

COPYRIGHT LAW - NATIONAL AND INTERNATIONAL SCENARIO"

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Background

Copyright and its related rights are essential to human creativity as they give the creators, incentives in the form of recognition and fair economic rewards. In the words of CHINNAPPA REDDY, J. in Gramophone Co. Vs. Birender Bahadur Pandey .

"An artistic, literary or musical work is the brainchild of the author, the fruit of his labour and so, considered to be his property. So highly is it prized by all civilised nations that it is thought worthy of protection by national laws and international conventions"¹

Copyright as Intellectual Property

Copyright is a legal term describing rights given to creators for their literary, artistic, musical and dramatic works, although the law now covers also other related rights like rights over sound recordings, cinema films, and also rights of performers and broadcasting organizations. The right covers a wide variety of creations, viz. novels, poems, plays, reference works, newspapers, computer programs, databases, films, musical compositions, choreography, paintings, drawings, photographs and sculpture, architecture, advertisements, maps and technical drawings.

Statutory definition of Copyright² Copyright means the exclusive right to do or authorise others to do certain acts in relation to : (1) literary, dramatic or musical works, not being a computer programme, (2) computer programme, (3) artistic work, (4) cinematograph film and (5) sound recording. The nature of the acts vary according to the subject matter. Basically copyright means the right to copy or reproduce the work in which copyright subsists. The various acts for which copyright extends is listed in s. 14 of the Act.

¹ CHINNAPPA REDDY, J. in Gramophone Co. Vs. Birender Bahadur Pandey AIR 1984 SC 667.

² Section 14 of the Copyright Act 1957.

The Copyright (Amendment) Act, 1994 (came in to force from May, 1995) enlarged the scope of the term 'author' to mean in relation to any literary, dramatic, musical or artistic work which is computer generated, the person who causes the work to be created. The definition of 'literary work' was amended to include the computer programmes, tables and compilations including computer databases.

The 1957 Act allows making of copies of computer software by the lawful buyer for fair use. It is not infringement if the copies are made to utilise the computer software for the purpose for which it was supplied or to make back up copies purely as a temporary protection against loss, destruction or damage. As per the Section 52 of the Act, if a person knowingly makes use of a copy of a computer programme for (personal) gain in the course of trade or business, it is treated as an infringement of copyright.

Section 14 of the Indian Copyright Act (amendment) prohibits the sale or hiring of (or offering for sale or hiring of) any copy of computer programme without the authorisation of the copyright holder. Even though an organisation/ institution purchases a legal copy of software, the law prohibits its duplication or making multiple copies for use by different constituent divisions or units or users in the same organisation/ institution.

Original Work

In order to enjoy copyright, the work must be original and must be fixed on any tangible medium of expression.

It requires that the work is the result of the author's skill, labour, judgment, howsoever small.

International conventions

India being a member of the Berne Convention and the Universal Copyright Convention, copyright protection is granted to works of foreign nationals or to works published in member countries of these conventions. This is done on the basis of reciprocity.

To meet the problems several countries joined together to form conventions for securing some minimum protection on a reciprocal basis for works originating in a member country in all the other member countries of the convention without any formality. To this end the Berne Convention was formed in 1886. Additions and revisions were made to

this from time to time, the latest revision of which is the Berne Convention for the Protection of Literary and Artistic Works (Paris Act 1971). Subsequently, the Universal Copyright Convention (UCC) was formed in 1952 and later revised in 1971. Most of the developed countries and many developing countries are members of these conventions. India is a member of both these conventions.

Acquisition of Copyright

Neither a publication nor registration, nor other formality or action is required to secure copyright. Copyright begins automatically as soon as a work is created, i.e. when a work is fixed in a copy for the first time.

Advantages of Registration

Although the Act provides for registration of works, registration is voluntary and not obligatory. Registration does not itself confer copyright. Registration may be done at any time during the term of copyright. It serves two purposes (i) it establishes a public record of copyright claim, and serves as a notice (ii) it establishes prima facie evidence in the court of the facts stated in the certificate, viz. relating to ownership of copyright.

Transfer of the Right

Any or all of the copyright owner's rights mentioned above may be transferred by way of assignment or licence. The copyright can even be transferred by operation of law for e.g. it can be bequeathed by will, and is capable of being inherited if no will has been made.

Remedies for Copyright Infringement

Under the provisions of the Copyright Act, the owner of the copyright can institute criminal and civil proceedings for infringement of his right.

Copyright infringement is a cognizable offence. A police officer of the rank of sub-inspector has been empowered to seize without warrant infringing copies as well as plates, duplicating equipments used for infringing copies. Infringement or abatement of infringement of

copyright in a work punishable with imprisonment for a term extending up to 3 years and with fine up to Rs. 2/- lakhs.

The owner of copyright can seek remedies in the civil court like injunction to prevent further infringement and damages or account of profit. He can also seek an order of temporary injunction for immediate order to restrain the infringer from continuing with the infringement. He can also seek delivery up of infringing articles.

In addition, the Registrar of Copyright can ban the import of infringing copies into India and order confiscation of infringing copies and their delivery to the owner of copyright.

Copyright Societies

An author cannot monitor all uses of his works. It is therefore, advantageous to establish copyright societies of a particular type. The Act gives legal recognition to such societies.

Importance of copyright law - national and international

Copyright problems in some respects are international problems. Copyrights, being intellectual property, travel from country to country more easily and quickly than other kinds of property. Technological progress has made copying of copyright material easy and simple. Consequently the control of copyright infringement has become very difficult and often impossible.

Copyright protection not granted in certain cases - public policy

Copyright protection is not granted where the work is grossly immoral, illegal, defamatory, blasphemous, seditious, irreligious or contrary to public policy or calculated to deceive the public.

Future of copyright law - The challenge of copyright is prescribed by the digital and on line environment of the information society with the possibility of works protected by copyright being recorded, stored and made available on demand in digital form all over the world through electronic communications networks such as the internet and with the threat of unlimited perfect quality copies being made of them are not therefore a matter for national laws. Only a global approach will provide the protection required.

The vulnerability of digital information for manipulations makes the problems all the more serious. Problems relating to copyright of electronic information resources on Internet, multimedia works, computer software, databases and copyright enforcement need to be dealt. Security of information is tried with cryptography, digital finger prints, watermarks and passwords.

The library professionals in India have not yet been able to appreciate the full ramifications of copyright and other IPRs in the fast changing technological developments. While networks in general and Internet in specific are perceived as panacea for all information related problems, their implications on copyright related aspects are little understood. It is therefore necessary to that all library schools include at least some aspects of intellectual property rights, their relevance and protection to make the library professionals discharge their duties more efficiently.

The Information Technology Act, 2000 also proposes penalties for computer crimes such as unauthorised access to computer networks and databases, damaging or disruption of computer systems and services, illegal copying of software and tampering with computer source documents, electronic forgery, spreading computer virus, etc. Also the current copyright laws have to be heavily modified to suit to the digital and networked environment.

RULINGS

AIR 1984 SC 667 - Gramophone Company India Ltd. Vs. Birendra Bahadur Pandey & others

"An artistic, literary or musical work is the brainchild of the author, the fruit of his labour and so, considered to be his property. So highly is it prized by all civilised nations that it is thought worthy of protection by national laws and international conventions"

Copyright Act Section 51 & 53 - word "Import" includes importation for transit across India to Nepal.

The Appellant, Gramophone Company India Ltd. is a well-known manufacturers of musical records and cassettes. By an agreement with the performing artist to whom royalties are paid, the Appellant company is the owner of the Copyright in such recordings. The Appellant received information from the Customs authorities at Calcutta, that the

consignment of a pre-recorded cassettes sent by Universal Overseas Pvt. Ltd., Singapore to M/s. Sungawa Enterprises, Kathmandu, Nepal, had arrived at Calcutta Port by ship and was awaiting despatch to Nepal. The appellant learnt that a substantial number of cassettes were 'pirated works', this fact having come to light through the broken condition of the consignment which was lying in the Calcutta docks. Basing upon the information received, the appellant sought the intervention of the Registrar of Copyrights for action under Section 53 of the Copyright Act, 1957. This provision enables the Registrar, after making such enquiries as he deems fit, to order that copies made out of India of a work which if made in India would infringe copyright, shall not be imported.

As the Registrar was not taking expeditious action on the application of the appellant and as it was apprehended that the pirated cassettes would be released for transportation to Nepal, the appellant filed a writ application in the Calcutta High Court seeking a writ in the nature of Mandamus to compel the Registrar to pass an appropriate order under Section 53 of the Copyright Act and to prevent release of the cassettes from the custody of the customs authorities.

A Division Bench of the Calcutta High Court held that the word "import" did not merely mean bringing the goods into India, but comprehended something more, that is, "incorporating and mixing, or mixing up of the goods imported with the mass of the property in the local area". The learned judges thought it would be wrong to say that there was importation into India, the moment the goods crossed the Indian customs barrier. Keeping in view the treaties with Nepal, the Division Bench took the view that there was no importation when the goods entered India en route to Nepal. The appeal was, therefore, allowed and the writ petition filed by the present appellant was dismissed. And so, the writ petitioner in the High Court has appealed to us under Article 136 of the Constitution.

