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**COPYRIGHT INFRINGEMENT IN THE ERA OF SOCIAL MEDIA**- Nishita Kirty<sup>1</sup>**Abstract**

Earlier the idea of property was only attached to tangible goods but over a period of time with the development in the technology the intangible right over tangible goods also gained prominence. These types of rights are called as Intellectual Property Rights as they are the work of the intellect or intelligence of a person. There are different kinds of IPRs to protect various kinds of creations or products. One of such kind is the Copyright which is to protect the literary and artistic works of the creators. In India Copyright is protected under the Copyright Act, 1957.

In the 21st century with the gradual improvement in the technology the social media platforms came into picture. Content creation became an important way of expressing ones creative talents and artistic works. Whether that creation is entitled to copyright and if so whether we are intentionally or unintentionally infringing someone else's right. This paper will focus on the following arenas:

- An understanding of copyright and works protected under it.
- Content creation and IPR rights attached to it.
- Whether social media a bane for copyright owners.
- Policies of copyright of different social media platforms.

**I. INTRODUCTION**

The legal protection of literary or artistic works created by the authors, artists and creators is called as Copyright. The works protected under this right range from books, music, paintings, films, maps, technical drawings and many more.<sup>2</sup>

India became a member of the World Intellectual Property Organization (hereinafter

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<sup>2</sup> World Intellectual Property Organization, "Copyright", Available at: <https://www.wipo.int/copyright/en/>, Last Accessed: Oct 04<sup>th</sup>, 2021.

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referred to as WIPO) in the year 1975 and also became a part of various treaties and conventions of the WIPO. During the pre-independence era the British East India Company's copyright law was enacted in India in the year 1847. English copyright law was followed in India for a very long time. In the English Copyright Act, 1847 the protection given was for the lifetime of the author plus seven years after the demise of the author and in total for a period of forty two years only. Later on with developments in the subject of copyright in Britain the 1847 act was replaced by a copyright enactment of 1911 and was applicable to all the colonies of the British Empire. This 1911 act was further modified through 1914 act. Post-independence in India a new copyright act was enacted in the year 1957 and was amended five times to bring it in conformity with the changes in the technology and development as well as with the various conventions of the WIPO.<sup>3</sup>

Section 14 of the Copyright Act, 1957 gives the meaning of 'Copyright' as the "exclusive right, subject to the provisions of this Act, to do or authorize the doing of any of the given acts in respect of a work or any substantial part thereof".<sup>4</sup>

Earlier when there were no tech gadgets the artistic or literary work used to take place through physical mode only and for protection of those creations we have the Copyright Act, 1957. But with the development in the technology as well as the networking systems creators are now seeking benefit of the audiences present on various social media platforms and are utilizing the opportunity to the fullest. The Act is of 1987 and at that time it was not foreseeable to know the impact of social media so to protect the infringement of Copyright in the era of social media the Act also need to evolve.

## **II. WORKS PROTECTED UNDER COPYRIGHT**

Section 14 of the Copyright Act, 1957 states the meaning of Copyright as well as enlists the works which are protected under Copyright. They are divided into five categories which are as following:

- I. Literary, Dramatic or Musical Work (not being a Computer Programme):
  - To reproduce the work in any type of material form
  - Storing of the work in any medium by electronic means also

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<sup>3</sup>CharuDureja, "Historical Development of Copyright Law in India", International Journal of Advanced Research in Management and Social Sciences, Available at: <https://garph.co.uk/IJARMSS/Jan2015/7.pdf>, Last Accessed: Oct 04<sup>th</sup>, 2021.

<sup>4</sup> The Copyright Act, 1957, Professional Book Publishers, 2021.

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- To issue copies of the work to public but they should not be the one already in circulation to the public.
- To perform or communicate the work to the public
- In respect of the work making of any cinematograph film or sound recording
- To translate the work
- To make any adaptation of the work
- To do any of the above mentioned works in relation to such translation or adaptation of the work in this category

II. Computer Programme:

- To do any act which are already mentioned in the category of literary, dramatic or musical work
- To sell or give on commercial rental or offer for sale or for commercial rental any copy of the programme

III. Artistic Work:

- To reproduce the work in any kind of material form including storing in any electronic medium or depiction in two dimensions of three dimensional work or depiction in three dimension of two dimensional work.
- Communicate the work to the public
- To issue copies of the work to public but they should not be the one already in circulation to the public.
- To include the work in any cinematographic film
- To make any adaptation of the work
- To do any of the above mentioned works in relation to such adaptation of the work in this category

IV. Cinematograph Film:

- To make a copy including photograph of any image forming part or storing it any medium by electronic or other means
- To sell or offer for sale or give on commercial rental any copy of the film
- To sell or give on hire or offer for sale or hire any copy of the film, whether such copy has been sold or given on hire earlier
- To communicate such film to the public

V. Sound Recordings:

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- To make any other sound recording embodying it
- Storing of the work in any medium by electronic means also
- To sell or offer for sale or give on commercial rental any copy of such sound recording
- To communicate such sound recording to the public<sup>5</sup>

### III. ESSENTIAL COMPONENTS OF COPYRIGHT:

There are certain essential elements of Copyright which are given subsequently:

- **Exclusive Right:** Section 14 of the Copyright Act, 1957 defines copyright as an exclusive right. It means that the rightful owner or creator of the work can restrict all others from copying his or her work in any form whatsoever. He can also prevent all others from doing any act which according to the law of copyright can only be done by the owner himself.
- **Bundle of Rights:** Copyright is called as a bundle of rights because an owner of the copyright has various kinds of rights attached to it such as to publish, produce, license, assign, communicate, translate, adapt, perform and many more. It varies depending on the category of work and is widely discussed under sec 14 of the Copyright Act, 1957.
- **Presentation of Idea is protected and not the Idea:** In the arena of Copyright protection the presentation of the idea is protected and not the idea itself. Idea is part of one's mental exercise and cannot be proved that who got the idea of the particular work but the presentation, publication or communication of that idea helps us prove that who shall get the exclusive bundle of copyrights because at the end it is a known fact that the mind cannot get a copyright but a material or electronic form of expression can.
- **Original Work:** Whenever a copyright is to be given it is seen that it has not been there in circulation earlier or copied from someone else. Originality does not mean the originality of idea or thought but the way of expression of that idea or thought. It is possible that two persons can get the idea of writing a book on the same subject matter but the plot or the way the storyline is designed has to be original. This term is also given prominence u/s 13 of the Copyright Act, 1957. It was held in the case of

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<sup>5</sup> Ibid, Pg No. 7, reference no. 3.

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Macmillan v Cooper<sup>6</sup> that a work may be called 'original' if the creator has applied his skill or labour, even though he has drawn inspiration or knowledge commonly known to all or has used already existing material.<sup>7</sup>

#### IV. SOCIAL MEDIA: A BANE FOR COPYRIGHT OWNERS

Earlier the idea of content creation, art, music etc. was only confined to the material space but with the development of the digital world it has plunged into the digital space also. With amendment in the year 2021 the Copyright Act also gave importance to the electronic form or area. Nowadays everyone has a smart phone and even kids of the age of two or three years know how to use it. There are various kinds of social media platforms and as we also like to say the world is coming closer. With these digital platforms content creation is also becoming easy because the creator gets a mass audience. It is in the universe that every coin has two sides to it and in this situation also with creators getting variety and large amount of audience they also face number of problems as their content is accessible to all.

To protect the creators on social media we first need to understand that whether they come under the ambit of Copyright protection or not. As it is discussed earlier that there are four essential elements of copyright i.e., it is an exclusive right, it a bundle of right, it has to be original and the most important one being the presentation of the idea is protected and not the idea itself. In the case of content creation on social media we can see that there is a presentation or expression of idea through various ways. People post choreographies, song covers, short films, poems, paintings etc. Section 14 of the Act also states that presentation in electronic means is also a part of Copyright but the problem arises in interpreting the term 'electronic means' and state that whether it includes social media or not.<sup>8</sup>

Instagram, Facebook and YouTube are one of the widely used platforms for content presentation and thousands of contents are posted on them every day. These platforms have their own checks and balances to prevent the infringement of copyright. The person copying any content must give due credit to the owner of the right. But the real question is that whether the credit is enough when the person is subsequently hampering the audience of the real owner by having more followers and getting more reach. This is not only done by the audience but at times the content creators also infringe the rights of the true owners. Eg. When a content creator

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<sup>6</sup> Macmillan v. Cooper, AIR 1924 PC 75.

<sup>7</sup> V. K. Ahuja, Law Relating to Intellectual Property Rights, 2021(3<sup>rd</sup> Edition).

<sup>8</sup> Journal of Intellectual Property Rights, "Challenges to Copyrightable Work in Cyberspace", January 2008, Available at: <http://www.delhihighcourt.nic.in/library/articles/challenges%20to%20copyright%20cyberworld.PDF>, Last Accessed: October 14<sup>th</sup>, 2021.

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making a dance cover uses a song or when a person is making reels or short videos and uses the tune or composition of music as background etc.

## V. COPYRIGHT POLICIES OF SOCIAL MEDIA PLATFORMS

There are copyright policies of each social media platform and as a user we should go through them so that we do not infringe the copyright laws as well as be vigilant enough if our copyright is getting violated. Following are the policies of different social media platforms:

Instagram: It clearly states that one should not post any content which is copied from someone else and must only post things which they have created themselves. They also provide a list of things that can violate the copyright laws such as songs that have been bought or downloaded can also violate the rights of the owner or assignee or licensee of that song, given credit to the true owner, even if there is no intention to gain profit from it, modified or added your own original content to it, saw others posting the same content and many more. They also gave few questions which one should ask before posting anything on Instagram like whether I have created what I am posting, whether I have taken all prior permissions required etc. It also states that it is always advisable to take a written permission from the true owner before posting any content that is created by someone else or owned by someone else. It mentions that we can only use someone else's creation if it is in the public domain by virtue of fair use only.<sup>9</sup>

Facebook: It is also the owner of all the prominent social media platforms including Instagram, WhatsApp etc. Facebook in its copyright policies gave descriptive information about copyright infringement and it also gives a form that can be filled if one believes that his or her copyright is being infringed. In the copyright policies of Facebook it is advised that one should read in detail about copyright from the websites of WIPO and be vigilant enough about his or her rights on intellectual property.<sup>10</sup>

YouTube: YouTube also strictly prohibits the use of copied content from the true owners and if they want to use any such music track or choreography etc. they must take the prior authorization of the true owner. Copyright policies of YouTube also talk about fair use which means in certain circumstances the content can be used without the permission of the true owner but also states that different countries have different rules regarding this. For providing information about any infringement a webform can be filled and YouTube copyright

<sup>9</sup> Help Centre Instagram, "Copyright", Available at: [https://help.instagram.com/126382350847838?helpref=faq\\_content](https://help.instagram.com/126382350847838?helpref=faq_content), Last Accessed: October 14<sup>th</sup>, 2021.

<sup>10</sup> Facebook Help Centre, "Copyright", Available at: <https://www.facebook.com/help/1020633957973118>, Last Accessed: October 14<sup>th</sup>, 2021.

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management can be informed about the same who can take the necessary steps required. They also have a copyright match tool which keeps a check on all the videos that get posted on YouTube. YouTube have an enforcing copyright system and if any complaint has been filed, action is taken on priority basis and the video is taken down and copyright strike is applied. If a user gets three copyright strikes within ninety days the account as well as the channel gets terminated.<sup>11</sup>

### **CONCLUSION:**

While going through the discussion we saw that there are various kinds of things that are protected under copyright. Earlier it was only confined to physical or material things but with the development in the digital world the infringements have started taking place there also. The Social Media has gained so much of prominence that content creation on social media has become one of the professions followed by many. We post anything that we like without even caring to do a due diligence that it may hamper the rights of others.

During the course of our discussion we saw that different social media platforms have their copyright policies to prevent such kind of infringements from taking place but the Copyright Act, 1957 do not specifically talk about infringements on social media platforms. It can be understood that when the Act was made the impact of social media could not have been foreseen. Later on with development in time the Act also changed through amendments but there is no specific statutory provision which states that infringing rights of others on social media has remedies.

With the evolution of society the Act must also evolve and adopt the changes taking place in the society. Law is dynamic and must be amended from time to time so that it can lead to good governance of society.

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