

Copyright and Related Rights Law

Dr. Rohan Cherian Thomas

Faculty of Law

NALSAR University of Law, Hyderabad

WEEK - 01

LECTURE - 03

Quantum of Literary Work

Welcome back to this course on copyright and related rights law. In the previous session, we had discussed whether qualitative considerations play a role in determining whether an expression can be considered as a literary work. In today's session, we are going to be questioning whether quantitative considerations are a relevant consideration. The definitions of literary work which we have seen in different copyright acts in different parts of the world: A uniformity among these provisions is that they do not talk about any qualitative consideration. And importantly, they also do not seem to talk about any quantitative consideration. We had seen how an important judgment in University London Press clearly stated that irrespective of any quality an expression can be considered based on an objective assessment to be a literary work. All that would be required would be that the expression is in words or in numbers or such other symbols.

In this case the court also focused on a very important consideration post determination of the subject matter which is an application of originality but the first determination which is what we are focusing on - In that first determination, are we also not considering quantity? Let us go back to the US copyright definition of literary work. We can see very clearly in this first component which refers to how literary composition can occur. There is as such no quantum prescription that only a certain number of words if written would amount to a literary work. Only if a line full of different numbers were to be written would it be a literary work.

There would have to be a page full of a combination of symbols and words and numbers in order for it to be considered as a literary work. There is no such consideration of quantum. Are we then saying that an expression just because it is in writing, just because words have been used, just because numbers have been used, all expressions are literary works? By that line of reasoning, wouldn't a single word which has been expressed also

be capable of being called a literary work? As you can see a word like breathe. If I were to just write breathe, would this be a literary work? We can see that objectively applying the provision without any Consideration of quantitative application - This would probably be a literary work. Let us extend the quantum consideration.

What if it is three words? Like in this image you can see if the writing is here to help. Would here to help be considered as a literary work? Let us consider an important case that came before the Privy Council. This is Francis Day Hunter versus 20th Century Fox. In this particular case, the copyright infringement claim or violation of copyright claim, the title as you can see in quotation is the man who broke the bank at Monte Carlo. This particular expression is in writing given that there is no quantitative application that needs to be made purely on consideration of the expression itself - This would amount to a literary work.

Let us look at how this was used. In 1892, this particular expression was the title of a song. In 1935 this was the title of a film. The reason why this case is so important because it helps us understand why limited quantum of word usage in an expression would probably not be considered as a literary one. It could but there is every chance that it wouldn't.

Let us start with the understanding that this particular case set out a general principle that titles of compositions of books could not be considered as a subject matter of copyright. Please pay attention. When we discussed the University of London Press case, we discussed that the first step was to decide whether an expression is in fact a subject matter. Only if it is a subject matter do we then proceed to the second step which is to see whether it is original or not. The general principle here is suggesting that titles of compositions of books are not subject matters.

Since this is a general principle, what that denotes is that in certain scenarios it is possible that titles could be considered as subject matters. But what is it that we must consider? if we are to consider an expression such as this to be a subject matter or not. The court has explained that as a rule, a title does not involve literary composition and is not sufficiently substantial to justify a claim to protection. Further, that statement does not mean that in particular cases A title may not be on so extensive a scale and of so important a character as to be a proper subject of protection against being copied. If you look at the specific term the court is using to explain why an expression which is low on quantum may not be considered as a subject matter.

You can see they say not sufficiently substantial to be considered as a literary composition. Clearly the Court is referring to a quantum determination. But something that we do not clearly understand from this is what is the normative basis on which we can make such a distinction. But as a foundation something is clear that The court is

saying that a title could be considered as a subject matter if it is on an extensive scale and has an important character. Again a quantum reference in terms of scale, but in terms of character.

What is that normative basis on which we are making a distinction? This normative line of consideration is something that we see in a later case of Noah versus Shuba. In Noah versus Shuba, there were two sentences which were being considered on the question of whether these sentences would amount to a literary work or not. You can see on your screen. These two sentences were follow clinic procedure for aftercare. If proper procedures are followed, no risk of viral infections can occur.

Clearly, because this is only two sentences, It brings to our minds a question of whether two sentences are sufficiently substantial. Is it on an extensive scale? What the court explains is that these two sentences on their own do not afford sufficient information, instruction or literary enjoyment to qualify as a work. You can see that in Noah versus Shubha we are understanding a normative basis based on which we can now say that a certain quantum can be considered as a subject matter or not. According to the court This should be determined on the basis of the informative value of that expression, instructional value of that expression or the literary pleasure that the expression is able to provide by itself. What we understand is that this particular title must be used in conjunction with other words in order for it to provide a more definitive informative value.

This definiteness is a clear consideration for determining subject matter existence because it also helps make a distinction between what would otherwise be an idea as compared to an expression. A generalized notion that appears from a particular statement would not be considered as providing any clear information. There is ambiguity. Therefore we can say that when we are saying that an expression should be sufficiently substantial - We are placing it on the anvil of whether there is an informative value or there is an instructional value or there is literary enjoyment. Let us consider this with some illustrations.

Let us say the expression is the word Ajay. Ajay is a single word. to simply write Ajay is to give no definite information to anybody about what is it about Ajay that we are discussing. What is that specific information about Ajay that is being conveyed? What is the informative value of this particular expression? But when we consider an expression, such as Ajay is a copyright law professor. He teaches at NALSAR.

He was awarded PhD on the topic literary work and copyright law by NALSAR. Now we have a definiteness to that information. In terms of an informative value that it offers These three sentences have a higher chance of being considered as a literary work than just the expression Ajay. Let us consider another illustration. To teach a master's course

in law, a teacher must not only focus on principles and statutory law but must look to offer critical insights enabling the student to develop a wider perspective of understanding with respect to the topic.

We can see that even this expression is definite in terms of a pedagogical approach that it provides for teaching in master's courses. To simply say that to teach a master's course in law requires a certain kind of pedagogy as against the expression that you see here. In your mind, now that we have understood what kind of a distinction we must make in order to define sufficiently substantial. Are you able to make that distinction now? Let us consider another expression. Through day and night the scholar worked dedicatedly like waves hitting the shore without interruption. Now we have headed into a direction of literary enjoyment.

There is some definiteness to this expression and it is still capable of being considered as a subject matter as against a title which by itself does not convey any specific purpose as to information, instruction or literary enjoyment. In Francis Day Hunter, we discussed the question of whether a title which in itself has few words. But what if the consideration is on the usage of one word? This was something which was discussed in Exxon Corporation versus Exxon Insurance Consultants International Limited. Wherein the question was whether the invented word Exxon can be considered as an original literary work. Let us try and apply our understanding of what would constitute a consideration of sufficiently substantial expression.

Would Exxon this single word even though it is invented, what does that mean? that this is not an ordinary dictionary word which has been used in a specific context. Exxon is an invented word which is being used to denote certain companies. Can we say merely on account of this word being invented, it should be considered as not just a literary work but also an original literary work? Let us look at how the court is approaching its answer. It is saying, it is a word which though invented and therefore original has no meaning and suggests nothing in itself. To give it substance and meaning, it must be accompanied by other words or used in a particular context or juxtaposition.

The judge says, Nothing I have said above is intended to suggest that I consider that a word which is used as a title can, as a matter of law, never in any circumstances be the subject of copyright and I would disagree with dicta in previous cases to the contrary effect. Such a word would, however, I think, have to have qualities or characteristics in itself if such a thing is possible, which would justify its recognition as an original literary work rather than merely as an invented work. I'm sure we are now able to clearly understand that be the word or a few words - if these words are able to provide an informative value for itself, an instructional value for itself, a literary enjoyment in itself; then that specific expression no matter the quantum can be considered as a literary work. I'm sure you also understand what this means when I say that quantum is relevant and if

the qualification of sufficiently substantial is met, only then will such an expression be considered as a literary work. The court had further elaborated that it does not appear to me to have any of the qualities which common sense would demand.

It conveys no information. It provides no instruction. It gives no pleasure that I can conceive. It is simply an artificial combination of four letters of the alphabet which serves a purpose only when it is used in juxtaposition with other English words to identify one or other of the companies in the plaintiff's group. Let us look at another case. This particular case came before the Supreme Court of India.

The case is called *Krishika Lulla versus Shyam Vithal Rao Devakatta*. In this particular case, the court was considering whether a combination of two words *Desi Boys* could be considered as a literary work. Let us see what the court is saying, and then place it in terms of our analytical understanding of how we should be analyzing an expression in terms of quantum. The Court says in the first place a title does not qualify for being described as work.

It is incomplete in itself and refers to the work that follows. Secondly, the combination of the two words *desi* and *boys* cannot be said to have anything original in it. They are extremely commonplace words in India. Therefore, our understanding which has been that if words need to be used in juxtaposition with other words in order to have an informative value, then such words would not be considered as a work. Further, the court says it is obvious, therefore, that the title *Desi Boys*, assuming it to be a work, has nothing original in it in the sense that its origin cannot be attributed to the respondent.

In fact, these words do not even qualify for being described as literary work. The mere use of common words such as those used here cannot qualify for being described as literary. Because these words are common words. Because the only interpretation that they offer is a common interpretation in terms of the information that it has. *Desi* and *Boys* being common words and used together also express a common meaning.

There is no definite informative value that we can attribute as originating from the claimant and therefore we cannot say that there is a work in existence. Till now in our discussion on literary works, this is how we are progressing. We have understood that when an expression is made through writing with the use of words, numbers or other such symbols or indicia, then such an objective assessment can lead us to the understanding that the expression is a literary work. On the question of whether quality is a relevant consideration, we have seen that a qualitative test is irrelevant, but in terms of quantity we have seen that this is an analysis. That low quantum of usage will be seen from the perspective of whether by itself it is offering informative value, instructional value or literary enjoyment.

With that hopefully we are now in a position to understand certain peculiar types of subject matter. Within literary works then in the next session we will see how computer programs fit within its scope. Thank you for joining me. See you all in the next session. Thank you.