

INTELLECTUAL PROPERTY LAW

TOPIC: Remedies against Infringement of Copyright

There are three types of remedies available against infringement of copyright:

- (1) Civil
- (2) Criminal, and
- (3) Administrative

All the three remedies are independent and can be pursued simultaneously or separately.

Civil remedies (Sec. 55):- The civil remedies for infringement of copyright are of two kinds: (a) preventive civil remedies, and (b) compensatory remedies.

(a) Preventive civil remedies:

Interlocutory Injunction

In order to secure immediate protection from a threatened infringement or from the continuance of an infringement, a plaintiff may apply for an interlocutory injunction pending the trial of the action or further orders. An application for such relief is made along with the plaint supported by affidavit evidence.

Permanent Injunction

If the plaintiff succeeds at the trial in establishing infringement of copyright, he will normally be entitled to a permanent injunction to restrain future infringements. This injunction will operate only during the unexpired term of the copyright.

Permanent injunction was also granted in **Himalaya Drug Co. V. Sumit**¹ to the plaintiff for the infringement of his copyright in the herbal database, as well as each herbal write up / description that comprised the herbal database. The court stated that the plaintiff has expended considerable time, labour, skill and money in preparing this database of ayurvedic herbs, and since the defendants have chosen not to appear or controvert any of these statements, the same stands established.

Anton Pillar Order

The procedure of law always provides equal opportunities to both the parties to present their case. However, in certain cases the court may, on an application by the plaintiff, pass an ex-parte order requiring the defendant to allow the plaintiff accompanied by attorney to enter his premises and make an inspection of relevant documents and articles and take copies thereof or remove them for safe custody. Such an order is called Anton Pillar Order.

¹ (2006) 32 PTC 112 (Del).

Such an order is, however, passed very cautiously by the court, only when the plaintiff in his application makes the fullest possible disclosure of all material facts within his knowledge and the court is convinced thereby.

(b) Compensatory Civil Remedies:

Damages

Microsoft Corporation v. Deepak Raval² the Delhi High Court stated that the courts in India were becoming sensitive to the growing menace of piracy, and have started granting punitive damages even in cases where due to absence of the exact figures of sales by the defendants under the infringing copyright, exact damages were not available.

Damages for Conversion / Delivery up

The Copyright Act provides that all infringing copies of any work in which copyright subsists and all plates used or intended to be used for production of such copies shall be deemed to be the property of the owner of the copyright. It then entitles him to take proceedings for the recovery of possession of the infringing copies and plates or in respect of the conversion thereof.³ In **Microsoft Corporation v. Yogesh Papat & Another**⁴ Delhi High Court held that the plaintiff was entitled to an order for the delivery up of the infringing copies of the software.

² (2007)

³ Copyright Act 1957, sec.58.

⁴ (2005) 30 PTC 245 (Del).

The remedies of claiming recovery of possession of infringing copies or damages for conversion thereof are not available in respect of the construction of a building or structure which infringes or which, if completed, would infringe the copyright in some other work.⁵

Account of Profits

A plaintiff is entitled to opt for damages or for an account of profits. He cannot obtain both an account of profits and damages. The basis on which an account is ordered is that there should not be any enrichment on the part of the defendant, and that the defendant should be deprived of any profit which he earned by wrongful acts committed in breach of the plaintiff's rights.⁶

Jurisdiction of the Court in Civil Matters

Sec. 62 Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

Criminal Remedies: The Infringement of copyright has been declared as an offence punishable with imprisonment from a minimum period of six months to a maximum of three years and with a fine of the order of Rs. 50,000 to Rs. 2 lakhs.⁷

⁵ Copyright Act 1957, sec 59.

⁶ EP Skone James, et al, Copinger and Skone James on Copyright, 1991, p.353.

⁷ Copyright Act 1957, sec.63.

The owner of copyright and also any other person can initiate criminal proceedings, by filing a complaint before the competent First Class Magistrate⁸ within whose jurisdiction, the plaintiff resides or the infringement takes place or deemed to have taken place. Only those who are affected by the infringement can initiate prosecution.

Administrative remedies:

Administrative remedies consist of moving the Registrar of Copyrights to ban the import of infringing copies into India when the infringement is by way of such importation and the delivery of the confiscated infringing copies to the owner of the copyright and seeking the delivery.⁹

Reference:

1. Prof. V. K. Ahuja, Law Relating to Intellectual Property Rights, 3rd Edition (2017) , Lexis Nexis
2. Dr. B. L. Wadehra, Law Relating to Intellectual Property Rights, 5th Edition, Universal Law Publishing Comp. New Delhi,

⁸ Copyright Act 1957, sec.70

⁹ Copyright Act 1957, sec.53.