

# Copyright Infringement: Effectiveness of Injunction as a Remedy

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## **Abstract**

*Copyright law prevents an individual from making any alterations, modifications or interference from the work of copyright owner. A copyright is exclusive right granted owner for his intellectual skills, labour and pain put on a certain work. Civil remedies are available to owner of copyright for protection against its infringement. Injunctions are an effective remedy for copyright infringement. It mandates an individual to commit or omit from doing a peculiar act. The courts have discretion for granting injunctions however, their discretion is guided by three pillar tests i.e. the court must satisfy that plaintiff has prima facie case, balance of convenience and irreparable loss would be caused if the plaintiff is denied the grant of injunction. Injunction as a remedy protects creativity of an individual and encourages an individual for investing creativity and intellectual ability for producing various expressions.*

**Keywords:** *copyright, intellectual skills, injunction, creativity, infringement*

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## **INTRODUCTION**

It is said that knowledge is power. Earlier, the knowledge was treated as property of the community however; the concept of knowledge, its dissemination and creation has changed with time. The primary objective behind knowledge creation was the welfare of society and enrichment of the society by sharing the knowledge. The paradigm shift has restricted the knowledge as property with individuals thereby excluding the others utilizing it, the resulting property due to investment of intellectual capital of an individual is termed as intellectual property. It is present in different forms like patents, trademarks, Geographical Indications, copyright, and design. This paper deals with the concept of copyright and injunctions as effective remedies against its infringement.

The copyright concept could be traced back to period of John Locke where he stated that every individual has the natural right of property to reap the fruits of its labour. Copyright in an exclusive right that is provided to its owner for his intellectual skill, labour and hard work. The statute of Anne

passed in 1710 provided for the protection against copyright infringement. During the regime of East India Company in 1847 the first copyright law came to India. Subsequently, several amendments was made in copyright law and adopted in 1914. Presently, The Copyright Act, 1957 governs the protection provided to copyright holders in India having undergone various amendments the recent being, amendment in 2012.

The Copyright protects the ‘expressions’ and not the ‘ideas’. The idea behind granting copyright is that skill, intellect, labour applied by individual should be given due recognition and it shall be protected from any interference or alterations or modifications in the work of owner. In order to protect copyright infringement copyright law provides civil remedies, criminal remedies and administrative remedies. The paper deals with civil remedies more particularly, injunctions, as effective remedy for protection against infringement of copyright in a peculiar product. Order XXXIX of Code of Civil Procedure, 1908 and section 55 of Copyright Act, 1957 deals with injunctions. It provides

for Interlocutory injunction, permanent injunction, Mareva injunction and Anton pillar order as effective preventive civil remedies. The paper addressed following two questions:

- 1 What are the prerequisites for granting an injunction peculiarly interlocutory injunction?
- 2 How many types of injunction could be issued under Copyright Law, 1957?
- 3 Whether injunctions are the effective remedies against copyright infringement?

### **HISTORICAL BACKGROUND**

Concept of copyright came into existence with passage of Statute of Anne which came into effect on 10<sup>th</sup> April 1710. The statute conferred statutory rights to author providing them sole rights to print their work for a restricted period of twenty-one years. Anne statute conferred this right to authors whose work was published before the passage of the Statute. However, works published subsequent to the enactment of statute were provided protection of fourteen years [1]. India witnessed the development in the span of 150 years [2].

India enacted its first copyright law in on 18<sup>th</sup> December 1847 in the regime of the East India Company. This Act was processed by the Governor General of India affirming the applicability of English Copyright laws in India [3]. The Act was limited to providing protection to books only thereby excluding the other type of creative expressions. The government has the authority to give licence for publication of work of owner after his death without his consent, in order to provide the book to public.

The registration of the work has to be done for claiming the copyright in a book. The Copyright Act, 1911 while repealing the previous copyright Act was adopted by several British Colonies including India. The provisions of the Act, 1911 provided that legislatures of respective nations could modify alter or alter the provisions of Act while enacting in their dominions. Accordingly, the Indian Government enacted the new legislation titled Indian Copyright Act, 1914. The Act continued to remain in force till it was replaced by The Indian Copyright Act, 1957 [4]. Presently copyright protection is

guaranteed by Copyright Act, 1957 but has been altered several times in the year 1983, 1984, 1992, 1999 most recently being 2012.

### **INTERNATIONAL CONVENTIONS ON COPYRIGHT LAW**

Copyright protection has territorial nature. Earlier, copyright protection under law was provided only to a nation where the law applies. Nations had to enter into bilateral agreement for claiming copyright protection in country other than the country of origin of work.

#### **Berne Convention, 1886**

During mid- nineteenth century several bilateral agreements took place between European Union nations, however they were neither comprehensive nor consistent. For maintaining a uniform system of protection to literary and artistic works of authors, the first international agreement was adopted on September 9<sup>th</sup>, 1886 in Berne, Switzerland, commonly known as 'The Berne Convention'. It is regulated by World Intellectual Property Organization (for brevity "WIPO"). The member nations ensure protection to copyright work of an author in their respective countries in accordance with the standards provided by the Berne Convention [5] which was revised at Paris in 1971.

#### **Rome Convention, 1961**

The Rome Convention was inclined towards protection of producers of phonogram, performers and broadcasting organizations. These rights were provided due to technological advancement. The development of phonogram industry has led to protection of performer's right including the performers of phonogram.

#### **Geneva Convention, 1971**

It accompanied with itself the protection of producers and phonograms restricting the unauthorized duplication and the protection was provided for 20 years.

#### **The Treaty on Intellectual Property in Respect of Integrated Circuits, 1989**

It ensured protection to layout designs and integrated circuits. It recognizes integrated circuits as products and provides protection to them.

### **The TRIPS Agreement, 1994**

TRIPS agreement was concluded in 1994 under World Trade Organization (WTO) that provide protection to related rights of producers of phonograms, performers and broadcasting organizations. They have the right of reproduction of a work also; they are entitled to prohibit any individual from using their work without prior consent. The duration of protection provided by TRIPS extend to fifty years for performers and producers of phonograms, while twenty (20) years protection is provided for broadcasting organizations.

### **The WIPO Performances and Phonograms Treaty, 1996**

This treaty provides protection of rights for the period of 50 years and also contains several provisions for internet related copyright.

## **BRIEF INTRODUCTION ABOUT COPYRIGHT**

Copyright is unique kind of intellectual property. The right which a person procures in a work resulting out of his intellectual labour is his copyright. The significant objective of the copyright is securing fruits of an individual's work, skill, labour or test from the interference by another person [6].

Section 14 of the Indian Copyright Act 1947 defines the term "copyright" as the exclusive right to do or alternatively, authorize any other individual to do certain acts in relation to following:

- a. Dramatic, Literary or musical work.
- b. Computer programme.
- c. Artistic work
- d. Cinematograph films
- e. Sound recording.

### **Rights Provided to Owner of the Work**

The abovementioned things also form the subject matter of copyright [7]. The author has right to distribution, reproduction and communication to public. However, with regards to film, computer programs and sound recordings rental rights had also been conferred to owner of work. Author could also convert its work into another form, for instance, a book story could be converted into

film, this is called right of adaptation as provided under Section 14 of Indian Copyrights act [8]. Copyright Act also provides moral rights to an author [9]. It could not be assigned by author to any other individual being inalienable right. Moral rights are divided into two (a) Right of paternity (*droit a la paternite*), that implies right of author to be recognized as author of certain work or to prohibit others from claiming the authorship over a work that is not produced by them and; (b) Right of Integrity, (*droit au respect de L'oeuvre*) for restricting others from creating deformity in the work of an author. These rights are mostly linked with the reputation of an author, whether a work is derogatory to the repute of author is subject to dispute to be settled by court of law [10].

### **Basics of Copyright Law**

The jurisprudence behind granting of copyright prescribes that, (a) every individual has natural right over the outcome of his labour and he shall be allowed to reap the fruits of his investments over a specified work thereby abating the tampering or unauthorized alterations to chastity of work; (b) copyright provides significant protection to creativity of an individual that leads to development of human personality. Production of a work requires skill, time, labour and novel indulgence; hence such investment shall not suffer from exploitation of fruits of a work produced by author [11].

The fundamental concept of copyright is that, it is applicable only to "expressions" and not the "ideas". An idea, historical facts, theme, principle or subject matters or legendry facts being a common property, they could not give copyright of a particular individual [12]. Paul Goldstein puts the rationale behind providing copyright to expression and not ideas in following words:

*"Copyright law rejects protection to ideas because good ideas are few and are rarely original. They act as founding block of all musical, literary, dramatic expressions. The artists, musicians, composers, authors must be free to choose and idea from the pool of ideas from which the expression inescapably*

*springs. Furthermore, production of idea takes several resources and hence few economic incentives are desired for fully realized works*” [13].

“Originality” is the *sine qua non*, for granting copyright in a work [14]. The work should not be copied from any source [15]. The skill, labour and pain taken by the owner author to produce a certain expression in concrete form must be duly recognized. The section (13) of Copyright Act, 1957 envisages that the work must be original for claiming a copyright protection. The concept of originality differs from legislations. France and Germany, civil law jurisdictions, prefer higher degree of originality compared to common like countries like India and U. K. where the threshold level of granting protection is flexible.

The special feature of copyright that makes it different from other Intellectual properties is its exclusion from any formalities. While other IPRs are taken by the process of law, copyright is inherently present in creation of original work [16]. The moment author converts idea in the form of concrete expression; he gets a copyright without any registration or application for copyright. Copyright encourages the creation of new works [17].

#### **Expiry Period Under Copyright Act, 1957**

Copyright should not be confused as right in perpetuity but restricted for a specific time period. The protection period varies from country to country. The standard set up by the Berne Convention for the protection of literary and artistic work as provided under Article 7 is minimum, fifty years from the death of author [18]. However, India provides protection of additional sixty years after the death of author for artistic, dramatic, literary and musical works [19]. After the expiry period the work falls within the “public domain.” It implies that an individual can utilize the work of its owner without its prior authorization or compulsory payment to such owner. The copyright is provided to author for reaping the fruits of his labour, skill and hard work put over a certain work apart from protecting others from its infringement. The Copyright

Act, 1957 provides certain remedies for tampering, alteration or causing infringement of copyrighted work.

### **INJUNCTION AS REMEDY UNDER COPYRIGHT LAW**

Existence of right without remedies for its infringement renders the right futile. The Copyright Act, 1957 provides below mentioned remedies in case of copyright infringement.

- I. Civil Remedies
- II. Criminal Remedies
- III. Administrative Remedies.

This paper discusses the civil remedies, peculiarly injunctions, as effective remedy for copyright infringement. The owner of copyright could claim civil remedies for copyright infringement under Section 52 of the Act.

#### **Civil Remedies**

The civil remedies are the most effective remedies guaranteed under Copyright Act. These remedies are provided under section 55 of the Act. The civil remedies could be divided into two, (a) The Preventive civil remedies and; (b) The Compensatory remedies.

#### **Preventive Civil remedies**

The abovementioned remedies are provided prior to actual commission of the act of infringement or prior to the damage are caused. These remedies turn out to be effective as they protect the individual before the actual harm is caused. The preventive remedies are classified into, (A) Interlocutory Injunction; (B) Permanent injunction; (C) Mareva Injunction; and (D) Anton Pillar Order.

#### **Injunction and Types of Injunctions**

The injunction is a mechanism whereby party is required to carry out or prohibited from carrying certain act [20]. Injunctions are effective remedy for copyright infringement. Injunction restrains an individual from continuing or commencing an act that threatens to invade the equitable or legal rights of another, through judicial process. The primary objective of granting interim relief is to maintain *status quo* of property till the conflicting claims and legal rights of the parties are adjudicated and to prevent any

alteration in the property till the final disposal of the suit [21]. Commonly, copyright owner demands speedy and effective remedy for prevention of any further interference with its copyrighted work, without waiting for the commencement of trial. Therefore, the law provides temporary relief to owner by granting interlocutory injunction.

The relief of injunction has its roots in the principle of equity, and it could not be claimed as a right. This remedy could be denied if the court arrives at a finding that plaintiff has approached the court with unclean hands, acted in inequitable and unfair manner and suppressed the material facts [22]. The purpose of granting injunction is to mitigate injustice being caused to plaintiff pending adjudication of his suit.

### **INTERLOCUTORY INJUNCTION**

An interlocutory injunction only imposes such restraint as may suffice to stop the complained of. The interlocutory injunction mandates the opposite party to carry or abstain from carrying out any act for a specified period of time or till the final disposal of the case as the court directs.

The grant of injunction lies at the discretion of the court, [23] however the court would not exercise its discretion in vague, arbitrary and fanciful manner rather it has to be exercised legally [24] in accordance with the rules for granting of injunction mentioned below with:

However, The Hon'ble Apex Court of India in *Best Sellers Retail Pvt. Ltd. v. Aditya Birla Nuvo Ltd.*, [25] held that following must be considered while granting injunction:

- I. The plaintiff has *prima facie* case.
- II. Balance of Convenience tilts in favour of the plaintiff.
- III. Irreparable damage would be caused to the plaintiff in case of denial of injunction.

Subject to fulfilment of abovementioned conditions the court would grant interim injunction for a particular period against defendant. The interlocutory injunctions are granted under Order 39 Rule 1 & 2 of Code of Civil Procedure, 1908. The injunction could be

granted after the commencement of the suit and after or before the passing of judgement.

### **Prima Facie Case**

For establishing a *prima facie* case it must be shown that there exists a *bona fide* dispute raised by the applicant and demands trial, [26] decision on merits and looking at the facts of the case there exists a probability of getting relief claimed by the applicant. Also, it must be shown that there exists a right with the applicant and infringement of such right has entitled the applicant to approach the appropriate court for demanding the grant of injunction [27].

### **Irreparable Injury**

After establishing the *prima facie* case, the applicant has to showcase that irreparable injury would be suffered by the applicant if the court denies grant of injunction [28]. The term 'irreparable injury' should not be confused that the injury caused to applicant is such that it could not be restored back to its original position. It simply connotes that injury must be material and it could not be adequately compensated by damages. Alternatively, it means that there exists no peculiar mechanism or pecuniary standards for quantifying the damages [29].

### **Balance of Convenience**

The court while exercising discretion, if satisfied that hardship, inconvenience or mischief likely to be suffered by denial of injunction to applicant is greater than that would be caused to defendant by granting of such injunction. After due consideration to conflicting probabilities, if the court is satisfied that the balance of convenience lies in favour of applicant, injunction would be granted. However, in situation contrary to this the injunction would be denied.

In *Gramophone Co. of India Ltd. v. Super Cassette Industries Ltd.*, [30] plaintiff i.e. Gramophone Company of India Ltd., had produced audio records titled "Hum Apke Hain Kaun" under the rights assigned to plaintiff by Rajshree Production Pvt. Ltd., the owners of the copyright work. The plaintiff company had sold 55(fifty five) lakh audio

cassettes and 40,000 (forty thousand) compact disks titled 'Hum Apke Hain Kaun'. Plaintiff contended that defendant have also launched the audio cassettes by adopting the same title, same design, colour scheme and layout deceptively similar to that of plaintiff. The plaintiff filed a suit for permanent injunction. The Hon'ble Delhi High Court while granting interlocutory injunction opined that plaintiff has established a prima facie case however, the court held that defendants have to use different carton and inlay cards, packaging material or design. The defendants should use such words as they confuse the public with the work of plaintiff.

In another landmark judgement of *Puneet Industrial Controls Pvt. Ltd. v. Classic Electronics*, [31] where the plaintiff was a manufacturer of engines, electronic and voltage relays since 1978 and due to extensive research work, he developed designs, special circuits and drawings. Defendant, an employee in plaintiff's company established a firm in 1994 for manufacturing the identical products. The plaintiff filed a suit for injunction. The court granted the injunction as *prima facie* case and balance of convenience both were in favour of the plaintiff.

In *Macmillan & Company Ltd. v. K & J Cooper* [32], where the defendant has substantially copied the words from plaintiff's book, the court opined that prima facie case has been made out by plaintiffs and issued injunction under Order XXXIX rule II of CPC. It is also well-established principle that temporary injunction could only be granted while pending the case before the Trial Court [33].

The Hon'ble Court in *Autodesk Inc. v. A.V.T. Shankardass* [34], the appellant was owner of copyright in famous software 3Ds Max and Autodesk Maya. The appellant has issued one licence, but the software was utilized for 50 animators and 30 computer systems. The appellate court held that in cases involving software infringement and piracy, element of surprise is necessary and of paramount importance the held that, appellant has *prima facie* case and injunction shall not be arbitrarily denied to appellants.

The concept of interim injunction was also highlighted in the case of *Harman Pictures v. Osborne*, [35] the plaintiffs were the owners of film copyright in a book. The defendants produced the script of screen play which showcased details and incidents similar to as mentioned in plaintiffs' book. The plaintiffs alleged the infringement of their copyright and sought an injunction for restraining the defendants from distributing or releasing the film based on screen play. The court opined that similarities in situations and incidents are the *prima facie* evidence of reproduction of work. While granting interim injunction the court would consider whether a prima facie case has been made by applicant, it would not be concerned with whether there has been an actual infringement of copyright by defendants.

In *Mirrbai Films Pvt. Ltd. v. Siti Cables Network & Ors.* [36] the appellants produced the film titled "Monsoon Wedding". The defendants in the instant case were cable television operators giving cable television network in several parts of the country. The appellants alleged that defendants were habitual of screening the pirated copies of new films in television and there is reasonable apprehension that they would do the same in case of 'Mansoon Weeding' movie of appellants. The court while granting temporary injunction held that balance of convenience lies with the appellant's also irreparable damage would be caused to them even at the single telecast of the film by the defendants.

Similarly, in *Khanjanchi Films Exchange & Anr. v. State of M.P. & Ors.* [37] the appellants had produced a movie titled "*Kabhi Khusi Kabhi Gum*" they had not sold video rights of the film. However, defendants had done illegal copying of the film its screening would result in copyright infringement and also would cause huge financial loss to the appellants. The appellant preferred a writ petition before High Court of Madhya Pradesh demanding the issuance of writ of mandamus against 55 (fifty-five) respondents. The Hon'ble High Court dismissed the petition and held that, the writ petition was filed on 28<sup>th</sup> November, 2001 and the movie is planned to be released on 14<sup>th</sup> December, 2001, therefore

the appellants has enough time to approach police/respondents and subsequently, the defendants for taking their responses and finding a way out for dealing with the matter. Hence in the presence of other alternative and effective resources, coming to court is unsustainable and premature.

The landmark judgement of Hon'ble court in *Power Control Appliances v. Summet Machines Pvt. Ltd.* [38] where the applicant was involved in the business of 'mixies' and several kitchen appliances during 1963. Subsequently, registered it trademark as 'SUMEET'. It has developed a huge market for its products. The 'mixies' were produced with the trademark 'SUMEET' and has its own style of packaging, design, pattern and a guarantee card was given to customers. The public was aware about such style of packaging. The applicant applied for injunction on seeing the advertisement of respondents in newspaper in 1992, selling their products by using same trademark 'SUMEET'. They claimed that they are the manufactures and called for distributorship. They caused the publication by adopting same design, colour and pattern. The applicant contended that, the act of the defendant causes is likely to deceive the public and applicant would suffer irreparable damage. The court denies issuing the injunction since the balance of convenience and prima facie case lies with the respondents.

### **MAREVA INJUNCTION**

The significant purpose of Mareva injunction is to prevent the defendants from disposing the assets that could be needed to satisfy the claim of plaintiff or moving the assets from the jurisdiction of the court [39]. This order restricts an infringer from disposing the assets in which profits from such infringement has been invested [40]. The objective behind granting of Mareva injunction is to prevent the defendant from taking unjust infringement and to appropriate payment of damages to plaintiff. The Mareva injunction is like 'freezing order' from the court directing the defendant not to sell or dispose the assets that are in conflict.

The granting of Mareva injunction is not different from power of High court to pass interim or final order of injunction [41]. Under

English Law jurisdiction of court for granting Mareva injunction is provided by section 37(3) of S.C. Act, 1981. In India the courts have power to issue Mareva injunction under Order XXXIX rule 5 of Code of Civil Procedure, 1908 [42].

The Mareva injunction was first granted in *Mareva Co. Naviera S.A. v. International Bulk Carriers SA* [43] where a danger existed that the defendant may transfer the assets out of jurisdiction, injunction was issued by the court thereby preventing the defendants to transfer the assets outside the jurisdiction of the court. In Indian scenario the Mareva injunction could be obtained by taking the recourse of Order 39 rules 1 to 5.

The Hon'ble Court in *Tata Sons Ltd. v. Vimal Kumar Sharma & Anr* [44]., the defendants were deceiving innocent employment seekers by offering jobs in company 'Tata India Ltd.' with its office address in Delhi. Tata Sons obtained an ex-parte injunction in the nature of 'Mareva Injunction' thereby freezing the defendant's assets including the bank account as the defendant's company was deceiving gullible employment seekers by using Tata's brand name. In another case of *Nirma Ltd. v. Lentjes Energy (India) Pvt. Ltd.*, the Hon'ble Gujarat High Court approved that, power of granting injunction could be extended to granting of "Mareva Injunction."

### **ANTON PILLAR ORDER**

It is an ex-parte order passed by the court directing the plaintiff to enter into defendant premises without prior notice before the defendant disposes or destroys the infringing material. The plaintiff and its solicitor both are allowed to enter and inspect the premises of defendant and take into possession any document, copies or any other relevant infringing stock or may require that the defendant to keep the infringing stock to preserve the evidence. The practice of issuance of such order has been consolidated and confirmed in the case of *Anton Pillar K.C. v. Manufacturing Process Ltd.* [45].

The order directs the defendant to allow plaintiff to enter into its premises and disclose

all the infringing material so that plaintiff could inspect. However, on contravention with the orders of court, the defendant would be held liable for contempt of court. On the other hand, if the plaintiff enters into premises of defendant without permission, he will be guilty of trespass [46]. The order is commonly passed with Mareva Injunction hence capable of causing drastic effect on the defendant. Therefore, the courts shall pass this order with extreme caution in extreme circumstances. The courts must satisfy the below mentioned three prerequisites before passing the order,

- I. The plaintiff has extremely strong *prima facie* case.
- II. It must be shown that plaintiff will or is most likely to suffer serious and irreparable damage in case the order is not provided.
- III. Clear evidence must be shown that the defendant is having the possession of infringing documents.
- IV. There exists a real possibility that the defendant will destroy the material before or after the *inter partes* application is preferred [47].

The Anton pillar order was also granted in *Ex Parte Island Case*, where plaintiff alleged that defendants were ‘Bootlegging’ i.e. recording, making and selling the unauthorized recordings of live performances of the performers without their consent. The court after considering the fulfilment of all the conditions for granting the order, issued an Anton Pillar Order against defendants. The court further, distinguished between ‘piracy’ and ‘bootlegging’ stating that pirates reproduce existing works while bootleggers reproduce the live performances of the performers [48].

The Anton pillar order survived the challenge of its legality in the ECHR in *Chappell v. United Kingdom* [49]. The defendant is entitled for the damages if plaintiff or his solicitor misuses the order [50]. The plaintiff shall enter into defendant’s premises only with his permission. However, the plaintiff must restrict himself in case of denial of permission by the defendant. The plaintiff must accept the refusal and may bring this fact to the notice of the court at a subsequent stage [51].

The Indian Courts are authorized to pass Anton pillar orders under Order 39 of CPC. Further, section 151 of CPC empowers the court to pass any order that it may deem fit in the light of justice. Apart from CPC, special statutes like The Geographical Indication of Goods (Registration and Protection) Act, 1999, The Trademarks Act, 1999 specifically provides for such order. There exists the high probability of misuse of such order hence appropriate safeguards are required to be taken like appointment of special officer by court to carry out execution, issuance of order for limited period, providing the opportunity to defendant to take legal actions [52].

In *Society Bic S.A. v. A.L Jugal Investments & Ors.* [53], the plaintiff was the manufacturer and distributor of ‘crystal pens’ applied for the renewal of registration of trademarks and designs. The plaintiffs alleged that defendants were selling the balls pens with same trademarks or similar marks. The defendants contended that they are bona fide purchasers of such pens from the market. However, no evidence was produced by defendants for showcasing that purchase is being done through open market or some other person. Hence, the court considered the plaintiff’s case as satisfying all the essentials and issued an Anton Pillar Order.

Therefore, Anton Pillar order is also an effective remedy in case of copyright infringement.

### PERMANENT INJUNCTION

Success of the plaintiff at trial in establishing copyright infringement, would normally entitle him for claiming the permanent injunction to restrain the defendants from any infringement in future. The non-compliance of the orders of the court would make them liable for contempt of court. However, permanent injunction would only be operative till the expiry of copyright protection period i.e. life and 60 years after death of the author.

During this scenario the defendant is perpetually restrained from omission or commission of doing certain acts that would defeat the interest of justice. It is provided under Section 38 of Specific Relief Act, 1963

subject to fulfilment of certain conditions as prescribed under sub-section (3) of Section 38 of the Act, [54] as mentioned below:

- I. The defendant act as trustee for plaintiff's property.
- II. Nonexistence of any standards for ascertaining the damages that is caused or likely to be caused by such invasion.
- III. The pecuniary compensation would not afford adequate relief to plaintiff.
- IV. For restricting multiple judicial proceedings injunction is necessary.

For obtaining permanent injunction the plaintiff is required to prove copyright infringement at trial stage and no need of proving the actual damages. However, the plaintiff must show that there exists a possibility of damage, that is not, simply nominal [55].

In *Ushodaya Enterprises Ltd. v. T.V. Venugopal*, [56] where the plaintiff was the owner of artistic work EENADU, and it has been using the artistic work same as a Masthead of the newspaper since 1974. The defendants made several attempts of suffixing and affixing something to EENADU for producing slightly changed version. It was clearly showcasing some relation with plaintiff's artistic work, hence the court held that defendants has infringed the plaintiff's copyright in the artistic work EENADU and issued permanent injunction against the defendants.

In *Hawkins Cookers Ltd. v. Magicook Appliances Company*. [57], the defendant has reproduced several passages from the plaintiff's cook books. Hence the Delhi High Court issued permanent injunction restraining the defendants from future copying from cookbook of the plaintiff.

In another case of *Vijay Grover v. Biocure Laboratories* [58], the defendants has copied the label of the plaintiff as far as colour combination, get up, label and packaging of the product the court held the defendants liable for copyright infringement and ordered permanent injunction against them.

### Grounds for Denial of Permanent Injunction

The court would not grant the permanent injunction if:

- a. No evidence has been produced by plaintiff showcasing that defendant threatens to or has done something which would cause infringement of copyright vested in the plaintiff.
- b. Interference with the copyright of plaintiff is theoretical nature, which would entitle the plaintiff to claim only nominal damages.
- c. The injunction would cause more damage to defendant than conferring advantage to plaintiff [59].
- d. Therefore, the permanent injunction could be refused if the abovementioned conditions are not satisfied by the court.

### CONCLUSION

There has been a paradigm shift in the concept of intellect as a property, from being available in public domain to claims of individual property. Copyright as Intellectual property is an exclusive right granted to owner of copyright in a product for his labour, skill, intellectual ability and pain that had been underwent by owner to produce a work. The copyright protects an owner from any interference, reproduction, alterations or modification on its work by another person. The individual has civil remedies under copyright law against such infringement. Injunction is an effective remedy available with the plaintiff against such infringement. Interim injunction could only be granted if plaintiff proves, the prima facie case, balance of the convenience and irreparable loss would be caused due to denial of injunction by the court. Mareva injunction is issued for restraining the defendant from disposing or selling the products in its possession. Whereas, in Anton pillar order the plaintiff could enter into the premises of defendant by the court's order along with his attorney and may seize the infringing material. Permanent injunction is commonly granted if the infringement is proved by the plaintiffs during trial and case has been finally adjudicated. Hence, the injunctions turn out to be effective remedy for the plaintiff.

## REFERENCES

- 1 Statute of Anne, 1710, 8 Ann., c. 19 (Eng.).
- 2 Charu Dureja, *Historical Development of Copyright Law In India*, International Journal of Advanced Research, Management and Social Sciences, ISSN: 2278-6236.
- 3 Kala Thairani, *How Copyright Works in Practice*, 1996, at Pg. 2.
- 4 V.K. Ahuja, *Law of Copyright and Neighbouring Rights: National and International Perspectives*, 2007, pg.2-3.
- 5 WIPO, *Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)*, See also, [http://www.wipo.int/treaties/en/ip/berne/summary\\_berne.html](http://www.wipo.int/treaties/en/ip/berne/summary_berne.html), accessed on (15<sup>th</sup> February 2018).
- 6 Paul Goldstein, *Copyright*, (2<sup>nd</sup> Edn.)
- 7 Indian Copyright Act, 1957. Section 13.
- 8 Arathi Ashok, *Economics Rights of Authors under Copyright Law: Some Emerging Judicial Trends*, Journal of Intellectual Property Rights, January 2010, pp 46-54.
- 9 Indian Copyright Act, 1957. Section 57.
- 10 Jitesh Bahadur Srivastava, *Moral Rights*, (2007) PL August 5. See also, <http://www.scconline.com/Members/SearchResult2014.aspx#FN0001>.
- 11 R. Dhiraj, SAPR Advocates, *The Law of Copyright in India*, see also, [www.Saprlaw.com/taxblog/copyright\\_final.pdf](http://www.Saprlaw.com/taxblog/copyright_final.pdf)
- 12 R.G. Anand v. M/S. Deluxe Films & Ors., A.I.R. 1978 SC 1613.
- 13 Goldstein Paul, *Copyright – Principles, Law and Practice*, Little Brown Co., Canada, Vol II, pg. 512-513.
- 14 Eastern Book Company (EBC) v. D. B Modak, (2008)1 SCC 1.
- 15 Lionel Bently & Brad Shreman, *Intellectual Property Law*, Oxford, 2001, pg. 80.
- 16 Pepsi Co. Inc. & Ors. v. Hindustan Coca Cola Ltd. and Anr., (2003) 27 P.T.C. 305.
- 17 T. C. James, *Copyright Law of India and the Academic Community*, Journal of Intellectual Property Rights, May 2004, Vol. 9, pg. 207 – 225.
- 18 WIPO, Berne Convention on Protection of Literary and Artistic Works, Available at, [http://www.wipo.int/treaties/en/text.jsp?file\\_id=283698#P98\\_1470](http://www.wipo.int/treaties/en/text.jsp?file_id=283698#P98_1470), (20<sup>th</sup> February 2018).
- 19 Indian Copyright Act, 1957. Section 22.
- 20 Halsbury's Laws of England, Vol. 24, (4<sup>th</sup> Edn.), para 901. See also, Food Corporation of India v. Sukh Deo Prashad, (2009) 5 SCC 665.
- 21 Manohar Lal Chopra v. Seth Hiralal, A.I.R. 1962 S.C. 527.
- 22 Media Transasia Ltd. & Anr. v. Indian Airlines Ltd. & Ors., 2003 (26) P.T.C. 294 (Del).
- 23 Series five Software Ltd. v Philip Clarke & Ors., [1996] FSR 273.
- 24 Harbuns v. Bhairo, ILR 5C 259 (PC).
- 25 (2012) 6 SCC 792. See also, Kishoresinh v. Maruti Corpn., (2009) 11 SCC 229.
- 26 American Cyanamid Co. v. Ethicon Ltd., 1975 A.C. 396.
- 27 Dalpat Kumar v. Prahalad Singh, (1992) 1 S.C.C. 719.
- 28 State of Karnataka v. State of U.P.
- 29 Cotton Corp. of India v. United Industrial Bank, (1983) 4 S.C.C. 625.
- 30 1995 (1) ARBLR 555 Delhi.
- 31 1997 PTC 161 (Del).
- 32 (1924) 26 BOMLR 292.
- 33 G.G. Harrap & Co. Ltd. v. Hatbanshah Kalra, AIR. 1988 (Del.) 68 at pg. 70; see also, Mirabai Films Pvt. Ltd. v. Siti Cable Network & Ors., 2003 (26) P.T.C. 473 (Del.).
- 34 AIR 2003 Del 167.
- 35 (1967) 2 All ER 324.
- 36 2003 (26) P.T.C. 473 Del.
- 37 2003 (26) PTC 183 (M.P.).
- 38 1994 SCC (2) 448.
- 39 Andrews, N.H., *Freezing Foreign Assets by Mareva Injunctions*, The Cambridge Law Journal, Vol. 48, No. 2 (Jul. 1989), pg 199-201, See at, <http://www.jstor.org/stable/4507283>, last visited on 28<sup>th</sup> February 2018.
- 40 Siporex Trade S.A. v. Comdel Commodities Ltd., [1986] NLJ Rep. 538 at pg. 539.
- 41 Popular Jute Exchange Ltd. v. Murlidhar Ratanlal Exports Ltd., 1998 SCC OnLine Cal. 15.
- 42 All answers Ltd., available at, <https://www.lawteacher.net/free-law-essays/english-legal-system/mareva-injunction.php>.

- 43 The Mareva [1975] 2 Lloyds Reports 509.  
See also, [1980] 1 All ER 213
- 44 CS (OS) No. 388/2001.
- 45 (1976) 1 All ER 779 (CA).
- 46 E.P. Skone James, Copinger and Skone James on Copyright, London: Sweet & Maxwell, 1991, pg.332-33.
- 47 Bucyrus Europe Ltd v. Vulcan Industries Engineering Com. Pvt. Ltd., (2005) 30 P.T.C. 279.
- 48 (1978) 3 All ER 824 (CA).
- 49 1989 F.S.R 617.
- 50 Columbia Pictures v. Robinson, 1987 Ch. 38.
- 51 (1976) 1 All ER 779 (CA).
- 52 Bengal Club Ltd. v. Susanta Kr Chowdhary, 2002 (3) CHN 322.
- 53 (2008) MWHC 157.
- 54 PP Joshi, District Judge & Additional Sessions Judge, Khed, *Temporary Injunction including Ex-parte Injunction, Perpetual Injunction and Mandatory Injunction*, pg. 7 available at <http://mja.gov.in/Site/Upload/GR/Consolidate%20Workshop%20Paper%20Ratnagiri%20Civil-15032015.pdf>.
- 55 EP Skone., Copinger & Skone James on Copyright, London: Sweet & Maxwell, 1991 pg.340.
- 56 2001 PTC 727.
- 57 A.I.R 2003 Del. 191.
- 58 (2002) 24 PTC 438.
- 59 Satyawrat Ponshe, *The Management of Intellectual Property*, Pune: Bhat & Ponshe Publication, 1991, pg.305.

**Cite this Article**

Praful Dwivedi. Copyright Infringement: Effectiveness of Injunction as a Remedy. *Journal of Intellectual Property Rights Law*. 2019; 2(1): 13–23p.