
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

COPYRIGHT PROTECTION DURING COVID 19- Nishtha Sharma¹**ABSTRACT**

The concept of COPYRIGHT is present into our lives from a very long time, even if the right of the copyright exists in India since the year 1957 by the Copyright Act, 1957, it has been present in other parts of the world since 1710 from the time when the Statute of Anne was made by the parliament of the than Great Britain. Everything was going on ok till now, there were few amendments already made to the laws regarding copyright in India and few things were being debated on to be amended, we were moving ahead step by step and than a big blow came, in the form of the major Global Pandemic of COVID-19 that changed the very perspective of life. Not only affecting the life of people, the pandemic has also impacted on various legal sectors and one of them is the protection of the Copyright. This paper deals with about the concept of Copyright under the Intellectual Property Laws and the effect and issues in the protection of copyrights during the pandemic.

Abbreviations

- IPR- Intellectual Property Rights
- Sec. - Section
- IP- Intellectual Property
- HC- High Court
- u/s- Under section
- VCR- Videocassette Recorder

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INTRODUCTION

In the recent time, the normal word has a new meaning now. What we used to call normal is no longer the same, it has evolved, developed and in many ways degraded itself and the new form is the new normal now. To the reader, it is very obvious to understand what caused this change in the normal. The global pandemic of COVID-19 has had this side affect that it just changed the life of each and every individual irrespective of what they are, where they are or how they are. But amidst this horrible experience of the pandemic there are various heroes around us that have selfless efforts by taking various amazing steps to bring joy, colours, happiness and knowledge in our closed quarantined life with very less excess to the outside world. The access and use of internet has rapidly increased especially in the time of pandemic because of work from home or online lectures, theatrical movies being streamed on online platforms, virtual access to opera or band shows or concerts and everything being done via online access such as the e-news, e-cash, e-classes & various other things particularly gained popularity in the pandemic time. But all of these things have a few side effects on the various legal aspects. Some of those aspects are the IPR, Copyright, patent issues, cyber crimes, increased domestic violence, discriminations etc. There are various effects on laws and legal provision in the pandemic of Covid-19. The COVID-19 pandemic has raised a lots of questions regarding the limit of the permissible use of materials, facts, documents and contents and since the pandemic has forced people to rely on internet more than they used to due to lack of excess to libraries and other materials for research, communications, educations, entertainment, commerce, etc., there is a significant rise in the questions regarding the implication & application of the laws of Copyright in such situation on the acts done on the internet. The development combine with the pandemic rapidly increased the use of content from the internet which gave rise to various debates regarding the copyright on the internet. For example, the recent shift of education to the online mode, there is a big confusion on how the copyrights laws will apply to what they teach in online lectures rather than when they used to teach in a classroom as offline in person to person.

IPR & COPYRIGHT

Intellectual Property commonly known as IP is the type of property which is the created by the knowledge, ideas or thoughts of one's mind. Intellectual means something related to the mind and created by knowledge whereas property means something over which the right to ownership extends. IP is intangible form of property which is not possible to just be defined as per some parameters, it is generally expressed in one or the other way so that it can be

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protected. The Intellectual Property Right refers to the general sense of given the property right on the Intellectual Intangible Assets, i.e., it is the legal rights conferred on the inventor or creator or manufacturer to protect the asst they created. Such right prohibits everyone else to use the Intellectual Property without prior permission of the owner. IPR acts as a tool to protect the right, interest and safeguard the time, efforts and the knowledge invested in by the owner in creating such intellectual property. In certain ways, IPR also influences the economic development of the nation because it not protect the right on IP but also promotes competition in a healthy way which develops the growth of industries, encourages creativity of mind and also creates a path to make people invent new things by increasing the horizon of their knowledge. IPR is generally divided into 2 parts:

- Industrial property- such as Patent, industrial designs, trademarks.
- Copyright, which includes literary, artistic, dramatic, musical, cinematographic, sound recording works.

COPYRIGHT, in a kind of exclusive right to do or right for authorising someone other to do something in respect of some:

- Original literary, artistic, dramatic, musical work, or;
- Cinematography, or;
- Sound recording

Copyright is the right given to the producer/ creator of the above mentioned work. This right is kind of a collection of different rights given for various purposes such as for reproduction of work, communication of the copyrighted work to general people, even conversion or translation of the work. “Copyright refers to as the sole right to produce or reproduce any work or any part of the work into any form or material whatsoever”.² Sec. 14 of the Copyright Act, 1957 provides the definition of the term Copyright, which gives the right to the creator of the original work to use and create copies of it ahead for some provided amount of time, for which the item which is copyrighted becomes the item or material under public domain.

The main objective of the copyright laws is to protect the original creator of the work from the fraudulent and dishonest people who just tends to copy the work of another and sell it as their own by creating some kind of confusion. The copyright laws “aim to discourage the dishonest & fraud creators from snatching and using the goodwill of the original owner and creator of the

²Kartar Singh Giani v. Ladha Sing 7 ors, AIR 1943 Lah 777

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copyrighted work who has worked hard and has put efforts to establish him.³ But there is a drawback to the right of copyright i.e., it is not applicable to the ideas or thoughts. A copyright protect expression but does not gives protection to any idea or thought. Therefore, it is said that there is no copyright available on an Idea. It has been held⁴ that, “the law of copyright does not protect the ideas but deals with the aspects of expressions.” As per sec. 13 of the Copyright Act, 1957, the right of copyright exists all over India and is applicable to certain works given in the section as:

- “Original Literary, artistic, musical & dramatic works, for which it has been held⁵ that “the word original mentioned in the sec. Does not refer to the work to be expression of an original or an inventive idea or thought” whereas Delhi HC held⁶ that the copy rights is available to and survives only to an original literary work. Also, originality is an essential requirement to avail copyright protection on an artistic work and such originality is not necessarily of the idea or theme but it shall be of the expression of that artistic work.⁷
- Cinematographic films, that refer to the video recording of any form and the definition of the term u/s 2(f) of the Copyright Act, 1957 includes the visual films or videos that are recorded in VCR.⁸
- Sound recordings

It was held by Bombay HC⁹, that “as per the definitions of ‘artistic work’ u/s 2 (c), ‘dramatic work’ u/s 2(h), & ‘cinematographic film’, the performance if the actor is not included as work to gain protection under the Copyright Act, 1957.

COPYRIGHT AND COVID 19

We all or aware of the fact that the pandemic of Covid-19 has impacted everything on the planet in one or the other way, be it the human race who have seen various deaths, isolations, & have faced various economic, social, emotional losses with health loss or be it the workforce or the industries or even the GDP that just shows that the whole world is in economic crises in some ways. Similarly, as having its side effects on the system of IPR also, as it can be said that Covid-19 involves interfacing with the IPR laws in general and particularly to the Copyright

³ Hawkins Cookers Ltd. V. Magicook Appliances Co., 00(2002) DLT698

⁴ M/s Mishra BandhuKaralaya& ors v. ShivratanlalKoshal, AIR 1970 MP 261

⁵ Macmillan & co. Ltd. V. K. & J. Cooper, AIR 1924 PC 75

⁶ Camlin Pvt. Ltd. V. National Pencil Industries, (2002) Del.

⁷Challenger Knitting Mills v. Kothari Hosery Factory, 2002 PTC (24) 756 Del. (Reg.)

⁸ Entertaining Enterprise & ors. V. State of Tamil Nadu &anr., AIR 1984 Mad. 278

⁹ Fortune Films Industry v. DevAnand&anr., AIR 1979 Bom. 17

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part of the IPRs.

There are many circumstances where the effect of pandemic on the concept of copyright can be seen very clearly, be it the online leaning via internet or online classes & lectures or the work of different artist being shared on internet during the lockdown or quarantined period not to mention the increase in the pace of internet usage during the time of the global pandemic of Covid-19. These issues have been generated because due to the fear of getting affected by the virus and see oneself and their loved ones suffer, people have preferred to rely more and more than how much they used to, on the internet for their work in their day to day life. The widespread pandemic of Covid-19 is acting as an alarm to wake the humanity on many fronts which in turn hides the importance of any kind of issues related to Copyrighted that has come out in the current situation. In this era of the pandemic, the major effected part of the copyrighted system is the education system. It has created various challenges for the educational institutions not only in India but all over the world. Due to the spread of the virus lockdown happened which means that the schools & other educational institutions were forced to close down and caused a sudden and random shift to the online mode of providing education. This had led to the closure of the library system where students or the mentors & teachers were able to go, look, research & study the physical books, journals & other works by having access to them but now all of such people depend on the internet or e-mode of books and needed materials available on the internet. Another major issue is that the classes & lectures, even the office & institutional meetings have to shift to the online mode. With these the pandemic has also affected the copyright laws in the terms of the work done by various artist and literary people. All of these issues have given rise to a no. of questions in the mind of people about such problems and the possible implications of the Indian laws related to Copyright.

Copyright Issues under the Online Education System

As mentioned before that the shift of education system from the general offline mode of classes to the newly understood online mode has given rise to various questions regarding to how the laws relating to the concept of copyright, its limitations and the exceptions would be applicable now on the new online mode of imparting education that uses online video, PPTs, documents and other lectures. Some of these raised questions are like:

- Whether these online lectures fall under the exceptions provided under the copyright laws?
- Whether such pre- recorded video lectures for online classes (that usually includes the material which is copyrighted under someone else's name) which are then presented to

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the students by the educators via online platforms, are created in same way as those lectures during the offline in- person lectures?

- What if the educational institutions provide the students with e- books of the printed books available in the library, will it come under the fair use of the copyright limitations and exceptions?
- Are the rules, regulations & laws relating to copyright that were applicable on the offline mode of classes, will be implied to the e- classes in the same manner?
- Will such online posting of material during the online lectures confer any kind of copyright of the person posting on that material?
- What steps can be taken to avoid the copyright infringement of any other person's work?

There are few of the questions that are present due to the current situation of the global pandemic.

Issues related to the Artistic Work

During the time of the pandemic of Covid-19, where many people have suffered there were some who stated to work for the betterment of the humanity. Some of these are the artists or creator of such works who shared their work with the whole world during this period. But as we always say every good comes with the bad, thus, even this production and sharing of the artistic or dramatic work which were never shown or given to anyone, has its own downside because where there is optimism there exists the opportunistic behaviour as there is always someone out there who is just waiting for one single opportunity to make their life without even caring about who they hurt or what laws they break in doing so. And such work has given rise to this opportunistic behaviour even online. There are various examples for this such as people randomly copying items from social media, items such as poems, write- ups, blogs, information related to education, even using the pictures, Gifs ad videos and making them their own. The general public while copying such things don't even think about the fact that there might be something illegal to such actions, they are not even concerned about the copyright and the laws relating to copyright.

One of the very famous examples of such work is Brewster Kahle, who is a multi- millionaire of Internet Archive, he has had various long debated about expanding the rights given to people to copy someone else's work and to the right to create any digital copies of such copyrighted work of a third party, making it available on internet and that to without the permission of the

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original owner of the copyrighted work. kahle, also introduced a free access to a free emergency library of the works which are under the copyright domain of a third person, available to every reader out there. To some extent this seems amazing as we don't have to pay to read some very good stuff or there will be no need to buy any book or journal or other printed item of such sort, but being a student of law and a responsible educated person, it is very important to understand the depth of our actions, their legality and modesty. Because such actions and work done by Kahle is controversial over many platforms and is beyond the limits given by the copyright laws in any country.

There are various other examples that shows about how the digitalisation has led to infringement of the copyright laws not only in the country but all over the world.

Solution & Answers to the issues

The solutions and answer to all the about problems and questions is straightforward, where the work shall be under the limitations as per the copyright laws with fair use of the provisions under the laws relating to copyright. As for the questions of the educational institutions regarding the copyright of the material they are using during the online classes on digital platforms, there are various provisions under the copyright laws in India that provides certain exceptions by exempting few actions from the definition of copyright. Being specific, exemptions under the Copyright Act, 1957 is provided u/s 52 of the act, which clearly states that any work, created or reproduced by a teacher or any person relating to teaching in the course of the provided instructions shall not be included under act of infringement of copyright. With these provisions, the judiciary of India has given various judgments interpreting the terms "in the course of instruction" which can include the all & any activities that falls under the head of providing for educational instructions. Therefore, it can be said that the exemptions provided to teaching for the infringement of copyright not only confers upon the offline lectures but is also applicable to the online mode of education because judiciary as always has widened the scope of such exceptions under the copyright laws to include the online & digital mode of teaching because of the recent shift of educational preferences due to the global pandemic of COVID-19. This is because it is very obvious to understand that when it comes to finding an alternative for the offline day to day, face to face in- person mode of education keeping in mind the latest requirement of the pandemic related to lockdown and social distancing, online platforms & modes of education seems to be the perfect fit for such situations. Thus, the online education clearly comes under the head of the fair dealing with the provisions of copyright laws in the country.

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Now when it comes to the question of uploading the video of any other person into the digital classroom, it generally becomes very tricky to answer such questions because as per the laws relating to copyright the actions of uploading the videos may come under the ambit of the definition of publication and such act if done for the material of a third party can lead to infringement of copyright. u/s 14 of the Copyright Act, 1957, it is very clear that providing of work to the general people is an exclusive right conferred upon the original owner of the work. in this situation the concept of the fair dealing of provisions of law also renders itself as a narrow concept where only small parts or paragraphs from the complete work which is copyrighted can be used. The current amended act of Copyright i.e., the amendment of 2012 clearly states and allows the libraries of educational institutions or the non- commercial libraries, to keep and circulate the digital copies of material if they have a non- electronic copy of such material physically present with them.

There are various cases such as “Google v. Oracle” that are the major examples where SC has dealt with the approach of the term “efficient infringement” in order to acquire and gain an intellectual property.

Way Forward

The pandemic has created a havoc in the lives of people and has effected various working all over the world but in general it has exposed off the various loopholes, vulnerabilities and drawbacks in the system of copyright and its implications to deal with the unprecedented circumstances like the pandemic has caused that includes the closing of industries, workplaces, educational institutions and even the government departments at some points. Therefore, there is need that now the law makers, the legislative organ of the government shall address the current issues via various arguments or debates and come to a solution as conclusion to cover the prevailing aspects to help solve the issues relating to the copyright protection. This need refers to the requirement of modernisation of the copyright laws as we move ahead towards the digital world (more since the pandemic of Covid-19) to deal with the new and advanced dynamics of the system of creating content and its usage through the internet. Hence, it can be said that it is high time to modernise and develop the copyright and its laws as per the current era of digitalisation and as per the time of pandemic, socialisation, e- reforms and even the cybercrimes. Thus, India needs to work and generate progressive as well as integrated measures to support the national laws on the COPYRIGHT

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