

Unit III (a)

Copy Rights

Copy Right is a form of protection granted to the authors of original work including literary, dramatic, musical, artistic and certain other works. It is governed exclusively by the federal law. Works like songs, books, jewelry, movies, sculptures, paintings etc. all are protectable. Computer software is also protectable by copy right.

Copy right is available for original works. No judgement is made about their literary and artistic quality. Certain works are not protectable, such as ideas, methods, list of ingredients etc.

Copyright protection exists automatically from the time a work is created in fixed form. Registration of a work is not compulsory, but the registration provides some advantages, like suing others for infringement, claiming the damages etc.

The owner of a Copyright has a right to reproduce the work, prepare derivative works based on the original work, distribute copies of the work, display the work etc. The Copyright protection extends throughout the life of the author + 70 yrs after the death of the author.

After that period the work will fall into public domain.

The main purpose of Copyright law is to protect the efforts and creations of authors against any type of infringement, if their works are not given protection and if they are denied the fruits of their creativity, they will not have further interest to create more works. So their knowledge must be rewarded and encouraged.

➤ Basic requirements for Copyrightability - To be eligible for copyright protection, matter must be original, it must be fixed in some tangible form, and it must qualify as a work of authorship.

1) Originality of material - To be eligible for protection material must be original. That means it must be ~~created~~ independently created by the author. The originality should not be confused with novelty, beauty, worthiness & aesthetic appeal. The requirement is it must be an independent product of the author. It must not be a copy & minimum variations of an existing work.

A work can be original even if it is strikingly similar & identical to that of another.
Ex:- If two authors write novels independently that are similar in their concepts, each will have a copyright protection as long as they did not copy one another.

Similarly if two photographers each take photographs of a picture & a library each will have Copyright protection though they are similar.

Even a slight amount of creative spark will suffice to get Copyright protection. The blank forms, Column headings, names, titles, etc. can not get Copyrights. Forer:- The Copyright of telephone directory was rejected since the Court held that it is lacking minimum creativity. The are facts arranged in an order. So they are not Copyrightable.

b) Fixation of material:- The Copyright Act protects the works that are "fixed in any tangible medium of expression". A work is said to be "fixed" when it is embodied in a copy or phonorecord, and it is permanent and stable to permit it to be reproduced & communicated to others.

There are two categories of tangible expression in which work can be expressed and fixed.

① Copies ② Phonorecords.

Copies:- A copy is a material object from which a work can be perceived, reproduced, & communicated either directly & by human perception & with the help of machine. ^{Forer} ~~thus~~ according to the Copyright Act a famous photograph that appears on a book cover, calendar, T-shirt, coffee mug is a "copy" in each case.

because they are material objects from which an image can be perceived. The copy may also be a writing on the paper, images on marbles and designs on clothes or any other fabrics.

Phonorecord - It is a material object that facilitates fixing of sounds and from which the sounds can be perceived, reproduced, or communicated either directly by human perception or with the help of a machine. Thus a record, a cassette tape, and a CD record etc are all considered as "phonorecords". So the definition of "fixation" requires, that a work must be embodied in stable and permanent form. Live performances are not protected because they are not fixed. But a Special Statute provides civil and criminal remedies for "bootlegging" sound recordings of live musical performance to ensure that concert-goers do not record live concerts.

5) Works of Authorship - 'works of authorship' is another requirement to get Copyright protection. According to this Act, the protection is provided to original works of authorship that are fixed in any tangible form. Under Section 17 and Sub-Section 102 of this Act states that there are eight categories of authorship works that can be protected. They are - (P.T.O)

a) Literary works - A literary work is one expressed in words, numbers or any verbal & numerical symbols irrespective of the nature of its material objects such as books, periodicals, manuscript, phonorecords, films, tapes etc. in which they are embodied is known as literary work. They also includes poetry, catalogs, reports, speeches, pamphlets, etc. They are all will be protected even if they does not include any artistic advantage to people.

b) Musical works - A musical work, together with its accompanying words is copyrightable. For ex - The musical work led to the creation of the 'Happy Birthday' Song and it was published in 1935. The Songs Reguide a payment of Commission to the authors for playing it in movies & other plays. The authors of a musical work are usually composers and lyricists by themselves.

c) Dramatic works - Dramatic works seen to stage plays or a play ^{per}formed for a movie, television & radio. They include spoken text, plot, and direction & action. Any music that is a part of dramatic work is protected under this law.

d) Pantomimes - Pantomime is a performance using gestures and expressions ~~not~~ without any spoken words or words. They can not be protected unless and until

They are fixed in some permanent form. If a mime is filmed then it can be protected.

(e) Choreographic works: - In 1976 the Act permitted to include the choreography as a copyrightable work. choreography means composition and arrangement of dance movements and patterns. Common dances can not be protected unless they are incorporated into a choreographic work.

(f) Motion pictures and other audiovisuals: - A motion picture is an audiovisual work comprising of a series of related images, when shown in succession, impart an impression of motion. They will be shown with the help of a projector, viewer or any other electronic equipment. These pictures can be protected under this Act along with the sounds.

(g) Pictorial, graphic and sculpture works: - According to this Act any two dimensional, three dimensional works of graphics, photographs, prints, maps, posters, fabrics, floor-wall-covering designs, sculptures etc. can be protected. This Act does not protect useful articles such as clothing, vehicles, furniture, machinery, dinnerware etc. ^(they get patent rights) Toys, dolls, and stuffed animals can be copyrighted because they are not useful articles.

(h) Sound recordings: - Any ~~other~~ narration of words, accompanied by a series of sounds are known as sound recordings. They can be protected under this law.

(i) Architectural works: - It is the design of a building

or house embodied in tangible medium. However the architectural works of the buildings can be protected but distribution of its pictures, public display and any other pictorial presentation of the building can not be protected.

Exclusions from Copyright (Not protectable):- Not all works are protected by Copyright. In addition to articles which are useful and can not be protected, there are no. of other works which can not be protected under Copyright law. They are -

(a) Ideas, Methods & Systems:- Section 102 of the C.R. Act states that, ideas, procedures, processes, systems, methods of operations, principles and discoveries etc. can not be protected regardless of the form in which they are described or illustrated. The Copyright protection is provided only to the expression of ideas and not the idea.

(b) Blank forms, Titles, short phrases etc.:- These will be considered to be common idioms of English language and can not be Copyrighted. They are there for every one to use. Examples:- there will be numerous text books that share same titles like "Introduction to mathematics", principles of Accounting etc. In order to be protected a work must contain at least certain minimum amount of originality.

(c) Facts:- Facts are not protected by this Act because

one who uncovers a fact is not an author or creator. Facts are viewed as "discoveries" and they are not original to a researcher, even if the researcher is the first person to reveal them. Ex: Facts like birth/death statistics relating to population etc. can not be protected.

(d) Computing and measuring devices:— Devices designed for computing and measuring can not be copyrighted. Ex. Common balance, wheel dial, calendars, measuring rods, etc. They are merely means for arriving at a result & reading and does not communicate facts or ideas.

(e) Useful articles:— Useful articles can not be protected. They act as source of inspiration for others and can be protected under trademark & patent law but not under Copyright Act. Existence of any artistic work or expression on the article can be copyrighted but not the article itself.

(f) Public Domain works:— Anything not protected by copyright and available for public use is known as public domain. They are free for all. Expired and forfeited copyrights fall under public domain.

(g) Expired Copyright:— After the expiry of specific time period copyrights will be expired and they can not be protected thereafter. Then it falls in public domain for free use.

① Forfeited work: Copyright may be forfeited from the author due to his failure to meet certain requirements. Such forfeited copyrights fall into public domain for free use.

② Dedicated works: - Sometimes the authors dedicate their work to public. Such works are not copyrighted hence no copyright protection will be given.

③ Typefaces: - A set of letters, numbers & other symbols that have a regular design and are in use for composing text are known as typefaces. They are eliminated from Copyright protection. However when typefaces are created using computer software only software can be protected not the type faces.

The above mentioned are the matters that can not be protected under Copyright Act.

Rights of the Copyright Owner: - According to ^{to} Sec 106 of CPA the owner of a copyright enjoys a bundle of rights, the right to reproduce, distribute, display, prepare derivative works etc. The owner can enjoy and can exploit their works commercially.

There are however some limitations also. Under the "first sale doctrine" once the work has been distributed, the subsequent owner is free to

sell, & use the item without any liability for infringement.
Similarly some activities do not constitute infringement.
F&C :- Some uses meant for educational activities
noncommercial fundraising & religious worship etc.
According to CPA Sec 106 the owner has following
rights :-

- ① Right of Reproduction :- This is the most fundamental
right granted to the Copyright owner. He only can
take copies of his work to sell or transfer or lease for
a profit & use in whatever manner he desires. This
law prohibits the reproduction by unauthorised persons.
F&C :- A film producer enjoys the exclusive right
to reproduce the copies and distribute the film in
theatres.

Secretly taping a concert, ~~filming~~ the taking
pictures of a filmed performance, recording speeches
all violate the owner's right to reproduce the work,
even though it is not for commercial use.

So the govt. has established 'CCC' (Copyright
clearance cell) which serves as "a clearinghouse
for copyrighted works to be reproduced & distributed.
It grants permissions and collects royalties which
will be distributed to the owner.

(b) Right to prepare derivative works:- A derivative work is one that is based on original work. The author has the exclusive right to make changes in the preexisting work and the resulting work is Copyrightable. (Ex: Translation, dramatisation, picturisation etc.)

To be Copyrightable, the derivative work must be different enough from the original to be regarded as a new work. Making minor changes to preexisting work will not qualify the work for Copyright.

The Copyright of a derivative work cannot be extended to original work. Copyrights cannot be revived to works which have fallen in public domain.

(c) Right of Distribution:- ("The first sale doctrine"):- Section 106(3) of the Copyright Act provides that the owner of a Copyright has the exclusive right to distribute the copies of the work to the public by sale, TP's ownership & by rental, lease etc. Usually authors often grant permission to others to distribute their works, through

One limitation to this right is, once the author has distributed the copies, he will be parted with the ownership and the new owner has the right to treat the object as his own and can freely use, sell, lease to another. That means the first sale exhausts the owner's right of distribution. This is called 'first sale doctrine'. But it won't prevent

- prevent the owner to prepare derivative works and other rights.

The first sale doctrine rests on the principle that once the ~~copy~~ owner sells the copies, he or she has received full economic value for the work and should not ~~be~~ restrict future sales.

In 1998 the Supreme Court held that once the first sale is occurred ^{domestically}, even if the sale is made abroad, the copyright to distribute is exhausted. The subsequent owner can sell it without the permission of the original owner.

Limitations to first sale doctrine: - (1) It applies only to lawfully made copies and phonorecords.

- (2) The first sale doctrine does not apply to commercial rental of recording, and certain computer programs, because renting of sound recordings would seriously undermine creativity of the owner.

- (d) Right to perform work publicly: - Sec 106 (4) of the Copyright Act states that the Copyright owner has the right to perform the copyrighted work publicly. The word perform means to recite, render, dance, play etc. either directly or by means of a device. To perform publicly means to perform at a place where ^{there} is a large crowd in a public place.

These performances are always subjected to Copyright protection. According to Sec 110 of CRA the following performances do not violate copyright owner's right to perform publicly.

- (a) one-to-one Teaching: - The work performed & displayed by the teachers & instructors is protected by this law, when these activities are performed in non-profit & gov. Such as non-profit educational institutions and gov. broadcasting educational institutions etc. This permits the students to work on Copyrighted work.
- (b) Religious Services: - Non-dramatic literary & musical performance of Copyrighted work in the ~~classroom~~ place of worship & other religious locations are permitted.
- (c) Promotion of Records: - This Act allows performances like playing of recorded music at retail stores, such as record stores, CD shops to promote sales.
- (d) Non-profit performances: - Live performances of non-dramatic literary & musical works for non-commercial purposes are permissible, if there are no admission charges or, if there are charges, the net proceeds are used for charitable purpose.
- (e) Agricultural and Horticultural Fairs: - performance of a non-profit agricultural & horticultural associations in the course of annual fairs & exhibitions are permitted.

- (f) Small commercial establishments:- This Act allows transmission of radio and television broadcast in small businesses, restaurants, bars etc. for the enjoyment of their customers. But there should not be any retransmissions and the area must be less than 2000 sq ft for non-eatable sections and 3750 sq ft for eatable sections. But setting up of a CD player is prohibited.
- (g) Transmission for handicapped persons:- The Copyright Act allows certain transmissions for the benefit of blind and deaf persons, if the performance is for non-profit.
- (h) Electronic audio visual games:- The Act allows the use and display of electronic audio visual games in coin operated equipments. But motion pictures are not allowed.
- There are the exceptions to perform ^{copyrighted} work publicly.

Copyright ownership issues

The copyright ownership lies with the author. Special issues arise when more than one person creates a work or when existing works are combined into a collective work. In such cases determining the ownership is critical, because the exclusive rights of reproduction, distribution, performances etc. lie with the Copyright owner.

Ex:- For a song, the lyrics will be written by one person and the music will be composed by another person and so on. In such cases it is difficult to determine the true owner of the work. Disputes arise because all the parties believe that they have acquired the ownership rights. The following are the issues related to Copyright ownership.

a) Joint work related issues - According to Sec 17. Joint works are those that are created by two or more authors with an intention to create the work as a whole at the time of creation. There will be only one Copyright for the created work. Ex:- Books that are written by Co-authors, For a Song Lyrics by one person and music Composition by another person etc.

Joint works also result when a Copyright owner transfers rights to more than one person or Copyright passes by will to two or more persons.

Merely making suggestions or giving directions to one creating a work is not sufficient to make it as a joint work. The Coauthors should make significant contribution. They may not be equal.

Determination of value of contribution by Coauthors:

It is imp: to determine the contribution of the co-owners for sharing profits and also for registration. They can share profits equally assuming that they have contributed equally unless they provide otherwise. To avoid disputes agreement must be in writing regarding the division of revenues.

Rights in joint works: - (1) All the co-authors will have equal rights on the work.

- (2) They can enjoy the all rights like right to reproduce, right to distribute, right to prepare derivative works etc. without the permission of the co-owners.
 - (3) Co-owners can not oppose other authors of the joint work for using the work for their purpose.
 - (4) They have a right to share profits equally unless stated otherwise.
 - (5) Co-owners can grant license to other individuals without obtaining any permission from the co-authors (Ex exclusive license consent is required).
 - (6) After the death of a co-author, his or her rights will be r/s to their legal representatives.
 - (7) Co-authors will have a right to terminate the transfer of ownership rights.
- Duration of the joint work: - In joint works

The Copyright lasts until 70 yrs after the death of the ~~last~~ last surviving co-author.

(b) ownership issues in derivative works (2) Collective work

"A Collective work can be defined as the work that is created by collecting and assembling the previous works in a creative manner, with the permission of the Copyright owner. Collective work cannot be a joint work because the original owner does not have any intention to create the work together at the time of creation. Ex:- a person has collected and assembled the poems of various poets in a book is a collective work.

The Copyright for the Collective work is separate from that of the Copyright of the original work. Both of them will have control over their own creation only.

The collective work owner has a right to give ^{this work} license to others, but not to original work.

derivative work: - It is a work created based on the original work. Ex:- A person who has created a film based on a book written by another author is a derivative work. The owner of derivative work can only enjoy the right to reproduce or distribute

the copies of their work, but could not get ownership rights of the original work. Duration of the derivative work is life of the author + 70 yrs after his death.

(c) Ownership issues when a work is made for hire:-

A work made for hire is an exception to the general rule of the law, i.e. the person who created the work is the owner of that work. But in the case of hired works, the employer will be ~~the~~ considered as the original author, but not the employee who actually created the work.

According to Section 101 of CR Act, work made for hire is defined as a work created by an employee within the scope of employment or by an independent contractor who ordered it for special purpose. Ex:- Microsoft hired many programmers to develop windows operating system which is then owned by the company but not by the programmers who have created it.

In case of hire work both the parties should sign the agreement called hire agreement. The employer should pay certain amount to employee.

Effects of hire work:- ① employer will be the original author ② Copyrights will be 95 yrs from the first publication and 120 yrs after the creation whichever is shorter.

Registration of Copyrights

I Filing the application: - After selecting and completing suitable application forms and suitable deposit materials, the applicant has to file the application with the Copyright office. It is always better to include a cover letter along with the application, which consists of name, address and other details of the applicant, along with the self-addressed cover to get confirmation from the office regarding the filing of the application.

Examination of the application: - The Copyright office will assign the application to a specialist. It is not tedious like trademark and patent applications. It is basically to confirm whether the material is original and copyrightable or not.

The Copyright office will have 4 major examining sections such as ① ~~for~~ for literary works ② for performing works ③ visual arts ④ for renewals.

The applicant can get the status information by paying a suitable fee. After examining the application if all the information is accurate, the Copyright office will issue a certificate of registration within 16 weeks. If it requires any additional information, & if it is rejected, they will call the applicant to know the reasons.

If any enquiries Copyright Office. will provide a period of 120 days to the applicant. If he fails to respond within the given time, the file will be closed without giving any notice to the applicant. Then the applicant has to file another application for further registration. If it is accepted registration certificate

will be issued with a stamp and seal, Reg. no. date of Reg'n etc. in order to reduce the processing time Copyright Office has introduced (CORDS) i.e. (Copyright Office ^{Electronic} Registration and Deposit System). encryption technology has been used for signing the application. It takes only few days to issue the Reg'n Certificate.

III Refusal of Registration:- In case of refusal the applicant can appeal for the re-examination. They can apply in a written form with a prescribed fee. The Chief Examiner will re-examine the application. If it is refused again, he can apply to the district court.

IV Special handling:- In order to speed up the process of registration, the Copyright Office has implemented a special handling procedure in which the applicant will get the Reg'n Certificate within few days & immediately. Special handling will be allowed under the following conditions. (1) Customers requirement (2) pending litigation (3) publishing deadlines that require immediate processing.

Supplementary Copyright Registration - The applicant will be given a chance to correct the information provided in the application is wrong, by filing Supplementary Copyright Registration. It is not necessary for minors as it does not require any deposit of materials. The situations which require Supplementary Reg'n are -

- ① If the original application is filled by incorrect author.
- ② If the work is registered as published when it is not.
- ③ If co-author omitted in case of joint works.
- ④ If any changes in the name & title of the work happen.

Copyright notice

Copyright notice informs the public that the work is protected by Copyright. The owner should include a notice of Copyright along with the work. Though it is not mandatory to include this notice, it provides some additional benefits to the owner. It can prevent infringement of the work.

prior to 1978 CR notice is compulsory along with the published work to get protection, otherwise the work will fall into public domain. But after Berne Convention use of a notice with first publication is not compulsory.

Copyright notice includes 3 key elements.

(i) Copyright symbol :- Copyright symbol will be © for Copies and, P for Phonorecords.

(ii) Year of first-publication :- Copyright owner should include the year first-publication of the work. Any mistake & alteration in the year of publication will be considered as an error by the C.R. office, which may adversely influence ownership rights.

(iii) Name of the Copyright owner :- The owner should include his name along with the Year and Symbol. Instead of giving full name he can use abbreviation also. In case of joint works all Co-owners names must be mentioned. Mistakes in the names must be rectified by applying a special form with PTO.

Forms of Copyright notice :- The forms of C.R. notice differs from one work to other. They will be as follows.

a) Form of notice for visually perceptible Copies :- V.P.C means Copies that can be seen & read either directly (such as books) or with the help of a machine (movies). The elements of this notice are

(i) Copyright symbol © or abbreviation "Copr".

(ii) Year of first publication

(iii) The name of the owner (all the owners in case of joint)

Ex :- "©" 1998 James.

② Form of notice for Sound recordings:- Under the Act the form of notice will be different for phonorecords which are used for sound recordings. ^{notice} ~~it~~ protects the reproduction, revision and distribution of the work without the permission of the owner. The notice includes

- (i) Copyright symbol © will be mentioned on label.
- (ii) Year of first distribution of work.
- (iii) Name of the owner or (owners) will be mentioned.
For ex "© 2004 Aditya Entertainment"

③ Form of notice for Collective work:- A single Copyright notice applicable to the collective work as a whole is sufficient to give protection. The notice should include only the name of the Copyright owner of the collective work, but not all the names of the authors who contributed to collective work.

④ Form of notice for derivative work:- In case of derivative work, the information in the Copyright notice should relate to the new work, not the original work.

- ① The symbol ©, ² and year of first publication
- ③ and the name of the Copyright-owner of the new work should be given.

⑤ Form of notice for unpublished works:- It is not necessary to include a Copyright notice for

unpublished works, if provided it will offer several benefits to the owner. It will be "unpublished work © 2007 Daniel".

Location of Notice: — CR Act does not dictate exact placement of the Copyright notice and requires only that it must be placed in such a way that it gives reasonable notice of the claim of C.R.

- (a) published work in book form: — The notice may be placed on the title page, ~~the page~~ in the immediate next page & on both sides of front cover & back cover pages of the book.
- (b) Single leaf works: — The notice must be placed anywhere on the front & back of the leaf.
- (c) Collective works: — The notice may be placed under the title or on the first page of the contribution or at the end of the contribution.
- (d) Serial works: — Notice can be placed anywhere in the book, & near masthead & adjacent to a heading near the front of the issue.
- (e) Computer programmes: — notice can be displayed at the user's terminal, continuous display on the terminal, if it is printed near the title of the copy.
- (f) Motion pictures: — The notice can be placed near

title of the work or at the beginning of the work,
& just preceding at the end of the work.

(g) F& pictorial and Sculpture work: - It can be placed on visible portion of the work, At the base of the work, & mounted on the work. If it can not be placed, it can be tagged to the work.

(h) Websites: - F& websites the notice can be placed on the homepage & in the index page.

(i) Sound recordings: - F& Sound recordings, it can be placed on the surface of phonorecord or on the label that is fixed on the phonorecord.

International Law of Copyrights

(c) Colours: - Since 1999, PTO has permitted the use of colours also within the design. But the description of the colour is must in the application.

II Identification of class: - The application must identify the goods and services offered under the mark. PTO has classified goods/services into 45 categories; called international classes, because most other nations use the same classification system established by WIPO.

If a mark is used for more than one class of goods/services, the applicant may file a combined application or separate applications for each class. The filing fee will be identical. Some prefer separate applications, because a defect in one class in combined application will hold up registration for all other classes.

No addition or deletion or modifications will be allowed once the application is filed.

III Information about the Applicant: -