

## LAW GOVERNING COPYRIGHT

In India the first Copyright Act was passed in the year 1914. At present, the Copyright Act, 1957 (hereinafter referred to as the Act) governs copyright law in India. The original Act of 1957 has been amended in the year 1983, 1984, 1992, 1994, and recently in 1999.

No copyright exists in any work, except as provided in the Act (Section 16). Copyright is a creation of the statute. Unlike trade marks, there is no such thing as common law copyright.

The moral basis for protection under Copyright law rests in the Eighth Commandment: “Thou shall not steal”. Philosophy of the Copyright law is: ‘The law does not permit one to appropriate to himself, what has been produced by the labour, skill and capital of another’.

### **What is copyright?**

Like trade marks, a copyright is an intangible property. The subject matter of copyright, the thing protected is called a “work”. Copyright subsists throughout India in (a) original literary, dramatic, musical and artistic works (b) cinematograph film and (c) sound recording (Section 13). These terms are defined in the Act. Apart from these works, no other work is entitled to copyright under the Act.

Section 14 of the Act defines a Copyright for the purposes of the Act. A Copyright means the exclusive right to do or authorise the doing of acts in respect of a work or any substantial part thereof.

### **Which are these acts?**

Literary, dramatic or musical work: The owner has exclusive right to reproduce work in any material form including the storing of it in any medium by electronic means, to issue copies to the public, to perform or communicate the work to the public, to make cinematograph or sound recording in respect of the work, to translate or make any adaptation of the work. [14(a)].

Computer programmes: In addition to the above rights, the owner has exclusive right to sell or give on hire, or offer for sale or hire any copy of the programme. The Copyright (Amendment) Act, 1999 has added one more right; i.e., to sell or give on commercial rental or offer for sale or for commercial rental any copy of the programme. [14(b)].

Cinematograph film: A producer has exclusive right to make copy of the film including photograph of any image forming part thereof, to sell or give on hire, or offer for sale or hire any copy of the film, to communicate the film to the public. [14(d)].

Sound recording: A composer has exclusive right to make any other sound recording embodying it, or offer for sale or hire any copy of the film, to communicate the film to the public. [14(e)].

Rights conferred by section 14 upon the author are the economic rights, because exploitation of the work by himself or by licensing it for royalty may bring economic benefit to the author.

Object of copyright law is to encourage authors, composers and artists to create original works by giving them exclusive right for limited period to reproduce the work for the benefit of the public. It is a negative right to prevent others from copying their work.

### **Term of copyright- (Sections 22 to 29)**

Copyright is not a perpetual right. It exists for a specific term. After the expiry of the term, the work falls in the public domain and open to public to use without permission of the owner. For literary, dramatic, musical and artistic works the term is 60 years from the death of the author; for photograph, cinematograph film, sound recording 60 years from the beginning of the calendar year next following the year in which it is published/ released.

### **Who owns copyright?**

It has to be understood that the ownership of copyright in a work is independent of the ownership of the physical material in which the work is fixed. Take for example, you go to a shop and buy "GOD OF SMALL THINGS". You are the owner of the book; i.e., 'the physical material in which the work is fixed' and Arundhati Roy is the owner of copyright in the work (unless of course, she has already assigned her copyright to some publishing company).

Author of any work is the first owner of copyright (Section 17) viz. Author of literary or dramatic work, composer of the music, artist or photographer in respect of an artistic work and a photograph respectively, producer of a cinematograph film or sound recording. When the work is computer generated, the person who causes the work to be created is the author. Section 17 of the Act provides situations where author is not the first owner of copyright (in the absence of the agreement to the contrary) e.g. when a photograph is taken, portrait or painting draw, or engraving made on in return of consideration, then the person giving the consideration is the owner; when literary, dramatic or artistic work is created by the author during the course of employment under a contract for service - employer is the owner.

To illustrate: A shorthand writer is not the owner of the work, but the person who dictates is. The teacher writes a book during his employment, He is the owner since he is employed to teach and not to write. An employee of a solicitors' firm drafts a document in the course of his employment - employer is the first owner of the copyright.

For being the owner of copyright - is registration compulsory?

The answer is in the negative. An author of the work becomes owner thereof, the moment the work is created. Registration is not necessary either for the subsistence or for the enforcement of copyright. However, the Register of Copyright is prima facie evidence of the particulars entered therein. (Section 48). It is advisable to register the copyright in the work.

### **Assignment**

Assignment of copyright has to be in writing and signed by the assignor or by his duly authorised agent. (Section 19). Copyright is a multiple right, consisting of a bundle of different rights in the same work, which can be assigned or licensed either as a whole to one party or separately to different parties. For example, take any book say "ONE WITH THE WIND" - separate rights exist in the same work - viz. reproduction in hard back and paper back edition, right of serial publication in a magazine, right of dramatic version or cinematograph version, translation, adaptation etc.

The deed of assignment must specify the 'rights assigned', the duration and territorial extent of assignment. When duration of assignment is not specified, it is presumed to be for five years and when territorial extent is not specified, it is presumed to extend within India (this presumption is applicable to assignments made after 1994).

An assignment of a Copyright is exempted from Stamp Duty. (Article 25 of Schedule I of the Bombay Stamp Act, 1958). In the Deed of Assignment, assigning copyright along with some other property say trade marks, it is advisable to state as to what part of consideration is towards the assignment of copyright.

### **Other rights**

In addition to Copyrights, the Act also recognises moral rights of the author, which exist with the author even after assignment of the work. These rights are - to claim authorship of the work; and to restrain and claim damages in respect of any distortion, mutilation, modification or other act in relation to the work, which is done before the expiration of the term of copyright, if such distortion etc. would be prejudicial to his honour or reputation.

### **Extent of copyright protection**

In case of a published work the copyright will subsist in India if, the work is published in India OR if the work is published outside India - the author at the time of publication (if alive at that date) or at the time of his death is citizen of India.

In case of an unpublished work, the copyright subsists in India if: The author at the time of making of work was a citizen or domicile of India. In case of architectural work, if work is located in India.

### **International arrangements**

Copyright is granted only by the law of the country in which the work is created. Therefore, if copyright does not subsist in certain country, to prevent piracy in that country is impossible. To meet this problem conventions like Berne Convention and Universal Copyright Convention are formed. The Member States offer minimum copyright protection on reciprocal basis to the works originating in another member country. India is a member of both these conventions.

Central Government has passed Universal Copyright Order, 1991 in exercise of right granted under Section 40, which empowers the Central Government to extend the copyright protection to foreign works.

### **TRIPS (trade related intellectual property rights)**

Articles 9 to 14 of TRIPS deal with Copyright and related rights. Members are required to comply with Articles 1 to 21 of the Berne Convention. Article 9 states that Copyright protection shall extend to expression and not to ideas, procedures, methods of operation or mathematical concepts as such. After amendment to the Act in 1999, India has complied with all the requirements of said Articles.

### **Computer software**

Much is being discussed about software piracy. Let us discuss some of the aspects of nature of the protection enjoyed by software. The term Computer software is very wide and includes: Preparatory design materials, e.g. flowcharts, diagrams, specifications, form and report layouts, diagrams, specifications, form and report layouts, designs for screen displays, etc.; Computer programmes (object code and source code) and other executable code; Software development tools, e.g. Relational database development systems, compilers, report generators, etc.; Information stored on computer media, e.g. conventional works such as literature, artistic works, music, etc. stored digitally, Database and data files; Computer output e.g. Sound, print-out, computer file or data, electronic signals; Screen displays; Manuals and guides (on paper or stored digitally); Programming languages. Depending upon the nature of the work, software is protected as artistic or literary work.

In India, a Computer Programme is protected as a literary work. However, the debate is still on internationally as to under which head of Intellectual property computer programme should be protected - copyright or patent.

Article 10 of the TRIPS reads: “(1) Computer programmes, whether in source or object code, shall be protected as literary works under the Berne Convention. (2) Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.”

### **Indian provisions**

S.2(o) “literary work” includes computer programmes tables and compilations including computer databases.

S.2 (ffc) “Computer programme means a set of instructions expressed in words, codes, schemes, or in any form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result.”

Computer programme being a literary work - for being capable of copyright protection - it should be “original”. Originality for the purpose of copyright law relates to the expression of thought, but such expression need not be of original or novel form. To be original, the work must not be copied from another work but must originate from the author. To secure copyright the author should expend sufficient labour, skill, judgment and capital to impart the work some quality or character which the raw material did not possess and which distinguishes the work from the raw material. However, what is the precise amount of labour etc. which the author must bestow upon the work in order to acquire copyright cannot be defined in precise terms.

Most computer programmes, however, small are result of skill and judgment and therefore entitled to copyright. However, there is a ‘De minimis’ rule in copyright i.e. trivial, insignificant or very small works are not protected. Protectability may depend upon the language used. E.G., to achieve the same result a programme written in one language may fall in the ‘De minimis’ rule but if written in another language be entitled to copyright.

### **Infringement**

If any of the acts specified in Section 14 relating to the work is carried out by a person other than the owner or without licence from the owner or a competent authority under the Act it constitutes infringement of copyright. (Sec.51 of the Act). The type of acts, which will constitute infringement, will depend upon the nature of the work. Secondary infringement such as making for sale or hire of, exhibition in public by way of trade of, distribution - infringing copies - is also prohibited and punishable under the Act.

### **Acts which do not constitute infringement of copyright**

Section 51 gives a list of such acts. Permitted acts can be classified as : fair dealing, educational purpose, library and archive use, use associated with public administration, certain acts carried out by lawful users of computer programme etc.

In respect of computer programmes permitted acts allow lawful users to make back-up copies, to decompile programme in limited circumstances, to copy and adapt programmes in ways consistent with lawful use.

Creation of a similar work does not infringe if it is created independently without copying the original work. E.G. A and B click photograph of the same beautiful tree from the same angle and have identical looking photographs. A and B are both entitled to separate copyright in their own photograph and one photograph does not infringe the other.

## **Remedies**

Civil: Remedies available are injunction, damages, and accounts of profits, delivery up of infringing copies and material.

Criminal: Section 63 to 70 deal with criminal remedies against the infringers.