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THE ROLE OF COPYRIGHT LAW IN PROTECTING CREATIVE WORKS OF ART

AUTHORED BY - PRANJALI KUMARI

1. Introduction

Copyright protection is based on the U.S. Constitution. The Framers believed that preserving authors' exclusive rights to their creations for a predetermined amount of time would "promote the progress of science and useful arts." The primary objective of copyright is to reward and incentivize authors for creating original works and making those works available to the public by giving them property rights. The argument holds that the public gains from artistic creations that might not otherwise be created or disseminated, and artists are compensated financially by being given exclusive rights that allow them to protect their works against theft. It is important to understand that authors are not required by copyright law to make their works accessible, even if doing so is intended to benefit the public by making creative works accessible. As a result, an unpublished work that is never made publicly accessible receives the same copyright protection as a published work.

Creativity through art, such as painting and sculpture, photography and architecture, installation and digital art, contributes significantly to the irreplaceable components of Who We Are as a Culture and how we support the Creative Economy through them. However, because of the way art is so easily copied, reused and abused in today's online environment, and because art can be created anywhere and shared internationally, the copyright law is the primary means by which the ownership rights of artists to their works are enforced. As a result, through copyright protection, an artist is guaranteed the exclusive right to their creation and the right to take action against those who violate their copyright by using the creative work without permission.

2. Importance of Copyright Protection

By giving authors and artists the sole authority to manage the use and distribution of their works for a certain amount of time, copyright plays a critical role in fostering creativity and innovation. Because they will be able to profit from their creations' commercial exploitation, artists are encouraged to devote their time and resources to creating new works. Hathcock

(2010) The economic and moral rights of artists are acknowledged by copyright law. While the moral rights guarantee that the creator's integrity and reputation are preserved even after the work has been sold or transferred to a third party, the economic rights let the copyright holder profit financially from the work. Towse (2006)

Protecting artists' rights and fostering a vibrant creative economy depend on copyright protection. With the assurance that they would be able to profit from their creations' commercial exploitation, copyright law plays a critical role in encouraging artists and creators to devote their time and resources to creating new works. This in turn promotes a thriving and long-lasting creative sector that makes a substantial contribution to the nation's overall cultural and economic development.

3. Scope of Copyright Protection for Artistic Works

3.1 The concept of copyright protection (which is applicable to artistic works) can also be found in the original expression of the work, as opposed to the idea, methodology, or the concept that might represent an artist's body of work. These principles are reflected in both international treaties (e.g., TRIPS Agreement; WIPO Copyright Treaty) as well as in respective national copyright laws.

From an artistic perspective, copyright protection applies to the particularised artistic expressions (including all visual characteristics) of the artist's work, which are made manifest by the specified visual characteristics of shape, line, colour, form, composition and character. An example of a "woman in a sarong standing by a river" may serve as an example of an underlying concept; the idea is free for everyone to use, but replicating the unique artistic expression of that particular painting/photo may create an infringement.

3.2 Artistic Works, under the Indian Copyright Act, 1957

Section 2(c), of the Indian Copyright Act, 1957 defines "artistic work" as including: paintings, sculptures, drawings (including diagrams, maps, charts, plans), engravings, photographs and architectural works, and any other artistic crafts and works created by any artistic discipline.

4. International Framework for Protection of Artistic Works

Global copyright protection for artwork does not stop at the borders of a country. There are three important tools for establishing a global copyright regime:

1. The Berne Convention for the Protection of Literary and Artistic Works 1886, (as amended) defines the minimum level of protection for literary and artistic works and sets out several basic principles, including:

- a. national treatment
- b. automatic protection without any formalities
- c. exclusive rights for reproduction of artistic work and the right to communicate to the public

2. The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) (1994) includes much of the substantive material from the Berne Convention, with the exception of the moral rights provisions; this agreement brings copyright under the World Trade Organization (WTO) framework; thus, all member states are bound by minimum copyright obligations and must provide enforcement mechanisms, including civil remedies, border measures and criminal penalties.

3. The WIPO Copyright Treaty (WCT) (1996) builds on the Berne Convention and provides clarification on copyright protection for works published in the digital environment and provides for the right to "make available" a work over the Internet and outlines the obligations of copyright holders to implement technological protection measures.

These three documents ensure that an artist from one country that is a signatory to these treaties will receive protection for his/her paintings or sculptures in any other country that has signed one of these treaties, with respect to the individual country's Copyright laws.

5. Rights Available to an Artist

The Copyright Act grants authors two types of rights, known as Economic Rights and Moral Rights. Collectively, these rights protect the financial interests in a creative product and provide means for maintaining a personal connection between authors and their products. The Copyright Act acknowledges an author's dual role as an economic contributor and as a person expressing creativity, individuality, and reputation through their creation.

A. Economic Rights

Authors have the financial right to make money from their inventions through their copyright in literary, musical, dramatic, cinematographic film, or sound recording works. The work may also be reproduced, displayed, communicated, and altered in any manner by the author.

Interestingly, when the original work's sale price surpasses Rs. 10,000, authors of literary manuscripts, musical compositions, paintings, sculptures, and drawings are also entitled to a share of the proceeds.

Key Economic Rights

- The **Right of Reproduction**, which allows the author to give permission or deny permission for a publisher to publish their work (books, photos, digital content), is the primary right.
- The **Right of Public Communication** means that the author gives a publisher the ability to share the author's work with an audience either through broadcasting to the public, broadcasting online, or through any media format that allows for public access.
- The **Right of Publishing/Distribution** illustrates how the author determines the methods to distribute and market their work (print, editions, performances, or digital display).
- The **Right of Adaptation** allows for the consent or refusal by an author of the author's work to be adapted into other forms, such as translating a work into another language or converting a novel to a screenplay or other forms of visual art.

B. Moral Rights

The Moral Rights are found in Section 57 of the Copyright Act. Even though the Copyright Act has always included the idea of moral rights, this right had a rebirth with the 2012 reform. Under the amended Act, the dualistic model of separate regimes for moral and economic rights was revived, along with the idea of permanent moral rights. The several rights that fall under this category of moral rights are listed below:

Right of paternity: Writers are given the privilege of paternity so they can claim authorship over their works and stop others from claiming their original works as their own.

Right of Integrity: The creator can have their identity protected by not allowing any of the following to occur to their work:

Alteration Modification Distortion Misrepresentation

Throughout the author's work, any treatment that impedes/inhibits his/her ability to maintain

his personal reputation, dignity, and artistic character

An artist may oppose the way a work is altered and thus perceived by the public. For example: An artist may be opposed to a significant change/modification of an oil painting because it creates a significant change in the way that the painting is perceived/understood by the public; A poem that is used in a different context than intended by the poet; altering a film scene without the author's consent. Creative works are not just property, but rather an extension of the creator's personality.

C. Subsidiary Rights: These rights include the capacity to produce and publish such works, the capacity to halt any other infringement on the author's identity, the capacity to resist harsh criticism, and the capacity to remove previously published works from sale.

6. Enforcement and Remedies

The copyright holders has two types of remedies available:

A. Civil Remedies

1) Injunctions between parties

The most important remedy is to grant an interlocutory injunction. Rarely does the case move past the interlocutory stage; instead, an application for interlocutory relief is typically filed. Three requirements must be met for an interlocutory injunction to be granted: A prima facie case comes first. Convenience should also be balanced. Lastly, there must be an irreversible harm.

2) Financial Solutions

Sections 55 and 58 of the Copyright Act of 1957 also give copyright holders three monetary remedies. First, a profit account that gives the owner the ability to demand payment equal to the profit made through illicit means. The second is compensatory damages, which allow the copyright owner to recoup losses he suffered due to the infringement. Third, conversion damages determined by the item's value.

3) Orders from Anton Pillar

The Anton Pillar Order got its name from ownership in Anton Pillar AG V. An Anton Pillar Order consists of the following elements: A court must first grant an injunction that forbids the criminal from stealing or causing property damage. Second, a court order permits the plaintiff's

lawyer to examine the defendant's belongings and take out anything they are storing in safekeeping.

Third, an order compelling the defendant to divulge suppliers' and customers' names and addresses.

4) The Mareva Injunction

When the court believes the defendant is trying to delay or stop the execution of any judgment against him, the Mareva injunction is utilized. To satisfy the ruling, the court has the power to order him to turn over all or any part of his property. The Civil Procedure Code, 1908, Order XXXVIII, Rule 5, makes this clear.

5) Pharmacal Order from Norwich

When a third party needs to be contacted for information, the Norwich Pharmacal Order is usually passed.

B. Criminal Remedies

The following remedies are available for infringement under the Copyright Act of 1957:

- A minimum of six months but a maximum of three years in jail
- The fine must be less than 50,000 but can be up to 2,000.
- Delivery of counterfeit items to the copyright owner
- Search and seizure of infringing goods.

7. Landmark Case

Amarnath Sehgal v. Union of India 2005(30) PTC253(DEL): This historic case acknowledged the moral rights of artists under the Indian Copyright Act, such as the right of integrity, which safeguards the original expression of an artist's vision, and the right of paternity, which permits artists to be identified as the creators of a work.

Eastern India Motion Pictures Association v. Indian Performing Right Society Ltd. 1977 2 SCC 820: Even if there was no financial gain from the performance, this case showed that public performances of musical works protected by copyright without permission from the owner of the property constitute infringement.

Yashraj Films Pvt. Ltd. and Ors. v. Mansoob Haider (2014) 59 PTC 292: This judgment

made it clear that the fundamental ideas, concepts, or facts themselves are not covered by copyright protection under Indian law; rather, it only covers the distinctive and original expression of an idea in an artistic work.

8. Conclusion

At the conclusion of our discussion regarding the importance of Copyright Law to protect Creative Works of Art is both a Part of the Foundation and the Future. The evolution of Copyright as a type of Law began with the signing of the Berne Convention and continues today through various National Statutes, such as The Indian Copyright Act. Copyright attempts to protect Artist Expression by allowing Artists to have a right to enforce control over their own Work and to allow for Public Interest to be addressed through the creation of limitations and exceptions to these rights. As highlighted by the Case Amar Nath Sehgal and other Moral Rights Cases, the Artist is not just viewed as an Economic Actor but also an Agent of Culture and Morality whose Reputation and Creative Vision should be given Legal Protection.

The continued evolution of technology will require Copyright Law to continue evolving through Legislative Reform, Judicial Interpretation and International Cooperation. However, the main function of Copyright Law will always be to protect and to incentivise Human Creativity as well as to preserve the Integrity of Artistic Works. The core function of Copyright Law will be the foundation of any Legal Framework that values Art and Culture.

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