

Copyright and Related Rights Law

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WEEK - 02

LECTURE - 06

Statutory Definitions of Artistic Work

Welcome back to this course on copyright and related rights law. In the first week we discussed the subject matter of literary works. We at first understood subject matter listings. We then looked at definitions of literary work. We looked at qualitative and quantitative assessments and their relevance in determining whether an expression can become a literary work or not. We also looked at some peculiar types of literary works, computer software and databases.

In this week, we will focus our attention On another type of subject matter category under copyright law, a very important one which is artistic works. As we have proceeded to discuss literary works, in this week also we will follow a similar format; and first thus In this session, we will discuss definitions of artistic works which are present in the copyright acts of various countries. In doing so, we will identify the commonalities of types of artistic works that have been considered in these acts and which will help us in further decoding what these types are. But the first understanding on artistic works must come from an appreciation of what an artistic work has come to protect.

If we look at the history of artistic work protection, in the UK, the first kind of protection that was accorded to any such artistic consideration was that of engravings. Eventually prints were protected. Eventually sculptures were protected. Still further paintings, drawings and photographs were protected. And then there were other subject matters like artistic craftsmanship and works of architecture that were included.

But what we see from this is that the processes that are connected to these subject matters are fundamentally different. And these processes are defined by the technical skill that is necessary to develop a particular piece of art. And what we see is that artistic work protection in that sense is not just protecting the output but is in a way a reward for the process that is being undertaken by the artist. Let's take a look first at the UK Copyright

Act. What the UK Copyright Act interprets artistic work as is a graphic work photograph, sculpture or collage irrespective of artistic quality.

A work of architecture being a building or a model for a building or a work of artistic craftsmanship. What we can see from this provision is that just like how we understood that literary works do not need to meet any qualitative considerations; Similarly, it has been expressed within the act itself that subject matters like a sculpture or a graphic work, they don't need to satisfy any artistic quality. A work of architecture and a work of artistic craftsmanship are peculiar additions to artistic works just like how we discussed computer programs and databases. and therefore they merit an individual discussion on themselves and therefore in today's discussion we will focus on Section 4(1)(a) which tells us that - graphic work, photographs, sculpture or collage, these types of subject matters fall within artistic work. Now under section 4 clause 2, there is an interpretation which has been provided for the terms that have been used there.

What is particularly relevant for us are graphic work and sculpture. A photograph, a work of architecture and artistic craftsmanship is something that we will look at later. But something common to all of these you will see is a requirement for fixation. We will understand what that is, but let's first take a look at these definitions. Building includes any fixed structure and a part of a building or fixed structure.

Graphic work includes any painting, drawing, diagram, map, chart or plan and any engraving, etching, lithograph, woodcut or similar work. Photograph means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced and which is not part of a film. Sculpture includes a cast or model made for purposes of sculpture. What we see is that something that is common across all of these subject matters is that there is visual perceptibility. A painting is visually perceptible.

A building is visually perceptible. A photograph, because it's a recording, if this is also visually perceptible, so is the sculpture. In order for there to be visual perception, there must be some kind of a physical existence. This is found across the board in all the subject matters that are present under artistic work. But something that can be a complex consideration is the duration of physical existence and that is something over which we will spend some time in the later course of this particular session.

Now within graphic works, let's take a look first at a painting. Now when we think about paintings, we are thinking about painting greats like M.F. Hussain. But if painting had to satisfy some definition, then what definition would that be? We see that in the UK Act where a painting has been included in a graphic work, painting itself has not been defined.

So where no particular definition or interpretation is offered within an Act, we must consider the ordinary meaning of that term. So one such ordinary meaning has been derived from the Oxford dictionary. What it states is that painting is a representation of objects or figures by means of colors laid on a surface. Now painting itself need not be the result of some famous painter. Any one of us can satisfy this particular definition if we follow it to the word.

But in this ordinary meaning that we see from the Oxford dictionary, is there an object or a figure that has been represented by color? On a surface, there just seems to be application of color. And therefore, the ordinary meaning of painting could then just be that there is use of color on a surface - whether there is an object or not. Now on the point of the surface itself - in a usual case, the surface which will be used by a painter would be the canvas. But if we consider a canvas to be surface apart from surface which is in the type of a paper, then the surface of the canvas could be the face of an individual as well. And to this there is no clear understanding that seems to be coming from the act itself that on what surface must a painting be done in order for a painting to be a painting.

What we can say is that all that is needed for a painting to be a painting is that there must be usage of color on a surface. A face could very well satisfy that surface. But an inherent issue that will arise when we start considering surfaces like faces is that eventually the painting on one's face would probably be washed away. And in that situation what it shows is that there is some sense of impermanence that will arise. But in this provision, we see that there is no such context of impermanence that comes in with the understanding of the subject matter itself.

Which leads us to understand that duration of fixation is a separate consideration which can be brought in by law in that particular act. Having understood what painting is, let us now come to understand what is a drawing. Again similar to a painting, a drawing has not been defined. The ordinary meaning of a drawing is this. To produce a picture or diagram by making lines and marks on paper with a pencil, pen etc.

And just like the definition of painting, the definition of drawing also differs in an ordinary setting. But one thing remains same, which is that drawing is connected to expression through lines or delineation. In other words, an artistic expression by the artist with the use of lines or delineation. Now consider this image. In this image, the artist is using delineation in creating a pattern.

The question then is, can we extend the meaning of drawing? In other words, what if the line itself is not drawn on a piece of paper? What if the delineation is perceived through the pattern of delineation that has been made by way of cutting for example. Conceptually this seems to be possible and therefore drawing because it is connected through to expression through lines or delineation. Even cutting through delineation

could be considered as drawing the pattern. So the pattern which is the output of such cutting can then be considered as drawing as well. Next, let's try and understand what a collage is.

Again, because there is no definition in the act, we must look at the ordinary meaning. A collage is a piece of art made by sticking various different materials such as photographs and pieces of paper or fabric onto a backing. Again, there is a process which helps us understand what this specific type of art is. Again, there is visual perceptibility because this has been done on a surface. Next, let's take a look at what is a sculpture.

A sculpture, unlike the other types of subject matter which has been included in the artistic work, has been interpreted. And sculptures if we see, within section 4, it reads sculpture includes a cast or model made for purposes of sculpture. But what this doesn't tell us is what a sculpture really is. So we must then again take a look at what the ordinary meaning of sculpture is. The art of sculpture is the art of forming representations of objects or abstract designs in the round or in relief by chiseling stone, carving wood, modeling clay, casting metal or similar processes.

As you can see in the image, the artist is in the process of creating a sculpture. But there is an important question which we must consider. In the definition of sculpture under the UK Act, they say that a cast or model is included within the understanding of a sculpture. How is a cast or model a sculpture? Now our common understanding of a sculpture is the finished output. What we see installed in a gallery for example, that for us is a sculpture.

But we must understand that a cast or a mold has the same specifications which are eventually found on the sculpture. Which means that the artist has to carefully create the cast or the mold in order for the sculpture to be created. If at all the cast or mold is being used and therefore the same kind of consideration that comes into play for determining this particular type as an artistic work can be applied to cast or model as well. If we look to the Indian Copyright Act, this is what the Indian Copyright Act states: Artistic work means a painting, a sculpture, a drawing, including a diagram, map, chart or plan, an engraving or a photograph, whether or not any such work possesses artistic quality; a work of architecture and any other work of artistic craftsmanship. We see that the Indian provision is very similar to the UK provision.

But the UK provision did not provide an interpretation or a definition of an engraving. What the Indian Act does is that it does provide such an interpretation where it says engravings include etchings, lithographs, woodcuts, prints and other similar works not being photographs. How is this different from what has been stated in the UK Act? You can see that the UK Act does not conflate these different processes into a generic umbrella called an engraving. Because these are distinct processes, the UK Act keeps

these different. Whereas the Indian Act uses a general umbrella term for these distinct processes.

And what you can see in the image is woodcuts. and the process of wood cutting, which leads to the creation of an artistic work. If we consider the Canadian Copyright Act, this is what it says. Artistic work includes paintings, drawings, maps, charts, plans, photographs, engravings, sculptures, works of artistic craftsmanship, architectural works and compilations of artistic works. Engravings includes etchings, lithographs, woodcuts, prints and other similar works not being photographs.

What we can see in a comparison between the UK Act, the Indian Act and the Canadian Act is that there are several commonalities. In terms of the different types of subject matters that can be considered as an artistic work, there is a lot of similarity. A distinction of approach seems to have been applied with a particular type of artistic work which is engravings. Just like the Indian Act, the Canadian Act also seems to be providing engravings as a kind of a general umbrella term whereas the UK Act doesn't. But what the Canadian Copyright Act adds as a type of artistic work is not seen either under the UK Act nor under the Indian Act and this is compilations of artistic works.

In our understanding on literary works in the previous week, we saw that a compilation is a literary work. Compilation includes selection and arrangement and the selection arrangement in itself is capable of having copyright in it. So where the content is an artistic work, the compilation itself could be eligible to have copyright as a literary work. But we see that the Canadian Copyright Act brings in a type of artistic work protection for compilations of artistic works particularly. Finally, we take a look at the French IP code.

The fact that In our understanding of literary works in week 1, there was a clear distinction that arose between open list subject matters and closed list subject matters. We find that the open list system seems to be much more capable of welcoming new processes into its fold than closed list systems. This is especially the case because many types of artistic works have not been defined. And therefore, if a new process comes in, it will have to somehow be considered as an extension of existing ordinary understandings of these terms such as painting for example. But under the French IP code again a reference that we will make to article L111-1 which reads: The author of a work of the mind shall enjoy in that work by the mere fact of its creation an exclusive incorporeal property right which shall be enforceable against all persons.

It then goes on to provide some specific examples of what could be included as a work of the mind. Within this provision L112-2, it states that photographic works or works of applied art, drawing, painting, architecture, they all come within the ambit of works of the mind. But like we discussed, because this is an open list system, it is much more

welcoming of new processes than perhaps closed list systems are. With that hopefully we have understood the different types of artistic works. How they are finding their place within the common umbrella of graphic works.

In the coming sessions we are going to be looking at some distinct types of artistic works such as photographs, works of architecture and artistic craftsmanship. But in the next session, we will focus on the question of whether artistic quality is a relevant consideration. Because as we have seen, unlike the case with literary works, with artistic works, Both the Indian Act and the UK Act seem to be suggesting specifically that it is not a requirement. Thank you for joining me in this session.

I will see you all in the next session. Thank you.