



COPYRIGHT & ITS DISTINGUISHING CHARACTERISTICS

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INTRODUCTION

Only human being possess capacity of imagination & creativity. By using this capacity he become author, artist, designer, composer of original work. Copyright Act was came into force 1957 for to protect intellectual creation & utilize it commercially. Copyright is the first globally recognised IP. It unique nature of IPR. Nature of copyright is different from other IPR because it possess some qualities like it is bundel of rights, it is transferable, intangible nature, protect only expression of ideas, it is automatic right, it maintain balance between private & social interest, it encourage creativity of author, it consist moral right & economic rights, neighbouring rights etc. Due to all reason copyright is significant IPR in the world. Indian Copyright Act was amended many time to meet the international requirement of the international treaty. India is signitary member of TRIPS, WIPO, WIPO internet treaty. Today's Indian copyright legislation is one of the progressive one.

Distinuishing Characteristics of Copyright in India:

1. Copyright is intangible property right

Property is unique type of right to a thing ,good against the world¹. Blackstone defined right to property means & includes right to free use, enjoyment and disposal of acquisition. Traditionally property classified into movable & immovable property. Both movable & immovable property fall in the category of corporeal property means such property which is physically touched, sensed or perceived. Where other category is incorporeal property which can not be touched or perceived. Corporeal property is tangible in nature & incorporeal is intangible nature of property. Intangible property includes IP, securities & right to reputation. IPR includes patent, trademark, copyright, design & geographical indication etc. It means that

¹ Dr.G.B.Reddy's Intellectual Property Rights and the Law, Gogia Law agency, Hyderabad

copyright is intangible property due to in consisting right & property interest granted to the owner. For e. g. painting is the tangible property and right over it granted to the owner is intangible form of property.

2.It protect expression idea & not idea itself

Copyright exist only in expression of idea in some material form i.e book, film, photograph or musical tone².Copyright Act make difference between idea & expression of idea. According to Sec. Of Copyright Act,1957” no idea, procedure, process, system, method of operation, concept, principle or discovery is eligible for copyright protection”. It means that Indian Copyright Act does not recognise rights in abstract ideas. Copyright protection provided when idea expressed in tangible form.For example-person have good idean,plan,story in mind he can not claim copyright over it,but when this plan, story, idea expressed in any material form then he claim copyright over it.The reason for granting protection to expression & not ideas is to protect the free flow of ideas³.There is no any provision under Copyright Act to make difference between idea & expression of ideas.But judiciary make attempt in many cases to make difference between them.

In the case of RG Anand Vs.Delux Films

Facts- Plaintiff was author of play called Hum Hindustani. In 1954,the defedent Mohan Sehegal sent a letter to the plaintiff expressing his desire to make a movie based on play. The plaintiff & defendant meet & discussed the entire play. The defendant did not commit anything ,but plaintiff later came to know that the defendant released movie titled New Delhi. After watching movie ,the plaintiff was of the opinion that it is based on the story of his play.So he filed a suit against defendant for for permanent injunction &damages.

Held- S.C.held that the movie cannot be considered to be an infringement of the script of play. Because idea behind both the stories was the same but manner in which they expressed are vatly different from each other.So it can not held copyright infringement.

3. It require originality of work for copyright protection

The essential condition for copyright protection is that work must be original one.The term originality under Sec.13 does not refer to the ideas but refer to material tangible form of expression.It means originality under Act refer to the expression of thought.The work original does not mean that work must be expression of original or invented thoughts like patent.But

² Dr.M.K.Bhandari Law relating to INTELLECTUAL PROPERTY RIGHTS,Central Law Publication.

³ www.intepat.com

the work must not be copied from another work⁴. The term originality is question of fact & degree of originality is depends on various factors⁵.

4. It is exclusive right

Copyright means to do or authorise doing any of the act in respect of original work like to reproduce, sell, communicate to the public, translate, make film or sound recording. The authority to do nay act in respect of original work is given only to the author exclusively. It means that owner of copyright has exclusive right to do certain act in respect of the work. If any other person does any of the act in respect of original work without proper authority then he would be liable for copyright infringement. The term exclusive right means right available only to author by excluding other.

5.It is moral & legal right

Copyright is legal or statutory right because it is granted by Copyright Statute& it can be enjoyed within scope of the Statute. The authors special rights are called as moral rights or droid moral. This right is independent & parallel to the authors economic rights. Mainly two types of moral rights available for author is⁶ ;

a)Right to claim authorship of the work

b)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 honour or reputation.

Under Sec.57 of Copyright Act special additional moral rights provided to the author of copyright. This Sec.57 prohibits any distortion or mutilation to authors work. The rights under Sec.57 are independent of the authors copyright.The moral rights of author is enforced even after assignment or transfer of copyright. Berne Convention in Art.6 has recognised moral rights of the author.In the case,K.P.M.Sundaram Vs.Ratan Prakash Mandir⁷,the defendant was restrained from printing,publishing,selling the book of plaintiff authorin distorted form.

6.It is bundel of right

Copyright is called as bundel of rights because in original work copyright is granted means not only copyright but also many more exclusive rights granted to the owner at the same

⁴ Macmillan Co. Ltd.Vs.K & J cooper,AIR1924 PC 75,P.83

⁵ Dr.G.B.Reddy's Intellectual Property Rights and the Law,Gogia Law agency,Hyderabad,P-78

⁶ Dr.G.B.Reddy's Intellectual Property Rights and the Law,Gogia Law agency,Hyderabad,P-127

⁷ AIR 1983 Del 461

time. It means copyright includes right to reproduce, right to sell, right to communicate work to the public, right to issues copies of the work to public, right to assignment, right to relinquish copyright, right to grant licences, right to translation, right to make adaptation of the work, right to enter name in Register of Copyrights and other incidental rights, right to claim to authorship, right to claim damages in respect of any distortion, modification or other act would be prejudicial to the honour or reputation of author, resale share right in original copies, rights owner against person possessing or dealing with infringing copies, right to sue for infringement etc. All this rights are enforced in the digital environment. In short copyright consist moral & economic rights.

7.It protect particular type of property

In India the Copyright Act,1957 provide legal protection only to certain or perticular works which include ;

- a) literary, dramatic, musical or artistic work
- b) a cinematography film
- c) a sound recording

Only above mentioned category of work is protected by the Act. The natural events, principle, methods, procedure , DNA sequence are not protected by copyright.

8.It is heritable & transferable

Copyright is property right so like other right it transferable. The authority to transfer copyright is given only to the author of copyright. He transfer copyright through the assignment or licence. Under Sec.18 of the Act owner assign copyright to any person either wholly or partialy,with or without condition, for whole term of copyright or any part of the term.Assignment of copyright should be in writting & signed by assignor.Therefore oral assignment is not permissible nor valid⁸.

9.It is automatic right

Copyright protection extend to original work of author expressed in tangible medium which is perceptible by the human sense directly or throught the use of machine. Copyright protection exists from the moment that a work is created thats why it is called as automtic right & no need to done anything to claim copyright protection⁹.There is no need for any formality or registration to claim copyright protection. Registration of copyright is only prima facie evidence before ecourt in any dispute.

10.It is negative in nature

⁸ Gramophone Co. Of India Ltd.Vs.Shanti Film Corporation(AIR 1997 Cal 63(76))

⁹ www.nolo.com

Copyright is negative in nature because it preventing other from unauthorised coping of physical material. Its object to protect the author, writer, creator of the original work from unauthorised reproduction or exploitation of his material¹⁰. It prevent other from using ,distributing original work.

11. It motivate creativity of author

Copyright provide exclusive right to author for their original work. This exclusive right allow author to obtain financial reward for their work. The greater the protection, the greater the reward; the greater the reward, the greater

the incentive to create new works; and the greater the incentive to create new works, the greater the number of new works created¹¹.

12. It consist neighbouring right

Neighbouring right is one of the dimension of copyright. It exist side by side or neighbour to the rights conferred on true author. Due to technological changes in digital environment this new right was created like;

a) Broadcast Reproduction right – Every broadcasting organisation has a special right under the Act ,is called as ‘Broadcast Reproduction Right’ in respect of its broadcast. It subsist for 25 years from the date broadcast is made.

b) Performers right- Where performer engaged in any performance then he entitled to special right is known as ‘performers right’.

This right is similar to the copyright in the context of subsistence, infringement & remedies. For performance, broadcasting intellectual skill, labour, time, money are required so it is important to protect them under Copyright Act otherwise in internet technology this right are easily exploited by anybody without more efforts. Fair dealing, private use, research, teaching are exception to the infringement of this right.

13. It maintain balance between social & private interest

Copyright Act provide exclusive right to the author fro a limited period of time. After expiry of time this work falls in public domain. If anybody does anything with respect to original work without authority it amount to copyright infringement. It means that in one hand Act protect private interest of copyright holder by providing exclusive right to him & remedy against infringement of copyright. On the other hand Copyright Act provide exclusive right for limited period. After expiry of the period it folls in public domain. In addition to this Act

¹⁰ Dr. M. K. Bhandari Law realting to INTELLECTUAL PROPERTY RIGHTS, Central Law Publications, Third Edition 2012, p-26

¹¹ <http://vanderbiltlawreview.org/article-Rev.-1669-2009.pdf>

provide some exception to the copyright infringement like fair dealing, private study, research, criticism etc. It means that limited duration for copyright protection & exception to copyright infringement, cause free flow of information protect social interest of the society. In short Act maintain balance between private & social interest.

14. Three administrative bodies are created to protect interest of copyright owner

Indian copyright Act, 1957 provides three authorities such as a) Copyright Office b) Copyright Board c) Copyright Society for the three purposes like

- i) for registration of copyright
- ii) effective protection of copyright
- iii) better enforcement of copyright of owners & others.

15. Civil & criminal remedy available against copyright infringement

The famous maxim 'Ubi jus, ibi remedium' means if there is right then there is remedy. If no right exist means no remedy available. If any person do any act in respect of copyrighted work then he would be liable for copyright infringement. Under Indian Copyright Act, 1957 three types of remedies provided for violation of copyright such as ;

a) civil remedies – these remedies include injunction, damages, accounts & cost. In case of grave danger to work court directing to defendant to permit to plaintiff, accompanied by attorney to enter premises, make search & seizure or removed the relevant copies of work. This is called as Anton Piller Order.

b) criminal remedies – Copyright Act provide criminal remedies against offence of copyright infringement under Sec. 63 to 70. Act provides different kinds of punishment is depending upon nature & gravity of offence. Mainly criminal remedies include punishment, fine or both.

c) administrative remedies – For better enforcement & protection of copyright Act provide establishment of some institutions like Copyright Office, Copyright Board, Copyright Society. They also given certain power to give certain remedies for violation of copyright.

16. Indirect infringer liability

Generally two types copyright infringement;

- i) direct infringement- When person violate any exclusive right of copyright owner
- ii) indirect infringement- Again it divided into two category;
 - a) Vicarious liability- It means liability of one person for the act of another. This liability arises when a person fails to prevent infringement when he can and has a right to do so and is

directly benefited by such infringement. To succeed on claim of vicarious liability plaintiff must show that the defendant¹²:

- (1) Had the right and ability to control the direct infringer's actions; and
- (2) Derived a direct financial benefit from the infringing activity.

b)Contributory liability¹³ - Contributory liability arises when a person participates in the act of direct infringement and has knowledge of the infringing activity.

17.It consist statutory exceptions

Protection of copyright given to owner or licence is not absolute but it subject to certain excretion & restriction provided by Sec.52 of the Copyright Act, 1957.The list provided under this Section is very lengthy like-

- a)Fair Dealing-It covers research, private study,criticism,review & reporting current events¹⁴.
- b)Reproduction for legislative or judicial procedure

18.It is essential for protection & improvement of culture of society

Indian copyright law provide favourable environment for to develop creativity of author.It help to promote artistic & intellectual activities in India.It provide protection to artistic work & publicizing of Indian existing cultural heritage¹⁵.

19.Changing & inclusive nature of copyright

In 20th century tremendous changes in the digital technology which create many opportunities & challenges before copyright.To give response to this technology Copyright Act develop itself & make progressive one.In the definition of literary work given by Sec.2 of the Act includes computer programme,tables & compilation including computer data bases.The work of cinematography film,sound recording included in the definition of copyright by

¹² <http://www.legalserviceindia.com/article/l195-Copyright-Law-in-India.html>

¹³ Further, in **Intellectual Reserve Inc. v. Utah Lighthouse Ministry inc.**,⁸ the plaintiff held a copyright in the Church Handbook of Instructions. After being directed by the court to remove the Handbook from its website, the defendants posted a message on its website that informed users that the handbook was online and also provided URLs⁹. The plaintiff sought a preliminary injunction enjoining defendants from posting such messages to their site, which plaintiff claimed constituted contributory infringement of his copyright in the handbook. The court issued the requested injunctive relief and further held that by posting the message on their website, the defendants had committed contributory infringement.

¹⁴ Dr.G.B.Reddy's Intellectual Property Rights and the Law,Gogia Law agency,Hyderabad,P-14

¹⁵ <http://nopr.niscair.res.pdf>(Journal of Intellectual property rights,Vol8,Sep2003,Moral Rights in Developing Countries:The Example Of India-Part I,Mira T Sundara Rajan,p-358)

amendment. In addition to this performers right & reproduction broadcast right was newly created under Act in response to the technological development. Even copyright was granted to the Computer Software. This shows that nature of copyright is not restrictive but also inclusive & changing from time to time. But on the other hand technology like linking, framing, meta tag, peer2peer file sharing are created obstacle before enforcement of the copyright.

Conclusion

Copyright is a legal right created by the law of a country that grants the creator of an original work exclusive rights for its use and distribution¹⁶. Copyright protection given only to certain work specified by the Copyright Act. Copyright possess some distinguishing characteristics which make it different from other. Generally copyright cultivates the creative art industries. Not only this but it encourage creativity in author, protect national cultural heritage & disseminate it and cause free flow of information. Like living organism copyright is changeable & develop to make suitable to the changing circumstances emanate it and cause free flow of information.

¹⁶ <https://en.wikipedia.org/wiki/Copyright>