



LAW RELATING TO COPYRIGHT : A BRIEF ANALYSIS

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ABSTRACT

Copyright is a form of intellectual property protection granted under the law to the creators of the original works of authorship. Copyright law evolved on the legal scenario of the world to safeguard the misuse of the original intellectual work of a person without having his or her authority. The social, economic and political development of every nation depends to a remarkable extent on the creativity of its intellectuals. The encouragement of national creativity is a sine qua non for further progress and that's why a country's intellectual creations should be protected by law of copyright. This article mainly intends to analyse the law relating to copyright in India in a nutshell.

KEYWORDS : Copy right, Infringement, Assignment, Relinquishment, Remedies.

INTRODUCTION

Copyright basically means the right to copy or reproduce the work in which copy right subsists. It subsists only in the expression of an idea. Mere idea or a concept, theme or plot does not have any copyright. What is protected is therefore not the original thought or information, but the original expression of the thought or information in some concrete form.¹ It is confined to expression of ideas and does not extend to the ideas themselves.² It can be regarded as an incorporeal right, a moral right, a right of a civilized community, a property right, a right to mental satisfaction etc.³ Copyright is made up of all the legal principles and rules envisaging the protection of those who produce the intellectual works. It supplies the copyright holder with a kind of monopoly over the created material, which assures him of both control over its use and pecuniary benefits derived out of it.⁴ It is the exclusive right given by law for a certain term of years to an author, composer etc. (or his assignee) to print, publish, sell, broadcast, perform, film or record an original work or any part of it.⁵

Black's Law Dictionary defines the term copyright as the property right in an original work of authorship (such as a literary, musical, artistic, photographic or film work) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform and display such work.⁶ The Encyclopedia Americana says that it is the exclusive right that protects an author, composer or artist from having his work recorded, performed, displayed, translated, distributed or reproduced by way of copies, phone records or other versions (derivative works) except with his permission, subject to specified limitations.

STATUTORY DEFINITION

The Indian Copyright Act, 1957 gives a detailed definition of copyright. According to Section 14 of the Act, "Copyright means the exclusive right to do or authorize the doing of any of the following acts in respect of a work or any substantial part thereof, namely:-

- (a) In case of a literary, dramatic or musical work not being a computer programme,-
- (i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
 - (ii) to issue copies of the work to the public not being copies already in circulation;
 - (iii) to perform the work in public, or communicate it to the public;
 - (iv) to make any cinematography film or sound recording in respect of the work;
 - (v) to make any translation of the work;
 - (vi) to make any adaptation of the work;
 - (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in case of a computer programme,

- (i) to do any of the acts specified in clause (a);
- (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental;

(c) in case of an artistic work,-

- (i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;
- (ii) to communicate the work to the public;
- (iii) to issue copies of the work to the public not being copies already in circulation;
- (iv) to include the work in any cinematograph film;
- (v) to make any adaptation of the work;
- (vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) in case of a cinematograph film,-

- (i) to make a copy of the film, including a photograph of any image forming part thereof;
- (ii) to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;
- (iii) to communicate the film to the public;

(e) in case of a sound recording,

- (i) to make any other sound recording embodying it;
- (ii) to sell or give on hire, or offer for sale or hire any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;
- (iii) to communicate the sound recording to the public.

Explanation :- For the purpose of this section, a copy has been sold once shall be deemed to be a copy already in circulation."

The above exhaustive definition has elaborately enlisted the detail acts for which copyright generally extends and thus copyright does not include any other right beyond the scope of this section.

OBJECT OF COPYRIGHT

Keeping in view the above discussed non-statutory and statutory definitions of copyright, the concept of copyright has to be constructed by adopting a rational approach not only to the protection of the intellectual works in this age of technological advance but also the main aim of the copy right law is to issue a fair return to an author for his creative labour.⁷

COPYRIGHT LAW : THE INDIAN SCENARIO

The Copyright Act, 1957,³ a milestone in the field of copyright in this country was enacted mainly to check the piracy i.e. infringement of rights under Copyright Act and that fruit of the labour put by the author or the copyright owner may be enjoyed by the author or the owner and not by the pirates.⁹ This Act was passed in conformity with the Berne Convention, 1886 and Universal Copyright Convention, 1952. India had participated and played a leading role in both the Conventions which were revised at Paris in 1971 providing special concessions in favour of developing countries enabling them to grant compulsory license for translation and reproduction of foreign work required for educational purposes.¹⁰ Due to some lacunae, the Act of 1957 was amended several times.

SUBJECT MATTER OF COPYRIGHT

According to Section 13 of the Copyright Act, 1957, copyright subsists in following classes of works:

- (a) Original literary, dramatic, musical and artistic works;
- (b) Cinematograph film; and
- (c) Sound recording.

(a) Original literary, dramatic, musical and artistic works

The word '**original**' means first in order¹¹ or which has served as a pattern of which a copy or translation is made; first hand; not initiative; novel in style, character or inventive,¹² that means the work must not be copied from other works and it should originate from the author.¹³ At the same time the word 'original' does not mean that it is confined to a field which has never been traversed before by any other person or persons either in respect of ideas or material comprised therein.¹⁴ The expenditure of original skill or labour is required in executing a work and not originality of thought.¹⁵ The term 'original' therefore means the production of a new intellectual work by exercise of mental labour, skill and judgment of author. Hence, any new and original plan, arrangement or compilation of materials entitles the author the copyright therein whether the materials themselves be old or new.

The '**literary works**' referred to in the Act are not confined to works of literature in the commonly understood sense but must be taken to include all works expressed in writing, whether, they have any literary merit or not.¹⁶ The maps, charts, plans, tables and compilations, lecture, address and speeches are subject matter of copyright being literary works.¹⁷ Similarly, the writing of religious preachers or his sermons and sayings compiled by any institution on his behalf are covered within the meaning of literary works.¹⁸

'**Dramatic Works**' include any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include a cinematograph film.¹⁹

The Act defines '**musical work**' as a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music.²⁰

An '**artistic work**' means -

(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;

(ii) a work of architecture and

(iii) any other work of craftsmanship.²¹

(b) Cinematograph film

The expression 'cinematograph film' means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes sound recording accompanying such visual recording and 'cinematograph'

shall be construed as including any work produced by any process analogous to cinematography including video films.²² The video and television are both cinematograph and both are jointly and severally apparatus for the representation of moving pictures or series of pictures.²³

(c) Sound recording

The expression '**sound recording**' means a recording of sound from which such sound may be produced regardless of the medium on which such recording is made or the method by which the sound is produced.²⁴ Copyright subsists in sound recording only if it is lawfully made. If the recording includes material which is an infringement of any literary, dramatic or musical work then the copyright will not subsist in such recording.²⁵

PROVISIONS RELATING TO ASSIGNMENT, TRANSMISSION AND RELINQUISHMENT

The author of a work is the first owner of the copyright therein subject to certain exceptions. According to Section 18, the owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof, provided that in case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence. Where the assignee of a copyright becomes entitled to any right comprised in the copy right, the assignee as respects the rights so assigned, and the assigner as respect the rights not assigned are treated as the owner of the copyright.

Assignment means the transfer of the claim right or property to another.²⁶ The term 'assignment', therefore, means the giving of authority by the owner of a property or a right to make use of the property or to exercise the right, but the assignment must be legal.²⁷ The transfer by assignment of a copyright should be made in writing by the transferor and upon execution of such writing, the transferee would acquire all rights of the transferor, provided copyright is an actionable claim.²⁸ The oral assignment of copyright is neither permissible nor valid.²⁹ The deed of assignment of copyright is not compulsorily registrable.³⁰ A registered owner of a copyright can not only legally assign the copyright to another by way of mortgage.³¹ The assignee of a copyright deserves exclusive right on the work³² and he may authorize third person to publish the matter.³³

So far as provisions relating to transmission is concerned, Section 20 of the Act says that, "where under a bequest a person is entitled to the manuscript of a literary, dramatic or musical work, or to an artistic work and the work was not published before the death of the testator, the bequest shall, unless the contrary intention is indicated in the testator's will or any codicil thereto, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death."

The author is provided right to relinquish copyright under Section 21 of the Act according to which, the author of a work may relinquish all or any of the rights comprised in the copy right in the work by giving notice in the prescribed form to the Registrar of Copyright and there upon such rights shall subject to the provisions of sub-section (3), cease to exist from the date of notice. On receipt of such notice, the Registrar shall cause it to be published in the Official Gazette and in such other manner as he may deem fit. The relinquishment of all or any of the rights comprised in the copyright in a work shall not affect any rights subsisting in favour of any person on the date of the notice referred to in sub-section (1) of section 21.

PROVISIONS RELATING TO TERM, LICENSE AND REGISTRATION OF COPYRIGHT

The Act of 1957 protects the rights of the owner of copyright. The term of this protection is determined keeping in view the interest of the author and general public. In respect of literary, dramatic, musical and artistic work, other than a photograph, the term of

copyright is the lifetime of the author plus sixty years from the beginning of calendar year next following the year in which the author dies and in case of joint authorship the period of sixty years will commence after death of the author who dies last³⁴ subject to certain other conditions.³⁵

In case of the term of copy right in photographs,³⁶ cinematograph films,³⁷ sound recording,³⁸ Government work,³⁹ works of public undertakings,⁴⁰ works of international organizations,⁴¹ copyright subsists until sixty years from the beginning of the calendar year next following the year in which such work is published.

So far as licences by the owners of the copyright is concerned, the owner of the copy right in any existing work or the prospective owner of the copy right in any future work may grant any interest in the right by licence in writing signed by him or by his authorized agent, provided that in case of a licence relating to copy right in any future work, the licence shall take effect only when the work comes into existence.⁴² At the same time the Act also provides that where a person to whom a licence relating to copy right in any future work is granted under Section 30 dies before the work comes in to existence, his legal representatives shall in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence.⁴³ The Act also explains exhaustively certain other provisions relating to compulsory licence in works withheld from public,⁴⁴ in unpublished Indian works⁴⁵ and licence to produce and publish translations⁴⁶ etc. In each case all the owners of a copyright, in case of joint authorship, can jointly give the licence.⁴⁷

Although the registration of copyright is not necessary, still the Copyright Act gives an option to the owner of a copyright to have the work registered under Section 45 of the Act.

PROVISIONS RELATING TO INFRINGEMENT AND REMEDIES

A copyright owner has several exclusive rights in copyrighted works and the act of violating any of those rights amounts to infringement,⁴⁸ which generally means breach of law or violation of a right.⁴⁹ The copyright in a work shall be deemed to be infringed by any person who without the consent of the owner of copyright does anything, the sole right to do which is conferred on the owner of the copyright.⁵⁰ On the other hand, section 52 of the Act has also provided certain other acts which shall not constitute an infringement of copy-right.

The Act of 1957 provides three types of remedies against infringement, namely (i) civil remedies, (ii) criminal remedies and (iii) administrative remedies. Section 54 to Section 62 deal with the civil remedies which, mainly include injunction, damages, accounts and costs etc. Section 63 to Section 70 provides various offences of infringement and prescribed certain punishments for such offences. Regarding administrative remedies, the Act provides for the establishment of offices and institutions like Registrar of Copyrights, Copyright Board and Copyright Societies etc. who have certain power to give certain remedies for violation of copyright.

CONCLUSION

In this 21st century the existing Indian legal framework seems to be inadequate to deal with the problems of digital society as the boundary of the copyright has expanded its limit from mere literary and artistic works to audio-video recordings, computer programming, satellite broadcasting, internet etc. which have posed new challenges to copyright law as these scientific inventions have made the scope of piracy much more wider and easier. So, if cyber piracy has to be legally controlled through the law of copyright, then it is humbly suggested that the Copyright Act, 1957 is again to be amended drastically as per the needs of the day. In addition to this, a separate chapter covering exclusively computer related provisions may also be added in the Act of 1957 so as to enable the appropriate authority to curb the new problems on copyright in this Internet age.

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