

THE COPYRIGHT ACT, 1957

(Act No. 14 of 1957)

[4th June, 1957]

An act to amend and consolidate the law relating to copyright

*Be it enacted by Parliament in the Eighth Year of the Republic of India
as follows*

CHAPTER I

Preliminary

1. Short title, extent and commencement.—(1) This Act may be called the Copyright Act, 1957.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

Comment

Application in Sikkim.—By notification made by the President of India on the 26th December, 1978, published in the *Gazette of India, Extraordinary*, Pt. II, Sec. 3 (ii), dated the 27th December, 1978, the Central Government appointed the 27th day of April, 1979 as the date on which the Copyright Act, 1957 (14 of 1957), and the Copyright Rules, 1958, made thereunder, came into force in the State of Sikkim.¹

2. Interpretation.—In this Act, unless the context otherwise requires,—

(a) “adaptation” means,—

(i) in relation to a dramatic work, the conversion of the work into a non-dramatic work ;

(ii) in relation to a literary work or an artistic work the conversion of the work into a dramatic work by way of performance in public or otherwise ;

(iii) in relation to a literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical ; and

(iv) in relation to a musical work, any arrangement or transcription of the work ;

(b) “architectural work of art” means any building or structure having an artistic character or design, or any model for such building or structure ;

1. Published in the *Gazette of India*, No. F. 1-10/75-Co., dated the 27th April, *Extraordinary* Pt. II, Sec. 3 (ii), dated the 27th 1979.
April, 1979, vide S. O. No. 226 (E), Notifn.

(c) "artistic work" means,—

(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality ;

(ii) an architectural work of art ; and

(iii) any other work of artistic craftsmanship ;

(d) "author" means,—

(i) in relation to a literary or dramatic work, the author of the work ;

(ii) in relation to a musical work, the composer ;

(iii) in relation to an artistic work other than a photograph, the artist ;

(iv) in relation to a photograph, the person taking the photograph ;

(v) in relation to a cinematograph film, the owner of the film at the time of its completion ; and

(vi) in relation to a record, the owner of the original plate from which the record is made, at the time of the making of the plate ;

(e) "calendar year" means the year commencing on the 1st day of January ;

(f) "cinematograph film" includes the sound tract, if any, and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography ;

(g) "delivery", in relation to a lecture, includes delivery by means of any mechanical instrument or by radio-diffusion ;

(h) "dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include a cinematograph film ;

(i) "engravings" include etchings, lithographs, woodcuts, prints and other similar works, not being photographs ;

(j) "exclusive licence" means a licence which confers on the licensee or on the licensee and persons authorized by him, to the exclusion of all other persons (including the owner of the copyright), any right comprised in the copyright in a work, and "exclusive licensee" shall be construed accordingly ;

(k) "Government work" means a work which is made or published by or under the direction or control of—

(i) the Government or any department of the Government ;

(ii) any Legislature in India ;

(iii) any court, tribunal or other judicial authority in India ;

(l) "Indian work" means a literary, dramatic or musical work, the author of which is a citizen of India ;

(m) "infringing copy" means,—

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematograph film ;

(ii) in relation to a cinematograph film, a copy of the film or a record embodying the recording in any part of the sound track associated with the film ;

(iii) in relation to a record, any such record embodying the same recording ; and

(iv) in relation to a programme in which a broadcast reproduction right subsists under Sec. 37, a record recording the programme, if such reproduction, copy or record is made or imported in contravention of the provision of this Act ;

(n) "lecture" includes address, speech and sermon ;

(o) "literary work" includes tables and compilations ;

(p) "musical work" means any combination of melody and harmony or either of them, printed, reduced to writing or otherwise graphically produced or reproduced ;

(q) "performance" includes any mode of visual or acoustic presentation including any such presentation by the exhibition of a cinematograph film, or by means of radio-diffusion, or by the use of a record, or by any other means and, in relation to a lecture, includes the delivery of such lecture ;

(r) "performing rights society" means a society, association or other body, whether incorporated or not, which carries on business in India of issuing or granting licences for the performance in India of any works in which copyright subsists ;

(s) "photograph" includes photo-lithograph and any works produced by any process analogous to photography but does not include any part of a cinematograph film ;

(t) "plate" includes any stereotype or other plate, stone, block, mould matrix, transfer, negative or other device used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records for the acoustic presentation of the work are or are intended to be made ;

(u) "prescribed" means prescribed by rules made under this Act ;

(v) "radio-diffusion" includes communication to the public by any means of wireless diffusion whether in the form of sounds or visual images or both ;

(w) "record" means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom ; other than a sound track associated with a cinematograph film ;

(x) "recording" means the aggregate of the sounds embodied in and capable of being reproduced by means of a record ;

(y) "work" means any of the following works, namely :

(i) a literary, dramatic, musical or artistic work ;

(ii) a cinematograph film ;

(iii) a record ;

(z) "work of joint authorship" 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 or authors ;

(z-a) "work of sculpture" includes casts and models.

Comment

Work.—The definition of "work" is to be found in sub-section (y) of Sec. 2 of the Copyright Act, 1957. It would appear that the Copyright Act, 1957, does not recognize the performance of an actor as "work" which is protected by the Copyright Act.

3. Meaning of publication.—For the purposes of this Act, “publication” means,—

(a) in the case of a literary, dramatic, musical or artistic work, the issue of copies of the work to the public in sufficient quantities ;

(b) in the case of a cinematograph film, the sale or hire or offer for sale or hire of the film or copies thereof to the public ;

(c) in the case of a record, the issue of records to the public in sufficient quantities ;

but does not, except as otherwise expressly provided in this Act, include,—

(i) in the case of a literary, dramatic or musical work, the issue of any records recording such work ;

(ii) in the case of a work of sculpture or an architectural work of art, the issue of photographs and engravings of such work.

4. When work not deemed to be published performed in public.—Except in relation to infringement of copyright, a work shall not be deemed to be published or performed in public, if published, or performed in public, without the licence of the owner of the copyright.

5. When work deemed to be first published in India.—For the purposes of this Act, a work published in India shall be deemed to be first published in India, notwithstanding that it has been published simultaneously in some other country, unless such other country provides a shorter term of copyright for such work ; and a work shall be deemed to be published simultaneously in India and in another country if the time between the publication in India and the publication in such other country does not exceed thirty days or such other period as the Central Government may, in relation to any specified country, determine.

6. Certain disputes to be decided by Copyright Board.—If any question arises,—

(a) whether for the purposes of Sec. 3, copies of any literary, dramatic, musical or artistic work, or records are issued to the public in sufficient quantities ; or

(b) whether for the purposes of Sec. 5, the term of copyright for any work is shorter in any other country than that provided in respect of that work under this Act ;

it shall be referred to the Copyright Board constituted under Sec. 11 whose decision thereon shall be final.

7. Nationality of author where the making of unpublished work is extended over considerable period.—Where, in the case of an unpublished work, the making of the work is extended over a considerable period, the author of the work shall, for the purposes of this Act, be deemed to be a citizen of, or domiciled in, that country of which he was a citizen or wherein he was domiciled during any substantial part of that period.

8. Domicile of corporations.—For the purposes of this Act, a body corporate shall be deemed to be domiciled in India if it is incorporated under any law in force in India.

CHAPTER II

Copyright Office and Copyright Board

9. Copyright office.—(1) There shall be established for the purposes of this Act an office to be called the Copyright Office.

(2) The Copyright Office shall be under the immediate control of the Registrar of Copyrights who shall act under the superintendence and direction of the Central Government.

(3) There shall be a seal for the Copyright Office.

10. Registrar and Deputy Registrars of Copyrights.—(1) The Central Government shall appoint a Registrar of Copyrights and may appoint one or more Deputy Registrars of Copyrights.

(2) A Deputy Registrar of Copyrights shall discharge under the superintendence and direction of the Registrar of Copyrights such functions of the Registrar under this Act as the Registrar may, from time to time, assign to him ; and any reference in this Act to the Registrar of Copyrights shall include a reference to a Deputy Registrar of Copyrights when so discharging any such functions.

11. Copyright Board.—(1) As soon as may be after the commencement of this Act, the Central Government shall constitute a Board to be called the Copyright Board which shall consist of a Chairman and not less than two or more than eight other members.

(2) The Chairman and other members of the Copyright Board shall hold office for such period and on such terms and conditions as may be prescribed.

(3) The Chairman of the Copyright Board shall be a person who is, or has been, a Judge of the Supreme Court or a High Court or is qualified for appointment as a Judge of a High Court.

(4) The Registrar of Copyrights shall be the Secretary of the Copyright Board and shall perform such functions as may be prescribed.

12. Powers and procedure of Copyright Board.—(1) The Copyright Board shall, subject to any rules that may be made under this Act, have power to regulate its own procedure, including the fixing of places and times of its sittings :

Provided that the Copyright Board shall ordinarily hear any proceeding instituted before it under this Act within the zone in which, at the time of the institution of the proceeding, the person instituting the proceeding actually and voluntarily resides or carries on business or personally works for gain.

Explanation.—In this sub-section “zone” means a zone specified in Sec. 15 of the State Reorganization Act, 1956 (37 of 1956).

(2) The Copyright Board may exercise and discharge its powers and functions through Benches constituted by the Chairman of the Copyright Board from amongst its members, each Bench consisting of not less than three members.

(3) If there is difference of opinion among the members of the Copyright Board or any Bench thereof in respect of any matter coming before it for decision under this Act, the opinion of the majority shall prevail ;

Provided that where there is no such majority—

(i) if the Chairman was one of the members who heard the matter, the opinion of the Chairman shall prevail ;

(ii) if the Chairman was not one of the members who heard the matter, the matter shall be referred to him for his opinion and that opinion shall prevail.

(4) The Copyright Board may authorize any of its members to exercise any of the powers conferred on it by Sec. 74 and any order made or act done in exercise of those powers by the member so authorized shall be deemed to be the order or act, as the case may be, of the Board.

(5) No member of the Copyright Board shall take part in any proceedings before the Board in respect of any matter in which he has a personal interest.

(6) No act done or proceeding taken by the Copyright Board under this Act shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Board.

(7) The Copyright Board shall be deemed to be a civil court, for the purposes of Secs. 480 and 482 of the Code of Criminal Procedure, 1898 (5 of 1898), and all proceedings before the Board shall be deemed to be judicial proceedings within the meaning of Secs. 193 and 228 of the Indian Penal Code, 1860 (45 of 1860).

CHAPTER III

Copyright

13. Works in which copyright subsists.—(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—

- (a) original literary, dramatic, musical and artistic works ;
- (b) cinematograph films ; and
- (c) records.

(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of Sec. 40 or Sec. 41 apply, unless,—

(i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India ;

(ii) in the case of an unpublished work other than an architectural work of art, the author is at the date of the making of the work a citizen of India or domiciled in India ; and

(iii) in the case of an architectural work of art, the work is located in India.

Explanation.—In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist—

(a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work ;

(b) in any record made in respect of a literary, dramatic or musical work, if in making the record, copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a record shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the record is made.

(5) In the case of an architectural work of art, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

Comment

Vesting of copyright in cinematograph film.—It is abundantly clear that a protectable copyright [comprising a bundle of exclusive rights mentioned in Sec. 14 (1) (c) of the Act] comes to vest in a cinematograph film on its completion which is said to take place when the visual portion and audible portion are synchronized.¹

14. Meaning of copyright.—(1) For the purposes of this Act, “copyright” means the exclusive right, by virtue of, and subject to the provisions of, this Act,—

(a) in the case of a literary, dramatic or musical work, to do and authorize the doing of any of the following acts, namely :

- (i) to reproduce the work in any material form ;
- (ii) to publish the work ;
- (iii) to perform the work in public ;
- (iv) to produce, reproduce, perform or publish any translation of the work ;
- (v) to make any cinematograph film or a record in respect of the work ;
- (vi) to communicate the work by radio-diffusion or to communicate to the public by a loud-speaker or any other similar instrument the radio-diffusion of the work ;
- (vii) to make any adaptation of the work ;
- (viii) to do in relation to a translation or an adaptation of the work any of the acts specified in relation to the work in Cls. (i) to (vi) ;

(b) in the case of an artistic work, to do or authorize the doing of any of the following acts, namely :

- (i) to reproduce the work in any material form ;
- (ii) to publish the work ;
- (iii) to include the work in any cinematograph film ;
- (iv) to make any adaptation of the work ;
- (v) to do in relation to an adaptation of the work any of the acts specified in relation to the work in Cls. (i) to (iii) ;

(c) in the case of a cinematograph film, to do or authorize the doing of any of the following acts, namely :

- (i) to make a copy of the film ;
- (ii) to cause the film, in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public ;
- (iii) to make any record embodying the recording in any part of the sound track associated with the film by utilizing such sound track ;
- (iv) to communicate the film by radio-diffusion ;

1. India Performing Right Society Ltd. A. I. R. 1977 S. C. 1443 at p. 1451.
v. Eastern India Motion Picture Association,

(d) in the case of a record, to do or authorize the doing of any of the following acts by utilizing the record, namely :

- (i) to make any other record embodying the same recording ;
- (ii) to cause the recording embodied in the record to be heard in public ;
- (iii) to communicate the recording embodied in the record by radio-diffusion.

(2) Any reference in sub-section (1) to the doing of any act in relation to a work or a translation or an adaptation thereof shall include a reference to the doing of that act in relation to a substantial part thereof.

15. Special provision regarding copyright in designs registered or capable of being registered under the Indian Patents and Designs Act, 1911.—

(1) Copyright shall not subsist under this Act in any design which is registered under the Indian Patents and Designs Act, 1911 (2 of 1911).

(2) Copyright in any design, which is capable of being registered under the Indian Patents and Designs Act, 1911 (2 of 1911) but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright or, with his licence, by any other person.

16. No copyright except as provided in this Act.—No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

CHAPTER IV

Ownership of Copyright and the Rights of the Owner

17. First owner of copyright.—Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein :

Provided that—

(a) in the case of a literary, dramatic or artistic work 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 purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work ;

(b) subject to the provisions of Cl. (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein ;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which Cl. (a) or Cl. (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein ;

(d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein ;

(e) in the case of a work to which the provisions of Sec. 41 apply, the international organization concerned shall be the first owner of the copyright therein.

Comments

Copyrights of music composer.—Scope of.—It is crystal clear that the rights of a music.....composer or lyricist can be defeated by the producer of a cinematograph film in the manner laid down in provisos (b) and (c) of Sec. 17 of the Act.¹

First owner of copyright in a cinematograph film.—As laid down by the Supreme Court in the case of the *Indian Performing Right Society Ltd. v. Eastern India Motion Pictures*,² when a cinematograph film producer commissions a composer of music or a lyricist for reward or valuable consideration for the purpose of making his cinematograph film or composing music or lyric therefor, i.e., the sounds for incorporation or absorption in the sound track associated with the film, which are included in a cinematograph film, he becomes the first owner of the copyright therein and no copyright subsists in the composer of the lyric or music so composed unless there is a contract to the contrary between the composer of the lyric or music on the one hand and the producer of the cinematograph film on the other.³

18. Assignment of copyright.—(1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof :

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.

(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

(3) In this section, the expression "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

19. Mode of assignment.—No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorized agent.

20. Transmission of copyright in manuscript by testamentary disposition.—Where under a bequest a person is entitled to the manuscript of a literary, dramatic or musical work, or to an artistic work, and the work was not published before the death of the testator, the bequest shall, unless the contrary intention is indicated in the testator's will or any codicil thereto, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

1. *Indian Performing Right Society Ltd. v. Eastern India Motion Picture Association*, A. I. R. 1977 S. C. 1443 at p. 1452.
2. A.I.R. 1977 S.C. 1443,

3. *Eastern India Motion Pictures v. Indian Performing Right Society Ltd.*, A. I. R. 1977 Cal 477 at p. 482.

Explanation.—In this section, the expression “manuscript” means the original document embodying the work, whether written by hand or not.

21. Right of author to relinquish copyright.—(1) The author of a work may relinquish all or any of the rights comprised in the copyright in the work by giving notice in the prescribed form to the Registrar of Copyrights and thereupon such rights shall, subject to the provisions of sub-section (3), cease to exist from the date of the notice.

(2) On receipt of a notice under sub-section (1), the Registrar of Copyrights shall cause it to be published in the official Gazette and in such other manner as he may deem fit.

(3) The relinquishment of all or any of the right comprised in the copyright in a work shall not affect any rights subsisting in favour of any person on the date of the notice referred to in sub-section (1).

CHAPTER V

Term of Copyright

22. Term of copyright in published literary, dramatic, musical and artistic works.—Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author until fifty years from the beginning of the calendar year next following the year in which the author dies.

Explanation.—In this section the reference to the author shall, in the case of a work of joint authorship, be construed as a reference to the author who dies last.

23. Term of copyright in anonymous and pseudonymous works.—In the case of a literary, dramatic, musical or artistic work (other than a photograph), which is published anonymously or pseudonymously, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published :

Provided that where the identity of the author is disclosed before the expiry of the said period, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the author dies.

(2) In sub-section (1), references to the author shall, in the case of an anonymous work of joint authorship, be construed,—

(a) where the identity of one of the authors is disclosed, as references to that author ;

(b) where the identity of more authors than one is disclosed as references to the author who dies last from amongst such authors.

(3) In sub-section (1), references to the author shall, in the case of a pseudonymous work of joint authorship, be construed,—

(a) where the names of one or more (but not all) of the authors are pseudonymous and his or their identity is not disclosed, as references to the author whose name is not a pseudonym, or, if the names of two or more of the authors are not pseudonyms, as references to such of those authors who dies last ;

(b) where the names of one or more (but not all) of the authors are pseudonyms and the identity of one or more of them is disclosed, references to the authors who dies last from amongst the authors whose names are not pseudonyms and the authors whose names are pseudonyms and are disclosed ; and

(c) where the names of all the authors are pseudonyms and the identity of one of them is disclosed, as references to the authors whose identity is disclosed or if the identity of two or more of such authors is disclosed, as references to such of those authors who dies last.

Explanation.—For the purposes of this section, the identity of an author shall be deemed to have been disclosed, if either the identity of the author is disclosed publicly by both the author and the publisher or is otherwise established to the satisfaction of the Copyright Board by that author.

24. Term of copyright in posthumous works.—(1) In the case of a literary, dramatic or musical work or an engraving, in which copyright subsists at the date of the death of the author or, in the case of any such work of joint authorship, at or immediately before the date of the death of the author who dies last, but which, or any adaptation of which, has not been published before that date, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published or, where an adaptation of the work is published in any earlier year, from the beginning of the calendar year next following that year.

(2) For the purposes of this section a literary, dramatic or musical work or an adaptation of any such work shall be deemed to have been published, if it has been performed in public or if any records made in respect of the work have been sold to the public or have been offered for sale to the public.

25. Term of copyright in photographs.—In the case of a photograph, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the photograph is published.

26. Term of copyright in cinematograph films.—In the case of a cinematograph film, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the film is published.

27. Term of copyright in records.—In the case of a record, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the record is published.

28. Term of copyright in Government works.—In the case of a Government work, where Government is the first owner of the copyright therein, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published.

29. Term of copyright in works of international organization.—In the case of a work of an international organization to which the provisions of Sec. 41 apply, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published.

CHAPTER VI

Licences

30. Licences by owners of copyright.—The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorized agent :

Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence.

Explanation.—Where a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence.

31. Compulsory licence in works withheld from public.—(1) If at any time during the term of copyright in any Indian work which has been published or performed in public, a complaint is made to the Copyright Board that the owner of copyright in the work—

(a) has refused to republish or allow the republication of the work or has refused to allow the performance in public of the work and by reason of such refusal the work is withheld from public ; or

(b) has refused to allow communication to the public by radio-diffusion of such work or in the case of a record the work recorded in such record, on terms which the complainant considers reasonable ;

the Copyright Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyrights to grant to the complainant a licence to republish the work, perform the work in public or communicate the work to the public by radio-diffusion, as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Copyright Board may determine ; and thereupon the Registrar of Copyrights shall grant the licence to the complainant in accordance with the directions of the Copyright Board, on payment of such fee as may be prescribed.

Explanation.—In this sub-section, the expression “Indian work” includes—

(i) an artistic work, the author of which is a citizen of India ; and

(ii) a cinematograph film or a record made or manufactured in India.

(2) Where two or more persons have made a complaint under sub-section (1), the licence shall be granted to the complainant who in the opinion of the Copyright Board would best serve the interests of the general public.

32. Licence to produce and publish translations.—(1) Any person may apply to the Copyright Board for a licence to produce and publish a translation of a literary or dramatic work in any language.

(2) Every such application shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the translation of the work.

(3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar of Copyrights such fee as may be prescribed.

(4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a translation of the work in the language mentioned in the application, on condition that the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the translation of the work sold to the public, calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed manner :

Provided that no such licence shall be granted, unless—

(a) a translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorized by him, within seven years of the first publication of the work, or if a translation has been so published, it has been out of print ;

(b) the applicant has prove to the satisfaction of the Copyright Board that he had requested and had been denied authorization by the owner of the copyright to produce and publish such translation, or that he was unable to find the owner of the copyright ;

(c) where the applicant was unable to find the owner of the copyright, he had sent a copy of his request for such authorization to the publisher whose name appears from the work, not less than two months before the application for the licence ;

(d) the Copyright Board is satisfied that the applicant is competent to produce and publish a correct translation of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section ;

(e) the author has not withdrawn from circulation copies of the work ; and

(f) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.

CHAPTER VII

Performing Rights Societies

33. Performing rights society to file statement of fees, charges and royalties.—(1) Every performing rights society shall, within the prescribed time and in the prescribed manner, prepare, publish and file with the Registrar of Copyrights, statements of all fees, charges or royalties which it proposes to collect for the grant of licences for performance in public of works in respect of which it has authority to grant such licences.

(2) If any such society fails to prepare, publish or file with the Registrar of Copyrights the statements referred to in sub-section (1) in relation to any work in accordance with the provisions of that sub-section, no action or other proceeding to enforce any remedy, civil or criminal, for infringement of the performing rights in that work shall be commenced except with the consent of the Registrar of Copyrights.

34. Objections relating to published statements.—Any person having any objections to any fees, charges or royalties or other particulars included in any statement referred to in Sec. 33 may at any time lodge such objections in writing at the Copyright Office.

35. Determination of objections.—(1) Every objection lodged at the Copyright Office under Sec. 34 shall, as soon as may be, be referred to the Copyright Board and the Copyright Board shall decide such objection in the manner hereinafter provided.

(2) The Copyright Board shall, in respect of every such objection, give notice thereof to the performing rights society concerned.

(3) The Copyright Board shall, after giving such society and the person who lodged the objection a reasonable opportunity of being heard and after making such further inquiry as may be prescribed, make such alterations in the statements as it may think fit, and shall transmit the alterations made by it to the Registrar of Copyrights, who shall thereupon, as soon as practicable after the receipt of such alterations, publish them in the official Gazette and furnish the performing rights society concerned and the person who lodged the objection with a copy thereof.

(4) The fees, charges or royalties as altered by the Copyright Board shall be the fees, charges or royalties which the performing rights society concerned may respectively lawfully sue for or collect in respect of the grant by it of licences for the performance in public of works to which such fees, charges or royalties relate.

(5) No performing rights society shall have any right of action or any right to enforce any civil or other remedy for infringement of the performing rights in any work against any person who has tendered or paid to such society the fees, charges or royalties specified in respect of that work in a statement published by that society under sub-section (1) of Sec. 33 or where such statement has been altered by the Copyright Board under this section in the statement so altered.

(6) Where any person has lodged an objection at the Copyright Office regarding the fees, charges or royalties in respect of any work included in a statement published under Sec. 33, that person or any other person, on depositing such fees, charges or royalties at the Copyright Office, may, pending the final decision of such objection by the Copyright Board or the High Court, as the case may be, perform that work without infringing the copyright therein.

(7) The fees, charges or royalties deposited at the Copyright Office under sub-section (6) shall be paid to the performing rights society concerned or to the person who made the deposit, or partly to such society and partly to such person, in accordance with the final decision on the objection as aforesaid.

Comment

Jurisdiction of the Board.—If the authority of the society to grant licence or to fix rates is challenged the Board has the jurisdiction to go into the same and decide the question of authority of the society concerned.¹

36. Existing rights not affected.—Nothing in this Chapter shall be deemed to affect—

(a) any rights or liabilities in relation to the performing rights in any work accrued or incurred before the commencement of this Act ;

(b) any legal proceedings in respect of such rights or liabilities pending at such commencement.

CHAPTER VIII

Rights of Broadcasting Authorities

37. Broadcast reproduction right.—(1) Where any programme is broadcast by radio-diffusion by the Government or any other broadcasting authority, a special right to be known as “broadcast reproduction right” shall subsist in such programme.

(2) The Government or other broadcasting authority, as the case may be, shall be the owner of the broadcast reproduction right and such right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the programme is first broadcast.

1. *Easter Indian Motion Pictures v. Cal.* 477 at pp. 479, 480.
Performing Right Society Ltd., A. I. R. 1978

(3) During the continuance of a broadcast reproduction right in relation to any programme, any person who,—

(a) without the licence of the owner of the right—

(i) rebroadcasts the programme in question or any substantial part thereof ; or

(ii) causes the programme in question or any substantial part thereof to be heard in public ; or

(b) without the licence of the owner of the right to utilize the broadcast for the purpose of making a record recording the programme in question or any substantial part thereof, makes any such record,

shall be deemed to infringe that broadcast reproduction right.

38. Other provisions of this Act to apply to broadcast reproduction rights.—Sections 18, 19, 30, 53, 55, 58, 64, 65 and 66 shall, with any necessary adaptations and modifications, apply in relation to the broadcast reproduction right in any programme as they apply in relation to the copyright in a work :

Provided that a licence to utilize a broadcast for the purpose of making a record recording a programme in which broadcast reproduction right subsists or any substantial part of such programme, shall not take effect unless the person to whom such licence is granted has also obtained a licence to make records recording the work embodied in such programme from the owner of the copyright in such work.

39. Other rights not affected.—For the removal of doubts, it is hereby declared that the broadcast reproduction right conferred upon a broadcasting authority under this Chapter shall not affect the copyright—

(a) in any literary, dramatic or musical work which is broadcast by that authority ; or

(b) in any record recording any such work.

CHAPTER IX

International Copyright

40. Power to extend copyright to foreign works.—The Central Government may, by order published in the official Gazette, direct that all or any provisions of this Act shall apply—

(a) to works first published in any territory outside India to which the order relates in like manner as if they were first published within India ;

(b) to unpublished works, or any class thereof, the authors whereof were at the time of the making of the work, subjects or citizens of a foreign country to which the order relates, in like manner as if the authors were citizens of India ;

(c) in respect of domicile in any territory outside India to which the order relates in like manner as if such domicile were in India ;

(d) to any work of which the author was at the date of the first publication thereof, or, in a case where the author was dead at that date, was at the time of his death, a subject or citizen of a foreign country to which the order relates in like manner as if the author was a citizen of India at that date or time ;

and thereupon, subject to the provision of this Chapter and of the order, this Act shall apply accordingly ;

Provided that—

(i) before making an order under this section in respect of any foreign country (other than a country with which India has entered into a treaty or which is a party to a convention relating to copyright to which India is also a party), the Central Government shall be satisfied that that foreign country has made, or has undertaken to make, such provision, if any, as it appears to the Central Government expedient to require for the protection in that country of works entitled to copyright under the provisions of this Act ;

(ii) the order may provide that the provisions of this Act shall apply either generally or in relation to such classes of works or such classes of cases as may be specified in the order ;

(iii) the order may provide that the term of copyright in India shall not exceed that conferred by the law of the country to which the order relates ;

(iv) the order may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities, if any, as may be prescribed by the order ;

(v) in applying the provisions of this Act as to ownership of copyright, the order may make such exceptions and modifications as appear necessary, having regard to the law of the foreign country ;

(vi) the order may provide that this Act or any part thereof shall not apply to works made before the commencement of the order or that this Act or any part thereof shall not apply to works first published before the commencement of the order.

41. Provisions as to works of certain international organizations.—

(1) Where—

(a) any work is made or first published by or under the direction or control of any organization to which this section applies, and

(b) there would, apart from this section, be no copyright in the work in India at the time of the making or, as the case may be, of the first publication thereof, and

(c) either—

(i) the work is published as aforesaid in pursuance of an agreement in that behalf with the author, being an agreement which does not reserve to the author the copyright, if any, in the work, or

(ii) under Sec. 17 any copyright in the work would belong to the organization ;

there shall, by virtue of this section, be copyright in the work throughout India.

(2) Any organization to which this section applies which at the material time had not the legal capacity of a body corporate shall have and be deemed at all material times to have had the legal capacity of a body corporate for the purpose of holding, dealing with, and enforcing copyright and in connection with all legal proceedings relating to copyright.

(3) The organizations to which this section applies are such organizations as the Central Government may, by order published in the official Gazette, declare to be organizations of which one or more sovereign powers or the Government or Governments thereof are members to which it is expedient that this section shall apply.

42. Power to restrict rights in works of foreign authors first published in India.—If it appears to the Central Government that a foreign country does not give or has not undertaken to give adequate protection to the works of Indian authors, the Central Government may, by order published in the official Gazette, direct that such of the provision of this Act as confer copyright on works first published in India shall not apply to works, published after the date specified in the order, the authors whereof are subjects or citizens of such foreign country and are not domiciled in India, and thereupon those provisions shall not apply to such works.

43. Orders under this Chapter to be laid before Parliament.—Every order made by the Central Government under this Chapter shall, as soon as may be after it is made, be laid before both Houses of Parliament and shall be subject to such modifications as Parliament may make during the session in which it is so laid or the session immediately following.

CHAPTER X

Registration of Copyright

44. Register of Copyrights.—There shall be kept at the Copyright Office a register in the prescribed form to be called the Register of Copyrights in which may be entered the names or titles of works and the names and addresses of authors, publishers and owners of copyright and such other particulars as may be prescribed.

45. Entries in Register of Copyrights.—(1) The author or publisher of, or the owner of or other person interested in the copyright in any work may make an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights.

(2) On receipt of an application in respect of any work under sub-section (1), the Registrar of Copyrights may, after holding such inquiry as he may deem fit, enter the particulars of the work in the Register of Copyrights.

Comment

Scope.—Section 45 does not qualify Sec. 13 or Sec. 14 or even Sec. 15 of the Act and makes registration as a condition for the subsistence of copyright or acquisition of ownership thereof. It is settled view that registration is but optional and provides a rule of evidence.¹

46. Indexes.—There shall be also kept at the Copyright Office such indexes of the Register of Copyrights as may be prescribed.

47. Form and inspection of register.—The Register of Copyrights and indexes thereof kept under this Act shall at all reasonable times be open to inspection, and any person shall be entitled to take copies of, or make extracts from, such register or indexes on payment of such fee and subject to such conditions as may be prescribed.

48. Register of Copyrights to be prima facie evidence of particulars entered therein.—The Registrar of Copyrights shall be *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 and sealed with the seal of the Copyright Office shall be admissible in evidence in all courts without further proof of production of the original.

1. *Messrs. Manojah Cine Productions v. A. Sundaresan*, A. I. R. 1976 Mad. 22 at p. 22 C.A.—3

Comment

Effect of registration.—The only effect of registration is what is stated in Sec. 48, to wit, that it shall be *prima facie* evidence of the particulars entered in the register. Hardly is there any indication in any of the provisions of the Act, read individually or as a whole, to suggest that registration is a condition precedent to subsistence of copyright or acquisition of ownership thereof.¹

49. Correction of entries in the Register of Copyrights.—The Registrar of Copyrights may, in the prescribed cases and subject to the prescribed conditions, amend or alter the Register of Copyrights by—

- (a) correcting any error in any name, address or particulars ; or
- (b) correcting any other error which may have arisen therein by accidental slip or omission.

50. Rectification of Register by Copyright Board.—The Copyright Board, on application of the Registrar of Copyrights or of any person, aggrieved, shall order the rectification of the Register of Copyrights by—

- (a) the making of any entry wrongly omitted to be made in the register, or
- (b) the expunging of any entry wrongly made in, or remaining on, the register, or
- (c) the correction of any error or defect in the register.

CHAPTER XI

Infringement of Copyright

51. When copyright infringed.—Copyright in a work shall be deemed to be infringed—

(a) when any person, without a licence granted by the owner of the Copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act—

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) permits for profit any place to be used for the performance of the work in public where such performance constitutes an infringement of the copyright in the work unless he was not aware and had no reasonable ground for believing that such performance would be an infringement of copyright, or

(b) when 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, 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) by way of trade exhibits in public, or

(iv) imports (except for the private and domestic use of the importer) into India,

any infringing copies of the work.

Explanation.—For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an “infringing copy”.

1. *Meera. Manojah Cine Productions v. Sundaresan*, A. I. R. 1976 Mad. 22 at p. 23

Comments

Infringement of copyright.—Taking into account the entire get-up, the combination of colours where it is noted that the essential features of plaintiff's containers have been absolutely copied and the entire scheme of the containers is also the same though there is a phonetic difference between the numerals "1001" and "9001" the plaintiff is entitled *prima facie* to the relief of permanent injunction for the infringement of his copyright.¹

Tests.—On a careful consideration and elucidation of the various authorities and the case-law on the subject the following propositions emerge :

1. There can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common similarities are bound to occur. In order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of valuation of copyright arises.

5. Where, however, apart from the similarities appearing in the two works *there are also material and broad dissimilarities* which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence.

7. Where, however, the question is of the violation of the copyright of stage play by a film producer or a director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader perspective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.²

52. Certain acts not to be infringement of copyright.—(1) The following acts shall not constitute an infringement of copyright, namely :

(a) a fair dealing with a literary, dramatic, musical or artistic work for the purposes of—

(i) research or private study ;

(ii) criticism or review, whether of that work or of any other work ;

(b) a fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events—

(i) in a newspaper, magazine or similar periodical, or

1. Messrs Anglo-Dutch Paint, Colour and Varnish Works Pvt. Ltd. v. Messrs India Trading House, A.I.R. 1977 Delhi 41 at pp. 44, 45.

2. R. G. Anand v. Messrs. Deluxe Films, A. I. R. 1978 S. C. 1613 at p. 1627.

(ii) by radio-diffusion or in a cinematograph film or by means of photographs ;

(c) the reproduction of a literary, dramatic, musical or artistic work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding ;

(d) the reproduction or publication of a literary, dramatic, musical or artistic work in any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature ;

(e) the reproduction of any literary, dramatic or musical work in a certified copy made or supplied in accordance with any law for the time being in force ;

(f) the reading or recitation in public of any reasonable extract from a published literary or dramatic work ;

(g) the publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for the use of educational institutions, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for the use of educational institutions, in which copyright subsists :

Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

Explanation.—In the case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more of those authors in collaboration with any other person ;

(h) the reproduction of a literary, dramatic, musical or artistic work—

(i) by a teacher or a pupil in the course of instruction ; or

(ii) as part of the question to be answered in an examination ; or

(iii) in answers to such question ;

(i) the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a record, if the audience is limited to such staff and students, the parents and guardians of the students and persons directly connected with the activities of the institution ;

(j) the making of records in respect of any literary, dramatic or musical work, if—

(i) records recording that work have previously been made by, or with the licence or consent of, the owner of the copyright in the work ; and

(ii) the person making the records has given the prescribed notice of his intention to make the records, and has paid in the prescribed manner to the owner of the copyright in the work royalties in respect of all such records to be made by him, at the rate fixed by the Copyright Board in this behalf :

Provided that in making the records such person shall not make any alterations in, or omissions from, the work, unless records recording the work subject to similar alterations and omissions have been

previously made by, or with the licence or consent of, the owner of the copyright or unless such alterations and omissions are reasonably necessary for the adaptation of the work to the records in question ;

(k) the causing of a recording embodied in a record to be heard in public by utilizing the record,—

(i) at any premises where persons reside, as part of the amenities provided exclusively or mainly for residents therein, or

(ii) as part of the activities of a club, society or other organization which is not established or conducted for profit ;

(l) the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution ;

(m) the reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction ;

(n) the publication in a newspaper, magazine or other periodical of a report of a lecture delivered in public ;

(o) the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person-in-charge of a public library for the use of the library if such book is not available for sale in India ;

(p) the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access ;

Provided that where the identity of the author of any such work or, in the case of a work of joint authorship, of any of the authors is known to the library, museum or other institution, as the case may be, the provisions of this clause shall apply only if such reproduction is made at a time more than fifty years from the date of the death of the author or, in the case of a work of joint authorship, from the death of the author whose identity is known or, if the identity of more authors than one is known, from the death of such of those authors who dies last ;

(q) the reproduction or publication of—

(i) any matter which has been published in any official Gazette except an Act of a Legislature ;

(ii) any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter ;

(iii) the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government ;

(iv) any judgment or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the Court, the Tribunal or other judicial authority, as the case may be ;

(r) the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made thereunder—

(i) if no translation of such Act or rules or orders in that language has previously been produced or published by the Government ; or

(ii) where translation of such Act or rules or orders in that language has been produced or published by the Government, if the translation is not available for sale to the public :

Provided that such translation contains a statement at a prominent place to the effect that the translation has not been authorized or accepted as authentic by the Government ;

(s) the making or publishing of a painting, drawing, engraving or photograph of an architectural work of art ;

(t) the making or publishing of a painting, drawing, engraving, or photograph of a sculpture, or other artistic work falling under sub-clause (iii) of Cl. (c) of Sec. 2, if such work is permanently situate in a public place or any premises to which the public has access ;

(u) the inclusion in a cinematograph film of—

(i) any artistic work permanently situate in a public place or any premises to which the public has access ; or

(ii) any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film ;

(v) the use by author of an artistic work, where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the work ;

Provided that he does not thereby repeat or imitate the main design of the work ;

(w) the making of an object of any description in three dimensions, of an artistic work in two dimensions, if the object would not appear, to persons who are not experts in relation to objects of that description, to be a reproduction of the artistic work ;

(x) the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed ;

Provided that the original construction was made with the consent or licence of the owner of the copyright in such drawings and plans ;

(y) in relation to a literary, dramatic or musical work recorded or reproduced in any cinematograph film, the exhibition of such film after the expiration of the term of copyright therein :

Provided that the provisions of sub-clause (ii) of Cl. (a), sub-clause (i) of Cl. (b) and Cl. (d), Cls. (f), (g), (m) and (p), shall not apply as respects any act unless that act is accompanied by an acknowledgment—

(i) identifying the work by its title or other description ; and

(ii) unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgment of his name should be made, also identifying the author.

(2) The provisions of sub-section (1) shall apply to the doing of any act in relation to the translation of a literary, dramatic or musical work or the adaptation of a literary, dramatic, musical or artistic work as they apply in relation to the work itself.

53. Importation of infringing copies.—(1) The Registrar of Copyrights, on application by the owner of the copyright in any work or by his duly authorized agent and on payment of the prescribed fee, may, after making such inquiry as he deems fit, order that copies made out of India of the work which if made in India would infringe copyright shall not be imported,

(2) Subject to any rules made under this Act, the Registrar of Copyrights or any person authorized by him in this behalf may enter any ship, dock or premises where any such copies as are referred to in sub-section (1) may be found and may examine such copies.

(3) All copies to which any order made under sub-section (1) applied shall be deemed to be goods of which the import has been prohibited or restricted under Sec. 19 of the Sea Customs Act, 1878 (8 of 1878)¹ and all the provisions of that Act shall have effect accordingly :

Provided that all such copies confiscated under the provisions of the said Act shall not vest in the Government but shall be delivered to the owner of the copyright in the work.

CHAPTER XII

Civil Remedies

54. Definition.—For the purposes of this Chapter, unless the context otherwise requires, the expression “owner of copyright” shall include—

(a) an exclusive licensee ;

(b) in the case of an anonymous or pseudonymous literary, dramatic, musical or artistic work, the publisher of the work, until the identity of the author or, in the case of an anonymous work of joint authorship, or a work of joint authorship published under names all of which are pseudonyms, the identity of any of the authors, is disclosed publicly by the author and the publisher of or is otherwise established to the satisfaction of the Copyright Board by that author or his legal representatives.

55. Civil remedies for infringement of copyright.—(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right :

Provided that 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.

(2) Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher, as the case may be, appears on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

(3) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the Court.

1. See now the Customs Act, 1962 (52 of 1962)

Comment

Scope.—In a case of clear infringement of the plaintiff's copyright under Sec. 55 of the Act the plaintiff is entitled *prima facie* to the relief of permanent injunction for the infringement of his copyright. The infringement of copyright being *prima facie* established, the plaintiff is entitled to interim relief for the infringement of the copyright as well in the shape of temporary injunction till the disposal of the suit from dealing in the matter in question and from passing off the goods as those of the applicants in any manner.¹

56. Protection of separate right.—Subject to the provisions of this Act, where the several rights comprising the copyright in any work are owned by different persons, the owner of any such right shall, to the extent of that right, be entitled to the remedies provided by this Act and may individually enforce such right by means of any suit, action or other proceeding without making the owner of any other right a party to such suit, action or proceeding.

57. Author's special rights.—(1) Independently of the author's copyright, and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right to claim the authorship of the work as well as the right to restrain, or claim damages in respect of—

(a) any distortion, mutilation or other modification of the said work;
or

(b) any other action in relation to the said work which would be prejudicial to his honour or reputation.

(2) The right conferred upon an author of a work by sub-section (1), other than the right to claim authorship of the work, may be exercised by the legal representatives of the author.

58. Rights of owner against persons possessing or dealing with infringing copies.—All infringing copies of any work in which copyright subsists, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of possession thereof or in respect of the conversion thereof:

Provided that the owner of the copyright shall not be entitled to any remedy in respect of the conversion of any infringing copies, if the opponent proves—

(a) that he was not aware and had no reasonable ground to believe that copyright subsisted in the work of which such copies are alleged to be infringing copies; or

(b) that he had reasonable grounds for believing that such copies or plates do not involve infringement of the copyright in any work.

59. Restriction on remedies in the case of works of architecture.—(1) Notwithstanding anything contained in the Specific Relief Act, 1877 (1 of 1877)² where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction to restrain the construction of such building or structure or to order its demolition.

(2) Nothing in Sec. 58 shall apply in respect of the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work.

60. Remedy in the case of groundless threat of legal proceedings.—Where any person claiming to be the owner of copyright in any work, by circulars,

1. Messrs. Anglo-Dutch Paint, Colour 44, 45.
and Varnish Work Pvt. Ltd., v. Messrs. India 2. See now the Specific Relief Act, 1963
Trading House, A. I. R. 1977 Delhi 41 at pp. (47 of 1963).

advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of the copyright, any person aggrieved thereby may notwithstanding anything contained in Sec. 42 of the Specific Relief Act, 1877 (1 of 1877)¹ institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in any such suit—

(a) obtain an injunction against the continuance of such threats ; and

(b) recover such damages, if any, as he has sustained by reason of such threats :

Provided that this section shall not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him.

61. Owner of copyright to be party to the proceeding.—(1) In every civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee, the owner of the copyright shall, unless the Court otherwise directs, be made a defendant and where such owner is made a defendant, he shall have the right to dispute the claim of the exclusive licensee.

(2) Where any civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee is successful, no fresh suit or other proceeding in respect of the same cause of action shall lie at the instance of the owner of the copyright.

62. Jurisdiction of Court over matters arising under this Chapter.—(1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the District Court having jurisdiction.

(2) For the purpose of sub-section (1), a "District Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.

CHAPTER XIII

Offences

63. Offence of infringement of copyright or other rights conferred by this Act.—Any person who knowingly infringes or abets the infringement of—

(a) the copyright in a work, or

(b) any other right conferred by this Act,

shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

Explanation.—Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section.

64. Power of police to seize infringing copies.—(1) Where a Magistrate has taken cognizance of any offence under Sec. 63 in respect of the infringement of copyright in any work, it shall be lawful for any police officer, not

1. See now the Specific Relief Act, 1963 (47 of 1963)

below the rank of sub-inspector, to seize without any warrant from the Magistrate, all copies of the work, wherever found, which appear to him to be infringing copies of the work and all copies so seized shall, as soon as practicable, be produced before the Magistrate.

(2) Any person having an interest in any copies of a work seized under sub-section (1) may, within fifteen days of such seizure make an application to the Magistrate for such copies being restored to him and the Magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application as he may deem fit.

65. Possession of plates for purpose of making infringing copies.—Any person who knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

66. Disposal of infringing copies or plates for purpose of making infringing copies.—The Court trying any offence under this Act may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for the purpose of making infringing copies, be delivered up to the owner of the copyright.

67. Penalty for making false entries in register, etc., for producing or tendering false entries.—Any person who,—

(a) makes or causes to be made a false entry in the Register of Copyrights kept under this Act, or

(b) makes or causes to be made a writing falsely purporting to be a copy of any entry in such register, or

(c) produces or tenders or causes to be produced or tendered as evidence any such entry or writing, knowing the same to be false,

shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

68. Penalty for making false statements for the purpose of deceiving or influencing any authority or officer.—Any person who,—

(a) with a view to deceiving any authority or officer in the execution of the provisions of this Act, or

(b) with a view to procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder,

makes a false statement or representation knowing the same to be false, shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

69. Offences by companies.—(1) Where any offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for, the conduct of the business of the company, as well as the company shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in this sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) “company” means any body corporate and includes a firm or other association of persons ; and

(b) “director” in relation to a firm means a partner in the firm.

70. Cognizance of offences.—(1) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

CHAPTER XIV

Appeals

71. Appeals against certain orders of Magistrate.—Any person aggrieved by an order made under sub-section (2) of Sec. 64 or Sec. 66 may, within thirty days of the date of such order, appeal to the Court to which appeals from the Court making the order ordinarily lie, and such appellate court may direct that execution of the order be stayed pending disposal of the appeal.

72. Appeals against orders of Registrar of Copyrights and Copyright Board.—(1) Any person aggrieved by any final decision or order of the Registrar of Copyrights may, within three months from the date of the order or decision, appeal to the Copyright Board.

(2) Any person aggrieved by any final decision or order of the Copyright Board, not being a decision or order made in an appeal under sub-section (1), may, within three months from the date of such decision or order, appeal to the High Court within whose jurisdiction the appellant actually and voluntarily resides or carries on business or personally works for gain :

Provided that no such appeal shall lie against a decision of the Copyright Board under Sec. 6.

(3) In calculating the period of three months provided for an appeal under this section, the time taken in granting a certified copy of the order or record of the decision appealed against shall be excluded.

73. Procedure for appeals.—The High Court may make rules consistent with this Act as to the procedure to be followed in respect of appeals made to it under Sec. 72.

CHAPTER XV

Miscellaneous

74. Registrar of Copyrights and Copyright Board to possess certain powers of Civil Courts.—The Registrar of Copyrights and the Copyright Board shall have the powers of a civil court when trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely :

(a) Summoning and enforcing the attendance of any person and examining him on oath ;

(b) requiring the discovery and production of any document ;

(c) receiving evidence on affidavits ;

- (d) issuing commissions for the examination of witnesses or documents ;
- (e) requisitioning any public record or copy thereof from any court or office ;
- (f) any other matter which may be prescribed.

Explanation.—For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of Registrar of Copyrights or the Copyright Board, as the case may be, shall be the limits of the territory of India.

75. Orders for payment of money passed by Registrar of Copyrights and Copyright Board to be executable as a decree.—Every order made by the Registrar of Copyrights or the Copyright Board under this Act for the payment of any money or by the High Court in any appeal against any such order of the Copyright Board shall, on a certificate issued by the Registrar of Copyrights, the Copyright Board or the Registrar of the High Court, as the case may be, be deemed to be decree of a civil court and shall be executable in the same manner as a decree of such court.

76. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

77. Certain persons to be public servants.—Every officer appointed under this Act and every member of the Copyright Board shall be deemed to be a public servant within the meaning of Sec. 21 of the Indian Penal Code, 1860 (45 of 1860).

78. Power to make rules.—(1) The Central Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may make rules to provide for all or any of the following matters, namely :

- (a) The term of office and conditions of service of the Chairman and other members of the Copyright Board ;
- (b) the form of complaints and applications to be made, and the licences to be granted, under this Act ;
- (c) the procedure to be followed in connection with any proceeding before the Registrar of Copyrights ;
- (d) the manner of determining any royalties payable under this Act, and the security to be taken for the payment of such royalties ;
- (e) the form of Register of Copyrights to be kept under this Act and the particulars to be entered therein ;
- (f) the matters in respect of which the Registrar of Copyrights and the Copyright Board shall have powers of a civil court ;
- (g) the fees which may be payable under this Act ;
- (h) the regulation of business of the Copyright Office and of all things by this Act placed under the direction or control of the Registrar of Copyrights.

(3) All rules made under this section shall, as soon as may be after they are made, be laid before both Houses of Parliament for not less than thirty days and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

79. Repeals, savings and transitional provisions.—(1) The Indian Copyright Act, 1914 (3 of 1914) and the Copyright Act of 1911 passed by the Parliament of the United Kingdom as modified in its application to India by the Indian Copyright Act, 1914 are hereby repealed.

(2) Where any person has, before the commencement of this Act, taken any action whereby he has incurred any expenditure or liabilities in connection with the reproduction or performance of any work in a manner which at the time was lawful or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the coming into force of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such action which are subsisting and valuable at the said date, unless the person who, by virtue of this Act, becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by the Copyright Board.

(3) Copyright shall not subsist by virtue of this Act in any work in which copyright did not subsist immediately before the commencement of this Act under any Act repealed by sub-section (1).

(4) Where copyright subsisted in any work immediately before the commencement of this Act, the rights comprising such copyright shall, as from the date of such commencement, be the rights specified in Sec. 14 in relation to the class of works to which such work belongs, and where any new rights are conferred by that section, the owner of such rights shall be,—

(a) in any case where copyright in the work was wholly assigned before the commencement of this Act, the assignee or his successor-in-interest ;

(b) in any other case, the person who was the first owner of the copyright in the work under any Act repealed by sub-section (1) or his legal representatives.

(5) Except as otherwise provided in this Act, where any person is entitled immediately before the commencement of this Act to copyright in any work or any right in such copyright or to an interest in any such right he shall continue to be entitled to such right or interest for the period for which he would have been entitled thereto if this Act had not come into force.

(6) Nothing contained in this Act shall be deemed to render any act done before its commencement an infringement of copyright if that act would not otherwise have constituted such an infringement.

(7) Save as otherwise provided in this section, nothing in this section shall be deemed to affect the application of the General Clauses Act, 1897 (10 of 1897), with respect to the effect of repeals.

Comment

Scope.—The saving clause indicates that the rights and liabilities accrued and incurred under the old Act are not to be affected by the new Act. Where the agreement was entered at a time when the Imperial Copyright Act of 1911 and the Indian Copyright Act, 1914 based on the Act of 1911 were in force, the saving Sec. 79 (5) of the Act of 1957 leaves no room for doubt that the rights of the parties would be governed by the old Act and the position under the old Act is quite clear. The legal term on the date of agreement in view of the provisions of Sec. 5 of the Act of 1914 would be only twenty-five years.¹

1. *Newspapers Ltd. v. Ratna Shanker Prasad*, A. I. R. 1977 All. 356 at pp. 357, 360