

## **MORAL RIGHTS IN COMPUTER PROGRAMS**

### **What are moral rights?**

The rights of an author of a copyrightable work can be broadly classified into: -

- (i) Economic rights, and
- (ii) Moral rights

Moral rights are those special rights of an author in his work which cannot be transferred and which will continue to vest in the author for the whole of the copyright term. These rights which originated in France are recognised by the general law of the land in almost all civilised nations. The generally accepted moral rights are:

- (i) the right of paternity ( droit a la paternite)
- (ii) the right of integrity ( droit au respect de loeuvre)
- (iii) the right of disclosure (droit de divulgation)
- (iv) the right of non-attribution

Article VI-A of the Berne convention, to which India is a signatory, recognises moral rights. Member states have been directed to provide authors the rights:

- (i) to claim authorship; and
- (ii) to object to alterations

In India, the Copyrights Act, 1957 (“the Act”) gives statutory recognition to the following moral rights :-

- (i) Right to claim authorship of the work.
- (ii) Right to restrain or 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, mutilation, etc would be prejudicial to his honour or reputation. (S.57 of the Act.)

In UK, Ss 77 to 89 of the Copyright, Design and Patents Act of 1988 contains detailed provisions regarding moral rights. The rights recognised by these sections are: -

- (i) Right of paternity,
- (ii) Right of integrity,
- (iii) Right against false attribution, and
- (iv) Right to privacy

In the US, the Visual Artists Rights Act of 1990 (17 U.S.C. § 106A) (“VARA”) protects moral rights of authors of visual arts. The scope of protection offered by VARA is limited as compared to Indian copyright law as it applies to visual art exclusively.

### **Are there moral rights in computer programs?**

#### *Indian law*

Section 57 of the Act confers moral rights on the author of a literary work. Literary work as defined in the Act includes computer programs, tables and compilation including computer databases.( S.2(o) of the Act) Thus computer programs are within the purview of moral rights.

The author of a computer program does not have any right to claim damages in respect of any adaptation of a computer program by the lawful possessor of a copy of such computer program –

- (i) in order to utilise the computer program for the purpose for which it was supplied; or
- (ii) to make backup copies purely as a temporary protection against loss, destruction or damages in order only to utilise the computer program for the purpose for which it was supplied. (Proviso to S.57(1)(b) of the Act)

The Indian law on this point can be summed up as under: -

- (i) Moral rights exist in computer programs.

- (ii) An author of a computer program, can subject to certain restrictions contained in the section, assert his moral rights. The proviso to S.57 restricts an author from obtaining a restraint order or claiming damages in respect of an adaptation to his work by a lawful possessor of the program, provided that such adaptation is necessary to utilise the program for the purpose for which it was supplied.
- (iii) Before an author can recover damages in respect of his right to integrity, it is essential that he demonstrate a certain degree of reputation.

*UK law*

In UK, the right of paternity. (right to be identified as author or director) does not apply in relation to the following descriptions of work:

- (i) a computer program;
- (ii) the design of a typeface;
- (iii) any computer-generated work. (S.79 of the Copyrights, Designs and Patents Act, 1988)

Similarly the right of integrity (right to object to derogatory treatment of work) does not apply to a computer program or to any computer-generated work.( S.81(2) of the Copyrights, Designs and Patents Act, 1988).

There are no exceptions to the right against false attribution of work. This right can be construed to be applicable to literary work of every nature, i.e., authors of computer programs also possess this right.

To put it in a nutshell, UK law recognises moral rights of authors of computer programs to a very limited extent.

*US law*

US law does not protect any right or interest on the ground that the Berne Convention recognises them.(17 USC § 104(c)). Thus a claim to enforce moral rights can be based only on the US common law and statutes.

In 1990, the U.S. Congress passed VARA that specifically gave authors of visual

art (e.g., painting, drawing, print, sculpture, still photographic image) the following rights of attribution:

- (i) the right to claim authorship;
- (ii) the right to prevent his/her name from being attached to works that he/she did not create;
- (iii) the right to prevent use of his/her name as the author after mutilation, distortion, or other modification of the work that is prejudicial to his/her honor or reputation;

and the following rights of integrity:

- (iv) prevent any intentional mutilation or distortion of the work that is prejudicial to his/her honor or reputation; and
- (v) prevent destruction of a work of recognized stature

The purpose of VARA was to ensure compliance with the Berne convention. However, VARA being limited in application, does not cover computer programs.

### **Can moral rights in computer programs be assigned?**

In India, the moral rights, are independent of the author's copyright and the author will continue to possess such rights irrespective of an assignment of any nature. The terms of the contract of assignment ("the Contract") must be consistent with the provisions of S.57 of the Act. In case of conflict, the provisions of S.57 of the Act will override the terms of the Contract.

Moral rights in a computer program can never be assigned. Therefore, a contract to assign moral rights in a computer program will be void..

### **Moral rights of employees who write computer programs in the course of employment**

It is worth noting that in some circumstances, moral rights can never exist. If an employee is paid to create copyright material for his employer, he cannot acquire moral rights to that material. By default of law, the employer is the first owner of the work including computer programs created by his employee under a contract

of employment unless agreed otherwise. All rights including the moral rights will belong to the employer and not to the employee. The employee cannot prevent the employer from upgrading his work.

An employer can assign the economic rights to such work in favour of a third party. The moral rights will however continue to vest in the employer and he can at anytime choose to assert them.

### **Conclusions**

- ✓ Moral rights in computer programs are recognized in India.
- ✓ The proviso to S.57 restricts an author from obtaining a restraint order or claiming damages in respect of an adaptation to his work by a lawful possessor of the program, provided that such adaptation is necessary to utilize the program for the purpose for which it was supplied.
- ✓ An employer is the author of a computer program created by his employee within the scope of his employment.
- ✓ To support a claim for enforcement of moral rights, it is essential to demonstrate a certain degree of reputation.
- ✓ The law in India does not permit assignment of moral rights in favour of a third party.
- ✓ In UK, moral rights of authors of computer programs are protected to a very limited extent only.
- ✓ In US, there is no legislation which protects moral rights of an author of a computer program.