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Review Document
Copyright Act, 1957

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Copyright Act, 1957

Significance

In India, law related to copyright is governed by the Copyright Act, 1957. In simple words, copyright protects original works of ownership. It gives an exclusive right to do or authorize others to do certain acts in relation to literary, dramatic, musical, and artistic works, cinematography and sound recordings.

Objective

- Protect the author of copyright work from an unlawful reproduction or exploitation of his work by others and thus encourage them to create original work.
- To allow people to make some free uses of copyright material subject to sec 52 of the act, so that the interests of the copyright owner and the society are balanced.

Important provisions

Copyright is a form of intellectual property protection granted under Indian law to the creators of original works of authorship.

Copyright

Under **Section 13(1)** of the act the following can be copyrighted:-

1. Original Literary, dramatic or musical works
2. Computer programme
3. Artistic works
4. Chromatographic films
5. Sound recording

Copyright refers to a bundle of exclusive rights vested in the owner of copyright by virtue of **Section 14** of the Act. These rights can be exercised only by the owner of copyright or by any other person who is duly licensed in this regard by the owner of copyright.

These rights include:

- the right of adaptation,
- right of reproduction,
- right of publication,
- right to make translations,
- Communication to public etc.

Ownership of copyright and the rights of the owner

As per **Section 17** of the Act, the author or creator of the work is the first owner of copyright. An exception to this rule is that, the employer becomes the owner of copyright in circumstances where the employee creates a work in the course of and scope of employment.

As per **Section 19**, these conditions are necessary for a valid assignment:

- It should be in writing and signed;
- It should specify the kinds of rights assigned and the duration or territorial extent; and
- It should specify the amount of royalty payable if required in any case.

It is also provided that, if the period is not mentioned in the agreement it will be considered as five years and if the territorial extent is not stipulated in the agreement, it will be considered as applicable to the whole of India.

Terms of copyright

The term of copyright varies according to the nature of the work and whether the author is a natural person or a legal person e.g. a Corporation, Government Institution, etc., or whether the work is anonymous or pseudonymous.

- **Section 22**: In the case of literary, dramatic, musical or artistic work (other than a photograph) when published during the lifetime of the author, copyright subsists during the lifetime of the author plus fifty years. This is a universally accepted term.

Where the work is of joint authorship the fifty years period will start after the death of the author who dies last.

- **Section 23:**In the case of anonymous or pseudonymous works the terms of copyright is until fifty years from the year of publication.

If the identity of the author is disclosed before the expiry of the fifty years period the term will extend to fifty years after the death of the author.

- **Section 24:**In the case of posthumous publications the term will be fifty years from the year of publication.
- **Section 25:**The period of copyright for a photograph is fifty years from the year of its publication.
- **Section 26:**For cinematography film and record also the term is fifty years of publication.
- **Section 28:**Where the first owner of copyright is the government or a public undertaking the term of copyright is fifty years from the year of publication.
- **Section 29:**Copyright works of International Organization also have a term of fifty years from the year of publication.

Thus it may be seen that in the case of literary, dramatic, musical or artistic works where the author is a natural person the term is lifetime plus fifty years. In all other cases the term is fifty years from the years of publication.

Licences

- **Section 30:**Copyright in any work, present or future, can only be assigned or licensed in writing by the copyright owner or his duly authorised agent.
- **Section 31:**It deals with the grant of compulsory licenses in respect of certain works withheld from the public. Under this section, if the owner of the copyright in an Indian work refuses to republish or allow the republication of such work or if he refuses to allow the performance of the work in public, and, if by reason of such refusal, the work is withheld from the public, a complaint may be made for the grant of a compulsory license.

Copyright societies

A 'copyright society' is a registered collective administration society for the management and protection of copyright in works by authors and other owners of such works. A copyright society can issue or grant licences in respect of any work in which copyright subsists or in respect of any other right given by the Copyright Act, 1957 (Copyright Act).

Section 33

- Persons or association of persons may apply for registration of copyright society to the Registrar of Copyrights;
- The Central Government shall not register more than one copyright society to do business in respect of the same class of works;
- Every such society shall get itself registered within a period of one year from the date of commencement of the Copyright (Amendment) Act, 1994;
- The minimum membership required for registration of society is seven.
- The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the owners of rights concerned, cancel the registration of such society after making such inquiry, after which the Central Government may by order, suspend the registration for a period of one year and appoint an administrator to discharge the functions of the copyright society.

Section 34

Copyright society accepts from an owner, an exclusive authorization to administer any right in any work by issue of licenses or collection of license fees or both;

Owner has rights to withdraw such authorization without prejudice to the rights of the copyright society under any contract;

Copyright society enters into an agreement with any foreign society or organization administering rights corresponding to rights under Copyright Act.

Section 35

Every Copyright society shall

- obtain the approval of such owners of rights for its procedures of collection and distribution of fees;
- obtain their approval for the utilization of any amounts collected as fees (not exceeding 15%) for any purpose (like administrative expense) other than distribution to the owner of rights; and
- provide to such owners regular, full and detailed information concerning all its activities, in relation to the administration of their rights.

Rights of broadcasting organisation and of performers(section 37-39A)

“Broadcast” means communication to the public by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or by wire.

The term of protection for broadcaster’s rights is 25 years.

The rights of a broadcasting organization with reference to a broadcast are

- right to re-broadcast the broadcast;
- right to cause the broadcast to be heard or seen by the public on payment of any charges;
- right to make any sound recording or visual recording of the broadcast;
- right to make any reproduction of such sound recording or visual recording where such initial recording was done without license or, where it was licensed, for any purpose not envisaged by such license; and
- right to sell or hire to the public, or offer for such sale or hire, any sound recording or visual recording of the broadcast.

As per the Indian Copyright Act, a **"Performer"** includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance.

Performer’s rights subsist for 25 years.

A performer has the following rights in his/her performance:

- Right to make a sound recording or visual recording of the performance;
- Right to reproduce the sound recording or visual recording of the performance;
- Right to broadcast the performance;
- Right to communicate the performance to the public otherwise than by broadcast.

International copyright (section 40-43)

Copyright of nationals of countries who are members of the Berne Convention for the Protection of Literary and Artistic Works, Universal Copyright Convention and the TRIPS Agreement are protected in India through the International Copyright Order.

Copyrights of works of the countries mentioned in the International Copyright Order are protected in India, as if such works are Indian works.

Registration of Copyright (section 44-50A)

In India, the registration of copyright is not mandatory as the registration is treated as mere recordable of a fact. The registration does not create or confer any new right and is not a prerequisite for initiating action against infringement. The view has been upheld by the Indian courts in a catena of judgments.

The steps for Registration:

- Application in triplicate with prescribed fees.
- Applicant to serve notice of his application to every person who has any interest in the subject matter.
- If the Registrar receives any objection he may after holding such inquiry as he deems fit, enter such particulars of work in the register of copyright, which he considers proper.
- Registrar then sends copies of the entries made in the register to the parties concerned

Infringement of copyright

Section 51

Copyright in a work is deemed to be infringed

- When any person without license being granted by the owner or registrar of copyright, or not following the conditions of the copyright; does anything which the exclusive right of the owner or for profit permits the communication of the work ,it will be infringement of copyright provided the doer was unaware of the same.
- When a person sells or let for hire, for trade displays or distributes or import in India any infringing copy of the work, then it is also be considered infringement of copyright.

Remedies

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

- Civil remedies: Injunction damages or account of profit, delivery of infringing copy and damages for conversion.
- Criminal remedies: Imprisonment of the accused or imposition of fine or both. Seizure of infringing copies.
- 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.

Offence

Section 63

Infringing copyright is an offence. The owner can claim damages for the same and the infringer shall be liable to both imprisonment and fine. It is both a civil and criminal offence.

The minimum punishment for infringement of copyright is imprisonment for six months with the minimum fine of Rs. 50,000/-. In the case of a second and subsequent conviction the minimum punishment is imprisonment for one year and fine of Rs. one lakh.

Jurisdiction of courts

In civil case the concerned District court has the jurisdiction and in criminal case no court below the Metropolitan Magistrate or Judicial Magistrate Istclass shall try the offence.

Any police officer not below the rank of sub inspector, on being satisfied that any copyright is infringed or is being infringed may without warrant seize the copies and produce before the magistrate the same to the earliest.

Limitation

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

Loopholes

Section 31 D, has been challenged by various entities alleging it to be ultra-vires the Constitution of India, especially Article 14, 19(1) (g) and 21 of the Constitution as well as the right to property.

Section 31D is violation of Article 19(1) (g), as it provides for the royalties to be fixed for radio broadcasting by the Board directly. Thus, such a power cannot be termed as a reasonable restriction.

Conclusion

The Copyright Act, 1957 intends to protect the rights and interests of the creators and owners of the intellectual property as well as protecting the interests of the world at large.

However, higher the level of protection given to literary, dramatic, musical or artistic work in any country, automatically higher is the number of intelligent creation. Thus, we can say for economic, cultural and social development, it is the basic perquisites.

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About the Author



I'm Divya Soni from Indore Institute of Law and I had the opportunity to undergo a one-month internship at LeaglEagle Law Forum. I must say this was an enriching experience for me. Mainly this was an online internship and bare act review program. Each intern was provided with six bare acts to review which we have to submit at the 20th day. It was difficult and interesting for me to review each bare act as I haven't read few bare acts before. In general, I can say that this internship was an invaluable experience for me, and the knowledge and skills I gained during this period will certainly help me in the future.