPS Agreement involved protecting computer programs as the literary creatives under the Berne Convention.^[4] Till 50 years the term of author's works is protected but after the death of the author his works could not be recognized as a authorized publication. It happens to include extensive regulations on IPR enforcement.^[3] Finally,

it is known to establish a sense of process for resolving disputes between parties over the Agreement's implementation.

5. THE ROME CONVENTION

The Rome Convention is a counterpart of the Berne Convention which is specifically known to apply to "related rights": broadcasts, performances, and phonograms. The performers are protected against actions to which they don't have a consent such as the live performances or any broadcasting a live performance. Phonogram producers are also having the right to protect their production of phonograms. All the broadcasting organizations hold exclusive rights to broadcast or rebroadcast their programs. ^[3]

History and Evolution of Copyright in India

In 1847, the copyright was first time known in India during the british rule. According to the copyright act of 1847, copyrights were only granted till the time the person survives plus the seven years after the demise further which the rights would be revoked. ^[2] ^[4]^[5] During that time if the author died the government had the full accountability to grant a publishing mandatory license to publish that book or writing to the copyrights owner. Also, the copyright infringement included unauthorizingly printing, hiring or selling someone's work. A new copyright act was established in 1914 in India. The act also had criminal sanction sections 7-12 regarding the IPR. The act of 1914 was the first copyright law act in India. This act was same as the 1911 law of England. The law also included literatures and art forms under it. On 21st January 1958, copyright act of 1957 replaced the 1911 act. ^[5] Further, later on the act was also modified which gave the owners of particular creatives all the rights to protect their works.

Copyright Infringement

Copyright Infringement means unauthorized use of someone's copyright protected work. Hence, it is using their work without a license. Copyright is known to be infringed according to the section 51 of copyright law^[5]:

1. A person illegally using someone else's works in any sort of forms.
2. Anyone performing any such acts without the actual knowledge of the copyright holder.
3. Someone forging the copied works.
4. A person permitting the place to be used for the sale, exhibition, communication, or distribution of an infringing work until and unless the person has no

knowledge of the infringing work or has no objection which violates the copyright.

Examples of copyright infringement is downloading songs or movies from pirated site also a person using background songs in their videos without permission is also a copyright infringement.

ISSUES RELATED TO COPYRIGHT

There are various issues in copyright namely:

1. **Designated works:** It means to use the works of someone who has already previously done it. For example: writing a research article or review article taking help from other people's research or readings but not providing references and claiming it as your own.
2. **Plagiarism:** It means copying someone's work and claiming it as your own without giving any reference or credit to the original author.
3. **Ownership:** This issue somewhat creates a confusion like if there is a person working in a company and he gave an idea but the company claims it but if he is a freelancer then he has his own rights.

TYPES OF COPYRIGHT INFRINGEMENT

Primaryinfringement

This infringement means actually copying all the work of the owner and selling it for business or commercial purposes.

1. **Substantial Taking:** Copyright is said to be violated when an unauthorized individual copies an important part of the work. In any language or writing are same as the copyrighted work then it is seen as infringement but if it has few changes then it is not considered as violation.
2. **Casual Connection:** The owner will have to show proofs if the works is similar of the person who copied and the original work. Sometimes in such issues the owner wont be able to claim his rights.
3. **Secondary Infringement:** It means copying the owner's authorized work without illegally copying. It could happen in different types of ways such as selling the copied works, importing the authorized works and providing a place for unauthorized works.

COPYRIGHT OWNERSHIP

1. **Initial ownership:** It is authorized work of the owner itself.
2. **Hired ownership:** If someone else hired by the author or a company does all the work then the person hired is the owner until and unless there is any agreement between the two parties.
3. **Joint Ownership:** If more than one person have worked towards same creation then both can jointly hold the copyrights.
4. **Assignment:** When the author transfers his copyrighted works to anyone he/she becomes the assignee it is known as assignment ownership.

Furthermore, there are also various other rights that the copyright owners have such as right to distribute, right to perform in public, right to reproduce his works, right of paternity to claim its authority and right to make derivative works.^[6]

COPYRIGHT INFRINGEMENT LAWS IN INDIA

Under the copyright act of 1957^[5],

The copyright owner can claim civil remedies and criminal remedies from the honorable court.

1. **Civil Remedies:** There are various civil remedies that can be implied by the owners.
2. **Interlocutory injunctions:** In this as a remedy the owner can get of his original creations is interlocutory injunctions.
3. **Pecuniary Remedies:** In this the owner will get all the profits earned by the accused illegally as well as compensation of his losses.
4. **Anton Pillar Orders:** In this the person guilty of infringement is prohibited from damaging the original products and also the owner along with his lawyer could search the person's premises due to the court's order.
5. **Mareva Injunction:** In this until the judgement is ruled the defendant has to submit all the goods he/she possess to the court so that he/she can't destroy it meanwhile.
6. **Norwich Pharmacal Order:** To get the required information from the third parties.

7. **Criminal Remedies:** The owner can take criminal action against the suspect person under the copyright act 1957, if by proof or judgement ruled out by the court the person is found guilty then he or she could get into jail from not less than 6 months and till 3 years, also has to pay a fine of Rs. 50,000 – 2 lakhs INR^[5].

ENTERTAINMENT INDUSTRY

The entertainment sector in economy is a tertiary sector. The entertainment industry around the globe is an important sector contributing to the economy. The industry revenue is more than 2.3 Trillion USD as of 2021. Films, music, drama and storytelling are few forms of entertainment. It gives the audience the interest and delight to watch^[7]

1. Entertainment Industry Of India

India is a diverse country and people are already associated with the entertainment industry. India is currently known to the world's second most country in the tele-communications industry. By the year 2022 the industry will grow more than 2.1 trillion.^[8] As, we are seeing increasing online subscriptions, games people are now more drawn to it and the entertainment industry will benefit from it. In recent researches it has been studied that India is potentially growing than any other markets in the OTT streaming. Further, sports being quite famous in the country people like watching it so esports is growing lots of popularity amongst the people. During the lockdown phase in the year 2020 it was witnessed that channels Aakashvani and DD Bharti had more than 100% increase and over 6 billion watch streams entire year. The audience popular shows like Ramayana, Chandra Gupta Maurya and Mahabharata got attention of people and were loved by the Indian audience. To add, government of India is also taking up few important steps in contributing to the growth of the industry. The FDI limit was increased from 74% - 100% DTH (direct to home) and cable as well as TV satellites. Hence, digitally the country is expected to grow at a tremendous rate by the year 2028.

Impact of copyright on the Entertainment industry

Copyright helps in protecting the creations of the owners and prevent it from getting copied or stolen. The owner only has all the exclusive rights. As, we can see the entertainment industry is growing at a tremendous rate the competition along with it is also increasing every day. So, it becomes quite necessary to have copyrights on the original works.^[8] The entertainment industry is greatly affected by the copyright and its laws. Currently, there has been also an increase in the piracy which leads to huge loss to the industry.

Copyright Piracy

Technology is increasing everyday but few people are using the same in a wrong way. Piracy is nowadays quite common due to which the industry is suffers a lot. [8] Piracy means the using someone else's copyrighted work such as downloading a movie from a free site or streaming shows from a pirated site which hinders the business of entertainment industry. India is known to be the largest hub for pirated audios and videos around the globe. Further, recent studies have shown that the entertainment industry seriously could loose 51.6 billion USD due to piracy of copyrighted works. Therefore, it becomes quite important to get registered for copyright as well to make more stricter and privacy policies to avoid infringement.

Need for Copyright Registration

Copyright registration is done to have a record of the work done by the owner on the record which could be of use during any case of plagiarism or infringement so the owner can claim his or her work based on the registration.

A CASE STUDY ON COPYRIGHT INFRINGEMENT

2. Royce Mathew V. The Walt Disney Co.

The author Royce Mathew, the plaintiff filed a copyright infringement against Disney, defendant regarding the movie "Pirates of Caribbean" which is currently known to be a massive block bluster around the globe. In this case, the plaintiff claimed that the defendant stole his story and all his related works in the story which he worked on in the year 1993.[9]The following year plaintiff again sent a legal notice to the defendant which was eventually withdrawn by the plaintiff the same year. During 2007, plaintiff again sued the defendant. Further, it is known that Disney (defendant) showcased the plaintiff's unregistered as well unpublished works as a proof before the court. Disney claimed that it was their idea to create the supernatural elements in "Pirates of Caribbean" which is "*pirates transforming and turning into living skeletons under the moonlight*". Therefore, the plaintiff had to withdraw his case but did not agreed to bringing up the issue again against the multimedia company. Several times the plaintiff tried suing the defendant but eventually the judgement was ruled out in favor of defendant that is Disney Co., also in this case we can see how the defendant dealt with their artist in a fraud manner by forging and presenting documents. [9] Therefore, Disney being one of the famous channels and everyone's favorite has been into various infringement cases and also has a lack of acceptability of waiver agreements between the artists.

MAIN MOTIVES BEHIND INFRINGEMENT

We can never guess the reason behind an infringement but there are possible reasons due to which a person could do copyright infringement

1. Lack of motivation, as a person who is not at all interested in developing a new idea will tend to copy the hardwork of others.
2. Lack of sources
3. Financial problems, it is known that our country is still a developing country and people are not yet well educated to find good jobs according to them therefore, they indulge in piracy and several other shortcuts.
4. Downloading anonymously leads to no such verification of the user so it also leads to piracy and infringement.

HOW CAN ONE AVOID COPYRIGHT INFRINGEMENT?

1. If one has to use any original work be it literary or music then they should check the license and read the terms and conditions before copying it. Also, one can always take permission from the owner.
2. One should always try to take inspiration from the other original works rather than copying the works.
3. While registering for copyright, lawyer consultation is important to avoid further infringement issues.

INDEPENDENT ANALYSIS

In today's world we understand that Intellectual Property Rights is quite important as it safeguards the creative works of people around us. IPR includes patents, copyrights, trademarks and trade secrets as well. The history of IPR goes way beyond and there were various laws that came before today's copyright act. The Indian copyright act was introduced in the year 1957, since then it protects the works of owners. Furthermore, despite of having strict laws regarding copyright there has been infringement of copyrights. Digitization has led us into a smoother world where we can work at our convenience. Now, we are able to work in our laptops at our homes instead of visiting cyber café like old times, we can write and read regarding any topic at our ease as we are having source of information. Internet has a substantial source of information where everyone can have an access to it. Due to which the piracy has also been increased. Recently, it was estimated that globally the entertainment industry loses

up to trillions due to infringement and piracy. India leads in copyright piracy and infringement. There are various OTT channels in India as well in other countries like Netflix, Disney + Hotstar, Amazon Prime, Zee5 and others. These OTT channels are providing quality entertainment media to people around the country and since from the pandemic people are enjoying due to which it now has immense popularity. Hence, due to immense popularity people's demands have increased due to increased demands the movies and shows are available free at various pirated sites. In one of my recent findings it is known that there are various channels available in Telegram application which is providing latest movies and shows to people free of cost. Therefore, as people are having access to free content it leads to decrease in economic impacts in the entertainment industry. There has been various cases related to copyright infringement including big companies like Disney and Sony. There are laws which provide remedies to copyright holder in case of infringement. It is a known fact that countries like China is currently leading Copyright Acts despite of bringing the copyright related laws late to their country. Still Indian laws needs reform in the current laws to curb the infringement and piracy from the entertainment industry. Entertainment Industry is a tertiary sector and the industry may face billions of loses due to infringement. Therefore, to avoid the infringement people should be highly motivated to create their own work and should work to study on collecting reliable information for creating original form of art.

CONCLUSION

To conclude, it is very significant to have copyright. It protects the original works of the creator. Due to todays increased infringement and piracy the entertainment industry's works needs to be safeguarded. It is advisable to take up some measures and come up with stricter laws for the digital media to curb the infringement. We are in need of criminal actions against the people violating the laws. Further, people in India should also be made aware to avoid infringement and piracy. Lastly, to maintain the authenticity, growth and creativity of entertainment industry IPR is a requirement.

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