



# The Indian Journal for Research in Law and Management

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## COPYRIGHT INFRINGEMENT

### Introduction

What is Intellectual Property

According to World Intellectual Property Organization (WIPO) at Stockholm 1967 Intellectual Property includes the right relating to:

- Literary, artistic and scientific works,
  - performances of performing artist, phonograms, and broadcasts,
  - inventions in all fields of human endeavor,
  - scientific discoveries,
  - industrial designs,
  - trademarks, service marks, and commercial names and designations,
  - protection against unfair competition,
- and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic field.

The Act came into force on 21<sup>st</sup> January 1958. The purpose of the Act to protect the literary, artistic, dramatic, musical works, cinematograph films, sound recordings from unauthorized use.

### Meaning of Copyright:

According to section 14 of the Copyright Act, 1957 'copyright' means the exclusive right subject to the provisions of Act, to do or authorize the doing of any acts in respect of a work or any substantial part thereof.

includes: -

- (a) Literary, dramatic or musical work,
- (b) Computer programmes,

- (c) Artistic works,
- (d) Cinematograph film,
- (e) Sound recording.

#### works in which copyright subsists

Section 13 of Copyright Act, 1957 states the works in which copyright subsists,

That is,

- (a) Original literary, dramatic, musical and artistic works,
- (b) Cinematography films, and
- (c) Sound recordings.

#### First owner of copyright

Section 17 of the copyright Act, 1957 states that, the author of a work shall be the first owner of the copyright therein.

#### Infringement of Copyright

According to section 2(m) of the copyright Act, 1957 infringing copy means

- (i) In relation to literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematography film,
- (ii) In relation to a cinematograph film, a copy of the film made on any medium by any means;
- (iii) In relation to a sound recording, any other recording embodying the same sound recording, made by any means;
- (iv) In relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of the Act, the sound recording or a cinematograph film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act.

Chapter XI of the Copyright Act, 1957 deals with the infringement of the copyright.

Section 51 of the copyright Act 1957 deals with when copyright is to be infringed- copyright is a work shall be deemed to be infringed-

- (a) When any person, without a licence granted by the owner of the copyright or the register of copyright under the act or in the contravention of a licence so granted or of any condition imposed by a competent authority under the Act.
- (i) Does anything, the exclusive right to do which is by the Act conferred upon the owner of the copyright, or
  - (ii) Permit for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright work,
- (b) when any person
- (i) makes for sale or hire, or sell or lets for hire, or by way of trade displays or offers for sale or hire, or
  - (ii) distributes either for the purpose of trade or such an extent as to affect prejudicially the owner of the copyright, or
  - (iii) by way of trade exhibits in public, or
  - (iv) imports into India, any infringes copy of the work

Section 52 of the copyright Act, 1957 deals with the act which should not considered as infringement of the copyright. These are considered as exceptions of the copyright.

- Any fair dealing with literary, dramatic, musical and artistic work,
- Private use, including research work,
- Criticism or review, whether of that work or any other work,
- In newspaper, magazine or similar periodical, or
- As part of the questions to be answered in an examination
- By broadcast or in a cinematograph film or by means of photographs
- By teacher or a pupil in the course or instruction, or
- In answer to such questions
- and others.

### Remedies for infringement of copyright

There are two types of remedies

- (1) civil remedies
- (2) criminal remedies
- (1) civil remedies

As per section 55(1) of the copyright act, 1957 where copyright in any work has been infringed, the owner of the copyright shall be entitled to remedies by way of

- injunction
- damages
- accounts
- anything conferred by law.

decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

## (2) Criminal remedies

A criminal action can also be made against the infringer.

The punishment can be an imprisonment for a term which shall not be less than 6 months but which may exceed to 3 years and with fine which shall not be less than fifty thousand rupees but which may exceed to two lakh rupees.

### Case law:

- In *RG Anand v. Deluxe Films*, AIR 1978 SC 1613, it was considered as a landmark judgement, it is held that the copyright protects the expression of idea not the idea itself.

## Conclusion

Copyright is one of the intellectual property rights. It is an exclusive right given to the creator from preventing the copyright to be infringed by any other person. In India the Copyright is governed by the Copyright Act, 1957. Copyright infringement has become common these days, even more strict action has to be taken by the government for copyright infringement.

## Reference

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