



BLIND FOLD LEGAL JOURNAL

VOLUME-1 ISSUE-3

{DECEMBER 2021-FEBRUARY 2022}

E-Mail:- blindfoldjournal@gmail.com

Website: - www.blindfoldjournal.com

MORAL RIGHTS AND INTELLECTUAL PROPERTY

Author: Rudra Singh

Introduction

A parody, which includes spoofs, is a humorous or broadly satiric version of an original work by an author. In its broadest sense, parody is used to make fun of or ridicule an artist's version of a work. Furthermore, thanks to technological advancements, making and releasing parody work online has become more accessible and straightforward. In fact, several websites exist expressly for the purpose of publishing parodies. As a result, a discussion about the legality of a parody and its relationship to the intellectual property rights of the original author, whose work is imitated and used for the operation of such websites, has erupted. However, the question of whether such copying constitutes infringement or not, whether it is exempted under the defence of fair use, or even whether it infringes on the owner's moral rights, turns out to be very subjective, with answers varying from case to case based on facts and circumstances. However, it is best to study the evolution of moral rights throughout history, as well as their growing space with respect to Intellectual Property Law, to better understand the intricacies of the criteria that categorise parodies into either an infringing nature as to an author's moral rights, or into the exception of fair use.

Nature and Evolution of Moral Rights

The right to object to any alteration, distortion, or mutilation of one's work that is "prejudicial to the author's honour or reputation" is protected by the integrity of one's work. The key characteristic of such rights is that even if an artist has already assigned his or her copyright to a third party, he or she retains moral rights to his or her work. France and Germany were the first to acknowledge moral rights, and they were later included in the Berne Convention for the Protection of Literary and Artistic Works in 1928. Some jurisdictions, on the other hand, allow for the surrender of moral rights. The Visual Artists Rights Act of 1990 in the United States recognises the legality of moral rights; nonetheless, they only apply to a limited category of works, namely visual art⁴. Furthermore, some countries, such as Austria, distinguish between limited and broad moral rights. While the former is concerned with the work's integrity, the latter is concerned with limiting its usage, which can occasionally jeopardise the author's integrity. Some copyright services allow the

author to post the details of permissible and banned usage intentions to prevent this violation of larger rights.

Moral Rights in India

Section 57 of the Indian Copyright Act, 1957 recognises moral rights. The Act's Section 57 refers to an author's Special Rights, which provides that the author of a copyrighted work retains the right to claim authorship. Furthermore, similar to the Berne Convention, it gives the author the right to sue for damages or seek a restraining order if the work has been distorted, modified, or mutilated in any way. Furthermore, the right to enjoy or seek damages can be used if any additional action relating to the work has been taken that could jeopardise the author's reputation. The issue of the author's moral rights was raised in the case of *Amar Nath Sehgal v. Union of India & Ors.* The lawsuit included a painting commissioned by the Indian government in 1957 during the construction of Vigyan Bhavan in New Delhi. The bronze mural in question was 140 feet long and 40 feet wide. It was on exhibit until 1979, when it was relegated to the Union of India's storerooms. The Hon'ble Delhi High Court resorted to the Berne Convention in its decision, awarding damages of Rs. 5,00,000 and ruling in favour of Amar Nath Sehgal, granting him the absolute freedom to duplicate the artwork at any location and holding that he would also have the right to sell it. Despite the fact that the work had been commissioned and copyrighted in favour of the Union of India, the Hon'ble Court recognised the creator's moral rights, and the case became a landmark in the field of intellectual property.

A parody, in the broadest definition, is a humorous work that critically remarks on or ridicules an existing work in order to expose the flaws of that work. As a result, it is clear that a parody is reliant on the creator's original work being well received and loved by the target audience. It indicates that in order to enjoy the parody, the audience must be familiar with the original work.

However, because parodies are by their very nature based on the work of others, they might run afoul of some aspects of intellectual property law. Most crucially, a parodist may have a proclivity for copyright infringement. By altering the original author's work in such a critical or satirical manner, the original author's intellectual and moral rights are violated. In a way that could jeopardise his honour and reputation, which is the focus of his research this document.

Academicians, on the other hand, are divided on whether or not these kinds of artistic expression should be allowed to employ the defence. Many argue against leaving the decision up to the courts, citing the case of Indian film director Ram Gopal Varma, who used a parody of the National Anthem in the trailer for his film Rann, which was later withdrawn by the Central Board for Film Certification. The Supreme Court had ruled that no one had the right to alter the National Anthem for artistic purposes. However, the author of the same study article concluded that the fundamental right to freedom of speech and expression¹³ overrides all other justifications for prohibiting such parody. The inconsistency between the two judgments, on the other hand, just adds fuel to the fire over these parodies. It raises the question of what criteria should be utilised to determine if a parody in question genuinely infringes on moral rights.

And, while such obstacles do not prevent such channels and collectives from making parodies, they do prevent them from earning revenue from content that they created themselves, because the brands and movies whose content is mimicked claim copyright infringement and take the majority of the revenue generated by such spoofs. Due to the lack of any additional incentives for individuals to engage in productive labours, parodists find themselves discouraged from appraising others' work, depriving the general public of pleasure and critical points of view of independent parodists.

Conclusion

The findings of this study show that parodies do not always infringe on an author's moral rights, as doing so would necessitate injuring the name and honour of the original work, as well as using or mimicking it in such a way as to constitute 'improper use.' However, in order to qualify as fair use, parodies must not attempt to compete with the original work, requiring parodists to forego the possibility of making money from their work, as stated in the Civic Chandran case. As a result, despite the Indian Copyright Act, 1957's protection of parodies by including them in the definition of 'fair dealing,' and the judiciary's support for their existence, parodists are unable to stand solid on an economic footing, resulting in a lack of content production. This undoubtedly deprives the broader population of critical and amusing perspectives on the content's shortcomings. To summarise, granting intellectual property law protection against parodies becomes both economically inefficient and practically against the foundations of intellectual property law. A

hilarious or generally satirical imitation of an author's original work is referred to as parody. In its broadest sense, parody is used to make fun of or ridicule an artist's version of a work. It almost never seeks to harm the creator's reputation or honour, instead turning the occurrences into public entertainment. As a result, it is established that parodies do not infringe on the original author's moral rights, as granted by the Act, and must thus be regarded solely as a source of amusement and constructive criticism, worthy of protection.

