

Copyright and Related Rights Law

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WEEK - 12

LECTURE – 60

Problem-Solving Part II

Welcome back to this course on copyright and related rights law. In the previous session, we started a segment in which we solved problems. To reemphasize, these problems are based on real-life situations. To solve these problems would mean using the knowledge you have accumulated over the many sessions we've had before. This would mean an effective revision of subject matter knowledge, application of originality, understanding of exceptions, and understanding of infringement. When we look at these problems, feel free to pause the video and try to solve the problem yourself.

As in any case, I will solve it for you. Let us then move on to the next problem. For the purposes of satisfying course requirements in a subject, an engineering student selects a topic. He discusses the topic with the concerned faculty members.

The faculty gives the go-ahead. The research takes two months. The work is submitted to the institution; the student wishes to publish the work, but the institution denies permission, citing that it has copyright in the work. Can the student go ahead with the publication? Is the student the copyright owner? Let us consider the same manner in which we were considering arriving at a solution in the earlier session. What is the work? The work seems to be a piece of literature.

Who is the author? Clearly, the author is the student who has written this research paper. Who is the first owner? There is nothing in these specific facts that illuminates any other understanding apart from the fact that the author himself is the first owner. Just because a student submits a research work as part of a course does not mean that ownership first vests with the course faculty or the institution. There is nothing in Section 17 of the Indian Copyright Act that provides for such a categorization of first ownership. If indeed the institution is claiming first ownership, then this can be due to a transfer by way of written agreement.

But otherwise, it will be the student who is the first owner and the copyright holder of that particular expression, which in this case is a research paper. Let us consider the next problem. X is a poet. Y is X's friend. On a visit to X's house, Y found X's diary of poems. I realized that they were unpublished. At an event where both X and Y were present, Y narrated several verses. Y gave due attribution to X. As Y violated X's copyright, let us consider what is the work? The work is a poem. What is a poem? Is it a literary work, or is it a dramatic work? I'm sure you are all saying literary work because the recitation of a poem does not require any bodily movement or action.

Therefore, we can categorize a poem, which is a written expression, as a literary work. Who is the author of this literary work? Clearly, it is X. Who is the first owner of this literary work? Clearly, again in this case, it is X. Just because this poem is unpublished, does it mean that there is no copyright on it? Please recall our discussion on whether copyright can subsist in unpublished works. You would remember that copyright can, in fact, subsist in an unpublished work.

And therefore, Y, in having published this work, has violated the copyright under section 51. Can Y claim that only some verses were cited and therefore this is not something that should amount to an infringement? You can also say that it is not like he said that this was his work. He gave due attribution under moral rights to X. You would recall that the publication of a work is the right of the author. Once first ownership is decoded, Then we know for a fact that publication is something that the author is engaging in or if it is somebody else who is not the author.

But nevertheless, in this particular situation, ownership is with X. In publishing it, even if some verses Y has infringed the copyright under section 51, there is no exception provided under the Copyright Act against this particular action. Let us look at the next problem. X has published a damaging review of Y's film on YouTube. Y's film and its business take a deep dive and take a serious beating because of this review.

Will X's review be considered a copyright infringement? Let us first understand what the work is. The work here is the cinematographic film. Who is the author of the work? The producer of the film, which is Y, is the first owner. Y is the first owner. So there is nothing in this that seems to suggest that in taking substantial portions, if they have been taken by X, X is infringing under section 51.

But is there any exception that can protect X's actions? Do you recall our discussion about fair use? Do you remember *Campbell v. Acuff-Rose*? Do you recollect the four factors that we discussed under fair use and how we discussed fair use and fair dealing to be very similar in their effect? You would no doubt have a very easy way of answering this question if you can apply section 52, clause 1, subclause a. What does this provision say? The following acts shall not constitute an infringement of copyright, namely, fair

dealing with any work that is not a computer program for the purposes of criticism or review. We had understood in *Campbell versus Acuff-Rose* as well that copyright is not concerned with the nature of the criticism or the nature of the review. It could be damaging.

The court should not concern itself with good quality or poor quality review. Rather, the court is focused on the purpose, and herein, where the purpose is review. There is a possibility that this will not be considered infringement. Let us look at this problem now. ABC Educational Institution is organizing a fest.

All students of the institution and their parents are called audiences. Students communicate copyrighted sound recordings at the festival. Are the students engaging in violations of copyright? Let us first consider what the work is. Clearly, the work is the sound recording and the sound recordings that are being communicated. Who is the author? The producer of the sound recordings is responsible for their quality.

Who is the first owner? Again, it would be the producer of the sound recordings. In considering whether there is infringement or not, when we look at section 14 of the Indian Copyright Act, When we look at the copyrights that are provided to sound recording producers, the right to communicate the sound recording is a copyright; therefore, under section 51, this is an act of infringement. But is communication of sound recordings by students in an educational institution an exception? Let us look at section 52. Section 52, clause 1, subclause J.

This is how it reads. The following acts shall not constitute an infringement of copyright. The performance, in the course of the activities of an educational institution, of a literary, dramatic, or musical work by the staff and students of the institution. or of a cinematograph film or a sound recording if the audience is limited to such staff and students. The parents and guardians of the students, as well as persons connected with the activities of the institution, or the communication to such an audience of a cinematograph film or sound recording. You can see that section 52, clause 1, subclause J provides a clear picture of whether this particular act can be considered infringing or not.

On the direct application of this provision, we can see that such communication by students in this educational institution will not amount to infringement. We can see that our understanding of permitted acts has informed us that provisions under section 52, which are not tied to fair dealing or terms such as reasonableness, have to be seen from the perspective of purpose. The purpose then is that in an educational institution and such a setup, If communications of sound recordings are done and the audience is restricted to the students, guardians, and staff of such educational institution, then this should not amount to an infringement. The extent of the usage of sound recordings or the extent of

communications you would recall becomes an irrelevant consideration. Let us look at the next problem.

An audiovisual recording of a singing performance is created by X. The lyricist is person Z. The composer is person Y. The sound recording is owned by ABC. X wishes to upload his audiovisual recording to YouTube. Will X be in violation of copyright with respect to ABC, Z, or Y? Let us first understand what the work is that is being used. When X delivers a performance in which X is singing. X is clearly not a machine, and therefore X cannot play the sound recording. What is X doing, then? X is using the lyrics and the composition for singing. Therefore, the works that are being used by X are the lyrics and the composition.

Who is the author, the lyricist, and the composer of the respective lyrics and the composition? Who is the first owner? Now this is tricky. In general cases wherein there is a sound recording containing underlying works, there is a possibility that, upon agreement, the underlying work authors have transferred their entire copyright to ABC. If that is not the case, then it is possible that Z and Y are the owners of their works, which is separate from the sound recording itself. Is there any exception that would cover this particular use by X of the lyrics and the composition? There isn't. In fact, if X were to upload this audiovisual recording onto YouTube, it would contain the unauthorized usage of lyrics and composition.

It would be considered an infringement of their respective copyright. Let us consider the next problem. X publishes a blog post on a certain topic. X had used an artificial intelligence tool. The tool had produced an output that was substantially similar to a copyrighted literary work.

Is this output an infringing work? Let us first see what the work is. The work that has been substantially used seems to be a literary one. Who is the author? The author would be the creator of the work whose content has been substantially taken. Who was the first owner? It could be the author, or it could be the publisher to whom the author had assigned the rights, or the publisher who was the first owner of that work. Is there any exception to the usage of AI tools and an output that is substantially similar to an original work? There are no such exceptions.

AI tools are known to generate outputs based on data that is fed to them. This data could, in fact, comprise copyrighted material; therefore, the output, which is substantially similar to the original work, will be an infringing expression. Let us look at the next problem. X is an actor.

X has performed in the ABC film. ABC is edited to show X's performance in a vulgar manner. Is there a violation of X's performers' rights? You would recall that performers have both economic rights and moral rights. You would recall that under Section 38B, it

is clearly provided that any such modification that is to the prejudice of the performer, His reputation will be a violation of his moral rights. What is the work here, then? It is a film.

Who is the author? The producer is. Who is the first owner? The producer is. But in terms of performers' rights, moral rights are applicable independent of any assignment that is made. That is, even if the performance is incorporated into a cinematograph film and the producer is enjoying the performer rights under section 38 A, section 38 B will still apply. Only those modifications that are necessary for the purpose of technicality can be done and that will not amount to a violation of the moral rights of the performer. The last problem we will consider is that X company specializes in sofas and the making of sofas.

X's design team prepares designs that are then mass applied to sofas. The company copies some of these designs. Can X claim copyright violation? Firstly, what is the work? The designs could be claimed as artistic works. Who is the author? The author is the person who made such a design. In this case, it would be an individual within an excess team of designers.

Will the Copyright Act be applicable? You would recall that artistic works are distinct from those designs that are capable of being registered under the Designs Act. Therefore, because this design is intended to be mass-applied to sofas, it is ideally not protected under the Indian Copyright Act. The right approach would be for such designs to be registered under the Designs Act and for the copyright to be claimed under the Designs Act and not under the Copyright Act. With this, we come to the end of this course, "Copyright and Related Rights Law." Let this be a beginning for a deeper understanding of Copyright Law. Thank you for joining me.