

Copyright Act,1957

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CHAPTER I – Preliminary

1. Short title, extent and commencement

(1) This act may be called the Copyright Act, 1957

(2) It extends to the whole of India

(3) It shall come into force on such date ¹ as the Central Government may, by notification in the Official Gazette, appoint.

1. Came into force on 21-1-1958, vide S.R.O. 269, dated 21st January, 1958, published in the Gazette of India, Extra., Pt. II, Sec. 3, p. 167.

2. Interpretation –

In this Act, unless the context otherwise requires,—

(a) “adaptation” means,—

(i) in relation to a dramatic work, the conversion of the work into a non-dramatic work;

(ii) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise;

(iii) in relation to a literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical; ¹[***]

(iv) in relation to a musical work, any arrangement or transcription of the work;²[and]

²[(v) in relation to any work, any use of such work involving its rearrangement or alteration;]

(b) ³[“work of architecture”] means any building or structure having as artistic character or design, or any model for such building or structure;

(c) “artistic work” means,—

(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;

(ii) a ⁴[work of architecture]; and

(iii) any other work of artistic craftsmanship;

(d) “author” means,—

(i) in relation to a literary or dramatic work, the author of the work;

(ii) in relation to a musical work, the composer;

(iii) in relation to an artistic work other than a photograph, the artist;

(iv) in relation to a photograph, the person taking the photograph;

⁵[(v) in relation to a cinematograph film or sound recording, the producer; and

(vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;]

⁶[(dd) “broadcast” means communication to the public—

(i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or

(ii) by wire, and includes a re-broadcast;]

(e) “calendar year” means the year commencing on the 1st day of January;

⁷[(f) “cinematograph film” means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and “cinematograph” shall be construed as including any work produced by any process analogous to cinematography including video films;]

⁸[(ff) “communication to the public” means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.

Explanation.—For the purposes of this clause, communication through satellite or cable or any

other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public;

(ffa) “composer”, in relation to a musical work, means the person who composes the music regardless of whether he records it in any form of graphical notation;

(ffb) “computer” includes any electronic or similar device having information processing capabilities;

(ffc) “computer programme” means a set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result;

(ffd) “copyright society” means a society registered under sub-section (3) of section 33;]

(g) “delivery”, in relation to a lecture, includes delivery by means of any mechanical instrument or by 9[broadcast];

(h) “dramatic work” includes any piece of recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting, form of which is fixed in writing or otherwise but does not include a cinematograph film;

¹⁰[(hh) “duplicating equipment” means any mechanical contrivance or device used or intended to be used for making copies of any work;]

(i) “engravings” include etchings, lithographs, wood-cuts, prints and other similar works, not being photographs;

(j) “exclusive licence” means a licence which confers on the licensee or on the licensee and persons authorised by him, to the exclusion of all other persons (including the owner of the copyright) any right comprised in the copyright in a work, and “exclusive licensee” shall be construed accordingly;

(k) “Government work” means a work which is made or published by or under the direction or control of—

(i) the Government or any department of the Government;

(ii) any Legislature in India;

(iii) any Court, Tribunal or other judicial authority in India;

¹¹[(l) “Indian work” means a literary, dramatic or musical work,—

(i) the author of which is a citizen of India; or

(ii) which is first published in India; or

(iii) the author of which, in the case of an unpublished work is, at the time of the making of the work, a citizen of India;]

¹²[(m) “infringing copy” means,—

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;

(iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer’s right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance,

if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;]

(n) “lecture” includes address, speech and sermon;

¹³[(o) “literary work” includes computer programmes, tables and compilations including computer ¹⁴[databases];]

¹³[(p) “musical work” means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music;]

¹³[(q) “performance”, in relation to performer’s right, means any visual or acoustic presentation made live by one or more performers;]

¹³[(qq) “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;]

¹⁵[***]

(s) “photograph” includes photo-lithograph and any work produced by any process analogous to photography but does not include any part of a cinematograph film;

(t) “plate” includes any stereotype or other plate, stone, block, mould, matrix, transfer, negative ¹⁶[duplicating equipment] or other device used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which ¹⁷[sound recording] for the acoustic presentation of the work are or are intended to be made;

(u) “prescribed” means prescribed by rules made under this Act;

¹⁸[(uu) “producer”, in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work;]

¹⁹[***]

²⁰[***]

²¹[(x) “reprography” means the making of copies of a work, by photocopying or similar means;

(xx) “sound recording” means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is the method by which the sounds are produced;]

(y) “work” means any of the following works, namely:—

(i) a literary, dramatic, musical or artistic work;

(ii) a cinematograph film;

(iii) a ²²[sound recording];

(z) “work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors;

(za) “work of sculpture” includes casts and models.

COMMENTS

Literary work: Scope

The definition of “literary work” given in section 2(o) of the Act is an inclusive definition and,

therefore, not exhaustive. Its “literary work” includes tables and compilations. Dissertation is, therefore, prima facie a literary work. The expression “work” inter alia means a literary work. The word “original” does not mean that the work must be the expression of original or invented thought. Copyright Acts are not concerned with the origin of ideas, but with the expression of thoughts and in the case of “literary work” with the expression of thoughts in print or writing. The originality which is required relates to the expression of the thought but the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work that it should originate from the author, Fateh Singh Mehta v. O.P. Singhal, AIR 1990 Raj 8.

Video tape within the definition of cinematograph film

In view of the extended definition of a cinematograph film in section 2 (f), which includes any process analogous to cinematography, the video tape had to be taken to come within the definition of cinematograph film; Entertaining Enterprises v. State of Tamil Nadu, AIR 1984 Mad 278.

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- 1. The word “and” omitted by Act 38 of 1994, sec. 2 (w.e.f. 10-5-1995).**
 - 2. Ins. by Act 38 of 1994, sec. 2 (w.e.f. 10-5-1995).**
 - 3. Subs. by Act 38 of 1994, sec. 2, for “architectural work of art” (w.e.f. 10-5-1995).**
 - 4. Subs. by Act 38 of 1994, sec. 2, for “architectural work of art” (w.e.f. 10-5-1995).**
 - 5. Subs. by Act 38 of 1994, sec.2, for sub-clauses (v) and (vi) (w.e.f. 10-5-1995).**
 - 6. Ins. by Act 23 of 1983, sec. 3 (w.e.f. 9-8-1984).**
 - 7. Subs. by Act 38 of 1994, sec. 2, for clause (f) (w.e.f. 10-5-1995).**
 - 8. Subs. by Act 38 of 1994, sec. 2, for clause (ff) (w.e.f. 10-5-1995). Earlier clause (ff) was inserted by Act 23 of 1983, sec. 3 (w.e.f. 9-8-1984).**
 - 9. Subs. by Act 23 of 1983, sec. 2, for “radio-diffusion” (w.e.f. 9-8-1984).**
 - 10. Ins. by Act 65 of 1984 sec. 2 (w.e.f. 8-10-1984).**
 - 11. Subs. by Act 23 of 1983, sec. 3, for clause (l) (w.e.f. 9-8-1984).**
 - 12. Subs. by Act 38 of 1994, sec. 2, for clause (m) (w.e.f. 10-5-1995).**

13. Subs. by Act 38 of 1994, sec. 2 (w.e.f. 10-5-1995).
14. Subs. by Act 49 of 1999, sec. 2, for “data basis” (w.e.f. 15-1-2000).
15. Clause (r) omitted by Act 38 of 1994, sec. 2 (w.e.f. 10-5-1995).
16. Ins. by Act 65 of 1984, sec. 2 (w.e.f. 8-10-1984).
17. Subs. by Act 38 of 1994, sec. 2 (xii), for “record” (w.e.f. 10-5-1995).
18. Ins. by Act 38 of 1994, sec. 2 (w.e.f. 10-5-1995).
19. Clause (v) omitted by Act 23 of 1983, sec.3 (w.e.f. 9-8-1984).
20. Clause (w) omitted by Act 38 of 1994, sec. 2 (w.e.f. 10-5-1995).
21. Subs. by Act 38 of 1994, sec. 2, for clause (x) (w.e.f. 10-5-1995).
22. Subs. by Act 38 of 1994, sec. 2, for “record” (w.e.f. 10-5-1995).

3. Meaning of publication –

¹ Meaning of publication –For the purposes of this Act, “publication” means making a work available to the public by issue of copies or by communicating the work to the public.

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1. Subs. by Act 38 of 1994, sec. 3, for section 3 (w.e.f. 10-5-1995).

4. When work not deemed to be published or performed in public-

Except in relation to infringement of copyright, a work shall not be deemed to be published or performed in public, if published, or performed in public, without the licence of the owner of the copyright.

5. When work deemed to be first published in India-

For the purposes of this Act, a work published in India shall be deemed to be first published in India, notwithstanding that it has been published simultaneously in some other country, unless such other country provides a shorter term of copyright for such work, and a work shall be deemed to be published simultaneously in India and in another country does not exceed thirty days or such other period as the Central Government may, in relation to any specified country, determine.

6. Certain disputes to be decide by Copyright Board -

¹Certain disputes to be decide by Copyright Board -If any question arises,-

(a) Whether a work has been published or as to the date on which a work was published for the purposes of Chapter V, or

(b) Whether the term of copyright for any work is shorter in any other country than that provided in respect of that work under this Act, it shall be referred to the Copyright Board constituted under Section 11 whose decision thereon shall be final:

Provided that if in the opinion of the Copyright Board, the issue of copies or communication to the public referred to in Section 3 was of an insignificant nature, it shall not be deemed to be publication for the purposes of that section.

1. Subs. by Act 38 of 1994, sec. 4, for section 6 (w.e.f. 10-5-1995).

7. Nationally of author were the making of unpublished work is extended over considerable period-

Where, in the case of an unpublished work the making of the work is extended over a considerable period, the author of the work shall, for the purposes of this Act, be deemed to be a citizen of, or domiciled in, that country of which he was a citizen or wherein he was domiciled during any substantial part of that period.

8. Domicile of corporations –

For the purposes of this Act, a body corporate shall be deemed to be domiciled in India if it is incorporated under any law in force in India.

CHAPTER II – Copyright Office And Copyright Board

9. Copyright Office -

(1) There shall be established for the purposes of this Act an office to be called the Copyright Office.

(2) The Copyright Office shall be under the immediate control of the Registrar of Copyrights who shall act under the superintendence and direction of the Central Government.

(3) There shall be seal for the Copyright Office.

10. Registrar and Deputy Registrars of Copyrights -

(1) The Central Government shall appoint a Registrar of Copyrights and may appoint one or more Deputy Registrars of Copyrights.

(2) A Deputy Registrar of Copyrights shall discharge under the superintendence and direction of the Registrar of Copyrights such functions of the Registrar under this Act as the Registrar of Copyrights such functions of the Registrar under this Act as the Registrar may, from time to time, assign to him : and any reference in this Act to the Registrar of Copyrights shall include a reference to a Deputy Registrar of Copyrights when so discharging any such functions.

11. Copyright Board -

(1) As soon as may be after the commencement of this Act, the Central Government shall constitute a Board to be called the Copyright Board which shall consist of a Chairman and not less than two or more than ¹[fourteen] other members.

(2) The Chairman and other members of the Copyright Board shall hold office for such period and on such terms and conditions as may be prescribed.

(3) The Chairman of the Copyright Board shall be a person who is, or has been, a Judge of ²[***] a High Court or is qualified for appointment as a Judge of High Court.

(4) The Registrar of Copyrights shall be the Secretary of the Copyright Board and shall perform

such functions as may be prescribed.

1. Subs. by Act 38 of 1994, sec. 5, for “eight” (w.e.f. 10-5-1995).

2. The words “the Supreme Court or” omitted by Act 38 of 1994, sec. 5 (w.e.f. 10-5-1995).

12. Powers and procedure of Copyright Board-

(1) The Copyright Board shall, subject to any rules that may be under this Act, have power to regulate its own procedure, including the fixing of places and times of its sittings:

Provided that the Copyright Board shall ordinarily hear any proceeding instituted before it under this Act within the zone in which, at the time of the institution of the proceeding, the person instituting the proceeding actually and voluntarily resides or carries on business or personally work for gain.

Explanation.—In this sub-section “zone” means a zone specified in section 15 of the States Reorganisation Act, 1956 (37 of 1956).

(2) The Copyright Board may exercise and discharge its powers and functions through Benches constituted by the Chairman of the Copyright Board from amongst its members, each Bench consisting of not less than three members:

¹[Provided that, if the Chairman is of opinion that any matter of importance is required to be heard by a larger Bench, he may refer the matter to a special Bench consisting of five members.]

(3) If there is a difference of opinion among the members of the Copyright Board or any Bench thereof in respect of any matter coming before it for decision under this Act, the opinion of the majority shall prevail:

²[Provided that where there is no such majority, the opinion of the Chairman shall prevail.]

(4) ³[The Chairman] may authorise any of its members to exercise any of the powers conferred on it by section 74 and any order made or act done in exercise of those powers by the member so authorised shall be deemed to be the order or act, as the case may be, of the Board.

(5) No member of the Copyright Board shall take part in any proceedings before the Board in respect of any matter in which he has a personal interest.

(6) No act done or proceeding taken by the Copyright Board under this Act shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Board.

(7) The Copyright Board shall be deemed to be a Civil Court for the purposes of ⁴[sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974)] and all proceedings before the Board shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (45 of 1860).

1. Ins. by Act 38 of 1994, sec. 6 (w.e.f. 10-5-1995).

2. Subs. by Act 38 of 1994, sec. 6, for proviso (w.e.f. 10-5-1995).

3. Subs. by Act 38 of 1994, sec. 6, for “The Copyright Board” (w.e.f. 10-5-1995).

4. Subs. by Act 23 of 1983, sec. 6, for “sections 480 and 482 of the Code of Criminal Procedure, 1898 (5 of 1898)” (w.e.f. 9-8-1984).

CHAPTER III – Copyright

13. Works in which copyright subsists-

(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—

(a) original literary, dramatic, musical and artistic works;

(b) cinematograph films; and

(c) ¹[sound recording].

(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 40 or section 41 apply, unless,—

(i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;

(ii) in the case of an unpublished work other than ²[work of architecture], the author is at the date of the making of the work a citizen of India or domiciled in India; and

(iii) in the case of ²[work of architecture], the work is located in India.

Explanation.—In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist—

(a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;

(b) in any ¹[sound recording] made in respect of a literary, dramatic or musical work, if in making the ¹[sound recording], copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a ¹[sound recording] shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or, as the case may be, the ¹[sound recording] is made.

(5) In the case of ²[work of architecture], copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

COMMENTS

Common property are not the subject of copyright

No doubt the central theme of the articles published by the second plaintiff and that of the drama and movie is the same, though the emphasis in the drama and the movie is more on human bondage, particularly of Indian women. The articles published by Ashwini Sarin also contain an autobiographical account of the part actually played by him in the affair. He has presented the whole affair in his own style. But that at the most would give the plaintiff copyright in respect of these articles. There cannot, however, be a copyright in an event which has actually taken place. There is a distinction between the materials upon which one claiming copyright has worked and the product of the application of his skill, judgment, labour and literary talent to these materials. Ideas, information, natural phenomena and events on which an author expends his skill, labour capital, judgment and literary talent are common property and are not the subject of copyright; *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Dr. Jagmohan Mundhara*, AIR 1985 Bom 229.

Copyright in translation of a work

There is copyright in translation of a work; *Blackwood & Sons Ltd. v. Parsuraman*, AIR 1959 Mad

410.

Meaning 'literary work'

The words 'literary work' cover work which is expressed in print or writing, irrespective of the question whether the quality or style is high. The word 'literary' seems to be used in a sense somewhat similar to the use of the word 'literature' in political or electioneering literature and refers to written or printed matter; *University of London Press Ltd. v. University Tutorial Press Ltd.*, (1916) 2 ChD 601.

Original work

The syllabi issued in a circular by the Board of Secondary Education of the State, containing guidelines of authors and publishers of textbooks cannot be taken as original work being the product of labour, skill and capital of some men engaged by the Board; *Nag Book House v. State of West Bengal*, AIR 1982 Cal 245.

Work of cine artist and performance as an actor

The work of a cine artist, his performance as an actor in a cinematograph film does not fall within the definition of "cinematograph film" to be found in section 2(f), and hence, is not protected under this Act. It is the cinematograph film that enjoys protection along with its sound track; *Fortune Films v. Dev Anand*, AIR 1979 Bom 17.

1. Subs. by Act 38 of 1994, sec. 2, for "record" (w.e.f. 10-5-1995).

2. Subs. by Act 38 of 1994, sec. 2, for "architectural work of art" (w.e.f. 10-5-1995).

14. Meaning of copyright-

¹[14. Meaning of copyright.—For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

(a) in the case of a literary, dramatic or musical work, not being a computer programme,—

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation of the work;

(vi) to make any adaptation of the work;

(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme,—

(i) to do any of the acts specified in clause (a);

²[(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.]

(c) in the case of an artistic work,—

(i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;

(ii) to communicate the work to the public;

(iii) to issue copies of the work to the public not being copies already in circulation;

(iv) to include the work in any cinematograph film;

(v) to make any adaptation of the work;

(vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) in the case of a cinematograph film,—

(i) to make a copy of the film including a photograph of any image forming part thereof;

(ii) to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the film to the public;

(e) in the case of a sound recording,—

(i) to make any other sound recording embodying it;

(ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the sound recording to the public.

Explanation.— For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.]

1. Subs. by Act 38 of 1994, sec. 7, for section 14 (w.e.f. 10-5-1995).

2. Subs. by Act 49 of 1999, sec. 3, for sub-clause (ii) (w.e.f. 15-1-2000).

15. Special provision regarding copyright in designs registered or capable of being registered under the Designs Act, 1911.-

15. Special provision regarding copyright in designs registered or capable of being registered under the ¹ [***] Designs Act, 1911. —(1) Copyright shall not subsist under this Act in any design which is registered under the ¹ [***] Designs Act, 1911 (2 of 1911)2.

(2) Copyright in any design, which is capable of being registered under the ¹ [***] Designs Act, 1911 (2 of 1911)², but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright, or, with his licence, by any other person.

1.The words “Indian Patents and” omitted by Act 23 of 1983, sec. 7 (w.e.f. 9-8-1984).

2.See now the Designs Act, 2000 (16 of 2000).

16. No copyright except as provided in this Act-

No person shall be entitled to copyright or any similar right 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.

CHAPTER IV – Ownership of Copyright and the Rights of the Owner

The Copyright Act, 1957 ¹

17. First owner of copyright -

Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that—

(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

(b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in

the absence of any agreement to the contrary, be the first owner of the copyright therein;

²[(cc) in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;]

(d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

²[(dd) in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

Explanation. —For the purposes of this clause and section 28A, “public undertaking” means—

- (i) an undertaking owned or controlled by Government; or
- (ii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or
- (iii) a body corporate established by or under any Central, Provincial or State Act;]

(e) in the case of a work to which the provisions of section 41 apply, the international organisation concerned shall be the first owner of the copyright therein.

COMMENTS

No ownership in case of mere ‘idea’

A person may have a brilliant idea for a story, or for a picture, or for a play, and one which, so far as he is concerned, appears to be original, but, if he communicates that idea to an author or a playwright or an artist, the production which is the result of the communication of the idea to the author or the artist or the playwright is the copyright of the person who has clothed the idea in a form, whether by means of a picture, a play, or a book, and the owner of the idea has no rights in the product; *Donoghue v. Allied Newspaper Ltd.*, (1937) 3 ChD 503.

Producer can defeat rights of music composer or lyricist

The core of the question, whether the producer of a cinematograph film can defeat the right of the composer of music or lyricist by engaging him. The key to the solution of this question lies in the

provisos (b) and (c) to section 17 of the Act reproduced

above which put the matter beyond doubt. According to the first of these provisos, viz., proviso (b), when a cinematograph film producer commissions a composer of music or a lyricist for reward or valuable consideration for the purpose of making his cinematograph film, or composing music or lyric therefor i.e., the sounds for incorporation or absorption in the sound track associated with the film, which as already indicated, are included in a cinematograph film, he becomes the first owner of the copyright therein and no copyright subsists in the composer of the lyric or music so composed unless there is a contract to the contrary between the composer of the lyric or music on the one hand and the producer of the cinematograph film on the other. The same result follows according to aforesaid proviso (c) if the composer of music or lyric is employed under a contract of service or apprenticeship to compose the work. It is, therefore, crystal clear that the rights of a music composer or lyricist can be defeated by the producer of a cinematograph film in the manner laid down in provisos (b) and (c) of section 17 of the Act; *Indian Performing Right Society v. Eastern India Motion Picture Assn*, AIR 1977 SC 1443.

Right in a drama vests in author

The right in a drama by an author written for a society, is, in the absence of a clear agreement to the contrary, vested in the author; *Lama Prasad v. Nabahash*, AIR 1967 Ass 70.

Valuable consideration

Where a person is under an obligation to do something, and in discharge of such obligation, he transfers a certain interest, such transfer is for valuable consideration; *Chidambaraiyer v. Renga*, AIR 1966 SC 193.

1. Subs. by Act 15 of 2008, sec. 2, for sec. 8 (w.e.f. 15-4-2008). Section 8, before substitution, stood as under:

“8. Payment of medical bonus.—Every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of two hundred and fifty rupees, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.”.

2. Ins. by Act 23 of 1983, sec. 8 (w.e.f. 9-8-1984).

18. Assignment of copyright -

(1) The owner of the copyright in an existing work or the prospective owner of the copyright in a

future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof.

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.

(2) Whereas the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights to assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

(3) In this section, the expression, "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

COMMENTS

(i) A mere agreement to assign does not operate to pass the property right but gives equitable rights, i.e., it operates as an equitable assignment of copyright as and when the work comes into existence; *Reoti Saran Sharma v. Numero Uno International*, 1995 PTR 132.

(ii) Where there is substantial similarity and the other party has no evidence to rebut the same in his favour, then there is infringement of copyright; *Godrej Soaps (P) Ltd. v. Dora Cosmetics Co.*, 2001 PTC 407 (Del).

19. Mode of assignment –

¹ (1)] No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or his duly authorised agent.

² [³ (2)The assignment of copyright in nay work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment.

(3) The assignment of copyright in any work shall also specify the amount of royalty payable, if any, to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

(4) Where the assignee does not exercise the rights assigned to him under any of the other sub sections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

(5) If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

(6) If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.

(7) Nothing in sub section (2) or sub section (3) or sub section (4) or sub section (5) or sub section (6) shall be applicable to assignments made before the coming into force of the Copyright (Amendment) Act, 1994.]

1. Section 19 re-numbered as sub-section (1) thereof by Act 23 of 1983, sec. 9 (w.e.f. 9-8-1984).

2. Sub-section (2) ins. by Act 23 of 1983, sec. 9 (w.e.f. 9-8-1984).

3. Subs. by Act 38 of 1994, sec. 8, for sub-section (2) (w.e.f. 10-9-1995).

19-A. Dispute with respect to assignment of copyright -

¹[19A. Disputes with respect to assignment of copyright.—(1) If an assignee fails to make sufficient exercise of the rights assigned to him, and such failure is not attributable to any act or omission of the assignor, then, the Copyright Board may, on receipt of a complaint from the assignor and after holding such inquiry as it may deem necessary, revoke such assignment.

(2) If any dispute arises with respect to the assignment of any copyright, the Copyright Board may, on receipt of a complaint from the aggrieved party and after holding such inquiry as it considers necessary, pass such order as it may deem fit including an order for the recovery of any royalty payable:

Provided that Copyright Board shall not pass any order under this sub-section to revoke the assignment unless it is satisfied that the terms of assignment are harsh to the assignor in case the assignor is also the author:

Provided further that no order of revocation of assignment under this sub-section, shall be made within a period of five years from the date of such assignment.]

1. Subs. by Act 38 of 1994, sec. 9, for section 19A (w.e.f. 10-5-1995). Earlier section 19A

was inserted by Act 23 of 1983, sec. 10 (w.e.f. 9-8-1984).

20. Transmission of copyright in manuscript by testamentary disposition -

Where under a bequest a person is entitled to the manuscript of a literary, dramatic or musical work, or to an artistic work, and the work was not published before the death of the testator, the bequest shall, unless the contrary intention is indicated in the testator's will or any codicil thereto, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

Explanation- In this section, the expression "manuscript" means the original document embodying the work, whether written by hand or not.

21. Right of author to relinquish copyright -

(1) The author of a work may relinquish all or any of the rights comprised in the copyright in the work by giving notice in the prescribed form to the Registrar of Copyrights and thereupon such rights shall, subject to the provision of sub section (3), cease to exist from the date of the notice.

(2) On receipt of a notice under sub section (1), the Registrar of Copyrights shall cause it to be published in the Official Gazette and in such other manner, as he may deem fit.

(3) The relinquishment of all or any of the rights comprised in the copyright in a work shall not affect any rights subsisting in favour of any person on the date of the notice referred to in sub section. (1).

CHAPTER V – Term of Copyright

22. Term of copyright in published literary, dramatic, musical and artistic works -

Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author until ¹[sixty years] from the beginning of the calendar year next following the year in which the author dies.

Explanation.—In this section the reference to the author shall, in the case of a work of joint authorship, be construed as a reference to the author who dies last.

COMMENTS

Subsistence of copyright by virtue of section 22, the copyright in the work of grandfather could not subsist 50 years after his death; *Khemraj v. Garg & Co.*, AIR 1975 Del 130.

1. Subs. by Act 13 of 1992, sec. 2, for “fifty years” (w.r.e.f. 28-12-1991).

23. Term of copyright in anonymous and pseudonymous works -

(1) In the case of a literary, dramatic, musical or artistic work (other than a photograph), which is published anonymously or pseudonymously, copyright shall subsist until ¹[sixty years] from the beginning of the calendar year next following the year in which the work is first published:

Provided that where the identity of the author is disclosed before the expiry of the said period, copyright shall subsist until ¹[sixty years] from the beginning of the calendar year following the year in which the author dies.

(2) In sub-section (1), references to the author shall, in the case of an anonymous work of joint authorship, be construed,—

(a) where the identity of one of the authors is disclosed, as references to that author;

(b) where the identity of more authors than one is disclosed, as references to the author who dies last from amongst such authors.

(3) In sub-section (1), references to the author shall, in the case of a pseudonymous work of joint authorship, be construed,—

(a) where the names of one or more (but not all) of the authors are pseudonymous and his or their identity is not disclosed, as references to the author whose name is not a pseudonym, or, if the names of two or more of the authors are not pseudonyms, as references to such of those authors who dies last;

(b) where the names of one or more (but not all) of the authors are pseudonyms and the identity of one or more of them is disclosed, as references to the author who dies last from amongst the authors whose names are not pseudonyms and the authors whose names are pseudonyms and

are disclosed; and

(c) where the names of all the authors are pseudonyms and the identity of one of them is disclosed, as references to the author whose identity is disclosed or if the identity of two or more of such authors is disclosed, as references to such of those authors who dies last.

Explanation.—For the purposes of this section, the identity of an author shall be deemed to have been disclosed, if either the identity of the author is disclosed publicly by both the author and the publisher or is otherwise established to the satisfaction of the Copyright Board by that author.

1. Subs. by Act 13 of 1992, sec. 2, for “fifty years” (w.r.e.f. 28-12-1991).

24. Term of copyright in posthumous works –

(1) In the case of a literary, dramatic or musical work or an engraving, in which copyright subsists at the date of the death of the author, or in the case of any such work of joint authorship, at or immediately before the date of the death of the author who dies last, but which, or any adaptation of which, has not been published before that date, copyright shall subsist until ¹[sixty years] from the beginning of the calendar year next following the year in which the work is first published or, where an adaptation of the work is published in any earlier year, from the beginning of the calendar year next following that year.

(2) For the purposes of this section a literary, dramatic or musical work or an adaptation of any such work shall be deemed to have been published, if it has been performed in public or if any ² [sound recording] made in respect of the work have been sold to the public or have been offered for sale to the public.

1. Subs. by Act 13 of 1992, sec. 2, for “fifty years” (w.r. e.f. 28-12-1991).

2. Subs. by Act 38 of 1994, sec. 2, for “record” (w.e.f. 10-5-1995).

25. Term of copyright in photographs –

In the case of a photograph, copyright shall subsist until ¹[sixty years] from the beginning of the calendar year next following the year in which the photograph is published.

1. Subs. by Act 13 of 1992, sec. 2, for “fifty years” (w.r. e.f. 28-12-1991).

26. Term of copyright in cinematograph films-

In the case of a cinematograph film, copyright shall subsist until ¹[sixty years] from the beginning of the calendar year next following the year in which the film is published.

1. Subs. by Act 13 of 1992, sec. 2, for “fifty years” (w.r. e.f. 28-12-1991).

27. Term of copyright in sound recordings –

27. Term of copyright in ²[sound recording].—In the case a ²[sound recording] copyright shall subsist until ¹[sixty years] from the beginning of the calendar year next following the year in which the ²[sound recording] is published.

1. Subs. by Act 13 of 1992, sec. 2, for “fifty years” (w.r. e.f. 28-12-1991).

2.Subs. by Act 38 of 1994, sec. 2, for “record” (w.e.f. 10-5-1995).

28. Term of copyright in Government works -

In the case of Government work, where Government is the first owner of the copyright therein, copyright shall subsist until ¹[sixty years] from the beginning of the calendar year next following the year in which the record is first published.

1.Subs. by Act 13 of 1992, sec. 2, for “fifty years” (w.r. e.f. 28-12-1991).

28-A. Term of copyright in works of public undertakings-

¹[28A. Term of copyright in works of public undertakings.—In the case of a work, where a public undertaking is the first owner of the copyright therein, copyright shall subsist until ²[sixty years] from the beginning of the calendar years next following the year in which the work is first published.]

1. Ins. by Act 23 of 1983, sec. 11 (w.e.f. 9-8-1984).

2. Subs. by Act 13 of 1992, sec. 2, for “fifty years” (w.r. e.f. 28-12-1991).

29. Term of copyright in works of international organisation-

In the case of a work of any international organisation to which the provisions of section 41 apply, copyright shall subsist until ¹[sixty years] from the beginning of the calendar year next following the year in which the work is first published.

1. Subs. by Act 13 of 1992, sec. 2, for “fifty years” (w.r. e.f. 28-12-1991).

CHAPTER VI – Licences

30. Licences by owners of copyright-

The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorised agent.

Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence.

Explanation – When a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to benefit of the licence.

30-A. Application of Sections 19 and 19-A. -

The provision of Sections 19 and 19-A shall, with any necessary adaptations and modifications, apply in relation to a licence under Section 30 as they apply in relation to assignment of copyright in a work.

1. Ins. by Act 38 of 1994, sec. 10 (w.e.f. 10-5-1995).

31. Compulsory licence in works withheld from public -

(1) If at any time during the term of copyright in any Indian work which has been published or performed in public, a complaint is made to the Copyright Board that the owner of copyright in the work—

(a) has refused to re-publish or allow the re-publication of the work or has refused to allow the performance in public of the work, and by reason of such refusal the work is withheld from the public; or

(b) has refused to allow communication to the public by ¹[broadcast], of such work or in the case of a ²[sound recording] the work recorded in such ²[sound recording], on terms which the complainant considers reasonable,

the Copyright Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyrights to grant to the complainant a licence to re-publish the work, perform the work in public or communicate the work to the public by ¹[broadcast], as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Copyright Board may determine; and thereupon the Registrar of Copyrights shall grant the licence to the complainant in accordance with the directions of Copyright Board, on payment of such fee as may be prescribed.

Explanation.—In this sub-section, the expression “Indian work” includes—

(i) an artistic work, the author of which is a citizen of India; and

(ii) a cinematograph film or a ²[sound recording] made or manufactured in India.

(2) Where two or more persons have made a complaint under sub-section (1), the licence shall be granted to the complainant who in the opinion of the Copyright Board would best serve the interests of the general public.

Comments

Question of grant of compulsory licence would arise only when the artistic work has been withheld from public. Compulsory licence need not be issued to all who apply and are ready to pay fee; *Super Cassette Industries Ltd. v. Entertainment Network (India) Ltd.*, AIR 2004 Del 326.

Once a Copyright is taken in public domain then it becomes commercial right and refusal to grant licence has to be on reasonable grounds. While making orders, the Board has to maintain a delicate balance between private rights of the copyright owner vis-a-vis public interest; *Super Cassette Industries Ltd. v. Entertainment Network (India) Ltd.*, AIR 2004 Del 326.

1. Subs. by Act 23 of 1983, sec. 2, for “radio-diffusion” (w.e.f. 9-8-1984).

2. Subs. by Act 38 of 1994, sec. 2, for “record” (w.e.f. 10-5-1995).

31-A. Compulsory licence in unpublished Indian works-

(1) Where in the case of an Indian work referred to in sub clause (iii) of clause (l) of Section 2, the author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found, any person may apply to the Copyright Board for a licence to publish such work or a translation thereof in any language.

(2) Before making an application under sub section (1), the applicants shall publish his proposal in one issue of a daily newspaper in the English language having circulation in the major part of the country and where the application is for the publication of a translation in any language, also in one issue of any daily newspaper in that language.

(3) Every such application shall be made in such form as may be prescribed and shall be accompanied with a copy of the advertisement issued under sub section (2) and such fee as may be prescribed.

(4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, direct the Registrar of Copyrights to grant to the applicant a licence to publish the work or a translation thereof, in the language mentioned in the application subject to the payment of such royalty and subject to such other terms and conditions as the

Copyright Board may determine, and thereupon the Registrar of Copyrights shall grant the licence to the applicant in accordance with the direction of the copyright Board.

(5) Where a licence is granted under this section, the Registrar of Copyrights may, by order, direct the applicant to deposit the amount of the royalty determined by the Copyright Board in the public account of India or in any other account specified by the Copyright Board so as to enable the owner of the copyright or, as the case may be, his heirs, executors or the legal representatives to claim such royalty at any time.

(6) Without prejudice to the foregoing provisions of this section, in the case of a work referred to in sub section (1), if the original author is dead, the Central Government may, if it considers that the publication of the work is desirable in the national interest, require the heirs, executors or legal representatives of the author to publish such work such period as may be specified by it.

(7) Where any work is not published within the period specified by the Central Government under sub section (6), the Copyright Board may, on an application made by any person for permission to publish the work and after hearing the parties concerned, permit such publication on payment of such royalty as the Copyright Board may, in the circumstances of such case, determine in the prescribed manner.

1. Ins. by Act 23 of 1983, sec. 12 (w.e.f. 9-8-1984).

32. Licence to produce and publish translations-

(1) Any person may apply to the Copyright Board for a licence to produce and publish a translation of a literary or dramatic work in any language ¹[after a period of seven years from the first publication of the work].

¹[(1A) Notwithstanding anything contained in sub-section (1), any person may apply to the Copyright Board for a licence to produce and publish a translation, in printed or analogous forms of reproduction, of a literary or dramatic work, other than an Indian work, in any language in general use in India after a period of three years from the first publication of such work, if such translation is required for the purposes of teaching, scholarship or research:

Provided that where such translation is in a language not in general use in any developed country, such application may be made after a period of one year from such publication.]

(2) Every ²[application under this section] shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the translation of the work.

(3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar of Copyrights such fee as may be prescribed.

(4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a translation of the work in the language mentioned in ³[the application—

(i) subject to the condition that the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the translation of the work sold to the public, calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed manner; and

(ii) where such licence is granted on an application under sub-section(1A), subject also to the condition that the licence shall not extend to the export of copies of the translation of the work outside India and every copy of such translation shall contain a notice in the language of such translation that the copy is available for distribution only in India:

Provided that nothing in clause (ii) shall apply to export by Government or any authority under the Government of copies of such translation in a language other than English, French or Spanish in any country if—

(1) such copies are sent to citizens of India residing outside India or to any association of such citizens outside India; or

(2) such copies are meant to be used for purposes of teaching, scholarship or research and not for any commercial purpose; and

(3) in either case, the permission for such export has been given by the Government of that country:]

⁴[Provided further that no licence under this section] shall be granted, unless—

(a) a translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorised by him, ⁵[within seven years or three years or one year, as the case may be, of the first publication of the work], or if a translation has been so published, it has been out of print;

(b) the applicant has proved to the satisfaction of the Copyright Board that he had requested and had been denied authorisation by the owner of the copyright to produce and publish such translation, or that ⁶[he was, after due diligence on his part, unable to find] the owner of the copyright;

(c) where the applicant was unable to find the owner of the copyright, he had sent a copy of his request for ⁷[such authorisation by registered air mail post to the publisher whose name appears from the work, and in the case of an application for a licence under sub-section (1)], not less than two months before ⁸[such application];

⁹[(cc) a period of six months in the case of an application under sub-section (1A) (not being an application under the proviso thereto), or nine months in the case of an application under the proviso to that sub-section, has elapsed from the date of making the request under clause (b) of this proviso or where a copy of the request has been sent under clause (c) of this proviso, from the date of sending of such copy, and the translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or nine months, as the case may be;

(ccc) in the case of any application made under sub-section (1A),—

(i) the name of the author and the title of the particular edition of the work proposed to be translated are printed on all the copies of the translation;

(ii) if the work is composed mainly of illustrations, the provisions of section 32A are also complied with;]

(d) the Copyright Board is satisfied that the applicant is competent to produce and publish a correct translation of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section;

(e) the author has not withdrawn from circulation copies of the work; and

(f) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.

⁹[(5) Any broadcasting authority may apply to the Copyright Board for a licence to produce and publish the translation of—

(a) a work referred to in sub-section (1A) and published in printed or analogous forms of reproduction; or

(b) any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities,

for broadcasting such translation for the purposes of teaching or for the dissemination of the results of specialised, technical or scientific research to the experts in any particular field.

(6) The provisions of sub-sections (2) to (4) in so far as they are relatable to an application under sub-section (1A), shall, with the necessary modifications, apply to the grant of a licence under sub-section (5) and such licence shall not also be granted unless—

(a) the translation is made from a work lawfully acquired;

(b) the broadcast is made through the medium of sound and visual recordings;

(c) such recording has been lawfully and exclusively made for the purpose of broadcasting in India by the applicant or by other broadcasting agency; and

(d) the translation and the broadcasting of such translation are not used for any commercial purposes.

Explanation.—For the purposes of this section,—

(a) “developed country” means a country which is not a developing country;

(b) “developing country” means a country which is for the time being regarded as such in conformity with the practice of the General Assembly of the United Nations;

(c) “purposes of research” does not include purposes of industrial research, or purposes of research by bodies corporate (not being bodies corporate owned or controlled by Government) or other association or body of persons for commercial purposes;

(d) “purposes of teaching, research or scholarship” includes—

(i) purposes of instructional activity at all levels in educational institutions, including Schools, Colleges, Universities and tutorial institutions; and

(ii) purposes of all other types of organised educational activity.]

1. Ins. by Act 23 of 1983, sec. 13 (w.e.f. 9-8-1984).

2. Subs. by Act 23 of 1983, sec. 13, for “such application” (w.e.f. 9-8-1984).

3. Subs. by Act 23 of 1983, sec. 13, for certain words (w.e.f. 9-8-1984).

4. Subs. by Act 23 of 1983, sec. 13, for “Provided that no such licence” (w.e.f. 9-8-1984).

5. Subs. by Act 23 of 1983, sec. 13, for “within seven years of the first publication of the work” (w.e.f. 9-8-1984).

6. Subs. by Act 23 of 1983, sec. 13, for “he was unable to find” (w.e.f. 9-8-1984).

7. Subs. by Act 23 of 1983, sec. 13, for “ such authorisation to the publisher whose name appears from the work” (w.e.f. 9-8-1984).

8. Subs. by Act 23 of 1983, sec. 13, for “the application for the licence” (w.e.f. 9-8-1984).

9. Ins. by Act 23 of 1983, sec. 13 (w.e.f. 9-8-1984).

32-A. Licence to reproduce and publish works for certain purposes-

(1) Where, after the expiration of the relevant period from the date of the first publication of an edition of a literary, scientific or artistic work,-

(a) The copies of such edition are not made available in India; or

(b) Such copies have not been put on sale in India for a period of six months.

To the general public or in connection with systematic instructional activities at a price reasonably related to that normally charged in India for comparable works by the owner of the right of reproduction or by any person authorised by him in this behalf, any person may apply to the Copyright Board for a licence to reproduce and publish such work in printed or analogous forms of reproduction at the price at which such edition is sold or at a lower price for the purposes of systematic instructional activities.

(2) Every such application shall be made in such forms as may be prescribed and shall state the proposed retail price of a copy of the work to be reproduced.

(3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar of Copyrights such fee as may be prescribed.

(4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a reproduction of the work mentioned in the application subject to the condition that ,-

(a) The applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the reproduction of the work sold to the public, calculated at such rate as the Copyright Board

may, in the circumstances of each case, determine in the prescribed manner.

(b) A licence granted under this section shall not extend to the export of copies of the reproduction of the work outside India and every copy of such reproduction shall contain a notice that the copy is available for distribution only in India.

Provided that no such licence shall be granted unless-

(a) The applicant has proved to the satisfaction of the Copyright Board that he had requested and had been denied authorisation by the owner of the copyright in the work to reproduce and publish such work to that he was, after due diligence on his part, unable to find such owner.

(b) Where the applicant was unable to find the owner of the Copyright, he had sent a copy of his request for such authorisation by registered airmail post to the publisher whose name appears from the work not less than three months before the application for the licence.

(c) The Copyright Board is satisfied that the applicant is competent to reproduce and publish an accurate reproduction of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section.

(d) The applicant undertakes to reproduce and publish the work at such price as may be fixed by the Copyright Board, being a price reasonably related to the price normally charged in India for works of the same standard on the same or similar subjects;

(e) A period of six months in the case of an application for the reproduction and publication of any work of natural science, physical science, mathematics or technology, or a period of three months in the case of an application for the reproduction and publication of any other work, has elapsed from the date of making the request under clause (a), or where a copy of the request has been sent under clause (b), from the date of sending of a copy, and a reproduction of the work has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or, three months, as the case may be;

(f) The name of the author and the title of the particular edition of the work proposed to be reproduced are printed on all the copies of the reproduction;

(g) The author has not withdrawn from circulation copies of the work; and

(h) An opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.

(5) No licence to reproduce and publish the translation of a work shall be granted under this section unless such translation has been published by the owner of the right of translation or any

person authorised by him and the translation is not in a language in general use in India.

(6) The provisions of this section shall also apply to the reproduction and publication, or translation into a language in general use in India, of any text incorporated in audio-visual fixation prepared and published solely for the purpose of systematic instructional activities.

Explanation – For the purposes of this section, “relevant period” in relation to any work, means a period of-

(a) Seven years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of , or relating to fiction, poetry, drama, music or art.

(b) Three years from the dare of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to, natural science, physical science, mathematics or technology, and

(c) Five years from the date of the first publication of that work, in any other case.

32.B. Termination of licences issued under this Chapter-

(1) If, at nay time after the granting of a licence to produce and publish the translation of a work in any language under sub section (1-A) of section 32 (hereafter in this sub section referred to as the licensed work) , the owner of the copyright in the work or any person authorised by him publishes a translation of such work in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for the translation of works of the same standard on the same or similar subject, the licence so granted shall be terminated.

Provided that no such termination shall take effect until after expiry of a period of three months from the date of service of a notice in the prescribed manner on the person holding such licence by the owner of the right of translation intimation the publication of the translation as aforesaid.

Provided further that copies of the licensed work produced and published by the person holding such licence before the termination of the licence takes effect may continue to be sold or distributed until the copies already produced and published are exhausted.

(2), If , at any time after the granting of a licence to produce and publish the reproduction or translation of any work under section 32-A, the owner of the right of reproduction or any person authorised by him sells or distributes copies of such work or a translation thereof, as the case may be, in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India or works of the same standard on the same or similar subject, the licence so granted shall be terminated.

Provided that no such termination shall take effect until after the expiry of a period of three months from the date of service of a notice in the prescribed manner on the person holding the licence by the owner of the right of reproduction intimating the sale or distribution of the copies of the editions of work as aforesaid.

Provided further that any copies already reproduced by the licensee before such termination takes effect continue to be sold or distributed until the copies already produced are exhausted.

1. Ins. by Act 23 of 1983, sec. 14 (w.e.f. 9-8-1984).

CHAPTER VII – Copyright Societies

33. Registration of copyright society-

(1) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 commence or, carry on the business of issuing or granting licences in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub section (3):

Provided that an owner of copyright shall, in this individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society.

Provided further that a performing rights society functioning in accordance with the provisions of Section 33 on the date immediately before the coming into force of the Copyright (Amendment) Act, 1994 shall be deemed to be a copyright society for the purposes of this Chapter and every such society shall get itself registered within a period one year from the date of commencement of the Copyright (Amendment) Act, 1994.

(2) Any association of persons which fulfils such conditions as may be prescribed may apply for permission to do the business specified in sub section (1) to the Registrar of Copyrights who shall submit the application to the Central Government.

(3) The Central Government may, having regard to the interest of the authors and other owner of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in applicants, register such association of persons as a copyright society to such conditions as may be prescribed.

Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

(4) The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interest of the owners of rights concerned, cancel the registration of such society after such inquiry as may be prescribed.

(5) If the Central Government is of the opinion that in the interest of the owners of rights concerned, it is necessary so to do, it may, by order, suspend the registration of such society pending inquiry for such period not exceeding one year as may be specified in such order under sub section (4) and that Government shall appoint and administrator to discharge the functions of the copyright society.

* Chapter VII (containing sections 33, 34, 34A, 35, 36 and 36A) subs. by Act 38 of 1994, sec. 11, for Chapter VII (containing sections 33 to 36) (w.e.f. 10-5-1995).

34. Administration of rights of owner by copyright society -

(1) Subject to such conditions as may be prescribed,-

(a), a copyright society may accept from an owner of rights exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both, and

(b) an owner of rights shall have the right to withdraw such authorisation without prejudice to the rights of the copyright society under any contract.

(2) It shall be competent for a copyright society to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act, to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign country by such foreign society or organisation.

Provided that no such society or organisation shall permit any discrimination in regard to the terms of licence or the distribution of fees collected between rights in Indian and other works.

(3) Subject to such conditions as may be prescribed, a copyright society may -

- (i) Issue licences under Section 30 in respect of any rights under this Act,
 - (ii) Collect fees in pursuance of such licences,
 - (iii) Distribute such fees among owners of rights after making deductions for its own expenses,
 - (iv) Perform any other functions consistent with the provisions of Section 35.
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*** Chapter VII (containing sections 33, 34, 34A, 35, 36 and 36A) subs. by Act 38 of 1994, sec. 11, for Chapter VII (containing sections 33 to 36) (w.e.f. 10-5-1995).**

34-A. Payment of remunerations by copyright society -

(1) If the Central Government is of the opinion that a copyright society for a class of work is generally administering the rights of the owners of rights in such work throughout India, it shall appoint that society for the purposes of this section.

(2) The copyright society shall, subject to such rules as may be made in this behalf, frame a scheme for determining the quantum of remuneration payable to individual copyright owners having regard to the number of copies of the work in circulation:

Provided that such scheme shall restrict payment to the owners of rights whose works have attained a level of circulation which the copyright society considers reasonable.

*** Chapter VII (containing sections 33, 34, 34A, 35, 36 and 36A) subs. by Act 38 of 1994, sec. 11, for Chapter VII (containing sections 33 to 36) (w.e.f. 10-5-1995).**

35. Control over the copyright society by the owner of rights –

*** [35. Control over the copyright society by the owner of rights.—(1) Every copyright society shall be subject to the collective control of the owners of rights under this Act whose rights it administers (not being owners of rights under this Act administered by a foreign society or organisation referred to in sub-section (2) of section 34) and shall, in such manner as may be prescribed,—**

- (a) obtain the approval of such owners of rights for its procedures of collection and distribution of

fees;

(b) obtain their approval for the utilisation of any amounts collected as fees for any purpose other than distribution to the owner of rights; and

(c) provide to such owners regular, full and detailed information concerning all its activities, in relation to the administration of their rights.

(2) All fees distributed among the owners of rights shall, as far as may be, be distributed in proportion to the actual use of their works.]

* Chapter VII (containing sections 33, 34, 34A, 35, 36 and 36A) subs. by Act 38 of 1994, sec. 11, for Chapter VII (containing sections 33 to 36) (w.e.f. 10-5-1995).

36. Submission of returns and reports -

(1) Every copyright society shall submit to the Registrar if Copyright such returns as may be prescribed.

(2) Any officer duly authorised by the Central Government in this behalf may call for any report and also call for any record of any copyright society for the purpose of satisfying himself that the fees collected by the society in respect of rights administered by it are being utilised or distributed in accordance with the provisions of this Act.

* Chapter VII (containing sections 33, 34, 34A, 35, 36 and 36A) subs. by Act 38 of 1994, sec. 11, for Chapter VII (containing sections 33 to 36) (w.e.f. 10-5-1995).

36-A. Rights and liabilities of performing rights societies -

*[36A. Rights and liabilities of performing rights societies.—Nothing in this Chapter shall affect any rights or liabilities in any work in connection with a performing rights society which had accrued or were incurred on or before the day prior to the commencement of the Copyright (Amendment) Act, 1994, or any legal proceedings in respect of any such rights or liabilities pending on that day.]

* Chapter VII (containing sections 33, 34, 34A, 35, 36 and 36A) subs. by Act 38 of 1994, sec. 11, for Chapter VII (containing sections 33 to 36) (w.e.f. 10-5-1995)

CHAPTER VIII – Rights of Broadcasting Organisation and of Performers

37. Broadcast reproduction right -

(1) Every broadcasting organistaon shall have a special right to the know as ‘broadcast reproduction right” in respect of its broadcasts.

(2) The broadcast reproduction right shall subsist until twenty five years from the beginning of the calendar year next following the year in which the broadcast in made.

(3) During the continuance of a broadcast reproduction right in relation to an broadcast, any person who, without the licence of the owner of the right does nay of the following acts of the broadcast or any substantial part thereof,-

(a) Rebroadcasts the broadcast, or

(b) Causes the broadcasts to be heard or seen by the public on payment of any charges, or

(c) Makes any sound recording or visual recording of the broadcast, or

(d) Makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licence, for any purposes not envisaged by such licence, or

(e) Sells or heirs to the public, or offers for such sale or hire, any such sound recording or visual recording referred to in clause (C) or clause (d), shall, subject to the provisions of Section 39, be deemed to have infringed broadcast reproduction right.

38. Performer’s right -

(1) Where any performer appears or engages in any performance, he shall have a special right to be known as the “performer’s right” in relation to such performance.

(2) The performer's right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the performance is made.

(3) During the continuance of performer's right in relation to any performance, any person who, without the consent of the performer, does any of the following acts in respect of the performance or any substantial part thereof, namely;-

(a) Makes a sound recording or visual recording of the performance, or

(b) Reproduces a sound recording or visual recording of the performance, which sound recording or visual recording was-

(c) Made without the performer's consent, or

(i) Made for purposes different from those for which the performer gave his consent, or

(ii) Made for purposes different from those referred to in Section 39 from a sound recording or visual recording which was made in accordance with Section 39, or

(a) Broadcasts the performance except where the broadcast is made from a sound recording or visual recording other than one made in accordance with Section 39, or is a rebroadcast by the same broadcasting organisation of an earlier broadcast which did not infringe the performer's right, or

(b) Communicates the performance to the public otherwise than by broadcast, except where such communication to the public is made from a sound recording or visual recording or a broadcast.

Shall, subject to the provisions of section 39, be deemed to have infringed the performer's right.

(4) Once a performer has consented to the incorporation of his performance in a cinematograph film, the provision of sub sections (1), (2) and (3) shall have no further application to such performance.

39. Acts not infringing broadcast reproduction right or performer's right-

No broadcast reproduction right or performer's right shall be deemed to be infringed by-

(a) The making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of bona fide teaching or research, or

(b) The use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for bona fide review, teaching or research, or

(c) Such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under Section 52.

1. Subs. by Act 38 of 1994, sec. 15, for section 39 (w.e.f. 10-5-1995).

39-A. Other provisions applying to broadcast reproduction right and performer's right -

Sections 18, 19, 30, 53, 55, 58, 64, 65 and 66 shall, with any necessary adaptations and modifications, apply in relation to the broadcast reproduction right in any broadcast and the performer's right in any performance as they apply in relation to copyright in a work.

Provided that where copyright or performer's right subsists in respect of any work or performance that has been broadcast, no licence to reproduce such broadcast shall take effect without the consent of the owner of rights or performer, as the case may be, or both of them.

1. Subs. by Act 38 of 1994, sec. 15, for section 39 (w.e.f. 10-5-1995).

CHAPTER IX – International Copyright

40. Power to extend copyright to foreign works-

The Central Government may, by order published in the Official Gazette, direct that all or any provisions of this Act, shall apply.

(a) To work first published in any territory outside India to which the order related in like manner as if they were first published within India,

(b) To unpublished works, or any class thereof, the authors whereof were at the time of the making of the work, subjects or citizens of a foreign country to which the order relates, in like

manner as if the authors were citizens of India.

(c) In respect of domicile in any territory outside India to which the order relates in like manner as if such domicile were in India

(d) To any work of which the author was at the date of the first publication thereof, or, in case where the author was dead at the date, was at the time of his death, a subject or citizens of foreign country to which the order relates in like manner as if the author was a citizen of India at that date or time.

And thereupon, subject to the provisions of this Chapter and of the order, this Act shall apply accordingly.

Provided that –

(i) Before making an order under this section in respect of any foreign country (other than a country with which India has entered into a treaty or which is a party to a convention relating to copying to which India is also a party, the Central Government shall be satisfied that foreign country has made, or has undertaken to make, such provision, if any, as it appears to the Central Government expedient to require for the protection in that country of works entitled to copyright under the provisions of this Act,

(ii) The order may provide that the provisions of this Act shall apply either generally or in relation to such classes of works or such classes of case may be specified in the order.

(iii) The order may provide that the term of copyright in India shall not exceed that conferred by the law of the country to which the order relates:

(iv) The order may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities, if any, as may be prescribed by the order,

(v) In applying the provisions of this Act as to ownership of copyright, the order may make such exceptions and modifications as appear necessary, having regard to the law of the foreign country.

(vi) The order may provide that this Act or any part thereof shall not apply to works made before the commencement of the order or that this Act or any part thereof shall not apply to works first published before the commencement of the order.

41. Provisions as to works of certain international organisations -

(1) Where-

(a) Any work is made or first published by or under the direction or control of any organisation to which the section applies, and

(b) There would, apart from this section, be no copyright in the work in India at the time of the making or, as the case may be, of the first publication thereof, and

(c) Either -

(i) The work is published as aforesaid in pursuance of an agreement in that behalf with the author, being an agreement which does not reserve to the author the copyright, if any, in the work, or

(ii) Under Section 17 any copyright in the work would belong to the organisation.

There shall, by virtue of this section, be copyright in the work throughout India.

(2) Any organisation to which this section applies which at the material time had not the legal capacity of a body corporate shall have and be deemed at all material times to have had the legal capacity of a body corporate for the purposes of holding, dealing with, and enforcing copyright and in connection with all legal proceedings relating to copyright.

(3) The organisation to which this section applies are such organisations as the Central Government may, by order published in the Official Gazette, declare to be organisations of which one or more sovereign powers or the Government or Governments thereof are members to which it is expedient that this section shall apply.

42. Power to restrict rights in works of foreign authors first published in India -

If it appears to the Central Government that a foreign country does not give or has not undertaken to give adequate protection to the works of Indian authors, the Central Government may, by order published in the Official Gazette, direct that such of the provisions of this Act as confer copyright on works first published after the date specified in the order, the authors whereof are subjects or citizens of such foreign country and are not domiciled in India, and thereupon those provisions shall not apply to such works.

43. Orders under this Chapter to be laid before Parliament-

Every order made by the Central Government under this Chapter shall, as soon as may be after it is made, be laid before both Houses of Parliament and shall be subject to such modifications as Parliament may make during the session in which it is so laid or the session immediately following.

CHAPTER X – Registration of Copyright

44. Register of Copyright –

There shall be kept at the Copyright Office a register in the prescribed form to be called the Register of Copyrights in which may be entered the names or titles of works and the names and address of authors, publishers and owners of copyright and such other particulars as may be prescribed.

45. Entries in Register of Copyrights-

(1) The author or published of, or the owner of or other person interested in the copyright in, any work may make an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights.

[(Note: Added by Act 23 of 1983, S.16 (w.e.f. 9-8-1984) Provided that in respect of an artistic work which in used or is capable of being used in relation to any goods, the application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trade Marks referred to in Section 4 of the Trade and Merchandise Marks Act, 1958 (43 of 1958), to the effect that no trade mark identical with or deceptively similar to such artistic work has been registered under than Act in the name of, or that no application has been made under that Act for such registration by, any person other than the applicant.]

(2) On receipt of an applicant in respect of any work under sub section (1), the Registrar of Copyrights may, after holding any such inquiry as he may deem fit, enter the particulars of the work in the Register of Copyrights.

NOTES

Registration not essential – Registration is not a condition precedent for filing any action against infringement of copyright. The provision is optional and is only intended to provide a prima facie proof of the particulars.

Non-registration does not deprive the owner of copyright of his right to bring both criminal and civil action.

46. Indexes –

There shall be also kept at the Copyright Office such indexes of the Register of Copyrights, as may be prescribed.

47. Form and inspection of register.-

The register of Copyrights and indexes thereof kept under this Act shall at all reasonable times be open to inspection, and any person shall be entitled to take copies of, or make extracts from, such register or indexes on payment of such fee and subject to such conditions as may be prescribed.

48. Register of Copyrights to be prima facie evidence of particulars entered therein -

The Register of Copyright shall be prima facie evidence of the particulars entered therein and documents purporting to be copies of any entries therein, or extracts there from certified by the Registrar of Copyrights and sealed with the seal of the Copyright Office shall be admissible in evidence in all courts without further proof or production of the original.

49. Correction of entries in the Register of Copyrights -

The Register of Copyrights may, in the prescribed cases and subject to the prescribed conditions, amend or alter the Register of Copyrights by -

- (a) Correcting any error in any name, address or particulars, or
- (b) Correcting any other error which may have arisen therein by accidental slip or omission.

50. Rectification of Register by Copyright Board-

The Copyright Board, on application of the Registrar of Copyrights or of any person aggrieved,

shall order the rectification of the Register of Copyrights by-

- (a) The making of any entry wrongly omitted to be made in the register, or
- (b) The expunging of any entry wrongly made in, or remaining on, the register, or,
- (c) The correction of any error or defect in the register.

50A. Entries in the Register of Copyrights, etc. to be published-

Every entry made in the Register of Copyrights or the particulars of any work entered under Section 45, the correction of every entry made in such register under Section 49, and every rectification ordered under section 50, shall be published by the Registrar of Copyrights in the Official Gazette or in such other manner as he may deem fit.

51. When copyright infringed -

Copyright in a work shall be deemed to be infringed -

(a) When any person, without a licence granted by the owner of the Copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any conditions imposed by a competent authority under this Act-

(i) Does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) [(Note: Subs. by Act 38 of 1994, S.16(1) (w.e.f. a date to be notified)) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright, or]

(b) When any person -

(i) Make for sale on hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) Distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) By way of trade exhibits in public, or

(iv) Imports (Omitted by Act 65 of 1984, S.3 (w.e.f. 8-10-1984)) into India, any infringing copies of the work:

[(Note: Subs. by Act 38 of 1994, S.16(2) (w.e.f. a date to be notified)) Provided that nothing in such clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.]

Explanation – For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an “infringing copy”.

NOTES

Basis of Copyright Law. – The fundamental idea of violation of copyright or imitation is the violation of the eighth commandment: “Thou shall not steal,” which makes the moral basis of the protective provisions of the Copyright Act.. It is obvious that when a writer or a dramatist produces a drama, it is the result of his great labour, energy, time and ability and if any other person is allowed to appropriate the labours of the copyright work, his act amounts to theft by depriving the original owner of the copyright of the product of his labour.

Test – There is no better way of detecting the piracy in an alleged infringing work than by making a careful examination of it to see whether any of the deviation and mistakes which artistic licence permits in the original have been reproduced in the alleged infringing copy.

Similar mistakes – Where the mistakes committed by the plaintiff in certain calculations in his book were found in the defendant’s book in similar calculations it was held that the defendant had copied the calculations from plaintiff’s book.

Common source – A person is at liberty to draw upon common sources of information. But if he saves himself the trouble and labour requisite for collecting that information by adopting another’s work with colorable variations, he is guilty of infringement of copyright, even though the original work is based on materials which are common property.

It is well-settled that even where the source of information used in a book is common and which is available to all, even then a compilation which has been brought out as a result of labour and industry put by a person, then in such a case he can claim a copyright in the publication brought out by him.

Several persons may originate similar works in the same general form without anyone infringing the law in regard to copyright. The infringement comes in only when it can be shown that someone has, instead of utilizing the available sources to originate his work, appropriated the labours of

another by resorting to a slavish copy or mere colorable imitation thereof.

In cases of works composed of or compiled or prepared from materials open to all the true principle is that the defendant is not at liberty to use or avail himself of the labour which the plaintiff has been at, for the purpose of producing his work, that is in fact, merely to take away the result of another man's labour or on other words, his property.

A person relying on plea of common source must show that he went to common source from which he borrowed, employing his skill, labour and brains and that he did not merely do the work of copyist by copying away from a work.

In law books the amount of "originality" will be very small, but that small amount is protected by law.

In law reports containing only approved reports of cases decided by courts, there is copyright. A man is not allowed to appropriate for himself the arrangement, sequence, order, idiom, etc., employed by another, using his brains, skill and labour.

The plaintiffs compiled their book with considerable labour from various sources and digested and arranged the matter taken by them from other authors. The defendant instead of taking pains of searching into all common sources and obtaining his subject-matter from them availed himself of the labour of the plaintiffs and adopted their arrangement and subject-matter. Such a use by defendant of the plaintiffs book cannot be regarded as legitimate.

Where the balance of convenience and inconvenience on both sides is equal, the defendant who has been proved to have prima facie infringed the copyright of the plaintiff's work must suffer inconvenience by grant of injunction rather than the plaintiff by not granting it.

Temporary injunction may be granted even if reference pirated by the defendant are insignificant compared to the total volume of the defendant's work.

Abridgement and translations can both infringe copyright – 70 Cal WN 1130.

52. Certain acts not to be infringement of copyright –

(1) The following acts shall not constitute an infringement of copyright namely -

(a) A fair dealing with a literary, dramatic, musical or artistic work [not being a computer programme (Note: Ins. by Act 38 of 1994, S.17 (w.e.f. a date to be notified))] for the purposes of –

(i) [(Note: Subs. by Act 38 of 1994, S.17 (w.e.f. a date to be notified)) private use, including

research:]

(ii) Criticism or review, whether of that work or of any other work.

(aa) [(Note: Ins. by Act 38 of 1994, S.17 (w.e.f. a date to be notified)) The making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy-

(i) In order to utilize the computer programme for the purposes for which it was supplied, or

(ii) To make back up copies purely as a temporary protection against loss, destruction or damage in order only to utilize the computer programme for the purpose for which it was supplied;]

(b) A fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events-

(i) In a newspaper, magazine or similar periodical, or

(ii) By [(Note: Subs. for "radio-diffusion" by Act 23 of 1983, S.2 (w.e.f. 9-8-1984)) broadcast] or in a cinematograph film or by means of photographs,

[(Note: Ins. by Act 23 of 1983, S.18 (w.e.f. 9-8-1984)) Explanation – The publication of a compilation of address or speeches delivered in public is not a fair dealing of such work within the meaning of this clause.]

(a) The reproduction of a literary, dramatic, musical or artistic work for the purpose of judicial proceeding or for the purpose a report of a judicial proceedings;

(b) The reproduction or publication of a literary, dramatic, musical or artistic work in any work prepared by the Secretariat of a Legislature, or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature;

(c) The reproduction of any literary, dramatic or musical work in a certified copy made or supplied in accordance with any law for the time being in force;

(d) The reading or recitation in public of any reasonable extract from a published literary or dramatic work;

(e) The publication in a collection, mainly composed on non copyright matter, bona fide intended for the use of educational institutions and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not

themselves published for the use of educational institutions, in which copyright subsists;

Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

Explanation – In the case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more those authors in collaboration with any other person;

(f) The reproduction of a literary, dramatic, musical or artistic work-

(i) By a teacher or a pupil in the course of instruction, or

(ii) As part of the questions to be answered in an examination, or

(iii) In answers to such questions

(g) The performance, in the course of the activities of an educational institutions, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a [(Note: Subs. by Act 38 of 1994, S.2 (xii) (w.e.f. a date to be notified)) sound recording], if the audience is limited to such staff and students, the parents and guardians of the students and persons directly connected with activities of the institution [(Note: Ins. by Act 38 of 1994, S.17 (w.e.f. a date to be notified)) or the communication to such an audience of a cinematograph film or sound recording];

(h) [(Note: Subs. by Act 38 of 1994, S.17 (w.e.f. a date to be notified)) The making of sound recordings in respect of any literary, dramatic or musical work, if-

(i) Sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work

(ii) The person making the sound recordings has given a notice of his intentions to make the sound recordings, has provided copies of all covers or labels with which the sound recordings are to be sold, and has paid in the prescribed manner to the owner of rights in the work royalties in respect of all such sound recordings to be made by him, at the rate fixed by the Copyright Board in this behalf.

Provided that-

(i) No alterations shall be made which have not been made previously by or with the consent of the owner of rights, or which are not reasonably necessary for the adaptation of the work for the purpose of making the sound recordings.

(ii) The sound recordings shall not be issued in any form of packaging or with any label which is likely to mislead or confuse the public as to their identity.

(iii) No such sound recording shall be made until the expiration of two calendar years after the end of the year in which the first sound recording of the work was made, and

(iv) The person making such sound recordings shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of accounts relating to such sound recording.

Provided further that if on a complaint brought before the Copyright Board to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this clause, the Copyright Board is prima facie, satisfied that the complaint is genuine. It may pass an order ex parte directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further orders as it may deem fit, including an order for payment of royalty.

(i) The causing of a recording to be heard in public by utilizing it, -

(i) In an enclosed room or shall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein, or

(ii) As part of the activities of a club or similar organisation which is not established or conducted for profit.

(k) The performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non paying audience, or for the benefit of a religious institution.

(l) The reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction.

(m) The publication in a newspaper, magazine or other periodical of a report of a lecture delivered in public

(n) The making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plant) by or under the direction of the person in charge of a public library for the use of the library if such book is not available for sale in India.

(o) The reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to

which the public has access.

Provided that where the identity of the author of such work, or, in the case of a work of joint authorship, of any of the authors is known to the library, museum or other institution, as the case may be, the provisions of this clause shall apply only if such reproduction is made at a time more than fifty years from the date of the death of the author or, in the case of a work of joint authorship, from the death of the author whose identify is known or, if the identify of more authors than one is known from the death of such of those authors who dies last.

(p) The reproduction or publication of-

(i) Any matter which has been published in any Gazette except an Act if a Legislature.

(ii) Any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or nay other original matter.

(iii) The report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of Legislature, unless the reproduction or publication of such report is prohibited by the Government.

(iv) Any judgement or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgement or order is prohibited by the court, the tribunal or other judicial authority, as the case may be

(q) the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made there under-

(i) If no translation of such Act or rules or orders in that language has previously been produced or published by the Government, or

(ii) Where a translation of such Act or rules or orders in that language has been produced or published by the Government if the translation is not available for sale to the public

Provided that such translation contains a statement at a prominent place to the effect that the translation has not been authorised or accepted as authentic by the Government.

(r) [(Note: subs. by Act 38 of 1994, S.17 (w.e.f. a date to be notified)) the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture.]

(s) The making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work falling under sub clause (iii) of clause (e) of Section 2, if such work is

permanently situate in a public place or any premises to which the public has access.

(t) The inclusion in a cinematograph film of-

(i) Any artistic work permanently situate in a public place or any premises to which the public has access, or

(ii) Any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film,

(u) The use by the author of an artistic work where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the work.

Provided that he does not thereby repeat or imitate the main design of the work

(v) (Note: Omitted by Act 38 of 1994, S.17 (w.e.f. a date to be notified))

(w) The reconstruction of a building or structure in accordance with the architectural drawings or plans by references to which the building or structure was originally constructed.

Provided that the original construction was made with the consent or licence of the owner of the copyright in such drawings and plans,

(x) In relation to a literary, dramatic or musical work recorded or reproduced in any cinematograph film, the exhibition of such film after the expiration of the term of copyright therein.

Provided that provisions of sub clause (ii) of clause (a), sub clause (I) of clause (b) and clauses (d), (f), (g), (m), and (p) shall not apply as respects any act unless that act is accompanied by an acknowledge –

(i) Identifying the work by its title or other description, and

(ii) Unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

(y) [(Note: Ins. by Act 38 of 1994, S.17 (w.e.f. a date to be notified)) the making of an ephemeral recording, by a broadcasting organisation using its own facilities for its own broadcast by a broadcasting organisation of a work which it has the right to broadcast, and the retention of such recording for archival purpose on the ground of its exceptional documentary character.

(z) The performance of a literary, dramatic or musical work or the communication to the public of

such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority.

Explanation - For the purpose of this clause, religious ceremony includes a marriage procession and other social festivities associated with a marriage.]

(2) The provision of sub section (1) shall apply to the doing of any act in relation to the translation of a literary, dramatic or musical work or the adaptation of a literary, dramatic, musical or artistic work as they apply in relation to the work itself.

52A. Particulars to be included in sound recordings and video films

(1) No person shall publish a [(Note: Subs. by Act 38 of 1994, S.2 (xii) (w.e.f. a date to be notified)) sound recording] in respect of any work unless the following particulars are displayed on the [(Note: Subs. by Act 38 of 1994, S.2 (xii) (w.e.f. a date to be notified)) sound recording] and on any container thereof, namely :-

(a) The name and address of the person who has made the [(Note: Subs. by Act 38 of 1994, S.2 (xii) (w.e.f. a date to be notified)) sound recording];

(b) The name and address of the owner of the copyright in such work; and

(c) The year of its first publication

(2) No person shall publish a video film in respect of any work unless the following particulars are displayed in the video film, when exhibited, and on the video cassette or other container thereof, namely:-

(a) If such work is cinematograph film required to be certified for exhibition under the provisions of the Cinematograph Act, 1952 (37 of 1952), a copy of the certificate granted by the Board of Film Certification under Section 5-A of that Act in respect of such work.

(b) The name and address of the person who has made the video film and a declaration by him that he has obtained the necessary licence or consent from the owner of the copyright in such work for making such video film, and

(c) The name and address of the owner of the copyright in such work.

52B. Accounts and audit -

(1) Every copyright society appointed under Section 345-A shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, in such form and in such manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of each of the copyright societies in relation to the payments received from the Central Government shall be audited by the Comptroller and Auditor-General of India such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the copyright society to the Comptroller and Auditor General.

(3) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the audit of the accounts of the copyright society referred to in sub section (2) shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts and other documents and papers and to inspect any of the offices of the copyright society for the purpose only of such audit.

(4) The accounts of each of the copyright societies as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

53. Importation of infringing copies -

(1) The Registrar of Copyrights, on application by the owner of the copyright in any work or by his duly authorised agent and on payment of the prescribed fee, may, after making such inquiry as he deems fit, order that copies made out of India, of the work which if made in India would infringe copyright shall not be imported.

(2) Subject to any rules made under this Act, the Registrar of Copyrights or any person authorised by him in this behalf may enter any ship, dock or premises where any such copies as are referred to in sub section (1) may be found and may examine such copies.

(3) All copies to which any order made under sub section (1) applies shall be deemed to be goods of which the import has been prohibited or restricted [(Note: Subs. for "under Section 19 of the Sea Customs Act, 1871" by Act 23 of 1983, S.19 (w.e.f. 9-8-1984)) under section 11 of the Customs Act, 1962 (51 of 1962)], and all the provisions of that Act shall have effect accordingly:

Provided that all such copies confiscated under the provisions of the said Act shall not vest in the Government but shall be delivered to the owner of the copyright in the work.

53A. Resale share right in original copies -

(1) In the case of resale for a price exceeding ten thousand rupees, of the original copy of a painting, sculpture on drawing, or of the original manuscript of a literary or dramatic work or musical work, the author of such work if he was the first owner of rights under Section 17 or his legal heirs shall, notwithstanding any assignment of copyright in such work, have a right to share in the resale price of such original copy or manuscript in accordance with the provisions of this section:

Provided that such right shall cease to exist on the expiration of the term of copyright in the work.

(2) The share referred to in sub section (1) shall be such as the Copyright Board may fix and the decision of the Copyright Board in this behalf shall be final :

Provided that the Copyright Board may fix different shares for different classes of work:

Provided further that in no case shall the share exceed ten per cent of the resale price.

(3) If any dispute arises regarding the right conferred by this section, it shall be referred to the Copyright Board whose decision shall be final.

CHAPTER XII – Civil Remedies

54. Definition –

For the purposes of this Chapter, unless the context otherwise requires, the expression, “owner of copyright” shall include-

(a) An exclusive licensee :

(b) In the case of an anonymous or pseudonymous literary, dramatic, musical or artistic work, the publisher of the work, until the identity of the author or, in the case of an anonymous work of joint authorship, or a work of joint authorship published under names all of which are pseudonyms, the identity of any of the authors, is disclose publicly by the author and the publisher or is otherwise established to the satisfaction of the Copyright Board by that author or his legal representatives.

55. Civil remedies for infringement of copyright -

(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right.

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the Plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

(2) Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher, as the case may be, appears on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is provided, to be the author or the publisher of the work, as the case may be.

(3) The costs of all parties in any proceeding in respect of the infringement of copyright shall be in the discretion of the court.

NOTES

Injunctions – The power of the Court to grant a temporary injunction is not limited by the absence of any finding on the question of jurisdiction which has been raised in the case.

The precise rule of law contained in cl. (f), S.56, Specific Relief Act, cannot, interfere in any way with the discretion of the Court in regard to a temporary injunction the grant of which should therefore be governed by other principles.

56. Protection of separate rights –

Subject to the provisions of this Act, where the several rights comprising the copyright in any work are owned by different person, the owner of any such right shall, to the extent of that right, be entitled to the remedies provided by this Act and may individually enforce such right by means of any suit, action or other proceeding without making the owner of any other right a party to such suit, action or proceeding.

57. Authors special rights -

[(Note: Subs. by Act 38 of 1994, S.20(w.e.f. a date to be notified)) (1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right-

(a) To claim authorship of the work : and

(b) To restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honor or reputation.

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub section (1) of Section 52 applies.

Explanation- Failure to display a work or to display it to them satisfaction of the author shall not be deemed to be an infringement of the right conferred by this section.

(2) The right conferred upon an author of a work by sub section (1), other than the right to claim authorship of the work, may be exercised by the legal representatives of the author.

58. Right of owner against persons possessing or dealing with infringing copies -

All infringing copies of any work in which copyright subsists and all plates used or intended to be used for the production of such infringing copies shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of possession thereof or in respect of the conversion thereof.

Provided that the owner of the copyright shall not be entitled to any remedy in respect of the conversion of any infringing copies, if the opponent proves -

(a) That he was not aware and had not reasonable ground to believe that copyright subsisted in the work of which such copies are alleged to be infringing copies; or

(b) That he had reasonable grounds for believing that such copies or plates do not involve infringement of the copyright in any work.

NOTES

Infringing copies and price of copies sold can be recovered by owner of copyright – Gopal Das v. Jagannath Prasad. AIR 1938 ALL 266.

59. Restriction on remedies in the case of works of architecture –

(1) Notwithstanding anything contained in [Note: Subs. for "the Specific Relief Act, 1877" by Act 23 of 1983, S.20 (w.e.f. 9-8-1984)] the Specific Relief Act, 1963 (47 of 1963)], where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction to restrain the construction of such building or structure or to order its demolition.

(2) Nothing in Section 58 shall apply in respect of the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work.

60. Remedy in the case of groundless threat of legal proceedings –

Where any person claiming to be the owner of copyright in any work, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of the copyright, any person aggrieved thereby may, notwithstanding anything contained [(Note: Subs. for "in Section 42 of the Specific Relief Act, 1877" by Act 23 of 1983, S.21 (w.e.f. 9-8-1984)) in section 34 of the Specific Relief Act, 1963 (47 of 1963)] institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in any such suit-

(a) Obtain an injunction against the continuance of such threats, and

(b) Recover such damages, if any, as he has sustained by reason of such threats:

Provided that this section shall not apply if the person making such threats, with due diligence, commences and prosecutes an action of infringement of the copyright claimed by him.

61. Owner of copyright to be party to the proceeding –

(1) In every civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee, the owner of the copyright shall, unless the court otherwise directs, be made a

defendant and where such owner is made a defendant, he shall have the right to dispute the claim of the exclusive licensee.

(2) Where any civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee is successful, no fresh suit or other proceeding in respect of the same cause of action shall lie at the instance of the owner of the copyright.

62. Jurisdiction of court over matters arising under this Chapter –

(1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) For the purpose of sub section (1), a “district court having jurisdiction ” shall notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction , at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.

CHAPTER XIII – Offences

63. Offence of infringement of copyright or other rights conferred by this Act -

Any person who knowingly infringes or abets the infringement of-

(a) The copyright in a work, or (b) Any other right concerned by this Act [(Note: Ins. by Act 38 of 1994, S.21 (w.e.f. a date to be notified)) except the right conferred by Section 53-A]

[(Note: Subs. by Act 65 of 1984, S.5 (w.e.f. 8-10-1984)) shall be punishable with imprisonment for a term which shall not be less than six months but which may extended to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that [(Note: Ins. by Act 38 of 1994, S.21 (w.e.f. a date to be notified)) where the infringement has not been made for gain in the course of trade or business] the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of

imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.]

Explanation – Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section.

63-A. Enhanced penalty on second and subsequent convictions –

Whoever having already been convicted of an offence under Section 63 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakhs rupees.

Provided that [(Note: Ins. by Act 38 of 1994, S.22 (w.e.f. a date to be notified)) where the infringement has not been made for again in the course of trade or business the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees.

Provided further that for the purpose of this section, no cognizance shall be taken of any conviction made before the commencement of the Copyright (Amendment) Act, 1984 (65 of 1984).]

63-B. Knowing use of infringing copy of computer programme to be an offence -

Any person who knowingly makes use on a computer of an infringing copy of a computer programme shall be punishable with imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.

Provided that where the computer programme has not been used for gain or in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgement, not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees.

64. Power of police to seize infringing copies –

[Note: Subs. for sub-section (1) by Act 65 of 1984, S.7 (w.e.f. 8-10-1984)) (1) Any police officer, not below the rank of a sub inspector, may, if he is satisfied that an offence under Section 63 in respect of the infringement of copyright in work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for the purpose of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable, be produced before a Magistrate.]

(2) Any person having an interest in any copies of a work [(Note: Ins. by Act 65 of 1984, S.7 (w.e.f. 8-10-1984)) , or plates] seized under sub section (1) may, within fifteen days of such seizure, make an application to the Magistrate for such copies [(Note: Ins. by Act 65 of 1984, S.7 (w.e.f. 8-10-1984)) or plates] being restored to him and the Magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application, as he may deem fit.

65. Possession of plates for purpose of making infringing copies -

Any person who knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists shall be punishable with imprisonment which may extend to [(Note: Subs. for "one year, or with fine, or with both" by Act 65 of 1984,S.8 (w.e.f. 8-10-1984)) two years and shall also be liable to fine.]

66. Disposal of infringing copies or plates for purpose of making infringing copies -

The court trying and offence under this Act may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for the purpose of making infringing copies, be delivered up to the owner of the copyright.

67. Penalty for making false entries in register etc, for producing or tendering false entries

Any person who,-

(a) Makes or causes to be made a false entry in the Register of Copyrights kept under this Act, or

(b) Makes a causes to be made a writing falsely purporting to be a copy of any entry in such register, or

(c) Produces or tenders or causes to be produced or tendered as evidence any such entry or writing, knowing the same to be false.

Shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

68. Penalty for making false statements for the purpose of deceiving or influencing any authority or officer

-Any person who -

(a) With a view to deceiving any authority or officer in the execution of the provisions of this Act, or

(b) With a view to procuring or influencing the doing or omission of anything in relation to this act or any matter there under , makes a false statement or representation knowing the same to be false , shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

68-A. Penalty for contravention of Section 52-A. -

Any person who publishes a [(Note: Subs. by Act 38 of 1994, S.2 (xii) (w.e.f. a date to be notified)) sound recording] or a video film in contravention of the provisions of Section 52-A shall be punishable with imprisonment which may extend to three years and shall also be liable to fine.]

69. Offences by companies –

(1) Where any offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for, the conduct of the business of the company, as well as the company shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub section shall render any person liable to nay punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub section (1), where an offence under this Act has been committed by a company and it is proved that the offence was committed with the consent or connivance of, or is attributable to any negligence on the part of , any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation – For the purposes of this section -

(a) “Company” means any body corporate and includes a firm or other association of persons, and

(b) “Director” in relation to a firm means a partner in the firm.

70. Cognizance of offences -

No court inferior to that of [(Note: Subs. for "a Presidency Magistrate or a Magistrate of the first class" by Act 23 of 1983, S.22 (w.e.f. 9-8-1984)) a Metropolitan Magistrate or Judicial Magistrate of the first class] shall try any offence under this Act.

CHAPTER XIV – Appeals

71. Appeals against certain orders of Magistrate –

Any person aggrieved by an order made under sub section (2) of Section 64 or Section 66 may, within thirty days of the date of such order, appeal to the court to which appeals from the court making the order ordinarily lie, and such appellate court may direct that execution of the order be stayed pending disposal of the appeal.

72. Appeals against orders of Registrar of Copyrights and Copyright Board -

(1) Any person aggrieved by any final decision or order of the Registrar of Copyrights may, within three months from the date of the order or decision, appeal to the Copyright Board.

(2) Any person aggrieved by any final decision or order of the Copyright Board, not being a decision or order made in an appeal under sub section (1), may within three months from the date of such decision or order, appeal to the High Court within whose jurisdiction the appellant actually and voluntarily resides or carries on business or personally works for gain.

Provided that no such appeal shall lie against a decision of the Copyright Board under Section 6.

(3) In calculating the period of three months provided for an appeal under this section, the time taken in granting a certified copy of the order or record of the decision appealed against shall be excluded.

73. Procedure for appeals -

This High Court may make rules consistent with this Act as to the procedure to be followed in respect of appeals made to it under Section 72.

CHAPTER XV – Miscellaneous

74. Registrar of Copyrights and Copyright Board to possess certain powers of civil courts -

The Registrar of Copyright and the Copyright Board shall have the powers of a civil court when trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely :-

- (a) Summoning and enforcing the attendance of any person and examining him and oath :
- (b) Requiring the discovery and production of any document
- (c) Receiving evidence on affidavits :
- (d) Issuing commissions for the examinations of witnesses or documents :
- (e) Requisitioning any public record or copy thereof from any court or office :
- (f) Any other matter which may be prescribed.

Explanation – For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Registrar of Copyrights or the Copyrights Board, as the case may be, shall be the limits of the territory of India.

75. Orders for payment of money passed by Registrar of Copyrights and Copyright Board to be executable as a decree -

Every order made by the Registrar of Copyrights or the Copyright Board under this Act for the payment of any money or by the High Court in any appeal against any such order of the Copyright Board shall, on a certificate issued by the Registrar of Copyrights, the Copyright Board or the Registrar of the High Court, as the case may be, be deemed to be a decree of a civil court and shall be executable in the same manner as a decree of such court.

76. Protection of action taken in good faith –

No suit or other legal proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

77. Certain persons to be public servants –

Every officer appointed under this Act and every member of the Copyright Board shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

78. Power to make rules –

(1) The Central Government may, by notification in the Official Gazette, make rules (Note: For the Copyright Rules, 1958, see. Gazette of India, Extraordinary, Part II, Section 3, p.167) for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may make rules to provide for all or any of the following matters, namely –

(a) The term of office and conditions of service of the Chairman and other members of the Copyright Board

(b) The form of complaints and applications to be made, and the licence to be granted under this Act,

(c) The procedure to be followed in connection with any proceeding before the Registrar of Copyrights,

(ca) [(Note: Ins. by Act 38 of 1994, S.24 (w.e.f. a date to be notified)) the conditions for submission of application under sub section (2) of Section 33,

(cb) The conditions subjects to which a copyright society may be registered under sub section (3) of Section 33.

(cc) The inquiry for cancellation of registration under sub section (4) of Section 33

(cd) The conditions subject to which the copyright society may accept authorisation under clause (a) of sub section (1) of Section 34 and the conditions subject to which owners of rights have right to withdraw such authorisation under clause (d) of that sub section.

(ce) The manner in which the approval of the owners of rights regarding collection and distribution of fees, approval for utilization of any amount collected as fees and to provide to such owners information concerning activities in relation to the administration of their rights under sub section (1) of Section 36.

(cf) The manner in which the approval of the owners of rights regarding collection and distribution of fees, approval for utilisation of any amount collected as fees and to provide to such owners information concerning activities in relation to the administration of their rights under sub-section (1) of Section 35;

(cg) The returns to be filed by copyright societies to the Registrar of Copyrights under sub-section (1) of Section 36;]

(d) The manner of determining any royalties payable under this Act, and the security to be taken for the payment of such royalties;

(da) [(Note: Ins. by Act 38 of 1994, S.24 (w.e.f. a date to be notified)) The manner of payment of royalty under clause (j) of sub-section (1) of Section 52;

(db) The form and the manner in which the copyright society shall maintain accounts and other relevant records and prepare annual statements of accounts and the manner in which the quantum of remuneration is to be paid to individual owner of rights under sub section (l) of Section 52-B.]

(e) The form of Register of Copyrights to be kept under this Act and the particulars to be entered

therein.

(f) The matters in respect of which the Registrar of Copyrights and the Copyright Board shall have powers of a civil court.

(g) The fees which may be payable under this Act.

(h) The regulation of business of the Copyright Office and of all things by this Act placed under the direction or control of the Registrar of Copyrights.

(3) [(Note: Subs. for sub-section 3 by Act 23 of 1983, Section 23 (w.e.f. 9-8-1984)) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

79. Repeals, savings and transitional provisions –

(1) The Indian Copyright Act, 1914 (3 of 1914), and the Copyright Act of 1911 passed by the Parliament of the United Kingdom as modified in its application to India by the Indian Copyright Act, 1914, are hereby repealed.

(2) Where any person has, before the commencement of this Act, taken any action whereby he has incurred and expenditure or liabilities in connection with the reproduction or performance of any work in a manner which at the time was lawful or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the coming into force of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interest arising from or in connection with such action which are subsisting and valuable at the said date, unless the person who, by virtue of this Act, becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by the Copyright Board.

(3) Copyright shall not subsist by virtue of this Act in any work in which copyright did not subsist immediately before the commencement of this Act under any Act repealed by sub section (1).

(4) Where copyright subsisted in any work immediately before the commencement of this Act, the rights comprising such copyright shall, as from the date of such commencement, e

the rights specified in Section 14 in relation to the class of works to which such work belongs, and where any new rights are conferred by that section, the owner of such rights shall be-

(a) In any case where copyright in the work was wholly assigned before the commencement of this Act, the assignee or his successor-in-interest.

(b) In any other case, the person who was first owner of the copyright in the work under any Act repealed by sub section (1) or his legal representatives.

(5) Except as otherwise provided in this Act, where any person is entitled immediately before the commencement of this Act to copyright in any work or any right in such copyright or to an interest in any such right, he shall continue to be entitled to such right or interest for the period which he would have been entitled thereto if this Act and come into force.

(6) Nothing contained in this Act shall be deemed to render any act done before its commencement an infringement of copyright if that act would not otherwise have constituted such an infringement.

(7) Save as otherwise provided in this section, nothing in this section shall be deemed to affect the application of the General Clause Act, 1897 (10 of 1897), with respect to the effect of repeals.

Rules

CHAPTER I – Preliminary

1. Short title, extent and commencement -

(Note: Published in the Gazette of India, Extraordinary, 1958, Pt. II, S.3m p.167.) S.R.O. 270, dated the 21st January, 1958. – In exercise of the powers conferred by Section 78 of the Copyright Act, 1957 (14 of 1957) the Central Government hereby makes the following rules, namely -

1. Short title, extent and commencement - (1) These rules may be called the Copyright Rules, 1958.

(2) They extend to the whole of India.

(3) They shall come into force on the date on which the Act comes into quires, -

2. Interpretations -

In these rules, unless the context otherwise requires, -

- (a) “Act” means the Copyright Act, 1957 (14 of 1957);
- (b) “Form” means a form set out in the First Schedule;
- (c) “Schedule” means a Schedule to these rules; and
- (d) “Section” means a section of the Act.

CHAPTER II – The Copyright Board

3. Terms and conditions of office of the Chairman and members of the Copyright Board -

(1) The Chairman and other members of the Copyright Board shall be appointed for such period not exceeding five years as the Central Government may in each case deem fit .

(2) The Chairman and other members of the Copyright Board shall, on the expiry of the period of their appointment, be eligible for reappointment.

(3) The Chairman or any other member of the Copyright Board may resign his office by giving three months notice in writing to the Central Government.

(4) The Chairman or any other member of the Copyright Board shall be paid such salary or honorarium as may be determined by the Central Government in each case.

(5) A non-official appointed as the Chairman or other member of the Copyright Board shall be entitled to traveling allowances for journeys performed on duty and to daily allowances for the period spent on duty on the scale provided in the rules applicable to the class of officers to which the Central Government may declare him to correspond in status:

Provided that it shall be competent for the Central Government to provide a different scale of such

allowances if the circumstances of any case so require.

(6) An official appointed as the chairman or other member of the Copyright Board shall be entitled to such traveling allowances for journeys performed on duty and to such daily allowances for the period spent on duty as may be admissible to him as such official.

(7) The other conditions of service of the Chairman and other members of the Copyright Board shall be regulated by orders made in that behalf by the Central Government from time to time.

4. Functions of the Secretary of the Copyright Board -

The Registrar or Copyrights shall perform all secretarial functions relating to the Copyright Board under the direction and control of the Chairman of the Copyright Board.

CHAPTER III – Relinquishment of Copyright

5. Notice of relinquishment -

The author of a work desiring to relinquish under Section 21 all or any of the rights comprised in the copyright in the work shall give notice to the Registrar of Copyrights in accordance with Form I.

CHAPTER IV – Licences for Translations

6. Application for licence -

(1) An application for a licence under Section 32 to produce and publish a translation of a literary or dramatic work in any language shall be made in triplicate in accordance with Form II and shall be accompanied by the fee prescribed in the Second Schedule.

(2) Every such application shall be in respect of one work only and for translation of that work into one language only.

7. Notice of application -

(1) When any such application has been made, the Copyright Board shall, as soon as possible, give notice of the application in the official Gazette and also, if the Copyright Board thinks fit, in one or two newspapers and shall send a copy of the notice to the owner of the copyright, wherever practicable.

(2) Every such notice shall contain the following particulars:-

(a) The date of the application;

(b) The name, address and nationality of the applicant;

(c) Particulars of the work which is to be translated;

(d) The date and country of the first publication of the work;

(e) The name, address and nationality of the owner of the copyright as stated in the application;

(f) The language in which the work is to be translated; and

(g) The Registration Number of the work in the Register of Copyrights, if any.

8. Consideration of the application -

(1) The Copyright Board shall consider the application after the expiry of not less than one hundred and twenty days from the date of the publication of the notice in the official Gazette.

(2) The Copyright Board shall give an opportunity to the applicant and also, wherever practicable, to any person claiming any interest in the copyright of the work, to be heard and may take such evidence in respect of the application as it thinks fit.

(3) If more than one application for translation of the work in the same language is pending before the Copyright Board at the expiry of one hundred and twenty days after the publication in the official Gazette of the notice of the application first received, all such applications shall be considered together.

(4) If the Copyright Board is satisfied that the licence for a translation of the work in the language applied for may be granted to the applicant, or, if there are more applicants than one, to such one

of the applicants as, in the opinion of the Copyright Board, would best serve the interests of the general public, it shall grant a licence accordingly.

(5) Every such licence shall be subject to the condition provided in subsection (4) of Section 32 relating to the payment of royalties and shall specify -

(a) The period within which the translation shall be produced and published;

(b) The language in which the translation shall be produced and published;

(c) The rate at which royalties in respect of the copies of the translation of the work sold to the public shall be paid to the owner of the copyright in the work; and

(d) The person or persons to whom such royalties shall be payable.

(6) The grant of every such licence shall, as soon as possible, be notified in the official Gazette and in the newspapers, if any, in which the notice under Rule 7 was published and a copy of the licence shall be sent to the other parties concerned.

9. Manner of determining royalties -

The Copyright Board shall determine the royalties payable to the owner of the copyright under subsection (4) of Section 32 after taking into consideration -

(a) The proposed retail price of a copy of the translation of the work;

(b) The prevailing standards of royalties in regard to translation of works; and

(c) Such other matters as may be considered relevant by the Copyright Board.

10. Extension of the period of licence -

The Copyright Board may, on the application of the licensee and after notice to the owner of the copyright, wherever practicable, if it is satisfied that the licensee was for sufficient reasons unable to produce and publish the translation within the period specified in the licence, extend such period.

11. Cancellation of licence -

The Copyright Board may, after giving the licensee an opportunity of being heard, cancel the licence on any of the following grounds, namely:-

(a) That the licensee has failed to produce and publish the translation within the time specified in the licence or within the time extended on the application of the licensee;

(b) That the licence was obtained by fraud or misrepresentation as to any essential fact;

(c) That the licensee contravened any of the terms and conditions of the licence.

CHAPTER IV A – Compulsory Licence for Publication of Unpublished Works, Translation and Reproduction of Work

11-A. Application for licence -

An application for a licence under Section 31-A, sub-section (1-A) of Section 32 and Section 32-A to publish any unpublished work or to translate any work in any language or to reproduce any published work shall be made in triplicate in accordance with Form II-A and shall be accompanied by the fee prescribed in the Second Schedule.

11-B.

Every such application shall be in respect of one work only and in respect of translation of a work into one language only.

11-C. Notice of application -

(1) A copy of such application shall be served by registered mail on the owner of copyright and if the owner of such copyright is not known or is not traceable, a copy of the application shall be served on the publisher whose name appears on the work.

(2) The Copyright Board shall give an opportunity to the applicant and also, wherever practicable, to any person claiming any interest in the copyright of the work, to be heard and may take such

evidence in respect of the application as it thinks fit.

(3) If more than one application for translation of the work in the same language or for reproduction of the work or for publication of any unpublished work is pending before the Copyright Board, all such applications shall be considered together.

(4) If the Copyright Board is satisfied that the licence for a translation of the work in the language or for reproduction of the work or for publication of unpublished work, applied for may be granted to the applicant, or if there are more applicants than one, to such one of the applicants, as in the opinion of the Copyright Board, would best serve the interests of the general public, it shall grant a licence accordingly.

(5) Every such licence shall be subject to the conditions provided in sub-section (7) of Section 31-A, clause (i) of sub-section (4) of Section 32 and clause (i) of sub-section (4) of Section 32-A relating to payment of royalties and shall specify:-

(a) The period within which such work shall be published;

(b) The rate at which royalties in respect of the copies of such work sold to the public shall be paid to the owner of the copyright in the work;

(c) In a case of translation of the work, the language in which the translation shall be produced and published; and

(d) The person or persons to whom such royalties shall be payable.

(6) The grant of every such licence shall, as soon as possible, be notified in the official Gazette and a copy of the licence shall be sent to the other parties concerned.

11-D. Manner of determining royalties -

The Copyright Board shall determine the royalties payable to the owner of the copyright under sub-section (7) of Section 31-A, clause (i) of sub-section (4) of Section 32 and clause (i) of sub-section (4) of Section 32-A after taking consideration:

(a) The proposed retail price of a copy of such work;

(b) The prevailing standards of royalties in regard to such works; and

(c) Such other matters as may be considered relevant by the Copyright Board.

11-E. Extension of the period of licence -

The Copyright Board may, on the application of the licensee and after notice to the owner of the copyright, wherever practicable, if it is satisfied that the licensee was for sufficient reasons unable to produce and publish the translation or reproduce the work or publish the unpublished work within the period specified in the licence, extend such period.

11-F. Cancellation of licence -

The Copyright Board may, after giving the licensee an opportunity of being heard, cancel the licence on any of the following grounds, namely :-

(a) That the licensee has failed to produce and publish such work within the time specified in the licence or within the time extended on the application of the licensee;

(b) That the licence was obtained by fraud or misrepresentation as to any essential fact;

(c) That the licensee has contravened any of the terms and conditions of the licence.

11-G. Notice for termination of licence -

Notice for termination of licence under proviso to sub-section (1) or sub-section (2) of Section 32-B shall be served on the person holding the licence by the owner of copyright in Form II-B of the First Schedule to these rules.]

CHAPTER V – Performing Rights Societies

12. Publication of statement of fees etc. -

(1) Every performing rights society having at the commencement of the Act authority to grant licences for performance in public of any works shall, within three months of the commencement of the Act or within such further period as the Registrar of Copyrights may, for sufficient reasons, allow in respect of any such society on an application made by it in this behalf, prepare and publish, as its own cost, in the official Gazette and in two newspapers in the English language

published in two different zones, the statements of all fees, charges or royalties which it proposes to collect for the grant of such licences.

(2) Every performing rights society shall, within one month of its acquiring after the commencement of the Act the authority to grant licences for performance in public of any works or within such further period as the Registrar of Copyrights may, for sufficient reasons, allow in respect of any such society on an application made by it in this behalf, prepare and publish, as its own cost, in the official Gazette, and in two newspapers in the English language published in two different zones, the statements of all fees, charges or royalties which it proposes to collect for the grant of such licences.

(3) Every performing rights society shall file with the Registrar of Copyrights two copies of the statements prepared under sub-rule (1) of sub-rule (2) Within the time specified therein, together with two copies of each of the newspapers in which statements have been published.

Explanation – In this rule “Zone” shall have the same meaning as in Section 12.

13. Determination of objections -

The Copyright Board may take such evidence as it deems fit in determining any objection lodged under Section 34.

14. Publication of alterations in the statements of fees etc. -

The Registrar of Copyrights shall publish the alterations made by the Copyright Board in the statements of fees, charges or royalties in the official Gazette and in the two newspapers in which the original statements were published under Rule 12 or in such other newspapers as he may deem fit.

CHAPTER VI – Registration of Copyright

15. Form of Register of Copyrights -

(1) The Register of Copyrights shall be kept in four parts as follows:-

Part I. Literary, Dramatic and Musicial Works.

Part II. Artistic Works.

Part III. Cinematograph Films.

Part IV. Records.

(2) The Register of Copyrights shall contain the particulars specified in Form III.

16. Application for Registration of Copyright -

(1) Every application for registration of copyright shall be made in accordance with Form IV and every application for registration of changes in the particulars of copyright entered in the Register of Copyrights shall be made in accordance with Form V.

(2) Every such application shall be in respect of one work only, shall be made in triplicate and shall be accompanied by the fee specified in the Second Schedule in this behalf.

(3) [(Note: Subs. by Noti. No. GSR 435(E), dt. 27-4-1992 (w.e.f. 27-4-1992) The person applying for registration shall give notice of his application to every person who claims or has any interest in the subject matter of the copyright or disputes the rights of the applicant to it.]

(4) If no objection to such registration is received by the Registrar of Copyrights within thirty days of the receipt of the application by him, he shall, if satisfied about the correctness of the particulars given in the application, enter such particulars in the Register of Copyrights.

(5) If the Registrar of Copyright receives any objections for such registration within the time specified in sub-rule (4), or, if he is not satisfied about the correctness of the particulars given in the application, he may, after holding such inquiry as he deems fit, enter such particulars of the work in the Register of Copyrights as he considers proper.

(6) The Registrar of Copyrights shall, as soon as may be, send, wherever practicable, a copy of the entries made in the Register of Copyrights to the parties concerned.

17. Correction of entries in the Register of Copyrights -

The Registrar of Copyrights may, on his own motion or on application of any interested person, amend or alter the Register of Copyrights in the manner specified in Section 49 after giving, wherever practicable, to the person affected by such amendment or alteration, an opportunity to show cause against such amendment or alteration and communicate to such person the

amendment or alteration made.

18. Indexes -

(1) There shall be kept at the Copyright Office the following indexes for each part of the Register of Copyrights, namely -

- (i) A general Author Index;
- (ii) A general Title Index;
- (iii) An Author Index of works in each language; and
- (iv) A Title Index of works in each language.

(2) Every index shall be arranged alphabetically in the form of cards.

19. Inspection of the Register of Copyrights and Indexes -

The Register of Copyrights and Indexes thereof shall at all reasonable times be open to inspection by any person in such manner and subject to such conditions as the Registrar of Copyrights may specify.

20. Copies and extracts of the Register of Copyrights and Indexes -

(1) Any person shall be entitled to take copies of, or make extracts from, the Register of Copyrights or Indexes on payment of the fee specified in the Second Schedule subject to such supervision as the Registrar of Copyrights may arrange.

(2) The Registrar of Copyrights shall, on an application made in that behalf and on payment of the fee specified in the Second Schedule, furnish a certified copy of any entries made in the Register of Copyrights and Indexes thereof.

CHAPTER VII – Making of Records

21. Making of records -

(1) Any person intending to make records under clause (j) of sub-section (1) of Section 52 shall give notice of such intention to the owner of the copyright and to the Copyright Board at least [(Note: Subs. by G.S.R. 267, dated 22-4-1958) fifteen days] in advance of the making of the records and shall pay to the owner of the copyright, along with the notice, the amount of royalties due in respect of all the records to be made at the rate fixed by the Copyright Board in this behalf.

(2) Such notice shall contain the following information, namely:-

(a) The particulars of the work in respect of which records are to be made;

(b) Alterations and omissions, if any, which are proposed to be made for the adaptation of the work to the records;

(c) The name, address and nationality of the owner of the copyright in the work;

(d) Particulars of the records made previously recording the work;

(e) The number of records intended to be made; and

(f) The amount paid to the owner of the copyright in the work by way of royalties and the manner of payment.

CHAPTER VIII – Importation of Infringing Copies

22. Importation of infringing copies -

Every application under sub-section (1) of Section 53 shall be made in accordance with Form VI and shall be accompanied by the fee specified in the Second schedule.

23. Procedure for examination of infringing copies -

The Registrar of Copyrights or the person authorised by him in this behalf shall, in taking action under sub-section (2) of Section 53, act in collaboration with Customs authorities.

CHAPTER IX – Miscellaneous

24. Mode of making applications etc. -

Every application, notice, statement or any other document to be made, given, filed, or sent under the Act or under these Rules may, unless otherwise directed by the authority concerned, be sent by hand or pre-paid registered post.

25. Mode of communication by the Copyright Board etc. -

Every written intimation from the Copyright Board, the Copyright Office or the Registrar of Copyrights shall be deemed to have been duly communicated to any person if such intimation is sent to the known address of such person by pre-paid registered post.

26. Fees. -

(1) The fees payable under the Act in respect of any matter shall be as specified in the Second Schedule.

(2) The fees may be paid to the Registrar of Copyrights, New Delhi, by a postal order or a bank draft issued by a Scheduled Bank as defined in the Reserve Bank of India Act, 1934, or by deposit into a Government Treasury or a branch of the Reserve Bank of India or the State Bank of India under the head of account : Major Head – ‘XLVI – Miscellaneous’. Minor Head ‘Naturalization, Passport and Copyright Fees’.

(3) Postal orders and bank drafts shall be crossed and draw able in New Delhi.

(4) Payment by bank drafts shall not be valid unless the amount of bank commission is included therein.

(5) Where payment is made by deposit in a Government Treasury or a branch of the Reserve Bank of India or the State Bank of India, the challan evidencing the payment shall be sent to the authority concerned by pre-paid registered post.

27. Right of audience. -

In any proceedings before the Copyright Board or the Registrar of Copyrights any party may appear and be heard either in person or by a pleader or other person duly authorised by such party.

28. Costs -

The costs of, and incidental to, the proceedings before the Copyright Board or the Registrar of Copyrights shall be in the discretion of the Copyright Board or the Registrar of Copyrights, as the case may be:-

FIRST SCHEDULE

FORM I – Notice of relinquishment of Copyright

(See Rule 5)

To

The Registrar of Copyrights, Copyright Office, New Delhi.

Sir,

In accordance with Section 21 of the Copyright Act, 1957 (14 of 1957), I hereby give notice that, with effect from the date of this notice, I do relinquish, to the extent specified in the enclosed affidavit, my rights in the work described in the said affidavit.

Yours faithfully,

(Signature)

Place:

Date:

Form Affidavit referred to above of (full name in block letters)

..... do hereby one (address) solemnly

(1) I am the author of the work described in the Statement below;

(2) I am the owner of the copyright in the said work to the extent specified in the said Statement;
and

(3) I do hereby relinquish my rights in the said work to the extent specified in the said Statement

1. Description of the Work:

(a) Class of the work (Literary, Dramatic, Musical, Artistic, Cinematograph Film, Record).

(b) Title of the work.

(c) Full name, address and nationality of the author.

(d) Language of the work.

(e) Name, address and nationality of the publisher.

(f) Year of first publication.

If the work has appeared as a serial or otherwise in a journal or magazine, give the name of the journal or magazine, the volume number of the issue, the date and page reference.

(g) Country of first publication.

(h) If the copyright in the work is registered under Section 45, the Registration Number.

2. Rights owned by the deponent on the date of the affidavit. (If the rights are owned jointly with others, state names, address and nationalities of the joint owners.)

3. Extent to which rights are relinquished.

4. Reasons for relinquishment of the rights. (The information given here will be kept strictly confidential.)

5. Remarks if any.

Place:

Date:

Signature

Solemnly affirmed before me by _____ who is know to me (name of deponent in block letters) personally/who is identified to me by _____ who is known to me personally. (name of identifier in block letters)

Place:

Date:

Signature and seal of the Magistrate.

FORM II – Application for a licence for translation

(See Rule 6)

(To be submitted in triplicate)

To

The Registrar of Copyrights,

Secretary, Copyright Board,

Copyright Office,

New Delhi.

Sir,

In accordance with Section 32 of the Copyright Act, 1957 (14 of 1957), I hereby apply to the Copyright Board for a licence to produce and publish a translation of the work in accordance with the particulars given in the enclosed Statement.

2. I hereby undertake to abide strictly by the terms and comditions of the licence, if granted to me.

Yours faithfully,

Signature

Place:

Date:

1. Full name of the applicant. (in block letters)

2. Full address and nationality of the applicant.

3. Telegraphic address, if any.

4. Description of the work:

(a) Class of the work (Literary, Dramatic, Musical, Artistic, Cinematograph Film, Record).

(b) Title of the work.

(c) Full name, address and nationality of the author and if the author is deceased, the date of his decease.

(d) Language of the work.

(e) Name, address and nationality of the publisher.

(f) Year of first publication.

(g) Country of first publication.

(h) Price of a copy of the work.

(i) If the copyright in the work is registered under Section 45, the Registration Number.

If the work has appeared as a serial or otherwise in a journal or magazine, give the name of the journal or magazine, give the name of the journal or magazine, the volume number of the issue, the date and the page reference.

5. Language into which the work is proposed to be translated.

6. Full name, qualifications and address of the translator.

7. Qualifications of the applicant to produce and publish the translation.

8. Number of copies of the translation proposed to be published.

9. Estimated cost of production and publication of the translation.

10. Proposed retail price per copy of the translation.

11. Rate of royalty, which the applicant considers reasonable, to be paid to the copyright owner.

12. Means of the applicant for payment of the royalty.

13. Whether the prescribed fee has been paid and if so, particulars of payment (give Postal Order/Bank Draft/Treasury Challan Number).

14. (a) Full name, address and nationality of the person competent to issue a licence for translation.

(b) Whether the applicant was able to find the said person.

(c) Whether the applicant had requested and had been denied authorisation by the said person to produce and publish the translation.

(d) If the applicant was unable to find the owner, whether he had sent a copy of the request for authorisation to the publisher. If so, the date on which the copy was sent.

Enclose true copies of correspondence, if any.

15. Whether the author of the work has withdrawn from circulation copies of the work.

16. (a) Whether a translation in the same language has been published before.

(b) Whether the earlier translation is out of print.

(c) Full name, address and nationality of the earlier translator and if the said translator is deceased, the date of his decease.

(d) Title of the earlier translation.

(e) Full name, address and nationality of the publisher of the earlier translation.

(f) Year of publication.

(g) Price per copy of the earlier translation.

(h) If the earlier translation is registered under Section 45, the Registration Number.

(i) Rate and amount of royalty paid to the copyright owner in respect of the earlier translation, if known.

17. (a) Whether translation has been made into any language other than the language stated in 5 above.

(b) Full name, address and nationality of the translator and if the said translator is deceased, the date of his decease.

(c) Title of the translation.

(d) Language of the translation.

(e) Full name, address and nationality of the publisher of the translation.

(f) Year of publication.

(g) Price per copy of the translation.

(h) If the translation is registered under Section 45, the Registration Number.

(i) Rate and amount of royalty paid to the copyright owner, if known.

18. Remarks, if any

19. List of enclosures.

Place:

Date:

Signature.

II-A (Note: Form II-A and II-B ins. by Noti. No. G.S.R. 602(E), dt. 9-8-1984 (w.e.f. 9-8-1984) (1985 CCL-III-80).

- Application for a licence for publication/reproduction

(See Rule II-A)

(To be submitted in triplicate)

To

The Registrar of Copyrights,

Secretary, Copyright Board,

Copyright Office,

New Delhi

Sir,

In accordance with Section 31/32/32-A of the [(Note: Subs. for "Copyright (Amendment) Act, 1983 (23 of 1983)" by Noti. No. G.S.R. 435(E), dt. 27-4-1992 (w.e.f. 27-4-1992)) Copyright Act, 1957 (14 of 1957)], I hereby apply to the Copyright Board for a licence to publish an unpublished Indian work, or reproduce a published work or to translate a work in accordance with the particulars given in the enclosed Statement.

2. I hereby undertake to abide strictly by the terms and conditions of the licence, if granted to me.

3. I hereby verify that the particulars given in this form are true to the best my knowledge, belief and information and nothing has been concealed therefrom.

Place:

Date:

Yours faithfully,

(Signature)

1. Full name of the applicant (In block letters)

2. Full address and nationality of the applicant.

3. Telegraphic address, if any.

4. Description of the work:

(a) Class of the work (Literary, Dramatic, Musical, Artistic, Cinematograph Film, Record).

(b) Title of the work.

(c) Full name, address and nationality of the author and if the author is deceased, the date of his death.

(d) Language of the work.

(e) Name, address and nationality of the publisher.

(f) Year of first and last publication.

(g) Country of first and last publication.

(h) Price of a copy of the work.

(i) If the copyright in the work is registered under Section 45, the Registration Number.

(If the work has appeared as a serial or otherwise in a journal or magazine, give the name of the journal or magazine, the volume number of the issue, the date and the page reference).

5. If the licence is applied for translation state:

(a) Language into which the work is proposed to be translated.

(b) Full name, qualifications and address of the translator.

(c) qualifications of the applicant to produce and publish the translation.

6. Indicate the purpose for which the licence is required.

7. Number of copies of work proposed to be published under the licence applied for.

8. Estimated cost of the work to be published.

9. Proposed retail price per copy of the work.

10. Rate of royalty, which the applicant considers reasonable, to be paid to the copyright owner.

11. Means of the applicant for payment of the royalty.

12. Whether the prescribed fee has been paid and if so, particulars of payment (give Postal Order/Bank Draft/Treasury Challan Number).

13. (a) Full name, address and nationality of the person competent to issue a licence.

(b) Whether the applicant after due diligence on his part was unable to find the owner.

(c) Whether the applicant has requested and had been denied authorisation by the said person to produce and publish the translation or reproduce the work or publish the unpublished work.

(d) If the applicant has requested and had been denied authorisation by the said person to produce and publish the translation or reproduce the work or publish the unpublished work.

(Enclose true copies of correspondence, if any).

14. Whether the author of the work has withdrawn from circulation copies of the work.

15. In case of application for translation furnish following additional information:-

(a) Whether a translation in the same language has been published before.

(b) Whether the earlier translation is out of print.

(c) Full name, address and nationality of the earlier translator and if the said translator is deceased, the date of his decease.

(d) Title of the earlier translation.

(e) Full name, address and nationality of the publisher of the earlier translation.

(f) Year of publication.

(g) Price per copy of the earlier translation.

(h) If the earlier translation is registered under Section 45, the Registration Number.

(i) Rate and amount of royalty paid to the copyright owner in respect of the earlier translation, if known.

16. (a) Whether translation has been made into any language other than the language stated in 5 above.

(b) Full name, address and nationality of the translator and if the said translator is deceased, the date of his decease.

(c) Title of the translation.

- (d) Language of the translation.
- (e) Full name, address and nationality of the publisher of the translation.
- (f) Year of publication.
- (g) Price per copy of the translation.
- (h) If the translation is registered under Section 45, the Registration Number.
- (i) Rate and amount of royalty paid to the copyright owner, if known.

17. Remarks, if any.

18. List of enclosures.

Place:

Date:

(Signature)

FORM II-B

(See Rule II-G)

To

.....
Sir,

[(Note: Subs. by Noti. No. G.S.R. 435(E), dt. 27-4-1992 (w.e.f. 27-4-1992). In accordance with first proviso to sub-section (1) ro the first proviso to sub-section (2) of Section 32-B of the Copyright Act, 1957 (14 of 1957)], I hereby give notice, that copies of translation/reproduction of the work given below (mention language) have been published by me/under my authorization.

Place:

Date:

Yours faithfully,

(Signature)

1. Title of the work.
2. Name of address of the owner of copyright.
3. Year and country of first publication and name, address and nationality of the publisher.
4. Name and address of the author who has translated the work.
5. Name and address of the publisher and year in which the translation has been published in India.
6. Name and address of the publisher and year in which the reproduction of the work has been published in India.
7. Retail price of the published work.

FORM III – Form of Register of Copyrights

(See Rule 15)

1. Registration Number.
2. Name, address and nationality of the applicant.
3. Nature of the applicant's interest in the copyright of the work.
4. Class and description of the work.
5. Title of the work.
6. Language of the work.
7. Name, address and nationality of the author and if the author is deceased, the date of his decease.
8. Whether work is published or unpublished.
9. Year and country of first publication and name, address and nationality of the publisher.
10. Years and countries of subsequent publications, if any, and names, address and nationalities

of the publishers.

11. Names, address and nationalities of the owners of the various rights comprising the copyright in the work and the extent of rights held by each, together with particulars of assignments and licences, if any.

12. Names, addresses and nationalities of other persons, if any, authorised to assign or licence the rights comprising the copyright.

13. If the work is an 'Artistic Work', the location of the original work, including name, address and nationality of the person in possession of it. (In the case of an architectural work, the year of completion of the work should also be shown).

14. Remarks, if any

FORM IV – Application for Registration of Copyright

(See Rule 16)

To

The Registrar of Copyrights,

Copyright Office,

New Delhi

Sir,

In accordance with Section 45 of the Copyright Act, 1957 (14 of 1957), I hereby apply for registration of copyright and request that entries may be made in the Register of Copyrights as in the enclosed Statement of Particulars sent herewith in triplicate.

I also send herewith Rule 16 of the Copyright Rules, 1958, I have sent by prepaid registered post copies of this letter and of the enclosed Statement (s) to the other parties concerned, as shown below:-

Names and addresses of parties	Date of despatch

*See Columns 7,11,12 and 13 of the Register of Copyrights.

3. The prescribed fee has been paid, as per details below:-

4. Communications on this subject may be addressed to:-

[(Note: Ins. by Noti. No. 435(E), dt. 27-4-1992 (w.e.f. 27-4-1992)) I hereby declare that, to the best of my knowledge and belief, no person other than to whom a notice has been sent as per paragraph 2, has any claim, interest or dispute to my copyright of this work, or to its use by me.]

[(Note: Ins. by Noti. No. GSR 602(E), dt. 9-8-1984 (w.e.f. 9-8-1984)) (Note: Para 4-A renumbered as para 6 by Noti. No. 435(E), dt. 27-4-1992 (w.e.f. 27-4-1992)) I hereby verify that the particulars given in this form and the Statement of Particulars are true to the best of my knowledge, belief and information and nothing has been concealed therefrom.]

Yours faithfully,

Place:

Date:

Signature.

Statement of Particulars

1. Registration Number in the Register of Copyrights.

2. Changes sought in the particulars of copyright as entered in the Register of Copyrights.

Reference to Column Number of the Register of Copyrights of	Existing entry in the Register of Copyrights	Proposed entry in place of the existing entry in the Register of Copyrights	Reasons for the changes proposed
--	---	--	---

1

2

3

4

(2) The works which are being imported in accordance with the particulars in the said Statement are infringing copies of the work described in the said Statement; and

(3) I am interested in the prevention of importation of the said infringing copies for the following reasons :- (State reasons)

(4) The infringing copies are not being imported for the private and domestic use of the importer. Statement

A. – Particulars of the Work and Rights held.

1. Full name, address and nationality of the applicant.

2. Telegraphic address of the applicant.

3. If the applicant is not the owner of the copyright, full name, address and nationality of the owner of the copyright.

4. Description of the work :-

(a) Class of the work (Literary, Dramatic, Musical, Artistic, Cinematograph Film, Record).

(b) Title of the work.

(c) Full name, address and nationality of the author and if the author is deceased, the date of his decease.

(d) Language of the work.

(e) Name and address of the publisher.

(f) Year of first publication.

(g) Country of first publication.

(h) If the copyright in the work is registered under Section 45, the Registration Number.

If the work was appeared as a serial or otherwise in a journal or magazine, give the name of the journal or magazine, the volume number of the issue, the date and page reference.

B. Details of import of infringing copies.

1. Country of origin of the infringing copies.
2. Name, address and nationality of the importer in India.
3. Name, address and nationality of the maker of the infringing copies.
4. Expected time and place of import of the infringing copies into India.

5. In case a consignment of the infringing copies is detected and detained, will the applicant be prepared to go himself or depute an authorised agent to identify the said copies to the satisfaction of the Registrar of Copyrights.

C. Any other relevant information not covered above.

Place:

Date:

Signature.

Solemnly affirmed before (full name of the Magistrate in block letters)

Who is known to me personally/who is identified to me by

.....
(name of identifier in block letters) who is known to me personally.

Place:

Date:

Signature and seal of the Magistrate.

SECOND SCHEDULE

(Note: Subs. by Noti. No. GSR 602(E), dated 9-8-1984 (w.e.f. 9-8-1984) (1985 CCL-III-80)).

“SECOND SCHEDULE”

1.	For a licence to republish a Literary, Dramatic, Musical or Artistic Work (Sections 31, 31-A and 32-A)	Rs. 100 per work
2.	For a licence to republish a Cinematograph Film (Section 31)	Rs. 500 per work
3.	For a licence to republish a Record (Section 31)	Rs. 200 per work
4.	For licence to perform an Indian work in public or to communicate the work to the public by Broadcast (Section 31)	Rs. 25 per work
5.	For an application for a licence to produce and publish a translation of a Literary or Dramatic Work in any language (Section 32 and 312 (I-A))	Rs. 100 per work
6.	For an application for registration of copyright in a - (a) Literary, Dramatic, Musical or Artistic Work. (b) Provided that in respect of a Literary or Artistic Work which is used or capable of being used in relation to any goods (Section 45)	Rs. 10 per work Rs. 50 per work
7.	For an application for changes in particulars of copyright entered in the Register of Copyrights in respect of a : (a) Literary, Dramatic, Musical or Artistic Work. (b) Provided that in respect of a Literary or Artistic Work which is used or capable of being used in relation to any goods (Section 45).	Rs. 5 per work Rs. 25 per work
8.	For an application for registration of copyright in a Cinematograph Film (Section 45).	Rs. 200 per work

9.	For an application for registration of changes in particulars of copyright entered in the Register of Copyrights in respect of Cinematograph Film (Section 45).	Rs. 100 per work
10.	For an application for registration of copyright in a Record (Section 45).	Rs. 50 per work
11.	For an application for registration of changes in particulars of copyright entered in the Register of Copyrights in respect of a Record (Section 45).	Rs. 25 per work
12.	For taking extracts from the Register of Copyrights (Section 47).	Rs. 5 per work per hour
13.	For taking extracts from the Indexes (Section 47).	Rs. 2.50 per work per hour
14.	For a certified copy of an extracts from the Register of Copyrights or the Indexes (Section 47).	Rs. 5 per copy
15.	For a certified copy of any other public document in the custody of the Registrar of Copyrights or the Copyright Board.	Rs. 2.50 per page
16.	For an application for prevention of importation of infringing copies (Section 53).	Rs. 25 per work per place of entry.]

The International Copyright Order, 1991

The International Copyright Order, 1991

(Note: Vide Noti. No. S.O. 657(E), dated 30-9-1991, published in the Gezette of India, Extra., Pt. II,

Section 3(ii), dated 30-9-1991, pp. 5-8 [No. F.12-1/90-IC).

In exercise of the powers conferred by Section 40 of the Copyright Act, 1957 (14 of 1957), and in super session of the International Copyright Order, 1958, the Central Government hereby makes the following order :-

1. (1) This Order may be called the International Copyright Order, 1991.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In this Order, unless the context otherwise requires, -

(a) 'Berne Convention Country' means a country which is a member of the Berne Copyright Union, and includes a country mentioned either in Part I or in Part II of the Schedule ;

(b) 'Phonograms Convention Country' means a country which has either ratified, or accepted or acceded to the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms, done at Geneva on the twenty-ninth day of October, one thousand nine hundred and seventy-one, and includes a country mentioned in Part V of the Schedule ;

(c) 'Schedule' means the Schedule appended to this Order ;

(d) 'Universal Copyright Convention Country' means a country which has either ratified, or accepted or acceded to the Universal Copyright Convention, and includes a country mentioned either in Part III or in Part IV of the Schedule.

Explanation – 'Phonogram' means any exclusively aural fixation of sounds of a performance or other sounds.

3. Subject to the provisions of Paragraph 4, all the provisions of the Copyright Act, 1957 (14 of 1957) (hereinafter referred to as the Act), except those of Chapter VIII ; and those other provisions which apply exclusively to Indian works, shall apply, -

(a) To any work first made or published in a country mentioned in Part I, II, III or IV of the Schedule, in like manner as if it was first published in India;

(b) To any work first made or published in a country other than a country mentioned in Part I, II, III or IV of the Schedule, the author of which was, at the date of such publication, or, where the author was dead on that date, he was at the time of his death, a national of a country mentioned in Part I, II, III or IV of the Schedule, in like manner, as if the author was a citizen of India at that point of time;

(c) To an unpublished work, the author whereof was, at the time of the making or publication of the work, a national or domiciled in any country mentioned in Parts I, II, III or IV of the Schedule, in like manner, as if the author was a citizen of, or domiciled in India;

(d) To any work first made or published by a body corporate incorporated under any law of a country mentioned in Part I, II, III or IV of the Schedule, in like manner, as if it was incorporated under a law in force in India; and

(e) To a record first made, the producer of which was, at the date of such production, a national of a country mentioned in Part V of the Schedule or a body corporate incorporated under a law in force in such a country, in like manner as if the producer was the citizen of India; or a body corporate incorporated under a law in force in India, as the case may be, at that point of time.

Explanation – ‘Record’ means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom, other than a sound-track associated with a cinematograph film.

4. Notwithstanding anything contained in Paragraph 3(a), the provisions of sub-section (1) of Section 32 of the Act -

(i) Shall not apply to a work first made or published in any Berne Convention Country mentioned in Part I or II of the Schedule ; and

(ii) Shall apply to a work first made or published in any Universal Copyright Convention Country mentioned in Part III or IV of the Schedule, only in respect of the translation of such work into any language specified in the Eighth Schedule to the Constitution of India.

5. The provisions of Section 32 [excluding its sub-section (1)], 32-A and 32-B shall apply to a work first made or published in a Berne Convention Country mentioned in Part I of the Schedule or in a Universal Copyright Convention Country mentioned in Part III of the Schedule.

6. The term of copyright in a work shall not exceed that which is enjoyed by it in its country of origin.

Explanation – In this paragraph, “the country of origin” shall mean -

(a) In this case of a work first made or published in a Berne Convention Country or a Universal Copyright Convention Country, that country;

(b) In the case of a work made or published simultaneously either in a Berne Convention Country or a Universal Copyright Convention Country and in a country which is neither a Berne Convention Country nor a Universal Copyright Convention Country, the former country;

(c) In the case of a work which is made or published simultaneously in several Universal Copyright Convention Countries, the country whose laws grant the shortest term of copyright to such a work ;

(d) In the case of a work which is made or published simultaneously in several Universal Copyright Convention Counties, the country whose laws grant the shortest term of copyright to such a work ;

(e) In the case of an unpublished work or a work first made or published in a country other than a Berne Convention Country or a Universal Copyright Convention Country, the country of which the author was a citizen, or the country in which he was domiciled at the time of its first publication, whichever grants the longer term of copyright.

7. The provisions of the International Copyright Order, 1958 shall cease to have effect from the date his Order comes into force.