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## COPYRIGHT ACT 1957- AN OVERVIEW

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### Historical Background

India has a long tradition of respecting men of letters. Its rich legacy of

literary works is a testimony of this fact. In ancient days some sort of informal system of promoting literature and men of letters existed in the form of royal patronages but the spread of their works may easily be attributed to love of its people for literature which created a rich cultural mosaic which in turn fostered creativity. However modern times require modern modes of promoting creativity in the society. It is hence natural that India should have an efficient legal system for protecting authors and for promoting creativity.

Copyright system as is known in modern times was introduced in India as long ago as in 1847, when the first Indian Copyright Act was enacted. Having the long title, an act for encouragement of learning, this Act had the stated purpose to set at rest any doubts about the applicability of British copyright law in Indian territories under the rule of East India Company. This continued to be the general position for about seven decades till the Indian Copyright Act of 1914 made the British Act of 1911 applicable to India. This Act

remained in force until 1957. Since the Imperial Act of 1911 had incorporated the provisions of the Berne Convention for the on Protection of Literary and Artistic Works (1886) and its extensive modification at Berlin in 1908, at the time of independence in 1947, the copyright law of India was not only substantially identical with that of Great Britain but also conformed to the international copyright conventions of the time. Soon after independence the Indian Parliament decided to strengthen, improve and enlarge the scope of copyright protection responding to the needs of Indian authors and Indian copyright-related industries. Thus, the Indian Copyright Act, 1957 was brought into effect from January 21, 1958.

During the four decades of its existence the Act underwent a number of changes to meet the challenges to copyright protection that arose from time to time so as to ensure adequate protection to authors. The Act was amended in 1983, 1984 and 1992, 1994 and in 1999. The amendment in 1983 incorporated the provisions relating to incorporate the provisions relating to the Paris Act of the Berne Convention. The new modes of enjoyment of works like video films and so on required an amendment in 1984 to strengthen the right of the authors. The 1992 amendment extended the term of protection to 60 years. The technological changes in the means of communication, like broadcasting and telecasting, need to grant rights to performers, and the emergence of new technologies like computer software necessitated major amendments in the Act in 1994. The 1999 amendment made Indian Act compatible with TRIPS provisions<sup>1</sup> and introduced fair use provisions for computer programmes. With these amendments the Indian copyright law has become one of the modern copyright laws in the world.

### **Basic Concepts**

Copyright is a bundle of exclusive rights conferred by law to the author. The rights are granted to enable the author to exercise control over the uses of the work, primarily to ensure adequate economic returns. The primary condition for subsistence of copyright is the existence of a work in which ideas are reduced to material form. Copyright is granted to expressions of ideas and ideas per se do not get protected. It is open to anybody to choose an idea

and develop it in his own manner and develop it in a manner different from others. What is protected is the expression of thought, the form, formulation, formulation, order, plan or arrangement of presentation as testifying to the investment by the author of mental faculties, skills, craftsmanship, knowledge, and labour in production of any work<sup>2</sup>. The expressive work gets protection upon creation and formalities like registration, which are required in other forms of Intellectual Property Rights like Patents, are not required to claim copyright protection.

As cultural products knows no boundaries the need for international protection of copyright works was recognised early. The basic international agreement for protection of copyright works is the Berne Convention 1886. The convention lays down certain minimum standards which the member countries have to incorporate in their copyright law. The member countries provide reciprocal protection and thus authors could enforce their rights beyond the national boundaries.

## **Works in which Copyright Subsists**

As per section 13 of the Copyright Act, 1957, copyright subsists throughout the country in the following classes of works:

- (a) original literary, dramatic, musical and artistic works;
- (b) cinematograph films; and
- (c) sound recordings (phonograms).

With reference to literary, dramatic, musical and artistic works the condition precedent is that the work should be original. The requirement of originality does not relate to an idea but the manner in which idea is expressed<sup>3</sup>. The word original does not mean that the work should be the result of expression of inventive thought. The amount of originality required for copyright as decided by the Indian courts is minimal. The seminal criterion is that the work must not be copied from another work, that is, it should originate from the author<sup>4</sup>. In the case of sound recordings and cinematograph films copyright protection is not available if a substantial part of it is an infringement of copyright in any other work<sup>5</sup>.

### **Works protected:**

#### Literary Work

The term literary work is not defined exhaustively in the Act but Section 2(o) provides an inclusive definition by stating that it includes computer programmes, tables and compilations including computer databases. Thus the term literary is not confined to the works of

literature in the commonly understood sense but would include what is expressed in writing whether they have inherent literary merit or not<sup>6</sup>. What is material is that the work should exhibit certain amount of originality.

Accordingly courts have held that copyright subsists in law reports, dictionaries, grammar books, maps, almanacs, guidebooks and compilations, question papers, tambola ticket books and so on.

#### Dramatic Works

As defined in Section 2(h) 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. Cinematograph films are specifically excluded from this category as they are provided protection as a different class of eligible work with separate conditions.

### Musical Works

A musical work is defined 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. The present definition was introduced in 1994 and prior to that there was a requirement that the music had to be fixed either in printed form or reduced to writing. The 1994 amendment has done away with this condition keeping in line with Indian musical traditions.

### Artistic Works

Section 2(c) define artistic work to mean a sculpture, a drawing (including a diagram, map, chart or plan) an engraving or a photograph, whether or not such work possess artistic quality; (b) an architectural work and (c) any other work of artistic craftsmanship. The definition itself makes it clear that in order to get protection the work need not possess any artistic quality and the only condition for the subsistence of copyright is originality.

### Cinematograph films

A cinematograph film<sup>7</sup> 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 a sound recording accompanying such visual recording. The Act construes it to include any work produced by any process analogous to cinematography including video films. By using the words recording on any medium and by any means the Act covers digital reproduction which may cover CDs and DVDs or computers.

### Sound Recordings

Sound recording is defined in Section 2(xx) to mean a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or method by which such sounds are reproduced. Likewise in the case of cinematograph works the words used in the Act is broad enough to cover digital transmission of sound records including recording on a computer hard disc or CDs or DVDs.

### **Matrix of Rights**

The rights granted under copyright law can be broadly be classified into economic rights and moral rights. While economic rights ensure adequate returns to the author the moral rights ensures the integrity of the work and protects authors honour and reputation. The economic rights are like proprietary and hence can be transferred for a consideration while moral rights attributable to the personality of the author cannot be so transferred and stays with the author even after the alienation of copyrights.

As per section 14 of the copyright means the exclusive right to do or authorize the doing of any of the acts of which the rights are conferred upon the author in respect of a work or a substantial part thereof. The nature and content of the rights vary according to the nature of the work and are separately detailed in the Act.

In the case of literary dramatic or musical works the rights include the right to (i) to reproduce the work in any material form including 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 to communicate the work 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 and (vii) to do in relation to a translation or adaptation of the work, any of the acts in relation to the work in clauses (i) to (vi).

In case of computer programmes in addition to the above rights given to the literary work which category it falls, the owner has the right to sell or give on commercial rental, or offer for sale or commercial rental any copy of the computer programme. This right is available only if the programme itself is not the essential object of the rental.

In the case of an artistic work the rights are (i) the right to reproduce the work in any material form including in three dimensions of a two dimensional work or in two dimensions of 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; and (iv) to do in relation to an adaptation of the work any of the acts specified above.

In the case of cinematograph film and sound recordings the owner has the right to make a copy of the cinematograph film, including a photograph of any image forming part thereof or in the case of sound recording any other sound

recording embodying it; the right to sell or give on hire, or offer for sale or hire or give on commercial rental regardless whether such copy has been sold or given on hire on earlier occasions; (iii) the right to communicate the work to the public.

Thus generally speaking the rights include the right of reproduction, distribution, public performance or communication to the public. In addition computer programmes, cinematograph films and sound recordings enjoy rental rights.

While the right of public performance was available in the Act the right of communication to the public was introduced by the 1994 amendment. While public performance meant performance of a work and simultaneous enjoyment of the same by the public, new modes of communication like the Internet had made it possible for the work to be stored in such a manner that the public may enjoy it at a time and place of its choice. The traditional definition of public performance was not sufficient to protect the rights of authors and hence a new right of communication to the public was provided. It is defined in section 2(ff) to mean making any work available to the public for being seen or heard or otherwise enjoyed by the public directly or by any means

<sup>8</sup> Section 2(q)

of display or diffusion other than by issuing copies of the work, regardless of whether any member of the public sees, hears or otherwise enjoys the work so made available. It has been clarified that communication through the satellite, cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public.

### **Moral Rights**

Section 57 of the Act grants authors special rights commonly referred to as moral rights. These rights generally have two components, the paternity right or the right to claim ownership of the work and the integrity right, the right to object distortion or mutilation of the work both of which are granted as per this section. This section thus elevates author to an exalted status conforming to the romantic notions of authorship. These rights are inalienable from the author and are available even after the assignment of the economic rights.

### **Resale Share Right**

Artists and authors are entitled to get a share not exceeding ten per cent of the resale price, in the subsequent sale of original copies of their painting, sculptures and drawings and original manuscripts of literary, dramatic and musical works vide section 53A of the Act.

This right, commonly referred to as *droit de suite*, is optional under the Berne Convention but India had opted for it. This right like the moral rights is available only to the author.

In addition to the rights granted to the author the Act also recognises certain rights which owes its origin to the copyright works and hence commonly referred to as related rights or neighbouring rights. These were introduced by the 1994 amendment and are termed the Performers Right and the Broadcast Reproduction Right

### **Performers Right**

Section 38 grants limited rights for the performers in their live performances for a period of fifty years from the year following the year of performance. A performer includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance. The performance<sup>8</sup> includes visual or acoustic presentation made by one or more performers. Any person who makes a sound recording or visual recording of the performance; or (b) reproduces a sound recording or visual recording made without the performers consent; or (c) broadcasts the performance; or (d) communicate the performance to the public without the consent of the performer infringes the performers right. However once the performer consents incorporation of his performance in a cinematograph film this right ceases to exist<sup>9</sup>.

### **Broadcast Reproduction Right**

Section 37 grants broadcasting organisations a special right in respect of its broadcasts. This right subsists for a period of 25 years and enables the rightholder to prevent the unauthorised (i) rebroadcast of the broadcasts; or (ii) communication of the broadcast to the public upon payment of charges; or (iii) make a sound or visual recording of such broadcast and reproduce the same and (iv) sell or hire to the public or offer for sale or hire such records.

### **Owner of Copyright**

The author of a work is the first owner of copyright in it as per section 17 of the Act. However, in the absence of any agreement to the contrary, in the case of a literary, dramatic or artistic work made by an author in the course of employment the employer is the first owner. So also, in the case of a photograph or a painting or a portrait or an engraving or a cinematograph film made for valuable consideration at the instance of another person, in the absence of any agreement to the contrary, that person is the first owner of copyright. In the case of government work government is the first owner. In the case of a public lecture, the person who delivers the address or if it is delivered on behalf of another person that person is the first owner.

Author is generally the creator of the work. The term author is defined in section 2(d) of the Act to mean:

- (i) in relation to a literary or dramatic work the author of the work;
- (ii) In the case of a musical work, it is the composer;
- (iii) in relation to an artistic work other than a photograph, the artist;
- (iv) in relation to a photograph, the person taking the photograph;
- (v) in the case of a cinematograph film or a sound recording it is the producer; and,
- (vi) in the case of a computer- generated work it is the person who causes the work to be created.

The Act also recognises joint authorship in cases where it is not possible to identify the separate contribution of different authors in a work<sup>10</sup>. In such circumstances the co owners will collectively be the first owners of copyright in the work.

### **Transfer of Rights- Assignment and licenses**

Being proprietary in nature these rights can be freely transferred like any other property rights. The right holder can transfer any or all of his rights by way of an assignment or license. Assignment involves transfer of ownership of the rights as such while license grants only a permission to exploit the work according to the terms of the agreement granting such license<sup>11</sup>. The Act stipulates that the assignment and license should be in writing and must be duly signed by the assignor or the licensor. It must also specify the rights transferred,

the duration, the territorial extent and the royalty payable. In case the period of assignment is not stipulated it shall be presumed that the contract is only for five years. It is made clear that if the assignee does not exercise the rights assigned to him within a period of one year from such assignment, the rights shall revert back to the author unless otherwise expressly provided in the agreement. Such provisions are intended to safeguard the interests of the author.

### **Compulsory licenses**

Sections 31 to 32B deal with compulsory licensing provisions. These are incorporated to ensure availability of copyright works to the public at reasonable prices. Section 31 details the procedure for the issuance of a compulsory license to republish works that are withheld from public. Copyright Board is empowered to adjudicate on an application for compulsory license. After giving the owner of the rights a reasonable opportunity of being heard the Board may direct the Registrar of Copyrights to grant compulsory license. Recently the FM broadcasting industry had sought and obtained direction for issue of such compulsory license from the Copyright Board for musical works, the rights of which were held by the collective administration society of the sound recording producers, viz, Phonographic Performances Ltd.

Section 31A deals with compulsory licenses to publish unpublished works. Here the proposal to publish the work must be advertised by the applicant in newspapers before making such an application. Section 32 permits any person to approach the Copyright Board for a license to publish translations of works after a certain period of publication of the original work. Section 32A allows any person to approach the Copyright Board to publish works of literary scientific or artistic nature if it is not made available within the country at reasonable rates within a stipulated time.

In addition section 52j deals with a statutory licensing mechanism, whereby any person is free to make and publish the sound recording of a literary dramatic or musical work already in circulation and published atleast two years before after paying

the statutory royalty fixed by the Copyright Board to the copyright owner. This provision was introduced by the legislature to promote young performers in the country so that the public could listen to popular musical works through their voices.

### **Infringement**

Section 51 of the act deals with the acts that are considered infringing the rights of the owner. As per this section copyright in a work shall be deemed to have been infringed when any person without a valid license (a) does anything the exclusive right to do which is with the author; (b) permits for profit to use any place for the performance of a copyrighted work, unless not aware nor had reasonable ground to believe that such performance constitute an infringement of copyright; (c) makes an infringing copy for sale or hire or selling or letting them on hire; (d) distributes infringing copies either for the purpose of trade or to such an extent which would prejudicially affect the owner of copyright; (e) by way of trade exhibit the work in public; (f) import infringing copies except for the private domestic use of the importer. The explanation to this section provides that the reproduction of a dramatic musical or literary work shall be deemed to be an infringing copy. Further section 2(m) defines what is an infringing copy.

Thus both direct and indirect infringements are prohibited by the Act. To constitute an infringement an exact reproduction is not necessary. A resemblance with the original in such a measure as to leave an impression in the minds of the reader or the beholder that it is a copy is necessary. The Supreme Court has in *R.G. Anand a v Delux film*<sup>12</sup> has laid down the principles whereby a copy could be held as infringing or not.

### **Remedies**

Both Civil<sup>13</sup> and Criminal<sup>14</sup> remedies are available to prevent infringement of copyright. While civil remedies include injunction, account of profit or damages criminal remedies involve imprisonment and fine. For invoking criminal remedies existence of knowledge or mens rea is a necessary condition. Copyright infringement is a cognizable offence and the Act empowers a police officer not below the rank of a sub inspector, if he is satisfied that infringement of copyright is being or is likely to be committed, to seize without warrant all copies of the work and all plates<sup>15</sup> used for the purpose of making infringing copies of the work.

### **Permitted Uses**

Section 52 of the Act exempts certain activities from the purview of infringement. Accordingly any fair dealing with a literary (other than a computer programme), dramatic, musical or artistic work for the purpose of private use, research, criticism or review, reporting current events, judicial proceedings and so on are exempted from the scope of infringement. There are

specific exemptions for educational activities and certain cultural activities like performance during the course of a religious ceremony, marriage and so on.

In the case of computer programmes there are specific exemptions for reproduction for the purpose for which the programme was purchased, making copies from legally obtained copy for private personal use, to do such acts as to create an interoperable programme. There is a rather exhaustive list of exemptions provided in the Act and it is primarily to ensure public access to copyright products. This prevents such cultural products being end up as monopolistic products.

### **Term of Copyright**

Chapter V of the Act deals with the term of protection. Original literary, dramatic, musical and artistic works enjoy copyright protection for the life-time of the author plus 60 years if they are published within the life-time of the author. The term of protection is 60 years since publication in the case of cinematograph films, sound recordings, photography, posthumous publications, anonymous and pseudonymous publications, and works of government and international organisations. In such cases the protection takes effect only from the date of publication of the work. Performers rights are protected for a period of fifty years and Broadcast Reproduction Right for a period of 25 years<sup>16</sup>.

### **Registration of Works**

The Copyright Act provides for registration of works<sup>17</sup>. However, the registration under the Act is voluntary and not obligatory. Registration does not itself confer copyright but the particulars entered in the Register of Copyright maintained in the Copyright Office constitute prima facie evidence of ownership of copyright in copyright cases<sup>18</sup>. As per the provisions of the Act, copyright subsists in any work as soon as it is created, without any formality like registration being observed. Registration is not a prerequisite for instituting infringement proceedings. It only raises a presumption in favour of the person whose name appears in the register of copyright which of course shifts the burden of proof.

The Act also provides for a Registrar of Copyrights and one or more Deputy Registrars of Copyrights and a Copyright Office to provide registration facilities. The Copyright Office of India is a

part of the Department of Education of the Ministry of Human Resource Development. The Registrar of Copyrights performs quasi-judicial functions.

He has the powers of a Civil Court like summoning witnesses, receiving evidence on oath and requisitioning public records. As per section 53 of the Act, the Registrar of Copyrights is empowered to order that copies made outside India shall not be imported where such copies, if made in India, would infringe the copyright of the work.

### **Copyright Board**

The Copyright Act provides for a quasi-judicial body called the Copyright Board consisting of a Chairman and two or more, but not exceeding fourteen, other members for adjudicating certain kinds of copyright cases. The Board has the power to:

- (i) hear appeals against the orders of the Registrar of Copyright;
- (ii) hear applications for rectification of entries in the Register of Copyrights;
- (iii) adjudicate upon disputes on assignment of copyright;
- (iv) grant compulsory licences to publish or republish works (in certain circumstances)
- (v) grant compulsory licence to produce and publish a translation of a literary or dramatic work in any language

than a computer programme), dramatic, musical or artistic work for the purpose of private use, research, criticism or review, reporting current events, judicial proceedings and so on are exempted from the scope of infringement. There are specific exemptions for educational activities and certain cultural activities like performance during the course of a religious ceremony, marriage and so on.

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<sup>16</sup> See section 38 and 37 respectively. <sup>17</sup> See section 45 of the Act.

<sup>18</sup> Section 48 of the Act

posthumous publications, anonymous and pseudonymous publications, and works of government and international organisations. In such cases the protection takes effect only from the date of publication of the work. Performers rights are protected for a period of fifty years and Broadcast Reproduction Right for a period of 25 years<sup>16</sup> .

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- (iv) grant compulsory licences to publish or republish works (in certain circumstances)
- (v) grant compulsory licence to produce and publish a translation of a literary or dramatic work in any language Protocol, since 1983.
- vi) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) since the date of its coming into force.

By virtue of India's membership in these international conventions Indian works get protected in the countries that have joined these conventions. By virtue of almost universal nature of the major conventions the works of authors enjoy worldwide protection.