

Copyright and Related Rights Law

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WEEK - 10

LECTURE – 46

Translation

Welcome back to this course on copyright and related rights law. In the previous session, we discussed the right of adaptation that copyright holders enjoy under section 14. We had seen how the adaptation right is a derivative right. It is derivative because it is derived from an original source. Therefore, a significant portion of a derivative work can be connected to the original work. In today's session, we are going to discuss another right within the bundle of rights granted to the copyright holder, and this one is the right of translation.

Before we look at the term translation, let us first look at the term transliteration. Transliteration means the act or process of writing words using a different alphabet. To make a statement in English, like I am making the statement right now. If it is transliterated into Hindi, it would simply mean that the alphabet has changed, but when spoken, it is English that is spoken.

Transliteration is different from translation. Translation means to express the meaning of words or text in another language. Therefore, to speak a sentence in English, to write a sentence in English, and to translate it would not just be to change the alphabet, but also change the sentence into another language completely. Therefore, when spoken, it would not be English in which the sentence was originally written, but rather in the language into which it has now been translated. Therefore, if a statement in English is considered, such as "I am going to travel to Rajasthan."

In Hindi, it would be, Main Rajasthan ki yatra karne ja raha hoon. In Malayalam, it would be, Njaan Rajasthanileku yatra cheyyan pokunnu. And you see, the alphabets have changed, and unlike transliteration, when spoken, it is the language in which the translation has happened that is spoken. But what's important, as per this definition, is that the sense of the original sentence is not lost. We could say that, similar to an

adaptation that retains the essence of the work, you remember the abridgments we discussed in the previous session.

An abridgement is a shortened version of a work that retains the sense of that work. A translation also retains the meaning of the work. We can therefore say that, just like adaptations, translations too are derivatives. They are derived from the original sources. Can there be a slight change in meaning? When the language is changed, there definitely can be changes.

In fact, there are many words in one language that might not be present in their exact meaning in another. But even with such slight changes, if the essence of the work can be maintained, then that is a translation. Because translations must retain this sense of the work, we say that, just like adaptations, they are also something in which the original right holder has a significant interest. And therefore, just like the adaptation right, the translation right too is a copyright. This is clearly signified in section 14, which provides for a specific copyright, as you can see in subclause 5 to 14(a) talking about the right to make any translation of the work.

Similar to adaptations, which we had discussed and in which the author has a significant interest because of the work being derived, the same is true for translations. And therefore, under subclause (vii), which we had earlier seen in the last session talking about adaptations, the same provision applies to translations as well, wherein it states : to do, in relation to a translation, any of the acts specified in relation to the work in subclauses one to six. Because you'd understand that if a film had to be made based on a translation, then wouldn't the film effectively represent what was provided in the original expression? Therefore, the significant interest that the original right holder has in such derivatives is recognized within 14(a) subclause 7. Most of us have watched films. Have you also watched a film that has been dubbed? Have you watched a Malayalam film dubbed in Hindi? A Tamil film in Telugu? If you watch these films, which are called dubbed films, you would have noted that when the performer is delivering the dialogue, Say, for example, the actor Vikram is delivering the dialogue originally in Tamil, but in the dubbed version of the film in Hindi, when Vikram speaks what should originally have been Tamil, it is now a Hindi dialogue.

In terms of what's happening, because there is a change in language, we can say that there is a translation happening. In terms of understanding what dubbing really is, let us see the meaning of dubbing. It is said that dubbing provides a film with a soundtrack in a different language from the original. The soundtrack, which was originally as we discussed, a soundtrack containing dialogues in Tamil, has now been replaced with a different language. You would have noted that when you watch films on OTT platforms such as Netflix or Amazon Prime, it is possible to switch to dubbed versions.

Which in effect means that the soundtrack is being replaced. I hope this foundational understanding of dubbing is clear. With respect to the consideration that there is a translation that seems to be happening, we must ask ourselves the question of whether the translation right is also available for cinematograph film producers. Aren't producers, in our understanding, those authors who are responsible for the making of the film? They are not concerned with writing the dialogue, are they? We see that under section 14 in clause d, the copyright of cinematograph film producers has been provided. There is no specific copyright called the translation right of the producer.

In fact, of the three copyrights that are granted under clause d, the most relevant is subclause 3, which provides for a copyright to communicate the film to the public. Let us investigate whether the film producer has the right to dub the film in another language despite not having a specific right to translate. Logically, such a right should vest with the person who has written the script. In this context, let us understand what the communication of film to the public would mean. Section 2 clause ff provides a meaning of communication to the public wherein it says: that communication to the public means making any work or performance available for being seen, or heard, or otherwise enjoyed by the public directly, or by any means of display or diffusion other than by issuing physical copies of it.

We have seen this provision earlier when we were discussing how broadcasts are communicated to the public. But with respect to how this provision can be used in understanding a copyright that has been granted to producers of films. It says that a film can be communicated to the public when it is made available to the public to be seen, heard, or otherwise enjoyed. In what other way can a film be enjoyed other than the obvious sensory perceptions of visual and auditory perception? This interesting question was considered by the Madras High Court in the case of Thiagarajan Kumararaja versus Capital Film Works. The court in this case considers what the inclusion of the phrase "otherwise enjoyed" does for the meaning of communication to the public.

According to the court, the use of the expression "otherwise" enlarges the scope of how communication with the public has to be made. The court says that if this were not so, the legislature would have restricted the communication to aspects that are relatable to the obvious sensory attributes of human beings, such as hearing and seeing. What the court is leading us to understand is that if, in fact, this phrase has been inserted within communication to the public, it has been done deliberately by the legislature, and it must be given its due relevance in terms of what it would mean. When an interpretation with respect to communication to the public has to be made regarding a subject matter such as cinematograph film. As we were considering, in what other way can we think about communication to the public of a film apart from the obvious sensory perception of seeing or hearing? According to the Court, the legislature, it seems, consciously has enlarged the scope of the expression by bringing in the aspect of enjoyment.

According to the court, dubbing would thus, in the court's view, fall within the ambit of the expression "communicating to the public." According to the court, if a film that has been originally made in a particular language, say in English, Then, in order for audiences of that film who do not understand English, the only way communication with the public about the film can be effective. It is, in fact, if the audience member can enjoy the film in a language that they understand. And according to the court, this particular understanding is what drove the legislature to insert this phrase, "otherwise enjoys." The court then says, quite clearly, that while the appellant, as the author of the literary work, namely the script, had inter alia a right to make a cinematograph film, he cannot circumscribe that right if authority qua that right is given to another person.

Insofar as the cinematograph film is concerned, the rights that flow upon its creation are those provided in section 14(1)(d). You see, the court is not referring to the right of translation, which we have seen in section 14, clause a. In this particular case, the court is considering the literary work, which is the script. And in connecting, the copyright is not referring to section 14(a)(v), which talks about translation, but rather is referring to the right of the literary work author under sub-clause (iv) to make a cinematograph film. According to the court, once this right has been exercised, the copyright of the cinematograph film producer is what is now in question.

According to the court, it is now 14(d)(iii) that must be considered and which is the right to communicate the film to the public. And according to the court, this is the manner in which an interpretation of "otherwise enjoys" is connected. And in doing so, even though a translation is involved, the court is not referring to the author's translation rights. In terms of the definitions that the court is using, it states that dubbing involves embedding a soundtrack in a film. which is in a language different from that of the original.

And translation of a work involves an exercise in which words or text used in the original work are expressed as closely as possible in another language. Immediately upon reading these two definitions, what strikes us is that dubbing is a process of embedding a soundtrack. It is not concerned with the process of translation, which in effect is the conversion of an expression in one language to another language. Which is where we also referred to watching a film on an OTT platform, in which you can simply switch between the soundtracks that are provided for different language dubbing. What the Court then says is, therefore, that while the translation of the literary work is ordinarily carried out by using a writing medium, dubbing involves the use of the soundtrack.

The question that thus comes to the fore is whether the producer or the author of the cinematograph film is conferred with the right to dub. According to the court, this is the case. The court says that the phrase "otherwise enjoys," which has been inserted by the legislature deliberately under section 2(ff), The right to dub has to be understood in the context of the communication of film to the public. The Court says, in our minds, the

answer has to be in the affirmative. As the right in a cinematograph film is independent of the right that a person may have in the underlying works, such as the story, the script, and the screenplay.

In some cases, it may happen that each of these rights vests in different persons. On the other hand, there could be a case where one or more rights vest in the same party. In what way, then, can there be some kind of restriction? If there has to be any restriction that a scriptwriter must place on the producer, this can only be done by way of a contract. The court says, in short, the principle being that the owners of copyright in a cinematograph work will, inter alia, have the right to both subtitle and dub their work. This, of course, is subject to any restrictive conditions being put in by the parties.

In summarizing what we have understood, the translation right is a right that vests with authors under clause 14(a) of literary works. An expression that has been made in a language such as English, if it has to be converted to a language like Hindi, Malayalam, or any other language, Then the right of translation comes to the fore, and only upon authorization can such a translation be made. And in the context of cinematograph films, the right of dubbing, although dubbing involves translation, It is interpreted by the court to be an extension of the communication of film to the public right granted to producers of the film. With this, we have understood the two types of derivations that are provided under Section 14. In the next session, we are going to look at the communication of work to the public and the performance of the work to the public.

Thank you for joining me. See you all in the next session. Thank you.