

IPR – Copyrights: Legal Perspective

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. I hope by the end of my presentation you would have a basic understanding of the same. I would be happy to answer any questions you have after the end of my presentation.

The fundamental idea of violation of copyright or imitation is the violation of the Eight Commandment: “Thou shalt not steal” which forms the moral basis of the protective provisions of the Copyright Act. It is obvious that when a writer or a dramatist produces a work it is a result of his great labour, energy, time and ability and if any other person is allowed to appropriate the labours of the copyrighted work, his act amounts to theft by depriving the original owner of the copyright of the product of his labour.

It is told that Emperor Shahjahan chopped off the hands of the 22,000 odd architects and workers who build the Taj Mahal a crude form of intellectual property protection nevertheless the Taj was never built again.

To many Bengalis, Tagore is to the Bengali language what Shakespeare is to English. The national anthems of both India and Bangladesh are based on his songs. Tagore set up Visva Bharati University with cash from the Nobel prize for literature which he won in 1913, and contributions from friends. Visva Bharati University for many years enjoyed sole copyright on all his works. This included all of the huge volume of his poetry, novels, short stories, songs and plays.

India is one of the signatories of the Berne convention for the protection of literary and artistic works. According to this convention, the Tagore copyright, held by the university he founded, was to have expired in 1991 but the copyright was extended by another ten years. That period is now almost over, Visva-Bharati will have no more say on the publication, performance, adaptation or interpretation of his works. After December 31, 2001, this poet like so many greater artists before him will have to brave it out, unprotected, with those two most vitally self-regulating entities, the public and the market.

On the above background we shall go on to see the evolution of copyright law.

Historical Evolution of the Law on Copyright

In the beginning copyright was confined only to books. That was under the reign of Queen Anne in 1709. Gradually with the passage of time all the artistic works, like textile design, encryption, sculpture, painting, photographs, musical works, all came under the purview of the British Copy right Act.

Consequent on article 6 of Berne Convention author’s rights such as his right to decide upon publication, the right to be named as author, to remain anonymous or open, the right to object revision, the right to have his work withdrawn, and the right to object the destruction of his work, have come to be included as subjects coming within the scope of the copy right .The British Copy right of 1911 was

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extended to cover the right to production of records and prevent unauthorized reproduction of recordings. The Indian Copy right Act of 1914 followed the steps of the British Act of 1911 ever since its enactment.

After independence the Act needed a thorough revision with the view of the advanced means of communication like broad casting and lithography. Accordingly Copyright Act of 1957 was re-enacted making a provision for establishment of Copyright Office and Copyright Board. The 1957 Act extended the period of copy right to 50 years, which has been extended to 60 in 1992.

The Act of 1957 was subsequently amended from in 1983, 1984, 1994, and 1999 to protect the intellectual property in Copyright to include the recent development in communication technology including Computer Software.

National & International Copyright Laws

India became a signatory member to GATT and TRIPS and a member of WTO. Under its obligations India has carried out a number of amendments to its Intellectual Property Laws. With the amendment of Indian Copy right Act of 1957 in 1999, the Indian copyright laws are now of International standards.

To stay in harmony with the international community India has entered into many important Copyright treaties. The important treaties in the international arena are:

- 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 unauthorized duplication.
- IV. Multilateral Convention for the avoidance of double taxation of copy right Royalties
- V. Trade Related Intellectual Property Rights Agreements (TRIPS).
- VI. International Convention for the Protection of Performers, Producers of phonograms and broadcasting organizations, better known as the “Rome Convention.”

Copyright

When a person creates a literary, musical, scientific or artistic work, he or she is the owner of that work and is free to decide on its use. That person (called the “creator” or the “author” or “owner of rights”) can control the destiny of the work. Since, by law, the work is protected by copyright from the moment it comes into being, there is no formality to be complied with, such as registration or deposit, as a condition of that protection. Mere ideas in themselves are not protected, only the way in which they are expressed. The economic rights are the rights of reproduction, broadcasting, public performance, adaptation, translation, public recitation, public display, distribution, and so on. The moral rights include the author’s right to object to any distortion, mutilation or other modification of his work that might be prejudicial to his honor or reputation. Both sets of rights belong to the creator who can exercise them. The exercise of rights means that he can use the work himself or can give permission to someone else to use the work or can prohibit someone else from using the work. The general principle is that copyright protected works cannot be used without the authorization of the owner of rights. Limited exceptions to this rule, however, are contained in national copyright laws.

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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.

Term of Copyright

The period for which the copyright subsists is the lifetime of the author plus sixty years from the calendar year in which the author dies. Where there are joint authors, the term of sixty years commences from the beginning of the calendar year in which the last of them dies. When the author is anonymous the sixty years shall be calculate from the year of the first publication.

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.

There are different rights conferred by the copyright law they are:

1. Reproductive rights
2. Performing rights
3. Recording rights
4. Motion picture rights
5. Broadcasting rights
6. Translation & adoption rights.
7. Moral rights
8. Neighbouring rights.

Assignment Of Copyright

The owner of the copyright can assign any one or more of his numerous rights or any combination of those rights. It can be limited to the areas or may be worldwide. It can also be limited to parts of a single right. Publication rights and performing rights can be assigned to more than one person. Copyright may be assigned for a period of years or for the duration of whole period. The assignment must be in writing, signed, and witnessed.

The terms of the assignment will have to be drafted carefully so that they represent correctly what is intended to be assigned and nothing more and nothing is left vague. An agreement without consideration is not enforceable. Oral agreement, a mere delivery of the work or a mere receipt for money received does not create any assignment. Assignee of copyright can sue the owner of the copyright if the owner infringes the rights of the assignee. Copyright being a property can be transferred by document and can be bequeathed by will. The rules of succession will apply in the case of intestate succession.

The difference between the licence and assignment is that while assignment transfers title in the copyright, the licence merely permits certain things to be done by the licensee. The following chief differences to be noted. The assignee being vested with the title of the copyright he may re-assign. The

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licence is personal and therefore not transferable. Furthermore, the assignee can sue for infringement without joining the assignor. The licensee cannot sue in his own name for infringement of copyright since the copyright belongs to the licensor.

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.

Defences against infringement

Unconscious and innocent infringement are not defences under the Copyright Act.

Fair Use

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.

Remedies against infringement

The remedies available against infringement are 1) Civil 2) Criminal 3) Administrative.

All the three remedies are independent and can be pursued simultaneously or separately.

Civil remedies are :-

- i) Suit for injunction: Restraining the impending infringement or continuing infringement. The reliefs claimed may be in the form of perpetual injunction i.e., permanently restraining the defendant from infringing the copyright or may be in the form of mandatory injunction, directing the defendant to withdraw, handover or destroy the infringing works and articles.
- ii) Suit for damages: Damages can be claimed- (1) as an amount of loss sustained by the holder of copyright by reason of infringement (2) as an amount representing the profits made by the infringer and (3) as an amount representing the value of infringing copies. The first two relief's are alternative to

one another i.e. one of the two but not both can be claimed. The third relief is however in addition to one of the two others.

If a person claims the damages as a loss suffered by him he cannot opt for profits made by the infringer. Conversely if a person claims profits gained by the infringer as damages he cannot claim damages as loss suffered by him.

The above suits can be presented before a Civil Court of competent jurisdiction within the territorial limits in which the plaintiff resides or the cause of action arises. The procedure required to be followed is the procedure prescribed in the Civil Procedure Code. The limitation for filing the suit is three years from the date when the cause of action arises.

Criminal Remedies

The owner of copyright and also any other person can initiate criminal proceedings, by filing a complaint before the competent First Class Magistrate within whose jurisdiction, the plaintiff resides or the infringement takes place or deemed to have taken place. Only those who are affected by the infringement can initiate prosecution.

Collective Administration

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, though the collective administrative society.

Challenges & New issues to Copyright Law

- Computer Programs.
- Computer Programming Languages.
- Electronic Signatures.
- Automated Data Bases.
- Online Works and Online Music.
- Internet Transmissions.
- Book Publishing.

Computer programs are protectable under the copyright law and can be registered with the Copyright office as literary works, regardless of their medium. Because of the ease of registration and modest filing fees, numerous authors have registered their computer programs with the Copyright office.

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Encryptions of computer programs are protected under the copyright law as the source code is a means of communication or speech.

In course of a very short period, in time, electronic signatures and documents will have the same force in law as their pen-and-ink counterparts. Consumers will be able to choose whether to use electronic or handwritten signatures.

Although the elements in a database may not qualify for copyright protection, the particular selection and arrangement of those materials may allow the material to qualify for protection as a compilation. Nevertheless, the topic of whether and how much protection should be afforded to such automated bases is subject to vigorous debate.

Works transmitted online and accessed via World Wide Web sites are protectable under the copyright law. Although copyright registration is not required to for these works because they are protected from the time of their creation and fixation, registration affords important benefits. However there is no blanket copyright registration available to cover revisions made on various dates and so it would be a good thing if all web sites were to include a copyright notice.

Online music: A birth of new technologies like the MP3 that allows users to access music from any online connection is challenging copyright law.

The Internet service providers are mere conduits for information rather than publishers who would be liable for infringement under the Copyright Act. Thus search engines and online providers are liable for copyright infringement that occurs when they have actual knowledge of such infringement, profit from it, and fail to stop it.

Finally the issue of ownership of college professor's lecture notes has caused concern in academia, as students have taken notes in class and then offered them for sale on the Internet. Oral, non-fixed lectures are not protected under the copyright law.

Challenges to copyright law have grown enormously along with the technological progress in the last several decades. The field of copyright and related rights has expanded enormously with the technological progress of the last several decades which has bought new ways of spreading creations by such forms of world wide communications as satellite broadcast and computer discs. Dissemination of works via the Internet is but the latest development, which raises new questions in the area of copyright and the law, continues to evolve with the growing world of technology.