

## **COPYRIGHT LAWS: AN OVERVIEW<sup>1</sup>**

### **INTRODUCTION**

Intellectual Property Rights are the rights which enable the inventors or the owners to benefit from their own work and protect it. IPR's are like any other property rights possessed by the owner of that particular right. Intellectual property regimes seek to balance the moral and economic rights of creators and inventors with the wider interests and needs of the society. A major justification for patents and copyrights is that incentives and rewards to inventors result in benefits for the society.<sup>2</sup> IPR are generally divided into: Industrial Property which includes patents, trademarks, industrial designs and geographical indications. The other category is of Copyright which covers literary works (such as novels, poems and plays), films, music, artistic works and architectural design.

The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO). The Intellectual Property rights have been mentioned in Article 27 of the Universal Declaration of Human Rights.

### **COPYRIGHTS**

Copyright<sup>3</sup> is a type of Intellectual Property Right. It grants the owner the right to direct the use of particular kinds of 'work' which are the outcome of the author's skill or which involved an investment of time, effort and/or money by the owner. Copyright is a property only in a limited way. It may be bought and sold like any other property, however, this right lasts only for a

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<sup>2</sup> A HUMAN RIGHTS PERSPECTIVE ON INTELLECTUAL PROPERTY, SCIENTIFIC PROGRESS, AND ACCESS TO THE BENEFITS OF SCIENCE, Audrey R. Chapman

<sup>3</sup> Section 14, Indian Copyright Act, 1957

limited time and there are liberties given to others to use the copyright material without the owner's permission.<sup>4</sup> There is no requirement either to register the work or to claim copyright in it, it arises automatically as the work is created.

All types of intellectual property rights aim at protecting the work of the human intellect, the realm of copyright is the protection of literary and artistic works<sup>5</sup>. These include writings, music, and works of the fine arts, such as paintings and sculptures, and technology-based works such as computer programs and electronic databases. Copyright does not protect work that is the expression of ideas, but only thoughts.

The oldest international convention governing copyright is the Berne Convention (1886). Article 2 of this convention states:

"The expression 'literary and artistic works' shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works, to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science. [.....] Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work. [.....] Collections of literary or artistic works such as encyclopedias and anthologies which, by reason of the selection and arrangement of their

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<sup>4</sup> The National Archives, Copyright and Related Rights, December 2011.

<sup>5</sup> Section 2(c) "artistic work" means-

- (i) 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;
- (ii) work of architecture; and
- (iii) any other work of artistic craftsmanship;

contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.

### **RIGHTS PROTECTED BY COPYRIGHT**

The rights that are granted under national laws to the owner of copyright in a protected work are normally "exclusive rights". These exclusive rights are to use the work or to authorize others to use the work, subject to the legally recognized rights and interests of others.

The Copyright Act provides six exclusive rights which a copyright gives to the copyright owner

(1) *The exclusive right to reproduce*<sup>6</sup> - the copyright owner has the exclusive right to make copies of the protected work.

(2) *The exclusive right to prepare derivative works*<sup>7</sup> - the copyright owner has the exclusive right to make adaptations based on the protected work.

(3) *The exclusive right to distribute*<sup>8</sup> - the copyright owner has the exclusive right to distribute (sell, rent, lease, etc.) copies or phono-records of the protected work to the public.

(4) *The exclusive right of public performance*<sup>9</sup> - the copyright owner has the exclusive right to publicly perform the protected work. This right applies to literary, musical, dramatic and choreographed works, as well as motion pictures and other audiovisual works, but not to pictorial, graphic and sculptural works, architectural works or sound recordings.

(5) *The exclusive right of display*<sup>10</sup> - the copyright owner has the exclusive right to publicly display the protected work. This right applies to all types of works except architectural works and sound recordings.

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<sup>6</sup> Section 38, Indian Copyright Act, 1957.

<sup>7</sup> Ibid.

<sup>8</sup> Supra note 5

<sup>9</sup> Supra note 5

<sup>10</sup> Supra note 5

(6) *The exclusive right of public performance of sound recordings*<sup>11</sup> - the right to publicly perform sound recordings by digital audio transmission.

The ownership of a copyright is divisible, so these rights can actually be spread out among different owners.

### **WORKS PROTECTED BY COPYRIGHT**

Copyrights are concerned with protecting literary and artistic works including every production in the literary, scientific and artistic domain, irrespective of the mode or form of its expression. Below are some heads of works which are protected by copyrights.

**Literary works:** This head basically includes all the works which are in written from using symbols, words or numbers. Literary works covered under copyrights are not only those which have some literary merit, even the business reports, databases, timetables are all covered under its ambit.

**Dramatic and Musical works:** it includes the works which are performed. For example, Plays, choreography, music or lyrics of a song.

**Artistic works:** these works include the two-dimensional creations and three dimensional creations as well. Two dimensional works are like paintings, photographs, etc. and three dimensional includes sculptures, seals, etc. Again, like literary works the creations need not have any artistic merit.

The other works included are films and sound recordings.

### **VIOLATIONS OF COPYRIGHTS IN INDIA**

#### **Cinematographic works**

It comprises rights of cinematography of a film. Firstly, comes theatrical right to exhibit films in theatres. The copyrights are held by the producers from whom the distributors buy theatrical

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<sup>11</sup> Supra note 5

rights and then make arrangements for actual exhibition to the public. Second are the video rights. These rights are purchased by the video cassette makers for sale in the market. These video cassettes are for personal use only and cannot be used for airing the film in cables or through satellite channels. For showing the public at large, another type of rights are required, namely 'cable rights', and 'satellite rights'.

In India, piracy in these works takes place through video and cable piracy. Video piracy takes place through two modes in India. One, when despite the no sale of video rights, video cassettes are available in the market for buying or borrowing. And two, when video rights are sold to a single party, but cassettes are made and sold by other parties illegally.

As per the resolution adopted by the Film Makers Combine, video release of a film can be made only after six weeks of theatrical release. But cable operators illegally transmit such films much before the stipulated time period, known as cable piracy.

All parties involved in the legitimate transaction of films - from the producers to the theatre owners, lose heavily because of widespread video or cable piracy. The Government also loses because pirates' activities do not bring in any revenue such as entertainment tax at theatres and excise duty and sales tax at the points of legitimate production/selling.<sup>12</sup>

### **Literary Works**

In India, the expensive and popular books and foreign and valuable aboriginal books are pirated. Though the books published by NCERT are priced low but due to their large demand, there pirated rampantly.

Besides the above, piracy in the form of mass photocopying of books is largely prevalent in India, especially in and around educational institutions. Students borrow books from libraries and then get these photocopied from the photocopier kept at the institution where from the books are borrowed. While copyright law permits photocopying of literary works for limited private uses such as research, review or criticism what happens, many a time is that the entire book is

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<sup>12</sup> STUDY ON COPYRIGHT PIRACY IN INDIA SPONSORED BY Ministry of Human Resource Development Government of India. Can be accessed at

photocopied including the cover pages. In the process student community and the photocopy operators gain, but the publishers lose huge revenue.<sup>13</sup>

Further, in India, some publishers obtain publishing rights from foreign publishers and keep on publishing and selling the books even after the expiry of period.

The other way through which piracy takes place is printing/selling of books meant for review. Many foreign publishers send books to India for review. The pirates somehow get access to such books and make quick prints to sell in Indian market. All these happen much before the authorised Indian distributors get their copies for selling in India. Naturally, the distributors' sales get affected adversely.<sup>14</sup>

Piracy of literary works leads to loss of revenue to publishers (in terms of less sales), authors (non-payment of royalty) and the national exchequer (non-payment of income tax and other levies payable by publishers/authors).

Foreign books in India are often too costly for readers to afford them. In such situations, piracy provides the escape route, because a pirated foreign book in India can be as cheap as half the original price or even less.

### **Sound Recordings**<sup>15</sup>

The sound recording industry witnesses mainly three kinds of piracy. Firstly, the songs from different original cassettes/CDs are copied and put in a single cassette/CD, then packaged to look different from the original products and sold in the market. Second, there is counterfeiting, when songs are copied in to and packaged to look as close to the original as possible using the same label, logos etc. These products are misleading in the sense that ordinary end users think that they are buying original products. The third form of music piracy is bootlegging, where unauthorized recordings of performance by artists are made and subsequently reproduced and sold in the market. All these happen without the knowledge of the performers, composer or the

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<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid*

<sup>15</sup> Section 2(xx), Indian Copyright Act, 1957: "sound recording" means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced

recording company. There is large demand for Indian music in the neighboring countries such as Pakistan, West Asia as well as far off countries like USA, Canada and the UK and Indian music is pirated in some of these foreign countries, the notable among these being Pakistan and the West Asia.

### **Performers**<sup>16</sup>

The 1994 Amendment of the Indian Copyright Act provided for the first time, some protection to all performers by means of Performer's Rights. Performer's rights cover any visual or acoustic presentation made live by one or more performers. The performers include "an actor, singer, musician dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance"<sup>17</sup>. As per the new Act, performer's consent is required for making any audio or audio-visual recording of the live performance and for communicating the performance to the public. Performer's rights are given in the new section substituting the section 38. The new section 39<sup>18</sup> specifies the cases where broadcast reproduction right or performer's right shall not be deemed to be infringed. These provisions are analogous to those contained in section 52 of the Principal Act.

The extent of violation of the copyrights is calculated in terms of performance where audio/video recording and /or broadcasting of performances have taken place without the consent of performers as a percentage of total performances. Unauthorized recording (audio or video) and or broadcasting of performances cause monetary losses to the performers.

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<sup>16</sup> Section 2(qq), Indian Copyright Act, 1957: 'performer' includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance

<sup>17</sup> Section 2(qq), Indian Copyright Act, 1957

<sup>18</sup> Acts not infringing broadcast reproduction right or performer's right. – No broadcast reproduction right or performer's right shall be deemed to be infringed by-

- (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 order acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under section 52.

## **INTERNATIONAL AGREEMENTS ON COPYRIGHT**

The first treaty is the Berne Convention for the Protection of Literary and Artistic Works. It dates back to 1886, but has been revised several times, typically at about 20-year intervals. The latest version was adopted in Paris in 1971.

TRIPS Agreement: This is the Agreement on Trade- Related Aspects of Intellectual Property Rights, which is one of the Agreements that emerged from the Uruguay Round of trade negotiations and is administered by the World Trade Organization. The TRIPS Agreement contains a reference to the substantive provisions of the Berne Convention, leaving aside moral rights, which are not considered trade-related. There are a number of additional norms of protection that are introduced by the TRIPS Agreement, most importantly regarding new types of creations (computer programs and original databases) and new forms of exploitation (right of rental).

## **SUGGESTIONS**

- Anti piracy drive with respect to books is generally weak in India. Whatever action is taken is done by the respective publishers. The enforcement machineries are also not very active in controlling piracy for a variety of reasons. The public awareness is also very poor.
- The section 64<sup>19</sup> of the Indian Copyright Act confers many powers on the police officers. But many of them refrain from implementing their powers because of the clause if he is

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<sup>19</sup> 64. Power of police to seize infringing copies . -(1)131 Any police officer, not below the rank of a sub-inspector, may, if he is satisfied that an offence under section 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for the purpose of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable, be produced before a Magistrate.] (2) Any person having an interest in any copies of a work 132[or plates] seized under sub-section (1) may, within fifteen days of such seizure, make an application to the Magistrate for such copie. 133[or plates] being restored to him and the Magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application as he may deem fit.

satisfied. Therefore, laws need to be liberal to some extent and the prime need is of proper implementation.

- The right holders should come forward to lodge a complaint formally whenever they witness a case of their work being pirated. The effectiveness can be enhanced if right holders produce authentic and legally admissible evidence to prove ownership of their copyrights.
- The police personnel's in general also lack the orientation towards copyright laws, such as knowledge of distinguishing infringed copies (i.e. duplicate copies) from the originals, etc. therefore, awareness campaigning and workshops should be initiated.
- End-users are also responsible for increasing piracy. It is demand for cheaper products that give rise to copyright violations by the unauthorised persons/agencies. Hence, the consumers need to be made aware of the
- Education campaign can also be launched at the school and college levels since students are the major consumers of the goods produced by copyright industry.
- The right holders and the distributors need to be educated on the Indian copyright laws. They should be convinced that occurrence of any violation adversely affects their interests directly.
- Violation of copyrights is not perceived as serious crimes as other thefts. This is because copyright piracy unlike most other thefts may not involve physical products and, therefore, in many occasions it remains 'intangible'. A massive publicity campaign regarding the ills of copyright violation mentioning its being criminal offence, consequences, etc. could be launched.<sup>20</sup>
- Higher the illiteracy in a country, higher is the piracy. Though these people do not need books and other literary works, so piracy in literary works is lesser here. But the illiterate persons heavily depend on audio-visual media for satisfaction of their needs for entertainment and information, thus rendering a variety of audio-video copyright products susceptible to wide spread piracy. Therefore there should be campaigns for them to help them in judging the originality of the products.

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<sup>20</sup> Supra note 11

- Anti-piracy enforcement of law has remained very ineffective. In India, there is no serious threat of being caught and punished when found involved in piracy.
- The registration of copyright works should be encouraged. The Copyright Office can publicize their activities including that of registration to the members of various associations and general public through different media.
- The video cassettes and cassettes for cable should carry all necessary details as mentioned in the section 52A(2)<sup>21</sup> of the Copyright Act.
- A separate copyright cell in each state should be formed depending on the size of the state. The copyright cells can publicise their activities by mass campaigns through pamphlets, seminars, workshops, etc.
- A Copyright Clearance Centre (CCC) should be formed to control piracy through photocopy. This can be done in similar line with the one that at present exists in the U.S.A. Its main function would be to authorise the user organisations to make photocopies of any registered title for internal use as well as for commercial use like course materials, handouts at seminars etc. A subscription fees can be charged from the service organisations for the same.

## **CONCLUSION**

Copyrights are concerned with protecting literary and artistic works including every production in the literary, scientific and artistic domain, irrespective of the mode or form of its expression. Violations of copyrights in India are increasing rapidly. The violations take place through various means. Video piracy and cable piracy are rampant. Books are continuously pirated through either illegal publication of the books or photocopying of the whole of the books. These

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<sup>21</sup> (2) No person shall publish a video film in respect of any work unless the following particulars are displayed in the video film, when exhibited, and on the video cassette or other container thereof, namely :-

- (a) if such work is a cinematograph film required to be certified for exhibition under the provisions of the Cinematograph Act, 1952, a copy of the certificate granted by the Board of Film Certification under section 5A of that Act in respect of such work;
- (b) the name and address of the person who has made the video film and a declaration by him that he has obtained the necessary licence or consent from the owner of the copyright in such work for making such video film; and
- (c) the name and address of the owner of the copyright in such work.]

violations hamper and destroy the rights of creators and right acquitters. Artists and performers do not get due recognition for their works and the infringers get undue advantage and benefit from it.

India is a large country with developing infrastructure and markets. Further, population of India is so huge. Measures should be serious which will prevent the commission of further crimes. That checking every violation is hectic. Laws are to be enforced properly. Punish copyright law enforcement machinery must succeed in securing exemplary punishment to the kingpins who are guilty of serious violations, rather than attempting to cope with a large number of petty violations.

### **BIBLIOGRAPHY**

- Bently Lionel and Sherman Brad, Intellectual Property Law, 3<sup>rd</sup> edition 2001.
- Watal Jayashree, Intellectual Property in the World Trade Organisation and Developing Countries, 2<sup>nd</sup> impression 2005.
- Llewelyn D. and Cornish W., Intellectual Property: Patents, Copyrights Trademarks and Allied Rights, 6<sup>th</sup> ed. 2008.
- Singh Shiv Sahai, The Law for Intellectual Property Rights, 2004.
- Yoo Christopher S., Copyrights, Vol. 1, 2011.
- Yoo Christopher S., Copyrights, Vol. 2, 2011.
- Cornish W.R., Intellectual Property: Patents, Copyrights Trademarks and Allied Rights, 2<sup>nd</sup> Indian reprint 2003.
- Gopalakrishnan N.S. and Agitha T.G., Principles of Intellectual Property, 2009.
- Sterling J.A.L., World Copyright Law, 2<sup>nd</sup> ed. 2003.

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