

CHARACTER PROTECTION UNDER COPYRIGHTS AND RELATED LAWS

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ABSTRACT

This article is based on one of the Intellectual Property Right's legal suitable systems, i. Copyright and related laws are held responsible for the protection of different literary and artistic texts and creative work, including expressions of ideas and thoughts, and these creators get specific time to utilise their exclusive rights over their creations. It is a title, a particular area of copyright protection for characters, which is taken into the picture. Whenuree cases observed cartoon toon were far simpler and easier to rule out those rare characters,ters as not only did they seem too complex they were but even difficult to decide upon where different kinds of testing were implemented under these laws are not only limited to copyrights, but also, the complexity lies in proving the originality of the artwork, especially when it comes to characters; it needs to acquire protection only when it's extraordinarily unique, and the features need to have no match with the rest of the characters available le That attains protection under The Copyright Act of 1957¹.

Keywords: Intellectual Property Rights, The Copyright Act, Copyright Laws, Protection of Characters.

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INTRODUCTION

Our complete childhood was covered with cartoon characters, the characters who made our childhood so memorable, characters like Ninja Hatori, Power Rangers, Avengers, Superman, Batman, Doraemon, Shinchon, Micky Mouse² and what else to Have about it ever wondereaudienceIndian is Audie ce? Shaktiman, one of our late 90s Indian superheroes b, Singapore used in Marvel or Marvel character man as their Character and DC to claim Iro Man as their own? We, as fans, always want our characters to be in their places, so we are the creators of Marvel and DC. Here, the role of Intellectual property character is where the Character's Legal identity stays with the creator himself, and no one can use it in their work. What defines Intellectual Property and Its assuring rights to creators that their work could be

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¹ The Copyright Act,1957, S 1(1)

² *Walt Disney Co. v Air Pirates* [1978] 581 F.2d 751, (US. 9th Cir.)

protected? And how much do they turn out to be helpful in terms of protecting a person's piece of art? And if art is a character, what vital role does it play, irrespective of the entertainment platform? All of the above questions might have dripped into the reader's mind, and this is what the article would be talking about.

INTELLECTUAL PROPERTY: A PROTECTOR?

The term Intellectual property is defined as "The creativity and crucial innovations of the mind which bring life-altering changes into human's life through different art forms such as inventions, computer programs to trademark and other commercial signs and helps in developing both in economic and Technologically" under World Intellectual Property Organisation (WIPO)³. It has benefited the process of the well-being of the human economy and standards of living where it has stood as the progress of Development in the society where the creator of artwork gets the motivation to create and develop his artwork as Intellectual property guarantees protection to their work and its identity. There are different kind of categories that IPR is mainly divided into where it begins Industrial Property Rights, which includes innovations, industrial designs, patents for inventions, trademarks of goods and Geographical indications, Copyrights and related law, which not only include books, music, paintings, scientific or movies, It covers an enormous range of works in detail which includes the Characters of books, paintingCharacteries where the Character stands unique and has unique abilities or personality in the context⁴.

CHARACTERS AND COPYRIGHT LAW

Copyright laws guarantee the creator's originality and creativity by preserving its uniqueness, and Characters are one of the most valuable forms of creativity a creator brings into existence. In the textual form, the term 'copyright'⁵ is mentioned as "the exclusive rights subject to work of the owner in response of the authority to his literary, dramatic or musical work such as movies, dramas, plays, journals, publications, characters, songs etc.". In layman's words, "The moral rights of an artist over their work, and the way rights are protected under copyright law, which was described in one of the Landmark Judgment cases *Amar Nath Sehgal v Union of India*⁶.

³ World Intellectual Property Organization (2004, WIPO, 2020) 2

⁴ World Intellectual Property Organization (2004, WIPO, 2020) 3

⁵ The Copyright Act, 1957, S 14(a)

⁶ *Amar Nath Sehgal v Union of India*, 2005 (30) PTC 253 (Del), HC AIR 2005

There are more than a million movies from the 1880s to date that have brought me joy. Every movie has characters that might or may not yet be protected under the Copyright Act of 1957,⁷ and to attain the credibility of having the protection of a character, a character needs to run under specific key facts.

Firstly, it needs to be a Character. It means the Character should have uniqueness, and no such character should exist beforehand; it may be its unique feature, appearance, personality, way of handling enemies, and even the dialogues and characters of the same Character hold identity.

Secondly, the protection sounds more concrete when there is appropriate Legal documentation or the Characters. When the characters gain their uniqueness, it get preserved, and the creation is less likely to be infringed upon by third parties. So, it's necessary to understand at what exact time and process a character is entitled to protection.

KINDS OF CHARACTERS BEING PROTECTED

When we consider characters, there are certain ways that a character is legally protected under intellectual property character is when the Character is a cartoon and is an artwork of an artist, let's say Mickey Mouse, Donald Duck, Doraemon, Shinchon, Chota Bheem, etc, which is also known as Cartoon Characters and Character her hand, the Character that is designed and assigned into the role like superheroes, Power Rangers, etc. which is also known as Literary Character.

Firstly, when it comes to cartoon characters, they can be approached from a very positive perspective. In the cases of cartoon characters, it has been found that in comparison to earlier cases where the hon'ble courts weren't able to decide whether similarity in the appearance of characters, without the similarity of personality, was a Characterement of a Character or n⁸. So, copyright protection is available for cartoon characters.

In recent times, courts have been prominent in protecting the originality of art forms and have persevered in the following cases, which have taken IPR to the next level.

In 1978, a landmark judgment case, *Walt Disney Co. v Air Pirates*⁹, a case of the United States Court of Appeals, involved the unauthorised use of Disney characters by a group of local comic

⁷ The Copyright Act, 1957

⁸ *Warner Bros. v American Broadcasting Cos.* [1981] 720 F. 2d 204 (US. 2nd Cir. 1983)

⁹ *Walt Disney Co. v Air Pirates* [1978] 581 F.2d 751, (US. 1132 9th Cir.)

artists. A two-step test was applied where virtual similarities and determining Infringement followed by analysing the Characterality of the Character, which is also known as 'Character Delineation', was conducted, which resulted in objecting other artists to stop painting images of the characters of Disney in the streets of Florida. The Character Delineation was further improved in *Nichols v Universal Pictures*¹⁰. Finally, the Court held that the characters were protected under copyright law and their use without permission constituted Infringement under the Copyright Act¹¹.

Another case of 1940, *Detective Comics v Bruns Publication*,¹² was a case that determined copyright protection for Cartoon Characters and even mentioned: "the Character to be an expression of a general idea"¹³. Here, a character named 'Wonderman' was created. This Character had a similar personality and features as the superhero character 'Superman'. The Court held that Defendant had copied the specified detailing of the Character Superman into his Character 'Wonderman'. So, the Court's decision was in favour of the complainant, and the Court denied granting protection to the Defendant, saying it was a general idea about a character and wasn't sufficient to grant protection.

After analysing these kinds of cases, it becomes clear that copying cartoon characters and detailing their nature, features, unique elements, personalities, and even the way the character talks and does activities amounts to Infringement.

Secondly, when it comes to literary work, the related laws and the Court at certain points seem a bit less concrete in comparison to Cartoon's characters. Literary work mostly has situations where the artwork isn't necessarily in a physical form, and here it becomes hard for the Court to hold a decision on the artwork, and it leaves the parties in a questionable stage of whom does have the actual authority of the workpiece due to the complexity to prove the expression.

Certain cases reflected the Court's decision on literary work where none of the characters were in solid form, as the characters in graphic, picture, or cartoon form were.

¹⁰ *Nichols v Universal Pictures*, [1931] 45 F.2d 119 (US. 902, 2nd Cir. 1930)

¹¹ The Copyright Act, 1957, S 51(b)(ii)

¹² *Detective Comics v Bruns Publication* [1940] 111 F.2d 432 (2nd Cir.)

¹³ Sourav Kanti De Biswas, 'Copyrightability of characters' (2004) 150 <http://docs.manupatra.in> accessed 19 January 2004

In a case, recently in 2015, *DC Comics v Mark Towle*¹⁴, a case of the United States of Appeals, where the case was about the unauthorised use of the Batmobile Character in replica and used to sell them. The Character was the property of DC Comics and, Hence, protected under the Copyright Act¹⁵. Defendant thus infringed on the artwork of DC.

In another case, *Warner Brothers Pictures*,¹⁶ according to the 9th Circuit, mentioned a different test, namely "Story being told," where Character that if the Character said in the storyline holds Copyright, then it constituted to be protected under Intellectual Property Rights and would be granted protection before the court. This is one of the ways the Court holds cases and gives justified decisions on such literary characters. The Court came across unfair use and competition of the character 'Falcon' as its name and characteristics were being used.

Similarly, In the case of *University City Studios v Kamar Industries*¹⁷, A similar test was characterised, and the Character named ET was declared characterable, and the Character was stated as unique and distinct. But when the same test was sent and was applied in Court, the Character of Regan from *The Exorcist* movie was refused to be protected under the law.¹⁸

In most of the cases, the Court was always seen in favour of the parties that had proper documentation of their characters, which symbolises that the creators can have a true fair of their artwork being preserved and safe under The Intellectual Property Rights and the Laws related to it do protect their piece of work.

On the other hand, when it comes to literary work, It consists of protectable and unprotectable expressions where it adds to the general rule of characters, being original, individualistic and idiosyncratic from different characters and no thoughts or characters which are just ideas would be entertained in Court, an artist needs to convert the art into expression and then would be granted protection under Copyright laws.

¹⁴ *DC Comics v Mark Towle* [2015] 802 F.3d 1012 (9th Cir.)

¹⁵ The Copyright Act, 1957, S 51(b)(i)

¹⁶ *Warner Brothers Pictures, Inc. et al. v Columbia Broadcasting Systems, Inc. et al.* [1951], Civ.8265, 102 F. supp.141 (S.D.Cal. 1951)

¹⁷ *University City Studios v Kamar Industries* [1982], (S.D Tex. 1982)

¹⁸ Sourav Kanti De Biswas, 'Copyrightability of characters' (2004) 152 <http://docs.manupatra.in> accessed 19 January 2004

CONCLUSION

When we talk about characters, we can refer to cartoons or literary characters. They are deeply rooted in our lifestyle, as are the laws in our legal system, Ms But at a certain period, it becomes difficult to put a mark on whether the work is the creator's creation or not if the art form is determined as fully developed or not if developed, whether some other creator has done with the legal work before or not. This becomes a challenging job. We always see the characters' happy faces but can never understand how difficult it becomes to handle a case where the question remains confusing and unanswerable.

