LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

(ISSN: 2583-7753)

Volume 2 | Issue 2

2024

UNRAVELING THE INTRICACIES: A DEEP DIVE INTO THE NUANCES OF COPYRIGHT LAW AND THE FINE PRINT OF INTELLECTUAL PROPERTY RIGHTS

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I. ABSTRACT

For dozens of individuals across the country, the concept of intellectual property rights is still relatively new. Since it refers to the ownership of intangible assets, an individual or a business may not be aware of the rights it is entitled to, with respect to its assets. IP infringement has become a rampant phenomenon in today's digital era. A lack of awareness of the vulnerability of one's intellectual Property could have deleterious effects on their business. Through this article, the author presents a novel take on the fine print of IPR, with the primary focus on the law of copyright. Apart from delving into the perquisites of copyright, the author has also discussed the economic and moral rights associated with ownership, through a catena of landmark cases. Further, the author has also discussed the relationship of IPR with innovation, in light of the jurisprudence of the subject and its relevance in the modern day. The author, through this paper, attempts to make copyright owners aware of their rights and limitations, to help them keep possible future disputes at bay.

II. KEYWORDS:

Copyright, Right to Public Display, Moral Right, Idea-Expression Dichotomy, Fair Dealing

III. INTRODUCTION

Mind is the biggest asset that a person has in the present-day arena. The product of one's mind/intellect is a property that is known as Intellectual Property. Salmond has defined

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 (ISSN: 2583-7753)

rights as an interest that is duly recognized by law and respect which is a duty and disregard is a wrong. Property on the other hand is defined as anything that belongs to someone which may comprise moveable, immovable, tangible and intangible properties. Intellect comes from the Latin word 'Intellectus', which means perception or knowing and reasoning.[2] Intellectual Property can be given a wholesome definition of a work that is produced by the intellect of a person and Intellectual Property Rights are the legislation that protects the Intellectual Property of an individual. They are the exclusive rights given to the creators and act as an incentive for them.

This article, delving into the intricacies of the existing copyright laws of India, has been divided into three sections. In the first section, the author carries out a novel analysis of the perquisites of copyright protection that include the concepts of originality and the idea-expression dichotomy. In the second, the author studies the plethora of rights associated with a copyright holder, which include both economic and moral rights. In the final section, the author delves into the jurisprudential aspect of the relationship of IPR and innovation. Further, the author has also cited a catena of case laws in order to present his arguments more precisely.

IV. THE NEED FOR INTELLECTUAL PROPERTY RIGHTS

There are different reasons why there shall be Intellectual Property Legislation be in place such as Ethical or Moral Reasons. The IPRs also serve as an incentive by the government in turn for the discovery and innovation of the individual that in addition to creating profits for the creator act as the foundation of a glooming economy. In other words, the IPRs can be termed as the contract between the Creator and the Sovereign state which further protects the public interest. Whenever an invention takes place, it carries in itself a solution to the problems persisting in society at that given time. For instance, in the recent time of pandemic, the drugs that were manufactured by Pharmaceutical Companies or different laboratories served as a medium to defend human life against the

[2] Wilmon H. Sheldon, What Is Intellect? Part One, 2 PHILOSOPHY EAST AND WEST, 4–19 (1952).

deadly virus of Corona. In the context of trademark law, the very roots of subject appear to be hanging in the balance, with the advent of AI and personalized product recommendations.[3] Such recommendations made to consumers are, in the majority of the cases, based on the consumer's past viewing or purchase history and seldom based on the brand.

The copyright domain of IPR has also grown in relevance in light of the digital age. For instance, there have been a plethora of recent disputes over ownership rights in the music industry. One such case involved acclaimed singer Katy Perry tied up in a dispute over her song, 'Dark Horse'.[4] The Appellate Court, ruling in favor of the defendant, carried out a detailed analysis of the idea-expression dichotomy and the extrinsic-intrinsic similarity test in the context of music.[5] Aspects of copyright have also come into the limelight at the dawn of the age of Artificial Intelligence (AI). For instance, there has been a rising debate on the need to accord copyright protection to works produced by AI, independent of human interference, in order to incentivize programmers.[6]

V. THE JURISPRUDENCE OF THE LAW OF COPYRIGHT

Copyright, one of the more important organs of the intellectual property domain, has its epicenter fixated on 'creations of the mind'. It essentially refers to 'the right to copy', providing the owner of a work an exclusive right to reproduce the work. Literary or artistic works, musical recordings, and cinematographic films all come under the ambit of this domain. One of the very purposes for framing laws, providing exclusive rights to the creators of original works, was to encourage creativity, and thus ensure rewards.

[3] Dahiya Neelam, *The Intersection of AI and Trademarks*, MONDAQ (July 5, 2024, 10:29 PM), https://www.mondaq.com/india/trademark/1409950/the-intersection-of-ai-and-trademarks.
[4] Vedant Saxena, *The Katy Perry "Dark Horse" case: Deciphering copyright infringement in music via the Ninth Circuit's ruling*, THE IP LAW POST (June 27, 2024, 9:29 PM), https://iplawpost.wordpress.com/2022/08/12/the-katy-perry-dark-horse-case-deciphering-copyright-infringement-in-music-via-the-ninth-circuits-ruling/.
[5] *Id.*
[6] Vedant Saxena, *Decoding the limitations in according ownership rights to Artificial Intelligence (AI)*, IP AND LEGAL FINDINGS (July 1, 2024, 9:29 PM), https://www.ipandlegalfilings.com/decoding-the-limitations-in-according-authorship-rights-to-artificial-intelligence/.

Creativity is incumbent for society to thrive. All inventions that have contributed to making the world a better place to live in, such as the breastfeeding shirt, the maglev train, the C-pen, steel kidneys, e-commerce and artificial intelligence involved creativity. In the context of copyright law, protection accorded to books, films and sound recordings have proven vital in preventing fraudsters from thriving upon the creativity of authors. In New Line Cinema v Russ Berrie and Co.[7], the plaintiffs were successful in invoking the copyright they held in the character of Freddie Kruger and preventing the defendants from impinging upon the identity of the character.

Copyright law was, for the first time, recognized internationally under the Berne Convention of 1886. It provides various kinds of artists, such as painters, poets, musicians and authors ways in which they may protect their creations. It prescribes to the member countries certain minimum standards of protection. It also allows certain standards of protection specific to developing countries. Copyright laws are designed to bring forth two outcomes, the primary one being the impartation of knowledge throughout the globe, which is ensured by incorporating exceptions to copyright ownership in the copyright statute. The secondary one is rewarding creativity, thus providing the owner with a bundle of rights to ensure that he/she is not deprived of any benefits arising out of his/her work. This bundle of rights is enshrined under section 14 of the Indian Copyright Act, 1957[8].

VI. DECRYPTING THE ESSENTIALS TO GRANTING RECOGNITION TO A WORK

1. The Idea-expression dichotomy

The idea-expression dichotomy is a fundamental principle in copyright law that distinguishes between unprotectable ideas and protectable expressions of those ideas. 'Ideas' are not eligible for protection, but every 'expression' of the idea, eligible for

[7] New Line Cinema v Russ Berrie and Co., 161 F. Supp. 2d 293 (S.D.N.Y. 2001).
[8] The Indian Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

protection, does incorporate the idea, too. The idea-expression dichotomy is pertinent to ensure the prevalence of creativity by rendering unoriginal and broad ideas illegible for copyright protection. The idea-expression dichotomy may be a clever and effective mechanism under copyright, but it does have drawbacks, the most evident one being its 'essentially paradoxical state of existence'. The dichotomy may be understood in light of the case of International News Service v. Associated Press[9], which involved two news agencies engaged in supplying news to the public during World War 1. The seeds of the dispute were sown when one of the agencies was banned from engaging in fieldwork to collect news. Consequently, the agency began drawing information from its rival agency's bulletins. The Court went on to hold that since the defendant agency had merely copied from an idea, which was illegible for protection, it had not violated the provisions of copyright law.[10]

An incumbent element of this dichotomy, namely 'the merger doctrine', attempts to resolve the idea-expression paradox in certain instances. In the case of Herbert Rosenthal Jewelry Corp. v. Kalpakian[11], the parties were involved in independent businesses involving the manufacture and sale of jewellery. One of the products manufactured by the plaintiff was a pin shaped in the form of a bee, containing stones. At a later date, the plaintiff discovered that the defendants were engaged in selling a similar product. The Court, however, held that in its opinion, there did not exist any other reasonable way in which the particular idea could have been expressed and therefore, the expression had 'merged' into the idea.[12]

2. Spark of creativity: A US mould

Another hurdle that must essentially be gone through is a minimal spark of creativity. This feature is unique to the American copyright law, which came up in the case of *Feist*

[9] International News Service v. Associated Press, 248 U.S. 215 (1918).
[10] *Id.*
[11] Herbert Rosenthal Jewelry Corp. v. Kalpakian, 446 F. 2d 738 (9th Cir. 1971).
[12] *Id.*

v. Rural Telephone Service Co[13]. Other than being 'an original expression of idea/fact', the work must embody a minimum amount of creativity to obtain copyright protection. If the work is found to be too banal, it would be rejected, despite being original. Such issues are generally referred to in cases concerning database rights. The contents of a database, such as names of persons or organisations, telephone numbers or addresses are themselves not eligible for copyright protection, owing to their being merely facts. However, the way those facts are expressed could certainly obtain copyright protection if the expression embodies a minimal amount of creativity. For instance, a person comes up with an idea to design a database containing information on the people working in a particular organisation, wherein the names of the people are not arranged merely by alphabetical order, but by their dates of birth. It is important to note that the minimal threshold of creativity is very small. As long as the work is an original expression, a slight degree of inventiveness complimenting it will be enough.

In India, the 'minimal spark of creativity' essential was, for the first time, incorporated by courts in Eastern Book Company v. D.B. Modak[14]. The plaintiff involved in this case was the Supreme Court Case Reporter (SCC) and the dispute was centred around the presentation of judgements edited by SCC, which included aspects such short notes consisting lead words, head notes, cross references, etc.[15] The Court, giving effect to the aforementioned doctrine, held that to recognize copyright in a work, aspects of novelty and non-obviousness are not taken into account.[16] It is rather a certain minimum degree of creativity required for a work to enjoy copyright protection. In light of the same, the Court accorded protection SCC with respect to its inputs made, since such inputs, according to the Court, required precise judgement, skill and legal knowledge.[17]

3. The 'Human element' feature

[13] Feist Publications, Inc., v. Rural Telephone Service Co., 499 U.S. 340
[14] Eastern Book Company v. D.B. Modak, AIR 2008 SC 809.
[15] *Id.*
[16] *Id.*
[17] *Id*.

The essentiality of a human author stems from one of the primary goals of Intellectual Property Rights, i.e., to reward the author and thereby incentivize others to produce original works. The case of Naruto v. Slater[18] was centred around an interesting incident that involved a photograph being clicked by a monkey. However, the photograph was declined copyright protection, since the author was a non-human entity. There has been a recent emerging debate, in the wake of works being produced by Artificial Intelligence (AI), on the viability of granting copyright protection to works produced without human interference. While some argue that such protection is necessary to incentivize the programmer of the AI software, others elaborate upon the irrationality of granting such protection to AI, in light of the incentive theory.[19] The United Kingdom, by enacting the Copyright, Designs and Patents Act, 1988[20], was the first state to grant copyright protection to works produced independently by AI. However, granting such recognition may have far reaching consequences. Firstly, with AI being restricted to the data fed into it, works produced independently by it appear more of a skillful jumblement of human input rather than a production of intellectual labour. Thus, the economic value that AI-generated works hold is questionable, which is integral to the debate on the grant of copyright to such works. Secondly, it does not appear reasonable to grant copyright protection to AI-generated works, in light of the primary purpose of copyright law, i.e., to create incentives for people to produce literary and artistic creations. AI, being a non-human entity, would remain unaffected by the grant of copyright. Another factor leaning against the grant of copyright protection to such works is the aspect of originality. While a work truly imbued with creativity would require a sufficient amount of time and intellectual labour, AI artwork is produced within the blink of an eye. Moreover, with AI not being bound by the restrictive ambit of human beings, it can produce an indefinite number of works, resulting in a potential string of infringement squabbles.

[18] Naruto v. Slater, 888 F. 3d 418
[19] Gary Myers, *The Future is Now: Copyright Protection for Works Created by Artificial Intelligence*, 102 TEXAS LAW REVIEW (2024).
[20] Copyright, Designs and Patents Act, 1988, No. 48, Acts of Parliament, 1988 (United Kingdom).

VII. ASSESSING THE ECONOMIC RIGHTS OF THE COPYRIGHT HOLDER

Money plays a vital role in society; any job or invention might be performed for the greater good of society or as a duty but in the end, one has an eye on the monetary gains as well that is fair on their behalf. No one else shall benefit from the intellectual creations of any person besides ownership rights talked about in the article now, we now move to a very essential component which is monetary rights. IPRs give exclusive rights of usage and regeneration to the holder and prevent any unauthorized usage or copying of the same. This right prevents any unauthorized reproduction or manipulation of the creation of an individual's mind.

1. The Public Performance Right

The right to public performance[21], as evident by its name, is the right of the owner of copyright to make a work available to the public. Violations of this right may include unauthorized acts of playing a movie or a sound recording or presenting a drawing or a photograph in an area reasonably accessible to the public. The term 'public', therefore, may not necessarily refer to a place of public gathering, but may also include a place to which the public has a reasonable access to. It is important to note that a gathering of family members or close acquaintances would not be included within this ambit.

2. Contemplating the relevance of American Broadcasting Co. v. Aereo, Inc. in the modern day

American Broadcasting Cos., Inc. v. Aereo, Inc.[22] has come to be known as a controversial and well-known case in this regard. Aereo, Inc. was a startup company, which was first launched in New York back in April 2012. What made it unique was that it picked up over-the-air signals, and instead of distributing them to cable television, allowed users to stream them on the internet. Aereo switched the mode of displaying content, from cable

[21] Indian Copyright Act, 1957, § 14(a)(iii), No. 14, Acts of Parliament, 1957 (India).
[22] American Broadcasting Cos., Inc. v. Aereo, Inc, 573 U.S. 431.

television to an on-demand video service. Thus, users now had control over their favourite movies and TV shows and could stream them at their leisure. A second major component that set Aereo apart from regular cable television broadcasting was that instead of having merely a single antenna for transmitting signals to broadcasters, it assigned every user his/her unique antenna every time the user logged in.

It didn't take long for various broadcasters to accuse Aereo of streaming their protected content without their authorisation, thus violating the public performance right. But Aereo seemed to have designed this very technology with a clear-cut intent on tackling the public performance right. It argued that it wasn't violating any of the broadcasters' rights, every individual was assigned his/her antenna every time he/she logged in, thus having the user exercise complete control over what to watch, when to watch, and how to watch.[23] Therefore, this cannot be termed as a public performance, as the user is himself choosing to watch the content, and at his leisure.

The matter went right up to the US Supreme Court. The court gave its judgment in favour of the plaintiffs.[24] It declared that while jotting down the public performance right, the Congress intended to capture such very acts.[25] It did not seem to focus on whether the user had control or not. It thus found Aereo guilty of publicly performing content of various broadcasters without their authorisation. It rejected Aereo's plea of not effectively performing the content publicly, by stating that there didn't appear to be much of a contrast between 'the click of a button' enabling cable TV streaming, and 'the click of a website' as in Aereo's case.[26] As long as it transmits protected content for the user to stream, irrespective of control, it is indeed violating the public performance right.

The Aereo case has become more relevant today, at the dawn of a number of streaming platforms such as Netflix and Amazon Prime. Such platforms provide features such as rewinding, fast forwarding and pausing that allow the viewer to effectively 'control' a

[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*

movie or show. However, the Aereo case set a precedent in the regard that an unauthorized transmission, whether via Live TV or via an OTT platform, is an act of violation of the copyright holder's right to public performance.

3. The right to reproduction

The right to reproduction[27], the foremost of the bundle of rights associated with ownership, involves the right to reproduce copies of the concerned work in any form. The owner is, therefore, at liberty to restrict anyone from producing unauthorized copies of his work. While it is easy to detect an instance of a verbatim reproduction, the problem arises in the event of an indirect copy. In the latter, the 'substantial similarity test' is used by courts to detect the extent of the similarity. This test was utilized by the Indian Supreme Court in the landmark case of RG Anand v. Deluxe Films[28]. The plaintiff in this case was the author of a play entitled 'Hum Hindustani'. In a subsequent instance, the defendants produced a movie entitled 'New India', which, according to the plaintiffs, violated the copyright that the plaintiff enjoyed in his play.[29] The Court, however, incorporating the substantial similarity test, reached the conclusion the defendants had not infringed the copyright of the plaintiff, since the majority of the similar aspects were mere unprotectable ideas.[30]

4. The right to distribution

The right to distribution[31] may be considered an extension of the right to reproduction, with the former granting the owner the exclusive right to commercially exploit his work. It is important to note that at the time the Copyright Law was framed, the Internet was neither around nor could reasonably have been in anticipation by the common masses. However, it cannot be concluded that the intention of the draftsmen was to limit this right to physical copies only. Therefore, in the age of the Internet where it digital copies are

[27] Indian Copyright Act, 1957, § 14(a)(i), No. 14, Acts of Parliament, 1957 (India)
[28] RG Anand v. Deluxe Films, AIR 1978 SC 1613.
[29] *Id.*
[30] *Id.*
[31] Indian Copyright Act, 1957, § 14(a)(ii), No. 14, Acts of Parliament, 1957 (India)

uploaded and sold across the Internet abound, courts have extended this right to cyberspace.

5. The right to adaptation

This right to adaptation[32], in a nutshell, refers to the right to of the owner to adapt his creation into other forms. The most obvious examples may include making an abridged version of a novel, making a movie based on a novel and painting an image of a character centric to a story. Adaption may be considered an advanced instance of indirect copying, which, if done deceptively, may go unnoticed. However, despite the owner's monopoly over the concerned expression, a person may be able to secure an independent copyright with respect to an adaptation. Firstly, he is open to seek authorization from the owner of the original work, to adapt his work. This is the case with the majority of the movie adaptations of novels. For instance, William Peter Blatty's 'The Exorcist'[33], a bestseller of the early 1970s, was adapted into a movie by William Fredrick that became an instant classic. Secondly, a person is free to produce a legal adaptation, provided that he satisfies the essential criteria of a copyrightable work, with the foremost being the originality factor.

VIII. DROIT MORAL: A LAYER OF 'MORAL PROTECTION' FOR THE AUTHOR

Copyright law is primarily recognized as a domain of rules and regulations, encompassing a bundle of rights primarily intended to reward creators of original works. A lesser-known fact about this domain is that apart from guaranteeing economic prosperity, it also ensures that the dignity of the creator is maintained for that work. An original expression, whether it be a poem, a novel, an artistic creation, a sound recording, or a movie, does significantly reflect its creator's personality. Any form of damage, distortion, mutilation or modification of the work could significantly jeopardise the

[32] Indian Copyright Act, 1957, § 14(a)(vi), No. 14, Acts of Parliament, 1957 (India)
[33] WILLIAM PETER BLATTY, THE EXORCIST (Harper & Row 1971).

creator's dignity and honour. Such rights, ensuring people uphold the creator's image in the eyes of the public, are termed as 'moral rights'.

An important aspect of moral rights is that they are essentially attributed to the creator/author of that work. Even in cases of work for hire, where the creator may not possess ownership of the economic rights, he has a locus standi for the enforcement of his/her moral rights. *Amar Nath Sehgal v. Union of India*[34] is a case law associated with this very principle. The Indian Copyright law mainly recognises two moral rights, namely the right to integrity, and the right to paternity[35].

One of the stark contrasts between Indian Copyright law and US Copyright law is with respect to moral rights: while Indian law provides relief against instances of both mutilation and a lack of credit, the the concept of moral rights is seldom recognized in the US. In the case of Fahmy v. Jay Z[36], a US District Court reaffirmed this stand. The only kind of work that contains an ambit of moral right protection is a work of visual art[37].

1. The Integrity right

The right to integrity prevents any form of distortion or mutilation of the work. An incumbent factor to have this right attracted is that the damage, distortion, mutilation or modification must either be intentional or grossly negligent. *Mannu Bhandari vs. Kala Vikas Pictures Ltd.*[38] is a landmark Indian case concerning the right to integrity. The plaintiff in the concerned case was the author of a Hindi novel, titled 'Aap ka Bunty'. The defendant intended to produce a motion picture out of the writing and reached out to the plaintiff. Although an agreement was made, the plaintiff was not satisfied with the elements of the movie. The very ending of the movie involved one of the main characters dying of starvation, whereas the book had the character being taken to a hospital by the father. Being a famous author, the plaintiff argued that the release of the movie could

[34] Amar Nath Sehgal v. Union of India, 2005 (30) PTC 253 (Del).
[35] Indian Copyright Act, 1957, § 57, No. 14, Acts of Parliament, 1957 (India).
[36] Fahmy v Jay Z, 835 F. Supp. 2d 783.
[37] Visual Artists Rights Act (VARA), 1990, § 106A, 17 U.S. Code.
[38] Mannu Bhandari v. Kala Vikas Motion Pictures, AIR 1987 Delhi 13.

turn out to be detrimental to his honour and dignity, and thus sought permanent injunction against the release of the movie.[39] Through this very case, the Indian courts recognised that the rights of authors exist beyond the realm of economic gains, and the author can seek a permanent injunction or claim damages in the event of any modifications to his work that could tarnish his image.[40]

2. The paternity right

This right is all about an author of a particular work having himself/herself recognised as the author of that work, in the eyes of the public. If the author desires, his/her name has to be published on every reproduction of the work, or attributed to any form of its publicity. Along with the right to recognition, the author of a work also has the right to prevent any person from associating his name with a work he/she didn't author. In the event of either, the author's reputation could well be compromised.

IX. THE RIGHT TO 'FAIR DEALING'

With a bundle of rights granted to owners of copyright, reaching a logical conclusion concerning the true intentions of the framers of these laws doesn't seem far-fetched. Creators of original works are known to incorporate a fair part of their personality into their creations, and thus it could be argued that rewarding copyright owners for their hard work and creativity was the intended purpose. However, the distribution of knowledge precedes the exploitation right. The fair dealing doctrine acts as a check on the rights of the copyright owner, ensuring that creativity and knowledge continue thriving among the common folk. This may involve scientific research, using copyrighted material for educational purposes, news reporting or critiquing a work. Therefore, through the concept of fair dealing, an individual can use up any of the rights enjoyed by the copyright owner, without his authorisation.[41]

[39] *Id.*
[40] *Id.*
[41] Indian Copyright Act, 1957, § 52, No. 14, Acts of Parliament, 1957 (India).

However, it is important to note that despite the aforementioned activities, Section 52 of the Indian Copyright Act[42] may not be attracted. Courts usually invoke 4 factors in order to determine whether or nor an activity falls within the ambit of fair dealing[43]:

- Whether or not, the work was used for commercial purposes
- Had the work drawn content from a published work, or from an unpublished one?
- The degree of the content drawn from the original work
- Had the subsequent work affected the commercial value of the original work?

1. Judicial interpretation on fair dealing

In the case of S.K. Dutt v. Law Book Co and Ors.[44], the Court, elaborating upon the doctrine of fair dealing, explained that a work falling within the ambit of the doctrine would be a legitimate reproduction, which would otherwise have been a violation of the copyright in the original work.

In the case of Harper & Row Publishers v. Nation Enterprises[45], the Court held that the doctrine of fair dealing finds its basis in the principle of equity. Further, reiterating what was held by the Court in the S.K. Dutt case, the Court held a work produced under the principles of the fair dealing doctrine would be a legitimate reproduction despite the work otherwise breaching the copyright of the former.

In Blackwood & Sons Ltd. & Ors. v. A.N. Parasuraman & Ors.[46], the interpretation given to the fair dealing doctrine by the Court was fairly restrictive. As per the Court, in order to constitute an act of infringement, there must have been an intention to compete with the original work and thereby to profit upon its goodwill. Thus, as per the Court, the primary factor distinguishing an act of breach of copyright with an act of fair dealing, is intention. Thus, if it is a likely scenario that the sales of the original work would be

[42] *Id.*
[43] Folsom v. Marsh, 9 F. Cas. 342 (C.C.D. Mass. 1841).
[44] S.K. Dutt v. Law Book Co and Ors., AIR 1954 All 570.
[45] Harper & Row Publishers v. Nation Enterprises, 471 US 539.
[46] Blackwood & Sons Ltd. & Ors. v. A.N. Parasuraman & Ors., AIR 1959 Mad 410.

affected, or substantial portions have been drawn from the original work so as to make the guilty intention of the author patent, it would constitute an act of copyright violation.

X. DOES IPR INHIBIT INNOVATION?

The human mind thinks in a way of its own. We acquire thoughts by getting inspired by something that we see observe or feel. Intellectual Property as the name suggests is the product of an individual's intellect. It serves as a founding stone in the steps of innovation in any domain and is granted as an incentive to the individual who has applied intellect. In the course of this reading, we shall analyze the negative impacts that Intellectual Property Rights pose before innovative minds. Analogically it can be understood by the example, that if the inventions are considered a race then they are not a sprint but a relay and the baton has to be passed on to successive runners, innovative minds in this case.

Any idea is based on some static observation or knowledge; no individual can think about something from scratch very frequently. It happens, once in a lifetime, that an entirely new idea comes and it develops into a useful resource for society. The very idea behind the inception of protective rights for Intellectual Property is to stop copying and hence any new advancement or further innovation in a direction calls for a chance of litigation which further makes the process cumbersome and invites unforeseen expenses.

1. Potential Hindrances

As mentioned in the above paragraph, an innovation is rather a relay race and not a sprint. Let us understand this with the help of an illustration. The first car that was built by Henry Ford had four wheels, had he claimed that anything having four wheels from now on would be his intellectual property then we might not be seeing the supercars and the variety of car companies that we are seeing. IPRs create a monopoly of the product for the individual who created it. Everyone's work shall be duly acknowledged and remembered but exercising the restraining rights regarding Intellectual Property may hinder development and innovation in the same arena. Patents do not provide patent protection to pharmaceutical drugs as it is for the greater good of society. In the same

manner, it cannot be said which product insights any individual to develop a new product that may be more beneficial than the existing one.

It is necessary to give the individual the due credit for their intellectual labour, promoting further innovation shall be on pari passu. Sequential or follow-on innovation is more productive than original or entirely new innovation as for a product already existing in the market, its flaws would be known and hence it can be improved tackled in follow-on products or the innovators can modify the product to suit more needs of the time. Many Intellectual Properties are not used but their IPRs are reserved by the owners, that is a wasteful practice as it inhibits the complete usage of the property and stops further efficient development.

2. IPR and Innovation: Decoding the merits

Despite the hindrances, the fact that IPR, by incentivizing the masses to engage in designing innovative and creative products and articles, continue to promote innovation in large numbers. While there have certainly been cases where the author of a product, after securing a monopoly with respect to it, has failed to work it properly or reasonably within the territory of India, this lacuna has essentially been eliminated by Section 84 of the Patents Act, 1970[47], which deals with the aspect of compulsory licensing. Under this section, a person is entitled to apply for a compulsory license after the expiry of a certain duration, in certain instances that involve the product not being made available at a reasonable price, not being worked in the territory of India or the reasonable requirements of the public not being met with respect to the public. Thus, it appears that Section 84 has covered the majority of the potential instances of patent abuse. In the context copyright law, the aspect of 'public domain' is essential in striking a balance between the rights of the owner and those of the public. Under Section 22 of the Indian Copyright Act[48], the duration of copyright is the lifetime of the author and an additional 60 years. Upon expiry of copyright, the concerned work falls within the public domain

[47] Indian Patents Act, 1970, § 84, No. 39, Acts of Parliament, 1970 (India).
[48] Indian Copyright Act, 1957, § 22, No. 14, Acts of Parliament, 1957 (India).

and is therefore, open to be used by the public. For instance, the fictional character 'Winnie-the-Pooh' recently fell into the public domain and soon thereafter, a horror film based on the character was made. Another recent instance in this regard is the 'Enola Holmes' lawsuit, which involved the famous character of Sherlock Holmes.[49] In this case, the proponents of the Conan Doyle estate contended that the show infringed the copyright the estate held in the character of Sherlock Holmes. The makers of the show, on the other hand, contended that with the majority of the character in the public domain, the estate could not claim a copyright in the residue, since it was too generic. The case was eventually dismissed. Thus, it may be concluded that the laws on IP have essentially struck a balance between the rights of the owner with those of the public, in order to prevent potential abuses of the monopolistic right granted by IPR and continue promoting innovation.

XI. CONCLUSION AND SUGGESTIONS

The ever-evolving society impedes the conclusion on the philosophy behind the protection of Intellectual Property Rights, at the beginning of the century we might not have thought of technological advancements like AI, Self-driven cars, Social Media and millions of other things. The arena of Intellectual Property Rights is ever-evolving and thus invites evolution now and then. Yet, to give is gist of this article, IPRs are essential to protect the creations that are a product of one's mind and act as an incentive at the same time for the creator to keep applying their intellect for solving the issues of the time. In addition to all this, IPRs also provide economic benefits to the creators as their invention or creation might invite fame from across all kinds of boundaries and bring monetary benefits along. However, in light of rapid technological advancements, it is essential that certain modifications be carried out in the laws of IP. For instance, as discussed above, a large amount of work today is being carried out by AI software,

[49] Alison Flood, *Lawsuit over 'warmer' Sherlock depicted in Enola Holmes dismissed*, THE GUARDIAN (July 3, 1970, 10:29 PM), https://www.theguardian.com/books/2020/dec/22/lawsuit-copyright-warmer-sherlock-holmes-dismissed-enola-holmes.

without human interference.[50] While the economic value, along with other considerations are is certainly a blot upon the debate on according ownership rights to AI, it certainly isn't hard to comprehend that within a few years, such works will grow, both quantitatively and qualitatively. In such an event, not granting copyright protection to AI-generated works would mean a lack of incentive to the programmers of the AI software, and thereby a breach upon the primary purpose of IPR. Similarly, as explained above, the advent of personalized product recommendations has threatened the very foundation of trademark law and therefore, modifications in the law are required to help AI and trademark law co-exist in the same environment.[51] In conclusion, with technological advancement pacing at the rate of knots, IPR are bound to play a decisive role in protecting rights. However, it is imperative the IPR legislation be undergone suitable amendments, as discussed in this article, in order to truly transform the world into a better place.

XII. REFERENCES

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