

COPYRIGHT: AN ANALYSIS ABOUT IT IN THE ERA OF GLOBALISATION

Written by Sudipta Patra

Ph.D. Research Scholar of F.M. University, Assistant Professor of Law, Midnapore Law College, V. U., (Guide- Under the guidance of Dr. R.L. Jati of F.M. University)

ABSTRACT

Copyright encourages composers, authors, designers artists to create original works. Copyright helps them to protect their rights. They will get the exclusive right for a limited period to use their works for monetary gain. Enrichment of culture is of vital interest to each and every society and the copyright law protects this social interest. The Copyright Act has been enacted to check the piracy that means to prevent the infringement of the rights of the real copyright owners. Copyright Law always tries to prevent plagiarism and other undesirable and illegal activities of theft in the sphere of intellectual property. Copyright Law has tried to make a great development in the world of arts, culture, sculpture and literature in the era of globalisation by protecting the copyright properly.

Introduction:-

Copyright is a kind of intellectual property the importance of which has increased enormously in recent times due to the rapid technological development in the field of printing, music, communication, and entertainment and computer industries. Copyright is a unique kind of intellectual property. The right which a person acquires in a work, which is the result of intellectual labour, is called his copyright. The primary function of a copyright law is to protect the fruits of a man's work, labour, skill or test from being taken away by other people.¹

Owing to the international character of copyright various countries have joined to form conventions for the protection of copyright owned by its nationals in other countries. The Berne

¹ Holy Faith International Pvt. Ltd. vs. Shiv K. Kumar, 2006 (3) R.A.J. 64 (A.P.) = 2006 (33) PTC 456 (A.P.).

Convention and Universal Copyright Convention are the result of such joint effort. Most of the countries of the world are members of one at least of these conventions. India is a member of both these conventions. Accordingly Indian Copyright owners can protect their copyright in almost any country in the world.

In India, the Copyright Act, 1957 is the primary legislation relating to the copyright protection. This Act is amended by the Copyright (Amendment) Act, 1999². The most recent amendment of copyright was held in the year 2012, through the Copyright (Amendment) Act 2012. It is a comprehensive legislation covering almost all the aspects of the copyright protection in India.

The scope and object of this Copyright Law is to encourage authors, composers, artists and designers to create original works. They will get the exclusive right for a limited period to use the work for monetary gain.

The hall mark of any culture is the excellence of arts and literature. In fact the quality of creative genius of artists and authors determine the maturity and vitality of any culture. Any art needs healthy environment and sufficient protection. What the law offers is not the protection of the interest of the artist or the author alone. Enrichment of culture is of vital interest to each society and the copyright law protects this social interest.³ The Copyright Act has been enacted to check the piracy i.e. the infringement of rights under the Copyright Act so that the fruits of the labour put by the author or the copyright owner may be enjoyed by the deserving authors and copyright owners and not the pirates, who indulge in plagiarism and other undesirable and illegal activities of theft of intellectual property.⁴

International Sphere of Copyright:-

There are many Conventions and Treaties governing the international regime of Copyright. Most important of them are –

- a) Berne convention for the protection of Literary and Artistic works:-

The International Union for the Protection of Literary and Artistic works was first established in 1886 in Berne, Switzerland. It is popularly known as the Berne Union or

² w.e.f. 15-01-2000.

³ Manu Bhandari vs. Kala Vikas Pictures Pvt. Ltd., AIR 1987 Delhi. 13.

⁴ Girish Gandhi vs. Union of India, AIR 1997 Raj 78 at p.84.

Berne Convention. It entered into force on 5th December, 1887 and has been revised five times with two additions, and is administered by WIPO. The latest text is that of the Paris revision, 1971. As on January 1, 1996, there were 117 states which became parties to the Berne Convention. The Berne convention has 38 Articles and an appendix incorporating special provisions for the developing countries.

The convention's scope and application is very broad encompassing "literary and artistic works" which include every production in the literary, scientific and artistic domain, irrespective of the mode or form of its expression. Therefore works such as choreography, painting and architecture, compilations and derivative works and even the industrial designs find protection under the Berne Convention. The published and unpublished works of authors, who are the nationals of member countries, are covered under the protective umbrella of the convention. Apart from the author's exclusive economic rights, Berne convention requires that the author's moral rights be recognized and endure beyond the life of the author. India is a member of the Berne Convention.

b) Universal Copyright Convention (And Protocols):-

The Universal Copyright Convention that means UCC was signed and entered into force on September 6, 1952 and it was revised in 1971 at Paris. The UCC is under and administered by the UNESCO of the UNO. The basis of the UCC is the National Treatment and also the requirement of maintenance of specific legal standards by each contracting state. The contracting states are under an obligation to provide adequate and effective protection of the rights of authors and other copyright proprietors.

According to this convention the protection given is for published as well as unpublished works. The convention limits the formalities that can be required of works first published outside the territory of a member state. For such works the only formalities allowed are that all the copies of the work must bear the symbol (c) accompanied by the copyright proprietor's name and the year of first publication placed in such conspicuous manner so as to be noticed easily.

The UCC was revised in Paris in 1971, in response to demands made by the developing countries. Special Provisions allow the developing countries to obtain compulsory

licences under certain conditions to translate copyrighted works for teaching, scholarship and research purposes. It also allows reproduction of copyrighted works for use in systematic instructional activities. The UCC protects the economic rights of the authors effectively. India is a member of the UCC.

c) International convention for the Protection of Performers, producers of phonograms and Broadcasting Organizations (Rome Convention):-

Phonogram means a sound recording. The rights in respect of phonograms and performances and Broadcasting are called neighbouring rights. The Rome Convention which was completed on October 26, 1961 and entered into force on May 18, 1964 basically intends to protect the neighbouring rights. The beneficiaries of the convention are performers, producers of phonograms, and broadcasters. The convention grants protection to performers if their performance takes place in another contracting state, if incorporated in a phonogram that is protected by the convention. If not fixed on a phonogram, and is carried by a broadcast, the convention protects such broadcast also.

Under the convention, performers are protected against the unauthorized broadcast of their public performance and enjoy the rights to a first fixation of their performance. Similarly, producers of phonograms enjoy the right to authorize or prohibit the direct or indirect reproduction of their programs in the form of phonograms. Any user of such phonograms has a duty to pay a single remuneration equitable in nature to artists or producers for a public performance of a phonogram.

In so far as the Broadcasting rights are concerned, broadcasting organizations shall enjoy the right to the fixation, reproduction and rebroadcast of their broadcasts, subject to any limitations imposed under the domestic law.

The eligibility to participate in the Rome convention is that a state must have become a member of either the Berne Convention or the Universal copyright convention. As of January 1, 1996, there were 50 States which became members of the Rome Convention. India was not a member on that date.

d) WIPO Copyright Treaty:-

This treaty was adopted by the Diplomatic Conference at Geneva on December 20, 1996. However it was yet to be entered into force as on January 1, 1997. This treaty is a Special Agreement within Article 2 of the Berne Convention and it constitutes the first update of the Berne Convention since 1972, in response to the new conditions brought about by digital technology and the internet.

The treaty specifies that protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts.⁵ Significantly, computer programmes are recognized as literary works within Article 2 of the Berne.⁶ In addition, the treaty also gives additional recognition to compilations of data or other material in any form and protection is provided to the intellectual creativity used in the selection and arrangement of their material.⁷

The treaty recognizes the exclusive right of rental for computer programs, cinematographic works, and works embodied in phonograms as determined by national law.⁸ Any member of WIPO may become a member of the treaty. Under Article 20 of the treaty, it shall enter into force three months after of 30 instruments of ratification or accession by states have been deposited with the Director General of WIPO.

e) WIPO Performances and Phonograms Treaty:-

It was also adopted by the Diplomatic conference at Geneva on December 20, 1996. This Treaty includes provisions that attempt to meet the challenges of digital technology particularly the internet. It is limited to the protection of the rights of performers and producers of phonograms. Audio-visual performances are not covered in the Treaty. Its main object is to update the 1961 Rome Convention.

Other treaties / Conventions relating to copyright protection:-

⁵ Article 2 of the Treaty.

⁶ Article 4.

⁷ Article 5.

⁸ Article 7.

Apart from the aforementioned five international instruments, there are some other treaties, conventions that aim at protection of producers phonograms against unauthorized duplication of their phonograms, distribution of programme-carrying signals transmitted by satellite and audio-visual works etc. They are-

- a) The convention for the protection of producers of phono-grams Against Unauthorized Duplication of their phonograms:-

Geneva Convention which was opened for signature on October 29, 1971. Its main purpose was to fight the ever-growing practice of record and tape piracy spawned by new reproductive technologies. Although the Rome Convention already covered the same ground, many states including the USA that did not recognize the neighbouring rights, refused to adhere to the Rome Convention. They became parties to this convention.

The Convention allows a contracting state to require a notice on all publicity distributed copies of the phonogram, which consists of the symbol “P” accompanied by the year, date of first publication and the name of the first producer, for claiming protection. As on January 1, 1996, there were 53 states which became party to this convention. India is a party to it.

- b) Convention Relating to the Distribution of Programme-carrying signals Transmitted by Satellite:-

Brussels Convention which was signed on May 21, 1974. The main object of the Brussels Convention is to combat the misappropriation of satellite signals on an international level. In view of the lack of clarity in the Berne Convention and also in the Universal Copyright Convention as to the coverage of satellite transmissions, this convention assumes greater significance.

This convention is limited in its scope, focussing on the unauthorized distribution of signals, not their unauthorized reception: - Thus, the private reception of signals for private use is not a violation of the convention, but their unauthorized distribution is. The object of protection under the convention is the signal and not the content of the material sent by the signal. The convention is designed to protect the emitter or carrier

not the copyright owner of the material transmitted by satellite. As on January 1, 1996, there were 20 states which became members of this convention, India was not a party.

c) The Treaty on International Registration of Audio-visual works:-

This Treaty is primarily concerned with the registration of audio-visual works at the international level. It establishes an international Register for Audio-visual works, administered by WIPO’s International Bureau. This Register is supposed to contain information about a particular work, its nature, rights in relation to reproduction, distribution, and performance, the place where these rights are enforceable and the limitations on those rights. This treaty has the membership of mostly South-American and European States which numbered 12 as on 1st January, 1996.

d) The Treaty on Intellectual Property in Respect of Integrated Circuits:-

This treaty aims primarily at the protection of Integrated circuits and layout-designs (topographs). It defines an integrated circuit (IC) as a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and / or in a piece of material and which is intended to perform an electric function.⁹ A Layout-design (topography) is a three-dimensional disposition, prepared for an IC intended for manufacture.¹⁰ This treaty requires the contracting parties to confer protection on layout designs and IC’s. It was brought into existence in response to laws enacted in several countries for protection of ICs and layout designs. The protection is conferred on the basis of national treatment.

The recent provisions regarding the duration of copyright protection in India is discussed below:-

<ul style="list-style-type: none"> • Literary • dramatic, • musical and 	<p>Lifetime of the author + sixty years from the beginning of the calendar year next following the year in which the author dies.</p>
--	---

⁹ Article 2 (i) of the Convention.

¹⁰ Article 2 (ii).

<ul style="list-style-type: none"> • artistic works 	
<ul style="list-style-type: none"> • Anonymous and pseudonymous works • Posthumous work • Cinematograph films • Sound records • Government work • Public undertakings • International Agencies • photographs 	Until sixty years from the beginning of the calendar years next following the year in which the work is first published.

Remedies for the Infringement of Copyright

We know the famous saying, where there is a right, there is a remedy that means “Ubi jus, ibi remedium”. No man is at liberty to take away the result of another man’s labour or his property.¹¹ Therefore violation of copyright has different remedies. The Copyright Act, 1957 provides for three types of remedies for violation of copyright, namely-

- (1) Civil Remedies;
- (2) Criminal; and
- (3) Administrative Remedies.

1. Civil Remedies:-

Chapter XII, Sections 54 to 62 deals with the civil remedies which are available for violation of copyright. Injunction, damages, accounts and costs etc. are coming under these remedies. The injunction can be permanent or it can be interlocutory.

Anton Piller Order:-

For better protection of copyright and other forms of intellectual property, the courts in England, have invented a new order. The court may, in appropriate cases, acting on an application by the plaintiff, pass an *ex-parte* order directing the defendant to permit the plaintiff, accompanied by solicitor or attorney to enter his premises and take inspection of

¹¹ Macmilan and Co., vs. K. & J. Cooper, Ltd., AIR 1924 PC 75 at p. 83.

relevant documents and articles and take copies thereof or remove them for safe custody. Generally where there is a grave danger of relevant documents and infringing articles being removed or destroyed the necessity for such an order arises so that the ends of justice will not be defeated. In the U.K., such an order is called as an Anton Piller Order, named after a plaintiff in a case where such an order was first passed.

Jurisdiction of court to grant civil remedies:-

Every suit or other civil proceedings arising under the Act in respect of civil remedies, for infringement of copyright in any work, is to be instituted in the District Court having jurisdiction.¹² For this purpose, a “district court having jurisdiction” includes a district court within the local limits of whose jurisdiction, the person instituting the suit/other proceedings, voluntarily resides or carries on the business or personally works for gain, at the time of the institution of the suit or other proceedings.

2. Criminal Remedies:-

Notwithstanding anything contained in other criminal legislations, the Copyright Act, 1957 also provides for certain criminal remedies. Chapter XIII, in Sections 63 to 70 deals with the offences in relation to violation of copyright.

3. Administrative Remedies:-

The copyright Act provides for the establishment of offices and institutions like the Registrar of copyrights, copyright Board and copyright societies etc. They also have certain powers to give certain remedies for violation of copyright.

Judicial Responses

Our judiciary has taken important steps for the protection of copyright in India in the era of globalization. Some instances are given below-

In *Pepsi Co., Inc. vs. Hindustan Coca Cola Ltd.*,¹³ the Delhi High Court held that advertising catch phrases are entitled to copyright protection. The court held that the phrase ‘Yeh Dil

¹² Under Section 62 of the Act.

¹³ 2004 (1) RAJ 570 (Delhi).

Maange More' of Pepsi is an original work of the company. Therefore the copy of its theme of roller coaster by Hindustan Coca Cola would be an infringement of Pepsi's Copyright.

Video Master vs. Nishi Productions,¹⁴

In this case the Bombay High Court was called upon to decide whether manufacturing Betachem Cassettes for the purpose or its user for satellite broadcasting for transmission infringes the copyright of the persons having exclusive and sole video copyrights in respect of the cinematograph films.

The court answered the question in negative and held that copyright for the broadcast does not infringe the rights of person enjoying the right to exhibit the film by cable T.V. The court also held that by receiving the satellite signals on dish antenna owned / maintained by cable T.V. operator or private party and by relaying signals through media of cable to the viewers do not infringe the copyrights of the plaintiffs / licences of copyrights in cinematograph films.

In *Vicco Laboratories vs. Art. Commercia Advt. Pvt. Ltd.*,¹⁵ the plaintiff claimed that the title "Yeh Jo Hai Jindagi" of a T.V. serial belonged to him and that the defendant / producer of the serial was only an agent appointed by him. However on a proper perusal of facts, the court found that the plaintiff was only a sponsorer of the serial therefore had no copyright in the same.

In *M/s. Infoseek Solutions and another vs. M/s Kerala Law Times and others*,¹⁶ it is held-

The judiciary is a limb of the State, as constitutionally conceived and provided. The preamble to the Indian Constitution is its part and it declares India to be a Sovereign, Socialist, Secular, Democratic, Republic. The Constitution has been "given by the people to themselves". This affirms the republican character of the polity and the sovereignty of the people. When the judiciary acts as the duly authorized societal agent of the State, it acts as the representative of the sovereign, namely, the people.

¹⁴ 1998 PTC (18) 117

¹⁵ AIR 2001 SC 2753.

¹⁶ AIR 2007 Ker. 1

The power to adjudicate, determine, apply, the laws and to give the verdict is essentially the power of the Republic, being exercised through the judicial limb of the State. Hence, it is totally inconceivable that the judgments of the Courts could be treated as documents over which there could be any copyright. The judgments belong to the State, to the Sovereign Republic, to her people. There can be no copyright over them.

Eastern Book Co. vs. Navin J. Desi,¹⁷

In this case the plaintiffs, M / s. EBC are engaged in business of printing and publishing of various book relating to the field of law and they claimed to have copyright in around 500 titles. Besides, they also publish law reports under the name and style of SCC, SCC (CrI.) and SCC (L& S) etc. They also publish data-base packages available on CDE ROM for finding S.C. ruling on any point of law, in the name and style of ‘SCC on-line SC case Finder’ and ‘SC cases Full Text on CD-ROM’.

They challenged the action of the defendants who developed a software package called “The Laws” published in two CD ROMS and “Grand Jurix” in three CD ROMS; on the ground that the short notes and head-notes published in the plaintiff’s SCC were copied by the defendants, along with the entire text of the edited judgments vibrations published in the plaintiff’s law report SCC; along with and including the style and formatting, the copy editing the paragraph numbers, footnote numbers and the cross references etc.

The defendants contended that their package was wider in scope / coverage because of the feature of ‘hyperlinking’ adopted by them, as to the period of judgments, no. of judgments, Central Acts, and equivalents etc. The High Court speaking through Justice S.K. Mahajan reviewed the entire relevant case-law and scheme of the Copyright Act, 1957 and held that “mere reproduction of a part of the judgment in the head-note is not an abridgment of the judgment and no copyright can be claimed therein. However, the court held that if the head notes are not the reproduced copies of the judgment and were written by using knowledge, labour, judgment or literary skill or task, the publisher will have copyright in them.

Conclusion

¹⁷ AIR 2001 Delhi 185

Copyright relates to artistic creations, such as poems, novels, music, paintings, cinematographic works, etc. Rights are made to be respected and, if they are not, there are sanctions. Any unauthorized use of works protected by copyright by a person constitutes what is called a copyright infringement. Legislation specifies sanctions to remedy the prejudice caused by such infringements, and the sanctions may be civil or criminal depending on the importance and the nature of the infringement or violation. Though law relating to Copyright is enacted to protect the Copyright, but it is not always enough to protect the Copyright. So, more rules regarding the protection of copyright are necessary for substantial development of arts, culture, sculpture, literature and other works which are coming under the purview of copyright in the era of globalisation.

