Copyright infringement: similarity versus sameness essay sample

Law

The laws and other doctrines covering the aspects of copyright and its infringement largely protect the works of copyright owners from the tampering or undue copying of their original works by other individuals. However, there are cases where there are no apparent intentions to violate the copyright of the original creator of an original work. For instance, a certain individual may publish a journal article with research findings that are similar to a published journal article a few years ago. In such cases, the former may have not provided proper citation or acknowledgment of the latter precisely because the former has no prior knowledge about the older article. As a result, the dilemma of innocent infringement has caused the courts to " stretch and bend the rules of monetary liability to avoid harsh results" while raising issues concerning copyright protection at the same time.[1] To say that the fact that a person has created a work similar to another's person work is evidence of copyright infringement is not a complete argument and, thus, it does not stand as solid evidence.

In earlier years, the courts maintained that intent to infringe the copyright of others is not essential to the act, nor is it a defence for the action, as in the 1931 case of *Buck v. Jewel-La Salle Realty Co* .[2] It was postulated in earlier times that innocence is not an excuse for copyright infringement because the copyright is available in the Copyright Office and, thus, failure to inquire before publishing constitutes infringement liabilities.[3] However, almost two decades after, the courts maintained that an author of an original work may defer the registration of the copyright for his or her work,[4] which means that the argument of ' responsibility' on the part of publishers to seek first the existing copyrights is weak.

More importantly, ‘ innocent’ infringement does not necessarily equate to strict copyright infringement primarily because of the absence of intention to infringe on the copyright as well as the absence of negligence on the part of the accused. Another reason why a seemingly similar copy of another work does not strictly amount to copyright infringement is that the original work presumed to have been copied is already in the public domain. Unless the presumed infringer had prior knowledge that what he took or copied is copyrighted, then the infringer cannot be held liable, as in the case of *De Acosta v. Brown* .[5] Indeed, how could the supposed infringer committed copyright infringement when the presumed infringer had no prior knowledge about the existing copyright, assuming there was one in the first place?

Another thing to consider is that one work may look similar with another but certainly not the same. In essence, similarity between two or more works does not mean sameness. It is therefore important to note that, while a contemporary poem may resemble certain similarities to the lines of a Shakespearean sonnet, the issue of similarity does not immediately result to copyright infringement. It may be the case, though, that a person can draw inspiration from the works of another author. As Paul Goldstein points out, “ copyright gives a limited property right that at once promises an author protection for the product of her mind, and ensures her the freedom to borrow unprotected elements from the copyrighted works of others.”[6]

In today’s modern society, the rise of the internet has further expanded the notion of copyright into the vastness of the cyber world. The cases of similar works published in numerous websites abound precisely because various

authors from across the world post articles in websites about the same events. Moreover, the issue of, say, similar texts between two articles in two different websites does not necessarily amount to copyright infringement because the very of idea of two articles as similar but not the same points back to the observation that copyright infringement does not always include ‘ innocent’ infringement as opposed to premeditated infringement of someone’s copyrighted works. There appears to be a ‘ digital dilemma’, as Raymond Shih Ray Ku argues, that challenges “ the proper scope of copyright in the twenty-first century.”[7]

There are still many other forms of copyrighted works in the mainstream media in these modern times where the delicate issue of copyright infringement is further highlighted. Songs having similar beats and notes might just as well qualify as being ‘ inspired’ by other musical pieces and not necessarily bordering on copyright infringement. Several online games may have similar features, graphical interface and characters and yet not one of these online games are said to have violated the copyright of one another. Two or three popular news websites may contain similar sections and graphical structure without necessarily infringing on other copyrighted websites. In essence, it can hardly be said that similarities can stand as sufficient bases for claiming that one person has committed copyright infringement, especially when that person had no intent of doing so.

Bibliography

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[1] Kent Sinclair, Jr., ‘ Liability for copyright infringement: handling innocence in a strict-liability context,’ *California Law Review* , Vol. 58, issue 4, 1990, p. 941.

[2] *Buck v. Jewel-La Salle Realty Co.,* 1931, 283 US 191.

[3] *Stern v. Jerome H. Remick & Co.,* 1910, 175 F. 282.

[4] *Washington Publishing Co. v. Pearson* , 1939, 306 U. S. 30.

[5] *De Acosta v. Brown* , 1944, 146 F. 2d (2d Cir. 1944).

[6] Paul Goldstein, ‘ Copyright,’ *Law and Contemporary Problems* , Vol. 55, issue 2, 1992, p. 86.

[7] Raymond Shih Ray Ku, ‘ The creative destruction of copyright: Napster and the new economics of digital technology,’ *The University of Chicago Law Review* , Vol. 69, issue 1, 2002, p. 264.