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Copyright Act And Photographs On Social Media

Are photographs posted on Social Media Protected under Copyright Law?

Introduction

We live, today, in an internet age, where human beings scattered all over the world are perpetually and constantly connected via social networking websites such as Facebook, Instagram, Twitter and several more. Social Media is that construct, which gives users the ability to share content instantly, from any corner of the planet, and all they need is an internet connection!

It must be admitted, that sharing photos that other people post on their profiles is something several of us do quite frequently when browsing on social media websites. If a beautiful picture pops up on our screens which inspires us, or makes an impact, we immediately feel the need to share that picture with friends or family, and we do so, without a second thought. However, this action begs the question, at what point does this act of sharing another person's picture become a possible copyright infringement?

Copyright Infringement in Photographs

With the advent of new social media platforms as well as a lot of photo sharing apps, the looming risk of a possible copyright infringement through the sharing of photos is now an ever-present phenomenon. In a simple “click-of-a-button” world, it is easy to forget about possible legal consequences and implications of what we do on social network.

It wasn't too long after the invention of such websites that the *unauthorized* use and sharing of photographs posted by such users became a problem in the legal sphere. For example, in 2013, a Haitian photographer, Mr. Daniel Morel won his major copyright victory after a four-year long struggle over certain photographs of he took of the 2010 Haiti earthquake he posted on social media. Originally, his photographs were posted on website known as “TwitPic”, that allows users to put up pictures on Twitter. However the issue arose when those pictures were reposted by another user known as Lisandro Suero, who claimed they were his property. Further, Agence France-Presse as well as Getty Images distributed and sold these photos to their clients for money. Mr. Morel eventually succeeded in the action he brought against the infringement of his rights, and was awarded a sum of awarded him \$1.22 million.

Social Networking Sites and Their Policy

According to Section 17(a) of the Indian Copyright Act the “first owners” of a literary work are the authors of that particular work, and provides that, first ownership will always rest with the author even if the rights of the concerned literary work have been transferred. In essence, this section provides that the photographer will be the first owner of the photograph and will have within him rights vested as such.

Further, as per the [Facebook's Statement of Rights and Responsibilities](#), by uploading any content on Facebook, the uploading party/user is, by way of such upload, licensing his intellectual property rights to Facebook. This is a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license. Thus, implying that, even though the user may be the original right-holder over content posted by him on Facebook, through the act of posting online he is giving Facebook an “[IP License](#)”. Such a condition is also included while posting content on Instagram.

Case of Fairmount Hotels Pvt. Ltd. vs. Bhupender Singh (2018)

A copyright vested in photos uploaded by users on Facebook has recently been recognized by the honourable High Court of Delhi in a recent judgement given by Justice Manmohan.

Facts of the Case

In 2015, a conflict arose when the Plaintiff, **Fairmount Hotels Pvt. Ltd.** realized that the Defendant, **Mr. Bhupender Singh** had displayed the pictures belonging to the Plaintiff. Pictures of the hotel had been posted on the Facebook page of the Defendant without the requisite authorization or permission of the Plaintiff. Subsequently, a suit for infringement of copyright of the Plaintiff was filed before the Hon'ble High Court of Delhi. The Plaintiff submitted that such an act of the Defendant unfair means to attract the innocent people in the guise of the Plaintiff. It so happened, that the Defendant had been an employee of the Plaintiff and after leaving that service, had opened a hotel of

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his own in Manali and was using images of the Plaintiff for the promotion of his own new hotel.

Reliefs Sought

Plaintiff filed two suits; in the original suit, he sought an *ex parte* injunction against any further use of the concerned photographs by the Defendant on his Facebook page. The Plaintiff then also submitted in evidence, the concerned photographs to claim permanent Injunction. An interim injunction was thus passed against the Defendant following which the Defendant undertook not to misuse the photographs on his Facebook page. Further, after considering all submissions made by both parties, as well as the financial status of the Defendant, the Hon'ble High Court of Delhi granted a permanent injunction against the misuse of the photographs by the Defendant and issued a direction of 50,000 INR cost to be paid to the Plaintiff.

Analysis

Photographs are protected under copyright law as artistic work under Section 2 (c) of Copyright Act 1957 in India. Although in India, as per section 25 of the Copyright Act, the Photographs are provided copyright protection for a period of 60 years from the date of publication, the term of protection varies from country to country. For example, the duration of protection provided by US/European Union is 70 years, while Berne convention provides minimum limit duration of protection of 50 years. Although copyright registration is not mandatory under Copyright Act, it is recommended, and the procedure can be completed with the Copyright Office.

However, it has been noted that malafide intention of a person sharing photographs should be considered imposing liability for infringement of copyright, with respect to photographs. If any individual looking to use/share/post pictures or photographs belonging to another person is doing so without the malafide intention to incur undue profits from it, he may not be infringing the Intellectual Property of the author. For example, in the above mentioned case of the Haitian photographer, companies that had wilfully sold his property for monetary gain were held liable for their malafide intent. Photographs can be utilized for teaching/research, legislative, judicial proceedings under the purview of fair use and are permissible for use of photographs even without the prior consent of the photographer.

Conclusion

The Copyright Act, 1957 is exhaustive which can effectively safeguard the rights of photographs posted on social media websites and photographer rights in India. This is because, the law not only protects hard copy/paper photographs taken but also online posting of photographs. This protection for online photographs is not expressly mentioned in the Copyright Act, however the existing judgements being pronounced in the purview of such issues is proving time and again that the meaning of "photographs" u/s 2(c) of the act includes photographs posted on online platforms as well. Therefore, the existing copyright law provisions are competent to overcome any hurdles in the way of social media users and all the latest technology.

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[11] Article 2(c)(i) of Copyright Act, 1957, “*artistic work as a painting , a sculpture, a drawing, (including a map, chart or plan) an engraving or a photograph whether or not any such work possesses artistic quality*”

[12] Procedure for Copyright Registration, available at <http://copyright.gov.in/frmWorkFlow.aspx>

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