

# Comments on Copyright Amendment Bill, 2010

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*Introduction of Copyright Amendment Bill, 2010 is a step towards incorporating two World Intellectual Property Organisation Internet Treaties, namely, WIPO Copyright Treaty, 1996 and WIPO Performance's and Phonograms Treaty, 1996 in the Indian intellectual property rights regime. The present article provides an insight to the Copyright Amendment Bill, 2010.*

The Indian Copyright Act enacted in 1957 extends protection to the original creators of all works, literary, dramatic, musical or artistic in India. The Act has been amended five times since then, i.e. in 1983, 1984, 1992, 1994 and 1999. The Copyright (Amendment) Bill, 2010 was introduced in the Rajya Sabha by the Union government on 19<sup>th</sup> April to amend the Copyright Act, 1957. The amendments are being made to bring the Act in conformity with the World Intellectual Property Organisation (WIPO) Internet Treaties, namely WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT). While India has not yet signed the above two treaties it is necessary to amend domestic legislation to extend the copyright protection in the digital environment. The bill is now expected to be referred to a Parliamentary standing committee which would invite inputs from stakeholders.

The Statement of Objects and Reasons of the Bill states that the Copyright Act, 1957 is proposed to be amended to remove operational difficulties and also to address

certain issues that have emerged in the context of digital technologies and the Internet.

The Bill proposes some major amendments which addresses the following:

- Author's rights specific reference to lyricist, singer, performer, director
- Music and Film Industry
- Exceptions to copyright infringement
- Conformity with WCT and WPPT
- Other Amendments

### Author's Rights

The Bill seeks to give independent rights to lyricists, composers and singers as the authors of literary and musical works in films and assign enhanced rights to lyricists, singers and movie directors. The authors, especially lyricists, will get continuing royalties and benefits from the sale of CDs, cassettes, public performances, ringtones etc. even if they assign their works. Accordingly, if the producer or the music companies wishes to use new mode for the exploiting the work, the

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author has to grant a separate licence or assignment for their work to be exploited in such a manner. This would provide them with an income over a longer period of time, rather than a one-time income.

The Amendment also states that the author's right to receive royalties from a literary or musical work that forms part of a cinematographic work cannot be assigned to any person except to legal heirs or copyright societies. This proposed amendment is viewed critically since it is felt that as owners of the copyright, composers and lyricists should have the right to choose whether to sell the rights or licence it.

The Bill proposes that moral right is valid even after the term of copyright expires and may also be claimed by the author's legal representatives. This would help in preserving the integrity of the work even after author's death.

**Music and Film Industry**

If the Bill is enacted, it will have far-reaching implications for the music and film industry. The director of the film often assigns his rights to the producer. The Director does not have any rights on the remake, to sell the movie overseas, or even to dub it. Under the present law, only the producer enjoys such rights. The draft Bill envisages a change in the role of directors. The producer and the principal director shall be treated jointly as the first owner of copyright. Further, the term of the copyright for films is extended from 60 to 70 years, provided the producer enters into an agreement with the director.

As per the proposed amendment, persons appearing casually or incidentally anywhere in a cinematographic film are not considered to be performers. There is a potential possibility of this being misused to avoid giving any rights

to certain performers in a cinematographic film. Further, the presence of people or incidents may be intentional but a defence of incidental appearance may become common.

If a performer consents in writing to incorporate his performance in a cinematographic work, he/she shall not object to enjoyment of such right by the producer. However, the performer shall be entitled to perform the same for commercial use. The performer shall have the moral right of attribution as a performer unless such omission is dictated by manner of use of performance. The performer also has the right to prevent mutilation or modification that would be prejudicial to his reputation.

Some of the other proposed changes are the inclusion of commercial rentals as one of the rights associated with cinematographic films and recognition of visual recordings done in any medium including storage of the work in electronic or other means.

**Exceptions to Copyright Infringement**

Currently, in the Indian Copyright Law, there is no fair use provision under which works protected by copyright could be legally reproduced in alternative formats which are accessible by persons with one or more disabilities. The Amendment Bill intends to make available copies of copyrighted works in formats which disabled persons would be able to access. Only a very limited number of formats like Braille and sign language would fall within this exception. It allows for the conversion of copyrighted works into Braille without having to pay a fee. For any other format, one still requires a licence for publication to the copyright owner. The proposed amendment does not permit disabled

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persons themselves to apply directly to the Copyright Board for a compulsory licence. Licence can be applied by Organisations that work primarily for the benefit of the disabled that are registered under Section 12A of the Income Tax Act and recognized under Chapter X of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act. It is to be seen once the rules pertaining to the amendments are framed as to how many copies of a work in an accessible format may be published without the payment of royalty and how the royalty rates would be fixed in case of compulsory licences. While the Act explicitly mentions that books can be converted to special formats such as Braille, it is silent on whether individuals can digitize the books and read them with the aid of screen reading software, which is the preferred mode of access for the visually challenged and those with learning disabilities.

Further, according to the proposed Bill, storing of "any work" in any electronic medium other than a computer programme for the purpose of private and personal use, including research, criticism or review, reporting of current events, including the reporting of a lecture delivered in public shall be a fair dealing.

In the context of digital technology, amendments are being made to include storage by electronic means and exclude non-commercial rental, lease or lending by non-profit library or educational institution. The importation of copies that is purely incidental to other goods or products of any literary or artistic work, such as labels, company logos or promotional or explanatory material, being imported lawfully shall not constitute an infringement of copyright.

#### **Conformity with WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT)**

It is proposed to include protection of "Rights Management Information". Wherein, removal without authorization of the names of the author/performer, name and address of the owner of rights, terms and conditions of use of works and any number of code which identifies the work such as ISBN is punishable with imprisonment which may extend to with two years and fine in addition to of civil remedies.

The Indian Copyright Amendment Bill, 2010, seeks to introduce the anti-circumvention provisions. It is proposed that any circumvention of effective technological measures like unauthorized accessing or copying the work by breaking the password, is punishable with two years imprisonment and fine. However, some exceptions have been allowed to students, researchers and learners in the technological sector to conduct encryption research using a lawfully obtained encrypted copy or to conduct any lawful investigation, for the purpose of testing the security of a computer system or a computer network with the authorization of its owner or operator or intended for identification or surveillance of a user and taking measures necessary in the interest of national security.

The exemption uses the word "user" but does not define what it means or whom it covers. Furthermore, the exemption does not have any conditions with respect to who may carry out the tasks and under what circumstances. The phrases "lawful investigation" and "measures in the interests of national security" have not been qualified and any person can break a technological measure and claim that he did that in the

interests of national security or for investigating a possibility of infringement. The Copyright bill seeks to introduce the anti-circumvention law in India but it has been worded very ambiguously.

The existing Performers' Rights under Section 38 of the Act are proposed to be further enhanced by introducing exclusive rights to performers to make it compatible with the WPPT. The "Moral Rights of Performers" are also proposed to be introduced in conformity with WPPT. This will enable performers to register a copyright-collective society and receive royalties.

The performer has the exclusive rights over his performance and can authorize anyone to make a sound recording or a visual recording of the performance or reproduction of it in any material form, including the storing of it in any medium by electronic or any other means; issue copies of it to the public, selling or giving it on commercial rental etc.

The period of copyright for photographers is proposed to be enhanced to "Life plus sixty years" instead of only 60 years as at present. (Currently, the Copyright Act provides protection for sixty years from the beginning of the calendar year next following the year in which the photograph is published).

#### **Other Amendments**

The Bill also seeks to introduce statutory licensing to broadcasting organizations to access literary and musical works and sound recordings under reasonable and non-discriminatory terms. The radio companies will not have to obtain permission from the copyright holders to play a song, but must pay usage fees to the copyright holders based on how often a particular song is played.

#### **Importation of Infringing Copies**

If the Copyright owner anticipates that infringing copies of the work are expected to arrive in India at a given time and place, he or his duly authorised agent may give notice in writing to the Commissioner of Customs or to any other officer authorised in this behalf by the Central Board of Excise and Customs, along with the proof of his ownership and a request stating that within a year infringing copies of the work are expected to arrive in India and to treat those goods as prohibited goods. The Copyright owner should deposit an amount as the Commissioner may require as security towards the likely expenses on demurrage, cost of storage and compensation to the importer in case if it is found that the works are not infringing copies. Once such goods arrive at the territory of the country, the Customs Officer detaining the goods must inform the importer as well as the person who gave notice of the detention of such goods within 48 hours of their detention. The Commissioner after scrutiny of the evidence furnished by the owner of the right and on being satisfied may treat infringing copies of the work as prohibited goods. The Customs Officer shall release the goods if the person who gave notice does not produce any order from a court having jurisdiction as to the temporary or permanent disposal of such goods within 14 days from the date of their detention.

The amendment without doubt would have its critics and supporters. However, the same heralds India's compliance for accession to WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty.