

Copyright Meaning and characteristics

- Copyright is a unique kind of intellectual property. The right which a person acquires in a work which is a result of his intellectual labour is called his copyright
- 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 characteristics

- Creation of a statute
- Some form of intellectual property
- Monopoly right
- Negative right
- Multiple rights
- Copyright only in form not in idea and
- Neighboring rights

Indian copy right law

Associated with copyright British law. In India first copyright act was passed in 1914 was a copy of copyright act of 1911 passed in England

Main features of the copy right act of 1957 was

- Creation of a copyright office and a copyright board to facilitate registration of copyright and settle certain kinds of disputes arising under the act and for compulsory licensing of copyright
- Definition of various categories of work in which copyright subsists and the scope of the rights conferred on the author under the act
- Provisions to determine the first ownership of copyright in various categories of works
- Term of copyright for different categories of works
- Provisions relating assignment of ownership and licensing of copyright, including compulsory licensing in certain circumstances
- Provisions relating to performing rights of or by societies

Indian copy right law

- Broadcasting rights
- International copyright
- Definition of infringement of copyright
- Exceptions to the exclusive right conferred on the author or acts which do not constitute infringement
- Authors special rights
- Civil and criminal remedies against infringement
- Remedies against groundless threat of legal proceedings

Requirement of copyright

- copyright Protects - subject matter of copyright :the author must have bestowed upon the work 'sufficient judgement skill and labour or capital. It is immaterial whether a work is wise or foolish, accurate or inaccurate, it has or has not literary merit. The copyright protects the skill and labour employed by the author.
- The owner of copyright has no monopoly in the subject matter others are at liberty to produce same result provided they do so independently and their work is original

Copyright is protection is in form and not in idea

- Copyright is a right derived from works and is not a right in novelty only of ideas.
- It is right of the author, artist or composer to prevent other person copying his original work, book or picture he created by himself. There is nothing in the copyright to prevent another from providing an identical result provided it is arrived at through a independent process
- There is copyright in ideas. Copyright subsists only in material form to which the ideas are translated.
- A person relates a story a person based on it scripts a book then he who translates the idea to material is holding the copyright.

Works in which copyright subsists

- Original literary , dramatic, musical and artistic works
- Cinematograph films
- Sound recording

Qualification for subsistence of copyright

To qualify for copyright, apart from being original should satisfy the following conditions

- the works first published in India
- Where the work is first published outside India, the author at the date of publication must be a citizen of India. If the publication is done after the death of the author than at the time of death the author should have been a Indian citizen.
- In case of unpublished work the author is on the date of making of the work, a citizen of India or domiciled in India. This does not apply to architecture works.
- Section 41 lists condition under which an international organization would be entitled to a copyright throughout India

Copyright in original literary work

- Copyright is not concerned with the original or inventive thought, but expression of the thought and in case of literary work with the expression of thought in printing or writing

Illustrations copyright in literary work

Adaptaion of literary work : copyright subsists in adaptation of another literary work as adaptation can be a literary work eg literary to dramatic work by way of public performance

Abridgment of literary work: abridgment of a literary work is entiled to copyright if it is new and original

Translation : is aoriginal literary work entiled to copyright as the author has expended sufficient labour and skill on it

Historical work: historical facts are not copyrightable pe se. but if the book of history is having a unique way of presentation to its author , it is an original literary work

Lecture; address, speech sermon by any mechanical or by broadcast it is entitled to copyright only if it is reduced to writing before it is delivered

Letters: copyright subsists in private letters, commercial letters and govt letters

Addressed by one person to another are original litterray work

Tittles of books cartoons or other literary matter pseudonyms are all protected under copyright

Shorthand writers transcript

Illustrations copyright in literary work

questionnaire for collecting statistical information

Catalogues

dictionaries

Compilations directories

New editions of existing work

Computer programme

Computer system with interactive voice responses

Television programmes

Question papers set for examination

Research theis and desertations

Parodies

News and newspaper precis

Illustrations copyright in musical work

- According to 13(1). Copyright subsists in original dramatic musical and artistic work song
- Choreography and scenic arrangement or acting
- Film based on newspaper article illustrations copyright
- Old song with different music composition
- Relevancy of expert opinion in a musical work

Illustrations copyright artistic work /architecture

- Painting sculpture ,drawing including drawing ,map chart or plan , engraving on a photograph
- Work of architecture
- Work of craftsmanship

Illustrations copyright in cinematograph
film/sound recording

Author and ownership copyright

Contract for service

- Were 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 cotract of service
- A person employs another to do certain work but leaves it to the other to decide how that work shall be done , what steps shall be taken to produce the desired effect then it is a contract of service

his status is that of an independent contractor then the copyright vests in him and not the employer.

Rights conferred by copyright

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

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

Assignment/License of copy right

- Exploitation of copyright in a work can be numerous as it bundle of multiple rights, they can be exercised independently of each other
- A novel can be published as a volume , serialized in newspaper or magazine or can be licensed to be made into film. Each can be assigned or licensed for a limited term.
- the assignment is a transfer of ownership rights to the assignee
- A licence is a permission to do something in respect to the work.
- Sections 18,19 and 19a of the copyright act deal with the assignment of copyright

Assignment of copyright

- Assignment of copyright 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 full term of copyright or for a limited period of time
- Assignment may be on a territorial basis i.e. for a particular territory or country
- A owner of a copyright can assign his right in the above combination of forms

Mode of assignment

Section 19 elaborates the mode of assignment

1. Assignment is valid only when it is in writing signed by the assignor or his duly authorized agent
2. 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. the assignee does not exercise his 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 unless otherwise specified in assigned instrument.
5. When the period of assignment is not specified it is deemed to be assigned for 5 years from the date of assignment.
6. If territorial extent is not specified it is presumed to extent for entire extent of India
7. When the assignment has been before the copyright act 1994 provisions of sections 2,3,4,5 ,6 are not applicable. However assignment must be through a written instrument

Infringement of copyright

- Can an assignee sue an assignor for infringement: an assignee to whom certain rights has been assigned can restrain the author from exercising his rights which has been already 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 to future work

Acts that constitute infringement

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 o 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

Direct and indirect evidence of copying

- Elements need to be present to make an act an 'infringement ' within the meaning of the act are

1. Substantial copying

2. Direct evidence of copying from the source in which copyright subsists

Indirect copying : here copying is done from a preexisting copy of the same work

Conscious, unconscious and sub conscious copying

Acts that do not constitute infringement

- Section 52 lists acts which do not constitute infringement of copyright
- 1. a fair dealing with a literary, dramatic, musical or artistic work not being a computer programme for the purpose of private use including research and criticism or review, making computer programme for certain purposes, reporting current events in a newspaper and magazine by broadcasting or in cinematograph film or by means of photographs
- Reproduction of judicial proceedings and reports thereof, reproduction exclusive for the use of members of legislature, reproduction is a certified copy supplied in accordance with law
- Reading or recitation in public of extracts of literary or dramatic work
- Publication in a collection for the use in educational institutions in certain circumstances

Acts that do not constitute infringement

- Reproduction by teacher or pupil in course of instructions or in question papers or answers
- Performance in course of the activities of educational institutions in certain circumstances
- Making of sound recording in respect of any literary, dramatic or musical work 1. with the license or consent of the owner or the holder of copyright in the work. 2. the person making sound recording 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 rights in the work royalties at rate fixed by copyright board

Acts that do not constitute infringement

- Provided that no alterations shall be made which have not been made previously with consent of the owner the sound recording shall not be issued in any form of packaging or label which is likely to mislead or confuse the public as to their identity
- No such recordings 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
- The person making such a sound recording shall allow the owner of rights or his duly authorized agent to inspect all the records and books of account relating to such sound recording

Acts that do not constitute infringement

- Performance in a amateur club given to a non paying audience
- Causing of a sound recording to be heard in public utilizing it in a enclosed room or club in certain circumstances
- Reproduction in newspapers or magazine a report of a lecture delivered in public
- Making a maximum of three copies for the use of a public library
- Reproduction of unpublished work kept in a museum or library for the purpose of research or study
- Reproduction or publication of any matter published in official gazette or reports of govt commissions /committees
- Reproduction of any judgment or order of court
- Production or publication of a translation of acts of legislature or rules
- Making or publishing painting ,drawing or photographs or sculpture or other artistic work
- reproduction for 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 institutions

Infringement in literary dramatic and musical works

Remedies against infringement

- Three kinds of remedy against infringement
- Civil remedies : injunction, damages or account of profit, delivery of infringing copies and damages for conversion
- Criminal remedies : imprisonment of the accused or imposition of fine or both.
- Seizure of infringing copies
- Administrative remedies: consists of moving the registrar of copyrights to ban the importation and delivery of confiscated infringing copies to the owner of the copyright and seeking the delivery.

Protection of authors special rights

- Claim to ownership of the work
- 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
- Special rights is not available in respect of any adaptation of a computer program for certain purposes or to make back up copies for protection against loss destruction or damage
- Rights of the author can be exercised even after assignment either wholly or partially

Issues in audit for infringement of copyright

- Whether the plaintiff is entitled to file the suit. His ownership of the copyright is to be determined
- Whether the copyright subsists in the work alleged to have been infringed
- Does the defendant's action constitute infringement of copyright in the work
- Does the defendant's act come within the scope of any of the exemptions to the infringement
- Whether the plaintiff is entitled to the remedy he is seeking in the suit

Case studies