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# **THE EFFECTIVENESS OF THE REMEDIES FOR COPYRIGHT INFRINGEMENT, A GLOBAL CONCERN.**

AUTHORED BY - AALE ZEHRA & KIRTI GOYAL

## **Abstract**

Copyright play a vital role in Intellectual property rights copyright is an exclusive right granted to the creator of an original work, which prevents unauthorized use, reproduction, or distribution of that work. Anyone wishing to use such work must obtain prior permission from the owner. This research paper explores the complexities of copyright infringement as a global concern, examining its roots causes, widespread impacts and various legal remedies available to address it. Through an analysis of legal framework and technological advancement of copyright.

**Keywords:** Copyright, Intellectual Property, Infringement, Legal Remedies, Technological Advancements

## **Introduction**

India is now developing as a digital India, in which anyone from anywhere can publish and access any information through the internet with the help of smart devices. But where is an advantage there is also a disadvantage means if anyone can access and publish any information then such a person can also copy and publish other's personal work in his own name without the owner's consent with the help of the internet. It is called copyright infringement. The rapid growth of the internet has become worrying for copyright owners. People can now copy large amounts of protected work instantly. The Internet has made this possible. The effect of this ease of copying material is that doubts have risen about the existence of copyright. It is undeniable that the internet poses great challenges for the copyright industry and its aim to protect creative expression<sup>1</sup>. The owner of a copyright has the monopoly right to exploit his work for commercial gains in many ways. The nature of rights depends on the nature of work.

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<sup>1</sup> Sangam Tiwari, The Effectiveness Of The Remedies For Copyright Infringement, A Global Concern, <https://letslearnlaw.com/b/the-effectiveness-of-the-remedies-for-copyright-infringement-a-global-concern/>, Published on August 10, 2021, Last Retrieved on January 17, 2023.

The Copyright Act clearly defines the acts which amount to infringement. The Act also allows the use of copyright work in a certain manner without committing infringement. It also provides adequate remedies for preventing infringement<sup>2</sup>.

The Copyright Act, 1957 extends copyright protection to the work by conferring certain exclusive rights on its author. The rationale of providing copyright protection to the owner of the work is to enable him to reap the fruits of his labor and investment to the exclusion of others. But at the same time, the public has also been given certain rights in his work under Sec.52

Thus, if a person uses any of the exclusive rights available to the owner of copyright without his prior permission or without any license granted by the registrar of copyright, he shall be deemed to have infringed copyright provided as such act was also not allowed under Sec 52.

There was a landmark case in which the US Supreme Court discussed Infringement of a copyright. The Case was Bobbs – Merrill Company v. Isidor Strauss and Nathan Strauss<sup>3</sup>, the US Supreme Court held that —

Infringement of copyright is a trespass on a private domain owned and occupied by the owner of the copyright, and therefore, protected by law, and infringement of copyright, or piracy which is a synonymous term in this connection, consists in the doing by any person, without the consent of the owner of the copyright, of anything the sole right to do which is conferred by the statute on the owner of the copyright<sup>4</sup>.

Infringement prima facie means unauthorized and illegal reproduction of work of others<sup>5</sup>. Sec. 51 of the Copyright Act of 1957, explains the infringement of copyright in the general sense. According to Sec. 51, Copyright in a work shall be deemed to be infringed-

(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act--

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of

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<sup>2</sup> Dr. Bhandari M.K., “Law Relating to Intellectual Property Rights”, Fifth Edition, 2017, Central Law Publications, Pg. No. 76.

<sup>3</sup> 210 US 339: (1907) 52 L Ed 1086

<sup>4</sup> “Effectiveness of Remedies For Copyright Infringement In Global Perspective”, [https://theamikusqraie.com/effectiveness-of-remedies-for-copyright-infringement-in-global-perspective/?utm\\_source=rss&utm\\_medium=rs&utm\\_campaign=effectiveness-of-remedies-for-copyright-infringement-in-global-perspective#:~:text=Section%2055%20of%20the%20Act,in%20respect%20of%20any%20work.,](https://theamikusqraie.com/effectiveness-of-remedies-for-copyright-infringement-in-global-perspective/?utm_source=rss&utm_medium=rs&utm_campaign=effectiveness-of-remedies-for-copyright-infringement-in-global-perspective#:~:text=Section%2055%20of%20the%20Act,in%20respect%20of%20any%20work.,) last Retrieved on January 16, 2023.

<sup>5</sup> Supra Note 2.

the copyright, or

(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person--

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or

(iv) imports into India, any infringing copies of the work:

Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.

Explanation. - For the purposes of this section, the reproduction of a literary, dramatic, musical, or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy"<sup>6</sup>. In *Gopal Das v. Jagannath Prasad*<sup>7</sup>, All 266, the plaintiffs were the printers and publishers of the books. The book titled "Sachitra Bara Kok Shastra" was printed for the first time in 1928 and had run into four editions since. The defendants printed and published another book title "Asli Sachitra Bara Kok Shastra" in 1930. The plaintiff's case was that the book published by the defendants was a colourable imitation of their book and an infringement of the plaintiff's copyright. It was held by the court that the defendant obtained the subject-matter from the plaintiffs' book and availed himself of the labour of the plaintiffs and adopted their arrangement and subject-matter and, thus, such a use of plaintiff's book could not be regarded as legitimate. The court also held that no one is entitled to avail himself of the previous labour of another for the purpose of conveying to the public the same information, although he may append additional information to that already published<sup>8</sup>.

<sup>6</sup> Section 51, The Copyright Act, 1957, [https://www.indiacode.nic.in/show\\_data?actid=AC\\_CEN\\_9\\_30\\_00006\\_195714\\_1517807321712&orderno=69](https://www.indiacode.nic.in/show_data?actid=AC_CEN_9_30_00006_195714_1517807321712&orderno=69), Last Retrieved on January 16, 2023.

<sup>7</sup> AIR 1938

<sup>8</sup> Dr. Wadhwa B.L., Law Relating to Intellectual Property, Fifth Edition, Universal Lexis Nexis, Pg. No. 324

## **Remedies against The Copyright Infringement**

### **2.1 Remedies in Copyright Law of India**

Ubi jus ibi remediem (where there is a right, there is a remedy). The Copyright Act has not only conferred the copyright but laid down effective system for protecting copyright by various remedies, which may be classified in following categories.

- Civil remedies
- Criminal remedies
- Administrative remedies

In *Tata Oil Co. Ltd. V. Hansa Chemical*<sup>9</sup>, the Delhi High Court held that remedies available to the holder of copyright are independent of each other entitling the aggrieved party to sue for any or all relief available to him under law<sup>10</sup>.

#### **2.1.1 Civil remedies**

Under Sec. 54 to Sec. 62 of Part V of the Copyright Act, 1957 civil remedies are available. Civil remedies are classified into two types.

- Preventive civil remedies
- Compensatory civil remedies

##### ➤ **Preventive civil remedies**

Basically these types of remedies are preventive in nature as these prohibit the wrongdoer from doing wrong work.

- Anton pillar order – In this type, Court has inherent power to inspect the premises of the defendant upon application of the plaintiff. It is just an authorization to inspect the premises to stop the defendant from doing what is not authorized by law<sup>11</sup>. It is also known as a search and seizure order. An Anton Piller Order is an ex parte interlocutory order that requires the defendant to permit the plaintiff's solicitors to enter their premises forthwith to inspect and remove defined articles and documents. In order for an Anton Piller Order to be granted, the plaintiff needs to show a strong prima facie case that there is a real risk that evidence will be destroyed if an order was not made<sup>12</sup>.

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<sup>9</sup> 1986

<sup>10</sup> [Dr. Bhandari M.K., "Law Relating to Intellectual Property Rights", Fifth Edition, 2017, Central Law Publications, Pg. No. 97.](#)

<sup>11</sup> Harshal Joshi, "Section 51 of Copyright Act- Copyright Infringement Lawsuit", <https://www.lawyered.in/legal-disrupt/articles/copyright-infringement-law-suit/>, Published on August 30, 2018, Last Retrieved on January 18, 2023.

<sup>12</sup> "Remedies for Infringement of Copyright", <https://wikijuris.net/ausip/copyrightremedies/>, Last Retrieved on January 18, 2023.

- Injunction- The plaintiff may seek relief by way of restraining the defendant from infringing his copyright through temporary, permanent, or interlocutory injunction in a civil suit at various stages of the trial. The provisions explained in Order 39, Civil Procedure Code are guiding principles.
- Interlocutory Injunction – Interlocutory injunction secures the immediate protection of copyright from an existent infringement or from the continuance of infringement or an anticipated infringement. A plaintiff may pray for an interlocutory injunction while trial is pending or for further orders. For obtaining an interlocutory injunction the plaintiff has to establish –
  - i) A prima facie case:
  - ii) Balance of convenience in his favour: and
  - iii) That refusal to grant interlocutory injunction would cause irreparable injury to the plaintiff,The defendant is entitled to compensation if injured as a result of such injunction, it is a condition on which interlocutory injunction is granted to the plaintiff. In *Mirabai Films Pvt. Ltd. V. Siti Cable Network*<sup>13</sup>, the unauthorized telecast of the appellant film ‘Monsoon Wedding’ by the respondent cable operator was prohibited by the grant of a temporary injunction, as the court found the balance of convenience was on the appellant side and denial of the injunction would cause irreparable loss and injury<sup>14</sup>.
- Mareva injunction- This is a form of interlocutory injunction known as Mareva injunction. Its purpose is to detain the defendant from disposing of the assets which may be required for satisfying the plaintiffs removing those assets from the jurisdiction of the court.
- John Doe Orders- John Doe orders are actions for seizing and assisting orders passed by the court of law against anonymous infringement. The person who acts as a threat is not known as they are made due to an unknown identity<sup>15</sup>. This is a kind of preventive remedy and acts as deterrent against alleged violation. The name ‘John De’ is used against a fictitious or unidentified person in USA and U.K. In India the name ‘Ashok Kumar’ has been used. It is a cease and desist order given under Order 30 Rule 1 of the Code of Civil Procedure, where the plaintiff have made a prima facie case

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<sup>13</sup> 2003 (26) PTC 473

<sup>14</sup> Supra Note 10, Pg. No. 98.

<sup>15</sup> Rangiseti Naga Sumalika, “Remedies against Copyright Infringement”, <https://iprlawindia.org/wp-content/uploads/2021/04/RANGISETTI-NAGA-SUMALIKA.pdf>, Pg. No. 7

establishing the likelihood of violation of their copyright work, which will affect their financial objectives leading to massive loss. In India the passing of John Doe (Ashoke Kumar) order started in the famous Taj Television v. Rajan Mandal<sup>16</sup>, where telecasting of FIFA world cup 2002 was stopped on various cable networks without licensing and their equipment were ceased<sup>17</sup>.

### ➤ **Compensatory Civil remedies**

This remedy includes damages, accounts of profit, and delivery of infringing copies. This remedy provides compensation in the form of money to the copyright holder for the financial loss caused to him due to the infringement of copyright. The copyright owner can claim for damages from the wrongdoer for his violated acts. Accounts of profits are taken against a defendant to recover the profit which he has made due to his wrong work. If any infringing copies are ceased from the person then that person has to deliver the infringing copies to the copyright owner<sup>18</sup>.

### **2.1.2 Criminal remedies**

Sec. 63 to Sec. 70 of the Copyright Act, 1957 deals with criminal remedies.

- Sec. 63 provides punishment of imprisonment not less than six months and not more than three years with a fine of fifty thousand which can extend upto two lakhs for knowingly infringing or abetting the infringement of copyright in a work or any other right conferred by the act except the right conferred by Sec. 53 A. This sec. also provides that if the purpose of such infringement is not to gain in course of trade or business then the court can for adequate and special reasons impose a sentence of imprisonment for a term of less than six months and a fine of less than fifty thousand<sup>19</sup>.
- Sec. 63-A provides punishment of imprisonment for the term of one year which can extend to three years with fine of one lakh which can extend to two lakh rupees. This sec. also provides that if the purpose of such infringement is not to gain in course of trade or business then the court can for adequate and special reasons impose a sentence of imprisonment for a term of less than one year and a fine of less than one lakh<sup>20</sup>.

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<sup>16</sup> 2003 FSR 22

<sup>17</sup> [Dr. Bhandari M.K., "Law Relating to Intellectual Property Rights", Fifth Edition, 2017, Central Law Publications, Pg. No. 99.](#)

<sup>18</sup> Supra Note 11.

<sup>19</sup> Sec. 63, [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_9\\_30\\_00006\\_195714\\_1517807321712&orverno=95](https://www.indiacode.nic.in/show-data?actid=AC_CEN_9_30_00006_195714_1517807321712&orverno=95)

<sup>20</sup> Sec. 63-A, *Ibid.*

- Sec. 63-B provides a punishment of imprisonment for seven days which can extend to three years with a fine of fifty thousand which can extend to two lakhs for knowingly using infringing copies of a computer programme. If such use of computer programme is not for gain, then the court for adequate and special reason impose only a fine of fifty thousand rupees<sup>21</sup>.
- Sec. 65 imposes imprisonment for up to two years and a fine for knowingly making or keeping in possession any plate for making infringing copies of any work in which copyright subsists<sup>22</sup>.
- Section 65-B<sup>23</sup> provides punishment of imprisonment for up to two years and a fine for infringing the rights of management information by doing acts prohibited by this sec.
- Sec. 67 provides punishment of imprisonment for up to one year or a fine or both for making false entries in the register of copyright etc. for producing or tendering false entries<sup>24</sup>.
- Sec. 68 provides punishment of imprisonment for up to one year or a fine or both for making false statements for deceiving or influencing any authority or officer<sup>25</sup>.
- Sec. 68-A imposes imprisonment for up to three years and a fine for publishing a sound recording or a video film in contravention of Sec. 52-A (Video and Audio Piracy)<sup>26</sup>.
- Sec. 69 punishes the offences committed by companies accordingly<sup>27</sup>.

### 2.1.3 Administrative remedies

There is one more remedy called administrative remedy which is also known as a quasi-judicial remedy available under copyright law. The registrar of copyright can make an order upon the application made by the copyright owner. After conducting due inquiry, the registrar of copyright can enter into any ship, dock, or premises where any such copies may be found. Once the copies are seized then they shall not vest to the government rather they will be handed over to the copyright owner<sup>28</sup>.

In the case of *Cheria P Joseph vs. Prabhakaran*<sup>29</sup>, it was held that “clear and cogent proof of

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<sup>21</sup> Sec. 63-B, Supra Note 19.

<sup>22</sup> Sec. 65, Supra Note 19.

<sup>23</sup> Sec. 65-B, Supra Note 19.

<sup>24</sup> Sec. 67, Supra Note 19.

<sup>25</sup> Sec.68, Supra Note 19.

<sup>26</sup> Sec. 68-A, Supra Note 19.

<sup>27</sup> Sec. 69, Supra Note 19.

<sup>28</sup> Supra Note 11.

<sup>29</sup> 1967 CriLJ 1517

knowledge is necessary to establish the commission of an offence.” Moreover, a criminal court will not give a decision relating to the issue of infringement if the same is lying with the civil court for final decision. Here, the complainant alleged that certain extracts of the accused’s book in Malayalam were translations of the book complainant book and “that they were translated and kept for sale without his permission or knowledge and the accused by so doing has infringed his copyright in those books thereby committing an offence punishable under Section 63 of the Act<sup>30</sup>.”

## 2.2 Remedies in Copyright Law of Other Countries

### 2.2.1 United Kingdom Copyright Law

The main source of copyright legislation in the United Kingdom is the Copyright, Designs & Patents Act, 1988 (CDPA). The act offers protection to literary, dramatic, musical, and artistic works and sound recordings, films, broadcasts, and typographical arrangements of published editions.

The United Kingdom is a signatory to both the Berne Convention and the TRIPS agreement like India. This is reflected in **Section 208(1)(a)** of the CDPA, which extends the protection under CDPA to individuals of “Convention Countries”. Convention Countries are part of any international treaty/convention/agreement to which the United Kingdom is a signatory. Therefore, by the virtue of both India and the United Kingdom being signatories to the Berne Convention and the TRIPS, both countries offer reciprocal protection of copyrighted works.

The UK Copyright law provides similar remedies as of Indian Law —

- Injunctions
- Damages
- Delivery up
- Seizure
- Forfeiture
- Prevention of Importation
- Undertaking to take License

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<sup>30</sup> Ananya Singh, Criminal Liabilities and Remedies for Copyright Infringement in India, <https://blog.ipleaders.in/criminal-liabilities-remedies-copyright-infringement-India/>, Published on August 2, 2021, Last Retrieved on January 18, 2023.

### 2.2.2 US Copyright Law

Remedies for copyright infringement in US Law includes:

- payment to the copyright owner of any profits the infringer received and of any losses suffered by the copyright owner, or ‘statutory damages’ as an alternative to actual profits and losses;
- a court order restraining the infringer from continuing the infringing activity;
- confiscation and destruction of the infringing items; and
- attorneys’ fees.

Monetary damages are available for copyright infringement. A party found liable for copyright infringement may be found liable for either the copyright owner’s actual damages and any additional profits of the infringer, or statutory damages, as provided by the Copyright Act. However, statutory damages are only available if registration for the infringed work was obtained within certain time requirements<sup>31</sup>.

### Criminal Copyright Provisions in US

The Copyright Act has criminal provisions. It is a criminal offense to wilfully infringe a copyright if the infringement was committed:

- for either commercial advantage or private financial gain;
- by the reproduction or distribution, including by electronic means, during a 180-day period, of one or more copies or phonographic records of one or more copyrighted works, which have a total retail value of more than US\$1,000; or
- by the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution.
- placing a fraudulent copyright notice on any article, or publicly distributing or importing for public distribution any article bearing such fraudulent notice;
- removing or altering any notice of copyright appearing on a copy of a copyrighted work with fraudulent intent;
- knowingly making a false representation of a material fact in an application for copyright registration, or in any written statement filed in connection with the application; and

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<sup>31</sup> Supra Note 4.

- wilfully and for purposes of commercial advantage or private financial gain violating the provisions of the Act concerning circumvention of technological protection measures or those concerning protecting the integrity of copyright management information<sup>32</sup>.

### **Conclusion**

The Copyright law aims to protect the original creations of the authors. The author puts his soul into his work by giving his important time, hard work, and intelligence. If someone steals his work and uses it for his own gain, it will lead to infringement. So, Copyright Law provides certain remedies such as civil, criminal, and administrative remedies to protect and prevent the infringement of the copyright of the owner. In civil remedies, the law provides relief to the copyright owner by granting an injunction and giving orders in favour of the plaintiff such as 'Anton Pillar Orders (Search and Seizure Order), John Doe Order (Ashok Kumar) where the person who infringed the copyright of the owner is unknown, damages, etc. In Criminal Remedies, the law provides punishments of imprisonment and fine for the offence of copyright infringement. UK Copyright Law also provides similar remedies against copyright infringement like Injunction, Compensation, etc. US Copyright Law provides for payments, confiscation and destruction, and monetary damages. Copyright is a right that should be protected at the international level as it can be infringed by anyone from anywhere so there is a need to make its scope wider and make it more effective.

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<sup>32</sup> Supra Note 4.

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