

## **Notes for Revision**

### **Unit 4 – Copyrights**

#### **What is a Copyright?**

Copyright (Oxford English dictionary) is an exclusive right given by law for a certain term of years to an author, composer, etc., to print, publish and sell copies of their original work.

Section 14 of the Copyright Act 1957 defines Copyright as:

The exclusive right to do or authorize others to do certain acts in relation to

- Literary, dramatic, or musical works
- Artistic works
- Cinematography (Film making)
- Sound recording

#### ***More complicated definition:***

An intangible incorporeal and exclusive right granted to the author of certain artistic or literary work for a certain period of time to multiply copies of the same, publish and sell them.

## What are Copyright characteristics?

### 1. Creation of Statute:

- It is created under a specific act (Section 16 of the Copyright Act 1957)
- There is no common law copyright
- Copyright is creation of a specific statute under the present law.

### 2. Form of Intellectual property

- It is a form of Intellectual property since the right is granted over works that are a result of utilization and investment of one's intellect.

### 3. Monopoly of right

- Restraining others from exercising that right

### 4. Negative right

- It is prohibitory in nature
- Prohibits others from copying or reproducing same work.

### 5. Multiple rights

- Copyright consists of a bundle of rights
- Example: A literary work copyright comprises of right of reproduction in hard back and paper back editions, right of publication in newspapers and magazines, right of dramatic and cinematographic versions, right of translation ...etc.

### 6. Copyright only in form not in idea:

- Copyright exists in expression of idea and not the mere idea.
- It exists in the expression of the idea in some material form like book, photograph, film or musical tone.

### 7. Neighboring rights

- Copyright is not merely right of reproduction, but also right to works derived from original works.
- Rights like right of performance, right to record, right to broadcast. These related rights are termed as Neighboring rights.

(Object of copyright: To motivate and encourage authors, composers and artists to create original works by providing them exclusive rights for a certain period of time to reproduce the works for publishing and selling.)

### Indian Copyright Law:

- First act was passed in 1914
- Replica of English copyright Act of 1911
- Present act was legislated in 1957  
Hence called, the Copyright Act of 1957.

### Main features of Copyright Act of 1957:

- Creation of Copyright office and a Copyright Board.
- Listing various categories of works for which copyright can be issued.
- Provisions to determine the first ownership of copyright
- Term of copyright for different works.
- Provisions relating to assigning ownership and licensing.
- Provisions relating to performing rights
- Broadcasting rights
- International Copyright
- Definition of Infringement of Copyright
- Authors special rights
- Civil and criminal remedies against infringement.
- Remedies against groundless threat of legal proceedings.

### Copyright requirements:

#### 1. Work of Authorship Requirement

- There must be an author or artist.
- Author must be a skilled labor

#### 2. The originality requirement

- A fixed expression of ideas is protected by copyright if and only if it is original.  
Neither quality nor uniqueness is required.
- Even bad work is subject to copyright protection.
- Works that are similar, but independently created, are individually subject to copyright protection.

#### 3. The fixation requirement

- The ideas must be fixed in some tangible medium of expression
- Copyright protection is immediate as soon as the expression is fixed in tangible form. That is, it applies to drafts and completed works, both published and unpublished.

### *Other Points:*

1. There must be an expression of ideas in a literary, dramatic, musical or artistic work, or in subject matter other than works, such as in an audio-visual performance
2. the work must be original
3. the work must be recorded in a 'material form', for example
  - a. written down on paper or something else
  - b. recorded by keystrokes saved on a computer
  - c. recorded on film
  - d. recorded on tape
  - e. recorded as software code saved on a computer
  - f. recorded digitally onto a device
4. there must be an author or artist.

## **Copyright protection is not provided for:**

1. Works not fixed in tangible form.
2. Titles, names, short phrases, slogans, methods, factual information, symbols or designs – however,
3. trademark law may provide some protection to these works.
4. Ideas or concepts, procedures, process, plans, principles, discoveries, and guidelines – however, in such cases patent or trade secret law may provide protections to these works.
5. Works that are already in the public domain and original authorship is not traceable are not covered under copyright law.
6. Copyright works that are already expired.

## **Various work that can be copyright protected:**

- Literary works:
  - Computer programmes, tables, compilations including computer databases.
  - Dramatic work including recitation, choreographic work
- Artistic works
  - Painting, Sculptures, drawing (Map, chart, diagram or plan), photograph engraving or any design having artistic character.
- Musical works
  - Work containing music
  - Any graphical notation of such work
  - But does not include an actors movement while rendering the song in a movie.
- Cinematography and Film making
  - Works including moving image and sound recording accompanied by visual recording
- Architectural works
  - Building or structure having artistic character
- Sound recording

## Contract for service and Contract of service

- Organizations tend to enter into a number of contracts with a large number of people/organizations for meeting their business and day-to-day requirements
- Organizations hire employees or engage the services of a third party to meet their needs. However, for all purposes, they enter into a number of contracts.
- All such contracts entered into by the company can be broadly divided into two categories
  - Contract for Service
  - Contract of Service

### 1. Contract for Service:

- Agreement that is entered into by the company with a third-party for availing its services.
- The third-party is an independent service provider, not an employee of the company.
- The third party is not entitled to the benefits that the employees of the company receive or are entitled to from time to time during the course of their employment.
- Control: The company does not exercise control over the third-party.
- Purpose and ownership of intellectual property: The company enters into such contracts where they want the service provider to assign the ownership of the intellectual property rights in the created work to it and in return pay for the work done by the service provider

(The third party holds the Copyright and not the company which hires it)

Example: A company hired an architect to design a plan, then the Copyright vests in the architect and not the company.

## 2. Contract of Service

- Agreement that is entered into by the company with an individual for availing his/her services.
- The individual here is the employee of the company and is entitled to the benefits that the employees of the company receive or are entitled to from time to time during the course of their employment.
- Control: The company enjoys control over the work created by the employee and the employee is bound to obey the orders of his employer.
- Ownership of intellectual property: The ownership of the intellectual property created by the employee rests with the company.

(Whenever an employee of a firm drafts a document in the course of their employment, the employer is the first owner of Copyright)

### *Comparison study:*

<b>Description</b>	<b>Contract for Service</b>	<b>Contract of Service</b>
<b>Parties</b>	Company and third party	Company and employee
<b>Relationship of the parties</b>	Independent contract/ consultancy	Employer-Employee
<b>Control over the work</b>	The third party is not bound to obey the instructions of the company	The employee is bound to obey the instructions of the employer
<b>Ownership of all the rights arising from the work created out of contract</b>	The company gets ownership after paying for the services to the third party	The company is by default the owner of the work done by the employee, except in cases of inventions

## **Remedies against Infringement**

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

### **1. Civil remedies**

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

Example:

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

- Stopping such an Infringement (Injunction)
- Damages in the form of monetary amount
- Account of profit (Profit which the infringer obtains)
- Damages for Conversion (Damages when infringer converts the form of the work)

### **2. Criminal remedies**

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

### **3. 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.

## **Jurisdiction of Courts**

A suit or other civil proceedings relating to infringement of copyright is filed in the District Court or High Court within whose jurisdiction the plaintiff resides or



carries on business or where the cause of action arose irrespective of the place of residence or place of business of the defendant

### **Limitation**

The period of limitation for filing the suit is three years from the date of infringement.

### Rights Conferred by Copyright Law (*Same as Copyright characteristics*)

- Statutory rights
- Negative rights
- Multiple rights
- Economic rights
- Moral rights

The author of a copyrighted work holds exclusive rights

- To reproduce the work,
- To distribute copies of the work,
- To publicly display or perform the work,
- To sell a copy of the work (but only one time),
- To produce derivative works based on the copyrighted work.

### Author and Ownership difference:

If 'A' asks 'B', a painter to paint his portrait for an agreed sum of money, then although B has created the painting, he shall be the author and A who paid consideration for the portrait shall become the first owner of the copyright arising and accruing out of the portrait.

### Ownership of Copyright

- According to Section 17 of the Copyright Act, 1957, the author of a work shall be the first owner of the copyright
- Section 17 (a) of Copyright Act, 1957: literary, dramatic and artistic works
  - It says that whenever such a work is made by an author during the course of his employment or service to the owner of a newspaper, magazine, book etc under a contract for publishing such work, then subject to an agreement in contrary, the owner of such newspaper or magazine shall become the first owner of the copyright.
- Section 17 (b) of Copyright Act, 1957: photograph, painting, engraving, cinematographic film
  - The cases when an artist is hired for creating a painting, or when a photographer is hired for clicking images, or a cinematographer is hired to shoot a cinematographic film then the person causing such work to be created shall become the first owner of the copyright.
- Section 17 (c), Copyright Act, 1957: work made during the course of employment
  - when a work is made by a person in the course of his employment under a contract of service or traineeship, then the employer shall become the first owner of all the work created during such employment unless there's an agreement in contrary between the parties.

*(Similarly, you can expand all the remaining points).*

- Section 17 (cc), Copyright Act, 1957: lectures delivered in public on behalf of another
- Section 17 (d) of Copyright Act, 1957 : work assigned by Government
- Section 17 (dd) of Copyright Act, 1957 : copyrightable work made on behalf of a public undertaking
- Section 17 (dd) and Section 41 of Copyright Act, 1957 : copyrightable works created for certain international organization

### Term of copyright

- 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
- Term of copyright in literary dramatic, musical, or artistic works published within the lifetime of the author until 60 years from the beginning of the calendar year next following the year in which the author dies.
- Broadcast reproduction right shall subsist until 25 years
- Performer's right shall subsist until 25 years

### Infringement of copyright

Acts that constitute infringement would depend upon the nature of work. According to section 51 of the act copyright is a work that is deemed to be infringed

When a person without a license from the owner or the registrar of copyrights does anything, the exclusive right to do which is conferred upon the owner of copyright or permits for profit, any place to be used for communication of the work to the public, unless he is not aware and had no reasonable ground for believing that such communication would be an infringement of copyright

When any person:

1. makes for sale or hires or sells or lets for hire or by way of trade displays or offers to sale or hire any infringing copies of work covered by the copyright
2. Distributes, either for purpose of trade or to such an extent as to affect prejudicially the owner of copyright, any infringing copies of the work
3. exhibits in public by way of trade any infringing copies of the work
4. Imports into India any infringing copies of the work except the copy of any work for the private and domestic use of the importer

*(Go through some illustrations if it is there in syllabus)*