

### KEY CONCEPTS

- Moral rights performer's rights
- Neighboring Rights
- John Doe /Jane Doe orders
- International treaties and conventions
- Literary and artistic works
- Computer program
- Author & ownership of copyright
- Assignment
- Licences
- Copyright societies
- Foreign works
- Infringement of copyright
- Appeals

### Learning Objectives

#### To understand:

- The legal framework provided for regulating the laws related to the copyright vested in any artistic or literary work.
- The Copyright Act, 1957.
- The important definitions and concepts herein.
- The ethical/moral aspects involved in using materials protected by copyright.
- The importance and value of copyright law and why it is essential.

### Lesson Outline

- Introduction
- Significance of Copyright & Related Rights
- International protection of Copyright and related rights
- Meaning of Copyright and the rights conferred
- Nature of Copyright protection
- Works in which Copyright subsists
- Author & Ownership of Copyright
- Assignment and Licensing of Copyright
- Copyright Societies
- Rights of broadcasting organisation and performers
- International Copyright
- Registration of Copyright
- Infringement of Copyright
- Remedies against Infringement of Copyright
- John Doe Order
- Appeals
- Neighboring Rights
- Copyright pertaining to software
- Case Laws
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other references (Including Websites / Video Links)

## INTRODUCTION

Copyright is a well-recognized form of property right which had its roots in the common law system and subsequently came to be governed by the national laws in each country. Copyright as the name suggests arose as an exclusive right of the author to copy the literature produced by him and stop others from doing so. There are well-known instances of legal intervention to punish a person for copying literary or aesthetic output of another even before the concept of copyright took shape. The concept of idea was originally concerned with the field of literature and arts. In view of technological advancements in recent times, copyright protection has been expanded considerably.

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.

The Copyright Act, 1957 (the 'Act') came into effect from January 1958. The Act has been amended five times since then, i.e., in 1983, 1984, 1992, 1994, 1999 and 2012. The Copyright (Amendment) Act, 2012 is the most substantial. The main reasons for amendments to the Copyright Act, 1957 include to bring the Act in conformity with two WIPO internet treaties concluded in 1996 namely, the WIPO Copyright Treaty ("WCT") and WIPO Performances and Phonograms Treaty ("WPPT"); to protect the Music and Film Industry and address its concerns; to address the concerns of the physically disabled and to protect the interests of the author of any work; incidental changes; to remove operational facilities; and enforcement of rights. Some of the important amendments to the Copyright Act in 2012 are extension of copyright protection in the digital environment such as penalties for circumvention of technological protection measures and rights management information, and liability of internet service provider and introduction of statutory licenses for cover versions and broadcasting organizations; ensuring right to receive royalties for authors, and music composers, exclusive economic and moral rights to performers, equal membership rights in copyright societies for authors and other right owners and exception of copyrights for physically disabled to access any works.

The 2012 amendments make Indian Copyright Law compliant with the Internet Treaties – the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).

Also, while introducing technological protection measures, the amended law ensures that fair use survives in the digital era by providing special fair use provisions. The amendments have made many author-friendly amendments, special provisions for disabled, amendments facilitating access to works and other amendments to streamline copyright administration.

The amendments introduced through Copyright (Amendment) Act, 2012 can be categorized into:

1. Amendments to rights in artistic works, cinematograph films and sound recordings.
2. WCT and WPPT related amendment to rights.
3. Author-friendly amendments on mode of Assignment and Licenses.
4. Amendments facilitating Access to Works.
5. Strengthening enforcement and protecting against Internet piracy.
6. Reform of Copyright Board and other minor amendments.

## SIGNIFICANCE OF COPYRIGHT AND RELATED RIGHTS

Copyright protects the literary, artistic, dramatic or other creative elements of products or services. Related rights protect certain performative, technical and organizational elements of products or services. Copyright and related rights enable their owners to prevent these elements (their "works") from being used by others.

Copyright and related rights therefore enable a business to do the following:

- **Control the commercial exploitation of works-** Works protected by copyright and related rights may not be copied or exploited commercially by others without the prior permission of the rights owner unless a limitation or exception applies. Such exclusivity over the use of works protected by copyright and related rights helps a business to gain and maintain a sustainable competitive edge in the marketplace.
- **Generate income-** Like the owner of physical property, the owner of copyright or of a related right may use their right, or transfer it to others by way of sale, gift or inheritance. There are different ways to commercialize copyright and related rights. One possibility is to make and sell multiple copies of works protected by copyright (e.g., prints of a photograph) or of the subject matter of related rights (e.g., copies of a sound recording); another is to sell (assign) copyright or related rights to another person or company. Finally, a third – often preferable – option is to license the use of works, which means permitting another person or company to use the copyright or related right in exchange for payment, on mutually agreed terms and conditions (see page 58).
- **Use as a collateral -** Companies that own copyright and related rights (e.g., a portfolio of distribution rights to a number of films) may be able to borrow money from financial institutions by using their rights as collateral so that investors and lenders can take a “security interest.”
- **Take action against infringers-** Copyright and related rights enable rights owners to take legal action against anyone encroaching on their exclusive rights (called an “infringer”) to obtain a remedy. Remedies can include monetary relief, injunctive relief (e.g., a court order to refrain from further infringement), the destruction of infringing works, or the recovery of attorneys’ fees. In some countries, criminal penalties may be imposed on willful copyright violators. Legal action against those helping others to infringe or providing them with the means used to infringe may also be available.
- **Use works owned by others-** Using works based on copyright and related rights owned by others for commercial purposes may enhance the value or efficiency of a business, including its brand value. For example, playing music in a restaurant, bar, retail shop or airport adds value to the experience of customers using a service or visiting a business outlet. But, in most countries, unless a limitation or exception to copyright applies (see page 71), the use of music in this manner requires a license. Understanding copyright and related rights laws is important in order to know when a license is required and how to obtain one. Obtaining a license from the owner of copyright and/or related rights when one is needed will help avoid disputes, which could result in potentially time-consuming, uncertain and expensive litigation.

## INTERNATIONAL PROTECTION OF COPYRIGHT AND RELATED RIGHTS

The first international copyright treaties were bilateral: that is, only two countries were involved. These agreements however failed to provide a reliable legal basis for the cross-border trade with protected works as they were limited in scope and varied widely. Therefore, countries gradually turned to multilateral conventions committing all parties to a single set of obligations, which eventually became the principal means for the international protection of copyright and related rights.

The origin of today’s is multilateral structure can be found in the universalist movement that originated in France in the middle of the 19th century, even before any bilateral copyright agreement was concluded. Authors and publishers called for a universal recognition of their copyright. A decisive step was the formation of the Association *LittÉraire et Artistique Internationale* at the 1878 literary congress in Paris. Among its main protagonists were such prominent figures as the French poet Victor Hugo. In 1882, the ALAI held a congress in Rome to discuss copyright protection at the international level.

Following the proposal of the German Publishers Association (*Boersenverein der deutschen Buch Indler*), between 1883 and 1886 four meetings took place in Berne to elaborate a text of an international treaty. The Convention for the Protection of Literary and Artistic Works was adopted on September 9, 1886 and signed by

ten countries including Belgium, France, Germany, Haiti, Italy, Liberia, Spain, Switzerland, Tunisia and the UK. Today, the Berne Convention remains still of great importance as many of the recent treaties refer directly or indirectly to its provisions.

### International Conventions and Treaties on law relating to Copyrights



#### Berne Convention for the Protection of Literary and Artistic Works (1886)

The Berne Convention, adopted in 1886, deals with the protection of works and the rights of their authors. It provides creators such as authors, musicians, poets, painters etc. with the means to control how their works are used, by whom, and on what terms. It is based on three basic principles and contains a series of provisions determining the minimum protection to be granted, as well as special provisions available to developing countries that want to make use of them.

The three basic principles are the following:

- Works originating in one of the Contracting States (that is, works the author of which is a national of such a State or works first published in such a State) must be given the same protection in each of the other Contracting States as the latter grants to the works of its own nationals (principle of “national treatment”).
- Protection must not be conditional upon compliance with any formality (principle of “automatic” protection).
- Protection is independent of the existence of protection in the country of origin of the work (principle of “independence” of protection). If, however, a Contracting State provides for a longer term of protection than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ceases.

It states that protection must include “every production in the literary, scientific and artistic domain, whatever the mode or form of its expression” (Article 2(1) of the Convention).

The Convention also provides for “moral rights”, that is, the right to claim authorship of the work and the right to object to any mutilation, deformation or other modification of, or other derogatory action in relation to, the work that would be prejudicial to the author’s honor or reputation.

As to the duration of protection, the general rule is that protection must be granted until the expiration of the 50th year after the author's death. There are, however, exceptions to this general rule. These limitations or exceptions are commonly referred to as "free uses" of protected works.

### **Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)**

The Rome Convention secures protection in performances for performers, in phonograms for producers of phonograms and in broadcasts for broadcasting organizations. WIPO is responsible for the administration of the convention jointly with the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO).

The Rome Convention secures protection in performances for performers, in phonograms for producers of phonograms and in broadcasts for broadcasting organizations.

1. Performers (actors, singers, musicians, dancers and those who perform literary or artistic works) are protected against certain acts to which they have not consented, such as the broadcasting and communication to the public of a live performance; the fixation of the live performance; the reproduction of the fixation if the original fixation was made without the performer's consent or if the reproduction was made for purposes different from those for which consent was given.
2. Producers of phonograms have the right to authorize or prohibit the direct or indirect reproduction of their phonograms. In the Rome Convention, "phonograms" means any exclusively aural fixation of sounds of a performance or of other sounds. Where a phonogram published for commercial purposes gives rise to secondary uses (such as broadcasting or communication to the public in any form), a single equitable remuneration must be paid by the user to the performers, to the producers of the phonograms, or to both. Contracting States are free, however, not to apply this rule or to limit its application.
3. Broadcasting organizations have the right to authorize or prohibit certain acts, namely the rebroadcasting of their broadcasts; the fixation of their broadcasts; the reproduction of such fixations; the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

As to duration, protection must last at least until the end of a 20-year period computed from the end of the year in which (a) the fixation was made, for phonograms and for performances incorporated therein; (b) the performance took place, for performances not incorporated in phonograms; (c) the broadcast took place.

WIPO is responsible, jointly with the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO), for the administration of the Rome Convention.

### **WIPO Copyright Treaty (WCT), 1996**

It is a special agreement under the Berne Convention which deals with the protection of works and the rights of their authors in the digital environment. In addition to the rights recognized by the Berne Convention, they are granted certain economic rights.

The Treaty also deals with two subject matters to be protected by copyright:

- i) computer programs, whatever the mode or form of their expression; and
- ii) compilations of data or other material ("databases").

As to the rights granted to authors, apart from the rights recognized by the Berne Convention, the Treaty also grants:

- *Right of distribution* – It is the right to authorize the making available to the public of the original and copies of a work through sale or other transfer of ownership.
- *Right of rental*- It is the right to authorize commercial rental to the public of the original and copies of three kinds of works: (i) computer programs (except where the computer program itself is not the essential object of the rental); (ii) cinematographic works (but only in cases where commercial rental has led to widespread

copying of such works, materially impairing the exclusive right of reproduction); and (iii) works embodied in phonograms as determined in the national law of Contracting Parties (except for countries which, since April 15, 1994, have had a system in force for equitable remuneration of such rental).

- *Right of communication to the public* - It is the right to authorize any communication to the public, by wire or wireless means, including “the making available to the public of works in a way that the members of the public may access the work from a place and at a time individually chosen by them”. The quoted expression covers, in particular, on-demand, interactive communication through the Internet.

As to duration, the term of protection must be at least 50 years for any kind of work. The enjoyment and exercise of the rights provided for in the Treaty cannot be subject to any formality.

### WIPO Performances and Phonograms Treaty (1996)

The WIPO Performances and Phonograms Treaty (WPPT) deals with the rights of two kinds of beneficiaries, particularly in the digital environment:

- i) performers (actors, singers, musicians, etc.); and
- ii) producers of phonograms (persons or legal entities that take the initiative and have the responsibility for the fixation of sounds).

As far as performers are concerned, the Treaty grants performers economic rights in their performances fixed in phonograms (not in audio-visual fixations, such as motion pictures). They are-

- *Right of reproduction*- It is the right to authorize direct or indirect reproduction of the phonogram in any manner or form.
- *Right of distribution*- It is the right to authorize the making available to the public of the original and copies of the phonogram through sale or other transfer of ownership.
- *Right of rental*- It is the right to authorize the commercial rental to the public of the original and copies of the phonogram, as determined in the national law of the Contracting Parties (except for countries that, since April 15, 1994, have had a system in force for equitable remuneration of such rental).
- *Right of making available*- It is the right to authorize the making available to the public, by wire or wireless means, of any performance fixed in a phonogram, in such a way that members of the public may access the fixed performance from a place and at a time individually chosen by them. This right covers, in particular, on-demand, interactive making available through the Internet.

As to unfixed (live) performances, the Treaty grants performers: (i) the right of broadcasting (except in the case of rebroadcasting); (ii) the right of communication to the public (except where the performance is a broadcast performance); and (iii) the right of fixation.

The Treaty also grants performers moral rights, that is, the right to claim to be identified as the performer and the right to object to any distortion, mutilation or other modification that would be prejudicial to the performer’s reputation.

As far as producers of phonograms are concerned, the Treaty grants them economic rights in their phonograms. They are-

- *Right of reproduction*- It is the right to authorize direct or indirect reproduction of the phonogram in any manner or form.
- *Right of distribution*- It is the right to authorize the making available to the public of the original and copies of the phonogram through sale or other transfer of ownership.
- *Right of rental*- It is the right to authorize the commercial rental to the public of the original and copies of the phonogram, as determined in the national law of the Contracting Parties (except for countries that, since April 15, 1994, have a system in force for equitable remuneration of such rental).

- *Right of making available*- It is the right to authorize making available to the public, by wire or wireless means, a phonogram in such a way that members of the public may access the phonogram from a place and at a time individually chosen by them. This right covers, in particular, on-demand, interactive making available through the Internet.

The term of protection must be at least 50 years. The enjoyment and exercise of the rights provided for in the Treaty cannot be subject to any formality.

### **Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (2013)**

The Marrakesh Treaty was adopted on June 27, 2013 in Marrakesh and it forms part of the body of international copyright treaties administered by WIPO. It has a clear humanitarian and social development dimension and its main goal is to create a set of mandatory limitations and exceptions for the benefit of the blind, visually impaired, and otherwise print disabled (VIPs).

The Treaty clarifies that beneficiary persons are those affected by a range of disabilities that interfere with the effective reading of printed material. The broad definition includes persons who are blind, visually impaired, or print disabled or persons with a physical disability that prevents them from holding and manipulating a book.

Works “in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media”, including audio books, fall within the scope of the MVT regime.

The MVT has a clear structure and provides for specific rules regarding both domestic and cross-border limitations and exceptions.

It requires Contracting Parties to have a limitation or exception to domestic copyright law for VIPs. The rights subject to such limitation or exception are the right of reproduction, the right of distribution, and the right of making available to the public.

The MVT requires Contracting Parties to allow the import and export of accessible format copies under certain conditions. Regarding importation, when an accessible format copy can be made pursuant to national law, a copy may also be imported without rightholder authorization.

The MVT leaves Contracting Parties the freedom to implement its provisions taking into account their own legal systems and practices, including determinations on “fair practices, dealings or uses”, provided they comply with their three-step test obligations under other treaties. It includes three elements; any exception or limitation:

- i) shall cover only certain special cases;
- ii) shall not conflict with the normal exploitation of the work; and
- iii) shall not unreasonably prejudice the legitimate interests of the right holder.

There is no requirement to be a member of any other international copyright treaty to join the MVT. Membership is open to Member States of WIPO and to the European Union.

### **TRIPS Agreement (1995)**

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which came into effect on 1 January 1995, is to date the most comprehensive multilateral agreement on intellectual property.

The Agreement states that copyright protection only applies to phrases, ideas, techniques, operating methods, or mathematical concepts. Copyright is granted to all types of works, including musical, dramatic, photographic, sculptural, architectural, choreographic, graphic, sound recording, motion picture, multimedia, computer programmes, and others. For a certain amount of time, the owner of a copyright has the right to prevent others from duplicating, distributing, making derivative works, performing, exhibiting, or utilising the work covered by the copyright. The essence of copyright is originality, which means that the work was created by the copyright

owner or claimant. A work of originality, on the other hand, does not have to be innovative. In copyright law, originality does not entail innovation.

In addition to requiring compliance with the basic standards of the Berne Convention, the TRIPS Agreement clarifies and adds certain specific points.

Article 9.2 confirms that copyright protection shall extend to expressions and not to ideas, procedures, and methods of operation or mathematical concepts as such.

Article 10.1 provides that computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971). This provision confirms that computer programs must be protected under copyright and that those provisions of the Berne Convention that apply to literary works shall be applied also to them.

Article 10.2 clarifies that databases and other compilations of data or other material shall be protected as such under copyright even where the databases include data that as such are not protected under copyright.

Article 11 provides that authors shall have in respect of at least computer programs and, in certain circumstances, of cinematographic works the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works.

**Related Rights** – For related rights, the provisions on protection of performers, producers of phonograms and broadcasting organizations are included in Article 14. According to Article 14.1, performers shall have the possibility of preventing the unauthorized fixation of their performance on a phonogram (e.g. the recording of a live musical performance). The fixation right covers only aural, not audiovisual fixations. Performers must also be in position to prevent the reproduction of such fixations. They shall also have the possibility of preventing the unauthorized broadcasting by wireless means and the communication to the public of their live performance.

In accordance with Article 14.2, members have to grant producers of phonograms an exclusive reproduction right. In addition to this, they have to grant, in accordance with Article 14.4, an exclusive rental right at least to producers of phonograms. The provisions on rental rights apply also to any other right holders in phonograms as determined in national law. This right has the same scope as the rental right in respect of computer programs.

Broadcasting organizations shall have, in accordance with Article 14.3, the right to prohibit the unauthorized fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of their television broadcasts.

The term of protection is at least 50 years for performers and producers of phonograms, and 20 years for broadcasting organizations (Article 14.5).

Article 14.6 provides that any Member may, in relation to the protection of performers, producers of phonograms and broadcasting organizations, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention.

### **Universal Copyright Convention (1952)**

The Universal Copyright Convention (UCC) is an international instrument which was drawn up in 1952 under the auspices of UNESCO. If it were to be as universal as its title claims, the Convention not only had to recognize copyright as a human right but also to act as a kind of bridge between the world's different legal and social systems.

The Universal Copyright Convention of 1952 provides a simple and ingenious solution to this problem. It prescribes that the formalities required by the national law of a contracting state shall be considered to be satisfied if all the copies of a work originating in another contracting state carry the symbol ©, accompanied by the name of the copyright owner and the year of first publication.

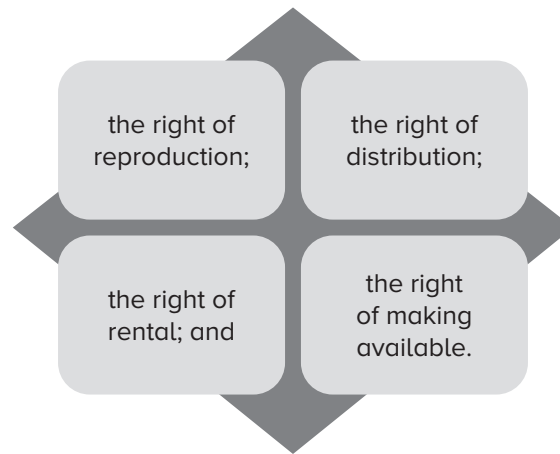
Ratified by the United States and by almost all the states parties to the Berne Convention, the UCC has successfully served its purpose as a pathway of communication between different legal systems, while also improving the international protection of intellectual works.

According to Article 4 of the UCC, the minimum duration was only twenty-five years in general and ten years for photographic and applied art works. Any Contracting State that, as of the UCC's enforceability date, provided for specific classes of works may do so under a transitional provision. The duration had to be computed after the first publication of the work. Reciprocity was introduced, given the diversity of national laws on the duration.

### Beijing Treaty on Audiovisual Performances

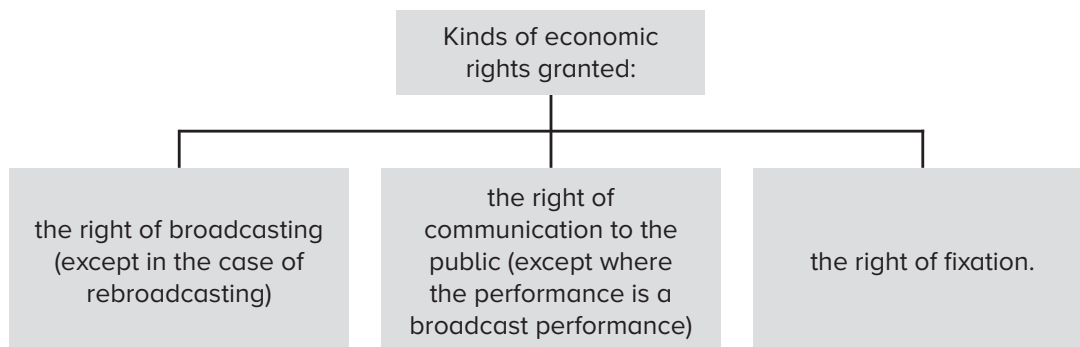
The Beijing Treaty on Audiovisual Performances was adopted by the Diplomatic Conference on the Protection of Audiovisual Performances, which took place in Beijing from June 20 to 26, 2012. The Treaty deals with the intellectual property rights of performers in audiovisual performances.

It grants performers four kinds of economic rights for their performances fixed in audiovisual fixations, such as motion pictures:



- **The right of reproduction** is the right to authorize direct or indirect reproduction of the performance fixed in an audiovisual fixation in any manner or form.
- **The right of distribution** is the right to authorize the making available to the public of the original and copies of the performance fixed in an audiovisual fixation through sale or other transfer of ownership.
- **The right of rental** is the right to authorize the commercial rental to the public of the original and copies of the performance fixed in an audiovisual fixation.
- **The right of making available** is the right to authorize the making available to the public, by wire or wireless means, of any performance fixed in an audiovisual fixation, in such a way that members of the public may access the fixed performance from a place and at a time individually chosen by them. This right covers, in particular, on-demand, interactive making available through the Internet.

As to unfixed (live) performances, the Treaty grants performers three kinds of economic rights:



The Treaty also grants performers moral rights, that is, the right to claim to be identified as the performer (except where such an omission would be dictated by the manner of the use of the performance); and the right to object to any distortion, mutilation or other modification that would be prejudicial to the performer's reputation, taking into account the nature of the audiovisual fixations.

The Treaty provides that performers shall enjoy the right to authorize the broadcasting and communication to the public of their performances fixed in audiovisual fixations. However, Contracting Parties may notify that instead of the right of authorization, they will establish a right to equitable remuneration for the direct or indirect use of performances fixed in audiovisual fixations for broadcasting or communication to the public. Any Contracting Party may restrict or – provided that it makes a reservation to the Treaty – deny this right. In the case and to the extent of a reservation by a Contracting Party, the other Contracting Parties are permitted to deny, vis-à-vis the reserving Contracting Party, national treatment ("reciprocity").

As to the transfer of rights, the Treaty provides that Contracting Parties may stipulate in their national laws that once a performer has consented to the audiovisual fixation of a performance, the exclusive rights mentioned above are transferred to the producer of the audiovisual fixation (unless a contract between the performer and producer states otherwise). Independent of such a transfer of rights, national laws or individual, collective or other agreements may provide the performer with the right to receive royalties or equitable remuneration for any use of the performance, as provided for under the Treaty.

As to limitations and exceptions, Article 13 of the Beijing Treaty incorporates the so-called "**three-step**" test to determine limitations and exceptions, as provided for in Article 9(2) of the Berne Convention, extending its application to all rights. The accompanying Agreed Statement provides that the Agreed Statement of Article 10 of the WCT applies similarly to the Beijing Treaty, that is, that such limitations and exceptions as established in national law in compliance with the Berne Convention may be extended to the digital environment. Contracting States may devise new exceptions and limitations appropriate to the digital environment. The extension of existing or the creation of new limitations and exceptions is allowed if the conditions of the "three-step" test are met.

The term of protection must be at least 50 years.

The enjoyment and exercise of the rights provided for in the Treaty cannot be subject to any formality.

The Treaty obliges Contracting Parties to provide for legal remedies against the circumvention of technological measures (e.g., encryption) used by performers in connection with the exercise of their rights, and against the removal or altering of information – such as the indication of certain data that identify the performer, performance and the audiovisual fixation itself – necessary for the management (e.g., licensing, collecting and distribution of royalties) of the said rights ("rights management information").

An Agreed Statement related to the interplay between technological measures and limitations and exceptions clarifies that nothing prevents a Contracting Party from adopting effective and necessary measures to ensure that a beneficiary may enjoy limitations and exceptions, where technological measures have been applied to an audiovisual performance and the beneficiary has legal access to that performance. The above effective and necessary measures may be needed only where appropriate and effective measures have not been taken by rights holders in relation to that performance to enable the beneficiary to enjoy the limitations and exceptions under that Contracting Party's national law. Without prejudice to the legal protection of an audiovisual work in which a performance is fixed, the obligations concerning technological measures of protection are not applicable to performances unprotected or no longer protected under the national law giving effect to the Treaty.

Contracting Parties shall accord protection under this Treaty to fixed performances that exist at the time of entry into force of the Treaty and to all performances made after its entry into force for each Contracting Party. However, a Contracting Party may declare that it will not apply the provisions concerning some or all of the exclusive rights of reproduction, distribution, rental, making available of fixed performances, and broadcasting and communication to the public in respect of performances that existed at the time of the entry into force of this Treaty in each Contracting Party. Other Contracting Parties may then reciprocally limit the application of these rights in relation to that Contracting Party.

The Treaty obliges each Contracting Party to adopt, in accordance with its legal system, the measures necessary to ensure the application of the Treaty. In particular, each Contracting Party must ensure that enforcement procedures are available under its law so as to permit effective action against any act of infringement of rights covered by the Treaty. Such action must include expeditious remedies to prevent infringement as well as remedies that constitute a deterrent to further infringement.

The Treaty establishes an Assembly of the Contracting Parties whose main task is to address matters concerning the maintenance and development of the Treaty. It entrusts to the Secretariat of WIPO the administrative tasks concerning the Treaty.

The Beijing Treaty will enter into force three months after 30 eligible parties have deposited their instruments of ratification or accession. The Treaty is open to States members of WIPO and to the European Union. The Assembly constituted by the Treaty may decide to admit other intergovernmental organizations to become party to the Treaty. Instruments of ratification or accession must be deposited with the Director General of WIPO.

### **Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974)**

The Brussels or Satellites Convention provides for the obligation of each Contracting State to take adequate measures to prevent the unauthorized distribution on or from its territory of any programme-carrying signal transmitted by satellite. A distribution is considered unauthorized if it has not been authorized by the organization – typically a broadcasting organization – that decided on the programme’s content. The obligation exists in respect of organizations that are nationals of a Contracting State.

Article 2 of this Convention states that-

1. Each Contracting State undertakes to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or passing through the satellite is not intended. This obligation shall apply where the originating organization is a national of another Contracting State and where the signal distributed is a derived signal.
2. In any Contracting State in which the application of the measures referred to in paragraph (1) is limited in time, the duration thereof shall be fixed by its domestic law. The Secretary-General of the United Nations shall be notified in writing of such duration at the time of ratification, acceptance or accession, or if the domestic law comes into force or is changed thereafter, within six months of the coming into force of that law or of its modification.
3. The obligation provided for in paragraph (1) shall not apply to the distribution of derived signals taken from signals which have already been distributed by a distributor for whom the emitted signals were intended.

The Convention permits certain limitations on protection. The distribution of programme-carrying signals by non-authorized persons is permitted if the signals carry short excerpts containing reports of current events or, as quotations, short excerpts of the programme carried by the emitted signals or, in the case of developing countries, if the programme carried by the emitted signals is distributed solely for the purposes of teaching, including adult teaching or scientific research. The Convention does not establish a term of protection, leaving the matter to domestic legislation.

Article 4 of this Convention states that-

No Contracting State shall be required to apply the measures referred to in Article 2(1) where the signal distributed on its territory by a distributor for whom the emitted signal is not intended

- i. carries short excerpts of the programme carried by the emitted signal, consisting of reports of current events, but only to the extent justified by the informatory purpose of such excerpts, or
- ii. carries, as quotations, short excerpts of the programme carried by the emitted signal, provided that such quotations are compatible with fair practice and are justified by the informatory purpose of such quotations, or

- iii. carries, where the said territory is that of a Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, a programme carried by the emitted signal, provided that the distribution is solely for the purpose of teaching, including teaching in the framework of adult education, or scientific research.

The provisions of this Convention are not applicable, however, where the distribution of signals is made from a direct broadcasting satellite.

The Convention does not provide for the institution of a Union, governing body or budget.

It is open to any State member of the United Nations or of any of the agencies belonging to the United Nations system of organizations.

Instruments of ratification, acceptance or accession must be deposited with the Secretary-General of the United Nations.

### **Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (1971)**

The Phonograms Convention, adopted in Geneva in October 1971, provides for the obligation of each Contracting State to protect a producer of phonograms who is a national of another Contracting State against the making of duplicates without that producer's consent, against the importation of such duplicates, where the making or importation is for the purpose of distribution to the public; and against the distribution of such duplicates to the public. WIPO is responsible, jointly with the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO), for the administration of this Convention.

Article 2 of this Convention provides for Obligations of Contracting States; Whom they must protect and against what.

Each Contracting State shall protect producers of phonograms who are nationals of other Contracting States against the making of duplicates without the consent of the producer and against the importation of such duplicates, provided that any such making or importation is for the purpose of distribution to the public, and against the distribution of such duplicates to the public.

Article 6 states that-

Any Contracting State which affords protection by means of copyright or other specific right, or protection by means of penal sanctions, may in its domestic law provide, with regard to the protection of producers of phonograms, the same kinds of limitations as are permitted with respect to the protection of authors of literary and artistic works. However, no compulsory licenses may be permitted unless all of the following conditions are met:

- (a) the duplication is for use solely for the purpose of teaching or scientific research;
- (b) the license shall be valid for duplication only within the territory of the Contracting State whose competent authority has granted the license and shall not extend to the export of duplicates;
- (c) the duplication made under the license gives rise to an equitable remuneration fixed by the said authority taking into account, inter alia, the number of duplicates which will be made.

Article 7 states that-

1. This Convention shall in no way be interpreted to limit or prejudice the protection otherwise secured to authors, to performers, to producers of phonograms or to broadcasting organizations under any domestic law or international agreement.
2. It shall be a matter for the domestic law of each Contracting State to determine the extent, if any, to which performers whose performances are fixed in a phonogram are entitled to enjoy protection and the conditions for enjoying any such protection.

3. No Contracting State shall be required to apply the provisions of this Convention to any phonogram fixed before this Convention entered into force with respect to that State.
4. Any Contracting State which, on October 29, 1971, affords protection to producers of phonograms solely on the basis of the place of first fixation may, by a notification deposited with the Director General of the World Intellectual Property Organization, declare that it will apply this criterion instead of the criterion of the nationality of the producer.

The Phonograms or Geneva Convention provides for the obligation of each Contracting State to protect a producer of phonograms who is a national of another Contracting State against the making of duplicates without that producer's consent; against the importation of such duplicates, where the making or importation is for the purpose of distribution to the public; and against the distribution of such duplicates to the public. "Phonogram" means an exclusively aural fixation (that is, it does not comprise, for example, the sound tracks of films or videocassettes), whatever its form (disc, tape, etc.). Protection may be provided under copyright law, sui generis (related rights) law, unfair competition law or penal law. Protection must last for at least 20 years from the date of first fixation or the first publication of the phonogram. (However, national laws increasingly provide for a 50-year term of protection.)

The Convention permits the same limitations as those provided in relation to the protection of authors. It allows non-voluntary licenses if reproduction is intended exclusively for teaching or scientific research, limited to the territory of the State whose authorities give the license, and if equitable remuneration is provided (Article 6).

WIPO is responsible, jointly with the ILO and UNESCO, for the administration of this Convention.

The Convention does not provide for the institution of a Union, governing body or budget.

The Convention is open to any State member of the United Nations or of any of the agencies belonging to the United Nations system of organizations. Instruments of ratification, acceptance or accession must be deposited with the Secretary-General of the United Nations.

### MEANING OF COPYRIGHT AND THE RIGHTS CONFERRED

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work. It means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever (*Kartar Singh Giani v. Ladha Singh & Others AIR 1934 Lah 777*).

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

Literary, Dramatic or Musical work (except computer program) [Section 14(a)]	Computer Program [Section 14(b)]	Artistic Work [Section 14(c)]	Cinematograph Film [Section 14(d)]	Sound Recording [Section 14(e)]
To reproduce the work in any material form which includes storing of it in any medium by electronic means.	to do any of the acts specified in clause (a) of Section 14.	to reproduce the work in any material form including- <ul style="list-style-type: none"> <li>● the storing of it in any medium by electronic or other means;</li> </ul>	to make a copy of the film, including— <ul style="list-style-type: none"> <li>● a photograph of any image forming part thereof; or</li> </ul>	to make any other sound recording embodying it including storing of it in any medium by electronic or other means.

		<ul style="list-style-type: none"> <li>● depiction in 3-D of a 2-D work; or</li> <li>● depiction in 2-D of a 3-D work.</li> </ul>	<ul style="list-style-type: none"> <li>● storing of it in any medium by electronic or other means.</li> </ul>	
To issue copies of the work to the public which are not already in circulation.	to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer program:  Provided that such commercial rental does not apply in respect of computer program where the program itself is not the essential object of the rental.	to communicate the work to the public.	to sell or give on commercial rental or offer for sale or for such rental, any copy of the film.	to communicate the sound recording to the public.
To perform the work in public or communicate it to the public.		to issue copies of the work to the public not being copies already in circulation.	to communicate the film to the public.	
To make any cinematograph film or sound recording in respect of the work.		to include the work in any cinematograph film.		
to make any translation of the work.		to make any adaptation of the work.		
to make any adaptation of the work.		to do in relation to adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv)		
to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi).				

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

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

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

## NATURE OF COPYRIGHT PROTECTION

### Automatic

Copyright is an unregistered right which subsists automatically as soon as the work that is eligible for protection is created and recorded on some medium.

### Originality

The work protected need not be new. However, it must be original in the sense that it is not copied from some other source but is the result of an application of effort by the creator of the work.

### Exclusions

Copyright protects the expression of ideas but not the idea or concept underlying a piece of work. For that reason, procedures, methods of operation and mathematical concepts are excluded from copyright protection

## WORKS IN WHICH COPYRIGHT SUBSISTS

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

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

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

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

An artistic work means-

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

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

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

“Musical work” means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music. A musical work need not be written down to enjoy copyright protection.

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

“Cinematograph film” means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and “cinematograph” shall be construed as including any work produced by any process analogous to cinematography including video films.

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

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

## AUTHORSHIP AND OWNERSHIP

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

“Author” as per Section 2(d) of the Act means-

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

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

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

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

In the case of a government work, government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

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

In the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work.

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

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

According to Section 54, the expression "owner of copyright" shall include—

- a. an exclusive licensee;
- b. in the case of an anonymous or pseudonymous literary, dramatic, musical or artistic work, the publisher of the work, until the identity of the author or, in the case of an anonymous work of joint authorship, or a work of joint authorship published under names all of which are pseudonyms, the identity of any of the authors, is disclosed publicly by the author and the publisher or is otherwise establishment to the satisfaction of the Commercial Court by that author or his legal representatives.

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

In another case Allahabad high Court has held that the copyright in the question papers set for the High School and Intermediate examinations belongs to the paper-setters and since this copyright neither belonged to nor has been assigned to the Board, the notification which declares that 'copyright of the question papers set at the examinations conducted by Board shall vest in the Board' is clearly bad. Simply by issuing a notification under the Intermediate

Education Act, the State Government could not arrogate to itself or to the Board a right which neither of them possessed under the law relating to copyright, embodied in the Copyright Act of 1957 (*Agarwala Publishing House v. Board of High School and Intermediate Education & Another AIR 91: 1996 All LJ 550*).

### Term of Copyright

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

Section	Term of Copyright	Number of Years
22	Term of Copyright in Published Literary, Dramatic, Musical and Artistic Works	Published within the lifetime of the author until sixty years from the beginning of the calendar year next following the year in which the author dies.  In the case of a work of joint authorship, be construed as a reference to the author who dies last.
23	Term of Copyright in Anonymous and Pseudonymous Works	Copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published.  If identity of author disclosed before the expiry of the said period, copyright shall subsist until sixty years.
24	Term of Copyright in Posthumous Work	Copyright subsists at the date of the death of the author or, in the case of joint authorship, at or immediately before the date of the death of the author who dies last, but which, or any adaptation of which, has not been published before that date, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published or, where an adaptation of the work is published in any earlier year, from the beginning of the calendar year next following that year.  Such work shall be deemed to have been published, if it has been performed in public or if any sound recordings made in respect of the work have been sold to the public or have been offered for sale to the public.
26	Term of copyright in cinematograph films	Copyright shall subsist until sixty years, from the beginning of the calendar year next following the year in which the work is first published.
27	Term of copyright in sound recording	Copyright shall subsist until sixty years, from the beginning of the calendar year next following the year in which the work is first published.
28	Term of copyright Government works	Wherein the government is the first owner, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published.
28A	Term of copyright in works of public undertakings	If public undertaking is first owner then copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published.
29	Term of copyright in works of international organisations	If section 41 is applicable, copyright shall subsist until sixty years, from the beginning of the calendar year next following the year in which the work is first published.

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

### COPYRIGHT OFFICE

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

### ASSIGNMENT OF COPYRIGHT

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

Sections 17 and 18 of the Copyright Act, 1957 show where the copyright vests. If a work is done by an author for a consideration for a publisher, the copyright in it would normally vest in the publisher subject to any contract to the contrary, as is provided by Section 17 of the said Act. It can be legitimately said that this Section has been inserted in the Act of 1957, but the rule of law has been same even prior to this statutory provision. Secondly as provided by Section 18, the copyright could be assigned, and if it is so done it would be vested in the purchaser. (*Khemraj Shrikrishnadass v. M/s Garg & Co. and Another AIR 1975 Del130.*)

### Mode of Assignment

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

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

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

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

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

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

The assignment of the copyright in any work to make a sound recording which does not form part of any cinematograph film does not affect the right of the author of the work to claim an equal share of royalties and consideration payable for any utilization of such work in any form.

## LICENCES

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

### Licences by Owners of Copyright

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

### Compulsory Licence in Works Withheld from Public

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

### Compulsory Licence in Unpublished or Published Works

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

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

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

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

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

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

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

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

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

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

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

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

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

It may be noted that such sound recordings shall not be sold or issued in any form of packaging or with any cover or label which is likely to mislead or confuse the public as to their identity, and in particular shall not contain the name or depict in any way any performer of an earlier sound recording of the same work or any

cinematograph film in which such sound recording was incorporated and, further, shall state on the cover that it is a cover version made under this section.

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

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

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

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

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

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

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

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

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

### **Termination of Licence**

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

## **COPYRIGHT SOCIETIES**

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

A copyright society is a registered collective administration society under Section 33 of the Copyright Act, 1957. Such a society is formed by authors and other 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.

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

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

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

The business of issuing or granting license in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered under this Act. This is a kind of compulsory collective licensing for managing of performing rights. The registration granted to a copyright society shall be for a period of five years and may be renewed from time to time before the end of every five years on a request in the prescribed form and the Central Government may renew the registration after considering the report of Registrar of Copyrights on the working of the copyright society under section 36.

The renewal of the registration of a copyright society shall be subject to the continued collective control of the copyright society being shared with the authors of works in their capacity as owners of copyright or of the right to receive royalty. Every copyright society already registered before the Copyright (Amendment) Act, 2012 came into existence shall get itself registered under this Chapter within a period of one year from the date of commencement of the Copyright (Amendment) Act, 2012.

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

#### **Registered Copyright Societies in India**

The following are the registered copyright societies in India:

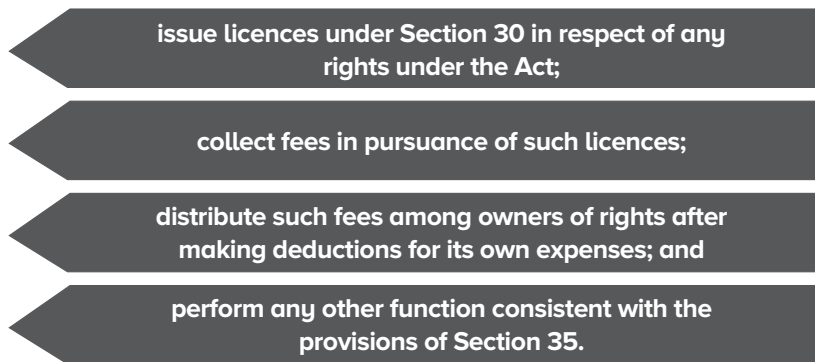
- (i) For Literary works associated with Musical Works: The Indian Performing Right Society Limited (IPRS), 208, Golden Chambers, 2nd Floor, New Andheri Link Road, Andheri (W), Mumbai-400 058 ( Website: <http://www.iprs.org/> );
- (ii) For Reprographic (photo copying) works: Indian Reprographic Rights Organization (IRRO), 18/1-C, Institutional Area, Near JNU Campus, New Delhi – 110067, (Website: <http://www.irro.in/>)
- (iii) For Performers (Singers) Rights: Indian Singers Rights Association (ISRA) – Registered on 14th June, 2013 – Registered Office-2208, Lantana, Nahar Amrit Shakti.

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

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

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

Section 34(3) empowers the Copyright Society to:



Section 35 deals with control over the society by the owner of rights and provides that every Copyright Society is subject to the collective control of the copyright owners whose rights it administers. It does not include owners of right administered by a foreign society or organisation.

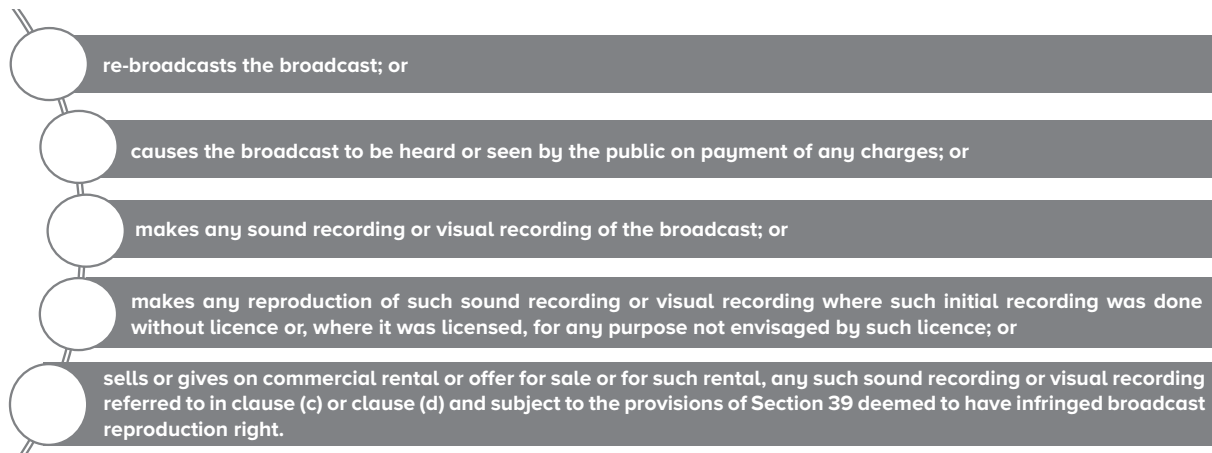
## RIGHTS OF BROADCASTING ORGANISATION AND PERFORMERS

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

### Broadcast Reproduction Right

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

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

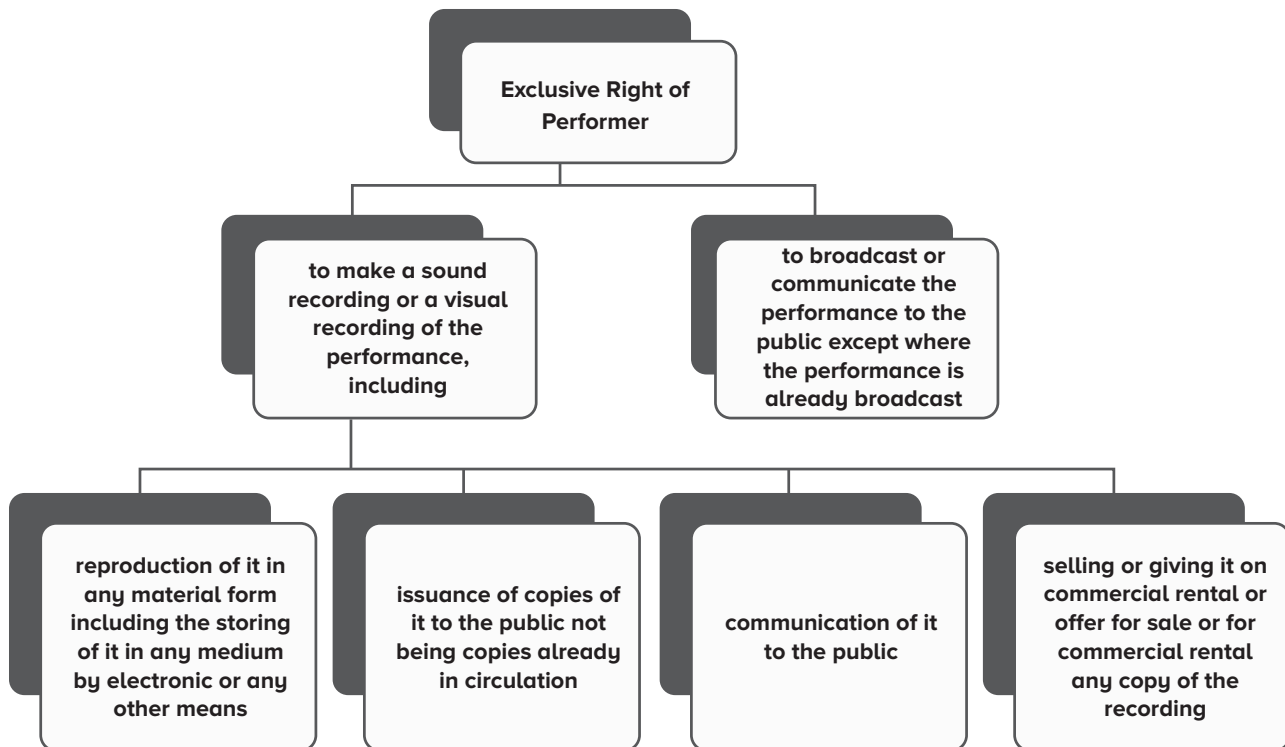


## Performer's Right

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

### Exclusive Right of Performer

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



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

### Moral Right of Performer

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

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

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

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

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

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

such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under Section 52.

## INTERNATIONAL COPYRIGHT

*Chapter XI of the Act containing Section 40-43 deals International Copyright*

### Power to extend copyright to foreign works

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

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

### Conditions of Copyright Protection

The following are the requisites for conferring copyright protection to works of international organization-

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

There should be no copyright in the work in India at the time of making or on the first publication of the work.

If the work is published in pursuance of an agreement with the author, such agreement should not reserve the author any copyright in the work or any copyright in the work should belong to the organisation.

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

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

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

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

the provisions of Chapter VIII shall apply either generally or in relation to such class or classes of broadcasts or performance or such other class or classes of cases as may be specified in the order;



the term of the rights of broadcasting organisations and performers in India shall not exceed such term as is conferred by the law of the country to which the order relates;



the enjoyment of the rights conferred by Chapter VIII shall be subject to the accomplishment of such conditions and formalities, if any, as may be specified in that order;



chapter VIII or any part thereof shall not apply to broadcast and performances made before the commencement of the order or that Chapter VIII or any part thereof shall not apply to broadcasts and performances broadcast or performed before the commencement of the order;



in case of ownership of rights of broadcasting organisations and performers, the provisions of Chapter VIII shall apply with such exceptions and modifications as the Central Government, may having regard to the law of the foreign country, consider necessary.

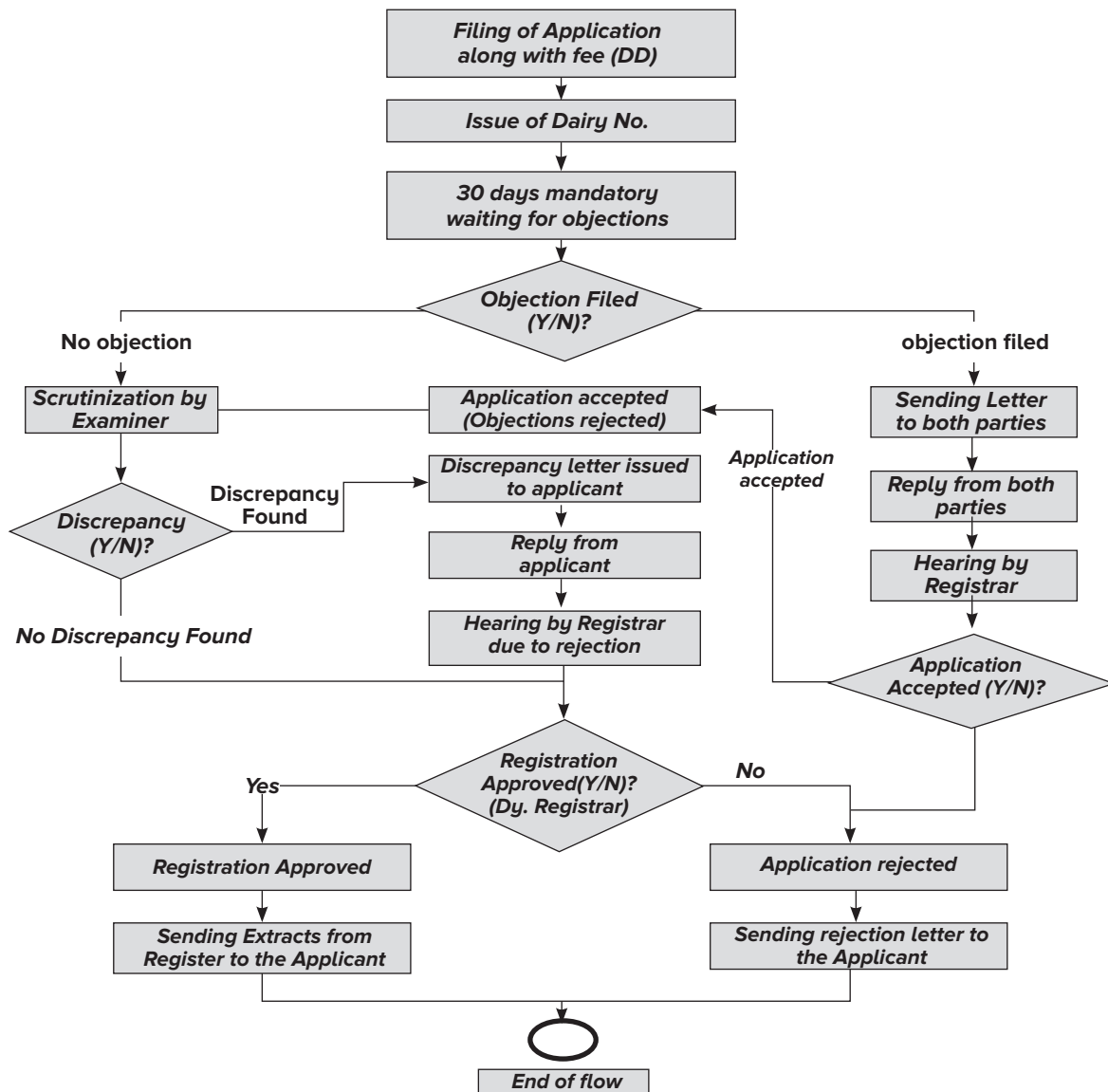
**Power to Restrict Rights of Foreign Broadcasting Organisations and Performers**

Section 42A provides that if it appears to the Central Government that a foreign country does not give or has not undertaken to give adequate protection to rights of broadcasting organisations or performers, the Central Government may, by order, published in the Official Gazette, direct that such of the provisions of this Act as confer right to broadcasting organizations or performers, as the case may be, shall not apply to broadcasting organizations or performers whereof are based or incorporated in such foreign country or are subjects or citizens of such foreign country and are not incorporated or domiciled in India, and thereupon those provisions shall not apply to such Broadcasting organizations or performers.

**REGISTRATION OF COPYRIGHT**

*Chapter X of the Act containing Sections 44 to 50A deal with various aspects of registration of copyright.*

**Copyright Registration Workflow**



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

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

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

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

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

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

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.

## JURISDICTION

Section 62 states, every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

For the purpose of sub-section (1), a district court having jurisdiction shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain

## INFRINGEMENT OF COPYRIGHT

***Chapter XI of the Act containing Sections 51 to 53A deal with infringement of copyright.***

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

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

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

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

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

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

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

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

One of the surest test to determine whether or not there has been a violation of copy right is to see if the reader, spectator, or the viewer after having read or seen both the works would be clearly of the opinion and get an unmistakable impression that the subsequent work appears to be a copy of the first. In other words, dealing with the question of infringement of copy right of the applicant's work by the respondent's work, the Court is to test on the visual appearance of the object and drawing, design, or artistic work in question and by applying the test viz., 'lay observer test' whether to persons who are not experts in relation to objects of that description, the object appears to be a reproduction. If to the 'lay observer', it would not appear to be reproduction, there is no infringement of the artistic copy right in the work. A bare look at these two artistic works 'Sharp' and 'Sharp tools'. Moreover, the work 'sharp' in the work of the appellant is embedded in a semi-circle design with rays emitting from it as if it were a rising Sun; whereas, in the respondent's work it is plainly 'Sharp Tools' with no design super imposing it. Judging by the eye alone, they appear to Court to be totally different. One does not think that anyone looking at these two works would say that they are similar in any manner nor do any one would say the design, the lay-out and the manner in which the words written in the works of the respondent was an obvious imitation, much less an imitation of the appellant's work. Applying the various tests set out above, it cannot be said that the respondent had committed an act of piracy by way of copying the copyright of the appellant. As rightly pointed out by the Copyright Board that there can be no copyright in the word or words, but the right can only be in the artistic manner in which the same is written, and in this case the works were totally dissimilar. [*Associated Electronic & Electrical Industries (Bangalore) Pvt. Ltd. v. M/s Sharp Tools AIR 1991 Kar406*].

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

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

In *Eastern Book Company & Others v. Navin J. Desai & Another 2001 PTC (21) 57 Del.*, Delhi High Court has held: Copyright is a limited monopoly having its origin in protection. There cannot be any monopoly in the subject matter which the author has borrowed from public domain. Others are at liberty to use the same material. Material in which no one has a copyright is available to all. Every man can take what is useful from the, improve, add and give to the public the whole comprising the original work with his additions and improvements. Under the guise of the copyright, the plaintiffs cannot ask the Court to restrain the defendants from making this material available to public. Judgements/orders published by the plaintiffs in their law reports 'Supreme Court Cases' is not their original literary work but has been composed of, compiled and prepared from and reproduction of the judgements of the Supreme Court of India, open to all. Merely by correcting certain typographical or grammatical mistakes in the raw source and by adding commas, full stops and by giving paragraph numbers to the judgement will not their work as the original literary work entitled to protection under the Copyright Act. Plaintiffs, therefore, have no copyright in the judgements published in their law reports. There being no copyright in the plaintiffs, there is no question of the defendant

infringing any alleged copyright. Plaintiffs have failed to make out any prima facie case in their favour and are, therefore, not entitled to any relief in the application.

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

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

### Statutory Exceptions

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

- (i) A fair dealing with literary, dramatic, musical or artistic work, not being a computer programme, for the purposes of –
  - private or personal use, including research;
  - criticism or review, whether of that work or of any other work;
  - reporting of current events and current affairs, including the reporting of a lecture delivered in public;
  - It may be noted that storing of any work in any electronic medium including the incidental storage of any computer programme which is not itself an infringing copy for the said purposes, shall not constitute infringement of copyright.
- (ii) The making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy in order to utilise the computer programme for the purposes for which it was supplied; or to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied.
- (iii) The doing of any act necessary to obtain information essential for operating inter-operability of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available.
- (iv) The observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied.
- (v) The making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use.
- (vi) The transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public.
- (vii) Transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy.

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

- (viii) The reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding.
- (ix) The reproduction or publication of any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature.
- (x) The reproduction of any work in a certified copy made or supplied in accordance with any law for the time being in force.
- (xi) The reading or recitation in public of reasonable extracts from a published literary or dramatic work.
- (xii) The publication in a collection, mainly composed of non-copyright matter, bona fide intended for instructional use, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for such use in which copyright subsists. However, not more than two such passages from works by the same author are published by the same publisher during any period of five years.

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

- (xiii) The reproduction of a literary, dramatic, musical or artistic work –
  - by a teacher or a pupil in the course of instruction; or
  - as part of the questions to be answered in an examination; or
  - in answers to such questions.
- (xiv) The performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a sound recording if the audience is limited to such staff and students, the parents and guardians of the students and persons connected with the activities of the institution or the communication to such an audience of a cinematograph film or sound recording.
- (xv) The causing of a recording to be heard in public by utilising it,-
  - in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein; or
  - as part of the activities of a club or similar organisation which is not established or conducted for profit; or
  - as part of the activities of a club, society or other organisation which is not established or conducted for profit.
- (xvi) The performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution.
- (xvii) The reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction.

- (xviii) The storing of a work in any medium by electronic means by a noncommercial public library, for preservation if the library already possesses a non-digital copy of the work.
- (xix) The making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a non-commercial public library for the use of the library if such book is not available for sale in India.
- (xx) The reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access.

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

- (xxi) The reproduction or publication of-
  - any matter which has been published in any Official Gazette except an Act of a Legislature;
  - any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter;
  - the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government;
  - any judgement or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the court, the tribunal or other judicial authority, as the case maybe.
- (xxii) the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made thereunder-
  - if no translation of such Act or rules or orders in that language has previously been produced or published by the Government; or
  - where a translation of such Act or rules or orders in that language has been produced or published by the Government, if the translation is not available for sale to the public:
 

however, such translation contains a statement at a prominent place to the effect that the translation has not been authorised or accepted as authentic by the Government.
- (xxiii) the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture.
- (xxiv) the making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work failing under sub-clause (iii) of clause (c) of Section 2, if such work is permanently situate in a public place or any premises to which the public has access.
- (xxv) the inclusion in a cinematograph film of-
  - any artistic work permanently situate in a public place or any premises to which the public has access; or
  - any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film.

- (xxvi) the use by the author of an artistic work, where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the work. However, he does not thereby repeat or imitate the main design of the work.
- (xxvii) the making of a three-dimensional object from a two-dimensional artistic work, such as a technical drawing, for the purposes of industrial application of any purely functional part of a useful device.
- (xxviii) the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed . However, the original construction was made with the consent or licence of the owner of the copyright in such drawings and plans.
- (xxix) in relation to a literary, “dramatic, artistic or” musical work recorded or reproduced in any cinematograph film the exhibition of such film after the expiration of the term of copyright therein. However, the provisions of sub-clause (ii) of clause (a), sub-clause (a) of clause (b) and clauses (d), (f), (g), (m) and (p) shall not apply as respects any act unless that act is accompanied by an acknowledgment-
  - identifying the work by its title or other description; and
  - unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.
- (xxx) the making of an ephemeral recording, by a broadcasting organisation using its own facilities for its own broadcast by a broadcasting organisation of a work which it has the right to broadcast; and the retention of such recording for archival purposes on the ground of its exceptional documentary character.
- (xxxi) the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority. However, religious ceremony including a marriage procession and other social festivities associated with a marriage.
- (xxxii) the adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format by any person to facilitate persons with disability to access to works including sharing with any person with disability of such accessible format for private or personal use, educational purpose or research; or any organisation working for the benefit of the persons with disabilities in case the normal format prevents the enjoyment of such works by such persons. However, the copies of the works in such accessible format are made available to the persons with disabilities on a non-profit basis but to recover only the cost of production and the organization shall ensure that the copies of works in such accessible format are used only by persons with disabilities and takes reasonable steps to prevent its entry into ordinary channels of business.
 

It may be noted that “any organization” includes and organization registered under Section 12A of the Income-tax Act, 1961 and working for the benefit of persons with disability or recognized under Chapter X of the Persons with Disabilities (Equal Opportunities, Protection or Rights and full Participation) Act, 1995 or receiving grants from the government for facilitating access to persons with disabilities or an educational institution or library or archives recognized by the Government.”
- (xxxiii) the importation of copies of any literary or artistic work, such as labels, company logos or promotional or explanatory material, that is purely incidental to other goods or products being imported lawfully.

### Resale share right in original copies

According to Section 53A, in the case of resale for a price exceeding ten thousand rupees, of the original copy of a painting, sculpture or drawing, or of the original manuscript of a literary or dramatic work or musical work, the author of such work if he was the first owner of rights under section 17 or his legal heirs shall, notwithstanding any assignment of copyright in such work, have a right to share in the resale price of such original copy or manuscript in accordance with the provisions of this section:

Provided that such right shall cease to exist on the expiration of the term of copyright in the work.

The share referred to in sub-section (1) shall be such as the Commercial Court may fix.

Provided that the Commercial Court may fix different shares for different classes of work:

Provided further that in no case shall the share exceed ten percent, of the resale price.

If any dispute arises regarding the right conferred by this section, it shall be referred to the Commercial Court whose decision shall be final.

## REMEDIES AGAINST INFRINGEMENT OF COPYRIGHT

*Chapter XII from Section 54 – 62 deals with civil remedies against infringement of copyright.*

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

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

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

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

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

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

Criminal remedies provide for the imprisonment of the accused or imposition of fine or both, seizure of infringing Copies and delivery of infringing copies to the owner of the copyright. Prior to the maximum punishment for infringement of copyright under Section 63 of the Copyright Act, 1957 was one year's imprisonment and fine. These punishments were enhanced by the Copyright (Amendment) Act, 1984 with a view to curbing widespread piracy in video-taping and musical records. Under these provisions, a person who knowingly infringes or abets the infringement of copyright in a work or any other right conferred by the Copyright Act, is punishable with imprisonment for a term of not less than six months but which may extend to three years

and fine which shall not be less than ₹ 50,000/-, but which may extend to ₹ 2,00,000/-. However, the court has the discretion to reduce the minimum term of imprisonment and the minimum fine for adequate and special reasons. For the second and subsequent convictions, the minimum term of imprisonment has been prescribed as one year and the minimum fine ₹ 1,00,000/-. The amendment in 1994, has further restricted the discretion of the court to impose lesser penalties than the minimum prescribed in the Act. The imposition of lesser penalties than the minimum prescribed in the Act has been restricted to cases where the infringement has not been made for gain in the course of trade and business. In other words, courts have been given discretion to impose a lesser penalty where the infringement is of a technical nature and not motivated by business considerations.

Section 58 entitles the owner of the copyright to initiate proceedings for the possession of infringing copies and other materials related thereto. In this context, the section clarifies that all infringing copies of any work in which copyright subsists and all plates used or intended to be used for the production of such infringing copies shall be deemed to be the property of the owner of the copyright.

***Eastern Book Company & Ors. vs . D.B. Modak & Anr. Appeal (civil) 6472 of 2004, D/12/12/2007 (AIR 2008 Supreme Court 809, 810)***

The judicial pronouncements of the Apex Court would be in the public domain and its reproduction or publication would not infringe the copyright. That being the position, the copy-edited judgments would not satisfy the copyright merely by establishing amount of skill, labour and capital put in the inputs of the copy- edited judgments and the original or innovative thoughts for the creativity are completely excluded. Accordingly, original or innovative thoughts are necessary to establish copyright in the authors work. The principle where there is common source the person relying on it must prove that he actually went to the common source from where he borrowed the material, employing his own skill, labour and brain and he did not copy, would not apply to the judgments of the courts because there is no copyright in the judgments of the court, unless so made by the court itself. To secure a copyright for the judgments delivered by the court, it is necessary that the labour, skill and capital invested should be sufficient to communicate or impart to the judgment printed in SCC some quality or character which the original judgment does not possess and which differentiates the original judgment from the printed one. The Copyright Act is not concerned with the original idea but with the expression of thought. Copyright has nothing to do with originality or literary merit. Copyrighted material is that what is created by the author by his own skill, labour and investment of capital, maybe it is a derivative work which gives a flavour of creativity. The copyright work which comes into being should be original in the sense that by virtue of selection, co-ordination or arrangement of pre-existing data contained in the work, a work somewhat different in character is produced by the author. To claim copyright in a compilation, the author must produce the material with exercise of his skill and judgment which may not be creativity in the sense that it is novel or non-obvious, but at the same time it is not a product of merely labour and capital. The derivative work produced by the author must have some distinguishable features and flavour to raw text of the judgments delivered by the court. The trivial variation or inputs put in the judgment would not satisfy the test of copyright of an author.

Adding, in the copy-edited version the cross-citations to the citation(s) already given in the original text; adding names of cases and cross-citations where only the citation of the case is given; adding citation and cross- citations where only name of the case is given; inserting citation in case history where only the title and year of the impugned/earlier order is given; presenting in their own style the cases when they are cited repeated in the judgment; providing precise references to the quoted matter in the judgment by giving exact page and paragraph number as in the original case source/treatise/reference material; adding margin headings to quoted extracts from statutes/rules, etc., when they are missing from the original text of the judgment; adding the number of the Section/Rule/Article/paragraph to the extract quoted in the original text; adding the names of Judges on whose behalf opinion given ; adding ellipsis “. ” to indicate breaks in quoted extract; supplying the matter inadvertently missed in quoted extracts in the original text of the judgment; changing the text as per corrigenda issued, etc. etc., does not give the Law Journal copyright in the copy-edited judgement.

***Win Medicare Pvt Ltd. vs. K. Pharmaceutical Works 126 (2006) DLT 651 Badar Durrez Ahmed, J.*****Facts:**

Plaintiff is the manufacturer of BETADINE and also the owner of the design of the bottle and the labels. Defendant also manufactured similar product and marketed the same. The shape of the bottle and the artwork, color combination of the labels etc., were identical with that of the plaintiff. Plaintiff sued for infringement and consequent damages.

**Decision:** Suit decreed.

**Reason:**

A comparison of the bottles, of the plaintiff and defendant, clearly shows that the defendant substantially copied the bottle of the plaintiff. Thereby the defendant has adopted an identical and/or substantially similar getup, layout and color combination on its "Povidone Iodine Solution" bottle labels which would amount to the infringement of the copyright which vests with the plaintiff in the said label. In these circumstances, the act and conduct of the defendant would amount to passing off and, therefore, the suit is decreed.

***Expar S A & Anr vs. Upharma Laoratorie Ltd. & Anr. [JT 2004 9 (3) 1 SC] Ruma Paul & P. Venkatrama Reddi, JJ. [Decided on 20.02.2004]*****Facts:**

The appellants filed a suit for infringement of copyrights, in respect of their medicinal product 'Maloxine', against the respondents in the Delhi High Court and sought injunction against them. The Single Judge of the Court granted an interim injunction against which both the appellants as well as the respondents went in appeal to the Division Bench. The Division Bench allowed the appeal of the respondents and directed the appellants suit to be returned to them for filing before the appropriate court. Against this order of the Division bench the appellants moved the Supreme Court raising an issue whether the High court of Delhi has the jurisdiction under section 69(2) of the Copyrights Act to entertain the suit filed by the appellants.

**Decision:** Appeal Allowed.

**Reason:**

The object and reason for the introduction of subsection (2) of section 62 was not to restrict the owners of the copyright to exercise their rights but to remove any impediment from their doing so. Section 62(2) cannot be read as limiting the jurisdiction of the district court only to cases where the person instituting the suit or other proceeding, or where there are more than one such persons, any of them actually and voluntarily resides or carries on business or presently works for gain. It prescribes an additional ground for attracting the jurisdiction of a court over and above the 'normal' grounds as laid down in section 20 of the Code. Even if the jurisdiction of the court were restricted in the manner construed by the Division Bench, it is evident not only from the cause title but also from the body of the plaint that the Appellant No.2 carries on business within the jurisdiction of the Delhi High Court. The appellant no.2 is certainly "a person instituting the suit". The Division Bench went beyond the express words of the statute and negated the jurisdiction of the Court because it found that the appellant no.2 had not claimed ownership of the copyright of the trademark infringement of which was claimed in the suit. The appellant no.2 may not be entitled to the relief claimed in the suit but that is no reason for holding that it was not a person who had instituted the suit within the meaning of section 62(2) of the Act.

Service of a mere notice may not be sufficient to found jurisdiction unless such notice formed an integral part of the cause of action. But a 'cease and desist' notice in a copyright action cannot, particularly in view of section 60 of the Act, be termed to be a 'mere' notice. Such a threat may give rise to the right to institute a suit to counter such threat and to ask for relief on the ground that the alleged infringement to which the threat related was not in fact an infringement of any legal right of the person making such threat.

The impugned decision is accordingly set aside and the matter is remanded to the Division Bench for disposal of the appeals filed by the respondents and appellants on merits.

### Moral Rights – Author’s Special Right

Apart from remedies for infringement of copyright, the Act expressly provides for the protection of special rights of the author known as moral rights. Under Section 57 of the Act an author of copyright work can restrain or claim damages in respect of any distortion or mutilation of the work or any other action in relation to the said work which would be prejudicial to his honour or reputation. These rights can be exercised even after the assignment of the copyright. They can be enforced by an action for breach of contract or confidence, a suit for defamation, or passing off, as the case maybe.

### Anton Piller Injunctive Relief in India

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

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

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

The orders in line of Anton Piller order are made under the head of civil remedies. The application of Anton Piller order in India is still in a nascent stage. There is not much case-laws debating over the aspects of Anton Piller order. One of the earliest case that dealt with the concept of Anton Piller order, though cursorily was *National Garments v. National Apparels, (1990) PTC 98*.

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

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

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

### JOHN DOE ORDER

The Indian Courts have not lagged behind in issuing such rulings, and actions have been taken in matters involving secret information, trademark infringement, copyright infringement, and invasion of privacy. The Indian judiciary has taken efforts in the right direction to advance this trend and acknowledge the necessity of such orders to offer relief to victims/parties. To safeguard the plaintiff’s rights and avert any harm, Indian courts have traditionally granted interim orders pursuant to Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (“CPC”). Such temporary orders are also permitted by the laws, such as the Trademarks Act of 1999 and the Geographical Indication of Products Act of 1999.

The common law notion of John Doe/Jane Doe orders, known as Ashok Kumar orders in India, may be able to help in these specific cases when interim instructions are given since enough damage has already been done.

The Anton Piller order has also been passed by the Indian courts, highlighting the importance of the plaintiff’s full and honest disclosure as well as the appointment of Special Officers by the Court within 14 days to provide

report on the alleged illegal sale, marketing, and distribution of the plaintiff's drawings, designs, and get-up. Nonetheless, Justice Ganguly found that the Anton Piller Order is primarily employed for evidence preservation, despite the fact that the fundamental principles for making such orders have been taken from other jurisdictions.

***Taj Television Ltd. & Anr. vs. Rajan Mandal & Ors. [(2003) F.S.R. 22]***

**Facts:**

The first plaintiff recently launched a new 24 hour exclusive sports channel "Ten Sports". Owing to its exclusive sports content broadcast in a very entertaining manner, Ten Sports has become a much sought after channel within just a few months of its coming into operation. The channel has bagged rights to some of the major sporting events. The plaintiff in order to market its channel in India entered into distribution arrangement with the second plaintiff. The second plaintiff in turn through its division Cable Division Network ("CDN") enters into agreements with cable operators in India. By virtue of this agreement, cable operators are granted a licence to transmit the Ten Sports channel to a specified number of subscribers within a specified area. Ten Sports has exclusive broadcast rights to telecast the World Cup Football matches in India. The first plaintiff is, therefore, the owner of the broadcast reproduction right as provided under s.37 of the Copyright Act, 1957. It was submitted that the plaintiffs have begun to identify a variety of cable operators/parties/networks who are unauthorizedly transmitting their Ten Sports channel and reaping huge dividends. This has not only caused the plaintiffs loss of revenues in terms of licence fees, but has also impacted their relationship with existing licensees who now do not see the need for paying license fees when they could very well unauthorizedly transmit the signal.

**Held:**

Court held that, "plaintiffs, has made references to a large number of Canadian, Australian, English and American cases but I would not like to burden this order with all the judgments on which reliance has been placed at this stage. Since "John Doe" orders are passed in the court of Canada, America, England, Australia and in some other countries. The judicial systems of all these countries have basic similarity with our judicial system. Therefore, looking to the extra ordinary facts and circumstances of the case, in the interest of justice the courts in India would also be justified in passing "John Doe" orders.

Undoubtedly the cable operators in India have a long history of violating copyrights. A very large number of court orders are testimony to this. The cable operators are encouraged owing to the unique nature of cable piracy and the unstructured nature of the cable industry, the speed with which any trace of infringement can be erased by the cable operators, enforcement of rights in conservative nature is unlikely to effectively redress the plaintiffs' grievance. At the same time, I am of the opinion that though the court is not powerless to pass John Doe orders in India but in the facts and circumstances of this case the directions given in succeeding paragraphs may protect the interests of the plaintiffs and meet the ends of justice.

On consideration of the totality of facts and circumstances it has become imperative to appoint a Court Commissioner to carry out directions of this case. He is authorised to search the premises of the first to sixth defendants and make an inventory and take into custody all such equipment/wires which is or could be used for the broadcast of the plaintiff's channel. The Court Commissioner may take assistance of technical experts and police officials in carrying out the orders of this court. The SHO of the concerned police stations are directed to render.

He is further authorised to enter the premises of other cable operators and collect necessary evidence by taking photographs and video films who are responsible for broadcasting of the plaintiffs' channel in a clandestine manner and submit a report to this court within three weeks. The court on the basis of the report of the Court Commissioner would consider issuing notices to all alleged violators of the orders of the court. The court after hearing may consider taking appropriate actions both "civil and criminal" against them in accordance with law."

***ESPN Software India Private Ltd. vs. Tudu Enterprise and Ors. (18.02.2011 - DELHC) : (CS/OS/384/2011)***

**Facts:**

The case of the Plaintiff is that it has the exclusive rights for India and other territories for telecast of the ICC Cricket World Cup 2011, cricket matches being played in India, Sri Lanka and Bangladesh. The Plaintiff obtained these exclusive rights from the International Cricket Council (ICC).

The Plaintiff is claiming to be the sole and exclusive distributor of three pay channels, namely, ESPN, STAR Sports and STAR cricket Channels in India (“the Channel(s)”) having obtained the exclusive right from ESPN STAR Sports (“ESS”) the Defendant No. 174 herein, who in turn obtained the same from ESPN (Mauritius) Limited (EML). EML has obtained from ICC Development (International) Limited (ICC) the exclusive right to televise in India till the year 2015 all ICC events including the said ICC Cricket World Cup 2011, being fifty overs International cricket matches, being played in India, Sri Lanka and Bangladesh from February 19, 2011 to April 2, 2011. The Plaintiff also has the exclusive right to televise in India various other international live sporting events including the French Open, Wimbledon, Confederation Cup, FI, Moto GP, various Golfing events, the Olympics events.

It is stated that the said ICC Cricket World Cup 2011 matches are to be televised on STAR Cricket, ESPN and STAR Sports. Approximately 6500 Cable Operators/Multi System Operators across India are claimed to have entered into contracts with the Plaintiff for the right to access the channels of the Plaintiff. Pursuant to these contracts, the Local Cable Operators (LCO’s) and Multi Systems Operators (MSO’s) are granted a license to transmit the channels of the Plaintiff depending upon their respective subscriber base.

The Defendants are Multi Systems Operator (MSO) and /or Local Cable Operators (LCOs) having their respective Head end(s)/cable network(s) in the cities as set out in the cause title. These Defendants have been unauthorisedly and without entering into contracts either with the distributor of the Plaintiff or with the Plaintiff itself are transmitting over their respective cable networks the channels of the Plaintiff and showing the events to their subscribers on payment and thereby, violating the Plaintiff’s broadcast reproducing right granted under the Copyright Act, 1957. The actions of the Defendants in distributing the Plaintiff’s signals to other cable operators and cable homes without any license in this regard from the Plaintiff are unlawful and violative of the Plaintiff’s broadcast reproduction right.

**Issue:**

Whether defendant’s act of unauthorized broadcasting amounts to infringement?

**Held:**

Delhi High Court held that –

"The Plaintiff has asserted violation of its rights and violations of the Copyright Act, 1957, the Cable Network (Regulation) Act, 1995 before this Court. It is urged that unauthorized cable transmission of the Plaintiff’s channel shall result in irreparable loss and damage to the Plaintiff including subscription loss as well as advertisement revenues in addition, it would encourage other cable operators who have currently procured licenses from the Plaintiff and possessed valid licenses to also transmit unauthorized signals without making necessary payments. It would appear that public interest would also suffered on account of poor programme quality. There is prima facie substance in the Plaintiff’s contention that the same would impact the Plaintiffs reputation as well. In support of the grievance that the damage would be irreparable, it is pointed out that the cable industry has an unstructured compensation and it would be impossible to assess the damages which may result on account of unauthorized telecast/broadcast/distribution.

The material placed before this Court would show that the Plaintiff’s channels are paid channels not meant to be viewed by persons who are not subscribers through authorized cable operators. Only authorized licenses can use/distribute the encrypted channels. The licensed cable operators use a decoder or a decryption device which have unique numbers given by the Plaintiff to its licensed cable operators. Unauthorised cable operators indulge in illegal capturing of sports signals of the Plaintiff which are the illegally transmitted. Such illegally and unauthorisedly captured signals are then distributed to through their respective network surreptitiously to cable homes attached to them.

There is therefore substance that unlicensed broadcast of the reproduction rights vested in the Plaintiff by operating signals, transmit to India in the foregoing manner is illegal, unfair and deserves to be prohibited.

The Plaintiff has specifically averred that the Defendants in the suit have not signed any licensed agreement and/or direct that the Plaintiff’s distributors and as such are not authorized to distribute the channels over their cable operators. As such transmission of these channels is violative of Section 37(3) of the Copyright Act.

Grave and irreparable loss and damage would ensure to the Plaintiff in case interim protection is not granted. Balance of convenience and interest of justice are in favour of the Plaintiff and against the Defendants."

## APPEALS

*Chapter XIV covers Section 71-73 dealing with Appeals.*

### Appeals against certain orders of Magistrate

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

### Appeals against orders of Registrar of Copyrights

Any person aggrieved by any final decision or order of the Registrar of Copyrights may, within three months from the date of the order or decision, appeal to the High Court.

Every such appeal shall be heard by a single Judge of the High Court:

Provided that any such Judge may, if he so thinks fit, refer the appeal at any stage of the proceeding to a Bench of the High Court.

Where an appeal is heard by a single Judge, a further appeal shall lie to a Bench of the High Court within three months from the date of decision or order of the single Judge.

In calculating the period of three months provided for an appeal under this section, the time taken in granting a certified copy of the order or record of the decision appealed against shall be excluded. (Section 72)

## NEIGHBOURING RIGHTS

Traditionally, neighboring rights have been granted to three categories of beneficiaries: performers, producers of phonograms and broadcasting organizations. The rights of performers are recognized because their creative intervention is necessary to give life, for example, to musical works, dramatic and choreographic works, and motion pictures, and because they have a justifiable interest in legal protection of their individual interpretations. The rights of producers of phonograms are recognized because their creative, financial and organizational resources are necessary to make recorded sound available to the public in the form of commercial phonograms, and because of their legitimate interest in having the legal resources necessary to take action against unauthorized uses, whether it be through the making and distribution of unauthorized copies (piracy) or in the form of unauthorized broadcasting or communication to the public of their phonograms. Likewise, the rights of broadcasting organizations are recognized because of their role in making works available to the public, and in light of their justified interest in controlling the transmission and retransmission of their broadcasts.

The first organized international response to the need for legal protection of the three categories of neighboring rights beneficiaries was the conclusion, in 1961, of the Rome Convention, or more specifically, the "International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations." Unlike most international conventions, which follow in the wake of national legislation and are intended to synthesize existing laws, the Rome Convention was an attempt to establish international regulations in a new field where few national laws existed at the time. This meant that most States would have to draft and enact laws before adhering to the Convention. Since the adoption of the Convention in 1961, a large number of States have legislated in matters related to the Convention, and a number of others are considering such legislation; indeed, the laws of many such States exceed the minimum levels of protection established by the Convention. While there is a widespread view that it is out-of-date and in need of revision or replacement by a new set of international norms in the field of neighboring rights, the Rome Convention remains the international benchmark for protection in this field: for example, the European Union has required that all its Member States adhere to the

Convention, and it was the basis for inclusion of provisions on the rights of performers, producers of phonograms and broadcasting organizations in the TRIPS Agreement (even though the levels of protection are not the same).

The rights granted to the three beneficiaries of neighboring rights in national laws are as follows, although not all rights may be granted in the same law.

- Performers are provided the rights to prevent fixation (recording), broadcasting and communication to the public of their live performances without their consent, and the right to prevent reproduction of fixations of their performances under certain circumstances; the rights in respect of broadcasting and communication to the public may be in the form of equitable remuneration rather than a right to prevent. Due to the personal nature of their creations, some national laws also grant performers moral rights, which may be exercised to prevent unauthorized uses of their name and image, or modifications to their performances which present them in an unfavorable light.
- Producers of phonograms are granted the rights to authorize or prohibit reproduction, importation and distribution of their phonograms and copies thereof, and the right to equitable remuneration for broadcasting and communication to the public of phonograms.
- Broadcasting organizations are provided the rights to authorize or prohibit rebroadcasting, fixation and reproduction of their broadcasts. Under some laws, additional rights are granted: for example, in the countries of the European Union, producers of phonograms and performers are granted a right of rental in respect of phonograms (and, in respect of performers, audiovisual works), and some countries grant specific rights over cable transmissions. Under the TRIPS Agreement, likewise, producers of phonograms (as well as any other right holders in phonograms under national law) are granted a right of rental.

In the TRIPS Agreement, the expression “related rights” is used to refer to the same rights. The purpose of neighboring or related rights is to protect the legal interests of certain persons and legal entities who either contribute to making works available to the public or produce subject matter which, will not qualifying as “works” under the copyright systems of all countries, express creativity or technical and organizational skill sufficient to justify recognition of a copyright-like property right.

### **COPYRIGHT PERTAINING TO SOFTWARE**

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

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

The philosophical justification for including computer programmes within the definition of “literary work” has been that computer programmes are also products of intellectual skill like any other literary work. Developing a computer programme is an activity which is comparable to the writing of a novel or other literary work excepting

that the “language” used as well as its uses are of a very different kind. Though a software can be written by individual programmer, most of the major software’s are the outcome of group efforts, where medium to large sized teams spend months or even years to write a programme.

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

A copyright is created for each addition or modification to the source code that exhibits sufficient originality, just as one was created when the first lines of source code were produced by the programmer. As a result, a computer programme is typically covered by a number of copyrights, beginning with the one that applies when it is originally developed and continuing through the final update.

### Infringements relating to Copyright vested in Softwares

1. **Software Piracy-** Software piracy is the act of using, sharing, or reproducing a software product without the express consent of its creator. Software piracy is theft, the taking of another person’s original concept and work.
2. **Software Counterfeiting-** The unlicensed and unauthorized copying and sale of software in a configuration that is almost identical to the original product.
3. **End User Piracy-** End users (including residential and business users) who are running unlicensed software on their computers or who have installed more copies of the programme than what is allowed by their licence agreements, such as a business with one licence who has five PCs running the software. Under-licensing is a type of end user piracy that the Business Software Alliance takes very seriously (BSA).
4. **Pirated Hard Disk-** Before selling a PC, computer sellers pre-install illicit copies of software. Some vendors install a single lawfully obtained copy on numerous machines. Normally, these computers are offered for sale without any kind of licence information or discs.
5. **Internet Piracy-** Software is made available for download on the Internet by third parties, either for free or at a cost. Pirates frequently utilise the Internet for advertising purposes to entice customers.

### ***Tata Consultancy Service vs. State of Andhra Pradesh 2006 (33) PTC 652 (SC)***

#### **Facts:**

The appellants, Tata Consultancy Services, provide consulting services, including computer consulting services. They sell off-the-shelf software packages for computers, also known as “packaged software.” Uncanned software, on the other hand, is custom-made software that is directly installed on customers’ computers. Canned software is software that a person may go to a shop and just buy off the shelf. The people who created the canned software are its true owners. According to Tata Consultancy, they are the licensees with this authority to sublicense it to others.

According to the Act, the Commercial Tax Officer in Hyderabad issued a provisional order of assessment declaring the software to be “goods.” Additionally, the Appellate Deputy Commissioner of Commercial Tax determined that software qualified as a good for sales tax assessment under the Act. The Sales Tax Appellate Tribunal rejected the appellant’s preferred appeal. Tata Consultancy, upset by the Tribunal’s decision, filed a

Tax Revision appeal with the Andhra Pradesh High Court, but it was also denied. The Appellant filed a Supreme Court appeal in opposition to this High Court order.

The Tata consultancy's major argument was that, according to Section 2(h) of the Act, the phrase "goods" exclusively refers to movable tangible property and not intangible property. It was made clear that, in contrast to conventional goods, software cannot be sold again and that a buyer does not automatically become the software's sole proprietor.

Computer programmes are considered "literary works" under the criteria provided in the Copyright Act of 1957 and are therefore considered to be intellectual property. It was stated that the customer only receives a set of commands when he buys software, not the finished result. Also, a number of international court cases were used to support the claim that software is an intangible asset.

The defendant argued that when one buys a copy of a book or a song that is protected by copyright from a record shop, what they actually get is just a copy of the item in question and not the original work. It was further contended that Article 366 (12) of the Indian Constitution expresses the phrase "products" to cover all tangible goods, including intangible property. The fact that the criteria for tax collection does not depend on whether the commodities are tangible or intangible was also welcomed.

**Issue:**

Whether an intellectual property contained in floppies, disks or CD-ROMs would be 'goods' within the meaning of Andhra Pradesh General Sales Tax Act, 1957?

**Held:**

The Apex Court stated that-

"A 'goods' may be a tangible property or an intangible one. It would become goods provided it has the attributes thereof having regard to (a) its utility; (b) capable of being bought and sold; and (c) capable of transmitted, transferred, delivered, stored and possessed. If a software whether customized or non-customized satisfies these attributes, the same would be goods.

A software may be intellectual property but such personal intellectual property contained in a medium is bought and sold. It is an article of value. It is sold in various forms like floppies, disks, CD-ROMs, punch cards, magnetic tapes, etc. Each one of the mediums in which the intellectual property is contained is a marketable commodity. They are visible to senses. They may be a medium through which the intellectual property is transferred but for the purpose of determining the question as regard leviability of the tax under a fiscal statute, it may not make a difference. A programme containing instructions in computer language is subject matter of a licence. It has its value to the buyer. It is useful to the person who intends to use the hardware, viz., the computer in an effective manner so as to enable him to obtain the desired results. It indisputably becomes an object of trade and commerce. These mediums containing the intellectual property are not only easily available in the market for a price but are circulated as a commodity in the market. Only because an instruction manual designed to instruct use and installation of the supplier programme is supplied with the software, the same would not necessarily mean that it would cease to be a 'goods'. Such instructions contained in the manual are supplied with several other goods including electronic ones. What is essential for an article to become goods is its marketability.

The Court ruled that even if ownership of the programme may remain with the creator, a computer programme may contain a set of instructions that allow the computer to carry out a certain task. The instant copies are produced and sold is when it transforms into a product. Even intellectual property turns become merchandise when it is published on media. The selling of a computer software on a CD or floppy disc is treated the same way by the court as the sale of music on a CD or cassette. The software and medium cannot be separated because the consumer does not pay for the disc or CD.

The Indian courts have established standards for identifying what constitutes "goods." Their tangibility does not matter. Therefore, Software falls under the category of goods."

**CASE LAWS*****Novex Communications Pvt Ltd. vs. Trade Wings Hotels Limited COMMERCIAL IP SUIT NO. 264 OF 2022*****Facts:**

In the above suits Novex Communications Pvt. Ltd and Phonographic Performance Ltd. (for short “Novex and PPL”) respectively are the Plaintiffs. Identical relief has been sought in the above suits namely a perpetual injunction restraining the Defendant from publicly performing or in any manner communicating the sound recordings of the songs assigned and authorized to PPL and Novex respectively without obtaining licences from PPL and Novex.

PPL and Novex are the sole licensees of these titles for on-ground performance rights, having purchased music assignments from producers such as Tips, T-Series, Eros, and others.

A preliminary issue has been raised by the Defendants in the above suits namely that Novex and PPL cannot carry on the business of issuing licenses without being registered as a Copyright Society under Section 33(1) of the Copyright Act, 1957 (“the Act”) and thus, the Suit as filed will not entitle PPL and Novex to any kind of relief.

**Issues:**

Whether PPL and Novex in the above suits are entitled to seek reliefs as sought for in the plaint without being registered as a Copyright Society under Section 33 (1) of the Act.

**Held:**

Court stated that-

Owner’s right under Section 30 cannot be curtailed by Section 33 (1) of the Act. He has submitted that Defendants have alleged that “no person” in Section 33(1) includes an “owner” of copyright and therefore even an owner of copyright cannot commence or carry on the business of granting copyright licenses. He has submitted that such an interpretation is ex facie incorrect because:

- i. If the interpretation as sought to be canvassed by the Defendant is accepted, then Section 33(1) completely takes away the right granted by Section 30 of the Act. In such a case, Section 33(1) would effectively emasculate Section 30;
- ii. Further, if Defendant’s interpretation is accepted then a section in a chapter dealing with copyright societies would completely subordinate and emasculate the right of an owner under Section 30, a section which falls in a different Chapter dealing with licensing. If Parliament had intended to take away any part of the owner’s right under Section 30 (even by subjecting it to the compulsory agency of a registered copyright society) then an express amendment to Section 30 would have been essential.

Section 34(1)(b) of the Act contemplates that an author or other owner will have the right to withdraw authorization given to the copyright society. This shows that an author or other owner does not have to carry out the business of licensing his works only through a copyright society. Since, once an owner withdraws its authorization from a copyright society, the owner can independently exercise his rights as he deems appropriate. It could never have been the intention of the legislature that once an author withdraws the authorization from a copyright society then that work cannot be licensed by anyone especially an owner. Such an interpretation would undermine the public interest in making available the copyrighted work to members of the public. In any event the provisions of Section 31, 31A-D would continue to operate to bind all owners to grant compulsory and statutory licenses even after withdrawal of authorization under Section 34(1)(b).

Court relied on “Entertainment Network India Ltd. v. Super Cassette Industries Ltd” wherein the Supreme Court has held that Chapter VII was incorporated into the Act so as to enable an author to commercially exploit his intellectual property through a Copyright Society. The Supreme Court holds that as per the Section 34 of the Act, a Copyright Society is a virtual agent authorized to act on behalf of the owner. The Supreme Court

has noted that the provisions of Chapter VII of the Copyright Act serve the dual objective of having copyright societies, i.e., to maintain a balance between the protection of owners' rights and interest of the public to have access to the works.

Court also stated that that the Defendants have contended that "business" must be given the widest possible meaning and as such anything that is "business", including the grant of licenses by the owner is covered by Section 33 (1). The wider the interpretation of the term "business", the greater the intrusion on the right available to the owner under Section 30. If business is interpreted as put forth by the Defendants, then in that case, 99% of the ownership rights would be taken away and the only right left with the owners would be to license its rights for philanthropy.

Therefore, the Court held that a partial assignment created as in the present case in favour of PPL and Novex i.e. to communicate sound recording to the public, to the extent of the right so created, the assignee is an 'owner' of the copyright in the work.

***Universal City Studios LLC. and Ors. vs Dotmovies.Baby and Ors, CS(COMM) 514/2023 and I.A. 14120/2023, 14122/2023, Delhi High Court dated 9th August 2023***

**Brief Facts:**

The Plaintiffs are well-established Hollywood Studios engaged in the production, distribution of a large volume of original creative content including cinematograph films, TV series, motion pictures, etc. (hereinafter 'content'). The Plaintiffs are as follows: Universal City Studios LLC., Warner Bros. Entertainment Inc., Columbia Pictures Industries, Inc., Netflix Studios, LLC, Paramount Pictures Corporation and Disney Enterprises, Inc.

The Plaintiffs' studios own Copyright in the entire content which is protectable as cinematograph films and also own rights in various underlying works – which are recognised under the Copyright Act, 1957 (hereinafter, 'the Act'). The present suit has been filed by the Plaintiffs against various websites which are permitting the viewing, streaming, accessing and downloading of such content without any license or authorisation from the Plaintiffs. Apart from constituting infringement of Copyright such unauthorised usage also results in enormous monetary loss to the Plaintiffs.

**Held:**

Court observed that-

"In India, regularly orders are being passed by Courts, against websites which consist of unauthorized and illegal content, in an effort to combat the scourge of internet/network piracy. Recently, the Bombay High Court in Applause Entertainment Pvt. Ltd. v. Meta Platforms Inc., 2023 SCC OnLine Bom 1034, has directed the blocking of all social media accounts which were being used for communicating substantial parts of a web series hosted on an OTT platform. In the said decision, while apprehending that continuation of such unauthorised dissemination using different names and identities, the Court issued an ex-parte ad-interim dynamic injunction, restraining even the adoption of different identities to perpetuate such unauthorised dissemination. The only effective measure at this stage, which domestic courts are therefore granting is blocking of these websites and extension of the injunction to mirror websites even if they are with alphanumeric variations.

The dynamism of the injunction, by itself, in one country or another may not, however be sufficient to protect copyright owners. There is an imminent need to evolve a global consensus in this regard inasmuch as despite ISPs blocking these websites, the said websites can be accessed through VPN servers, and other methods to which the long arm of the law cannot extend etc.

To keep pace with the dynamic nature of the infringement that is undertaken by hydra-headed websites, this Court has deemed it appropriate to issue this '**Dynamic+ injunction**' to protect copyrighted works as soon as they are created, to ensure that no irreparable loss is caused to the authors and owners of copyrighted works, as there is an imminent possibility of works being uploaded on rogue websites or their newer versions immediately upon the films/shows/series etc. The Plaintiffs are permitted to implead any mirror/redirect/alphanumeric variations of the websites identified in the suit as Defendants.

The Plaintiffs are at liberty to also file an appropriate application seeking protection qua their copyrighted works, including future works, if the need so arises.”

***The Bhaktivedanta Book Trust, India vs. <https://bhagavatam.in/#Gsc.Tab=0> & Ors. CS (COMM) 657/2023 and I.A. 18425/2023 (21.09.2023)***

**Facts:**

The present suit has been filed seeking permanent injunction, restraining infringement of copyrights, damages, rendition of accounts of profit, costs, etc.

The Plaintiff - Bhaktivedanta Book Trust is a trust established by His Divine Grace A.C. Bhaktivedanta Swami Prabhupada, 'Sri Prabhupada' (hereinafter, 'Author'). The Author was a renowned scholar, philosopher, cultural ambassador, prolific author, religious leader, spiritual teacher, a social critic and is revered by his devotees as a Guru. He is also credited with the establishment of the International Society for Krishna Consciousness (ISKCON).

The Author spread the message from various Hindu scriptures including from the Shri Bhagavad Gita, in India and in several foreign countries. Publications written by the Author include various lectures and published books which are read by devotees and those who are interested in his teachings, in a large number of languages including English, Hindi, Tamil, Telugu, Assamese and other regional languages, as also foreign languages such as French, German and Russian etc., It is averred that some of the Author's works have simplified the religious books and scriptures and have made it easy for the common man to understand. The copyright in all the works which have been based on the Authors teachings, writings, lectures and preaching vests with the Plaintiff -Trust.

The Plaintiff Trust also has numerous copyright registrations granted by the Copyright Office, for its works spread in the said writings and teachings in various forms including printed books, audio books and electronic versions and earns the royalty from the sale and commercial exploitation of the said works.

Defendants are websites, mobile applications, Instagram handles amongst others which are making available a large number of the Plaintiff's copyrighted works almost in a verbatim manner on their online platforms.

Plaintiff submits that the Plaintiff - Trust is engaged in a large number of charitable activities in India and one of the main sources of income for the Trust is the royalties which are earned from the aforementioned copyrighted works. They submit that defendants do not have any license or right to reproduce, communicate and disseminate the copyrighted works of the Author as the Plaintiff is the owner of the copyrights in the said works. He submits that the reproduction by the said Defendants being completely brazen and clear, deserves to be enjoined.

**Issue:**

Reproduction religious scriptures of a substantial number of copyrighted works of the plaintiff trust in social media under various digital format amounts to infringement?

**Held:**

Court held that “there can be no doubt that the Shrimad Bhagavad Gita is one of the most revered ancient scriptures in the world. The Bhagavad Gita along with the other scriptures like Bhagavatam which are written about by the Author are all 'public domain' works. There can be no copyright claimed in the Scriptures. However, any adaptations of the said work including providing explanation, summary, meaning, exegesis/interpretation or creating any audio visual works for eg., television series like Ramanand Sagar's Ramayana or B.R. Chopra's Mahabharata; dramatic works created by drama societies based on scriptures etc., being transformative works, would be entitled to copyright protection - being original works of the Authors themselves.

The books being made available by the Defendants are complete reproductions of the works of the Plaintiff, which were authored by Bhaktivedanta Swami Prabhupada, 'Sri Prabhupada'. These are not mere reproductions of the original scriptures as it is, i.e., the shlokas but their अनुवाद (Anuvaad) and तात्पर्य (Tatparya), summary, introduction, preface, cover etc., have all been reproduced

Such piracy of the copyrighted works of the Plaintiff-Trust cannot be permitted. If such piracy goes unchecked, the copyright in the said works would be considerably diluted leading to immense loss of revenues to the Plaintiff – Trust.

Under these circumstances, this Court is of the opinion that the Plaintiff has made out a prima facie case for grant of an ex parte ad interim injunction. The balance of convenience lies in favour of the Plaintiff and irreparable injury would be caused to the Plaintiff if the interim injunction is not granted.”

Further, the court restrained defendants from printing, reproducing, communicating, disseminating any part of the Plaintiff’s works, to the public either in print form or in audio-visual form or in electronic form including through websites, mobile applications, weblinks, Instagram posts or any other posts on the social media as would result in the infringement of Plaintiff’s copyright. Also, Defendant shall take down the infringing mobile applications from their respective platforms. It also directed Godaddy.com to immediately block and suspend the domain name or website ‘www.bhagavatam.in’.

***Warner Bros. Entertainment Inc. and Ors. vs. Santosh V.G. (13.04.2009 - DELHC) : CS (OS) No.1682/2006***

**Facts:**

The plaintiffs sue the defendant for permanent injunction and damages, claiming that the latter has infringed their copyrights in respect of films, by hiring, and offering for hire, infringing copies, in India.

The plaintiffs, their associated and affiliated companies carry on business of film production and are the owners, co-owners, assignees, licensees of rights, titles and have interests in and to the copyrights in the films produced by them. They contend that all the films in which they claim copyrights have been first published in a country included in the first schedule of the International Copyright order, 1991 and therefore, under the Copyright Act, 1957 and the Copyright Amendment Act, 1994 they have the exclusive right inter alia to (i) to make a copy of the film including a photograph of any image forming part thereof; (ii) to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions; and (iii) to communicate the film to the public.

The plaintiffs contend that films are also distributed and made available to the public in different formats at different times. It is normal for the plaintiffs to first release their films in theatres in the United States of America. By the time the film is released in theatres in other countries outside the USA, it is probable that in the USA, the films are already released in home video format. Accordingly, at the time that a film is theatrically released in India, it is possible that the same film has already been released on home video format in the US by the plaintiffs and/or their respective licensees. It is critical that this home video product released in the US is not authorized or licensed for sale (or rental) outside the US and/or USA and Canada.

The plaintiffs allege that giving (a film) on hire or offering a film for hire without the copyright owner’s license is an act of infringement. The plaintiffs allege that the defendant has no rental licenses in his favour and all such acts of rental amount to an act of infringement of copyright under the provisions Section 14 (d) (ii) read with Section 51 of The Copyright Act, 1957. The plaintiffs assert to being copyright owners and assignees of several such films.

It is alleged that DVDs are coded according to specific geographical zones. The DVDs meant for sale in the USA and Canada are Zone 1 DVDs. DVDs meant for sale in India are Zone 5 DVDs. Zone 1 DVDs are not authorized for sale or rental in Zone 5 countries like India.

**Issue:**

Whether the act of importing and hiring or renting within India amounts to infringement of copyright?

**Held:**

Court stated that-

"In this case the copies that are being let out for rent/hire by the Defendant are not made in India. Rather, they have been made in the US and imported into India. As noticed earlier, copyright in a work published abroad, in

a Berne Convention country, like the United States, entitles its owner to assert copyright in India; such rights are “as if” the works were published in India (Section 40 and provisions of the Order). An infringing copy is one “... made or imported in contravention of the provisions of this Act”. In this context, the proviso to Section 51(b) (iv) in the court’s view, provides they key to Parliamentary intention. It carves only one exception, permitting “import of one copy of any work for the private and domestic use of the importer”. The plaintiffs’ argument is that there would have been no need to enact this exception, if there were no restriction on import of cinematograph films, genuinely made outside India. The effect of the proviso to Section 51(b)(iv) is plainly, not to relax the importation of genuinely made cinematographic films but to allow for the importation of one copy of any work “for the private and domestic use of the importer” This would mean that the proviso allows for the importation of an infringing work, for private and domestic use of the importer, and not commercial use.

The defendant argues that once the plaintiffs placed their copies in the US market, and they were purchased legitimately, “long arm” restrictions expressed on the concerned copies are of no consequence; it lost or “exhausted” the right to control further sale or commerce in that copy. They draw inspiration from what is termed as the doctrine of “exhaustion”. Reliance is placed on two decisions of the US Supreme Court, and an English decision, Zino Davidoff, in support of this contention. The plaintiffs, on the other hand, argues that those decisions were in the context of peculiar circumstances, and that the principle of exhaustion does not apply in India; they rely on the text of the Copyright Act.

The second reason is that Section 14(1)(d) provides that the copyright owner has, in case of cinematographic films, the exclusive right to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasion. The copyright owner, therefore continues to be entitled to exercise rights in a particular copy of the film regardless of whether it has been sold previously- in express contrast to literary works, which are “already in circulation”. This is reinforced by Section 51 (b) (i), which unambiguously provides that copyright in a work shall be infringed if a person does anything the exclusive right do which is by the Act, conferred upon the owner of the copyright; it is also emphasized by Section 51(b) (i) which makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, any infringing copies of the work. The proviso, crucially, exempts from the definition importation of a single infringing copy for “the private and domestic use of the importer”. As noted earlier, importation into of a copy into India, in contravention of the Act - for instance, without the license, or authorization of the copyright owner, is an infringement; such copy is an infringing copy under Section 2(m).

The express indication in Section 14(a)(ii) that a copyright owner of literary works cannot exercise domain over copies in circulation, shows that exhaustion, if one may term it, applies only in relation to the class of copyrights in Section 14(a) and to the extent specified in Clause (ii). Thus, the copyright owner of a literary work, cannot dictate how and under what conditions a copy can be re-sold, once it is “circulated”. This limited “exhaustion” negates the applicability of the principle in regard to other classes of copyrights. Thus, Parliament having intervened in one category of copyrights to grant a limited kind of “exhaustion” and consciously chosen not to extend it to others, sleight of judicial reasoning cannot extend its application. This, Section 14(a) (ii) to the extent it exempts the copyright owners’ right in respect of copies in circulation, is by way of a proviso or exemption; there is a long line of decisions, that such provisos or exemptions, embrace only the field covered by the main provision, and carving out an exemption, or exception (to such main provision) and to no other.

In view of the above discussion, the second issue too, is answered in favour of the plaintiffs; the defendant’s action, giving on hire or rent in India, copies of cinematograph films authorized for sale or rental in a particular territory outside India, in which cinematograph films the plaintiffs claim copyrights, would constitute infringement of copyright under Section 51(b) (iv), as long as the plaintiff’s authorization is not secured."

***John Wiley and Sons Inc. and Ors. vs. Prabhat Chander Kumar Jain and Ors. (17.05.2010 - DELHC): (2010) ILR 5 Delhi 510***

**Facts:**

The plaintiffs contend that any attempt by anyone to sell, distribute or circulate the books outside the territories prescribed by the owners of the copyright shall cause infringement of the copyright. The said claim

is averred in the plaint by stating that India is signatory to the Universal Copyright Convention and the Berne Convention and the rights of a copyright holder shall extend to the member countries by virtue of Section 40 of the Copyright Act.

The grievance of the plaintiffs begins with the rampant problem of the export of books which are reprint editions meant for the Indian and neighbouring territories to the Western Countries which not only causes copyright infringement but also leads to royalty losses of the plaintiffs who are the owners of the respective copyrights.

The plaintiff's state that their attention was drawn to Defendant, a bookseller in Delhi trading under the website "www.alibris.com" was offering online sale and delivery worldwide of the Low Price Editions of the plaintiffs' publications. The plaintiffs have also described their predicament insofar as the defendants are attracting customers by misrepresenting that the books put up by them for sale are identical to those of the plaintiffs.

The plaintiffs allege that these acts of the defendants of diverting the Low Price Edition books which are meant for sale in India and its neighbouring states to the USA, UK and other countries for which the books are not meant amounts to infringement of the plaintiffs copyright in the said books. It is submitted that the placing of the said books in circulation, that too in the countries for which the books are not meant, without the permission of the plaintiffs, is a clear infringement of the copyright of the plaintiffs.

**Issue:**

Whether the circulation of books in India, without the permission of author, is infringement of copyright?

**Held:**

Court held that-

"The defendants' argument that the first sale doctrine will exhaust the rights of the plaintiffs internationally is incongruous and the same will lead to absurd results in as much as the defendants are the purchasers of the books with notice from the exclusive licensee and not from the owner of the copyright. Accepting the contention of the defendants would again be nugatory to the principle of the ownership and license. The owner has full right to enjoy the property and if the property is purchased from the owner only then will the owner lose his rights. The same is applicable in the present circumstances. The purchaser after purchasing from the exclusive licensee cannot by claiming the principle of exhaustion or extinguishment of rights defeat the rights of the owner. This is the only harmonious interpretation possible by invocation of doctrine of first sales in the present case.

In view of the aforementioned reasoning, the argument of applicability of first sale doctrine defeating the rights of the owner fails and the same cannot abridge the rights of the owner to complain of infringement in the present case even if it is applied.

The first sales doctrine if it is applied does not aid the case of the defendant. Thus, there is prima facie infringement of copyright which warrants the grant of temporary injunction till the disposal of the suit.

The plaintiffs have been prima facie successful in establishing that they are the owners of the copyright in the books and the same is being violated by the defendants by putting into circulation the Low Price Editions of the books into territories for which the books are not meant and violating the right of the owner under Section 14(a)(ii) and also causing the conditions of the licence to be violated and thereby causing the infringement of the copyright of the plaintiffs. The defendants have failed to show any prima facie tenable defence in support of their acts.

The balance of the convenience will lie in favour of the plaintiffs as the plaintiffs will be more inconvenienced if the ex parte injunction granted on 17.9.2008 is not confirmed and the defendants are not restrained from carrying out the infringing acts as against the defendant, who will be less inconvenienced. This is also more so when the defendants have already given an undertaking before US court to not indulge in infringing acts in future. The plaintiffs will suffer irreparable loss if the defendants are allowed to start carrying out their acts at this stage. The defendants will not suffer any such loss at this stage as is obvious by weighing the comparative hardship."

***The Chancellor, Masters and Scholars of the University of Oxford and Ors. vs. Rameshwari Photocopy Services and Ors. (16.09.2016 - DELHC) : CS(OS) 2439/2012, I.A. Nos. 14632/2012, 430 and 3455/2013***

**Facts:**

Rameshwari Photocopy Service (Defendant) is a photocopy shop that was established in 1998 and is owned by Dharampall Singh located on the Delhi School of Economics (DSE) grounds in Delhi University's North Campus. Several DSE students frequented this store because it served as the main source of a range of course materials. This was as a result of some professors at the Delhi School of Economics creating course packs that contained excerpts from books written by other authors and published by different international publishing houses. These pages were copied, bound, and given to students for 50 paise (US \$0.01) each by Rameshwari Photocopy Service.

The University of Delhi and Rameshwari Photocopy Service were sued for copyright infringement in 2012 by Oxford University Press, Cambridge University Press (UK), Taylor & Francis Group (UK), Cambridge University Press India Pvt. Ltd., and Taylor & Francis Books India Pvt. Ltd. for distributing copies of their published books without the proper authorization. The plaintiffs instituted this suit for the relief of permanent injunction restraining the two defendants from infringing the copyright of the plaintiffs in their publications by photocopying, reproduction and distribution of copies of plaintiffs' publications on a large scale and circulating the same and by sale of unauthorised compilations of substantial extracts from the plaintiffs' publications by compiling them into course packs/anthologies for sale.

Rameshwari Services received a lot of support from academics, activists, and students alike in response to the lawsuit, and several petitions were submitted to be impleaded as defendant, including the Society for Promoting Educational Access and Knowledge (SPEAK) and the Association of Students for Equal Access to Knowledge (ASEAK).

In 2012, a temporary injunction prohibiting Rameshwari Services from selling the cloned course packages was issued by the Delhi High Court. Additionally, the Court ordered a Local Commissioner to visit the shop's location without warning and seize any allegedly infringing copies of the plaintiff's works that were produced thereafter after making an inventory of them.

Justice Rajiv Sahai Endlaw dismissed the lawsuit in 2016 and lifted the injunction, allowing Rameshwari Photocopy Services to resume selling the course bundles. In that year, a two-judge court overturned the earlier ruling and permitted the case trial to proceed, ruling that copyright violations were not committed by reproducing copyrighted works for educational reasons.

The Delhi High Court urged the business to provide recurring reports regarding the course packs it was selling rather than issuing an injunction at the same time. Students, faculty, and alumni of Oxford University wrote an open letter to Oxford University Press in 2017 pleading with them not to appeal the Division Bench ruling in the Supreme Court of India.

**Issue:**

- Whether the reproduction in the course packs constitute copyright infringement?
- Whether such reproduction amounts fair use?

**Held:**

Court held that –

“Copyright, specially in literary works, is thus not an inevitable, divine, or natural right that confers on authors the absolute ownership of their creations. It is designed rather to stimulate activity and progress in the arts for the intellectual enrichment of the public. Copyright is intended to increase and not to impede the harvest of knowledge. It is intended to motivate the creative activity of authors and inventors in order to benefit the public...

Applying the tests as aforesaid laid down by the Courts of (i) integral part of continuous flow; (ii) connected relation; (iii) incidental; (iv) causal relationship; (v) during (in the course of time, as time goes by); (vi) while doing; (vii) continuous progress from one point to the next in time and space; and, (viii) in the path in which

anything moves, it has to be held that the words “in the course of instruction” within the meaning of Section 52(1)(i) supra would include reproduction of any work while the process of imparting instruction by the teacher and receiving instruction by the pupil continues i.e. during the entire academic session for which the pupil is under the tutelage of the teacher and that imparting and receiving of instruction is not limited to personal interface between teacher and pupil but is a process commencing from the teacher readying herself/himself for imparting instruction, setting syllabus, prescribing text books, readings and ensuring, whether by interface in classroom/tutorials or otherwise by holding tests from time to time or clarifying doubts of students, that the pupil stands instructed in what he/she has approached the teacher to learn. Similarly the words “in the course of instruction”, even if the word “instruction” have to be given the same meaning as ‘lecture’, have to include within their ambit the prescription of syllabus the preparation of which both the teacher and the pupil are required to do before the lecture and the studies which the pupils are to do post lecture and so that the teachers can reproduce the work as part of the question and the pupils can answer the questions by reproducing the work, in an examination. Resultantly, reproduction of any copyrighted work by the teacher for the purpose of imparting instruction to the pupil as prescribed in the syllabus during the academic year would be within the meaning of Section 52(1)(i) of the Act.

I thus conclude that the action of the defendant No. 2 University of making a master photocopy of the relevant portions (prescribed in syllabus) of the books of the plaintiffs purchased by the defendant No. 2 University and kept in its library and making further photocopies out of the said master copy and distributing the same to the students does not constitute infringement of copyright in the said books under the Copyright Act.”

***M/s Knit Pro International vs. the State of NCT of Delhi & Anr, (Criminal Appeal No. 807 of 2022) dated May 20, 2022***

**Facts:**

M/s Knit Pro International (“Knit Pro”) had submitted an application under Section 156(3) of the Code of Criminal Procedure, 1973 (“CrPC”) asking the Chief Metropolitan Magistrate (“CMM”) to direct the “registration of FIR against” Respondent No. 2 (“accused”) for offences related to Sections 51, 63, and 64 of the Copyright Act as well as Section 420 of the Indian Penal Code, 1860 (“IPC”) collectively, “offences” An FIR was filed after the CMM approved the application in an order dated October 23, 2018.

As a result, the accused submitted a Writ Petition to the Delhi High Court (“High Court”) asking for the criminal proceedings to be dismissed.

The accused requested the quashing of the criminal proceedings on the only basis that “the offence under Section 63 of the Copyright Act is not a cognizable and a non-bailable offence” during the case hearing.

Vide the impugned judgement, that “the offence under Section 63 of the Copyright Act is a non-cognizable offence,” the High Court granted the petition. Knit Pro approached the Supreme Court.

**Issue:**

Whether, the offence under Section 63 of the Copyright Act is a cognizable offence as considered by the Trial Court or a non-cognizable offence as observed and held by the High Court?

**Held:**

Supreme Court *inter alia* observed that-

“For the offence under Section 63 of the Copyright Act, the punishment provided is imprisonment for a term which shall not be less than six months but which may extend to three years and with fine. Therefore, the maximum punishment which can be imposed would be three years. Therefore, the learned Magistrate may sentence the accused for a period of three years also. In that view of the matter considering Part II of the First Schedule of the Cr.P.C., if the offence is punishable with imprisonment for three years and onwards but not more than seven years the offence is a cognizable offence. Only in a case where the offence is punishable for imprisonment for less than three years or with fine only the offence can be said to be non-cognizable. In view of the above clear position of law, the decision in the case of Rakesh Kumar Paul (supra) relied upon by learned

counsel appearing on behalf of respondent no.2 shall not be applicable to the facts of the case on hand. The language of the provision in Part II of First Schedule is very clear and there is no ambiguity whatsoever.

Under the circumstances the High Court has committed a grave error in holding that the offence under Section 63 of the Copyright Act is a non-cognizable offence. Thereby the High Court has committed a grave error in quashing and setting aside the criminal proceedings and the FIR. Therefore, the impugned judgment and order passed by the High Court quashing and setting aside the criminal proceedings/FIR under Section 63 of the Copyright Act deserves to be quashed and set aside.

In view of the above discussion and for the reason stated above, it is observed and held that offence under Section 63 of the Copyright Act is a cognizable and non-bailable offence. Consequently, the impugned judgment and order passed by the High Court taking a contrary view is hereby quashed and set aside and the criminal proceedings against respondent no.2 for the offence under Sections 63 & 64 of the Copyright Act now shall be proceeded further in accordance with law and on its own merits treating the same as a cognizable and non-bailable offence.”

### ***Sanjay Soya Private Ltd. vs. Narayani Trading Company IA (L) 5011/2020 in COMP (L) 2/2020***

#### **Facts:**

For many years, Sanjay Soya has produced and sold a variety of edible oils, including soyabean oil. Narayani Trade is a one-person business. The necessary ISO certifications for quality and other qualifications, according to Sanjay Soya. In May 2003, SK Oil adopted the label, mark, and creative work in relation to edible oil that has a distinctive get up, layout, and schematic arrangements, according to Sanjay Soya, who claimed that the company is the successor-in-title of one SK Oil Industries. According to Recital (2) of the Deed of Assignment, SK Oil conceptualised, constructed, designed, and developed a SOYA DROP label. This piece of artwork is the subject of the current dispute.

Among other things, the defence argued that their label was distinct from the plaintiff's. Additionally, the defendant argued that the plaintiff was a legal corporation and not a natural person, which exempts them from Section 2(d) of the Copyright Act of 1957's definition of author.

Furthermore, the defendant argued that the plaintiff was ineligible to seek remedies under the Copyright Act since they had not registered the label, citing the decision of Dhiraj Dewani as support. The defendant further asserted that since the plaintiff had registered the label as a trademark, the mark could not be protected by copyright as an artistic creation.

The registered label mark and the copyright-protected artistic work on the label, according to Sanjay Soya, have been completely taken and illegally reproduced by Narayani Trading. It claims that a significant portion of Sanjay Soya's original and distinctive artwork is reproduced and illegally copied on Narayani Trading's label.

#### **Issue:**

Whether the defendant infringed the plaintiff's copyright?

#### **Held:**

The Bombay High Court ruled that “no section of the Act requires registration of copyright before requesting relief under the Act. Instead, it is up to the owner's choice whether to register copyright under the Act. The Convention and the TRIPS Agreement were also cited by the court to buttress its ruling. Registration just establishes a presumption of validity for information placed in the Copyright register. The word “may” is used in Section 45(1) of the Act, which deals with entries in the register of copyrights, and Section 51 states that infringement is not limited to the registered Work. Protection should be “automatic” as soon as the Work is created.

That the conduct of Narayani Trading warrants not the slightest indulgence. After the ad interim order of KR Shriram J, Narayani Trading sought registration of the rival label as a label mark, as also registration under the Copyright Act. Now this is indeed very peculiar. What Narayani Trading does not seem to understand is

that the act of applying for registration under either of these statutes has its own consequences, and those consequences are adverse. Under the Trade Marks Act, an application like this is an acceptance that Sanjay Soya's label mark is indeed distinctive. The application for registration under the Copyright Act is even more problematic. The reason is that Narayani Trading has throughout said that Sanjay Soya's artistic work is not original. But Sanjay Soya's label is undoubtedly prior in time to that of Narayani Trading. Therefore, if Sanjay Soya's label is not original meriting registration under the Copyright Act, then clearly neither is Narayani Trading's. But the argument works effectively in reverse because Narayani Trading's label is subsequent to that of Sanjay Soya. This necessarily implies that Sanjay Soya's work is the first work, and Narayani Trading's copyright registration application is an implicit admission of originality in the work itself. Narayani Trading is hoist by its own petard."

### LESSON ROUND-UP

- Copyright is a well-recognized form of property right which had its roots in the common law system and subsequently came to be governed by the national laws in each country.
- Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work.
- Under the Copyright Act, 1957 copyright subsists throughout India in the following classes of works: Original literary; dramatic, Musical and artistic works; Cinematograph films; and Sound recordings.
- The definition of "Literary work" under the Copy Right Act, 1957 includes computer programmes, tables and compilations including computer "literary databases."
- The Act provides for the establishment of the Copyright Board and empowers the Central Government to constitute the same consisting of a Chairman and not less than two, but not more than fourteen members.
- An assignment of copyright should be in writing signed by the owner of the copyright.
- The Act empowers the owner of the copyright in any existing work or the prospective owner of the copyright in any future work to grant any interest in the right by licence in writing by him or by his duly authorised agent.
- Central Government has been authorised to register association of persons as copyright society. The Central Government cannot register more than one copyright society to do business in respect of the same class of works. The Act empowers a Copyright Society to accept exclusive authorisation from an owner of Copyright to administer any right in any work by issuing licences or collection of licence fee or both.
- The Act recognizes rights of broadcasting organisations and of performers. The Act entitles every broadcasting organisation to have a special right to be known as "broadcast reproduction right" in respect of its broadcasts for twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made.
- The Copyright Act applies only to works first published in India, irrespective of the nationality of the author. However the Act empowers the Government of India to extend the benefits of all or any of the provisions of the Act to works first published in any foreign country.
- The registration of the work under the Copyright Act is not compulsory and is not a condition precedent for maintaining a suit for damages, if somebody infringes the copyright.
- Government of India has passed the International Copyright Order, 1958. According to this order any work first published in any country which is a member of the Berne Convention or the Universal Copyright Convention will be accorded the same treatment as if it was first published in India.
- Act contemplates situations where copyright in a work is deemed to be infringed and provides for civil remedies, administrative remedies and criminal to the owner of the copyright in the event of infringement.
- Apart from remedies for infringement of copyright, the Act expressly provides for the protection of special rights of the author known as moral rights.

- Besides traditional remedies, the non-traditional forms of remedies like, Anton Piller Order, interlocutory injunction, etc, have assumed more popularity nowadays.
- John Doe/Jane Doe orders, known as Ashok Kumar orders in India, may be able to help in these specific cases when interim instructions are given since enough damage has already been done.

### GLOSSARY

**Copyright** - It 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.

**Musical work** - It 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.

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

**Cinematograph film** - It 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.

**Commercial rental** - It does not include the rental, lease or lending of a lawfully acquired copy of a computer programme, sound recording, visual recording or cinematograph film for non-profit purposes by a non-profit library or non-profit educational institution.

**Right of reproduction** - It is the right to authorize direct or indirect reproduction of the phonogram in any manner or form.

**Right of distribution** - It is the right to authorize the making available to the public of the original and copies of the phonogram through sale or other transfer of ownership.

**Right of rental** - It is the right to authorize the commercial rental to the public of the original and copies of the phonogram, as determined in the national law of the contracting parties (except for countries that, since April 15, 1994, have a system in force for equitable remuneration of such rental).

**Right of making available** - It is the right to authorize making available to the public, by wire or wireless means, a phonogram in such a way that members of the public may access the phonogram from a place and at a time individually chosen by them. This right covers, in particular, on-demand, interactive making available through the internet.

### TEST YOURSELF

*(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation).*

1. Briefly explain the term "copyright" and the rights conferred by the copyright.
2. There is no copyright in an idea. Explain.
3. Copyright protects the rights of authors. How an author has been defined under the Copyright Act?
4. Write short notes on the following:
  - (a) Assignment of copyright

- (b) Copyright societies
  - (c) Term of copyright
  - (d) John Doe Orders
  - (e) Anton Piller order.
5. Briefly explain the procedure relating to registration of copyright. Is registration of the work compulsory under the Copyright Act?
  6. Discuss the major International Conventions and Treaties on law relating to Copyrights.
  7. What are the copyrights societies? Discuss
  8. How does copyright law govern the software? Explain with the help of relevant case laws.
  9. Briefly explain the procedure relating to registration of copyright. Is registration of the work compulsory under the Copyright Act?
  10. What do you mean by performer's right? What are the exclusive rights of a performer under the Copyright Act?
  11. Who is authorized to constitute the Copyright Board? Enumerate the functions of the Copyright Board.
  12. Briefly outline the remedies available to a copyright owner when his copyright is infringed.
  13. Can copyright be assigned? If so, what is the mode of assigning copyright?

#### LIST OF FURTHER READINGS

- Bare Act – The copyright Act 1957, rules and regulations made thereunder.
- Iyenger's commentary on Copyright Act- 9th Edition.
- Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974)
- Beijing Treaty on Audiovisual Performances (2012)

#### OTHER REFERENCES (Including Websites / Video Links)

- <https://copyright.gov.in/>
- <https://copyright.gov.in/Documents/handbook.html>
- <https://copyright.gov.in/Documents/International%20Copyright%20Order.htm>
- <https://www.wipo.int>
- <https://www.wipo.int/publications/en/details.jsp?id=4640&plang=EN>
- <https://www.wipo.int/treaties/en/ip/phonograms/>
- <https://copyright.gov.in/Documents/Toolkit.pdf>

