

Copyright and Related Rights Law

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WEEK - 12

LECTURE – 59

Subconscious Copying and Part I of Problem-Solving

Welcome back to this course on copyright and related rights law. In the previous four sessions, we discussed the infringement of copyright under section 51 of the Indian Copyright Act. We have also discussed how the Indian Supreme Court in R.G. Anand versus Deluxe Films has explained infringements as they occur with respect to non-literal features of a work. We have also understood how websites such as torrent websites are, in fact, hubs of online piracy.

In today's discussion, we are going to consider whether subconscious copying is something that can amount to infringement in a work. After we are done with this particular understanding, we will proceed to solve certain problems. Let us ask ourselves: when we looked at section 51, was it provided under section 51? That if a person is unaware of there being a copyright in some prior existing work, such a person will be given a clean chit? There is nothing like that under section 51. A provision that is contained within Section 51, Clause A, Subclause 2, which we discussed as being applicable to the person who is providing his platform for profit.

And where communication of a work or performance has taken place of which he was unaware, it was an infringement. Apart from this, there is nothing in section 51 which suggests that simply because a person is unaware of an existing copyright, he should be given a clean chit. To supplement this understanding, let us consider Section 55 of the Indian Copyright Act, which provides for civil remedies. In this provision, it is clearly stated that if a person is unaware of copyright in a work and is alleged to have infringed that work, the remedies that can be pursued against such a person may be limited. But it does not eliminate the infringement.

Please understand that in cases of infringement generally, all remedies, such as the remedies of injunction and remedies of damages, will be available against the infringer. But in the proviso to section 55, clause 1, if a person can show that he was unaware, then

the relief is limited against such an infringer to an injunction and the portion of the profits that are received by such an infringer. Let us consider: when an infringement action is undertaken against an individual, what is it that the claimant has to prove? Quite naturally, because the claimant is saying that his copyright in a particular work has been infringed, he will attempt to show that he has a valid copyright. What does it mean for a person to say that they have a valid copyright? It means that he has created his work independently, and it is not copied from someone else. He would also show that the other person had copied the work.

In other terms, he would show that there was access that this defendant had or has to the plaintiff's work. and this access is something that will defeat any claim that is made by the defendant with respect to independence of his creation. Let us recall session 21, in which we discussed what "original" means. In this particular discussion, you would recall we had discussed the term "original" and its dimension as an independent creation, meaning that it is not copied from elsewhere. Therefore, the question that we had asked was, "Can there be identical or substantially similar works that are independently created?" You would recall that we answered this question by saying that it is possible for two people who are separated by geography but exposed to common phenomena to arrive at a substantially similar expression.

While this is possible, practically, for two people to arrive at a substantially similar expression would indicate that there might be some kind of access. Nevertheless, if upon the claim being made by the copyright holder that his is a valid copyright, the defendant has had access to the work. What does the defendant do? The defendant would attempt to show that the subject matter was uncopyrightable. Second, he would try to show that there is a common source for both the plaintiffs' work and the defendants' work; and third, he would show that he had made his work independently. Let us consider how the work that is claimed to have copyright in it can be shown to be uncopyrighted.

We had discussed how titles that are claimed to be literary works are not considered subject matters that can have copyright in them. What about a common source? If there is a common source based on which two works exist, then, as we discussed in *R.G. Anand versus Deluxe Films*: There would be a lot of similarities between these works, and such similarities could, in fact, show that there is, in fact, a lot of commonality in that expression, and none of it is, in fact, eligible for protection. In terms of subconscious copying, We are considering the question of whether, in claiming that the defendant has independently created a work, he has in fact subconsciously used an original work.

Is that something that can be considered a defense? You must have noted that in such a claim there is a flaw, and the flaw is: how can a creation be independent if it is, in fact, based on a pre-existing work in which copyright exists? This reasoning is the background to how subconscious copying is an act that can amount to infringement. Let us consider a

case that arose in the United States. This is Bright Tunes Music Corp versus Harrison Music Limited. This case involves a member of the popular band called The Beatles: George Harrison. George Harrison composed a work called My Sweet Lord, which was recorded in the year 1970.

But George Harrison's composition was similar to a previously existing recording. On a composition called "He's So Fine," which was composed by Ronald Mack. The years that separated He's So Fine from its publication and Sweet Lord. Could those years that have passed be considered a ground for forgetting that copyright existed in a particular work? Or was the work there at all? Such was the scenario that occurred in this particular case at the time when He's So Fine was published. It became the number one most listened to music for several weeks in both the US and England.

George Harrison admitted to knowing about He's So Fine. But at the same time, the claim that was being made was that he had independently composed "My Sweet Lord." This is what the U.S. court is saying. The composer, in seeking musical materials to clothe his thoughts, was working with various possibilities. As he tried this possibility and that, a particular combination surfaced in his mind that pleased him as one he felt would be appealing to a prospective listener. In other words, that this combination of sounds would work. But is there a reason why he would feel that this combination works? Could it be that in his subconscious he knew that this combination had, in fact, worked, but his conscious mind did not recollect this particular fact? The Court continues by saying that, having arrived at this pleasing combination of sounds, the recording was made. The lead sheet prepared for copyright and the song became enormous successes.

Now, did Harrison deliberately use the music of "He's So Fine"? The court is saying that it doesn't believe this to be the case. Nevertheless, it is clear that My Sweet Lord is the very same song as He Is So Fine with different words. This is an infringement of copyright under the law and is no less so even though it was accomplished subconsciously. Therefore, this particular case demonstrates to us that if access to a work can be shown Then, even if the artist has spent many years creating a work and says that he does not recollect the original work, that cannot be used as a defense. It will be considered an infringement.

Cases pertaining to subconscious copying have arisen in the US, and this particular case is very significant in our understanding. Let us move on to the next segment of our course. In this particular segment, we will be solving problems. These problems relate to real-life situations. In solving these problems, use the knowledge you have accumulated over the previous sessions.

Spanning subject matter understanding, copyright subsistence on the application of originality, exceptions against such copyright, and infringement actions. In doing so, you

will be able to use copyright law in your daily lives. Feel free to pause the video when I read the problem and try to solve it yourself before I solve it. Let us look at the first problem. A and B's wedding video, which was shot in Delhi in 2025, was made at their instance by DEF studio.

DEF studio was given 4.5 lakhs rupees by A and B for this purpose. A and B decide to put their wedding video on YouTube, where it becomes a hit. They generate revenue from YouTube. Is DEF's copyright being violated? Let us see. What is the work? We understand that the work is a cinematic film.

Who is the author of the work? The authors of the work seem to be A and B. Why is that? Despite the fact that DEF studio has made this video, it is A and B who have taken the initiative and responsibility for making this film. And therefore, if we look at section 2, clause (uu), it says that the producer in relation to a cinematograph film is a person who takes the initiative and responsibility for making the work. Therefore, who is the first owner? Being the authors of this wedding video, A and B are the first owners. How do we know this? Section 17, which talks about first ownership, very clearly provides that the author of a work shall be the first owner of the copyright therein.

Even if we say that A and B are not the authors, even in that case, Upon application of section 17, clause b, it states that where a video is made at the instance of a person, then such a person who has made valuable consideration will be the first owner. And therefore, it will be A and B who have copyright over the cinematograph film. As you understand, once it is determined that the person has copyright under section 14, then they can do what they wish with that work. So uploading that work on YouTube is completely their prerogative.

DEF has no claim. Let us look at the second problem. X is an Indian national who often visits Brazil for business trips. He purchases inexpensive, illegitimate copies of books from street vendors in Brazil. He uses them for his personal purposes in India. In 2025, during a visit to Brazil, X likes a book written by Y, an Indian author.

The book is selling for a lower rate in Brazil than in India. X bought 200 copies to sell them in India. Is there going to be a violation of the copyright of Y if X imports these copies and then engages in sale? Let us first understand what the work is. It is clear that the work is a piece of literature. This is a book that has been authored by Y, an Indian author.

Who is the first owner? Since this fact scenario does not tell us about any publisher, we will go with section 17, which says the author is the first owner, and therefore Y is the first owner. Is there any exception that we must consider? Because if there is no exception, will this not be infringing? We have discussed that the importation into India of copies that are more than one will amount to infringement. We had also understood

how even legitimate copies that are purchased in foreign countries and brought to India could be held to be in violation of the issuance of copyright under section 14, clause (a), sub-clause (2). Therefore, these are illegitimate copies, and any importation of these copies into India will necessarily be an infringement. There is no exception carved out either under section 52 or in any other part of the Copyright Act that can validate such importation or sale.

It will be infringing under Section 51. We will continue this exercise of solving some problems in the next session, as well. Thank you for joining me. See you all in the next session. Thank you.