

## **Copyright and Related Rights Law**

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**WEEK - 04**

**LECTURE - 16**

### **Statutory Definitions of Dramatic Work**

Welcome back to this course on copyright and related rights law. In the previous sessions, we discussed three subjects related to copyright. We started with our discussions on literary works, followed by artistic works, and the latest sessions focused on musical works. This week, we are going to look at dramatic works, another subject matter of copyright. In the term "dramatic work," the focus is on the word "drama." Just like in literary works, the term "literary," which is related to the term "literature," is relevant.

Similarly, the term artistic is significant for its use of the word art and the phrase musical work for music. Similarly, dramatic work uses the word drama, which means a composition in verse or prose intended to portray life or character, or to tell a story usually involving conflicts and emotions through action and dialogue, and is typically designed for theatrical performance. We can see that there are important components in this definition. Firstly, this is a composition, meaning it isn't just any expression; it is a creative one.

Secondly, it is intended for a specific purpose. Herein, the purpose is the portrayal of life and character. And thirdly, the presentation of such portrayals isn't merely through words but also includes actions. In other words, there must be movement, but in understanding this definition, are we able to figure out what it is that dramatic work looks to protect? We understand that in literary works, it is the informative value, the instructional value, or the pleasure that is offered on account of literary enjoyment. In artistic works, the visual appeal is what matters.

And in musical works, it is the pleasant harmony of the tune that listeners enjoy. But what is it with respect to dramatic works? In this session, we will try to understand the various definitions offered in different Acts in different countries. Look to see how this

legislation understands dramatic work. In doing so, we shall also highlight some important issues that seem to lie within the context of dramatic works. Take a look at this image.

Many of you might have witnessed plays in theaters like this one. But many of us have also seen plays performed on the streets. Plays incorporate the presentation of stories, as we have seen in the definition, where the question is, does the expression portray life or some characters? A play seems to bring a story to life. In the UK Copyright Act, a dramatic work is interpreted as a work of dance or mime. We all understand what dance is, but if we were to identify whether there is a definition of dance out there, this is how it would be defined.

A dancer is moving rhythmically to music, typically following a set sequence of steps. What is a mime? Not a term that we hear often. Mime refers to the theatrical technique of suggesting action, character, or emotion without words, using only gestures, expressions, and movement. You can see here; this is an image of a person dancing. From the looks of it, he's an experienced dancer skilled at what he does.

This image is of a performer who is going to perform mime. But importantly, when we look at Section 3 of the UK Copyright Act, it doesn't state that a dramatic work includes dance or mime. Rather, it states that dramatic work includes works of dance or mime. What does this indicate? We know that dancing is a performance. Similarly, we see that a mime is a performance art.

The use of gestures to convey meaning without the use of words is what a mime does. But both of these are performances. How did we understand performances related to musical works? We understood that an instrumentalist who plays the piano, for example, is performing. But on the question of what he is performing. We understood that he was performing a musical work.

Similarly, what this definition seems to be telling us is that where dance is a performance, the dance is a representation of some underlying work. Which, according to Section 3, is a work of dance. Similarly, the mime, as a performance, is also based on something. This, according to Section Three, is a work of mime. So, in recollection, what are the attributes of a work? We must remember that copyright protects expressions, not ideas.

Therefore, there must be some tangible consideration that exists on which a performance can be based. Can we also say that, just as we understood with musical works, there could be a creation or generation of a musical work through performance? Perhaps through dance, a work of dance could be generated. But one thing is for certain: a performance is not a dramatic work in itself. We can separate dance from the act of dancing. And as we were attempting to understand, through dance, there could be the generation of a dramatic work or a work of dance, as it is referred to in UK copyright.

But how does dance generate dramatic work? Consider this image. In this image, you can see a person performing. She's singing. We understand that the fixation of a musical work may or may not be a requirement in the copyright act of a specific country. In relation to the Indian Copyright Act, we have seen that a designed modification to the law came in 1994, wherein the mandatory fixation requirement was removed.

We had also discussed how the change that was brought to the Act was made in terms of preserving and protecting the cultural musical traditions of India, in which graphic notations are not that prevalent. Therefore, when fixation is not a necessary requirement, singing can be a means of creating a musical work. Similarly, playing the piano can be a means of creating a musical work. Now that we are at the point of fixation, let us look at Section 2(h) of the Indian Copyright Act, which interprets dramatic works. You can see it states: Dramatic work includes any piece for recitation, choreographic work, or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise; but it does not include a cinematograph film.

You can see that the interpretation of dramatic works in Section 2(h) is inclusive. Unlike how artistic works have been interpreted with specific subclassifications, the interpretation of dramatic works starts by stating that it includes certain considerations. This is similar to how literary works have been defined under the Indian Copyright Act, as you may recall. Let us take a look at the term "choreography" that is used in Section 2(h). It is different from how it is defined under the UK Copyright Act in the sense that, instead of saying choreography, UK copyright refers to it as a work of dance.

And thus, in referring to the ordinary meaning of what choreography is, we understand that it is a sequence of steps and movements in dance or figure skating, especially in ballet or other staged dances. A dumb show is another term for mimes. But in this interpretation, you can see two important considerations. One is the mandate for fixation, wherein it states "fixed in writing or otherwise," and second, that it does not include cinematograph films. Where it says "fixed in writing or otherwise," the provision itself looks to mandate fixation.

Why is this the case? We do not see such a requirement in Section 3 of the UK Copyright Act. The distinction we must note is that the UK Copyright Act, in a separate provision, provides for the mandatory requirement of fixation. But because the subject-specific application of fixation is necessary in India, fixation has been diluted in works such as musical works. With respect to dramatic works, we find fixation to be mandatory. But why is it a mandate? Consider this image.

You can see a representation of a group of friends dancing at a party. Would dancing in such a spontaneous setting lead to a specific sequence of steps being followed by all the dancers? While this is not entirely impossible, the chances of a sequence of steps being

followed by all dancers are manifold if it is predetermined, which, in this case, it is. For a performance like ballet, the level of sync that the dancers have to be in as a group is essential. There is an intense level of practice that needs to be met on a predetermined course of action. And this predetermined course of action is satisfied and there is certainty if it is fixed.

Fixation, therefore, offers clarity to anyone who wants to understand what the specific sequence of steps is. Is there any other way, apart from writing, that fixation can be achieved? Writing, let us understand it in broad terms. Even though writing is not specifically defined under the Indian Act, let us consider it in the way we understand expressions in literary works. Writing could include the use of symbols; therefore, any notation that could be used to represent a dance step could possibly satisfy writing as well. Or, it could otherwise be a reference to recording.

For instance, if a choreographer is used to practicing a sequence of steps in a studio instead of writing it down in any format, then recording such a sequence of steps would satisfy the fixation requirement. Let us take a look at how dramatic works are defined under Canadian copyright. It says that under section two, dramatic work includes any piece for recitation, choreographic work, or mime, the scenic arrangement or acting form of which is fixed in writing or otherwise. So far, there is a great similarity between how the Indian Copyright Act defines a dramatic work. But the Canadian Copyright Act includes cinematograph works as dramatic works, which is the opposite of what the Indian Act says.

As you can see, towards the end of Section 2(h), dramatic works exclude cinematograph films. But the Canadian Copyright Act includes it. What does a cinematographic work mean in the Canadian Copyright Act? It means any work expressed by any process analogous to cinematography, whether or not accompanied by a soundtrack. Does a cinematograph work, which is effectively a recording, a process that is followed to generate fixation? How is it that the Canadian Copyright Act considers this a dramatic work? This is a fundamental contradiction between two Copyright Acts in two different countries, but what if there were a logical explanation for how they could possibly include cinematograph films or works within dramatic works? This is something that we will explore and understand in greater detail in an upcoming session this week. Let us also look at another inclusion in the dramatic work that the Canadian Copyright Act makes.

And this is in relation to the compilation of dramatic works. In our study on literary works, we understood that literary works protect compilations. Therefore, what would otherwise be a literary work in which the content is a dramatic work? In the Canadian Copyright Act, it is classified as a dramatic work. Let us look at yet another copyright legislation.

This is the Singapore Copyright Act. In this dramatic work, choreographic shows or other dumb shows are included if described in writing in the form in which the show is to be presented. and a scenario or script for a cinematographic film, but does not include a cinematographic film as distinct from the scenario or script for a cinematographic film. In explaining a dramatic work thus, the Singapore Act provides a layer of distinction that will help us in our exploration of how cinematograph films or cinematograph works can fall within dramatic work and not. According to this Act, the screenplay or the script on which the cinematograph film is based can be considered a dramatic work, but not the film itself. When you look at this image, you would appreciate that, being a recording, the Indian Copyright Act seems to make a distinction between what would be a type of standalone work in itself and a different subject matter than dramatic works.

But is that really the consideration, or is there something else? In relation to scripts, we understand that scripts are written. But if scripts are written, then how is a script a dramatic work and not a literary work? This possible confusion between dramatic works and literary works is a more foundational confusion. We will look to answer this in the next session and the next, before we come to the question on the distinction between dramatic works and cinematograph films. Thank you for joining me in this session. I will see you again in the next session. Thank you.