

Coping with Copying Copyright Violations in Literary Works and Films

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Abstract

Copyright of literary works is the most debated topic and the most misunderstood one. There is a need for understanding it in totality as it is this understanding that is going to guide the teachers, researchers and students to ethically use the writings and works of others without violating the copyright norms. This topic has attracted researchers from all over the world to focus on the important elements of literary copyrights.

The Indian film industry is replete with examples of unauthorized copying of films from Hollywood many other major and minor film centres. There is a significant debate on the dichotomous position of the Indian film industry as a major cultural force but one that is permissive of copying. The issue is now not whether copyrights or not? The pertinent question is how to use copyright law effectively?

This paper tries to focus on certain grey areas of copyright laws dealing with literary works and films. These are mostly related with the Idea-expression dichotomy and fair use. Apart from these the paper also highlights the violations in literary and film copyrights and ways to tackle them.

Key words: copyright, intellectual property, literary works, film scripts

1. Introduction

The need to innovate is universal and applies equally in all sectors and services. It is the foundation of a successful and flourishing economy. India's copyright law, laid down in the Indian Copyright Act, 1957 as amended from time to time, adheres strongly to the Berne

Convention on Copyrights, of which India is a signatory. Also, India is party to the major copyright conventions and member of significant international Intellectual Property institutions such as WIPO.

Intellectual Property is the product of human brain. It could be in the form of creative, innovative and inventive ideas that have huge potential for the individual innovator, for the business and for the country. Intellectual Property Rights (IPRs) are assuming increasing importance in international trade, investment, in economic relations and in national growth.

Literary works include not only stories, novels, scripts, biographies and other forms of literature, but anything that has been originally expressed in words and put on paper, by way of handwriting or typing and printing. Thus the word 'literary' here may be interpreted in a broader sense, much like its usage in phrases like 'political literature' and 'sporting literature'.

Cinematograph film means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means. Thus 'cinematograph films' is construed as including any work produced by any process analogous to cinematography including video films.

2. Copyright

The owner of a registered copyright enjoys the ability of blocking and initiating penal action against the unauthorized copying or public performance of a work protected by copyright. Copyright is a set of exclusive rights granted by government to regulate the use of a particular expression of an idea or information. Copyright is a compound word and it is literally "the right to copy" an original creation. In most cases, these rights are of limited duration and copyright does not exist in perpetuity.

2.1 Areas of Copyright

Copyright may subsist in a wide range of creative or artistic forms or "works", which may be referred to as the "subject-matters of copyright". These include poems, plays, and other literary works, movies, choreographic works (dances, ballets etc), musical compositions, cinematograph films, audio recordings, paintings, drawings, sculptures, photographs, software, **Language in India** www.languageinindia.com ISSN 1930-2940 14:8 August 2014

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radio and television broadcasts of live and other performances. Copyright law covers only the particular form or manner in which ideas or information have been manifested, or the "form of expression", but not the ideas per se.

2.2 History of Copyright

The modern concept of copyright originated in 1710 with the British Statute of Anne, which first accorded exclusive rights to authors rather than publishers, and it included protections for consumers of printed work ensuring that publishers could not control their use after sale. In some jurisdictions, in order to obtain a copyright when a literary work such as a book or movie is created the work generally should contain a copyright notice. This notice is comprised by a letter c inside a circle (i.e., ©), or the word "copyright", followed by the year(s) of the copyright and the name of the copyright holder.

Certain alternative formats were permitted for certain types of literary works.

A copyright notice serves to inform any potential users that the work is copyrighted. A copyright notice is no longer required for a work to be covered by copyright in jurisdictions which have acceded to the Berne Convention. In most jurisdictions a work may be copyrighted from the moment of its creation regardless of whether or not it bears a copyright notice. However, wherever a copyright notice has been incorporated, it becomes much easier to claim damage for infringement in legal proceedings, since it may be presumed that the defendant had ignored the notice and violated copyright intentionally.

Several exclusive rights are available to the holder of a copyright. For a literary work those rights are as follows:

- To reproduce the work
- To issue copies of the work to the public
- To perform the work in public
- To communicate the work to the public.
- To make cinematograph film or sound recording in respect of the work

- To make any translation of the work
- To make any adaptation of the work.

Similarly, in the case of a cinematograph film, copyright means the exclusive right:

- To make a copy of the film including a photograph of any image forming part thereof
- To sell or give on hire or offer for sale or hire a copy of the film
- To communicate the cinematograph film to the public.

The phrase "exclusive right" means that only the copyright holder is free to exercise the rights that come with copyright, and others are prohibited from doing them without the consent of the copyright holder. Copyright is often called a "negative right", as it prevents others from doing something, rather than permit people (e.g. authors) to do something. In that sense it does not endow anything positive upon the author, but only excludes others from using that right.

3 Limits and Exceptions to Literary Copyright Works

3.1 Idea-Expression Dichotomy

A copyright covers the expression of an idea, not the idea itself — this is called the idea/expression dichotomy. For example, if a book is written describing the travels of a traveler across Europe, a copyright does not prohibit another author from writing a similar account as long as it is an original version; it is only the exact expression of that writing that is covered by copyright.

Similarly, a film about two lovers who fall in love but encounter resentment from their parents, only finally to get together with sanction from their parents, is a theme that runs as a common thread across many Hindi films. Every generation of moviegoers in India is conversant with this theme as multiple movies have been made around this theme at many times. This, however, does not make the later films infringing copies of the earlier ones or the first one, as long as the exact expression of the screenplay or dialogues has not been copied.

Numerous issues arise in literary works and in films, related to the idea-expression doctrine. Especially in academic writing, issues of plagiarism often come up and it is observed

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that many authors and researchers, in their overzealous effort to producing more research and writing, end up infringing other people's copyrights. Many films made in the Hindi film industry every year are 'inspired versions' of foreign films. One of the reasons why they might go scot-free is that the law may see these inspired versions as just the use of an earlier idea instead of the plagiarizing of an expression.

3.2 Fair Use and Fair Dealing

Subject to certain conditions, a fair deal for research, study, criticism, review and news reporting, as well as use of works in library and schools and in the legislatures, is permitted without specific permission of the copyright owners. In order to protect the interests of users, some exemptions have been prescribed in respect of specific uses of works enjoying copyright. Some of the exemptions are the uses of the work

- i. for the purpose of research or private study,
- ii. for criticism or review,
- iii. for reporting current events,
- iv. in connection with judicial proceeding,
- v. performance by an amateur club or society if the performance is given to a non-paying audience
- vi. for parodies and spoofs

Fair use and fair dealing is an important component of Copyright law, and is covered under Indian Copyright law. Broadly speaking, fair use allows the use of limited amount of copyrighted creative work without first obtaining permission for the purpose of review, criticism, or comment, news report, teaching and research, for judicial proceedings or for amateur uses. Fair Use is a quite a contentious issue with regard to copyright as it may happen that copyright holders may seek to reduce the 'fair usage' window and try to encompass more uses as infringement instead of keeping them for free usage as 'fair use'. This happens often when big studios try to keep the intellectual property that they own strictly watertight and not want to permit even small uses.

3.3 Moral Rights

The copyright besides conferring economic benefits also confers moral rights on the author. They include the right to decide whether to publish or not to publish the work i.e. right of publication, the right to prevent alterations and other actions that may damage the author's honor or reputation i.e. the right of integrity; and the right of paternity which implies that the author of a work has the right to claim authorship of the work. These rights are extremely important for all subject matters of copyright, and especially for literary works since moral rights are frequently asserted in such works.

Practical issues regarding the assertion of moral rights also surface frequently in the film industry, which is a highly commercial industry but strongly artistic values at its roots. Moral rights are in a way an exception to the general application of copyright laws, since moral rights remain with the author and may be asserted even when the economic rights have been assigned. Recently there has been a spate of script-writers and novelists strongly asserting their moral rights in situations where their original works have been apportioned by film-makers without giving proper credit or any credit at all. Examples include the controversy that surfaced post the release of the film *3 Idiots* (Hirani, 2009) when the author of the novel *Five point someone* (Bhagat, 2004) alleged that due credit had not been given to him in the numbering credits of the film.

4. Coping with Copying

4.1 Is Open Sourcing a Solution for Literary Works?

In India, there is excessive reliance on informal access to the scientific literature because Indian Institutions are unable to provide the research literature due to high costs of databases and journals (Gaule, 2009). There is ample evidence supporting that open access to scientific publications leads to significant increases in the number of article citations (Antelman, 2004). Thus there is rich evidence indicating that free access is responsible for accelerating the citation process (Craig, Plume, McVeigh, Pringle and Amin (2007) and it may have preferential effects for researchers in developing countries (Harnad, 2004).

Will open sourcing also lead to increased Copyright violations and enhanced Plagiarism?

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There is literature supporting that open Source model offers an alternative to the usual assembly line process for collaborative work; it emphasizes the value of writing, in turn emphasizing the wrongs of plagiarism and the need for proper citation (Laurie and Riley, 2006).

4.2 Creating Awareness

MHRD in India encouraged the organisation of awareness programs, seminars and workshops and provided funding for organizing these programs. DST also supported this move. Thus, in India, there are steps being taken to provide a conducive environment in educational institutions for generating awareness amongst teaching community, researchers and students. Creating awareness will not only help curbing copying due to ignorance, but also help in making them aware of penalties associated with copyright violations.

4.3 Introduction to IPRs as a Compulsory Subject in All Streams

A course on IPRs with focus on copyrights is the need of the hour. This course should be mandatory at undergraduate and post graduation level with an added course on research methodology at Ph.D. level focusing on Ethics in academic writing to stay away from plagiarism and scientific misconduct. Plagiarism usually involves the use of writings belonging to others, and not citing them properly. Even copying of part of own previous published study by a scientist without appropriate citation, i. e., self-plagiarism is also not tolerable in academic writing (Cross, 2007). Authors are supposed to mention closely related previous work in appropriate manner (Dellavalle, Banks and Ellis 2007). The work already published by an author becomes a property of scientific medical literature in actual sense and cannot be duplicated. Properly following these guidelines will help in checking plagiarism to a great extent.

4.4 Digitalization of Resources

Increased digitalization has lead to increased sharing of resources, but how has it affected copyright environment. Digitalization leads to easy access to material, easy duplication of material and making multiple copies in short span of time. This can ruin the copyright owners profits and thus needs to be reduced. There are other researchers emphasizing that digitalization of resources could mean the material has to be cited properly otherwise there are more chances of being caught and hence this will check and reduce plagiarism.

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4.5 Proper Laws and Their Enforcement

There is a need for stronger legal framework to check copyright violations and penalize the evaders. Proper licensed software in academic institutions is urgently required. The loopholes need to be checked and raids to be conducted to strongly endorse and enforce the laws. This also holds true strongly for the Indian film industry where copyright violations are rampant and proper laws and their more stringent enforcement would lead to a healthier copyright environment in the film industry.

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