

Copyright and Related Rights Law

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WEEK - 12

LECTURE – 58

Infringement Part IV

Welcome back to this course on copyright and related rights law. In the previous sessions, we discussed infringement. We understand that Section 51 provides for certain acts that will be considered as infringement. We have also gained a detailed understanding of the Supreme Court decision in R.G. Anand versus Deluxe Films on infringement not being limited to literal copying, but also extending to non-literal copying.

In this particular session, we are going to focus on infringement in connection with torrent websites, which is one way of online piracy. We will also look at certain other aspects that are connected to infringement, such as jurisdiction and offenses. Let us consider torrent websites like Kickass Torrent or 1337x. What these torrent sites do is provide a user who is accessing this torrent website with the facility to download copies of films, sound recordings, and books.

The problem is that the copies being downloaded are unauthorized copies. Clearly, this is something that will be struck under section 51. But what is the role of the torrent client in this? So the torrent client is a kick-ass torrent. What is their role in this infringement, and can they be considered infringers themselves? To understand this better, let us understand how torrenting works. Unlike traditional forms of file sharing, where the file is stored on the platform, For example, if you were to upload a file onto YouTube, it would be stored on their server.

But nothing is stored on the torrent website's servers. Torrenting, on the other hand, uses the power of its users. If a user, for instance, selects a particular film and its copy for the purpose of downloading, the torrent client will contact a tracker. A tracker is a specialized server that will then check the other units or the other nodes where such a download is happening or has happened. It, in effect, splits a large file into small pieces, and simultaneously, it allows for an exchange of this information between these nodes.

So the user is connected to various other nodes or to various other computers. Where such a download is taking place, and as and when the downloading is happening with respect to the user who is downloading that file, he is also exchanging that particular information with whoever is downloading it. Thus, there is a simultaneous exchange of data happening between peers. This is the reason why torrenting is referred to as a peer-to-peer file-sharing system. If you look at it in terms of efficiency, it is an incredibly efficient method of file-sharing.

But when file sharing involves pirated copies, it is a serious issue for copyright holders. So much so that many movies released even in the last few weeks, you would note, have faced issues with leaking, and such leakage is found on torrent websites apart from other mediums. Let us then see how the issue of copyright violation is attached to such torrenting sites. The Delhi High Court in a case that involved UTV Software Communication and others versus torrenting sites like 1337X. Considered the application of Section 51, Clause A, Subclause 1.

The court said that the defendant's websites, which are communicating the films to the public by making the films available to be seen, heard, or enjoyed through their websites, are infringing the plaintiff's copyright in the film. We understood that section 51, clause a, subclause 1 is effectively a broad right that encompasses the violation of the exclusive right provided under section 14. One of the rights that are provided to cinematograph film authors or the producers is the right to communicate the film to the public. In enabling such communication of pirated copies, the torrenting website can be caught under the net of Clause 51(a)(1). We had discussed that under section 51, clause a, subclause 2, there is an exception.

That if the person can show that he was not aware, then simply because he was providing a platform for communication of the work for profit, he could not be held to be an infringer. Let us compare a website like YouTube with one like 1337x. The legitimate activity happening on YouTube far outweighs the illegitimate activity. Nobody is contesting that there is infringing material available on YouTube.

There is. But as we had discussed, technological advancement and the impossibility of a platform such as YouTube striking every single case of violation as it occurs, makes them justified in claiming the exception under clause 51(a)(2). But can 1337 claim such an exception? The illegitimate activity happening on these websites far outweighs any legitimate activity that happens there. What about the application of the exception under Section 52? Let us see what 52, clause 1, subclause C is saying. It says certain acts are not to be considered infringement of copyright. The following acts shall not constitute an infringement of copyright, namely transient or incidental storage of a work or performance for the purpose of providing electronic links.

Access or integration where such links have not been expressly prohibited by the right holder. Unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy, it is not considered infringing. It then says that once awareness has been brought about by a notice provided by the right holder, Then there must be a takedown, and it needs to be kept down until there is an order from the court. If there is no such order for a particular period, which is 21 days, then such access can be provided. But the issue with clause 52, subclause 1(c), is that it is talking about transient or incidental storage.

But there is no storage happening with respect to a torrent website. As we have understood, the connection is rather between two peers than more peers. There is not really any kind of storage happening with respect to the torrent client. Therefore, the court says that the defendant websites are liable for copyright infringement under section 51, and they cannot claim the exception under section 52, clause 1, subclause C because they are not entities that are transiently and incidentally storing any work. The next topic that we will briefly touch upon is the topic of jurisdiction.

Jurisdiction is a broad area in itself in terms of understanding. There is only one facet of that which I am touching on for our discussion. Such that a foundational understanding of jurisdiction, with respect to copyright specifically is understood to some extent. The primary provision that we must look to is Section 20 of the Civil Procedure Code. Under this, a suit for infringement can be filed either at the place where the defendant is residing or carrying on business, or where the cause of action arises.

But when we look at section 62 of the Indian Copyright Act, it allows for the plaintiff who is claiming that his work has been infringed. to bring such a suit where he is voluntarily residing or carrying on business. In terms of what section 62 is doing, it is adding an additional layer of forum for jurisdiction. Let us see the objective behind such an additional forum being added by the Copyright Act. In *Dodha House versus S.K. Maingi*, the Indian Supreme Court referred to the objects and reasons for the Copyright Act of 1957.

And it said that these objects and reasons show that such an additional forum was created to enable authors to file the suit for violation of the copyright at a place where they reside. The court further explains that considering the first aspect of the aforesaid principle, the common law that existed before the provisions of law were passed was Section 20 of the Code of Civil Procedure. It did not provide for the plaintiff to institute a suit except in accordance with the provisions contained in Section 20. The defect in existing law was the inconvenience or deterrence caused to authors suffering from financial constraints, on account of having to vindicate their intellectual property rights in a place far away from their residence or place of business.

The Supreme Court is explaining that when an author of a work is faced with infringement of his work, he may be deterred from filing an infringement suit. If he was told that he could only file such an infringement suit where the defendant is residing or carrying on business. Or can he rather bring such a suit where he is residing? According to the Supreme Court, section 20 and its restriction on the forum of jurisdiction were a kind of mischief that provided for such a deterrent effect. And in order to remedy this, section 62 of the Copyright Act introduced this additional forum. Let us move ahead to the point concerning offenses.

Under section 63, it is provided that a person who knowingly infringes or abets the infringement will have committed the offense of copyright violation. The punishment for this offense is stated in Section 63. An exception that Section 63 makes with respect to a particular right provided within the Copyright Act is Section 53A. This particular provision talks about the resale share right. You would recall that the resale share right is the right that the artist of a painting, for example, will claim over subsequent sales.

It is provided in Section 63 that if a person is knowingly infringing copyright but not doing it for gain, then noting the adequate consideration that emerges in such a circumstance, the court can grant a lesser punishment. Let us also look at another provision under the Copyright Act. This is Section 64, which authorizes the police to seize infringing copies without a warrant. Let us take a look at this provision. It is saying that any police officer not below the rank of a sub-inspector, May, if he is satisfied that an offence under section 63 in respect of the infringement of copyright in any work is being or is likely to be committed, Seize without a warrant all copies of the work and all plates used for the purposes of making infringing copies of the work, wherever found.

And all copies and plates so seized shall, as soon as practicable, be produced before a magistrate. You can see here that there is a particular rank of police officer who alone can conduct such a seizure. Let us see a case in which a police officer below the rank of sub-inspector conducted a seizure. In the case of Navas versus the State of Kerala. The court had considered such a seizure to amount to vitiation of the trial.

This is how the court explained it. When a statute prescribes a particular mandate for conducting a seizure by designating the officers with their ranks, it is a safeguard made by the lawmaking authority for the protection of the accused. So as to avoid illegal search and seizure at the hands of officers of lower rank. So the seizure by the assistant sub-inspector of police, who is lower in rank than the sub-inspector, violates section 64, and therefore such an action will vitiate the entire trial. Let us also consider how the non-identification of the violation of what kind of work can lead to the non-holding of any infringement and, in turn, an offense.

Such a situation arose in the case of Irfan versus the State of Uttarakhand, in which two individuals were nabbed by the police for selling CDs. These CDs, which purportedly carried film content, were seized by the police, and the individuals were charged under section 63. Interestingly, at no point did the authorities run the CDs to see what work was contained on these CDs. Because there was no identification of the work or which author was affected, in terms of any such violation, the court had to consider that there was no infringement. What the court stated is that copyright has an age.

It is not that the copyright may remain in perpetuity. First and foremost, the prosecution has to show and establish that some work was infringed and that infringing copies were sold. With that, we are ending our discussion on infringements. I hope these issues have been understood well. In the next session, we are going to take a look at what subconscious copying is and whether that amounts to infringement, and we will start with the first part of problem solving.

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