

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 5

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Academic Research and Copyright Issues

VIPRAVAR RAO¹

ABSTRACT

Academic research is related to literary work and due to lots of similar research works the chances of getting illegally copied raises. So, to protect from being unauthorised copy of work Intellectual Property law gives protection by Copyright Act. For that it provides few essential criteria which need to be fulfilled. The guidelines are generally very common in all Countries. So, generally any research work which is done get protected easily in all countries. But if any person does not follow that guideline, then he or she shall not be protected by Copyright in lieu of protecting they get penalised. Copyright Act protect author by prohibiting others to copy work without permission.

Keywords: *Academic Research, Copyright Issues, Author's right.*

I. INTRODUCTION

When we talk about **Intellectual Property Law** (IP) it means we are talking about rights of intangible property. This law gives protection to Copyright, Patent, Trade Marks, Industrial Designs, Geographical Indication, Trade Secrets etc.

When we talk about **Copyright** protection then it's mean we are talking about Artistic work, Cinematograph work, Original literary work etc. for giving protection to such works in India there is Copyright Act, 1957. Copyright Law is based on principle of *ubi jus ibi remedium* which means where there is right, there is remedy. In case of infringement of copyright Appellate Board (in accordance with Chapter II of Copyright Act) provide civil remedies (in accordance with Chapter XII of Copyright Act), punishment (in accordance with Chapter XIII of Copyright Act) to the party infringed. Copyright deals with protection of expressed idea not mere thought of ideas or we can say published work (also include work not communicated in public) because it may be common or we can say it may match with others thought also.

When we talk about **Academic Research** then it means we are simply talking about *Original Literary work* under Copyright Act. This Act give protection to only "Original Literary" work not to copied work, it is protected by infringement provisions under Copyright Act. It protects right not only inside the India but also protect from outside the territory of India. It also includes

¹ Author is a student at University of Allahabad, India.

Computer Programmes (it's included after 1999 amendment) so that tables, graphs, data, chart flow can be used in it.

II. ACADEMIC RESEARCH

(A) What is Academic Research

Academic Research in Intellectual Property Law (under Copyright Act, 1957) is known by *Literary Work*. According to Section 2 (o) Of Copyright Act, 1957 *Literary work* includes computer programmes, tables and compilations including computer database.²

Academic Research includes original literary work as per Section 13 (1) (a). In academic research publication plays an important role because copyright protection can be provided only to the expressed work in terms of academic work publication is the way to express the thought or ideas. The main purpose of the academic research is to make available data, graphs, literature to the public specially to students for easy access of study material. According to Section 3 of the Copyright Act, 1957 the purpose of Publication in the Act is to make work available for public by issuing copies.

In Academic Research author can be either single (sole author) or joint authors. In case of joint authors work always considered as original work and one work not separate work due to joint authorship.

For example – (**Sole Author**) 'A' wrote article in x Magazine on health-related issue. So, in this case A shall be considered as sole author of that article.

(**Joint Author**) 'A' and 'B' decided to write a book on x topic. Then in this case work of A and B shall be considered as joint authors of the book. No one can claim himself sole author of book.

In both the above situations Copyright shall protect the work of Sole as well as Joint Authors so that no one can copy or could claim on the work which is already in public.

(B) Expressed Original Literary Work

Original literary work is one of the most essential ingredients of Academic Research. It includes question paper making, Research Article, Book (book includes not only literature book but also Numerical books i.e., Mathematics book).

In case of *Shyam Lal v. Gaya Prasad*³ Court observed that – The expression "*Literary Work*"

² Universal's Legal Manual 2020 (Lexis Nexis), Intellectual Property Laws with short notes (The Copyright Act, 1957) available at page 189.

³ AIR 1971 All 192, available at page 26 of Law Relating to Intellectual Property Rights (LexisNexis, Third

means not only such work which deals with any particular aspect of literature in prose and poetry but also indicates work which is literature i.e., anything in writing which could be said to come within the ambit of literary work.

In Academic Research Work Publication plays a very important role because mere thought cannot be protected so, publication of research work becomes important.

The main purpose of academic research is to provide their work in public so that everyone could read it. Without publication the purpose of academic research would also fail. Section 3 of the Copyright Act, 1957 also says *the purpose of publication is to make work available to the public by issuing copy of it.*

In case of *University of London Press v. University of Tutorial Press*⁴ Court observed that – The word “*literary work*” cover work which is expressed in print or writing, irrespective of question whether the quality or style is high.

(C) Author’s Ownership

For publication of academic work author is necessary it could be either sole author or joint author because academic research work cannot be published without writer. This is the person whose work is get protected by copyright Act. The person who merely have idea of the theme work shall not be considered as author of the work. Ownership shall be entitled to that person only who expressed it in work.

In case of *Donoghue v. Allied Newspapers Ltd.*⁵ Court observed that – *if a person who has an idea for a story, picture, or play, communicates it to another, the production which is the result of the communication of the idea is the copyright of person who has clothed the idea in form.*

1. Joint Author

Joint author means work done by more than one author or we can say on one work when more than one author work together is called joint author. According to Section 2 (z) of Copyright Act, 1957 also “work of joint author” means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.⁶

Edition, Reprint 2021) Dr VK Ahuja.

⁴ (1916) 2 Ch 601 Universal’s Legal Manual 2020 (Lexis Nexis), Intellectual Property Laws with short notes (The Copyright Act, 1957) available at page 195.

⁵ (1937) All. E.R. 503 available at page 50 of Law Relating to Intellectual Property Rights (LexisNexis, Third Edition, Reprint 2021) Dr VK Ahuja.

⁶ Universal’s Legal Manual 2020 (Lexis Nexis), Intellectual Property Laws with short notes (The Copyright Act, 1957) available at page 191.

*Najama Heptulla v. Orient Longman Ltd.*⁷ in this case Maulana Azad (narrator) and Prof. Humayun Kabir (writer) did work together on book named *India Wins Freedom*. In the case there was direction given by Maulana Azad that - Prof. Kabir shall be allowed to publish 30 pages after death of Maulana Azad 30 years only i.e., on 22nd February 1988, till that period he can publish rest portion of the book. After death of Maulana Azad Prof. Kabir made an agreement with Orient Longman Ltd. on 02nd September 1958 that excluding 30 pages rest portion to be published because 30 pages were kept sealed for 30 years in National Archives and National Library.

The question was raised who shall be the author of book *India Win Freedom* because legal heir of Maulana Azad also claimed that all published and unpublished work of Maulana Azad shall be inherit by them by giving reason that they are they are the legal heir. So, in this case Court observed that although legal heir of Maulana Azad inherit all property along with copyright protected work i.e., published or unpublished but the work *India Win Freedom* is the outcome of active and close intellectual collaboration and cooperation between Maulana Azad and Prof. Humayun Kabir. This work done by cooperation of both parties so, no one shall be the sole owner of the work rather it shall a work of *Joint Authorship*.

2. Work made in the course of employment

In case of course of employment, employer shall be the owner of the work but work other than the contract shall be considered as author's own work and he shall be entitled to the owner of that work. Section 17(c) of Copyright Act, 1957 states that – in case of a work made in the course of employment under course of apprentice or contract of service, the employer shall be the first owner of the work, in absence of any agreement to the agreement.

3. Nationality of Author

Nationality of Author becomes important to get protected there work especially unpublished work. Section 13(2) states –

(i) in case of *published work* whether inside or outside India, the author must be the citizen of India even at the time of death (it immaterial whether he/she died within or outside the boundary of India) so that they get protected by Copyright Act.

(ii) in case of *unpublished work* author at the time work must be the citizen of India.

The above condition is necessary to be fulfilled so that author could claim his work and get protected by Indian statute i.e., Copyright Act, 1957.

⁷ AIR 1989 Del 63

(D) Author's Moral Rights

According to Section 57 of the Copyright Act, 1957 author gets right to protect his work and prevent form others to modify it. The rights are as follows -

1. Right of paternity (Droit de paternite)

Right of paternity means that an author has a right to claim authorship of his work and can prevent all others from claiming authorship of his work. In this author also has right to demand his name on appropriate place of this work. He can also prevent others from using his name in their work.

2. Right of integrity (Droit de respect de l'oeuvre)

This right give protection to the author so that he can prevent his work from modification. So that no one can modify and use it in another form which cause hurt the reputation of author.

III. COPYRIGHT

(A) What is Copyright?

Copyright is a set of intellectual property's rights or we can say rights of intangible property. It protects the people's ideas of thoughts which are expressed in work or execution of idea is done not merely idea of thought (so that no one could copy it) because it may match with others thought also. Copyright Act, 1957 gives protection to the original author or relatives of the original author or joint authors so that no one can copy others work without permission. If anyone found infringing others right then they shall be punished in accordance to the provision provided under the Act by providing civil remedy to the person whose right get effected and criminal proceeding may also be charged against the person who infringed others right. **Section 14 of Copyright Act, 1957 deals with definition of Copyright**, according to Section 14 it is an exclusive right which deals with literary works, computer programme work, artistic works, cinematograph film works, sound recording.

(B) Features of Copyright

There are three essential features which are as follows –

1. Multiple Rights

Copyright consists of multiple rights with one right like with Literary work right to reproduction, right to adaption, right to translation. It restrains to others from coping others work.

2. Original Work

This is one of the most important element of copy right. According to Section 13(1)(a) Copyright subsist of original literary, dramatic, musical and artistic works. Section 13(3) talk about work which shall not be protected by Copyright.

In the case of *C. Cunniash and Co. v. Balraj and Co.*⁸ it was held that - use of original and labour is essential to acquire copyright in a work.

3. Expression of idea

Copyright gives protection to expression of idea not merely idea. For example Mr.A has planned to write a book on x theme which matched with Mr. B's idea. Mr. B wrote Book on that theme and published. So, in this case Mr. B shall get protection of copyright because he executed his idea.

In case of *Donoghue v. Allied Newspaper Ltd.*⁹ It was observed that – “an idea however brilliant or clever it may be, is nothing more than an idea if it is not put into any form of words or any form expression such as a picture or play. No copyright subsists in an idea until it is reduced into reduced into writing, or into some tangible form, by which the idea or information is conveyed to others.”

IV. COPYRIGHT ISSUES IN ACADEMIC RESEARCH

(A) Doctrine of sweat of brow

When we talk about *Doctrine of sweat of brow* then we see the effort of work that how much the work is done with creativity. According to this doctrine even a small amount of creativity work gets protected by Copyright. In research work many times issue raised that work is similar to others work. So, by applying this doctrine person can claim protection on his/her work.

1. Position in USA

Initially USA used to provide protection only on original work or we can say doctrine of sweat of brow has been rejected. *Feist Publication Inc. v. Rural Telephone Services Co. Inc.*¹⁰ was the case in which US court insisted on this doctrine. In this case Court observed that – to qualify for copyright protection, a work must be original work. The ‘original’ here means work done by author only which consist at some minimal degree of creativity, originality does not signify

⁸ AIR 1961 Mad 111 available at page 41 of Law Relating to INTELLECTUAL PROPERTY RIGHTS (CENTRAL LAW PUBLICATION, FIFTH EDITION, 2019) Prof. (Dr.) M.K. Bhandari.

⁹ (1937) 3 ChD 503 available at <https://www.lawyersclubindia.com/judiciary/rights-are-protected-in-works-not-in-ideas-themes-or-plots-4364.asp> (Court's Observation Para 1) last visited on 10/07/2021 at 10:38 PM

¹⁰ (1991) 499 US 340

novelty. It is not necessary that work requires huge effort, even a slight difference is sufficient. In case of *Key Publications, Inc. v. Chinatown Today Publishing Enterprises, Inc.*¹¹ US Court stated that there are three requirements which is necessary to fulfil for qualifying Copyright Protection. They are as follows –

- (a) The collection and assembly of pre-existing data;
- (b) Selection, coordination or arrangement of the data; and
- (c) The resulting work that comes into being is original, by virtue of the selection, coordination or arrangement of the data contained in the work

So, we can say in USA creativity is essential element to get protected copyright.

2. Position in UK

Doctrine of sweat of brow was first used in UK in the case *University of London Press v. University of Tutorial Press*¹². In this case Examiners were made mathematics paper which was found later that they had done nothing new rather questions were common but Court held that - *the Copyright Act does not require that expression be in an original or novel form. It does, however, require that the work not be copied from another work. It must originate from the author. The question papers are original within the meaning of copyright laws as they were originated from the authors. The court held that merely because similar questions have been asked by other examiners, the plaintiff shall not be denied copyright.*¹³

So, we can conclude by the above case that by a slight difference in work person can get protected their work.

3. Position in India

India follows both England as well as America pattern while giving Copyright protection to the person for his/her work.

The most important Indian Case on this subject is *Eastern Book Company v. D.B. Modak* where the Supreme Court discarded the ‘Sweat of the Brow’ doctrine and shifted to a ‘**Modicum of creativity**’ approach as followed in the US.¹⁴

(B) Ownership

¹¹ 945 F 2d 509 (2d Cir 1991)

¹² (1916) 2 Ch 601

¹³ Available at: <https://www.indialaw.in/blog/blog/law/analysis-of-doctrines-sweat-of-brow-modicum-of-creativity-originality-in-copyright/> last visited on 10/07/2021 at 12:10 AM

¹⁴ *Ibid*

According to Section 17 of Copyright Act, 1957 except private research work in every other work owner or first author shall be person for whom work is done or under whom the work is done i.e., work in relation employer and employee, employer shall be the owner of work. Same is the case with Government work. If in case there is a contract which is contrary then the author shall be the owner i.e., employee not employer for his/her work.

(C) International Copyright issue in Academic Research

According to Section 40 work published outside India shall be treated as it is first published in India or we can there is no difference between work published inside or outside the India because India is the signatories of Berne Convention and Universal copyright Convention. So, even foreigner can publish their work inside India but the only condition is that country must be the member States otherwise it shall depend upon order pass by Central Government and the order should not infringe the Copyright Act provisions of India and law of that country.

In simple word we can say India grant Copyright protection to those country who is member of treaties or we can say to those country only who also provide copyright protection to Indian authors.

1. Term of International Copyright

Section 40 makes it clear that the term of copyright to a foreign work in India shall not exceed the term provided in the law of that country, which means if the term of Copyright is 50 years in that country and for similar work the term in India is 60 years, the foreign work shall enjoy copyright for 50 years only.¹⁵

(D) Infringement of Copyright in Academic Research

According to Section 52 sub section (1) clause (h) a person cannot copy others copyrighted work in any form. But in this clause, it is also stated that if any one is copying others work then it should not exceed two passages along with two passage there must be bona fide intention. In Academic research work person can copy others work but reference must be given and the same condition shall apply in this also i.e., not more than two passage and bona fide intention.

If person not follows then it shall be considered as infringement of copyright.

(E) Fair dealing doctrine

In India, fair dealing with any work other than computer programme is allowed for private or personal use including research. In this research does not include commercial research it only

¹⁵ available at page 110 of Law Relating to INTELLECTUAL PROPERTY RIGHTS (CENTRAL LAW PUBLICATION, FIFTH EDITION, 2019) Prof. (Dr.) M.K. Bhandari.

includes private research. In case if it is found that author is using research work for commercial purpose then it shall be considered as infringement of copyright.

In case of *Rupendra Kashyap v. Jiwan Publishing House*¹⁶ it was stated that if a publisher publishes a book for commercial exploitation and in doing so infringes a copyright, the defence under Section 52 sub-section (1) clause (a) sub clause (i) would not be available to such a publisher though the book published by him may be used or be meant for use in research or private study.

By the above we can understand that fair dealing give protection for work used for fair purpose otherwise it shall be treated as infringement.

V. REMEDIES

(A) Civil Remedy¹⁷

Under Section 55 of the Copyright Act of 1957, *Civil Remedy* is provided. They are as follows-

1. Interlocutory Injunctions

The most important remedy is the grant of an interlocutory injunction. In most case the application filled is for interlocutory relief and the matter rarely goes beyond the interlocutory stage. There are three requirements for there to be a grant of interlocutory injunction –

- (i) a *prima facie* case.
- (ii) there needs to be a balance of convenience.
- (iii) there needs to be an irreparable injury.

(B) Pecuniary Remedies

Under Section 55 and 58 of the Copyright Act of 1957, pecuniary remedies are provided which are as follows –

- (i) an account of profits which lets the owner seek the sum of money made equal to the profit made through unlawful manner.
- (ii) compensatory amount which let the copyright owner seek the damages he suffered due to the infringement.
- (iii) conversion damages which are assessed according to the value of the article.

¹⁶ (1996) PTC 439 (Del)

¹⁷ Available at <https://blog.ipleaders.in/remedies-available-copyright-infringement-india/> last visited on 12/07/2021 at 03:42 PM

1. Anton Pillar Orders

The Anton pillar order gets its name from the holding in Anton Pillar AG V. Manufacturing Processes. The following elements are present in an Anton Pillar Order –

- (i) an injunction restraining the defendant from destroying or infringing goods.
- (ii) an order permitting the plaintiff's lawyer to search the defendant's premises and take goods in their safe custody.
- (iii) an order that the defendant be directed to disclose the names and addresses of suppliers and customers.

2. Mareva Injunction

The Mareva injunction is used when the court believes that the defendant is trying to delay or obstruct the execution of any decree being passed against him. The court has the power to direct him to place whole or any part of his property under the court's disposal as may be sufficient to satisfy the decree. This is provided in Order XXXVIII, Rule 5 of The Civil Procedure Code, 1908.

(B) Criminal Remedy

Section 63 of Copyright Act, 1957 provides Criminal remedies for infringement of copyright. They are as follows –

- (i) imprisonment of 6 month to 3 years
- (ii) imprisonment + fine Rs. 50,000/- up to Rs. 2,00,000/-

VI. CONCLUSION

Firstly, I would like say when we talk about Academic Research issue it means we are talking about Copyright. Copyright not only give protection but it also prevents from others so that no one could copy others work. In case anybody copied others work then that work is considered as infringed work. If anyone's right get infringed then Copyright provides remedy to that person.

Secondly, I would say In case of Academic Research to get protected by copyright author is required to published their work because this Act does not give any protection to mere thought. So, to get protected from copyright expression of thought is must.

Lastly when we talk about Academic Research work we generally consider it as whole literary work but the fact is *All Academic Research is Literary work but All Literary Work is not Academic Research* because literary work consider many things like lecture, educational videos

etc. where as academic research only covers work which talk about education i.e., book, research paper, discovery of fact etc.

VII. BIBLIOGRAPHY**(A) Bare Act**

Intellectual Property Laws (The Copyright Act,1957), Legal Manual 2020, Universal Lexis Nexis.

(B) Book

1. Law Relating To Intellectual Property Rights, Third Edition, Reprint 2021, LexisNexis, by Dr. V K Ahuja
2. Law Relating to Intellectual Property Rights, Fifth Edition, Reprint 2019, Central Law Publication, by Prof (Dr) M K Bhandari

(C) Website

1. <https://www.lawyersclubindia.com/judiciary/rights-are-protected-in-works-not-in-ideas-themes-or-plots-4364.asp> (Court's Observation Para 1) last visited on 10/07/2021 at 10:38 PM
2. <https://www.indialaw.in/blog/blog/law/analysis-of-doctrines-sweat-of-brow-modicum-of-creativity-originality-in-copyright/> last visited on 10/07/2021 at 12:10 AM
3. <https://blog.iplayers.in/remedies-available-copyright-infringement-india/> last visited on 12/07/2021 at 03:42 PM.
