

Copyright and Related Rights Law

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WEEK - 02

LECTURE - 10

Architectural Works

Welcome back to this course on copyright and related rights law. We have discussed definitions of artistic work. We have seen what the meaning of artistic is in artistic work. We have seen some peculiar types of artistic works, such as photographs and tattoos. We have also seen the difference between artistic works and industrial designs. What we will look at today in the final session in this week of understanding the subject matter of artistic works is how architectural works fall within the sphere of artistic works.

We must quickly revisit our discussion on artistic craftsmanship and designs. What we had discussed was in both these considerations, there is an article that is in question. The article itself has a certain function that it serves, a certain utility. But it is not the utility that is target of either artistic work protection under the Copyright Act nor design under the Designs Act.

It is rather the creative expression which could amount to an artistic work or the expression which could be considered as a design because of the visual appeal it has when viewed by a consumer. Now take a look at this image. What do you see? In this image, you can see construction happening the process of making a building. What we can distinguish this from is the kind of reasoning that will exclude functionality from copyright application or design application would also make construction activity in itself outside the scope of creative expression. In contrast, if you take a look at this image, you can see the finished building showcases a certain artistic character.

There is an appeal to the building which is quite different from its functional nature. It is possible that there is some kind of a merger. But this can lead to a complex analysis of whether such a merger can lead to non-application of copyright as we had discussed. Therefore with relation to the artistic character of such building, the possibility of distinct expressions must be something which we must consider. Let us take a look at how a work

of architecture has been defined in some Copyright Acts. The first Act we will consider is the US Copyright Act. The US Copyright Act states, an architectural work is the design of a building as embodied in any tangible medium of expression including a building, architectural plans or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features. Some very important considerations of what constitute an artistic work in architectural works appear from this definition.

It states that the design of the building that is what is the focus of artistic work. What can also contribute to the artistic character is the arrangement and composition of spaces and such other elements of the design such as - proportional features of such elements and how they interact in creating that composite design for the architectural work. Clearly something that must be excluded are common features which are used by architects commonly in their designs. and therefore it is very clear that only some aspects of this design are going to be considered for the originality aspect of artistic work protection for a work of architecture. Now consider the UK Copyright Act.

We have seen this provision before wherein an artistic work includes a work of architecture wherein it says a work of architecture being a building or a model for a building. Following this provision, the UK Copyright Act also explains what a building is and it says Building includes any fixed structure and a part of a building or fixed structure. What could be the reason for the UK Act to include part of a building in the explanation of what a building is? There could be a confusion in context to the finished building that if the building had to be extended or some wing for example had to be added to a building - would such an extension be considered as a work of architecture? Because if you look at it, the extension itself cannot be considered as the whole building. It is but a part of the building. and therefore to clear any such confusion that might exist.

The UK Act clearly provides that a part of a building must also be considered as a work of architecture. Conceptually, it also explains that a building is something which is of a fixed nature. It's a fixed structure. We will consider the question of fixation in some more detail in the following slides. But before that consider this image.

You can see in this image certain models which are on display. These are models for buildings - models for buildings also fall within the scope of a work of architecture. Importantly this says model for the building; As we can see, the interpretation of work of architecture under the Indian Act states, work of architecture means any building or structure having an artistic character or design or any model for such building or structure. What is the difference between a model for a building and a model of a building? Model for a building demonstrates that there is a purpose for the creation of such a model. In fact, it would not be wrong to state that such a model plays an important part in the process of making such a building.

After all the architectural work must find its application in the form of a building and therefore in aiding such a transformation a model can be very useful. To look at the Indian Copyright Act, we have seen this before of how There are many common elements between the UK Copyright Act and the Indian Copyright Act, wherein similarly a work of architecture is considered as an artistic work. One of the features that you will see is slightly different is that unlike how a building has been explained under the UK Copyright Act - Where it says that a building is a fixed structure. A building has not been interpreted within the Indian Act. But it can be argued that a building in its ordinary meaning would mean that it is fixed.

Fixed to what? Fixed to the land on which it is constructed. And therefore even if a specific meaning or interpretation of building is absent in the Indian Act, it cannot be stated that it is in some way lesser than the understanding of a work of architecture in the UK Act. Let us also take a look at another provision within the Indian Copyright Act, which is section 13. Section 13 is a provision that explains the works in which copyright subsists and certain considerations with relation to such architectural consideration under 13(5) where it says - in the case of work of architecture copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction. Now this is completely in line with what we had started our discussion with - which was the method of construction that is a process and processes of such functions are outside the scope of copyright protection.

The only consideration that copyright can protect is the expression and that expression is what section 13 explains as the artistic character and design. But what exactly is artistic character? This has not been explained within the scope of the UK Copyright Act or the Indian Copyright Act. But what we find is that our reasoning tells us that a building has to abide by certain structural integrity considerations and no design can run counter to such structural requirements. Also, there are certain spatial proportionalities which must be considered by the architect when making such a design. In fact, the US Copyright Act is much more revealing in terms of what such an artistic character would include as we had seen.

The US Act explains that arrangement and composition of spaces and elements of the design. This is also something that can be considered as artistic character. In order to understand how exactly does an architect control the copyright in such artistic character. Let us consider the question of demolition. What we have been attempting to understand is that copyright creates a kind of an artificial fence.

An artificial fence which allows for the copyright holder to control unauthorized usage of his design but can the architectural work author uses copyright against the owner of the building? So if the owner wishes to demolish his building, can the architect tell him that if you do so you will be destroying my design and therefore I prevent you from doing so

by invoking my copyright? This interesting question arose before the Delhi High Court in a 2019 case of Raj Rewal versus Union of India. In this particular issue, we can see a clash of interest - the interest of the architect in preserving his design; and the interest of the owner of the building in carrying out activities which according to him are relevant for modifications or for example, in this situation destruction or demolition. It could be for the purpose of a new building that has to be constructed on that land. Now the way in which the court termed this particular issue you can see on the screen - whether an architect as author of artistic work of architecture in the form of a building or structure having an artistic character or design and having a copyright therein, upon the owner of the land on which building is constructed choosing to demolish the said building to construct another building in its place has a right to restrain the owner from doing so? Let us recall a discussion that we had from the first session. In that session we understood that when we consider a book, copyright protection isn't aimed at protecting the book itself, but rather it is aimed at protecting the content.

Let us keep this distinction in mind as we move ahead with trying to understand how the court is creating a distinction between the interest of the owner of the building as against the interest of the copyright holder. At first the court makes a distinction between works of architecture and other conventional artistic works such as paintings. What is the Court saying? A work of architecture when transformed in a building or structure has a very different connotation from most other works in which copyright subsists. All such other works in which copyright subsists are expressed in mediums which in themselves are of no value, such as a canvas. A work of architecture translated into a building gets fixed or attached to the land.

A work of architecture cannot be transformed into a building except on land or immovable property. Such land may or may not be of the author of the architectural drawing; and rather invariably is not of the author of the architectural drawing. Such land has a value of its own even without the building with work of architecture thereon and often more than the value of the building thereon. What the court is helping us understand are the various elements that seem to be in play when the copyright of the architect is being considered. Since the design is on the building, the building itself must be considered for the value it has.

This is clearly distinguishable. The design does bring in a certain amount of value, but the building also has a certain value. This is clearly distinguishable from a painting which is on canvas. But there is another element which we must consider and that is the land on which the building is fixed. Both the land and the building are subject to various laws.

In such a situation where there is a seeming conflict between various laws, how does the copyright law fair? The court explains, while a building or structure over the years depreciates in value, the value of the land appreciates. Such land by itself is a subject

matter of legislation with laws governing it and as per which the building or structure constructed on land is part of land and qualifies as land or removable property and which laws does apply also to buildings or structures constructed on land. The question which then arises is - Whether the laws relating to artistic work of architecture and the copyright therein expressed on land belonging to another can be interpreted without regard to laws relating to land? Where these elements come together and as we were discussing a conflict seems apparent. Can copyright law be applied without any reference to these laws? It does not seem so. In fact, when considered in terms of a hierarchy of rights, copyright is a statutory right - which is a right that will have to give way to a higher form of right such as a constitutional right and this is what the court explains.

As distinct from copyright which is purely a statutory right and not even a natural or common-law right, right to land or property is not only a human and common-law right but also a constitutional right, until the year 1978 was also a fundamental right. When the Constitution in Article 300A mandates that no person shall be deprived of his property save by authority of law, no law unless expressly providing for deprivation of property can by implication be interpreted as depriving a person of his property Further the code explains the implementation or transformation into a building of the work of architecture is governed by other laws such as the laws relating to town planning, building bylaws, environmental laws and laws protecting the rights of owners of adjoining buildings. It is thus not necessary that the building or structure concerned is always a true reflection of the drawings of the designs authored by the architect. Though the architects are expected to provide the drawings and designs in compliance of such laws; but in a given case it may not be so and the modifications which the owners are required to make in complying with other laws or for other valid reasons cannot in my view be objected to by the architect. The requirements of urban planning outweigh the moral rights of an architect.

Similarly, technical reasons to modify the building, economic reasons justifying modifications to the building and the necessity to obtain an authorization to build all prevail over moral rights. My research has disclosed that no jurisdiction in the world is prohibiting demolition of a building or structure constructed in accordance with the architectural drawings or plans. What we see in this particular explanation are two very important considerations. One that because there is a conflict of laws one set of laws that are looking to regulate the construction of the building itself - seems to put in place a consequence that many times the architectural work does not translate as it was intended to be onto the building. Therefore according to the court this clearly shows the impact of the laws regulating building over copyright which seem to be subservient to the laws concerning buildings.

And quite rightly so as the court explains when considered in terms of the constitutional right of property the statutory right of copyright must give way. The second consideration that appears in this explanation is the use of the term moral rights which form another

crucial aspect of our discussion into copyright law; and we will be looking at the Raj Rewal case again with respect to the moral right issue, specifically the moral right of integrity which was also central to the considerations in this case. But what the Raj Rewal case has helped us understand is the possible conflict that could arise between The copyright holder of the architectural work and the building owner himself. Coming to the last segment of this discussion on architectural works.

Take a look at this image. What you see in the image is a kind of photograph called as a panoramic photograph. Panorama is explained as a picture or photograph containing a wide view. What you would see in this photograph, there are many buildings which have been captured. Some buildings are architectural works. Some buildings may not be architectural works.

But in capturing such a view, should the photographer be wary of any copyright holder coming after him and asking him to show his authorization in capturing the architectural work in the photograph. Because of the clear problems this will create for certain types of works such as photographs. A kind of exception that is accepted against the copyright of the architectural work is freedom of panorama. If we look at section 52 of the Indian Copyright Act, let us take a look at two provisions. The first provision is section 52(1)(t), it states : the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture is a permitted act.

Now permitted acts are some things which we will discuss in a lot of detail when we will look at exceptions carved out against copyright. But in very simple terms because this is a topic which we have to understand when looking at the work of architecture. In very simple terms a permitted act is a exception that has been carved out within the copyright act on account of which a person looking to use a copyrighted work need not take explicit authorization before such use. And what section 52(1)(t) states is that an expression such as a photograph of a work of architecture need not take any explicit authorization before such photograph is taken or such photograph is used. The second provision you can see is 52(1)(u) which states the inclusion in a cinematograph film of any artistic work permanently situated in a public place or any premises to which the public has access.

Cinematograph films too like photographs when shooting happens, buildings do tend to get included within a shot. What this provision allows is for such architectural works to get captured in the shot without the requirement of specific authorizations. With this, I hope we have understood architectural works as artistic works and we also end week 2 in which we have understood the subject matter of artistic works. In the next week, we are going to be focusing our attention on the third subject matter system which is musical works. To quickly recap, literary works are connected to informative value, artistic works are connected to visual appeal, and third, musical works.

We will find out what it concerns itself with. Thank you for joining me. See you in the next session. Thank you.