

**BURNISHED LAW JOURNAL****Arunima Sharma****3<sup>rd</sup> Year,****School of Law, CHRIST****BASICS OF COPYRIGHT ACT OF 1976 AND ITS GENERAL EXCEPTIONS**

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**ABSTRACT**

This research article is concerned with copyright law. Copyright is a type of intellectual property rights which legally protects the ownership of the expression of any work of authorship. Unlike trademark or Patent, copyright is concerned with the creativity involved while producing the concerned work and the expression used by the author. While Copyright law essentially protects any piece of original authorship, it must be understood that the scope of the law is limited to a certain extent to ensure that the work produced can be used in a society for the betterment of the people and their welfare. For this purpose the US copyright laws have recognised certain doctrines which are considered as the limitations and the exceptions to the copyright law by the courts while dealing with cases which violate the purpose of the law by demanding strict applicability of the above mentioned provisions.

## 1. INTRODUCTION TO COPYRIGHT LAW

Copyright protects original expression that is fixed in a tangible medium and is a product of authorship<sup>1</sup>. To break down this expression, copyright has four essential requirements which need to be fulfilled. First that the work produced must be original and not a copy of an existing piece of art. Originality does not mean that the work of expression needs to be new in the sense of having been the first in existence but that it has to originate from the author and not copied from anywhere else.

Second is the idea of expression or that only expression is protected. This essentially is termed as the idea-expression dichotomy or the fact-expression dichotomy.<sup>2</sup> These two doctrines differentiate between idea and expression and facts and expressions respectively and state that under the copyright law, protection is only given to the expression of a fact or the idea and not to the fact or the idea itself. This means that if two different authors express the facts of a case in two different manners, it will not be considered as an infringement of the copyright law. The same is applicable while expressing similar ideas.

The third is that the work needs to be fixed in a tangible medium known as the fixation requirement. While copyright creates intellectual property rights, the fixation requirement states that such an intellectual property right must be with respect to a physical object<sup>3</sup>. It essentially mandates there to be a physical piece of work which can be copyrighted. Such a tangible object is the subject matter of the copyright law. For example a painting, novel, etc.

The fourth is that it needs to be a work of authorship or the authorship requirement. This is not expressly defined in the act or the codified laws, but the judgements set a clear precedent that for any work to be copyrighted, there must be an author.<sup>4</sup> The US law<sup>5</sup> requires a human element present in production of the subject matter of the copyright and further, the concerned human must be the one claiming copyright.

## 2. EXCEPTIONS OF COPYRIGHT LAW

For the purpose of creation and encouraging the use of those creative works in lawful ways by the society, the courts recognise certain exceptions to the applicability of the copyright law some of which are-

<sup>1</sup> Leaffer, M. A. (2010). *Understanding copyright law*. LexisNexis

<sup>2</sup> Samuels, E. (1988). The idea-expression dichotomy in copyright law. *Tenn. L. Rev.*, 56, 321

<sup>3</sup> 10 Wash. J.L. Tech. & Arts 17 (2014) <http://digital.lib.washington.edu/dspace-law/handle/1773.1/1388>

<sup>4</sup> *Naruto v. Slater* Copr.L.Dec. P 30, 881 (2016).

<sup>5</sup> US Copyright act of 1976

**The merger doctrine** is applicable when the fact or the idea is too specific that it merges with the expression of the same. In such a case even the expression does not get copyright provision.

**First sale doctrine** is another exception which allows the first time owners of a copyrighted book, painting, etc. to sell the same after they have no use for it without infringing the copyright law.

Now, these are specific exceptions to the copyright law which were created with respect to a particular situation. Copyright law also provides for General exceptions that apply regardless of the subject matter at issue. This primarily is the **Fair use doctrine**.

### 3. DEFINITION OF FAIR USE DOCTRINE

Fair use doctrine originated in the case of *Folsom v. Marsh*<sup>6</sup>, 1841 by Justice Joseph Story who set the four factors required for the doctrine of fair use. In this case, the defendant copied 353 pages from the plaintiff's 12-volume biography of George Washington to create a two-volume work of his own. The defence of fair use was not allowed as it was held that a reviewer may fairly cite largely from the original work, if his design be really and truly to use the passages for the purposes of fair and reasonable criticism. Ever since then, until 1976, the fair use doctrine wasn't codified. It was a doctrine that evolved to judicial decision-making through the precedence of the federal courts. Then in 1976, Congress revised the copyright statute and codified this doctrine in the Copyright act of 1976. This codification set the US copyright law apart from the international laws of copyright because of the significant amount of involvement of judiciary.

### 4. APPLICABILITY

Fair use doctrine is applicable when all four apply to the actions of the defendant. There have been multiple judgements which recognise copying of an original piece of work as fair use while ensuring that all four factors are implemented. If any character is missing, then this doctrine is not applicable. Like in the case of *Warner Bros. Entertainment, Inc. v. RDR Books*<sup>7</sup>, 2008 which is relatively recent, creation of a *Harry Potter* encyclopaedia couldn't justify a fair use defence in light of the extensive verbatim use of text from the *Harry Potter* books. In some cases, the court doesn't consider application of fair use on the principle "*de minimis*" as the amount copied is not substantial. This was seen in the case of *Sandoval v. New Line Cinema Corp.*<sup>8</sup>, 1998.

<sup>6</sup> Folsom v. Marsh, 9. F.Cas. 342 (C.C.D. Mass. 1841)

<sup>7</sup> Warner Bros. Entertainment, Inc. v. RDR Books., 575 F.Supp.2d 513 (S.D. N.Y. 2008)

<sup>8</sup> Sandoval v. New Line Cinema Corp., 147 F.3d 215 (2d Cir. 1998)



In the current scenario as well, fair use requires applicability of all four factors. Like in the case of *Swatch Grp. Mgmt. Servs. Ltd. v. Bloomberg L.P.*<sup>9</sup>, 2014 news organization (Bloomberg) tapped into earnings call made by Swatch to 132 analysts, and posted a recording and transcript of the phone call. Fair use was considered fair use as Bloomberg's purpose was only to deliver newsworthy financial information which was for public benefit and the court was also able to prove that other three factors were also fulfilled. Initially fair use was considered as a defence but in the case of *Lenz v. Universal Music Corp.*<sup>10</sup>, 2015 the U.S. Court of Appeals for the Ninth Circuit concluded that fair use was not merely a defence to an infringement claim, but was an expressly authorized right, and an exception to the exclusive rights granted to the author of a creative work.

## 5. CONCLUSION

Harvard's Office of the General Counsel writes that copyright laws "attempt to reconcile two conflicting goals." Copyright grants some ownership rights allowing them control over use of their work and the incentive of payment for it. This encourages works of artistic and creative expression by providing incentives to their authors. Yet copyright law also has the goal of allowing society to benefit from new ideas and information, so it limits protection to the form in which ideas and information are expressed, but not to the ideas and information themselves. Thus, copyright is a law based on balance between private rights as well as social benefits<sup>11</sup>.



<sup>9</sup> *Swatch Grp. Mgmt. Servs. Ltd. v. Bloomberg L.P.*, 742 F.3d 17 (2d Cir. 2014)

<sup>10</sup> *Lenz v. Universal Music Corp.*, 801 F.3d 1126 (9th Cir. 2015)

<sup>11</sup> Geiger, C., Griffiths, J., Senftleben, M., Bently, L., & Xalabarder, R. (2015). Limitations and Exceptions as Key Elements of the Legal Framework for Copyright in the European Union—Opinion of the European Copyright Society on the Judgment of the CJEU in Case C-201/13 Deckmyn. *IIC-International Review of Intellectual Property and Competition Law*, 46(1), 93-101