

Week-8 (Intellectual Property)

Q.1. What are the four factors to consider in deciding whether a use of copyrighted material is a fair use? Explain by giving examples.

Answer:

Fair use is a legal doctrine that preserves and protects the freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances without authorization or permission from the real owner. The four factors to consider in deciding whether a use of copyrighted material is a fair use are described below:

1. The purpose and the character of the use which includes whether such use is of a commercial nature or is for nonprofit educational purposes

For example, utilizing an image of a painting found in an art history textbook would likely be regarded fair if the writer/author is using it for an educational purpose and developing a narration on his own. But applying the same copyrighted painting on an advertisement for an unrelated product would not be regarded as the practice of a fair use. Another example is that, if an artist were to take a segment (portion) of another artist's copyrighted painting and incorporate that portion into his or her own work to make an analysis or narration on it, then this would be a legally preserved activity.

2. The nature of the copyrighted work

Example of this factor is the case scenario of *Salinger v. Random House*. A biographer was sued for having paraphrased portions of letters written by J.D. Salinger. Although the public could read these letters at a university library, Mr. Salinger had never permitted their copying, replication or publication. Despite the scholarly purpose of the proposed Salinger biography, the court would not permit the unauthorized paraphrasing of Mr. Salinger's unpublished letters as a fair use.

3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole

- is it long or short in length, that is, are you copying the entire work, as you might with an image, or just part as you might with a long novel

Example: In one case, a court permitted a biographer-defendant to quote from six unpublished letters and ten unpublished journal entries by the late novelist Richard Wright. One factor that weighed in favor of the biographer was the amount used. The court determined that no more than 1% of Mr. Wright's unpublished letters and journal were copied. Next example is, the copying of one minute and 15 seconds of a 72-minute Charlie Chaplin film was considered substantial and was not permitted as a fair use.

4. The effect of the use upon the potential market for or value of the copyrighted work.

Example: in a case scenario regarding a photograph that was adapted to a wood sculpture, the court identified the existence of a market for new versions or new uses of the photograph, and determined that an unofficial and unauthorized use of the photographic image compromised the capable market. Copying a magazine cover for purposes of a comparative advertisement can be considered to be a fair use because the comparative advertisement does not diminish the sales or desires for the featured magazine. No customer would not buy the magazine merely because of the advertisement.

Q.2. What is an intellectual property? What are the different intellectual property rights protected by the laws of government? How does it differ from each other?

Answer:

Intellectual property (IP) refers to the rights that are provided to people over the creations of their minds. It means the protections and preservations of the creations of the mind (brain), which might consist of the both a moral and a commercial value. According to World Intellectual Property Organization (WIPO), intellectual property refers to the creation of the mind; inventions; literary and artistic works and symbols, names and images used in commerce. It is further protected by its categories and they include; Patents, Copyrights, Trademarks and Trade secrets. Here we are going to discuss only about Patent, Copyright and Trademark.

A **patent** preserves and protects the creations or inventions of the people from being used, produced or sold by others with the absence of their agreement or permission. It can be issued by the government for a fixed duration of time. Similarly, a **copyright** is considered to be a legal word that can be used to sketch or describe a person's ownership rights to and original expression of the creativity or innovations. Finally, a **trademark** is the distinctive signs, logo or indicates, that helps in distinguishing or recognizing the source of the goods of one enterprise, company or party from the others. Copyright protects our arts and writings. Trademark protects our names, slogans, logo, symbols for products or services. Whereas patent protects our creation, designs and inventions. Patent affords the right to exclude others from selling, creating, importing or using a particular product or service. Similarly, trademark affords the right to preserve others from unfairly competing with you by using confusingly similar marks. And copyright affords the right to exclusively reproduce, perform, produce, record or display the creative work, and also create derivative works from the original. In order to gain the protection in patent, the individual must file a register or patent application. But in trademark and copyright registration is not required but it offers the added legal benefits. Patent is available up to 20 years, copyright is protected as long as the copyright mark is being used in commerce and lastly in trademark author's life plus 70 years but if owned by a company, then 95 years after the date the work is first made public.

Q.3. Read a license agreement for a software product. It could be a game, operating system, video editor, tax preparation program, and so on.

(a) What does the license agreement say about the number of copies you can make?

(b) Does it specify penalties for making unauthorized copies?

(c) Was the agreement easy to read before purchase (e.g., on the outside of the package or available on a website)

Answer:

For the above scenario I read a license agreement of a game i.e. Dragon Age Origins.

- a) The license agreement of the Dragon Age Origins game states that we are strictly restricted from making or creating a copy without permission. We must be authorized by Electronic Arts (EA) in order to make number of copies.
- b) The particular license agreement clearly did not state about the specific penalties. But there exists some sort of consequence if the license agreement is violated. In case violation of license agreement occurs then it would result in EA termination in the absence of notice from EA regarding Right under the License.
- c) License Agreement is available during the period of installation. Outside of the package, the license agreement is not accessible but is introduced regarding the installation and can also be read via website. So license agreement was not a headache, it was easily available to read.

Q.4. Define the term 'Plagiarism'. Give an example in which plagiarism is also copyright Infringement.

Answer:

Plagiarism is defined as the wrong practice of directly copying and then presenting an existing production without accurate citing or referencing, and or passing off the product as one's own, without the permission from the original owner. As a whole it can be regarded as an act of fraud. Plagiarism simply encourages stealing or imitation someone else's ideas, thoughts and task and introducing them as their own without the permission of the actual owner. Following plagiarism is strictly prohibited. If it is found to be done, then the own who copies other's ideas are formulated with the strict laws and protection. It might create some inappropriate consequences. If the thoughts or views of a person is found with plagiarism then it might destroy the reputation of the actual owner, also might take legal actions, and so on.

Suppose you recently post a published short story to your blog and claim that you wrote it yourself, this can be termed as a plagiarism because you are using someone else's ideas, thoughts or view in your post without giving credit to them. This can also be stated as the copyright infringement because you are reproducing and distributing copies of a protected task without proper permission or agreement. Similarly, in our college premises also we are insisted to create report or documentation of our project that requires referencing of the topics. But if we do not reference or cite the original work and try to copy the ideas or opinions from the report then it may have considered to be plagiarism and they exit some certain strict rules and regulations for plagiarism. It is also regarded as some sort of a crime because it's no one's right to stela someone's ideas, thoughts or work to make their own.

Q.5. Search for a case scenario on the internet related to any violation of intellectual property rights that was popular and summarize it in your answer what actually happened on that case and what was the conclusion.

Answer:

In 2005, a famous, popular and prestigious artist Wamod Namok suffer intellectual property when his copyright was infringed for Reproductions of Wamod's famous work. i.e. listing Kangaroo for online sale. That particular listing stated that the reproductions were licensed and the royalties must be paid to Wamok as per the percentage of sales. But all of this listing were proved faulty and the task were performed against Namok. Reproductions were made unauthorized. In addition, he was unable to receive any kind of royalty for the sale of his work. All the work was performed against Namok and his listings.

Namok was also associated with an organization named Artist in the Black. This organization was in the favor of Namok. They helped issued a letter of demand to the eBay operator who was selling unauthorized copies. Finally, eBay operator responded with a claim which states that he had obtained a licensed signed by Wamod himself at the gallery which purchased the original Kangaroo. Since Namok was not able to read and write English properly so they took the advantage of that. While signing the license because of this weakness he thought that the document he signed was a simple receipt that states the purchase being issued regarding the sale of the original Kangaroo to the gallery. Knowing all of this the lawyer who has in their favor issued a letter of demand stating that the licensed which was signed by Namok was invalid. The letter was signed with the absence of proper understanding by the artist. The letter also made crystal clear that the operator i.e. eBay and the gallery are strictly restricted and cannot practice the right of making and selling the reproductions of Kangaroo. The artist team also delivers that they had never did so again.

By the help of this case scenario, we can conclude that how must essential it is for the artists and other intellectual property right holders to manage and preserve their intellectual property. In upcoming days there might exist many unfortunate cases like this

one where the intellectual property right holders might be unknown or unaware about their rights which might result in painful loss and suffer to the victim.