



History and Evolution of Copyright in India

Suvrashis Sarkar

Researcher for PhD with the University of Mumbai at Jamnalal Bajaj Institute of Management Studies

ABSTRACT

The study of history and evolution of a subject matter is important to gain deep knowledge of the specific area of study and the same has been explored as a part of the study on IPR management system in India. This paper presents in a short and concise manner the history and evolution of Copyright in India

KEYWORDS

History, Evolution, Copyright, India

INTRODUCTION:

Copyright gained its recognition after the invention of printing press in 15th century which enabled reproduction of literary work. Copyright is the exclusive right to copy or to reproduce the work in which copyright subsists. Copyright is the set of exclusive rights granted to the author or creator of an original work, including the right to copy, distribute and adapt the work in relation to: literary, dramatic, musical, artistic, cinematography, sound recordings. Copyright is also the author's right for not allowing anyone to copy his/her original work. Copyright lasts for a certain time period after which the work is said to enter the public domain. Copyright gives protection for the expression of an idea and not for the idea itself. For example, many authors write textbooks on a particular subject matter for college students. For example a textbook of Biology will have almost same topics, same diagrams, same illustrations, covered in several books by different authors, but each author will have a copyright on the book written by him / her, provided the book is not a copy of some other book published earlier. The Copyright in this case will remain with the author for the lifetime plus 60 more years. But if the concept of that book is just in the idea state and not in the form of a published book, copyright cannot subsist in it.

Copyright has come to limelight due to the growing interest in the topic owing to the progress in Information Technology, advancement in the fields of digital printing, communication and entertainment. Technological progress has made reproduction of copyright material easy, but at the same time piracy of original work also has grown immensely. Copyright is international in nature and hence many countries together joined to form conventions for protection of copyright. The Berne Convention and Universal Copyright Conventions are due to that effort. Most countries including India are members of these conventions. Therefore, Indian Copyright owners can protect their ownership of copyright internationally.

The Copyright Act, 1957, The Copyright Rules, 2013 and the International Copyright Order, 1999 regulates Copyright protection in India.

Definition:

According to Section 14 of the Act, "Copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:-

(a) in the 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 cinematograph 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 the 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 the 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 the case of 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 the case of 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.

HISTORY OF COPYRIGHT IN INDIA

Copyright law entered India in 1847 through an enactment during the East India Company's regime. According to the 1847 enactment, the term of copyright was for the lifetime of the author plus seven years post-mortem. But in no case could the total term of copyright exceed a period of forty-two years. The government could grant a compulsory licence to publish a book if the owner of copyright, upon the death of the author, refused to allow its publication. The act of infringement comprised in a person's unauthorized printing of a copyright work for (or as a part of attempt of) "sale hire, or exportation", or "for selling, publishing or exposing to sale or hire". Suit or action for infringement was to be instituted in the "highest local court exercising original civil jurisdiction." The Act provided specifically that under a contract of service copyright in "any encyclopedia, review, magazine, periodical work or work published in a series of books or parts" shall vest in the "proprietor, projector, publisher or conductor." Infringing copies were deemed to be copies of the proprietor of copyrighted work. Importantly, unlike today, copyright in a work was not automatic. Registration of copyright with the Home Office was mandatory for the enforcement of rights under the Act. However, the Act also specifically reserved the subsistence of copyright in the author, and his right to sue for its infringement to the extent available in law other than the 1847 Act.

In 1914, the then Indian legislature enacted a new Copyright Act which merely extended most portions of the United Kingdom Copyright Act of 1911 to India. It did, however, make a few minor modifications. First, it introduced criminal sanctions for copyright infringement (sections 7 to 12). Second, it modified the scope of the term of copyright; under section 4 the "sole right" of the author to "produce, reproduce, perform or publish a translation of the work shall subsist only for a period of ten years from the date of the first publication of the work." The author, however, retained her "sole rights" if within the period of ten years she published or authorized publication of her work a translation in any language in respect of that language. The 1914 Act was continued with minor adaptations and modifications till the 1957 Act was brought into force on 24th January, 1958.

EVOLUTION OF COPYRIGHT IN INDIA

Before the Act of 1957, copyright protection was governed by the Copyright Act, 1914 which was the extension of British Copyright Act, 1911. The Act has been amended after 1957 in 1983, 1984, 1992, 1994 and 1999. In May 2012, both houses of the Indian Parliament unanimously passed the Copyright Amendment Bill, 2012, bringing Indian copyright law into compliance with the World Intellectual Property Organization Treaties – the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).

Some of the important amendments to the Copyright Act in 2012 are: getting the 1957 the Act in conformity with WCT and WPPT, extension of copyright protection in the digital environment such as penalties for circumvention of technological protection measures and rights management information, and liability of internet service provider and introduction of statutory licences for cover versions and broadcasting organizations; ensuring right to receive royalties for authors, and music composers, exclusive economic and moral rights to performers, equal membership rights in copyright

societies for authors and other right owners and exception of copyrights for physically disabled to access any works.

The amendments made in Copyright (Amendment) Act 2012 can be majorly categorized into:

(1) Amendments to rights in artistic works, cinematograph films and sound recordings.

The amendments clarify the rights in artistic works, cinematograph films and sound recordings, by providing that the right to reproduce an artistic work, to make a copy of a cinematograph film or embodying a sound recording now includes 'storing' of it in any medium by electronic or other means and therefore address some of the modern digital era challenges.

(2) WCT and WPPT related amendment to rights

The obligation under Article 11 of the TRIPS Agreement, Article 7 of WCT and Article 9 of WPPT is to provide for 'commercial rental' rights for computer programmes and cinematograph films. This right was introduced in section 14 by using the word 'hire'.

The term 'hire' in sections 14(d)&(e) with regard to cinematograph film and sound recording, respectively, is replaced with the term 'commercial rental'. The primary reason behind the replacement is to curtail the possibility of interpreting the term 'hire' to include non-commercial hire and also to keep in sync with the replacement (1999 amendment) of the term 'hire' to 'commercial rental' with respect to computer programme in section 14(b).

(3) Author-friendly amendments on mode of Assignment and Licenses

Section 18(1) provides that the owner of a copyright in any work or prospective owner of a future work may assign the copyright, and the proviso to this sub-section clarifies that in the case of future work, assignment will come into force only when the work comes into existence. Another proviso under S. 18(1), inserted through Amendment Act 2012, provides that the author of a literary or musical work incorporated in a cinematograph film or sound recording shall not assign the right to receive royalties in any form other than as a part of the film or sound recording.

(4) Amendments facilitating Access to Works

- Grant of Compulsory Licenses (Section 31,A,B)
- Grant of Statutory Licenses (Section 31C,D)
- Administration of Copyright Societies (Section 33,34,35)
- Fair Use Provisions (Section 52)
- Access to copyrighted works by the Disabled (Section 31B,52(1))
- Relinquishment of copyright (Section 21)

(5) Strengthening enforcement and protecting against Internet piracy

Section 53, dealing with importation of infringing copies, has been substituted with a new section providing detailed border measures to strengthen enforcement of rights by making provision to control import of infringing copies by the Customs Department, disposal of infringing copies and presumption of authorship under civil remedies. The new section 65A, introduced for protection of technological protection measures (TPM) used by a copyright owner to protect his rights. Section 65B has been introduced to provide protection of rights management information, defined under clause (xa) of section 2.

(6) Reform of Copyright Board and other minor amendments

Considering the diverse nature of issues being dealt with by the Copyright Board, section 11 relating to the constitution of the Copyright Board has been amended to make it a body consisting of a Chairman and two members.

REFERENCES:

1. Copyright Act, 1957
2. Copyright (Amendment) Act 2012
3. www.wipo.int