

International **Comparative** Legal Guides



Copyright **2020**

A practical cross-border insight into copyright law

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1 Copyright Subsistence

1.1 What are the requirements for copyright to subsist in a work?

In India, copyright subsists in the following categories of works:

- **Original** literary, dramatic, musical and artistic works.
- Cinematograph films.
- Sound recordings.

The word “original” has not been defined in the Copyright Act, 1957 (“the Act”), but has derived its connotation through case laws. It is largely understood as a work that “owes its origin to the author”; the work must originate from the skill and labour of the author and must not be a copy of any other work.

It is important to highlight that the word “original” is prefixed to literary, dramatic, musical and artistic works and not to cinematograph films and sound recordings, as the latter are works made by using the former categories of works. For example, a cinematograph film is made by making use of a script which is a literary work. Though there is no express stipulation regarding “originality” in respect of cinematograph films and sound recordings, copyright does not subsist in a cinematograph film if a substantial part of that film is an infringement of the copyright in any other work. Likewise, copyright does not subsist in a sound recording made in respect of a literary, dramatic or musical work if in making the sound recording, copyright in such work has been infringed.

Another prerequisite of copyright protection is the fixation of work in a tangible form. Indian regime follows the fundamental rule of copyright law, laid down in Article 9(2) of TRIPS and Article 2 of WCT, 1996, that copyright does not subsist in ideas and only protects original expression of the ideas.

1.2 On the presumption that copyright can arise in literary, artistic and musical works, are there any other works in which copyright can subsist and are there any works which are excluded from copyright protection?

In addition to literary, artistic and musical works, copyright also exists in original dramatic works, sound recordings and cinematograph films. However, copyright does not subsist in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work, and in any sound recording made in respect of a literary, dramatic or musical work, if in making the sound recording, copyright in such work has been infringed.

Also, a work of architecture is included in the definition of “artistic work”. The scope of copyright in architectural works is limited to artistic character and design, and does not extend to processes or methods of construction.

1.3 Is there a system for registration of copyright and if so what is the effect of registration?

System:

Acquisition of copyright is automatic and the right comes into existence as soon as the work is created. Additionally, there is also a system for registration of copyright under which the author/publisher/owner, or any other person interested in the copyright in any work, may make an application to the Registrar of Copyrights for entering particulars of that work in the Register of Copyrights.

In case of an artistic work, which is used or is capable of being used in relation to any goods or services, the application must also include a statement that no trade mark that is identical/deceptively similar to the said artistic work has been applied for registration or is registered under the Trade Marks Act in the name of any person other than the applicant. This statement must also be corroborated by a certificate from the Registrar of Trade Marks.

Effect:

The Register of Copyrights is *prima facie* evidence of the particulars entered therein, and documents purporting to be copies of any entries therein, or extracts therefrom certified by the Registrar of Copyrights, shall be admissible as evidence in all courts without further proof or production of the original.

1.4 What is the duration of copyright protection? Does this vary depending on the type of work?

The duration of copyright protection varies depending on the type of work. The term of protection for different kinds of works is as follows:

- Literary, dramatic, musical and artistic works published during the lifetime of the author – 60 years from the beginning of the calendar year which follows the year in which the author dies.
- Cinematograph films – 60 years from the beginning of the calendar year which follows the year in which the cinematograph film is published.
- Sound recording – 60 years from the beginning of the calendar year which follows the year in which the sound recording is published.

1.5 Is there any overlap between copyright and other intellectual property rights such as design rights and database rights?

India does not allow parallel protection and statutorily clarifies that copyright does not subsist in any design which has been registered

under the Designs Act, 2000. Furthermore, though unregistered designs are protected under the realm of copyright law, copyright in any unregistered design, which is capable of being registered under the Designs Act, will cease to exist if the article to which the design has been applied is reproduced more than 50 times by an industrial process by the owner of the copyright or, under his licence, by any other person.

Additionally, there is also an overlap with respect to the protection of artistic works between copyright law and trade mark law. The artistic work, which is used or capable of being used in relation to any goods or services, can be protected both under trade mark and copyright laws.

The definition of “literary work” includes computer programs, tables and compilations including computer databases. Thus, databases are protected under the copyright law as literary work.

1.6 Are there any restrictions on the protection for copyright works which are made by an industrial process?

Copyright in any unregistered design, which is capable of being registered as an industrial design, will cease to exist if the article to which the design has been applied is reproduced more than 50 times by an industrial process by the owner of the copyright or, under his licence, by any other person.

2 Ownership

2.1 Who is the first owner of copyright in each of the works protected (other than where questions 2.2 or 2.3 apply)?

There is a distinction between the author of a work and the owner of copyright therein, especially in those cases where the author has created the work in the course of employment, or at the instance of another person, and/or under a contract governing the ownership of copyright. Nevertheless, the first owner, generally (as per the Act), is the author of the work and since the term “author” has been defined in the Act for several categories of works, the first owner for each category of work will be as follows:

- the author/creator in respect of a literary or dramatic work;
- the composer in respect of a musical work;
- the artist in respect of an artistic work (“artistic work” means and includes a painting, sculpture, drawing, engraving, photograph, work of architecture and any other work of artistic craftsmanship) other than a photograph;
- the person taking the photograph in respect of a photograph;
- the producer, in relation to a cinematograph film or sound recording; and
- the person who causes the creation of the work in the case of any literary, dramatic, musical or artistic work which is computer-generated.

Where the work is a public speech or address, the person who delivers such work in public shall be the first owner of the copyright therein. However, if such work is made/delivered by a person on behalf of another person, such other person on whose behalf the work is so made or delivered will be the first owner.

2.2 Where a work is commissioned, how is ownership of the copyright determined between the author and the commissioner?

When a work is commissioned, generally the copyright in the work remains vested with the author/creator of the work, unless the

rights are assigned in favour of the commissioner in the form of a written and duly executed document/assignment agreement. Where the assignee/commissioner becomes entitled only to a particular set of rights out of those comprised in the copyright through the assignment, he/she shall be treated as the owner of those rights, and as regards the rest of the rights comprised in the copyright which have not been so assigned, the author shall be treated as the owner.

However, specifically in the case of a photograph, painting, portrait, engraving or a cinematograph film made or created for valuable consideration, the person who has commissioned such work shall be the first owner of the copyright therein (in the absence of any agreement to the contrary).

If the work in question is a public speech or address which is made on behalf of another person/commissioner, then the commissioner shall be the first owner of the copyright therein.

2.3 Where a work is created by an employee, how is ownership of the copyright determined between the employee and the employer?

The general rule is that the employer shall have copyright in the work created/authored by an employee in the course of employment unless there happens to be an agreement to the contrary.

Where any literary, dramatic or artistic work is made by the author in the course of employment by the proprietor of a newspaper, periodical, etc. for the purpose of publication in such media, the proprietor shall be the owner of the copyright in the work (in the absence of any agreement to the contrary). However, such ownership of the proprietor/employer shall be limited to the publication/reproduction of the work in such or other like media, while in all other respects, the author would still remain the first owner of the copyright of the work.

In the case of a public speech/address, the person making or delivering such work or the person on whose behalf such work is so made or delivered shall be the first owner of the copyright therein, even if either of them is employed by another person who arranges such speech or public address, or on whose behalf or premises such address or speech is delivered.

2.4 Is there a concept of joint ownership and, if so, what rules apply to dealings with a jointly owned work?

In India, the Act recognises the concept of “work of joint authorship”, which means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author(s). The courts in India have not yet fully defined and determined as to what amounts to an active and close intellectual collaboration, which is essential in the case of claiming joint authorship. In the case of *Angath Arts Private Limited v. Century Communications Ltd. and Anr.* 2008(3) ARBLR 197(Bom), the High Court of Bombay held that the “joint owner of a copyright cannot, without the consent of the other joint owner, grant a licence or interest in the copyright to a third party”. Further, in the case of a work of joint authorship, all the authors (two or more) have to individually satisfy the conditions essential for subsistence of copyright in the work. Joint authors enjoy all the rights granted by the Act as mentioned above, including bringing a suit for infringement and being entitled to reliefs such as injunction, damages, account of profits, etc. The term of copyright of a work of joint authorship is calculated with respect to the author who dies last.

3 Exploitation

3.1 Are there any formalities which apply to the transfer/assignment of ownership?

An assignment of copyright must conform to the following formalities:

- Must be in writing and should be signed by the assignor or his duly authorised agent.
- Must identify the work, and shall specify the rights assigned, their duration, territorial extent and the amount of royalty and any other consideration payable.

3.2 Are there any formalities required for a copyright licence?

A copyright licence must conform to the following formalities:

- Must be in writing and should be signed by the licensor or his duly authorised agent.
- Must identify the work, and shall specify the rights licensed, their duration, territorial extent and the amount of royalty and any other consideration payable.

3.3 Are there any laws which limit the licence terms parties may agree (other than as addressed in questions 3.4 to 3.6)?

If the author is a member of a Copyright Society, a copyright licence in any work contrary to the terms and conditions of the rights already licensed to Copyright Societies shall be void.

Further, no copyright licence in any work to make a cinematograph film can affect the right of the author to claim an equal share of royalties and consideration payable in case of utilisation of the work in any form, other than for the communication to the public of the work, along with the cinematograph film in a cinema hall. Likewise, no copyright licence in any work to make a sound recording which does not form part of any cinematograph film can affect the right of the author to claim an equal share of royalties and consideration payable for any utilisation of such work in any form.

3.4 Which types of copyright work have collective licensing bodies (please name the relevant bodies)?

The 1994 amendment in the copyright statute extended the operation of legal provisions relating to collective licensing bodies called the Copyright Societies to all rights relating to all domains of works.

Presently, the following four Copyright Societies are registered in India:

- Indian Reprographic Rights Organization (IRRO) for authors and publishers.
- Indian Singers Rights Association (ISRA) registered for performers' (Singers') Rights.
- Indian Performing Rights Society Limited (IPRS) for musical works.
- Phonographic Performance Limited (PPL) for sound recordings. (Re-registration is pending.)

Further, the following applications for registration as a Copyright Society are pending:

- The Recorded Music Performance (RMPL) for sound recordings.

- The Cinefil Producers Performance Limited (CINEFIL) for cinematograph films.
- Screenwriters Association of India (SRAI) for literary works.

3.5 Where there are collective licensing bodies, how are they regulated?

The collective licensing bodies called the Copyright Societies are regulated by the following:

1. Authors and owners – the authors and owners, whose rights are administered, have collective control over these Copyright Societies. These societies, in such manner as prescribed, have to:
 - obtain approval of authors/owners of rights for their procedure of collection and distribution of fees;
 - obtain approval for utilisation of any amounts collected as fees for any purpose other than distribution to the authors/owners of rights; and
 - provide such owners regular, full and detailed information concerning all its activities, in relation to the administration of their rights.
2. Registrar of Copyrights – Copyright Societies shall submit to the Registrar of Copyrights such returns as may be prescribed. Any officer authorised by the Central Government may call for any report/record of any Copyright Society, to check whether the fees collected by the society in respect of rights administered by it are being utilised or distributed in accordance with the provisions of the Act.
3. Central Government – the Registrar of Copyrights submits the applications received for registration of Copyright Societies to the Central Government which may register such association of persons as a Copyright Society. In case the Copyright Society is being managed in a manner detrimental to the interests of the owners of rights concerned, the Central Government may cancel the registration of such society, after such inquiry as may be prescribed.

3.6 On what grounds can licence terms offered by a collective licensing body be challenged?

Any person aggrieved by the tariff scheme published by the Copyright Societies may appeal to the Intellectual Property Appellate Board and the Board may, after holding any necessary inquiry, make orders necessary to remove any element, anomaly or inconsistency therein.

4 Owners' Rights

4.1 What acts involving a copyright work are capable of being restricted by the rights holder?

The Act clearly lays down those acts which are capable of being restricted by the rights holder in respect of all categories of works, as follows:

For a literary, dramatic or musical work (other than a computer program which also falls in the category of literary works), acts of reproducing in any material form, including storing through electronic means, issuing copies to the public not being those already in circulation, performing or otherwise communicating to the public, making a cinematograph film or sound recording of the work, making any translation or adaptation or effectuating any of the above in respect of a translation or adaption of the work, can be restricted.

For a computer program, in addition to all the above acts, selling and giving via commercial rental or offering for sale or rental any copy of the computer program can be restricted by the rights holder provided the essential object of such rental is the computer program in question.

For an artistic work, acts of reproducing in any material form including storing through electronic means, depicting a two-dimensional work in three dimensions or *vice versa*, issuing copies to the public not being those already in circulation, performing or otherwise communicating the work to the public, making a cinematograph film out of the work, making any adaptation or effectuating any of the above in respect of an adaptation of the work, can be restricted.

For a cinematograph film, making a copy of the film including a photograph of any image forming a part thereof and/or storing of such copy in any medium by electronic or other means, giving via the sale or commercial rental or offering for sale or for such rental any copy of the film, and communicating the film to the public can be restricted.

For a sound recording, making any other sound recording containing it or storing it in any medium by electronic or other means, giving via sale or commercial rental or offering for sale or for such rental any copy of the sound recording, and communicating it to the public can be restricted.

In India, the most common types of violation of the above rights as regards infringement actions is with respect to artistic works overlapping with trade mark law, and piracy in the media and entertainment space pertaining to musical works, sound recordings and cinematograph films.

4.2 Are there any ancillary rights related to copyright, such as moral rights, and if so what do they protect, and can they be waived or assigned?

Yes, the moral rights of an author are duly recognised and protected under law, whereby the author can claim authorship of the work irrespective of any subsequent assignment of copyright therein. Moreover, these rights serve to protect against any distortion, mutilation, modification or degradation of the work affecting the author's honour or reputation, even after the expiration of the term of copyright and, thus, can be exercised also by the author's legal heirs/representatives. Moral rights, which are independent of the author's copyright, can be understood as the author's right to paternity and integrity with respect to the work. These special rights of an author cannot be assigned; however, as to whether the author may waive or relinquish them remains debatable as the Act does not specifically cover such a scenario. However, in the case of *Sartaj Singh Pannu v. Gurbani Media Pvt. Ltd. and Ors.*, 2015, the court observed that if waiver of moral rights as regards credit/paternity/authorship is voluntary, the same would not be contrary to public policy and thus permissible. As such, waiving a moral right may be permissible on a case-by-case basis, especially if it is not opposed to public policy.

4.3 Are there circumstances in which a copyright owner is unable to restrain subsequent dealings in works which have been put on the market with his consent?

Yes, such circumstances do exist and are recognised where subsequent dealings in works cannot be restrained by the copyright owner. More particularly, in the case of literary (not being a computer program), dramatic, artistic or musical works, a copy of the work which has been sold even once, or is otherwise already in circulation, cannot be restrained by the copyright owner from

being issued to the public. This concept is also referred to as the principle of exhaustion.

As far as parallel importation is concerned, it has been the subject of much debate and deliberation as to whether India should follow the doctrine of national exhaustion or international exhaustion. However, as on the date of writing this chapter, India follows the national exhaustion principle owing to a catena of judgments in this regard. As such, the online availability with regard to any subsequent dealings in copyrighted content would also be subject to and similarly attract the principle of national exhaustion. However, the courts are yet to fully address as to how this principle applies to digital content protected by copyright.

5 Copyright Enforcement

5.1 Are there any statutory enforcement agencies and, if so, are they used by rights holders as an alternative to civil actions?

Apart from the right to a civil action by way of filing a suit for infringement, remedies under criminal law are also provided to the rights holders. The rights holder or the authorised representative can file an official complaint to the local police authorities informing them of the infringement of his rights, or directly approach the Magistrate and file a criminal complaint so that the competent court can direct the police authorities to investigate further in the matter. The police machinery has a pertinent role in combatting copyright infringement. Special state-specific cells/units such as the Anti-Piracy Cell – Kerala Police, Telangana Intellectual Property Crime Unit (TIPCU), etc. have been created, which may be approached by the rights holders for protection and enforcement of their rights. Additionally, the owner of copyright or his duly authorised agent may give a notice to the Customs authorities to suspend the clearance of imported infringing copies of work.

In view of the above, criminal remedies can be considered an alternative to civil actions.

5.2 Other than the copyright owner, can anyone else bring a claim for infringement of the copyright in a work?

Apart from the owner of copyright, an exclusive licensee can also bring a claim for infringement.

5.3 Can an action be brought against 'secondary' infringers as well as primary infringers and, if so, on what basis can someone be liable for secondary infringement?

An action can be brought against secondary infringers in addition to primary infringers, and both can be impleaded as co-defendants in an infringement law suit or as co-accused in a criminal complaint for infringement. Secondary infringers can be made liable for copyright infringement if they have been indirectly involved in, have contributed to or abetted an act of infringement. Although secondary infringement has not been so defined under the Act, one such instance wherein secondary liability can arise is when a person, without a licence from the copyright owner, permits for profit any place to be used for communicating the work to the public and where such communication constitutes infringement of the copyright in the work. The defence to this is when the person who has permitted any place to be so used was not aware, and had no reasonable ground to believe that such communication to the public would constitute infringement of copyright.

Thus, for a case of secondary infringement to be made out, the intent and/or knowledge on the part of the secondary infringer as to the occurrence of infringement is material, and any indirect involvement or contribution in violating any of the bundle of rights of the owner of copyright in a work with such knowledge or intent, either express or implied, would constitute secondary infringement.

Further, even intermediaries or ISPs can be made liable for secondary infringement as regards hosting digital content protected by copyright, if it is shown that they have contributed or possess actual knowledge of such infringement.

5.4 Are there any general or specific exceptions which can be relied upon as a defence to a claim of infringement?

Any activity that falls under the scope of fair use and like provisions such as fair dealing in any work for private or personal use, including research/criticism or review/reporting of current events or current affairs, reproduction of work by a teacher or pupil in the course of instructions, reproduction of any work for the purpose of judicial proceedings or its reporting, the reading and recitation in public of reasonable extracts from a published literary or dramatic work, storing of work in any medium by electronic means by a non-commercial public library, for preservation if the library already possesses a non-digital copy of the work, etc., does not constitute infringement.

Apart from the above, the following is the non-exhaustive list of defences that can be resorted to while defending a claim of infringement:

- Challenging the subsistence of copyright – disputing the originality of the work.
- Claiming multiple originality by proving that the defendant had no access to the work created by the plaintiff.
- Challenging the right of the plaintiff to sue – preliminary objection on maintenance of the suit.
- Suit/complaint barred by limitation – preliminary objection on maintenance of the suit.
- No knowledge of infringement – in case of a civil action, if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement, and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may, in the circumstances, deem reasonable.

Furthermore, in case of criminal complaints, if the offence is not committed for commercial gain, the degree of fine/imprisonment may be reduced.

5.5 Are interim or permanent injunctions available?

Yes, both interim and permanent injunctions are available as civil remedies in cases of copyright infringement. The courts in India are also ready to award *ex parte ad interim* injunctions in cases where there is an urgent need made out for restraining the act of infringement in question. In cases of grant of temporary injunctions, the trinity of *prima facie case*, *irreparable injury* and *balance of convenience* is always looked into by the courts in India.

5.6 On what basis are damages or an account of profits calculated?

The grant of damages is generally meant to restore the position of the plaintiff in which he/she would have been, if the infringement in question did not take place. Calculating damages involves the

determination of loss caused to the plaintiff by the infringement. Punitive damages can be awarded in addition to basic amounts, especially if the act of infringement has been grave or flagrant in nature. Damages can also be exemplary in nature so as to set a deterrent for others. In *Time Incorporated v. Lokesh Srivastava (2005)*³⁰ PTC3(Del), it was observed that “...the time has come when the Courts dealing with actions for infringement of trade marks, copyrights, patents etc. should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers who indulge in violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them”.

However, in cases where a defendant proves that he was not aware and had no reasonable ground for believing that copyright subsisted in the work at the date of infringement, the plaintiff will be entitled only to an injunction against the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies, as the court may, in the circumstances, deem reasonable.

5.7 What are the typical costs of infringement proceedings and how long do they take?

The usual cost of an infringement proceeding before a High Court in India (such as the Delhi High Court), from its institution up to obtaining an order of preliminary injunction, may be in the range of USD 11,500 to USD 15,000; whereas the all-inclusive cost of filing a law suit and obtaining an order of permanent injunction from the court against the infringement may be in the range of USD 26,500 to USD 35,000 as reaching this stage involves a full trial. Infringement proceedings on full trial can take two to three years to conclude, whereas *ex parte* orders can be passed in just a few days from the institution of the suit.

5.8 Is there a right of appeal from a first instance judgment and if so what are the grounds on which an appeal may be brought?

- Yes; in the case where the first instance judgment is passed by the District Court, an appeal may be instituted in the High Court. Further, in cases where the first instance judgment is passed by a Single Judge of the High Court, the appeal may be brought before the Division Bench. Also, in some cases, a special leave to appeal may be granted by the Supreme Court against first instance judgment passed by any court under Article 136 of the Constitution of India.
- In cases of seizure and disposal of infringing copies, an aggrieved person may, within 30 days of the date of order of Magistrate, file an appeal in the Court of Session.
- Certain substantive grounds, amongst others, on which an appeal may be brought, include where there is a question of fact involved or there has been misappreciation of facts or evidence in relation to the law in force, where there is concealment of facts or evidence which requires consideration afresh, or where a question of law needs to be addressed, etc.

5.9 What is the period in which an action must be commenced?

The period of limitation for filing the suit is three years from the date of infringement. Where the cause of action for filing a suit for infringement of copyright is a recurring one or continuing in

nature, the limitation period of three years would be taken to commence from the date of such last infringement. Further, if sufficient and reasonable cause is shown for condonation of delay in instituting a law suit for infringement, the period of limitation of three years can be extended in accordance with judicial discretion and case law.

6 Criminal Offences

6.1 Are there any criminal offences relating to copyright infringement?

Yes; the following are the offences relating to copyright infringement:

- Knowingly infringing or abetting the infringement of copyright.
- Knowingly making use on a computer of an infringing copy of a computer program.
- Knowingly making, or possessing, any plate for the purpose of making infringing copies of any work in which copyright subsists.
- Circumvention of effective technological measures with the intention of committing copyright infringement.
- Knowingly removing or altering any rights management information without the authority.
- Knowingly distributing, importing for distribution, broadcasting or communicating to the public, without authority, copies of any work or performance, and knowing that electronics rights management information has been removed or altered without authority.
- Making or causing to be made a false entry or a writing falsely purporting to be a copy of any entry in the Register of Copyrights. Producing/tendering or causing to be produced or tendered as evidence any such entry or writing, knowing the same to be false.
- Knowingly making false statements or representation for the purpose of deceiving or influencing any authority or officer.
- Publishing a sound recording or a video film in contravention of the provisions that lay down the particulars to be included in such works.

6.2 What is the threshold for criminal liability and what are the potential sanctions?

Conviction for any offence mentioned in question 6.1 shall entail criminal liability. Different sanctions including a fine and/or imprisonment, seizure of infringing copies and delivery or disposal thereof are codified for different offences and their varying degrees. The fine may go up to a maximum of approximately USD 2,900, and the maximum prescribed imprisonment can extend up to three years. Each and every subsequent conviction for such offence of copyright infringement shall also entail the same maximum limits for fine as well as imprisonment.

7 Current Developments

7.1 Have there been, or are there anticipated, any significant legislative changes or case law developments?

Legislative and Procedural Changes

The most significant legislative development of the year is the proposal of the Draft Copyright (Amendment) Rules, 2019 by the Government of India to amend the existing Copyright Rules, 2013.

In addition to adhering to the idea of “Digital India”, the Draft Rules also concur with the attempt of the Finance Act, 2017 of reducing the number of Tribunals and bringing into effect the merger of the Copyright Board with the Intellectual Property Appellate Board (IPAB), which was earlier exercising original and appellate jurisdiction in respect of patents, trade marks and GIs. Another objective of the Draft Rules is to bring more transparency and accountability in the functioning of Copyright Societies and distribution of royalties to authors/owners of works. Therefore, a new requirement has been introduced whereby the Copyright Societies must submit and make available on its website, for at least three years, a transparency report for every financial year.

Also, as per the Draft Rules, every application for registration of copyright in a computer program may now be accompanied by only the first 10 and last 10 pages of the source code (instead of the entire source code and object code) where the source code is longer than 20 pages, or the entire source code if less than 20 pages. However, there should be no blocked-out or redacted portions. Further, these Draft Rules, in respect of proceedings against importation of infringing copies, replace the earlier set of rules by clarifying that notice of registration of rights with the Customs authorities shall be made to the Commissioner of Customs or any other officer authorised by the Commissioner, and the subsequent procedure thereafter shall be in accordance with the Intellectual Property Rights (Imported Goods) Enforcement Rules, prescribed under the Customs Act, 1962.

The Copyright Office has also undertaken measures to enhance efficiency and facilitate a seamless registration of copyright applications. For instance, it has introduced the provision to upload soft copies of literary, dramatic and artistic works and other related documents on its online portal *vide* a public notice dated January 17, 2019. Additionally, in February 28, 2019, the Copyright Office has allowed applicants to upload scanned signatures while filing the online copyright application on Form XIV, thereby doing away with the need for manual signatures.

Case Law Developments

In May 2019, a dispute pertaining to the moral rights of an architect was brought before the Delhi High Court in *Raj Rewal v. UOI and Ors.* The case involved a conflict between the moral rights of an architect and the property rights of the building owner to freely deal with the property including the right to demolish the property. The plaintiff relied on the provisions of Section 57 of the Copyright Act which protect the author's right of paternity and integrity thus making the act of demolition of the aforesaid building contrary to the provisions of Section 57. However, the plaintiff's moral right in its work being a statutory right could not hold good in comparison to the right of property of the building owner which the court noted was a constitutional right under Article 300-A.

Also, in a recent landmark judgment (*MRF Ltd v. Metro Tyres Ltd*, decided on July 1, 2019) the Delhi High Court held that the scope of protection of a cinematograph film is on par with other original works and, therefore, the test of substantial similarity laid down in *R.G. Anand v. M/s Deluxe Films and Ors. (1978) 4 SCC 118* would apply. The Hon'ble High Court observed that making a copy of a cinematograph film does not just mean making a physical copy of the film by a process of duplication, but it also refers to another film which substantially, fundamentally, essentially and materially resembles/reproduces the original film. Consequently, copying of fundamental/essential/distinctive features of a film would constitute infringement. The Hon'ble High Court disagreed with the judgment passed by the Bombay High Court in *Star India v. Leo Burnett* (which held that “to make a copy” means to make a physical copy by process of duplication) on the grounds that: (i) the finding that a cinematograph film does not require originality is not in consonance with the Berne Convention; and (ii) it was not brought

to the attention of the Bombay High Court that the 1998 *Norowzian v. Arks* judgment (UK) (heavily relied upon by the Bombay High Court to reach its conclusion) has been overruled in relation to the issue of law and the Appeal Court has held that a film is entitled to protection as an original work.

7.2 Are there any particularly noteworthy issues around the application and enforcement of copyright in relation to digital content (for example, when a work is deemed to be made available to the public online, hyperlinking, etc.)?

In addition to the merger of the Copyright Board with the IPAB, another significant change brought by the Draft Copyright (Amendment) Rules, 2019 relates to statutory licences for broadcasting of literary and musical works and sound recordings.

The words “radio and television broadcast” have been replaced with the words “each mode of broadcast”. The proposed words “each mode of broadcast” are broad in nature and can be possibly interpreted to include internet-based services as well.

In an endeavour to curb online piracy, the Hon’ble Delhi High Court on April 10, 2019, through its judgment in *UTV Software Communication Ltd. and Ors. v. 1337X.TO and Ors.*, has come up with the remedy of “dynamic injunctions” under which the rights holders do not need to go through the time-consuming process of a judicial order in order to issue blocking orders to ISPs. By virtue of this judgment, the plaintiffs have been allowed to approach the Joint Registrar of the Delhi High Court (an administrative position), to extend an injunction order already granted against a website to another similar “mirror/redirect/alphanumeric” website which contains the same content as that of the already blocked/injuncted website.



Dheeraj Kapoor is an advocate with extensive knowledge and expertise in intellectual property laws, and specialises in handling diverse matters before the High Courts, Intellectual Property Appellate Board, Trade Marks Office and the Copyright Office, as well as advising on various related laws. He also specialises in contentious issues pertaining to copyright law, border protection and control measures, as well as enforcement. He is intricately associated with the legal research and publication team of LexOrbis, and has authored many articles and papers in leading IP publications. Dheeraj advises many Fortune 500 companies, multi-national corporations, small and medium-sized enterprises, and technology start-ups.

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