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INTERPRETING BONA FIDE INTENTIONS IN COPYRIGHT LAW: BALANCING RIGHTS AND PUBLIC INTERESTS

The copyright Act 1957, under Section 39(a), Section 39(b) and Section 39(c) elucidates acts that come under the ambit of bona fide teaching or research, bona fide review and necessary adaptations and modifications with regards to sound or visual recording, performances or any act. Any act under this spectrum shall not be considered to be infringing broadcast reproduction right or performer's right.¹

The Latin term *bona fide*, although not defined in its constituents and elements under the Act², it translates to 'good faith'. The good faith, consequently becomes a matter of interpretation by the court. In Section 52(h) and Section 52(1) (za) of the Act, bona fide is noted to as an element of intention for a work that shall be not constitute as an infringement of copyright. Even though the provision provides with a structured provision under Section 51 of the Act, consisting of instances which shall come under copyright infringement, the court time and again is in a position to interpret the bona fide intention in determination of copyright infringement.

In the case of the *Society of Music Lovers vs. State Government*, the issue of bona fide came into play when a copyrighted music was played at an official state occasion, wherein it was stated that copyrighted music isn't solely about the beautiful melody, exceptional vocals, or magnificent rendition. It pertains to the melody or harmony that has been transcribed into written, printed, or graphic form. It was interpreted by the court, in accordance to Section 52(1) (za) that it exempts performances of copyrighted works during official ceremonies organized by government bodies from copyright infringement on the ground that it shall come under bona fide ceremony. This broad interpretation includes events organized by the Central Government, State Government, or local authorities. And thus, copyright societies like IPRS cannot claim

¹ The Copyright Act, 1957. S. 39

² The Copyright Act, 1957

royalties for such performances, providing legal certainty for event organizers and balancing copyright protection with public interests in cultural events.³

In a report submitted by Dr. Arul George Scaria, an associate professor of law and LLM Chair at the National Law School of India University (NLSIU), Bengaluru, to the Delhi High Court presented that the utilization of music or audio recordings during wedding ceremonies does not constitute copyright infringement. There is yet to come a definitive judgment on the same as the court refrained from making a legal judgment on the matter in question.⁴

In case of *Star India Pvt. Ltd. vs Piyush Agarwal & Ors.*⁵, the plaintiff asserted the essential rights to all data originating from a cricket event, based on their role in organizing and promoting the sport of cricket within India. The defendants contended that the plaintiff and BCCI at best, can only claim broadcasting rights and copyright over the cinematograph film of the cricket match or audio recording of the commentary etc., to the extent it is recognized under the Act. And that the defendants' action does not amount to free-riding because, they neither copy the actual content of the broadcast, nor provide access to audio or visual footage of the broadcast. The defendants contended that the plaintiff and BCCI can only claim rights to broadcast and copyright over the cricket match videos or audio commentary as allowed by the law and the defendant's actions shall not count as unfair advantage-taking because they don't copy or share the actual broadcast content or provide access to the audio or visual footage of the match.

The court observed the timing of updates provided during live telecasts or broadcasts of cricket matches. Court came into a conclusion that if updates are delayed by 2/3 minutes, they would still be considered contemporaneous with the live event. However, if the delay extends to 30 minutes or more, as the information loses relevance and deprives the public of their right to timely updates. Hence, the court held that a 15-minute delay ensures a balance between the plaintiff's right to monetize the match and the public's right to access information. It also prevents the defendants from unfairly benefiting from the plaintiff's efforts without

³ Dhruv M. Shah. *Are The Exemptions Prescribed Under Copyright Law Really Being Enforced? Here's What You Need To Know!* LIVELAW NEWS NETWORK. (Apr. 8, 2024, 9:00 PM.) <https://www.livelaw.in/law-firms/law-firm-articles-/dpiit-copyright-act-society-for-copyright-regulation-of-indian-producers-for-film-and-television-phonographic-performance-limited-ipr-233950>

⁴ *Delhi High Court Acknowledges Dr. Arul Scaria's Assistance in Copyright Litigation | Submissions Taken on Record.* NATIONAL LAW SCHOOL OF INDIA UNIVERSITY. (Apr. 8, 2024, 10:00 PM.) <https://www.nls.ac.in/news-events/delhi-high-court-acknowledges-dr-arul-scarias-assistance-in-copyright-litigation-submissions-taken-on-record/>

⁵ *Star India Pvt. Ltd. v Piyush Agarwal & Ors.* (2013)

contributing themselves. The role of the BCCI broadcasting was considered to be under a bona fide intention.

It is to be noted that the essence of bona fide has been given a wide interpretation by the court when observing the above-mentioned instances. The term bona fide is specifically attached to education and research under S.39 of the Act as it intends to restrict any purely commercial aspect from it. Similarly, the provision further states bona fide element with regards to the performance to emphasize the criteria on which a work shall be allowed.

It is to also recognise that the concept of bona fide intend under S.52 of the Act has been incorporated with reference to the UK Copyright Law, where the concept of fair dealing was formally acknowledged within the UK's copyright legislation. Although this term has not been stated in the copyright law in India, the essence has been very well included in the provision. This UK legislation had three crucial limitations on the rights of copyright owners, specifically permitting fair dealing for non-commercial research or private study, for criticism or review, and for news reporting, which could be observed in S.39 of the Act. This framework of fair dealing in British copyright law is detailed through an exhaustive list of exceptions which makes the UK legislation clearer in terms of application and interpretation of bona fide intend and fair dealing.⁶

⁶ Sufiya Ahmed. *Fair Dealing in Indian Copyright Law*. Journal of Intellectual Property Rights. Vol 26, March 2021, pp 96-102. (2021)