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# **YOUR ENTERTAINMENT, SOMEONES OWNERSHIP: A STUDY OF COPYRIGHT ISSUES IN RELATION TO SOCIAL MEDIA**

AUTHORED BY - GUNJAN WADHWA

## **• OBJECTIVES OF RESEARCH**

This study will help us to understand the extent of applicability and infringement of copyright in the world of social media. To achieve this, the object of the study would include emphasize on:

- i. ownership over the content available on these platforms.
- ii. applicability of copyright law on social media platforms
- iii. extent of activities which would cause copyright violation on these platforms.
- iv. disputes regarding copied content on social media are resolved.
- v. how a person can protect his content on social media.

## **• SCOPE OF STUDY**

The study provides an insight regarding the regulation of original content on social media networks. It involves a doctrinal study on when infringement is said to be caused on social media with regards to different circumstances such as photographs, tweets, music etc.

## **• HYPOTHESIS OF RESEARCH**

It is hypothesized that-

- i. The social media platforms themselves have some ownership over the content available on these platforms.
- ii. There are certain acts which can result in copyright infringement on social media networks.
- iii. The social media platforms themselves provide some remedy to protect the content of the owner,
- iv. The criteria of measuring the flow of content on social media is different then that in the analogical world.

## • SOURCES

This paper is primarily based on secondary sources that include both printed and non-printed materials. Printed material includes books and non-printed material includes data obtained from online database.

## • RESEARCH METHEDODOLOGY

Research methodology applied in this project is doctrinal. An explanatory study is used order to find underlying principles; therefore, the data would be mainly collected from secondary sources of information. These include books, journals and internet. Keeping this in view the researcher has gone through several books and web references.

## • RESEARCH QUESTIONS

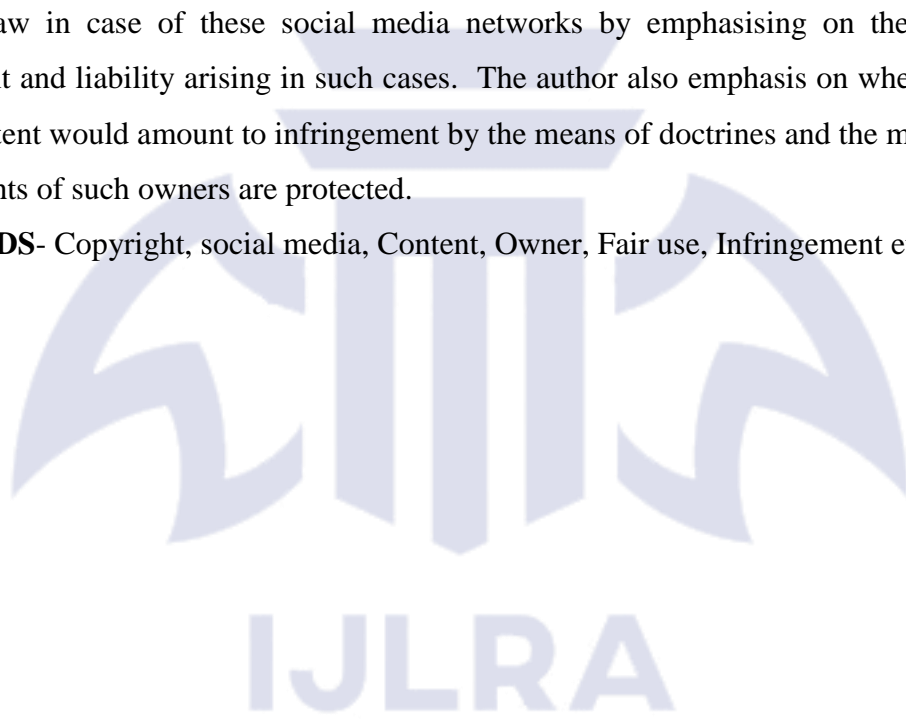
- i. Who is regarded as the rightful owner of all the content available on social media platforms?
- ii. What activity done by a person on social media would violate the right of the original creator of the work?
- iii. Do these networks have any policy to protect the rights of such creators?
- iv. Whether these networks provide any dispute resolution mechanism by which a person can protect their rights in case of copyright infringement?
- v. Is there any absolute or fool proof way to protect our content from being 'copied' by others on social media?

## ABSTRACT

After the revolution of the world in 1991 by the LPG policy, a new era of Digitalization emerged during the 20<sup>th</sup> century. Though in India, digitization could be traced back up to about two decades where emergence of internet was seen and it was considered to be of a great value. However, in today's era using the Internet is like using a spoon to eat. The concept of digitalization emerged in order to provide the people a better living standard wherginre they would be able to access piles of global information to enhance their knowledge. It even helped the people to connect to each other at a global level through the means of social media. Today every person has the access

to one social media account or another through platforms such as Instagram, twitter, Facebook, YouTube etc. Through these networks a person can share any ideas, videos or images to others by way of virtual communication. These ideas, videos, images etc not only became a source of entertainment for people by being “shared” to large masses but it also provided a global platform to people to enhance their business and earn a living. However, all of these sources must have been owned and created by a person, thus giving them the exclusive rights of an owner under Copyright right law. The unregulated flow of content shared on these networks may result in difficulties to establish about the true owner of the work as these contents are regularly shared by a third party, being an individual or a company, either for their own *mala fide* gain or sometimes merely for entertainment purposes. Through this article the author focuses on the application of copyright law in case of these social media networks by emphasising on the ownerships, infringement and liability arising in such cases. The author also emphasis on when the sharing of such content would amount to infringement by the means of doctrines and the mechanisms of how the rights of such owners are protected.

**KEYWORDS-** Copyright, social media, Content, Owner, Fair use, Infringement etc.



## INTRODUCTION

Social media has become a part of our day-to-day life now. It helps us to connect with people who are miles apart from us. It helps in establishing an open economy for all, which is used by every business whether big or small. Through the means of social media, a person or “creator” shares their content in the form of text, images, videos, audio clips, music, poems, photographs, writings, fanfictions etc. These creations are then shared to a number of people at a large scale. However due this sharing of content at a large scale the difference between a shared and an original content becomes blurred. The people using social media at a daily basis share this content without thinking about who the actual creator of the content is. This further affect both the actual creator as well as the person sharing/ resharing or reposting any such thing which wasn't their own creation.

As we understand that the Indian Copyright Act, 1957 applies to all original, literary, dramatic, musical, and artistic work. It also applies to cinematography films and sound recordings.<sup>1</sup> Thus, all the content we see on social media must be also owned by someone who was the creator of that content. As, a general rule, it is eminent that every owner of such work has certain exclusive rights over his creation which requires that his work cannot be used by any other person without the owner's prior permission.

To understand whether such sharing of content leads of an infringement of the rights of the owner and how liability arises in such cases we also need to emphasise that who the actual owner of the content on social media is.

## OWNERSHIP AND ACCESSIBILTY OF CONTENT ON SOCIAL MEDIA

When a person posts any idea or creation of his own in any form over a social media platform, he becomes the owner of such content. Thus, every work we see on social media whether it is a tweet, photograph, video, audio clip, literary work or any work as such, it is also owned by someone. The social media platform holds no ownership over the content shared on their own network. Thus, in case when a person uses such content, he will be liable towards the creator and not the social media network itself.

Moreover, there is a great confusion that all the content of such networks is freely accessible to all. Though as per the general rule the owner has exclusive rights over his creation and thus such

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<sup>1</sup> The Copyright act, 1957, § 13, No. 14, Acts of Parliament, 1957 (India).

work on social media cannot be used by any other person without the prior permission of the owner, nor it can be owned by the social media network itself, however, this rule is not absolute in nature. In certain cases, a person while sharing his content on social media makes it permissible for others to use his work within the network itself due to the terms of service of such network.

For e.g. If a person writes a poem of his own and post it on twitter, it can be retweeted to share to others. However, if that poem from the tweet is copied by a person and shared on any social media network without the permission or proper recognition to its owner, it would amount to infringement of the rights of owner.

Due to this, every social media network clearly mentions about the usage of content on the network. Like, in the case of twitter, the terms of service clearly state that:

*‘By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods now known or later developed (for clarity, these rights include, for example, curating, transforming, and translating). ..... You agree that such Content will not contain material subject to copyright or other proprietary rights, unless you have necessary permission or are otherwise legally entitled to post the material and to grant us the license described above’.<sup>2</sup>*

Thus, as per these guidelines it is implied that when a person posts his creation on social media, he/ she makes it accessible for the world to use, copy, adapt, modify or publish such content. By agreeing to such terms of use the owner himself gives a license to these networks to make their content accessible to all without any payment.

## **INFRINGEMENT OF COPYRIGHT**

In a legal sense ‘infringement’ is referred to as “A breaking into; a trespass or encroachment upon; a violation of a law, regulation, contract, or right. Used especially of invasions of the rights secured by patents, copyrights, and trademarks.”<sup>3</sup>

A lot of confusion arises regarding infringement of copyright law in India as the content present on social media are not registered by anyone. This is due to the fact that the content available on social media platforms is easily accessible to every person in the world. These are used and shared by third parties, such as individuals or companies, on a daily basis. Moreover, the liability arising out due to such infringement of right is limited in scope due to the terms of service of these

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<sup>2</sup> Twitter Terms of Service, <https://twitter.com/en/tos>, (Last Visited on 10<sup>th</sup> June, 2023)

<sup>3</sup> The law dictionary, <https://thelawdictionary.org/infringement/> (Last visited on 13<sup>th</sup> June, 2023)

networks. Thus, it becomes important to realise that when this mere sharing of such data would amount of infringement of the rights of the owner.

As a general rule, it is mandate that every person who uses the creation of another causes the violation of the rights of the owner. Accordingly, as mentioned in Section 51 it is expressed that without a licence granted by the owner of the copyright, action by any person, that violates anything that, by virtue of the copyright, is exclusively conferred to the owner of the work, shall be construed as infringement of the work. Thus, forwarding a video clip or sound recording or images of performances definitely infringes the copyright of the owner of those materials.<sup>4</sup>

However this rule is subject to certain exceptions as per sec 52 of the Indian Copyright Act.<sup>5</sup>

As per these exceptions, a work used for a private or personal use would not amount to infringement of rights of owner. Thus, the sharing of a content with any person through the means of chat conversations shall not amount to such infringement. Moreover, they establish a line between when a copied work would result in infringement of rights of owner.

## **WHEN INFRINGEMENT IS SAID TO BE CAUSED**

Now as we understand that, even if as per the terms of use of these social media network a content is freely accessible to all of its users, but in certain cases infringement can be caused even on social media and this can be caused in various ways possible. These situations cause not infringement of copyright but may also regarded as offences as per the cyber security violation, Indian Penal Code, 1860 as well as the Information Technology Act, 2000.

The issue regarding when a work would be said to be copyrighted is based on the principle of “Fair use”. This principle is regarded in Section 52(a) of the Indian Copyright Act, 1957. As per this section “a fair dealing with any work, not being a computer programme, for the purposes of—

- i. private or personal use, including research;
- ii. criticism or review, whether of that work or of any other work;
- iii. the reporting of current events and current affairs, including the reporting of a lecture delivered in public.”<sup>6</sup>

Would not amount to copyright violation.

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<sup>4</sup> The Copyright act, 1957, § 51, No. 14, Acts of Parliament, 1957 (India).

<sup>5</sup> The Copyright act, 1957, § 52, No. 14, Acts of Parliament, 1957 (India).

<sup>6</sup> The Copyright Act, 1957, § 52, No.14, Acts of Parliament, 1957 (India)

Other clauses of the same provision also mention about certain different cases of exceptions to the general rule such as making copies of computer programmes, reporting of current events, Reproduction in case of judicial proceedings, Publication for use of educational institutions, performance of literary work etc. Thus, in a legislative sense, every work which would be under the domain of these clauses would not amount to infringement of copyright.

However, when the judicial body utilise this principle of fair dealing it emphasises on the particulars of the case and determine whether the following act would lead to infringement or not based on factors such as:

1. the purpose of the work, as to whether such work is used is for a commercial activity or for nonprofit or educational purpose;
2. the nature of the copyrighted work;
3. the amount or portion of the copied work in relation to whole of such work; and
4. the effect of such copy upon the potential market for the copyrighted work owner.<sup>7</sup>

Thus, the fact that whether an act done by a person, would actually violate the rights of some other person would depend entirely on the circumstance. As these social media handles are a global network on which content is shared in many form`s such as, images, videos, tweets, etc, thus, copyright infringement is actually different in each of such content.

**In Case of Photographs**, they might be either ‘shared’ by a person by the means of native sharing tools available on the platform itself or may be reposted by some other person. When such a content is reshared by means such as retweets or adding it to their stories, it gives an automatic credit to the actual owner of the work. Thus, no prior permission of the owner is required in such cases. However, when these images are to be posted on the feed of a person’s account, they need to have the permission of the actual owner of the content.

Moreover, no social media handle allows a person to post the content of an external website without the permission of the owner. This simply means that if a person copies a work from one network and posts it as their own on their handle, it would still amount to infringement, if they do not seek prior permission.

If any of these photographs fall under the ambit of doctrine of fair use or Section 52 of the Indian Copyright Act, 1957, it would not arise any liability. Thus, a content which is merely shared to provide any important information, for purposes such as teaching, research, judicial or legislative

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<sup>7</sup>Oliver Herzfeld and Marc Aaron Melzer, *Fair Use in The Age of Social Media*, FORBES, (May 26, 2016,09:34am EDT), <https://www.forbes.com/sites/oliverherzfeld/2016/05/26/fair-use-in-the-age-of-social-media/?sh=4fa853c93300>

etc and is done without having any mala fide intention to seek any wrongful gain or derive any undue profit would not infringe the rights of the owner of the content.

**In Case of Tweets**, they are exclusively available on 'twitter' network only. In case a person shares any of its original idea in the form of a tweet, he becomes the automatic owner of such content. These tweets can either be private or public depend on the account. By agreeing to the terms of service of Twitter a person agrees that such original content can be retweeted by other persons also. The process of re tweet gives an automatic recognition to the actual owner of the content. However, such an idea should be creative in nature and not merely a simple and ordinary text. Moreover, it is important to understand that twitter only protects the exact words of a text and not the idea behind the same.

Similarly, **in the era of Instagram reels**, the issue regarding copyright is a subject matter of the **music used** as well as the **choreography** of the work. Instagram as such does not have any copyright over any type of music. The updates and guidelines for including music in videos, by Instagram specifies certain conditions as in accordance to which a person can include some music in their posts.<sup>8</sup> As per these guidelines a person can post any content on their account and add a short clip of music available on Instagram on it. Thus, it limits that-

- a. the whole song cannot be added or a long clip of the same
- b. it should be accompanied by some visual content

It also allows a person to post such music which is recorded from some live performances. Thus, a person can access any music available on the Instagram music library up to a certain extent. However, when it comes to usage of a sound which is not available on the Instagram itself, a person has to seek the permission of the sound's owner. Similarly, when a person recreates any song to create a cover song of their own, they have to get the permission of the owner of the work along with the information regarding their intention and the copy of the work

Now as it is essential that for the usage of such music, a user can accompany it with some visual representation. This visual representation can be in any form, from mere writing the lyrics of such song or to dancing on the same. With the popularity of reels, the concept of social media trends also expanded by which a person re-enacts a certain choreography over the song to gain popularity. Though in most of the cases these choreographies are re-enacted at a large scale without giving the due credits to other, however the owner of such choreography has the right to

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<sup>8</sup>Updates and Guidelines for Including Music in Video, INSTAGRAM, Posted on May 20, 2020, <https://about.instagram.com/blog/tips-and-tricks/updates-and-guidelines-for-including-music-in-video/?ref=epidemicsound.com>

claim for the credits of his work.

This concept emerged when the creator of the “savage challenge” namely Keara Wilson registered her choreography for the challenge and thus claimed a right to receive credit as well as payment for her work, and consequently the right to have a legal action in case on infringement of the same.

Moreover, while talking about the content on social media, one of these types still remain a grey area. It is not properly backed by any provision nor any guideline. They are the **fan pages and the fanarts** we see on such platforms. as the fanarts include some type of creativity of their own thus the person who creates such arts becomes the owner of it. However, in case of fan pages no creativity as such is used, they are dedicated to any person, movie, show, book etc. Though such a person or creator may refuse to any person to make any fan page dedicated to them to protect their privacy, some of these creators actually encourage such pages. The principle that whether these fan pages would violate the rights of the owner depend on the purpose of these pages. A fan page can only be made for entertainment purposes and not to generate revenue from someone else work. Thus, the courts entirely rely on the principle of ‘fair use’ in such cases.

Thus, the content available to us on social media can be re used by us as its users only under the domain of the doctrine of “fair use”. If any of such content is used by a user with the intention to gain any profit from the same, I would amount to copyright infringement. Moreover, in the recent times the Indian Judiciary is also relying on the principle of ‘*de minimis non-curat lex*’ meaning that “law is not concerned with small things.” which is used by the courts in order to reduce its burden by entertaining only such cases which causes a severe harm to the copyright owner. This doctrine is based on 5 principles which are:

- i. the size and type of the harm,
- ii. the cost of adjudication,
- iii. the purpose of the violated legal obligation,
- iv. the effect on the legal rights of third parties, and
- v. the intent of the wrongdoer.<sup>9</sup>

## **REMEDY AVAILABLE**

In case where damage is caused to a person due to such copyright infringement, they may seek

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<sup>9</sup> India TV Independent News Service (P) Ltd. v. Yashraj Films (P) Ltd. 2012 SCC Del 4298

remedy from the court. However, in most of the cases this is not the scenario. This is due to the fact that all the social media handles have certain guidelines which provide for a mechanism in case of violation of copyright.

A glance at the help centre of Instagram informs us that Instagram has dispute mechanism based on reports regarding copyright infringement. Similarly in case on copyright violation a person can file a report to Instagram by filling out a form at <https://help.instagram.com/contact/552695131608132>. Moreover, it also provides a Brand Right Protection tool which allows a brand to protect their intellectual properties over meta technology. A user may also send a Digital Millennium Copyright Act (DMCA) report to the Designated agent by filling an online form or by sending it to the address provided on the help centre.

When such a form is received by the authorities of Instagram, they go by collecting all the information regarding the copied work and if satisfied by the information provided by both parties it may take down the copied content from the page.

## **PROTECTION OF CONTENT ON SOCIAL MEDIA**

The issue regarding how a person can protect their work from being used by other people on social media is quite a black area. It is said that if you want to protect your work don't post it on social media at the first place. However, this solution is not practical in the real-life scenario as now these networks not only provide entertainment or information to a person but also act as a global market for various business who use their social media handles to promote their brand.

A person may however, while posting such work which is original in nature add some logo or watermark to the same to prohibit others from taking credit of that work.

## **CONCLUSION**

From the above data we can conclude that copyright infringement is something which can be extended up to the online world as well. Though, the social media handles make sure that a major part of the content is freely available to the world but it also recognizes the rights of the owner. The protection provided to such content is highly based on the doctrine of 'fair use' by the courts. Moreover, to protect the rights of the rightful owners of the content these social medial handles themselves provide a dispute resolution mechanism in accordance to which they regulate the work which is complained to be copyrighted and thus remove the content. This mechanism helps in reducing the burden of the courts as well as the petty cases are resolved internally only. However, if the cause heavy damage to the creator, the victim also has the right to approach to the court.

Even though, the society as a whole has become digitalized there is still an autonomy regarding the type of content which can be shared on social media without violating the rights of the owner of the content.

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