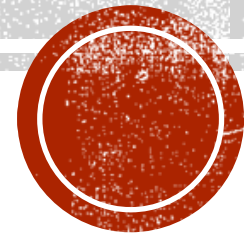


LECTURE ON COPYRIGHT ACT 1957

Dr. SAGAR KUMAR JAISWAL



INTRODUCTION

- The word “Copy” alone probably dates from 1485 and was used to connote manuscript or other matters prepared for printing.
- According to Oxford Dictionary, copyright is an exclusive right given by law for a certain term of years to authors, composer, etc. (or his assignee) to print, publish and copies of his original work.
- More explicitly, it is an exclusive rights to dispose of, sell and commercially exploit an intellectual work by means of printing, lithography, graphic production, copying, moulds, casts, photography, cinematograph film, gramophone record, or rolls for mechanical instruments, concerts, oral delivery or recitation, theatrical representation, translation, adaptation, performance, broadcast transmission, or any other form of reproduction, multiplication of copies or dissemination.



▪ **Meaning According to Copyright Act:**

Copyrights, according to section 14 of Copyright Act 1957, means the exclusive right to do or authorize others to do certain acts in relation to:

1. literary, dramatic or musical works not being a computer program;
2. Computer program
3. Artistic works,
4. Cinematograph films and
5. Sound recording

Since the section begins with the expression “copyright means”, it means the definition is exhaustive and copyright does not extend to any right beyond the scope of section 14. To be more confirmed, section 16 of the Act, itself provides that—No person shall be entitled to copyright or any similar rights in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.



The nature of the acts varies according to the subject matter. The various acts for which copyright extends are listed in section 14 of the Act.

The exclusive right for doing the respective acts extends not only to the whole of the work, but to any substantial part thereof or to any translation or adaptation thereof.

Nothing would be accepted as infringements of this right if what is sought to be done by the defendants is in exercise of a similar rights vested in them under a contract of assignment with the person who possess that rights.

▪ **Bundle of Rights**

Copyright is a bundle of rights. The copyright is not a singular term but it refers to three bundles of rights:

- ❑ The exclusive economic rights;
- ❑ Moral right or special rights of the author (1. Paternity rights or right to claim authorship; 2. Integrity right or the right to object to any distortion, mutilation or other modification of the work); and



□ Neighboring rights(1. Right of producers of sound recording; 2. Rights of performers; and 3. Right of broadcasting organizations).

▪ Though exclusive economic rights varies countries to countries and conventions to conventions, the scope of each rights are often overlapping, nevertheless the legislation of every country recognize the following rights as basic economic rights or their equivalents:

✓ The reproduction right

✓ The adaptation rights

✓ Distribution right

✓ Public performance rights

✓ Cable casting rights

✓ The rental rights.



▪ **Splitting Nature of Copyright**

As copyright is a bundle of rights, therefore, it can be split and exploited in different ways. A person X who is the copyright owner in the novel can transfer to separate parties different rights belonging to him. He can assign the right to adaptation to dramatist A; right to make a film with respect to novel to film producer B; the right to issue copies of the book by publishing to Publishers C, and so on.

▪ **Standard of protection:**

The copyright protection is basically granted to an author on three fundamental standards. They are:

1. Protection of expressions of ideas rather than the idea themselves
2. The expression must be fixed in any medium
3. Work must be original, i.e., it must originate from the author himself and must not be copied from another.



- **A copyright does not vest in an idea:**

Copyright protection extends to expressions and not to ideas, procedures, and methods of operation or mathematical concepts. What is protected is not original thought or information, but the original expression of thought or information in some concrete form.

- **Requirement of Fixation:**

Copyright is the protection from unauthorized use of author's original creative expression. For the purpose of copyright protection, the work concerned has to be Original work of authorship and Fixed in material form. A work is fixed in a tangible medium of expression when it's written down, recorded, or otherwise made permanent so that it can be perceived and reproduced by others.

Berne Convention provides that the copyright subsists in literary and artistic works “whatever may be the mode or form of its expression”, thus allowing each signatory to determine whether it will require fixation “in some material form.”



Indian regime follows the fundamental rule of copyright law, laid down in Article 9(2) of TRIPS and Article 2 of WCT, 1996, that copyright does not subsist in ideas and only protects original expression of the ideas. The requirement of fixation in material form is a precondition for copyright to subsist in a work (as to the work in which copyright subsist). Generally, in the common law countries, the principle of fixation in copyright law is followed.

For subsistence of copyright in a literary, dramatic or musical work, the UK Act makes recording, in writing or otherwise, a precondition whereas the Indian Act does not have such a qualifying clause for literary or other works for copyright subsistence in them. This leaves ground for exploring the possibility of copyright protection for original and oral literary and dramatic pieces.

However, in the case of musical works, in India, the condition of fixation in a medium has been done away since 1994.



Fixation, as a requirement for copyrightability, is capable of supporting different objectives:

- ✓ *Administration*: having something to refer to makes it easier to determine whether copyright subsists and whether it has been infringed.
- ✓ *The Idea vs Fact Dichotomy*: tangible forms make it easier to separate underlying ideas from the expression of those ideas.
- ✓ *Notice*: material forms make it easier to identify what may be subject to copyright, allowing others to avoid infringement.
- ✓ *Reducing Opportunism*: without material forms, baseless allegations of copyright can abound.
- ✓ *Non-Casualness*: fixed forms are formalised, raising the threshold as to whether something should be protected.
- ✓ *Incentive to Codify Knowledge*: fixed forms lend themselves better to preservation, transmission and dissemination.



- **Copyrights and independent creations**

Copyrights operate to prevent a person from copying the copyright work. In so far as it is possible for a person to create the same or similar work independently, there is no copyright infringement. Similarity of the infringing work to the author's or proprietor's copyrighted work does not of itself establish copyright infringement if the similarity results from the fact that both works deal with same subject or have a common source.

- **Limitation of copyrights protection**

Copyright protection is confined to certain act specified in section 14. There are acts injurious to the author not covered by this section. Protection against them can be sought from other branches of law. For Example, oral communication of the work is not an infringement of copyright. But when trade secrets are communicated orally by an employee or others in possession of the secrets to competitors an action for breach of trust or confidence will lie. This is specifically provided in section 16. Similarly, where a person publishes a work which resembles the authors' work in title and get up or appearance, so as to cause confusion with the authors' work or cause damages to his reputation, no protection is available under the copyright Act but the author may have a remedy under the law of passing off or libel as the case may be.

- **No formalities:**

In India, copyright comes into existence as soon as a work is created and no formality is required for acquiring copyright. The vesting of copyright in a work is thus automatic. The procedure for registration is optional and not mandatory. Registration is only intended to provide a prima facie evidence of the particulars entered in the register. There is a register of copyright at the copyright office. Published and unpublished works can be registered under the Act.

- **Negative Rights:**

The copyrights law is in essence concerned with the negative rights of preventing the copying of the physical material, existing in the fields of literature and arts. It is concerned only with the copying of physical material and not with the reproduction of ideas.

- **A copyright is not an absolute exclusive right.**

- In that, the term of exclusive rights is limited.
- In that, in certain cases or condition the reproduction, or other act, is not treated as infringement of copyrights.



- Copyrights laws tries to create a **balance** between the rights of the copyrights owners and the right of public to the access of work.
- The **moral basis for protection under copyright law rests in the eighth commandants**: “Thou Shall Not Steal” (Lord Atkinson in Macmillan v/s Cooper). The law does not permit one to appropriate to himself what has been produced by the labour, skill and capital of another.
- **The general principles of copyright protection is reflected in article 27** of the universal declaration of Human rights:
 1. Everyone has the right freely to participate in the cultural life of the community to enjoy the arts and share in scientific advancement and its benefits.
 2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.



- **The object of copyrights law** is to protect the author of the copyright work from an unlawful reproduction or exploitation of his work by others. The long periods of copyright encourage authors, composers and artist to create original work of literature, music and art.

- **Copyrights is considered a social requirement and the public interest** that, authors and other right owners should be encouraged to publish their works so as to permit the widest possible dissemination of works to the public at large. The public is benefited through such right in the following ways:
 - encouragement of learning
 - promotion of the economy by providing economic incentives and benefits not only to authors but to industry commerce and society as a whole
 - promoting cultural development and
 - promotion of international understanding



▪ **Economic Significance of copyrights:**

Copyright protection is essential in the general interest of the people. It is in the benefit of the public. It is by virtue of copyright protection that today many industries, particularly, publication, books, magazine, newspaper, television (news, entertainment, sports, adventure, educations, etc.), films and sound recording, performing are flourishing. Copyrights is exploited by entrepreneurs like publishers, film producers or sound recording producers to whom the owner of copyright assigns or licenses the particular rights. If the entrepreneur is to recover the capital invested and earn profits he has to be protected from unauthorized reproductions otherwise a pirate would reproduce the work at a fraction of the original cost of production and undersell the producer. In the case of sound recordings and cinematograph films a pirate could ruin the producer by his piracy. Without legal protection for a certain period no entrepreneur will undertake publication of books or production of films or sound recording.



- **The economic importance** of copyright protection can be traced namely to the following:
 - the amount of royalties and other payments by users
 - employment in users industries (manufacturing, broadcasting electronic dissemination) and collecting societies
 - value of sales of products and services and consequent benefits and
 - protection against unfair competition.

