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GLIMPSE OF JURISPRUDENCE OF COPYRIGHT IN INDIA

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ABSTRACT

This Article is basically to provide glimpse of the jurisprudence of Copyright under the Copyright Act, 1957 (“**Act 1957**”); Works in which Copyright subsists, when there would be infringement of the Copyright work; Acts that falls under fair dealing as defined under Section 52 of the Act 1957; why it is required to protect original work of the copyright; An attempt to discuss the licensing part of the copyright work more specifically the work related to playing of songs at public places such as airports, restaurant, hotels, malls, etc. and also at ceremonies such as marriage ceremony, official ceremony held by the Central Government or the State Government or any local authority.

This Article will also discuss the outcome of the judgement of the Hon’ble Bombay High Court (Nagpur Bench) in the matter Dhiraj Dharamdas Dewani versus M/s. Sonal Info Systems Pvt. Ltd. (First Appeal No. 1076/2011) relating to the benefit of registration of Copyright on Territorial Jurisdiction.

GLIMPSE OF JURISPRUDENCE OF COPYRIGHT

COPYRIGHT:

The term “Copyright” is not defined under the Act 1957, but the meaning is provided at Section 14 of the Act 1957 as under:

*[“copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof”]*¹

This means the copyright is an exclusive right granted to the author / owner to protect their creativity i.e. “**work**”.

¹ Copyright Act, 1957

The Act 1957 defines “**Work**” as under:

[“work” means any of the following works, namely:— a literary, dramatic, musical or artistic work;

- (i) a cinematograph film;*
- (ii) a sound recording.]*

Copyright is an exclusive and assignable legal right, given to the author / originator / owner for a certain years on work such as literary, dramatic, musical, computer programming, artistic works, cinematograph films and sound recording. Copyright is a package of right which includes but not limited to rights of reproduction, performance of the work in public, communication to the public, adaptation and translation of the work. The Act 1957 does not protect idea and it only protects expression.

WHEN THERE IS AN INFRINGEMENT:

Copyright in a work is infringed when any person without obtaining proper license / permission from the owner of the Copyright or the Registrar of Copyrights or contravene any of the conditions of license so granted and does following acts such as:

- i) communication of work to public;
- ii) make work for sale or hire or sells or lets for hire, or by way of trade displays or offers for sale or hire;
- iii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright;
- iv) by way of trade exhibits in public;
- v) imports into India;
any infringing copies of the work.

FAIR DEALING OF THE COPYRIGHT WORK UNDER THE ACT 1957

Section 52 of the Act 1957 enumerate the acts which are considered as fair dealing and does not amounts to infringement of copyright which provides inter alia, that a fair dealing with any work, not being a computer programme, for the purpose of private or personal use, including research or criticism or review, whether of that work or of any other work or the reporting of current events and current affairs, including the reporting of a lecture delivered in public, etc. the list of fair dealing is exhaustive and one must study carefully before coming to the conclusion that use of any work would fall under fair dealing.

NEED TO GIVE PROTECTION TO THE ORIGINAL WORK OF THE COPYRIGHT:

“Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. Creativity being the keystone of progress, no civilized society can afford to ignore the basic requirement of encouraging the same. Economic and social development of a society is dependent on creativity. The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more and motivates others to create.”²

LICENSE / PERMISSION TO USE WORK WHICH SUBSIST COPYRIGHT (SPECIFIC ON PLAYING OF SONGS):

License is required to play songs at public place such as airports, restaurant, hotels, malls, etc. however, there is an exception where license is not required in case the performance of literary dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority.

The explanation relating to religious ceremony includes a marriage procession and other social festivities associated with a marriage.

² <http://copyright.gov.in/Documents/handbook.html>

Further, recently the Government of India, Department for Promotion of Industry and Internal Trade Copyright Office vide *Public Notice Dated August 27, 2019* clarified doubts of various stakeholder pertaining to whether license is required to be obtained for the purpose of utilization of sound recordings in the course of any marriage related function wherein they have come to the decision that:

“In view of the provision contained in Section 52(1) (za) of the Act, read with the explanation thereto, it is evident that the utilization of any sound recording in the course of religious ceremony including a marriage procession and other social festivities associated with a marriage does not amount to infringement of copyrights and hence no license is required to be obtained for the said purpose.”³

Moreover on playing music, *“it was held in the case of Performing Rights Society vs. Cameo, that playing music through a loudspeaker in a private room adjoining a public restaurant in such a manner that the music was audible to the public in the restaurant was held performance in public and constituted infringement of copyright⁴ “In Earnest Turner Electrical Instruments vs. Performing Rights Society, it was held that programmes of music and gramophone records played at the factory using loudspeakers for the benefit of the workers and playing of records over loudspeakers more or less continuously in a record shop to increase the shop owner’s profit were performances in public which may be infringing, if done without the consent of the composer.”⁵*

REGISTRATION OF COPYRIGHT IS COMPULSORY OR MANDATORY FOR TAKING RECOURSE TO THE PROVISIONS OF COPYRIGHT ACT

³ The Registry Office, Public Notice Dated August 27, 2019

⁴ Performing Rights Society vs Cameo (1963) 3 All ER 557

⁵ (1943) Ch. 167

In the matter Dhiraj Dharamdas Dewani versus M/s. Sonal Info Systems Pvt. Ltd., the question was arisen that whether registration of copyright is compulsory or mandatory for taking recourse to the provisions of Copyright Act, 1957?

The answer is in affirmation.

Below is the extract from the Dhiraj Dharamdas Dewani (supra)

*“22. Perusal of Section 51 clearly shows that it shall be deemed that there shall be infringement of the copyright when any person does anything, the exclusive right to do is conferred upon the owner of the copyright by the Copyright Act or any person makes sale of copies of such work by infringement of the copyright in the said work. It is thus clear from the reading of Section 51 that infringement shall be deemed when exclusive right to do of the owner of the copyright is utilized by some other person viz.the infringer. Now unless such person (the infringer) knows that there is any particular owner of the copyright in India or that such owner of copyright has registered his work under Section 44 of the Act before he did, attributing infringement by him or on his part intentionally or unintentionally, would be an preposterous. Such a person who is infringing the copyright in a work must be deemed to have knowledge about the owner of the copyright and such knowledge cannot be attributed unless the provisions of Chapter 10 regarding registration of copyright, publication thereof etc. are complied with. Otherwise a person who is innocent can in that event be easily brought in the net of infringement under civil law or criminally, which can never be the intention of the legislature. Thus, reading of Section 51 which defines infringement of right conferred by this Act, with Section 45(1) and the word 'may' therein to my mind means; **if owner of a copyright wants to invoke the provisions of this Act for enforcing civil and criminal nature of remedies before the special forum, namely the District Judge rather than a normal civil Court, he must have the registration.**”⁶*

(emphasis supplied)

⁶ Dhiraj Dharamdas Dewani versus M/s. Sonal Info Systems Pvt. Ltd. (First Appeal No. 1076/2011)

After analysing various provisions of the Copyright Act, the Court concluded that to avail remedies under the provisions of the Copyright Act against the defendant for the infringement under Section 51 of the Copyright Act, the registration of copyright is compulsory.

However, in recent case *USV Private Limited vs. Medulla Life Sciences and Anr, Commercial IP Suit (L) No. 1179 of 2019* filed before Hon'ble High Court of Bombay for infringement of the copyright in the artistic packing / trade dress of the plaintiff product MYCHIRO. The ad-interim relief was granted in favour Plaintiff as it is evident that the Plaintiff is the owner of the copyright in the artistic packaging/ trade dress used in respect of its MYCHIRO product. In this case, the artwork / artistic packaging of MYCHIRO is not registered under the Act and even the defendant product was not found in the jurisdiction of the Hon'ble High Court of Bombay.

Considering various past judgements, it has been dicey situation were some judgement consider registration of copyright as mandatory whereas some are not. However, considering the recent Dhiraj Dharamdas Dewani (supra) the registration of the Copyright is mandatory in order to avail additional forum granted under Section 62 of the Copyright Act.

The content of this paper is intended to provide a general education and information on the subject matter. Specialist advice should be sought about your specific circumstances.