ABSTRACT

“A CRITICAL STUDY ON INFRINGEMENT OF COPYRIGHT AND ITS PROTECTION UNDER THE COPYRIGHT LAW IN WTO REGIME”

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ABSTRACT

Practice of infringement of copyright is not new but existed in various form in earlier decades but today practice of infringement of copyright has increased enormously in almost not only in entire globe but spreading it at an alarming rate in our country too. Now the time has come to protect the rights of the author and to restrain the door from infringement with proper procedure and legislation.

The questions of infringement of copyright comes into picture when the people intend to take undue advantage and cause economic loss to the people who by virtue of hard labour have earned those rights. What is apparent is that the technological change has made reproduction of copyright material easy and cheap, and also at the same time it has made piracy of copyright work simple and difficult to control.

Briefly speaking infringement of means – To do justice for the protection of copyright owner.

Accordingly, for systematic analysis of my research work, I have divided into several chapters, such as –

Chapter – I Origin of Copyright Law and its Infringement.

Chapter – II Concept, Meaning and Definitions of copyrights.

Chapter – III Protection of copyright under copyright Law.

Chapter – IV Judicial Pronouncements of Infringement of copyrights of Indian as well as Foreign Court’s decisions.


Chapter – VI Infringement, Remedies and Defences of Copyright.
Therefore, I focused following suggestions which will (if approved / accepted), I believe copyright owner will get proper protection from infringement of copyright.

‘Copyright’ is the term used to describe the area of intellectual property law that regulates the creation and use that is made of a range of cultural goods such as books, songs, films, paintings, computer programs etc. The object of copyright law is to protect the author of the copyright work from an unlawful reproduction or exploitation of his works by others.

The infringement of copyright in a work occurs when one or more of the following acts take place -

a) Reproduction of the work in a material form;

b) Publication of the work;

c) Communication of the work to the public;

d) Performance of the work to the public;

e) Making of adaptations and translations of the work and doing any of the above acts in relation to a substantive part of the work;

Doing anyone of the above acts in relation to a substantive part of the work will amount to infringement of copyright. Mere difference in dimensions or in accurate reproduction where substantial part of the work is immaterial for bringing an act into the sphere of infringement of copyright.

There are two fundamental elements required to determine the cases of infringement of copyright –

(i) There must be sufficient objective similarity between the infringing work and the copyrighted work or a substantial part thereof.
(ii) The copyrighted work must be source from which the infringement work is derived.

The ultimate test “has there been a reproduction of plaintiff’s work in a substantial form?” The ‘substantial’ embraces within its ambit two conceptions namely –

(a) The one of being ‘Considerable’ i.e., as regards quantity, this meaning is directly attributed to the words when the quality of infringed work is uniform.

(b) The other being ‘important’ or material, that is as regards quality.

Copyright protects the skill and labour employed by the author in the production of his work. In relation to literary work that skill and labour embraces not only the language originated and used by the author, but also such skill and labour as he has employed in selection and compilation [Rayenscroft v. Herbert, 1980 RPC. 193]. Another person may originate another work in the same general form, provided he does so from his own resources and makes the work he so originates a work of his own resources by his own labour and industry bestowed upon it. In determining whether there is an infringement where the subject-matter of the plaintiff’s work is not original, the question is how far an unfair or undue use has been made of the work? If a person instead of obtaining the subject-matter from common sources avails himself of the labour of his predecessor, adopts his arrangements and quotations, or adopts them with a colourable variation it is an illegitimate use. In the case of works not original in the proper sense of the term, but composed of, or compiled or prepared from materials which are open to all, the fact that one man has produced such a work does not take away from anyone else the right to produce another work of the same kind, and in doing so to use all the materials open to him.

Hence, a series of infringement have been discussed with the help of Judicial – Pronouncement, categorically from pre-independence era.

The intellectual property rights are private rights, but there is need for a multilateral framework of principles, rules and disciplines dealing with the intellectual property rights.
The World Intellectual Property Organisation (WIPO) and Paris Convention are already covering patents well.

The Agreements of WTO are subject to the common dispute settlement system, hence efforts to bring intellectual property under WTO are made as Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The TRIPS Agreement is added to the Agreement Establishing the World Trade Organisation (WTO). It is a multilateral Trade Agreement. The TRIPS is an integral part of the WTO Agreement, binding of all member countries as per Article II(2) of the WTO Agreement. The TRIPS Agreement has no annexes, or Ministerial Decisions unlike most of the other major WTO Agreements. The emphasis is on implementation of TRIPS.

Under the Copyright Act 1957 both civil and criminal remedies are available against infringement of copyright. In the case of innocent infringements some of these remedies are not available.

Sections 54 to 62 of the Copyright Act provide civil remedies. As per Section 55 of the Act in the case of infringement of copyright “the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right”. Thus an owner of Copyright is entitled for all such civil remedies

The main remedy sought in most Copyright suits is an injunction to restrain the defendant from continuing to do acts which constitute infringement. It is the only remedy available against a defendant who proves that at the date of the infringement he was not aware and had no reasonable grounds for believing that copyright subsisted in the work (the innocent infringer).

Sections 63 to 70 of the Copyright Act 1957 deal with the criminal remedies. The Act makes it an offence for any person knowingly to infringe (a) the copyright in a work or (b) any other right conferred by the Act (e.g., broadcast reproduction right; author’s special rights), or knowingly to abet such infringement. It is, however, clarified that the
construction of a building or other structural work which infringes or which, if completed would infringe the copyright in some other work is not an offence under the Act. The Act now provides for minimum punishment, though the court is given power to impose a lesser punishment for adequate and special reasons to be mentioned in the judgement. The punishment increases for the second or further conviction.

In order to prevent importation of infringing copies in India, the Copyright Act 1957 makes available an effective and quick administrative remedy to the owner of copyright. Section 53(1) of the Act empowers the Registrar of Copyrights to make an order prohibiting the importation into India of copies of a copyrighted work made outside India which, if made in India, would infringe copyright in the work, on the application of the owners of copyright in such work, or his duly authorised agent, after making such inquiry as he deems fit.

Therefore, I arrived at a conclusion that copyright infringement occurs when someone other than the copyright holder copies the "expression" of a work. This means that the idea or information behind the work is not protected, but how the idea is expressed is protected. For example, there have been many movies about Pirates, but only one Jack Sparrow.

Thus copyright infringement can occur even if someone does not copy a work exactly. This example of copyright infringement is most easily apparent in music and art. Copyright infringement occurs if the infringing work is "substantially similar" to the copyrighted work.