

Law of Copyright

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- What is copyright?
 - A copyright is a form of intellectual property that grants its holder the legal right to restrict the copying and use of an original, creative expression, such as a literary work, movie, musical work or sound recording, painting, computer program, or a design for a defined period of time.

- According to Section 13 of the Copyright Act 1957 act:
 - Original literary, dramatic, artistic and musical work
 - Also cinematographic film and sound recording
- Chapter VIII (Sections 37- 38)
 - Broadcast Reproduction Right
 - Performer's Rights

How do you get copyright protection - Registration??

- **A. Sundarasan vs A.C. Thirulokchandar And Anr. (1973) 2 MLJ 290**
 - There is nothing.... to indicate that in the matter of infringement of copyrights, the Legislature drew any distinction between copyrights, which are registered, and those which are not. On the contrary, the scheme of the Act shows that an author acquires a copyright the moment he produces a literary work and it is open to him as the owner of the copyright to effect an assignment thereof, whether he has registered it or not.
- **Zahir Ahmed v. Azam Khan 1996 Cri LJ 290**
 - registration only raises a presumption that the person whose name is entered in the Register of Copyrights...is the actual author. Law provides...that the registration of copyright shall be prima facie evidence of the particulars entered therein and shall be admissible in evidence in all Courts without further proof for production of the originals.

Originality

- Not same as novelty
- **C. Cunniah and Co. vs. Balraj and Co. AIR1961Mad111**
- Was the representation of a common subject like a painting of the deity "Bala Subrahmanya" made from conventional ideas as to his appearance in human form Original?
- It is well established that, in order to obtain copyright protection for literary, domestic, musical and artistic works, the subject dealt with need not be original, nor the ideas expressed be something novel. Thus, though pictorial representation of Lord Balasubrahmanya in a human form is a subject which is common to everyone, still, if a picture of Lord Balasubrahmanya drawn by an artist made up of conventional ideas as to his posture, his form, the ornaments he wears, the vahanam he uses and other matters, the picture produced is still copyrightable if it is not copied from somewhere else.

- In ***Errabhdrarao v. B.N. Sarma***, AIR 1960 AP 415
- “By an original composition we do not convey that it is confined to a field which had never been traversed hitherto by any other person or persons, either in respect of ideas or material comprised therein. Indeed such contributions are few, as most works depend upon the contribution of others, using them as steps in aid of reaching a particular object which may be original in its design and conception.”
- The originality which is required relates to the expression of thought, and that the work should not be copied from another work, but should be original from author.

Take home points

- Originality does not mean that the work should be inventive, novel, stylish or unique.
- The creator need not touch any standard of quality and creativity can be a result of accident.
- Hence there is no qualitative threshold for originality as such.
- The plain meaning of originality is to make sure that the work has originated from the author / creator

Standards of originality

- Sweat of the brow
 - **Burlington home shopping (P) Ltd. V Rajnish chibber 61 (1995) DLT 6**
- Modicum of creativity
 - **Fiest Publications, Inc. v. Rural Telephone Service Company, Inc, 499 U.S. 340 (1991)**
 - Raw data are uncopyrightable facts, and the way in which rural selected, coordinated, and arranged those facts is not original in any way. Rural's selection of listings, subscriber's names, towns and telephone numbers could not be more obvious.

- **Present Indian position**
- **Eastern book co. v. D.B.Modak (2008)1SCC1**
- To claim the copyright in a compilation, the author must produce the material with exercise of his **skill and judgment** which may not be creative in the sense that it is novel or non obvious, **but at the same time it is not a product of merely labour and capital.**
- where "skill" is "the use of one's knowledge, developed aptitude or practised ability in producing the work" and "judgment" is "the use of one's capacity for discernment or ability to form an opinion or evaluation by comparing different possible options in producing the work".
- No doubt the appellants have collected the material and improved the readability of the of the judgment by putting the inputs in the original text of the judgment by considerable labour, but that does not give a flavour of minimum creativity

Idea-Expression dichotomy

- Ideas are not copyrightable, only the expression of an idea can be copyrighted.
- So copyright does not stop free flow of ideas.
- It does not mean that ideas are treated as less valuable. Quite the opposite: ideas are too valuable to be copyrighted.
- The freedom to copy ideas is central to the structure of copyright law.

- ORIGIN OF THE DICHOTOMY
- **BAKER V SELDON, 1879 US 99 (1879)**
- In the said case Charles Selden got a copyright in a book, which dealt with his particular book keeping system.
- The book consisted of an introductory essay explaining the system of book-keeping to which were annexed certain forms or blanks consisting of ruled lines and headings, which illustrated how the said system of book keeping had to be carried out.

- Later on Baker made accounting books, which made use of a similar plan so far as results were concerned; but made a different arrangement of the columns, and used different headings.
- The allegation was that Baker had used Selden's system of accounting, however there was no allegation that Baker had actually copied the particular forms contained in Selden's book

1-18. Edited by C. S. Selden, 1861. Reprinted May 22nd 1861. Reprinted

SELDEN'S
CONDENSED LEDGER,
AND
Condensed Memorandum Book,
AND FORMS OF RECORD,
Condensed Ledger, Reports,
AND
CONDENSED MEMORANDUM BOOK.

By CHARLES SELDEN.

CINCINNATI:
MOORE, WILSTACH, KEYS & CO., PRINTERS,
25 WEST FOURTH STREET.
1861.

PREFACE.

THE PUBLIC is deeply interested in any attempt to simplify the system of accounts known as Book-keeping, by any means which does not detract from its accuracy and reliability. The author of the little treatise which is herewith presented, has endeavored to attain an improvement in Book-keeping in the line above indicated. With regard to the Treasury or Auditorial Department Accounts of either County, State or Federal Governments, he believes he has succeeded; likewise with all Corporate Companies, or individuals keeping only few specific or stereotyped accounts. And merchants extensively engaged in business, are attracted to the Condensed Ledger, by its power (as a re-condenser of their condensing books) to compress almost innumerable accounts under a few specific, intelligible heads, indicating Financial condition *instantly*, within a space almost incredible.

The Condensed Ledger expresses in its title its chief merit—Condensation; but its author does not claim to have expelled ordinary books of original or detailed entries. But the ordinary Journals and Ledgers, and indeed all Journals and Ledgers now in use, which are known as works of condensation, require, after an elaborate examination of their contents, a distinct and separate Balance Sheet to test and prove their correctness, while the Condensed Ledger, by new forms and captions, comprises the three (Journal, Ledger and Balance Sheet) in one, and presents *numerous* accounts at a glance, with an accuracy, succinctness, comprehensiveness, satisfaction and economy, beyond precedent, and which, by the old forms and captions now in use, could never have been attained, if even approximated.

Believing that the useful art of Book-keeping is simplified and facilitated by my Condensed Memorandum Book and Forms of Record or original entry, and my Condensed Ledger, they with my Forms of Report, are cheerfully submitted to the scrutiny and patronage of all interested.

CHAS. SELDEN.

INTRODUCTION.

The new system of Book-keeping introduced by the accompanying illustrative forms, contain within themselves their own demonstration. The captions of the blank forms sufficiently indicate their uses without explanation. Utility and simplicity are united to as great an extent as is practicable, and they are carried much further than by any previous structure.

A correct record of business transactions is necessary in all systems of Book-keeping, consequently original explanatory entry is indispensable. For Governmental Accounts, this is amply provided for in the Forms of Record of the Auditor and Treasurer, which present a clear and concise exhibit of all Receipts and Disbursements in their respective departments, and of Distributions derived from Taxes, Appropriations, Profit and Loss or Transfers, Auditorial, Congressional or otherwise, as provided for by Law. With regard to the Condensing Books now known, viz: the Journal, which compacts preceding books in a comparatively small space, and the Ledger, which compacts the Journal, and until now regarded the extreme condensing book of accounts, they are superseded by the Condensed Ledger, which fully supplies their place, dispenses with the *absolute* necessity of an Index, and presents a continual Balance Sheet, determining its correctness the whole time, which important result so adopt in Book-keeping will perceive at a glance. By my system of arrangement, the Departments of Auditor and Treasurer are completely counterparted, and no error can occur which is not susceptible of quick discovery, as the only *legitimate* difference in the accounts between them *must exist* in the Floating Orders.

The Condensed Ledger which shows only monthly postings of accounts, may answer for any other interval. The Reports may also embrace any period of time. Aggregates or Balances of accounts may be carried forward indiscriminately, at any period, without changing the result. Governments usually continue aggregates for the Fiscal Year, adopting only the balances at the commencement. Individuals may be governed by intervening settlements, or convenience.

Respecting the Mercantile Ledger, comprising *many* and various accounts, my Ledger as a re-condenser thereof, classifying those accounts under a *few* comprehensive titles, and indicating Financial Condition *instantly* is invaluable.

The author, though always desirous of promoting the public good, does not in this instance, disclaim a hope of pecuniary reward; to this end he has taken steps to secure his right to some personal compensation, for what he thinks, a valuable discovery. In addition to the copyright of this little book, he has applied for a patent right to cover the forms of the publication, and prevent their indiscriminate use by the public.

CONDENSED LEDGER.

Brought forw'd.		Distribution		Date: from Dec. 1st to 31st, 1860, inclusive.		Totals.		Balances.	
DR.	CR.	DR.	CR.	DR.	CR.	DR.	CR.	DR.	CR.
50.00	50.00					124.00	141.00		17.00
TREASURER.									
Dr. Ca.									
\$ 66.00 \$ 51.00									
20.00	10.00	20.00		County Fund	42.00	40.00	22.00	8.00	2.00
10.00	10.00	12.00		Bridge Fund		22.00	11.00		
10.00	10.00	17.00		County Treasury		27.00	10.00	1.00	
10.00	10.00	17.00		Building Fund		22.00	10.00	22.00	
10.00	10.00	10.00		Interest Fund		20.00	20.00		
5.00	5.00	5.00		Road Fund		10.00	10.00		
	0.00			Refundations		10.00	12.00	12.00	
	0.00			Tax Commission		0.00	8.00	8.00	
	2.00			State Loans		0.00	0.00	0.00	
				Diplomats		0.00	2.00	2.00	
				State Fund					
				School Fund					
				Corporate Fund					
				Township Fund					
				Treasurer's Fee					
120.00	128.00			91.00	Carried Forward.	60.00	285.00	285.00	21.00

DUPLICATE ACKNOWLEDGED BY TREASURER, \$401.50.

FLUATING ORDERS

County Fund 12.00
Bridge Fund 10.00
County Treasury 10.00
Building Fund 10.00
Interest Fund 10.00
Road Fund 10.00

- Had he used words of description instead of diagrams (which merely stand in the place of words), there could not be the slightest doubt that others, applying the art to practical use, might lawfully draw the lines and diagrams which were in the author's mind, and which he thus described by words in his book.
- that blank account books are not the subject of copyright; and that the mere copyright of Selden's book did not confer upon him the exclusive right to make and use account-books, ruled and arranged as designated by him and described and illustrated in said book.

- where the art it teaches cannot be used without employing the methods and diagrams used for illustration, or such as are similar to them, such methods and diagrams are to be considered as necessary incidents to the art, and given therewith to the public.

- The US Supreme Court stated that the copyright in the book, although effective to protect the book, "did not confer upon the author the exclusive right to make and use account-books, ruled and arranged as designated by the author and described and illustrated in said book."

- In *Indian Express Newspaper (Bombay) Pvt Ltd., Jagmohan*
- The Bombay High Court held that there could not be any copyright in an event which has actually taken place. The Court observed: "There is distinction between the materials upon which one claiming copyright has worked and the product of the application of his skill, judgment, labour and literary talent to these materials. The ideas, information, and events etc. on which an author expends his skill labour, capital, judgment and literary talent are common property and are not the subject of the copyright".

- ***R.G.Anand v. Deluxe Films*, A.I.R. 1978 SC 1613**

- The Court made it clear that there can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner, arrangement and expression of the idea by the author.

- Merger doctrine
- Scenes a faire doctrine
- *De minimis non curat lex*

Subject Matter

- **Literary works:**
- The Indian copyright act does not define it, just says that it includes computer programmes, tables and compilations including computer databases.

- It must be original
- It must be in some fixed form
- No literary merit is required
- Therefore almost every kind of written material work would constitute literary work.

- **Dramatic work: Under Indian act a dramatic work includes:**
 - Any piece of recitation
 - Choreographic work
 - Entertainment in dumb show,
 - the scenic arrangement or the acting form of which is fixed in writing or otherwise but does not include a cinematographic film.
- **Black's law dictionary:** A literary work setting forth a story, incident, or scene from life, in which, however, the narrative is not related by words but is represented by dialogues and action; may include a descriptive poem set to music, or a pantomime

- A story is a *sine quo non* of a dramatic work.
- A mere exhibition, spectacle or arrangement of scenic effects, without a story, does not possess a dramatic composition.
- A dance step or a piece of dramatic action may be protected by a written description of the acts of the performer. But a dance is not by itself, capable of protection.
- Choreography and pantomime are also copyrightable dramatic works provided they are in written form.

- **Musical work:** The word music is not defined in the act
- Going by the dictionary definition, music means sounds in melodic or harmonic combination, whether produced by voice or instruments
- Section 2(p): Musical work is a work consisting of music and includes any graphical notation of this music, exclusive of any words or action intended to be sung, spoken or performed with it.
- So in a song there are at least two copyrights.

- **Artistic Work:** sec 2(c) – a painting, a sculpture, a drawing (including a diagram, map, chart, or plan), an engraving or a photograph, **whether or not any such work posses artistic quality;**
- A work of architecture;
- Any other work of artistic craftsmanship.

- **Cinematographic film {Sec 2(f)}** means any work of visual recording produced through a process from which a moving image may be produced and includes a sound recording accompanying such visual recording.
- This category includes feature films, TV programs, documentaries, short films, home videos, animated films, television commercials and some multimedia products such as computer games.

- Copyright will not subsist in a film if the substantial part of the film is an infringement of the copyright in any other work.
- The copyright in a cinematograph film or a sound recording shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the sound recording is made.

- **Sound recording:** The definition states that "sound recording" means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced.
- The sound recording should not infringe copyright in any other work.
- The right of the sound recording is different from the subject matter recorded as they are subjects of independent copyright.

Economic rights – section 14

- Main rights
 - Right to reproduce
 - Right to distribute
 - Right to perform/communicate
 - Right to translate
 - Right to adapt
 - Right to make cinematographic movie

Moral Rights

- Section 57
- It is independent of the author's copyright
- Even after the assignment either wholly or partially of the said copyright, the author of the work shall have the moral rights.
- Right to claim authorship of the work
- To restrain or claim damages in respect of any distortion, mutilation, modification, or other act which is prejudicial to his honour and reputation.

- **Manu Bhandari v Kala Vikas pictures
AIR1987 Del 13**
- The rights are independent of author's copyright.
- Section 57 confers additional rights on the author of any work.
- The special protection of the intellectual property is emphasized by the fact that the remedies of restraint order or damages can be claimed “even after the assignment of the said copyright”
- Thus section 57 clearly overrides the terms of the contract of assignment of the copyright

- In other words the contract of assignment would be subject to the provisions of section 57 and the terms of contract cannot negate the special rights and remedies guaranteed by section 57
- The contract of assignment will have to be construed as to be consistent with section 57.
- The assignee of a copyright cannot claim any rights and immunities based on the contract which are inconsistent with the provisions of section 57.
- Moral rights are available to the authors and not to the owners.

Ownership and authorship (section 17)

- General rule is
 - The author is the first owner of the copyright.
- Exceptions
 - In case of **contract of service**, the employer is the owner of the copyright, and in case of **contract for service** the author is the owner.
 - Work created during the course of employment.

- **Contract of service or contract for service**
 - the control exerted by the employer over the employee (i.e., the employee's schedule and the hiring of the employee's assistants);
 - the control exerted by the employer over how and where the work is done;
 - the supplying of equipment for the employee's use; and
 - the payment of employment benefits.
 - The location of the work
 - The duration of the relationship between the parties
 - Whether the hiring party has the right to assign additional projects to the hired party.

- Examples: manuals written by technical writers employed by a software company; advertisements created by employees of an ad agency; a brief written by an associate at a law firm etc.

Term of protection

- In case of literary, dramatic, musical or artistic work— life of the author + 60 years.
- Anonymous or pseudonymous work: 60 years.
- In posthumous work: 60 years.
- In cinematographic films, sound recordings : 60 years

Infringement

- Section 51
- When any person without authorization does anything the exclusive right to do which is conferred upon the owner of the copyright
- Permits for profit any place to be used for communication of the work to the public where such communication amounts to infringement unless he was not aware or had no reasonable ground for believing that such communication would be infringement.

- When any person sells or lets for hire
- Distributes or exhibits either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright
- Import into India any
- infringing copies of the work.
- Reproduction of a literary, dramatic, musical or artistic work in the form of a cinematographic film shall be deemed to be an 'infringing copy'

- Copying can be of the following types
 - Literal copying
 - Non literal copying
 - Subconscious copying
- Direct evidence of copying is difficult to procure.
- Hence courts rely on the **substantial similarity** test.
- The substantial similarity includes 'qualitative similarity' and not just quantitative similarity.
- It is a two step process
 - Access to the original work
 - Substantial similarity

- RG ANAND V DELUX FILMS
- **One of the surest and the safest test to determine infringement is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original**

- Origin of the Subconscious Copying Doctrine: **Fred Fisher, Inc. v. Dillingham 298 F. 145 (S.D.N.Y. 1924)**
- In that case, the plaintiff owned the copyright in a composition entitled "**Dardanella**." The defendant, the well-known composer Jerome Kern, had composed a piece entitled "**Kalua**," which he used in one of his short operas.
- On the basis of evidence presented Court found the second work to be substantially similar to the first.
- The access test was deemed met on the grounds that "Dardanella" was a popular enough composition that the defendant, being in the music industry, would have known it.

- In determining that the defendant's unawareness of his copying had no bearing on the court's finding of infringement, Judge Hand articulated the principle which would become known as the subconscious copying doctrine:
- *"The author's copyright is an absolute right to prevent others from copying his original collocation of words or notes, and does not depend upon the infringer's good faith. Once it appears that another has in fact used the copyright as the source of his production, he has invaded the author's rights. It is no excuse that in so doing his memory has played him a trick."*

- Myspace vs Super Cassettes Inc.
- **1) Whether MySpace could be said to have knowledge of infringement so as to attract liability for secondary infringement under Section 51(a)(ii)?**
- No. According to the Court, in the case of internet intermediaries, section 51(a)(ii) contemplates actual knowledge and not general awareness.
- the Court held that to attract liability for secondary infringement, MySpace should have had actual knowledge and not mere awareness of the infringement. Appreciating the difference between virtual and physical worlds, the judgment stated “*the nature of internet media is such that the interpretation of knowledge cannot be the same as that is used for a physical premise.*”

- As per the court, the following facts only amounted to a general awareness, which was not sufficient to establish secondary liability:
- Existence of user agreement terms which prohibited users from unauthorised uploading of content;
- Operation of post-infringement mechanisms instituted by MySpace to identify and remove content;
- SCIL sharing a voluminous catalogue of 100,000 copyrighted songs with MySpace, expecting the latter to monitor and quell any infringement;
- Modifying videos to insert ads in them: SCIL contended that MySpace invited users to share and upload content which it would use to insert ads and make revenues – and this amounted to knowledge. The Court found that video modification for ad insertion only changed the format of the video and not the content; further, it was a pure automated process and there was no human intervention.

- The Court imposed a duty on SCIL to specify the works in which it owned copyright *and* being shared without authorisation on MySpace. It held that merely giving names of all content it owned without expressly pointing out the infringing works was contrary to the established principles of copyright law. Further, MySpace contended and the judge agreed, that in many instances the works were legally shared by distributors and performers – and often users created remixed works which only bore semblance to the title of the copyright work.
- ***In such cases it becomes even more important for a plaintiff such as MySpace to provide specific titles, because while an intermediary may remove the content fearing liability and damages, an authorized individual's license and right to fair use will suffer or stand negated.***

Fair use/ fair dealing

- Section 52 :
- Fair dealing for
- Private use including research
- Criticism or review
- Reporting current events

Apart from this there are many other specific grounds of fair dealing.

- **Hubbard v. Vosper** (1972) 2 Q.B. 84
- Court held
- It is impossible to define what is "fair dealing." It must be a question of degree. You must consider first the number and extent of the quotations and extracts. Are they altogether too many and too long to be fair? Then you must consider the use made of them.
- If they are used as a basis for comment, criticism or review, that may be fair dealing.
- If they are used to convey the same information as the author, for a rival purpose, that may be unfair.
- Next, you must consider the proportions. To take long extracts and attach short comments may be unfair. But, short extracts and long comments may be fair.

Remedies

- Administrative
- Civil
- criminal

Administrative remedies

- Section 53 – notice to the commissioner of customs that
- You are the owner of copyright (must give the proof)
- That the goods being imported into india be treated as infringing goods and to detain the goods.
- Commissioner is allowed to weigh the evidence and then act.

Civil remedies

- Section 55 provides for the following remedies
- Injunction
- Damages
- Accounts

Proviso – innocent infringement – only injunction available and a decree made for the profits

- The remedy for injunction can be joined either with that of damages or accounts but the remedies of accounts and damages can in no case be joined.
- Section 58 – all infringing copies are the property of the copyright owner.
- He can initiate proceedings for the recovery of possession thereof.

- **Anton pillar order** –
- This is a pre- judgment order which directs a defendant to permit representatives of the plaintiff access to defendant's premises without altering it.
- This is for the purpose of searching for evidence which is vital to the plaintiff's case where there is a danger that the evidence will be destroyed.

- Guidelines
- Where the plaintiff has an extremely strong prima facie case
- Where the actual or potential damage to the plaintiff is very serious
- Where it was clear that the defendant might destroy or dispose of such material so as to defeat the ends of justice
- Prevention of evidence destruction.

- Before passing Anton pillar order certain safe guards are to be followed like asking the plaintiff to give an undertaking for damages in case the plaintiff is wrong and the defendants suffer damage as a result of the execution of the order.
- Utmost good faith of the plaintiff is a pre condition.

- **Mareva injunction:** This is an injunction granted to restrain the defendants from disposing of their assets until the trial or judgment in the action .
- Such an order is passed where there is a danger of the defendants disposing of or transferring their assets out of the jurisdiction of the court making a money judgment obtained unenforceable.

Criminal remedies

- Both the criminal and civil remedies can be availed of simultaneously as they are distinct and independent.
- knowledge or mens rea is an essential ingredient of the offence
- Under the Copyright Act, infringement of copyright is punishable with imprisonment, which may extend from a minimum punishment of 6 months to maximum of 3 years and with a fine not less than fifty thousand rupees and extending up to two lakh rupees.

- For the second and subsequent conviction the minimum term of imprisonment is increased to one year and minimum fine is one lakh rupees
- Copyright Infringement is a cognizable offence.
- All infringing copies of books / plates which are used for the purpose of making such copies, can be ordered by the court to be delivered to the owner of the copyright in the mark

2012 Amendments – Protection of Technological Measures

- "65A. (1) 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, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.

- Exceptions
- Doing anything not prohibited in the act
- Encryption research
- National security
- Conducting lawful investigation
- Testing the security of a computer system or computer network

- 65B. Any person, who knowingly
 - (i) removes or alters any rights management information without authority.
 - (ii) distributes, imports for distribution, broadcasts or communicates to the public, without authority, copies of any work, or performance knowing that electronic rights management information has been removed or altered without authority, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine: