

MORAL RIGHTS

Introduction

Copyright, under the Copyright Act, 1957 (“Act”), is a right granted to creators of literary, dramatic, musical, computer and artistic works, and producers of cinematography films and sound recordings. Copyright includes rights of reproduction, communication to the public, adaptation and translation of the work.

Copyright ensures certain minimum safeguards of the authors’ rights over their creations, thereby protecting and rewarding creativity. The protection that copyright provides to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematography films and computer software, creates an atmosphere conducive to creativity.

Moral Rights of an Author under the Act

The author of a work has the right to claim authorship of the work and to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the work, if such distortion, mutilation, modification or other act is prejudicial to his honour or reputation. Moral rights are available to the authors even after the economic rights are assigned. (section 57)

Section 57 falls in Chapter XII of the Act concerning civil remedies. It is a statutory recognition of the special care with which the intellectual property is protected.

The proviso to section 57 states that the author will not have the right to restrain or claim damages in respect of any adaptation of a computer programme by a lawful possessor of a copy of a computer programme, to utilise the computer programme for which it was supplied and to make backup copies as a temporary protection against loss. By the proviso, this section also confers the special rights on the authors of computer programmes. A computer programme is defined to mean a set of instructions expressed in words, codes, scheme, or in any other form including a machine, or recordable medium capable of causing a computer to perform a particular task or achieve a particular result. (section 2(ffc)).

Under section 57, the author has a right to restrain infringement or claim damages for infringement of the copyright. This section provides an exception to the rule that after an author has parted with his rights in favour of a publisher or other person, the latter alone is entitled to sue in respect of infringement. These rights

are independent of the author's copyright and the remedies open to the author under section 55 (relating to infringement of a copyright).

Section 57 clearly overrides the terms of the contract of assignment of the copyright. The contract of assignment would be read subject to the provisions of section 57 and the terms of contract cannot negate the special rights and remedies guaranteed by section 57. The assignee of a copyright cannot claim any rights or immunities based on the contract, which are inconsistent with the provisions of section 57.

This section prohibits any distortion, mutilation or other modification of the author's work. The words "other modification" are ejusdem generis with the word "distortion" and "mutilation". The modification should not be so serious that the modified form of the work looks quite different work from the original. "Modification" in the sense of the perversion of the original, will amount to distortion or mutilation.

In KPM Sobharam v/s M/s Rattan Prakashan Mandir, AIR 1983 Del. 461 (468, 469), the plaintiff, an author of certain books instituted the suit against the defendants for injunction, restraining them from printing, publishing and selling the specified books, rendition of accounts for the illegal gains made by the defendants for all unauthorized publications, and, for damages under the provisions of sections 55 and 57 of the Act. The plaintiff claimed that the defendants mutilated and distorted the original works of the plaintiff by publishing various books in modified form in gross violation of the plaintiff's copyright. The plaintiff alleged that the defendants had changed the original works' title and made a distortion and mutilation of the plaintiff's work prejudicial to the plaintiff's reputation. The plaintiff claimed that he never gave any authority to the defendants to print and publish the books in that manner. The court granted injunction restraining the defendants from printing, publishing and selling the goods written by the plaintiff till final disposal of the suit.

In Smt. Mannu Bhandari, Appellant v. Kala Vikas Pictures Pvt. Ltd. and another, AIR 1987 Delhi 13, the court observed that "section 57 lifts the author's status beyond the material gains of copyright and gives it a special status. An author's right to restrain distortion etc. of his work is not limited to a case of literary reproduction of his work. The restraint order in the nature of injunction under section 57 can be passed even in cases where a film is produced based on the author's novel. The language of section 57 is of the widest amplitude and cannot be restricted to 'literary' expression only. Visual and audio manifestations are

directly covered. The court observed that by reading the contract with section 57, it is obvious that modifications, which are permissible, are such modifications, which do not convert the film into an entirely new version from the original novel. The modifications should also not distort or mutilate the original novel. The fact that Mannu Bhandari is the author of the story will be published in all the credits. This is for giving due recognition to the author's reputation." The court therefore, directed certain modifications and deletions to the film before screening it.

In Phoolan Devi v. Shekar Kapoor, (1995-PTC Del), the plaintiff claimed that the basis of the film, being a novel dictated by the illiterate plaintiff herself had been considerably mutilated by the film producer. The plaintiff sought a restraint order against the defendant, from exhibiting publicly or privately, selling, entering into film festivals, promoting, advertising, producing in any format or medium, wholly or partially, the film "Bandit Queen" in India or else where. Granting an injunction Vijendra, Jain J. held, that "the defendant had no right to exhibit the film as produced violating the privacy of plaintiff's body and person. The balance of convenience is also in favour of restraining the defendants from exhibiting the film any further as it would cause further injury to the plaintiff. No amount of money can compensate the indignities, torture, and feeling of guilt and shame which has been ascribed to the plaintiff in the film. Therefore, the defendants were refrained from exhibiting the film in its censored version till the final decision of the suit."

Conclusion

Under section 57 of the Act, the author of a work has the right to claim the authorship of the work. He also has a right to restrain the distortion or mutilation of his work or to claim damages for the distortion even after assigning the copyright. The contract of assignment will require being consistent with section 57.

The author of a computer programme is also protected under this section. The moral rights will subsist with the programmer even after assigning the copyright in a software programme. If the assignee distorts the software as a result of which the programmer's reputation is harmed, the programmer can sue for restraining such distortion and for damages. The proviso to the section excludes from the purview of the section, the adaptation of a computer programme by a lawful possessor of a copy of a computer programme to utilise the computer programme and making of backup copies as a temporary protection against loss.

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Therefore, even if the contract for assignment of software makes a provision for assignment of all economic and moral rights, the assignor can at any time exercise his special rights granted under section 57 of the Act.