



## TRIPS and Copyright Protection in India: An Overview

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### ABSTRACT

*The question as to protection of intellectual creations in the form of literary or artistic works has its historical roots and is not of novel origin. Internationally, for the first time efforts were made in the Berne Convention in 1886 for the recognition and protection of this intellectual creativity in the form of copyright. The efforts gathered momentum which ultimately culminated into TRIPS Agreement. Since then India has also amended its copyright law in a direction to make it TRIPS compliant.*

### I. Introduction

The Berne Convention for the Protection of Literary and Artistic Works, 1886 marked the era of protection of copyrighted works of the nationals of its member States internationally, which not only recognized but also regulated the rights of the copyright owner. This was the first international convention on copyrights. The Berne Convention recognized certain principles that still find place in the TRIPS Agreement, a multilateral agreement dealing with the Intellectual property rights and adopted by all the WTO member nations. The establishment of international bureau contributed a lot to carry out administrative works. In 1893, on its merger with the international bureau established under the Paris Convention and formation of a United International Bureau for the Protection of Intellectual Property, called BIRPI, a predecessor of the World Intellectual Property Organization, the importance of intellectual property grew. A major landmark in the international economic relations was achieved with the signing of the Trade Related Aspects of Intellectual Property Rights (TRIPS) administered by the World Trade Organization (WTO). India is a signatory to the WTO and therefore, bound to amend its Intellectual Property (IP) enactments in conformity with the WTO Agreements, including the TRIPS Agreement of the WTO. India has amended its various such laws including laws on Copyrights in consonance with the TRIPS Agreement. The Copyright Act 1957 has been amended five times in 1983, 1984, 1992, 1994 and 1999 to bring it in conformity with the TRIPS. Recently, the Copyright Act has further been amended in 2012 for the sixth time where certain efforts have been made to enlarge the ambit of the copyright by conferring copyright to those who were earlier not included in the definition of the author of literary works that shall now include lyricists, scriptwriters, music composers, etc., as well.

In this article an endeavour has been made to analyze the TRIPS provisions relating to the copyright at the first place and their incorporation into the Indian Copyright law at the other place so as to make it TRIPS compliant. The judicial pronouncements available on the subject have been examined as well.

### II. Copyright

Copyright is an exclusive right over an intellectual work of a person irrespective of his status, which having a statutory position and deserves on being qualified as a copyright work a legal protection. In *Sulmangalam R. Jayalakshmi* and another v. *Meta Musicals, Chennai* and others, the Madras High Court observed that the right which a person acquires in a work which is the result of his intellectual labour is called his copyright. The primary function of the copyright law is to protect the fruits of a man's work, labour, skill or test from annexation by other people. The Berne Convention protected literary and

artistic works as the copyright works. It is not a single right but a bundle of rights enjoyed by the owner of such right by which he can oust all others from copying his work, or doing any other acts such as reproduction, sale, adaptation, etc., which according to copyright law could be done exclusively by him. However, that doesn't mean that absolute monopoly exists, but protection to the work subsists for a limited period of time after which it passes into the public domain. The copyright law does not protect the idea of a person as such but protection is given to original expression of such idea, thought, concept, theme or plot in some concrete form. In the case of *R. G. Anand v. Deluxe Films* the Supreme Court of India in an *Expression v. Idea Dichotomy* held that there can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts. Violation of copyright in such case would be confined to the form, manner and arrangement and expression of the idea by the author of the copyright work.

The Berne Convention does not explicitly refer to the computer programs under the literary and artistic works. Article 4 of the WIPO Copyright Treaty of 1996, an Agreement under Article 20 of the Berne Convention, defined for the first time computer programs as literary works pursuant to Article 2 of the Berne Convention on the ground that the list under Article 2.1 is not exhaustive and that the Members to the Convention were free to adopt new kinds of literary and artistic works. In the early 1990s when the new technological products flourished the markets, need for their legal protection stretched the category of literary works so as to include computer programs within its ambit. It further necessitated the need of internationally accepted detailed rules whether a computer program could really be seen as a literary work. The difficulty in including the computer programs as literary works was mainly due to the fact that they were not viewed as fixed and tangible object, which was the creation of a source code that could not be treated as a creative work. Nevertheless, Article 10.1 of the TRIPS Agreement stipulates for the uniform implementation of the computer program protection and states that computer programs must be protected as literary works, which further makes it clear that the computer programs are protected regardless of their specific form

### III. TRIPS and Copyright

The TRIPS Agreement establishes international minimum standards for the protection of intellectual property. In the area of copyright, TRIPS sets forth the minimum standards for their substantive protection and enforcement, often called the Berne-plus standards.

#### i. Copyright and Related Rights under TRIPS

Article 9 through 14 of the TRIPS Agreement contained in Section I of Part II deals with the copyright and related rights.

The provisions on copyright relating to creators of literary and artistic works are based upon the Berne Convention, the substantive provisions of which are incorporated into the TRIPS Agreement. Specifically, Article 9-13 of TRIPS Agreement specifies the minimum standards for the protection of copyright. Article 14 relates to the rights of performers, producers of phonograms and broadcasting organizations.

Article 9 of the TRIPS Agreement obliges the Members for adhering to the Berne Convention. During the TRIPS negotiation no developing country expressed any reservation on this way of showing adherence to the Berne Convention. Article 9(1) establishes the relationship between the TRIPS Agreement and Berne Convention. It obliges the Member States to comply with Articles 1 through 21 of the Convention. The commentators have acknowledged that most Members considered Berne Convention as an appropriate standard for copyright protection. As in case of the US, in October 1987, it clearly called for exemption to the exclusive rights granted under copyright to be limited to the Berne Convention. The EC also explicitly called for observance to the provisions of both the Paris and Berne Conventions. The Berne Convention emphasized that the enjoyment and exercise of copyright cannot be subjected to any formality such as registration as the same gets protected the moment it is created, subject to the fulfillment of the conditions of originality.

Article 9(1) of the TRIPS Agreement, however, clearly exempts moral rights from protection under copyright by referring to Article 6 bis of the Berne Convention. This exception to adherence to the Berne Convention in the TRIPS text was due to raising up an objection by the United States to Article 6 bis of that Convention, which obliges members to protect the moral rights of authors. Article 6 bis, paragraph (1) of the Berne Convention states: "independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, multilateral or other modification of, or other derogatory action in relation to, the said work, which could be prejudicial to his honor or reputation."

Thus, under Article 6 bis, the authors of the copyrighted works retain their privilege to claim paternity of the work even after they have authorized reproduction or use. Further any modification of the work that the author considers derogatory to the works or is prejudicial to his honour or reputation, can also be objected by the author of the work. The relationship between TRIPS and Berne Convention was explained in the case of United States, Section 110 (5) of the US Copyright Act, brought by EC, where it was held that the rules of Berne Convention have to be read as applying to the WTO Members and also that they have been incorporated into TRIPS. Further, it was held that the Berne Convention and the TRIPS Agreement form part of the overall framework for multilateral protection.

Article 9(2) of the TRIPS Agreement awards copyright protection only to expressions and not to ideas, procedures, method of operation, or mathematical concepts. TRIPS Agreement, however, does not define these excluded elements for which no protection is provided. Thus it is for the domestic courts and the Member States to decide as to what exactly constitutes a non-protected procedure or method of operation as opposed to protected expression.

#### ii. Computer Programs and Data Compilation

Article 10 expands the traditional subject matter of copyright to include computer programs and complications of the data by creating an obligation to protect them as literary works.

As regards information technologies, the TRIPS Agreement selects copyright protection to computer programs and not for patent protection, the availability of which remains unsettled and controversial in most developed countries. Article 1 of the Berne Convention, however uses the term 'literary and artistic works' that might be the subject-matter of protection by the Members of the Berne Union, and in Article 2 defines this

term as 'every production in the literary, scientific or artistic domain, whatever may be the mode or form of its expression. Although, no explanation as to what would constitute the literary or artistic works, non-inclusion of specific works has led to a debate on, whether computer programs were included or not. However, the TRIPS Agreement under Article 10 has clarified this picture that the computer programs are eligible for protection under copyright law. The protection to computer programs is available whether in 'source' or object code', as literary works. Software is first created in "source code" using a programming language, easily understood by others. This is then translated into a machine-readable form known as 'object code'. The software is generally sold or licensed with the object code and the source code is kept secret. Decompiling or reverse engineering the object can reveal the source code, which is very difficult and time consuming process. By including computer programs within the meaning of literary works, the shorter term of protection of 25 years applicable to works of applied art under the Berne Convention was explicitly excluded. The debate on whether functional object code of a computer program was also protectable under copyright came to an end as TRIPS Agreement provides protection to both source and object code. Many national copyright laws provide certain limitations to the principle of exclusive right in case of computer programs, if the same are meant for normal use. The legitimate fair use also exempts from infringement of the copyright. Thus it is very difficult to decide whether a particular use of the copyrighted material in other forms as de-compilation of software would amount to fair use if meant for personal use. It is for the protection of computer software under the patented regime of the TRIPS Agreement. The TRIPS Agreement, in addition to the copyright protection, also provides for trade secret protection to computer programs in Article 39, although this is not so effective form of IP protection for software in itself, since reverse engineering is allowed and all elements of software cannot be kept secret.

Article 10(2) of the TRIPS Agreement, like Article 2(5) of the Berne Convention, also requires originality in the selection and arrangement of the contents of a compilation. Mere creating a list works or extracts without engaging in any creativity is not sufficient to get copyright protection. If the database is protectable, the copyright protection only extends to the creative element, that is, the selection and arrangement of the data and not to the material or data itself. Thus many databases such as phone books or telephone directory, which are arranged and structured in a way that does not fulfill the originality requirement as was held by the US Supreme Court, cannot become the subject matter of protection as copyright works. Databases such as encyclopedia or anthology etc., can be considered creative selection or arrangement of the editor, and thus subject-matter for protection.

TRIPS Article 10(2) elaborates this provision of Berne Convention to include:

- A database or other compilation of data or other material;
- Material in both machine-readable or other form; and
- Compilation of non-copyrightable material.

The developing countries agreed for its inclusion in the TRIPS Agreement, since this was perceived to be within the limits set by the Berne Convention. However, after the finalization of the TRIPS Agreement, developed countries like the US and EU found this level of protection inadequate to cover all types of databases. Therefore, they sought to include in WIPO, an international treaty for sui generis law for protection of databases that may not even qualify as creative works. However, it could not ripen out and the initiatives failed in December 1996.

#### iii. Rental Rights

Article 11 provides the exclusive right to authors and their successors to authorize or prohibit the commercial rental of their computer programs and, subject to impairment tests, to their cinematographic works. Copyright only gives authors the right to prevent copying or reproduction and use of the protected work in certain ways. In accordance with principle of exhaustion, the work, once it is legitimately placed in the market,

cannot be prevented from being resold or commercialized.

Article 11 of the TRIPS Agreement, for the first time introduced in international copyright law, the rental rights, that is, the right of authors to authorize or prohibit rentals of their work. This concept was primarily directed at computer programs and sound recordings where it was perceived that a single act of rental could result in the private copying of the work, an act not prohibited under copyright or related rights. Once rentals are allowed, wide scale private copying of the work is not easy to prevent, thus affecting the legitimate interests of the right holder. Had there been no development of technology, thereby enabling good quality or easy private copying, there would not have been the need for protecting such right.

There were discussions in the TRIPS negotiations regarding the issue of rental rights, which were opposed by the developing countries. But in the end, rental rights were included for computer programs, sound recordings and, in certain circumstances, for cinematographic works, the latter being supported by India. For the cinematographic works, the rental rights become relevant only when there is such widespread copying of these works that the exclusive right of reproduction granted by the copyright is materially impaired.

#### iv. Term of Protection

Following Article 7 (1) of the Berne Convention, Article 12 of the TRIPS Agreement sets the term of protection of most works that are calculated on a basis other than the life of the author to a minimum duration of fifty years from the end of the calendar year of authorized publication, making, or phonogram fixation or performance.

Article 7(1) of the Berne Convention states the minimum term of protection on copyrighted works shall be the life of the author plus fifty years post mortem auctoris, that is, after death. In case of cinematographic works, a similar kind of protection was afforded which was applicable from the date of making such work publicly available. However, copyright in photographs and works of applied art subsists only for 25 years. The term of protection of the photographic works has now been extended to 50 years under WCT negotiated in WIPO in December 1996.

Article 12 of the TRIPS merely clarifies that where the term of 50 years is set other than on the basis of the life of an author, the term should commence from the date of first authorized publication of the work. Where no such publication takes place for 50 years from making of the work, this term should be 50 years from making of the work. This provision is meant to cover copyright owners who are legal entities.

#### v. Limitations and Exceptions to Exclusive Rights in Copyrighted Works

Article 13 requires Members to confine limitations or exceptions to exclusive rights to:

- i. cases that do not conflict with normal exploitation of the work; and
- ii. cases that do not unreasonably prejudice the legitimate interests of the right holder.

The wording of Article 13 has roots in Article 9(2) of the Berne Convention that allows exceptions to the exclusive right of reproduction given by copyright law. It states: "it shall be a matter of legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author."

TRIPS Article 13 applies to all exceptions to the rights of a copyright owner. These provisions exempted use of official texts, current news or facts, speeches or lectures, quotations, use for teaching and grant of compulsory licenses. Such exceptions also find mention under Indian copyright law. Article 13 of TRIPS Agreement permits members to provide for exceptions and limitations to the copyright standards laid down,

'in special cases provided these do not conflict with the exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.'

Taking into account these exceptions allowed under the Berne Convention, national copyright laws have permitted wide scale exceptions such as use for private, non-profit, or educational purposes.

#### vi. Related Rights or Neighbouring Rights

In the field of related rights or neighbouring rights, Article 14 grants improved protection of rights of performers, phonogram producers, and broadcasting organizations. In contrast to the legal regime of copyright, where the TRIPS Agreement incorporates the provisions of the Berne Convention, as far as the right of performers, producers of phonograms and broadcasting organizations are concerned, the provisions of the Rome Convention, 1961 have not been included. Here, the TRIPS Agreement limits itself to reproducing, in a simplified form, the substantive rights recognized by the Rome Convention. A significant modification with respect to the Rome Convention has been made, by extending the duration of the rights of performers and producers of phonograms. The two Conventions viz., the Berne Convention for copyright and Rome Convention for neighbouring rights are the result of differentiation between the protection of copyright and the protection of neighbouring rights, existing within European continental law.

With respect to performers, Article 14 (1) of the TRIPS Agreement sets out the protection to be granted, that is, preventing unauthorized phonogram fixation, reproduction of such fixation, and broadcasting by wireless means and communication to the public. TRIPS requires Members to prevent the unlawful fixation and reproduction of such fixation of live performances on phonograms only, the unauthorized reproduction of phonograms and the unauthorized fixation or rebroadcast of radio or television programs, including satellite broadcasts. In respect of these rights, WTO Members have to afford national treatment to all, as stipulated in Article 3 of TRIPS Agreement. This right afforded to the performers under Article 14(1) of the TRIPS Agreement is much more limited than granted to performers under Article 7 of the Rome Convention, since performers cannot prevent the authorized fixation and reproduction of such fixation in an audiovisual medium. Even under the Rome Convention, under Article 19, this right is fairly weak as once the performer has consented to the incorporation of his performance in a visual or audiovisual fixation, he can no longer control further reproduction or fixation. For instance, a consenting playback singer in a cinema cannot prevent the further fixation or reproduction of a sound or video recording of the song he has sung. The lack of exclusive rights for related rights makes the protection for performers weaker than that given to authors.

This provision of TRIPS is an exact replica of Article 10 of the Rome Convention. However, Article 12 of that convention, relating to secondary uses of phonograms, which allows for a single equitable remuneration to performers or to producers of commercial phonograms for direct broadcasting or for public communication of protected phonograms, is not applicable under TRIPS. Thus under TRIPS Agreement, the producers of sound recordings cannot prohibit radio broadcasts or playing in public places such as restaurants or bars. However, the copyright owners of phonograms can do so under the Berne Convention and TRIPS.

Further Article 14 (3) confers rights on the broadcasting organizations to prevent certain acts undertaken with their authorization. Broadcasting organizations are given the same rights provided in Article 13 of the Rome Convention, namely the right to prohibit, when undertaken without their permission, the fixation, the reproduction of fixations and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. However, this right of the broadcasting organizations is not an absolute right, since it is allowed not to recognize this right of the broadcasting organizations when a Member

State provides owners of the Copyright in the subject matter of broadcasts with the possibility of preventing the acts mentioned in Article 14(3) of TRIPS Agreement. In such a case, Article 11 bis of the Berne Convention shall be applicable. This means that the Member States may exclude the rights attributed to the broadcasting organizations under Article 14(3) only when their legislation considers broadcasting programmes as protected by the copyright.

These rights provided by the Members to the owners of copyright in the subject matter of broadcasts are subjected to the provisions of the Berne Convention, 1971.

Phonogram producers enjoy exclusive rental rights under Article 14(4) of the TRIPS Agreement. Any Member State can continue with the system of equitable remuneration of right holders of phonograms, if on 15 April 1994, that system was in force. However, the only limitation to the prevalence of such system is that the commercial rental should not prejudice substantially the exclusive rights of reproduction of right holders. Developing countries cannot take advantage of this provision if they do not meet these criteria provided under Article 14(4) of TRIPS, more particularly those did not have such a system in place by the given date.

Further, Article 14(5) of the TRIPS Agreement deals with the term of protection of related rights or neighbouring rights. The minimum term of protection for the performers' rights and producers of sound recordings is 50 years under TRIPS Agreement, while the same under the Rome Convention is only 20 years. The rights of the broadcasting organizations, on the other hand, run for at least 20 years from the date of the broadcast, which is similar to the period of protection afforded under the Rome Convention and under national laws of many Member States.

The TRIPS Agreement establishes certain limitations and exceptions in relation to protection of copyright and related rights. With regard to the rights of performers, producers of phonograms and broadcasting organizations, Article 14 (6) stipulates that any Member State may provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. Therefore, this provision has to be read in combination with Article 15 of the Rome Convention. Moreover, as regards the rights over phonograms, it is provided that Article 18 of the Berne Convention must be applied, which refers to the protection of the existent works at the time of entry into force of the Convention. According to Article 14(6), the provisions of Article 18 of the Berne Convention shall be applied *mutatis mutandis* to the rights in phonograms of performers and producers of phonograms. This means that, contrary to the Rome Convention, which does not provide for retrospective application of its provisions contained in Article 20, the TRIPS Agreement establishes such retroactivity when applying *mutatis mutandis* Article 18 of the Berne Convention. Thus, conditions, limitations, exceptions and reservations can be provided by the Members with regards to related rights to the extent permitted by the Rome Convention, principally those provided for by Articles 12, 15 and 16 of the Convention.

#### IV. India and Copyright Law

The Copyright Act, 1957 that repealed earlier copyright laws applicable in India dealt with the subject matter of copyright to include original literary, dramatic, musical and artistic works; cinematograph films and sound recordings. India ratified the Berne Convention, as revised at Paris in 1971, on 7 October 1974 with the exception of Articles 1 to 21 and the Appendix. By virtue of the Berne Convention, protection to works published in India could be enjoyed in several countries, even without actually applying for registration of the work under the Indian Copyright law. However, Article 9.1 of the TRIPS establishes that the WTO members must comply with Articles 1 to 21 of the Berne Convention, 1971, including the Appendix thereto. Conversely, Articles 1 to 21 of the Berne Convention, revised by Paris Act of 1971, were adopted and ratified by India in 1984. The TRIPS has incorporated almost

the entire Berne Convention for achieving harmonization and uniformity. The Copyright Act of 1957 is in conformity with the international treaties and conventions on the subject of copyright. However the Act of 1957 has been amended from time to time to make it compliant with the international standards. Yet, even before TRIPS, it was in accordance with the well accepted international principles for copyright protection; the definition of literary works was amended in 1994 to include computer programs and was amended for the fifth time in 1999 to incorporate provisions making it TRIPS compliant by encompassing neighbouring rights including performers' rights and protection of rights of broadcasting organizations. Under the copyright Act 1957 in India no copyright can exist in any work except as provided in Section 16 which reads as under: "No Copyright except as provided in this Act- No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain breach of trust or confidence."

In the case of *IPRS v. Eastern Indian Motion Pictures Association and Others*, the Supreme Court held that the producers of a cinematographic film are the first owners of the copyright in the musical and lyrical works and no copyright subsists in the composer of the lyrics or music so composed, unless there is a contract to the contrary between the composer of the lyrics or music and the producer of the cinematograph film. The Copyright (Amendment) Act, 2012 protects the interests of the authors, whereby the amendment states that in Section 17 of the 1957 Act, in clause (e), the following proviso shall be inserted at the end, namely: "Provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) shall affect the right of the author in the work referred to in clause (a) of sub-section (1) of Section 13" thereby enabling the original authors to be considered as the 'first owners' of the literary, dramatic, musical and artistic works incorporated in the cinematograph film.

In *Gramophone Company of India Ltd. v. Shanti Films Corporation*, the Calcutta High Court held that the copyright to be a beneficial interest in movable property capable of being transferred by way of assignment. Moreover, Section 18 of Copyright Act, 1957 also provides that the owner of the copyright of a work may assign any of the rights comprised in the copyright of his work to any other person. However, 2012 amendment inserts in sub-section (1) of Section 18, after the proviso, the following provisos, namely: ".....Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilization of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copy right society for collection and distribution and any agreement to contrary shall be void:

Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilization of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void." These provisions further confirm the rights of original owners to receive royalties in case of assignment of the work by the producer in relation to the cinematograph film or the sound recording.

The Copyright (Amendment) Act, 1994 substituted Section 37 so as to incorporate broadcast reproduction rights, whereby every broadcasting organization shall have a special right in respect of its broadcasts. Additionally, in conformity with Article 14 of the TRIPS Agreement, rights of the performers were also given protection by 1994 Amendment. Prior to that, they did not have protection against copying of their art. The term

of protection of the performers was also brought in line with the TRIPS Agreement in the year 1999.

#### IV. Conclusion

Copyright is an intellectual creativity which requires protection not only at the national but at the international level as well. From Berne Convention in 1886 to the incorporation of the TRIPS Agreement into the WTO, which came into force in 1995, the international law on copyright has developed itself in such a manner so as to cover various literary, artistic, musical, dramatic works and the cinematograph works along with the sound recordings. With the growth of technology the horizon of the copyrights has grown to the extent that computer programs now are treated as literary works. Law on copyright in India had been crystallized on very sound footings even before it became the member of the WTO, consequently required to implement the provisions of the TRIPS Agreement. Presently, the law on copyright is in consonance with the TRIPS Agreement. Now, further efforts are being made to amend the copyright to protect the rights of the authors made available to the users through digital technology, especially internet as India has not signed WIPO Copyright Treaty of 1996. An endeavor was made in 2010 when Copyright (Amendment) Bill was introduced in the Indian Parliament. However, it was in 2012 that certain amendments were made. Right of the authors on internet is still awaiting protection.

1. ( hereinafter, The Berne Convention)
2. The Berne Convention provided for the three basic principles: The principle of National Treatment, requiring the Contracting States to grant the nationals of other Contracting States the same treatment as it grants to its own nationals for the copyrighted works. The other principle recognized by the Berne Convention came to be known as the principle of Automatic Protection, which required absence of any condition requiring compliance with any formality. Finally, the principle of the Independence of Protection proclaimed that the protection of work would be independent of the existence of protection in the country of origin of the work. Available at: [http://www.wipo.int/treaties/en/ip/berne/summary\\_berne.html#TopOfPage](http://www.wipo.int/treaties/en/ip/berne/summary_berne.html#TopOfPage) (last visited 10 June 2012).
3. The Copyright (Amendment) Act, 2012 came into force on 21 June 2012.
4. AIR 2000 Mad. 454
5. Available at: <http://indiankanoon.org/doc/1636994/> (last visited: 23 June 2012)
6. Article 2(1) Of the Berne Convention defined literary and artistic works so as to include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico- musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art, illustrations, maps, plans, sketches and three- dimensional works relative to geography, topography, architecture or science.
7. Meenu Paul, Intellectual Property Laws, Faridabad: Allahabad Law Agency, Third Edition 2009, at 36.
8. AIR 1978 SC 1613
9. Supra, Meenu Paul at 36
10. Irini A. Stamatoudi, Copyright and Multimedia Works: A Comparative Analysis, UK: Cambridge University Press, 2004 at 44.
11. Jayashree Watal, Intellectual Property Rights in the WTO and Developing Countries, (2001), op. cit. 12 at 210.
12. Article 5(2) of the Berne Convention
13. Graeme B. Dinwoodie, 'A New Copyright Order: Why National Courts Should Create Global Norms', 149 University of Pennsylvania Law Review 469 (2000).
14. Article 7 (4) of the Berne Convention
15. Supra, Jayashree Watal, at 218
16. Fiest Publications, Inc. v. Rural Telephone Service Co, Inc., 499 U.S. 340 (1991)
17. Supra, Jayashree Watal, at 222
18. Supra, Jayashree Watal, at 226
19. Section 52 of the Indian Copyright Act, 1999
20. Jerome H. Reichamn, 'Universal Minimum Standards of Intellectual Property Protection under the TRIPS Component of the WTO,' in Intellectual Property and International Trade: the TRIPS Agreement, Carlos M. Correa and Abdulqawi A. Yusuf (eds.), (2008) at 138.
21. Article 14 of the Rome Convention
22. Alberto Bercovitz, 'Copyright and Related Rights,' in Intellectual Property and International Trade: the TRIPS Agreement, Carlos M. Correa and Abdulqawi A. Yusuf (2008), at 141
23. Section 13(1) of the Copyright Act, 1957
24. Under Section 2(o) of the Copyright Act, 1957 as amended in 1994 the literary works shall includes computer programs, tables and compilations, and was further amended in 1999 to include literary computer data bases as literary works.
25. 1977 AIR 1443
26. Air 1997 Cal. 63