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Issues Relating to Copyright Law

Summary

Issues Relating to Copyright Law

NOTE: This book is not a substitute for the Copyright Act and Rules. It is intended to serve as an information booklet for enforcement agencies as well as the general public. Government officers and general public are requested to refer to the Copyright Act, 1957 (as amended from time to time) and the Copyright Rules, 1958 (as amended from time to time) before taking any action with reference to copyright registration and infringement. Copies of the Act and Rules may be obtained from the Controller of Publications, Government of India, Civil Lines, Delhi- 110 054. (Secretary to Government of India, MHRD, Department of Secondary Education and Higher Education.)

INTRODUCTION

There is an acute lack of awareness on various issues relating to copyright and related rights amongst stakeholders, enforcement agencies, professional users like the scientific and academic communities and members of the public. The questions put forth by the representatives of these sections of society vary from those relating to the very fundamentals of intellectual property rights to those which relate to practical applications. The Ministry of Human Resource Development has for some time been contemplating a publication to answer such queries. In this booklet, an attempt has been made to provide clarifications on most of the issues relating to copyright law and its enforcement in a question – answer format. The language used is jargon free and user friendly.

RATIONALE OF COPYRIGHT PROTECTION

What is copyright?

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. There could be slight variations in the composition of the rights depending on the work.

Why should copyright be protected?

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.

Is it not true that strict application of the principle of protection of copyright hampers economic and cultural development of the society?

Yes. If copyright protection is applied rigidly, it can hamper progress of the society. However, copyright laws are enacted with necessary exceptions and limitations to ensure that a balance is maintained between the interests of the creators and of the community.

To strike an appropriate and viable balance between the rights of the copyright owners and the interests of the society as a whole, there are exceptions in the law. Many types of exploitation of work which are for social purposes such as education, religious ceremonies, and so on are exempted from the operation of the rights granted in the Act. Copyright in a work is considered as infringed only if a substantial part is made use of unauthorizedly. What is 'substantial' varies from case to case. More often than not, it is a matter of quality rather than quantity. For example, if a lyricist copy a very catching phrase from another lyricist's song, there is likely to be infringement even if that phrase is very short.

Does the law allow any use of a work without permission of the owner of the copyright, and, if so, which are they?

Subject to certain conditions, a fair deal for research, study, criticism, review and news reporting, as well as use of works in library and schools and in the legislatures, is permitted without specific permission of the copyright owners. In order to protect the interests of users, some exemptions have been prescribed in respect of specific uses of works enjoying copyright. Some of the exemptions are the uses of the work

- i. for the purpose of research or private study,
- ii. for criticism or review,
- iii. for reporting current events,
- iv. in connection with judicial proceeding,
- v. performance by an amateur club or society if the performance is given to a non-paying audience, and
- vi. the making of sound recordings of literary, dramatic or musical works under certain conditions.

What is the scope of protection in the Copyright Act, 1957?

The Copyright Act, 1957 protects original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized uses. Unlike the case with patents, copyright protects the expressions and not the ideas. There is no copyright in an idea.

Does copyright apply to titles and names?

Copyright does not ordinarily protect titles by themselves or names, short word combinations, slogans, short phrases, methods, plots or factual information. Copyright does not protect ideas or concepts. To get the protection of copyright a work must be original.

WORK

What is a work?

A work means any of the following, namely, a literary, dramatic, musical or artistic work, a cinematograph film, or a sound recording.

What is a work of joint authorship?

"Work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.

What are the classes of works for which copyrights protection is available in India?

Copyright subsists throughout India in the following classes of works:

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

What is an artistic work?

An artistic work means-

- o 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;
- o a work of architecture; and
- o any other work of artistic craftsmanship.

What is a musical work?

"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.

What is a sound recording?

"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.

What is a cinematograph film?

"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.

What is a government work?

"Government work" means a work which is made or published by or under the direction or control of

- the government or any department of the government
- any legislature in India, and
- any court, tribunal or other judicial authority in India.

What is an Indian work?

"Indian work" means a literary, dramatic or musical work,

- the author of which is a citizen of India; or
- which is first published in India; or
- the author of which, in the case of an unpublished work is, at the time of the making of the work, a citizen of India.

AUTHORSHIP AND OWNERSHIP

Whose rights are protected by copyright?

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.

Who is the first owner of copyright in a work?

Ordinarily the author is the first owner of copyright in a work.

Who is an author?

- 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 a computer generated work, the person who causes the work to be created.

Who all have rights in a musical sound recording?

There are many right holders in a musical sound recording. 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.

Is it necessary to obtain any licence or permission to use a musical sound recording for public performance?

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.

Who is the owner of copyright in a government work?

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.

Who is the owner of copyright in the work of a public undertaking?

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.

Who is the owner of copyright in works by journalists during the course of their employment?

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.

Who is the owner of a work produced during the course of the author's employment?

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.

Who is the owner of the copyright in the case of a work produced for valuable consideration at the instance of another person?

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.

Is copyright assignable?

Yes. 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 either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof.

What is the mode of assigning copyright?

It shall be in writing signed by the assignor or by his duly authorised agent. It shall identify the specific works and specify the rights assigned and the duration and territorial extent of such assignment. It shall also specify the amount of royalty payable, if any, to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

Does an assignment lapse automatically?

Where the assignee does not exercise the rights assigned to him 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 the said period unless otherwise specified in the assignment.

What will be the period of assignment if not specifically stated in the assignments?

If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

What will be the territorial extent of the assignment if not specified in the assignment?

If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within the whole of India.

Can an author relinquish copyright and, if so, how?

The author of a work may relinquish all or any of the rights comprising the copyright in the work by giving notice in the prescribed form to the Registrar of Copyrights.

DIFFERENT RIGHTS

Are copyrights same for all classes of works?

No. The rights vary according to the class of work.

What are the rights in the case of a literary work?

In the case of a literary work (except computer programme), copyright means the exclusive right

- To reproduce the work
- To issue copies of the work to the public
- To perform the work in public
- To communicate the work to the public.
- To make cinematograph film or sound recording in respect of the work
- To make any translation of the work
- To make any adaptation of the work.

Is translation of an original work also protected by copyright?

Yes. All the rights of the original work apply to a translation also.

Are computer programmes protected under Copyright Act?

Yes. Computer programmes are protected under the Copyright Act. They are treated as literary works.

Are there any special rights in computer programmes?

Yes. In addition to all the rights applicable to a literary work, owner of the copyright in a computer programme enjoys the rights to sell or give on hire or offer for sale or hire, regardless of whether such a copy has been sold or given on hire on earlier occasion.

What are the rights in a dramatic work?

In the case of a dramatic work, copyright means the exclusive right

- To reproduce the work
- To communicate the work to the public or perform the work in public
- To issue copies of the work to the public
- To include the work in any cinematograph film
- To make any adaptation of the work
- To make translation of the work.

What are the rights in an artistic work?

In the case of an artistic work, copyright means the exclusive right

- To reproduce the work
- To communicate the work to the public
- To issue copies of the work to the public
- To include the work in any cinematograph film
- To make any adaptation of the work.

What are the rights in a musical work?

In the case of a musical work, copyright means the exclusive right

- To reproduce the work
- To issue copies of the work to the public
- To perform the work in public
- To communicate the work to the public
- To make cinematograph film or sound recording in respect of the work
- To make any translation of the work
- To make any adaptation of the work.

What are the rights in a cinematograph film?

In the case of a cinematograph film, copyright means the exclusive right

- To make a copy of the film including a photograph of any image forming part thereof
- To sell or give on hire or offer for sale or hire a copy of the film
- To communicate the cinematograph film to the public.

What are the rights in 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.

What is the right of reproduction?

The right of reproduction commonly means that no person shall make one or more copies of a work or of a substantial part of it in any material form including sound and film recording without the permission of the copyright owner. The most common kind of reproduction is printing an edition of a work. Reproduction occurs in storing of a work in the computer memory.

What is the right of communication to the public?

Communication to the public means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion. It is not necessary that any member of the public actually sees, hears or otherwise enjoys the work so made available. For example, a cable operator may transmit a cinematograph film, which no member of the public may see. Still it is a communication to the public. The fact that the work in question is accessible to the public is enough to say that the work is communicated to the public.

What is an adaptation?

Adaptation involves the preparation of a new work in the same or different form based upon an already existing work. The Copyright Act defines the following acts as adaptations:

- a. Conversion of a dramatic work into a non-dramatic work
- b. Conversion of a literary or artistic work into a dramatic work
- c. Re-arrangement of a literary or dramatic work
- d. Depiction in a comic form or through pictures of a literary or dramatic work
- e. Transcription of a musical work or any act involving re-arrangement or alteration of an existing work.

The making of a cinematograph film of a literary or dramatic or musical work is also an adaptation.

Can any person translate a work without the permission of the owner of the copyright in the work?

No. A person cannot translate a work enjoying copyright without the permission of the copyright owner.

Is there any copyright over news?

No. There is no copyright over news. However, there is copyright over the way in which a news item is reported.

REGISTRATION OF COPYRIGHT

Is it necessary to register a work to claim copyright?

No. Acquisition of copyright is automatic and it does not require any formality. However, certificate of registration of copyright and the entries made therein serve as *prima facie* evidence in a court of law with reference to dispute relating to ownership of copyright.

What is the procedure for registration of a work under the Copyright Act,1957?

Copyright comes into existence as soon as a work is created and no formality is required to be completed for acquiring copyright. However, facilities exist for having the work registered in the Register of Copyrights maintained in the Copyright Office of the Department of Education. The entries made in the Register of Copyrights serve as *prima-facie* evidence in the court of law. The Copyright Office has been set up to provide registration facilities to all types of works and is headed by a Registrar of Copyrights and is located at B.2/W.3, C.R. Barracks, Kasturba Gandhi Marg, New Delhi-110 003, Tel: 338 4387

What are the guidelines regarding registration of a work under the Copyright Act?

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:

- a. 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 ;
- b. Separate applications should be made for registration of each work;
- c. Each application should be accompanied by the requisite fee prescribed in the second schedule to the Rules ;
and
- d. 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.

Application for registration of copyright alongwith statement of particulars and instructions for filling up the statement of particulars.

TERM OF COPYRIGHT

Is copyright protected in perpetuity?

No. It is protected for a limited period of time.

What is the term of protection of copyright?

The general rule is that copyright lasts for 60 years. In the case of original literary, dramatic, musical and artistic works the 60-year period is counted from the year following the death of the author. In the case of cinematograph films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organisations, the 60-year period is counted from the date of publication.

ADMINISTRATION OF COPYRIGHT LAW

Is there any advisory body on copyright matters?

Yes. The government has set up a Copyright Enforcement Advisory Council (CEAC).

Are there special courts for copyright?

No. There are no special courts for copyright cases. The regular courts try these cases. There is a Copyright Board to adjudicate certain cases pertaining to copyright.

What are the powers of Copyright Board?

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

- i. hear appeals against the orders of the Registrar of Copyright;
- ii. hear applications for rectification of entries in the Register of Copyrights;
- iii. adjudicate upon disputes on assignment of copyright;
- iv. grant compulsory licences to publish or republish works (in certain circumstances);
- v. grant compulsory licence to produce and publish a translation of a literary or dramatic work in any language after a period of seven years from the first publication of the work;
- vi. hear and decide disputes as to whether a work has been published or about the date of publication or about the term of copyright of a work in another country;
- vii. fix rates of royalties in respect of sound recordings under the cover-version provision; and
- viii. fix the resale share right in original copies of a painting, a sculpture or a drawing and of original manuscripts of a literary or dramatic or musical work.

Has the Registrar of Copyrights any judicial powers?

Yes. The Registrar of Copyrights has the powers of a civil court when trying a suit under the Code of Civil Procedure in respect of the following matters, namely,

- a. summoning and enforcing the attendance of any person and examining him on oath;
- b. requiring the discovery and production of any document;
- c. receiving evidence on affidavit;

- d. issuing commissions for the examination of witnesses or documents;
- e. requisitioning any public record or copy thereof from any court or office;
- f. any other matters which may be prescribed.

PERFORMER'S RIGHTS

Who is a performer?

As per the Indian Copyright Act, a "Performer" includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance.

What is a performance?

"Performance" in relation to performer's right, means any visual or acoustic presentation made live by one or more performers.

What are the rights of a performer?

A performer has the following rights in his/her performance:

- Right to make a sound recording or visual recording of the performance;
- Right to reproduce the sound recording or visual recording of the performance;
- Right to broadcast the performance;
- Right to communicate the performance to the public otherwise than by broadcast.

What is the term of protection of performer's rights?

Performer's rights subsist for 25 years.

What are the rights of a performer in a cinematograph film?

Once a performer has consented for incorporation of his performance in a cinematograph film, he shall have no more performer's rights to that performance.

BROADCASTER'S RIGHTS

What is a broadcast?

"Broadcast" means communication to the public:

- by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images;
or
- by wire.

What are the rights of a broadcasting organization?

The rights of a broadcasting organization with reference to a broadcast are :

- right to re-broadcast the broadcast;
- right to cause the broadcast to be heard or seen by the public on payment of any charges;
- right to make any sound recording or visual recording of the broadcast;
- right to make 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; and
- right to sell or hire to the public, or offer for such sale or hire, any sound recording or visual recording of the broadcast.

What is the term of protection of broadcaster's rights?

The term of protection for broadcaster's rights is 25 years.

FOREIGN WORKS

Is copyright of foreign works protected in India?

Yes. Copyrights of works of the countries mentioned in the International Copyright Order are protected in India, as if such works are Indian works.

Does copyright subsist in a foreign work?

Copyright of nationals of countries who are members of the Berne Convention for the Protection of Literary and Artistic Works, Universal Copyright Convention and the TRIPS Agreement are protected in India through the International Copyright Order. A list of such countries is at **Appendix- IV**.

Which are the international copyright conventions of which India is a member?

Copyright as provided by the Indian Copyright Act is valid only within the borders of the country. To secure protection to Indian works in foreign countries, India has become a member of the following international conventions on copyright and neighbouring (related) rights:

- i. Berne Convention for the Protection of Literary and Artistic works.
- ii. Universal Copyright Convention.
- iii. Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms.
- iv. Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties.
- v. Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

COLLECTIVE ADMINISTRATION OF COPYRIGHTS

What is collective administration of copyright?

Collective administration of copyright is a concept where management and protection of copyright in works are undertaken by a society of owners of such works. Obviously no owner of copyright in any work can keep track of all the uses others make of his work. When he becomes a member of a national copyright society, that society, because of its organisational facilities and strength, is able to keep a better vigil over the uses made of that work throughout the country and collect due royalties from the users of those works. Because of the country's membership in international conventions, the copyright societies are able to have reciprocal agreements with similar societies in other countries for collecting royalties for the uses of Indian works in those countries. From this it can automatically be inferred that it will be in the interests of copyright owners to join a collective administration organisation to ensure better protection to the copyright in their works and for reaping optimum economic benefits from their creations. Users of different types of works also find it easy to obtain licences for legal exploitation of the works in question, through the collective administrative society.

What is a copyright society?

A copyright society is a registered collective administration society. Such a society is formed by copyright owners. The minimum membership required for registration of a society is seven. Ordinarily, only one society is registered to do business in respect of the same class of work. A copyright society can issue or grant licences in respect of any work in which copyright subsists or in respect of any other right given by the Copyright Act.

What are the functions of a copyright society?

A copyright society may:

- i. Issue licences in respect of the rights administered by the society.
- ii. Collect fees in pursuance of such licences.
- iii. Distribute such fees among owners of copyright after making deductions for the administrative expenses.

Are there any registered copyright societies in India?

Yes. The following are the registered copyright societies in India:

- i. Society for Copyright Regulation of Indian Producers for Film and Television (SCRIPT) 135 Continental Building, Dr. A.B. Road, Worli, Mumbai 400 018, (for cinematograph and television films).
- ii. The Indian Performing Right Society Limited (IPRS), 208, Golden Chambers, 2nd Floor, New Andheri Link Road, Andheri (W), Mumbai- 400 058 (for musical works).

- iii. Phonographic Performance Limited (PPL) Flame Proof Equipment Building, B.39, Off New Link Road, Andheri (West), Mumbai 400 053 (for sound recordings).

Is it necessary to obtain licences from more than one society for exploitation of a work?

In many cases, it is necessary to obtain licences from more than one society. For example, playing of the sound recording of music may involve obtaining a licence from the IPRS for the public performance of the music as well as a licence from the PPL for playing the records, if these societies have the particular work in their repertoire.

MORAL RIGHTS

What are the moral rights of an author?

The author of a work has the right to claim authorship of the work and to restrain or claim damages in respect of any distortion, mutilation, modification or other acts in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation. Moral rights are available to the authors even after the economic rights are assigned.

Do the author's moral rights remain after assignment of copyright?

Yes. The moral rights are independent of the author's copyright and remains with him even after assignment of the copyright.

Will failure to display a work infringe the moral rights of an author?

No. Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the moral rights of the author.

COPYRIGHT INFRINGEMENTS

Which are the common copyright infringements?

The following are some of the commonly known acts involving infringement of copyright:

- i. Making infringing copies for sale or hire or selling or letting them for hire;
- ii. Permitting any place for the performance of works in public where such performance constitutes infringement of copyright;
- iii. Distributing infringing copies for the purpose of trade or to such an extent so as to affect prejudicially the interest of the owner of copyright ;
- iv. Public exhibition of infringing copies by way of trade; and
- v. Importation of infringing copies into India.

Has the owner of an auditorium or a hall any liability while renting out the place for communication to the public of a copyrighted work?

Yes. If a person permits for profit any place to be used for the communication of a work to the public, where such 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 to the public would be an infringement of copyright, he will be deemed to have committed an offence under the Copyright Act.

What are the civil remedies for copyright infringement?

A copyright owner can take legal action against any person who infringes the copyright in the work. The copyright owner is entitled to remedies by way of injunctions, damages and accounts.

Which is the court having jurisdiction over civil remedies in copyright cases?

The District Court concerned has the jurisdiction in civil suits regarding copyright infringement.

What is the proof of the authorship of a work?

Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher appears on copies of the work as published, or, in the case of an artistic work appeared on the work where it was made, the person whose name so appears or appeared shall, in any proceeding in respect of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

What are the rights of owner over infringing copies and equipments used for making infringing copies?

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.

What are the remedies in the case of groundless threat to legal proceedings?

Where any person claiming to be the owner of copyright in any work, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of copyright, any person aggrieved thereby may institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in any such suit –

- a. obtain an injunction against the continuance of such threats; and
- b. recover such damages, if any, as he has sustained by reason of such threats.

Is copyright infringement a criminal offence?

Yes. Any person who knowingly infringes or abets the infringement of the copyright in any work commits criminal offence under Section 63 of the Copyright Act.

What are the punishments for a criminal offence under the copyright law?

The minimum punishment for infringement of copyright is imprisonment for six months with the minimum fine of Rs. 50,000/-. In the case of a second and subsequent conviction the minimum punishment is imprisonment for one year and fine of Rs. one lakh.

Is copyright infringement a cognizable offence?

Any police officer, not below the rank of a sub inspector, may, if he is satisfied that an offence 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.

How are the seized infringing copies or plates disposed off?

The Court may order delivery to the owner of the copyright all such copies or plates.

Who is responsible for copyright offence committed by a company?

Every person who at the time the offence was committed was in charge of, and was responsible to the company for, the conduct of the business of the company, as well as the company shall be deemed to be guilty of such offence and shall be liable to be proceeded against.

Which court can try copyright offence cases?

No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under the Copyright Act.

Can a police officer seize infringing goods without warrant?

Yes. A police officer not below the rank of sub inspector can seize without warrant all infringing copies of the work.
Democratic Republic

- The use of information communication technologies has opened new opportunities, has enhanced government services to the citizens, increased citizens participation in policy making and development. The millions of people can be benefited by the use of technology, the government and business enterprises can play an important role in promoting the use of technology.
- The Information Technology act, 2000 (IT Act 2000) is the most significant act which accords legal recognition to electronic records, digital signatures and impose penalties for various cyber offences.
- The UNCITRAL Model Law on E-Commerce establishes rules and norms that validate and recognize contracts formed through electronic means and lays down rules for contract formation and governance of electronic contract performance, defines the characteristics of a valid electronic writing and an original document provides for the acceptability of electronic signatures for legal and commercial purposes, and supports the admission of computer evidence in courts and arbitration proceedings.
- India is a signatory to the Model Law and following the UN Resolution Indian Parliament passed the Information Technology Act 2000 as notified on October 17, 2000.
- The Information Technology Act was enacted with a view to give a fillip to the growth of electronic based transactions, to provide legal recognition for e-commerce and e-transactions, to facilitate e-governance, to prevent computer based crimes and ensure security practices and procedures in the context of widest possible use of information technology worldwide
- The act deals with various aspects pertaining electronic authentication; legal recognition of electronic records; retention of electronic records.
- It provides legal recognition to Digital Signatures. Section 3 of the act provides Legal Framework for affixing Digital signature by use of asymmetric crypto system and hash function which envelop and transform the initial electronic record in to another record.
- The Various types of Offences and stringent penalties under the Act have been enumerated in Chapters IX and XI of the act.
- Though there are many advantages of the Act, there are still some anomalies which can be improved upon.
- To overcome the existing inadequacies and practical difficulties in implementation of the Information technology Act, to address some of the emerging issues that has arisen from the use of cyberspace and the growing number of cybercrimes the Information Technology Amendment Act, 2008 was passed by both the houses of Parliament and was notified for effectiveness on October 27, 2009.
- The most common method of signing electronically for giving the electronic authentication to the electronic document is the digital signature which often uses “public key cryptography”, but it is only one of the types of electronic signature.
- “Electronic signature” means authentication of any electronic record by a subscriber by means of the electronic technique specified in the Second Schedule and includes digital signature.
- Chapters II, VI, VII and VIII of the IT Act are devoted to Electronic signatures. The Section 3 of the act provides for authentication of electronic records.
- Chapter III has introduced the principle of functional equivalence giving recognition to the alternative method of communication and storage of information other than traditional paper based method.
- Sections 4 to 8 provides for legal recognition of electronic records, electronic signatures, use of electronic records and electronic signatures in Government and its agencies, retention of electronic records, and publication of rule, regulation, etc. in Electronic Gazette.
- The chapter V deals with the secure Electronic records, Electronic signatures has been deemed secured if at the time of affixing signature, the signature creation data was under the exclusive control of signatory and no other person and was also stored and affixed in such exclusive manner as may be prescribed.
- The security procedure and practices may be prescribed by central government with regard to commercial circumstances, nature of transactions and such other related factors as it may consider appropriate.
- Chapter VI deals with regulation of certifying authorities. Chapter VII further provides that certifying authorities can issue electronic certificate to the applicant or can also reject the application by recording reasons in writing and after giving reasonable opportunity to applicant for showing cause against the proposed rejection.
- The Information Technology Act provides for adjudication mechanism and procedure The Central Government by notification shall establish one or more appellate tribunals to be known as Cyber Appellate Tribunal (CAT).
- The CAT is not bound by the procedure laid down by the Code of Civil Procedure, 1908. However, it shall be guided by the principles of natural justice as per Section 58(1). But the CAT has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (sec 58(2)).
- Penalties, compensation and offences are dealt in different Chapters in the Act. Chapter IX, which lays down for adjudication and also enumerates the various penalties and compensation and the entailing consequences. Chapter XI deals exclusively with offences.

- Three kinds of contraventions have been listed out in the Act providing for civil liability. Firstly, penalty and compensation for damage to computer, computer system, computer network or computer resources under section 43 of the Act. Secondly penalty for failure to furnish information returns, etc. under section 44. And finally section 45 contains the residuary penalty.
- The act enumerates the various acts which constitute an offence in chapter XI of the Act it also provides for punishment which may be either imprisonment or fine or both.
- Section 79 deals with Exemption from liability of intermediary in certain cases.

References and Suggested Readings:

- Information Technology Act, 2000
- Information Technology (Amendment) Act, 2008.
- Guide to Enactment of the UNCITRAL Model Law on Electronic Commerce (1996)