

Course : PGDIPR-03



**Vardhaman Mahaveer Open University,
Kota**

Copy Rights

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Unit -1

Copy Rights

(Nature, Meaning, Objectives and Conceptual Aspects)

Objectives :

After going through this unit you should be able to understand concept of copyright, its nature, meaning, history, development and objects.

Structure : -

- (1.1) Copy Rights
- (1.2) Development of copyright in Britain
- (1.3) Development of copyright in India
- (1.4) Indian Copyright Act, 1847
- (1.5) Indian copyright Act, 1914
- (1.6) Features of the copyright Act of 1957
- (1.7) Copyright: Nature and subject matter
- (1.8) Meaning of copyright
- (1.9) Objectives of copyright
- (1.10) Summary
- (1.11) Self assessment Test
- (1.12) Further reading

1.1 Copy rights:-

Nothing like the concept of copyright, that exist today, was in existence in ancient jurisprudence in India. During the British colonial rule this concept took shape in India. Therefore, it becomes essential to examine the origin and history of the concept in Britain.

1.2 Development of Copyright in Britain:-

When the text and manuscripts were handwritten the chances of duplicacy were rare but with the introduction of the mechanism of printing in 15th Century it made possible large scale production of work thus the need of a right of ownership of an author to his work aroused, just in order to protect him against the violators of this right. Therefore, in Britain this right which later on known as Copyright become a matter of importance to the author as well as crown, because printers number increased day by day, so in order to protect the interest of the crown and authors, the king acting through court of Star Chamber issued decrees in 1556 and 1585 and 1637. The 1556 decree prohibited any printing contrary to ordinance or statute, the 1585 decree made compulsory the licensing of every book and the decree of 1637 prohibited the printing, import of any book or copy unless the person going to do so have the right, privilege, authority or allowance either by any letter patent, order or otherwise by entry in register book.

This Ordinance really was a great statutory effort, which for the first time introduced authors' ownership right concept on his work, this Ordinance was followed by another Ordinance of the year 1649 and ultimately after the expiry of thirteen years, the Act known as Licensing Act, the printing of books declared unlawful without a license which followed by a number of enactment and finally expired in May, 1679, efforts were made to get another License Act passed but all goes in failure. Thereafter prayers were made to Parliament in 1709 in which the affected parties stated about the absence of any statute or ordinance to protect the copyrights of the stationers, in such a situation, the incidence of violation increased too much and the Parliament alone could set the things right. In absence of such a law the common law remedy which they could avail limited to the damages proportionate to actual loss.

The prayer of stationers worked and what may be called as proper Copyright Act of Britain is enacted in 1709, which is also called as statute of Anne,

1710 and it became effective from April 10, 1710. The authors of the books were given the right and freedom to print them for specific term of 21 years and for the unprinted books sole right for 14 years.

Later on two more Copy Right Acts were passed in Britain in the year 1734 and 1766 in which the term of copyright provided for 14 years, which extended later to 28 years. Following this copyright Act the Acts of 1798 and 1814 were passed to protect human sculpture for 14 years and later on extended to the lifetime of sculpture for another 14 years. However these Act not cover the copyrights of the composers, play-writers and others in the field of drama, so in order to provide protection to them Dramatic copy right Act, 1833 was passed and even lectures in public were given protection by Lectures Copyright Act, 1835.

But the duration of copyright protection in these Acts was not proper and author's patrimony to their children was also not recognized in these Acts, therefore, another law Literary Copyright Act, 1842 was passed by the Parliament in which the duration of copyright was given for the life of the author extendable to another seven years or a period of 42 years whichever is longer, the same term for copyright of musical and dramatic pieces was provided under section 20 of the Act.

The concept of copyright in Britain developed to great extent in 1885 after the Berlin convention on copyright which was further modified by Berlin convention in 1908, which facilitated the copyright protection to foreigners also, for this purpose to comply with the revised convention a committee was constituted and a draft Bill was introduced in Parliament in 1910 which could not get through and ultimately passed in 1911 and after receiving the royal sanction on December 11, 1911 it became effective on July 1, 1912. By this time copyright laws in Britain too much rationalized and came in the form of modern codified law.

The 1911 Copyright Act further replaced by copyright Act, 1956 on the recommendation of the review committee in 1952 called Gregory Committee and

by this time the sound and television broadcasts covered by copyright later on by an amendment new technologies like cable television and computer software also.

The Act of 1956 was again reviews by the Whitford Committee in 1977 which recommended overhauling of the Act on the basis of which ultimately a new Act passed named copyright Designs and Patent Act, 1988.

1.3 Development of Copyright in India:-

As mentioned earlier, the ancient Indian jurisprudence has no concept of copyright, even during Moughal period it was nonexistent. The arrival of the Britishers brought this concept to India. The Literary Copyright Act, 1842 as passed by the British Parliament made applicable to British colonies also, besides the Britain herself. Therefore, this Act got extension to British India. But infect, except this colonial Act relating to copyright no codified law, exist till mid of 19th century, in the absence of any codified law obvious application of common law principle "justice, equity, good conscience" was in prevalence which courts under the administration of East India Company expected to follow. Thus as regard copyright law the uncertainty was prevailing till the passing of the copyright Act, 1847 by the Governor General in Council for India, which was passed on 15th December, 1847, the purpose of the Act was to provide protection of copyright to the works published in the areas under company administration.

1.4 Indian Copyright Act, 1847 : -

The salient features of the Act were as follows:-

- (a) It defined for the first time term copyright.
- (b) provided the life span of copyright.
- (c) made provision for remedy through courts in matter of infringement of copyright.
- (d) the provision for registration and assignment of copyright were made.

This act was very crude exercise of codification as to copyright it was criticized for incompleteness, inaccuracy of language leaving aside other important areas of copyright like photograph, translation etc. Therefore, no recorded history of its implementation is found.

1.5 Indian Copyright Act, 1914 :-

Meanwhile in Britain the imperial Act of 1911 relating to copyright became effective. In India efforts were made by the Government to apply this Act with some modifications as per Indian requirements but that was a delaying process and the Government want to protect the interests of British Authors in India, therefore Governor General in Council for India enforced the British Act on 31 October, 1912 through a proclamation, subsequently Government invited views of the local government and prepared a draft Bill which becomes the first Indian Copyright Act, 1914. However the imperial Copyright Act, 1911 remained part of this Act in the form of its First schedule. This Act was a very small Act having 15 Sections and one schedule only.

In the subsequent events Indian gained freedom and the 1914 Act was not in consonance with constitutional spirit and there was need to enact a comprehensive, independent law of copyright due to the changed situation and in the Britain itself old Copyright Act of 1911 replaced with Copyright Act, 1956. Therefore, independent India enacted its own Copyright Act, 1957.

Copyright Act, 1957 was very comprehensive law on copy rights under this Act a copyright office headed by Registrar of copyright was created, a copyright Board was also appointed and so many new things were introduced for the first time.

1.6 Features of the Copyright Act of 1957 :-

- (a) the term copyright defined in comprehensive manner with categories of copyrights.
- (b) first ownership of copyright outlined for different categories.
- (c) terms of copyright for various categories identified.
- (d) assignment of ownership and licensing provisions added.
- (e) Broadcaster Rights and performer artist rights and rights of the society given a recognition as copyright.
- (f) first time the concept of international copyright introduced.
- (f) remedies against infringement identified.

It is important to note here that the 1957 copyright Act followed the Berne convention, 1886 and Universal Copyright Convention, 1952, The copyright Act, 1957 further amended time to time with copyright (amendment) Act, 1983, 1984, 1992, 1994 and 1999. All these amendment were to keep the development of copyright law in India with the pace of global development. The salient features and details of these Amendment Acts will be discussed in Unit 3.

1.7 Copyright: Nature and Subject matter:-

Nature :- The copyright are the creation of Human being as an artist, author, composer, designer of their original works, because human being is only creature on earth having well developed mental faculty to develop new creation with their imagination, these are the creation of human intellect, therefore, copyright is unique kind of intellectual property and infact it is the first intellectual property, which got recognition throughout the world. These rights differ from other materialistic property or industrial property, as these are the rights which are the product of human intellect. Thus the wider concept of copy right covers the rights of a person acquired by him for a work, which is the result of his intellectual labour. The object of copyright and law relating to it is to safeguard the work of a

person, which is the creation of his labour, skill and imagination against aggression by others. The copyright extend the protection mainly in this field of printing, Music, Communication/broadcasting, entertainment and computer industry.

Subject Matter of Copyright :- What categories of work may be covered under copyright may differ in different legal system. But the fundamental criteria is 'originality' of work. Universally the copyright protection is given to original work of authorizing for the use of that work, which is generally in following respects.

- a) literary work – fiction, nonfiction, novel, plays, stories.
- b) musical work – composition, pattern etc.
- c) dramatic work – including music relating to that
- d) pantomimes and choreography
- e) pictorial, graphical and sculptural work
- f) Audiovisual presentation and motion pictures
- g) sound recordings, computer programming
- h) work relating to architecture.

Here is important to note that copyright protection in no way extend to simple

Conceivment of idea, procedure, process, method, concept, principle or discovery or it may be said in brief that copyright protection is provided only in respect of above mentioned specific cases.

1.8 Meaning of Copyright:-

As already noted earlier, the copyright meaning was confined under statue of Anne, 1710 only in respect of sole liberty to print and publish. In this age of developing technology the concept has very much widened keeping the pace with latest developments. The Indian copyright Act, 1957 comprehends the meaning of copyright under section, 14, 15 & 16 (to be discussed in detail under Unit 3).

However, as per Act the copyright means, the exclusive right to do or authorizing of the doing of any act, with regard to the work, which is the subject matter of copyright, specified in the Act. The Acts which are authorized the reproduction, circulation, performance or communication in public, translation, adaptation, cinematography or sound recording in case of literary, dramatic, artistic or musical work, it also include sale, rental, licensing of computer programs and cinematograph films.

1.9 Objectives of Copyright:-

The society and culture of that is identified with the excellence of arts and literature it is the creation and genius of the artists and writers which determines the importance and value of particular culture. The copyright law extend protection not only to individual creator but the interest of the society by providing protection to societal interest. Thus copyright law came into existence to check the infringement of copyright recognized under the Act, so that the creator of original work may enjoy the fruits of his labour, and piracy may be checked and pirates may not get benefitted by stealing the creation of other person through plagiarism and indulging in undesirable and illegal activities.

1.10 Summary: -

Thus copyright is the first intellectual property, which is the creation of human labour and intellect, which recognizes certain rights of creator and gives the protection to the creator against piracy or theft by others, depriving him the fruits of his labour.

1.11 Self Assessment Test :-

Q. 1. Define copyright, what are the subject matter of copyright.

- Q. 2. Copyright is the expression of an idea and not the idea itself. Explain.
- Q. 3. Discuss the History & Development of concept of copyright.

1.12 Further Reading :-

- Copy right Act, 1957.

Unit – 2

International Protection of Copy Rights and Related Rights: Conventions and Treaties

Objectives:

After going through this unit you should be able to understand the protection of copyright through international conventions and treaties and how the concept of copyright has been taken up and regulated through international instrumentalities.

Structure: -

- (2.1) Berne Convention 1886
- (2.2) Universal Copyright Convention, 1952
- (2.3) Rome Convention, 1961
- (2.4) Geneva Treaty on International Registration of Audio Visual Work, 1989
- (2.5) Treaty on Intellectual Property in respect of Integrated Circuit, 1989
- (2.6) Brussels convention Relating to Distribution of Programme – carrying signals transmitted by Satellite, 1974
- (2.7) TRIPS Agreement
- (2.8) WIPO. Treaties
- (2.9) Summary
- (2.10) Self Assessment Test
- (2.11) Further Reading

2.1 Introductions and Berne Convention 1886 :-

The history of copyright development reveals that movement for securing this right dawn with the start of industrial revolution in 19th Century. The journey

of copyright protection at the international level start with the adoption of Berne convention in 1886; which proceed through adoption of other convention time to time and culminated in the form of WIPO (World Intellectual Property Organization) through it various treaties. Let us examine the development in sequence :-

Berne convention may be characterized as the first international document which extended protection in the field of intellectual property rights in general and copyright in particular. The initiative for this convention was taken by a group of countries when they met in the Berne (Switzerland) in the year 1866.

This convention aimed at the protection of literary and artistic work in whatever form or expression they may be, whether published or unpublished. Since adoption this convention has been revised so many times in 1896 (Paris), 1908 (Berlin), 1914(Berne), 1928 (Rome), 1948 (Brussels), 1967 (Stockholm) and 1971 (Paris). This convention incorporates 38 Articles and its membership has been grown to more than 120, India is one of them.

The revised Berne convention in addition to recognition of exclusive economic rights of the author also recognizes their moral rights under Article 6. The eligibility criteria for protection of work, cinematographic works, architectural and certain artistic work is provided under Article 3 & 4. The term of copyright protection specified under Article 7, the right of translation, reproductions and certain rights in musical and dramatic works were outlined under Articles 7, 8, 9 & 11 respectively. The rights relating to broadcast and cinematographic rights were recognized under Article 11 & 14. Several provisions relating to protection of copyright in member relations were also incorporated in the convention.

2.2 Universal Copyright Convention, 1952 :-

1952 U.C.C. is another significant convention extending protection to copyrights it was entered into by the countries that were not party to Berne

convention like U.S.A., U.S.S.R. (Russia) and China. The origin of this convention was as an alternative to Berne convention.

The most significant provision of this convention are Article 1 & 2, Article 1 put an obligation on the contracting nations to provide adequate and effective protection to authors and proprietors of copyright in literary, scientific and artistic works, writing, musical, dramatic and cinematographic works, painting, engravings and sculpture. Article 2 makes provision for national treatment of published and unpublished works of one country by another member country. The term of protection for work under this convention extended to the life of the author and 25 years after his death under Article 4. The copyright protection to works under this convention confers the exclusive right to the author to make, published or authorizes the making and publication of translation of works under Article 5. The peculiarity of this convention was that for the first time the restriction on application was made in respect of works which are permanently in public domain in the state where the protection is claimed. Under Article 10 of the convention the member countries were asked to make suitable changes in their laws to make effective the provisions of this convention, and a committee was constituted to watch and monitor the application of convention in member countries under Article 11, named 'Intergovernmental Committee'.

This convention was revised at Paris meet in 1971 on the demand of the developing countries, wherein a provision of compulsory license was allowed under certain circumstances for translating copyright works for teaching, scholarship and research purposes.

2.3 Rome Convention, 1961 :-

The basic deficiency of the Berne convention was that it primarily meant for protection of works in the field of literature, art and cinematograph, but it was silent about the sound recordings, producers and performer's rights and the rights

of broadcasters and others. The efforts were made to expand it but these were not materialize, because extension of copyright to these allied rights was opposed on the ground that they lack the intellectual origin and are of derivative nature.

Ultimately this deficiency was made good through another convention named Rome convention, 1961, and this convention extended the protection to the neighboring rights of performers, producers and broadcasters adopted in 1961 this convention become effective in May, 1964. Through this convention the member states were bounded to give the national treatment to the performance made in any convention party country, thereby the rights of the authors, performers, producers, broadcasters belonging to other member state are protected in the same manner as of their native people. For that purpose, the definition of national treatment is provided under Article 2, the conditions and terms for according national treatment are provided under Article 4. The specific protection is given for phonogram under Article 5, broadcasters under Article 6, performers under Article 7, permitted exceptions under Article 15 and rights of the performer's in films under Article 19 in addition to making provisions for allied matters relating to these rights.

Through this convention the performers got sole right over the fixation of a performance that is converting the transient performance to permanent form utilizing audio or audiovisual, cinematographic, photographic or any other retrievable form. Thus fixation of any performance is prohibited if it is without the consent of performer and unauthorized broadcast of performance also declared unlawful.

Under this convention the protection is extended upto 20 years calculated from the end of the year when the fixation was made. This convention was free to be signed by the members countries who were already signed the Berne Convention and Universal Copyright Convention.

2.4 Geneva Treaty on International Registration of Audio Visual Work, 1989 :-

This treaty is an allied international instrument to copyright through which a union for the international registration of audio-visual work is constituted for increasing the legal security in transactions relating to audio-visual work and thereby enhancing the creation of audio-visual works and international flow of such work with safeguards against piracy of these work and contributions contained in these works.

2.5 Treaty on Intellectual Property in respect of Integrated Circuit, 1989 :-

This treaty was adopted on May 26, 1989 at Washington through which the contracting parties constitute themselves into a union and every contracting party is under an obligation to secure, throughout its territory, intellectual property protection in respect of lay out designs (topographies) and make provision for prevention of acts which are declared unlawful under Article 6 and provide the appropriate legal remedies where such acts have been committed, Under Article 6 of this treaty the 'National Treatment' is to be given by contracting parties in their country to the topographies - the layout designs. The protection extended under Article 8 of the treaty for at least eight years.

(2.6) Brussels convention Relating to Distribution of Programme – carrying signals transmitted by Satellite, 1974 :-

This convention intend to create worldwide system to prevent distributors from distributing programme carrying signals transmitted by satellite, which were not intended for those distributors and by preventing them in such manner protect

the interests of authors, performers, producers of phonograms and broadcasting, organizations.

2.7 TRIPS Agreement :-

Trade related aspects of intellectual property rights agreement is also called as Marrakesh agreement through which W.T.O. established, it was signed on 15th April, 1994. This agreement is very significant in the sense that for the first time it provided the standards of availability, condition for use and commercial exploitation of intellectual properties. Copyright and related rights are one of the intellectual property right covered under TRIPS agreement in Part II section 1, which includes –

- (i) Rights of the artists, painters, musicians, sculptors, photographers and authors for their works.
- (ii) Right of the computer programmers whether as a source or compilation data.
- (iii) Rights of the performers producers, recorder of sound phonogram's and broadcasting organizations regarding fixation of their programs for copyrights in their work.

TRIPS also relied on the earliest convention on copyright the Berne convention by putting obligation on the member states under Article 9 to follow Articles 1-21 of the convention except Article 6 which relates to moral rights of the author for which the member have no right or obligation under TRIPS agreement.

Under TRIPS the protection as a copyright is granted only to creations which are original and are in tangible expression, mere ideas, procedure, methods of operation or mathematical concepts are not given protection and they are expressly excluded under Article 9(2) of the agreement.

Other new addition to copyrights is made under Article 10 of the TRIPS by inclusion of computer programs and data compilation assigning them the category of literary works. Articles 11-14 of the TRIPS agreement provide for-rental rights;

term of protection; limitations and exceptions and protection of performers, producers of phonograms (sound recording) and broadcasting organization.

2.8 WIPO. Treaties :-

In 1996 the world intellectual property organization adopted two important treaties to support and further advance the already existing international instrument in respect of copyright, these are :-

(i) WIPO Copyright Treaty or (WCT) – This treaty provide additional protection to copyright which were considered necessary due to advancement of information technology. Through this treaty the computer programs are protected as literary works under Article 4, the arrangement and selection of material in of database is also protected under Article 5. This treaty provides authors of works their control over rental and distribution under Article 6 to 8. The circumvention of technological measures and unauthorized modification of rights management information is also prohibited under Articles 11 and 12, respectively of this treaty.

(ii) WIPO Performance and Phonograms Treaty (WPPT) – This treaty was adopted to provide the protection of the rights of performers and producers of programs in a effective and uniform manner. However, this treaty in no way disturb the protection given to authors of these categories under Rome Convention 1961. Some additional rights are provided to performers and producers of phonograms under Article 18 and 19 of this treaty. These rights are similar to the rights provided under Articles 11 & 12 of W.C.T.

Thus the shortcomings of Berne convention of copyright are remedied by these two WIPO treaties and the International copyright protection updated to cope with latest developments and technological advancements. The whole development in the field of International copyright instruments shows that now the creations of human being is well protected internationally as well as nationally, which we will trace under Unit (3).

2.9 Summary :-

At the international level from Berne convention to WIPO Treaties about Eight International Instruments are adopted by the state parties. Through these instruments the concept of copyright has been made precise, very comprehensive covering the all aspects of copyright and its protection.

2.10 Self Assessment Test :-

1. Explain TRIPS Agreement.
 2. Explain WIPO.
 3. Explain Important Conventions on Copy Rights.
-

2.11 Further Reading :-

- Copyright Act, 1957

Unit – 3

The Law Relating to Copy Rights in India

(The Copy Right Act, 1957)

Objectives:

After going through this Unit you should be able to understand, the statutory meaning and definition of copyright in India and the coverage of copyright in the country and the subject matters of copyright or the work for which copyright protection is available.

Structure:-

- (3.1) Introduction, Statutory Meaning and definition of Copyright
- (3.2) Analysis of definition
- (3.3) Conditions essential for copyright coverage
- (3.4) Analysis of the subject matter of Copyright
- (3.5) Summary
- (3.6) Self Assessment Test
- (3.7) Further Reading

3.1 Statutory Meaning and Definition of Copyright (Section 14) :-

The basic law relating to copyright in India is copyright Act, 1957 which consists of 79 sections and supported by copyright rules 1958. The major provisions of this Act have been borrowed from U.K. copyright Act, 1956. This Act was enacted in conformity with provisions of Berne Convention and Universal

Copyright Convention. The 1957 Act is further amended from time to time in the years 1983, 1984, 1992, 1994 and 1999. The copyright Act today comply with most international convention and treaties relating to copyrights, except the Rome convention to which India is not a member state.

As usual Section 2 of the Act defines various terms like Artistic work, Author, Adaptation, Broadcast, Cinematograph, Film, Computer Programme, Copyright Society, Dramatic Work, Exclusive License, Indian Work, Infringing Copy, Literary work, Musical Work, Performance and Sound Recording etc, apart from these important definitions, the statutory definition of copyright is given in detail under Section 14 of the Act.

For the purpose of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorize the doing of any of the following acts in respect of a work of any substantial part thereof, namely :-

(a) in the case of 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 adaption 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);
- (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 programs where the programs 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 adaption of the work;
- (vi) do to in relation to any adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) in the case 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 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.

3.2 Analysis of definition:-

The definition of the copyright under section 14 is very comprehensive, and it covers even modern technological creations of the information Technology sector. For the better understanding of the meaning of statutory definition of copyright it may be analyzed as follows :-

- (i) copyright is the monopolistic exclusive right.
- (ii) it is available for different categories of works in respect of those it authorizes different class of acts.
- (iii) copyright is granted in case of literary dramatic or musical work.
- (iv) it authorizes or give the exclusive right to do the following acts -
 - Storing or reproduction of aforementioned work in any material form
 - If the copies of work are not already in circulation to circulate that in public
 - Performing and communication of work to public
 - Making of the cinematograph film or sound recording of the work
 - Making adaption of work
 - To do any of the above act in respect of translated or adapted work.

3.3 Conditions essential for a copyright coverage:-

For qualifying the copyright protection a work under consideration must fulfill the following conditions :-

1. originality of work
2. it should be related to literary, dramatic, musical work or a cinematograph film or sound recording.
3. if a work not fulfill above two conditions it should be work of international organization under section 41 or q foreign work under section 40.
4. if it is a design it should not be covered under Designs Act, 1911.
5. otherwise, the work should be in the coverage of copyright Act.
6. it should be expression of an idea not the idea itself.

3.4 Analysis of subject Matters of Copyright :-

As seen earlier the copyright protection is available for intellectual creations. As per section 13(1) of the Act copyright protection exist throughout India for the following classes of works -

- (a) original literary, dramatic, musical and artistic works;
- (b) cinematograph works; and
- (c) sound recordings,

Therefore, to know the subject matters of copyright we need to analyze the above terms with certain illustration in the following discussion -

(i) Literary Work :-

Under the copyright Act the term Literary work is not confined to the aspects of literature i.e. the prose or poetry, but it encompass within it the work which may be called as literature, or anything in writing. To determine whether a literary work deserve a copyright protection, the test is its originality i.e. the expression of thought in printed form or in writing and not the originality of idea itself.

The term 'Literary Work' is defined under section 2(o) of the Act wherein the computer programs, Tables and compilation including database are specially declared as literary work.

Some illustrative cases wherein the originality of literary work is sustained by the courts are -

- (a) Examination question papers (Agarwal Publishing House vs Board of High School and Intermediate Education AIR 1957, All.9).
- (b) disctionaries (Govindan vs Gopalkrishnan AIR 1955, Mad.)
- (c) Dissertations (fateh Singh Mehta vs O.P.Singhal and other AIR 1990 Raj. 8)
- (d) Headnotes of law reports and digest (Ragnathan vs All India Reporter AIR 1971 Bom. 48)

- (e) Writing, sermons and saying of religious preachers (Satsang vs Kiran Chand Mukhopadhyay, 1990 Raj. 8)
- (f) Translation of existing literary work (Blackwod vs Parasuraman, AIR, Mad. 40)
- (g) Digest or Abridge literary work are also considered as original work as it involve labour & intellect (Raghuathan vs All India Reporter AIR 1971 Bom. 48)

The above list is only illustrative, but there are some more categories of works involving labour, skill and originality in preparation which are considered proper for copyright protection.

(ii) Dramatic Work :-

The 'dramatic work' means any recitation, choreography, mimicry, scenic arrangement, scripted acting etc. but it not include cinematographic film. Thus under definition given in Section 2(h) the scope of dramatic work is very wide, the word 'otherwise' at the end of definition further enhance its scope to include the modern means of recording such as tape recorder, Dictaphone and other instruments but it is very clear under the definition that it does not include the performance of film actor or actress (Indian Performing Rights Society (IPRS) vs. Eastern India Motion Pictures (EIMP) AIR 1997 SC 1443).

(iii) Musical Work :-

The term 'Musical Work' is defined under section 2(p) of the Act, which means a work consisting of music and includes any graphical notation of such work but does not includes any words or any action, intended to be sung spoken or performed with music. Thus 'lyrics' or 'dialogues' etc. can not be considered musical works for copyright protection. Similarly a song can not be given copyright. The author of song has copyright in words and composer of the song has copyright over music, but there is no copyright for song itself.

In a notable case Gramophone co. of India Ltd. Vs. Super Cassette Industries Ltd. 1996 P.T.C. (16) 252, the Delhi High Court clarified that version recording of already published using another voice or voices with different musicians and arrangers cannot be covered by copyright violation.

(iv) Artistic Work :-

A very comprehensive definition of 'Artistic Work' is given under section 2 (c) of the Act, according to which artistic work means –

- (i) painting, a sculpture, a drawing, including a diagram, map, chart or plan and engraving on a photograph whether or not such work possess artistic quality
- (ii) a work of architecture; and
- (iii) any other work of architecture craftsmanship.

A variety of works has been included in the definition of artistic work, these work need not to possess any artistic quality for eligibility to copyright protection. However, the necessary condition for all artistic work for coverage of copyright is that they must be original on surface and tangible not mere idea or imagination. And they must involve original skill and labour in their creation, not mere duplication.

(v) Cinematograph Works :-

Cinematograph work are also entitled to copyright protection under the Act. By 1994 Amendment Act Section 2(f) included which define cinematograph film as "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 or sound recording accompanying such visual recording". Such visual recording may be with or without sound track, but in earlier case soundtrack is the part of cinematograph film and it is covered by copyright. Thus, cinematograph work may be construed as a work produced by cinematography including video filming. (Entertaining Enterprises Mad. vs. State of Taimlnadu AIR 1984 Mad. 278). Even Television and video film are considered as cinematograph film (Raj Video Vision vs. K. Mohana Krishnan AIR 1998 Mad. 294 at P. 278), (Indian performing Rights Society vs. Eastern India Motion Picture Association AIR 1977 SC 1443).

(vi) Sound Recording :-

The 1994 Amendment Act include sound recording as a subject matter of copyright protection under section 13(1)(c). The section 2(xx) of the Act explain

the term sound recording. According to which “sound recording means recording of the sound from which such sound may be produced regardless of medium on which such recording is made or the method by which the sound is produced”.

Here sound recording differ from the subject matter recorded and both have a separate copyright protection with separate copyright for each. The victims of piracy in case of sound recording generally are the singers, composers of music, manufacturer, producers of audio and video media.

The copyright entitlement in case of sound recording covers records – such as tape, vinyl disc, compact disc, compact cassette or other devices embodying sounds which are capable of reproduction.

(vii) Computer Programs & Software :-

The computer software and programs are the latest addition to the list of subject matters of copyright protection. Due to the mandate of Berne convention and TRIPS a further amendment was made in copyright Act in 1999 to implement these mandates, and computer programs are included as a part of ‘literary work’ deserving protection under section 13(1)(q). As mentioned earlier under literary work, section 2(o), which define literary work expressly include computer programs and computer database.

As per definition under section 2(ffc) of the Act “computer programme means a set of instruction expressed in words, codes, scheme 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”.

By virtue of above definition all computer generated programs prepared in any computer language e.g. COBOL, FORTRAN, CAR, PASCAL are literary works. Software programs like WINDOWS OR JAVA, which may be stored in any form like magnetic tape, disc, drive or IC are also literary work, but only condition is that these programs should be capable of causing a computer to perform a particular task or to achieve a particular result.

(viii) Architecture Works :-

Section 2(b) define work of architecture, which “means any building or structure having an artistic character of design or any model for such building or structure”.

These work of Architecture provided copyright protection under “artistic work” e.g. any layout design of any monument, building, temple, castle etc.

3.5 Summary :-

Thus coverage and subject matters of copyright protection under copyright Act is very comprehensive and the scope of the Act is very wider and multifaceted. This Act covers all the aspects of copyrights in India and can be said to be in consonance with the major international treaties on copyright of which the latest is TRIPS.

3.6 Self Assessment Test :-

- i. Give the salient features of Copyright Act, 1957.
- ii. The Copyright Amendment Act, 1994 & 1997 brought changes to original copyright Act, Enumerate them.
- iii. Discuss the concept and main features of copyright.
- iv. Expression of an idea is a copyright not idea itself explain.

3.7 Further Reading :-

- Copyright Act, 1957

Unit – 4

Authorities Concerning Copy Rights: Powers and Functions

Objectives :

After going through this unit you should be able to understand about various authorities constituted for administration of copyright Act, their powers and functions as a protection of the interests of owners of copy rights through proper registration and enforcement.

Structure :-

- (4.1) Authorities under Copyright Act
- (4.2) Copyright Office
- (4.3) Copyright Board
- (4.4) Powers and Procedure of Copyright Board
- (4.5) Copyright Societies
- (4.5) Self Assessment Test
- (4.6) Further Reading

4.1 Authorities Under Copyright Act:-

Enforcement machinery and mechanism is an important aspect for proper implementation of any law because in the absence of it the letters and objectives of law become redundant. Therefore, for the purpose of effective enforcement, the copyright Act, 1957 provide for creation of various authorities with the primary objects of –

- (i) Registration of copyrights.
- (ii) Effective protection of the interests of copyright owners.
- (iii) Better enforcement of the provisions of law relating to copyright.

The main authorities for obtaining above purposes are :-

1. Copyright Office.
2. Copyright Board

4.2 Copyright Office :-

Section 9 of the copyright Act makes provision for the creation of Copyright Office, sub section 1 of which states - "There shall be establish for the purposes of this Act an office to be called the copyright office. This office shall be within the immediate control of the Registrar of copyrights, who will exercise his functions under the superintendence and direction of the Central Government. Registrar shall have a seal of copyright office.

The appointment of Registrar is made by the Central Government under section 10. The Central Government may also appoint one or more Deputy Registrar. The Registrar and latter will discharge his functions under the superintendence and direction of Registrar and all reference to Registrar under the Act shall be construed to be references to either the Registrar or Deputy Registrar so authorized with respect to that function.

Generally the Registrar is entrusted with the function of registration of copyrights and maintenance of a register for that purpose. Being a office bearer of Registrar, he also perform the duties of secretary of Copyright Board, a judicial body under copyright Act.

4.3 Copyright Board :-

Under section 11 of the Act, the Central Government shall constitute a Board to be called as copyright Board, consisting of a Chairman and not less than

two and not more than 14 other members. The registrar copyright is appointed as its Secretary. The Chairman and other members hold their office for such period and on such terms and conditions as may be prescribed.

The chairman of copyright Board shall be from among the following persons – who

- (i) is either a High Court Judge; or
- (ii) has been a Judge of the High Court or
- (iii) is qualified for appointment as a Judge of a High Court

4.4 Powers and Procedure of Copyright Board :-

(a) General Powers : Through the Section 12 of the Act, the copyright Board has the power to regulate its own procedure, for ordinarily hearing the proceeding before it, including fixing of place and times of its sittings, within the zone in which at the time of the institution of proceedings, the persons instituting the proceedings actually and voluntarily resides or carries on business or any work for gain. The country is divided for this purpose into five zones i.e. Northern, Eastern, Western, Southern and Central Zone.

The Board exercise its powers and functions through its Bench constituted by the Chairman Copyright Board selecting from its members. Each bench consist of not less than 3 members. However the chairman may constitute a special bench of five members, if he is of the opinion that the case is fit to be so heard. The decision are made by majority opinion of the members of Board / Bench in case of any difference of opinion. In case of no majority opinion, the decision of Chairman shall be final. But in hearing the matters and in its proceedings the Benches and members of the Board are expected to follow the principles of Natural Justice. The act done or proceedings taken by the copyright Board under this Act shall be questioned merely on the ground of any vacancy in the constitution of Board.

(b) Powers of Civil Court :- Because the copyright Board and its members exercise the adjudicating function, under Section 74 of the Act, the Copyright Board shall be deemed to be a civil court for the purpose of sections 345 and 346 of the code of criminal procedure, 1973 and all proceedings before the copyright Board are regarded as judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal code.

Thus the copyright Board has wide powers of civil court which are given to a court hearing a civil suit under Civil Procedure Code, 1908. Which are as follows :-

- (i) summoning, enforcing attendance of any person and examining him on oath
- (ii) directing discovery and production of any document
- (iii) to record the evidence
- (iv) issuing commission for examination of witnesses and for production of any document
- (v) directing to produce any public recording or its copy from any court or office.
- (vi) to exercise powers in any other matter as may be prescribed.

Further the power of execution of order is given to the Board under Section 75 of the Act, whereby it may get execute its order for payment of money just like a decree of the civil court.

(c) Appeal from decision of Board :- Except in matters relating to publication under section 6 in which the decision of Board is final and conclusive an Appeal may be preferred against the decision of Copyright Board to the High Court having jurisdiction, within 3 months from the date of decision under (Section 72(2)).

(d) Power to issue compulsory License :- Besides the powers mentioned above the copyright Board also have the power to issue compulsory license in respect of following works :-

- (i) works withheld from the public (Section 31)
- (ii) in unpublished Indian works (Section 31-A)
- (iii) to produce and publish translations of the work (Section 32)

(iv) to reproduce and publish works for certain purposes (Section 32-A)

(e) Power to terminate Compulsory License so Issued :- The copyright Board not only can issue the compulsory license in aforementioned situation for a work but also it may terminate the license so issued subject to certain conditions.

(f) Power to decide certain other disputes :- Apart from above specific powers the copyright Board has the power to decide other miscellaneous issues relating to copyright like :-

(i) Whether the work has been published ?

(ii) Date on which work was published ?

(iii) Determination of term of copyright

(iv) Whether the term of copyright for any work is shorter in other country ?

In all these respects the decision of the copyright Board is final & conclusive as per section 6 of the Act.

(g) Power to hear dispute as to assignment, revocation of License :- Through 1983 Amendment Act Sec 19-A is added to the Act which empowers the copyright Board to hear the dispute between authors and publishers regarding the assignment of copyright, including its revocation on account of nonpayment of royalties, undue delay, etc. Thus copyright Board is empowered with all the necessary powers on adjudicatory body should have, virtually the wider powers have been given to copyright Board to settle the dispute between authors and publishers of works for which copyright is granted.

4.4 Copyright Societies :-

Copyright societies are the other bodies / authorities which work for collectively safeguarding the interests of the authors of works. These are the voluntary Associations of the copyright owners, which can get it registered under copyright Act legally and able to exercise their powers for protection of their

interests. The detailed discussion regarding these society will be given under Unit-9 of this course.

4.5 Self Assessment Test :-

- (i) Enumerate the various authorities concerning copyright
- (ii) Write a note on Copyright Board
- (iii) Discuss the composition, function and powers of Copyright Bard.
- (iv) Mention the provision relating to appeal from decision of copyright Bard.

4.6 Further Reading

- Copyright Act, 1957

UNIT – 5

Copy Rights and Ownership: Rights of the Owner, Term of Copy Rights and Remedies Thereof

Objectives :

After going through this unit you should be able to understand the rights relating to ownership as to Copy Rights, the term of these ownership right or the term duration for which these may be enjoyed by author for commercial exploitation, when the copy right is considered as expired and the copyright ends, the work comes in public domain.

Structure :-

- (5.1) Preliminary
- (5.2) Ownership of Copyright
- (5.3) Copyright Owners' Rights
- (5.4) Term of Copyright
- (5.5) Self Assessment Test
- (5.6) Further Reading

5.1 Preliminary :-

After knowing the meaning, definition and concept of copyright now questions arises how and when copyright is created and in whom or where its

ownership lies ? This Unit deals particularly with how the ownership is determined and what are the claims and rights of the owner of copyright ?

5.2 Ownership of Copyright :-

Who is first owners of copyright ? As per section 17 of the copyright Act, the author of a work shall be the first owners of the copyright therein. The provision under section 17 is very comprehensive which provide for copyright ownership in respect of literary, dramatic or artistic works, photographs, public address, speeches, Government work, and work made or first published by or under the direction or control of any public undertaking.

Because, the author of a work is the first owner of the copyright in that work, therefore, it is essential to know who is author in order to determine the ownership of copyright.

Who is an author ? Section 2(d) of the copyright Act define 'author' for different categories of work the authors are determined as follows :-

- (a) for literary or dramatic work – the author of work
- (b) for musical work – the composer of music
- (c) for artistic work other than photograph – the artist
- (d) for photograph – the person who takes photograph
- (e) for cinematograph film or sound recording – producer
- (f) for computer generated literary, dramatic, musical or artistic work – the person who causes the work to be created.

Therefore, the respective person will be regarded as first owner of copyright to respective work being an author of th work. However, the authorship assigned be section 17 is subject to so many riders provided in several clauses of this section itself, whih are discussed below :-

Ownership in case of literary, dramatic or artistic work : As a general rule the author of these works will be the first owner of copyright, but if these works are

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 purposes of publication, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright relating to publication and reproduction of work for the purpose of publication (S.17(a)).

However, the works created by the author while not in the employment of proprietor, the copyright vests in the author as it was held in 'V.T. Thomas alias Tom vs. Malyalam Manorama AIR 1988 Ker 291', the cartoon characters named 'Boban and Molly' created by V.T. Thomas a quite prior to joining the employment of respondent were held to be belonging to cartoonist as a sole owner of work.

The copyright in respect of revised, rewritten literary work vests in the author – the person who revised or rewritten the literary work.

Ownership in case of photograph etc. : unless there is an agreement to contrary the works relating photographs, paintings, portraits, engravings or cinematograph film, made for valuable consideration at the instance of any person such person shall be the first owner of copyright. Thus above categories of person working for the others for consideration will not be entitled to claim copyright in the works created by them, unless there is certain agreement to the contrary.

Ownership in addresses and public speeches : The ownership of copyright in respect of any address or speech delivered in public, the person making the speech either himself or through some other person shall be the first owner of copyright therein. The organizer or the person related to organization of programme will have no claim as to copyright ownership. (S.17(cc)).

Copyright ownership in Government work - As per section 17(d) unless there is an agreement to the contrary, the government shall be the first owner of copyright in a government work. Any work which is made or published by or under the direction or control of the government, any department of government, any

legislature, court, tribunal or judicial authority, will be called the government work e.g. date of government, project report, census report, enquiry report etc.

Ownership of copyright in works made for / by any public undertaking - As per 17(dd) in case of the works first published by or under the direction and control of any public undertaking, in the absence of any agreement to the contrary, such public undertaking shall be the first owner of copyright therein. Here public undertaking means an undertaking owned and controlled by the Government.

Copyright ownership in works of certain international organizations : As per section 17(e), when a work is considered to be a work of certain International organization, in such cases the concerned International organization shall be the first owner.

Copyright ownership in musical works and cinematograph film **For musical works** : the first owner of the copyright is the composer of the work, but if the composer is paid some consideration under a contract of employment, the employer will be the first owner. However, a person who commission a musical work i.e. the film producer not become owner of the copyright for music, he is simply a licensee.

5.3 Copyright Owners' Rights :-

Copyright is an ownership in intellectual property, just like the rights associated with other tangible properties, several rights are attached with the ownership of copyright. The various rights conferred on the owner of copyright may be summed up as follows :-

(i) Statutory Rights as owner :- As an owner the author of a work acquire the exclusive rights to do or authorize the doing certain acts in respect of work or any substantial part thereof. These authorized acts are well enumerated under Unit 3 (3.1) in explaining the definition and meaning of copyright under section 14 of the Act. (please see that Unit)

(ii) Right to assignment of copyright :- Under this right the author of a work (the first owner of copyright acquires the right to transfer this statutory rights under section 14, through assignment, licence, grant, or use of his copyright with his consensual permission to any person these rights relating to transfer of copyright are elaborated in detail under Unit 6 of this study material.

(iii) Rights to remedy :- In case of infringement of copyright by unauthorized use of the work of author by another person and against the persons possessing or dealing with infringed copies certain rights are conferred on owner of copyright. These rights to remedy in case of infringements are more valuable rights as compared to other rights. These important rights are discussed in detail under (Unit-12) of the study material.

(iv) Allied and Neighboring rights :- Besides abovementioned rights, which are generally called as economic rights of the owner, certain other rights are provided to authors, the detail description of these rights is made Under (unit-8) of this study material.

5.4 Term of Copyright :-

Copyright extend a variety of right to the authors of work, among these rights the most important and controversial right is right to commercial exploitation of the work or in other words to reap the fruits of the work in commercial sense either himself or through other by means of license or assignment. But the copyright not confer the right to commercial exploitation permanently or for perpetuity. For the purposes of maintaining the balance between private economic gain and the interest of public some restrictions are imposed on commercial exploitation by owner or a period is fixed for the exclusive enjoyment of the copyright for owner. Whenever this period is expired the work is considered to be in public domain.

Therefore, the copyright Act itself fix the duration of copyright i.e. the period for which copyright exist with the owner or user. This period is generally denoted as the terms of the copyright. It is to be noted that term of the copyright is not the same for all work, it varies from work to work Sections 22 to 29 deals with the term of the copyright in India.

Calculation of term of Copyright :- The calculation of the term of copyright is taken into consideration from the date of the publication of work for the first time. Here the word publication means to made it known to the public or to publicly. Here it is worthwhile to mention is provisions of section 3 of the Act which defines 'publication' as follows:-

"For the purposes of the Act 'Publication' means making a work available to public by issue of the copies or by communication the work to the public".

The last words 'communicating the work to the public, here are important which means making available the work to the public to be heard, displayed, seen, distributed enjoyed, irrespective of the fact that whether the public actually perceive, enjoy or not the work so made available to them.

The copyright subsist from first publication of work the work first published in India is entitle to copyright under the Act. In another case the work is entitled to copyright if the author was citizen of India at the time of publication (Sec. 13(2)).

The disputes relating to publication, if any, is arises the 'copyright Board' is the final authority under Section 6 of the Act to decide whether the work was published or not or the date on which the publication of work took place.

Specific term of copyright for different works :- The term of the copyright varies from work to work or the different term or duration of copyright are provided under the Act depending upon the subject matter of work.

Section 22 to 29 of the Act specifically deals with each and every work, which is put up hereunder :-

(1) Published Literary, dramatic, judicial and artistic works :- Section 22 of the copyright Act provide term for these work which is 60 years from the beginning of the calendar year just next following the year in which author dies. It means that for above mentioned works the copyright vested for lifetime of the author i.e. till he/she survive extendable to 60 years after his / her death. The reference to life time of the author be constructed with reference to author who dies the last.

(2) Anonymous and Pseudonymous Works :- Section 23 of the Act deals with the term of these works. The anonymous works means the works without name or where the identity of author is not clear while pseudonymous work are these work where the name of author is fake or fictitious. In both of these cases the term of the copyright is 60 years from the date of publication subject to condition that if before the expiry of 60 years, if the identity of author becomes clear, the term of the copyright will now be during the life time of author (identified) plus 60 years.

(3) Posthumous Work :- The provision of term of copyright in posthumous work is given under section 24 of the Copyright Act. A work is called posthumous when it is published after the death of the author, the copyright subsists upto 60 years from the year of publishing of the same after his death. In case of joint authorship, the 60 years will be calculated after the death of last joint author.

(4) Photographs :- Since the provisions of abovementioned three section i.e. 22, 23, & 24 of the Copyright Act not covers the work of photograph, therefore, a separate provision for these work is made under section 25 of the Act. As per this section the term of the copyright in photograph is 60 years from the date of its publication. The term photograph as per definition under section 2(3) include photolithograph or any work involving process analogous to photograph but it does not include cinematograph film.

(5) Cinematograph film :- The term of copyright for work of cinematograph film is given under section 26 of the Act, for these work s the copyright subsists until 60 years from the date of the publication of film. According to definition of

cinematograph film given in section 2 (f) of the Act cinematograph film may include cinema, video film, T.V. serials, documentary.

(6) Sound Recordings : - For sound recordings the term of copyright is provided under section 27 of the Act, which exists until 60 years from its publication.

(7) Government Works :- The term of copyright for Government work is fixed by section 28 of the Act, which subsists until 60 years from its publication.

(8) Work of public undertakings :- In respect of these works, as per section 28 (A) of the Act, the term of copyright shall be 60 years from the date of publication of work.

(9) Works of International organizations :- In case of work of an International organization, which is declared so under section 41 of the Act, the term of copyright as per section 29 shall subsists until 60 years from the date of publication of work.

If we analyze the provisions of section 22-29 of the copyright Act it become apparent that in most of the categories of work the term of copyright is 60 years from the date of publication. It is noteworthy here that the term for abovementioned work was 50 years prior to 1992 Amendment of the copyright Act.

5.5 Self Assessment Test :-

- (i) Discuss the provision relating to ownership of different Copyrights.
- (ii) Mention the Copyright owner's rights under Copyright Act.
- (iii) Explain the work 'Term of copyright' give the different terms for various Copyrights.

5.6 Further Reading :-

- Copyright Act, 1957.

UNIT – 6

Rights Relating to Transfer of Copyrights, Assignment, License and Compulsory License

Objectives :

After going through this unit you should be able to understand some specific rights of the Authors of work relating to alienation of the ownership on work by transfer, assignment, License to other person, the conditions thereto and the conditions in which the compulsory license of a work may be granted by the Copy Right Board.

Structure :-

- (6.1) Preliminary
- (6.2) Modes of Transfer of copyright
- (6.3) Assignment of Copyright
- (6.4) By Bequeath or Will
- (6.5) Transfer of Copyright by operation of Law
- (6.6) Transfer of Copyright by license
- (6.7) Transfer of Copyright by Compulsory license
- (6.8) Transfer by compulsory license in unpublished or published work
- (6.9) Compulsory license in national Interest
- (6.10) Compulsory license for the Benefit of Disabled
- (6.11) Statutory license for Cover Version
- (6.12) Statutory license for Broadcasting of Literary and Musical works and Sound Recording

(6.13) license to produce and Publish translations of a Literary or dramatic work in any language

(6.14) license to reproduce and publish a work for certain purposes

(6.15) Termination of Compulsory license

(6.16) Self Assessment Test

(6.17) Further Reading

6.1 Preliminary :-

As we know the copyright is an intellectual property right, which is not a tangible property but just like the ownership right of the tangible property, the copyright also attached with the right to alienate or transfer it to the others. So it is the discretion of owner of the copyright either to commercially exploit his creation himself under Section 14 or he is at the liberty to transfer it to other for exploitation on a consideration absolutely or partially. The owner of copyright may alienate his right as to ownership in the manner prescribed under the copyright Act. The popular mode of transfer of copyright are assignment, license for a particular period and forced or compulsory license.

6.2 Modes of Transfer of Copyright :-

The various modes of transfer of right attached to copyright are as follows

:-

(a) Assignment

(b) By Bequeath or Will

(c) By Operation of Law

(d) Bylicense

(e) Compulsorylicense

6.3 Assignment of Copyright : -

As per section 18 of the Copy Right Act 'the owner of the copyright in an existing work or the prospective owner of the copyright in a future work has right to assign copyright to any person either wholly or partially or either generally or subject to limitations and either for the whole term of the copyright or any part of the term.

Thus copyright owner have an absolute right and freedom to enter into a contract of assignment. But in case of assignment of copyright of future work, the assignment becomes effective only when the works come into existence, on assignment the person to whom copyright is assigned (assignee) acquires all the rights relating to copyright of assigned work from the author (assignor) and he is considered as owner of the copyright for all the purposes of copyright Act.

But the simple publishing agreement in which right o publish and sell is transferred keeping reserve the copyright cannot be called as assignment because it is simple license to publish and sell not the transfer or assignment of copyright (AIR 1938 Lah. 173).

Procedure of Assignment :-

The procedure or mode of assignment is provided under section 19 of the Act, according to which following are the essential conditions for valid assignment :-

- (a) The assignment of copyright should be in writing and signed by the assignor or his authorized agent. (Section 19(1))
- (b) The assignment should identify the work and specify the rights assigned and the duration and territorial extent of such assignment. (S. 19(2))
- (c) The assignment should also specify the amount of royalty of any, payable to author or his legal heirs.

The assignment of copyright need not be in any particular form. A simple letter in writing suffice, and will amount to assignment (Rupendra K Vs. Jiwan Publishing House, 1996 PTC (16) Delhi). The assignment of copyright need not be compulsorily registrable. (Sawitri Devi Vs. Dwarka Prasad, AIR 1939 All 305.

The assignment may be revised, extended or terminated on the terms mutually agreed between the parties. If the assignee fail to exercise his right within a period of one year from the date of assignment, it will lapse unless otherwise provided or specified in agreement between the parties.

Generally the period of assignment is stated in the agreement, but when this period is not disclosed it will be five years from the date of assignment. Similarly in case when the territorial application of copyright is not disclosed in assignment, it will be presumed extend to India.

Any dispute relating to assignment of copyright which may arise, is to be decided by the copyright Board. The Board may also revoke the assignment in certain circumstances (Section 19-A).

6.4 By Bequeath or Will :-

Copyright in a manuscript may be transmitted through testamentary disposition. As per section 20 of the Act, where the manuscript, i.e. the original document embodying the work, whether written by hand or not, of a literary, dramatic or musical or artistic work is transferred to a person by bequest and the work was not published before the death of the testator, such bequest shall, unless the contrary intention is indicated in the testator's will or any codicil (appendix) thereto, shall be construed as including the copyright in the work if the testator was the owner of copyright immediately before his death.

Thus copyright may be transferred along with the manuscript relating to work which is subject matter of copyright by will immediately, unless otherwise is mentioned in the will.

6.5 Transfer of Copyright by operation of Law :-

Such transfer takes effect when the author (Owner) of a copyright dies without making a will, irrespective of the fact the weather work was published or

unpublished, the copyright just like other estates or properties will pass on to his legal representatives.

6.6 Transfer of Copyright by license:-

License means the authorization through a grant by the owner of a copyright to do any or all of the acts by another person to which the owner himself was entitled exclusively.

As per provisions of sections 30 of the Act, the owner of copyright in any existing work and perspective owner of copyright in any future work may transfer his interest in the copyright by grant of license. The license should be in writing duly signed by the owner of copy right. The license of present work takes effect just after signing of it by owner, but the license in respect of future work becomes effective only when the work comes into existence.

6.7 Transfer of Copyright by Compulsory License:-

The compulsory licensing of a copy right differ from the voluntary license as discussed above. The compulsory license is issued by the copyright Board, under section 31 of the Act, in respect of a work, the author of which has refused to republish etc. and due to such refusal the public has been deprived of that work. (Pune video Theaters Association Vs. Cinemaster 2002. (24) PTC 242(CB) Del.

The Copyright Board may exercise this power of compulsory licensing under the following circumstances :-

- (a) The work is already published or performed.
- (b) The owner of copyright in respect for that work has refused to allow performance of that work in public and the public is deprived of that work by reason of such refusal.
- (c) In the satisfaction of the Board, the grounds of such refusal are not reasonable.

(d) After making enquiry as the Board deems fit is satisfied that situation like above is arised, it may issue the license to the complainant on payment of such compensation as may be determined by it, putting such terms & conditions as it deem fit. However, the copyright Board will give, to the owner of copyright in work a reasonable opportunity of being heard.

Generally this provision of copyright is invoked in the larger interest of the society so that the public may not be deprived of a copyright work. Where two or more persons are the complainant under subsection (1) the license shall be granted to complainant who in the opinion of copyright Board would best sub serve the interests of the general public. The very pertinent case in this regard is M/s Entertainment Network (India) Ltd. Vs. M/s Super Cassette Industries Ltd. 2008 (9) SCR 165), Wherein this right of the public was even recognized by Supreme Court of India.

6.8 Transfer by compulsory license in unpublished or published work :-

The provision relating to such transfer is made under section 31 (A) of the Copyright Act.

Where in case of an unpublished work or any work published or communicated to the public and the work is withheld from the public in India. The author of which is dead or unknown or can not be traced or the owner of the copyright in such work cannot be found, any person may apply to the Copyright Board for a license to publish such work or translation thereof in any language. But before making an application, the applicant shall publish his proposal in an issue of daily newspaper in the English language having circulation in major part of the country. Every such application shall be made in such form as may be prescribed an shall be accompanied with a copy of advertisement issued as above and the fees prescribed.

On such application, the copyright Board may, after holding the prescribed inquiry, direct the Registrar of copyrights to grant to the applicant a license to publish the work or translation thereof in the language mentioned in the application subject to payment of such royalty and subject to such other terms & conditions as the copyright Board may determine.

Where license is granted in respect of such work, the Registrar of Copyright may by an order direct the applicant to deposit the amount of royalty as determined by Copyright Board in the public account of India or in any other account specified by copyright Board, so as to enable the owner of the Copyright, or as the case may be, his heirs, executors or legal representatives to claim such royalty any time.

6.9 Compulsory License in national Interest :-

The special provision is made under section 31(6&7) for issuing of compulsory mandate in works, the original author of which is dead, the central Government may, if it considers that the publication of work is desirable in the national interest it may issue the direction requiring the her is, executors or legal representatives of the author to publish such work within such period as may be prescribed by it.

In case where the work is not published within the period specified by the central Government under subsection (6) the copyright Board may, on the 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 determines in prescribed manner in the circumstances of such case (Section 31(7)).

6.10 Compulsory license for the benefit of disabled

By Amendment Act of 2012 a new section 31(b) included in the Copyright Act for issuing of compulsory license for the benefit of disabled. As per provisions

of this section any person working for the benefit of persons with disability on a profit basis or for business may apply to the Copyright Board in the manner prescribed accompanied by a fee for a compulsory license to publish any work in which copyright subsists for the benefit of such persons and the Copyright Board shall dispose of such application as expeditiously as possible but not beyond the expiry of two months from the date of receipt of application,

On receipt of application the copyright Board after making an inquiry that application has been made in good faith and after giving owner of copyright a reasonable opportunity of being heard, and making such inquiry as it may deem necessary is satisfied that a compulsory license need to be issued to make the work available to disabled, it may direct the Registrar of Copyright to grant the applicant such license to publish the work.

6.11 Statutory License for Cover Version :-

The 2012 Amendment Act also introduced the provision for statutory license for cover version under section 31 (c) of a sound recording in respect of any literary, dramatic or musical work, where the sound recording is made under a license or consent of the owner of the right in the work, a person desirous of doing so may do so subject to conditions as follows :-

(i) Such person should give a prior notice of his intention to do so, providing advance copies of all covers or labels and pay in advance the royalty at the rate fixed by copyright Board in advance with further condition that the packaging cover or labels of such produce should not misled or confuse the public as to their identity and shall clearly state on the cover that it is a cover version under the provision of section 31 (c).

(ii) No alteration in the literary or musical work, which has not been made previously will be made by such person in the sound recording and it shall not be

made until the expiration of five calendar years from the end of the year in which the first sound recording of the work was made.

(iii) One royalty in respect of such sound recordings shall be paid for a minimum of fifty thousand copies of each work during each calendar year in which copies are made. However, the Copyright Board may fix the lower minimum in respect of certain works keeping in consideration the potential circulation of such work.

(iv) The register and book of accounts in respect of such sound recording shall be maintained having full details of existing stock and that shall be open to be inspected by owner / his authorized agent / his representative.

6.12 Statutory License for Broadcasting of Literary and Musical works and Sound Recording :-

The Copyright Board may issue the statutory license under section 31 (D) of the Amended Copyright Act to a broadcasting organization for communicating to the public through broadcast or performance of a literary or musical work and sound recording already published subject to following conditions :-

(i) A prior notice is given by broadcaster as to its intention to broadcast the work its duration, territorial coverage, and the payment of royalty is made to owner of work at the rate fixed by the Copyright Board. The Copyright Board shall fix separate rates of royalty for radio and television broadcast.

(ii) The names of authors / principal performers shall be announced with the broadcast by broadcaster.

(iii) Without the consent of copyright owner the broadcaster shall not make any fresh alteration to literary or musical work except the shortening the work for convenience of broadcast.

(iv) The records and book of account as to work shall be maintained by broadcaster for furnishing to owner and for inspection by him/his agent/representative in the prescribed manner.

6.13 License to produce and Publish translations of a Literary or dramatic work in any language :-

Section 32 of the Act make specific provision in respect of literary or dramatic work for granting of license to any person on his application after a period of 7 years from the first publication of work. (Section 32(1).

The Copyright Board may also grant a license on application of any person in respect of a literary, dramatic work, other than an Indian work, to produce and publish a translation in printed and analogous forms of reproduction in any language in general use in India after a period of 3 years from the publication of such work, if such translation is required for the purpose of teaching, scholarship or research provided further 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.

Every application for getting such license should be in prescribed form stating proposed retail price of the copy, enclosing the fee. Prescribed and should be submitted to Registrar of Copyrights.

6.14 License to Reproduce and Publish a work for certain purpose:-

This special provision has been added to copyright Act by an Amendment Act in 1983 under section (32-A) under this provision a compulsory license may be granted by copyright Board for production and publication of an edition of a literary, scientific or artistic work, the copies of which are not made available in India or have not been put on sale in India for a period of six months to the general public whether the work is Indian or not) after the expiry of certain prescribed

period from the date of first publication i.e. seven years in work relating to fiction, poetry, drama, music or art. Three years in works relating to natural science, physical science, mathematics or technology, five years for other works.

Every such license shall be issued by the Copyright Board on application in prescribed form stating the retail price of a copy of the work to be reproduced and on depositing of prescribed fees to Registrar of Copyrights, however such license granted by Board shall not be an exclusive license and the licensee will be under obligation to make payment of royalty, in respect of copies of reproduction of work sold to the public, to the copyright owner, which shall be determined by the copyright Board, and the licensee shall not be allowed the export of such reproduced copies, he shall also display a notice on each copy 'only for distribution in India'. Such authorization in the form of compulsory license shall be subject to principles of natural justice i.e. the owner of copyright shall be heard before issuing of such license.

6.15 Termination of Compulsory License:-

Section 32(B) deals with the conditions in which the compulsory license granted, under section 32 (1A) and Section 32(A) (for translation and reproduction respectively of a work) may be terminated by the Copyright Board. If the Copyright Board is satisfied that after the granting of license, the owner of Copyright himself made available the translated or republished work at the price normally charged in India and the work is same of same standard on same subject.

Provided that the termination of compulsory license in such a situation shall take effect until after the expiry of three months from the date of service of a notice

in the prescribed manner on the person holding such license by the owner of copyright. Further the copies already reproduced or translated by the licensee before such termination takes effect may continue to be sold or distributed until these copies are exhausted.

6.16 Self Assessment Test :-

- (i) Explain the term assignment of Copyright.
- (ii) Discuss various modes of transfer of Copyright.
- (iii) What do you mean by compulsory license.
- (iv) Write shot note on the following :-
 - (a) license of Copyright
 - (b) Termination of compulsory license.

6.16 Further Reading :-

- Copyright Act, 1957.

Unit – 7

Renewal and Termination of Copyrights

Objectives :-

After going through this unit you should be able to understand when a copyright may be renewed ? the conditions therefore and when a copyright terminated ?

Structure : -

- (7.1) Renewal of Copyright
- (7.2) Termination of Copyright
- (7.3) Self Assessment Test
- (7.4) Further Reading

7.1 Renewal of Copyright :-

In India once a work is registered as copyright in the name of an author or society, the ownership and other rights in respect of that work last up to the term as provided under the Copyright Act, 1957 and during the term of existing copyright for that work there is no need of renewal (we have already discussed under Unit-5 of this reading material the terms of various work).

However, the renewal of a copyright is a process through which an initial term of copyright protection for a work can be extended for a second term. It is necessary because once the term of copyright protection ended, the copyright work enters into the public domain and one can freely reproduce and incorporate it in new work.

Here, it is significant to note that the provision of renewal not required in India, because India was a party to the 'Berne Convention' from the very beginning,

therefore, the terms of various copyrights under Copyright Act 1957 and earlier governed by the norms of this convention.

However, it was in United States, the works published before 1923 are all in the public domain under the provisions of the copyright Act, 1909 and earlier law, because this Act provided for an initial term of 28 years which could be extended for an additional 28 years through renewal registration with the U.S. Copyright Office. The renewal registration requirement applies to the works in statutory copyright before January 1, 1978. As to claimants under the Berne Convention, their rights under U.S. accession to this convention on March, 1, 1989, long after the renewal registration requirement ceased to apply to newly created works.

Accordingly, for all works first published during the Berne ear (on or after March, 1, 1989), U.S. copy right office imposes no need to register for renewal on either U.S. or foreign claimants. By contrast pre-1978 work from the member countries of Berne that is still protected in the U.S. as of March, 1, 1989, even if previously published are governed by the Berne Convention after that date, because the Convention applies to "all works which, on becoming effective of this convention have not yet fallen into the public domain e.g. a work first published in India in 1970 by an Indian national, who died in 1980, but his work is still protected in India in 1998, the initial copyright term for that work in U.S. will be up for renewal and on non renewal the work will fall in public domain.

In this controversial scenario, if we examine the Berne Convention which commands that "the enjoyment and exercise of copyright shall not be subject to any formality'. Therefore, the formality of renewal for a foreign work, which is well protected in its country of origin under copyright law was not less than imposing a formality, as a condition for continued protection of the work.

The formality of renewal of copyright has lost its significance for the works copyright has lost its significance for the works copyrights in the U.S. in 1964 or after due to the copyright Renewal Act, 1992. This law done away the requirement that a second term of copyright protection is contingent on a renewal registration.

7.2 Termination of Copyright :-

Once a copyright is conferred on author of a work. It is exist for the term prescribed under the provisions of Copyright Act. However on expiry of the term the copyright cease to exist or in other word the work comes in the public domain. The other mode of termination of copyright may be assignment of copyright and relinquishment of copyright by the owner himself Broadly the termination of copyright takes place in following three ways :

- (i) on expiry of the term of copyright.
- (ii) on assignment of copyright to other person.
- (iii) on relinquishment of copyright.

(i) On expiry of the term of copyright : the copyright under Copyright Act is granted for a term specified for different work on expiry of this term the copyright is terminated and work is treated in public domain (the details regarding term of copyrights is already discussed under Unit-5 of this study material).

(ii) On assignment of copyright to other person : when the author of a copyright assign his right to other person the right of the authors as copyright owner terminated for the term for which copyright is assigned, but in case of assignment of work forever, the author's copyright is terminated forever (the detail discussion regarding transfer or assignment of copyright is already made under Unit-6 of this study material).

(iii) On relinquishment of copyright : a copyright may be terminated in respect of a work on relinquishment of the claim by author. The author of a work may relinquish his copyright under Section 21 of the Copyright Act either wholly or partially, when the author relinquish his copyright wholly the copyrights is terminated. Under provision of this Section the copyright may be relinquished by giving notice to the registrar of copyrights in Form (I) or a public notice under sub

rule 2 of rule 5. Regarding relinquishment the detailed procedure is provided under Rule 4 & 5 of the Copyright Rules.

7.3 Self Assessment Test :-

(i) What do you mean by the renewal of Copyright ? when the Copyright needed renewal ?

(ii) What do you mean by termination of Copyright ? when a copyright is deemed terminated ?

7.4 Further Reading :-

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- Copyright Act, 1957

UNIT – 8

Copy Rights: Allied and Neighboring Rights

Objectives :

After going through this unit you should be able to understand the Allied and Neighboring rights of the copyrights, which the owner of a copyright acquires along with the copyright. These rights are quite alike the copyright but they are not the same as the copy right is.

Structure :-

- (8.1) Preliminary
- (8.2) Special Rights
- (8.3) Moral Rights
- (8.4) Allied and Neighboring Rights
- (8.5) Summary
- (8.5) Self Assessment Test
- (8.5) Further Reading

8.1 Preliminary :-

Once a copyright protection is granted to a work the owner of the work acquire two sorts of rights. The first are the rights of economic nature – which relates to economic exploitation of the work, which we have already studied under Unit-5 of this study material while other rights are of non economic nature – which are generally denoted as special rights of the owner or moral rights. Thus special or moral rights of the author are coextensive with the economic rights and these rights

are also statutory rights or actionable rights and their breach is considered as breach of legal duty and may result in award of damage on being proved.

8.2 Special Rights:-

The special rights of the owner of copyright are independent of the rights of owner of a copyright and these special rights are available to the owner despite the copyright being assigned to other wholly or partly.

Section 57 of the Indian Copyright Act deals with these special rights, which are as follows :-

- (i) Right to claim authorship of the work.
- (ii) The right to restrain or claim damages in respect of any distortion, mutilation, modification done to his work before the expiration of his copyright, if such distortion, mutilation, modification or other act would be prejudicial to his honor or reputation. (This right is subject to an exception under section 52(1)(99). i.e. in case of adaptation of computer programme by the law full possessor of copy.

These special rights of the author are also named as 'Moral Rights' having origin to the French Word 'droit moral'. As observed earlier that these rights are parallel to and independent of the authors economic rights as to exploitation of his work economically.

8.3 Moral Rights :-

The moral rights are special rights of the copyright owner and these are conferred on him in addition to economic rights. The directives to protect the moral rights of the author are derived from Article 6 of the Berne Convention which mandate the member states to protect the following two rights – (i) The Paternity right : the right to claim authorship of the work (ii) The rights to integrity – the right to protect his honour and reputation.

Generally the following four rights are considered as moral rights:-

- (i) Right to be identified as an author :** of a copyright literary, dramatic or musical artistic work or cinematographic work (paternity right).
- (ii) Right against derogatory treatment :** an author of a work or director of a film may object to derogatory treatment of his work or film (Integrity right).
- (iii) Right against false attribution :** It is the right of a person against false attribution of a literary, dramatic, artistic or musical work to him as an author .
- (iv) Right to privacy :** Is provided to the commissioner of a work for photographs or film made for private and domestic purposes.

As stated above in special right of author the obligation in respect of above rights is fulfilled by Section 57 of the Indian Copyright Act, 1957 to some extent, because all the above four moral rights as well conferred under United Kingdom copyright, Design and Patent Act, 1988 (CDPA). However, Indian copyright Act recognizes only first two moral rights of the author.

If we look the wider view of the moral rights of the author across the countries, the moral rights recognized in India and U.K. are very limited, while other rights which have recognition as moral rights in some other jurisdictions are right to publish or divulge a work, to correct a work, to object to the excessive criticism of the work, to withdrawal of a work from circulation on own dissatisfaction.

Special right given to author of any literary or other work extend a special status to author. Virtually section 57 of Indian Copyright Act is overriding provision whereby, even after the assignment of copy right wholly or partially, the author's right to remedies through restraint order or damages remain with him overriding the terms of the contract of assignment. Thus this is a special provision for the protection of special rights of the author (Amarnath Sehgal Vs Union of India 2002 (2) Raj 248).

In (Smt. Mannu Bhandari Vs Kala Vikas Pictures Pvt. Ltd. AIR 1987 Delhi 13) the author's special or moral rights has been dealt with in detail and the court held them as specific rights of the author, Justice S.B. Wadi of Delhi High Court

observed : “Enrichment of the culture is of vital interest to each society, law protect this social interest. Section 57 is one such example of legal protection. Section 57 lifts author’s status beyond the material gains of copyright and gives it a special status. Section 57 is a statutory recognition of the intellectual property of the author and the special care with which the intellectual property is protected”.

Section 57 of the Act is a special provision for the protection of special rights of authors, the object of which is to put the intellectual property on higher footing than the normal objects of the copyright, because these rights are remained enforceable even if the economic rights of the author are alienated. Therefore the moral rights are inalienable rights in certain situations.

8.4 Allied and Neighboring Rights :-

Allied or neighboring rights are to a great extent looks to rights of the nature of copyright or look similar to copyright, but in-fact these rights are not the same as copyrights are the neighboring right akin to copyright considered in respect of certain works, which due to technicalities of law do not qualify as literary works. These are generally the works relating to entrepreneurship or entrepreneurial works which are not considered as creative as the authorial works are. The rights given to these later type of works are known as related rights or neighboring or allied rights, which are quite distinct to copyright.

Authorial works and entrepreneurial work have a great distinction as to rights for former the author’s rights are recognized and for later the neighboring rights are given. The works created by authors like books, plays, music art and film have author’s right i.e. the copyright. While neighboring or allied rights are provided in works which cannot be strictly so called the author’s work like sound recordings, broadcasts, cable programs, and published edition typographical formats.

The distinction between two is due to the fact that the authorial works are considered as original work while entrepreneurial work are considered as

derivative work, for that reason the two cannot be put at par, although there is no great objection presently under law in providing protection to them, but objection comes in treating both on the same footing as copyright. That is the reason that neighboring rights were not initially recognized in respect of human creations but to the creation of the body or person, financially or organizationally responsible for the production of the material.

The similarity between copyright and neighboring right has made the concept of copyright to some extent confusing in recent period which is well anticipated by Mr. W. R. Cornish in the following words : "The range of copyright has been complicated by the addition of certain analogous rights given to performers and to the producers of sound recordings, films, broadcasters and other entrepreneurs, for somewhat shorter periods.

The distinction of copyright and Neighboring rights is historical and it originated from the Berne Convention, 1886 which refused to recognize these rights on the grounds, firstly that the work for which these rights are claimed were of non creative or derivative nature and secondly on the ground of fact that recognizing these rights would reduce the royalties payable to authors. But all these distinction of work authorial and derivative was removed in 1961 through Rome Convention in which a consensus was emerged among member countries to give national treatment to rights of performers and broadcasters in their respective nation. Therefore the distinction between copyright and Neighboring rights now become of historical importance only.

In India also such distinction is eliminated through 1994 Copyright (Amendment) Act, which now recognized the rights of the performers and broadcasters in indiscriminate manner along with copyright we will study the provisions relating to protection of these rights in detail under Unit-10 of this study material.

8.5 Summary :-

The Neighboring or allied rights are somewhat align to the copyright but these are not same. The copyright are rights of the author while Neighboring rights are derivative rights or rights of the entrepreneurs.

8.6 Self Assessment Test :-

- (i) What do you mean by special / moral rights of the authors.
 - (ii) distinguish between copyright and Neighboring / allied rights.
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8.7 Further Reading :-

- Copyright Act, 1957.

Unit – 9

Copyright Societies and International Copyright

Objectives :-

After going through this unit you should be able to understand about Copyright Societies, which are voluntary associations of the Copyright holders, their establishment, formation, registration, their rights and powers including the functions these society discharges, simultaneously you will be able to learn about the emerging concept of International Copyright, which emerged after the establishment of W.T.O., for which the Indian Copyright Act also makes provisions, what is the nature of these rights, the works for which these right are granted and what is the term of these rights.

Structure : -

- (9.1) Copyright Societies
- (9.2) Registration of Copyright Societies
- (9.3) Cancellation of Registration
- (9.4) Delegation of Rights of the owner and powers of Copyright Societies
- (9.5) Duties of Copyright Societies
- (9.6) International Copyright
- (9.7) When International Copyright is Granted ?
- (9.8) Term of International Copyright
- (9.9) Self Assessment Test
- (9.10) Further Reading

9.1 Copyright Societies :-

Though the author of the work, in his individual capacity have the exclusive right to grant licenses in respect of his work, but sometimes the owner of copyright may not be able to exploit economically his work either due to lack of financial resources or skill. For the sake of protection of the interest of such types of authors the copyright societies may be constituted to collectively safeguard their interests. Generally these societies are voluntary associations of the Copyright owners entitled to be registered legally under the Copyright Act.

The owners of copyright collectively constitute these societies having a collective control of all. Prior to coming into force of copyright (Amendment) Act, 1994 Under Sections 33 to 36 only the 'Performing Right Societies' may be constituted having a limited powers of granting licenses for performance of a literary, dramatic and musical work based on script, novel, or story. The name of these societies was changed by 1994 Act to 'Copyright Societies' along with enlargement of their powers to grant licenses in respect of all sorts of Copyright.

Now author of Copyright being a owner may establish form and get registered certain societies along with certain other interested persons. The 'Performing Rights Societies' existing before the coming into force of the 1994, Amendment Act, will also be considered as copyright societies, however they were to be required to get registered themselves under the Act within a period of one year from the date of commencement of Amendment Act. (Section 33(1)).

9.2 Registration of Copyright Societies :-

The Copyright Societies are registered on mandatory basis they become eligible to grant license on being registered under the Act, Section 33 of Copyright Act and rules thereof (Rule 12-14P) deals with registration of Copyright Societies.

Any association of persons comprising 7 or more owners of copyright formed for the purposes of carrying on business of issuing license in respect of any

class of work in which Copyright subsists may apply to the Registrar of Copyright through an application, who will forward the same to the Central Government for granting of permission to carry on such business and for its registration as a copyright society.

The Central Government after taking into consideration interest of the public and capabilities of the applicant may register association of applicant as a copyright society, with the condition that only one association of persons shall ordinarily be so registered for one class of work (Sections 33(2) and 33(3).

However, an application so submitted is likely to be rejected if :-

- (i) applicant lacks professional competence to carry on its business or have no sufficient funds to maintain or manage affairs of the society
- (ii) existence of other Copyright society registered under the Act for the same class of work with proper functioning,
- (iii) in the opinion of Central Government the applicant are not the bonafide owners of the Copyright and they have not voluntarily signed the application.

9.3 Cancellation of Registration :-

In order to protect the interests of owners of Copyright the Central Government may cancel the registration done or suspend it pending an enquiry.

9.4 Delegation of Rights of Owner and Powers of Copyright Societies :-

The owner of Copyright delegate their rights to the copyright society; and the latter acquires the powers in respect of copyright delegated so under Section 34 of the Copyright Act read with Rules 14-G and 14-H, under these provisions the copyright society acquires the following powers :-

- (i) Exclusive authorization may be accepted by the Copyright Society to administer any right in any work by issue of licenses or collection of license fees or both. However, owner is entitled to withdraw this authorization.
- (ii) on obtaining authorization from the owner the copyright society may issue license,
- (iii) for granting of license it may collect the fee,
- (iv) to distribute the fee collected among the authors,
- (v) to make deduction from the fees collected for its own expenses,
- (vi) copyright society may enter into any contract with a foreign society having similar rights there to entrust the said foreign society or organization the administration in any foreign country of rights administered by the said copyright society in India. However these powers may be exercised when Indian work is published in a foreign country or a foreign work is published in India.

The different powers conferred on copyright society by the Act put it in the place of authors regarding administration of Copyright. The Supreme Court in M/s Entertainment Network (Indi) Ltd. Vs. M/s Super Cassette Industries Ltd. 2008(9) SCR 165 observed that for all intent and purport copyright society steps into the shoes of the author. Section 34 providing for administration of rights of owners by a Copyright society for all intent or purport creates a virtual agency so as to enable the society to act on behalf of the owner. Under Section 55 the copy right society may also enforce the civil remedies for infringement of copyright.

9.5 Duties of Copyright Societies :-

The Copyright society exercise the rights and it powers subject to certain duties which are as follows :-

- (i) duty to pay remuneration, by framing a scheme for determining the quantum of remuneration payable to the individual copyright owners having regard to the number of copies of the work in circulation. (Section-34)

- (ii) duty subjecting itself to the collective control of owners of right-whose rights it administer. (Section-35)
- (iii) duty to submit to the Registrar of Copyright the reports and returns in prescribed form. (Section-36)
- (iv) duty to submit to the Central Government annual account and records thereof maintained. (Section-53-B)

9.6 International Copyright :-

India being a founder member of Berne Convention, Universal Copyright Convention and W.T.O. has given International Legal regime to different Intellectual Property Rights including copyright. Therefore, the provision is made under Copyright Act to give Copyright to foreign work in India published by foreign national and outside India. On reciprocity of same treatment to the works published in India. This happened because of the fact that members of the Berne convention, like India, are bound under this treaty to give the national treatment to the works and authors of the member countries.

Here in contrast as per Section 13(q) of the copyright Act, the Copyright may be granted only to the work which published first in India or in case of publication outside, the author is an Indian citizen. But International Copyright is granted Under Sections 40 and 41 as an exception to general provision as mentioned above.

9.7 When International Copyright is Granted :-

The provision relating to International Copyright has been made effective through Sections 40 and 41 of the Copyright Act.

As per Section 40, the Central Government may be order provide for national treatment to the books (published or unpublished) and their authors whether living domiciled or, if dead, living at the time of death, in a foreign

country. Such books shall get copyright protection in the same manner as the works of Indian authors published in India. That means works published outside India to which International copyright order 1999 applies. Such work are treated at the same footing as Indian works is.

By virtue of above provision and copyright order 1999, the unpublished work of foreign nationals is treated in the same manner like the authors citizen of India.

Under the Copyright Act, the Government of India is empowered to give the national treatment to the authors of other countries also i.e. who are not members of International Convention but have a bilateral treaty with India on the reciprocal basis. Thus the Central Government is entitled to grant the copyright protection to the works of authors of any country which has provide the similar protection to Indian authors or work in their territory.

Under Section 40-A of the Act, the central Government is entitled to give national treatment to other nation's broadcasters and performers subject to certain conditions and limitations. By extending of such a treatment the broadcasters and performers are provided the special rights under Sections 37, 38 and 39 of the Copyright Act.

Section 41 of the Copyright Act extend the Copyright protection to the works of International Organizations e.g. U.N., recognized as such by Central Government.

However, in such cases where National treatment is given to foreign work, the Central Government may restrict the protection given as a Copyright to these works, if the Government is of the opinion that the country to which work belong not giving the similar protection to Indian work on the reciprocal basis. (Section-42). The Central Government has been given the same power regarding restriction on the Copyright of foreign broadcasters and performers Under Section 42-A. But these orders of restriction are required to be discussed in Parliament Section-43).

9.8 Term of International Copyright :-

The term of the Copyright, extended to foreign works in India shall, however, not exceed the term conferred by law of that country, e.g. term of copyright for a work in foreign country is 50 years and it is 60 years in India for the same work, the foreign work will be entitled to copyright protection up to 50 years only.

9.9 Self Assessment Test :-

- (i) How International Copyright differ from Copyrights ?
- (ii) When International Copyright is granted ?
- (iii) Discuss the term of International Copyright.

9.10 Further Reading :-

- Copyright Act
- Copyright order 1999 published in Gazette of India Extra Part-II Section 3(i) dated 6.4.1999.

Unit – 10

Rights of Broadcaster and Performers: Their Protection

Objectives :-

After going through this unit you should be able to understand about the rights of the broadcasters and performers. When these are considered as infringed and when not, and remedies for infringement.

Structure :-

- (10.1) Broadcaster and Performers Rights
- (10.2) Broadcast Reproduction Rights
- (10.3) Performers' Rights
- (10.4) When performers' Right Infringed
- (10.5) When performers' Right not Infringed
- (10.6) Self Assessment Test
- (10.7) Further Reading

10.1 Broadcaster and Performers Rights :-

The broadcasters and performers emerged as a great player in the field of entertainment, art, culture, knowledge, after the development of the electronic media at the global level. In this scenario the rights of those people were at the stake and subject to consistent infringement **undeterrently**.

To deal with such situation the Copyright Act amended in 1994, to give effect to Article 14 of Trade Related Intellectual Property Rights (TRIPs)

Agreement, whereby provision is made for some special rights to broadcast reproduction and performers.

10.2 Broadcast Reproduction Rights :-

In respect of broadcast the broadcasting organization shall have a special right, known as broadcast reproduction right under section 37 of the Act in respect of its broadcasts. This right subsists till 25 years from the beginning of the calendar year next, following the year in which the broadcast is made.

During the subsistence of this right, no person can do any of the following acts of broadcast or any substantial part of it, without the license of the owner of such rights :-

- (a) rebroadcasting other broadcast; or
- (b) causing the broadcast to be heard or seen by the public on payment of any charges; or
- (c) making any sound recording or visual recording of the broadcast
- (d) making any reproduction of such sound or visual recording, where the same was done without any license; or
- (e) to sell or hire to the public, or to offer for such sale or hire, any such sound or visual recording referred to in item (c) & (d) above.

Doing of any of the above mentioned acts, without the license of the owner, would be treated as infringement of broadcast reproduction right. But the making of any sound recording or visual recording for the purposes of private use or solely for the purpose of bonafide teaching or research or using the same in the reporting of current event will not be considered as infringement of broadcast reproduction right. But 'fair dealing' norm shall apply in such cases (Section-39).

10.3 Performers' Rights (Section 38) :-

Performers consist of the person who demonstrate their art to the public generally these are called as artist. Section 2 (q.q) of the Copyright Act define 'performer' as acrobat, musician, singer, actor, juggler, snake charmer, a person delivering lectures or any other person who makes performance. The word 'Performance' is defined under Section (q) as any visual or acoustic presentation made by one or more performers.

The performers enjoy the protection of their right at par with broadcasters. Before the 1994 Amendment no such protection was given to performers under Copy Right Act again copying of their talent. Before Amendment of Section 38(2) of the copyright Act, the term of performers right was 25 years but following the TRIPs agreement the term is now extended to 50 years since 1999 Amendment of the Act.

10.4 When performers' Right Infringed (Section 39) :-

During the continuance of a performer's Right, if any person without the consent of the performer, do any of the following acts regarding performance or substantial part thereof the performers' right deemed to have been infringed

- (i) making of sound recording or visual recording of the performance,
- (ii) reproducing a sound recording or visual recording of the performance;
- (iii) broad casting the performance;
- (iv) communicating the performance to the public otherwise than by broadcast.

10.5 When performers' Right not Infringed :-

Section 39 besides rights simultaneously provide certain exceptions, where in the performers' right not regarded as infringed which are as follows :-

- (i) making of sound or video recording for personal purpose; or
- (ii) for the purposes of bonafide teaching or research; or
- (iii) using the performance excerpts for bonafide teaching or research; or
- (iv) doing of any act which does not constitute the infringement of copyright Under Section 52 of the Act (for detail discussion see Unit 12 of this study material).

10.6 Self Assessment Test :-

- (i) Define performer and performance.
- (ii) What are the broadcaster Rights ? Explain.
- (iii) What are the performers Rights ? Explain.
- (iv) When broadcaster and performers rights deemed infringed ? Explain.

10.7 Further Reading :-

- Copyright Act

Unit – 11

Procedure for Registration of Copyright

Objectives :-

After going through this unit you should be able to understand the procedure regarding registration of copyright, the advantage and evidentiary value of registration and certain other miscellaneous matters of registration like appeal etc. .

Structure :-

- (11.1) Preliminary
- (11.2) Registration Procedure
- (11.3) Appeal against Decision of Registrar
- (11.4) Effects of Registration of Copyright
- (11.5) Power of Copyright Board to Rectify the Register
- (11.6) Procedure of Rectification
- (11.7) Statutory Publication of Rectification Made
- (11.8) Provision of Appeal
- (11.9) Self Assessment Test
- (11.10) Further Reading

11.1 Preliminary :-

The authors of work to which copyright is assigned enjoy certain exclusive right just like other rights, which are statutorily conferred. A work to which copyright is extended need not be compulsorily registered under the Act and the fact that work is not registered, the author of the work cannot be deprived of the rights provided

to him under copyright Act (Nav Sahitya Prakashan Vs Anand Kumar, AIR 1981 All 200).

For the purposes of promotion of registration of copyright, however, the Act confer certain advantages to registered copyright over unregistered copyright. In this sense the registration of copyright is advisable rather than compulsory.

11.2 Registration Procedure :-

For the purpose of registration of copyrights every copyright office required to maintain a register of copyright in the prescribed form for having a record of names or titles of works, names and addresses of authors, publishers and owners of the copyright, which are recorded on the application of a person interested for registration. (Section 44)

The detailed procedure for registration of copyright provided under Rules 16 of Copyright Rules, 1958 along with section 45 of the copyright Act, which is as follows :-

- (a) On an application by the author, publisher or owner or any other interested person in copyright in prescribed form, with prescribed fees, the Registrar of the copyright will enter the particulars of the work in the register maintained as aforesaid under Section 44. But in matter of artistic work which can be used as Trade Mark, the applicant is also required to furnish a certificate from Registrar of Trade Marks that earlier no trademarks similar or identical has already been registered under Trade Mark Act in the name of any person other than applicant.
- (b) The applicant for registration of copyright is also required to give notice regarding application to all persons having any claim, interest in the subject matter of copyright or dispute the copyright to applicant e.g. co-author of a work.
- (c) The objection will be invited by the registrar of Copyright on such an application for registration and if registrar not receive any objection to such registration within thirty days, after making an enquiry, as the registrar deems fit

on satisfaction regarding correctness of the details of work and other particulars, the registrar of copyright will enter the details of work and author in the register kept for the purposes of registration.

(d) In case the Registrar receive any objection to the registration within 30 days time, after making an inquiry as he deem fit he will take decision regarding registration in register.

(e) A copy of entries made in Register shall be send by Registrar copyright to the concerned parties as soon as possible.

On making the entries of a work, its author and other particular in the Register by the Registrar copyright to copyright is said to be registered.

11.3 Appeal against decision of Registrar :-

An appeal may be preferred by the aggrieved party against the decision of Registrar Copyright as to denial of registration, registration despite objections to the Copyright Board within three months of decision.

11.4 Effects of Registration of Copyright :-

The registration of a work by Registrar of copyright is a prima facie evidence regarding particulars entered in the register and it is admissible as evidence in all courts of law. Through registration the owner of copyright acquires the effective protection against infringement of it in the form of evidentiary value to his work as a creator or original author.

11.5 Power of Copyright Board to rectify the Register :-

Copyright Board has been given power under Section 50 of the Act expunged from the register of copyright the registration sought by fraud, mistake

or suppression of facts. In this respect the Copyright Board after following a due procedure may make rectification of the register of copy rights.

11.6 Procedure of Rectification :-

On application of aggrieved person or Registrar of Copyright, the Copyright Board direct for the rectification of register in the following manner

- (a) making of entry in the register wrongly omitted; or
- (b) removal of entry wrongly made in the register; or
- (c) by making correction of defect or error in the register.

11.7 Statutory Publication of Rectification made :-

The rectification made in the register under Section 50 are required to be published in the official Gazette or through other mode. This statutory requirement is made through an amendment of the Act by inclusion of Section 50-A.

11.8 Provision of Appeal :-

Against the order of Registrar of copyright passed under Section 44 as to registration / non-registration of a work lie to Copyright Board and in matter of infringement of registered copyright to Magistrate in Criminal Proceeding and judge in civil suit.

A further appeal may be allowed to the High Court from any order passed by Copyright Board.

11.9 Self Assessment Test :-

- (i) Is registration of copyright is compulsory under Copyright Act ? What are the advantages of registration ?
- (ii) Discuss the procedure for registration of a copyright.

(iii) How and when the rectification may be made in register of copyright ?

11.10 Further Reading :-

- Copyright Act.

Unit – 12

Infringement of Copyright, Remedial Procedure Appeal Etc.

Objectives :-

After going through this unit you should be able to understand the infringement of copyright meaning, when infringement is caused, the modes of infringement, the principles which are the deciding factors of infringement, the factors which decides the infringement, the acts which not constitute infringement, how the questions of infringement of copyright determined ? the remedies against infringement of copyright civil and criminal.

Structure : -

- (12.1) Preliminary
- (12.2) Copyright Infringement
- (12.3) When infringement of Copyright is Constituted ?
- (12.4) What is infringing copy
- (12.5) Parameters to decide infringement of Copyright
- (12.6) Deciding Factors for Determination of Infringement
- (12.7) Statutory defenses or acts which not Constitute Infringement
- (12.8) Special Provisions as to Infringement of Copyright of Sound Recording and Video Film
- (12.9) Remedies and Remedial Procedure for Copyright Infringement
- (12.10) Civil Remedies
- (12.11) Criminal Remedies
- (12.12) Administrative Remedies
- (12.13) Provisions for Appeals

(12.14) Self Assessment Test

(12.15) Further Reading

12.1 Preliminary :-

The author/owner of Copyright has exclusive right to economically exploit his creation. If someone without proper authorization of owner exploit commercially, the work of the owner for monetary gain it is called the infringement of the copyright of owner.

Thus use of one's copyright for commercial purposes without consent of the owner by others is called the violation of infringement of Copyright. However the nature of rights and the protection accorded differ from work to work. The reproduction of any work in any material form, performance of work in public, communication of the work to public are the most usual modes of copyright infringement.

12.2 Copyright Infringement :-

When a Copyright is considered as infringement ? it is well explained Under Section 51 of the Copyright Act. In the following situations the Copyright is deemed to be infringed :-

- (a) When any person without a license from the owner of the copyright or Registrar of copyright or in contravention of the conditions of a license granted or any conditions imposed by the competent authority under the Act;
 - (i) does anything, the exclusive right of doing which is conferred upon the owner of copyright,
 - (ii) permits for profit any place to be used for the communication of the work to the public, where such communication constitutes an infringement of copyright; or
- (b) Where any person :-
 - (i) makes for sale or hire, or sells or lets for hire, or by way of trade, displays or offers for sale or hire any infringement copies of work, or

- (ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright; or
- (iii) exhibits in public by way of trade; or
- (iv) except single copy for private or personal use, imports into India any infringing copies of the work.

An explanation attached to Section 51 further make it clear that the reproduction of literary, dramatic, musical or artistic work in the form of a cinematographic film shall be regarded as infringing copy.

12.3 When infringement of Copyright is Constituted ? :-

Two elements are necessary to constitute the infringement of Copyright i.e. :-

- (a) objective similarity between infringing work and the copyright work,
- (b) infringing work is derived from Copyright work.

12.4 What is Infringing Copy :-

Under explanation to Section 51 the reproduction of a literary, dramatic, musical or artistic work in the form of cinematograph film is deemed as 'Infringing Copy'. Therefore, it is necessary to know the meaning of term infringing copy.

Under Section 2(m) of the Act 'Infringing Copy' means :-

- (i) in relation to a literary, dramatic, musical or artistic work, reproduction of it, except in the form of cinematograph film;
- (ii) in relation to a cinematography film, making a copy of the film on any medium by any means;
- (iii) in relation to a sound recording, making any other recording embodying the same sound recording;
- (iv) in relation to programme in which broadcast reproduction right subsists Under Section 37, the sound recording or a cinematographic film of such programme or performance.

12.5 Parameters to decide infringement of Copyright :-

When a Copyright is infringed ? in a landmark judgment **R.G. Anand VS Deluxe Films AIR 1978 SC 1613 at P. 1627** the Supreme Court laid down the detailed parameters to decide particular cases, which are as follows :-

- (a) As there can be no copyright in an idea, subject-matter, theme, plots or historical or legendary facts, the violation of copyright in such cases confined to the form, manner and arrangement and expression of the idea by the original author of work.
- (b) Where the same idea is developed in a different manner, the source being common, the similarity is bound to occur, in such cases the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyright work. If the defendant's work is nothing but the literal imitation of copyright work with some variations here and there it would amount to infringement of copyright.
- (c) The surest test to determine, whether there has been violation of copyright, if the readers, spectator or viewer after having read, is clearly of the opinion, and gets an unmistakable expression that the subsequent work appears to be a copy of the original.
- (d) where the theme is the same but is presented and treated in a different way so that the subsequent work becomes a completely new work. In such cases no violation of copyright is there.
- (e) Where apart from similarities appearing in the two works there are also material and broad dissimilarities which negatives the intention to copy, there is no infringement of copyright.
- (f) the infringement of Copyright is an act of privacy it is required to be proved by clear and cogent evidenced.

(g) in case of violation of Copyright in stage play or film, if the viewers are of the opinion that major part of the show is the copy of original, it amounts to infringement.

(g) In case of violation of Copyright in stage play or film, if the viewers are of the opinion that major part of the show is the copy of original, it amounts to infringement.

12.6 Deciding Factors for Determination of Infringement :-

The determinant and deciding factors in case of infringement of Copyright are as follows :-

(i) Copying : in case of copying the owner of copyright must show that there is a casual connection between the original and alleged infringed copy of work barring the objective similarity is there.

(ii) Subconscious Copying : subconscious copying involve the indirect copying in such case of infringement the decisive factors are – whether it is unaltered copying, extent to which defendant made alterations, character of plaintiff's and defendant's work, nature and extent of plaintiff efforts, how defendant has taken advantage of plaintiff's work, the extent to which the plaintiff is deprived of exploitation of his work.

The direct evidence of copying may be traced from the pirated work, if the defendant's work have the similar error mistakes as present in the plaintiff's work, it certainly be the infringement, where no direct evidence is available it may be gauged from surrounding facts.

Generally the courts in India are guided by the "**Lay observer Test**" in determination of infringement of Copyright. As per this test 'Whether or not there has been violation of Copyright is to see if the reader, spectator or the viewer after having read or seen both the work should be clearly of the opinion and get unmistakable impression that subsequent work seems to be a copy of the first. If

the opinion formed by lay observer is so the subsequent work is an infringed work. However, the burden of proof as to infringement of copyright of the author of original work lie on the person alleging that.

12.7 Statutory Defenses or acts which not Constitute Infringement :-

The Copyright protection given to the owner of licensee is not absolute, for allowing fair dealing of work for the purposes of education, research and promotion of public good, the Act itself provide certain defenses or permitted certain acts in respect of copyright work, which not amount to infringement of copyright under Section 52.

Under the heading "certain acts not to be infringement of copyright" the Section 52 gives a following list of acts which are exceptions or defenses in case of copyright violation :-

- (a) Fair dealing :** the fair dealing allow the copying or other use of work, which would otherwise be an infringement fair dealing with a literary, dramatically, musical or artistic work, other than computer programs, for the purposes of private use, including research, criticism or review is a statutory defense.
- (b) Making copies / adaptation of computer programme for specific purposes :** by the lawful possessor of a copy, from such copy for the agreed purposes, for making the backup copy against loss, destruction or damage etc not amount to infringement (S. 52(i) qq).
- (c) For reporting current events :** fair dealing with a literary, dramatic, musical or artistic work for the purposes of reporting current events in a news paper magazines or similar periodical or by broadcast or in a cinematograph film or by means of photography not considered as infringement, but the publication of speeches and address not covered under the meaning of fair dealing.

- (d) Reproduction for the purposes of judicial and legislative proceedings :** reproduction of a literary, dramatic musical or artistic work for the purposes of judicial proceedings or of a report of judicial proceedings, similarly the reproduction or publication of a literary, dramatic, musical or artistic work in any work prepared by the secretariat of one or both houses of legislature for the exclusive use of the members of legislature not amount in infringement.
- (e) The Reproduction in the form of certified copies :** The reproduction of any literary work in the form of certified copy made or supplied in accordance with any law for the time being in force not considered as infringements of Copyright.
- (f) Reading / recitation of any extract from a literary work :** the reading or recitation of any extract from a literary or dramatic work in public not amount to infringement.
- (g) Publication for use of educational institutions :** A collection from non Copyright material or literary or dramatic work intended for bonafide use of the educational institutions would not amount to infringement of copyright.
- (h) Reproduction by teacher / pupil during instructions in classroom :** as part of the questions to be replied, in examination, in answers to these question will not amount to infringement of copyright.
- (i) Performance of a literary, dramatic or musical work by the staff and students for educational purposes :** such performance is not considered as violation of copyright.
- (j) Making or using of sound recording :** making a sound recording with the license or with consent of copyright owner in enclosed rooms or clubs not running for profit do not amount to infringement .
- (k) Reproduction of an unpublished literary, dramatic or musical work kept in library museum or other institution for the purposes of research or private study.**
- (i) Reproduction or publication of any matter published in official Gazette or reports of the Government Commission or other bodies appointed by Government.

- (m) Publication of a public lecture delivered in public in a magazine, news paper or other periodical.
- (n) Reproduction of an article on current economic, political, social or religious topics in newspaper or other periodical is not violation of copyright.
- (o) Performance of literary works by amateur club or society for the benefit of nonpaying audience or for the benefit of religious institutions is not violation of copyright.
- (p) Making a maximum of 3 copies of book, pamphlets, music, sheet, map, chart or plan, for use in public library, which is not available for sale in India.
- (q) Reproduction of any judgment or order of court, tribunal or other judicial authority not prohibited from publication.
- (r) Production of publication of translation of Acts of legislature or rules.
- (s) Making or publishing of a painting, drawings engraving or photograph of a work of architecture or its display which is permanently present in public place.
- (t) Inclusion in a cinematographic film of any artistic work permanently situated in public place e.g. documentary film.

All the exceptions as to infringement included in Section 52 (1) also apply to the doing of any act in relation to the translation of a literary, dramatic or musical work or the adaptation of such work in the same manner as they are applicable to work itself.

12.8 Special Provisions as to Infringement of Copyright of Sound Recording and Video Film :-

As the copyright violations in respect of sound recordings and video films are of fragile nature and difficult to prevent, the specific provisions has been included by 1984, Amendment Act to copyright, which are as follows :-

No person shall publish a sound recording in respect of any work unless the following particulars are displayed on the sound recording and container of it :

- (i) the name, address of the person making the sound recording.
- (ii) the name, address of the owner of the copyright in such work.
- (iii) the year of its first publication.

Just like sound recording, no person can publish video film in respect of any work unless the following details are displayed in the video film, on the video recording and container.

- (i) a copy of the certificate granted by the Board of Film certification, if the work is cinematograph film.
- (ii) the name and address of the producer of video film and details regarding license and consent,; and
- (iii) the name and address of the owner of the Copyright in such work.

The intention behind inclusion of these provisions in the Act is to prevent the video or audio piracy.

12.9 Remedies and Remedial Procedure for Copyright

Infringement :-

The copyright of the owner is a substantial right, the redressal of the grievance of copyright owner on violation of this right is essential, otherwise there will be no value of such right on unlawful violations.

The copyright Act, itself create an effective mechanism through various remedies of protection of Copyright the remedies may be classified under following three categories :-

- (a) Civil remedies
- (b) Criminal remedies
- (c) Administrative remedies

All the above remedies are coexistent and available to the owner of copyright in case of infringement simultaneously.

12.10 Civil Remedies :-

In case of infringement of copyright the owner may seek the remedies like 'injunction', 'damages', 'accounts' or costs and all other remedies provided by law for the infringement of a right. Section 54 to 62 of the Act deals with such remedies. These remedies are preventive and remedial both :-

(i) Anton Pillar order or order for search and seizure :- This is a preventive measure devised by English court in Anton Pillar's case and this order is named after the plaintiff, Anton Pillar, in the case. This order was passed in order to prevent the growing piracy of sound recording and videos. This is an expert order passed by the court in appropriate cases on application of plaintiff directing the defendant to allow the plaintiff along with his solicitor or attorney to enter the premises and make inspection of the relevant documents and articles and to take copies therefore or remove them for safe custody. It is just like an expert interlocutory order to inspect the premises of the defendant and to make inventory of the offending articles. But the court may pass such an order after ensuring that the plaintiff has made full disclosures of all details and facts within his knowledge and his conduct is equitable and the situation demand for such an order in order to prevent the defendant from destroying the offending material.

(ii) Injunction or Stay Order :- The author of Copyright in case of infringement may also get the relief by restraining defendant through temporary or permanent injunction in the civil suit for which a civil court is entitled to pass an order under Order XXXIX of Civil Procedure Code.

(iii) Interlocutory Injunction :- Such type of injunction may be ordered by civil court on an application by the plaintiff in which he alleged the existing infringement, continuing infringement or anticipated infringement of his Copyright. Such an order may be passed by the court during the pendency of the suit or further orders.

(iv) Damages on Account of Profit :- The plaintiff in suit for infringement may seek from the court damages in respect of infringement of his copyright and conversion of his copyrights work in other form.

(v) Accounts of Profits :- In a suit for copyright infringement, the plaintiff if remained successful, may request to the court for accounts of profits alternatively to damages.

Who may sue for infringement ? :-

Only the 'owner' of copyright is entitled to sue for infringement of his copyright, which is defined Under Section 54 of the Act, but in ultimate analysis of this definition the following persons may also sue for infringement of copyright i.e. assignee of copyright, the legatee, for anonymous or pseudonymous work; the publisher, till the identify of author is disclosed, the licensee if the owner of copyright is made a party (Section 61).

Court Competent to Grant Civil Remedies ? :-

Under Section 62 of the Act, every suit or other civil proceeding arising under the Act for infringement of Copyright in any work or infringement of the rights of broadcasters and performers is to be instituted in the District Court having jurisdiction.

Where Suit for Infringement to be Instituted :-

The suit for infringement of Copyright may be instituted in the District Court, within the local limits of whose jurisdiction the person instituting the suit voluntarily resides or carries on the business or personally works for gain at the time of institution of suit of proceeding.

Limitation Period for Filing of Suit :-

A suit for infringement of Copyright may be brought within the three years period from the date of infringement.

12.11 Criminal Remedies :-

Besides the civil remedies, the copyright Act, 1957 also provide for criminal remedies in case of copyright infringements these remedies of penal nature are in addition to the remedies available in other laws relating to crime.

Thus infringement of Copyright is not only a civil wrong but also a crime. Section 63 to 70 of the Act specifically deal with the offences relating to violation of Copyright, which are discussed below :-

(i) Section 63 : Knowingly infringement or abetting the infringement of

Copyright : A person who knowingly infringe or abets the infringement of the Copyright in a work or any other right conferred by Copyright Act (except in case of resale share right in original copies Under Section 53 A) shall be punished with imprisonment form 6 months to three years and fine fifty thousand to two lakh rupees. However if in the opinion of court if infringement is not of commercial nature then court may impose fine less than fifty thousand rupees.

(ii) Section 63-A Repetition of Offence Under Section 63 and Conviction

therefore, : The Act provides enhanced penalty for second and subsequent conviction in that case one may be punished with minimum 1 year and maximum 3 years imprisonment and fine ranging from 1 to 2 lakh rupees .

(iii) Section 63-B knowingly using of Infringing copies of Computer Programs

: for such an offence on may be penalized with imprisonment for seven days upto three years and fine ranging from fifty thousand to 2 lakh rupees.

(iv) Section 65 Deliberate Possession of plates for the purposes of making infringement copies is punishable with two years imprisonment and fine.

(v) Section 67 Making False entries in the Copyright Register : 1 Year imprisonment or fine or both may be imposed for making false entries in Copyright Register.

(vi) Section 68 Making false Statements for Deceiving or influencing any

authority or officer : Making of false statements intending to deceiving any authority or influencing officer is punishable with imprisonment up to one year or fine or both.

(vii) Section 68-A Publishing a sound recording or video film in violation of Section 52-A : A person who publishes a sound recording or video film in contravention of the provision of Section 52-A may be punished with imprisonment up to three years and fine.

Where the above offences are committed by a company, every person in charge at the time of commission of offence and the persons responsible for the conduct of the business of the company and company itself shall be held liable. The trial for criminal violations under the Copyright Act is allowed only in court not inferior to that of Metropolitan Magistrate or a Judicial Magistrate of the First Class. The power is also given to the trial court to order the seizure without warrant, all infringement copies of work and equipments used for infringement by the police officer not below the rank of Sub Inspector and to produce before Magistrate under Section 63 and 64 of the Act.

12.12 Administrative Remedies :-

The power to grant certain administrative remedies is given to Registrar of Copyright and Copyright Board in respect of prevention and control of copyright infringements. These remedies are :-

(i) Section 53 Ban on Importation of Infringed Copies : On the application of the owner of copyright or his authorized agent, the Registrar may impose ban on importation of infringed copies of alleged work. But before issuing such an order the Registrar will conduct an enquiry as to allegation. He may also issue an order for delivery of seized copies of infringed work to the owner of work.

(ii) Section 60 Groundless threat of Legal Proceedings : The owner of copyright may give the warning through a notice for alleged violation of Copyright in the form of threat to institute the legal proceeding against violator. Such tactic work well against the Copyright infringement or prospective infringement.

But Under Section 60 of the Act the remedy is provided against groundless threat of legal proceeding. Therefore if any person claiming to be the owner of a

copyright threatens any other person through circular, advertisement or otherwise, for any legal proceeding, in respect of alleged infringement, the person aggrieved of such threat may institute a declaratory suit under Section 60 that the alleged infringement in fact is not the infringement of any legal right of the person making such threat. He may also seek an injunction against alleged threat under Section 60 to discontinue such threats and damages suffered by him due to threat.

12.13 Provisions for Appeals :-

The remedies Under Copyright Act, 1957 is not confined to the above mentioned remedies, but the Act under Section 71 also provide the second tier of bodies for adjudication as appellate authorities.

Any person aggrieved by an order of the Magistrate made under Section 64(2) or Section 66, may appeal, to the court to which appeals from the court making the order ordinarily lie, within thirty days from the date of such order. On such appeal the appellate court may pass stay orders on the execution of the lower court order till the appeal is pending.

Similarly Under Section 72(1), a person aggrieved by any final decision or order of the Registrar of Copyright may appeal to the Copyright Board within three months against such order or decision.

Against the order or decision of copyright Board (which is not made in an appeal against the order of Registrar of Copyright) one may appeal to the High Court, in whose jurisdiction the appellant actually or voluntarily resides or carries on business, within three months from the date of such decision or order, this period excludes the time spent in getting a certified copy of such order or decision's record.

The rules to be followed in appeals are to be formulated under Section 73 of the Act by the High Court.

12.14 Self Assessment Test :-

- (i) what do you mean by infringement of Copyright ? when infringement of copyright takes place ?
- (ii) write a note on infringing copy
- (iii) what are the parameters and deciding factors for determining infringement of Copyright ?
- (iv) explain which acts not constitute infringement of copyright ?
- (v) discuss the remedies available for infringement of Copyright Under Copyright Act,
- (vi) what are the provisions relating to appeal in matter of infringement and other orders or decision Under Copyright Act ?

12.15 Further Reading :-

- Copyright Act, 1957

How different national laws provide a patchwork of legal requirements

- *1) What forms of property right do IP rights take in your country?*

Under many national laws IP rights are personal property; such rights may be 'personal' (e.g. Denmark, Korea, Philippines, Singapore, UK). In Belgium they are 'moveable' and in the Netherlands 'biens'. Some groups (e.g. Finland) use the term 'intangible'. The French group noted the difference between rights which arise by creation (copyright and related rights) and those which are granted by the state on application. This difference appears to have an impact on the treatment in insolvency, as discussed below. The Japanese group noted

that IP rights had two aspects – a form of property and rights to stop others doing certain acts.

- *2) Is it required to register an assignment or license of IP rights in order for it to be effective a) between the parties and b) against third parties?*

There was a variety of responses to this question. Some national groups answered for all rights together, while others divided their answers for each IP right. It will be important to check national laws carefully in individual cases. Only a few countries reported a fundamental requirement to register assignments or licenses. In China it is required to register an assignment or license in order for it to be effective. It should be registered with the administrative authority. The Japanese Group reported that there are two types of exclusive license. One type (Senyojishshiken) must be registered to be effective. In the Philippines agreements which do not conform with technology transfer laws should be registered for approval, or they are ineffective. It therefore appears that as between parties to an agreement, there is very rarely a need to register a license. The German group reports that the registration of the patent owner does not generate any constructive effect, nor does it establish any (rebuttable) presumption in favor of the person registered, that the registered person is entitled to the protected rights. However, trademark law contains a presumption to the end that the person registered is entitled to the trademark rights. However, the position concerning effectiveness against third parties is

very different. A very large number of Groups reported a requirement of registration of assignments and licenses to confer rights against third parties. For example in Belgium and Spain where there are conflicting agreements, the first registered will be effective. This operates to provide legal certainty. In the Netherlands third parties generally enjoy third party protection if acting in good faith (save in the case of copyright). The Danish group referred to the requirement of registration under the EC Community Trade Mark and Design Regulations. Exceptions appear rare. In Slovenia there is no need for registration to have an effect against third parties. Peru also reported that it is not required to register a transaction of copyright in order for it to be effective.

- *3) Does the a) exclusive and b) non-exclusive licensee of an IP right have a right to bring proceedings for infringement, and if so, what conditions must be satisfied for right to arise?*

A large majority of countries reported that exclusive licensees have a right to bring proceedings for infringement. There are national rules surrounding this e.g. in Australia and the UK an exclusive licensee must involve the proprietor of a patent in infringement proceedings either as plaintiff or defendant. In the US an exclusive licensee may not bring proceedings if only licensed for a limited portion of the term. Belgium reported that a compulsory licensee may also bring proceedings. This is surprising and may be the subject of further study. In Germany there is no statutory provision for patents but customarily an

exclusive licensee is permitted to sue. In Chile, Denmark, Estonia, Indonesia and Mexico a non-exclusive licensee may bring proceedings; in Chile and Indonesia this must be agreed. The UK and Belgium have similar provisions for non-exclusive licensees of trademarks and, in Belgium, copyright. In Spain a non-exclusive patent and trademark licensee may bring proceedings if the licensor does not act within 3 months of being asked to do so. In Malaysia the position is similar, with time limits of 3 months for patents and 2 months for trademarks. The Finnish group reported that the position is not clear. In Japan the position is complex, depending what type of license is concerned. It is interesting to note that under Article 4(2) of the WIPO Joint Recommendation Concerning Trademark Licenses a Member State may not require the recordal of a license as a condition for any right that the licensee may have to joint infringement proceedings.

- *4) Is a license transferable a) by the licensor and b) by the licensee?*

Given the variety of answers to this question, the transfer of licenses is an issue which it is clearly prudent to address in any license agreement. Where national laws do not address the point specifically for IP rights, national laws of contracts and obligations will apply. For example, in Denmark, the analysis turns on whether the party wishing to assign has obligations to the other that remain to be performed. If so, it is generally not possible to assign without consent. In Australia, China, Egypt, Estonia, the Netherlands, Romania,

Thailand, the UK and the US the licensor can generally assign. In Australia and the UK it is possible to assign the benefit but not the burden of a contract. In most other countries, it is possible to agree such a term. In Finland it is generally not possible. In Bulgaria assignment is only possible with the underlying right. For transfer by the licensee the great majority of groups report that this is a matter requiring the licensor's consent and that this is best addressed in the original license agreement. Where there is no agreement, the key question in some jurisdictions (including Belgium, Switzerland, the UK and the US) is whether the license is personal to the licensee. If so, the license may not be assigned.

- *5) What is the effect on an assignment or license of the invalidity of the underlying IP right?*

There were a number of responses to this question. Many groups noted that IP rights if held invalid are invalid *ex tunc*. This clearly has the potential to have an impact on contracts as the underlying subject matter never existed in legal terms. One Group of countries including Spain and Switzerland noted that where an IP right becomes invalid the invalidity affects contracts concerning IP only from the date invalidity of the IP right is pronounced. The Japanese Group noted that in theory the assignee/licensee may claim for termination and repayment of amounts paid under the contract. In practice, however, there are usually terms agreed to protect the licensor/assignor. Serbia and Montenegro

note that the licensee is entitled to restitution of amounts paid. In Peru the contract is discharged unless it is fully performed. In Argentina the licensor may be liable for damages. In Egypt the licensee may terminate and seek damages. In the US there is no requirement to pay further royalties, but the licensor is not obliged to repay royalties.

- *6) Can IP rights be used to provide security? If so what formalities are required?*

In the great majority of countries IP rights can be used to provide security. There are, however exceptions. In Indonesia it is not possible to provide such security. Panama and Philippines law are silent on the matter; in Panama and Thailand it should be possible to do so. In Norway it is not possible to take security over a single right, but business enterprises may create non-possessory liens on operation accessories (assets necessary for the running of a business). The remaining Groups which answered this question described a wide variety of security interests, including pledges, mortgages, deposits and usufructs. It will be critical for anyone taking security to take specific advice on the formalities required and of national variations in rights. For example, in Australia, it is not possible to take security over an unregistered trademark In Spain, registration is 'constitutive' of the security. A number of countries noted a specific exception surrounding copyright and moral rights. These relate to copyright and it appears that in Belgium, Egypt and Mexico these cannot be the

subject of a security interest. In Mexico it is, however, possible to pledge the profits due from copyright. The absence of copyright registration in most countries means that a security interest must be registered separately from the right. The German Group noted that the purpose of IP registers is to publicize the existence of IP rights and not ownership interests in them.

- *7) Does the bankruptcy law explicitly provide for the effect of bankruptcy on IP rights and contracts concerning them?*

The great majority of groups answered this question in the negative. The following comments were made. In the US, the Intellectual Property Bankruptcy Act of 1988 (11 USC 365n) provides for the effect of bankruptcies on contracts concerning 'intellectual property rights' as defined in the Bankruptcy Code. This does not include trademarks or foreign patents or foreign copyrights. Section 365 applies to executory contracts in general (i.e. those with substantial performance remaining on both sides). As IP contracts are generally considered executory, the Code applies to most IP contracts. The Japanese group noted that Articles 53 and 56 of the Bankruptcy Law apply in certain cases to allow IP license agreements to continue despite bankruptcy and the administrator in bankruptcy has no right to rescind. The Dutch group noted that under s21 of the Dutch Bankruptcy Act copyrights which remain with the author, moral rights and rights in unpublished works remain outside a bankruptcy.

- *8) Do all intellectual property rights form part of a bankruptcy, or are some exempted?*

The major exception to rights forming part of a bankruptcy is copyright and related rights. The Australian, Danish, Dutch, Egyptian, Finnish, Japanese, Mexican and Spanish Groups noted that copyright or related rights may not form part of a bankruptcy. The Greek Group noted that such rights must be transferable.

- *9) What is the effect of the insolvency or bankruptcy of the licensor and the licensee on a contract regarding intellectual property? a) Does one party have a right to terminate on the insolvency of the other? b) Can the insolvent party assign the rights concerned? c) What effect do express contractual terms have in this situation?*

The US group reported that the trustee in bankruptcy of debtor has 3 options for an executory contract. They are to assume performance of the contract; assume then assign; or reject the contract. So while the trustee may reject the contract, the licensee may retain certain rights and may treat the rejection as a breach giving rise to a right to damages or retain the rights granted under the contract (11 USC 365(g)). An insolvent party cannot assign its rights where the contract is analogous to one for personal services. Under 365(f) most contracts can be assumed and assigned, except where they are personal. In the UK the liquidator has a right to disclaim onerous property. This could be the case

where the insolvent licensor has continuing obligations. In Japan, a contractual clause giving a right to terminate may not be valid. This depends on the third party effect of the contract. In the Netherlands the trustee in bankruptcy may rescind the contract. In Australia there is a moratorium on action and the court's consent is needed for action. In Portugal the licensor can terminate on the insolvency of the licensee. If the contract is personal the licensee can too. In Belgium under Article 30 of the Copyright Act, an author can terminate an agreement with an insolvent publisher. A similar right arises for audiovisual agreements under Article 20. Under Spanish law, contractual terms allowing termination on insolvency are invalid. In Portugal, attempts to vary the statute are void. In Korea an agreement has no effect on the rights of an insolvent party. On the other hand, many Groups noted that the terms of a contract would be critical here.

- *10) Is there any statutory or other protection for a licensee/licensor in the event of the insolvency of a licensor/licensee?*

Very few groups answered this question positively. In the US the courts, as courts of equity should not allow significant damage to be done to a licensee particularly where there is no countervailing benefit to the insolvent estate. In Belgium the protections described above apply. In the Netherlands it is possible to seek a usufruct – a right to use property belonging to another and enjoy the

fruits of it. The German Group described an interesting dual trust structure that may protect against the effects of insolvency.

(The above Summary is taken from the AIPPI Summary Report (2006) prepared by the APPI committee responsible for this Question 190 (“Q190”, “Contracts regarding Intellectual Property Rights (assignments and licenses) and third parties”). See also Dick van Engelen,

The Assignment of a European Patent Portfolio: A plea for a ‘Lex Proprietas’¹

¹ <http://www.ipeg.com/assignment-and-use-of-ipr-in-financial-transactions-a-jumble/>