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# THE EXEMPLIFICATION OF LINGUISTICS IN COPYRIGHTS LAW

**Dr. N. Vani Shree**

Chairperson, PG Department of Studies in Law, JSSLC, Mysuru, Karnataka, India

**Mariyam Rula Irshad**

Student, VIII Semester BBA LLB, JSS Law College, Mysuru, Karnataka, India

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**Abstract:** Language and linguistics have a lot to offer to intellectual properties, especially copyright and neighboring rights. It is steadily a branch of knowledge opposite to the practice of copyright law. However, more prominently, linguistic understanding of fundamental aspects of copyrights elucidates a deeper relationship between the two. Conceptualizations that linguists have developed to systematize and explicate the use of language may prove useful and helpful in providing a structure in which copyright law can tackle with the various developing laws, rules and regulations that address the numerous roles and functions that copyrights now serve.

**Keywords:** Intellectual property, copyright, language, linguistics.

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**Introduction:** *"There is no such thing as a new idea. It is impossible. We simply take a lot of old ideas and put them into a sort of mental kaleidoscope. We give them a turn and they make new and curious combinations. We keep on turning and making new combinations indefinitely; but they are the same old pieces of colored glass that have been in use through all the ages."*  
– Mark Twain.

This can be said so in the case of some intellectual properties such as copyright, *the sine qua non* of which is uniqueness, not originality. In order to understand copyright, and law in general, it is important to give due attention to the concept of language and the science of linguistics, which is instrumental in its formulation, interpretation, construction, investigation into infringement, and tackling the problem of piracy.

**Intellectual Property:** Property means the highest right, a man can have to anything being that right which one has to land or tenements, goods or chattels which does not depend on another's courtesy: it includes ownership, estates and interests in corporeal things, and also rights such as trademarks, copyrights, patents and even rights *in personam* capable of transfer or transmission, such as debts; and signifies a beneficial right to or a thing considered as having a money value, especially with reference to transfer of succession, and their capacity of being injured. This was held by the Hon'ble Supreme Court of India in the case of *R.C. Cooper v. Union of India (AIR 1970 SC 564)*. Intellectual Property is an inception of the human mind and intellect, and hence rightfully called "intellectual property". Although it is a hidden and intangible property, it is undeniably an important means of accumulating tangible wealth. Intellectual Properties and intangible assets jointly form the most important driving force of the world economy. That is precisely why so many multinational companies and international corporations have invested enormous amounts for the enrichment and protection of their intellectual properties. It is rather remarkable that with every property, there arises the question of its protection and security. Intellectual properties face dangers like any other kind of property. Where tangible properties are stolen and illegally acquired, an intellectual property is susceptible to piracy, illegal use and distribution, which is matter of grave concern because it gives a jolt to the originality of the intellectual products and infringes the rights of its creator or owner [1].

**Types of Intellectual Property:** Intellectual Property is often divided into two branches i.e., Industrial Property; and Copyrights and neighboring rights. Industrial properties are patents, trademarks, industrial designs, layout design and geographical indications etc., whereas copyright and neighboring

rights are writings, musical works, dramatic works, audio-visual works, paintings and drawings, sculptures, photographic works, architectural works, sound recordings, performances of musicians, actors and singers, and broadcasts etc. Intellectual property vitally shields and protects the application of ideas and information that are of commercial value. The subject is growing in significance, in the advanced industrial nations in particular, as the fund of exploitable ideas becomes more sophisticated and their hopes for a successful economic future come to depend increasingly upon their superior *corpus* of new knowledge and fashionable conceits. Recently, there has been a tremendous amount of political and legal activity designed to assert and strengthen the various types of protection for ideas and fruits of creativity. William Cornish is of the opinion that one characteristic shared by all types of Intellectual Property Rights is that they are essentially negative. This means that, they are rights to stop others from doing certain things. For example, such rights stop pirates, imitators, counterfeiters and even in some cases third parties who have independently reached the same ideas, from exploiting them without the license of the owner of the right. Some aspects of intellectual property, however, confer positive entitlements as well, such as the right to be granted a patent or to register a trademark upon fulfilling the requisite conditions; but these are essentially ancillary. The various types of intellectual property envisaged by the World Intellectual Property Organization (WIPO) and Trade Related Aspect of Intellectual Property Rights (TRIPs) have specific aims and objects.

**Copyright:** Copyright has two types of root. On the one hand, it started as an exclusive right to made copies – that is, to produce the work of an author. This entrepreneurial side of copyright is linked in closely with the invention of the printing press, which facilitated and eased copying of literary works and permitted the entrepreneur to make multiple copies for the first time. On the other hand, it became vital to protect the author now that his or her work could be copied much more easily and much higher numbers. It felt that the author should share in the profits of this new exploitation of the work, although this feeling was much stronger in Continental Europe than it was in the United Kingdom. Before the arrival of the printing press, many original literary or musical works were commissioned. One copy was written and the commissioner paid the author for that copy. The printing technology resulted in the production of multiple copies and it was almost naturally felt that the author should be paid for each copy that was made. Because the technique also reduced the possibility of the author controlling the format and contents of the various copies, and because the entrepreneur now undertook the reproduction work, it became necessary to think about minimum guarantees for the author in this area. This resulted in the creation of the so-called ‘moral rights’, which protected the author against unfair use of his or her work. This double set of roots is still reflected in modern copyright law.

Ever since it was created, copyright was directed towards the protection of a reproduction of a work. It was, first of all, a right in the production of printed copies of the work, which means that it is exclusively concerned with the material expression of the ideas on which the work is based. Copyright is not about ideas, but about the manner in which they are expressed. It has nonetheless proven itself to be a tool that is not only flexible but also valuable. It has the scope to be used to protect various works. At various moments in time, literary works, musical works, artistic works, - such as sculptures and paintings - works of architecture, computer programs, and so on started to attract copyright protection. A similar expansion of copyright can be seen in relation to the carriers of various works, as sound recording tapes, broadcasts, cinematograph films, videos, etc., all entered the arena of copyright [2].

**Local Laws and International Conventions:** The Indian copyright law i.e., the Copyright Act, 1957 protects literary works, dramatic works, musical works, artistic works, cinematograph films and sound recordings. It has been amended six times, with the last amendment in 2012. It is a comprehensive statute providing for copyright, moral rights (known as author’s special rights) and neighboring rights (rights of broadcasting organizations, performers and *droit de suite*). The Act provides for comprehensive economic rights (copyright) in various works that are transferable in nature. Moral rights exist in perpetuity and are vested in the authors of the work and their legal representatives, being non-transferable and enforceable by the authors and legal representatives even when the copyright in the work has been assigned to someone else. The Copyright Rules, 2013 came into force from 14th March 2013 and provide for the procedure to be adopted for the relinquishment of copyright; compulsory

licenses; statutory licenses; voluntary licenses; registration of copyright societies; and membership and administration of affairs of copyright societies and performers' societies [3].

The common law countries treated copyright as form of property and the civil law countries gave an additional dimension to the work of the author by treating it as an extension of his personality. The Berne Convention underwent seven major revisions and it is based on three major principles: National Treatment; Automatic Protection and Independence of Protection. The Universal Copyright Convention (UCC) of September 1952 was created to provide an alternative to the Berne Convention and comparatively, it imposes fewer substantive requirements. For countries that are both members of Berne Convention and the UCC, in cases of conflict between the two conventions, the former prevails. TRIPs Agreement became an annexure to the agreement establishing World Trade Organization (WTO). In addition to providing for international minimum standards of protection in the area of intellectual property, TRIPs established standards for the enforcement of such rights. It is divided into seven parts and provides for a minimum level protection for IPRs to be provided by each Member State. The member countries may, however, provide for higher standards of protection, if deemed fit. WIPO Copyright Treaty, 1996 (WCT) is an extension of the Berne Convention to meet the requirements of the contemporary digital environment. WIPO Performances and Phonograms Treaty, 1996 (WPPT) is an extension of the Rome Convention to meet the requirements of the contemporary digital environment. It requires that performers shall be given rights of attribution and integrity in their live aural performances or performances fixed in phonograms. India is a member of the Berne Convention and UCC but still has not ratified to WCT and WPPT. Intellectual property rights are now administered both by WIPO and WTO. Special conventions in the field of neighboring rights are Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961; Geneva Phonograms Convention, 1971; WPPT, 1996; Brussels Satellite Conventions, 1974; and Beijing Treaty on Audio-visual Performances, 2012. The provisions of these conventions require that authors and works linked in a certain way to one of the adherents to the conventions will be treated by a national copyright legislation in the same way as will the national authors and their works. India has complied with the provisions of the conventions that it is a part of and has drafted and/or amended the relevant laws related to copyright and neighboring rights as well as other intellectual property rights accordingly [4].

**Copyright Infringement and Rights:** The usage of copyrighted work without the consent or permission of the copyright holder is considered as a copyright infringement. The infringement of intellectual property takes place when an individual or group of individuals fabricate the work of the author either intentionally or unintentionally without giving them due credit. In the aftermath of the implementation of the Information Society Directive which was enacted to implement the WIPO Copyright Treaty and to harmonize aspects of copyright law, copyright provides essentially for three main rights, which are also available in a digital environment: the reproduction right; the right of communication to the public and of making available to the public; and the distribution right. Firstly, in relation to the reproductive right, authors have the exclusive right to authorize or to prohibit direct or indirect, temporary or permanent reproduction of their work by any means, and in any form, wholly or partly. Copying and borrowing remain infringements, irrespective of the analogue of digital environments in which they may take place. Similarly, a reproduction right is given to producers of films in respect of the original and copies of their films, and to broadcasting organizations in respect of their broadcasts, irrespective of whether these broadcasts are transmitted by wire or over the air. The crucial element in this case is that it is accepted as a starting point that temporary reproduction, as well as permanent reproduction, amounts to an infringement of copyright if it is done without the prior authorization of the right holder. Such interim duplications are made on several occasions in a digital online environment.

Secondly, right holders in a digital online environment are given a right to authorize or to prohibit the communication of their works to the public by wire or by wireless means. The most important aspect of this right is that it also applied to on-demand services, in relation to which the work is made available to the public in such a way that members of the public may access the work from a place and time that they have chosen. This removes the doubt that still existed on this point under old existing laws and

regulations. Producers of the first fixation of films receive an exclusive right to authorize or to prohibit the making available to the public, by wire or by wireless means, of the original or of copies of the films. Again, this right is explicitly held to apply also to on-demand systems and a similar right is given to broadcasting organizations in relations to fixations of their broadcasts. This right is independent of the way in which the broadcast was transmitted. Thirdly, there is the distribution right, which mainly affects hard copies of the work. The right applied to originals or copies of works that are distributed to the public through sale or otherwise. Furthermore, copyright owners are also protected through the provisions on indirect infringement, but in relation to that, they will have to prove knowledge or reason to believe on the part of the alleged infringer of their copyright [5].

**Language:** Language is the indispensable mean by which we express and record our thoughts and it is our sole way of expressing and conveying abstract concepts, keeping record, writing laws, making contractual agreements and engaging in many other acts wherein we state or record ideas. Language, therefore, is the basis upon which society as we know it today essentially functions. Without language, we would not have modern civilization characterized by such complex developments as science and technology, legal procedure and literature, because there would not be a better to express and record ideas at the disposal of mankind. It is constructed by a society to serve its purpose and it is a vehicle for transmitting cultural heritage which embraces the creations and inventions of mankind, modifications to nature made by man, behavioral characteristics and intuitions established to serve human beings, and non-material elements such as human knowledge, desire, expectations, ambitions, aspirations and visions. Phonological, philological, morphological, syntactical, semantic, linguistic and pragmatic knowledge are the major components of knowledge of language.

Language is used more often than anything else to delimit boundaries. Language is not a given trait but it is rather acquired. In this sense, human beings are not considered civilized until and unless they know the language and therefore the enormity and intensity of language growth occupy a dominant place in the realm of human relations and social discourse. Perhaps another way to understand this influence is to think of language as a series of groove by one's linguistic habits. As one reflects on a situation, their thoughts move in the flow created by their language and thus guides their thoughts. The most important single influence on a language is the linguistic needs of the society it serves. This statement rests on a simple truism, that is, a language must supply a name for every object, action and other phase of the life known to the people it serves and it must possess inflection, structure and other characteristics necessary to express thoughts precisely and adequately.

The role of linguistics needs as an influence on language and law as well is likely to continue unless the society is to become incomprehensibly static, needs will continue to arise daily, and every need will occasion a change in language, as words are added, established words are given new meaning, other means are involved to cover the new situation. Furthermore, as needs disappear from society, words and actions will become obsolete, thereby affecting changes in languages and how they are used and interpreted. Language is a structured system of arbitrary vocal sounds and sequences of sounds which is used or can be used in interpersonal communication by an aggregation of human beings, and which rather exhaustively catalogues the things, events and processes in the human environments.

**Linguistics:** Linguistics is the science of language. It deals with a specific body of material, namely written and spoken language, and that it processes by operations that can be publicly communicated and described and justified by reference to stable principles and to a theory capable of formulation. Its purpose is the analysis of the material and the making of general statements that summarize, and as far as possible, relate to the rules and regularities, the infinite variety of phenomena that fall within its scope. It is an empirical science in that its subject matter is observable with the senses, speech as heard, the movements of the vocal organs to be seen directly or with the aid of instruments, the sensations of speaking as perceived by the speaker and writing as seen and read.

Linguistics includes studies which are description of one particular language or even of a one particular language. It is a science and adopts scientific methods of procedure. It can hardly be called a physical science because language, the object of its study, is not physical and various aspects of the same cannot

be measured with the same precision that purely physical phenomena can. As language is an element of human behavior, linguistics can be regarded as one of the social or behavioral sciences. Indeed, among all branches of knowledge, linguistics is in a special position and it differs from other studies in that it uses both language and has language in its subject matter. Since every brand of knowledge makes use of language, linguistics may, in some respect, be said to lie at the center of them all, of being the study of the very tool that they must use.

Language is a system of systems and they are – phonology, morphology, semantics, and syntax are the parts of linguistics. That deals with the material of speech itself is called phonetics which is immediately concerned with the organ of speech and the movements of articulation, and more widely with the physics of sound transmission and the physiology of hearing, and ultimately with the neurological process involved both in speaking and hearing. Phonology is concerned with the patterns and organization of languages in terms of the phonetic features and categories involved and grammar is concerned with the patterns and arrangements of units established and organized on criteria other than those referable to phonetic features alone. Meaning is an attribute not only of language but of all sign and symbol systems, and the study of meaning is called semantics which, thus, embraces a wider range than language itself. Semantic can be recognized as a level of linguistic description and as a component of linguistics but it is much less tidily circumscribed field of study than are phonetics, phonology and grammar. Morphology is the identification, analysis and description of the structure of morphemes and other units of meaning in a language like words, affixes, and parts of speech and intonation/stress, implied context. In this way, morphology is the branch of linguistics that studies patterns of word formulation within and across languages, and attempts to formulate rules that model the language of the speakers and users of these languages. The branch of grammar that deals with the inner structure and general characteristics is called syntax. The syntax of sentences deals with the types of predicative relations joining the main parts of the sentence i.e., the subject and predicate. It is also concerned with the general characteristics of the sentence such as modality, syntactic tense, and the communicative goal of the sentence [6].

**Copyright and Linguistics:** It can be suggested that impressions of similarity of expression, including in relation to non-literal copying, can be clarified by describing features of discourse organization that gives rise to them. Such description may also assist one in understanding the degree of abstraction and generality that signals between architecture, treatment and ideas. Linguistics insights can be used to better understand copyright as a whole as well as copyright infringement. It is worth contrasting at the very beginning that the overall approach adopted in linguistic investigation with the noticeably different way that language questions arise in case of copyright. Linguistics is typically concerned with analyzing forms of language and also serves a variety of complementary communicative functions. As well as investigating forms, linguistics also investigates how language is used to persuade, to report events or processes occurring in different places at earlier times as well as counterfactual state of affairs, to model possible worlds, and to establish and maintain interpersonal contact in personal communication. This is all rather different from how language matters in copyright. Language questions in copyright generally concern what the complainant must show in order to succeed in preventing copyright infringement, whether for financial reasons or in order to control the impact and use of the discourse that they have produced. The allegedly infringing work must involve expression, not ideas; be copied from a work and to constitute the same the language must exhibit some degree of unity and reflect labor in selection and transformation of relevant source materials; be similar to an antecedent or senior work in which the claimant has the relevant property right; be copied either directly, by chase or even subconsciously; involve a degree of similarity that is substantially obvious; and be beyond the scope of permitted acts which make up the defense of fair dealing.

Each of these considerations calls for practical judgments about language, to the extent that degree of similarity between the allegedly infringing work and the allegedly copied work is inferred from the form of the respective works. One fundamental difference, however, between judgments made about language in copyright and investigation of language in linguistics is that observations made about language in copyright take on their significance only when linked to legally relevant findings of fact in the

particular case [7]. Linguistics plays an important role not only in formulating the laws and conventions related to copyright but also in their interpretation, construction and investigation into infringement as well.

**Illustration:** From the year 1962 to 1970, The Beatles wrote and performed over 200 original songs, many of which were chart topping hits. Classic songs like *Please Please Me*, *I Want to Hold Your Hand*, *Yesterday*, *In My Life*, *Hey Jude* and *Something*, social commentaries such as *Nowhere Man*, *Eleanor Rigby*, *A Day in the Life* and *Revolution* to rock and roll fundamentals such as *I Saw Her Standing There*, *Can't Buy Me Love*, *Day Tripper* and *Get Back*, John Lennon, Paul McCartney, George Harrison and Ringo Starr set the bar in the music industry insurmountably high. Led primarily by the legendary writing partnership of Lennon-McCartney, the Beatles as band were an integral part of popular music's evolution into a form of art. When they broke up in 1970, each of the members enjoyed significant commercial success on their own as soloists.

George Harrison, who had been stifled as a songwriter due to the rather dominating presence of Lennon-McCartney, released his triple album, *All Things Must Pass* that very year which acclimatized critical praise. *My Sweet Lord*, was the most successful hit single of the album but is also produced a legal headache for Harrison. As the song hit the radio airwaves in the early 1970s, it became rather obvious and apparent that the song had a melody that was incredibly similar to a song called *He's So Fine* that was released almost a decade ago. Bright Tunes Music which was the publisher of the said song filed a copyright infringement lawsuit in federal court against George Harrison. In order to prove copyright infringement, Bright Tunes had to prove that Harrison had access to the copyrighted work. Their song was written by the songwriter and singer Ronnie Mack and it was a huge hit in 1963 for the girl's group The Chiffons. The Beatles, including Harrison, from the very beginning of their fame in the early 1960s, routinely discussed the influence of American music on their songwriting, both in interviews with the press and also during their live concerts. Therefore, there was little question of Harrison's access to the song, and he admitted to the same rather freely in the subsequent trial. Substantial similarity, the other cornerstone of proving copyright infringement, was apparently also in dispute. Harrison denied deliberate plagiarism but has commented that he was not consciously aware of the similarity when he wrote the song but once the song got a lot of airplay and people started to talk about it, he questioned his inability to realize it earlier and also said that it would have been very easy to change a note here and there and not affect the entire feeling of the record. Harrison tried to settle the lawsuit but a settlement was never reached. The case finally came to trial in early 1976. Side by side, the two songs were carefully analyzed by the court using various tools and parameters such as linguistics and sound analysis. The trial ended with Harrison being found guilty of 'subconscious plagiarism', and he had to pay over \$1.5 million in damages, which was a considerable amount of money back in that decade [8].

**Case Law:** In the landmark case of *Francis Day and Hunter Ltd v. Bron* ((1963) 1A IPR 331), the ratio was that the test of substantial similarity in copyright infringement cases is an objective one. That assessment is for the court with such assistance from the evidence and parties as it can muster. To be an infringement there must be 'some causal connection' between the form of the infringing work and the form of the copyright work. Wilmer LJ said: 'I do not think it could be doubted that there was material on which to base the inference that the composer of 'Why' deliberately copied from 'Spanish Town'. Were that the right inference, I am satisfied that the degree of similarity would be sufficient to constitute an infringement of the plaintiffs' copyright.'

Diplock LJ said: 'to constitute infringement of copyright in any literary, dramatic or musical work, there must be present two elements: first, there must be sufficient objective similarity between the infringing work and the copyright work, or a substantial part thereof, for the former to be properly described, not necessarily as identical with, but as a reproduction or adaptation of the latter; secondly, the copyright work must be the source from which the infringing work is derived. [9]'

**Conclusion:** Language is the best form of expression with which the different art forms of copyright can be depicted. If not for linguistics, the interpretation of soothing music, drama and dance forms

wouldn't have helped the common man overcome many of the diseases both mental and physical. The contributions of the legal instruments (use of appropriate language in drafting) both at the International and National levels have enhanced the theory, concept, rights, obligations and remedies for the protection of copyright owners.

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