

## **The summary of the Copyright Act, 1957**

Copyright law as its name suggests is the simple law that suggests if you create something you own it and only you get to decide what happens next with it. In India, law related to copyright is governed by the Copyright Act, 1957. The objective of this copyright law is mainly twofold: first to assure authors, composers, artists, designers and other creative people, who risk their capital in putting their works before the public, the right of their original expression, and second to encourage others to build freely upon the ideas and information conveyed by a work.

Indian copyright law is at parity with the international standards as contained in TRIPS. The (Indian) Copyright Act, 1957, pursuant to the amendments in 1999, 2002 and 2012, fully reflects the Berne Convention for Protection of Literary and Artistic Works, 1886 and the Universal Copyrights Convention, to which India is a party. India is also a party to the Geneva Convention for the Protection of Rights of Producers of Phonograms and is an active member of the World Intellectual Property Organization (WIPO) and United Nations Educational, Scientific and Cultural Organization (UNESCO).

"Work" protected in India

Under the Copyright Act, 1957 the term "work" includes an artistic work comprising of a painting, a sculpture, a drawing (including a diagram, a map, a chart or plan), an engraving, a photograph, a work of architecture or artistic craftsmanship, dramatic work, literary work (including computer programmes, tables, compilations and computer databases), musical work (including music as well as graphical notations), sound recording and cinematographic film.

In order to keep pace with the global requirement of harmonization, the Copyright Act, 1957 has brought the copyright law in India in line with the developments in the information technology industry, whether it is in the field of satellite broadcasting or computer software or digital technology. The amended law has also made provisions to protect performer's rights as envisaged in the Rome Convention.

### **Historical development in India**

In India, the earliest law of copyright was enacted by the British during the realm of East India Company that is the Indian Copyright Act, 1847 which was passed for the enforcement of rules of English copyright in India. After it, by Copyright Act 1911, this law was repealed, replaced and applied to all British colonies including India. Further, it was again modified in 1914 by the Indian Copyright Act, 1914, which remained applicable in India until replaced by the Copyright Act, 1957 by the parliament of sovereign India.

Copyright laws serve to create property rights for certain kinds of intellectual property, generally called works of authorship. Copyright laws protect the legal rights of the creator of an 'original work' by preventing others from reproducing the work in any other way.

### **Subject matter of copyright**

All subject matters protected by copyright are called 'works'. Thus according to Section 13 of The Copyright Act 1957, it may be subjected for the following works:

Original Literary Work,  
Original Dramatic work,

Original Musical work,  
Original Artistic Work,  
Cinematography films, and  
Sound recordings.

Modern copyright laws serve to protect a variety of intellectual property ranging from songs and jingles to computer software and proprietary databases. The intellectual property protected under copyright laws can be classified as follows:

#### Literary Works:

These cover published works including books, articles, journals, and periodicals, as well as manuscripts. Even adaptations, translations, and abridgements are taken as original works and are protected under copyright law. Very importantly, these also cover computer programs and computer databases.

#### Dramatic Works:

A dramatic work is a work capable of being physically performed. It need not be fixed in writing or otherwise. Some examples of dramatic works are a piece of recitation, choreographic work, elements of a dance or ballet, costumes, and scenery associated with a drama, etc.

#### Musical Works:

A musical work means a work consisting of music and it includes graphical notation of such a work. The words in a song and the music have separate rights and the rights cannot be merged.

#### Artistic Works:

Artistic works are works such as paintings, sculptures, drawings, engravings, photographs, and architectural works, irrespective of judgements on their artistic quality.

#### Cinematographic Films and Sound Recordings:

Cinematography covers any method used to record moving images, including video recording and recordings of short clips using webcams and cell-phones. Soundtracks of movies also come under cinematography. Similarly, stand-alone sound recordings are also protected under copyright laws.

#### Moral rights

In addition to the protection of economic rights, the Copyright Act, 1957 conjointly protects the ethical rights, that is due to the actual fact that a literary or inventive work reflects the temperament of the creator, just as much as the economic rights reflects the author's need to keep the body and the soul of his work out from commercial exploitation and infringement. These rights are supported by Article 6 of the Berne Convention of 1886, formally referred to as a world convention for the protection of literary and inventive works, whose core provision relies on the principle of national treatment, i.e. treats the opposite good as one's own.

#### **Section 57 of The Copyright Act,1957 recognize two types of moral rights which are:**

Right to paternity– which incorporates the right to assert the authorship of the work, and right to forestall others from claiming authorship of his work; and

Right to integrity- which incorporates right to restrain, or claim of damages in respect of any distortion, modification, mutilation, or any other act relates to the said work if such distortion, multiplication or alternative act would be prejudiced to claimant honor or name.

### **Registration of Copyright:**

Though the Indian Copyright Act provides for a procedure for registration of copyright, registration is not necessary for acquiring a copyright. In fact, it is not advisable to go through the trouble of registering a copyright.

In Indian laws, a copyright is created when the original work is created and unlike laws in the US, registering it does not confer any special rights. The particulars with the Registrar of Copyrights will serve as evidence of existence of the work on the date of registration. Many creators of original work use other methods to prove existence of their work on a particular date such as depositing manuscripts in a bank locker.

### **Copyright Protection:**

There are four basic concepts central to the idea of copyright protection as discussed here.

#### **Idea vs. Expression:**

It is necessary to fix the boundary between the idea and the expression contained in the original work. It is important to note that copyright applies only to the expression and not to the idea. But what constitutes the idea and not the expression can be a source of great legal debate.

#### **Fixation:**

Copyright can exist only if the work is represented in a material form. It is only if the book is written, the sound is recorded, or the painting or sculpture is executed, that the work is eligible for protection under copyright laws.

#### **Fair Use:**

Copyright holders are deemed to consent to fair use of their work by others. Fair use is not defined but can include use in the course of news reporting, commenting, scientific research, etc.

### **Copyright Term:**

In most cases, the term of copyright is the lifetime of the author plus 60 years thereafter. There are some notable exceptions as given below:

1. Broadcasting organization has rights with respect to their broadcasts. The term of this right is 25 years from the beginning of the calendar year following the year in which the broadcast is made.
2. Performers have some special rights in relation to their performance. These rights are for a period of 50 years from the beginning of the calendar year following the year of the first performance.
3. In case of posthumous publications, the rights stand for a period of 60 years after the publication.

### **Infringement of Copyright:**

A copyright grants protection to the creator of an original work and prevents such work from being copied or reproduced without consent. The creator of a work can prohibit anyone from

- i. Reproducing the work in any form, such as print, sound, video, etc.,
- ii. Recording the work in compact disks, cassettes, etc.,
- iii. Broadcasting it in any form,
- iv. Translating it into other languages, and
- v. Using the work for a public performance, such as a stage drama or musical performance.

A copyright is infringed when someone, without the permission of the copyright holder, does any of the above, which only the copyright holder has the exclusive right to do.

The Copyright Act provides for both civil and criminal remedies for infringements of copyrights. On proving an infringement, the copyright owner is entitled to remedy by way of injunctions and order for seizure and destruction of infringing articles. The offending parties may also be asked to pay damages.

The Registrar of Copyrights has the power to prevent the import of infringing copies. On receiving a complaint, the Registrar can enter ships, docks, or warehouses, housing the alleged infringing material and examine them. In case the infringing material is found, it is handed over to the copyright holder.

**Copyright Protection for Computer Programs:**

In 1994, the definition of the term literary work in the Copyright Act was amended to include 'computer programs, tables and compilations, including computer databases.'

Owners of computer programs get protection under copyright laws. A computer program can be registered with the Registrar of Copyrights by giving the first 25 and the last 25 lines of the source code. Here again, it is preferred to establish date of development by submitting logbooks detailing development work, etc.

Making copies of legally obtained computer programs for purposes of making back-up copies as a temporary protection against damage or destruction is permitted. Knowingly making use of an infringing copy of a computer program is a punishable offence.

### **Registration of Copyright**

In India, the registration of copyright is not mandatory as the registration is treated as mere recordal of a fact. The registration does not create or confer any new right and is not a prerequisite for initiating action against infringement. The view has been upheld by the Indian courts in a catena of judgments.

### **Need for Registration of Copyright**

The awareness of Intellectual Property (IP) Laws is considerably low among the enforcement authorities in India, and most of the IP litigation is confined to metropolitan cities. Despite the fact that the registration of copyright is not mandatory in India and is protectable through the International Copyright Order, 1999, it is advisable to register the copyright as the copyright registration certificate is accepted as a "proof of ownership" in courts and by police authorities, and acted upon smoothly by them.

### **Enforcement of Copyright in India**

The law of copyright in India not only provides for civil remedies in the form of permanent injunction, damages or accounts of profits, delivery of the infringing material for destruction and cost of the legal proceedings. etc. but also makes instances of infringement of copyright, a cognizable offence punishable with imprisonment for a term which shall not be less than six months but which may extend to three years with a fine which shall not be less than Rs 50,000 (approx. US\$ 800) but may extend to Rs 2,00,000 (approx. US\$ 3,000). For the second and subsequent offences, there are provisions for enhanced fine and punishment under the Copyright Act. The (Indian) Copyright Act, 1957 gives power to the police authorities to register the Complaint (First Information Report, ie, FIR) and act on its own to arrest the accused, search the premises of the accused and seize the infringing material without any intervention of the court.

### **Protection to Foreign Works in India**

Copyright of "works" of foreign nationals, whose countries are member of Convention Countries to which India is a signatory, are protected against any infringement of their "works" in India through the International Copyright Order, 1999. The Indian courts have also been pro-active for the protection of copyright of foreign authors/owners, which includes software, motion pictures including screen play of motion pictures and database.

The Government of India is also taking initiative to combat piracy in the software industry, motion pictures and the music industry along with players in the industry through their associations and organizations like NASSCOM (National Association of Software and Service Companies), NIAPC (National Initiative Against Piracy and Counterfeiting) etc.

### **Licensing and Assignment of Copyright**

Copyright in any work, present or future, can only be assigned or licensed in writing by the copyright owner or his duly authorised agent.

### **Infringement and remedies**

Where a person intentionally or unintentionally infringes the rights of the copyright holder, the holder may be subject to the following remedies available under this Act.

#### **Civil remedies**

These remedies are given under Section 55 of the Copyright Act, 1957 which are:

##### **Interlocutory injunction**

This is the most important remedy against the copyright infringement, it means a judicial process by which one who is threatening to invade or has invaded the legal or equitable rights of another is restrained from commencing or continuing such act, or is commanded to restore matters to the position in which they stood previous to the relation. Thus for granting the interlocutory injunction, the following three factors are considered as necessary:

Prima facie case, an assumption of the court that the plaintiff can succeed in the case and become eligible for relief.

Balance of convenience, in it the court will determine which parties suffer the greater harm, this determination can vary with the facts of each case.

Irreparable injury, it is difficult to decide and determine on a case by case basis. Some examples of it include- loss of goodwill or irrevocable damages to reputation, loss of market share.

##### **Mareva injunction**

This is a particular form of the interlocutory injunction which restrains the defendant from disposing of assets that may be required to satisfy the plaintiff's claim or for removing them from the jurisdiction of the Court.

#### Anton Piller order

This order is passed to take into possession the infringed documents, copies and other relevant material of the defendant, by the solicitor of the plaintiff. This order is named after the famous case of Anton Piller KG v/s Manufacturing Process Ltd, 1976. In this case, the plaintiff Antone Piller, the German manufacturer is successful in passing ex-parte awards of restraining the use of his copyrighted products against the defendant.

#### John Deo's order

In this order, the Court has the power to injunct rather than those impeded in the suit, who may be found violating the rights in the field of copyright. Thus this order is issued against the unknown person, who has allegedly committed some wrong, but whose identities cannot entertain the plaintiff.

#### Pecuniary remedies

There are three types of pecuniary remedies provided:

An account of profit, which lets the owner seek the sum of money made, equal to the profit made through unlawful conduct.

Compensatory damages, which let the copyright owner seek the damages he suffered.

Conversational damages, which are assessed to the value of the article.

#### **Criminal remedies**

For infringement of copyright, the criminal remedies provided under Section 63:

Imprisonment, not less than 6 months which may extend up to 3 years;

Fine may not be less than 50,000 which may extend up to 2,00,000;

Search and seizure of copyrighted goods; and

Delivery of copyrighted goods to the copyrighted owner.

In the case of repeat offenders, minimum punishment terms of 1 year and fine of 1 lakh however, the highest punishment will be the same as the first time offender.

#### **Exceptions**

This act shall not constitute copyright infringement in cases of:

#### **Fair Dealing**

Fair dealing is the statutory limitation on the exclusive right of the copyright owner which permits reproduction or use of copyrighted work in a manner that otherwise would have constituted infringement.

This law is given under Section 52 of the Copyright Act,1957 according to which the free uses can be made for any work except computer program for the purposes:

For private and personal use including research,

For criticism and review,

For reporting of current events or issues including lectures in public,

For broadcasting in cinematographic films or by posting photographs,

For reproduction and reporting of any judicial proceeding,

For reproduction, or publication of any kind of work prepared by the secretariat of a legislature,

For reproduction of any kind of work in a certified copy made or supplied accordance with any law,  
For reading and recitation of any literary or dramatic work in the public domain,  
For publication of any non-copyright matter bonafide intended for the use of educational institutes, and  
For recording any sound by the owner of the right in the work.

## INTRODUCTION

The idea of Copyright protection only began to emerge with the invention of printing, which made it for literary works to be duplicated by mechanical processes instead of being copied by hand. This led to the grant of privileges, by authorities and kings, entitling beneficiaries exclusive rights of reproduction and distribution, for limited period, with remedies in the form of fines, seizure, confiscation of infringing copies and possibly damages.

However, the criticism of the system of privileges led to the adoption of the Statute of Anne in 1709, the first copyright Statute. In the 18th century there was dispute over the relationship between copyright subsisting in common law and copyright under the Statute of Anne. This was finally settled by House of Lords in 1774 which ruled that at common law the author had the sole right of printing and publishing his book, but that once a book was published the rights in it were exclusively regulated by the Statute. This common law right in unpublished works lasted until the Copyright Act, 1911, which abolished the Statute of Anne.

Copyright is a well recognised form of property right which had its roots in the common law system and subsequently came to be governed by the national laws in each country. Copyright as the name suggests arose as an exclusive right of the author to copy the literature produced by him and stop others from doing so. There are well-known instances of legal intervention to punish a person for copying literary or aesthetic output of another even before the concept of copyright took shape. The concept of idea was originally concerned with the field of literature and arts. In view of technological advancements in recent times, copyright protection has been expanded considerably. Today, copyright law has extended protection not only to literary, dramatic, musical and artistic works but also sound recordings, films, broadcasts, cable programmes and typographical arrangements of publications. Computer programs have also been brought within the purview of copyright law.

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.

In India, the law relating to copyright is governed by the Copyright Act, 1957 which has been amended in 1983, 1984, 1985, 1991, 1992, 1994, 1999 and 2012 to meet with the national and international requirements. The amendment introduced in 1984 included computer program within the definition of literary work and a new definition of computer program was inserted by the 1994 amendment. The philosophical justification for including computer programs under literary work has been that computer programs are also products of intellectual skill like any other literary work.

In 1999, the Copyright Act, 1957 was further amended to give effect to the provisions of the TRIPs agreement providing for term of protection to performers rights at least until the end of a period of fifty years computed from the end of the calendar year in which the performance took place. The Amendment Act also inserted new Section 40A empowering the Central Government to extend the provisions of the Copyright Act to broadcasts and performances made in other countries subject to the condition however that such countries extend similar protection to broadcasts and performances made in India. Another new Section 42A empowers the Central Government to restrict rights of foreign broadcasting organisations and performers.

The Act is now amended in 2012 with the object of making certain changes for clarity, to remove operational

difficulties and also to address certain newer issues that have emerged in the context of digital technologies and the Internet. Moreover, the main object to amendments the Act is that in the knowledge society in which we live today, it is imperative to encourage creativity for promotion of culture of enterprise and innovation so that creative people realise their potential and it is necessary to keep pace with the challenges for a fast growing knowledge and modern society.

## **MEANING OF COPYRIGHT AND THE RIGHTS CONFERRED**

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. It means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever (*Kartar Singh Giani v. Ladha Singh & Others AIR 1934 Lah 777*).

Section 14 of the Act defines the term Copyright as to mean the exclusive right to do or authorise the doing of the following acts in respect of a work or any substantial part thereof, namely

In the case of literary, dramatic or musical work (except computer programme):

- (i) reproducing the work in any material form which includes storing of it in any medium by electronic means;
- (ii) issuing copies of the work to the public which are not already in circulation;
- (iii) performing the work in public or communicating it to the public;
- (iv) making any cinematograph film or sound recording in respect of the work;

making any translation or adaptation of the work.

Further any of the above mentioned acts in relation to work can be done in the case of translation or adaptation of the work.

In the case of a computer programme:

- (i) to do any of the acts specified in respect of a literary, dramatic or musical work; and
- (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme. However, such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

In the case of an artistic work:

- (i) reproducing 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) communicating the work to the public;
- (iii) issuing copies of work to the public which are not already in existence;
- (iv) including work in any cinematograph film;

making adaptation of the work, and to do any of the above acts in relation to an adaptation of the work.

In the case of cinematograph film and sound recording:

- (i) making a copy of the film including a photograph of any image or making any other sound recording embodying it;

- (ii) selling or giving on hire or offer for sale or hire any copy of the film/sound recording even if such copy has been sold or given on hire on earlier occasions; and
- (iii) communicating the film/sound recording to the public.

In the case of a sound recording:

- To make any other sound recording embodying it
- To sell or give on hire, or offer for sale or hire, any copy of the sound recording
- To communicate the sound recording to the public.

The main objective of the Act is to give protection to the owner of the copyright from the dishonest manufacturers, who try to confuse public and make them believe that the infringed products are the products of the owner. Further, it wants to discourage the dishonest manufacturers from encroaching the goodwill of the owner of the copyright, who has established itself in the market with its own efforts [*Hawkins Cookers Ltd.v. Magicook Appliances Co., 00(2002) DLT698*].

Unlike the case with patents, copyright protects the expressions and not the ideas. There is no copyright in an idea. In *M/s Mishra Bandhu Karyalaya & Others v. Shivaratanlal Koshal AIR 1970 MP 261*, it has been held that the laws of copyright do not protect ideas, but they deal with the particular expression of ideas. It is always possible to arrive at the same result from independent sources. The rule appears to be settled that the compiler of a work in which absolute originality is of necessary excluded is entitled, without exposing himself to a charge of piracy, to make use of preceding works upon the subject, where he bestows such mental labour upon what he has taken, and subjects it to such revision and correction as to produce an original result.

Whether one book is a copy of the other or not, it was held in *S K Dutt. V. Law Book Co. & Others AIR 1954 All 57*, in deciding the question whether one book is a copy of the other or not the Court has, in one view, to keep in mind the two features of the two books, namely, the external and the internal features. By external features means the get-up and the 'overall' scope of the publication. By internal features means the general lay out of the subject-matter, the manner of the treatment of the subject matter and the amount of material contained in the book.

### **Works in Which Copyright Subsists**

Section 13 of the Copyright Act provides that copyright shall subsist throughout India in certain classes of works which are enumerated in the section. Copyright subsists throughout India in the following classes of works:

- Original literary, dramatic, musical and artistic works;
- Cinematograph films; and
- Sound recordings.

In *Macmillan and Company Limited v. K. and J. Cooper, AIR 1924 PC 75*, it was held that the word 'original' does not mean that the work must be the expression of original or inventive thought. Copyright Acts are not concerned with the origin of ideas, but with the expression of thought; and in the case of 'literary work, with the expression of thought in print or writing. The originality which is required relates to the expression of the thought; but the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work—that it should originate from the author. What is the precise amount of the knowledge, labour, judgement or literary skill or taste which the author of any book or other compilation must bestow upon its composition in order to acquire copyright in it within the meaning of the

Copyright Act cannot be defined in precise terms. In every case it must depend largely on the special facts of that case, and must in each case be very much a question of degree.

In *Camlin Private Limited v. National Pencil Industries, (2002) Del*, Delhi High Court held that copyright subsists only in an original literary work. But it is not necessary that the work should be the expression of the original or inventive thought, for Copyright Act are not concerned with the originality of ideas, but with the expression of thought, and in the case of a literary work, with the expression of thought in print or writing. Originality for the purpose of copyright law relates to the expression of thought, but such expression need not be original or novel. The essential requirement is that the work must not be copied from another work but must originate from the author.

An artistic work means-

- a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;
- a work of architecture; and
- any other work of artistic craftsmanship.

Word “artistic” is merely used as a generic term to include the different processes of creating works set out in the definition section and that provides that a work produced by one such processes, and that its creation involved some skill or labour on the part of the artist, it is protected [*Associated Publishers (Madras) Ltd. v. K. Bashyam alias ‘Arya’ & Another AIR 1961 Mad. 114 (1962) 1 Mad LJ 258*].

What is required for copyright protection in an artistic work is ‘originality’. It is not originality of idea or the theme behind the work but the expression of the work which requires to be original. The originality required as per the Act is a minimum amount of originality. What is prevented under the Copyright Act is making of copies without permission of the author. A copy is one which is either a reproduction of the original or a work which closely resembles the original [*Challenger Knitting Mills v. Kothari Hosery Factory 2002 PTC (24) 756 Del. (Reg.)*].

"Musical work" means 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. A musical work need not be written down to enjoy copyright protection.

"Sound recording" means a recording of sounds from which sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced. A phonogram and a CD-ROM are sound recordings.

"Cinematograph film" means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes 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.

The expression “cinematograph film” in Section 2(f) of the Copyright Act, 1957 includes video film also which has been recorded in *VCR. Entertaining Enterprises & Others v. State of Tamil Nadu & Another AIR 1984 Mad. 278*.

The Bombay High Court in *Fortune Films International v. Dev Anand & Another AIR 1979 Bom.17*, has held that in view of the definitions of “artistic work”, “dramatic work” and cinematograph film”, it would appear that the Copyright Act, 1957 does not recognize the performance of an actor as ‘work’ which is protected by the Copyright Act.

## **COPYRIGHT PERTAINING TO SOFTWARE**

The definition of "Literary work" under section 2 (o) of the Copyright Act, 1957 includes computer programmes, tables and compilations including computer "literary data bases. Computer programme as stated above was included within the definition of "literary work" in 1984 and the new definition of "computer programme" under Section 2 (ff) introduced in 1994 means a set of instructions expressed in words, codes or in any other form, including a machine-readable medium, capable of causing a computer to perform a particular task or achieve a particular result.

Computer programmes (also known as "software") originated with the invention of the computer itself. However, it was only with the advent of Personal Computers (PCs) in the 1980s that software became widely available and the need for protecting software under Copyright law became an issue. In the initial stages, computer programmes were developed by the manufacturers of computers themselves. With the emergence of wide use of PCs, production of software became delinked from manufacturers of computers. Development and manufacturing of software has now become an independent activity and the number of companies engaged in this activity has also increased. It is however the output and variety which has grown manifold which has given rise to problems of enforcement of Copyright in them. While vigorous competition among producers of software has, on the one hand brought about improvement in the quality of computer programmes and brought down the prices, the increased opportunities have also given rise to what is commonly known as "software piracy" - the activity of duplicating and distributing software without authority from the holder of the copyright.

The philosophical justification for including computer programmes within the definition of 'literary work' has been that computer programmes are also products of intellectual skill like any other literary work. Developing a computer programme is an activity which is comparable to the writing of a novel or other literary work excepting that the "language" used as well as its uses are of a very different kind. Though a software can be written by individual programmer, most of the major software's are the outcome of group efforts, where medium to large sized teams spend months or even years to write a programme.

Like the unauthorised copying of literary works, unauthorised copying of computer programmes also attracts the same legal consequences under the Copyright law. However, since the facility of copying a computer software and its duplication is within the easy reach of a potential pirate and since copies of software are indistinguishable from the original, publishers/owners of software are also confronted with daunting problems for safeguarding their interests under the Copyright law when large scale software piracy takes place. Software piracy has assumed enormous proportions in certain countries and has become a friction point in international trade negotiations. Within domestic jurisdictions also software piracy has thrown up serious challenges to enforcement authorities. The Copyright (Amendment) Act, 1994 has tried to address these questions and has incorporated internationally recognised standards and procedures for enforcement of copyright in the field of computer programmes. The relevant provisions have been discussed under remedies against infringement of copyright

## **AUTHORSHIP AND OWNERSHIP**

Copyright protects the rights of authors, i.e., creators of intellectual property in the form of literary, musical, dramatic and artistic works and cinematograph films and sound recordings. Generally the author is the first owner of copyright in a work.

"Author" as per Section 2(d) of the Act means

- In the case of a literary or dramatic work the author, i.e., the person who creates the work.
- In the case of a musical work, the composer.

- In the case of a cinematograph film, the producer.
- In the case of a sound recording, the producer.
- In the case of a photograph, the photographer.
- In the case of any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created.

In a musical sound recording there are many right holders. For example, the lyricist who wrote the lyrics, the composer who set the music, the singer who sang the song, the musician (s) who performed the background music, and the person or company who produced the sound recording.

A sound recording generally comprises various rights. It is necessary to obtain the licences from each and every right owner in the sound recording. This would ,inter alia, include the producer of the sound recording, the lyricist who wrote the lyrics, and the musician who composed the music.

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 therein.

In the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

In the case of a literary, 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, 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 work made in the course of the author's employment under a contract of service or apprenticeship, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

In the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

## **Term of Copyright**

Sections 22 to 29 deal with term of copyright in respect of published literary, dramatic, musical and artistic works; anonymous and pseudonymous; posthumous, photographs, cinematograph films, sound recording, Government works, works of PSUs and works of international organisations.

Literary, dramatic, musical or artistic works enjoy copyright protection for the life time of the author plus 60 years beyond i.e. 60 years after his death. In the case of joint authorship which implies collaboration of two or more authors in the production of the work, the term of copyright is to be construed as a reference to the author who dies last.

In the case of copyright in posthumous, anonymous and pseudonymous works, photographs, cinematograph films, sound recordings, works of Government, public undertaking and international organisations, the term of protection is 60 years from the beginning of the calendar year next following the year in which the work has been first published.

The Copyright (Amendment) Act, 1994 has given special right to every broadcasting organisation known as broadcast reproduction right in respect of its broadcasts. This right is to be enjoyed by every broadcasting organisation for a period of twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made. In terms of Copyright (Amendment) Act, 1999 if any performer appears or engages in any performance, he has a special right in relation to such performance called performers right to be enjoyed for a period of fifty years.

## **COPYRIGHT OFFICE**

Section 9 of the Copyright Act requires for establishment of an office to be called the Copyright Office for the purpose of the Act. The Copyright Office is to be under the immediate control of a Registrar of Copyrights to be appointed by the Central Government, who would act under the superintendence and directions of the Central Government.

## **Copyright Board**

Section 11 of the Act provides for the establishment of the Copyright Board and empowers the Central Government to constitute the same consisting of a Chairman and not less than two, but not more than fourteen members. Chairman of the Board should be a sitting or retired judge of the High Court or a person qualified to be appointed as judge of the High Court. The Registrar of Copyright to act as Secretary of the Copyright Board.

## **Functions of the Copyright Board**

The main functions of the Copyright Board are as under:

1. Settlement of disputes as to whether copies of any literary, dramatic or artistic work or records are issued to the public in sufficient numbers.
2. Settlement of disputes as to whether the term of copyright for any work is shorter in any other country than that provided for that work under the Act.
3. Settlement of disputes with respect to assignment of copyright as dealt with in Section 19A.
4. Granting of compulsory licences in respect of Indian works withheld from public.
5. Granting of compulsory licence to publish unpublished Indian works.
6. Granting of compulsory licence to produce and publish translation of literary and dramatic works.
7. Granting of compulsory licence to reproduce and publish literary, scientific or artistic works for certain purposes.
8. Determination of royalties payable to the owner of copyright.
9. Determination of objection lodged by any person as to the fees charged by Performing Rights Societies.
10. Rectification of Register on the application of the Registrar of Copyright or of any person aggrieved.

The Copyright Board has no powers to limit the user of copyright to any particular territorial area. The appeal against orders passed by the Copyright Board except under Section 6 lies to the High Court within whose jurisdiction the appellant resides or carries on business.

The scope of the powers of the Copyright Board has been explained in the case of *Shri Urmila Charan Gupta v. Shri Charushila Sharan Gupta and Sumitra Nandand Gupta 1983 PTC 84*. In this case it has been held

that if the Board, in its powers, thinks fit or agrees to dispose of the matter of all the 38 books on a single application, no one else is given the right to question its propriety.

## **Assignment of Copyright**

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 Section 18 of the Copyright Act provides for the assignment of copyright in an existing work as well as future work. In both the cases an assignment may be made of the copyright either wholly or partially and generally or subject to limitations and that too for the whole period of copyright or part thereof. However, in case of assignment of copyright in any future work, the assignment has the real effect only when the work comes into existence. Section 18(3) explains that a assignee in respect of assignment of the copyright in future work include the legal representative of the assignee, if the assignee dies before the work comes into existence.

Sections 17 and 18 of the Copyright Act, 1957 show where the copyright vests. If a work is done by an author for a consideration for a publisher, the copyright in it would normally vest in the publisher subject to any contract to the contrary, as is provided by Section 17 of the said Act. It can be legitimately said that this Section has been inserted in the Act of 1957, but the rule of law has been same even prior to this statutory provision. Secondly as provided by Section 18, the copyright could be assigned, and if it is so done it would be vested in the purchaser. (*Khemraj Shrikrishnadass v. M/s Garg & Co. and Another AIR 1975 Del 130.*)

## **Mode of Assignment**

Section 19 of the Act provides that an assignment of copyright should be in writing signed by the owner of the copyright. Mere acceptance of remuneration or delivery of manuscript does not constitute an assignment of copyright. Oral assignment is invalid and it is impermissible in law. *Setty v. Dr. Suryakantha U. Kamath K.A. Venugopala Setty v. Dr. Suryakantha U. Kamath AIR 1992 Kar 1.*

Section 19 requires that the assignment should be in writing signed by the assignor or by his duly authorized agent—if the assignment appears from any document and it is signed by the assignor or by his authorized agent the statutory requirement is fulfilled. *Srimagal and Co. v. Books (India) Pvt. Ltd. & Others AIR 1973 Mad 49: (1972) 2 Mad LJ 610.*

Copyright is different from the material object which is the subject of the copyright. So it should be clear that the transfer of the material object does not necessarily involve a transfer of the copyright. The assignment of copyright should specify the assigned work, rights including duration, territorial extent of assignment and the amount of royalty. However, in the absence of duration and territorial extent, the assignment remains valid for a period of five years and within the territory of India.

In case assignee does not exercise his rights within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of said period, unless otherwise specified in the assignment.

The assignment of copyright in any work contrary to the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member is void.

The Assignment of copyright in any work to make a cinematograph film does not affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilization of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall.

The assignment of the copyright in any work to make a sound recording which does not form part of any

cinematograph film does not affect the right of the author of the work to claim an equal share of royalties and consideration payable for any utilization of such work in any form.

## **Licences**

Chapter VI containing Sections 30-32B deal with licences. Section 30 deals with licences by owners of copyright; Section 30A contains provisions regarding application of Sections 19 and 19A; Section 31 provides for compulsory licence in works withheld from public; Section 31A deals with compulsory licences in unpublished Indian works; Section 31B deals with Compulsory Licence for the benefit of disabled; Section 31C deals with statutory licence for cover versions; Section 31D deals with statutory licence for broadcasting of literary and musical works and sound recording; Section 32 deals with licences to produce and publish translations; Section 32A provides for licence to reproduce and publish works for certain purposes; and Section 32B deals with termination of licences.

### **Licences by Owners of Copyright**

Section 30 of the Act empowers the owner of the copyright in any existing work or the prospective owner of the copyright in any future work to grant any interest in the right by licence in writing by him or by his duly authorised agent. However, in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence. Explanation to this section clarifies that where a person to whom a licence relating to copyright in any future work is granted, dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence.

### **Compulsory Licence in Works Withheld from Public**

Section 31 provides that if at any time during the term of copyright in any Indian work which has been published or performed in public, a complaint is made to the Copyright Board that the owner of copyright in the work has refused to re-publish or allow the re-publication of the work or has refused to allow the performance in public of the work, and by reason of such refusal the work is withheld from the public or has refused to allow communication to the public by broadcast of such work or in the case of a sound recording; the work recorded in such sound recording, on terms which the complainant considers reasonable, the Copyright Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyrights to grant to the complainant a licence to republish the work, perform the work in public or communicate the work to the public by broadcast, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Copyright Board may determine.

### **Compulsory Licence in Unpublished “or Published Works**

Section 31A of the Act provides that in the case of any unpublished work or any work published or communicated to the public and the work is withheld from the public in India, the author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found, any person may apply to the Copyright Board for a licence to publish or communicate to the public such work or a translation thereof in any language.

Before making an application to the Copyright Board, the applicant is required to publish his proposal in one issue of a daily newspaper in the English language having circulation in the major part of the country and where the application is for the publication of a translation in any language, also in one issue of any daily newspaper in that language.

The Copyright Board after holding such inquiry as may be prescribed, direct the Registrar of Copyrights to grant to the applicant a licence to publish the work or a translation thereof in the language mentioned in the application subject to the payment of such royalty and subject to such other terms and conditions as the Copyright Board may determine, and thereupon the Registrar of Copyrights shall grant the licence to the applicant in accordance with the direction of the Copyright Board.

### **Compulsory Licence for Benefit of Disabled**

Section 31B (1) provides that any person working for the benefit of persons with disability on a profit basis or for business may apply to the Copyright Board in prescribed manner for a compulsory licence to publish any work in which copyright subsists for the benefit of such persons, in a case to which clause (zb) of sub-section (1) of Section 52 does not apply and the Copyright Board shall dispose of such application as expeditiously as possible and endeavour shall be made to dispose of such application within a period of two months from the date of receipt of the application.

The Copyright Board may on receipt of an application inquire, or direct such inquiry as it considers necessary to establish the credentials of the applicant and satisfy itself that the application has been made in good faith and a compulsory licence needs to be issued to make the work available to the disabled, it may direct the Registrar of Copyrights to grant to the applicant such a licence to publish the work.

It may be noted that clause (zb) of sub-section (1) of Section 52 provides that the adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format, by—

- (i) any person to facilitate persons with disability to access to works including sharing with any person with disability of such accessible format for private or personal use, educational purpose or research; or
- (ii) any organisation working for the benefit of the persons with disabilities in case the normal format prevents the enjoyment of such works by such persons:

However, the copies of the works in such accessible format are made available to the persons with disabilities on a non-profit basis but to recover only the cost of production and the organization ensure that the copies of works in such accessible format are used only by persons with disabilities and takes reasonable steps to prevent its entry into ordinary channels of business.

It may be noted that “any organization” includes an organization registered under Section 12A of the Income-tax Act, 1961 and working for the benefit of persons with disability or recognized under Chapter X of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 or receiving grants from the government for facilitating access to persons with disabilities or an educational institution or library or archives recognized by the Government.”

### **Statutory Licence for Cover Versions**

Section 31C (1) provides that any person desirous of making a cover version, being a sound recording in respect of any literary, dramatic or musical work, where sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work, may do so subject to the provisions of this section. However, such sound recordings shall be in the same medium as the last recording, unless the medium of the last recording is no longer in current commercial use.

The person making the sound recordings required to give prior notice of his intention to make the sound recordings in the manner as may be prescribed, and provide in advance copies of all covers or labels with which the sound recordings are to be sold, and pay in advance, to the owner of rights in each work royalties in respect of all copies to be made by him, at the rate fixed by the Copyright Board.

It may be noted that such sound recordings shall not be sold or issued in any form of packaging or with any cover or label which is likely to mislead or confuse the public as to their identity, and in particular shall not contain the name or depict in any way any performer of an earlier sound recording of the same work or any cinematograph film in which such sound recording was incorporated and, further, shall state on the cover that it is a cover version made under this section.

The person making such sound recordings shall not make any alteration in the literary or musical work which has not been made previously by or with the consent of the owner of rights, or which is not technically necessary for the purpose of making the sound recordings. However, such sound recordings shall not be made until the expiration of five calendar years after the end of the year in which the first sound recordings of the work was made.

It may be noted that cover version means a sound recording made in accordance with this Section 31C of the Act.

### **Statutory Licence for Broadcasting of Literary and Musical Works and Sound Recording**

Section 31D provides that any broadcasting organisation desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published may do so subject to the fulfillment of prescribed conditions.

The broadcasting organisation required to give prior notice in prescribed manner of its intention to broadcast the work stating the duration and territorial coverage of the broadcast, and pay to the owner of rights in each work royalties in the manner and at the rate fixed by the Copyright Board.

The rates of royalty for radio broadcasting shall be different from television broadcasting and the copyright Board shall fix separate rates for radio broadcasting and television broadcasting and the broadcasting organisation to pay an advance to the owners of rights.

The broadcasting organisation required to maintain such records and books of account, and render to the owners of rights such reports and accounts; and allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such broadcast in prescribed manner.

### **Licence to Produce and Publish Translations**

Section 32 entitles any person to apply to the Copyright Board for a licence to produce and publish a translation of a literary or dramatic work in any language after a period of seven years from the first publication of the work. However, in respect of teaching, scholarship or research Section 32(1A) allows any person to apply to the Copyright Board for a licence to produce and publish a translation, in printed or analogous forms of reproduction, of a literary or dramatic work, other than an Indian work, in any language in general use in India after a period of three years from the first publication of such work. Further, where such translation is in a language not in general use in any developed country, such application may be made after a period of one year from such publication.

### **Termination of Licence**

Section 32B of the Act deals with termination of licences and provides that if at any time after the granting of a licence, the owner of the copyright in the work or any person authorised by him publishes a translation of such work in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for the translation of works of the same standard on the same or similar subject, the licence so granted shall be terminated. However, such termination shall take effect only after the expiry of a period of three months from the date of service of a notice in the prescribed manner on the

person holding such licence by the owner of the right of translation intimating the publication of the translation.

## **Copyright Societies**

The Copyright (Amendment) Act, 1994 added a new Chapter VII on Copyright Societies. Section 33(1) prohibits any person or association of persons to commence or carry on the business of issuing or granting licences in respect of any work in which copyright subsists or any other rights conferred by the Act. The aforesaid restriction is not applicable to Copyright Societies registered under Section 33(3) of the Copyright Act.

Under clause (3) of Section 33 Central Government has been authorised to register association of persons as copyright society after taking into account the following factors:

- (i) the interests of the authors and other owners of rights under the Copyright Act;
- (ii) the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights; and
- (iii) the ability and professional competence of the applicants.

However, an owner of copyright in his individual capacity continues to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered Copyright society. The Central Government cannot register more than one copyright society to do business in respect of the same class of works.

The Central Government has been empowered to cancel the registration of a Copyright Society if its management is detrimental to the interests of the owners of rights concerned. The registration can also be suspended by the Government for a period of one year if it is necessary in the interest of the owners of the rights concerned and the government has to appoint an administrator to discharge the functions of the Copyright Society.

## **Administration of Rights of Owner by Copyright Society**

Section 34 of the Act empowers a Copyright Society to accept exclusive authorisation from an owner of Copyright to administer any right in any work by issuing licences or collection of licence fee or both. Such authorisation can however be withdrawn by an owner without prejudice to the rights of the Copyright Society.

A Copyright Society is competent to enter into agreement with any foreign society or organisation, administering rights corresponding to rights under the Indian Copyright Act, to entrust such foreign society or organisations the administration in any foreign country of rights administered by the said Copyright Society in India or for administering in India the rights administered in a foreign country by such foreign society or organisation.

Section 34(3) empowers the Copyright Society to:

- (i) issue licences under Section 30 in respect of any rights under the Act;
- (ii) collect fees in pursuance of such licences;
- (iii) distribute such fees among owners of rights after making deductions for its own expenses; and
- (iv) perform any other function consistent with the provisions of Section 35.

Section 35 deals with control over the society by the owner of rights and provides that every Copyright

Society is subject to the collective control of the copyright owners whose rights it administers. It does not include owners of right administered by a foreign society or organisation.

## **Rights of Broadcasting Organisation and Performers**

Chapter VIII of the Act containing Section 37-39A deals with rights of broadcasting organisations and of performers.

### **Broadcast Reproduction Right**

Section 37 entitles every broadcasting organisation to have a special right to be known as "broadcast reproduction right" in respect of its broadcasts for twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made.

As per sub Section (3) of Section 37 during the continuance of a broadcast reproduction right in relation to any broadcast, any person who, without the licence of the owner of the right does any of the following acts of the broadcast or any substantial part thereof,-

- (a) re-broadcasts the broadcast; or
- (b) causes the broadcast to be heard or seen by the public on payment of any charges; or
- (c) makes any sound recording or visual recording of the broadcast; or
- (d) makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence; or
- (e) sells or gives on commercial rental or offer for sale or for such rental, any such sound recording or visual recording referred to in clause (c) or clause (d) and subject to the provisions of Section 39 deemed to have infringed broadcast reproduction right..

### **Performer's Right**

Section 38 provides that where any performer appears or engages in any performance, he shall have a special right to be known as the "performer's right" in relation to such performance. The performer's right subsist until fifty years from the beginning of the calendar year next following the year in which the performance is made.

### **Exclusive Right of Performer**

As per Section 38A without prejudice to the rights conferred on authors, the performer's right which is an exclusive right subject to the provisions of the Act to do or authorise for doing any of the following acts in respect of the performance or any substantial part thereof, namely:—

- (a) to make a sound recording or a visual recording of the performance, including—
  - (i) reproduction of it in any material form including the storing of it in any medium by electronic or any other means;
  - (ii) issuance of copies of it to the public not being copies already in circulation;
  - (iii) communication of it to the public;
  - (iv) selling or giving it on commercial rental or offer for sale or for commercial rental any copy of the recording;

- (b) to broadcast or communicate the performance to the public except where the performance is already broadcast.

It may be noted that once a performer has, by written agreement, consented to the incorporation of his performance in a cinematograph film he shall not, in the absence of any contract to the contrary, object to the enjoyment by the producer of the film of the performer's right in the same film. However, the performer shall be entitled for royalties in case of making of the performances for commercial use.

### **Moral Right of Performer**

Section 38B of Act provides that the performer of a performance shall, independently of his right after assignment, either wholly or partially of his right, have the right to claim to be identified as the performer of his performance except where omission is dictated by the manner of the use of the performance; and to restrain or claim damages in respect of any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation.

It may be noted that mere removal of any portion of a performance for the purpose of editing, or to fit the recording within a limited duration, or any other modification required for purely technical reasons shall not be deemed to be prejudicial to the performer's reputation.

### **Acts not Constituting Infringement of Broadcast Reproduction Right and Performers Right**

Section 39 stipulates situations in which no broadcast reproduction right or performer's right shall be deemed to be infringed. These include:

- (a) the making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of bona fide teaching or research; or
- (b) the use, consistent with fair dealing of excerpts of a performance or of a broadcast in the reporting of current events or for bona fide review, teaching or research; or
- (c) such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under Section 52.

### **International Copyright**

#### **Copyright Protection to Foreign Works**

The Copyright Act applies only to works first published in India, irrespective of the nationality of the author. However Section 40 of the Act empowers the Government of India to extend the benefits of all or any of the provisions of the Act to works first published in any foreign country. The benefits granted to foreign works will not extend beyond what is available to the works in the home country and that too on a reciprocal basis i.e. the foreign country must grant similar protection to works entitled to copyright under the Act. The term of Copyright in India to the foreign work, will not exceed that conferred by the foreign country.

Government of India has passed the International Copyright Order, 1958. According to this order any work first published in any country which is a member of the Berne Convention or the Universal Copyright Convention will be accorded the same treatment as if it was first published in India.

#### **Conditions of Copyright Protection**

The following are the requisites for conferring copyright protection to works of international organisations:

- (a) The work must be made or first published by or under the direction or control of the International Organisation.

- (b) There should be no copyright in the work in India at the time of making or on the first publication of the work.
- (c) If the work is published in pursuance of an agreement with the author, such agreement should not reserve the author any copyright in the work or any copyright in the work should belong to the organisation.

### **Power of Central Government to Apply Chapter VIII to Broadcasting Organisations and Performers in Certain Other Countries**

Section 40A inserted by the Copyright (Amendment) Act, 1999 provides that subject to the satisfaction of Central Government that a foreign country (other than a country with which India has entered into a treaty or which is a party to a Convention relating to rights of broadcasting organisations and performers to which India is a party) has made or has undertaken to make such provisions, if any, as it appears to the Central Government expedient to require, for the protection in that foreign country, of the rights of broadcasting organizations and performers as is available under this Act, it may, by order, published in the Official Gazette, direct that the provisions of Chapter VIII shall apply:

- (a) to broadcasting organizations whose headquarters is situated in a country to which the order relates or, the broadcast was transmitted from a transmitter situated in a country to which the order relates as if the headquarters of such organisation were situated in India or such broadcast were made from India;
- (b) to performances that took place outside India to which the order relates in like manner as if they took place in India;
- (c) to performances that are incorporated in a sound recording published in a country to which the order relates as if it were published in India;
- (d) to performances not fixed on a sound recording broadcast by a broadcasting organisation the headquarters of which is located in a country to which the order relates or where the broadcast is transmitted from a transmitter which is situated in a country to which the order relates as if the headquarters of such organisation were situated in India or such broadcast were made from India.

Section 40A (2) also provides that the order so made by the Central Government may provide that:

- (i) the provisions of Chapter VIII shall apply either generally or in relation to such class or classes of broadcasts or performance or such other class or classes of cases as may be specified in the order;
- (ii) the term of the rights of broadcasting organisations and performers in India shall not exceed such term as is conferred by the law of the country to which the order relates;
- (iii) the enjoyment of the rights conferred by Chapter VIII shall be subject to the accomplishment of such conditions and formalities, if any, as may be specified in that order;
- (iv) chapter VIII or any part thereof shall not apply to broadcast and performances made before the commencement of the order or that Chapter VIII or any part thereof shall not apply to broadcasts and performances broadcast or performed before the commencement of the order;
- (v) in case of ownership of rights of broadcasting organisations and performers, the provisions of Chapter VIII shall apply with such exceptions and modifications as the Central Government, may having regard to the law of the foreign country, consider necessary.

### **Power to Restrict Rights of Foreign Broadcasting Organisations and Performers**

Section 42A provides that if it appears to the Central Government that a foreign country does not give or has

not undertaken to give adequate protection to rights of broadcasting organisations or performers, the Central Government may, by order, published in the Official Gazette, direct that such of the provisions of this Act as confer right to broadcasting organizations or performers, as the case may be, shall not apply to broadcasting organizations or performers whereof are based or incorporated in such foreign country or are subjects or citizens of such foreign country and are not incorporated or domiciled in India, and thereupon those provisions shall not apply to such Broadcasting organizations or performers.

## Registration of Copyright

Chapter X of the Act containing Sections 44 to 50A deal with various aspects of registration of copyright. The mechanism for registration of copyright has been contemplated under Section 44 of the Act. It is evident from the provisions of the aforesaid section that registration of the work under the Copyright Act is not compulsory and is not a condition precedent for maintaining a suit for damages, if somebody infringes the copyright. Registration is not a prerequisite for acquisition of a copyright (*Nav Sahitya Prakash & Others v. Anan Kumar & Others AIR 1981 All 200*).

Sections 44 and 45 of the Act is only an enabling provision and the provisions contained therein do not affect common law right to sue for infringement of the copyright, therefore, registration of the work under the Act is not compulsory and that registration is not a condition precedent for maintaining a suit for damages for infringement of copyright (*R. Madhavan v. S K Nayar AIR 1988 Ker 39*). The only effect of registration is what is stated in Section 48, to wit, that it shall be prima facie evidence of the particulars entered in the register. There is no indication in any of the provisions of the Act, read individually or a whole, to suggest that registration is condition precedent to subsistence of copyright or acquisition of ownership thereof.

There is no section in the Copyright Act, 1957, to the effect that the author can have no right or remedy unless the work is registered. *Satsang and Another v. Kiron Chandra Mukhopadhyay & Others AIR 1972 Cal 533*. In *Jayanthilal M. Munoth and Ors. v. M. Durairajan, [2006] 132 Com Cases 797(Mad)* where a petition was filed for infringement of copyright and the same was challenged by the respondents on the ground that that there was no registration of copyright. The Court held that registration of copyright was not a pre-condition for filing a suit or for launching prosecution for violation of copyright.

The Register of Copyrights is to be maintained by the Copyright Office to enter the names or titles of works and the names and addresses of authors, publishers and owners of copyright. The Register of Copyrights is to be kept in six parts, namely, Part I Literary works other than computer programmes, tables and compilations including computer data bases and dramatic works; Part II Musical works; Part III Artistic works; Part IV Cinematograph films; Part V Sound Recording; and Part VI Computer programmes, tables and compilations including computer data bases.

Chapter VI of the Copyright Rules, 1956, as amended, sets out the procedure for the registration of a work. Copies of the Act and Rules can be obtained from the Manager of Publications, Publication Branch, Civil Lines, Delhi or his authorised dealers on payment. The procedure for registration is as follows:

- Application for registration is to be made on Form IV ( Including Statement of Particulars and Statement of Further Particulars) as prescribed in the first schedule to the Rules ;
- Separate applications should be made for registration of each work;
- Each application should be accompanied by the requisite fee prescribed in the second schedule to the Rules ; and
- The applications should be signed by the applicant or the advocate in whose favour a Vakalatnama or Power of Attorney has been executed. The Power of Attorney signed by the party and accepted by the advocate should also be enclosed.

Each and every column of the Statement of Particulars and Statement of Further Particulars should be replied specifically.

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. Three copies of published 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. In case two copies of the manuscript are sent, 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.

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 V with prescribed fee.

## **INFRINGEMENT OF COPYRIGHT**

Copyright protection gives exclusive rights to the owners of the work to reproduce the work enabling them to derive financial benefits by exercising such rights. If any person without authorisation from the owner exercises these rights in respect of the work which has copyright protection it constitutes an infringement of the copyright. If the reproduction of the work is carried out after the expiry of the copyright term it will not amount to an infringement

In *Penguin Books Ltd., England v. M/s India Book Distributors & Others AIR 1985 Del. 29*, it was observed that whenever there is misappropriation of intellectual property of which the primary beneficiary is the copyright owner there is infringement of copyright. Copyright is a property right. Throughout the world it is regarded as a form of property worthy of special protection in the ultimate public interest. The law starts from the premise that protection would be as long and as broad as possible and should provide only those exceptions and limitations which are essential in the public interest.

Section 51 of the Act contemplates situations where copyright in a work shall be deemed to be infringed. As per this section copyright in a work is infringed when any person without a licence granted by the owner of the copyright or the Registrar of Copyright or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority does —

- (1) anything for which the exclusive right is conferred upon the owner of the copyright, or
- (2) permits for profit any place to be used for the communication of the work to public where such a communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication would be an infringement of copyright.
- (3) when any person (i) makes for sale or hire or lets for hire or by way of trade display or offers for sale or hire, or (ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or (iii) by way of trade, exhibits in public, or (iv) imports into India any infringing copies of the work.

However, import of one copy of any work is allowed for private and domestic use of the importer. Explanation to Section 51 clarifies that the reproduction of literary, dramatic, musical or artistic work in the form of cinematograph film shall be deemed to be an infringing copy.

The copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything, the sole right to do which is conferred on the owner of the copyright. *Kartar Singh Giani v. Ladha Singh & Others AIR 1934, Lah 777 (DB)*.

The concept of honest and concurrent user found in Section 12(3) of the 1958 Act for securing concurrent registration is totally irrelevant as defence in a suit for infringement and copyright arising out of a different Act, namely, 1957 Act (*M/s Power Control Appliances & Others v. Sumeet Machines Pvt. Ltd. (1994) 2 SCC 448*).

In *Ushodaya Enterprises Ltd v T.V. Venugopal, 2001 PTC 727*, the division bench of the Andhra Pradesh High Court held that even though the defendant has registered the carton under the Trademark Act, that may not come to the aid of the defendant as the case of the plaintiff is that it owns a copyright of the artistic work under the Copyright Act and no registration is required for the same. Thus the court held that the plaintiff was justified in alleging infringement of his artistic work.

One of the surest test to determine whether or not there has been a violation of copy right is to see if the reader, spectator, or the viewer after having read or seen both the works would be clearly of the opinion and get an unmistakable impression that the subsequent work appears to be a copy of the first. In other words, dealing with the question of infringement of copy right of the applicant's work by the respondent's work, the Court is to test on the visual appearance of the object and drawing, design, or artistic work in question and by applying the test viz., 'lay observer test' whether to persons who are not experts in relation to objects of that description, the object appears to be a reproduction. If to the 'lay observer', it would not appear to be reproduction, there is no infringement of the artistic copy right in the work. A bare look at these two artistic works 'Sharp' and 'Sharp tools'. Moreover, the work 'sharp' in the work of the appellant is embedded in a semi-circle design with rays emitting from it as if it were a rising Sun; whereas, in the respondent's work it is plainly 'Sharp Tools' with no design super imposing it. Judging by the eye alone, they appear to Court to be totally different. One does not think that any one looking at these two works would say that they are similar in any manner nor do any one would say the design, the lay-out and the manner in which the words written in the works of the respondent was an obvious imitation, much less an imitation of the appellant's work. Applying the various tests set out above, it cannot be said that the respondent had committed an act of piracy by way of copying the copyright of the appellant. As rightly pointed out by the Copyright Board that there can be no copyright in the word or words, but the right can only be in the artistic manner in which the same is written, and in this case the works were totally dissimilar. [*Associated Electronic & Electrical Industries (Bangalore) Pvt. Ltd. v. M/s Sharp Tools AIR 1991 Kar 406*].

*M/s. Video Master & another v. M/s. Nishi Productions & others, 1998(3) Bom. CR 782*. The given case examined the circumstances under which the exhibition of film by various modes infringed copy rights. The plaintiff was assigned video playback and cable T.V rights and he objected to the defendants being given the satellite broadcasting rights. The Court observed that there were various modes of communication to public and each one was separate and divisible. It was held that each of the modes of communication could exist in different persons at the same time without infringing copy right of the other.

The *Bombay High Court in Hindustan Lever Ltd., v. Nirma Private Limited, Ahmedabad, AIR 1991* held that the dissimilarities were totally inadequate to wipe out general impression of the unwary purchaser. Thus, there was prima facie infringement of copyright. The case dealt with the infringement of the copyright in the label when there were only few changes made in the colourable imitation of label.

In *Eastern Book Company & Others v. Navin J. Desai & Another 2001 PTC (21) 57 Del.*, Delhi High Court has held:

Copyright is a limited monopoly having its origin in protection. There cannot be any monopoly in the subject matter which the author has borrowed from public domain. Others are at liberty to use the same material. Material in which no one has a copyright is available to all. Every man can take what is useful from the, improve, add and give to the public the whole comprising the original work with his additions and improvements. Under the guise of the copyright, the plaintiffs cannot ask the Court to restrain the defendants from making this material available to public. Judgements/orders published by the plaintiffs in their law reports 'Supreme Court Cases' is not their original literary work but has been composed of, compiled and prepared from and reproduction of the judgements of the Supreme Court of India, open to all. Merely by correcting certain typographical or grammatical mistakes in the raw source and by adding commas, full stops and by giving paragraph numbers to the judgement will not their work as the original literary work entitled to protection under the Copyright Act. Plaintiffs, therefore, have no copyright in the judgements published in their law reports. There being no copyright in the plaintiffs, there is no question of the defendant infringing any alleged copyright. Plaintiffs have failed to make out any prima facie case in their favour and are, therefore, not entitled to any relief in the application.

In *Godrej Soaps (P) Ltd. v. Dora Cosmetics Co.* 2001 PTC (21) 407 Del. It was held that the Delhi High Court held that where the carton was designed for valuable consideration by a person in the course of his employment for and on behalf of the plaintiff and the defendant had led no evidence in his favour, the plaintiff is the assignee and the legal owner of copyright in the carton including the logo.

Crowning Glory carton was designed for valuable consideration by a person who produced the said work in the course of his employment with advertising company under a contract of service for and on behalf of the plaintiff. By the reason of the circumstances in which the said artistic work was produced, the plaintiff is the owner of the legal and equitable title in the artistic work. As a matter of abundant caution the copyright in the carton was assigned to the plaintiff. Plaintiff has proved that it is the assignee of the copyright in the carton for 'Crowning Glory'

## **Statutory Exceptions**

Certain exceptions to infringement have been stipulated by the Copyright Act. The object of these exceptions is to enable the reproduction of the work for certain public purposes, and for encouragement of private study, research and promotion of education. The list of acts which do not constitute infringement of copyright has been provided under Section 52 of the Act. These include

(i) A fair dealing with literary, dramatic, musical or artistic work, not being a computer programme, for the purposes of—

- private or personal use, including research;
- criticism or review, whether of that work or of any other work;
- reporting of current events and current affairs, including the reporting of a lecture delivered in public.
- It may be noted that storing of any work in any electronic medium including the incidental storage of any computer programme which is not itself an infringing copy for the said purposes, shall not constitute infringement of copyright.

(ii) The making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy in order to utilise the computer programme for the purposes for which it was supplied; or to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied.

(iii) the doing of any act necessary to obtain information essential for operating inter-operability of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available.

(iv) the observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied.

(v) the making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use.

(vi) the transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public.

(vii) transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy.

It may be noted that if the person responsible for the storage of the copy has received a written complaint from the owner of copyright in the work, complaining that such transient or incidental storage is an infringement, such person responsible for the storage shall refrain from facilitating such access for a period of twenty-one days or till he receives an order from the competent court refraining from facilitating access and in case no such order is received before the expiry of such period of twenty-one days, he may continue to provide the facility of such access.

(viii) the reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding.

(ix) the reproduction or publication of any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature.

(x) the reproduction of any work in a certified copy made or supplied in accordance with any law for the time being in force;

(xi) the reading or recitation in public of reasonable extracts from a published literary or dramatic work.

(xii) the publication in a collection, mainly composed of non-copyright matter, bona fide intended for instructional use, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for such use in which copyright subsists. However, not more than two such passages from works by the same author are published by the same publisher during any period of five years.

In the case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more of those authors in collaboration with any other person.

(xiii) the reproduction of a literary, dramatic, musical or artistic work—

- by a teacher or a pupil in the course of instruction; or
- as part of the questions to be answered in an examination; or
- in answers to such questions.

(xiv) the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a sound recording if the audience is limited to such staff and students, the parents and guardians of the students and persons connected with the activities of the institution or the communication to such an audience of a cinematograph film or sound recording.

(xv) the causing of a recording to be heard in public by utilising it,-

- in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein; or
- as part of the activities of a club or similar organisation which is not established or conducted for profit;
- as part of the activities of a club, society or other organisation which is not established or conducted for profit.

(xvi) the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution.

(xvii) the reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction.

(xviii) the storing of a work in any medium by electronic means by a noncommercial public library, for preservation if the library already possesses a non-digital copy of the work.

(xix) the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a non-commercial public library for the use of the library if such book is not available for sale in India;

(xx) the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access.

However, where the identity of the author of any such work or, in the case of a work of joint authorship, of any of the authors is known to the library, museum or other institution, as the case may be, the provisions of this clause shall apply only if such reproduction is made at a time more than sixty years from the date of the death of the author or, in the case of a work of joint authorship, from the death of the author whose identity is known or, if the identity of more authors than one is known from the death of such of those authors who dies last;

(xxi) the reproduction or publication of-

- any matter which has been published in any Official Gazette except an Act of a Legislature;
- any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter;
- the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government;
- any judgement or order of a court, tribunal or other judicial authority, unless the reproduction or

publication of such judgment or order is prohibited by the court, the tribunal or other judicial authority, as the case may be.

(xxii) the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made thereunder-

- if no translation of such Act or rules or orders in that language has previously been produced or published by the Government; or
- where a translation of such Act or rules or orders in that language has been produced or published by the Government, if the translation is not available for sale to the public:
- however, such translation contains a statement at a prominent place to the effect that the translation has not been authorised or accepted as authentic by the Government.

(xxiii) the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture.

(xxiv) the making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work falling under sub-clause (iii) of clause (c) of Section 2, if such work is permanently situate in a public place or any premises to which the public has access.

(xxv) the inclusion in a cinematograph film of-

- any artistic work permanently situate in a public place or any premises to which the public has access; or
- any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film.

(xxvi) the use by the author of an artistic work, where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the work. However, he does not thereby repeat or imitate the main design of the work.

“(xxvii) the making of a three-dimensional object from a two-dimensional artistic work, such as a technical drawing, for the purposes of industrial application of any purely functional part of a useful device;

(xxviii) the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed . However, the original construction was made with the consent or licence of the owner of the copyright in such drawings and plans.

(xxix) in relation to a literary, “dramatic, artistic or” musical work recorded or reproduced in any cinematograph film the exhibition of such film after the expiration of the term of copyright therein .However, the provisions of sub-clause (ii) of clause (a), sub-clause (a) of clause (b) and clauses (d), (f), (g), (m) and (p) shall not apply as respects any act unless that act is accompanied by an acknowledgment-

- identifying the work by its title or other description; and
- unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

(xxx) the making of an ephemeral recording, by a broadcasting organisation using its own facilities for its own broadcast by a broadcasting organisation of a work which it has the right to broadcast; and the retention of such recording for archival purposes on the ground of its exceptional documentary character.

(xxxi) the performance of a literary, dramatic or musical work or the communication to the public of such work

or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority. However, religious ceremony including a marriage procession and other social festivities associated with a marriage.

“(xxxii) the adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format by any person to facilitate persons with disability to access to works including sharing with any person with disability of such accessible format for private or personal use, educational purpose or research; or any organisation working for the benefit of the persons with disabilities in case the normal format prevents the enjoyment of such works by such persons. However, the copies of the works in such accessible format are made available to the persons with disabilities on a non-profit basis but to recover only the cost of production and the organization shall ensure that the copies of works in such accessible format are used only by persons with disabilities and takes reasonable steps to prevent its entry into ordinary channels of business.

It may be noted that “any organization” includes and organization registered under Section 12A of the Income-tax Act, 1961 and working for the benefit of persons with disability or recognized under Chapter X of the Persons with Disabilities (Equal Opportunities, Protection or Rights and full Participation) Act, 1995 or receiving grants from the government for facilitating access to persons with disabilities or an educational institution or library or archives recognized by the Government.”.

(xxxiii) the importation of copies of any literary or artistic work, such as labels, company logos or promotional or explanatory material, that is purely incidental to other goods or products being imported lawfully.

## **Remedies against Infringement of Copyright**

Protection of rights under the copyright law, which is basically a negative right is as much a problem of complying with the mandatory provisions of the procedural law as the effective exercise of investigative and adjudicatory functions by the enforcing authorities and the courts.

Section 54 to Section 62 of the Copyright Act provide for civil remedies under the Act. Section 55 provides that where copyright in any work has been infringed, the owner of the copyright can, except as otherwise provided in the Act, be entitled to all remedies like injunctions, damages and accounts as are conferred by law for the infringement of a right. However, if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground to believe that copyright subsisted in the work, the plaintiff will not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may, in the circumstances, deem reasonable.

In *Zee Telefilm Limited v. Aalia Productions & Others* 2000 PTC 382 Bom. there was a dispute relating to transfer of copyright in TV serial ‘India’s Most Wanted’. It was held that in the absence of any specific rights assigned by the defendants in respect of concept/script/story/synopsis/structure and/or format of programme, the plaintiffs cannot seek injunction against the defendant. The assignment agreement executed between the plaintiff and the defendants as regards structure, format, concept, synopsis and script vague and uncertain, the plaintiffs are not entitled to any interim relief.

The case of *Hawkins Cookers Ltd. v. Magicook Appliances Co.*, 100(2002) DLT698 discussed the grant of permanent injunction to the plaintiff for restraining the defendant from using a label for pressure cookers, which was deceptively similar to the registered trade mark ‘HAWKINS’ of the plaintiff – On non-appearance of the plaintiff, an *ex-parte* order was passed and it was ruled that, the unjust enrichment by the infringing party, was a mischief and the plaintiff was to be protected from it as per Section 55 of the Copyright Act, 1957. Hence permanent injunction was granted.

In any civil proceedings under the Copyright Act for infringement of copyright, it is the District Court which will have jurisdiction over such matters. Section 62 (2) further provides that notwithstanding anything contained in the Civil Procedure Code, 1908 or any other law for the time being in force, the District Court within the local limits of whose jurisdiction the person instituting the suit is actually or voluntarily residing or carrying on business or personally working for gain will have jurisdiction in the matter.

Administrative remedies consist of moving the Registrar of Copyrights under Section 53 to ban the import of infringing copies into India and the delivery of infringing copies confiscated to the owner of the copyright.

Criminal remedies provide for the imprisonment of the accused or imposition of fine or both, seizure of infringing Copies and delivery of infringing copies to the owner of the copyright. Prior to the maximum punishment for infringement of copyright under Section 63 of the Copyright Act, 1957 was one year's imprisonment and fine. These punishments were enhanced by the Copyright (Amendment) Act, 1984 with a view to curbing widespread piracy in video-taping and musical records. Under these provisions, a person who knowingly infringes or abets the infringement of copyright in a work or any other right conferred by the Copyright Act, is punishable with imprisonment for a term of not less than six months but which may extend to three years and fine which shall not be less than ₹ 50,000/-, but which may extend to ₹ 2.00,000/-. However, the court has the discretion to reduce the minimum term of imprisonment and the minimum fine for adequate and special reasons. For the second and subsequent convictions, the minimum term of imprisonment has been prescribed as one year and the minimum fine ₹ 1,00,000/-. The amendment in 1994, has further restricted the discretion of the court to impose lesser penalties than the minimum prescribed in the Act. The imposition of lesser penalties than the minimum prescribed in the Act has been restricted to cases where the infringement has not been made for gain in the course of trade and business. In other words, courts have been given a discretion to impose a lesser penalty where the infringement is of a technical nature and not motivated by business considerations.

Section 54 defines the term owner of copyright. In *Rupendra Kashyap v. Jiwan Publishing House 1996 PTC (16) 439 Del.*, it was held that CBSE is a public undertaking; examination papers are literary work made under the direction and control of CBSE and applicability of Section 17(dd) of Copyright Act is squarely attracted to the facts of the case. CBSE is the first owner of the copyright in the examination papers on which examinations are conducted by it.

In another case Allahabad high Court has held that the copyright in the question papers set for the High School and Intermediate examinations belongs to the paper-setters and since this copyright neither belonged to nor has been assigned to the Board, the notification which declares that 'copyright of the question papers set at the examinations conducted by Board shall vest in the Board' is clearly bad. Simply by issuing a notification under the Intermediate Education Act, the State Government could not arrogate to itself or to the Board a right which neither of them possessed under the law relating to copyright, embodied in the Copyright Act of 1957 (*Agarwala Publishing House v. Board of High School and Intermediate Education & Another AIR 91: 1996 All LJ 550*).

Section 58 entitles the owner of the copyright to initiate proceedings for the possession of infringing copies and other materials related thereto. In this context, the section clarifies that 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.

### **Moral Rights — Author's Special Right**

Apart from remedies for infringement of copyright, the Act expressly provides for the protection of special rights of the author known as moral rights. Under Section 57 of the Act an author of copyright work can

restrain or claim damages in respect of any distortion or mutilation of the work or any other action in relation to the said work which would be prejudicial to his honour or reputation. These rights can be exercised even after the assignment of the copyright. They can be enforced by an action for breach of contract or confidence, a suit for defamation, or passing off, as the case may be.

## **Anton Piller Injunctive Relief in India**

Besides traditional remedies the non-traditional forms of remedies like, Anton Piller Order, interlocutory injunction, etc, have assumed more popularity nowadays.

The first use of such order was made by *Templeman J, in EMI v. Pandit, (1975) 1All E R 418*, to protect the offending evidences from being destroyed. However, it was only after the case of *Anton Piller KG v. Manufacturing Process,(1976) 1All E R 779.418*, that it gained recognition and popularity.

The statutes governing intellectual property in India like Copyright Act, 1957, Trade Marks Act, 1999; Patents Act, 1970 (as amended by Patents (Amendment) Act, 2005, Designs Act, 2000 etc. stipulate the rights that are available to the intellectual property owner, besides containing a sound mechanism to prevent the infringement of intellectual property rights. The remedies available for protection of IPR are broadly classified into civil and criminal remedies.

The orders in line of Anton Piller order are made under the head of civil remedies. The application of Anton Piller order in India is still in a nascent stage. There is not much case-laws debating over the aspects of Anton Piller order. One of the earliest case that dealt with the concept of Anton Piller order, though cursorily was *National Garments v. National Apparels,(1990) PTC98*.

In *Bucyrus Europe Ltd. v. Vulcan Industries Engineering Co. Pvt. Ltd., 2005(30) PTC 279*, the court observed that an Anton Piller order can be passed in the following situations:

- Where the plaintiff has an extremely strongly prima facie case;
- Where the actual or potential damage to the plaintiff is very serious.
- Where it was clear that the defendant possessed vital evidence; and
- There was a real possibility that the defendant might destroy or dispose of such material so as to defeat the ends of justice.

The purpose of Anton Piller order is the preservation of evidences.

The application of Anton Piller order in India is still in nascent stage and lot many questions are still left unanswered.

## **APPEALS**

An appeal under the the Copyright Act, 1957 lies against (a) certain orders of magistrate & (b) against orders of Registrar of Copyrights and Copyright Board:-

As per Section 71 of the Act any person aggrieved by an order under sub-section (2) of Section 64 or Section 66 may, within thirty days of the date of such order, appeal to the court to which appeals from the court making the order ordinarily lie, and such appellate court may direct that execution of the order be stayed pending disposal of the appeal.

Section 72(1) provides that any person aggrieved by any final decision or order of the Registrar of Copyrights may, within three months from the date of the order or decision, appeal to the Copyright Board.

Any person aggrieved by any final decision or order of the Copyright Board, not being a decision or order made in an appeal under sub-section (1), may, within three months from the date of such decision or order, appeal to the High Court within whose jurisdiction the appellant actually and voluntarily resides or carries on business or personally works for gain :

However, no such appeal shall lie against a decision of the Copyright Board under Section 6.

## **INTERNATIONAL CONVENTIONS**

The first multilateral agreement on copyright is the Berne Convention which was concluded in 1886 and was meant for providing protection to literary and artistic works. A country joining the Convention has to provide copyright protection to literary and artistic works of member countries in its own territory and also entitled for enjoying reciprocal protection from others. The Berne Convention was revised seven times in 1896 (at Paris), 1908 (at Berlin), 1928 (at Rome), 1948 (at Brussels), 1967 (at Stockholm) and 1971 (at Paris) and finally in 1978. Among these, the 1971 revision (the Paris Act) is of particular importance to the developing countries as it provided special concessions to these countries in making translations and reproduction of foreign literary works for educational purposes. Ninety countries are at present member of the Berne Convention.

The post Second World War era saw the emergence of the need for protecting copyright on an universal basis. Till then countries in the North America were not party to the Berne Convention and copyright protection in these countries were governed by various national and regional agreements.

In August, 1952 the Intergovernmental Copyright Conference was convened in Geneva which led to the adoption of another historical copyright convention, namely the Universal Copyright Convention (UCC). The UCC is not a substitute for the Berne Convention. Rather it tried to establish the link between the countries on the Bern Union and those in North America. India is a member of both the Berne Convention and the UCC.

TRIPS Agreement negotiated at the Uruguay Round of General Agreement on Tariffs and Trade (GATT) in 1994 came into effect on 1 January 1995. The text comprises 73 articles grouped in seven different parts. The standards for specific IPRs such as copyright and related rights are discussed under articles 9-14.

## **LESSON ROUND UP**

- Copyright is a well recognized form of property right which had its roots in the common law system and subsequently came to be governed by the national laws in each country.
- 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.
- In India, the law relating to copyright is governed by the Copyright Act, 1957 which has been amended in 1983, 1984, 1985, 1991, 1992, 1994, 1999 and 2012 to meet with the national and international requirements
- Under the Copyright Act, 1957 copyright subsists throughout India in the following classes of works: Original literary; dramatic, Musical and artistic works; Cinematograph films; and Sound recordings.
- The definition of “Literary work” under the Copyright Act, 1957 includes computer programmes, tables and compilations including computer “literary data bases.
- Literary, dramatic, musical or artistic works enjoy copyright protection for the life time of the author plus 60