

INTRODUCTION TO COPYRIGHT ACT, 1957**Dr.Sujata Shrivastava**Principal, A.P.Narmada Law College
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Abstract:- Intellectual property refers to property created with the use of intellect or creation of mind. The fruit of man's brains can with utmost propriety be called his property. The term Intellectual property refers to a loose cluster of legal doctrines that regulates the use of different sorts of ideas. Intellectual property right is a right recognized and sanctioned by law. It can be divided in to two categories-Industrial Property Rights and Copyright. Former deals with Patents, Trademarks, and Designs etc. Copyright on the other hand deals with literary and artistic work. Copyright is a legal right created by the law of a country that grants the creator of original work exclusive rights for its use and distribution. 'TRIPS Agreements' is a part and parcel of the World Trade Organisation set up and World Intellectual Property Organisation (WIPO) 1996, a Treaty, was signed to meet the challenges of IPR. India is a member of most of the important International Conventions governing the area of copyright including the Berne Convention of 1886,the Universal Copyright Convention of 1955, the Rome Convention of 1961 and the TRIPS. The of Copyright Act 1957 was extends to the whole India. It contains total 79 sections which are divided in 15 Chapters. It has been amended 06 times since 1957.The most recently done in the year 2012.

Keywords: Berne Convention, Copyright Act 1957, Intellectual Property Rights, TRIPS, WIPO.

Introduction

Intellectual property refers to property created with the use of intellect or creation of mind. The fruit of man's brains can with utmost propriety be called his property. Such creating is vested with the status of property because of commercial value of the intellectual creation.

Intellectual Property Rights

The term Intellectual property refers to a loose cluster of legal doctrines that regulates the use of different sorts of ideas. Intellectual property right is a right recognized and sanctioned by law. It is an incorporeal right granted by the statute, the creative intelligence of man is displayed in multiform ways of aesthetic expression but it is often happens that economic system so operates that the priceless divinity which we call artistic or literary creativity in man is exploited and master, whose works are invaluable are victims of piffling payments. Therefore, the public opinion in defense of human rights to intellectual property led to declaration of human right and various

conventions. Intellectual property rights can be divided in to two categories-

(1)Industrial Property Rights and (2) Copyright. Former deals with Patents, Trademarks, Designs, and Geographical Indications etc. Copyright on the other hand deals with literary and artistic work

International Provisions

The Universal Declaration of Human Right, 1948 mandates State parties to protect the private incentive for innovators as well as the public interest of maximizing access to the fruits of innovation as provided under Article 27 which states that (i) everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and benefits; (ii) everyone has the right to the protection of the moral and material interest resulting from and scientific, literary or artistic production of which he is the author.

The agreement of trade-related aspects of Intellectual Property Rights, well known, as 'TRIPS Agreements' is part and parcel of the

WTO(World Trade Organisation) set up. The TRIPS agreement binds all the members of WTO, which seeks to reduce distortions and impediments to international trade. Article 9 to 14 of the agreements deal with the copyright and related rights. The term 'related rights' appearing in the Agreement refers to the neighboring rights, which are provided to performers, producers of phonograms and broadcasting organization.

World Intellectual Property Organisation (WIPO) 1996, a Copyright Treaty, was signed in response to the new conditions brought about by the digital technology and internet and subsequently the WIPO performances and phonograms treaty, 1996 was signed to meet the challenges of digital technology particularly the internet, the WIPO Diplomatic Conference on Copyright and neighboring Rights Questions in Geneva, on December 20, 1996 adopted these two treaties.

Concept of Copyright

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings. Copyright law includes (a) the law of copyright as understood in the strict sense of the word, i.e., the protection of intellectual reactivity and (b) neighboring rights. The main thrust of the law of copyright is that it grants the authors and other creator an incentive to create and to promote their intellectual moral and economic interests. The terms neighboring right includes (i) the rights of the performing artist (like actors, musicians and singers etc.) who do not create but perform works (ii) the right of the broadcasting organizations. The rights of these categories of beneficiary are generally similar to those granted to authors of literary and artistic works. The purpose of neighbouring rights is to protect the legal interests of certain persons and legal entities, who either contribute to making works available to the public or produce subject

matter which will not qualify as "works" under copyright systems. The branch of law 'deems that the productions which result from the activities of such persons and entities are deserving of legal protection in themselves, as their neighbours to the protection of works of authorship under copyright.

The copyright law, which was first aimed at protecting the printing work, has undergone tremendous changes over the time with the development of technology. The scope of literary and artistic work has been extended from literary and artistic work to musical and dramatic work, cinematography film and sound recording. Technological progress has made reproduction of copyright material easy and cheap, but at the same time it has made piracy of copyright work simple and difficult to control. The seriousness of piracy in copyright work has realized only after the development of gadgets like tape recorder, videocassette recorder and magnetic tape, invention of computer, which is capable of doing multifarious functions such as create, store and transmit information in the electronic form posed much greater threat to the literary work, now a digital multimedia can perform all categories of function.

Piracy in literary work can be traced from the time to time of invention of the printing press and has become a global problem due to the rapid advances in technology. Piracy costs software industry and Government cores of rupee every year. Piracy not only causes loss to the owner of the copyright, but also the pirates evade payment of royalty, excise duty, sale tax etc. Consumer pays for poor quality of product. The continuing problem meant higher prices for the consumer. It has assumed that it's a common problem all over the world and all countries are trying to meet the challenge by taking stringent legislative and enforcement measures. The WIPO recommended in late 1970 that computer software programmes as a literary work within the meaning of Article 2 of the Berne Convention. TRIPS agreements under Article 10 (1) provides protection to computer

programmes “ whether in source code or object code” and also Article 4 of the WIPO Copyright Treaty 1996 more specifically accords protection to Computer programme.

The Copyright as a right of property, had occupied the thought of man for several centuries. From the days of Shakespeare and other authors have sought to protect their work from Plagiarism. The pecuniary rewards which comes to the author of a firs are work tempt lesser and unscrupulous man effortlessly to copy the artist work and reap rewards to which they are not entitled and which by right belong to the original author. Copyright is a negative right of protection the copying of physical material existing in the field of literary work and objective of the act is to accord protection to the author against unlawful reproduction his material.

The moral basis of protection afforded against Plagiarism can be stated in the words of eighth commandment of the Mosaic law: “thou shalt not steal”. The principle is that no man shall steal what belongs to another. The law does not permit one man to make profit and appropriate to him, that, which has been produced by the labour, skill and capital of another. Such protection became very much important after invention of printing which in England occurred in the last half of fifteenth century. The evolution of copyright law has closely followed with the development of mechanical means of production and its relevance and importance has greatly increased with technological advance relating mass media of dissemination. Law of copyright is not only to secure to the authors the property in their works but also protect them from Plagiarism. In order to be covered by the copyright law and work in which copyright is claimed must originate from the author, it is also necessarily means that the work in which copyright is claimed must be something, which has not been copied by the author form any one else, it is only when the work has not been copied that is

can be said that it has originated from the author.

History and Development of Copyright Law

Historically copyright is a capitalism conception. The practice was development in the Italian City states, first formalized in a Venetian law of 1474. This practices gradually spread to other countries of Western Europe. In the reign of Elizabeth I, a series of patents to encourage foreign inventor to import their inventions and work them in England and also to help domestic producers were made. Originally copyright grew out of the same system as royal patent brands, which gave the authors and the printers the executive rights to publish book and other material. The purpose was too providing Government to increase its revenue and control over publication content. The first piece of legislation in England was the Copyright Act of 1709. It was made for the encouragement of learning by vesting copies of the painted books by the author or purchasers of such copies. It gave authors of the books, then printed, sole right and liberty, for printing them for a term of 21 years and book, then not printed, sole right of printing for 14 years. This statute for the first time gave the legal protection to the consumers of copyrighted works. It also created a public domain “for literature by limiting the right granted to the copy right owner”. In 1775 an Act (15 Geo/II c.53) was passed to enable the universities to hold in perpetuity, their copy right in book given or be bequeathed to them” for advancement of useful learning and other purposes of education”. The next major change in the Copyright Act Came in the year 1842, which extended the period of copyright to the life of the author and 7 years after his death or 42 years , which happened to be longer. The succession of arts threw the law into confusion, which the Act of 1911 sought to end. It was Copyright Act of 1911, which was the basis of the Indian Copyright Act 1914. In England the Act of 1956 was passed, repealing the Copyright Act of 1906, 1911 and Musical Copyright Act of 1902

and 1906 and the outstanding section of Fine Arts Act of 1864.

Background of Indian Copyright Law

The history of Copyright law in India can be traced back to its colonial era under the British Empire. The of Copyright Act 1957 was the first post independence copyright legislation in India and the law has been amended 06 times since 1957. The most recent amended was done in the year 2012. India is a member of most of the important International Conventions governing the area of copyright including the Berne Convention of 1886 (as amended in 1971), the Universal Copyright Convention of 1955, the Rome Convention of 1961 and the TRIPS. But India is not member of the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).

Therefore, a complete revision of law was acquired and accordingly the Copyright Act of 1957 was passed, repealing the Indian Copyright Act 1914.

The Copyright Act, 1957

The Copyright Act, 1957 is in consonance with Article 12 of the Berne Convention. The Act was enforced with effect from 21/01/1958 and it extends to the whole India. It contains total 79 sections which are divided in 15 Chapters. The present Act was amended in the year 1983, 1984, 1992, 1994, 1999 and 2012 to accommodate the international conventions on copyright and to meet the challenges of piracy. The Act provides for exclusive right to the author and other owners of original work. The object is to ensure protection from unlawful exploitation of the work.

Salient features of the Copyright Act, 1957 are:

“Work” protected in India Under the Copyright Act, 1957 is artistic work including a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving, a photograph, a work of architecture or artistic craftsmanship, dramatic work, literary work (including computer programmes, tables, compilations and computer databases), musical work (including music as well as graphical

notation), sound recording, and cinematograph film are protected.

The Copyright Act, 1957 recognized the economic right, adaptation right and moral rights of an Author. The exclusive rights, which the author of the work has include: the right of reproduction; right of dissemination; the right to exhibition; the right to communicate work to the public; he right to recitation, performance and presentation; the right to communicate through visual of sound recording and the right to communicate by broadcaster. The Act also contains provisions for infringement. Infringement of copyright takes place when any person reproduces the work without the consent of the copyright owner. Under S. 51, an act is deemed to be an infringement, if any person without license of a copyright owner of statutory authority or in contravention of the terms of license makes for sale or hire or displays for sale or hire or distributes for traded or exhibits in public any infringing copies of the work. Further, under the above provision import of infringing copies is also treated as an infringement.

Duration/Term of Copyright. In the case of original literary, dramatic, musical and artistic works, the duration of copyright is the lifetime of the author or artist, and 60 years counted from the year following the death of the author. In the case of cinematograph films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organizations are protected for a period of 60 years which is counted from the year following the date of publication.

Some other features are:

1. A Copyright Office is to be establishment under the immediate control of a Registrar of Copyright (S.9). The principal function of the Registrar of Copyright office will be to maintain a Register of Copyrights in which may be entered at the option of the authors, the names or titles of works, the names and

addresses of the authors and owners of copyright (S. 44 & 45).

2.A Copyright Board is to be constituted under S. 11 which will determine the reasonableness of the rates and fees, charges or royalties claimed by performing rights societies, consider applications for general licensees for public performances of works and will assess compensation payable under the Act in certain circumstances.

3.The definition of copyrights is enlarged to include exclusive right to communication works by radio diffusion. (S. 14 iv)

4.A Cinematography film is given separate copyright a part from in various components, story, music, etc.

5.The normal term of the copyright is fixed for various work (Chapter V)

6.Provides for granting license to produce and publish translation of a work.

7.Provides for issue of general or special licenses for public performances of any work by means of a radio receiving set or a mechanical contrivance.

8.Requires the performing right societies to file certain lists and statements with registrar (S.33).

9.Confers broadcast reproduction rights on broadcasting authorities (S.37).

10.Chapter IX deals with international copyright relations.

Some Important Amendments to the Copyright Act, 1957

By the Copyrights (Amendment) Act, 1994, the term of copyright was further extended by a period of ten years. Under this Act computer program and computer data base are considered to be literary work. As per S. 2 (ffc) computer data base is considered to be literary work, which defines computer program as a set of instructions expressed in words, codes, schemes or any other forms, including machines readable medium, capable of carrying a compute to perform a particular task or achieve a particular result.

Some of the statutory rights attached with a copyright are a computer program, which are: right to make copies of the computer program in any material from including the storing of it in any medium by electronics means, right to issue copies of the computer program to the public, right to make translation of the computer program, right to prepare derivative computer program based upon the copyrighted computer program, right to make a public performance of a computer program, right to sell or give on hire or offer for role or hire any copy of the computer program.As much, under the amended copyright law in India, piracy of software and data base copyright can also be taken care of.

The said Act also gives power to the Central Government to apply Chapter VIII (Rights of Broadcasting Organization and of Performers) to broadcasting organization and performers in certain other countries. It also gave power to the Central Government to restrict right of foreign broadcasting organization and performs. Under S. 52 (1) cl. (aa) the following clauses were inserted to facilitate acts which will not constitute infringement of copyright, namely:(ab) the doing of any act necessary to obtain information essential for operating inter - operatibility of an independent programme with other programmers by a lawful possessor of a computer programme provided that such information is not otherwise readily available;(ac) the observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied;(ad) the making of copies or adaptation from the computer programme from a personally legally obtained for non-commercial purpose.

The 2012 amendments make Indian Copyright Law compliant with the Internet Treaties - the WIPO Copyright Treaty

(WCT) and WIPO Performances and Phonograms Treaty (WPPT).

By the Copyrights (Amendment) Act, 2012, in S. 14 the following sub-clauses is inserted (1) to reproduce the work in any material form including- (a) the storing of it in any medium by electronic or other means (b) depiction in three-dimensions of a two-dimensional work(c) depiction in two-dimensions of a three-dimensional work (d) to make a copy of the film, including- (i) a photograph of any image forming pan (ii) storing of it in any medium by electronic or other means(ii) to sell or give on commercial rental or offer for sale or fur such rental, any copy of the film. Further S. 38A inserted as the rights conferred on author, the performers right which is an exclusive right subject to the provisions of this Act to do or authorize for doing any of the following acts in respect of the performance or any substantial part thereof, namely:- (a) to make a sound recording or a visual recording of the performance, including- (i) reproduction of it in any material form including the storing of it in any medium by electronic or any other means (ii) issuance of copies of it to the public not being copies already in circulation (iii) communication of it to the public(iv) selling or giving it on commercial rental or offer for sale or for commercial rental any copy of the recording (b) to broadcast or communicate the performance to the public except where the performance is already broadcast. S.38B states that the performer of a performance shall, independently of his right after moral rights of assignment, either wholly or partially of his right, have the right- the performer (a) claim to be identified as the performer of his performance except where omission is dictated by the manner of the performance and (b) to restrain or claim damages in respect of any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation.

Major Hurdles of the Act

The working of the Act has revealed certain lacuna and administrative drawbacks, especially in relation to the protection of the author's right. There is also no provision in the Act at the present for the publication of an Indian author who in either dead or unknown or whose where about are not traceable or where the owner of the copyright cannon be located. It in proposed to make certain amendments in the Act to remove these lacuna and practical difficulties and to make certain additional provisions pertaining to author's right.

Effective copyright protection promotes and rewards human creativity and is in modern society an indispensable support for intellectual, cultural and economic activity. Copyright law promotes creation of literary artistic dramatic and musical works, cinematography films and sounds recordings by providing certain exclusive rights to their authors and creators. The law relating to copyrights and related rights have been order and comprehensive review of the govt. for some time, taking into account the difficulties expressed gained from the administration of the existing law and the situation created by various technological development that have taken place.

Conclusion

In conclusion, it can be mentioned that the rights conferred upon the authors in the Indian Copyright Act, 1957 are more protective and in confirmation with the international conventions. The Act strikes a balance between private and public interest in the copyright. At the same time copyright owner is well protected by criminal, civil and administrative remedy against piracy. The efficacy of the law depends much upon its enforcement.

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