

COPYRIGHT LAW IN INDIA: AN OVERVIEW

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ABSTRACT

Literary and artistic creation is a unique feature of human beings. This intellectual creativity has been recognized and protected by law in the form of copyright. It is an exclusive right given by law for certain term to an author, composer etc. to print publish and sell copies of his original work. God gifted to a human being is observation and thinking power which lead human to do huge amount of search physical and biological resources on the earth. With using this imagination and creativity, human has been producing many arts or products for changing needs of his and society's interest comfort and convenience which is important for economic development of country. Intellectual property includes patents, Designs, Trademarks, copyrights, confidential information and industrial. We have already noted that there was no concept of copyright in India until the Mughal period, and it was the arrival of the British on the Indian soil that brought the concept here. Copyright is a creation of the statute. No person is entitled to copyright or any similar right in any work except those provided under the copyright Act. Copyright law is in essence, concerned with the negative right of preventing copying of physical material existing in the field of literature and the arts. Its subject is to protect the writer or the creator of the original work from the unauthorized reproduction or exploitation of his materials. The right also extends to prevent other from exercising without authority any other form of right, attached to copyright. The law of Copyright Act, 1957 has been giving protection to literary dramatic or musical works, artists, cinematograph film and sound record. The doctrine of ubi jus ibi remedium i.e. where there is right, there is remedy, is well established principle, which is also applicable in copyright law. In this paper the author focus on the laws of copyright in Indian aspect.

Keywords: Copyright, Intellectual Property, Ownership, Globalisation, Infringement, Materialistic.

Introduction

In this era of globalization, specially after the establishment of WTO, intellectual property laws assume much importance, white disproportionate to what they actually deserve. The reason might be the feeling that advance industrial societies are undergoing a fundamental transfer nation from capital and labour based economic to knowledge economic as an aftermath of the recent information technology revolution¹. Intellectual properties are key to the economic prosperity of a nation. India emerging as develop nation has rightly placed intellectual property and intellectual property rights in the forefront. Creation, enjoyment and 'accumulation of property' has been a Central activity of human life. Out of four objectives of human life, that is 'Artha', 'Kama', 'Dharma' and 'Moksha' the first objective is i.e. money. These are the fundamental requirements of sustaining material life.

Origin and Growth

Copyright is not an origin of India. In India there was nothing of this sort until after the advent of the British. Those well versed in the knowledge of the highest order the Vedas and Upanishads in India firmly believed that they were just the means through which the Parmeshwar (the Almighty) was doing things in this world. Therefore, whatever they did they took it as God's grace upon them and not any exclusive work on their part.

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Geeta, next only to Vedas in epitomizing India Philosophy states that the absence in the door of desire to claim it as his own doing is the symbol of attainment of the ultimate knowledgeⁱⁱ. Since he does everything through the means that is human beings every creative work in olden times would be done in the name of God and for the service to humanity. The creator as has been said never had a desire to claim the work as his own this, however, is not to ignore the fact that there was no dearth of people who would gladly admit and announce the works done by them as truly theirs.ⁱⁱⁱ

The point which we want to underline here is that owing to the attitude hinted above a seer would humble try to make it clear to his disciples that whatever had been created through him was purely a work of God and he had been fortunate enough to be in this role that is he would never will to claim and exercise his right of ownership over such creation's which he believed were the fruits of God's grace on him Besides in early ages there were no means but memory of the scholars to preserve these scholarly works for posterity .

In such a scenario there was very chance that (a) the work is gradually forgotten and is ultimately fully out of memory after a gap of grew generations and loses its existence or (b) the work while in its journey from one generation to other is abridged or modified or enriched by the knowledge and experience of those whose memories were carriers of the work with the passage of times or (c) the work gets a recognition as that of some scholar other than the real author^{iv}.

We note here in this regard that Indian literature is replete with instances where there is non-controversial answer to 'whose', what's and when regarding a work as a result we are led only by speculative or argumentative ideas of modern scholars on such questions which more often than not leave the reader almost dumb founded and he gets no certain and uncontroversial information on such points. Several most valuable and great works do not have their authors identified or dates fixed even several countries after their inception. There are also a number of sholas which are very commonly used but nobody knows for sure who had composed the same^v.

Thus, the point we must bear in mind is that to the Indian scholars in ancient times God was the source of every doing or being infact, he was only creator hence the tendency of scholars to Sum authorship rights.

This dispassionate attitude of author so far as claiming the right of authorship is concerned persisted in India throughout the Mughal Empire as well. The Urdu language which changes into being as a result of an amalgamation of Indian and Arabian language and which has by this time a vast literature of its own also reflects similar trends Because there are several books poems stories etc. the authorship of which is yet undecided.

However, in modern times the man has constantly tried to come out of the shadow of God and nature and to establish his own supremacy over the world and all that the world is made up of. In such a scenario he takes pride in being a creator of things this national shift in what is known as a creative work as also the right to ownership thereof lies at the very foundation of intellectual property rights in general and copyright in particular. It may also be looked upon as the victory of materialistic approach vis-a-vis religious and respectful approach towards the world of things the man finds himself in^{vi}.

Thus, copyright is creator's exclusive right recognized by law for a certain term of years to publish and sell copies of his original work. In *Tata Consultancy Services Vs State of AP*^{vii}, the Supreme Court has made it clear that copyright remains with originator of the intellectual property (in this case the software).

The creator must have the first right to be benefited by any commercial use of his creation. The law recognizes this position. Legally speaking copyright means the exclusive right to do or authorize others to do certain to do or authorize others to do certain acts in relation to literary dramatic or musical works artistic work cinematograph cation or sound recording.

Copyright law in India can be traced back to the time when the East India Company decided to extend the English Copyright Law, 1847 to territories which were under its control.

This law in 1914 was replaced by the Indian Copyright Act which was based on the 1911 UK Copyright Act. The act was however different from the UK copyright Act 1911 in two was firstly penal sections were introduced for copyright infringement and secondly the scope of the terms copyright was modified however the first effective Copyright Act was passed in 1974. It was a modified version of the British Copyright Act, 1911. It was a small Act containing 15 sections and one schedule. The comprehensive law on copyright was enacted by the Indian Parliament in 1957.

WIPO and Indian Copyright Act

The Act it may be noted has been amended five times since 1957 i.e. in the years 1983, 1984, 1992, 1994 and 1999. If anything, it simply reflects the ever growing regime of copyright in India and the world because these frequent changes are brought about by similar developments in this field on a global scale. India being a developing nation, has always tried to keep herself abreast of changing times and bring her laws in conformity with the best laws on the subject in the world.

Indian Copyright law is at parity with the international standards contained in TRIPS. The Indian Copyright Act, 1957 pursuant to the amendments in 1999, 2002, and 2012, fully reflects the Berne Convention for protection of literary and Artistic Works 1886 and the Universal Copyright Convention to which India is a party. India for producers of phonograms and is an active member of the World Intellectual Property Organization (WIPO) and United Nations Educational, Scientific and Cultural Organization (UNESCO).^{viii}

Registration

In India the registration of copyright is not mandatory as the registration is treated as mere recordal of a fact. The registration does not create or confer any right and is not a prerequisite for initiating action against infringement. Despite the fact that the registration of copyright is not mandatory in India and its protectable through the international copyright order 1999, it is advisable to register the copyright as the copyright registration certificate is accepted as a "proof of ownership" in court and by police authorities and acted upon smoothly by them.

Remedies

The law of copyright in India not only provides for civil remedies in the form of permanent injunction, damages, accounts of profits, delivery of the infringing material for destruction and cost of the legal proceeding etc. But also makes instances of infringement of copyright, a cognizable offence punishable with imprisonment for a term which shall not be less than Rs.50,000/- but may extend to Rs.2,00,000.^{ix} The Indian Copyright Act, 1957 gives power to the police authorities to register the complaint (first information report that is FIR) and act on its own to arrest the accused, search the premises of the accused and seize this the infringing material without any interventions of the court.

Copyright in any work present or future can only be assigned or licensed in writing by the copyright owner or his duly authorized agents.

Duration

In the case of original literary, dramatic, musical and artistic works the durations of copyright is the lifetime of the author or artist and 60 years counted from the year following the death of the author.

In the case of cinematograph films, sound recordings, posthumous, anonymous and pseudonymous publications, works of Government and works of international organization are protected for a period of 60 years which is counted from the year following the date of publication.^x

Conclusion

The provision of the above mentioned and equipment show that the copyright protection in India is strong and effective enough to take care of the copyright of the concerned person. The protection extends not only the copyright as understood in the traditional sense but also in its modern aspect. Online copyright issues are also adequately protected through not in clear and express terms.

To meet the ever-increasing challenges as posed by the changed circumstances and latest technology, the existing law can be so interpreted that all facts of copyright are adequately covered. This can be achieved by applying the purposive interpretation technique, which requires the existing law to be interpreted in such a manner as justice is done in the facts and circumstances of the case.

Alternatively, existing laws should be amended as per the requirements of the situation. The existing law can also be supplemented with newer ones, specifically touching and dealing with the contemporary issues and problems. The Information Technology Act, 2000 requires a new outlook and orientation, which can be effectively used to meet the challenges based on the intellectual property rights regime in this age of information technology. Till the contrary has such a sound and strong legal base for the protection of intellectual property rights, the judiciary should play an active role in the protection of these rights including the copyrights. The situation is, however, not as alarming as it is perceived, and the existing legal system can effectively take care of any problems associated with copyright infringement.

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