

ISSN: 2582 - 2942



LEX FORTI

LEGAL JOURNAL

VOL- I ISSUE- III

APRIL 2020

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of LexForti Legal Journal. The Editorial Team of LexForti Legal Journal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of LexForti. Though all efforts are made to ensure the accuracy and correctness of the information published, LexForti shall not be responsible for any errors caused due to oversight otherwise.



ISSN: 2582 - 2942

EDITORIAL BOARD

EDITOR IN CHIEF

ROHIT PRADHAN

ADVOCATE PRIME DISPUTE

PHONE - +91-8757182705

EMAIL - LEX.FORTII@GMAIL.COM

EDITOR IN CHIEF

MS.SRIDHRUTI CHITRAPU

MEMBER || CHARTED INSTITUTE
OF ARBITRATORS

PHONE - +91-8500832102

EDITOR

NAGESHWAR RAO

PROFESSOR (BANKING LAW) EXP. 8+ YEARS; 11+ YEARS WORK EXP. AT ICFAI; 28+ YEARS WORK EXPERIENCE IN BANKING SECTOR; CONTENT WRITER FOR BUSINESS TIMES AND ECONOMIC TIMES; EDITED 50+ BOOKS ON MANAGEMENT, ECONOMICS AND BANKING;

EDITOR

DR. RAJANIKANTH M

ASSISTANT PROFESSOR (SYMBIOSIS INTERNATIONAL UNIVERSITY) - MARKETING MANAGEMENT

ISSN: 2582 - 2942

EDITORIAL BOARD

EDITOR

NILIMA PANDA

B.SC LLB., LLM (NLSIU) (SPECIALIZATION BUSINESS LAW)

EDITOR

DR. PRIYANKA R. MOHOD

LLB., LLM (SPECIALIZATION CONSTITUTIONAL AND
ADMINISTRATIVE LAW)., NET (TWICE) AND SET (MAH.)

EDITOR

MS.NANDITA REDDY

ADVOCATE PRIME DISPUTE

EDITOR

MS. P SAI SRADDHA SAMANVITHA

STUDENT EDITOR

ABOUT US

LexForti is a free open access peer-reviewed journal, which gives insight upon broad and dynamic legal issues. The very objective of the LexForti is to provide open and free access to knowledge to everyone. LexForti is highly committed to helping law students to get their research articles published and an avenue to the aspiring students, teachers and scholars to make a contribution in the legal sphere. LexForti revolves around the firmament of legal issues; consisting of corporate law, family law, contract law, taxation, alternative dispute resolution, IP Laws, Criminal Laws and various other Civil issues.



Nuisance in the Parody and Copyright Infringement in the Indian Context

Alan J Yogyaveedu

MEANING AND NATURE OF PARODY

Parody, in a literal sense, refers to a work, which humorously and critically comments on an existing work in order to expose the flaws of the original work. Black's law dictionary defines the word "parody" as "A transformative use of a well-known work for the purposes of satirizing, ridiculing, critiquing, or commenting on the original work, as opposed to merely alluding to the original to draw attention to the later work." As a working definition, 'parody' connotes a literary or artistic work that imitates the characteristic style of an author or a work for comic effect or ridicule. Or more evocatively, 'parody, in its purest form, is the art of creating a new literary, musical, or other artistic work that both mimics and renders ludicrous the style and thought of an original'.

Parodies generally appeal to the public as being entertaining and funny while providing an opportunity to amateur actors to showcase their talent. But some people may get offended by such parodies, thereby claiming copyright infringement of the original work. Thus, there is a need to balance the rights of the copyright holders as well as parodists to ensure there is no infringement of copyright and at the same time, the creativity of the parodists is not hampered. Therefore, the debate on legality of parody and its relationship with the intellectual property should be to strike out a balance between parodies and intellectual property infringement.

Parodies may have positive or negative impact or both in relation to the copyright holders. On one hand, parodies may infringe the moral and economic rights of the copyright holders. But on the other hand, parodies can lead to increase in the number of views and popularity of the original work. In this way, the copyright holders can actually benefit from such parodies. Parody is mainly based on the original work whose main intention is to ridicule it in the eyes of the audience who recognize the original work.

The nature of parodies is such that it creates controversies in Intellectual Property Laws with respect to infringement of the rights of copyright holder. Another significant issue is whether parodies affect the moral rights of the author/owner of the original work as it may have negative impact on his reputation as well as his work.

INDIAN POSITION ON PARODY AND COPYRIGHT

There is lack of substantial jurisprudence on the nuances of parody and copyright infringement in the Indian context. The concept of parodies lies in the grey area of the Indian

Copyright law. It is absolutely legal if parodies are done with the permission of the author/owner, but that seldom happens. The judiciary also rarely faces cases dealing with parody at least in India. The Copyright Act 1957 in India relating to parody is dealt under the provision S.52 (1) (a) which primarily deals with “fair dealings”.

Borrowing copyrighted material without permission is legal provided the purpose of the use is to comment on or criticize the original work. This type of borrowing is considered to be a "fair use" of the copyrighted work. When the borrowed material is transformed into a humorous imitation of the original, it is a parody. If such a parody is done for the purpose of criticizing or commenting, then it can come within the ambit of “fair use” which will not infringe on the rights of the copyright holder. But it is important to understand that if a substantial portion of the original work is used not to criticize the work but simply to mock the work, then such a parody will not necessarily enjoy protection under section 51 (1) (a).

Copyright law does not protect monopoly of idea but only protects monopoly of expression. If the copyright action is extended to something more than the precise expression in the copyrighted work, other artists may be overly hampered in their treatment of the same idea.

As there is no clear cut guidelines as to what comes within the ambit of fair use, there has been a tendency in India to determine what would be considered to be fair with reference to the four factors laid down in Section 107 of Title 17 of the United States Code and, possibly, Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works (Paris Text 1971) which contains reference to principles similar to those in Title 17. In simple words, guidelines include the following:

- Amount of work
- Nature of work
- Principle of use
- Consequence of work

Though not expressly mentioned, parodies are given protection under “fair use” under the Indian Copyright law. There is a dearth of cases dealing with the issue of parody in the Indian context with relation to copyright.

DOES PARODIES AFFECT THE MORAL RIGHTS OF THE CREATORS OF ORIGINAL WORK?

Moral rights are special rights with the owner of the copyrighted work that remain with them even after the copyright term has expired. Moral rights protect the original work from any kind of mutilation or distortion. Parodies are comical in nature. They criticize, entertain but do not mutilate the work. The non-rivalrous nature of copyright law i.e. the importance of the original is not lost because of the copied work, also defend the parody culture.

Moral rights of the copyright owners ensure that their work is not distorted or manipulated in addition to giving them the right to prevent the alteration, destruction and other actions that may damage his reputation. Section 57 of the Copyright Act 1957 deal with the moral rights which encompasses rights such as integrity rights, divulgation rights, attribution rights and retraction rights.

On a careful comprehension of this provision, it is clear that parodies do not affect the moral rights of the copyright holder because a parody is new and independent work that is just based on the original work but does not aim to distort, mutilate or modify the original work. Parody can be categorized separately as an art form which aims to ridicule the work humorously and the time, effort and skill involved in the labour of the parodist is evident. The parodist himself puts in a lot of effort and labour to create an original work. In this context, he can be said to be both a creator and user at the same time. In this respect, parody cannot be said to be a violation of the moral rights of the author.

The wide-wording of the moral rights may lend itself to misuse if safeguards are not prescribed. It is necessary to ensure that moral rights do not affect the provisions for criticism, review, and the other exceptions specified in S.52(1). It would be preferable to change the language of S.52(1) or of S.57 to reflect that moral rights are subject to certain limitations as well. Importantly, uncharitable forms of modification to a work, such as a parody, or even remixes of popular songs, should not be curtailed on the basis of moral rights of the author/performer.

RECENT CONTROVERSY RELATING TO AIB

AIB stands for **All India Bhakhod** which consists of a group of comedians who wanted to release a video on Youtube which wanted to make a spoof of the movie “Dhoom” for which they were denied permission by YashRaj cinemas. The issue here was whether YashRaj

cinemas had copyright claims over the spoof of its work? However, AIB retaliated with a music video 'Humble plea to Bollywood' in which it narrates the events that unfolded and questions why Bollywood can't take a joke and enjoy parodies like they happen on the international scene. Overnight, the video received more than 54000 views.

JUSTIFICATION FOR PARODIES TO HAVE INTELLECTUAL PROPERTY PROTECTION

Denial of protection to parodies deprives the public of entertainment besides depriving them of the opportunity to view the work from different perspectives or angles which might expand the horizon of the public to a larger picture and a broader view. Curbing the emergence of parodies in the name of copyright infringement hampers the creators of original work to produce quality work if they are sure that their work will not be subject to criticisms. It can be argued that no creator of original work can be said to be hampered from creating work based on his intellectual property on the apprehension that his work will be parodied or ridiculed. It would be absurd to say that parody is any different from other forms of criticisms towards the creator's work. Parody is for of expression put forth in a humorous way under the guise of criticism. Thus, it is not fair for the copyright holder to claim infringement in case of parodies especially when he is subject to other forms of criticisms and reviews.

Moreover, the concept of intellectual property rights has its fundamental basis on utilitarianism. Thus, if inadequate protection is given to parodies, it may have a negative bearing on social utility as the talent and creativity of parodists is impeded.

SUGGESTIONS TO THE PROBLEM OF PROTECTION OF PARODY

Sometimes, the parodies of the original work gain more popularity and views than the original work itself. In this respect, it can be said that the economic rights of the copyright holder may be infringed. The suggestion for this problem may be the introduction of compulsory licensing system where the parodist must take compulsory license from the copyright holder where the monetary benefits gained from the parody may be shared along with the copyright holder. The copyright holder in this case will find no reason to refuse the license since the economic benefits are shared and he is compensated for utilizing his work. This would be beneficial to the parodist as well as he can freely go ahead and use his skill and talent to express his ideas. The only drawback is that it might put a financial burden on

the parodist as he will have to share his commercial benefit with the copyright holder for an uncertain amount which is unpredictable as the parody may or may not be a success.

CONCLUSION

The narrow aspect of “criticism and review” must be given liberal interpretation so as to expand the understanding of criticisms in the form of parodies so that copyright protection is not used as an unreasonable restriction on freedom of expression of ideas of parodists. The contemporary medium of communication places more reliance on direct modes of criticisms. But in the era of increasing social media activity, the forms of criticisms are taking new shapes like parodies, spoofs, satire , plays etc. Thus, law cannot be constant and it has to adapt itself to the changing social environment. One such instance is the incorporation of new dimensions in the nature of expressions like internet memes into the narrow ambit of “criticisms and reviews”.

In the light of the nuances of the parodies explained in this paper, it is can be concluded that it would not be efficient to grant intellectual property protection against parodies unless it is done with –

- An intention to compete with the copyright holder of the work and to derive profits from such competition and also,
- the motive of the alleged infringer in dealing with the work must not be improper.

Thus, the area of parody and copyright infringement has a wide scope for debate and discussions for balancing the rights of various interest groups.

BIBLIOGRAPHY

1. www.ipindia.nic.in
2. www.wipo.int
3. www.jstor.org
4. www.manupatra.com