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Analysing the Relevance and Terminology of Intellectual Property Rights vis a vis The History of English Literature

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Abstract:

The paper aims to analyse the different types of IPR's conferred upon the rightful applicants under the purview of patents, trademarks, copyrights, design rights etc. In the field of Humanities and Social Sciences the most commonly found IPR is related to Copyright.

The various benefits include monetary (Royalty), rights related to distribution and adaptation, hence protection of the artist's reputation. The beneficiaries are the creators of works in the following fields-literary, dramatic, musical and artistic works which include sound recordings, films, broadcasts, cable programmes, typographical designs of publications and computer programs.

The relevance of the paper is to ensure the protection to the author of his artistic work although the concept protects the "expression of the idea" and not the idea itself. The field of arts and literature has become inter-disciplinary and incorporates elements of intertextuality and intermediality. Thus, IPR is required as it effectively creates a safe and financially empowering environment for the facilitation of artistic endeavours.

Keywords: Intellectual Property Rights, Copyright, Plagiarism, History of English Literature.

The *Cambridge Advanced Learner's Dictionary* defines property as, "an object or objects that belong to someone", "a building or area of land, or both together", "the legal right to own or use something" (Walter). Property as is commonly understood refers to something tangible or corporeal. All countries have stringent and detailed laws in place to protect these tangible goods which belong to its citizens. These are material objects like land, jewellery, business, vehicles, electronics, organizations and the list are endless. An illegal or forceful appropriation of such

goods can land the defaulter behind the bars with or without a hefty fine. However, these laws proved to be inadequate in cases of infringement of an individual's intellectual property.

The definition of Intellectual Property stands thus, "someone's idea, Invention, creation, etc. which can be protected by law from being copied by someone else" (Walter). The problem of its protection arises because intellectual property is not a tangible corporeal property which can be regulated or monitored as it is a property in fiction. It entails the rights on scientific inventions, literary and artistic creations, trademarks, service marks, industrial blueprints, etc. Thus, anything created by the human mind becomes the intellectual property of the creator. These rights take various forms, for example patents, trademarks, colophons, copyrights, etc. The monetary benefits derived from these laws are often termed as the 'Royalty', enjoyed by the creator.

The recognition of this malaise of infringement on Intellectual Property and its possible solution has a long history. The technological developments became issues of a nation's reputation thereby making it all the more mandatory to ensure their protection. Thus, the Paris Convention came into being in 1883 which ensured the protection of the intellectual property rights of a country in another member country. Consequently, the United International Bureaux for the Protection of Intellectual Property (BIRPI) was established in Berne, Switzerland in the year 1893 to deal with the administrative aspects.

Post World War II the United Nations Organization was established to foster and maintain harmony among member nations. In order to facilitate trade and revive the shattered economy International Trade Organization was established. The year 1967 witnessed the replacement of BIRPI with World Intellectual Property Organization (WIPO) to improve upon the administrative aspects of the unions as well as to ensure the safeguarding of the intellectual property and artistic creations.

The different types of IPR's conferred upon the rightful applicants come under the purview of patents, trademarks, copyrights, design rights etc. However, in the field of Humanities and Social Sciences the most commonly found IPR is related to Copyright. Before the Renaissance period and subsequently the invention of printing press by John Guttenberg, the manuscripts were written by hand. This was a time consuming and exhaustive process which also affected the price of these books. Only a few could afford such luxury hence a limited number of copies existed of the concerned work. The printing press introduced a new era in

learning by making the books cost effective and education became affordable. However, it also made the publication and distribution of material which did not benefit the author as the author remained blissfully unaware of the loss of his profit due to unauthorized publication. By the eighteenth century it had become a common menace and in order to curb it the Statute of Anne was adopted in 1709. According to the Statute the author held exclusive rights to print and publish his work, but post publication when the work entered had entered the public domain it came under the regulations of the Statute. The Statute of Anne was replaced by the Copyright Act in 1911.

The term 'Copyright' itself bespeaks volumes about all the rights it entails. The copyright is a legal right granted exclusively to the author of a particular work to regulate and be monetarily benefitted by the publication or production of that work. The laws of copyright and penalties for its infringement are different in various countries. This concept of copyright was constituted for the protection of intellectual property in the fields of art and literature but with the times it has begun to include a lot of other technological and mechanical artistic expressions as well. The field of arts and literature has in itself become more liberal and in this age of inter-disciplinarity, intertextuality and intermediality, copyright protection has become a household term. These laws now protect the literary, dramatic, musical and artistic works which include sound recordings, films, broadcasts, cable programmes, typographical designs of publications and computer programs. Novels, poems, plays, reference works, newspapers, advertisements, computer programs, databases, films, musical compositions, choreography, paintings, drawings, photographs, sculpture, architecture, maps and technical drawings all come under the purview of Copyright protected works.

The personnel involved in creative pursuits can claim the ownership of their work and be rewarded and acknowledged for it. In the absence of such laws the authorship as well as the authenticity of the works is always under question. A typical example is the dubious authorship of the plays of Elizabethan times. The playwrights then were writing for money instead of the sentiment to create canonical literature, hence at times it appears that the play is a compilation of the work of more than one authors. Some scenes of Doctor Faustus by Christopher Marlowe are said to have been written by some inferior, aspiring playwright as they do not match the artistic skill of the rest of the play, and this is a common occurrence with the productions of other playwrights as well. Another instance where the complications arising due to the lack of

copyright laws and IPR is when the play has two playwrights. For example, in the play *Hero and Leander* which was a joint venture of Marlowe and Nahum Tate, one can only guess the extent of the two writers to the text.

William Shakespeare is not only the most well-known playwright of English Literature but also the most controversial. The trajectory of his life and his creative output has so many gaps and loopholes that many litterateur and historians doubt his authorship of the plays commonly attributed to his pen. This theory was put forward by the first historian to write about the history of English Poetry George Puttenham. The movie *Anonymous* presents this theory in such a convincing manner that the audiences believe that the revered Shakespeare was a wily imposter while the genuine author of the plays attributed to him was the Earl of Oxford, who could not openly engage in artistic pursuits because of his aristocratic lineage. It is a common knowledge that Robert Greene derides Shakespeare as an “upstart crow beautified by our feathers” (Greene 19) in his article Greene’s “Greene’s Groatsworth of Wit Bought With a Million of Repentance”, the authorship of which is sometimes attributed to Henry Chettle.

The process of obtaining a copyright to the work flows through legal channels hence the chances of such errors are reduced to a great extent. The copyright laws protect the labours of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software engineers respectively. There pervades an environment which encourages creative pursuits and improvement of their skills. According to the Handbook of the Copyright Law of India, Ministry of Human Resource Development, Government of India, in section on “Different Rights”:

In the case of a literary work (except computer programme), copyright means the exclusive right

- To reproduce the work
- To issue copies of the work to the public
- To perform the work in public
- To communicate the work to the public.
- To make cinematograph film or sound recording in respect of the work
- To make any translation of the work
- To make any adaptation of the work.

Is translation of an original work also protected by copyright?

Yes. All the rights of the original work apply to a translation also. (Government of India)

A parallel and closely related field to copyright laws is that of 'Related Rights'. These rights are extended to the performers, actors, phonogram producers etc. They function in a very similar manner to that of the copyright laws but are of a shorter duration. In India the copyright laws are valid throughout the lifetime of the author and post his/ her demise extend up to sixty years. Copyright laws may extend to include the heirs of the creator of the work; the beneficiaries are called the 'right holders'. They have exclusive rights to grant permission or prohibit others to use or produce the work in any other form or media. As is often the case, they transfer the rights of production or fixation (recording) and reproduction to firms engaged in various media productions which are better suited to distribution on a large scale, be it as a print or audio or visual media. They derive revenue or compensated through royalties, which depends on the sales of the book, CD's etc. The Indian Copyright Law on related rights reads thus:

What are the rights in a dramatic work?

In the case of a dramatic work, copyright means the exclusive right

- To reproduce the work
- To communicate the work to the public or perform the work in public
- To issue copies of the work to the public
- To include the work in any cinematograph film
- To make any adaptation of the work
- To make translation of the work.

What are the rights in an artistic work?

In the case of an artistic work, copyright means the exclusive right

- To reproduce the work
- To communicate the work to the public
- To issue copies of the work to the public
- To include the work in any cinematograph film
- To make any adaptation of the work.

What are the rights in a musical work?

In the case of a musical work, copyright means the exclusive right

- To reproduce the work
- To issue copies of the work to the public

- To perform the work in public
- To communicate the work to the public
- To make cinematograph film or sound recording in respect of the work
- To make any translation of the work
- To make any adaptation of the work.

What are the rights in a cinematograph film?

In the case of a cinematograph film, copyright means the exclusive right

- To make a copy of the film including a photograph of any image forming part thereof
- To sell or give on hire or offer for sale or hire a copy of the film
- To communicate the cinematograph film to the public.

What are the rights in a sound recording?

- To make any other sound recording embodying it
- To sell or give on hire, or offer for sale or hire, any copy of the sound recording
- To communicate the sound recording to the public. (Government of India)

The era of intermediality has led to plurimedial renditions of the same work. For example, a novel or a drama may be adapted into a film, a television series or theatrical production. This raises questions about the true authorship of the work. The plot and theme is inspired from the text but its adaptations entail a lot of changes which are introduced by the director. The film studies consider the film director to be its auteur. This creates a dilemma as to who should be considered the creator of the work and be accorded the rights of royalty. One such debate arose betwixt Raj Kumar Hirani regarding his movie *3 Idiots*, whose storyline closely resembled Chetan Bhagat's novel *5 Point Someone*. Bhagat felt he had not been duly acknowledged or consulted with by the director, although Hirani contested that as he had mentioned Bhagat's name in the credits.

All literary works which have been published by authorized publishing houses have the Copyright page which generally comes soon after the title page. The Modern Language Association Handbook 8th Edition recommends the Copyright page as the authentic source to be consulted for the information regarding the date of publication, the publisher, for editions, volumes, serial numbers etc. Any information printed within the Copyright notice becomes

contestable legally. Hence, it is considered to be the source of authentic source and it contains the history of the publication of the work. A Copyright notice of a book reads thus

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The World Intellectual Property Organization treaties provides economic rights to the beneficiaries which come into effect from the date of creation or fixation of work and lasts for around fifty years after the creator's decease. The duration of time varies from country to country. The enforcement of these rights can be done through civil action suits, administrative action and criminal prosecution. Injunctions, orders requiring destruction of infringing items, inspection orders, among others, are used to enforce these rights. The Indian Copyright law furnishes the right holders with

The right of reproduction commonly means that no person shall make one or more copies of a work or of a substantial part of it in any material form including sound and film recording without the permission of the copyright owner. The most common kind of reproduction is printing an edition of a work. Reproduction occurs in storing of a work in the computer memory. (Government of India)

Regarding the right of communication to the public, Indian Copyright Law states that

Communication to the public means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion. It is not necessary that any member of the public actually sees, hears or otherwise enjoys the work so made available. For example, a cable operator may transmit a cinematograph film, which no member of the public may see. Still it is a communication to the public. The fact that the work in question is accessible to the public is enough to say that the work is communicated to the public. (Government of India)

In case of an adaptation of the work, ICL directs,

Adaptation involves the preparation of a new work in the same or different form based upon an already existing work. The Copyright Act defines the following acts as adaptations:

- a. Conversion of a dramatic work into a non-dramatic work
- b. Conversion of a literary or artistic work into a dramatic work
- c. Re-arrangement of a literary or dramatic work
- d. Depiction in a comic form or through pictures of a literary or dramatic work
- e. Transcription of a musical work or any act involving re-arrangement or alteration of an existing work.

The making of a cinematograph film of a literary or dramatic or musical work is also an adaptation. (Government of India)

The aforementioned laws and regulations stand valid only with the official consent of the creator of the work. The Copyright law also applies to the specific manner and mannerism of the presentation of a news article, as is the case with the special way of the presentation of an idea. It does not provide the exclusive rights of the respective news or idea to the broadcaster or the individual respectively. In order to ensure their right to an exclusive and special news feature, the news channels often imbed their name in the news reel which is prominently displayed throughout the presentation.

This area has seen vast expansion and advancement over the few past decades in terms of technology as well as its purview. This has made the tracking of offences related to plagiarism and copyright infringement all the more difficult to track.

The *Merriam- Webster Collegiate Dictionary* defines plagiarizing as committing “literary theft”. Plagiarism in humanities, “is the “wrongful appropriation” and “stealing and publication” of another author's “language, thoughts, ideas, or expressions” and the representation of them as one's own original work” (*MLA Handbook* 6). This happens when the due credit is not given to the original author. The term ‘plagiarist’ was used for the first time by Martial in his work *Epigrams*. The term is a derivation from the Latin term ‘*plagiarius*’ which means a kidnapper or child stealer.

However, copyright infringement refers to the violation of the exclusive rights which belong to the author or the creator to reproduce the work, its distribution, creation of a work which is a derivation of the original work, conduct a public exhibit or a public performance of the work. While plagiarism is an offence which amounts to academic dishonesty and weighs heavy on ethical and moral grounds, copyright infringement is a much more serious and critical issue as it also results in the financial loss for the author and may harm his/ her reputation.

The history of English literature has been replete with instances of plagiarism. One such instance occurred early on in the history of English literature. A prolific poet, Samuel Daniel is constantly jibed at and advised by his fellow poets to learn the wit of the foreign writers whose works he translates into English and presents as his own. The era of ‘poetomachia’ is a time period famous for the fight among its literary stalwarts on the basic issue of plagiarizing from each other. Ben Jonson was its initiator, who accused his contemporary dramatists John Marston

and Thomas Dekker of plagiarizing from him and was returned with the same favour by them. Thomas Stearns Eliot, one of the greatest literary figures of the twentieth century, was accused of plagiarizing his magnum opus, *The Wasteland* from other lesser known poets while most of the portions were picked from Madison Casein and his poem entitled *Waste Land*. Eliot's disarming statement that, "Immature poets imitate, mature poets steal; bad poets deface what they take, and good poets make it into something better, or at least something different" (Eliot 114) in the essay entitled "Philip Massinger" published in his collection *The Sacred Woods* in 1920 convey his opinions about plagiarising. Although, it is true that T. S. Eliot was not persecuted for the charges of plagiarism that kept resurfacing time and again during his life, yet after his death T. S. Eliot does not find favours with the critics. He remains till date one of the most well-known literary figures, yet he is also denounced for the amount of pilfering and pastiche his works contain and his reputation suffers. Recent examples of plagiarism charges and lawsuits include the one filed against famous author of the Harry Potter series, J.K. Rowling by the executors of Adrian Jacob's estate. They claimed that she had stolen the plot of the fourth book of the series, *Harry Potter and the Goblet of Fire* from the children author's work, *The Adventures of Willy the Wizard* published in 1987. However, all charges against her were dismissed by the U.K. Court as well as the courts of Australia and United States. On the other hand, a young American author, Kaavya Viswanathan, was not so lucky. After the publication of her debut novel, *How Opal Mehta Got Kissed, Got Wild, and Got a Life* (2006) accusations against her of plagiarism from the works of Megan McCafferty's *Sloppy Firsts* (2001) and *Second Helpings* (2003), Salman Rushdie, Sophie Kinsella, Meg Cabot, forced her publisher to revoke and obliterate the copies from the market. These are instances of conscious plagiarism. Unconscious plagiarism occurs when we recall and use an idea from memory without realising that we may be borrowing another person's idea. The term for such innocent act is cryptomnesia.

There are some cases which are exempt from the Copyright law of India. *The Handbook of the Copyright Law of India*, Ministry of Human Resource Development, Government of India, lists them as follows-

Some of the exemptions are the uses of the work

- i. for the purpose of research or private study,
- ii. for criticism or review,
- iii. for reporting current events,

- iv. in connection with judicial proceeding,
- v. performance by an amateur club or society if the performance is given to a non-paying audience, and
- vi. the making of sound recordings of literary, dramatic or musical works under certain conditions (Government of India)

A case in point which explains the clause of certain conditions as mentioned in point (vi) is to cite the example of the Rameshwari Photocopy Service versus Oxford University Press, Cambridge University Press and Taylor & Francis case. The Delhi High Court had been moved by the three aforementioned publishing houses to ban the Rameshwari photocopy shop located near Delhi School of Economics from selling Xeroxed material and syllabus sets. The Delhi High Court however dismissed these charges citing the provision in the 1957 Indian Copyright Act which exempts the ‘fair use’ of work for educational purposes. To quote Shammad Basheer, an intellectual property law expert, “Copyright laws are meant to balance public and private interests but in recent years, the public interest has been eroded due to lobbying. The HC has restored that balance” (Singh). This has been considered a landmark decision in the debate of India’s stance on copyright laws as it gave preference to the basic social requirement- education and included it in the purview of exemptions. However, it does not hold water in the case of plagiarism charges levelled against a research paper or thesis. The researcher stands responsible and his reputation and credibility is at stake if charges of plagiarism are found to be true in his/her case.

In continuation to the above verdict it is important to note India’s stance on the Broadcasting Treaty. The Rome Treaty had not been updated since 1961 while the digital and technological developments have been occurring at a brisk pace. This had led to instances of signal breach and theft of signals broadcasted over internet which results in the circulation of a lot of pirated material, causing immense financial loss to the broadcasters. The World Copyright Treaty and WIPO Performance and Copyright Treaty clubbed together form the WIPO Internet Treaty. Since it’s a common practice nowadays to circulate work over Internet this treaty is for the protection of plagiarism and copyright infringement of such material. It dictates that the existing laws on Intellectual Property stand for the media circulated through digital means and over Internet. It also provides some additional rights which cover the complexities arising due to digital medium. They give some leeway to the member countries to restrict the usage of material

being created in their country to create a level playing field for the right holders and the general masses. The countries upon their discretion may allow the access to their information in exceptional cases. In addition to the rights held by the country, it is advised to grant the rightholders the authority to protect their work by licensing it. They may also encrypt their material so as to prevent its hacking by unauthorised sources. Another safe guard that is recommended as a provision is to protect the “rights management information” which is enclosed with the protected creation from amendment or erasure, as like the copyright note cited above it provides the information on the creator of the work and the terms and conditions regarding its usage. India and Brazil contend for minimal Internet restrictions to allow a free flow of knowledge. They advocate minimal restrictions as long as the security and vital information is not threatened.

The apex body for Higher Education in India, University Grants Commission has taken cognizance of this issue and in a draft issued on 01 September 2017. A detailed notification explaining the key words, levels of plagiarism and penalties recommended by the Plagiarism Disciplinary Authority etc can be found on the official website. UGC has invited suggestions and opinions from the stakeholders on the issue. The Public Notice details,

University Grants Commission had constituted a Committee of experts to look into issues of Plagiarism and recommend some institutional mechanism to eliminate the scope of this menace in higher education system in the country. The objective of the regulations is to promote academic research and deterrence from plagiarism by developing systems to detect plagiarism. As a result, the Committee emphasized on the needs to refer plagiarism in a broader way by putting appropriate systems and checks in place. (*University Grants Commission*) A copy of the draft has been included as an appendix to the paper.

In order to ensure that the work is free of intentional and unintentional plagiarism the researchers and intellectuals can follow some precautionary steps. The rudimentary habit to develop is to keep a track of the references and developing the sincerity to acknowledge the author of the original work as and when required. A good number of references indicate the advanced level of reading and efforts put into an intensive research. The novel notions and new concepts learnt during the reading process may be universal and largely known yet the propagators of those deserve mention.

The cost-effective availability and access to a large variety of computer softwares on Internet has made it very easy to check for any unintentional or intentional plagiarism. It is important for the researches to keep track of any inadvertent plagiarism that might have crept into their work to ensure utmost possible originality and sincerity of their work. The purpose of research in literature is to add new aspects and concepts to the existing body of knowledge or reinvestigate the existing ones in a new light. It is imperative for this purpose to be fulfilled that the researches take on the onus of ensuring that with due respect and credit to the existing body of knowledge, new and emerging areas be built on ancient foundations. As Thomas Stearns Eliot in his seminal essay, “Tradition and Individual Talent” says,

This historical sense, which is a sense of the timeless as well as of the temporal and of the timeless and of the temporal together, is what makes a writer traditional. And it is at the same time what makes a writer most acutely conscious of his place in time, of his contemporaneity.... No poet, no artist of any art, has his complete meaning alone. His significance, his appreciation is the appreciation of his relation to the dead poets and artists. (Eliot 44)

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