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CRIMINAL REMEDIES AVAILABLE FOR COPYRIGHT INFRINGEMENT IN INDIA

Authored By: Arjun Krishna.J

Introduction

“Our ideas can never be copyrighted only its product can be copyrighted”. Copyright is a right which protects the original works of a creator from being copied or used in any form without the permission or knowledge of the creator. Copyright infringement is the usage of these works without consulting the creator. When an infringement takes place, the creator can either seek civil remedies or criminal remedies. Criminal remedies are far more effective as the infringement can be stopped and further infringement can be terminated quickly. However, the aspect of mens rea is a crucial part of the offence. This article tries to shed light on various aspects like importance of copyright, criminal remedies of copyright infringement, the relevance of such an act in India in the 21st century.

Copyright Infringement

The Copyright Act of 1957 defines copyright infringement as the use of copyrighted material without the permission or knowledge of the creator. Copyright infringement takes place when a third party [uses the copyrighted material intentionally or unintentionally without the permission of the creator](#). The creators are greatly benefited by copyright as they can earn money by transferring the right to reproduce their work, sell their work etc. [Original literary, dramatic, artistic works, cinematograph films, sound recordings etc are protected under the Copyright Act in India. Copyright promotes creativity and innovation as copyright makes sure that the artists are compensated for their work, which inspires them to keep producing and giving back to society more creative and original works.](#)

Criminal Remedies

The offences in the Copyright Act are exhibited in Chapter 13 of the act and are discussed in the sections ranging from 63-70 of the Act.

[Section 63](#): It states that anyone who uses copyrighted content without the permission of the owner shall be sentenced to imprisonment not less than 6 months and can be extended up to 3 years and also shall be fined not less than Rs. 50,000 but maybe extended up to Rs.2 lakhs under the discretion of the court, according to the severity of the offence.

[Section 63A](#): It states that if the person who was convicted under section 63 is convicted again for the same offence, they would be punished for the second time and for every consequent offence. The term of imprisonment shall be not less than 1 year and can be extended up to 3 years, and the offender can be fined not less than Rs. 1 lakh and can be extended up to Rs. 2 lakhs according to the discretion of the court.

[Section 63B](#): It states that anyone who uses a illegal copy of a computer programme in a computer shall be imprisoned for a period not less than 7 days and can be extended up to 3 years, and can be fined an amount not less than Rs.50,000 but not more than Rs.2,00,000.

[Section 64\(1\)](#): It states that any police officer with a level higher than sub-inspector has the authority to use a warrantless search to confiscate copies of copyrighted works that have been copied illegally. This section's offence is regarded as a cognizable offence that is not subject to bail.

[Section 64\(2\)](#): It states that within fifteen days of the seizure, anyone who has an interest in copies or plates of a work that were taken under subsection (1) may apply to the magistrate for their return. The magistrate will then decide how to proceed with the application after hearing from both the applicant and the complainant and conducting any additional research that may be required.

[Section 65A](#): It states that the Act prohibits circumventing technological measures to protect rights, but does not prevent individuals from doing anything not explicitly prohibited.

[Section 65B](#): It states that anyone who changes or alternates the rights management information, without the authority shall be punished for imprisonment up to 2 years and payment of a fine.

[Section 66](#): It states that the Court can order the delivery of infringing copies or plates to copyright

owners, regardless of conviction, or make other disposal orders.

[Section 67](#): It states that fraudulent entries in the Register of Copyrights, fake copies, and the production or tender of proof of fraudulent entries or writings are all punished by imprisonment, monetary penalties, or both.

[Section 68](#): It states that Individuals who deceive or influence authorities or officers to make false statements or representations are punishable with imprisonment, fines, or both for deceiving or influencing actions.

[Section 68A](#): It states that Violation of section 52A provisions results in imprisonment and fines for publishing sound recordings or videos.

[Section 69](#): It states that a company's directors, managers, and officers are liable for any offense committed by their subordinates, regardless of whether the offense was committed without their knowledge or due diligence. If the offense was committed with the consent or connivance of a director, manager, secretary, or other officer, they are also deemed guilty and liable for punishment.

[Section 70](#): It states that any offence under this Act shall not be tried by a court other than a Metropolitan Magistrate or a Judicial Magistrate of the first class.

Case Laws

1. [Tips Industries Vs. Wynk Music \(2019\)](#): In a leading case, the Bombay High Court found Wynk guilty of direct infringement for offering copyrighted work offline and streaming it through streaming services. Online streaming services are covered under Section 31D, which does not apply to downloads or purchases, according to the court's interpretation. The Internet streaming was ruled to be an exemption under Section 31D by the court.

2. [TV Software Communications Ltd. v. 1337X.To & Ors. \(2019\)](#): In this leading case, the Delhi High Court made the decision to take action against malicious websites that, after being prohibited, reappear as mirrors or redirects. The court found that the defendant websites were hosting content that violated copyright, and that the pirated websites directly benefited from these

violations. The court disregarded ideas about the "exceptionalism" of the internet and examined whether prohibiting a website that promotes piracy was in conflict with a free and open internet. The court went into further detail on the idea of rogue websites, concentrating on elements like piracy, takedown notices, visitor level, and rules. The court issued a permanent injunction after finding that the defendant websites were fraudulent websites. The court advised DoT and MeITY to create a policy to alert users who are viewing copyrighted content, and also to impose fines if the viewers continue to watch the content.

Conclusion

In conclusion we can say that the harmonic interaction of copyright and criminal sanctions is essential for protecting authors' creativeness and to encourage authors to produce more original content. The recent amendments of the Act have revolutionized the scope of copyright in India. By proper implementation of the Act, we can create an environment where uniqueness thrives by recognising innovators' genius while preserving the ideals of fairness and respect.

