



International Journal of Research Publication and Reviews

Journal homepage: www.ijrpr.com ISSN 2582-7421

Role of Copyright Law in the Media Industry

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ABSTRACT

Copyright, as well known is a bundle of rights which are bestowed under law on the creators of literary, dramatic musical and artistic works and the producers of cinematography films and sound recordings. In other words, we can also say that copyright is nothing but the exclusive legal rights which confers protection to an authorship, composition or artistry. Thus, copyright is an umbrella that protects and controls the rights of a person/entity over a literary, dramatic, musical or artistic work or computer program along with the rights pertaining to its publication, sale or production. This paper focuses on the importance of knowing the role of the copyright laws in the media industry. The paper deals with Copyright chaos, Section 2(d)(v) & taglines, broadcast, the Doctrine of fair use and also offenses and penalties. The paper further scrutinizes the tool of Monopolistic Oppression and important judgments. The views and inferences of the researcher conclude the paper.

Keywords: Copyright, Media Industry, Law

1. Introduction

Copyright, as well known is a bundle of rights which are bestowed under law on the creators of literary, dramatic musical and artistic works and the producers of cinematography films and sound recordings. In other words, we can also say that copyright is nothing but the exclusive legal rights which confers protection to an authorship, composition or artistry. Thus, copyright is an umbrella that protects and controls the rights of a person/entity over a literary, dramatic, musical or artistic work or computer program along with the rights pertaining to its publication, sale or production.

In my own words and from my angle of view, copyright is the right of an author over his work. A unique idea, an innovative work, a novel invention are all products of a person's or an entity's toil and sweat. Hence, the same should be appreciated and protected. Copyright aims at this. On one hand it confers exclusive right to the author and on the other hand it restricts others from the unauthorized use of the creation without the knowledge and consent of the author. In short, the copyright law indicates a notion of respect towards the creativity of an author.

Media is often referred to as the 'fourth pillar' of democracy in the present scenario. In the current century, Media plays a vital role in the lives of people. Whether it be print media or electronic media, it has become an inevitable part of the lives of the new generation. Through smart phones, computers, laptop, tablets and various other gadgets and applications, media reaches the tip of a person's finger. The influence of media is in its superlative degree. Irrespective of the veracity of the content, media greatly triggers the societal behaviour in both, good ways and bad ways. Media Industry is an entertainer as well as a destructive weapon.

Movies, songs, serials, programs, shows etc. Occupy prominent positions in the pyramid of media industry when it comes to the creative side. Hence, such creativity needs to be exclusively protected. It is at this juncture, the copyright law steps into the media industry. For example, take the case where a popular song in a particular movie is copied by an individual in his short film. He used the same tune and pitch of the song but wrote an all new lyrics. In such a situation,

- Is there a copyright violation?
- Is it legal for him to do so?
- Is it authorized?
- Is he punishable?
- What about the rights of the original author of the music?

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- What are the rights available to the author?
- Can the author sue the other person?

There are even more questions that can come into the minds of a person during such instances. That's when a law aspirant needs to know about the role of the copyright laws in the media industry. Let us now have a bird's eye view on this topic.

2. Copyright chaos

The number of channels are increasing day by day and TV shows are also multiplying. Hence, this has stirred up a rivalry among channels and leads to a lot of copyright issues as well.

Firstly, take the case of a very popular and highly rated serial. The edifice of a serial is nothing but a strong script. The script is the product of a creative mind i.e. it's author. The author is very well entitled under law to get his right protected under copyright law. Once copyright is obtained, the author is vested with absolute and exclusive rights over his creation. None other than he himself is authorized for the use of his work in any manner. Since the entire serial is anchored strongly in its script, it has become a common practise in the media industry to identify means to influence the employees of the rival channel to get to the script and know further. Once the script is known, the rival channels can easily come up with something that could strike out the program.

Secondly, a script alone is not sufficient for a movie or a program or a serial to be born. It mandates various other elements and factors including a production. If a person or an entity should agree to fund the program and become the producer, it is essential and inevitable that the script is shown to them. However, there can be hardly any evidence for sharing of the script with various producers and such situations make the script vulnerable as it is prone to very higher chances of misuse. The idea can be misused if shared with rivals.

It is not the idea per se that is protected under the copyright law. The protection is available only when the idea is as such converted to a tangible instrument. For instance, if a prospective investor misuses the copyrighted instrument, the copyright law can be invoked and legal remedies are available to the author. It also a common practice that both the parties shall enter into a Non Disclosure Agreement for a better understanding and protection of the copyright.

3. Section 2(d)(v) and taglines

'Computer ji lock kiyajaye'

There is not a single Indian who will not be familiar with this tagline by Amitabh Bachan in the popular television program with a world wide fame, 'Kaun Banega Karodpati'.

Now here is the question. Who owns the right towards this tagline? Is it with Mr. Amitabh Bachan, actor and host of the show who said this line? Is the right lying with the script writer? Should the right go to the Director, who is the real captain of the show? Or what about the producer who backs the entire program financially?

This is a crucial situation which can bring a very high level of ambiguity as to who owns the rights of a tagline. Section 2(d)(v) of the Copyright Act makes its entry to the scene at this point. This provision elucidates that the author of a Cinematographic work or sound recording is none other than the producer.

4. Broadcast

Under the copyright law, broadcast rights can also be copyrighted. In simple terms, we all know that broadcast means the transmission of programs either by television or by radio.

On moving from the layman's idea to a lawman's idea, the term broadcast embraces a transmission through the medium of a wireless telegraphy of visual images, sounds or other information that is capable of being lawfully received by the members of the general public or that has been lawfully transmitted for presentation to the members of the general public. It covers analogue, terrestrial and satellite broadcasts through television or radio.

5. The Doctrine of fair use

The most important right of a user of a copyright lies in the doctrine of fair use. It is necessary the rights are used fairly and lawfully. It strikes a notion of balance. It prevents any sort of unlawful, unauthorized and unfair use of the copyright. The fairness is determined by analysing the following factors:

- The purpose and character of the use.
- The nature of the copyrighted work.
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
- The effect of the use upon the potential market for or value of the copyrighted work.

Apart from the above, the doctrine of fairness also gets judged by the impetus of the public interest. Even Courts give high weightage to public interest when it comes to determining the doctrine of fair use.

6. Offenses and Penalties

Like every other penal law, copyright laws are also no novice to offenses and penalties. The copyright act also classifies certain acts and offenses and the offenses under the copyright laws also comes with penalties as per the gravity and seriousness of the offense committed.

Generally, offenses under the Copyright Act are 'cognizable offenses.' Offenders of copyright violations shall be subjected to:

- Police Search
- Seizure

Moving to the remedies under the Copyright Act for copyright infringement, there are civil remedies as well as criminal remedies. Let us now have a glimpse at the various provisions and the remedies.

Civil remedies for copyright violations are embedded under Section 55 of the Copyright Act. Criminal remedies for infringement of copyrights are envisaged under Section 63 of the Copyright Act. The various criminal remedies explicated under this provision includes the following:

- Injunction
- Damages
- Accounts
- Other remedies conferred by the law on the owner

Under the Copyright Act, an offender, i.e. a person or an entity that violates the copyright of another person can be punished with imprisonment for a period of 6 months and can extend up to two years along with a penalty of fine of Rupees fifty thousand to Rupees Two Lakhs.

Further, the Police is empowered to seize the infringing copies and all materials utilized to produce the same. Section 64 of the Copyright Act speaks about this.

7. Tool of Monopolistic Oppression

Even though the main idea behind the introduction of copyright laws lie in the protection of an author's rights, it has also taken an evil guise too in the present scenario. Exclusivity is an important element in copyright. The author alone gets the right. The sole owner. This shapes a kind of monopoly. And as we all know, mono is one and this kind of a monopoly rules out the chance of a competitor. It restrains others from the use of the copyrighted work and can even bring about criminal liability. In spite of the element of public interest or the larger good, there is higher level of chance that, the copyright given to an author to respect and protect his rights may be used to mould a monopoly outweighing others

8. Important judgments

From a legal angle, any study of the role of copyright laws in the media industry is lame and incomplete without a reference to caselaws. There can be landmark cases, precedents, popular cases, etc. Hence, let us now go through a few of the most important copyright cases in the media industry along with a brief description of the verdict or important question of law that was dealt with in the respective copyright caselaw.

No.	Copyright-Media Industry Case Law	Important points
1	R.G.Anand v. M. S. Delux Films*	<ul style="list-style-type: none"> • Copyright infringement against the movie 'New Delhi.' • Clarified the concepts of idea-expression dichotomy and copyright infringement.
2	Nichols v. Universal Pictures Corporation†	<ul style="list-style-type: none"> • Dealt with copyright infringement by non-literal copying of a dramatic work. • Held that whether it be a book, play or film, copyright cannot be extended to the characteristics of stock characters in a story.

*AIR 1978 SC 1613

†45 F.2d 119(2nd Cir. 1930)

3	Mandeville-Anthony v. Walt Disney Co. [‡]	<ul style="list-style-type: none"> • Pertaining to the copyright infringement of copyright in the movies – ‘Cars’ and ‘Cars 2’ • The Appellate Court affirmed lower court decision that the movies did not infringe the copyrighted works of Jake Mandeville-Anthony as they are not substantially similar as a matter of law.
4	Zee Entertainment Enterprises Limited v. Sony Pictures Networks India Private Limited [§]	<ul style="list-style-type: none"> • Copyright issues pertaining to TV shows. • It was stated in this case that the surest and safest test to determine whether or not there is a copyright infringement is to see if the spectator, the reader, the viewer or the audience, after having read or seen both the works is of the opinion and is of an unmistakable impression that the subsequent work appears to be a copy or a facsimile of the original.

9. Conclusion

As stated in the beginning of this work, Copyright, is a bundle of rights which are bestowed under law on the creators of literary, dramatic musical and artistic works and the producers of cinematography films and sound recordings. It is a protective law, it is a law of respect and also a law of appreciation to the author and his creation or his/her innovation. I would also say that copyright law is a necessary law which protects and encourages the creative side of a person.

While the goodness and merits of the copyright law gets piled up on hand, an evil side also peeps out from another side. One should note that, like every other law, the law of copyright is also intended to protect the rights and shield the author against any sort of mala fide and unauthorized use and violation of his or her rights. The doctrine of fair use should be given due weightage. Every case differs from the other and the verdict should be determined after analysing the facts and circumstances of the respective case. Innocent, unintentional, harmless and bona fide infringement should be protected. Public interest should also be given extreme importance in every case. The detrimental factors differs from a case to case basis. Hence, I suggest that, before passing a final verdict in any case, the facts and circumstances should be meticulously analysed, giving due importance to the author’s rights and not outweighing the larger public interest.

[‡]11-56441 (9th Cir. 2012)

[§]Bombay High Court, 5th April 2017