



SHIELDING OF COPYRIGHT LAW IN WTO WITH SPECIAL REFERENCE TO ARTISTIC TRANSGRESSION

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ABSTRACT

The practice of copyright protection existed in countless forms in earlier times. However, in modern times, it has grown alarmingly not only over the entire world but also in our country. Now is the ideal moment to put adequate protocols and regulations in place to safeguard the author's rights and prevent the door from being shielded. When individuals want to unfairly exploit and financially harm those who have worked hard to advance those rights, the issue of copyright protection comes into focus. What is clear is that technological advancement has simultaneously made copyright material replication affordable and simple. It has made copyright infringement easy to commit and challenging to stop. In simple words, shielding of means - To appropriately safeguard the copyright proprietors/ creators of original works which are creative i.e., artistic creations, books, tunes, films, and so on. As a result, this research is divided into several chapters for a systematic analysis, including those on the history of copyright law

and its violations, the Copyright Act of 1957, Indian judicial precedent on copyright violations, artistic violations and their remedies, the TRIPS Agreement of the WTO, and recent changes affecting the artistic works. This research makes an effort to defend copyright law and debunk artistic transgression. The researcher tries to offer succinct thoughts on various legal instruments used to safeguard copyright owners. This research study also critically examines the defenses put out by copyright legislation. Therefore, the author has concentrated on the ideas that are listed in this research paper, which, if approved or accepted, will provide the copyright owner with enough protection from copyright transgression.

Keywords: Copyright, Judicial Precedent, Literary Infringement, Licensing, Piracy.

INTRODUCTION

Man is a social creature. He has a moral obligation to advance society by his original works, ideas, inventions, writings, etc. Although

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private in ownership, many concepts are public in nature. It has been acknowledged that these inventions and ideas are man's natural right since the beginning of time. However, over time the protection for these original works, ideas and inventions grew to be recognized as a legal right and was referred to as industrial property, which includes patents, designs, and trademarks. The appropriation of private property is prohibited by all types of industrial property, which are regarded as negative rights. These rights are now referred to as "intellectual property rights," which encompasses copyrights, integrated circuit designs, geographical indications, trade secrets, and concealed data in addition to more traditional rights like patents, designs, and trademarks. In light of this, copyright is a recently developed legislative right pertaining to computer programmes, printing, music, communication, entertainment, and more. The Copyright Act's main goals are to safeguard the rights of authors, ensure that the public generally benefits from their labor, and to offer remedies in the event when these rights are violated.²

The subject of copyright contravention ascends as soon as someone intends to yield the biased benefit of & financially impair people who worked hard to gain those rights. Technical advancements have made reproduction of copyright material easier at a low cost, while simultaneously making copyright infringement easy to commit and challenging to stop. They have given copyright violation a global flavor. Numerous stakeholders are engaged in the transmission of work when it is moved from one location to another or made accessible to the public. These include companies that offer online services or access to internet. When a service provider does something like transfer of available materials given by some other, then they are accountable for any violations of copyright. If the service provider is discovered to have committed unauthorized acts of public communication or reproduction themselves, or

if they are shown to have contributed to or made possible another person's copyright infringement, they may be held liable.³

Currently, copyright law pacts with an issue of civic attention & attempts for finding the equilibrium amid the deuce in the current alphanumeric ecosphere, in addition to shielding rights of the copyright owner and adjacent rights. As a result, copyright law has evolved from its early days, when it primarily protected literary and aesthetic works and has entered a new world full of technical developments.

The owner of the copyright possesses the sole authority to: (a) duplicate work; (b) distribute duplicates of work to the community; (c) rental/give duplicates of work to the community; (d) transmission of the work; (e) accomplish or show work in the community; (f) familiarize work. Anyone who performs or permits someone to perform the abovementioned acts prohibited by copyright without the copyright owner's authorization infringes on the copyright that exists in the work of the owner as defined by Section 51. The Act provides for civil and criminal measures to stop copyright infringement. Criminal remedies include incarceration and fines, whereas civil remedies include an injunction, an account of profit, or damages. However, for a criminal case to be made under the Act, it must be proven beyond a reasonable doubt that the offender knew they were violating the rights.⁴

An individual that permits the other individual to conduct the performances prohibited by the law violates copyright of owner unless a license has been secured. A license from each of the joint owners is required in the case of a work with joint copyright owners. The definition of a license should be understood in terms of the owner's authority or his consent to do a specific restricted act. Of course, there is the issue that if the license is not contractual, then subject to equitable laws

2 Dr. Dharmendra Kumar Mishra, *Remedies Regarding Infringement of Copyright in India: An Overview*, INDIAN BAR REVIEW 363, 368 (2004).

3 Mrs. Runa Mehta, *How to Judge the Infringement of copyright: An Analytical study*, 11 M.D.U. LAW JOURNAL 135, 145 (2006).

4 J.K. Das, *Intellectual Property Rights* 197, (Kamal Law House 2008).

and principles, such as the theory of estoppels, it may be canceled at any time.⁵

In most cases, the license granted by the owner of the copyright will be formal and pledged in nature, such as the nonexclusive license for a package of the supercomputer software program for the license fee i.e., dollars 250. It can be informal or non-contractual as an alternative. The courts might be willing to infer the copyright owner's license if there isn't express permission to perform the restricted act in question. The scope of any implicit license will be limited to what is absolutely necessary to carry out the parties' intentions. Other situations might imply an assignment. For instance, if a person is granted permission to use a computer programme, the court may interpret the license agreement to mean that the licensee will have the legal right to any reports generated by the programme.

When determining whether an implicit license is suitable, commercial reality must also be taken into account. The claimant and defendant in *Fylde Microsystems Ltd. v. Key Radio Systems Ltd.*⁶ worked together to build software for mobile and portable radios. The defendant made and sold mobile and portable radios, whereas the claimant worked as a software engineer. There was no agreement between the parties governing the software development. Because of the circumstances, the defendant was not the owner of the copyright that protected the claimant's solely written software. The defendant's claim that it possessed an implicit license permitting it to use the software however it saw appropriate was rejected by Laddie J.

This would let the defendant utilize the programme without having to compensate the claimant, despite the fact that the claimant spent four years creating the software. The substitute defense that the perpetrator had an implicit right to duplicate software in order to replace the defective and low-quality printed circuit-boards provided by plaintiff was likewise rejected. The perpetrator will

have a choice of requesting delivery of substitute printed circuit boards/ submitting prerogative for indemnities for the defective printed circuit boards. As a result, the license's meaning was completely unnecessary.

1. Transgression of Copyright

The fundamental principle of copyright law is that it forbids one person from using another person's labour, talent, or capital for profit or personal gain. The law is powerful enough to prevent injustice from occurring. The Copyright law provides the author with exclusive rights to prohibit certain unauthorized acts. If someone else carries out these actions without the copyright owner's permission, they are violating the owner's copyright in that work.

Therefore, while the word "infringement" in its strict definition denotes a violation of a person's rights when applied to the copyright, this denotes roughly improper usage of copyright exertion. Section 51 of the Copyright Act, 1957, describes transgression in simple footings which can be summarized –

- a. Engaging in any activity for which the owner of the copyright has exclusive rights without a license;
- b. Allowing the use of a location for commercial gain without a license, if doing so would constitute a violation of the work's copyright.
- c. Producing an unauthorised copy of the work for sale or hire, offering it for sale or hire, selling it, giving it away, showing it in public, or bringing it into India. One copy may be brought into India for the importer's personal and household use, though.

The seemingly straightforward definition of infringement conceals a legally complex reality; determining infringement is dangerously difficult.

However, Section 2(m) describes that an infringing copy provides certain guidelines

⁵ David Bainbridge, *Intellectual Property*, 160-162, (Pearson 2003).

⁶ *Fylde Microsystems Ltd. v. Key Radio Systems Ltd.*, (1998) FSR 449.

and standards for figuring out if a violation has occurred. A definition of unauthorized copy is:

- i. reproduction of musical, artistic, literary, or the dramatic work;
- ii. a copy of a cinematograph film made on any medium by any method;
- iii. a copy of a sound recording made by any method or any other recording containing the same sound recording; and
- iv. a programme or performance in which such a broadcast reproduction appears.

2. Elements of Transgression

Without permission, it is unlawful to copy, edit, display, reproduce, communicate, or perform a work that is protected by copyright. An allegation of infringement requires the demonstration of two factors:

- a. **Copyright:** The copyright claim requires to show that the alleged infringer had access to the work and infringed one of the exclusive rights;
- b. **Ownership:** The party alleging infringement must demonstrate that they are the legal owner of copyright;

It's crucial to keep in mind that the intent to violate copyright does not have to be proven in order to establish responsibility. Unintentional or unconscious infringement may nevertheless subject one to liability.

SOURCE OF COPYRIGHT LAW AND ITS TRANSGRESSION

1. Basis of Transgression in Copyright law

The idea of copyright dates to the dawn of humanity. It became a protected right when printing machines were introduced, replacing manual writing in the process. The phrase "THOU SHALT NOT STEAL" later developed into the moral tenet that guided the legal protections of

copyright in Europe at the start of the 17th century, impression of an author must have a limited "copyright" in its creation started to yield its shape. It originated from a conflicting strain, and it underwent significant evolutionary strife before settling into its current form.

The earliest duplicating industry, printing, had a pattern of exploitation from its inception. The main risk-taker was an entrepreneur, usually a "Stationer," who bought the work from the author and oversaw its production and distribution. The main defenders of exclusive rights against copiers were stationers, the forerunners of the modern publishing. They certainly insisted on this exclusivity in their own procedures, such as their guidelines under which the authors were dealt with; their "insiders-only" regime served as a source for trade traditions from which universal rights against "outsiders" might be derived.⁷ The crown was the stationers' ally in achieving this goal. In 1534, protection was given against the importation of foreign books, and Mary, who had severe concerns about religious opposition, awarded the stationer's company a Charter in 1556. This granted the authorities the ability, in addition to their usual trade supervision authority, to locate and destroy publications printed in defiance of a law or proclamation. The corporation established whatever amounted to a licensing scheme by requiring that only books that were printed legally be included in its register. As this was pertinent to the core intent of the Charter, the right to make an entry was restricted to company members. Elizabeth and her Stuart successors found the control method to be equally gratifying the leaders of the established church and the star chamber oversaw it. Governments that wanted to ban heterodoxy worked in tandem with the industry's established rules for publishing.

This line of reasoning was unimportant as long as the licensing system persisted. Additionally, the licensing of the stationer's business was rather active. The stationers, who had vehemently resisted losing their protection, were left with whatever

⁷ William Cornish, David Llewlyn, Tanya Aplin, *Intellectual Property: Patents, Copyright, Trade Mark and Allied Rights* (Sweet & Maxwell 2019).

“copyright” claim they could formulate based on their own customary procedures for registration. They required both concrete substantive rights and efficient means of enforcing them, and the legislation they obtained under the reign of Anne reflected these concerns in the Copyright Act, 1970.

The Act granted authors and their assignees the exclusive right and freedom to print books, although this privilege resulted from commercial exploitation rather than pure literary invention. The right needed to be registered with the stationers’ company before the book was published to be enforced, “as hath been usual,” and it was also punishable by confiscation. The right was “returned” to the author for an additional 14 years if he was still alive at the end of the initial 14 years following first publication.

The majority of judges first believed that history and policy required the acknowledgment of this full property right. In those times, when unfair competition might negatively impact the first publisher, the Act of Anne was viewed as offering further remedies. Finally, the landmark case of *Donaldson v. Beckett*⁸ narrowly decided how Act was understood for limiting the possibility of the rights prior journal. If the case had gone the other way, a variety of initiatives would have been launched to protect other types of intellectual work from exploitation.

As the technological capabilities for copying artistic works increased, statuaries were endangered in 1798 & 1814. Eventually, the FACA, 1862 added paintings, drawings, and photography. The statutory right to 28 years or the author’s life, whichever came first, was added to published books in 1814. Sergeant Talfourd tried to get it extended again, maybe for another 60 years, but he encountered a shoal of “economical” arguments that T.B. Macaulay put in particularly illuminating form. In 1842, the time was only prolonged for forty-two years or novelist’s lifetime & seven years

since copyright was viewed as “a levy on readers for the aim of granting a bounty to authors.”

In order to protect their financial interests, book publishers had requested a “Copyright,” and similar rules applied to creative work. However, live performances and the sale of copies of works were both forms of exploitation in the theatre and musical arts. The playwright’s songwriters and their business associates asserted a “use” right for each public performance of the work. Theatrical works were given this special performing right in 1833, and the working of musicals was added in 1842. Despite the nature of the performing right, “author’s right” was never substituted for “Copyright” in English usage as it was in the majority of other languages, despite being more inclusive.

The Copyright Act of 1911, the first piece of British law to codify all of the country’s copyrights in one text, approved these amendments, and at the same time to give legal standing to rights, even in unpublished works. However, there were certain provisions for automatic licenses in the later years of the copyright in published works, which represented a concession to public interest concerns.

The 1911 Act allowed sound recording creators the exclusive right to stop copies of their recordings from being made. Therefore, it was not an author’s right in the slightest, but rather something that continental theory would carefully define as a “neighboring right.” A significant precedent was established for a time when the technical means of artistic expression would significantly rise. The Indian Supreme Court noted a similar point in *R.G. Anand vs. Delux Films*.⁹

The creation of a drama by a writer or dramatist is undoubtedly the outcome of his behavior amounts to theft since it deprives the original owner of the copyright of the end consequence of author’s marvelous energy, ability, labor, time, if other individual is permitted for usurp An author’s work of the copyright.

8 *Donaldson v. Beckett*, (1774) 2 Bro. P.C. 129.

9 *R.G. Anand v. Delux Films*, AIR 1978 SC 1613.

Copyright protection, in India, dates back to 1847, when the East India Company implemented the English Act of 1842 to the regions it controlled. But the India Copyright Act, 1974, which was the first law, was passed in 1914. After the country gained its independence, a new copyright Act, 1957 was shaped, substituting this. Later, the Act endured many modifications in order to be completely consistent with the Copyright Rules of 1958. It offers protection to all original works of fiction, theatre, music, painting, cinematography, and sound recording. Other industries, such as satellite transmission, computer software, and digital technology, were also brought under its jurisdiction. Since the International Copyright Order of 1999 was published, the provisions of the order outspread to various countries including India, as it is also a member of the World Trade Organization (WTO) and the order applied to all WTO members. Copyright has created a global significance in this way.

2. Nature of Copyright

The word “copyright” denotes the area of intellectual property law that governs the production and use of a range of cultural objects, including artwork, music, movies, literature, software programs, and so on. The purpose of copyright law is to safeguard the author of a copyrighted work against unauthorized duplication or use of his works.

The fact that foreign and international treaties and developments have had an impact on copyright law is one of the recurring topics in the history of the discipline. Numerous international agreements have an impact on copyright law. The Berne Convention and the Universal Copyright Convention establish basic requirements for copyright protection and provide reciprocal legal protection among the nations that have ratified them. Each agreement currently has a sizable number of signatories (Berne has well over 100), and many nations, like India, have ratified both accords. The Berne copyright convention is administered by

World Intellectual Property Organization and the UCC by UNESCO (United Nations Educational, Scientific and Cultural Organization).¹⁰ Since 1886, the Berne Copyright Convention has been of European descent. The Universal Copyright Convention was established in 1952 to compel additional states to join an international “club” without necessitating weakening of the Berne Convention, and it has been and continues to be very effective.

The UCC allows constricting governments to compel compliance with payment of the fees, formalities, and registration whereas the Berne Copyright Convention does not. This is an essential distinction between the two treaties.

TRIPS is another significant international development. TRIPS contains a number of provisions that deal with copyright. The Berne Convention’s Articles 1 through 21, with the exception of Article 6 bis, which deals with moral rights, must be implemented by members of TRIPS as per Article 9(1). One effect of this is that the WTO can now take into account disagreements on Berne compliance.

Additionally, the TRIPS Agreement includes a few “Berne-plus” provisions that pertain to various parts of copyright. For instance, computer programs must be protected under TRIPS like literary works under the Berne Convention [TRIPS Act 10(1)].

The WIPO Performers and Phonograms Treaty and the WIPO Copyright Treaty were both approved in Geneva in December 1996. Both agreements were designed to add to the existing Conventions in order to take into account developments in practice and technology in particular.

The primary law of Copyright was enacted in India in 1914. And it was nothing but more than a duplicate of British India’s Copyright Act of 1911 that had been appropriately modified. The Copyright Act of 1957, which is still in effect today, followed the U.K. Act of 1956 and incorporated

10 Silke von Lewinski, *The Role and Future of the Universal Copyright Convention*, 11 *E-Copyright Bulletin, Doctrine and Opinions* 1, 13 (2006).

many of its guiding principles and clauses while also adding several fresh ones.

The aforementioned Copyright Act, of 1957, as updated later, contains the current copyright legislation of India. It also added a few new sections and amendments to the Copyright law in addition to consolidating and updating it. No work has any copyright unless otherwise specified in the aforementioned Act (Sec. 16). Only the original dramatic, literary, musical, artistic works, sound recordings and cinematographic films are all enclosed by Copyright Act under Section 13. The extent of the works has, however, been interpreted legally in a variety of ways.

1. Foundation and Expansion of Copyright Worldwide

a) Contents

The first international agreement controlling copyright was the Berne Convention for the protection of artistic and literary work which was adopted in 1886. Initially adopted and signed by ten nations, the Convention presently has 136 members, more than half of which are developing nations. The fact that a large number of states in all areas are members of the Berne Convention demonstrates its universality. Nations like America, Africa, Pacific, Asia, Europe, including India are currently parties to this treaty.

The Berne Convention has undergone numerous revisions in an effort to enhance the global system of protection it offers. The first significant revision, however, occurred in Berlin in 1908, 22 years after the Berne Convention's first drafting in 1886. The amendments in Rome in 1928, Brussels in 1948, Stockholm in 1967, and Paris in 1971 came after that. The Convention's content has become richer as a result of these amendments.¹¹

b) Purpose

The Stockholm revision of 1967 had the dual goals of making administrative and structural improvements while also taking into account the concerns of growing nations and the rapid advancements in technology. For the first time, authors received express permission to reproduce their works. The favorable arrangements for developing nations that were negotiated in Stockholm were expanded upon at the Paris Revision Conference in 1971, where new agreements were negotiated. The Berne Convention's stated goal is "to protect the rights of authors in their literary and artistic production in the most effective and standard manner feasible."¹²

In accordance with Article 1 of the treaty, the countries to whom it applies establish a Union to protect the authors' rights to their literary and artistic creations. The two guiding principles of the convention are "national treatment," which requires that works created in one of the member states receive the same level of protection in each of those states as the latter grants to works created by their own citizens, and "automatic protection," which requires that such national treatment is not conditional on any formality; in other works, protection is automatically granted and is not subject to the formality of registration, regardless of the circumstances.

2. Vital Constituents of Transgression of Copyright

A work's copyright is violated when any of the following includes:

- a) work is reproduced in a substantial form;
- b) work is published;
- c) work is communicated to community;
- d) work is performed for community;
- e) the work is adapted or translated; and

11 J.K. Das, Intellectual Property Rights, 79-80, (Kamal Law House 2008)

12 Berne Convention for The Protection of Literary and Artistic Works, Sept 28, 1979.

f) any of the aforementioned acts are performed with respect to a significant portion of the work.

Such actions pertaining to a sizable chunk of the work will constitute a copyright violation. A simple variation in size or a precise replica of a significant portion of the work is insufficient to qualify an act as a copyright violation.¹³

The Supreme Court of India clearly defines the circumstances and cases relevant to copyright infringement in its landmark decision in *R.G. Anand v. Deluxe Films*¹⁴, the court established the following guidelines for holding that copyright was violated:

- i. Copying an idea, topic, story, or fable is not a violation of copyright in the expression of the original work's ideas.
- ii. Since the same idea is being developed in several ways, analogies will unavoidably appear because the source is the same. In this case, the court will need to determine whether the similarities reflect a basic or important aspect of the expression employed in the copyrighted work.
- iii. Copyright infringement may occur if the accused's work specifically imitates another work that is covered by copyright and modifies it in some way.
- iv. Whether the spectator is surely of the opinion and receives the unambiguous impression that the later work looks to be a copy of the original after reading or seeing both the works.
- v. When the same concept is used and is presented inversely, creating an entirely new work, there is no question of copyright infringement.
- vi. There would be no copyright infringement if the similarities between the two works are entirely coincidental and the works'

material and general differences negate any desire to duplicate the original.

- vii. Because a copyright violation is equivalent to an act of piracy, it must pass all of the established requirements and be supported by clear and convincing evidence.

The viewer's test is relevant evidence of copyright violation. After watching the movie, if the viewer has the impression that it is largely an exact replica of the original play, then a copyright violation has likely occurred.

JUDICIAL PRECEDENT ON TRANSGRESSION OF COPYRIGHT IN INDIA

An exclusive right to a work's replication in material form, storage of the work on any medium using electronic means, publication, public performance, and translations are all granted by copyright.

The owner of the copyright is granted these rights so that he can profit financially. Copyright infringement occurs when any of the aforementioned actions are carried out by someone other than the copyright owner without authorization from the owner. For a set amount of time, copyright is awarded. Whether or not there is copyright in the work will determine whether or not an act constitutes an infringement. If the work's copyright has expired, it enters the "public domain," and any act of copying by someone other than the author would not constitute an infringement. As an illustration, a poet wrote a poem in 1820. In 1888, the poet passed away. After then, another author in the year 1970 used the poem exactly in one of his book's chapters. Since the term of copyright for literary works continues for sixty years after the author's passing, there is no copyright violation in this situation.

Thus, a number of violations have been comprehensively explored using judicial

¹³ Tayal, V. and Tariq, M., *Emerging challenges to the legal protection of creativity under copyright law: An overview*, 1 SCJ (2008).

¹⁴ *Supra* note 8.

pronouncements, starting with those from the pre-independence era. These violations include:

1. Pre-independence;
2. Post-independence;
3. Judicial – Precedent after the 1999 Amendment and in the 21st Century.

Pre-independence

a) Works

Original works of authorship that are permanently affixed to perceptible medium countenance that can be reproduced/ perceived or transferred directly/ with aid of a mechanism or a device, are protected by copyright laws. Therefore, it must be considered a “work” in order for the copyright to remain in effect. According to Section 2(y) of the Copyright Act of 1957, a “work” is any of the following: a sound recording; a cinematograph film; or a literary, dramatic, musical, or artistic work.

According to widely accepted doctrine, a “work” must have involved some level of skill, labour, or judgment in order to qualify for copyright protection. The question now is whether factual data in a table that includes data like sunrise and sunset qualifies as “work” for copyright protection. This problem has been fixed. In the case of *Cramp Sons Ltd. v. Frank Smithson Ltd.*¹⁵, the court addressed a similar issue and determined that the sun does in fact rise, and the moon set, at times which have been calculated, and the utmost that a table can do on such a subject is to state the result precisely. There is no room for judgment. The creation of a new table consisting exclusively information may require an important amount of work and effort in deriving that information, for instance by scientific observation and measurement.

b) Works Of a Joint Authorship

A “work of joint authorship” is defined as “a work produced by the collaboration of two or

more authors in which the contribution of one author is not distinguishable from the contribution of the other author or authors” under Section 2(z) of the Copyright Act of 1957. Therefore, if two or more people made an intellectual contribution to the creation of a literary work in accordance with a priori-shared design, those individuals must be recognised as joint authors. In the landmark case of *Macmillan v. Suresh Chander Ded*,¹⁶ the aforementioned topic has been extensively examined. The Privy Council decided that a work that had specific selections and an arrangement along specific lines from an author whose works were accessible to everyone was entitled to protection since the compiler had invested skill, labour, judgment, and knowledge into it. Apart from the fact that it may or may not be a compilation of several authors’ works that have been carefully chosen and structured along particular lines, a collective work will always be protected by its own copyright. However, the creator of such a work must not have violated his or her own copyright.

c) Literary works

Work other than musical or dramatic work, which is sung, spoken, or written and is considered to be literary. A literary work needs to contain some aspect of either knowledge and education or literary enjoyment. The work does not, however, need to have any inherent literary merits in order to be considered a literary work. A literary work’s copyright must be more than *de minimis* in order for it to exist. Single words are not protected by copyright. As stated in *Macmillan v. Copper*¹⁷, according to the Privy Council, there was not enough knowledge, judgment, labour, or literary skill invested to confer copyright on the appellants over the text. The Privy Council also declined to refer to the work of the respondent and appellant as “abridgments” at the same time.

15 *Cramp Sons Ltd. v. Frank Smithson Ltd.*, (1944) AC 379 at 336.

16 *Macmillan v. Suresh Chander Ded*, ILR 17 Cat 951.

17 *Macmillan and Company Ltd. v. K. and J. Cooper*, (1924) 26 BOMLR 292.

d) Dramatic Works

A cinematograph film is excluded from the definition of a dramatic work, which includes any composition intended for recitation, choreography, or entertainment in a stage production where the staging or acting is fixed in writing or another way is dramatic work. In the case of *Tate v. Fullbrook*,¹⁸ it was decided that because a visual skit for a music hall sketch including the use of fireworks had not been reduced to writing, it did not fall under the purview of copyright.

e) Musical Works

These are the musical works that include any graphic notation of the composition but exclude any words or actions that are meant to be spoken, perform, sung in conjunction. In *Redwod music vs. Cheapell*,¹⁹ was decided that a musical arranger can get an independent copyright if he or she embellishes, develops, transfers to a different media, or otherwise modifies the straightforward music of a well-known song in order to qualify as an original musical work. The concepts expressed in the arrangement don't have to be brand-new.

Post-Independence

a) Works

If only a little bit of effort is put out, is that enough to grant the resulting work copyright? The “sweat of the brow” doctrine was put to rest when the U.S. Supreme Court ruled against copyright protection for merely factual compilations in *Feist Publications Inc. v. Rural Telephone Service Co. Inc.*²⁰ In that case, it was determined that the telephone directory's white pages were not covered by copyright since they were created with only effort and did not call for the use of skill or judgment. It was decided that copying factual information from the Yellow Pages did not

violate the copyright in *Bell South Advertising and Publishing Corporation v. Donnelly Information Publishing*²¹. Telephone directories' “Yellow Pages” may be protected by copyright due to the skill and judgment used in choosing the classification system as well as the inclusion of other copyright elements like commercials.

b) Works of the Joint Authorship

Under the Act, joint authors' works are protected in *Nazma Heptualla v. Orient Longman Ltd., and Others*,²² Maulana Azad, the plaintiff, inscribed the book *India achieves freedom while still alive*. The sixth perpetrator claims that her father is the creator of the aforementioned book and that he wrote and composed it. The closest relatives of Maulana Azad allegedly consented to the agreement reached to release the book, apart from the 30 sheets. The judge also noted that since Maulana Azad's representative received 50% of the book's royalties, Professor Kabir was not the only author. The court subsequently declared Prof. Kabir and Maulana Azad to the role as joint writers of the aforesaid book.

c) Literary quality

A literary work can be as simple as an index of railroad stations, a railroad handbook, or a list of stock exchange quotes if enough effort was put into assembling it to stretch its unique & new charm. In the case of *Gleeson v. Denne*²³ it was decided that someone exerting enough effort to warrant asserting copyright in the finished product—for example, by going down the street, noting names of individuals who reside at houses and producing a street directory as a result of that labor—is entitled to do so.

18 *Tate v. Fullbrook*, (1908) 1 KB 821.

19 *Redwod music v. Cheapell*, (1982) RPC 109.

20 *Feist Publications Inc. v. Rural Telephone Service Co. Inc.*, 499 U.S. 340 (1991).

21 *Bell South Advertising and Publishing Corporation v. Donnelly Information Publishing, Inc.*, 11th Cir. 2 Sept. 1993.

22 *Nazma Heptualla v. Orient Longman Ltd. and Others*, AIR 1989 DEL 63.

23 *Gleeson v. Denne*, 1975 RPC 471.

d) Research thesis and dissertation

They must put in a lot of work to synthesize their research into a thesis and dissertation. A student's thesis was plagiarized in *Fatch Single Mehta v. Singhal*²⁴ by the guide for his own Ph.D. thesis. A temporary injunction was obtained to prevent the guide from receiving a Ph.D.

3. Judicial Precedent after the 1999 Amendment and in the 21st Century

The Amendment Act of 1994 provided for performer's right protection covering any visual or artistic presentation made live by one or more performer's; copyright societies, seeking to promote collective administration of the rights of authors, composers and other creative artists; assignment of copyright by an author or artist to protect the interest of both assignor and assignee; and computer programmes, cinematograph films and sound recordings.

The Copyright Act was once again changed in 1999, changing the definition of a "literary" work, what it means to have a copyright for a computer programme, extending the performers' rights from 25 to 50 years, and adding some new clauses relating to the Central Government has the authority to impose restrictions on the rights of foreign broadcasting organizations and performers as well as the authority to extend certain regulations relating to broadcasting organizations and performers to organizations and artists in other countries.

a) What the plaintiff must prove

Plaintiffs in *Eastern Book Co. v. Navin J. Desai*²⁵ published volumes of head-noted collections of court judgments. Similar volumes of the same collection of decisions with head notes had been released by the defendants. On the grounds that the decisions' text is public domain

and that the plaintiff's head notes contain no copyright-worthy material, the defendant's request for an interim injunction was denied.

b) Work Comparison

In *Pepsi Co. Inc. v. Hindustan Coca-cola*²⁶ the defendants "use of 'Yeh Dil Mange More'" (used by the Plaintiff in their advertisement) in their advertisement was not in relation to their products. And on comparative advertisements it was found that it is utilized in a sarcastic way. This would not, on the prima facie, constitute a copyright violation.

c) Violation of a computer program

The architecture of a computer programme (which might be either the overall structure of the system at a high level of abstraction or the allocation of functions between various programmes) was capable of protection is a substantial part of the programmer's skill labour and judgment had gone into it, in *Tradition (U.K.) v. Cantor Fitzgerald International*.²⁷

ARTISTIC TRANSGRESSION IN INDIAN CONTEXT AND ITS REMEDIES

A holder of copyright has a limited right to: make copies of work, or duplicate work, broadcast it, or perform work in public. Section 14 of the Indian Copyright Act 1957 specifies the private rights contained in the copyright in numerous courses of endangered works.

Under Section 51, a person who does or authorizes another to do any of the copyright-restricted acts without the copyright owner's permission infringes the copyright in the work. To prevent infringement of copyright, the Act provides both civil and criminal remedies. Criminal remedies include imprisonment and a fine, whereas civil remedies include an injunction and an

24 *Fatch Single Mehta v. Singhal*, (1990) IPR 69. Raj.

25 *Eastern Book Company v. Navin J. Desai*, 2001 (58) DRJ 103.

26 *Pepsi Co. Inc. v. Hindustan Coca-Cola*, 2001 AIPC 240 (Del).

27 *Cantor Fitzgerald v Tradition*, (2000) RPC 95.

account of profit or damages. While civil remedies compensate the owner, criminal remedies serve as a deterrent to infringing behavior. Section 52 of the Copyright Act lays out the general defenses to copyright transgression. The various issues concerning copyright transgression, remedies, and defenses require careful consideration.

1. Transgression of Copyright

1.1 Transgression is the Basis of the Copyright Obligation

Section 51 of the Act outlines several turns that disrupt copyright & other rights well-known. Referring to this section, copyright is transgressed when an individual without holding a license from the author uses any area of copyrighted work for gain or do violations of copyrights and sell them or distribute in public or for trading purposes. The Section's explanation also states that imitation of literary, musical, artistic, and dramatic in form of film is also a transgression of copyright.

In order to summarize, copyright infringement occurs when somebody engrosses in any activity that disturbs any rights granted to the owner of copyright in a work, authorizes the performance of the work in public, creates illegal copies of the work for sale or hire, distributes or imports illegal copies of the work for commercial purposes, or otherwise acts in a way that harms the copyright holder in the work. Any exchange of illegal copies is likewise prohibited.

1.2 Criteria for Determination of Transgression

The term 'infringement' is not defined in the definition clause of the Copyright Act 1957. However, the definition of an infringing copy under Section 2(m) states some criteria for determination that an infringement has occurred. Accordingly it means: in relation to dramatic, musical, or artistic work, a reproduction, thereof, otherwise that in relation to a cinematograph film, a copy of the film made on any medium by any means; in relation to a sound recording, any other recording embodying

the same sound recording, made by any means; and in relation to a programme or performance in which such a broadcast reproduction right or a performers right subsists under the Act, the sound recording or a cinematograph film of such performance.

2. Remedies for the Transgression of the Copyright.

Both civil and criminal penalties are available for copyright infringement under the Copyright Act of 1957. Some of these remedies are not available in cases of innocent infractions.

2.1 Civil Remedies

Civil remedies are offered by Section 54 to 62 of the Copyright Act 1957. The copyright owner is entitled to all the remedies by way of accounts, damages, injunction, and other reliefs, which may be settled by regulation for contravention of right. Therefore, the proprietor of the copyright is entitled to all civil remedies provided by law, including injunction, damages, accounting, and other remedies.

a) Injunctions

Most copyright lawsuits seek injunctions to stop the defendant from performing conduct that constitutes infringement as their primary remedy. This is just the remedy accessible to an aggrieved who establishes at any period of the contravention. This remedy is also available when the offender is uninformed and has any basis for trusting that the work's copyright still exists (the innocent infringer).²⁸

b) Compensation and Accounts of Profit

Copyright offers compensation for losses and accounts as remedies. However, the remedy of an injunction may be combined with either a claim for damages or accounts of profit, but the two remedies cannot ever be combined.²⁹

Therefore, in a lawsuit for copyright infringement, the publishers of a book requested

28 Ibid

29 Pillalamarri Lakshmikantham and others v. Ramkrishna Pictures, AIR 1981 AP 224.

an injunction against the makers and distributors of the movie that was based on the concept of the book in order to stop the movie from showing anymore. The publishers requested both account relief and damages. The publishers didn't dispute the sufficiency of the damages; therefore, the decree of damages became binding. The petition was denied by the Andhra Pradesh High Court, which ruled that it was impossible to argue that an injunction was the wrong course of action. Additionally, the publishers were not eligible for relief of accounts because damages were determined, and the order of damages became final. The court further declared that accounts and damages are two different types of relief that cannot be combined.³⁰

c) Other Remedies

Section 55 also recognizes other remedies like Anton Piller Orders, Mareva Injunctions, etc., as are or may be conferred by law for infringement of a copyright. In England, the High Court has the authority to rule the court to issue an order requiring a defendant to grant the plaintiff and his representative access to the defendant's property as specified in the order in order to inspect items and documents relevant to the proceedings, remove them or take copies of them, and even take proceeds from the invading items on the basis of an application made to the court by a plaintiff *ex-parte* and in camera.³¹

2.1 Criminal Remedies

a) Statutory Provisions

The criminal remedies are covered in Sections 63 to 70 of the Copyright Act, 1957. Anyone who intentionally violates a copyright or any other right granted by the Act, or who knowingly aids in the violation, is violative of the Act. Although

the court has the authority to impose a lesser punishment for sufficient and unique grounds that must be indicated in the judgment, the Act now stipulates a minimum punishment. The penalty is harsher with a second or subsequent conviction.³²

b) Judicial Approach

There have been very few cases that have been escalated to the Appellate authorities for seeking criminal remedies. However, the High Courts were not of the opinion to go ahead with criminal prosecution for infringement of copyright after looking into the seriousness like in the rulings of the Delhi High Court and Bombay High Court in the cases of Gulfam Exports and Others v. Sayed Hamid³³ and Siaram Silk Mills v. State³⁴, respectively. As per the Court's directions, a search was done, and illegally obtained items were seized. The offence was also acknowledged by the Courts. However, a plea for compromise of the dispute under Section 482 of the Cr. P.C. was submitted to the High Court. In criminal offence after establishing each party's participation, the court made the following observation: "*Given the foregoing, it would be useless to continue the aforementioned complaint and proceedings. The petition is therefore approved. The above-noted FIR and the related proceedings are dismissed, with the Legal Aid and Advice Board, Patiala House, receiving costs in the amount of Rs. 10,000. The petition is dismissed*".³⁵

c) Administrative Remedies

The Copyright Act, 1957 gives the owner of copyright access to a rapid and efficient administrative remedy in order to stop the importation of infringing copies into India. The Registrar of Copyrights is empowered by Section 53(1) of the Act to issue an order prohibiting the importation into India copies of a copyrighted

30 Ibid

31 C.B.S. United Kingdom Ltd. v. Lambert, (1983) CH 37.

32 Ibid.

33 Messrs Gulfam Exports and Others v. Sayed Hamid, 2000 (2) BomCR 619.

34 Siyaram Silk Mills v. State, 91 (2001) DLT 369.

35 Supra note 30.

work made outside India that, if made in India, would violate the work's copyright upon request from the owners of copyright in such work or his duly authorized agent and following any inquiry he deems appropriate.

WTO - TRIPS AGREEMENT

The Agreement establishing the World Trade Organization (WTO) now includes the TRIPS Agreement. An international trade agreement, that is, as stated in Article II (2) of the WTO Agreement, TRIPS are a fundamental component and are binding on all member nations. Unlike the majority of the other significant WTO Agreements, the TRIPS Agreement does not contain annexes or Ministerial Decisions. The implementation of TRIPS is the main focus.

The TRIPS Agreement aims to safeguard intellectual property rights and encourage innovation and creativity. It wasn't until the late 1980s that it was added to the Original Uruguay Round Agenda. Developing nations only consented to the Uruguay Round's inclusion of TRIPS on the condition that the MFA's textile and garment quotas would be eliminated. The TRIPS were established in multilateral discussions for the first time in 1994, under the aegis of the GATT.³⁶

The TRIPS agreement was established in accordance with the Berne Convention for Copyrights (1971). These requirements must be met by members. The Rome Convention (1961) and Treaty on Intellectual Property in Respect of Integrated Circuits, 1989 commitments are similarly protected by TRIPS.

TRIPS is a treaty that covers seven different types of IP, like trademarks, GI, patents, copyright, industrial design, integrated circuits, related rights, undisclosed knowledge. It includes seventy-three articles in total and is divided into seven parts.

1. Necessity of TRIPS

The WTO members acknowledged the following in order to reduce trade barriers:

- i. There is a need to promote effective and adequate intellectual property rights protection;
- ii. There is a need for new intellectual property rights rules and regulations;
- iii. There is a necessity to deliver passable morals and ideologies use of trade-related IP rights, and the scope;
- iv. There is a necessity to offer real & suitable resources for the implementation of trade-related facets of IP rights & set novel rubrics and guidelines;

The TRIPS Agreement was approved by the WTO member nations in order to meet the aforementioned needs.

2. Basic Principles and Provisions

2.1 Responsibility of Members

Members (i.e., WTO members) are required to implement the TRIPS Agreement's obligations. Members are free to adopt laws that provide for greater levels of protection than those mandated by this Agreement, as long as they do not go against the terms of this agreement.

2.2 TRIPS and Intellectual Property Conventions

In respect of Part II, III and IV of the TRIPS Agreement, members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention, 1967. Nothing in Parts I to IV of the TRIPS Agreement may alter these provisions that members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

2.3 National Conduct

Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions already provided in, respectively,

³⁶ Pradip Gharami, *A Critical Study on Infringement of Copyright and Its Protection Under the Copyright Law in WTO Regime*, UNIVERSITY OF CALCUTTA 280, (2013).

the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. This requirement solely pertains to the rights provided by this agreement for performers, phonogram manufacturers, and broadcasting organizations.

2.4 Aims of TRIPS

The promotion of technological innovation, the transfer of knowledge, and its dissemination should be aided by the protection and enforcement of intellectual property rights in a way that benefits both the producers and users of technological knowledge.

CURRENT MODIFICATION WITH RESPECT TO ARTISTIC WORKS

The Copyright Act, 1957 underwent a recent revision in 2012, brought good news for the copyright users. The following modifications are a result of the Amendment:

1. Some exceptions that were previously solely applicable in connection to specific kinds of work are nowadays appropriate to all kinds of work, such as fair dealing and use for educational purposes;
2. As a result, certain other ways have been developed to protect copyright, such as embedded devices or particular encryption methods that prohibit copying or impede access to data on the internet. However, innovative security precautions are still in their infancy, expensive, and unable to keep up with the most recent hacking techniques for copying and decrypting data.

Section 52 now includes the following new exceptions:

1. Brief and accidental archiving of work solely for purposes of research, broadcast or public benefit;
2. The reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library,

museum or other institution to which the public has access;

3. A non-commercial library preserving a work in any media by electronic means if the library already has a physical copy of the work;
4. The transformation of any strictly functional component of a useful equipment into a three-dimensional item from a two-dimensional artistic creation, such as a technical sketch;
5. The transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public shall not constitute an infringement of copyright;
6. A separate Section 31 C has been added in place of Section 52 (1) (j), which dealt with the requirement relating to cover versions.

CONCLUSION AND SUGGESTIONS

The copyright has drawn attention because, other than rewarding a few financially secure individuals, society has not profited from it. The copyright critics contend that by limiting others, the copyright protection grants the holder of the copyright greater rights. There is concern that the copyright system in a digital environment may in the future weaken the copyright due to recent technological advancements in the communication area, particularly the internet. In support of this, it is claimed that the existing copyright legislation makes it harder to protect and enforce copyright on the internet because violating copyright is simpler than using more established and conventional ways of copying.

The most obvious examples include downloading and sharing music on the internet without the owner's consent and copyright owner's knowledge. Therefore, a substitute for copyright has been made available in the form of embedded systems or specific encryption techniques that prevent copying or restrict access to data on the internet. Technology-based security measures, however, are still in their adolescence and are

unable to keep up with the latest contemporary duplicating and decryption hacking methods. Copyright is still the utmost active lawful mechanism to guarantee that the authors of the original work or the copyright and its owners will be protected legally against the theft of their rights and potential future violations.

The TRIPS Agreement requires both developed and developing nations to provide processes and measures to enforce intellectual property rights, including copyright, under the WTO regime. They must provide both corrective actions, such as injunctions, damages, and asset seizure, as well as preventive measures, such as temporary restrictions and border controls. In general, members must approach enforcement provisions from two angles:

- a. If there is currently no national legal system in place, enacting the law, defining the procedural norms, and incorporating it, the courts and other applicable authorities will have the power to enforce intellectual property rights.
- b. The first issue of ensuring the correct application of these standards will not present too much of a challenge because the majority of countries, especially developing ones, are able to carry out the necessary legal passage in order to fulfil their commitments. The second component, however, is the most challenging to obtain because it is prone to challenges as it is still uncertain as to what constitutes fair and unfair.

- c. The TRIPS Agreement's Paragraph 2 of Article 50 states that the judicial authorities must have the authority to adopt temporary measures when necessary, without the defendant being heard (*inaudita altera parte*), particularly in cases where a delay could result in permanent damage to the holder.
- d. Having adequate border measures is another TRIPS Agreement requirement for copyright protection. The Indian Custom Act, 1962 fulfils the TRIPS Agreement's requirement for border measures pertaining to copyright protection at the time of its negotiation. As a result, while the Indian copyright law was being revised to comply with the TRIPS Agreement mandate, the 1962 Customs Act did not undergo any revision or amendment.

As a result, the Red Points Copyright Transgression Shielding Software aids in protecting one's creative works from those who would violate their rights in an effort to profit from innovations. A wide variety of media are covered by the software, including digital works, movies, prints, streaming, and educationally linked products. Copyright violations are quickly detected and penalized using a self-improving machine learning system and bot-powered hunt. The technology mechanically and continuously shuts down and detects copyright transgressions.