



How Trivial is Trivial in Copyright Suits?

As advances in technology ease copyright violation, India has seen rise to what may only be called trivial violations of copyright law. A recent judgment by the High Court of Delhi has helped delineate the line between trivial and non-trivial, reports **Lucy Rana**.

Trivial violations of law have attracted significant consideration under India's copyright law in recent times, and the judgment delivered by the High Court of Delhi on August 21, 2012, in the case of *India TV v. Yashraj Films* bears testimony to the same. The legal maxim that has been discussed in detail by the Court in the judgment is *de minimis non curat lex* – the law does not concern itself with trifles.

Case Facts

Two suits [(CS (OS) No.2283/2006) and (CS (OS) No.1706/2006)] were initiated against India TV, one for using a line from a popular Hindi song in an advertisement broadcast by the entity and the other for airing a program where Vasundhara Das, a renowned playback singer, in the course of her interview, sang nine stanzas from songs which had made her famous. Playback singers, a frequent fixture in Bollywood movies, are singers whose singing is prerecorded for use in movies. Playback singers record songs for soundtracks, and actors or actresses then lip-sync the songs for the film.

When Das was singing on the program, video clips from the respective cinematographic films were displayed in the background. The Single Judge of the Delhi High Court had restrained India TV and had held that other than with the permission of the owner of a copyrightable work, it is only Section 52 of the Copyright Act 1957 which privileges use of copyrightable works and that the said section does not include derivative copyrightable works and cinematographic films. The

Judge had opined that a derivative copyrightable work such as a sound recording cannot be appropriated, even in the minutest part, by any person for whatsoever purpose it may be. The fair use argument was also considered and both the disputed actions were not considered as fair use by him.

It is against the said order of the Single Judge that India TV had filed appeal in the Division Bench of the High Court.

Contentions and Observations

With respect to Section 52 of the Copyright Act 1957 (as in force prior to it being amended vide Act No. 27 of 2012), the parties argued whether Section 52(1)(b), in the context of reporting current events, justified India TV broadcasting songs sung by the singer during the chat show. It was argued that the lifetime achievements of a budding artist would be current event. This rationale was, however, rejected by the Court.

It is interesting to note that the Judge had observed the following four factors on the basis of which the fair use is considered in India:

- the purpose and the character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- the nature of the copyrighted work;
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- the effect of the use upon the potential market for or value of the copyrighted work.

It is however with reference to the legal maxim *de minimis non curat lex* (as a defense in copyright violation) the present case was discussed by the Court. As also observed by the Court, *de minimis* basically means that the law will not resolve petty or unimportant disputes.

As far as the application of *de minimis* is considered, the three paths as charted by Courts in various judicial pronouncements and as also observed by the Court in the present case are delineated below:

- Substantial similarity analysis: The said similarity can either be of comprehensive non-literal type or of fragmented literal type. The *de minimis* maxim is usually applied in the latter case.
- Application of *de minimis* to the fourth of the four factors pertaining to fair use. The Court observed that firstly, the maxim can be used as an alternative to fair use in cases where the damage done is trifling, or secondly, as a help to describe the conclusion with respect to a factor of fair use.
- The need to apply *de minimis* as applied in the other areas of the law to the law of copyright.

Discussion

The essential features of the copyright law makes it susceptible to maximum trivial violations. As also observed by the court, the type of works protected under the copyright law, the protection accorded to the work without the requirement of registration and the global nature of the protection are some of the features responsible for the same. In view of the public expenditure that would be incurred in such proceedings, adjudication of petty issues cannot be justified.

Application of *de minimis* in resolving copyright disputes has several distinct advantages. For instance it can easily substitute the concept of fair use for resolving trivial violations. Secondly, not only would its application be easier and less time consuming, but the concerned parties and society generally would also benefit as litigation could be settled in a very short time.

Factors Affecting the Application of *De Minimis*

The decision in the current case was pronounced in light of the following five factors: the size and type of the harm, the cost of adjudication, the purpose of the violated legal obligation, the effect on the legal rights of third parties and the intent of the wrongdoer.



Playback singer Vasundhara Das found herself in the midst of a copyright suit after performing nine stanzas from songs which had made her famous on a network talk show. The High Court of Delhi ruled that such use was trivial and the singer and network which had aired the program could use the *de minimis* defense.



Lucy Rana is the senior associate at SS Rana & Co in New Delhi. Rana advises many Fortune 500 companies and some of the world's most esteemed corporations in multifarious fields and has actively contributed to growth in every sphere of the firm, from prosecution to successful litigation. Rana, who majored in Japanese language and business management, has channelled her innovative and pioneering strategies for delivering efficient, high quality and cost effective results to clients.

In the first case [(CS (OS) No.2283/2006)] the advertisement was held to be a consumer awareness advertisement that intended to educate the public. Further, as the infraction was found to be trivial, it was held to have attracted the defense of *de minimis*.

As far as Vasundhara Das's performance was concerned, the Court noted that in the natural setting of a chat show, if a celebrity were to sing more than a wee bit but not substantially the full songs, as long as the singing duration is limited to a minute or so at a time, it would be a case of *de minimis* use and hence the appropriation of the lyrics would not constitute an actionable violation of the copyright in the sound recording. Since the total time consumed in singing was found to less than of 10 minutes duration (in a program that lasted for about 45 minutes) the court, after applying the aforesaid five factors, held that the defense of *de minimis* would be available both to the singer and to the television channel.

Consideration and Conclusion

While the above judgment aptly highlights the significance of *de minimis non curat lex* as a solution to trivial litigations, it does raises issues such as what quantity of copying is below the threshold of actionable copying, under what circumstances the maxim should be applied and what can be considered as trifling, unimportant or insufficient. The judgment may also consequently lead to the inference that most people can violate copyright law in minor ways on a regular basis.

The development in technological infrastructure and the multifunctional character of the information and communication technology eases copyright violation which may lead to rise in trivial disputes. Clarification regarding the aims and mechanism of the maxim has therefore assumed significance. The courts and the copyright office need to carefully analyze the loopholes existing in the law prevailing in relation to the *de minimis* and copyright law in India so that minimum standards are set on the grounds of which the size of legal violation and subsequently the size of harm caused due to the same can be measured. **AIP**



S.S.Rana & Co.

317 Lawyer Chambers,
High Court Of Delhi,
New Delhi, India
T: +91 11 30562000, 23384491
F: +91 11 30562010, 23386201
E: patents@ssrana.com
W: www.ssrana.com