



Exploring Sovereign Immunity in Copyright Infringement: How India Can Learn from the Global Experience

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Abstract:

Compared to the analogous use of patented inventions, the government's use of copyrighted works, though a very important sector, has gotten less attention. However, reports of such usage by the government or sovereign have been made in a number of nations, including the USA, where the eminent domain authority was used to provide some sort of explanation. This article uses a comparative analysis of significant jurisdictions to investigate this little-studied but crucial aspect of intellectual property law.

Original works of writing that meet the requirement of fixation in any physical medium of expression are covered under copyright law. Like with land-related property rights, the power of copyright ensures the rights to use and exclusion. The idea that "he who owns the land owns everything up to the sky and down to the center of the earth" underpins the extent of a landowner's rights in relation to their property. Copyright likewise operates on a largely similar premise, albeit with some restrictions. Therefore, the ability to regulate an abstract entity's socioeconomic agenda and keep it out of the public domain is effectively what copyright protection entails. People are eager in gaining possessions and defending the right holder's exclusive holdings from trespassers, just like they are in the case of property. Accordingly, copyright grants its owner an exclusive title that includes the freedom to use, the ability to keep others from using or possessing it, and the ability to give it to other people.

The various entitlements covered by copyright are significantly fragmented and have an impact on the delicate stability of the system. Given the multitude of rights involved, it is commonly referred to as a bundle of rights. This means that the owner of the copyright has the right with regard to the work to reproduce, distribute, communicate to the public, make any adaptations to the work, include in a cinematographic film, etc. The bundle of rights known collectively as "the copyright" grants the author the exclusive rights to reproduce, adapt, distribute, perform publicly, and display publicly the copyrighted work. The owner of the copyright may carry out these actions alone or may provide permission to anyone wishing to carry out any or all of these actions.

These evenings encompass a vast range of tasks, from printing copies to granting licenses to different broadcasting companies so they can distribute the material over the Internet or satellite transponders. The exclusive right of the copyright owner to manage this collection of rights is essential to the entire process since it allows him to safeguard the work's

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monetary value. It should be highlighted, nonetheless, that just like any other property right, the bounds of copyright must be defined precisely.

There is a bundle of restrictions that go along with the privileges mentioned above. These restrictions are designed to address the most basic necessities of society in the best interests of the general public. Regarding the copyright holder's rights, the system offers redress in the event of a violation.

Therefore, the copyright owner may pursue remedies under the relevant laws that are applicable in the relevant countries for any illegal use of a copyrighted work that is prohibited by copyright law.

Copyright law outlines a systematic framework for determining problems of culpability and damages when the accused act of infringement is undertaken by a private individual or corporation. But when the government or a company under its control is accused of violating the law, things can get rather complicated. Sovereign immunity theories will be crucial in assessing the nature of a government entity's culpability for infringement and appropriate relief in such cases, in addition to policy considerations pertinent to governmental uses." According to a renowned academic, governments are entitled to utilize copyrighted property more than copyright owners, and it is therefore improper to restrict a government agency's use of copyrighted property for socially beneficial purposes.

Use of Copyrighted Works by the Government

Regarding the government, original literary, dramatic, musical, or creative works are subject to two different types of copyright. The first is the government's ownership of copyright.

The second aspect pertains to the government's entitlement to perform actions that are covered by copyright in a work that is owned by another party. Only the latter will be covered in this essay. It is a fact that many nations make extensive use of intellectual property for governmental purposes. Property including computer software, magazine articles, book extracts, photos, records, network television shows, poetry, and artwork are all used by the government or its agents.

Position in United States of America (USA)

The legal position in the USA is that government agencies may be held accountable for breaking copyright rules. Therefore, it has been made clear that the US government may violate a work that is shielded by copyright rules. The copyright owner's exclusive remedy for such infringement is to file a lawsuit in the Court of Federal Claims against the US government to obtain monetary damages.

In the event that the US government or a US-owned or controlled corporation violates the copyright of any work protected by US copyright laws, the copyright owner may file a lawsuit against the US in the Court of Federal Claims to recover all damages, including the minimum statutory damages specified in Title 17, United States Code, and reasonable and complete compensation for the infringement. This clause also applies to any action taken on behalf of the government and with its approval or authority by a contractor, subcontractor, or other individual, business, or organization. According to US law, if the government or a government agency wishes to use property protected by copyright but is unable to reach a mutually agreeable agreement with the owner, it may use eminent domain to force the owner to sell the property to the government. The inherent authority of the federal and state governments to appropriate private land for public use, even without the owner's permission, is known as "eminent domain." In the famous case of *Kohl v. United States*, the US Supreme Court established the definition of eminent domain as "the right belonging to a sovereignty to take private property for its own public uses, and not for those of another" and thereby acknowledged the constitutionality of the power.¹¹ The US Supreme Court holds that every sovereign state possesses the right to eminent domain, which is a fundamental component of sovereignty.¹²

The right to acquire private property for public use in exchange for fair compensation is so frequently required for the effective execution of governmental duties that it is considered an indispensable component of state existence that cannot be relinquished or curtailed. The 'takings clause' of the Fifth Amendment to the United States Constitution, which states that the federal government must provide reasonable compensation to anybody whose private property is seized for public purpose, supports the authority of eminent domain.

Thirteen Scholars have noted that current courts will accept a fairly wide range of applications of eminent domain, despite the fact that US courts demand some proof of publicness as a prerequisite for the legal use of the power of eminent domain.⁴

Therefore, any government agency seeking to appropriate privately held land for public use may file for eminent domain; in such cases, the agency will have to reimburse the landowner for the use of their property.³

Eminent domain may be used to seize any kind of property, material or intangible. Since copyright is a type of property, both the federal and state governments are permitted to obtain and utilize private property. Academics point out that there are no recorded cases of government agencies using their eminent domain authority to take ownership of copyrighted work. Copyright holders, however, have sued the government, claiming that their property was seized without offering fair recompense.

The plaintiff in *Arthur S. Curtis v. United States* was the author and proprietor of "The Medal of Honor — True Tales of the Nation's Highest Award," a syndicated comic strip that was published in series starting in 1945 and was protected by copyright. The comic strip included a sequence of action cartoon pictures accompanied by descriptive words and explanations in the form of words that one of the cartoon characters was seen saying. Heroes of World War II were the medal of honor winners whom the plaintiff portrayed. The lawsuit claims that he gave his medal of honor strip to the US Treasury Department and an advertising company on the condition that he would get payment if his design was adopted. The plaintiff additionally claimed that the advertising agency utilized his primary idea to create a Medal of Honor series that the Treasury Department could use to promote the sale of defense bonds without getting his permission or paying him.

The US Treasury Department, however, disagreed with the plaintiff's argument, claiming that the advertising agency was never permitted to sign contracts on behalf of the government and that the plaintiff had never dealt with any officer or agent of the government with the authority to sign contracts on its behalf regarding the subject matter of the lawsuit. The plaintiff's statement alone could not give rise to an implied contract, the court ruled, because the plaintiff had not shown any supporting facts. The court further noted that the plaintiff would have to prove that the US Government really used his concept and/or materials in its bond advertising campaign in order to establish a claim based on a constitutional take. The US Government only utilized the photos along with a narrative detailing the recipient's valiant actions and, in certain cases, an illustrator's drawing, the court said, despite the plaintiff's strip following the conventional format and manner of cartooning.

The US government was not held accountable by the court in this uncommon instance concerning government liability for secondary copyright infringement. Boyle, the plaintiff in *John C. Boyle v. United States*, authored a brochure that described "Money for mutual fund products that were targeted to different maturity dates depending upon the year the money was desired by the investor." He distributed the pamphlets to a number of money managers.

Scope of Fair Use Doctrine with Respect to Governmental Use In US,

The copyright owner's exclusive rights are subservient to the fair use exception, which is a widely interpreted and largely judicially constructed doctrine. Despite beginning as a court theory, the fair use exception gained statutory support in 1976 with the addition of Section 107 of the Copyright Act (ref. 23).

Courts are required by Section 107 to take into account four elements when evaluating whether a certain use is fair. Therefore, the following criteria must be taken into account in order to determine whether a given use of a work is fair: (1) the use's purpose and character, including whether it is for profit or nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the impact of the use on the copyrighted work's potential market or value.²³

Fair Use and Governmental Use

The government can rely on fair use and conservation just like any other private entity, but it's important to remember that government usage of resources does not guarantee fair use and conservation. The US Department of Justice provided clarification on this in a 1999 opinion. Although government reproduction of copyrighted material for government use would generally be considered non-infringing as it would be a fair use under 17 USC §107, the opinion pointed out that there is no "per se rule" that says that government reproduction of copyrighted material is always acceptable as a fair use. ²¹ This implies that in certain uncommon circumstances, the government's usage might not be acceptable as fair use. When it comes to determining whether government use of a copyrighted material qualifies as fair use, the existing law offers very little guidance. There are very few documented cases in which the fair use concept has been applied to activities and behavior by the government. Regarding the usage of copyrighted works by governments, Williams & Wilkins Coy United States is the only documented ruling. A lawsuit was brought against specific policies of the National Library of Medicine (NLM) and the National Institute of Health (NIH). For the benefit of its research workers, the NIH library provided photocopying services: researchers could request a copy of an article from any of the journals in the library's collection, usually to help with ongoing projects or as background reading. Approximately 930,000 pages, or 85,744 requests for photocopies of journal articles, including those from Williams & Wilkins publications, were fulfilled by the library in 1970. However, the National Library of Medicine (NLM), which housed a large portion of the world's medical literature, gave away free photocopies of journal articles to other libraries, research and education-focused organizations, and for-profit businesses like pharmaceutical corporations. By a vote of 4 to 3, the Court of Claims determined that the photocopying methods of the NLM and the NIH were fair uses and hence not infringing. The court may have reached its conclusion after realizing that government libraries couldn't afford to fight copyright holders each time they tried to photocopy an item that was requested.

Uses by the government, such as the one described above, offer particularly appealing circumstances for applying the fair use theory. Additionally, in the event of a national security emergency, the US government may be granted a privilege to use a copyrighted work without the owner's express consent due to the public interest." Accordingly, the US Army Regulation 25-30 explicitly acknowledges and applies the fair use theory to the Army's use of copyrighted content.

Position in United Kingdom (UK)

The Gregory Committee Report served as the inspiration for a number of exceptions that deal with the government use of copyrighted works in other commonwealth jurisdictions. The Gregory Committee (the Committee) thought it strange that there were no statutory

provisions allowing the government to use any other copyright material, even though there were provisions allowing the use of patented designs and inventions by the government and for the use of copyright materials related to such use.

The Committee believed that it might be necessary for the armed forces to replicate papers and designs related to military equipment while soliciting bids for such equipment, rather than constantly waiting for the prior approval of copyright owners. Consequently, the Committee suggested that the authority to reproduce copyright material for government services be provided by permanent legislation, with provisions for reparation payment to be determined by the Court in the event that the parties are unable to come to an agreement.

The UK's Copyright Designs and Patents Act 1988, which took its inspiration from the Committee report, allowed the government to utilize copyrighted works for public administration purposes as long as they fell within the fair dealing category. 3* The pertinent clauses address

Court cases, cases involving royal concord, and historically significant matters, The a makes clear when a document is available for public viewing in accordance with a legal mandate. The copying of as much of the content as comprises factual information of any kind, by or with the authority of the relevant person, for a purpose that does not involve the distribution of copies to the public, does not violate any copyright in the material as a literary work.

The following exceptions apply: any material that is in public records that are available for public inspection may be copied, and a copy may be given to any individual by the officer holding the record or with their permission, without violating copyright laws:* This clause can undoubtedly be very important to owners of intellectual property. Therefore, if the relevant authority gives their approval, any information sent to the UK Drugs Controller about the toxicity and effectiveness of a specific drug may be replicated and made available to anyone.

Position in Australia

The Crown may utilize copyrighted materials in accordance with the Australia Copyright Act 1968. Copyright material for Commonwealth, State, and Territory services may be used by the governments of those states and territories, as well as by anybody granted written authorization by those governments. 31 Unless it would be against the public interest, the government must notify the copyright holder of the Crown use as soon as feasible. Terms, including possible payment for the usage, may be agreed upon by the government and the owner of the copyright. If they are unable to come to an agreement, terms may be established by the Australian Copyright Tribunal.

Additionally, the law states that nothing done for the purpose of a judicial action or the report of a judicial proceeding may infringe upon the copyright of a literary, dramatic, musical, or artistic work. 34 Recently, the Australian High Court rendered a decision in an intriguing issue involving the use of copyright by the government." 35 One of the members of the collecting society that made up the appellant, Copyright Agency Limited (CAL), was the Australian Consulting Surveyors Association, which created survey plans of land and strata in the State of New South Wales (State). In order to be sure that the survey plans they produced could satisfy the State's standards for determining the boundaries of land parcels within the State, the State registered surveyors. Survey plans were also registered by the State via the Department of Lands. 2.

To be registered in the state of New South Wales (NSW). survey plans. have to adhere to specific conditions set down under NSW legislation. The NSW government not only registered the blueprints but also duplicated them for specific uses and kept them on file. Under Sections 183 and 183A of the Copyright Act 1968, CAL petitioned the Copyright Tribunal to determine how much royalty the NSW government should pay the copyright

owners for the use of specific blueprints. The State, however, disagreed, arguing that since the blueprints were created under its supervision or direction, it was the copyright owner under Section 176 of the Copyright Act 1968. The matter was brought before the Federal Court of Australia, where a decision was rendered by the entire bench. According to Sections 176 and 177 of the Copyright Act 1968, the Federal Court determined that the State of NSW did not possess the copyright in these specific survey plans because the government/crown copyright did not exist in them.³⁷

The Federal Court further decided that the State of NSW was entitled to a license to reproduce and disseminate the contested plan to the public, in excess of what was allowed by Section 183 of the Copyright Act 1968. According to the Federal Court, the State of New South Wales possessed an implicit right, free of charge, to carry out any tasks related to or mandated by registered plans.

In the Australian High Court, CAL lodged an appeal against the Federal Court's ruling. The Australian High Court ruled that there was no implicit license in place for using the blueprints for public use. either in the contracts that surveyors® have with their clients or outside of these agreements. The State of NSW charged for the copies it provided, and the court based its decision on the facts that there was no need to suggest such a permission. As a result, it decided that the State of New South Wales could not use surveyors' plans by duplicating them and making them available to the general public without paying the copyright holders.

Position in New Zealand

The Copyright Act 1994 (New Zealand) contains rules pertaining to the government and the crown. It allows the use of copyrighted content for government services provided that the copyright owner receives fair compensation, as agreed upon or established. The program is only activated when actions are taken in the interest of public health or safety, national security, or during an emergency.

Position in Singapore

Strong guidelines addressing government usage of copyrighted content are found in Singapore's Copyright Act. According to the pertinent clause, a sound recording, cinematograph film, literary, dramatic, musical, or creative work is protected by copyright. The Singapore government or any authorized individual performing any copyright-protected act cannot violate television, sound, or cable programming as long as the act is carried out in the government's service." This includes the use of defense supplies by the government in accordance with a defense agreement with another nation.

Additionally, it specifies that the government must notify the copyright holder of such use as soon as possible. ⁴³. However, it has been stipulated that the copying of all or part of a work for educational purposes by an educational institution under government control shall not be considered as an act done in the service of the Government in order to prevent the misuse of these provisions by educational institutions owned by the Singapore government."

Position in Continental Europe

Germany and other continental European nations allow for specific government exceptions to be made in order to advance public safety and justice administration. Therefore, making copies of a work or ordering copies to be made is acceptable when it comes to using those copies in court, before an arbitration panel, or before a public authority. With the exception of the aforementioned circumstance, courts, arbitration panels, and government agencies are authorized to duplicate or order the reproduction of pictures in order to carry out justice administration and public safety functions.

Position in India

There are also certain provisions regarding government usage of copyrighted works in the Copyright Act 1957 (India). The copying of a literary, dramatic, musical, or artistic work for the purpose of a judicial procedure or as a report is allowed under the regulations that are currently in place. Similarly, it is permissible to reproduce or publish a literary, dramatic, musical, or artistic work in any work created by a legislature's secretariat and intended solely for use by its members.⁷ Moreover, it is permissible to reproduce any literary, theatrical, or musical work in a certified copy that is created or provided in compliance with an existing law. The exemption from public performance of literary, dramatic, or musical works as well as sound recordings made during official ceremonies hosted by the federal government, state governments, or local authorities is another noteworthy clause.

Fine-tuning the Indian Law: Some Suggestions

As previously mentioned, copyright holders' compensation for such use is not included in Indian law. It should be kept in mind that any replication carried out by the government or entities acting on its behalf shouldn't interfere with the work's regular commercial use or unjustly jeopardize the author's or owner's legal rights. The current Copyright Act's governmental use provisions are extremely limited in scope and do not cover all actions taken by the government. A provision allowing the Union, State, or Local government, as well as any individual granted written authorization by those governments, to utilize any copyrighted material for the benefit of the aforementioned governments should be included in the Copyright Act. Regarding the various terms, including possible payment for the usage, the government and the copyright holder may reach an agreement. The authority to establish the terms and conditions may be delegated to the Copyright Board if they are unable to come to an agreement. The government should be required to pay copyright owners for the value of their appropriated works, even though it is desirable to grant the government the superior right to exploit intellectual material over copyright owners.

A far broader compulsory permission in the government's favor can be added to the law's limited exemption for government use. Any such license, though, ought to include a fair compensation plan to make up for the losses suffered by copyright holders.

Governmental Use to Protect National Security

In the event of national security, where public interest is paramount, the Copyright Act must have certain exemptions for important ministries within the Indian defense system. This privilege should enable the relevant departments and armed forces to use the copyrighted work without the owner's express consent. For instance, the Indian Army or Bhabha Atomic Research Centre should be able to use an image of a specific weapon system that is displayed in a defense journal published by Janes Defense Weekly without the owner's consent.

In addition, the Copyright Act ought to include an explanation or exception stating that copying done by someone authorized by the person requiring public inspection or maintaining the register, or for any other purpose other than distributing copies to the general public, will not violate any copyright in material that is available for public inspection under statutory requirements or in a statutory register.⁸ Second, the Act should allow the public to copy or issue copies of copyrighted materials that are placed on a statutory register that includes information about subjects of general scientific, technical, commercial, or economic interest, or that are open to public inspection in accordance with a legal requirement. Nonetheless, in these situations, the person keeping the register or allowing public access to the content should approve such an action.

Additionally, material sent to the government in the course of public business by the owner

or with a license from them is another exemption that might be added to the Act in cases where the government owns or controls a document or other material that incorporates the work. Subject to any agreement to the contrary, the government may, without infringement, make copies of such material or distribute copies to the public for the purposes for which the work was communicated to it. These clauses can insulate the government from liability even if it duplicates anything or distributes copies to the general public at a profit that is paid by the copyright owner.

Conclusion

The governmental usage exclusions in numerous international jurisdictions were thoroughly discussed in this study. The article examined the legal concepts and case-laws pertaining to the governmental use of copyrighted works in various commonwealth jurisdictions, such as the UK, Australia, and India. It began with the USA, where there is no particular exception available for such use. In summary, one could contend that the courts ought to evaluate government uses of copyrighted property in a distinct manner from how private defendants utilize it. Unlike private individuals, the Union, State, and Local government organizations possess the authority to use eminent domain over property that is protected by copyright.

Eminent domain authority is a feature of sovereignty that each sovereign state possesses by default. The government may utilize its power of eminent domain to compel the owner of any property to sell all or part of its rights if a movement entity wishes to use that right but is unable to reach an amicable agreement with them.

When used appropriately, this authority can supersede copyright owners' rights as specified by the applicable laws. However, in order to ensure that it does not violate any of the Bere Convention's exceptions, a government entity's unapproved use of copyrighted work must be subject to specific restrictions. To put it briefly, adequate guidelines should be offered for figuring out when a certain use of copyrighted property by the government qualifies as an exercise of the eminent domain power and what kind of appropriate compensation the copyright owners should get. More thorough legislation on the subject is required in India. Appropriate modifications ought to be made in order to include specific clauses concerning national security and the duplication or public dissemination of copyrighted items that are accessible for public viewing in accordance with legal mandates. etc. But right now, there is a pressing need for a campaign to raise awareness about the types and extent of government use of intellectual material. Educating different stakeholders about the extent of this use will undoubtedly be a positive step in the right way.

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