

INDIAN COPYRIGHT LAW : AN OUTLINE

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I. INTRODUCTORY

Present Law

The main statute in India on the subject of copyright is the Copyright Act, 1957. This Act repealed the Indian Copyright Act, 1914, which had more or less incorporated the (U.K.) Copyright Act, 1911. The present Act deals with copyright and its ownership, registration of copyright, infringement of copyright, civil and criminal remedies for infringement and allied matters. There are also Chapters devoted to international copyright and rights or broadcasting authorities. The administrative aspects are taken care of by Chapters dealing with the Registrar of Copyrights, who heads the copyright office and the Copyright Board. The Copyright Board is headed by a Chairman who is or has been a Supreme Court or High Court Judge or who is qualified to be a High Court Judge. Amendments made in the Copyright Act, 1957 after the enactment of the original Act have dealt with several matters, including compulsory licences (sections 32A and 32B), revocation by Copyright Board of assignment of copyright in certain circumstances (section 19A), the problem of computers, the problem of video piracy, duplicating machines and the like. Further amendments are proposed in a recent Bill.¹

1. Scope of Act

Copyright is defined in terms of an exclusive right to do certain things (section 14), and on matters covered by the Act, is exhaustive (section 16). At the same time, jurisdiction to restrain a breach of trust or confidence is saved (section 16) - an aspect of considerable importance in modern times.

II. WORKS PROTECTED

3. Protection of original works

The principal creative works protected by the Copyright Act are - literary, dramatic, musical and artistic works, cinematograph films and records (section 13.). The work must be original. **Deepak Printers v. Forward Stationary Mart** (1986) PTC 186, 17 Guj. L.R. 338. Of course, the expression "originality", in the field of copyright law, has to be interpreted according to its well understood meaning in that field. **Govindan v. Gopalakrishnan**, AIR 1955 Mad. 391; **Marshall v. Ram Narain**, AIR 1934 All 122.

1. Copyright (Second Amendment) Bill 1992.

4. Literary works

For the purpose of copyright law, "literary" works do not necessarily have to possess literary merit see section 2(o). Further, what is protected, is not the idea, but its formal expression in writing. **Agarwala Publishing House v. Board of High School and Intermediate Education** AIR 1967 All. 91. Copyright can therefore be claimed in compilations of various types. **Macmillan v. R.C.Cooper**, AIR 1924 P.C. 75. **N.T.Raghunathan v. All India Reporter**, AIR 1971 Bom. 48, **R.G.Anand v. Delux Films**, AIR 1978 S.C.1613. In particular, it can be claimed in encyclopaedias, lexicons etc. In fact, section 35(1) of the Indian Copyright Act, 1914, specially mentioned them.

5. Dramatic works

As defined in section 2(h) of the Copyright Act, a dramatic work includes "any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, but does not include a cinematograph film." Judicially also, it has been held that "dramatic work" does not include cinema films. **Fortune Films v. Dev Anand**, AIR 1979 Bombay 17, 23, 24 holding that actor in a film is not protected for his acting. Controversies have arisen by reason of adaptation of a story in a play, which is again made into a film. **Indian Express Newspapers Ltd. v. Jagmohan**, AIR 1985 Bom. 229.

6. Artistic works

Artistic works are defined by the Copyright Act as meaning a painting, sculpture, drawing of any kind (including diagram, map, chart or plan), an engraving or a photograph, whether or not such work possesses artistic quality. Besides this, an architectural "work of art" and any other work of artistic craftsmanship are also artistic works. (Section 2(c).) Artistic quality, as such, may not be required, but there has to be some use of human labour and skill. **D.C.S. Bureau v. United Concern**, AIR 1967 Mad. 381; **Camlin Private Ltd. v. National Pencil Industries**, AIR 1986 Delhi 444.

7. Cinematograph films and Video films

"Cinematograph film" is defined in section 2(f) as including the sound track; and "cinematograph" itself is defined as any work produced by any process analogous to cinematography. Video films are also deemed to be produced by "a process analogous to cinematography".

8. Records

The embodiment of sound, and its capacity for reproduction, are the two essentials of the concept of "record" in the Copyright Act, section 2(w), where the expression is defined as "any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom", other than a sound track associated with a cinematograph Film.

III. RIGHTS OF THE AUTHOR

9. Author of literary works, and his rights

There are detailed provisions in the Copyright Act as to the rights given to the author of a work, depending on the species of the particular work (literary, dramatic etc.). For brevity, one may concentrate on authors of literary works. By the combined operation of sections 13, 14, 17, 20, 21 and 57 of the Copyright Act, it will be possible to describe the important rights of the author of a literary work; and, for this purpose, it may be convenient to group the numerous rights under certain useful headings.

Broadly speaking, these are rights concerned with reproduction, publication, performance and alteration of the work and assignment (of copyright in the work). The right to reproduce the work in any material form recognised by the Act, by section (14)(1) (a) (i), can be said to be the principal nucleus of copyright law. This is followed by the right to publish or produce the work and to perform the work in public, as also similar rights regarding translation of the work. The theory here is, that exploitation of the creation of the author by any means should (in the absence of an assignment), remain exclusively with the author. As regards alteration of the work, one must not only take notice of the right to make any "adaptation" of the work- which is well understood in traditional copyright law - but must also take note of the "moral right" of the author (section 57). Even after assignment of the copyright, the author has a right to claim paternity (authorship) and to object to non-consensual and substantial mutilations of the work. There is an interesting Delhi case on the subject, namely, **Manu Bhandari v. Kala Vikas Pictures Ltd.** AIR 1987 Delhi 13 (S.B.Wad J.). This involved a film produced on the basis of the novel of the author, and the judgment specifically holds that the authors' right to restrain distortion etc. of the work is not limited to mere literary reproduction of the work, but also covers visual and audio manifestation of the original work.

10. Neighbouring Rights derivative works

The Copyright Act does not itself use the expression 'neighbouring rights', commonly taken as right in works derived from the original work. But the statutory provision is very clear. Thus, section 14(1)(a) (dealing with literary, dramatic or musical works), which confers several exclusive rights as per subclauses (i) to (vi) specifically also confers, by section 14(a) (vii) and (viii), exclusive rights to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in clauses (i) to (vi). There is an elaborate definition of "adaptation" in section 2(a). This includes, *inter alia*, (in the case of musical works), "arrangement" or "transcription" of the work.

In Western music, "arrangement" is illustrated (1) by arranging orchestral work for piano or (ii) arrangement of song written with piano in mind, for voice and orchestra. "Transcription" (in relation to a musical work) means "arrangement of a musical composition for some instrument or voice other than the original" (Webster's Collegiate Dictionary).

11. Assignment

While rights of reproduction, publication and adaptation of a work do not directly have an element of transfer, the rights of the author of a work to assign the copyright in that work does possess such an element.

An assignment of copyright must be in writing, signed by the assignor or his duly authorised agent (section 19). Disputes regarding assignment, or regarding any term of assignment, may be brought before the Copyright Board (Section 19). Assignment can be made of a copyright in a future work, but such assignment comes into effect only when the work comes into existence under section 18(1), and proviso thereto.

12. Musical works

It has been held by the Supreme Court of India that the author (composer) of a lyric or musical work, who has authorised a cinematograph film of his work by incorporating or recording it on the cinematograph film, cannot restrain the owner of the copyright in the film from (i) causing the sound portion of the film to be performed or projected on screen in public for profit or (ii) from making any record embodying the recording in any part of the sound tracks.

The reasoning is, that section 14(i) & (iii) authorise the owner of the copyright in the film to make any record embodying the recording in any part of the sound tracks associated with the film. The decision has not escaped criticism.

Indian Performing Rights Society v. East India Motion Pictures Association
AIR 1977 SC 1443

IV. DURATION

13. Duration

With certain exceptions, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph), published in the lifetime of the author for sixty years from the beginning of the calendar year next following the year in which the author dies. The period was previously 50 years, but very recently, it has been increased to 60 years by an amendment. The amendment was effected by promulgating an Ordinance, and will very shortly be incorporated in an Act of Parliament (section 22).

b) Under section 25, in the case of photograph the copyright shall subsist for 50 years from the beginning of the calendar year following the year of publication (section 25).

V. REMEDIES

14. Remedies for infringement

The most important remedy for infringement of copyright is injunction. The next important remedy is damages. Accounts of profits and delivery of infringing

copies, are the other remedies available (sections 54-62). According to one decision, both the relief of damages and accounts cannot be granted, but only one of them may be granted. **P.Lakshmikantam v. Ramakrishna** AIR 1981 A.P. 224.

Criminal prosecutions can be filed if a person **knowingly** infringes copyright (sections 63-66). Finally, there is what may be called the "administrative remedy", that is to say, applying to the Registrar for an order to ban import of infringing copies (Section 53).

A consent decree obtained outside India has no effect in India. **Penguin Books Ltd. v. India Book Distributors**, AIR 1985 Del. 29, 32 (D.B.)

15. Injunction

a) In India, permanent injunctions are granted under sections 38-42, Specific Relief Act, 1963.

b) Temporary injunctions are governed mainly by Order 39, rules 1-2 Code of Civil Procedure, 1908.

c) In actions for infringement of copyright, usually damages are not an adequate remedy, and therefore injunctions are granted to restrain acts in the nature of such infringement.

Penguin Books Ltd. v. India Book Distributors
AIR 1985 Del. 29, 58.

16. Interlocutory Injunctions

Normally (as was laid down in a case relating to trade marks), the plaintiff seeking interlocutory injunction (i) has to make out a prima facie case (ii) has to show that the balance of convenience is in favour and (iii) should show that if the interim injunction is not granted, the plaintiff will suffer irreparable injury.

Century Traders v. Roshanlal Duggar & Co. AIR 1978 Del 252

Kartar Singh v. Dadha Singh AIR 1931 Lah 124.

G.C.Harrao & Co. v. Harbans Lal AIR 1935 Lah 282.

Prima facie case is made out for temporary injunction, if the publisher publishes selections from another work. In a Lahore case, a perpetual injunction was prayed for against the defendants. It was alleged that defendant infringed the plaintiff's copyright by copying a large number of rulings of the Financial Commissioner, Punjab from the plaintiff's journal, the **Lahore Law Times**, and by compiling and publishing a book called the "Consolidated Revenue Rulings".

It appeared that the allegation referred to the ruling portion only of **Lahore Law Times** and that too, of past years; the publication of the defendant consisted not merely of the rulings of the Financial Commissioner, but also of judgments of Punjab Chief Court and the Lahore High Court as well. Further, the plaintiff had, by bringing

out a similar book at a cheaper price, substantially reduced the chance of a loss to himself. The Trial Court had, by directing the defendants to keep a separate account of their sales, amply safeguarded the plaintiff's interest. It was held that under the circumstances, a temporary injunction was not necessary. **Prabhu Das v. Law Reporters Ltd**, AIR 1933 Lah 448.

17. Damages and accounts of profits

In India, either damages or account of profits can be claimed.

P.Lakshmikantam v. Ramakrishna AIR 1981 AP 224.

Damages are awarded under sections 55 and 58 of the Copyright Act, Section 55(1), main paragraph, provides that where copyright in any work has been infringed, the owner of the copyright shall (except as otherwise provided by the Act.) "be entitled to all such remedies by way of injunction, damages, accounts and otherwise, as are or may be conferred by law for the infringement of a specific right." There is no separate provision for "flagrant violation", unlike section 17(3)(a) of the Copyright Act, 1956 (U.K.)

Under the proviso to section 55 of the Indian Act, if the defendant proves that the date of infringement, he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall 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.

By section 58 of the Act, the infringing copies are the property of the owner of copyright. Accordingly, he may be sued for

- i) recovery of possession thereof or
- ii) in respect of the "conversion" of infringing copies.

But the remedy of "conversion" is not available, if the opponent proves that he was not aware of the subsistence of the copyright or proves reasonable grounds for believing that the copies did not involve infringement of copyright.