

“Copyright”

- Literally construed as the ‘right to copy’
 - Right to produce copies (presupposes a medium)
- What is a copyright?
 - Exclusive rights given by law for a period of time
 - Authors, composers, artists, etc. (or their assignees)
 - To print, publish, sell copies of original “works”

The Right to Copy

- Right: Literary/Artistic, film, sound recordings
 - Making copies, broadcasting, selling
 - Exploit (granting permission or sale)
 - Publish a book (anyone, easiest IP to create)
 - Without permission: Infringement
 - Injunction; damages

→  Publisher, 2018

 © Authors, 2016

The Right to Copy

- Right: Literary/Artistic, film, sound recordings
 - Making copies, broadcasting, selling
 - Exploit (granting permission or sale)
 - Publish a book (anyone, easiest IP to create)
 - Without permission: Infringement
 - Injunction; damages
- Exceptions: Fair use or fair dealing
 - few pages, education, lending

Original Works

- Originality:
 - Literary, dramatic, musical, artistic
 - Easily satisfied, not unique; originated from author; his intellectual creation (not like novelty in Patent Law)
 - Quality not an issue: Tagore's poetry and poems written by school kid; judges/courts will become art critics
 - Sound recordings, broadcast, typographical arrangements
 - Derivative works need not be original
 - Repeat broadcasts, each will have a copyright
 - Films treated like original works

Scope of Right

- Extends beyond copying:
 - Covers translation of literary works
 - Public performances
 - Technological developments (broadcasting, storing on computer, electronic transmission, hosting on website)
- Overlapping rights:
 - Simultaneous creation (two photos of moon)
- Does not protect ideas, only expressions
 - Murder mystery; Agatha Christie

idea/expression

Term and Subject Matter

- Limited Life: Life of author + 60 years
- Owner: Author; employer
- Assignment: Will, licences
- Moral Rights:
 - Right to be recognized as author
 - Right to object to derogatory treatment (defamation)
- Not based on merit:
 - Bills, coupons, telephone directories, databases
 - Value (investment); incentive for investment (intangibles)

History and Origin

- Profit from others works
 - Plagiarism: one who copies the work of another and passes it off as his own (plagiarius = kidnapper)
 - Piracy: plundering of intellectual property includes unauthorized distribution, theft, reproduction, copying, performance, storage, sale (pirate = sea robber)

History and Origin

- Religious works: hand-illustrated
- Two inventions:
 - Gutenberg: moveable type
 - Caxton: printing press
- Laws favouring printing and circulation (printing privilege)

History and Origin

- Printing practiced freely
- Control on Printing religious works: Henry VIII banned import of books into England
- Stationers' Company: Registration
 - granted privilege; a monopoly in printing
 - Members "right" to print books – "Copyright"
 - Power to confiscate (infringement)

History and Origin

- Piracy flourished: Statute of Anne passed (1709)
 - Argued that copyright is a true property right, like houses and estates
 - "...very great detriment and too often to the Ruin of them and their families."
 - Preamble: "...the encouragement of learning..."
 - Term: 14 years sole right of printing (+14, if alive)
- US Copyright Act 1790 (inspired by Anne)

History and Origin

- Protection from copying after the invention of printing press—15th Century
 - Stationer's in UK granted a charter by the Crown to search out and destroy books printed in contravention of statute
- Copyright in the 19th Century
 - Protection extended to paintings, drawings, photographs, musical works
 - Slow emergence of bilateral agreements: Reciprocity

International Arrangements

- Berne Convention, 1886 (uniformity)
 - Limited to literary and artistic work
 - National treatment principle
 - Min. Duration: most works, life of author + 50 years
 - Automatic protection
- Rome Convention, 1961
 - Neighboring rights (performers rights)
 - Rights of phonogram producers, performers, and broadcasters

International Arrangements

- TRIPS Agreement 1994
 - Most-favoured nation principle
 - Idea-Expression distinction
- WIPO Treaties
 - WIPO Copyright Treaty, 1996
 - WIPO Performances and Phonograms Treaty, 1996

TRIPS Agreement 1994

- Implements Arts 1-21 of Berne Convention
 - Disputes with regard to compliance of Berne Convention can be brought before DSB of WTO
- Rome Convention: Article 14 of TRIPS
 - Protection of Performers, Producers of Phonograms
- Computer programs
 - as literary works; compilation of data=intellectual creations

WIPO Copyright Treaty, 1996

The WIPO Copyright Treaty (WCT) is a special agreement under the Berne Convention that deals with the protection of works and the rights of their authors in the digital environment. Any Contracting Party (even if it is not bound by the Berne Convention) must comply with the substantive provisions of the 1971 (Paris) Act of the Berne Convention for the Protection of Literary and Artistic Works (1886). Furthermore, the WCT mentions two **subject matters** to be protected by copyright: (i) computer programs, whatever the mode or form of their expression; and (ii) compilations of data or other material ("databases"), in any form, which, by reason of the selection or arrangement of their contents, constitute intellectual creations. (Where a database does not constitute such a creation, it is outside the scope of this Treaty.)

WIPO Copyright Treaty, 1996

As to the **rights granted to authors**, apart from the rights recognized by the Berne Convention, the Treaty also grants: (i) the right of distribution; (ii) the right of rental; and (iii) a broader right of communication to the public.

- **The right of distribution** is the right to authorize the making available to the public of the original and copies of a work through sale or other transfer of ownership.
- **The right of rental** is the right to authorize commercial rental to the public of the original and copies of three kinds of works: (i) computer programs (except where the computer program itself is not the essential object of the rental); (ii) cinematographic works (but only in cases where commercial rental has led to widespread copying of such works, materially impairing the exclusive right of reproduction); and (iii) works embodied in phonograms as determined in the national law of Contracting Parties (except for countries which, since April 15, 1994, have had a system in force for equitable remuneration of such rental).
- **The right of communication to the public** is the right to authorize any communication to the public, by wire or wireless means, including "the making available to the public of works in a way that the members of the public may access the work from a place and at a time individually chosen by them". The quoted expression covers, in particular, on-demand, interactive communication through the Internet.

WPPT 1996

The WIPO Performances and Phonograms Treaty (WPPT) deals with the rights of two kinds of beneficiaries, particularly in the digital environment: (i) performers (actors, singers, musicians, etc.); and (ii) producers of phonograms (persons or legal entities that take the initiative and have the responsibility for the fixation of sounds). These rights are addressed in the same instrument, because most of the rights granted by the Treaty to performers are rights connected to their fixed, purely aural performances (which are the subject matter of phonograms).

WPPT 1996

As far as **performers** are concerned, the Treaty grants performers **economic rights** in their performances **fixed in phonograms** (not in audiovisual fixations, such as motion pictures): (i) the right of reproduction; (ii) the right of distribution; (iii) the right of rental; and (iv) the right of making available.

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

WPPT 1996

As far as producers of **phonograms** are concerned, the Treaty grants them **economic rights** in their phonograms: (i) the right of reproduction; (ii) the right of distribution; (iii) the right of rental; and (iv) the right of making available.

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

Rationale

- Why protect copyrights?
 - Intellectual productions need to be protected
 - Intellectual effort
 - Copying can be equivalent to theft
 - Labour theory
 - Reward an author for creating a work
 - Essential to human creativity

Rationale

- Why protect copyrights?
 - Incentive to create more works
 - Economic and social development of society dependent on creative work
- If copyright protection applied rigidly, hamper progress of society
 - Exceptions and limitations included

History in India

- Indian Copyright Act, 1914
- Copyright Act, 1957
- Copyright (Amendment) Act, 2012
 - Balance of rights of authors, right holders and users
 - Performers rights
 - Amendment to facilitate access to works
 - Compulsory licenses

Fundamentals

- Jurisdiction
 - Extends to whole of India
- Term
 - For most works, life of author + 60 years
- Rights of a copyright holder
 - Exclusive rights to print, publish, sell copies of work

Work

- A work means a literary, dramatic, musical, or artistic work, a cinematograph film, or a sound recording
- Work of joint authorship
 - Work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors

Works Protected by Copyrights

- Original literary, dramatic, musical, and artistic work
- Cinematograph films
- Sound recording
- Other conditions
 - Work first published in India
 - Author citizen of India

Author

- Literary or dramatic work
 - Author of the work
- Musical work
 - Composer
- Artistic work
 - Artist

Author

- **Photograph**
 - Person taking the photograph
- **Cinematograph film or sound-recording**
 - Producer
- **Computer generated work**
 - Person who causes the work to be created

Introduction

- Work should be protected by the Copyright Act, 1957
- Certain other requirements
 - Recorded in a material form
 - Originality
 - Exceptions: Cinematograph films, sound recordings
 - Work sufficiently connected to India
 - Not excluded on public policy grounds

Fixation

- Recorded in Material Form
 - Subject matter requires to exist in some permanent form before it gains copyright
- Idea-expression dichotomy
 - No © in idea but in expression of idea
 - Idea given embodiment in tangible form

Originality

- Independent creation
- Relationship between the creator and work
 - Not same as the novelty requirement in patents
 - Author's intellectual qualities in creating the work
- Originality of expression
 - Manner of expression of ideas
 - Not originality of ideas
- Derivative works can be original

Originality

- Requires a modest amount of creativity
- Intent to be original not required under ©
- Artistic: Aesthetic neutrality
- Need not be necessarily lawful content
 - Lawfulness of a content is not governed by copyright law

Qualified Work

- Work sufficiently connected to India
 - Qualification by first publication]
 - Qualification by authorship (published outside:
citizen)
 - Qualification by authorship (unpublished work:
citizen or domicile)
 - Qualification by location: Architectural works }

Introduction

- All subject matter protected by © are called "works"
- The list of subject matter not exhaustive
 - Intellectual creations that fall outside the subject categories must be protected
- Understand if material attracts ©
 - Duration, ownership, infringement
- Author: person who creates the work

Literary Work

- Indian Act doesn't define literary work
 - *"It includes computer programmes, tables and compilations including computer databases."*
- Need not necessarily have literary merit
 - Courts have included football fixture lists, mathematical tables, tambola tickets etc.
- Quantum of Work
 - Number of words not quality
- Author: Author of the work

Literary Work

- Quantum of Work
 - Cannot be protected under ©
 - Names, invented words, slogans
 - 'Yeh dil Mange More', Pepsico's advertising slogan was held not protectable under the Act
- Secondary or derivative works, only protected if:
 - Labour right kind
 - Effort brings material change in the work
 - Change of right kind
 - Prior work different from secondary work

Literary Work

- Original author assigns copyright then, new work will be entitled to a copyright
 - Adaptations and abridgement
 - Translations
- Compilations and collective works
 - © subsists in individual items and collection as a whole
- Computer programmes
 - Protection of source codes

Dramatic Work

- *“..includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting, form of which is fixed in writing or otherwise but does not include a cinematograph film.”*
 - literary and dramatic used together, principles applicable to literary work will be applicable here
- Author: Author of the work

Musical Work

- *“..means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music.”*
 - 2012 amendment, grant of statutory license for cover versions

Musical Work

- Song contains both literary and musical work
 - Tune and lyrics
- Lyrics of the song is literary work
 - Author: Writer of the lyrics
- Music accompanying the song musical work
 - Author: Composer of musical work

Artistic Work

- Meaning
 - 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
 - Any work of artistic craftsmanship
- Author
 - Artist, for artistic work other than photograph
 - Photograph, person taking the photograph
 - Monkey selfie

Cinematograph Films

- *“..means any work of visual recording 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 produced regardless of the medium on which such recording is made or the method by which the sounds are produced.”*
- Author: the producer of the sound recording

Term of ©

↓
life of author
+ 60 yrs
publication
death

- Literary, musical, dramatic, and artistic work
 - Life of author plus 60 years
- Posthumous work
 - 60 years from work first published
- Cinematograph films, sound recording, government work, works of international organizations
 - 60 years from work first published

Ownership

- First owner of copyright is author
- Contract of service v. contract for service
 - Cases of commissioned work
 - Works made by employee
- Rights of lyricist, composer in films
 - Commissioned work, producer of film has ©
 - Composer and lyricist first owner and author of their work for purposes other than showing in cinema halls

Assignment

- Transfer of ownership of ©
 - Assign, license, testamentary disposition, or relinquish
- Assignment
 - Existing work or future work after it comes into existence
 - Made in writing and signed by assignor or authorized agent

Rights of Owners

- Exclusive economic rights
 - Right to reproduce the work in any material form
 - Right to store the work in electronic medium
 - Right of issuing copies to the public
 - Right to perform the work in public or communications to the public

Rights of Owners

- Exclusive economic rights
 - Right to make film, sound recording
 - Right to make translation of the work
 - Right to make adaptation of the work
 - Right to make copy of the work
 - Distribution right

Rights of Owners

- Moral rights
 - Independent of author's copyright and assignment
 - Claim authorship of work
 - Restraine or claim damages, distortion, mutilation
 - No infringement—failure to display work to the satisfaction of the author

Infringement

- Infringement of right of reproduction
- Reproduction of an idea
 - No © in an idea
- Reproduction as pirate copy
- Reproduction in any material form
- Reproduction by substantial copying

Defences

- Fair dealing
 - Research, criticism, or review
 - DU Photocopy Case
- Permitted reproduction
 - Certified copies of court
 - Reading materials by teacher, instruction
 - Private study
 - Report tabled in the Parliament

Defences

- Permitted publication
 - Display of work of architecture
 - Translation of an Act in any Indian language
- Library use
 - Storing of work for preservation in electronic medium if non-digital copy exists

Neighbouring Rights

- Broadcasting Rights
 - Copyright owner has exclusive rights to communicate his work to the public
 - After license from © owner, broadcasting owner will have a right in his broadcast
- Performers Rights
 - Exclusive economic rights, live performers
 - Moral rights

Plagiarism

- Using someone else's work without giving proper credit
- Copyright infringement is using someone else's work without getting that person's permission
- Schools enforce plagiarism
- Courts enforce copyright infringement

Interpretation of Educational Exceptions

- Restrictive v. Liberal
- Liberally interpreted by courts in India
- Preparation of guide books and reproduction of previous years' exam papers in textbooks
- DU Photocopy Case (The Chancellor, Master and Scholars of the University of Oxford and Ors. v. Rameshwari Photocopy Services and Anr.): Photocopying of course packs

Exception 1: Reproduction

- Reproduction in the course of instruction- Section 52 (1)(i) of the Copyright Act, 1957
- “Reproduction”-duplication or copying
- Express prohibition against reprographic process in U.K., Singapore-reproduction permissible but no photocopying
- No express prohibition in Indian law
- Course of instruction to cover all ways of imparting knowledge

Section 52(1)(a)(i) of the Act

- 52. Certain acts not to be infringement of copyright- (1) The following acts shall not constitute an infringement of copyright, namely:—
 - (a) **a fair dealing** with any work not being a computer programme, for the purposes of — (i) **private or personal use, including research**

Section 52(1)(i)(i) of the Act

- 52. Certain acts not to be infringement of copyright- (1) The following acts shall not constitute an infringement of copyright, namely:—
 - (i) the reproduction of any work—
 - (i) by a teacher or a pupil **in the course of instruction**

Relevance of end-user test

- Ultimate beneficiaries of the copyrighted material
- Students as end-users
- DU Copyright case- Rameshwari photocopying service not the end-users

Exception 2: Fair dealing

- Fair dealing in the course of research-Section 52 (1)(i)
- “Private use”=Research+ Private Study+ Instruction (Alberta v. Canadian Copyright Licensing Agency 2012 SCC 37)
- Fair dealing exception applicable to circulation of extracts
- Quantitative limits (cap such as 10%, etc.) to fair dealing restrictive-what are the consequences?
- Cover to cover reproduction permissible?

Right to access

- Textbooks too highly priced for students
- Limited number of textbooks available in libraries
- Textbooks unavailable/out of print

Fair dealing

- 2012 amendments-fair dealing to cover all works
- No quantitative limit (cover to cover copying permissible)
- No involvement of publishers
- Students as end-users
- Economic burden on Universities reduced

DU Photocopy Case

- 9th Dec, 2016: Allowed educational use
 - Fair use: use necessary for achieving the purpose of educational instruction, regardless of the percentage of the work used
 - ‘in the course of instruction’: included preparation and distribution of course packs to students
 - Teaching: fairness determined by extent justified by the purpose
 - Issue of course packs not publication: Difference between publication and reproduction (profit)
 - Agency: irrelevant