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**INFRINGEMENT OF LITERARY, DRAMATIC AND MUSICAL WORKS
ALONG WITH JUDICIAL ROLE**- Arun Eradi Arangil¹**ABSTRACT**

The Indian Copyright Act limits the reproduction of literary, dramatic, and musical works. The unlicensed reproduction of books and other printed materials is the definition of literary work piracy. Public performance of a literary, dramatic, or musical work violates the work's copyright. Due to India's limited internet penetration, infringement of copyright content on computers belonging to genuine owners is unusual. Copying large portions and appending brief comments may be unfair, but this must be a matter of perspective. The appeal of Malini Mallya was denied because copyright associated with dance performance would not be considered a literary work.

When criminal conduct interfered with a private right, the Court of Appeal ruled that courts had the authority to issue an ex parte injunction against the offender. Copyright law is seen as crucial protective legislation since it helps the enrichment of a nation's cultural legacy. Awareness of copyright violations and regulations is crucial in a rising society, as creativity is essential to growth. At each stage of dealing with copyrighted information, it is essential to contact a copyright attorney. This includes assistance with copyright application submission, copyright infringement settlement, and copyright defense.

**INFRINGEMENT OF LITERARY, DRAMATIC, AND MUSICAL WORKS ALONG
WITH JUDICIAL ROLE**

The Indian Copyright Act restricts the copying of literary, theatrical, and musical works. Initially, and following the language of the preceding articles of the Copyright Act, such work was afforded minimal protection. In summary, the legislative protection according to various types of labor does not comport with the goals of justice. As a result, it necessitates judicial intervention. Though the Indian judiciary has not dealt with many copyright infringement cases

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due to various reasons and thus has been unable to contribute significantly to the cause of copyright protection, whenever such cases have reached the bench, they have been adjudicated to grant some protection to the copyrighted work.

The Indian Copyright Act 1957 protects literary works, theatrical works, musical works, creative works, cinematographic film, and sound recording. Section 14 (a) of the Copyright Act 1957 confers similar exclusive rights for literary, theatrical, and musical works. Although computer programs, tables, and compilations, including computer databases, are included in the scope of literary work, special rights are recognized for computer programs under section 14 (b).

According to the Copyright Act 1957, a copyright owner has the following rights in literary, dramatic, and musical works:

- Reproducing the work in any tangible form, including electronic storage,
- Issuing copies of the work to the public that are not already in circulation;
- Performing or transmitting the work in public;
- Producing a cinematographic video or audio recording in connection with the job;
- Performing any necessary translations of the work,
- Adapting the work in any way; and
- He is performing any of the activities described above with a translation or adaptation for the work.

Piracy of literary works is defined as the unauthorized replication of books and other printed materials and their distribution/sale for profit. Any individual who commits any preceding activities without the owner's consent is considered infringing the work under section 51 of the Act. Journals/magazines and other publications are not often pirated in India. Piracy of literary works often occurs in three distinct ways in this country.

- 1) Reprinting of text and trade books on a large scale
- 2) Illegal translations; and
- 3) Commercial photocopying of books/journals. Frequently, piracy takes the form of releasing phony books with fictitious writers.

The other method of piracy is the production and sale of publications intended for review. Numerous international publishers submit books for evaluation to India. Pirates obtain access to such books and create rapid reproductions for sale in the Indian market. This occurs far before the permitted Indian distributors receive their copies for sale in India. Naturally, distributors'

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sales suffer as a result. Without the authorization of the work's copyright owner, performing a literary, theatrical, or musical work in public is an infringement of the work's copyright. What is public has never been defined or described in the laws. In its broadest sense and literal interpretation, the term public refers to the broader public, and the question concerned the criteria to be employed when interpreting the term public. The audience's character, including its composition, i.e., the presence or absence of visitors in the family, the audience's relationship with the copyright owner, and so on, decides whether it is a communication to the public.

DIFFERENT TYPES OF LITERARY WORK AND HOW INFRINGEMENT OCCURS:

In Section 2(o) of the copyright act, literary work is defined as "computer programs, tables, and compilations, including computer databases. "However, this definition is not complete; in order to define the term "literary work," we must use a variety of denotations, and it is at the discretion of the judiciary to provide copyright protection. Literary work encompasses all work expressed in print or writing, regardless of its quality or style. In copyright law, the term literary is used in politics, like how the term literature refers to written or printed information.

"Infringing copy "refers to a duplication of a literary, theatrical, musical, or creative work that is not in the form of a cinematographic film. The present thesis has examined various aspects dealt with by the judiciary, which were not expressly mentioned in the definitions as works containing copyright but was nonetheless granted copyright protection; the following list is indicative only; there are additional works as well. The literary work that has been granted copyright protection are-



Different kinds of Literary Works

Abridgments, compilations, notes from referred books, dictionaries, directories, statistics, legal publications, notes on preliminary sketches for a copyrighted work, selection of quotations, trade literature, the idea taken, historical works and works of fiction, commentaries on acts, law books, language copying, unconscious copying, reproduction, parody, research thesis, dissertations, students guide in respect of a copyrighted work, research thesis, dissertations, students guide in respect of a copyrighted

In *Kartar Singh V/s Lodha Singh*, the then-Lahore High Court found that two literary works, one earlier and one later, were biographical and historical biographies of Guru Gobind Singh. It was a particular situation where the same author authored both novels. In 1915, Kartar Singh published a Punjabi poetic biography of Guru Gobind Singh titled 'Deshmesh Parkash' and sold the exclusive copyright to Lodha Singh. In 1930, Kartar Singh produced another book on Guru Gobind Singh's life in poetry, titled "Deshmesh Partap." The Respondent said that the latter book is almost identical to the older book in which he owns the copyright and hence infringed on his copyright in the book. After considering the plea, the Court concluded that there is no breach of copyright because the two works exhibit distinct characteristics. The first volume included 568 pages, while the second contained 900. Some errors in the first book were rectified in the second. The second book had several new situations not included in the first. Indeed, the poetic form was unique. Thus, it was concluded that because both publications were

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biographies of the same person, there was bound to be some resemblance in the dates.

What copyright safeguards:

Copyright safeguards the author's expertise and labor in creating his work. In literary production, talent and labor encompass the language invented and utilized by the author and the selection and compilation. Another individual may create another work in the same basic shape, provided he does so from his means and endows the work with his labor and industry. When evaluating whether there has been infringement if the subject matter of Plaintiff's work is not original, the issue is how far the work has been used in an unfair or unauthorized manner. If a person obtains the subject matter through illicit means rather than ordinary sources, he is engaging in illegitimate usage. In the case of works that are not original in the strict sense of the term, but are composed of, compiled, or prepared from materials that are freely available to all, the fact that one man has produced such work does not preclude anyone else from producing another work of the same type and utilizing all the materials available to him. In any of these circumstances, the defendant is not permitted to employ or advantage himself of the Plaintiff's labor to create his work, that is, just to take away the fruits of another man's labor, or in other words, his property.

In *Harman pictures N.V. vs. Osborne*, The Judge was challenged with Mrs. Cecil Woodham Smith's well-known book *The Reason Why* and the screenplay for the film written by John Osborne. The Judge posed the following question: "Did John Osborne work independently and produce a script that, by its very nature, bears a great deal of resemblance to the book, or did he work in reverse, taking his selection of incidents and quotations from the book, albeit omitting a few and making some alterations and additions through reference to common sources and some references to other sources?"

General propositions:

In *R.G. Anand v. Deluxe Films*, FAZAL ALI, J. developed the following propositions after studying a variety of sources, English, Indian, and American:

- (1) There can be no copyright in an idea, subject matter, themes, narratives, or historical or legendary facts, and in such circumstances, infringement of the copyright is limited to the form, manner, arrangement, and presentation of the author's concept.
- (2) Where the same concept is developed differently, it is evident that similarities are sure to appear because the source is the same. The Court should decide whether the similarities concern essential or substantial components of the copyrighted work's form of expression in such

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circumstances. If the defendant's work is a carbon copy of the original work with minor variations, this is a breach of the copyright. In other words, for a copy to be actionable, it must be significant and material to the extent that it immediately concludes that the defendant committed an act of piracy.

(3) One of the surest and safest ways to assess whether or not copyright has been violated is to check if the reader, spectator, or viewer has an absolute sense that the later work is a copy of the original after reading or seeing both works.

(4) Where the same topic is used but is presented and treated differently, the succeeding work becomes an entirely new work, no question of copyright infringement arises.

(5) However, when material and broad dissimilarities between the two works negate the purpose of duplicating the original, and the coincidences between the two works are coincidental, no copying infringement occurs.

(6) Because a breach of copyright is an act of piracy, it must be established by clear and convincing evidence by the different requirements outlined in the preceding case law.

(7) where, on the other hand, the issue is whether a film producer or director violated the copyright of a stage play, the Plaintiff's duty of establishing piracy becomes more difficult. Contrary to a theatrical play, a film has a much broader perspective, a larger field, and a more extensive background, allowing the defendants to give the notion a distinct color and complexion by incorporating a range of occurrences. If the audience leaves the film because it is essentially a replica of the original play, copyright violation may be established.

All human events, it was maintained, were equally available to everyone who sought to contribute to or improve on the materials already gathered by others, thereby creating original work, and no one could monopolize such a topic. Every man may take what is beneficial from the original work, improve, add to, and distribute the entire work to the public without compromising the original work with his additions and improvements, and there will be no infringement of any right. However, a copy of work, much less a slavish copy, cannot be permitted to stand.

Plaintiffs work must be used:

There can be no infringement unless the plaintiffs' work has been used, directly or indirectly. The aphorism "what is worth copying is worth defending" has been criticized for seeming excessive. 'What is worth copying is prima facie worth defending,' it has been observed. It is conceivable to save wholly mechanical labor by replicating something produced entirely

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mechanically and without skill when the sole issue was whether the previous work's entirely mechanical labor constituted relevant labor to bestow originality in the copyright sense.

Copying the idea:

A person cannot be held accountable for copyright infringement in work if he merely takes the work's core concept, even if it is highly unique, and expresses it in his way. While copyright cannot prevent copying a broad concept, it can protect the copying of a specific 'Idea.' It is a matter of degree, with the concept of excessive borrowing of the talent, labor, and judgment that went into the copyrighted work serving as a good guide. In determining whether a computer is infringing, consideration must be given to literal similarities and the "program structure" and design elements.

What Plaintiff has to establish:

"In any case of infringement, the Plaintiff must establish not only that the work complained of is so similar to his that it is capable of being an infringement, but also that it was produced by the use of those features of his work that constitute an original copyright work due to the knowledge, skill, and labor employed in their production. There is no infringement unless and until it is proven that the defendant created a work that is both similar to the Plaintiff's work and created via the direct or indirect use of the Plaintiff's work's copyright-protected aspects."

To prevail in a copyright lawsuit, Plaintiff must establish that the defendant has made unauthorized use of Plaintiff's copyright work, either directly or indirectly. It is not essential to demonstrate that the defendant plagiarized Plaintiff's work. It is sufficient for Plaintiff to prove a causal connection between their copyright work and the defendant's claimed infringing copy. The copying does not have to be direct. It might be circumstantial. However, what must be established is that the putative defendant copier took the Plaintiff's labors in creating his copies, either directly or indirectly. A plaintiff must demonstrate and prove as a matter of the fact that copying occurred. Typically, the requisite proof begins with establishing similarities and access to the Plaintiff's output.

The surest and safest way to assess whether or not there has been a copyright violation is to see if the reader, spectator, or viewer is definitely of the opinion and receives an unequivocal impression that the later work looks to be a copy of the original after reading or seeing both works. Two components must be established to show infringement: (1) ownership of a valid copyright and (2) copying of the work's original constituent pieces. The need for originality

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precludes the protection of non-copyrightable information such as names, addresses, and telephone numbers. The individual who prepared the telephone directory cannot be considered the author by any stretch of the imagination.

Infringement of copyright works through internet-digital Technology:

This is the Technology by which any information containing letters, numerical words, devices, or two-dimensional color combinations can be converted to binary electronic notions of 0's and 1's, stored in a computer, and transmitted almost instantly and with perfect accuracy to any part of the world connected via a network of cables or satellites. This enables entrepreneurs to convey information about their products, services, and marketing material to any computer linked to the internet, where it may be picked up and saved. This has enabled copyright violators to exploit the materials connected with their products. Additionally, they can steal important information and resources such as recorded music CDs from music recording businesses' computers. Infringement of copyright content held by legitimate owners on their computers linked to the internet is uncommon in India, owing to the country's low internet penetration. Internet use is prevalent in the United States of America and other advanced countries.

Manner of using plaintiffs' work:

Defendants may utilize the plaintiffs' work as a source of ideas or information if they use it as a springboard for their compilation or check on their independent study. Using the plaintiffs' directory entries and sending them out for verification, constructing a street directory, or using the exact quote that the Plaintiff has chosen for a critical edition of Shakespeare's plays, were all deemed inappropriate.

The extent of plaintiffs' efforts:

Where the plaintiffs' labor, skill, and judgment were insignificant, perfect copying of particular characteristics will be required to show infringement. In *Kenrick v Lawrence*, it was determined that only an identical replica of the plaintiffs' picture infringed since it was hand-drawn to inform voters where to register their vote on a ballot paper.

Scientific literature:

The Royal Society of the United Kingdom stated in 1956 that 'Science is founded on its published record, and access to public scientific and technical information is a fundamental need of scientists worldwide. Making single copies of extracts from books or periodicals is critical for research workers, and the production of such single extract copies is required for

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scientific practice.

The motive for reproduction:

The purpose of reproduction is significant in determining whether it constitutes fair dealing. Thus, if the replication is motivated by profit rather than criticism, it cannot be defended as fair dealing. This occurs when a writer reproduces the entire work and adds a few critical notes here and there, with the effect that the book is purchased for the original work rather than for the critique included therein. If the replication is just to attract readers and not for criticism or review, it does not constitute fair dealing.

Quantum of reproducing Justified:

"You must first evaluate the quantity and range of citations and excerpts," Lord Denning once stated. Are they collectively too many and lengthy to be considered reasonable? Then you must consider how they are used. This may constitute "fair dealing " if they are utilized as a springboard for commentary, criticism, or review, this may constitute "fair dealing." They may be unjust if they convey the same information as the author for a competing goal. Following that, you must examine dimensions. Taking lengthy passages and attaching little remarks may be unjust. However, once everything is said and done, it must be a question of perception."

Whether reproduction of a significant portion of work qualifies as fair dealing is subject to copyright. It is not acceptable to justify publishing a whole work because it was necessary for research or private study. On the other hand, a music student may copy the entirety of a musical composition for research and private study. In the case of a painting, drawing, or other two-dimensional creative creation, the entire piece may be created for critique.

Even publishing a large portion of Plaintiff's work for private study, research critique, review, or newspaper summary is not protected. However, the Court will examine the substantiality of the portion created when determining fair dealing. Thus, reproducing a few critical lines will not be considered fair dealing.

Competition with the original:

When determining whether the use is within the definition of fair dealing, one factor to examine is whether the two works are likely to compete, therefore reducing demand for the original work.

Study notes:

The study noted that including extensive reproductions of the original works and intended as

further aids for students is not fair dealing.'

How far defendant's user will seriously interfere with plaintiffs' exploitation:

In the context of literary work, it has been observed that the nature of the two publications and the likelihood or unlikelihood of them colliding is relevant and may even be a deciding factor in the case. However, even if there is no likelihood of competition between the two works, unfair use of one book in the preparation of another would constitute infringement.

Part of the work only Infringed:

Where only a portion of the work has been infringed, the question becomes whether the injunction should be limited to the portion of the entire work. The infringing portion of the work can be isolated from the entire work, and the injunction will be limited to the infringing portion. If the copied portions of the work cannot be isolated from the original portions without jeopardizing the use and value of the original materials, the injunction will be extended to the entire work.

As the legislature provides for copyright protection, any literary work that is a component of another work and is either an abridgment or a compilation of another work constitutes literary work in its purest meaning. This signifies that some new things are referred to as literary work via compilation or abridgment. The author might add uniqueness to his work by compiling more material on a particular subject and binding or compiling it ultimately.

Frequently, students or teachers will take notes from books and interpret and analyze them in their unique way, requiring some degree of creativity and originality in the work. Because notes taken from books referred to for a particular study can be obtained, copyright can be obtained on the notes themselves.

Variety of dramatic works, in which copyright Subsists and its infringement in the eye of Law:

"Dramatic work" refers to any item for recitation, choreographic work, or amusement in a dumb show whose scenic arrangement or acting style is defined in writing or otherwise but does not include a cinematograph film. The judiciary has interpreted the following terms concerning dramatic works: 'elements of fiction, drama, photoplays, the parallelism of phrase, incidents of dramatic works, plot, theme, environment, emotions, local color, characters, dramatic

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situations, scenes, stage mannerism, mechanical ideas, controversies, general tests of infringement of dramatic works, originality of dramatic work, defense of familiar and earlier sources.

Bootlegging:

Bootlegging is the illegal recording of a live performance, and such unauthorized recordings are referred to as bootlegs. The Copyright Act does not afford a remedy for bootlegging since a live performance is not protected by copyright. As revised by the 1994 Amendment, the current legislation vests performers with specific individual rights dubbed performer's rights, which constitute an infringement of these rights when infringed.

Position in the U.K:

The Performers' Protection Acts 1958–1972 in the United Kingdom protects performers concerning their live performances. Under this Act, unauthorized recording is deemed a criminal offense. India lacks comparable legislation. In India, unauthorized recording can be protected only through a breach of contract or confidence lawsuit. The United Kingdom's current Copyright, Design, and Patents Act 1988 grant several specific rights to performers according to sections 180, 195, and 196. The following instances illustrate how courts in the United Kingdom approach this issue. In *Ex parte, Island Records Ltd.*, thirty plaintiffs, performers, and recording companies with whom the performers had exclusive contracts to record their performances in the best possible condition, alleged that they were suffering severe damage as a result of the activities of unauthorized recorders ('bootleggers') of live performances and subsequent trading reproductions of those recordings. They applied *ex parte* in the Chancery Division for, among other things, an injunction to revoke those contracts. Without considering the affidavit of documents, JOHN WALTON Held that the courts had jurisdiction to award relief to a person who, although demonstrating damage caused by the unlawful conduct, lacked a claim to property violated by those activities.

Allowing the appeal, the Court of Appeal held (8HAW, LJ. dissenting) that where a private or corporate person could demonstrate that a criminal act was interfering with a private right, thereby causing or threatening to cause him special damage in addition to general public damage, the courts had jurisdiction in equity to grant an *ex parte* injunction restraining the defendant from damaging that private interest; and that were the recording compliant findings.

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Considering the legislative requirements, there can be no question that copyright in connection with dance performance would not fall within the concept of literary work but within the definition of dramatic work. The Supreme Court of India declared in *Academy of General Education, Manipal, nod Another vs. B. However, Malini Mallya* must bear in mind that the Act's provisions distinguish between literary and theatrical works. In general, a dramatic work may also be classified as a literary work if it is a part of dramatic literature, which refers to the text of works that can be read rather than viewed and heard during the performance. Dramatic works, like in the case of William Shakespeare, may feature periods of exceptional literary excellence. Thus, the primary distinction between literary and dramatic labor cannot be interpreted to suggest that dramatic activity has nothing to do with literary effort. The only distinction between both is that theatrical effort creates the text upon which the promise is performed, whereas literary work enables the written words to be read. Neither of the two is possible without the author's creative ability."

MUSICAL WORKS AND THEIR INFRINGEMENT:

Musical work refers to a composition composed entirely of music and includes any graphical notation for the composition but does not contain any words or actions meant to be sung, spoken, or performed in conjunction with the music.

The activities that constitute an infringement of a musical work are identical to those that constitute an infringement of literary or theatrical works. However, the concept of adaptability varies. In the context of a musical work, adaptation refers to any arrangement or transcription of the composition.

Arrangement of the original song in disco style A disco arrangement of an original song is protected by copyright. The composer of such arrangement owns the copyright in such work and is thus able to sue for infringement of copyright in his work, even if it breaches the copyright in the original song. He has the right to prohibit others from infringing on his work and seek damages, subject to his responsibility to account for the song's original author's part of any recovery.

Copyright infringement in a musical composition should not be decided on a note-for-note basis, but rather by the ear as well as the eye, e. The Judge's impression and expert testimony play a significant role in determining whether the defendant plagiarised the Plaintiff's work. While the defendants' work may be identical to the plaintiffs' work in every way, it is not an

infringement if it is generated separately. The defendants may utilize Plaintiff's work, but if they have not duplicated a significant portion of it or altered its substantiality, this may constitute infringement.

Regarding musical works, the Indian judiciary has accorded high regard to composers and interpreted the terms necessary to protect the work under copyright. These terms include infringement of a musical work, parody, imitation, musical composition, words, and music protected, reproduction of musical work-essential elements, defense of shared source, mechanical reproduction, and public performance.

Reprography:

Reproduction with contemporary Technology such as a duplicating machine is referred to as reprography. The phrase is now used to refer to reproduction using light processes, laser methods, holographic reproduction, and reproduction via computers. Generally, duplicating machines reproduce literary works, papers, and drawings. The term 'home taping' refers to reproduction using a tape recorder. Tape recorders are mainly used to reproduce music, whereas videogames are primarily used to reproduce films.

Copyright infringement, notably in the case of music cassettes and literary works, is a global issue facilitated by the usage of reprographic equipment. Legal action to prevent such infringement is nearly impossible, as the infringers are distributed around the country, and individuals at home often handle the item's copyright. To compensate at least partially for the loss of royalty payments to copyright owners, several nations have imposed a cess on the sale of reprographic machines, tape recorders, and video cassette recorders, the profits of which are dispersed to copyright owners through third-party administrators.

Initially, copying was a laborious job; owing to a lack of copying equipment, it was complicated for one individual to replicate another's work; as a result, violation of the copyright in musical works was uncommon. Although reproducing a musical piece is not difficult for someone who can comprehend its composition fairly simply once he listens to the music. The reproduction of music, whether in a song or on its own, leaves an effect on the listener, and so while affording protection to the musical work, its duplication or reprography must be halted to avoid violation of the musical work's copyright.

Digital Piracy:

The piracy of musical works has evolved into a global issue. Previously, a musical work could

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not be transferred across borders due to a lack of resources or interest in listeners, but with globalization, trans-border replication or piracy of musical works in digital media has become feasible. Due to the availability of pirating gear in the digital era, copying musical material has become more accessible.

Piracy of copyrighted products and the desire for more substantial intellectual property rights is not a new phenomenon; it manifests itself every time technology advances, from printing machines to VCRs. At all times, copyists have attempted to free-ride on the labor of others, and policymakers have responded by enforcing stricter copyright enforcement and providing an incentive to produce. The most critical characteristic of digital material is that access to it is synonymous with control over it, which, when combined with the low cost of replication and distribution, results in a virtual loss of ownership in terms of the economic worth of the information.

Digitization has had several beneficial effects on copyright material, including increased reproducibility, decreased reproduction costs, simpler substitutability of digitized copies, and equally affordable diffusion of digitized items. Digital reproducibility has facilitated the compression and storage of digital material and the internet's extraction and sharing of digital content. The apparent consequence has been that copyright content has become vulnerable to unlawful copying, depriving the creator and copyright owner of economic rewards on their labor and capital investments, hence disincentivizing such output.

This is a significant issue for content owners.

This also affects the developmental theory of copyright because unlawful digital copying affects creative creation, affecting the growth of copyright-based companies. Copyright sectors, notably the audio-visual Industries (AVI), are particularly hard damaged by such piracy, as these businesses have embraced digital Technology over the years. AVI players tried to mitigate this danger by 'reglementing infringement-facilitating systems.'

Organizers of public entertainment:

If organizers of public entertainments hire musicians as independent contractors, they may be held to authorize or condone infringement if they leave the selection of music to the musicians. They should either secure the necessary licenses directly from the Performing Rights Society or urge the musicians. When the defendant is the sole owner of the hall and not the entertainment organizer, he cannot be held liable for infringement if he was simply 'indifferent' to the choice

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of music. Under UK law, an occupier of premises who supplies receiving equipment for broadcasts or apparatus for playing records is considered to be causing the subject matter to be heard or seen in public, infringing the records' copyright.

The organizers of public programs frequently utilize copyrighted music without compensating the creator or owner of the work, violating the rights of the musical composer or copyright owner in the copyright.

Musical Work- Special Features:

The acts constituting infringement of a musical work are identical to those constituting infringement of literary or theatrical works. However, the concept of adaptability varies. In the context of a musical work, adaptation refers to any arrangement or transcription of the composition.

Arrangement of the original song in disco style A disco arrangement of an original song is protected by copyright. The composer of such arrangement owns the copyright in such work and is thus able to sue for infringement of copyright in his work, even if it breaches the copyright in the original song. He has the right to prohibit others from infringing on his work and seek damages, subject to his responsibility to account for the song's original author's part of any recovery.

How infringement determined:

Infringement of copyright in a musical composition is not to be decided by a note for note comparison but should be evaluated by the ear and the eye. The defendants' work may be identical to the plaintiffs' work in every respect, but if it is created independently, it is not an infringement. The question of whether the defendant has duplicated the Plaintiff's work rests to a significant part on the Judge's impression and expert testimony. The defendants may use Plaintiff's work, but if he has not copied a substantial part of Plaintiff's or altered it substantially, it may not constitute infringement.

In *Sulamangalam R. Jayalakshimi vs. Metamusicals, Chennai*, the defendant plagiarised the plaintiffs' musical work sung and recorded on cassettes. The defendants violated the plaintiffs' copyright by duplicating the recorded music from the tapes. Interim restraining order granted. The decision goes into detail on the numerous facets of musical work.

The general rule of infringement establishes the procedure for establishing infringement, which requires that the work be reproduced either through copying or conscious copying. Similarly, a

musical work would be infringed by copying earlier musical notation or the musical work as written down in a literary work or directly published.

Performance in public:

Infringement occurs when a musical work is performed in public. If the performance is private or semi-private, it is not public whether the entertainment is offered in public or privately is entirely dependent on the audience's nature.

The musical played in a factory or restaurant:

It had been held that playing music and gramophone records over loudspeakers at a factory for the benefit of the workers (strangers were not permitted), and playing records over loudspeakers more or less continuously in a record shop to increase the shop owner's profit, constituted public performance. Similarly, playing music over a loudspeaker in a private room adjacent to a public restraint in such a way that the public could hear the music in the restaurants constituted public performances and constituted infringement of copyright.

While playing music at a workplace or restaurant without charging for it does not constitute an infringement of copyright, it does represent an element of reproduction of the work.

"In my opinion, a performance given to an audience consisting of the person present in a shop that the general public is permitted, and indeed encouraged, to enter without payment or invitation in order to increase the shop owners' profit can only be properly described as a performing in public," Justice Brown Wilkinson stated.

Tuning radio in a public place:

Switching on the radio in public space constitutes a distinct public performance separate from the original performers. A guy in possession of a wireless receiving device that tunes it in and picks up and makes audible a musical composition that is being broadcast plays that song. If a person, through an installation, makes the performances in a private space audible to a broader audience than the home circle, this is an infringement of the copyright in the program. Connecting and tuning a wireless receiving set in public is considered performance.

Recorded tune of music:

There are several credible sources of information for a continually performed and sung melody, and it is exceedingly difficult to assert that any person obtained his knowledge from one source over another. He may have received it from both, and if so, who is to tell which contributed

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more to his knowledge accumulation?

Causation chain where the plaintiffs own a copyright in tune published, it is not sufficient for them to establish that theirs is identical to the printed record of music; they must also establish that the defendants made direct or indirect use of the Plaintiff's printed record in producing their printed records. The plaintiffs had to demonstrate, on an indirect basis, that the defendant learned the music from someone A, that A received it through B, and that B obtained it from the Plaintiff's original vinyl record. For Plaintiff's case to succeed, each step in this chain of causation must be shown.

In a series of petitions filed by Phonographic Performance Limited and Others, the Supreme Court of India declared that a contextual reading of the laws would require us to evaluate the ground circumstances. The term 'work' in broadcasting must be interpreted because there are 150 FM licenses in India, of which about 93 are operational. Each city has its FM radio station. Three hundred broadcasters are operating in practically all major cities. The term 'public' must be interpreted broadly to encompass India, not just a single region. If a different interpretation is given, the phrases 'on terms that the complainant thinks reasonable' lose all meaning. The very fact that the Parliament has used the term "reluctance" to refer to rejection to authorize communication on terms that the complaint finds acceptable indicates that inappropriate terms would constitute a refusal. In that sense, the word 'has refused' cannot be used to signify the copyright owner's unequivocal rejection or refusal.

It is the most contentious topic about what happens if the infringement is committed by many unidentified and unknown individuals and how a remedy may be sought. It is a well-known fact that specific genres of music are featured in various cultural programs across the world. As is the case with the organizers of the Ganesh festival, Durga puja, or similar festivals, a schedule of cultural activities is organized in which the musical work of a composer is played in the background without permission from the work's owner or without obtaining a license to use the work.

Because the organizers of such events do it on a location anywhere in the country. It would be challenging for the author of the musical piece to track down and prosecute the infringer. Furthermore, identifying the infringement is very hard in these cases. The difficulty arises in filing a petition against such infringers due to a large number of infringers, the cause of action arose at all points of jurisdiction, and also due to a large number of defendants, and thus the

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Plaintiff is prevented from taking action against such a large number of infringers.

CONCLUDING REMARKS:

Copyright law is regarded as critical legislation of protection for a country since it contributes to enriching the country's national cultural heritage. However, the greater the amount of protection afforded to literary, theatrical, musical, or creative activity in any country, the greater the number of clever creations, and hence the more remarkable their fame. Thus, we can conclude that economic, cultural, and social progress is fundamental preconditions. Awareness of copyright infringement and copyright rules is critical in a growing culture, as innovation is a necessary component of progress. It is critical to consult a copyright attorney at each level of dealing with copyrighted content. This includes support with submitting a copyright application, the resolution of copyright infringement, and the copyright defense.

BIBLIOGRAPHY:

I. BOOKS REFERRED

- Vidyakumari, Dr. T., (2004), Copyright protection, current Indian and international perspective, first edition, Asia Law House, Hyderabad.
- Cornish, W.R., (1993), Intellectual property, Patents, Copyright, Trademarks, and allied Rights, second edition, Universal Law Publishing Co. Pvt. Ltd. Delhi.
- Copinger, & Skony Jomes, (1999), Copyright, 14th edition, edited by Kevin Garnett, Jonathan Ryner, James Gillian davies (Vol. one) sweet and Maxwell, London.
- Lionel, Bently and Brad Sherman, (2003), Intellectual Property Law, Oxford University Press, New Delhi.
- Myneni, Dr. S. R., (2006), Law of Intellectual Property, 3^d edition, Asia Law House, Hyderabad.
- Dworkin, Gerald & Taylor, Richard D., (1998), Blackstones Guide to Copyright, Designs, and Patents Act, Black Stone Press Limited.
- Johnson, Donald F. (1978), Copyright Hand Book, R. R. Bowker Company, New York and London.
- Mittal, P. K. & Chaddha, O. P., (2004), Supreme Court on Trade Mark, Copyright,

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Patents and Designs, Om Law Book House, Delhi.

- Vashisth, Advocate Vikas, (1999), Law and Practise of Intellectual Property Law in India, 1st Edition, Bharat Law House, New Delhi.
- Singh, Dr. Raghbir, (2004), Law relating to Intellectual Property, Vol. 1, Universal Law Publishing Co. Pvt. Ltd., Delhi.
- Soni, Dr. Ashok, (2003), Intellectual Property Right Laws, Vol. 2, First Edition, Snow-white Publications Pvt. Ltd. Mumbai.
- Taraporewala, V.J., (2005), Law of Intellectual Property, 1st edition, V.J. Taraporewala, Mumbai.

II. REPORTS AND JOURNALS REFERRED:

- Anand, Justice A. S., "*Intellectual Property Rights, the Indian Purview*" (1997) 6 SCC 1
- Dalai, Praveen, "*The long arm jurisdiction of courts regarding copyright law in India.*" Journal of Intellectual Property Rights, JIPR 9(6) 557-667.
- Desai, Rachana, "*Copyright Infringement in the Indian Film Industry,*" 7 Vand. J. Entertainment Law & Practice 259.
- Jha, Sneha, & Jha, Samar, "*An Analysis of theory of contributory infringement*" Journal of Intellectual Property Rights, JIPR 11(5) 318-325.
- Lahoti, Justice R. C., "*Role of Judiciary and IPR development,*" (2004) 8 SCC (Journal) 1
- Singhania, Ankita, "*Copyright Laws in India and maintenance of a welfare state.*" Journal of Intellectual Property Rights, JIPR 11(1)43-52.
- Singh, Shivendra & Aparajita, "*Insight into the nature of offence of copyright infringement*" Journal of Intellectual Property Rights, JIPR 13(6) 583-589.
- Tandon, Justice Rajesh, "*Role of Judiciary and IPR development and adjudication,*" (2004) 8 SCC (Journal) 9
- Thomas, Zakeer, "*Overview of changes to the Indian copyright law.*" Journal of Intellectual Property Rights, JIPR 17(4) 324-334.

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III. SOFTWARES USED:

1. Law Suit
2. SCC
3. Manupatra.
4. Microsoft Office.

IV. WEBSITES:

- 1) www.wipo.org
- 2) www.wto.org
- 3) www.brainleagueipservices.org
- 4) www.legalservice.org
- 5) <http://copyright.gov.in/mainact.asp>
- 6) <http://www.iipa.com/rbc/2007/2007SPEC301INDIA.pdf>
- 7) www.indiankanoon.org



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