



INTELLECTUAL PROPERTY RIGHT - COPYRIGHT : GENERAL REVIEW

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ABSTRACT Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work. There could be slight variations in the composition of the rights depending on the work.

KEYWORDS : Intellectual Property Right, Copyright, Process, Delhi University

Introduction:

Originality is considered as 'the bedrock principle of copyright' and 'the very premise of copyright law'. A work to be a copyrightable subject matter is to be created by the exercise of labour, skill and judgment of the author. Also, such exercise of efforts on the part of the author should not be trivial in nature and thus should not be a mere exercise of the mechanical function of copying the work of another. Variation must be substantial in nature than merely trivial thus requirement of degree of originality is quantitative in nature (Das Jitendra Kumar 2015).

Intellectual Property law dates back as medieval Europe. The term Intellectual property law dates back in medieval Europe. The term was first time used in an article published in the monthly review in 1769, in Europe. The origin of patents can be traced back to the year 1331. King Edward III of England created history by providing Letter of Patent on 16th July 1331, to John Kemp, Flemish weaver of woollen clothes. Kemp was allowed to exploit his invention and conduct trade on woollen clothes craft in England.

India's New National IP Policy, 2016: The Union Cabinet has approved the National Intellectual Property Rights (IPR) Policy on 12th May, 2016 that shall lay the future roadmap for IPRs in India. The Policy recognises the abundance of creative and innovative energies that flow in India, and the need to tap into and channelize these energies towards a better and brighter future for all.

The National IPR Policy is a vision document that encompasses and brings to a single platform all IPRs. It views IPRs holistically, taking into account all inter-linkages and thus aims to create and exploit synergies between all forms of intellectual property (IP), concerned statutes and agencies. It sets in place an institutional mechanism for implementation, monitoring and review. It aims to incorporate and adapt global best practices to the Indian scenario.

Vision Statement An India where creativity and innovation are stimulated by Intellectual Property for the benefit of all; an India where intellectual property promotes advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources; an India where knowledge is the main driver of development, and knowledge owned is transformed into knowledge shared.

Mission Statement Stimulate a dynamic, vibrant and balanced intellectual property rights system in India to: foster creativity and innovation and thereby, promote entrepreneurship and enhance socioeconomic and cultural development, and focus on enhancing access to healthcare, food security and environmental protection, among other sectors of vital social, economic and technological importance. The Policy lays down seven objectives which are elaborated with steps to be undertaken by the identified nodal Ministry/ Department. The objectives are briefly mentioned below. Objective 1 IPR Awareness: Outreach and Promotion - To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society The 21st century belongs to the knowledge era and is driven by the knowledge economy. A nation-wide program of promotion should be launched with an aim to improve the awareness about the benefits of IPRs and their value to the rights-holders and the public. Such a program will build an atmosphere where creativity and innovation are encouraged in public and private sectors, R&D centers,

industry and academia, leading to generation of protectable IP that can be commercialized. It is also necessary to reach out to the less-visible IP generators and holders, especially in rural and remote areas. The clarion call of the program would be the holistic slogan (Kankana 2019).

Nature of Copyright - Subject matter of copyright

The Copyright Act, 1957 protects original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized uses. Unlike the case with patents, copyright protects the expressions and not the ideas. There is no copyright protection for ideas, procedures, methods of operation or mathematical concepts.

Basic definitions of elements of copyrights:

Section 2 (a) Adaptation work in relation to a dramatic work, the conversion of the work into a non-dramatic work, literary work or an artistic work into a dramatic work, a musical work, any arrangement or transcription of the work.

Section 2 (b) building or structure having an artistic character or design, or any model for such building or structure.

Section 2 (c) "artistic work" means, a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, architecture, craft.

Section 2 (d) "author" means in relation to a literary or dramatic work, composer of music, photographer, cinematograph film or sound recording, the producer, person in computer generated work.

Section 2 (f) "cinematograph film" means any work of visual recording and includes a 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.

Section 2 (g) "delivery", in relation to a lecture, includes delivery by means of any mechanical instrument.

Section 2 (h) "dramatic work" includes 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.

Section 2 (l) "Indian work" means a literary, dramatic or musical work, by citizen of India; or first published in India.

Section 2 (m) "infringing copy" means— (i) in relation to a literary, dramatic, musical or artistic work, cinematographic film, sound recording, programme or performance in which such a broadcast reproduction right or a performer's right, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act.

Section 2 (o) "literary work" includes computer programmes, tables and compilations including computer [databases].

Objectives of Copyright Law:

1. Encourage and develop new art and literary work,

2. Induce creator to disclose his creative work,
3. Reward for the expenses of developing creative work,
4. Inducement to invest capital in art, music, and literature,
5. To encourage innovation in art, music, and literature.

Registration Procedure

The Copyright Office has been set up to provide registration facilities to all types of works and is headed by a Registrar of Copyrights and is located at Plot no. 32, Boudhik Sampada Bhawan, Sector 14, Dwarka, New Delhi- 110075. The applications are also accepted by post. On-line registration through "E-filing facility " has been provided from 14th February 2014, which facilitates the applicants to file applications at the time and place chosen by them.

The procedure for registration is as follows:

- a) Application for registration is to be made on Form XIV (Including Statement of Particulars)
- b) Separate applications should be made for registration of each work;
- c) Each application should be accompanied by the requisite fee prescribed in the second schedule to the Rules; favouring "Registrar Of Copyrights Payable At New Delhi".
- d) The applications should be signed by the applicant.

Both published and unpublished works can be registered. Copyright in works published before 21st January, 1958, i.e., before the Copyright Act, 1957 came in force, can also be registered, provided the works still enjoy copyright. Two copies of published or unpublished work may be sent along with the application. If the work to be registered is unpublished, a copy of the manuscript has to be sent along with the application for affixing the stamp of the Copyright Office in proof of the work having been registered. One copy of the same duly stamped will be returned, while the other will be retained, as far as possible, in the Copyright Office for record and will be kept confidential. It would also be open to the applicant to send only extracts from the unpublished work instead of the whole manuscript and ask for the return of the extracts after being stamped with the seal of the Copyright Office.

Computer Software or programme can be registered as a 'literary work'. As per Section 2 (o) of the Copyright Act, 1957 "literary work" includes computer programmes, tables and compilations, including computer databases. 'Source Code' and "Object Code" have also to be supplied along with the application for registration of copyright for software products.

When a work has been registered as unpublished and subsequently it is published, the applicant may apply for changes in particulars entered in the Register of Copyright in Form XV with prescribed fee. The process of registration and fee for registration of copyright is same.

Ownership of Copyright and Rights of the Owner (Section 17)

In the case of a literary, music, photograph, cinematograph, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall have right.

In the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work.

In the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright.

Assignment of copyright (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 the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.

"Assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

The assignment of copyright in any work shall also specify the amount of [royalty and any other consideration payable], to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties (Section 19).

If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

Term of copyright in published literary, dramatic, musical and artistic works is sixty year (Section 22-29).

Related rights are moral and ethical rights, to be used legally, and not to be infringed. Related rights, also referred to as neighboring rights. To protect the legal interests of certain persons and legal entities that contribute to making works available to the public or that produce subject matter. The law of related rights deems that the productions that result from the activities of such persons and entities merit legal protection as they are related to the protection of works of authorship under copyright. Some laws make clear, however, that the exercise of related rights should leave intact, and in no way affect, the protection of copyright. Traditionally, related rights have been granted to three categories of beneficiaries: performers; producers of sound recordings and broadcasting organizations

Licences by owners of copyright (Section 30): — The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence/ writing by him] or by his duly authorised agent.

Duties of the Copyright Owner

Every specification, whether provisional or complete, shall describe the work and shall begin with a title sufficiently indicating the subject-matter to which the work relates. (2) Subject to any rules that may be made in this behalf under this Act (3) If, in any particular case, the Controller considers that an application should be further supplemented, as he may require shall be furnished before the application is found in order for grant of a copyright.

Revocation of Copyright (Section 19): If an assignee fails to make sufficient exercise of the rights assigned to him, and such failure is not attributable to any act or omission of the assignor, then, the 3 [Appellate Board] may, on receipt of a complaint from the assignor and after holding such inquiry as it may deem necessary, revoke such assignment. Every complaint received shall be dealt with by Appellate Board as far as possible and efforts shall be made to pass the final order in the matter within a period of six months from the date of receipt of the complaint.

Infringement, Remedies & Penalties: When any person, without a licence granted by the owner of the copyright claims work or permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, such communication to the public would be an infringement of copyright (Section 51).

Remedies: Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right (Section 55). All infringing copies of any work in which copyright subsists, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of possession (Section 58)

Penalties: Penalty for making false entries in register, etc., for producing or tendering false entries or for making false statements for the purpose of deceiving or influencing any authority or officer shall be punishable with imprisonment which may extend to one year, or with fine, or with both. Any person who publishes a sound recording or a video film in contravention of the act shall be punishable with imprisonment which may extend to three years and shall also be liable to fine (Avtar Singh 2013).

Copyright office and Appellate Board.

1. The Registrar of Copyrights appointed. A Deputy Registrar of Copyrights shall discharge under the superintendence and direction of

the Registrar of Copyrights such functions of the Registrar under this Act as the Registrar may, from time to time, assign to him; and any reference in this Act to the Registrar of Copyrights shall include a reference to a Deputy Registrar of Copyrights when so discharging any such functions.

2. The Copyright Office has been set up to provide registration facilities to all types of works and is headed by a Registrar of Copyrights and is located at Plot no. 32, Boudhik Sampada Bhawan, Sector 14, Dwarka, New Delhi- 110075 (Jay Pandey Rai(2005).

3. The Appellate Board established under section 83 of the Trademarks Act, 1999 (47 of 1999) shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017 (7 of 2017), be the Appellate Board for the purposes of this Act and the said Appellate Board shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.]

Copyright filing in India: India, although it jumped 8 places in the global IP index rankings, is still one of lowest performing countries on the 50 countries list and is also 4th on the list of BRICS countries, in terms of its IP performance and economic output through IP.

In the year 2016-17, the annual IP report, reported a total disposal figure of 5,444 for Copyright registrations whereas the same figure for the following year jumped to 39,799, of which the figure for ROC generated was 3596 and 19997 respectively. These figures show a contrasting reliance that is building up in the creative community for protecting their copyright. (U.S. Chamber International IP index 2019)

Category wise Registration of Copyright (ROC) generated during the year 2019-20

Sr. NO	Category	ROCs
1	Artistic	4710
2	Cinematograph Film	272
3	Computer Software	1057
4	Literary / Dramatic	9106
5	Music	47
6	Sound Recording	837
Total ROCs:		16029

- Annual report 2019-2020 Intellectual Property India

Case Law: Delhi University Photocopy Case, University of Oxford and Ors Vs. Rameshwari Photocopy Services and Ors (2016) 160 DRJ (SN) 678.

Oxford University Press and other four publisher instituted the suit against Delhi University and Rameshwari Photocopy services alleging them infringement of copyright under S/52(1)(I) of the said act. By simply photocopying certain portions of different books. To create study material as requirement of the syllabus. It was argued that educational institute does not require any permission of publisher if it is necessarily for students. The court dismissed the suit of the plaintiffs and held that neither of the defendants infringed the copyrights of the plaintiff-publishers. Relying upon Section 52(1) (i) of the Copyrights Act, he held that the impugned actions of the defendant do not amount to copyright infringement. The said section provides that there is no copyright infringement of any kind of reproduction of a copyrighted text if such reproduction is done on the instruction of the teacher and the work is part of the syllabus of the students.

- Highlights of the judgment:
- Section 52 of the Copyright Act must be interpreted broadly and in favour of educational institutions, which otherwise should be interpreted narrowly.
- The copyright Act aims at developing the intellectual enrichment of the public and not to impede the harvest of knowledge. It is only a statutory right and not a natural right.
- The making of course packs by the University does not infringe the copyrights of the publishers. Therefore, there is no infringement even when the photocopy is outside the library of the University or is done with the help of and assistance of someone. This is the reason why Defendant 1 was not liable for infringement.
- Photocopying of certain portions of the publisher's work does not amount to infringement if it done for the benefits of the students. Just like how when students photocopy certain pages or take

photographs of the same for their personal benefit does not amount to infringement.

- The term instruction extends to the whole academic session of an educational institution.
- The term teacher mentioned in section 52 should be interpreted to include the entire educational institution.

Conclusion: Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. Creativity being the keystone of progress, no civilized society can afford to ignore the basic requirement of encouraging the same. Economic and social development of a society is dependent on creativity. The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more and motivates others to create.

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