Research Paper Media Law

Availability, Scope, and Use of the Designs Act, 2000 and the Copyright (Amendment) Act, 2012 for Applications in Contemporary Media Practices

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ABSTRACT

This Paper discusses how the availability of two very important Acts, namely, the Designs Act, 2000, and the Copyright Act 1957, periodically amended, and significantly so in 2012; impacts the scope of their use and applications in contemporary media, trade and other industrial practices. The basic information of these Acts, as well as an understanding of related concepts of creative output and Intellectual Property and how they locate themselves under WIPO (World Intellectual Property Organisation) is also presented. Thoughts on the relevance of the Designs Act and Copyright Act in the past decades and the now prevalent contemporary digital scenario of production and distribution of content- also have been put forth. In a rapidly expanding media and public domain, it is critical to periodically review legislations and how the interplay and balance between the opportunities and constraints is kept manageable and advantageously negotiable.

KEYWORDS : Designs Act, Copy Right Act, Intellectual Property, Infringement, Creativity.

Knowing the Backdrop:-

The Creative Milieu:

Content production and manifestation in the Media has evolved from being manual and linear to automated and multidimensional. The new tools enable faster design solutions and offer a multitude of options for creativity and presentation. John Pilger , award winning journalist, filmmaker, and columnist – who was in India in 2011 for the screening of his documentary film "The War You Don't See", has coined a phrase called : "*Visual chewing gum….*" i.e. ruminating on too much visual clutter which is overtly 'feel good" but not substantive. Thomas Friedman in his article "*Reaching the Last Person…",* published in The Indian Express, dated 14 November 2011, talks about how one can take full advantage of a hyper-connected world. Citing the example of the launch of the Aakash tablet in India he applauds how through innovative design ideas price points can be effectively broken to enhance reach. In a scenario where the use of *inter-operatable communication design platforms* have become the norm, and where innumerable designs and products are being ideated and yielded to global markets, concern (alarm!) about Intellectual Property Rights and how one could regulate access to creative works is very valid. For logo designers-- trademarks, copyright and registered designs can be a career minefield. In essence, though, there needs to be a clear, damaging resemblance to existing designs to constitute an actual infringement. Under section 13 of the Copyright Act , 1957, copyright protection is conferred on literary works, dramatic works, musical works, artistic works, cinematograph films and sound recording. Amendments are being made in domestic legislations to enable extending the copyright protection in the digital environment.

International Regulatory Scenario:

World Intellectual Property Organisation (WIPO) Internet Treaties, namely WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) have set the international standards in this sphere. WIPO is one of the 17 specialised agencies of the UN, created in 1967 to encourage creative activity, to promote the protection of intellectual property throughout the world. The WCT deals with the protection for authors of literary and artistic works such as writings, computer programmes, original databases, musical works, audiovisual works, works of fine art and photographs. The WPPT protects certain "related rights" which are the rights of the performers and producers of phonograms. Legislations like the *Protect IP Act* (House version known as *Stop Online Piracy Act*) have been introduced in many countries, notably the USA to protect Intellectual Property. Compliance with this Act would require huge overhead spending by Internet companies to monitor censoring of any infringing material from being posted or transmitted. Solutions offered by legislations in the West threaten to inflict collateral damage on democratic discourses, especially those enabled through the social networks on the internet. Social networking services are however, protected by safeguards like the *Digital Millennium Copyright Act* which grant immunity from prosecution if they act in good faith.

Understanding the Fundamentals:-

Intellectual Property:

Intellectual property is the Property which has been created by exercise of intellectual faculty. It is the result of the person's intellectual activities. Thus, Intellectual Property refers to creations of the mind such as inventions, designs for industrial articles, literary and artistic works, and symbols which are ultimately used in commerce. Intellectual Property Rights allow the creators or owners to have the benefits from their works when these may be exploited commercially. These are statutory rights governed in accordance with the corresponding legislations. Intellectual Property Rights reward creativity and human endeavour which fuel the progress of humankind. The Intellectual Property is classified into seven categories, namely, Patent, Industrial Design, Trade Marks, Copyright, Geographical Indications, Layout Designs of Integrated Circuits, and Protection of undisclosed Information/Trade Secret according to Trade Related Aspects of Intellectual Property Rights (TRIPS) agreements.[1]

Trade Related Aspects of Intellectual Property Rights (TRIPS):

The TRIPS Agreement, which came into effect on 1 January 1995, is to date the most comprehensive multilateral agreement on Intellectual Property. The areas of Intellectual Property that it covers are Copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organisations); trademarks including service marks, geographical indications including appellations of origin, industrial designs, patents including the protection of new varieties of plants, the layout-designs of integrated circuits, and undisclosed information including trade secrets and test data. The three main features of the Agreement are *Standards, Enforcement,* and *Dispute Settlement.* In addition, the Agreement provides for certain basic principles, such as national and most - favoured- nation treatment, and some general rules to ensure that procedural difficulties in acquiring or maintaining Intellectual Property Rights do not nullify the substantive benefits that should flow from the Agreement.[2]

The Copyright Act, 1957:

The Copyright Act, 1957 came into effect from January 1958. This Act has been amended five times since then, i.e. in 1983, 1984, 1992, 1994, 1999, and 2012. The Copyright (Amendment) Act, 2012 is the most substantial. The amendments to the Copyright Act 1957 were made in order to bring the Act in conformity with WCT and WPPT; to protect the Music and Film Industry and address its concerns; to address the concerns of the physically disabled and to protect the interests of the author of any work; to cover incidental changes; to remove operational facilities; and enforcement of rights. Some of the important amendments to the Copyright Act in 2012 are extension of copyright protection in the digital environment such as penalties for circumvention of technological protection measures and rights management information, liability of internet service providers and introduction of statutory licenses for cover versions and broadcasting organisations; ensuring right to receive royalties for authors, and

music composers, exclusive economic and moral rights to performers, equal membership rights in copyright societies for authors and other right owners, and exception of copyrights for physically disabled to access any work/s. The Copyright Act, 1957 has within the scope of its protection original literary, dramatic, musical and artistic works, cinematograph films and sound recordings. Under this Act these are all safeguarded from unauthorised use. [3]

The Designs Act, 2000:

'Design' means only the features of shape, configuration, pattern or ornament or composition of lines , or colour or combination thereof applied to any article whether two or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye, but does not include any mode or principle or construction or anything which is in substance a mere mechanical device, and does not include any trade mark, as defined in clause (v) of sub-section of Section 2 of the Trade and Merchandise Marks Act, 1958, property mark or artistic works as defined under Section 2 (c) of the Copyright Act,1957. The scope of protection of this Act is that once a design is registered, it gives the legal right to bring an action against those persons (natural / legal entity) who infringe the design right, in the court not lower than the District Court in order to stop such exploitation and claim any damage to which the registered proprietor is legally entitled. However, if the design is not registered under the Designs Act, 2000 there will be no legal right to take action against the infringe . The important purpose of design registration is to see that the artisan, creator, originator of a design is not deprived of his bonafide reward by others applying it to their goods. [4] The Designs Act, 2000, was amended in the year 2008 (Designs Amendment Rules, 2008) and the amendment provides for a more detailed classification of design to conform to the international system and to take care of the proliferation of design related activities in various fields.

Wrapping the Rudiments:-

Interplay of Creativity with Regulations:

From a macroeconomic perspective, the historical evolution of trade and commerce has been closely entangled in a two-way or paradoxical relationship with the evolution of laws, in which one is inextricably linked to the other, and both mutually influence each other. At the microeconomic level, the same can be said about the relationship between businesses or industries and their underlying technologies. Recent changes, and notably the accelerated pace at which we recognise change, has lead to a widespread trend of 'convergence'. Convergence has been recognised in different contexts, namely, in languages, technologies and industries, as well as in regulatory matters. In order to ponder the future challenges in the regulation of global trade under the aegis of the World Trade Organisation (WTO), there is a need to focus on the question of whether technological and industrial convergence should be met by a similar trend towards 'regulatory convergence' through 'regulatory harmonisation'.[5]

In an article on "Protecting Creativity", it is conveyed that lawmakers do intend to balance the incentive to create with the interest that society has in free access to knowledge and art which may be available as "material" in the public domain. In the last few decades, however, that balance has shifted, largely thanks to the entertainment industry's lawyers and lobbyists, owing to whom, the scope of the duration of copyright has vastly increased. Lengthy protection, they argue, increases the incentive to create. Digital technology seems to strengthen the argument: by making copying easier, it seems to demand greater protection in return. The idea of extending copyright also has a moral appeal. Intellectual Property can seem very like real property, especially when it is yours and not some faceless corporations's. As a result, people feel that once they own it-especially if they have made it- they should go on owing it, much as they would a house that they could pass on to their descendents. The notion that lengthening copyright increases creativity is questionable, however. Authors, artists, and designers do not generally consult the statute books before deciding to whether or not to pick up pen or paintbrush or any of their creation tools. And overlong copyrights often limit, rather than encourage a work's dissemination, impact and influence. It can be difficult to locate copyright holders to obtain the rights to reuse old material. As a result, much content ends up in legal limbo (and in the case of old movies and sound recordings, is left to deteriorate—copying them in order to preserve them may constitute an act of infringement).The penalties even for inadvertent infringement are so punishing that creators routinely have to self-censor their work. Nor does the advent of digital technology strengthen the case for extending the period of protection. Copyright protection is needed partly to cover the costs of creating and distributing works in physical form. Digital technology slashes such costs, and thus reduces the argument for protection. The value that society places on creativity means that fair use needs to be expanded, and inadvertent infringement be minimally penalised.[6] None of the above or any other points of view should come in the way of enforcement of regulations which remain vital tools of management and surveillance of media and other production practices in the enormous domain of knowledge, learning, trade , and industry.

Summation:

On the one hand there are these directives in place, and on the other hand, today, inflection points and variations in ideation and production of media content are burgeoning. Media manifestations have come a really long way from the time of movable type and Gutenberg's printing press. The new tools enable design solutions faster, offer multitude of options for exercising creativity and enhancing quality content manifestation and delivery. The global-local "glocal" interplay in the production and output of text and visuals has become highly technologically sophisticated and more dynamic than ever before, though it would be unfair to undermine the significance of the print and other media production techniques and output in the past years. But, needless to say the future scenario is only going to get more interesting and marvelously enticing. Owing to proliferation of politically willed, technologically enabled, and regulatory mechanisms supported digital platforms, the manner in which content is delivered has been completely altered. Also, relatively newer participatory concepts such as *Copyleft* and *Creative Commons* are opening up people's minds to alternative ways of content sharing and access. The traditional and modern playing fields are now open. However, it will always remain important to maintain the balance in the core elements, purposes, and aesthetics of *design* against the edict of laws, and the hazard of (dis)information trivia and clutter that can be easily created and perpetrated disadvantageously in the vast public domain. Moreover, in a country like India, poised on the cusp of fast and further change, the commercial viability of *design* has to be countered with its use for development as well. But summarily, undeniably; anyone can indeed, today, connect, contribute and collaborate meaningfully to provide and sustain varied and viable design solutions in different media, as well as industrial and other sectors, optimising in positive ways the availability and provisions of legally designated and delineated Acts.

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