

# Copyright Infringement

## What is Copyright Infringement?

Copyright infringement refers to the *unauthorized use of someone's copyrighted work*. Thus, it is the use of someone's copyrighted work without permission thereby infringing certain rights of the copyright holder, such as the right to reproduce, distribute, display or perform the protected work.

Section 51 of the Copyright Act specifies when a copyright is infringed. According to Section 51 of the Act, Copyright is deemed to be infringed if:

- A person without obtaining the permission of the copyright holder does any act which only the copyright holder is authorised to do.
- A person permits the place to be used for communication, selling, distribution or exhibition of an infringing work unless he was not aware or has no reason to believe that such permission will result in the violation of copyright.
- A person imports infringing copies of a work
- A person without obtaining the authority from the copyright holder reproduces his work in any form.

## Copyright Infringement examples

- If a person uses someone's song as background music in his/her music video then he could be made liable for copyright infringement.
- If a person downloads movies or songs from an unauthorized source then it will amount to copyright infringement.
- A person is free to record a TV program to view it later, but if he transfers or distributes it to others then it becomes a copyright infringement.

## Copyright infringement elements

- The work was the original creation of the author
- The defendant actually copied the work of the author. It is important to note that not all factually copying is legally actionable. The substantial similarity between the works of the author and the defendant has to be established to prove that the defendant has infringed the author's copyright.

## Copyright Issues

There are a number of issues that can arise in Copyright. These are discussed below:

## • Plagiarism

Someone may copy the copyrighted material and pretend it to be his original work. People are allowed to quote the work or refer the work but the person who is using the copyrighted work has to give the credit to the copyright holder.

## • Ownership

The issue of ownership may arise when an employer works for an organisation. In such case who has the copyright over the work? If a person is an employer then it is the organisation which has the copyright over the material but if a person is a freelance writer then it is the person himself who is the sole owner of the copyrighted material.

## • Derivative Works

Derivative works use the already existing work of someone. It is a new version of already existing material. For example, translating a book into another language. A person requires a license for it but if he has not obtained the license for it then he can be made liable for copyright infringement.

# Types of Copyright Infringement

Copyright infringement can be broadly classified into two categories:

1. Primary Infringement
2. Secondary Infringement

## Primary Infringement

Primary infringement refers to the real act of copying the work of the copyright holder. For example, photocopying a book and then distributing it for commercial purposes.

However, sometimes a person may only copy a part of the work, for example, a paragraph of an article. In such a case, the copyright holder is required to establish two things:

## • Substantial Taking

A copyright is infringed only when an unauthorized person copies a *substantial part* of the work. For example, copying a catchy phrase of a lyricist.

While deciding the case, the court also tries to conceive, how an ordinary person will perceive the work. If an ordinary person will perceive that the work is copied from a different source then it will be considered infringement.

If the writing style, language and errors are similar to the copyrighted work then it will serve as evidence of copying in a court of law. The minor alterations made by the person in the work of a copyright holder will not affect the claim of infringement.

- **Casual Connection**

The copyright holder must prove that there is a similarity in the works of the copyright holder and the infringer. However, this may be because of several other reasons like both of them have used the same source for the research. In such a case, the copyright holder can not claim for infringement.

## Secondary Infringement

Secondary Infringement refers to the infringement of copyright work without actually copying it. This can happen in the following ways:

- **Providing a place for Copyright Infringement**

If a person provides the place or permits the place (for profit) to be used for communicating of the work the public and such work amounts to copyright infringement then such person can be made liable for the offence of copyright imprisonment. However, if the person is unaware or has no reason to believe that the place is used for copyright infringement then cannot be made liable for the same.

It is important to note that the person should let the place for "*profit*" to be made liable for copyright infringement. If an NGO lets the place then the NGO cannot be made liable for the same.

- **Selling Infringing Copies**

If a person sells the copies that infringe the right of the copyright holder then it will amount to copyright infringement.

- **Distributing Infringing Copies**

When a person distributes infringing copies of the copyright holder works then it will amount to copyright infringement. For example, if a person uploads a movie on the internet for free then it is an infringement of copyright.

- **Importing Infringing Copies**

Importing the infringed work of the copyright holder in India also amounts to infringement of Copyright. However, if the person has imported the infringed work for the domestic or personal use then it will not amount to Copyright Infringement.

# Ownership of Copyright

## Initial Ownership

The initial ownership belongs to the creator of the work itself. Thus, for example, if a person *A* has written a novel *P* then initially it is the *A* himself, who is eligible for the ownership, thus, no one else other than *A* can claim the ownership on the novel.

## The work made for Hire rule

If a person hires someone for the creation of the work then it is the hirer or the employer who is the owner of the copyrighted work and not the person who has originally created the work unless there is an agreement to the contrary.

## Joint Ownership and Authorship

If two or more authors have worked together to create a work then the authors will get joint ownership over the work.

## Assignment

Assignment refers to the transfer of copyright ownership. A person or a company to whom the rights are assigned is known as assignee. In this case, the Assignee become a owner.

## Rights of Copyright owners

Certain Rights are given to the copyright holder under the Copyright Act, 1957. These rights are discussed below:

### Right to Reproduction

The right to reproduction allows the copyright holder to make copies of his work in any form. The copyright holder can also bring legal action against the person if he reproduces his work i.e. download or copies his work in any format for commercial purposes.

### Right to distribute

The copyright holder has the right to distribute his work in a manner he deems fit. He is also entitled to transfer his rights or some rights. For example, he may allow someone to translate his work.

## Right to make derivative works

The copyright holder has the right to derivative works. Thus, if a person wants to make a movie based on a novel then he should take permission from the author of the novel to do so or it may result in copyright infringement.

## Right to publicly perform

The copyright holder has the right to perform his work publicly i.e. a writer of a novel may showcase his work by performing drama or concert.

## Right of Paternity

The right of paternity allows the copyright holder to claim authorship of the work. The author can claim due credit for his work, thus for example, if a movie is based on a novel but the maker of the movie does not acknowledge the author of the novel then the author can bring an action against the makers.

## Sui Generis Right

This right is available to the creators of the database and software. The right exists for a period of 15 years.

## Copyright Exceptions

### Quotation, Criticism and Review

If a person uses the quotes of the copyrighted work then it will not amount to infringement. Similarly, a person may cite examples of the published work to criticize it or review it.

### Criteria for using the exception

- The reason for using the material is genuinely for the purpose of Quotation, Criticism and Review. For example, one cannot discuss the whole film in an article and then comment that he/she liked the movie.
- The material which is used for review or criticism should already be available to the public. Thus, a person cannot use the material which is not made available to the public but is kept confidential.
- The use of the material should be fair. There is no legal definition of what is fair and what is not. The fair use of the material will depend on the facts and circumstances of the case.
- If a person has provided sufficient acknowledgement to the copyright holder then it would not amount to copyright.

# Parody and Pastiche

Parody means to *use the existing work of someone to create the humour or to use it for mockery*. Some people may use the copyrighted work to make a critique while others may use it to draw attention to a social phenomenon. Use of work for parody and pastiche is not considered as a copyright infringement.

## Test for Copyright Infringement

To test whether the work is copyrighted or not, the court follows the **three-factor test**. These three factors are:

1. Quantum of the work copied
2. Purpose of copying the work
3. The likelihood of competition between the two works.

## News Reporting

A news reporter may sometimes use the copyrighted material to report the current event. For example, a news reporter may use a part of the video clip to report a current event. In this case, he is exempted from copyright infringement. There are certain conditions under which a news reporter is exempted from copyright infringement, the conditions are discussed below:

- The news reporter has not used the copyrighted photograph. The copyrighted photograph cannot be used for news reporting.
- The purpose of using the material should be genuine i.e. for reporting purpose only.
- There should be a fair use of the material.
- The news reporter has to sufficiently acknowledge the author of the copyrighted work.

## Libraries

The libraries often lend readers the book for a certain period and make copies for its users. The librarians, in this case, cannot be made liable for copyright infringement.

## Education

Another exception to copyright infringement is the use of copyrighted material for educational purposes. Sometimes the copyrighted material is used by the teachers to illustrate a point or make the student understand the concept then it is not a copyright infringement. Similarly, if a student uses the thoughts of someone to explain an answer in examination then it is not a copyright infringement.

# Research and Private Studies

Researchers have to use various copyrighted sources for the research purpose. The researchers are allowed to use copyrighted material for research purposes, it does not amount to copyright infringement. Copyright allows making single copies or taking shorts extracts of the work for non-commercial purpose.

## Private Copying

Private copying refers to the copying of material from one device to another without infringing the right of the copyright holder. For example, one may copy a song from DVD to MP3 player for backup purpose.