Copyright Protection in India

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For more than a century, the World’s Wealthiest human being has been associated with oil. Now he is a knowledge worker

- Lester C. Thurow
Civilization-Sunrise of Knowledge

- 17th century-Scientific Revolution
- 18th Century-Political Revolution
- 19th Century-Industrial Revolution
- 20th Century-Information Revolution
- 21st Century-Knowledge Revolution
Meaning of Intellectual Property

- A kind of intangible property
- Creation of human mind/mental labour
- Includes all rights resulting from intellectual activity in scientific, industrial, literary, or artistic fields
- E.g., Patents, Copyright, Trademarks, Designs, Traditional Knowledge etc.
- Covers-chemical, information and biotechnology
- Transnational in character
- Confers limited monopoly rights on creators/owners
“Most creations resulting from human endeavors in various fields of art, literature, science and technology constitute Intellectual Property”
Classification of IPR

IPR

Industrial Property

Patents

Trademarks

Industrial Design

Geographical Indications

Copyright

Broadcasting

Music

Dramatics Works

Literature

Sound Recording

Works of Art

Computer Programs

ASC,OU
Literary Property includes
- Copyright
- Neighbouring Rights
Copyright

- Protects literary, artistic, musical, dramatic works and computer works apart from photographs and cinematograph works
- Protects expression of an Idea [it is in what you write- not in what you think]
  - Initially vested in authors (creators)
- Means a bundle of rights relating to reproduction, issue of copies, performance of work in public, translation, adaptation etc.
  - Registration not compulsory [copyright springs into existence the moment the work is created]
Copyright [contd]

- Term of protection varies from 60 years to Life + 60 years
- Can be assigned and heritable
- At present, no more concerned with only lonely starving authors but with the cultural, publishing, entertainment and I.T. industries.
Look at J.K. Rowling & Bill Gates

-made £5 a second in the past year & Her fortune, currently estimated to be £560 million, surpassed the Queen’s riches several years ago

- One of the Richest men in World
Subject-Matter of Copyright Protection

- Literary works (including Computer Programs)
- Dramatic works
- Musical works
- Artistic works
- Sound Recordings
- Films
- Broadcasts
- Cable Programmes etc
Copyright in Literary works

In the case of a literary work (except computer programme), copyright includes the exclusive right

- To reproduce the work
- To issue copies of the work to the public
- To perform the work in public
- To communicate the work to the public.
- To make cinematograph film or sound recording in respect of the work
- To make any translation of the work
- To make any adaptation of the work.
Ownership – Assignment and Management of Copyright

- U/S 17, Author shall be the first owner of copyright
- In case of Cinematograph film/sound recording/musical work, author is producer
- Copyright can be assigned by the first owner in respect of existing or future works, either wholly or partially
- Assignment can be either generally or subject to limitations
- Similarly it can be for whole term of copyright or any part thereof.
Assignment of copyright (Contd..)

- Assignment must be in writing and signed by assignor/authorised agent
- It shall identify the work, specify the rights assigned, and duration and territorial extent of assignment
- The royalty payable shall be specified
- If period is not stated, it shall be deemed to be for 5 years
- If territory is not specified, it shall be presumed to extend within India
Management of Copyright

- Collective management
- The Indian Performing Right Society (IPRS)- [IPRS-Est. 23-8-1969] – issues licenses
- The Phonographic Performance Limited (PPL)- Issue of Licenses, Music reporting, Documentation, Distribution of sound recordings- specialized body to administer Public Performance and Broadcasting Rights
- The Society for Copyright Regulation of Indian Producers for Film &TV (SCRIPT)
- The Indian Music Industry (IMI)- Formerly Indian Phonographic Industry (IPI-Estd. in 1936) - Both IPRS & PPL are within its ambit.
Term of Copyright

- In published Musical, artistic & other works etc, until 60 years from the beginning of calendar year subsequent to the year of death of author.
- In Anonymous/Pseudonymous/Posthumous works, until 60 years from the beginning of calendar year subsequent to the year of publication.
- In case of Sound recordings, until 60 years from the beginning of calendar year subsequent to the year of publication.
Rights of Authors

- **Economic rights** - including right to reproduce work, to issue copies to public, to make cinematograph film/sound recording, to perform work in public, to translate/make adaptation of work (Sec.14)

- Resale share right in original copies, if price exceeds Rs.10,000/- (sec.53-A)

- **Moral rights** (independent of author’s copyright and even after its assignment)
  - *paternity right* (to claim authorship of work)
  - *integrity right* (to restrain/claim damages in case of distortion/mutilation/modification prejudicial to authors’ honour or reputation) (Sec.57)
Neighbouring Rights
(Chapter VIII, Sec. 37 to 39-A)

• Subject matter of rights
  (1) Sound Recordings
  (2) Performances

* Beneficiaries of Rights
  - Broadcasting Organisations
  - Performers

* Include - Broadcast Reproduction
  - Rights (25 years)
  - Performers’ Rights (25 years)

- Also called Related Rights
Broadcast Reproduction Right (S.37)

- Includes right to Rebroadcast the broadcast
- To cause broadcast to be heard/seen by public on payment of charges
- To make sound recording/visual recording of broadcast
- To make reproduction of such sound recording/visual recording
- To sell/hire to public such sound/visual recording
Performers and Performances

- "Performer" includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance.

- "Performance" in relation to performer’s right, means any visual or acoustic presentation made live by one or more performers.
Performer’s Right (S.38)

- Includes right to make sound recording/visual recording of performance
- To reproduce sound recording/visual recording of performance
- To broadcast performance
- To communicate performance to public otherwise than broadcast.
Infringement of Copyright (Sec.51)

- Doing anything, without a license, in contravention of conditions of license the exclusive right to do which is conferred upon owner of copyright;
or
- Permitting for profit, any place to be used for communication of work to public;
or
- Making for sale/hire, hiring/selling or letting for hire, or by way of trade displays;
or
- Distributing for trade purposes
- Importing in to India, any infringing copies.
Book Piracy

- BOOK piracy - illegal reproduction of books & has assumed menacing proportions over the last two decades

- Three types of print piracy - prevalent in India
  1. reprinting a book illegally.
  2. publishing books in the name of famous authors, but actually authored by imitators.
  3. producing translated versions of foreign-language books

The pirates do not have to pay taxes, and, of course, no royalty to the author.
Exceptions to infringement & Fair Use (Sec.52)

- for the purpose of research or private study,
- for criticism or review,
- for reporting current events,
- in connection with judicial proceeding,
- performance by an amateur club or society if the performance is given to a non-paying audience, and
- the making of sound recordings of literary, dramatic or musical works under certain conditions

- New Section 52(1)(zb) - facilitates access to copyrighted works by persons with disabilities provided that the reproduction of accessible formats is on ‘a non-profit basis but to recover only the cost of production’, and the organization ensures that the accessible copies are used only by persons with disabilities and takes reasonable steps to prevent the entry of the accessible copies into ordinary channels of business etc.
Cinema Piracy

- Original Producers of Cinema have
  - Cinematograph rights
  - Video rights
  - Cable rights
  - Commercial rights
  - Satellite rights
- Each of above rights include theatrical, non-theatrical, public video, and terrestrial rights etc.
Impact of the Copyright (Amendment) Act, 2012- An analysis

- Performers and their Rights [new Ss.38A & B- S.2(qq)]
- Digital Rights Management (DRM)- Protection of technological measures- Rights Management Information (RMI)- [S. 2(xa), 65A and 65B]
- Meaning of copyright- insertion - now includes the right to store works in any medium by electronic or other means
• **Future technologies** - Section 18 - amended to disallow the assignment of copyright in a manner which would allow the assignee to exploit the copyright assigned to it via unspecified ‘future technologies’ i.e. any medium or mode of exploitation of a work which did not exist or was not in commercial use when the assignment was signed.

• **Authors of certain works in cinematograph films and sound & recordings**

  Amendments to Sections 18, 19 and 33- to ensure that the authors of music, lyrics and scripts in films and sound recordings have a continuing right to royalty for the non-theatrical use of their works in films, and for any use of their works in sound recordings. *(Javed Akhtar’s Initiative)*
Term of copyright in photographs-
Photographs now treated in the same manner as artistic works and instead of enjoying a sixty year post-publication term, the copyright in photographs now effectively subsists till sixty years after the death of the photographer.

Provisions for the benefit of persons with disabilities-Section 52(1)(zb) & Compulsory licences
- **Statutory licences** - The new Section 31C facilitates the making of cover versions five years after the first sound recording of the concerned work is made, and generally with royalty payable for a minimum of 50,000 copies during each year in which copies are made. [substitute for version recordings u/old Section 52(1)(j) which the 2012 amendments deleted from the copyright statute.]

- The new Section 31D enables ‘any broadcasting organisation desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published’ to do so by paying royalty to the copyright owner
Broadened exceptions to copyright infringement

The exceptions to copyright infringement dealing with the reproduction of works for judicial, legislative and educational use now generally apply to any work, instead of only to literary, dramatic, musical and artistic works as was the case earlier.

copyright infringement for benefit of academia - broadened. For example, the publication of compilations for educational institutions in Section 52(1)(g) of the ‘old’ copyright statute has been deleted and the new Section 52(1)(h) which has replaced it allows the publication of compilations for ‘instructional use’ instead of just for educational institutions.
Archival storage and reproduction by libraries - The new Section 52(1)(n) allows: ‘the storing of a work in any medium by electronic means by a noncommercial public library, for preservation if the library already possesses a non-digital copy of the work’, and the scope of Section 52(1)(o) has been restricted to allow only non-commercial public libraries to make not more than three copies of books unavailable for sale in India for their own use, as opposed to any public library as was the case earlier. (digitization)
Popular misconceptions about Copyright

- Copyright is compulsorily registrable
- Copyright protection is the concern of individuals only
- Complaints can be lodged at the accused/defendant’s place only
- Tracking/tracing owner of copyright to adduce evidence of infringement is essential [State of Andhra Pradesh v. Nagoti Venkataramanna {1996 (16) PTC 634 (SC)}]
- Any non-profit use is permissible
- Fair Use/dealing always is a better defence.
Tips for Writers/teachers

- Acknowledgment-safest & professional courtesy
- Quote little and quote accurately
- Avoid plagiarism
- Create original works [originality of expression]
- Reserve and register your works
- Be careful about contracts
The Challenge to IPR protection in Modern Times

- Squeezing today’s innovation into yesterday’s system simply won’t work.
- Multi-media licensing
- Digital revolution
- Digital Rights Management
- Need to balance IPRs and public interest
Copyright Offices In India

- Government of India, Ministry of Human Resource Development, Department of Secondary Education & Higher Education
- Book Promotion & Copyright Division, B.2/W.3, Curzon Road Barracks, Kasturba Gandhi Marg, New Delhi 110 001
- **Telephone**: (91-11) 338 2549, 338 4687, 338 2436, 338 2458, 338 4387
Need of the Hour

Demystify the IPRs
- Understand them
- Create them
- Identify them
- Document them
- Register them
- Exploit them; and
- Protect them
THANK YOU