

Introduction

MEANING OF COPYRIGHT

Copyright is a unique kind of intellectual property. The right which a person acquires in a work, which is the result of his intellectual labour, is called his copyright. The primary function of a copyright law is to protect the fruits of a man's work, labour, skill or test from being taken away by other people.

The word 'copyright' is derived from the expression 'copier of words' first used in the context, according to Oxford Dictionary, in 1586. The word 'copy' is presumed to date back to circa (approximate date) 1485 AD and was used to connote a manuscript or other matter prepared for printing.

Word 'copy' according to Black's Law Dictionary means "transcript, imitation, reproduction of an original writing, painting, instrument or the like".....

Copyright according to Black's Law Dictionary is the right in literary property as recognised and sanctioned by positive law. An intangible incorporeal right granted to the author or originator of certain literary or artistic production whereby he is invested for a specified period with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them.

Copyright as defined in the Oxford English Dictionary is an exclusive right given by law for a certain term of years to an author, composer, etc., (or his assignee) to print, publish and sell copies of his original work.

Copyright in some form seems to have been recognised in ancient times. The Roman Law adjudged that if one man wrote anything on the paper or parchment of another, the writing should belong to the owner of the blank material; meaning thereby the mechanical operation of writing by the scribe deserved to receive satisfaction.

The statutory definition of copyright means the exclusive right to do or authorise other(s) to do certain acts in relation to—

1. literary, dramatic or musical works;
2. artistic work;
3. cinematograph film; and
4. sound recording.

Section 14 of the Copyright Act, 1957 (hereinafter referred to as the Act) defines copyright as above.



CHARACTERISTICS OF COPYRIGHT

1. CREATION OF A STATUTE;
 2. SOME FORM OF INTELLECTUAL PROPERTY;
 3. MONOPOLY RIGHT;
 4. NEGATIVE RIGHT;
 5. MULTIPLE RIGHTS;
 6. COPYRIGHT ONLY IN FORM NOT IN IDEA; AND
 7. NEIGHBOURING RIGHTS.

Creation of a statute

Copyright is creation of a specific statute under the present law. There is no such thing as common law copyright. No copyright can exist in any work except as provided in the section 16 of the Act.

Form of intellectual property

A copyright is a form of intellectual property since the product over which the right is granted, e.g., a literary work, is the result of utilisation and investment of intellect.

Monopoly right

Copyright is a monopoly right restraining the others from exercising that right which has been conferred on the owner of copyright under the provisions of the Act.

Negative Right

Copyright is a negative right meaning thereby that it is prohibitory in nature.
It is a right to prevent others from copying or reproducing the work.

Object of copyright—

The object of copyright law is to encourage authors, composers and artists to create original works by rewarding them with the exclusive right for a specified period to reproduce the works for publishing and selling them to public.

The moral basis for protection under copyright law rests in the Eighth Commandment "Thou Shall Not Steal". The law does not permit one to appropriate to himself what has been produced by the labour, skill and capital of another.

Thus protecting, recognising and encouraging the labour, skill and capital of another is the object of a copyright.

Multiple rights

Copyright is not a single right. It consists of a bundle of different rights in the same work. For instance, in case of a literary work copyright comprises the right of reproduction in hard back and paper back editions, the right of serial publication in newspapers and magazines, the right of dramatic and cinematographic versions, the right of translation, adaptation, abridgement and the right of public performance.

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Neighbouring rights

Copyright consists not merely of the right to reproduction. It also consists of the right to works derived from the original works; rights like the right of public performance, the recording right and the broadcasting right which are important or even more than the right of reproduction. Such related rights are termed "neighbouring rights".

INDIAN COPYRIGHT LAW

In India the first Copyright Act was passed in 1914. It was a replica of English Copyright Act of 1911 suitably modified to make it applicable to the British India. The Act presently in force was legislated in the year 1957 and known as Copyright Act, 1957 as amended by copyright (Amendment) Act, 1978. It adopted many principles and provisions contained in the U.K. Act of 1956.

MAIN FEATURES OF COPYRIGHT ACT OF 1957

1. Creation of a Copyright Office and a Copyright Board to facilitate registration of Copyright and to settle certain kinds of disputes arising under the Act and for compulsory licensing of Copyright.
 2. Definition of various categories of work in which copyright subsists and the scope of the rights conferred on the author under the Act.
 3. Provisions to determine the first ownership of copyright in various categories of works.
 4. Term of copyright for different categories of works.
 5. Provisions relating to assignment of ownership and licensing of copyright including compulsory licensing in certain circumstances.
 6. Provisions relating to performing rights of or by societies.
 7. Broadcasting rights.
 8. International Copyright.
 9. Definition of infringement of Copyright.
 10. Exception to the exclusive right conferred on the author or acts, which do not constitute infringement.
 11. Author's special rights.
 12. Civil and criminal remedies against infringement.
 13. Remedies against groundless threat of legal proceedings.

India being a member both of the Bern Convention and the Universal Copyright Convention, amended its Copyright Act of 1957, in 1983, 1984, 1994 and 1999 to bring the Indian law in conformity with these international conventions.

Basic principles of copyright and the Indian Contract Act

There are two time-honoured principles. First, *ex turpi causa non oritur actio*. There in the vernacular "no right of action arises out of a shameful cause". Secondly, *pari delicto potior est conditio defendantis*, or in the vernacular, 'where both the author guilty of wrongdoing, the position of the defendant is stronger'. The maxim "the same *pari delicto potior est conditio posidentis*" is a maxim of law established not for the same

benefit of plaintiffs or defendants, but is founded on the principles of public policy; that the court will not assist an illegal transaction in any respect. It is more intimately connected with the more comprehensive rule of law '*ex turpi causa non oritur actio*' meaning thereby no court shall allow by itself to make the instrument of enforcing to obligation alleged to arise out of a contract or transaction which is illegal. An exception to the principle of above maxim can be seen from section 65 of the Indian Contract Act, 1872, which reads as follows:

"65. Obligation of person who has received advantage under void agreement or contract that becomes void.—When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it."

REQUIREMENTS OF COPYRIGHT

What copyright protects—Subject matter of copyright

In order to secure copyright protection what is required is that the author must have bestowed upon the work "sufficient judgement, skill and labour or capital". It is immaterial whether the work is wise or foolish, accurate or inaccurate, or whether it has or has not any literary merit; *Walter v. Lane*, 1990 AC 539. Copyright protects the skill and labour employed by the author in the production of his work; *Ravencraft v. Herbert*, 1981 RPC 103.

The owner of a copyright has no monopoly in the subject-matter. Others are at liberty to produce the same result (from the common source) provided they do so independently and their work is 'original'. Another person may create another work in the same general form provided he does so from his own resources and makes the work he so originates a work of his own by his own labour and industry bestowed upon it; *Ravencraft v. Herbert*, 1980 RPC 103.

The owner of a copyright has no monopoly in the subject-matter. Others are at liberty to produce the same result provided that they do so independently and though they are not the first in the field, their work is nonetheless 'original' in the sense in which that word is used in the Copyright Act (Halsbury's Law of England, 4th Ed.).

COPYRIGHT IS PROTECTION IN FORM AND NOT IN IDEA

Copyright is a right given to or derived from works and it is not a right in novelty only of ideas. It is based on the right of an author, artist, or composer to prevent another person from copying his original work, whether it is a book, a tune or a picture, which he created himself. There is nothing in the notion of copyright to prevent another person from providing an identical result (and himself enjoying a copyright in that work) provided it is arrived at through an independent process.

There is no copyright in ideas. Copyright subsists only in the material form to which the ideas are translated. In the field of literary work the words chosen by the author to express his ideas are peculiar to himself and no two descriptions of the same idea or fact can be in the same words, just as no two answers written by

two different individuals to the same question can be the same. The order and arrangement of each man's words is as singular as his countenance. It is the form in which a particular idea, which is translated that is, protected; *Jeffreys v. Boosey*, (1854) 4 HLC 815.

A person may have a brilliant idea for a story or for a picture but if he communicates that idea to an artistic or play writer then the production which is the result of the communication of the idea is the copyright of the person who has clothed the idea in a form (whether by means of a picture or play) and the owner of the idea has no rights in that product; *Donoghue v. Allied Newspapers Ltd.*, (1937) 3 All ER 503. Since there is no copyright in ideas or information, it is no infringement of copyright to adopt the ideas of another or to publish information derived from another, provided there is no copying of the language in which those ideas have or that information has been previously embodied.

WORKS IN WHICH COPYRIGHT SUBSISTS

Section 13 of the Act lists out the works, in which copyright subsists. It reads as follows:-

1. Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say—
 - (a) Original literary, dramatic, musical and artistic works,
 - (b) Cinematograph films, and
 - (c) Sound recording.

Literary work includes computer programmes, tables, compilations including computer databases. Dramatic work includes any piece for recitation, choreographic work or entertainment in a dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include a cinematograph film.

Musical work means a work consisting of music and includes any graphical notation of such work, but does not include any works or any action intended to be sung, spoken or performed with the music. For instance, an actor's movements while rendering the song in a movie cannot be copyrighted.

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', meaning any building or structure having an artistic character or design or any model for such building or structure.

Cinematograph film means any work of usual 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.

Sound recording means a recording of sounds from which such sounds may be reproduced regardless of the medium on which such recording is made or method by which the sounds are produced.

COPYRIGHT IN ORIGINAL LITERARY WORK

The word 'original' does not mean that the word must be the expression of original or inventive thought. The Copyright Act is 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 printing 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 i.e. it should originate from the author.

QUALIFICATION FOR SUBSISTENCE OF COPYRIGHT

In order to qualify for copyright the work, apart from being original, should also satisfy the following conditions (except in the case of foreign works):—

1. The work is first published in India.
2. Where the work is first published outside India, the author at the date of publication must be a citizen of India. If the publication was made after the author's death the author must have, at the time of his death, been a citizen of India.
3. In the case of unpublished work the author is on the date of making of the work, a citizen of India or domiciled in India. This however, does not apply to works of architecture.

These conditions do not apply to foreign works or works of international organisations. The provisions of section 40 empower the Central Government, by an order published in the Official Gazette, to bring foreign works within the scope of the Copyright Act so that all or any of the provisions of this Act shall apply on them.

Section 41 lists out the conditions as to when the work of certain international organisation would be entitled to a copyright throughout India. These are:

- (1) Where—
 - (a) any work is made or first published by or under the direction or control of any organisation to which this section applies, and
 - (b) there would, apart from this section, be no copyright in the work in India at the time of the making or, as the case may be, of the first publication thereof, and
 - (c) either—
 - (i) the work is published as aforesaid in pursuance of an agreement in that behalf with the author, being an agreement which does not reserve to the author the copyright, if any, in the work, or
 - (ii) under section 17 any copyright in the work would belong to the organisation;

there shall, by virtue of this section, be copyright in the work throughout India.
- (2) Any organisation to which this section applies which at the material time had not the legal capacity of a body corporate shall have and be deemed at all material times to have had the legal capacity of a body corporate for the purpose of holding, dealing with, and holding, dealing with, and

enforcing copyright and in connection with all legal proceedings relating to copyright.

- (3) The organisations to which this section applies are such organisations of a licensed nature as the Central Government may, by order published in the Official Gazette, declare to be organisations of which one or more sovereign powers or Government or Governments thereof are members to which it is expedient that this section shall apply.

Thus, where the work is first published in India, copyright subsists in India irrespective of the nationality of the author. But where the work is first published outside India, copyright subsists only if the author is a citizen of India. In the case of unpublished work, the author must be a citizen of India or domiciled in India. Works by foreign authors published outside will get copyright protection in virtue of India being a Member of the Bern Convention and the Universal Copyright Convention. Where the work is the creation of joint authors, the conditions regarding nationality must be satisfied by all the authors.

Cinematograph films and sound recordings are generally based on some literary, dramatic, musical or other works in which copyright may be subsisting. In such a case, two independent copyrights subsist simultaneously.

WHAT IS PROTECTED IN LITERARY WORK

It is the product of the labour, skill and capital of one man which must not be appropriated by another, not the elements, viz., the raw materials upon which the labour, skill and capital of the author have been expended.

To secure copyright for the product, it is necessary that the labour, skill and capital should be expended sufficiently to impart to the product some quality or character which the raw material did not possess and which differentiates the product from the raw material used.

Literary quality

A literary work need not be of literary quality. Even so prosaic a work as an index of railway stations or a railway guide or a list of stock exchange quotations qualifies as a literary work if sufficient effort has been expended in compiling it to give it a new and original character.

In *Gleeson v. Denne*, 1975 RPC 471, it was held that if one walks hard enough walking down the streets, taking down the names of people who live at houses and makes a street directory as a result of that labour, this has been held to be an exercise sufficient to justify in making claim to copyright in the work which is ultimately produced.

SOFTWARE IS AN INTELLECTUAL PROPERTY

The 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, punchcards, magnetic tapes etc. Each one of the mediums in which the intellectual property is contained is a marketable commodity. They are visible to the senses. They may be a medium through which the intellectual property is transferred but for the purpose of determining the question as regards 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 instructions manual designed to instruct use and installation of the supplier program is supplied with the software, the same would not necessarily mean that it would cease to be a "good". Such instructions contained in the manual are supplied with several other goods including electronic ones.

SOME ILLUSTRATIONS OF COPYRIGHT IN LITERARY WORK

Adaptation of literary work

Copyright subsists in the original adaptation of another literary work because the adaptation itself can be a literary work. Adaptation in relation to literary work means the conversion of the work into a dramatic work by way of performance in public or otherwise, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical.

According to section 2(a)(v) of the Act adaptation in relation to any work includes any use of such work involving the rearrangement or alteration. Where the owner of a copyright in an original work licences another person to arrange or adapt it, e.g., to base a film script or a play upon a book, the copyright in the arrangement then vests in the arranger. The owner of the copyright in the original work does not own the copyright in the arrangement.

Abridgement of literary work

A genuine abridgement of a literary work is an original work and can be subject of copyright. An abridgement of a literary work is entitled to copyright if it is new and original and the author has bestowed sufficient skill and labour upon it. It is obvious that the learning, judgement, literary taste and skill requisite to compile properly and effectively an abridgement deserving that name would not be needed merely to select such scrips taken from an author and to print them in a narrative form. In other words, to copy certain passages and omit others so as to reduce the volume in bulk is not such an abridgement as would entitle an author of the abridged version, a copyright in the same.

In *Govindan v. Gopalakrishnan*, AIR 1955 Mad 391, the view expressed on Abridgement was that "abridgement is the reproduction of an original work in a much more precise and concise way. So a genuine abridgement of a literary work is an 'original work' and is the subject-matter of copyright. A digest of any literary work is an abridgement. An abridgement of a literary work is entitled to protection if it is original and the author has bestowed sufficient skill and labour upon it. It does not matter if the amount of originality is very small."

The law on the point of abridgement can be summarised in the case outlined below:

The law on the point of abridgement was elaborated by the Privy Council in case *Macmillan and Co. v. K.J. Cooper*, AIR 1924 PC 75.

In this case, the plaintiffs' book consisted of selected passages from 'Plutarch's Life of Alexander the Great', joined together by few words to give a different appearance. The book also contained introduction and notes useful for education. A similar book was published by the defendants with notes. The plaintiffs alleged that the defendants had infringed their copyright in book, which was prescribed for university examinations. The original work contained 40,000 words, while the defendants had copied 20,000 words and 7,000 words in notes.

Lord Atkinson in this case defined an abridgement in the following words: "An abridgement of an author's work means a statement designated to be complete and accurate of the thoughts, opinions and ideas by him expressed therein, but set forth much more concisely in the compressed language of the abridger. A publication, the text of which consists of a number of detached passages, selected from an author's work, often not contiguous but separated from those which precede and follow them by considerable bodies of print knit together by a few words so as to give these passages, when reprinted, the appearance of a continuous narrative is not an abridgement at all. It only expresses in the original author's own words, some of the ideas, thoughts and opinions set forth in his work".

Lord Atkinson further observed:

(i) to constitute a true and equitable abridgement, the entire work must be preserved in its precise import and exact meaning, and then the act of abridgement is an exertion of the individuality employed in moulding and transferring a large work into a small compass, thus rendering it less expensive and more convenient both to the time and use of the reader.

(ii) Independent labour must be apparent and the restriction of the size of the work by copying some of its parts and omitting others confers no title to the authorship, and the result will not be an abridgement.

(iii) To abridge in the legal sense of the word is to preserve the substance, the essence of the work in language suited to such a purpose, language substantially different from that of the original.

(iv) To make such an abridgement requires the exercise of mind, labour skill and judgement brought into play and the result is not mere copying.

(v) Thus, literary taste and skill requisite to compile properly and effectively is important. Mere process of selecting passages from works is not enough; the skill manifested in making or arranging selection is important. One may have borrowed much of the material from others, but if they are combined in a different manner, i.e., are original, one has a copyright in them.

Lord Atkinson in *Walter v. Lane*, 1900 AC 539, relying on the case held that, in the case under consideration sufficient knowledge, labour judgement and literary skill had not been bestowed on the plaintiff's book to be entitled to copyright except in the notes, and that the defendants had infringed copyright only in

respect of notes. It was held that neither the plaintiff's book nor the defendants' were abridgements, but only copied works, the plaintiffs copied from the original work while the defendant from the plaintiff's work.

Translation

In *Blackwood v. Parasuraman*, AIR 1959 Madras 410, it was held that a translation of a literary work is itself a literary work and is entitled to copyright protection if it is original and the author has expended sufficient labour and skill on it. It was further held that if copyright subsists in the original work, then reproduction or publication of the translation without the consent or licence of the owner of the copyright in the original will constitute infringement.

The word 'translation' has not been defined in the Act. The expression translation as defined in Black's Law Dictionary means: "the reproduction in one language of a book, document or speech in another language".

According to Shorter Oxford Dictionary, 'translate' means 'to interpret, explain, also to express one thing in terms of another' and 'translation' means 'the action or process of turning from one language into another; also the product of this, a version in a different language, the expression or rendering of something in another medium or form, transformation, alteration or change.'

Applying this meaning, it has been held that the conversion of the source code in a computer programme, often written in hand, into the object code or machine language is a translation; *Apple Computer Inc. v. Computer Edge*, 1984 FSR 481 (540).

Thus if copyright subsists in the original work, the reproduction or publication of translation without the consent or licence of the owner of copyright in the original will constitute infringement.

Reports of judicial proceedings

The judgement or order of Court, tribunal or other judicial authority is exempted from copyright protection. Any person can reproduce or publish them unless such reproduction or publication has been prohibited by the judicial authority concerned.

Judgements of courts published in Law Reports are collected by lawyers practising in various courts. If the reporters or lawyers, alongwith the judgement also supply head notes prepared by them as part of their report, copyright in the head notes will vest in them.

In *Jagdish Chandra v. Mohim Chandra*, AIR 1915 Cal 112, it was held that in the reports of judgements the reporter has no copyright but it cannot be said that in the selection of cases and in the arrangement of the reporting, the reporter does not have the protection of copyright law.

Thus the law reports which contain head notes are entitled to copyright protection. Copyright subsists also in commentaries on the Acts.

Head notes of law reports

The head note contains in clear and concise language the principle of law deduced from the Court decision to which it is prefixed or the facts and circumstances which bring the case in hand within some principle or rule of law

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or practise. The preparation of such a head note or the side note or the margin note in a report of a judgement requires the exercise of skill and thought.

The head notes of law reports are, therefore, original literary work which are entitled to copyright protection.

Historical work

Historical facts are not copyrightable *per se*. A book on history is designed to convey information to the readers. There can be no copyright in the information as such but if the manner of its presentation is unique to its author, it is a original literary work.

In *Ravencraft v. Herbert*, 1980 RPC 193 at p. 206, it was held that a historical work is not to be judged by precisely the same standards as a work of fiction. Also that the purpose of novel is usually to interest the reader and to contribute to his enjoyment and leisure. Historical work would have another purpose well to add to the knowledge possessed by the reader and in the process increase the sum total of human experience and understanding. The author of historical work must have attributed to him an intention that the information thereby imparted may be used by the reader, because knowledge would become sterile if it could not be applied. Therefore, it is reasonable to suppose that the law of copyright will prohibit the wider use to be made of a historical work. The knowledge built upon an historical work can, however, be extracted. Such extraction of knowledge from historical work can claim copyrighting in itself.

Lecture

A lecture includes address, speech and sermon. Delivery of a lecture includes delivery by means of any mechanical instrument or by broadcast. A lecture will be entitled to copyright only if it is reduced to writing before it is delivered.

A lecture delivered extempore, which has not been reduced to writing, cannot be protected by an action of breach of confidence or by showing that the lecture was delivered under an express or implied contract that those admitted to listen to the lecture should not publish it.

Section 17(cc) of the Copyright Act, 1957 states that in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of another person, such other person shall be the first owner of the copyright thereof notwithstanding that the person who delivers such address or speech or as the case may be, the person on whose behalf such address or speech is delivered, employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered.

Further, section 38 of the Copyright (Amendment) Act, 1994, has conferred on performers certain special rights called 'performers' rights'. A person who delivers a lecture is a performer under section 2(qq) and is, therefore, entitled to the performer's rights conferred under section 38 of the Copyright Act.

The question of copyright was brought out in the case of *Caird v. Sime*, 188 GLP 526.

In this case, the question of copyright in lectures delivered in a classroom was contested. It was contended by the Professor that he had put in labour and skill in compiling it.

The Court held that although the lecture delivered in a classroom is seldom written out, the author retains his right of property in those lectures, otherwise he would be hesitant in giving his original views to the students. Also that the students are not supposed to make profit by the act of publishing these lectures.

The matter of copyright of a professor on the lecture delivered was further considered in the case *Abernethy v. Hutchinson* and it was held that students are under an implied contract not to publish classroom lectures though they are entitled to use them for their own information in studies.

Letters

Copyright subsists in private letters, commercial letters and government letters as they are original literary works. The author of the letter is the owner of copyright in the case of private letters. In the case of commercial or government letters written by employees in the course of employment, the copyright belongs to the employer in accordance with the provisions of section 17(a) of the Act. When a person sends a letter to a newspaper, the newspaper gets an implied licence to publish it and also a right to edit or alter it so long as it does not affect the literary reputation of the writer.

In *Walter v. Lane*, (1900) AC 539, it was held that letters addressed by one person to another are original literary work entitled to copyright and when a letter is dictated to a stenographer or a typist the copyright in the letter belongs to the person who has dictated the letter.

Titles of books, cartoons or other literary matter, pseudonyms

As a general rule, titles of books or literary articles are not protected under copyright law. Titles of books can be protected only under the law of passing off. Pseudonym can be protected only under the law of passing off.

There is no copyright in titles of cartoons as such. A newspaper publisher who employs a cartoonist to produce cartoons for him of characters created by the cartoonist does not acquire a property right in the names of such characters even though he becomes the owner of the copyright in the cartoons published during the term of the employment of the cartoonist. The publisher, however, has no right to continue to use the names of such characters after termination of the employment especially where the title was created by the artist prior to his employment by the newspaper.

In *Forbes v. Kensley Newspapers*, (1951) 2 TLR 656, it was held that the title of a periodical publication or a book may be protected by an action for passing off if the plaintiff establishes that the title in question, i.e., the defendant's title, indicates to the public the plaintiff's book or publication and that the use by the defendant of the same title or a colourable imitation thereof would be calculated to lead to deception.

Shorthand writer's transcripts

The transcript taken down by a shorthand writer involves sufficient skill and labour. A copyright subsists in only the shorthand transcript prepared by the

stenographers from shorthand notes taken by them. A person who only writes down (not in shorthand) verbatim the words dictated by another is not entitled to copyright in the written work. In that case copyright vests in the person who dictates the material.

In *Donoghue v. Allied Newspapers Ltd.*, (1937) 3 All England Reporter 503, it was held that mere transcribing and typing does not make anyone entitled to own a copyright in respect of what he has typed or transcribed word by word. The owner of copyright is the author of the work who dictates. Therefore, if an author employs a shorthand writer to take down a story which the author is composing word for word in shorthand, and the shorthand writer then transcribes it, and the author has it published, the author is the owner of the copyright and not the shorthand writer. The explanation for that is, that there exists copyright in the form of language in which the idea is expressed.

Questionnaire for collecting statistical information

The preparation of a questionnaire involves sufficient skill, judgement and labour so as to constitute original literary work entitled to copyright protection.

Catalogues

A catalogue of items sold by a trader, or catalogue of manufacturers listing their products, is also capable of copyright protection.

In *Lamba Brothers Pvt. Ltd. v. Lamba Brothers*, AIR 1993 Del 347, the plaintiffs filed a suit for infringement of copyright against the defendants on the basis of their alleged claim of copyright in their catalogue/brochure. The plaintiffs had not caused particulars of the catalogue/brochure, to be entered on the 'catalogue of books' under section 18(4) of the Press & Registration of Books Act, 1867 nor had they indicated their claim of copyright in the catalogue/brochure by the symbol 'C' and the name of the author and year of publication. It was held that the suit was not sustainable.

Dictionaries

The preparation of a dictionary on any subject involves considerable amount of labour, skill and judgement. Copyright would subsist in a dictionary for the arrangement, sequence or idiom format of a dictionary which cannot be appropriated by another.

Copyright subsists in dictionaries because they are compilations and compilations are included in the definition of literary work.

In *Chappel v. Redwood Music*, 1981 RPC 337, it was held that the collective works like encyclopaedia or a dictionary constitute works written in distinct parts by different authors or in which works or parts of works of different authors are incorporated. Each such author has a copyright besides the compiler of the dictionary who also has a separate copyright in the work.

Compilations, directories, 'who is who', etc.

A compilation of articles is entitled to copyright protection. It is original in the copyright sense as sufficient labour, skill and judgment have been invested by the compiler.

New editions of existing work

To create a copyright in a new edition there must be evidence of labour skill and capital invested to make alterations which give a new face to the already existing book.

Collective work

The Copyright Act of 1957 does not refer to collective work. The term was defined under section 35 (1) of the old Act of 1911 as follows:—

Collective work is—

- (a) any encyclopaedia, dictionary, year book or similar work.
- (b) a newspaper, review, magazine, or similar periodical or any work written in distinct parts by different authors or in which works or parts of works of authors are incorporated.

The same meaning of collective work can be said to exist to-date.

There are two kinds of copyright in collective work—:

- (i) Copyright in the separate parts which is vested in the respective authors of the parts. For instance, an article written in a book which by itself is a compilation of articles is a copyright of the original author.
- (ii) Copyright in the collective work vests in the individual who collects the articles, arranges and edits them. The logic in vesting in him the copyright is that substantial amount of skill, judgement and investment of capital and labour goes into creating such collective work.

Computer programme

Section 2(ffc) defines computer programme as a set of instructions expressed in words, codes, schemes or 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 are considered to be literary works entitled to copyright protection.

Television programmes

Programme schedules of Television and Radio programmes are considered to be compilations and thus protected under copyright.

Pocket diaries, calendars

Pocket diaries containing besides usual pages, information of the kind found in calendars, postal information, a selection of days and dates for the year, tables of weight and measures are not considered literary works for the purpose of copyright.

In *Deepak Printers v. Forward Stationery Mart*, 1981 PTC 186, the Gujarat High Court ruled that no copyright subsists in a calendar even though certain pictures of deities and public personalities and some decorative features were incorporated in the calendar when no separate copyright in them was claimed.

Tambola ticket books

The ticket used in the game of Tambola is a form of tables of numbers requiring investment of skill, labour and originality in preparation; hence they

qualify as being subject-matter for copyright. This view was reinforced in *Toys Industries v. Munir Printing Press*, 1982 PTC 85.

Single word

A single word cannot be the subject of a copyright. The logic is that it is no creation of labour, skill and capital. Also, recognising the copyright of a person over a single word would eliminate the word from regular use, thus creating enormous hardship in the process.

In *Associated Electronics v. Sharp Tools*, AIR 1991 Karn 406, it was held that though there can be no copyright in a single word, there can, however, be copyright in the artistic manner in which the word may be represented.

Code words for cabling purposes

In *D.P. Anderson and Co. Ltd. v. Lieber Code Company*, (1912) 2 KB 465, compilation of thousands of words designed for use in coded messages, suitable for cabling purposes was held as subject matter of copyright.

Question papers set for examination

The person who sets the question paper invests labour, skill and time on its preparation. He is the author of the question paper and the copyright vests in him. This opinion has been reiterated in different judgements of the courts, e.g. *Jagdish Prasad v. Parameshwar Prasad*, AIR 1966 Pat 33, and *Agarwala Publishing House v. Board of High School and Intermediate Education UP*, AIR 1957 All 9.

The landmark case in determination of the question of copyright in a question paper was *University of London Press v. University Tutorial Press*, (1916) Ch 601. The case is discussed below.

In 1915, the senate of the University of London passed a resolution that it made a condition precedent for the appointment of every examiner that a copyright possessed by him in examination papers prepared by him of the University shall be vested in the University. Examiners were subsequently appointed for the Matriculation examination, but they were not on the staff of the University. They were free, subject to a syllabus and having regard to the knowledge required from students, to choose their own questions. The examiners thus prepared two question papers. The University entered into an agreement with the University of London Press Ltd., by which the University agreed to assign and make over to the press company all such copyright/rights publication as the University might have in such question papers for the period of 6 years. In 1916, the University of London Press Ltd. proceeded to publish examination papers. Meanwhile, the defendant company, the University Tutorial Press Ltd. issued a publication which included 16 out of 42 matriculation papers of January, 1916. The papers were taken from the students. The University of London Press Ltd., brought an action against the defendant company for infringement of copyright.

The first issue was: Are those question papers subject of copyright? It was held that examination papers, being a 'literary work', were subject of copyright. It was observed that 'literary work' is not confined to 'literary work' in the sense in which that phrase is generally applied. For instance, the writings of Rob

Stevenson. The term covers anything which is in print or writing, irrespective of the question whether the quality or style is high.

Assuming that they are 'literary work', the question then is whether they are 'original'. The word 'original' does not in this connection mean that the work must be the expression of original or inventive (new) thought, but that the work must not be copied from another work and should originate from the author. What is required is expenditure of original skill and labour in execution and not the originality of thought. The examination papers are 'original' works, which like a book, originate from the author. The setting of papers entitles the exercise of brain work, memory and trained judgement, and even the selection of passages from other author's works involved careful consideration, discretion and choice. Thus, the examination papers constitute 'original literary work'.

The second issue was: In whom did the copyright in the examination papers vest when they had been prepared? It was held that author of the question papers was the first owner of the copyright.

The court observed: A 'contract of service' was not the same thing as a 'contract for service'. The existence of direct control by the employer, the degree of independence on the part of the person who renders services and place where the service is rendered, are all matters to be taken into consideration. The examiner was free to prepare his questions at his convenience so long as they were ready by the time appointed for the examination, and it was left to his skill and judgement to decide what questions should be asked, having regard to the syllabus, the book work, and the standard of knowledge to be expected at the matriculation exams., and in view of this aspect of matter, the examiner was not acting under the 'contract of service' (apprenticeship) but under the 'contract for service' (independent contractor). Thus the copyright vests in him and not the employer (University).

The third issue was: Whether copyright in the question papers vested at once in the University by virtue of the fact that the examiners were employed on the terms that the copyright should belong to the University, who thereby became equitable assignees of the copyright?

Peterson J. took the view that the examiner was the first owner, but if there is an obligation under the contract of employment to assign copyrights in such papers to the University, then the University became equitably entitled to it subject to certain restrictions. If the University assigns its right to another, then that third party became equitably entitled to the copyright. Thus, in that case, the author (examiner), the University, and the third party, all become entitled to copyright.

The fourth issue related to "fair dealing". It was argued on behalf of the defendant company that what they have done has been "fair dealing" for the purpose of private study, viz., to prepare for examinations. They may make a profit out of it is not relevant. A man may take part or even the whole of a copyright work, without being liable, if he adds to it a considerable amount of matter (in the present case, the defendant company had also given answers to the questions).

However, the court rejecting this argument, observed that a mere republication of a work is not a 'fair dealing'. If an author produces book of questions could another person with impunity republish the work with answers to those questions? The answer is 'no'. Thus, the defendants have infringed the copyright of the plaintiffs. The suit can be brought by the examiners, the University and the plaintiff company.

Copyright subsists in the examination papers (original literary work).

Research thesis and dissertation

The Research Thesis and Dissertation prepared by students involves laborious efforts on their part to synthesise their study in the form of Thesis and Dissertation. In *Fateh Singh Mehta v. Singhal*, (1990) IPR 69 Raj, the guide copied from a student's thesis for his own Ph.D thesis. Interim injunction was granted against awarding Ph.D to the guide.

Parodies

Parody and satire are forms of social and literary criticism which are entitled to copyright protection. The parody in order to be original must be of such a nature where expenditure of skill, knowledge and labour of the parodist is evident.

News and newspaper precis

All are equally entitled to news. There can be no copyright as such in news but only the manner of expression in which it is written. Thus if one borrows news from a news item published in a newspaper and prepares his own write up, there is no copyright violation.

Copy right in Industrial design

The protection is given by the law relating to design to those who produce new and original designs, is primarily to advance industries and keep them at a high level of competitive progress. The registered proprietor of a design has the copyright in the industrial design. Copyright is defined as the exclusive right to apply a design to any article in any class in which it is registered. The term of this copyright is ten years in the first instance commencing from the date of registration which is the date of making the application.

If a design has been registered under the Design Act, 2000, it cannot be protected by the Copyright Act even though it may be an original Artistic work.

MEANING OF DRAMATIC, MUSICAL AND ARTISTIC WORKS

According to section 13(1)(a) copyright subsists in original dramatic, musical and artistic work. Hence an understanding of the above three terms, dramatic, artistic, and musical works, is required.

According to section 2(h) a dramatic work includes any piece of 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.

Choreography and scenic arrangement or acting

Choreography is the art of arranging or designing of ballet or stage dance in symbolic language but in order to qualify for copyright protection, it must be reduced to writing since arrangements to qualify for copyright protection must be reduced to some permanent form. Copyright subsists not only in the actual words of the work but in dramatic incidents created in the work. The use of such incidents by another would amount to infringement.

Film based on newspaper article

An interesting case came up in *Indian Express v. Jagmohan*, AIR 1985 Bom 229, where the defendants made a stage play and a movie based on the central theme of certain series of articles published by the plaintiff namely purchase of a woman by the name Kanta by a journalist to highlight the flesh trade flourishing in some parts of the country. The article published contained as autobiographical account of the part actually played by the author in the affair. In the film the emphasis was on human bondage particularly of Indian women. The Court held that stage play on the movie was not an infringement of the copyright in the article.

MUSICAL WORK



Copyright is recognised in original musical work under the provisions of section 13(1)(a). Section 2(p) defines 'Musical Work' as a work consisting of music and includes any graphical rotation of such work but does not include any words or any action, intended to be sung, spoken or performed with music. Adaptation of a musical work is also entitled to copyright protection. Adaptation in relation to a musical work means any arrangement or transcription of the work. A copyright subsists in arranging music by adding accompaniments, new harmonies, new rhythm and the like and transcribing it for different musical forces.

This provision of law provides the leeway to musical composers to come out with their pirated and remix versions of old musical works.

Adaptation in common parlance are usually termed as arrangements, e.g., a musical work may be modified by the accompanying orchestra. Today we hear many original songs being reposed with remix arrangement or an original song made to suit a particular performer or a particular language version of the musical text.

In *Redwood Music v. Chapell*, 1938 RPC 109 (119), it was held that if a musical arranger so decorates, develops, transfers to a different medium or otherwise changes the simple music of a popular song so as to make his arrangement fall within the description of an original musical work, such arrangement or adaptation is capable of attracting an independent copyright. There is no need for the ideas embodied in the arrangement to be novel.

A musical work in order to enjoy copyright must be original, to determine the originality, the degree of skill, labour and innovativeness is to be considered.

Song

There is no copyright in a song, the words of the song create a copyright in the author of the song and the music of the song is the copyright of the composer but

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the song itself has no copyright. In a case where a song is written and composed by the same man, he would own the copyright in the song.

Old Songs with different music compositions (remix)

The remix songs so very popular among the young generation is within definition of adaptation of a musical work, such adaptation is no infringement of the copyright of the original musical composition.

ARTISTIC WORKS



According to section 2(c) Artistic work means—

- (i) painting, a sculpture, a drawing including a diagram, map, chart or an engraving on a photograph whether or not only such work possess artistic quality;
- (ii) a work of architecture; and
- (iii) any other work of architecture craftsmanship.

Adaptation

Section 2(a)(ii) also provides that adaptation in relation to an artistic work means the conversion of the work into a dramatic work by way of performance public or otherwise. Adaptation in accordance with section 2(a)(v) also means relation to any work including artistic work any use of such work involving arrangement or alteration.

WORK OF SCULPTURE INCLUDES CASTS AND MODELS

Engravings

Section 2(i) defines engraving to include etchings, lithographs, wood prints and other similar works not being photographs. Engraving is the art of inscribing or covering figures upon surfaces particularly hard surfaces, or cutting figures, etc., in lines on metal surfaces for printing. Although an engraver is ordinarily a copyist, his art requires considerable work and talent. According to copyright subsists in an engraving distinct from the copyright on the picture from which it is produced. Copying from an engraving is an infringement of copyright therein, but as engraving produced from a picture is not infringement.

Painting

Painting is an artistic work even if it possess no aesthetic quality. What is sufficient to entitle it for a copyright is that it must be original, i.e., the painting should be the creation of the painter and not a mere copy of another painting. Painting in order to be copyrighted must be on a surface; it is a tangible object and not an idea only.

Only a painting on a tangible surface is entitled to copyright protection. Facial make up cannot be considered a painting by any stretch of imagination.

Drawing

According to section 2(c)(i) drawing including a map, diagram chart or plan covered by definition of artistic work and qualifies for copyright protection irrespective of the quality of work. Since the word drawing is not defined in the Act, it would mean any kind of drawing whether mechanical or engineer-

drawing. It must satisfy only the condition of originality meaning thereby that it should originate from the person who draws it.

In *Merchant Adventures v. M. Grew & Company*, 1973 RPC 1, it has been held that drawings for the purpose of copyright would include any legends or explanatory notes which describe in general terms what the drawing represents. Derivative drawings often used in mechanical and engineering drawings are original works since they involve skill, labour even though they may be built upon the substratum of some pre-existing drawing. The question is not how much the derivative drawing is different from the earlier drawings but what is judgemental in determining whether a copyright is entitled to copyright protection or not is the degree of skill and labour involved.

Industrial or Engineering Drawings

Engineering drawings are 'Artistic works' within the broad meaning of the term but each individual case has to be judged accordingly, to prevent a situation where every industrial or engineering drawing would claim the protection of a copyright and be outside the realm of even fair use for instructing students or of any use of such a nature.

In *Allibert v. O'Connor*, 1982 FSR 317, the Court opined that copyright protection is given to the work and not to the idea and that it is not originality of thought that has to be established to obtain copyright protection but original skill and labour in execution. So a copyright would vest in a product drawing even though it may be based upon an earlier drawing. Sufficient performance of independent labour is the criteria for adjudging whether the drawing by itself qualifies for grant of copyright.

Photograph

A photograph is an artistic work entitled to copyright. A photograph must be original, i.e., originally taken by the photographer to be entitled to protection and to be original, investment of some degree of skill and labour must be evident. A photograph of a public object, e.g., a public building when photographed in a particular manner by a particular individual is a subject matter of copyright, this does not prohibit another person from taking a photograph of the same object from same angle and claim an independent copyright. A photograph or a xerox copy of a photograph itself cannot be a subject-matter of copyright since there is no involvement of original, skill and labour in making such a copy.

In *Associated Publishers v. Bashyam*, AIR 1961 Mad 114, where a portrait of Mahatma Gandhi was made based on two photographs, it was held that a portrait based on photographs will be entitled to copyright if it produced a result different from the photograph and the portrait itself is original.

Copyright protects the original skill and labour involved in taking a photograph, i.e. drawing the objects photographed (e.g. family group photo) or in selecting the moment or setting to capture in the camera.

When some particular person or persons are asked to pose for a photograph, the publication of the photograph would be possible only with prior permission of the posers in question. Taking a photograph of a crowd would not need such a prior consent.

WORK OF ARCHITECTURE

Section 2(b) provides that a work of architecture means any building or structure having an artistic character or design or any model for such building or structure.

In order to qualify for copyright protection, the work besides being original must also possess artistic quality, this is in contrast to other artistic works like painting, drawing, etc., which does not require artistic quality for copyright protection.

According to provisions of section 13(5) copyright in a work of architecture does not extend to the process or the method of construction, however, the building or structure which constitutes a work of architecture, is built on the basis of plan which enjoys a separate copyright apart from the copyright in the building.

The artistic quality of the work is to be determined on the merits of each piece of architecture, e.g., a lay out of a garden containing steps, walls, ponds, etc., can be considered a piece of architecture.

WORK OF ARTISTIC CRAFTSMANSHIP

Section 13(1) confers copyright on the works of artistic craftsmanship. Lord Reid in the course of arguments in *George Hensher v. Restawile Upholstery*, 1975 RPC 31, declared that the primary purpose of conferring copyright on a work protects the man who puts on to the market, articles each one of which is a work of artistic craftsmanship, a product of his over handcraft, from reproduction whether by hand, machine or otherwise.

Test of artistic craftsmanship

In deciding the question whether there is any artistic craftsmanship involved in the work in question two issues are relevant. The meaning of the work artistic has to be clarified, it has to be determined by the Court whether the work in question possessed such artistic quality so as to be entitled to copyright protection.

Works which do not qualify the clause of artistic craftsmanship

- (1) Prototype furniture, commercial furniture.
- (2) The work of a cobbler does not qualify to be called artistic craftsmanship
- (3) Some of the work of carpenters, painters, bookbinders, weavers may be considered as work of artistic craftsmanship but most of their products would not be protected by the Clause to entitle their work to copyright protection.

Works which would qualify the clause of artistic craftsmanship—

- (1) Hand painted tiles.
- (2) Stained glass windows.

The maker of the such items would qualify for a copyright and their work can be described as work of artistic craftsmanship.

CINEMATOGRAPH FILM

A copyright subsists in a cinematograph film by virtue of section 13(1)(b). A 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 cinematograph including video films. Cinematograph film is a film which by rapid projection through an apparatus called cinematograph projector produces the illusion of motion on a screen of many photographs taken successfully on a long film.

For the purpose of copyright, the producer is considered to be the author of cinematograph film.

The sound track associated with the film is a part of the cinematograph film which is the subject of copyright. In *Balwinder Singh v. Delhi Administration*, AIR 1984 Delhi 379, and in *Thulsidas v. Vasantha Kumari*, (1991) 1 LW (Mad) 220 (229), it was held that video and television are both cinematograph films.

Level of originality in a cinematograph film

A television report or a documentary may be based upon a live incident or a newspaper report. The Act does not prescribe any specified level of originality in the cinematographic film in order to entitle it to a copyright protection. Section 13(3)(a), however, makes it clear that a copyright will not subsist in a cinematograph film if a substantial part of the film is an infringement of the copyright in any other work.

Rights granted to a holder of copyright in cinematograph film

Section 14(d) confers on the author of cinematograph film in which the copyright subsists some exclusive rights which are as follows:

1. to make a copy of the film including a photograph of any image forming a part of the film,
2. 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,
3. to communicate the film to the public. The sound recordings embedded in the film have a separate copyright of its own which is not affected by the copyright in the film as a whole.

Artists working in a cinematograph film

The artists working in a cinematograph film are not protected by copyrights. The permission to film their performances is through independent contracts with the performers. The Copyright (Amendment) Act, 1994 recognised certain special rights of performers called 'Performer's Rights' under the provisions of section 38 of the Copyright Act. The word 'performer' includes an acrobat, musician, singer, actor, juggler, snake charmer, a person delivering lecture or any other person who makes a performance. Section 2(qq) recognises the above categories of people as performers.

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The performer's right will subsist for twenty five years from the year of performance.

The performer has the exclusive right to do the following:

- (a) to make sound recording or visual recording of the performance,
- (b) to reproduce a sound record or visual recording of the performance,
- (c) to broadcast the performance,
- (d) to communicate the performance to the public otherwise than by broadcast.

There is no copyright in 'live events' but where the live events include the performance of any performers the, broadcasting of and sound recording of such live events cannot be done without permission of such performers.

Copyright in lyric and music of a cinematograph film

When an author of a lyric or musical work authorises a film producer to make a cinematograph film incorporating his work, the producer on completion of the cinematograph film by virtue of operation of section 14(d) acquires a copyright which gives him the exclusive privilege of communicating the work to the public. A distinct copyright is created in the film as a whole.

The composer of a lyric or a musical work, however, retains the right of performing it in public for profit otherwise than as a part of the cinematograph film and he cannot be restrained from doing so.

The two concerts of Indian film music composers who compose popular Hindi songs are in fact saved under this provision else they would have been unable to perform without the consent of the producer of the film in which they are incorporated. Such a law if it had been existing would have been against the interest of both the public and the composer or lyricist himself.

SOUND RECORDING

Copyright subsists in a sound recording. According to section 2(xx) a sound recording means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are reproduced.

Copyright in the music vests in the composer and the copyright in the music recorded vests in the producer of the sound recording. Where the song has not been written down and the composer who is also the performer records the song two copyrights come into existence simultaneously, one for the music and one for the sound recording.

SOME GENERAL PRINCIPLES/TESTS TO DETERMINE WHETHER COPYRIGHT EXISTS

1. A work is threatened by copiers only if the work is worth copying. In *Unit of London Press v. Univ. Tutorial Press*, (1916) 2 Ch 609, it was held that whatever is worth copying is *prima facie* worth protecting.

2. The copyright protection to be extended to a work is to be determined on the basis of the test that is the originality of the work in question and considering the work as a whole. It is not proper to dissect the work into parts and then show

that each part by itself is not entitled to copyright protection and then to extend the justification to deny the whole work, the protection of copyright (Halsbury's Laws of England 4th Edn., Vol. 9, para 836, p. 533.)

3. The law of copyright cannot be extended to cover events which have actually taken place or live events, e.g., sporting events, news events, processions.

4. In *R.G. Anand v. Delux Films*, AIR 1978 SC 1613, it was laid down by the Supreme Court that one of the surest and safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator, or the viewer finds one work a copy of the other.

5. Copyright is a right recognised to subsist on its own. Registration is not a pre-condition for bringing an action against infringement of copyright. In *Nav Sahitya Prakashan v. Anand Kumar*, AIR 1981 All 200, it was held that registration is only optional, registration serves the purpose of being a *prima facie* proof of possession of copyright by the person.

Level of originality in literary works

The question that would come to the mind of the reader is what should be the level of originality of a literary work in order to entitle itself to a copyright. Literary work means any work written or printed in any language, e.g., any work of fiction, poetry, history or books on any subject, computer programmes, tables and compilations including computer database are also included within the meaning of literary work.

In *Agarwala Publishing House v. Board of H.S. and Intermediate Education, U.P.*, AIR 1967 All 91, it was held the literary merit of the work is immaterial, even a mundane rhyme would qualify for copyright protection if it originates from the intellectual exercise of an individual.

The test of literary merit besides being a subjective criteria is also time specific. If the lyricist of yesteryears were to judge the literary merit of popular songs of today, they would rate them as worthless creations.

Recognition of skill and labour

So long as there is evidence of investment of sufficient amount of skill and labour in creating the material, no particular level of aesthetic appeal to the intellect is required. That is how works which would sound not at all literary to a common man such as a set of logarithmic tables or an income tax return compilations are considered as literary works within the meaning of copyright.

Originality in thought

The Copyright Act does not require that the thought or the intellectual investment input into the work must necessarily be original or novel. In *Univ. of London Press v. Univ. Tutorial Press* (1916) 2 CH 609 and in *C. Cunnian & Co. v. Balraj & Co*, AIR 1961 Mad 111, it was reiterated that the work must not be copied from another work, the manner of expression of the thought must be original. The expenditure of skill and labour in the manner of expression must be original point originating in thought.

In *Jagdish Prasad v. Parmewshwar Prasad*, AIR 1966 Pat 33, the court was of the view that no original thought or original research is required in order that a

literary work may be deemed to be original. The standard of originality required for a copyright is low.

In *Govindan v. Gopalakrishna*, AIR 1955 Mad 391, the opinion expressed was that in modern complex society provisions have to be made for protecting every man's copyright whether big or small, whether involving a high degree of originality as in a new poem or picture or only originality at the vanishing point as is in a law report.

Originality only in form not in idea

The Supreme Court in the case of *R.G. Anand v. Delux Films*, AIR 1978 SC 1613, declared there can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts. There needs to be an originality only in the form of expression.

The outline of the case given below would explain this principle.

In this case, the plaintiff was a play writer and producer of some plays including the play 'Hum Hindustani'. The plaintiff tried to consider the possibility of filming the said play and narrated the play to the defendant. The defendant, without informing the plaintiff, made a picture 'New Delhi', which was alleged to be based on the said play. The issues that arose, thus, were: (i) Is the plaintiff owner of the copyright in the play 'Hum Hindustani', and (ii) Is the film 'New Delhi' an infringement of the plaintiff's copyright in the play 'Hum Hindustani'. The first issue was decided in favour of the plaintiff, but not the second one.

Fazal Ali, J., after considering a number of authorities—English, Indian and American—derived the following proposition:

- (1) There can be no copyright in an idea, subject-matter, themes, plots or historical/legendary facts, and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work. What is protected is not original thought or information, but the original expression of thought or information in some concrete form.
- (2) Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. But if the defendants' work is nothing but a literal (colorable) imitation of the copyrighted work with some variations here and there, it would amount to violation of copyright. Thus the copy must be substantial and material one. "A copy is that which comes so near to the original as to give to every person seeing it the idea created by the original." This is a sure and safe test to determine in violation of copyright.
- (3) Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.
- (4) Where, however, apart from the similarities appearing in the two works, there are also material and broad dissimilarities which negative the intention to copy the original and coincidences appearing in the two works are clearly incidental, no infringement of the copyright occurs.

- (5) As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests.
- (6) Where, however, the question is of the violation of the copyright of "stage play" by a film producer/director, the task of the plaintiff becomes more difficult to prove piracy. It is clear that unlike stage play a film has a much broader perspective, wide field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyright work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.
- (7) It is obvious that the underlying emotions reflected by the principal characters in a play or book may be similar and yet that the characters and expression of the same emotions be different. That the same emotions are found in plays would not alone be sufficient to prove infringement but if similar emotions are portrayed by a sequence of events presented in like manner, expression and form, then infringement would be apparent.

Now, in the instant case, the 'film' portrays three themes, (a) role of provincialism in regard to marriage and in regard to renting out accommodation, (b) evils of caste-ridden society, (c) evils of dowry. The last two aspects do not appear at all in the plaintiff's 'play'. All the three aspects mentioned above are integral parts of the story of film and cannot be separated without affecting the beauty and continuity of the film. Further, the story treatment of film is very different from that in play.

At the most the central idea of the play (*i.e.*, provincialism) is undoubtedly the subject-matter of the film, but it is well-settled that a mere idea cannot be the subject-matter of copyright. Thus, it was held that the film was not a substantial or material copy of the play.

Conclusion—There is no copyright in abstract ideas, themes or plots of a literary work or films, etc. For example, if a play depicts the caste-ridden society or dowry system prevailing in India, there is no infringement of copyright.

Difference between the means and the end

The Copyright Act somehow envisages that the creators of literary works can reach different destinations using the same path, *i.e.*, the same means can lead to different ends and it is the end (the literary work) which is protected. Thus there is clear differentiation between the ends and the means in the Act.

In *Macmillan and Co. v. K.J. Cooper*, AIR 1924 PC 75, the court was of the view that the question is not whether the materials which are used are entirely new and have never been used before. The true question is whether the same plan, arrangement and combination of materials have been used before for the same or any other purpose, if they have not, then the plaintiff is entitled to a copyright, although he may have gathered hints for his plan and arrangement from existing and known sources.

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There is clear distinction between materials upon which one claiming copyright has worked and the product of the application of his skill, judgment, labour and learning with those materials, such products though may neither be novel or ingenious is yet the claimants original work in that it emanates from him and is not copied.

Unjust enrichment and restitution in copyright

The main source of public policy precluding the enforcement of obligations statutory prohibition. In addition, the courts have enumerated their own common law heads of public policy. Two major problems have lighted English Law under this heading. First, the courts have not always been sensitive in the exercise of statutory construction in ascertaining the public policy underlying the statute. In the result, often the very party which the statute intended to protect has suffered as a result of a blunt application of the illegality rule. Second, having regard to express or implied statutory prohibitions may have been less problematical in the pre-industrial age. However, in the modern regulatory State the proliferation of Regulatory Acts and delegated legislation has passed problems for this topic which the judiciary has not always been able to cope with successfully.

Use of Combinations of Alphabets and numericals

The Supreme Court on the issue of what is likely to cause confusion, in case of *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*, AIR 2001 SC 1952, referred to *Dr. Reekaweg & Co. GmbH. v. S.M. Sharma, M.D.*, (2006) 32 PTC 458, held that while dealing with cases relating to passing off, one of the important tests which has to be applied in each case is whether the misrepresentation made by the defendant is of such a nature as is likely to cause an ordinary consumer to confuse one's product as of another due to similarity of marks and other surrounding factors. What is likely to cause confusion would vary from case to case. Where medicinal products are involved, the test to be applied for adjudging the violation of trade mark law may not be at par with cases involving non-medicinal products. A stricter approach should be adopted while applying the test to judge the possibility of confusion of one medicinal product for another by the consumer. While confusion in the case of non-medicinal products may only cause economic loss to the plaintiff, confusion between the two medicinal products may have disastrous effects on health and in some cases, life itself. The stringent measures should be adopted specially where medicines are the medicines of last resort as any confusion in such medicines may be fatal or could have disastrous effects. The confusion as to the identity of the product itself could have dire effect on the public health.

True and equitable assignment

To constitute a true and equitable abridgement, the entire work must be preserved in its precise import and exact meaning and than the act of abridgement is an exertion of the individuality employed in moulding and transfusing a large work into a small compass, thus rendering it less expensive and more convenient both to the time and use of reader.

The independent labour must be apparent, and the reduction of the size and work by copying some of its parts and omitting others confers no title to authorship and the result will not be an abridgement entitled to protection. To abridge in legal sense of the word is to preserve the substance, the essence of the work in language suited to such a purpose—language substantially different from that of the original. To make such an abridgement requires the exercise of mind, labour, skill and judgment brought into play, and the result is not merely a copying.

The International Convention on Copyright

There is a general convention on Copyright in the world. An artistic, literary or musical work is the brainchild of its author, the fruit of his labour, and so is considered to be his property. So highly is it prized by all civilized nations that it was though worthy of protection by national laws and international conventions relating to copyright.

The International Convention for the protection of literary or artistic works first signed at Berne in September 1886, was revised at Berlin in 1908, at Rome in 1928, at Brussels in 1948, at Stockholm in 1967 and finally at Paris in 1971. Article 1 of the Convention, as revised, constitutes the countries to which the convention applies into a Union for the protection of rights of authors in their literary and artistic works. The expression "Literary and artistic works" is defined to include every production in the literary, scientific and artistic domain whatever may be the mode or formation of its expression. It is provided that the work shall enjoy protection in all countries of the Union. Various detailed provisions are made in the convention for the protection of the works. Article 9 provides that authors of literary and artistic works protected by the convention shall enjoy the exclusive right of authorising the reproduction of these works in any manner of form. It is also expressly stipulated that any sound or visual recording shall be considered as a reproduction for the purposes of the Convention.

Article 16 of the Convention provides that:

- (1) Infringing copies of a work shall be liable to seizure in any country of the Union where the work enjoys legal protection.
- (2) The provisions of the preceding paragraphs shall also apply to reproductions coming from a country where the work is not protected, or has ceased to be protected.
- (3) The seizure shall take place in accordance with the legislation of each country.

India is a party to Berne Convention.

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Author and Ownership of Copyright

The concepts of 'author' and 'ownership' are vital when the question of propriety over the copyright arises. The copyright provisions do not recognise any copyright in an idea. The originator of an idea is not the owner of the copyright, copyright belongs to the person who gives concrete form to the idea, e.g., writes a book, paints a picture or makes a film borrowing from the idea if such an idea has been communicated to him by another.

In *Donoghue v. Allied Newspapers*, (1937) 3 All ER 503, the view expressed was "since there is no copyright in ideas even if they are original, the originator of a brilliant idea is not the owner of the copyright in the work, unless he is also the creator of the work". Thus, if a person has a brilliant idea for a story, play or a picture and if he communicates that idea to an author or play writer or an artist, the production based on that idea is the copyright of the artist who has clothed the idea in a form whether by means of a book, play or picture and the originator of the idea has no right in the product, for which copyright subsists.

According to provisions of section 17 the author of the work is the first owner of the copyright in the work. To understand as to who is considered the author of the work, section 2(d) needs to be read. It defines 'author' in relation to various categories of works as follows:

- I. Literary or dramatic work, the author of the work
- II. Musical work, the composer in relation to a musical work means the person who composes the music regardless of whether he records it in any form of graphical notation—section 2(ffa).
- III. An artistic work other than a photograph, the artist.
- IV. Photograph, the person who takes the photograph.
- V. Cinematograph film, the producer.
- VI. Sound recording, the producer.
- VII. Literary, dramatic, musical or artistic work which is computer generated, the person who causes the work to be created.

The author of a newspaper report is the person who writes it and not the person supplying the news. A journalist who writes a news story on the life story of another on the basis of such a narration made to him is the author of the story so published.

Nationality requirement for ownership of copyright

The nationality of an author is not the prime determinant of the entitlement of the author to a copyright under the Indian Act. However, the subsistence of copyright has certain requirements under section 13(2).

- (i) Published work—In case of a published work, the work must be published in India or when published outside India, the author must be a citizen of India at the date of publication (if alive at that date) or if dead at the time of his death.
- (ii) Unpublished work (other than architectural work)—The author at the time of making the work must be a citizen of India or domiciled in India where the making of an unpublished work is extended over a considerable period, the author of the work will be deemed to be a citizen of, or domiciled in, that country of which he was a citizen or wherein he was domiciled for any substantial part of that period, this is provided in section 7 of the Copyright Act.
- (iii) Architectural work—The work must be located in India only then can it be a subject of copyright protection.

OWNERSHIP OF COPYRIGHT



Section 17 statutorily recognises the author of the work to be the first owner of the copyright therein. This is however, subject to some exceptions.

These are discussed as below for each kind of creative work.

Literary, dramatic or artistic work

Section 17(a) provides—

Where a work is made by the author in the course of his employment by the proprietor of a newspaper, magazine or a periodical under a contract of service or apprenticeship for the purpose of publication in a newspaper, magazine or periodical, the said proprietor, in absence of any agreement to the contrary, will be the first owner of the copyright in the work in so far as it 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 being so published. Except in such cases, the author will be the first owner of the copyright in the work.

In *Thomas v. Manorama*, AIR 1989 Ker 49, it was held that in case of termination of the employment, the employee is entitled to the ownership of copyright in the works created subsequently and the former employer has no copyright over the subsequent works so created.

The copyright in a work done by an employee on his own time and not in the course of his employment belongs to him.

Photograph, painting, portrait

Section 17(b) provides—

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

Work made in the course of employment

Section 17(c) provides—

Where a work is made in the course of the author's employment in a contract of service or apprenticeship, the employer (not being the proprietor of a newspaper, magazine or periodical) in absence of any agreement to the contrary, the employer will be the first owner of the copyright in the work so created.

Lectures delivered in public

Section 17(cc) provides—

Where any person has delivered any address or speech in public, the person will be first owner of the copyright. If the address or speech is delivered on behalf of any other person, such other person will be the first owner of the copyright therein.

Government work

Section 17(d) provides—

In the case of government work, the government is the owner of the copyright in the absence of an agreement to the contrary.

Work made on behalf of a public undertaking

Section 17(dd) provides—

By the Amendment Act of 1983, the Copyright Act came to contain provision, in case of a work made or first published by or under the direct 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.

Public sector undertaking means:

- (i) An undertaking owned and controlled by Government;
- (ii) A Government company as defined in the Companies Act, 1956; or
- (iii) A body corporate established by or under any Central or Provincial State Act.

Government will include both Central and State Governments.

Work of certain international organisation

Section 17(e) provides—

When a work is considered to be a work of certain international organisations under the provisions of section 41, in such case the international organisation concerned shall be the first owner of the copyright therein.

Ownership of copyright in a commissioned work or work created at the instance of another

Work created at the instance of another for a valuable consideration belongs to the provider of such valuable consideration. Examples of such commissioned works are: person writing a report on a subject as a part of a research project being conducted by the company, a composer composing a song for a film company, a painter drawing a portrait at the instance of another person.

Apprenticeship

An apprentice is a student.

In *Dunk v. George Waller*, (1970) 2 WLR 241, it was held that an apprentice is a student bound to another for the purpose of learning his trade or calling, the contract being of such a nature that the master teaches and the other serves the master with the intention of learning. Hence, the work belongs to the teacher.

Shorthand writer

If the Shorthand writer takes down the matter dictated verbatim by a person, the person who dictated the matter is the author and copyright owner of the work.

Employee teacher

If an employee teaching in a school, college or university writes a book on the subject he teaches or on anything else, he is the author and the owner of the copyright because he is employed to teach and not to write text books.

Question papers of an examination

Ownership copyright in examination question papers vests in the paper setter where no contract to the contrary exists. The paper setter in such a case is the author and owner and not the Board of Examination or the authority for whom the question papers are set.

Collective works

Collective works include encyclopaedia, dictionary, year book, newspaper, magazine or generally a work in which works or parts by different authors are incorporated. The first owner of the copyright in the collective work as a whole is a person who has collected, edited and organised the work.

Musical work

The first owner of a copyright in a musical work is the composer of the work. If the work is composed in the course of employment under a contract of service, the employer will be the first owner of copyright. The person who commissions a musical work, for example, a film producer who commissions a music composer to compose the music for his film does not become the owner of the copyright but only gets a licence to use the work for the purpose for which it is commissioned. The producer only gets the right to incorporate the music in his film. All other rights are retained by the music composer.

Artistic work

- (a) The artist who created the work is the first owner of copyright.
- (b) Where the work is created in the course of employment unless a contract to the contrary exists, the employer will be the owner of the copyright.
- (c) Where the employer is the owner of a newspaper, magazine, he possesses only a limited right to use the work for publication in the newspaper or magazine.
- (d) When the creation of artistic work is a commissioned work for valuable consideration, the person who commissioned the work is the owner of the copyright.

Plan

The plan of a building or a structure is the copyright of the architect. His ownership of copyright can be eliminated only by an agreement to the contrary. The client is not authorised to make copies of the plan except for his own study. He cannot use the pre-existing plan even for making an extension of the building constructed on the basis of the previous plan.

Photograph

Within the meaning of section 2(s) photograph includes photolithograph or any work produced by any process analogous to photography but does not include a cinematograph film.

- (a) The person taking the photograph is the owner of copyright.
- (b) Where the photograph is taken for a valuable consideration at the instance of any person, such a person in the absence of any agreement to the contrary, is the first owner of copyright therein.
- (c) Where the photographer takes a photograph in the course of employment by a proprietor of a newspaper or magazine under a contract of service or apprenticeship for the purpose of publication in the newspaper or magazine; the said proprietor is the first owner of copyright in the photograph in so far as the copyright relates to the publication of the work in any newspaper or magazine. In all other respects, the author will be the first owner of the copyright in the photograph.

THE DISTINCTION BETWEEN CONTRACT OF SERVICE AND CONTRACT FOR SERVICE

The author may create work independently or he may create a work under a contract of service or contract for service.

Contract of service

Where a man employs another to do work for him under his control so that he can direct the time when the work shall be done, the means to be adopted to bring about the end, and the method in which the work shall be arrived at, then the contract is a contract of service.

In *Belloff v. Pressdram*, 1973 RPC 765, it was decided that the true test is whether on one hand the employee is employed as part of the business and his work is an

integral part of the business or whether his work is not integrated into the business but is only accessory to it or the work is done by him in business on his own account. In the former case, it is contract of service and in the later case, it is a contract for service.

In the case of contract of service, the status of the author is that of an employee. For example, whenever an employee of a solicitor's firm drafts a document in the course of his employment, the employer is the first owner of copyright.

Contract for service

If a person employs another to do a certain work but leaves it to the other to decide how that work shall be done, what steps shall be taken to produce that desired effect, then it is a contract for service. His status is that of an independent contractor who himself decides about the manner of doing work, in such cases the copyright vests in him and not the employer. For example, an architect who is hired by the company to construct a plan for their new building. In such a case the copyright vests in the architect himself.

In the case of *University of London Press v. Tutorial Press*, (1916) 2 Ch 501, it was declared that the services of an independent contractor are hired for creating or doing a work on a given subject. It was held the examiner who prepares question papers for a University or college was free to prepare his questions at his convenience so long as they were ready by the time appointed for the examination, and it was left to his skill and judgement to decide what questions should be asked, having regard to the syllabus, the book work and the standard of knowledge to be expected at the matriculation examination and in view of this aspect of the matter, the examiner was not acting under the "contract for service". Hence he was an independent contractor owning a copyright over the question paper.

QUANTUM OF EXTRACTS OR "FAIR DEALING"

The production of whole work or a substantial portion of it as such will not normally be permitted and only extracts or quotations from the work will alone be permitted even as "fair dealing". In the circumstances, the quantum of extracts or quotations permissible will depend upon the circumstances of each case. It may not be proper to lay down any hard and fast rules to cover all cases where the infringement of copyright is alleged on the basis of extracts or quotations from the copyrighted work. In a case like the one on hand, court will have to take into consideration the followings : (1) the quantum and value of the matter taken in relation to the comments or criticism, (2) the purpose for which it is taken, and (3) the likelihood of competition between the two works. It is only when the court has determined that a substantial part has been taken, that any question of fair dealing arises. Though once this question arises, the degree of substantiality, that is to say, the quantity and the value of the matter taken, is an important factor in considering whether or not there has been a "fair dealing".

Further, it is thought that even under the personal law, in considering whether a dealing with a particular work was fair, it would have to be considered whether any competition was likely to exist between the two works. But each

Author and Ownership of Copyright

case will depend on its facts, and what may be fair in one case will not necessarily be fair in another case. The criticism or review may relate not only to literary style but also to be doctrine or philosophy of the another as expounded in his book. A fair criticism of the ideas and events described in the book documents would constitute "fair dealing".

Moreover, the term "fair dealing" has not been defined as such in the Act. section 52(1)(a) and (b) specifically refers to "fair dealing" of the work and reproduction of the work. Accordingly, it may be reasonable to hold that reproduction of the whole work or a substantial portion of it as such will normally be permitted and only extracts or quotations from the work will be permitted even as "fair dealing".

PIRACY AND COPYRIGHT LAW

Piracy has become a global problem due to the rapid advances in technology. It has assumed alarming proportion all over the world and all the countries are trying to meet the challenge by taking stringent legislative and enforcement measures.

There are mainly three types of piracy, namely, piracy of the printed material, piracy of sound recordings and piracy of cinematograph films. The object of pirate in all such cases is to make quick money and avoid payment of legitimate fees because the taxes and royalties. In respect of books, it is estimated that six hundred thousand titles are pirated every year in India and on each of the pirated titles the Copyright loss of Government is in form of tax evasion.

Apart from books, the recorded music and video cassettes of films and programmes are reproduced, distributed and sold on a massive scale in parts of the world without any remuneration to the authors, artists, publishers and producers concerned.

The emergence of new technique of recording, fixation and reproduction of audio programme combined with advent of video technology have helped the pirates. It is also estimated that the losses of the film producer and other owners of copyright amount to several crores of rupees. The Indian Government in terms of tax evasion also amounts to crores of rupees. In addition to this, because of the recent video boom in the country, there are reports that unlicensed video films are being exhibited on a large scale. A large number of video parlours have also sprung up all over the country and they exhibit such films recording video tapes by charging admission fees from their clients.

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Statutory rights

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Rights Conferred by Copyright**33****Rights Conferred by Copyright****WHAT IS THE NATURE OF RIGHTS?**

- (1) Statutory rights.
- (2) Negative rights.
- (3) Multiple rights.
- (4) Economic rights.
- (5) Moral rights.

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Statutory right

The copyright in a work is a creation of statute. A person owns a copyright because the law recognises the existence of such a right. The rights which an author of a work has by virtue of creating the work are well defined. Section 14 of the Copyrights Act so defines them as under:

'For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

- (a) in the case of a literary, dramatic or musical work, not being a computer programme,—
 - (i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
 - (ii) to issue copies of the work to the public not being copies already in circulation;
 - (iii) to perform the work in public, or communicate it to the public;
 - (iv) to make any cinematograph film or sound recording in respect of the work;
 - (v) to make any translation of the work;
 - (vi) to make any adaptation of the work;
 - (vii) 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);
- (b) in the case of a computer programme—
 - (i) to do any of the acts specified in clause (a);
 - (ii) to sell or give on hire, or offer for sale or hire any copy of the computer programme, regardless of whether such copy has been sold or given on hire on earlier occasions;

Rights Conferred by Copyright

- (c) in the case of an artistic work—
 - (i) to reproduce the work in any material form including depiction in two dimensions of a three dimensional work;
 - (ii) to communicate the work to the public;
 - (iii) to issue copies of the work to the public not being copies already in circulation;
 - (iv) to include the work in any cinematograph film;
 - (v) to make adaptation of the work;
 - (vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);
- (d) in case of a cinematograph film,—
 - (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;
 - (iii) to communicate the film to the public;
- (e) in the case of a sound recording,—
 - (i) to make any other sound recording embodying it;
 - (ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;
 - (iii) to communicate the sound recording to the public.

*Explanation:—*For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

Negative right

Copyright is a negative right in the sense that it stops others from exploiting the work of the author for their own benefit without the consent or licence of the author. It does not confer any positive right on the author himself.

Multiple rights

Copyright is not a single right but a bundle of rights which can exist and be exploited independently. The nature of these multiple rights depends upon the categories of works, namely:—

- (1) literary, dramatic and musical works;
- (2) original artistic works;
- (3) cinematograph films; and
- (4) sound recording.

The literary, dramatic and musical works are grouped together for the purpose of defining these exclusive rights. The rights relating to artistic works are distinct from those of cinematograph films and sound recording.

Economic rights

The rights conferred by section 14 on a copyright owner are economic rights because the exploitation of the work by the author by exercising these rights may bring economic benefit. The author may exploit the work himself or license others to exploit any one or more of the rights for a consideration which may be in the form of royalty, a lump-sum payment.

Moral rights

The copyright besides conferring economic benefits also confers moral rights on the author. Such rights though not statutorily defined are as follows:—

- (1) The right to decide whether to publish or not to publish the work, i.e., the right of publication.
- (2) The right to claim authorship of a published or exhibited work.
- (3) The right to prevent alteration and other actions that may damage the author's honour or reputation—the right of integrity.

The Bern Convention recognises some of these rights and requires member States to provide the author with the right to claim authorship and to object to alterations. These rights remain with the author even after the transfer of copyright and such rights last throughout the entire term of the copyright.

These moral rights are recognised as "Author's Special Rights" under the provisions of section 57 of the Act (as amended by the Amendment Act of 1994).

These rights are:

- (a) To claim authorship of the work.
- (b) To restrain or claim damages.

The above rights are conferred on the author even after the assignment of the copyright.

The author's computer programmes are treated differently.

The author of computer programme does not have the right to restrain or claim damages when the making of copies or adaptation is done:

- (1) In order to utilise the computer programme for the purpose for which it was supplied.
- (2) To make back-up copies purely as temporary protection against loss, destruction or damage in order only to utilise the computer programme for purpose for which it was supplied.

STATUTORY LIMITATION ON THE SCOPE OF RIGHTS

There are certain statutory limitation placed on the scope of rights conferred on the author. Section 52 enables other persons to exercise the rights comprised in a copyright for specified purposes under specified circumstances without infringement.

WORK OF JOINT AUTHORSHIP

A work may be created by a single author or by more than one author, a work of joint authorship can also claim copyright.

Rights Conferred by Copyright

Section 2(2) provides: "A work of joint authorship means a work produced by the collaboration of two or more authors in which contribution of one author is not distinct from the contribution of the other author or authors."

In the case of *Levy v. Rutley*, 1871 LR 6 CP 523, it was held, to constitute joint authorship it is necessary that there should be a common design and operation in carrying out the design. If two persons undertake jointly to play, agreeing on the general outline and design and sharing the labour of working it out, each would be contributing to the whole production and might be said to be the joint authors of it, but to constitute joint authorship must be a common design:

In the case of *Tate v. Fullbrook*, (1908) 1 KB 821, it was held that a person only suggested the idea or subject-matter of the work cannot be considered joint author.

In *Luksenan v. Weiderfeld*, 1985 FSR 525 (528-529), the court held that suggestion of idea which is embodied by author in a work written by him not make the originator of the idea the author of the same. Contribution of ideas, catch uses or words is not sufficient to claim joint authorship to the work written by another.

Status of a joint owner

In the absence of agreement to the contrary, each of the joint owners has an equal undivided share in the copyright. One joint author cannot lawfully reproduce the work himself or grant licences to others to reproduce it, without the consent of the other author or authors.



Term of Copyright

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Term of Copyright

The term of copyright is fixed keeping in view the interest of the author and that of the general public. The interest of the author is in protecting his work as long as possible whereas the interest of the public is in making the work a public property as soon as possible. The protection of the interest of the author assumes primary importance in view of the fact that the assurance that their work will bear their name, and be protected by law serves as a stimulant to creative minds to produce literary works.

The interest of the public is served by recognising the 'principle of fair dealing' where the use of the copyright work by a person other than the author himself does not constitute infringement of the copyright.

The term of copyright varies according to the nature of the work.

Term of copyright in literary, dramatic, musical or artistic works

Section 22 provides—

Copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) 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.

Explanation.—In this section the reference to the author shall, in the case of a work of joint authorship, be construed as a reference to the author who dies last.

Term of copyright in anonymous and pseudonymous works

Section 23 provides—

(1) In the case of a literary, dramatic, musical or artistic work (other than a photograph), which is published anonymously or pseudonymously, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published:

Provided that where the identity of the author is disclosed before the expiry of the said period, copyright shall subsist until sixty years from the beginning of the calendar year following the year in which the author dies.

- (2) In sub-section (1), references to the author shall, in the case of an anonymous work of joint authorship, be construed,—
 - (a) where the identity of the authors is disclosed, as references to that author;
 - (b) where the identity of more authors than one is disclosed, as references to the author who dies last from amongst such authors.
- (3) In sub-section (1), references to the author shall, in the case of a pseudonymous work of joint authorship, be construed,—
 - (a) where the names of one or more (but not all) of the authors are pseudonymous or his and their identity is not disclosed, as references to the author whose name is not a pseudonym, or, if the names of two or more of the authors are not pseudonyms, as references to such of those authors who dies last;
 - (b) where the names of one or more (but not all) of the authors are pseudonyms and the identity of one or more of them is disclosed, as references to the author who dies last from amongst the authors whose names are not pseudonyms and the authors whose names are pseudonyms and are disclosed; and
 - (c) where the names of all the authors are pseudonyms and the identity of one of them is disclosed, as references to the author whose identity is disclosed or if the identity of two or more of such authors is disclosed, as references to such of those authors who die last.

Explanation.—For the purposes of this section, the identity of an author shall be deemed to have been disclosed, if either the identity of the author is disclosed publicly by both the author and the publisher or is otherwise established to the satisfaction of the Copyright Board by that author.

Term of copyright in posthumous works

Section 24 of the Act provides—

Where copyright subsists at the date of death of the author who dies last (in case of joint authors) and the work or/and adaptation of which has not been published before that date, i.e. the date of the death of such an author, the copyright will subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published. Where any adaptation of such a work has already been published earlier, i.e. prior to the publication of the original work, the sixty year period will commence from the calendar year next following that year. Calendar year means the year commencing on the first day of January.

A literary, dramatic or musical work or an adaptation of any such work is deemed to be published if it had been performed in public or if any sound recording made in respect of the work have been said to the public or have been offered for sale to the public.

An illustration of such a publication would be where a play is staged in an auditorium where the audience is invited by open tickets. Such a

staging of a play would amount to publication of the dramatic work. However, the case is entirely different when a play is staged to a selected audience of its own directors, producers who watch the play as the final product of the efforts of all the participants, such a staging of a play does not amount to publication.

Term of copyright in photographs

Section 25 provides—

In the case of a photograph, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the photograph is published.

Term of copyright in cinematograph films

Section 26 provides—

Copyright in a cinematograph film subsists until sixty years from the beginning of the calendar year next following the year in which the film is published.

Term of copyright in sound recording

Section 27 provides—

Copyright subsists in a sound recording until sixty years from the beginning of the calendar year next following the year in which the work is first published.

Term of copyright in Government works/public undertakings

Section 28 provides—

The Government is the first owner of the copyright, the copyright shall subsist until 60 years from the beginning of the calendar year next following the year in which the work is first published.

Term of copyright in works of international organisation

Section 29 provides—

In the case of a work of an international organisation to which the provisions of section 41 apply, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published.

Broadcast reproduction right

Section 37(2) provides that broadcast reproduction right shall subsist until 25 years from the calendar year next following the year in which the broadcast is made.

Performers' right

According to section 38(2), the performers' right shall subsist until 25 years from the beginning of the calendar year next following the year in which the performance is made.

Assignment/Licence of Copyright

The manner of exploitation of copyright in a work can be numerous. Copyright is a bundle of rights comprising of multiple rights, they can be exercised independently of each other. A novel can be published as a volume serialised in a newspaper or magazine or can be licensed for being made into a film. Each of these rights can be assigned or licensed for a limited term. When assignment is a transfer of ownership in rights to the assignee, a licence is permission to do something in respect of the work.

ASSIGNMENT OF COPYRIGHT

Sections 18, 19 and 19A of the Copyright Act deal with the assignment of copyright. Assignment of copyright may be for the whole of the rights or for part of the rights only.

Assignment of copyrights may be general, i.e., without any limitation being placed on the assignee or the assignment may be subject to certain limitations.

Assignment may be for the full term of the copyright or for a limited period of time.

Assignment may be on a territorial basis, i.e., for a particular territory or country.

An owner of a copyright can assign his right in the above combination forms.

Illustration—An author assigns the right to serialise the work into a television serial to a producer for a period of 20 years provided the serial is broadcast within the territory of India. Here the author makes a limited assignment for a limited period of time placing territorial restrictions at the same time.

Mode of assignment

Section 19 elaborates the mode of assignment in the following manner:

- (1) Assignment is valid only when it is in writing signed by the assignor by his duly authorised agent.
- (2) The assignment instrument shall identify the work and specify the rights assigned and the duration and territorial extent of such assignment.
- (3) The instrument of assignment of copyright shall also specify the amount of royalty payable, if any, to the author or his legal heirs during the subsistence of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

- (4) If the assignee does not exercise the rights assigned to him within one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment instrument.
- (5) When the period of assignment is not stated, the period shall be deemed to be five years from the date of assignment.
- (6) If the territorial extent of any assignment of the rights is not specified, it shall be presumed to extend within India.
- (7) When the assignment has been made before the coming into force of the Copyright (Amendment) Act, 1994, the above provisions of the above sub-sections (2), (3), (4), (5), (6) shall not be applicable. However, even such an assignment has to be through a written instrument.

Can an assignee sue an assignor for infringement?

An assignee, to whom certain rights have been assigned by the assignor (author), can restrain the author from exercising those rights which have already been assigned to him by moving court of competent jurisdiction for infringement.

Can assignment be made in respect of work which has not yet come into existence?

Section 18 provides that copyright can be assigned even in respect of future works of the author before their coming into existence. But in that case, the assignment will take effect only when the work comes into existence.

Transmission of copyright by operation of law

Copyright is a kind of personal movable property. It can be transferred by assignment (details of which have been discussed above), testamentary disposition (through will) or by operation of law, e.g., when the owner of copyright whether it is published or unpublished, dies. The copyright will pass on to his personal representative as part of the estate, if such a person dies intestate (without making a will).

Section 20 provides that if a manuscript of a literary, dramatic or musical work or an artistic work has been bequeathed to a beneficiary without specifically bequeathing copyright, the bequest will carry with it the copyright to the work also. In case the owner of copyright becomes bankrupt, the copyright will vest in the official receiver and will pass to the trustee of the bankrupt's estate as assets for distribution among the creditors.

Relinquishment of copyright

According to section 21, the author of a work may relinquish all or any of the rights comprised in the copyright in the work by giving notice to the Registrar of Copyright.

LICENCING OF A COPYRIGHT

A licence can transfer the interest in a copyright. In a licence the rights granted are limited. The ownership in the rights remains with the author. In the case of assignment, the ownership in the rights is transferred to the assignee.

Illustration

When an author licences only the right of circulation of his work to a publisher, the publisher is only entitled to cause circulation of the work. An assignee of the copyright, however, would be entitled to the accompanying benefits of circulation of the work.

In the case of *Dharam Dutt Dhawan v. Ram Lal Suri*, AIR 1953 Punj 279 (280), the plaintiffs entered into an agreement with the defendants (publishers) to publish a book written by them on a royalty basis. In the agreement, the author agreed that the publishing and selling rights shall be vested in and remain with the publishers. The preamble defined the parties so as to include their respective heirs, executors, administrators or assignees. It was held that this was partial assignment of publishing rights and not a mere licence.

The relevant provisions of the Copyright Act concerning licences of copyright are as follows:—

Licences by owners of copyright

Section 30 provides—

The owner of the copyright in any existing work of the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorised agent:

Provided that 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.—Where a person to whom a licence relating to copyright in any future work is granted under this section, 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.

Application of sections 19 and 19A

Section 30A stipulates—

The provisions of sections 19 and 19A shall, with any necessary adaptations and modifications, apply in relation to a licence under section 30 as they apply in relation to assignment of copyright in a work.

Compulsory licence in works withheld from public

Section 31 provides—

(1) 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—

(a) has refused to republish or allow the republication 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

(b) 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

Intellectual Property

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 re-publish the work, perform the work in public or communicate the payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Copyrights Board may determine; and thereupon the Registrar of Copyright shall grant the licence to the complainant in accordance with the directions of the Copyright Board, on payment of such fee as may be prescribed.

Explanation.—In this sub-section, the expression "Indian work" includes—

- (i) an artistic work, the author of which is a citizen of India; and
- (ii) a cinematograph film or a sound recording made or manufactured in India.
- (2) Where two or more persons have made a complaint under sub-section (1), the licence shall be granted to the complainant who in the opinion of the Copyright Board would best serve the interests of the general public.

Compulsory licence in unpublished Indian works

Section 31A provides—

- (1) Where, in the case of an Indian work referred to in sub-clause (iii) of clause (1) of section 2, 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 such work or a translation thereof in any language.
- (2) Before making an application under sub-section (1), the applicant shall 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.
- (3) Every such application shall be made in such form as may be prescribed and shall be accompanied with a copy of the advertisement issued under sub-section (2) and such fee as may be prescribed.
- (4) Where an application is made to the Copyright Board under this section, it may, 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.
- (5) Where a licence is granted under this section, the Registrar of Copyrights may, by order, direct the applicant to deposit the amount of the royalty

Assignment/Licence of Copyright

determined by the Copyright Board in the public account of India or any other account specified by the Copyright Board so as to enable owner of the copyright or, as the case may be, his heirs, executors or legal representatives to claim such royalty at any time.

- (6) Without prejudice to the foregoing provisions of this section, in the case of a work referred to in sub-section (1), if the original author is dead, Central Government may, if it considers that the publication of the work is desirable in the national interest, require heirs, executors or legal representatives of the author to publish such work within such period as may be specified by it.
- (7) Where any work is not published within the period specified by the Central Government under sub-section (6), the Copyright Board may, on an application made by any person for permission to publish the work and after hearing the parties concerned, permit such publication and payment of such royalty as the Copyright Board may, in the circumstances of such case, determine in the prescribed manner.

Licence to produce and publish translation

Section 32 of the Act provides—

- (1) Any person may 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.
- (1A) Notwithstanding anything contained in sub-section (1), any person may 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 the work, if such translation is required for the purposes of teaching, scholarship or research:
Provided that 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.
- (2) Every application under this section shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the translation of the work.
- (3) Every applicant for a licence under this section shall, along with the application, deposit with the Registrar of Copyrights such fee as may be prescribed.
- (4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a translation of the work in the language mentioned in the application—
 - (i) Subject to the condition that the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the translation of the work sold to public, calculated at such rate as may be prescribed.

- Copyright Board may, in the circumstances of each case, determine in the prescribed manner; and
- (ii) where such licence is granted on an application under sub-section (1A), subject also to the condition that the licence shall not extend to the export of copies of the translation of the work outside India and every copy of such translation shall contain a notice in the language of such translation that the copy is available for distribution only in India:

Provided that nothing in clause (ii) shall apply to the export by Government or any authority under the Government of copies of such translation in a language other than English, French or Spanish in any country if—

- (1) such copies are sent to citizens of India residing outside India or to any association of such citizens outside India; and
- (2) such copies are meant to be used for purposes of teaching, scholarship or research and not for any commercial purpose; and
- (3) in either case, the permission for such export has been given by the Government of that country:

Provided further that no licence under this section shall be granted, unless—

- (a) a translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorised by him, (within seven years or three years or one year, as the case may be, of the first publication of the work), or if a translation has been so published, it has been out of print;
- (b) the applicant has proved to the satisfaction of the Copyright Board that he had requested and had been denied authorisation by the owner of the copyright to produce and publish such translation, or that he was, after due diligence on his part, unable to find the owner of the copyright;
- (c) where the applicant was unable to find the owner of the copyright, he has sent a copy of his request for such authorisation by registered air mail post to the publisher whose name appears from the work, and in the case of an application for a licence under sub-section (1), not less than two months before such application;
- (cc) a period of six months in the case of an application under sub-section (1A) (not being an application under the proviso thereto), or nine months in the case of an application under the proviso to that sub-section, has elapsed from the date of making the request under clause (b) of this proviso, or where a copy of the request has been sent under clause (c) of this proviso, from the date of sending of such copy, and the translation of the work in the language mentioned in the application has not been published

- by the owner of the copyright in the work or any person authorised by him within the said period of six months or nine months, as the case may be;
 - (ccc) in the case of any application made under sub-section (1A),—
 - (i) the name of the author and the title of the particular edition of the work proposed to be translated are printed on all the copies of the translation;
 - (ii) if the work is composed mainly of illustrations, the provisions of section 32A are also complied with;
 - (d) the Copyright Board is satisfied that the applicant is competent to produce and publish a correct translation of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section;
 - (e) the author has not withdrawn from circulation copies of the work; and
 - (f) an opportunity of being heard is given, whenever practicable, to the owner of the copyright in the work.
 - (5) Any broadcasting authority may apply to the Copyright Board for a licence to produce and publish the translation of—
 - (a) a work referred to in sub-section (1A) and published in printed or analogous forms of reproduction; or
 - (b) any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities, for broadcasting such translation for the purposes of teaching or for the dissemination of the results of specialised, technical or scientific research to the experts in any particular field.
 - (6) The provisions of sub-sections (2) to (4) in so far as they are relatable to an application under sub-section (1A), shall, with the necessary modifications, apply to the grant of a licence under sub-section (5) and such licence shall not also be granted unless—
 - (a) the translation is made from a work lawfully acquired;
 - (b) the broadcast is made through the medium of sound and visual recordings;
 - (c) such recording has been lawfully and exclusively made for the purpose of broadcasting in India by the applicant or by other broadcasting agency; and
 - (d) the translation and the broadcasting of such translation are not used for any commercial purposes.
- Explanation.—*For the purposes of this section,—
- (a) “developed country” means a country which is not a developing country;
 - (b) “developing country” means a country which is for the time being regarded as such in conformity with the practice of the General Assembly of the United Nations;

- (c) "purposes of research" does not include purposes of industrial research, or purposes of research by bodies corporate (not being bodies corporate owned or controlled by Government) or other association or body of persons for commercial purposes;
- (d) "purposes of teaching, research or scholarship" includes,—
 - (i) purposes of instructional activity at all levels in educational institutions, including schools, colleges, universities and tutorial institutions; and
 - (ii) purposes of all other types of organised educational activity.

Licence to reproduce and publish works for certain purposes

Section 32A(1) provides—

Where, after the expiration of the relevant period from the date of the first publication of an edition of a literary, scientific or artistic work—

- (a) the copies of such edition are not available in India; or
- (b) such copies have not been put on sale in India for a period of six months,

to the general public, or in connection with systematic instructional activities at a price reasonably related to that normally charged in India for comparable work by the owner of the right of re-production or by any person authorised by him in this behalf, any person may apply to the Copyright Board for a licence to reproduce and publish such work in printed or analogous form of reproduction at the price at which such edition is sold or at a lower price for the purposes of systematic instructional activities.

Section 32A(4) provides—

Where an application is made to the Copyright Board under this section, it may, after holding such an inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a reproduction of the work mentioned in the application subject to the conditions that—

- (i) the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the reproduction of the work sold to the public, calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed manner;
- (ii) a licence granted under this section shall not extend to the export of copies of the reproduction of the work outside India and every copy of such reproduction shall contain a notice that the copy is available for distribution only in India:

Provided that no such licence shall be granted unless—

- (a) the applicant has proved to the satisfaction of the Copyright Board that he had requested and had been denied authorisation by the owner of the copyright in the work to reproduce and publish such work or that he was, after due diligence on his part, unable to find such owner;

- (b) where the applicant was unable to find the owner of the copyright he had sent a copy of his request for such authorisation by registered airmail post to the publisher whose name appears from the work less than three months before the application for the licence;
- (c) the Copyright Board is satisfied that the applicant is competent to reproduce and publish an accurate reproduction of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section;
- (d) the applicant undertakes to reproduce and publish work at such price as may be fixed by the Copyright Board, being a price reasonably related to the price normally charged in India for work of the same standard on the same or similar subjects;
- (e) a period of six months in the case of an application for reproduction and publication of any work of natural science, physical science, mathematics or technology, or a period of three months in the case of an application for the reproduction and publication of any other work, has elapsed from the date of making the request under clause (a), or where a copy of the request has been sent under clause (b), from the date of sending of a copy, and reproduction of the work has not been published by the owner of the copyright in the work or any person authorised by him within said period of six months, or three months, as the case may be;
- (f) the name of the author and the title of the particular edition of the work proposed to be reproduced are printed on all the copies of reproduction;
- (g) the author has not withdrawn from circulation copies of the work and
- (h) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.

Termination of licences

Section 32B provides—

- (1) If, at any time after the granting of a licence to produce and publish a translation of a work in any language under sub-section (1A) of section 32 (hereinafter in this sub-section referred to as the licensed work), the owner of the copyright in the work or any person authorised by him publishes a translation of such work in the same language 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:

Provided that no such termination shall take effect until after the expiry of a period of three months from the date of service of a notice in a prescribed manner on the person holding such licence by the owner of the right of translation intimating the publication of the translation aforesaid:

Provided further that copies of the licenced work produced and published by the person holding such licence before the termination of the licence takes effect may continue to be sold or distributed until the copies already produced and published are exhausted.

- (2) If, at any time after the granting of a licence to produce and publish the reproduction or translation of any work under section 32A, the owner of the right of reproduction or any person authorised by him sells or distributes copies of such work or a translation thereof, as the case may be, 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 works of the same standard on the same or similar subject, the licence so granted shall be terminated:

Provided that no such termination shall take effect until 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 the licence by the owner of the right of reproduction intimating the sale or distribution of the copies of the editions of work as aforesaid:

Provided further that any copies already reproduced by the licensee before such termination takes effect may continue to be sold or distributed until the copies already produced are exhausted.

There is no legislative intent to make registration of a copyright mandatory

A careful analysis of the scheme and the provisions of the Act does not disclose any legislative intention to make registration of copyright mandatory, or to take away criminal or civil remedies in the event of non-registration of copyright. On the other hand, some of the provisions point a contrary conclusion.

Copyright is the exclusive right, subject to the provisions of the Act, to do and authorise the doing of any of the acts enumerated in section 14 in respect of a work or substantial part thereof. The first owner of the copyright shall be the author of the work. In other words, the ownership of a copyright is a logical consequence of the authorship. Copyright does not arise from registration of copyright. The provision regarding registration and maintenance of register is basically a provision to enable entries to be made in respect of relevant particulars including the names of owners of copyright. Unless there is an existing copyright and the person is the owner of a copyright, the question of applying for or making entries in the register of copyright does not arise. The registration follows the copyright and not *vice versa*. Certified copies entries in the register are only *prima facie* evidence without further proof and they are not conclusive.

A copyright, when it is propounded or challenged, has to be duly established in a competent court. There are specific provisions as in the Trade Marks Act or Indian Partnership Act barring institution of legal proceedings in the absence of registration.

Having regard to all these circumstances, it has to be held that registration is not mandatory and for breach of copyright, civil or criminal remedy can be restored to without registration.

Infringement of Copyright

Even otherwise, it is to be seen whether it is a case of any infringement of the copyright. Meaning of expression "copyright" is given under section 14 of the Copyright Act. The works in which copyright subsists is given under section 13. Section 16 manifests that there is no copyright except as provided in the Act. Section 14 mandates that the Author of the work shall be the first owner of the copyright. As per section 21, the author can relinquish his right. Under section 30, the owner of the copyright may grant any interest in the right by license to anybody either to produce and publish a translation as can be seen from section 32. Section 44 contemplates the registration of copyright. While section 51 enumerates when copyright shall be deemed to be infringed, section 52 enumerates which acts are not infringement of copyright. Section 57 deals with a special right of the author even after the assignment of the work. Section 63 prescribes the punishment for the infringement of the copyright.

A peep into the provisions shows what is meant by a copyright, in what works the copyright subsists, the rights of the author of the copyright, when that right is said to be infringed and when not, and the penal consequences of such infringement.

The purpose of recognising and protecting the copyright of an author is to statutorily protect his work and inspire him to exercise his creative faculties further.

A copyright confers exclusive right on the copyright owner, *inter alia*, to the reproduction of the work in a material form, storing the work in any medium by electronic means, publication of the work, performance of the work in public, making of its adaptations and translations.

These rights are conferred on the owner of the copyright to enable him to reap monetary benefits. If any of the above acts are carried out by a person other than the owner of the copyright, without a licence from the owner, it constitutes infringement of the copyright.

Copyright is granted for a specific period of time. Whether an act is an infringement or not would depend on the fact whether copyright is subsisting in the work or not. In case the copyright in the work has expired, the work falls in the 'public domain' and any act of reproduction of the work by any person other than the author would not amount to infringement.

Illustration

A poem was written by a poet in 1820. The poet expired in 1888. Thereafter, the poem was copied verbatim by another author in a chapter of his book in the year 1970. There is no infringement of copyright in such a case because the term of copyright for a literary work subsists for a period of sixty years after the death of the author.

ACTS WHICH CONSTITUTE INFRINGEMENT

Since the forms of creative works are numerous, i.e., literary, dramatic, musical, artistic, etc., the acts which would constitute infringement would depend upon the nature of the work.

Section 51 of the Act defines infringement of a copyright not specifically with respect to each kind of creative work, but in general terms. According to section 51 of the Act, copyright in a work shall be deemed to be infringed:

- (a) when any person without a licence from the owner or the Registrar of Copyrights does anything the exclusive right to do which is by this Act conferred upon the owner of copyright, or permits for profit, any place to be used for the communication of the work to the public, unless he was not aware and had no reasonable ground for believing that such communication would be an infringement of copyright; or
- (b) when any person:
 - (i) makes for sale or hires or sells or lets for hire or by way of trade displays or offers for sale or hire any infringing copies of the work covered by copyright; or
 - (ii) distributes, either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, any infringing copies of the work; or
 - (iii) exhibits in public by way of trade any infringing copies of the work; or
 - (iv) imports into India any infringing copies of the work except the copy of any work for the private and domestic use of the importer.

For the purpose of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an infringing copy.

Illustrations

1. A printer takes a copy of the latest book released by another publishing house, makes copies of the same and circulates them in the market. His act amounts to infringement.
2. The unauthorised video films in circulation in the market of popular Hindi movies are all instances of infringement of copyright in cinematograph film.
3. A book is published in America by a publisher there. An Indian visitor to that country gets a copy of the book, makes further copies and floods the Indian market with such copies of the said book. He is guilty of infringement under the provisions of section 51 of the Act.

Intellectual Property**Infringement of Copyright****An Act whether Infringement or not—Factors to be considered**

In judging whether an act would amount to infringement or not, the factors which are taken into consideration are given below:

- (i) Whether copying has a causal connection, deliberately made or is a unintentional, indirect copying. Causal connection can be found when the infringer has some overt motive to produce a copy, for instance reaping monetary reward.

Illustration

A poem is copied verbatim by another and published in his own name. A third person borrows the idea of the poem and paraphrases it. In the first case, the person is directly infringing the copyright. In the latter case, infringement may be indirect depending upon the degree of similarity between the two works. Both cases, however, involve infringement.

- (ii) In determining whether an act amounts to infringement, the extent of defendant's alteration of the original work; the manner in which defendant attempts to take advantage of the plaintiff's work; the nature and extent of plaintiff's effort involved in the original work; are the material factors considered.

GENERAL PRINCIPLE

The general principle is that no infringement of the plaintiff's rights takes place where a defendant has bestowed such mental labour upon what he has borrowed and has subjected it to such revision and alteration as to produce an original result. The ultimate test is "has there been a reproduction of the plaintiff's work in a substantial form?"

The defendant is not at a liberty to take away the result of another man's labour or the benefits arising out of the product of such labour.

The elements need to be present to make an act an 'infringement' within the meaning of the Act are:

- (1) substantial copying; and
- (2) direct evidence of copying from the source in which copyright subsists.

Substantial copying

There must be substantial copying of the work. In deciding whether there has been substantial copying, four factors have to be taken into consideration. They are:

- (i) The volume of the material borrowed by the defendant. Volume here does not mean only the quantity but also the quality (a short passage may be of vital significance in a work), which is borrowed by the defendant.

In *Landbroke Ltd. v. William Hill*, (1964) 1 WLR 273, it was held that substantiality is a question of fact and degree determined on the basis of importance of the parts reproduced.

- (ii) Whether the substantial copying on the part of the defendant has been intended for the purpose of saving himself of the labour?

(iii) The extent to which the plaintiff's and defendant's work are competing with each other.

Illustration

A work of fiction is written by X. Y reads the work and authors another work carrying 10 chapters of the previous book which have been paraphrased by him though marginally.

Both the novels are sold in the same outlet. In this case, there has been substantial copying with the intention of cashing it on the work created by another.

All the above factors suggest that there has indeed been infringement of the original author's copyright.

In the case of *D. Narayan Rao v. V. Prasad*, (1979) 2 APLJ 231, the defendant had borrowed a part of the speech which was only of two-and-a-half-minutes duration in a three hour film. Yet it was held that substantial part of the speech had been copied.

Direct evidence of copying

In copyright infringement cases, the direct evidence of copying is generally difficult to furnish. Evidence of copying has to be deduced from surrounding circumstances. Evidence of copying, for instance, can be found when the defendant's work contains the same errors, mistakes as those present in the plaintiff's work. Similarity in the language and writing style also provides evidence of copying.

Copying the copyrighted work even with minor additions, omissions or alterations would still amount to infringement of the copyright because such minor additions, omissions or alterations in the copied work would not make it original work.

In cases where the similarities in the two works are due to coincidence and necessities inherent in the nature of the work (e.g., dictionaries, calendars, logarithmic tables, books on law containing similar provisions and case laws), the question of infringement by copying is irrelevant.

In *Shyam Shah v. Gaya Prasad Gupta*, AIR 1971 All 192, the court held that a person is at liberty to draw upon 'common source of information'. But if he saves himself the trouble and labour requisite for collecting that information by adopting another's work, with colourable variations, he is guilty of infringement of copyright even though the original work is based on material which are common property.

It is a well settled principle that where the source of information used is common and available to all, a compilation which has been brought out as a result of labour and industry put in by a person, can claim a copyright, if the copied work, by employment of such labour and industry assumes the character of an original work.

Indirect copying

There can be infringement by indirect copying also. A work may be copied by making a copy from a pre-existing copy of the same work.

In the case of *Manfstaengal v. Empire Palace*, (1894) 3 Ch 109 (127), it was held that not recognising indirect copying as infringement would open the door to indirect piracies. If a defendant makes a two dimensional copy of the plaintiff's three dimensional architectural plan, he is guilty of infringement by indirect copying. A novel may be converted into a play without the consent of the author by a director. When such a play is again made into a ballet there would be infringement by indirect copying.

It is infringement of copyright to produce a work similar to the original copyrighted work even if the defendant has never seen the plaintiff's work, but has copied an intermediate copy.

In the case of *Schlesinger v. Turner*, (1890) 63 LT 764, it was held that plays based upon novels which in turn were based upon original plays amounted to infringement of the original play.

Conscious, unconscious and sub-conscious copying

Conscious copying is when the infringer is perceptually aware, i.e., he has self-knowledge that he is copying the work of another.

In case of unconscious copying, the flow of idea and its expression from the mind of the author is spontaneous. He has no self-knowledge that the work created by him is similar to the work of another. In such a case, definite causal connection has to be established to prove infringement.

Sub-conscious copying is when the author having already been familiar with the work of the first original author creates a work which bears marked similarity to the original work though the person himself does not consciously aim to imitate the first author.

In the case of *Francis Day and Hunter v. Bron*, 1963 Ch 583 (613), it was held that sub-conscious copying is sufficient to constitute infringement of copyright provided substantial familiarity with the work alleged to be copied is shown.

When copying and reproduction become an infringement

Copying and reproduction connote different meanings depending upon the kind of work in question.

In case of a literary and dramatic work, reproduction means copying a substantial part of the work and passages from the original work.

In musical works, when the bars of one musical work are borrowed substantially there would be copying.

Reproducing the work in a different medium is infringement. For instance, reproduction of a literary, dramatic or musical work in the form of a record or a cinematograph film and reproduction of an artistic work which is two dimensional into a three dimensional work would tantamount to infringements.

In *Ladbroke (Football) Ltd. v. William Hill (Football) Ltd.*, (1964) 1 WLR 273, it was held that broadly reproduction means copying and does not include cases where an author or compiler produces a substantially similar result by independent work without copying. A copy is that which comes so near to the original so as to suggest the original to the mind of the persons seeing it.

Reprography—Whether infringement

Reproduction by the use of modern equipment like xeroxing machines, is called reprography. Section 2(x) of the Act provides:

"Reprography means the making of copies of a work by photo-copying or similar means."

Duplicating machines are used for reproduction of literary work, documents and drawings. Tape recorders are used for reproducing music and video-grams are used for reproducing films.

Infringement of copyright by means of 'Reprography' is a world-wide phenomenon. Since such infringement is more often at domestic levels (in the homes of people), prevention of such infringement is rather difficult.

The Copyright Cess Bill, 1992 was introduced in the Lok Sabha in May, 1992 which provided for a cess on sale of reprographic machines, such as tape recorders, video cassette recorders, the proceeds of which were to be distributed to copyright owners through association of copyright owners who administer their rights on their behalf. This Bill has not yet been passed by the Parliament. Hence to this date, no statutory provision exists to curb this kind of infringement of copyright.

Illustration

X buys a cassette containing songs of the latest popular Hindi film. This cassette is sold in the market say by HMV. His friend borrows the cassette and makes his own copy by recording the same in his own cassette recorder. Such an act is reprography which is a subtle form of infringement but the present Copyright Act does not provide any remedy for such form of infringement.

***ACTS NOT CONSTITUTING INFRINGEMENTS—
STATUTORY EXCEPTIONS***

The use of a copyright work by any person other than the owner of copyright is an infringement. However, the Copyright Act recognises certain acts which though done by a person other than the owner of copyright would not amount to infringement of the copyright. The purpose of recognising these exceptions is to enable the reproduction of the work for certain public purposes for encouragement of private study and research and promotion of education. These exceptions can be pleaded in defence by the defendant in an action for infringement of copyright.

Section 52 lists the acts which do not constitute infringement of copyright. These are:

- (1) A fair dealing with a literary, dramatic, musical or artistic work not being a computer programme for the purposes of private use including research, criticism or review, making copies of computer programme for certain purposes, reporting current events in newspapers and magazines or by broadcasting or in a cinematograph film or by means of photographs.
- (2) Reproduction of judicial proceedings and reports thereof, reproduction exclusively for the use of members of legislature, reproduction (artistic work excluded) in a certified copy supplied in accordance with law.

Infringement of Copyright

- (3) Reading or recitation in public of extracts of literary or dramatic work
- (4) Publication in a collection for the use in educational institutions in certain circumstances.
- (5) Reproduction by teacher or pupil in the course of instructions or in question papers or answers.
- (6) Performance in the course of the activities of educational institutions in certain circumstances.
- (7) The making of sound recording in respect of any literary, dramatic or musical work, if—
 - (i) sound recordings of that work have been made by or with the consent of the owner or by the holder of the copyright in the work
 - (ii) the person making the sound recordings has given a notice of his intention to make the sound recordings, has provided copies of all covers or labels with which the sound recordings are to be sold, and has paid in the prescribed manner to the owner of the rights in the work royalties in respect of all such sound recordings to be made by him, at the rate fixed by the Copyright Board in this behalf.

Provided that—

- (i) no alterations shall be made which have not been made previously by or with the consent of the owner of rights, or which are not reasonably necessary for the adaptation of the work for the purpose of making the sound recordings;
- (ii) the sound recordings shall not be issued in any form of packaging or with any label which is likely to mislead or confuse the public as to their identity;
- (iii) no such sound recording shall be made until the expiration of two calendar years after the end of the year in which the first sound recording of the work was made; and
- (iv) the person making such sound recordings shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording;

Provided further that if on a complaint brought before the Copyright Board to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this clause, the Copyright Board is, *prima facie*, satisfied that the complaint is genuine, it may pass an order ex parte directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty.

- (8) The causing of a sound recording to be heard in public utilising it in an enclosed room or in clubs in certain circumstances.
- (9) Performance in an amateur club given to a non-paying audience or for religious institutions.

- (10) Reproduction in newspaper and magazine of an article on current economic, political, social or religious topics in certain circumstances.
- (11) Publication in newspapers or magazines a report of a lecture delivered in public.
- (12) Making a maximum of three copies for the use of a public library.
- (13) Reproduction of unpublished work kept in a museum or library for the purpose of study or research.
- (14) Reproduction or publication of any matter published in Official Gazette or reports of Government Commissions/Committees or other bodies appointed by Government.
- (15) Reproduction of any judgment or order of court, tribunal or other judicial authority not prohibited from publication.
- (16) Production or publication of a translation of Acts of Legislature or Rules.
- (17) Making or publishing of a painting, drawing or photographs of a work of architecture.
- (18) Making or publishing of a painting, drawings, or photographs or engraving of sculpture or other artistic work permanently situate in a public place.
- (19) Inclusion in a cinematograph film of any artistic work permanently situate in a public place and other artistic work by way of background or incidental to the principal matter represented in the film.
- (20) Reproduction for the purpose of research or private study or with a view to publication of an unpublished literary, dramatic or musical works kept in a library, museum or other institution to which the public has access.
The provision of this clause shall apply only if such reproduction is made at a time more than 60 years from the date of the death of the author.
The period which was 50 years in the 1957 Act has been amended to 60 years by the Copyright (Amendment) Act, 1999.
The exceptions to infringement listed under section 52(1) in relation to literary, dramatic, musical or artistic work will apply also in relation to any translation or adaptation of such work.

ACTS WHICH DO NOT AMOUNT TO INFRINGEMENT IN RESPECT OF COMPUTER PROGRAMMES

Section 52(1)(aa) provides that, in respect of computer programmes, the following acts do not constitute infringement:

The making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme from such copy—

- (i) in order to utilise the computer programme for the purpose for which it was supplied; or
- (ii) to make back-up copies purely as temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied.

The following clauses have been inserted after clause (aa) in sub-section (1) of section 52 by the Copyright (Amendment) Act, 1999:

- (ab) 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,
- (ac) the observation study or test of function 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,
- (ad) the making of copies or adaptation of the computer programme from a personally, legally obtained copy for non-commercial personal use.

Illustration

When an office typist while typing on a computer saves a file/programme in order to protect it from loss, destruction, it is not infringement of the copyright.

Infringement in literary, dramatic and musical works

Section 51 when read with section 14(a) brings out that if a person without the consent or licence of the owner of copyright does or authorises the doing of any of the following acts, he will be guilty of infringement of copyright in the work.

- (1) To reproduce the work in any material form including the storing of it in any medium by electronic means.
- (2) To issue copies of the work to the public not being copies already in circulation.
- (3) To perform the work in public or communicate it to the public.
- (4) To make any cinematograph film or sound recording in respect of the work.
- (5) To make any translation of the work.
- (6) To make any adaptation of the work.
- (7) To do in relation to a translation or adaptation of the work any of the acts specified in relation to the work in sub-clauses (1) to (6).
- (8) To permit for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of the copyright.
- (9) To make infringing copies of the work for sale or for hire or sells or lets for hire or display or offers for sale or hire infringing copies.
- (10) To distribute infringing copies either for the purpose of trade or to such an extent as to effect prejudicially the owner of the copyright.
- (11) To exhibit infringing copies by way of trade to the public.
- (12) To import into India infringing copies by way of trade to the public.
- (13) In respect of a computer programme which is a form of literary work:
 - (i) to do any of the acts specified above; and
 - (ii) to sell or give on hire, or offer for sale or hire any copy of the computer programme, regardless of whether such copy has been sold or given on hire on earlier occasions.

Infringing copies in the above clauses mean reproduction of the work made contravention of the provisions of the Act. When the reproduction of a literary, musical or dramatic work is made into a 'cinematograph film' there shall be deemed to be an infringement and the cinematograph film shall be deemed to be an infringing copy.

Illustration—An Indian on a visit to U.S.A, picks cinematograph films based on works of fiction written and published there. He returns to India and makes reproductions of these cinematograph films and circulates them through a video parlour. He is guilty of infringement by exhibiting infringing copies by way of trade to the public.

Test of infringement

The test of infringement is the presence of two elements:

- (1) There must be sufficient objective similarity between the infringing work and the copyright work or a substantial part thereof.
- (2) The copyright work must be the source from which the infringing work is derived.

In the case of *Willian Hill (Football) v. Landbroke (Football)*, it was held that the test of infringement is not how much is taken but it depends on the worth of the work taken.

In the case of *Jarrold v. Houston*, (1857) 3 K&J 708, a third element was identified. It was held that whether there has been an *animus furandi*, i.e., intent to commit fraud on the part of the defendant for the purpose of saving labour, was an important consideration in arriving at the conclusion of occurrence of infringement.

INFRINGEMENT IN CERTAIN LITERARY WORKS

Some of the categories of literary works have been listed below and the manner of infringement which may occur in such works is described.

Dictionaries, directories, school text books and books on law and science

Certain factual information contained in dictionaries, directories, school text books and books on law and science, is similar to such work authored by another person. A work of such a nature although materially similar to another will not itself constitute infringement of the copyright of another person. To determine infringement in such cases, the test to be applied is whether the work has been imitated with the purpose of saving labour.

Historical work

In case of a historical work, the information in the work is entitled to be put to use by the reader, also the information contained in historical work is not the brainchild of the author but universal facts and the author cannot claim any copyright on those facts.

The judgement whether there has been an infringement in the works the purposes of which are to convey information and knowledge, e.g., books on science, engineering, technology, mathematics has to be made keeping in mind the principle of widespread application of the information contained in them.

Commentaries on acts, law books

Copyright in commentaries on Acts, if whole passages or actual words in a number of instances have been lifted, may amount to infringement. Decisions reported in law reports are common property for commentators on law and use by them is not infringement.

Quotations

Quotations are the words of a speaker which can be quoted by many authors without any infringement. When, however, the quotations selected and arranged by the author are copied and adopted by another without investing any skill and labour of his own, there is infringement.

Students' guide prepared from text books

Whether the students' guide prepared from the text books is an infringement or not of the copyright in the text book concerned would depend upon facts of each case. The purpose of guides is to help students in comprehending difficult text by presenting them in a lucid manner.

Due to the very fact that they simplify the text, reproduction of words, phrases and short passages from the original work is essential. If the guide is written with the purpose of helping the students, it may not amount to infringement. However, if it is written with the purpose of competing with the original text-book, it would amount to infringement.

INFRINGEMENT OF MUSICAL WORK

The acts which constitute infringement of a musical work are the same as those for literary and dramatic works. However, the adaptation of a musical work means any arrangement or transcription of the work. Such an adaptation is not infringement. It is due to this provision that the remix versions of popular Hindi songs are not infringement of copyright of musical work.

If all the bars of the musical note are copied, then it would be infringement.

In the case of *Francis Day and Hunter v. Bron*, (1963) 2 All ER 16, it was held that infringement of copyright in a musical work is not to be determined by a note for note comparison, but should be determined by the ear as well as the eye.

The defendant's work may be identical to the plaintiff's work in many respects but if it has been created by the defendant independently, it is not infringement.

The question whether the defendant has copied the plaintiff's work depends to a large extent on the Judges' own impression and on expert evidence. The defendant may make use of the plaintiff's work. But if he has not copied a substantial part of the plaintiff's work or if he has altered it substantially, it may not constitute infringement.

In the case of *Joy Music Ltd. v. Sunday Pictorial Newspapers*, (1960) 1 All ER 703, it was held that the defendants' work had its origin in plaintiff's work but it was produced as sufficiently independent new work by the defendant. It was held to be not a reproduction of the plaintiff's work but a new original work derived from the plaintiff's work.

Intellectual Property

Infringement in Literary, Dramatic and Musical Works

Performance in public

Performance in public of a musical work will constitute infringement. If the performance is domestic or quasi domestic, there is no public performance.

In the case of *Performing Rights Society v. Hawthorns Hotel*, (1933) Ch 855, the performance was open to any member of the public who was prepared to be the guest of the hotel by either sleeping or dining there. Infringement was established. It was held that infringement occurs when the defendant's action interferes with the author's proprietary rights and cause him injury. Profit earned by the defendant is an important consideration. The defendant infringes the copyright when the public performance is made on a payment.

Music played in a factory or restaurant

In the case of *Earnest Turner Electrical Instruments v. Performing Rights Society*, (1943) Ch 167, it was held that programmes of music and gramophone records played at the factory using loudspeakers for the benefit of the workers and playing of records over loudspeakers more or less continuously in a record shop to increase the shop owner's profit were performances in public which may be infringing, if done without the consent of the composer.

In the case of *Performing Rights Society v. Cameo*, (1936) 3 All ER 557, it was held playing music through a loudspeaker in a private room adjoining a public restaurant in such a manner that the music was audible to the public in the restaurant was held performance in public and constituted infringement of copyright.

INFRINGEMENT OF ARTISTIC WORK

Artistic work means:

- (i) A painting, sculpture, drawing (including a diagram, map, chart or plan) engraving or photographs whether or not only such work possesses artistic quality.
- (ii) A work of architecture.
- (iii) Any other work of artistic craftsmanship.

Infringement of artistic work

In respect of artistic work, infringement of copyright consists of doing or authorising the doing of only of the following acts without the consent or licence of the copyright owner:

- (1) To reproduce the work in any material form including the depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work.
- (2) To communicate the work to the public, communication of the work to the public means making the work available to the public for being seen or heard or otherwise enjoyed by the public directly or any other form of display or diffusion/excluding issue of copies. This includes communication through satellite or cable.
- (3) To issue copies of the work to the public not being copies already in circulation.

- (4) To include the work in any cinematograph films.
- (5) To make an adaptation of the work. Adaptation of an artistic work means the conversion of the work into dramatic work by way of performance in public or otherwise.
- (6) To do in relation to an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (1) to (4).

How infringement in artistic work is to be determined?

Any reproduction is infringement. In the case of *King Features Syndicate v. Kleeman*, (1941) 58 RPC 207, it was held that a reproduction copied not directly from the original artistic work or a sketch of it but copied from a reproduction in material form derived directly or indirectly from the original work, is an infringement of the original artistic work.

In the case of *Associated Electronics & Electricals v. Sharp Tools*, 1995 PTC 85, it was held that the surest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or viewer after reading or seeing both the works would get an unmistakable impression that the subsequent work appears to be a copy of the first.

In this case it was held that there can be a copyright in the artistic manner in which a word is represented. In such a case, the reproduction of the work in ordinary form will not constitute infringement of the copyright in the artistic work.

A copyright in a painting is infringed when a person copies from the original painting or a picture of painting. For example, a photographer took a photograph of a painting of M.F. Hussain, then paints the same himself and sells such copies painted by him.

Infringement of a painting or a picture can be detected by making a close comparison between two works.

A work of art such as painting must be on some surface or substratum. A painting is a tangible expression of an intangible idea. There can be no copyright in facial make up.

Photograph

According to section 17(b), if a person gets his photograph taken by a photographer on payment. The copyright in the photograph belongs to such a person. The publication of the photograph or its exhibition at any place including the photographer's shop would amount to infringement of the copyright in the photograph constitute infringement of that copyright.

Illustration

A wedding photograph cannot be displayed in a photographer's shop without the express or implied consent of the parties.

Drawings

A drawing including a diagram, map, chart or plan comes within the definition of artistic work and copyright substitutes in it if it is original. For a drawing to be entitled to a copyright, it is not mandatory that it should possess any artistic quality. Drawings as complicated as engineering and industrial

drawings can be protected by a copyright. Copyright subsists in industrial drawings, drawings of machines or machine parts or any drawing on the basis of which three dimensional objects are made.

Three dimensional representation of a drawing

Reproduction of a three dimensional representation constitutes direct infringement. Indirect infringement of copyright would occur when a three-dimensional drawing is reduced to a two-dimensional form or vice-versa.

Under section 14(c)(i) one of the rights conferred on the owner of an artistic work (including a drawing) is to reproduce the work in any material form including a depiction in three dimensions of a two dimensional work or in two dimensions of a three-dimensional work.

Copying the article based on a drawing

In the case of *British Leyland v. Armstrong*, 1986 RPC 279 (HL), it was held that the copyright in a drawing whose sole purpose was to serve as the blueprint for the construction of a three-dimensional article of purely functional or utilitarian value and with no aesthetic or decorative element was capable of being infringed by copying of the three-dimensional article. In the case of *Temple Instruments v. Hollis Heels*, (1973) RPC where the defendant did not actually copy the drawing, but had only taken the crucial dimensions of the plaintiff's product, which enabled them to manufacture this item, there is a clear nexus between the drawing and the defendant's product there is infringement of the drawing.

Architectural drawings

The architectural drawings can be infringed when a building or structure is constructed on the basis of such drawings. When a building is reconstructed on the basis of pre-existing drawing on the basis of which the original building was constructed, it is not an infringement provided the construction was made with the consent or licence of the owner of the copyright.

Illustration

If a building similar to the Lotus Temple in Delhi is made by any other architect, it would be infringement of copyright of the architect who made the plan for the Lotus Temple. However, there would be no infringement if the same Lotus Temple in Delhi is reconstructed or repaired in accordance with the original drawing.

Industrial drawings

The industrial drawings are of such a nature that ensuring strict, inflexible copyright protection to such drawings would be against public interest. Strict copyright protection of industrial drawings would prohibit beneficial use of such drawings. Hence, the concept of infringement as far as such drawings are concerned is not very rigid.

INFRINGEMENT OF CINEMATOGRAPH FILM

A cinematograph film is a subject-matter of copyright protection. Video films are deemed to be work produced by a process analogous to cinematography. The term **cinematograph film** includes 'video films'.

Forms of Cinematograph Films and their Infringement

Films on live events

There can be no copyright on films covering live events such as sporting events, political meetings, horse races, demonstration, etc. Since there is no copyright on such films, the question of infringement does not arise.

Illustration

A cinematographer films the World Cup Cricket Matches and broadcasts the same on Television channel. Another channel makes a similar film on the events and broadcasts it. There does not exist any copyright on the cinematograph film on such live events and no infringement can occur.

Video films

The cinematograph film includes video films but video-taping of cinematograph film will constitute infringement of the film. The video films broadcast over cable T.V. are often the video tapes of the cinematographic films and amount to infringement of copyright in the film.

Cinematograph film based on other works

Cinematograph films are generally based on some literary work, if a cinematograph film is based on a copyrighted literary or musical work without a licence from the owner of the copyright then it is an infringement of the original work. Such a film will not be entitled to a copyright itself.

If a cinematograph film reproduced a copyrighted musical work, the cinematograph film infringes the copyright in the musical work.

A film is based on Arundhati Roy's "The God of Small Things" without seeking her consent, the film itself being an infringement of the copyright in a literary work cannot claim a copyright itself. If the producer of the film has sought prior consent of the author, then a copyright would vest in the cinematograph film.

There can be no copyright in a plot of a film. In concluding whether a film is an infringement of copyright in a novel, the proper inquiry is whether keeping in view the idea and the general effect created by the film, such a degree of similarity is attained as would lead one to say that the film is a reproduction of incidents described in the novel or substantial part thereof.

The film must either use in its captions a substantial part of the words of the plaintiff's work or must use in its pictures, a substantial part of the dramatic incidents represented or colourable imitations of them. Such a film would be an infringement of the copyright in the original work.

Intellectual Property

Infringement in Literary, Dramatic and Musical Works

All film makers make their films unique by introducing new songs, new locations, new sets, although the plot may be similar.

The popular Hindi film 'Dil Hai Ki Manta Nahin' starring Pooja Bhatt and Aamir Khan was based on a popular English classic "It Happened One Night" but the former was in no way an infringement of the copyright of the latter since the characterisation and settings were substantially altered and modified to a degree where an independent copyright was created in the Hindi version.

In case of films the concept of infringement is given a liberal interpretation in order to facilitate production of such work. If a little similarity in plots would amount to infringement, then the scriptwriters, producers, directors would very soon run out of ideas and the entertainment industry would come to a stand still. The ridiculous example would be a situation where a producer of a film claims copyright in theme of a love story and declares that any film based on a love story would be an infringement of his copyright. None can claim such a copyright in any film.

Cinematograph film on a stage play

The maker of a cinematograph film which is based on a dramatic work has to seek the consent of the owner of copyright in the dramatic work before making any cinematograph film on the work or of a translation in any language or of an adaptation of the work. A film producer may avoid infringement by borrowing the central idea from the play and making his own modifications.

The case of *R.G. Anand v. Delux Films*, brings out the above adequately.

In this case, the plaintiff was a play writer and producer of some plays including the play 'Hum Hindustani'. The plaintiff tried to consider the possibility of filming the said play and narrated the play to the defendant. The defendant, without informing the plaintiff, made a picture 'New Delhi', which was alleged to be based on the said play. The issues that arose, thus, were : (i) Is the plaintiff owner of the copyright in the play 'Hum Hindustani'; and (ii) Is the film 'New Delhi' an infringement of the plaintiff's copyright in the play 'Hum Hindustani'. The first issue was decided in favour of the plaintiff, but not the second one.

Fazal Ali, J, after considering the number of authorities —English, Indian and American—derived the following propositions:

- (1) There can be no copyright in an idea, subject-matter, themes, plots or historical/legendary facts, and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyright work. What is protected is not original thought or information, but the original expression of thought or information in some concrete form.
- (2) Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. But if the defendants' work is nothing but a literal (colourable) imitation of the copyright work with some variations here and there, it would amount to violation of copyright. Thus the copy must be substantial and material one. "A copy is that which comes so near to the original as to

Films based on other films

Whether a film based on another film is an infringement or not would depend on the extent of similarity in the plot, story and characters of the two films. There can be no copyright in a plot. Most Hindi films with the usual good hero fighting the mafia, or an honest police officer against an all powerful don would be infringements of each other if a copyright was recognised in the plot of every film.

- give to every person seeing it the idea created by the original". This is a sure and safe test to determine the violation of copyright.
- (3) Where the theme is the same but is presented and treated so differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.
 - (4) Where, however, apart from the similarities appearing in the two works, there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental, no infringement of the copyright occurs.
 - (5) As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests.
 - (6) Where, however, the question is of violation of the copyright of "stage play" by a film producer/director, the task of the plaintiff becomes more difficult to prove piracy. It is clear that a film has a much broader perspective, wider field and a bigger background where the defendant can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted stage play has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.
 - (7) It is obvious that the underlying emotions reflected by the principal characters in a play or book may be similar and yet that the characters and expression of the same emotions be different. That the same emotions are found in plays would not alone be sufficient to prove infringement but if similar emotions are portrayed by a sequence of events presented in like manner, expression and form, then infringement would be apparent.

In the instant case, the 'film' portrays three themes —

- (a) role of provincialism in regard to marriage and in regard to renting out accommodation,
- (b) evils of a caste-ridden society,
- (c) evils of dowry.

The last two aspects do not appear at all in the plaintiff's 'play'. All the three aspects mentioned above are integral parts of the story of film and cannot be separated without affecting the beauty and continuity of the film. Further, the story treatment of film is very different from that in play.

At the most the central idea of the play (*i.e.*, provincialism) is undoubtedly the subject-matter of the film, but it is well-settled that a mere idea cannot be the subject-matter of copyright. Thus, it was held that the film was not a substantial or material copy of the play.

Conclusion—There is no copyright in abstract ideas, themes or plots of a literary work or films, etc. For example, if a play depicts the caste-ridden society or dowry system prevailing in India, there is no infringement of copyright.

Single frame (shot) from a film

The printing of individual still pictures from the film is an infringement of copyright in the film. If a poster seller in the market takes a still photograph of the famous Dilip Kumar-Madhubala feather scene in the film Mughal-E-Azam and sells such photograph in the form of enlarged poster, he is infringing the copyright in the cinematographic film.

Such a photograph cannot claim any copyright.

INFRINGEMENT OF SOUND RECORDING

According to section 2(xx)—

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 such sounds are produced.

A sound recording may be of a literary work, for instance, the copyright in the sound recording of Javed Akhtar's collection of poem 'Tarkash' is with the recording company which has the exclusive right to sell the cassettes in the market. In case a person makes a recording of the same in a home taping system and sells the same in the market, he is infringing.

Home taping of sound recording is the most common form of infringement of copyright in sound recording. Since home taping is done within the confines of homes of people, it is practically difficult to take any action against such infringement.

Under the English Law, it is not a breach of copyright for persons to make in the home tape, recording of sound or film tracks. This is not so under the Indian Law. Under Indian Law it is infringement.

Broadcasting agencies such as Television and Radio must obtain a licence for the purpose of broadcasting from the recording company who is the owner of the copyright in the record.

Exceptions to infringement of sound recording

Section 52(1)(k) provides that the causing of a recording embodied in a sound recording to be heard in public by utilising it will not constitute infringement. Such public use would be:

- (i) if the sound recording is played in an enclosed room or hall meant for the common use of residents in any residential premises (not being hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein, or
- (ii) as part of the activities of a club or similar organisation which is not established or conducted for profit.

For instance, if a sound recording is played in the common room of a school/hostel, it will not constitute infringement.

Remedies against Infringement of Copyright

KINDS OF REMEDIES

There are three kinds of remedies against infringement of copyright, namely:—

Civil remedies

Injunction damages or account of profit, delivery of infringing copies and damages for conversion.

Illustration

An author sues another for reproducing the copies of his books and selling them in the market. The civil remedies he can claim are:

- (1) Stopping such an infringement, i.e., injunction.
- (2) Damages in the form of monetary amount.
- (3) Account of profit, i.e., the profits which the defendant wrongly appropriated by sale of infringing copies.
- (4) Damages for conversion can be claimed when an infringer stages a play based on the authors work, i.e., the infringer converts the form of the work without the consent of the author and causes infringement in copyright.

Criminal remedies

Imprisonment of the accused or imposition of fine or both. Seizure of infringing copies.

Administrative remedies

Administrative remedies consist of moving the Registrar of Copyrights to ban the import of infringing copies into India when the infringement is by way of such importation and the delivery of the confiscated infringing copies to the owner of the copyright and seeking the delivery.

PROTECTION OF AUTHORS' SPECIAL RIGHTS

Besides the infringement of copyright, which is actionable, the moral rights of the author known as "special rights" are also protectable. These special rights are:—

- (1) to claim authorship of the work, and
- (2) to restrain or claim damages if in respect of any distortion, mutilation, modification or other act in relation to the said work which is done

before the expiration of the term of copyright, if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation.

This special right is not available in respect of any adaptation of a computer programme for certain purposes or to make back up copies for protection against loss, destruction or damage.

These rights of the author can be exercised even after the assignment, either wholly or partially, of the said copyright in the work.

To protect these rights, action can be taken by moving the court for restraint and/or damages.

DEFENCES WHICH MAY BE SET UP BY THE DEFENDANT

The defendant may set up any of the following defences:—

1. No copyright subsists in the work alleged to be infringed.
2. The plaintiff is not entitled to sue as he is not the owner of the copyright.
3. The alleged copyright work itself is not original, it is in itself an infringed copy.
4. The alleged copyright is not entitled to protection being immoral, seditious or otherwise against public policy.
5. The defendant's work is independent and is not copied from the plaintiff's work.
6. The defendant's action does not constitute infringement of the plaintiff's work and is permissible under one or more of the exceptions to infringement under section 52.
7. The suit is barred by limitation.
8. The plaintiff is guilty of estoppel, laches or acquiescence or consent.
9. The infringement was innocent and on the date of infringement the defendant was not aware and had no reasonable ground for believing that copyright subsisted in the work.

Illustration

An academician delivers a lecture in a seminar, the same is reported in a newspaper. He files a suit against the newspaper. The newspaper can set up the defence of fair dealing under section 52 which permits the reporting of current events in a newspaper, magazine or similar periodical.

ISSUES IN A SUIT FOR INFRINGEMENT OF COPYRIGHT

The issues which need determination in a suit for infringement of copyright are the following:—

1. Whether the plaintiff is entitled to file the suit? His ownership of the copyright is to be determined.
2. Whether the copyright subsists in the work alleged to have been infringed?
3. Does the defendant's action constitute infringement of copyright in the work?

4. Does the defendant's act come within the scope of any of the exemption to the infringement?
5. Whether the plaintiff is entitled to the remedy he is seeking in the suit?

KINDS OF CIVIL REMEDIES TO WHICH A PLAINTIFF IS ENTITLED

- A 1. Anton Pillar Order,
 I 2. Interlocutory Injunction.
 D 3. Damages or account of profits.

Anton pillar order

The procedure of law always provides equal opportunities to both the parties to present their case. However, in certain cases the court may, on an application by the plaintiff, pass an ex parte order requiring the defendant to allow the plaintiff accompanied by attorney to enter his premises and make an inspection of relevant documents and articles and take copies thereof or remove them for safe custody. Such an order is called Anton Pillar Order.

Such orders are necessary when there exists an apprehension in the mind of the plaintiff and the court that following the regular procedure would give time to the defendant to destroy relevant documents and (copies of) the articles, defeating the ends of justice.

Such an order is, however, passed very cautiously by the court; only when the plaintiff in his application makes the fullest possible disclosure of all material facts within his knowledge and the court is convinced thereby.

Interlocutory injunction

Interlocutory injunction secures the immediate protection of copyright from an existent infringement or from the continuance of infringement or an anticipated infringement. A plaintiff may pray for an interlocutory injunction pending trial or further orders.

For obtaining an interlocutory injunction the plaintiff has to establish :

1. a prima facie case,
2. balance of convenience in his favour,
3. that refusal to grant interlocutory injunction would cause irreparable injury to the plaintiff.

The defendant, if injured as a result of such injunction, is entitled to compensation by virtue of an undertaking as to damages which is made by the plaintiff. Such an undertaking on the part of the plaintiff is a condition precedent for the grant of interlocutory injunction.

Interlocutory injunction may be refused when:

1. the interest of the plaintiff can be protected by ordering the defendant to keep an account of profits,
2. the defendant has pleaded and established bonafide fair dealing,
3. the plaintiff has been guilty of undue delay in coming to the court., or
4. his conduct amounted to acquiescence in the infringement.

Remedies against Infringement of Copyright

5. there is substantial doubts about the plaintiff's right to succeed in the action.

The grant of interlocutory injunction would depend on the overall circumstances of the case.

Damages on account of profits

The plaintiff is entitled to two types of damages, viz.,

- (a) One for infringement of his copyright, and
- (b) The other for conversion of his copyrighted work into another form.

Account of profits

A plaintiff, if successful, is also entitled to account of profits as an alternative to damages.

CRIMINAL PROCEEDINGS AGAINST INFRINGEMENT

In addition to civil remedy, the plaintiff can initiate criminal proceedings against an infringer. These two remedies are distinct and can be invoked simultaneously.

The infringement of copyright has been declared as an offence, punishable with imprisonment which may extend from a minimum period of six months to a maximum of three years and with a fine of Rs. 50,000 to Rs. two lakhs.

Court where criminal proceedings are to be initiated

No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class can try an offence under the Act. The conduct of the criminal proceedings is governed by the Criminal Procedure Code. The court trying the offence may order that all copies or instruments for making infringing copies in possession of the alleged offender be delivered to the owner of the copyright without any further proceedings. The court may also order a police officer of the rank of Sub-Inspector and above to seize without warrant, all infringing copies of the work and accessories for making infringing copies and produce them before the Magistrate.

THREAT OF LEGAL PROCEEDINGS

Threat of legal proceedings also serves the purpose at times. On coming to know of violation of copyright, the owner of copyright may send a notice to the infringer requiring him to discontinue forthwith the act which amounts to infringement. The infringer may comply with the request and agree to pay compensation settled by mutual agreement. However, the threat of legal proceeding is an efficacious remedy only when the nature of infringement is such that further infringement is neither profitable for the defendant nor is it likely to be repeated, for instance, the performance in public of a dramatic or musical work.

In case where infringement is in the form of reproduction of the copyright work in large numbers and is a profitable venture such a threat generally fails to stop further infringement. In such a case, court action becomes necessary.

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39 Registration of Copyright

Rule 16 of Chapter VI, Copyright Rules, 1958, lists out the procedural formalities which an applicant has to fulfil when filing an application for registration of copyright. It states that one application is to refer to one work only, it shall be made in triplicate (three copies of the same) accompanied by the prescribed fee.

The steps for registration

1. The persons applying for a copyright has to give notice of his application to every person who claims or has any interest in the subject-matter of the copyright or disputes the rights of the applicant to the copyright, for instance, in case of joint authorship when only one of the authors makes an application, a notice of such an application is to be given to the other author.

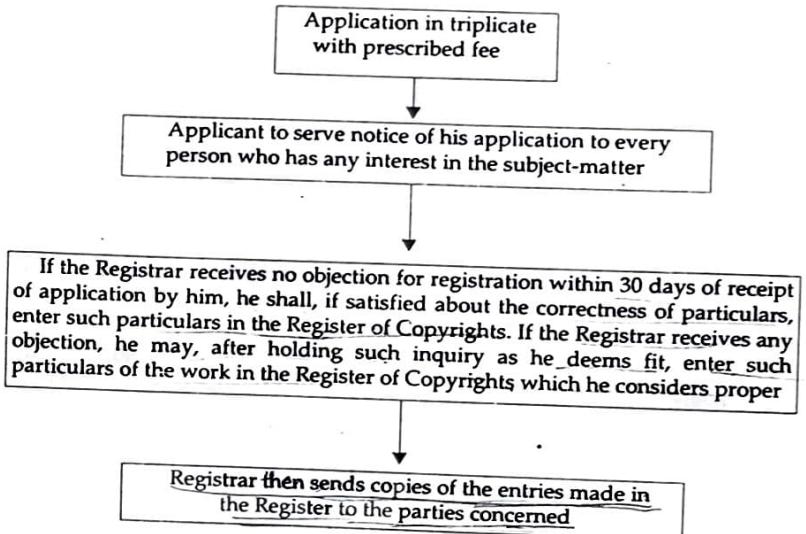
2. If no objection to such registration is received by the Registrar of Copyrights within thirty days of the receipt of the application, he shall be satisfied by the correctness of the particulars given in the application, enter the particulars in the Register of Copyrights.

3. If the Registrar of Copyright receives any objection to such registration within the time of thirty days of receipt of the application, he may, after holding such inquiry as he deems fit, enter such particulars of the work in the Register of Copyrights as he deems proper.

4. The Registrar of Copyrights shall, as soon as may be, send, wherever practicable, a copy of the entries made in the Register to the parties concerned.

The flow chart of the steps involved in making a registration of copyright would be as follows:—

Registration of Copyright



Appeal

Any person aggrieved by the decision or order of Registrar of Copyrights, may, within three months from the date of the order or decision, appeal to the Copyright Board.

*Registrar then sends
copies*

Regulatory Authorities

The two regulatory authorities under the Act are—

- (1) Registrar, Copyright .
- (2) The Copyright Board.

The Copyright Office under the overall charge of Registrar maintains a Register of Copyright, containing particulars of the authors of the copyright works, names and addresses of publishers and owners of copyright.

REGISTER OF COPYRIGHT

The Register of Copyright has a separate part for each category of work. These are:

- 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 Recordings.
- Part VI Computer Programme, Tables and Compilations including Computer Data Bases.

Form and inspection of the register

There is kept at the Copyright Office, the indexes of the Register of Copyright and the Register itself. The Register of Copyright and the indexes thereof are open to inspection and any person is entitled to make copy or extract from such Register of Copyright or indexes on payment of prescribed fee and subject to the prescribed conditions.

Evidentiary value of the register

The Register of Copyright will be the '*prima facie*' evidence of particulars entered therein, e.g., name of the author, title of the work. Copies of any entries made in the Register or extracts therefrom certified by the Registrar of Copyright and sealed with the seal of Copyright Office will be admissible as evidence in all courts without further proof or production of the original.

COPYRIGHT BOARD

Section 11 of the Copyright Act provides for the constitution of Copyright Board for the discharge of certain judicial functions under the Act. It consists of a

Regulatory Authorities

Chairman and two or more members. However, the number of members shall not be more than fourteen. The Chairman and other members are appointed for a period of not exceeding five years.

The Chairman must be a person who is or has been a Judge of a High Court or is qualified for appointment as a Judge of the High Court.

The main functions of the Copyright Board are:—

- (1) The Copyright Board is to decide whether a work has been published in the date on which the work was published for the purpose of determining the term of copyright.
- (2) To decide whether the term of copyright for any work is shorter in any other country than under the Act.
- (3) To settle disputes arising out of assignment of copyright.
- (4) To consider the grant of compulsory licences to publish unpublished work(s).
- (5) To consider the grant of compulsory licences in respect of Indian works withheld from public.
- (6) To consider the grant of compulsory licences to produce and publish translation of literary and dramatic works.
- (7) To consider the grant of compulsory licences to reproduce and publish certain categories of literary, scientific or artistic works for certain purposes.
- (8) To consider the rectification of the Register on the application of any aggrieved person or the Registrar of Copyright.

Appeals against orders of the Copyright Board

An appeal against orders passed by the Copyright Board except under section 6, i.e., in the dispute regarding the question whether a work has been published or as to the date on which a work was published or where it is to be determined whether the term of copyright for any work is shorter in any other country than that provided in respect of that work under this Act, the decision of the Copyright Board will be final and cannot be appealed in the High Court.

Powers and procedure of Copyright Board

According to the provisions of section 12 of the Copyright Act, the Copyright Board has the power to regulate its own procedure, including the fixing of place and times of its sittings.

The Copyright Board hears the proceedings instituted before it within the zone in which the person instituting the proceedings resides and carries on business. The territory of India is divided into five zones for the purpose of jurisdiction.

Section 12(1) provides for zonal distribution which is as follows:

- (a) the Northern Zone comprising the States of Haryana, Punjab, Himachal Pradesh, Rajasthan, Jammu and Kashmir and the Union Territories of Delhi and Chandigarh;
- (b) the Central Zone comprising the States of Uttar Pradesh and Madhya Pradesh;

- (c) the Eastern Zone comprising the States of Bihar, West Bengal, Orissa, Assam, Manipur and Tripura;
- (d) the Western Zone comprising the States of Gujarat and Maharashtra and the Union Territories of Dadra and Nagar Haveli and Goa, Daman and Diu; and
- (e) the Southern Zone comprising the States of Andhra Pradesh, Tamil Nadu, Karnataka and Kerala and the Union Territory of Pondicherry.

Powers of Copyright Board/Registrar

Section 74 provides that the Registrar of the Copyright Board has the powers of Civil Court in respect of the following matters:—

- (a) summoning and enforcing the attendance of any person and examining him on oath,
 - (b) requiring the discovery and production of any documents,
 - (c) receiving evidence on affidavit,
 - (d) issuing commissions for the examination of witnesses and document,
 - (e) requisitioning any public record or copy thereof from any court or office, and
 - (f) any other matter which may be prescribed.
-

Publication

The term 'publication' connotes different meanings in the context in which it is used. While for a layman publication means 'the printing of a matter'. The term publication means other things in some branches of law. In the law of patents, publication means communication of information about an invention to any member of the public who is not bound by the duty to keep it secret, e.g., an inventor discusses his invention with one of his artist friend. This artist friend is not bound by a duty to keep the information secret. There has been a publication of the invention.

Publication with reference to law of defamation would mean communication of the defamatory matter to any person other than the person defamed. If a junior talks ill about his boss during the lunch hours in the office canteen that would amount to publication; if he points the same evil when he is seeing the boss in his office privately in the presence of his only boss, there is no publication.

STATUTORY DEFINITION OF PUBLICATION

Section 3 of the Act defines publication as follows:—

"For the purposes of this Act 'publication' means making a work available to the public by issue of copies or by communicating the work to the public."

'Communication to the public' means making any work available for being seen or heard or otherwise enjoyed by the public directly or by means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.

Illustrations:

1. A music composer plays his new tune in a live concert attended by few people who do not enjoy the music at all.

There is communication of the work so as to amount to its publication.

2. An artist paints a picture and exhibits the same in an exhibition. Due to dim lighting of the corner where his painting is kept, none is able to see his painting.

The mere keeping of the painting amounts to communication to the public.