

B.A.LL.B. VIII SEMESTER
INTELLECTUAL PROPERTY LAW
BL- 803

TOPIC: INFRINGEMENT OF COPYRIGHT AND FAIR DEALING PROVISIONS

Section 51 of the Copyright Act:

When copyright infringed – copyright in a work shall be deemed to be infringed:

- (a) When any person, without a license granted by the owner of the Copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a license 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 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:

According to Sec. 2 (m) - Infringing copy means,-

- (i) In relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematograph film;
- (ii) In relation to a cinematograph film, a copy of the film made on any medium by any means,
- (i) In relation to a sound recording, any other recording embodying the same sound recording, made by any means, and
- (ii) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematograph film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act.

ELEMENTS OF INFRINGEMENT:

Two elements must be proved: **Ownership** and **Copying**. Intention to infringe is not essential to establish for infringement of a copyright.

INFRINGEMENT OF COPYRIGHT BY COPYING:

(i) DIRECT COPYING:

Reproduction of the plaintiff's work by defendant falls under this category.

Ladbroke v. William Hill (1964)

(ii) INDIRECT COPYING:

Indirect copying means copying the work of a person by changing its form. If a novel is turned into a play, which is in turn converted into a ballet, there may be indirect copying.

JC Bamford Excavators Ltd. v/s Action Construction equipment Ltd. (2006)

Donoghue v Allied Newspaper Ltd (1937)

Copyright in a work is not infringed, if someone takes essential idea from it and develops his own work.¹

R.G. Anand v. Deluxe Films AIR 1978 SC 1613

R. Madhavan v S.K. Nayar AIR 1988 KERLA 39

¹ Cherian p joseph v. Prabhakaran AIR 1967 kerla 234.

Certain acts not to be infringement of copyright (Sec.52)

There are certain works which do not amount to infringement of copyright even when they are used, without authorization from the copyright owner. These are the works which are provided statutory immunity. So, a copyrighted work can be used broadly in the following ways:

1. By taking the permission/ license from the copyright holder, or
2. By paying adequate/requisite compensation to the copyright owner, or
3. Without taking permission from the copyright holder, in case the nature and extent of such usage of the copyrighted work is a fair use.

Fair dealing provisions:-

- (i) Fair Dealing for Research and Private Study
- (ii) Fair Dealing for Criticism or Review
- (iii) The reporting of current events and current affairs, including the reporting of a lecture delivered in public.

Reproduction of a work for Judicial Proceedings

- (iv) Reproduction or publication of any work prepared by the Secretariat of a Legislature.
- (v) Reproduction of a work in a certified copy made under any law
- (vi) Reading or Recitation in Public
- (vii) Use of copyright material in the course of Education

It was held in *Syndicate of Press of University of Cambridge & Another v. Kasturi Lal & Sons.* (2006)

- (viii) Performance of a work in course of Education
- (ix) Making Sound Recordings in respect of Literary, Dramatic or Musical works in certain cases
- (x) Causing a Recording to be heard in Public
- (xi) Performance of a work by Amateur Club or Society
- (xii) Reproduction of Articles on Current Topic in Periodicals, etc.

Periyar Self Respect Propaganda Institution v. Periyar Dravidar Kazhagam (2009)

- (xiii) Reproduction for use of Libraries
- (xiv) Reproduction or Publication of Unpublished Works
- (xv) Reproduction or Publication of any matter in Official Gazette, Act of Legislatures, Judgments of Courts, etc

In *Eastern Book Company v. Navin J Desai*² the Delhi High Court held that there was no copyright in judgments, and they were in public domain once published.

- (xvi) Publication of Translation of Acts of Legislatures,

² (2001) PTC 57 (Del)

(xvii) Making or Publishing of a Painting, Photograph, etc of a work of Architecture

(xviii) Making or Publishing of a Painting, Photograph, etc of a Sculpture or other Artistic work,

(xix) Incidental inclusion of Artistic work in Cinematograph Film

It was discussed by Court in *In Suneet Verma Design Pvt Ltd v. Jas Kirat Singh Narula*.³

(xx) Use of Artistic work by the Author himself in certain circumstances

(xxi) Reconstruction of a Building in accordance with Architectural Drawings

(xxii) Exhibition of Cinematograph Film after the Expiration of Copyright term in Literary, Dramatic or Musical work

(xxiii) Performance or Communication of a work in Official Ceremony

In *Super Cassette Industries v. Nirulas corner House (p) Ltd*.⁴, the Delhi High Court stated that, section 52(1) (za) is an exception to section 51. Such an exception involving the communication of a work to the public or of a sound recording in the course of any bona fide religious ceremony is not a public performance.

Ephemeral Recording for the purpose of Broadcast.⁵

³ (2007) 34 PTC 81 (Del).

⁴ (2008) PTC 237 (Del.)

⁵ Copyright Act 1957, sec 52(1)(z).

In **Video Master v. Nishi Productions**⁶ , the Bombay High Court reflected the argument of the plaintiff that the preparation of the Betachem cassettes by the defendants for the purpose of satellite broadcasting, infringed his copyright.

Reference:

1. Prof. V. K. Ahuja, Law Relating to Intellectual Property Rights, 3rd Edition (2017) , Lexis Nexis
2. Dr. B. L. Wadehra, Law Relating to Intellectual Property Rights, 5th Edition, Universal Law Publishing Comp. New delhi,

For further queries you may reach us via..

E-mail - juristyogi@gmail.com

Mob - 9058995499

Dr Yogendra Kumar

Assistant Professor of Law

ILS, CCSU Campus, Meerut

⁶ (1998) (23) IPLR 388.