**Copyright infringement and remedies**

*Infringing acts*

**What constitutes copyright infringement?**

Copyright infringement occurs when any of the following occur:

* unauthorised use of the exclusive rights of the owner of a copyright whether in relation to the whole or a substantial part of the copyright work;
* permitting a place to be used for infringing purposes on a profit basis; and
* displaying or exhibiting in public by way of trade or distributing for the purpose of trade or importing infringing copies of a work.

*Vicarious and contributory liability*

**Does secondary liability exist for indirect copyright infringement? What actions incur such liability?**

The terms ‘indirect’, ‘secondary’, ‘vicarious’ and ‘contributory’ infringement are not mentioned in Indian copyright law, although they are sometimes used. The acts referred to would generally amount to infringement under Indian law, as in the case of jurisdictions that have similar wording in their copyright statutes, such as Australia or the United Kingdom.

*Available remedies*

**What remedies are available against a copyright infringer?**

The remedies provided by the Copyright Act, 1957 against infringement of copyright are:

* civil remedies - these provide for injunctions, damages, rendition of accounts, delivery and destruction of infringing copies and damages for conversion;
* criminal remedies - these provide for imprisonment, fines, seizure of infringing copies and delivery of infringing copies to the owner; and
* border enforcement - the Act also provides for prohibition of import and destruction of imported goods that infringe the copyright of a person with the assistance of the customs authorities of India.

*Limitation period*

**Is there a time limit for seeking remedies?**

Yes. The period of limitation for filing a suit for damages for infringement of copyright is three years from the date of such infringement.

*Monetary damages*

**Are monetary damages available for copyright infringement?**

Yes, besides damages the copyright owner can also claim rendition of account of profits.

*Attorneys’ fees and costs*

**Can attorneys’ fees and costs be claimed in an action for copyright infringement?**

Yes. Litigation costs are a standard request in infringement suits, but the decision to award such costs is at the discretion of the court. Costs awarded seldom cover actual legal expenses. However, the Commercial Courts, Commercial Division and Commercial Division Appellate Division of High Courts Act 2015 (Commercial Courts Act), which was enacted recently, had brought forth amendments in the Code of Civil Procedure and specifically provides for payments of costs, lays down scenarios in which costs are to be paid and the method of calculation of costs. Since the Commercial Courts Act was introduced very recently, the effects of these amendments will be seen in the near future.

*Criminal enforcement*

**Are there criminal copyright provisions? What are they?**

Yes. The Copyright Act, 1957 has provided for enforcement of copyright through a series of penal provisions under Chapter 13 of the Act. The following are the principal penal provisions under the Act:

1. Under section 63, where any person knowingly infringes or abets infringement of the copyright in a work and any other right as covered by the Copyright Act, 1957 (broadcast reproduction rights, performers’ rights, moral rights, etc), such person may be punished with imprisonment of a minimum term of six months and a maximum term of three years, and a fine of between 50,000 and 200,000 rupees.
2. Section 65A penalises circumvention of effective technological measures that may be applied to copies of a work with the purpose of protecting any of the rights conferred under the Act (ie, copyright, performance rights). The punishment under this provision is imprisonment that may extend to two years and payment of a fine. Section 65A was inserted by the Copyright (Amendment) Act, 2012.
3. Section 65B makes unauthorised removal or alteration of ‘rights management information’ punishable with imprisonment of up to two years and payment of a fine. The provision makes the unauthorised distribution, broadcast or communication to the public of copies of the work punishable in the same manner if the person is aware that electronic rights management information in the copy has been removed or altered. Section 65B was inserted by the Copyright (Amendment) Act, 2012.
4. Section 63A provides for enhanced penalty on second or subsequent convictions under section 63 (see point (i)).
5. Other provisions in the chapter provide penalties for offences such as using infringing copies of a computer program, making or possessing plates for the purpose of making infringing copies of works, and making false entries in the Register of Copyrights.

*Online infringement*

**Are there any specific liabilities, remedies or defences for online copyright infringement?**

Yes. The 2012 amendments to the Act introduced certain provisions that are specifically relevant to copyright infringement and the internet.

Under the fair use provisions of the Act, section 52(1)(b) provides that transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public does not constitute infringement of copyright. This provision provides safe harbour to internet service providers that may have incidentally stored infringing copies of a work for the purpose of transmission of data.

Section 52(1)(c) further provides that transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration that is not expressly prohibited by the rights holder would not be infringement of copyright, unless the person responsible is aware of infringement or has reasonable grounds for believing that such storage is that of an infringing copy.

Under section 52(1)(c), if the owner of a copyright work, in a written complaint to the person responsible for digitally storing an infringing copy of the work, complains that such transient or incidental storage is an infringement, then the person responsible would have to refrain from facilitating access to the infringing copy of the work for a period of 21 days. If within 21 days, the person responsible does not receive an order from a competent court that directs the person responsible to refrain from providing access, then access may be resumed at the end of that period.

Therefore, if A, the owner of a short story, finds that his or her short story has been published on the website of B, he or she may write a complaint to B declaring that B must refrain from providing the public with access to A’s short story. B would then have to remove A’s short story from visibility or accessibility on his or her website for 21 days, within which time A must persuade a competent court that it should order the complete removal of the infringing version or copy of the work. If the court does not issue such an order within that period of time, then B may resume making the short story available to the public on his or her website. This provision was inserted in the Act by the Copyright (Amendment) Act, 2012 which came into force on 21 June 2012. It is yet to be used in practice.

Apart from the above-mentioned provisions, the entire scheme of the Copyright Act makes it amply clear that all the provisions of the Act must be applied to electronic and digital media in the same manner they are applied to conventional media. The Copyright (Amendment) Act, 2012 has also clarified this in many places. Remedies against copyright infringement on the internet are not dealt with separately under that Act as the provisions sufficiently cover all forms of exploitation of works, including exploitation over the internet, and the remedies for copyright infringement would apply to the internet as they would to any other medium or platform.

*Prevention measures*

**How may copyright infringement be prevented?**

No degree of vigilance can guarantee an ‘infringer-free’ environment, but certain deterrent measures must be adhered to by copyright owners, for instance:

* documentation of instances of use;
* registration of copyright;
* proper notice of copyright;
* monitoring the activities of habitual infringers;
* making independent contractors and employees subject to confidentiality;
* having proper licensing agreements incorporating a proper control mechanism; and
* publicising a successful infringement trial (if resources allow).