

Copyright and Related Rights Law

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WEEK - 10

LECTURE – 48

Rental Rights, TPM and RMI

Welcome back to this course on copyright and related rights law. In the previous sessions, we have seen various rights under the bundle of rights provided in section 14 of the Copyright Act in India. We have seen what the reproduction rights refer to. We have seen the issuance of copyright, adaptation rights, translation rights, communication of works to the public, and performance of works in public. In an earlier session, we also discussed the right to make a cinematograph film and to make a sound recording. In today's session, we are going to discuss rental rights.

And the measures that are provided under the Indian Copyright Act, against the circumvention of technological protection measures, and rights management information. Consider a house that is for rent. What is the nature of the transaction between the house owner and the tenant? In this transaction, the homeowner does not part with ownership of his property. It is only a temporary right of use.

In this case, the tenant will reside in this house for a certain period upon payment of some consideration. We are attempting to understand how the concept of rental figures under section 14 of the Copyright Act works. But before we do that, let us revisit an earlier discussion that we had, which was on resale share rights or resale royalty rights. In this discussion, we understood a doctrine of copyright law which is the doctrine of first sale. We had discussed that upon the sale of a unit of a book, for example, the distribution right or the distribution control over subsequent commercial utilization of this particular unit in terms of issuance is lost.

We had understood that this was connected to the theory of unjust enrichment, which provides that where just consideration has been received in return for a sale, any future control over subsequent sales would be unjust. We have also understood that this is limited to the extent of issuances and does not extend to other acts such as reproduction, adaptation, translation, etc. This was a larger conversation that we had in the earlier

sessions and not something I am going to repeat. But the application of the Doctrine of First Sale is something that is crucial to understanding rental rights. Let us consider Section 14(a) once more.

Under section 14, we see that with respect to the subject matter, which is literary work, it is stated that there is a right to issue copies of the work to the public. We have connected this particular right to the doctrine of first sale. With respect to computer programs, we find that there is another provision within section 14 that provides for these copyrights. Apart from the right to the issuance of copies that literary works have. How does a computer program earn the copyrights that literary works have? I'm sure all of you are in a position to answer this.

You must all be saying that a computer program is a literary work, and therefore whatever is applicable to literary works should ideally apply to computer programs as well. Well, under section 14(b), that is exactly what the first provision says to do: any of the acts in clause a. But then it provides a passage in terms of a right that is not provided under 14(a). This is the right of the author of a computer program to sell, give on commercial rental, or offer for sale any copy of the computer program. Let us consider that in this particular passage, what is being considered is an action in respect to a copy of the computer program, which means that a copy is already present with a person.

In other words, issuance has occurred. We had discussed that where an issuance occurs, there is no longer any control in terms of such issuance, or in other words, in terms of distribution that can be exerted by the copyright holder. Then to say that there is going to be control with respect to the sale of such a copy and the rental of such a copy - Commercial in nature. It means that this is an exception to the doctrine of the first sale. It is specifically provided with respect to computer programs because of the kind of commercial utilization and the relevance of this particular type of utilization for computer programs.

Supplementing this is the valid apprehension that, because of its digital nature, there is an ease of reproduction leading to mass-scale piracy. And in order to prevent these kinds of infringing acts, which are found to be very prevalent with respect to computer programs, this specific right has been included. It further provides that such commercial rental does not apply to computer programs where the program itself is not the essential object of the rental. Therefore, it is clear that the entire purpose behind this specific right is to protect the computer program from acts of infringement. And it is the nature of such works that they are easy to reproduce.

CDs can be easily burned. Programs on computers can easily be copied. And the sheer number of infringing copies that are being used, distributed, or even rented out for that purpose - is many. In fact, this same issue that we are figuring out with respect to

computer programs is also a highly prevalent issue regarding cinematograph films. All of the issues that I have mentioned with respect to computer programs seem to fit in some way with films as well.

Films have also been the subject of a large-scale piracy effort. The same kind of issues include the burning of CDs, the copying of films on computers, the distribution of such copies, and the renting out of copies that have been bought. All of these kinds of utilization are very prevalent in cinematographic films. And therefore, the same kind of exception that has been provided against the doctrine of first sale for computer programs has also been extended to cinematograph films. We see that because of the same kind of issue that also arises with sound recordings.

This rental right has also been extended to the authors of sound recordings. Despite the presence of these rights under Section 14, we have found that piracy is still prevalent. It is an unfortunate aspect that commercial utilizations with respect to works such as cinematographic films, sound recordings, or even computer software, which require a significant amount of investment because reproducibility is so easy, distribution is so easy online that regulation of such activities has been very difficult. At this time, even after many efforts that have been made internationally against the restriction of activities leading to piracy. We can say that the fight is still something that needs more teeth.

But a realization that authors require an additional kind of support through copyright was envisaged under the WIPO Internet treaties. We had already discussed the TRIPS Agreement under the WTO framework, but under the World Intellectual Property Organization framework, we find the WIPO Copyright Treaty, which was introduced in 1996. This treaty, also called an internet treaty, brought in certain digital rights in the international forum on copyright law in respect of authors' rights. What are these digital rights aimed at? As I was saying, the digital rights are aimed at providing an additional layer of protection against a massive issue that authors are facing with respect to online piracy. It is on this foundation that we will discuss how the 2012 amendment has introduced certain measures to prevent circumvention of measures that authors are taking to protect their works.

It is in this context that we will discuss certain provisions that have been inserted into the Copyright Act that aim to target the circumvention of measures that have been adopted by authors to protect their works. Let us first consider RMI, or Rights Management Information. What is it that is referred to as rights management information? There is an interpretation of this offered under the Copyright Act. It says that rights management information means the title or other information identifying the work or performance, the name of the author or performer, the name and address of the owner of rights, Terms and conditions regarding the use of the rights, and any number or code that represents the information referred to in sub clauses (a) to (d), but does not include any device or

procedure intended to identify the user. Rights management information as is clear from a literal understanding of this definition, is that this is information pertaining to the identification of the work with respect to its author, or the right holder and the terms and conditions of usage of such work. We will find this information tied to any digital unit that is available for use online. Right holders will specifically tie this information so that when this unit is used by an individual or is going to be used by an individual, This information can be easily tracked by the rights holder and the user who is using it. In terms of what the purposes are for which this particular work has been authorized for use. It must be understood, then, that all of this information is inherently important to understanding.

Firstly, who is the right holder? And secondly, what permissions are available with respect to the usage of such work? I'm sure you are all able to answer this question. Any alteration of such information can lead to a seriously prejudicial effect on the rights holder. Even if the user is not very clear about the kind of usage, I'm sure all of you are in a position to clearly understand what alterations to such information can do. It can lead to a cycle of distribution of a particular digital copy in such a way that no one is the wiser with respect to who the rights holder is and What are the permissions with respect to such use? A series of infringements can occur just because pertinent information with respect to that particular digital unit has been altered. Because of the gravity of the problem that such an alteration will cause, a provision inserted by the 2012 amendment seeks to penalize this alteration.

It says, "Any person who knowingly removes or alters any rights management information without authority, or distributes, imports for distribution, broadcasts, or communicates to the public without authority copies of any work." For performance knowing that electronic rights management information has been removed or altered without authority shall be punishable by imprisonment which may extend to two years and shall also be liable to a fine. It is understood that many of the users who are using digital copies are not particularly aware of rights management information. But then there are those who are engaged in the practice of distributing such copies, knowing fully well that there has been an alteration or removal of the rights management information. In both these cases, then, one of the acts of removal or alteration and the distribution knowingly of those copies in which such a removal or alteration has taken place, the Copyright Act penalizes such actions.

It also says, provided that if the rights management information has been tampered with in any work, The owner of copyright in such work may also avail themselves of civil remedies provided under Chapter 12 against the persons indulging in such acts. Civil remedies are something that we have yet to look at. But to put it as a distinction of action, we must understand that the categorization of circumvention of rights management information as an offense is to target the punitive nature of relief. Whereas in terms of

civil relief, it is more of a question of notional restitution regarding damages or compensation, if you can say. The money component, which is calculable based on the angle of loss that might have resulted from such an infringement, is something that can be recovered through civil action.

Now, what is a technological protection measure? Right holders engage in simple, and very complex technological protection measures with respect to their works that are available digitally. These measures, for example, could include the scrambling of words in a passage when it is copied from a source. If some of us have used Adobe PDF formats and tried to copy a passage from it into Word. Then we might have seen such a technological protection measure in effect. This is a very simple example of what a technological protection measure can be.

It makes copying a more difficult task. We had found in our discussion earlier in the session that the inclusion of the right of rental, for example, It is specific to certain types of works because of the nature of commercial utilization in the market with respect to such works in cases of rentals. And if not for such copyright, it would lead to serious prejudice in terms of the commercial interests of the right holder. The ease of piracy with respect to computer software and cinematograph films leads to the necessity for certain types of measures. And therefore, with respect to works that are made available digitally, as I was saying, rights holders engage in simple to complex technological protection measures.

Just like then, the circumvention of rights management information is an offense. Similarly, the circumvention of technological protection measures is an offense under the Act. It is stated that any person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by this Act. With the intention of infringing such rights, one shall be punishable by imprisonment, which may extend to two years, and shall also be liable to a fine. But we find that circumventing technological protection measures might be necessary in certain circumstances.

Therefore, under Section 65A itself, certain exceptions have been carved out. One such exception is the conduct of a lawful investigation. We understand that both of these provisions, 65A and 65B, bring in a very important consideration in terms of digital protection of works with respect to copyright holders. In the next session, we are going to take a look at economic rights under section 14. We will look at section 57, which talks about authors' special rights.

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