

INDIAN COPYRIGHT LAW: SOME OBSERVATIONS ON PHOTOCOPYING IN LIBRARIES

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ABSTRACT

Copyright Act provides protection to the authors, artists and other creators for their literary and artistic creations, generally referred to as 'works'. But with the development and passage of time, some other formats of work are added to this act. This paper describes the history and development of copyright act in India along with its various features and fair use of the work to avoid infringement of the act. Further, it touches upon the fair use of copyright act in the country in digital or electronic era.

Keywords: Copyright, Infringement, Fair Use, Photocopying.

1. INTRODUCTION

The idea of copyright protection seems to be emerged with the invention of printing press, which made the literary works to be duplicated by mechanical process. Earlier, to that hand copying was the sole mean of reproduction but after the invention of Guttenberg's printing press in Germany in 1436, a need to protect the printers and booksellers was recognised and thus certain privileges to printers, publishers and also authors were granted (Dureja, 2015). Dureja further mentions that first codified law came in to existence with the passing of the statute of Anne, which came into force in 1710 and it was the first legal articulation of real copyright.

However, 'copyright', term itself is derived from the expression "copier of words" that was used first in Oxford Dictionary in 1586 (Singh and Bhumesh, 2007). Simply meaning, copyright is a right and protection given to an individual who write to the intellectual creation. It attempts to stop one from appropriating to himself what has been produced by the labour, skills and capital of another. Any person who reproduces the work of the original author without his existing permission violates his right, called copyright. Thus, copyright is a legal device designed to protect livelihood of the creators and producers of literary, musical and artistic works.

2. DEFINITIONS OF COPYRIGHT

Copyright is the "exclusive right that protects an author, composer, or artists from having his work recorded, performed, displayed, translated, distributed or reproduced by way of copies, phonorecords or others versions except with his permission subject to specified limitations".

– Anonymous (1984)

Copyright is an “exclusive right given by law for a certain term of years, to an author, composer etc. (or his assignee) to print, publish and sell copies of his original work”.

– Simpson and Weiner (1989)

Copyright is “the exclusive legally secured right to publish, reproduce and sell the matter and form of a literary, musical, dramatic or artistic work”.

– Anonymous (1993)

Thus, Copyright is the exclusive and assignable legal right, given to the originator for a fix number of years, to print, publish, perform, film, or record literary, artistic or musical materials, films, art works, architecture plans, menus, music video scripts and computer software.

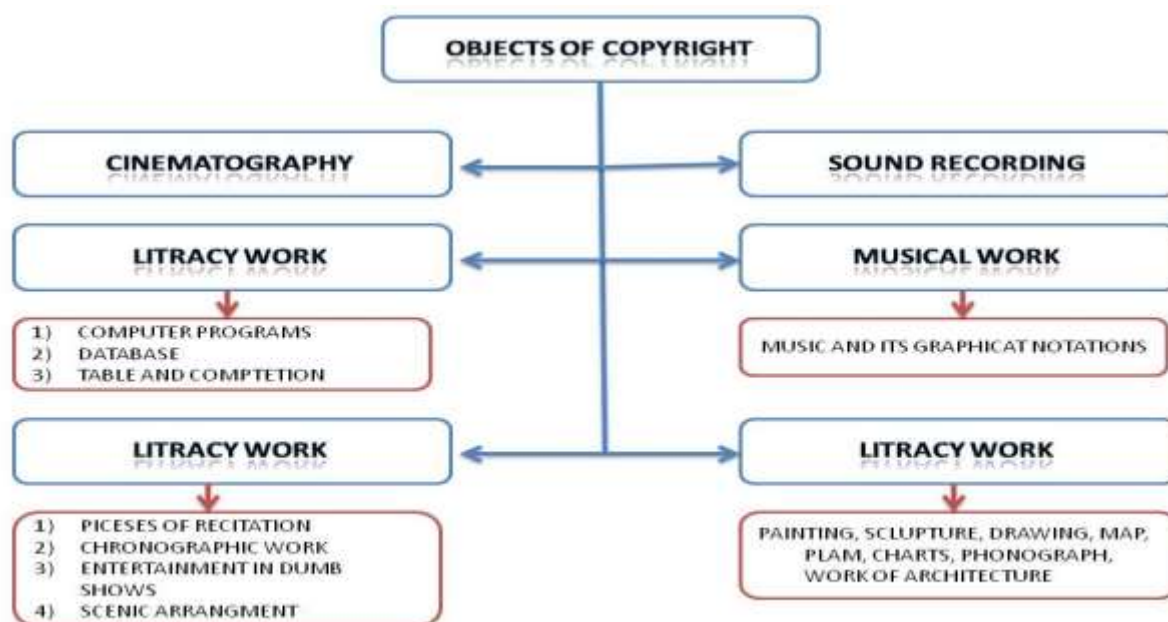


Figure 1: Objects included in Copyrights

Figure 1 (based on <http://mybscit.com/cyber-law/works-protected-under-copyright-cyber-law-unit-1>) shows different types of the objects included in copyright purview.

3. CHARACTERISTICS OF COPYRIGHT

Copyright is not a single right rather it is collection of rights. The following are the characteristic features of copyright (<http://mybscit.com/cyber-law/copyright-and-its-characteristics-cyber-law-unit-1>).

- **Creation of Statute:** Copyright is the creation of a specific statute under the present law. No copyright can exist in any work except as provided in the section 16 of the Act.

- **Form of Intellectual Property:** A copyright is a form of intellectual property since the product over which copyright is granted is the result of utilization and investment of an intellect.
- **Monopoly Right:** Copyright is a monopoly right restraining others from exercising that right which has been conferred on the owner of copyright under the provisions of the Act.
- **Negative Right:** Copyright is a negative right also meaning thereby it is prohibited in nature. It is a right to prevent others from copying or reproducing the work. There can be no copyright in an idea rather copyright exists only when that idea is published in any form of words or form of expression such as a play or picture.
- **Multiple Rights:** Copyright consists of a bundle of different rights in the same work. For instance, in case of a literary work copyright may comprise of the right of reproduction in hard back and paperback editions, the right of serial publication in newspapers and magazines, the right of dramatic and cinematographic versions, the right of translation, adoption, abridgement and the right of public performance.
- **Neighbouring Rights:** Copyright consists not merely of the right to reproduction but also consists of the right to works derived from the original works; rights like the right of public performance, the recording right and the broadcasting right which are as important or even more than the right of reproduction.

Thus, the basic aim of copyright law is to motivate authors, composers and artists to create original works by giving them exclusive right for a specified period of time. But copyright protection is not provided for:

- Works not fixed in tangible form.
- Titles, names, short phrases, slogans, methods, factual information, symbols or designs – however trademark law may provide some protections to these works.
- Ideas or concepts, procedures, process, plans, principles, discoveries, and guidelines – however in such cases patent or trade secret law may provide protections to these works.
- Works that are already in public domain and original authorship is not traceable are not covered under copyright law, and
- Copyright works that are already expired.

4. INDIAN COPYRIGHT ACT: DEVELOPMENTS AND AMENDMENTS

Indian Copyright Act of 1847 was the first copyright law which was enacted during the East India Company's regime and it remained in vogue from 1847 to 1911. Later, Imperial Copyright Act 1911 come into force which extended throughout the British dominion but this Act was sooner replaced by the Indian Copyright Act of 1914 (www.wipo.int/edocs/lexdocs/laws/en/in/in121en.pdf). However, after attaining independence, Indian Copyright Act was passed in 1957.

Indian Copyright Act of 1957 extends to certain specified classes of works like: (a) original literary, dramatic, musical and artistic works; (b) cinematographs films; and (c) sound recordings (www.copyright.gov.in/Documents/Copyrightrules1957.pdf).

Copyright Act in India has been amended many times, namely in 1983, 1984, 1992, 1994, 1999 and 2012 to meet out the national and international requirements.

- Year 1983 amendments include the insertion of section 32A for issuing compulsory licences for reproduction of an edition of literary, scientific or artistic work, whether or not the work is Indian, for the purposes of systematic instructional activities where copies are not made available in India or have not been put on sale in India for a period of six months after the expiration of certain prescribed periods from the date of the first publication.

Further, section 31A was inserted which provided that in case of unpublished work where the author is dead or unknown or owner of copyright cannot be traced, any person wishing to publish material or translation thereof may advertise his proposal and apply to the Copyright Board for permission which would grant such permission and fix an appropriate royalty. The royalty could be deposited in public account for specific period so as to enable the owner of copyright or his heirs, executors or the legal representatives to claim such royalty at any time.

- Year 1984 amendment concerns with the problems of policy having a serious impact on the right of reproduction of authors and, stressed upon the need of taking sufficient antipiracy measures (http://www.wipo.int/edocs/lexdocs/laws/en/au/au_279en.pdf).

- Amendment of 1994 was made after the introduction of TRIPS agreement. With the development in information and communication technology, further, Indian Copyright Act of 1957 was amended and the definition of computer programme was introduced in the act as given as:

“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 (to) achieve a particular result” (www.wipo.int/edocs/lexdocs/laws/en/in/in002en.pdf).

- Its 1999 amendments have increased the protection of performers from 25 to 50 years as required by TRIPS. Further, the rental right was introduced in case of computer programs to strengthen the right of reproduction of authors of computer programs in accordance with WCT 1996 (http://www.wipo.int/wipolex/en/text.jsp?file_id=128095).

- 2012 amendments further include the relevant changes in the internet age (<http://www.wipo.int/edocs/lexdocs/laws/en/in/in066en.pdf>).

- Lastly, it was amended in 2013. Copyright Rules, 2013 has been notified by the Copyright Division, Department of Higher Education, Ministry of Human Resource Development on 14th March, 2013. The amendments to the existing provisions of the Copyright Act, 1957 and introduction of new provisions under the Copyright(Amendment) Act, 2012, which came into the force on 21st June, 2012, necessitated amendments to the Copyright Rules, 1958 (<http://pib.nic.in/newsite/PrintRelease.aspx?relid=93921>).

Copyright Rules, 2013 provide new rules for statutory licence for cover versions and broadcasting of literary and musical works and sound recording; compulsory licences for works withheld from public, unpublished and published works, for benefit of disabled; registration of Copyright Societies and Performer's Right Societies; storage of transient or incidental copies of works; making or adapting the work by organizations working for the benefit of persons with disabilities; and importation of infringing copies and technological protection measures.

5. FAIR USE OF COPYRIGHT ACT

The fair use doctrine is a list of four factors that must be weighed to determine whether a use should be deemed fair: (1) the purpose and the character of the use; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use on the potential market for, or value of, the copyrighted work (Barrett, 2008).

Under section 52 of copyright Act various fair use clauses are enumerated which provides fair use of literary dramatic, musical or artistic works only. This clause has been amended to provide fair dealing with any work, not belong to a computer programme, for the purposes of private and personal use. Further, the amendment extended the fair use provision to cinematograph and musical works.

Therefore, plea to fair dealing or fair use must be observed under the right of use for approved purposes. Dealing is fair for the purpose whose fairness must be judged in relation to that purpose. However, the fair use of a copyrighted material becomes difficult to be distinguished from infringement at many occasions.

6. INFRINGEMENT OF COPYRIGHT ACT IN PHOTOCOPYING

Infringement is the violation of the rights vested upon author by the statute depriving him of his income. Thus, the problem of infringement occurs when someone without the permission of the copyright owner does any of the exclusive acts, which copyright owner alone can do.

Scanning or photocopying a copyrighted book will amount to copyright infringement as the exclusive right to make copies of that book belongs to the copyright owner. But certain exceptions permit copying a copyright work if all the conditions of that exception are satisfied. Generally, selling or hiring a copy made under these exceptions invalidates the protection. As such, Section 52 (0) of the act provides few exceptions for books which are not available for sale in India. It reads as (Agarwal, 1996): "the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under direction of a public library for the use of the library if such books is not available for sale in India". Therefore, three copies of such a book can be made and kept by a public library for the use of the library.

Further, photocopies of different books etc. can be done for study purpose too. Recently, Delhi High Court has given a decision that says: the photocopying of course packs prepared by Delhi University comprising of the portions from books published by Oxford University Press,

Cambridge University Press and Taylor & Francis did not amount to infringement of copyright (Jain, 2016).

“Copyright, especially in literary works, is thus not an inevitable, divine, or natural right that confers on authors the absolute ownership of their creations. It is designed rather to stimulate activity and progress in the arts for the intellectual enrichment of the public”. Justice Endlaw further adds that “copyright is intended to increase and not to impede the harvest of knowledge. It is intended to motivate the creative activity of authors and inventors in order to benefit the public” (Jain, 2016).

However, the infringement of copyright is punishable with imprisonment for 6 months to 3 years with a fine of rupees fifty thousand to two lacs, if it is committed first time and in case of second time and more if the infringement is committed, the person shall be punishable with imprisonment for a term not less than 1 year up to 3 years and fine of rupees one lac to two lacs. The law permits any police officer with the rank of sub-inspector or above to arrest responsible person without any warrant and produce him before the court of a Metropolitan Magistrate or a first class Judicial Magistrate provided he/she is satisfied that offence has been or is being or is likely to be or committed (Kumar, 2009).

7. COPYRIGHT AND THE LIBRARIANS

Libraries are the key intermediaries in providing information that could be categorized as published, un-published, print and non-print works, to the users and the librarians, as the managers are to provide different types of information resources through different channels to its users. Librarian as a facilitator has to connect the authors, publishers, aggregators, distributors, vendors, and users and so on. But the toughest task for librarian is to balance copyright and use of copyrighted material within the purview of laws. Violating copyright laws would lead to legal disputes between Copyright holder, publisher, distributor, vendor, aggregator and user or stake holder of concerned institution (Anjaneya Reddy and Aswath, 2016). So, librarian has to ensure the reputation of organization by avoiding misuse of copyrighted material by its stakeholders by creating awareness about copyright laws.

Besides, utmost care needs to be taken during subscription and its agreements with regard to any kind of electronic resource procurement. It will be better to consult legal expert during whole of the process of subscribing them. Librarian also needs to ensure the protection of copyrights while providing library access to its users.

8. CONCLUSION

Thus, it is seen that copyright that is one of the aspects of Intellectual Property Rights or IPR (Dhiman and Gupta, 2015) has travelled a long journey since the advent of printing press to the advent of computers and internet of things upto 2012/2013 amendment of Indian Copyright Act of 1957. It gives exclusive legal right to the creator or a group of individuals to protect their work or creativity from reproduction, adaption, translation, distribution and public performance by others without prior permission from the creator/person responsible for the existence of the work. But the very purpose of the copyright is “to secure and reward the general benefits i.e. labour of authors on

the produced work”. It also “encourages the authors to produce and proceed with more works on continual basis” (Anjaneya Reddy and Aswath, 2016).

However, a few years back the knowledge about copyright was very less and no major stress was given but with the change in times the society is becoming aware of the need of protection of the creative works in any form, format and media. But the “problem arises as to the maintenance of a just balance between the copyright owner’s interest and the user’s interest between the good obtained from private profit and the good obtained from public learning. Nevertheless, the goal of learning cannot be withheld till the copyright over a work ceases to exist. Hence, “there should be a balance between the interest of the users and owners of copyrighted work” (Narayan and Rajput, 2014) in the library services.

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