



“शिक्षा मानव को बन्धनों से मुक्त करती है और आज के युग में तो लोकतंत्र की भावना का आधार भी है । जन्म तथा अन्य कारणों से उत्पन्न जाति एवं वर्गगत विषमताओं को दूर करते हुए मनुष्य को इन सबसे ऊपर उठाती है ।”

- इन्दिरा गाँधी

"Education is a liberating force, and in our age it is also a democratising force, cutting across the barriers of caste and class, smoothing out inequalities imposed by birth and other circumstances."

- Indira Gandhi



Indira Gandhi
National Open University
School of Law

MIP-105

Copyright and Related Rights

Block

2

ADMINISTRATION OF COPYRIGHT

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BLOCK 2 ADMINISTRATION OF COPYRIGHT

This Block deals with the procedural aspects of copyright protection. This Block consists of four units.

Unit 5 of this course deals with the procedure of registration of copyright wherein issues like mandatoriness of registration, evidentiary value of registration, procedure of registration etc is discussed.

Unit 6 of this course deals with Assignments of Copyright, the form of assignments, joint ownership assignments and case law related to the topic, licenses pertaining to copyright, revocation of assignments, relinquishment of copyrights etc.

Unit 7 of this course relates to Copyright Societies. It discusses topics like Copyright Societies in India, procedure for Registration, functions of Copyright society, registered copyright societies of India etc.

Unit 8 of this Course explains the functions and Constitution of a Copyright board. Topics like powers and procedure of the Copyright Board, jurisdiction of the Board, procedures of the board etc are dealt with.

MINISTRY OF AGRICULTURE
GOVERNMENT

1. The Department of Agriculture has the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the above-mentioned subject.

2. In reply to inform you that the same has been forwarded to the appropriate authorities for their consideration and that you will be advised of the result as soon as it is available.

3. It is requested that you continue to keep the Department advised of any further developments in the matter.

4. Very truly yours,
Director of Agriculture

5. The Department of Agriculture has the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the above-mentioned subject.

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UNIT 5 REGISTRATION OF COPYRIGHT

Structure

- 5.1 Introduction
 - 5.2 Objectives
 - 5.3 Evolution of Formality Free Copyright Protection
 - 5.4 Copyright Registration in India
 - 5.5 Mandatoriness of Registration
 - 5.6 Evidentiary Value of Registration
 - 5.7 Copyright Office and the Registrar of Copyright
 - 5.8 Copyright Register
 - 5.9 Procedure for Registration
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 - 5.11 Correction of Entries in the Register
 - 5.12 Summary
 - 5.13 Terminal Questions
 - 5.14 Answers and Hints
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- Annexure

5.1 INTRODUCTION

In this unit we will look into the procedural aspects of copyright protection.

Copyright is one intellectual property right for enjoying for which one does not have to do any formalities. It accrues to the creator of an original work without any procedures. One reason for this is that perhaps copyright is the largest intellectual property right. World over billions of new original works are being created every year. Works are created by children and adults. It is well nigh impossible to have them all put to a registration and grant procedure for enjoying the right. That is why the Berne Convention for the Protection of Literary and Artistic Works of 1886, the first major international treaty on protection of copyright did not prescribe any procedure for grant of the right. The Convention include within the meaning of the expression 'literary and artistic works', "every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatic-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science." (Article 2). It is well nigh impossible to put all these works through a registration procedure.

5.2 OBJECTIVES

After reading this unit, you should be able to:

- describe the registration procedures of copyright in India.
- look into various aspects of registration such as validity and use of registration, detailed procedures for registration, administrative set-ups for registration and cases relating to registration.

5.3 EVOLUTION OF FORMALITY FREE COPYRIGHT PROTECTION

This formality free approach towards copyright protection is the result of a long historical process. Earlier, that is before the conclusion of the Berne Convention in 1886, different countries followed different rules and procedures for according copyright protection to works. Therefore,, authors had to comply with the formalities and procedures on a country-wise basis to get copyright protection in different jurisdictions, as it is the case with other intellectual property rights like patents and designs even now. Initially, in the Berne Convention, the principle adopted was that authors need to comply with the formalities in the country of origin only. This too proved a difficult task not only because of the volume of works but also because the procedures were different in different countries and there was no unanimity among countries in those procedures. Consequently, in 1971 the Berne convention was amended to provide for formality free protection. This amendment is known as the Paris Act. The new Article 5(2) reads as under:

The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

This made enjoyment of copyright protection formality free. Most countries of the world follow this practice of not having any registration procedure.

Apart from the Berne Convention, there is another international Convention on copyright. This is the Universal Copyright Convention administered by the United Nations Educational, Scientific and cultural Organisation. This treaty was finalised in 1952 in Geneva. This provides in its Article III:

- 1) *Any Contracting State which, under its domestic law, requires as a condition of copyright, compliance with formalities such as deposit, registration, notice, notarial certificates, payment of fees or manufacture or publication in that Contracting State, shall regard these requirements as satisfied with respect to all works protected in accordance with this Convention and first published outside its territory and the author of which is not one of its nationals, if from the time of the first publication all the copies of the work published with the authority of the author or other copyright proprietor bear the symbol © accompanied by the name of the copyright proprietor and the year of first publication placed in such manner and location as to give reasonable notice of claim of copyright.*

- 2) *The provisions of paragraph 1 shall not preclude any Contracting State from requiring formalities or other conditions for the acquisition and enjoyment of copyright in respect of works first published in its territory or works of its nationals wherever published.*
- 3) *The provisions of paragraph 1 shall not preclude any Contracting State from providing that a person seeking judicial relief must, in bringing the action, comply with procedural requirements, such as that the complainant must appear through domestic counsel or that the complainant must deposit with the court or an administrative office, or both, a copy of the work involved in the litigation; provided that failure to comply with such requirements shall not affect the validity of the copyright, nor shall any such requirement be imposed upon a national of another Contracting State if such requirement is not imposed on nationals of the State in which protection is claimed.*
- 4) *In each Contracting State there shall be legal means of protecting without formalities the unpublished works of nationals of other Contracting States.*

The Universal Copyright Convention, in the matter of registration has taken a middle path between formality free protection and protection with formalities. It says that the formality will be treated as complied if one claims copyright in a published work with a notice. It also provides that foreigners should have protection without formalities.

Countries with copyright registration

There are, however certain countries who do have a registration procedure. Keeping in view their obligations under the Berne convention, they have not made registration compulsory for enjoyment of the rights but made it a voluntary and optional one in most cases. According to these countries,

“registration facilitates the exercise of copyright and related rights, by providing right owners with a simple and effective means to clearly establish authorship and/or ownership of rights. National registration and recordation systems often hold valuable information on creativity, both from a legal and economic standpoint. As an office of record, a copyright registry can make available certificates of registration, certified copies of registry documents that provide, with varying legal effect, important information on a work or other subject matter, its author or, through a documented chain of transfer, its present ownership. Registration can also help to delimit the public domain, and consequently facilitate access to creative content for which no authorization from the right owner is needed. The information contained in national registries is not only valuable in legal and economic relations but may also serve the public interest by providing a source of national statistics on creativity and culture. Finally, national registries may constitute a repository of cultural and historical heritage, as they represent collections of national creativity, including works and other creative contributions.”

According to a Survey carried out by the World Intellectual Property Organisation 48 countries have some kind of voluntary registration for copyrighted works.

The following countries have some kind of registration and documentation of copyright, as per information collected by the World Intellectual Property Organisation (WIPO) as part of a survey:

Albania	Kenya
Algeria	Korea
Argentina	Kyrgyz Republic
Armenia	Madagascar
Bahrain	Mauritius
Belarus	Mexico
Belize	Mali
Bhutan	Moldova
Brazil	Mongolia
Bulgaria	Montenegro
Burundi	Namibia
Chile	Nepal
China	Oman
Colombia	Pakistan
Costa Rica	Peru
Croatia	Romania
Czech Republic	Russia
Ecuador	Serbia
Ghana	Slovenia
Guatemala	South Africa
Republic of Guinea	Spain
Hungary	Thailand
Indonesia	Tunisia
Italy	Ukraine
Jamaica	USA
Japan	

Other countries who have voluntary registration facility available for copyright are:

Canada
France
India
Turkey

US Law

The United States of America had been earlier following the path of formality bound protection until 1978. Formality requirement was fulfilled by the act of publication with a notice of copyright or by registration at the Copyright Office. While the above procedure was in operation, the USA could not join the Berne Convention for the Protection of Literary and Artistic Works. As per the new statute, registration is not compulsory for getting protection for copyright in the States. However, registration is still available in the USA for copyrighted works. Registration has certain advantages in the matter of compensation and damages

when it comes to a case of infringement. The copyright Office of the USA recommends copyright registration since it enables a copyright owner to have the facts of their copyright on the public record and have a certificate of registration. Further, registered works may be eligible for statutory damages and attorney's fees in successful litigation. Finally, if registration occurs within five years of publication, it is considered *prima facie* evidence in a court of law.

Self Assessment Questions

(Spend 3 minutes each)

1) What are the different arguments for registration of copyright?

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2) What are the provisions in the Universal Copyright Convention regarding formalities for securing copyright protection?

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3) Briefly describe the evolution of formality free protection for copyright in the Berne Convention.

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5.4 COPYRIGHT REGISTRATION IN INDIA

India did not have any kind of registration for copyright protection in the earlier Copyright Act of 1914. Earlier, the British Copyright Act of 1862 had provided clearly that no proprietor of any copyright shall be entitled to the benefit of that Act until the sake had been registered, thus making copyright registration mandatory for enjoyment of the rights. Later, the Imperial Copyright Act of 1911 repealed that provision, thus making registration not necessary. The Indian Copyright Act of 1914 was based on the British Act of 1911. In that Act there was no provision for registration of copyright. It was, however, introduced in the present copyright Act of 1957 on the following ground (as stated in the Statement of Objects and Reasons):

Under the existing law, there is no provision for the registration of copyright. Such registration could furnish useful information to interested members of the public.

The present Copyright Act of 1957, however, provided for a Copyright Office and a Copyright Register.

5.5 MANDATORINESS OF REGISTRATION

The introduction of a new Section for registration in the Copyright Act in 1957 initially raised doubts about the mandatoriness of the provision, although as stated in the Statement of Objects and Reasons, the purpose was only to provide useful information to interested members of the public. Further, the expression "may" in Section 45 indicates permissiveness and not mandatoriness. This led to a number of cases in various high courts.

In the State of Hyderabad, there was a separate law for copyright, namely, the Hyderabad Copyright Act (2 of 1334F). Section 3 of that Act had provided that an original composition or compilation is only protected if the book is registered according to the provisions of that Act. This was upheld in the case of *V. Errabhadrarao v. B. N. Sarma*, (AIR 1960 Andh Pra 415). That Act was applicable only to the then state of Hyderabad and to no other part of the country. This Act lost its validity, even in Hyderabad state, with the merger of Hyderabad state with Indian Union and the coming into force of the Copyright Act 1957. However, in a number of cases, even after that, many counsels raised the argument of the provision for registration in the Hyderabad Act and the Errabhadrarao case to argue for mandatoriness of registration.

One of the earliest cases to discuss the issue of mandatoriness of registration for copyright protection in India under the Copyright Act 1957 was in the Madhya Pradesh High Court in the case of *Mishra Bandhu Karyalaya v. Shivratan Lal Koshal* (AIR 1970, M.P. 261). The dispute in this case was over the publishing agreement dated 13 March 1952 between the parties in respect of a textbook on Arithmetic entitled 'Saral Middle School Ank Ganet'. The issue of registration came up when the advocate of Mishra Bandhu Karyalaya challenged the copyright of the author and/or his assignee on the ground that the book had not been registered with the Copyright Office. Taking up the position of copyright according to the provisions of the Indian Copyright Act, 1914, and under the new Copyright Act, 1957, the court observed that the only change that is relevant for the case in question was that under the old law, the non-registration of the copyright had not the effect of entailing the dismissal of an action in respect of infringement of copyright commenced when the Act of 1914 was in force.

The Indian Copyright Act, 1914 had nowhere made any provision for the registration of copyrights. Under the Copyright Act, 1957, it appears that under Sections 13 and 45, the registration of book with the Registrar of Copyrights, is a condition for acquiring copyright with respect to it. A plain reading of the several provisions of the Act, leaves no doubt in our minds that a copyright in a book now is only secured if it is an original compilation and has been duly registered according to the provisions of the 1957 Act. Once it is so registered, the author is deemed to acquire property rights in the book. The right arising from the registration of the

book can be the subject-matter of civil or criminal remedy, so that, without it the author can have no rights, nor remedies in spite of the fact that his work is an original one. We are, however, concerned with the state of law prevalent under the Imperial Copyright Act, 1911, enacted by the British Parliament, subject to such modifications as stated in the Indian Copyright Act, 1914. It is necessary for us to deal with this aspect because the learned counsel for the appellants, during the course of his arguments, obliquely suggested that the copyright of the book in question "Saral Middle School Ank Ganeet" not being registered, neither the author nor his assignee had any kind of right or remedy. The whole object of this discussion is to remove that misconception.

This view was not shared by other High Courts of India and there have been a number of cases where other High Courts rules that registration is not mandatory for copyright protection.

In 1972, a case came up in the Calcutta High Court regarding the copyright in the works of a religious preacher. This was the case of *Satsang and Another v. Kiron Chandra Mukhopadhyaya* [AIR 1972 Cal 533] for an interlocutory injunction restraining the defendants. Kiron Chandra Mukhopadhava end Kumud Bandhu Bal and others from making any further reproduction or printing or publication of the works entitled "Satyanusaran" "Chhande-Surey-Sabar-Jibon" and "Path-O-Patheo" or any of them or making any other or further copies or colourable imitation of the publications of the works entitled "Satva-nusaran" "Anusruti" and "Alochona Prasangey" and from selling or disposing of by way of trade or offering for sale any copies of the said works or any other copies or colourable imitations of the said publications. One of the arguments advanced by the defendants was that since no registration was done as per the copyright Act, 1957, there cannot be any copyright. For this they relied on the Madhya Pradesh High Court judgement and also the Hyderabad case. After listing the argument of the plaintiff's counsel that neither Section 13 nor Section 45 of the Copyright Act mentions that registration is compulsory, nor there is any section in 1957 Act, which provides, that unless there is registration the author of any works cannot bring an action for infringement of copyright, the court observed:

A plain reading of several sections of the Copyright Act, 1957 leaves no doubt in my mind that the (above) contention ... is correct. Under the Copyright Act 1957 registration is not compulsory. There is no section in the Copyright Act 1957, to the effect that the author can have no right or remedy un-less the work is registered. Section 13 of the Copyright Act provides that copy-right shall subsist throughout India in certain classes of works which are enumerated in the section. Section 45 of the Act provides that 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. This section does not say that registration is compulsory.

It restated the position again as under:

In my view, the observations of the learned Judges in the Madhya Pradesh case to the effect; "under Copyright Act, 1957, unless copyright is

registered the author will not acquire property right in the book and without it the author can have no rights and remedies are observations in the nature of 'obiter dictum'. I have already expressed my view in the matter. With respect to the learned Judges, I do not find any such provision in the Copyright Act, 1957.

Another case that came up in the Madras High Court following the Madhya Pradesh High Court order where the issue was discussed was the case of *A. Sundarasan v. A.C. Thirulokchandar & Anr.* [(1973) 2 MLJ 290]. In this case, the main issue itself was the mandatoriness of registration for getting copyright protection. S. Sundarasan, the plaintiff, had written and published a story titled 'Nazhuval'. The defendants were making a film, 'Iru Malargal' based on the story. The plaintiff sought permanent injunction against exploiting the film since it is copyright infringement of his story. The defendants plea was that the suit is not maintainable for non-registration of the plaintiff's copyright in the story 'nazhuval'.

The court observed

Admittedly, the plaintiff, whose story was published in the issue of the 'Ananda Vikatan' dated 19th May, 1963, has not registered his copyright therein. The contention of the second defendant is that although the plaintiff might have acquired a copyright in the story, he is not entitled to enforce the same without registration thereof. I would have dismissed this contention without serious notice but for the observations made by a Division Bench of the Madhya Pradesh High Court in support of this contention.

After quoting the Madhya Pradesh High Court's observations, the Madras High court observed:

The last sentence shows that the previous observations quoted above were entirely in the nature of obiter. I feel constrained, with great respect, to disagree with the obiter dicta of their Lordships and to hold that both under the Copyright Act, 1957 and under the Copyright Act of 1914, the legal position is the same, viz., that regardless of registration, the author acquires a copyright in his work, and non-registration thereof does not liable the owner of the copyright from bringing an infringement action. I shall presently show with reference to the several provisions of the Copyright Act, 1957, that registration is not a pre-requisite to the acquisition of a copyright.

Although in Chapter II of the Act, a machinery has been provided for registration of copyrights, there is no provision therein which requires compulsory registration of copyrights. Neither Chapter XI, which deals with infringement of copyright, nor Chapter XII, which deals with civil remedies, provides that non-registration of a copyright shall have any penal consequences.

After referring to Sections 51 and 55 of the Copyright Act, 1957, the court stated:

There is nothing in this section to indicate that in the matter of infringement of copyrights, the Legislature drew any distinction between copyrights, which are registered, and those which are not. On the contrary, the scheme of the Act shows that an author acquires a copyright the moment he produces a literary work and

it is open to him as the owner of the copyright to effect an assignment thereof, whether he has registered it or not. Section 55, which occurs under the Chapter entitled 'civil remedies', provides that where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by the 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. This section does not insist that the owner of the copyright ought to have registered this copyright before he institutes a suit in case of an infringement.

Learned Counsel for the second defendant would, however, contend that the provision for registration of copyrights would be rendered meaningless if non-registration should have no penal consequences. I am unable to agree. Take, for instance, the Indian Registration Act, which makes a distinction between compulsorily registrable documents and optionally registrable documents. Where a document is optionally registrable and a party does not choose to have it registered, it can certainly not be contended that the optionally registrable document is void for non-registration. Registration in such cases confers upon the party certain advantages in the matter of proof. In fact, Section 48 of the Copyright Act, provides that the Register of Copyrights shall be prima facie evidence of the particulars entered therein, and shall be admissible in evidence in all Courts without further proof or production of the original. If the Legislature had intended that registration shall be compulsory, one would expect the language of Section 48 to be radically different from what it is; it ought to have said that without registration, no valid copyright can be claimed or enforced.

After quoting Section 44 of the new Act, the Bench ordered:

The contrast between the word "shall" in the earlier part of the section and the word "may" in the later part makes it manifest that although the maintenance of the Copyright Register is compulsory, the entry therein of the names or titles of works and the names and addresses of authors, publishers and owners of copyright is left to the option of the owner of the copyright. This is emphasised by Section 45, which says that the author of 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. It is found from *Tuck v. Priester L.R.* 19 Q.B.D. 48, that the English Copyright Act of 1862 expressly provided that no proprietor of any such copyright shall be entitled to the benefit of that Act until such registration. But this provision has been repealed by the English Copyright Act of 1911, with the result that even in England, registration has ceased to be a pre-condition to the acquisition of a copyright. It is important to observe that the Indian Copyright Act of 1957, contains no provision similar to the one contained in the English Copyright Act of 1862. In the absence of such a provision, I hold that registration of copyrights is not compulsory under the Act and that non-registration does not disentitle the plaintiff to sue for the reliefs he has prayed for in the plaint. This issue is consequently answered against the second defendant.

The order of the Single Bench was challenged and the Division Bench in its judgement upheld the view of the single Bench that registration is not a condition precedent to the subsistence of copyright. It said, in *Manojah Cine Productions v. Sundaresan, A* [A.I.R. 1976 Mad.22]:

It is clear from the provisions of Sections 13, 14, 45 and 48 that the only effect of registration is ... that it shall be prima facie evidence of particulars entered in the register. There is no indication in any provisions of the Act, read individually or as a whole to suggest that registration is a condition precedent to acquiring copyright.

Section 45 is an enabling section. Anyone who is so minded, may apply for registration... Section 45 does not qualify Section 13 or Section 14 or even Section 15 of the Act ... Registration is but optional and provides a rule of evidence.

There were cases in other High Courts in the 1970s wherein also judges did not agree with the views of the Madhya Pradesh High Court on the compulsoriness of registration for copyright protection.

The Kerala High Court considered the issue of the essentiality of registration for claiming copyright in the case of *Kumari Kanaka v. Sundararajan* [1972 Kerala Law Reporter 536] and gave the following reasoning for considering not compulsory:

The reasoning, that, since there was no provision for registration under the Act of 1914, the right existed sans registration, and since there is provision for registration under the Act of 1957, the right flows only from registration does not appear to be very happy ... With due respect to the learned judges who constituted the Division Bench of the Madhya Pradesh High Court, it is difficult to agree with this reasoning, and Chapters 2 and 10 of the Act of 1957 do not contain any provision which indicates that registration is compulsory, nor is there anything which indicates that copyright can exist, or an action for infringement thereof can brought, only if there is registration.

In the case *Firoz v. State of Kerala* [AIR 2006 Ker 279] the Kerala High Court again held that It is settled position that no registration is required to claim copyright under the Copyright Act and non-registration under the Copyright Act does not bar action for infringement.

The Patna High Court considered the issue in the *Radha Kishna Sinha and Anr. v The State of Bihar and Anr.* [1979 CriLJ 757] on 21 August, 1978. In this case the petitioner's argument was that since the State of Bihar had not registered the copyright under section 45 of the Act, no action could be taken under section 60. He had relied on the case of *V. Errabhadrarao and Mishra Bandhu Karyalaya* Comparing the Errabhadrarao case, the court observed:

Section 45 of the Act, no doubt, provides for registration of copyright, and Section 63 makes infringement of copyright an offence punishable with imprisonment which may extend to one year, or with fine, or with both. Section 45 is, however, only an enabling section. Anyone who is so minded, may apply for registration. Section 45 does not go further. It nowhere lays down like the Hyderabad Copyright Act that -the original composition or compilation is only protected if it is registered

After quoting the Madhya Pradesh order, the Bench observed:

The aforesaid view expressed by the Madhya Pradesh High Court, has however, been dissented from by the Calcutta High Court in the case of

Satsang v. Kiron Chandra Mukhopadhyay. It has been said in the said Calcutta High Court decision that the observations of the learned Judges of the Madhya Pradesh High Court in the case of *M/s. Mishra Bandhu Karyalaya* (AIR 1970 Madh Pra 261) (supra), to the effect that under the Act, unless copyright is registered, the author will not acquire property right in the book and without it the author can have no rights and remedies, are in the nature of obiter dictum. It has further been observed therein that a plain reading of several sections of the Act leaves no doubt that there is no section in the Act to the effect that registration of copyright is compulsory or the author can have no right or remedy unless the work was registered, Section 13 of the Act provides that copyright shall subsist throughout India in certain classes of works which are enumerated in the section. Section 45 of the, Act provides that 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 t the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights. This section does not say that registration is compulsory.

The case of *V. Errabhadrarao* (supra), decided by the Andhra Pradesh High Court was also distinguished by the Calcutta High Court on the ground that it had dealt with the Hyderabad Copyright Act which is a different statute in which there was a clear provision that copyright in a book or drawing is only secured if it is an original compilation and has been duly registered according to the provisions of that Act. The aforesaid view taken by the Calcutta High Court has been reiterated by a Division Bench of the Madras High Court in the case of *Manojoh Cine Productions v. A. Sundaresan* AIR 1976 Mad 22 in which also the view taken by the Madhya Pradesh High Court in the ease of *M/s. Mishra Bandhu Karyalaya* (supra), has been dissented from on the ground that the same is not justified by the language of Sections 13 and 45 of the Act, and the reasonings and the views expressed by the Calcutta High Court in the case of *Satsang* (suprja) have been relied on and followed.

If I may say so, I am in respectful agreement with the reasoning and the views expressed by the Calcutta High Court in the case of *Satsang* (supra) and by the Madras High Court in the case of *M/s. Manojah Cine Productions* AIR 1976 Mad 22, (supra), and, for the same reasons, I am of the view that registration of copyright under the Act is not compulsory, nor it is sine qua non or a condition precedent to the subsistence of copyright or acquisition of ownership thereof or relief for infraction of copyright.

The above position of the various High Courts, except that of the Madhya Pradesh High Court were reiterated by other High courts also. The Cuttack High Court considered the issue of the necessity of registration for acquiring copyright in the case of *Laxman Misra v. Mathani* [Indian Law Reporter, 1976, Cuttack]. The court held the following view:

I am unable to agree with the view expressed by their Lordships of Madhya Pradesh High Court and would hold that to acquire a copyright registration is not essential. It is only optional which confers certain

benefits on an author or a publisher who has registered the copyright. But non-registration does not deprive him to bring an action, both criminal and civil, for infringement of the copyright.

Almost around the same time another case came up in the Gujarat High Court where also the issue of the essentiality of registration of copyright for claiming the rights came up. The Gujarat High Court also expressed views similar to those of the Cuttack High Court in the case *Deepak Printers v. Stationary Mart* [1976, Gujarat Law Reporter 338]. It said:

Reliance has been placed ... on the provisions contained in Sections 13 and 45 of the copyright Act. On a perusal of these provisions it is evident that neither Section 13 nor section 45 enjoins that copyright must be compulsorily registered. The view taken by the Madhya Pradesh High Court is based on some misconceptions ... and is merely an obiter dicta.

A little later a case came before the Allahabad High Court regarding copyright infringement in which the defendant took the line that since the work was not registered in the Copyright Office, the suit was not maintainable. This was in the case of *Nav Sahitya Prakash v. Anad Kumar* [AIR 1981 All]. The Bench went into a detailed analysis of the provisions and the earlier judgements of other High Courts including the Madhya Pradesh High Court.

The argument was that since Ram Naresh Tripathi did not get his copyright registered, the plaintiffs were not entitled to enforce the same. Reliance had been placed on Section 44 of the Indian Copyright Act ... in support of this argument. ...

The submission was that a copyright in a book was accrued only if it had been duly registered according to the provisions of the said Act. If the copyright was not so registered, the author or his heirs or legal representatives did not acquire any right enforceable in the court of law.

For the above argument, the learned counsel relied on a decision of the Madhya Pradesh High Court reported in *Mishra Bandhu Karyalaya v. S. Koshel*. AIR 1970 Madh Pra 261. ...

For a proper appreciation of the point it may be useful to refer to the relevant provisions of the Act. Before the enactment of the present Act, the existing law relating to copyright was contained in the Copyright Act, 1911 of the United Kingdom as modified by the Indian Copyright Act, 1914. The legislature felt that apart from the fact that the United Kingdom Act did not fit in with the changed constitutional status of India, it was necessary to enact a self contained Act on the subject of Copyright in the light of growing public consciousness of rights, consequently, the present act was enacted and the whole scheme of the Act was changed .

The English Copyright Act of 1862 provided expressly that no proprietor of any such copyright shall be entitled to the benefit of that Act until the same had been registered. This provision was, however, repealed by the English Copyright Act, 1911, with the result that even in England registration was not required. In the Indian Copyright Act of 1914, there was no provision for the registration. Section 44 of the present Act was, however, provided for registration of copyright. The object behind this section was:

“Under the existing law there is no provision for the registration of copyright. Such registration could furnish useful information to interested members of public....”

The object given shows that the Intention behind the enactment of Section 44 was not to make registration compulsory or mandatory for the purpose of enforcement of copyright. It provided an option. It was, therefore, (not) obligatory for an author to get the copyright registered under Section 44 of the said Act for the purpose of acquiring rights conferred by it. The registration only raised a presumption that the person shown is the actual author. The presumption was not conclusive but where contrary evidence was not forth coming, it was not necessary to render further proof to show that the copyright vested in the person mentioned in the register. Section 48 of the Copyright Act provides that the registration, of Copyright Act shall be prima facie evidence of the particulars entered therein and shall be admissible in evidence in all courts without further proof or production of the original. If the legislature intended to make the requirement, of registration mandatory, the language of Section 44 would have been different. It could be on the lines of Section 69 of the Partnership Act. There is no provision in the Act depriving an author of the rights conferred by this Act on account of non-registration of the copyright.

The use of word “may” in Section 45 is also helpful for interpreting Sections 44 and 45. In ordinary usage “may” is permissive and is not generally held to be mandatory unless the context requires to the contrary. In determining the meaning of any word, the first question to ask always is what is natural and ordinary meaning of the word. It is only when that meaning leads to some other result which cannot reasonably be supported to have been, the intention of the legislature that it is proper to look for some other possible meaning of the word. In the instant case, the context does not require to give a meaning different than the ordinary.

At this place reference may also be made to Section 13 of the Copyright Act which deals with “works in which copyright subsists.” Section 17 lays down that subject to the provisions of this Act, the author of a work shall be the first owner of the copyright. There is nothing in either of these two sections which provided for the registration of copyright as a condition precedent for acquiring a right in it. The common law right of property in literary or intellectual production exist independently of the statute. It belongs essentially to the owner. He has the sole and exclusive right over it. However, Sections 13 and 17 which confer and recognise the copyright do not lay down any condition for the infringement of which registration is mandatory.

Chapter XI deals with infringement of copyright. In this respect, reference may be made to Section 51 of the Act which lists the various grounds on which copyright in a work shall be deemed to be infringed. Section 55 provides the remedies for infringement of copyright. Reading these sections together, one would find that there is nothing in these provisions which makes registration compulsory for availing the remedy provided for.

The view taken by me is supported by the decision given in *A. Sundarasan v. A. C. Thirulokchandar*, (1973) 2 Mad LJ 290. In this case, the Madras High Court held that both under the Copyright Act of 1957 and the Copyright Act. 1914,

regardless of registration an author acquires a copyright in his work and non-registration thereof does not disable the owner of a copyright for bringing an infringement action. Registration is not a prerequisite for acquisition of a copyright.

In *Satsang v. Kiron Chandra Mukhopadhyay* AIR 1972 Cal 533, the controversy raised was the same as before me. In that case also the Calcutta High Court held that there was no section in the Copyright Act of 1957 to the effect that the author could have no right or remedy unless his work was registered. It held, that a person had an inherent copyright in a general composition without the necessity of its registration.

Great reliance was placed by the learned counsel for the appellants on a decision of the Madhya Pradesh High Court given in *Mishra Bandhu Karyalaya v. S. Koshel* (AIR 1970 Madh Pra 261) (supra). There is no doubt that the submission of the appellants' counsel is supported by the said decision. But with great respect to the learned Judges, I find it difficult to subscribe to the view taken therein. To me, it appears difficult to hold that an author will have no right or remedy unless the work was registered. The provisions of the Copyright Act, 1957 do not call for such an interpretation.

This case has been referred in both the decisions of Madras and Calcutta High Courts. Both the Courts could not agree with the view taken therein. They were of the opinion that the observations made in the M. P. case laying down that the requirements of registration was mandatory as obiter. I am in respectful agreement with the said view. The Madhya Pradesh High Court was not called upon to go into the controversy of registration. The actual decision turned on another fact.

Reliance had also been placed on another decision reported in *V. Errabhadrao v. B. N. Sarma*, AIR 1960 Andh Pra 415. This was a suit under Hyderabad Copyright Act (2 of 1934). In the Hyderabad Act, there was a clear provision that a copyright in a book was only secured if an original compilation had been duly registered according to the provisions of the Act. Since there is no such provision in the Copyright Act of 1957, this decision is of no assistance to us. For the view taken by me in this Court that registration was not a prerequisite for acquiring copyright. Reference has also been made to another decision of the Kerala High Court found reported in *Kumari Kanaka v. Sundaraian*, 1972 Ker LR 536. The view taken is that, "under the Act the registration of a work is not necessary. No section in the Act enacts that the author can have no right or remedy unless his work is registered."

It, thus, is an established law position that in India registration of copyright is not compulsory. The registration data is not absolute proof of the ownership of copyright in a work. It is only a prima facie evidence, but that is a rebuttable evidence.

Self Assessment Questions

(Spend 3 minutes each)

4) What is the provision in the Copyright Act regarding registration?

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5) What is the rationale for the Madhya Pradesh High Court considering registration as essential for copyright protection?

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6) What are the arguments against mandatoriness of copyright registration in India?

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5.6 EVIDENTIARY VALUE OF REGISTRATION

Registration is not essential for enjoying copyright in a work. It is not a condition precedent to the subsistence of copyright in a work. The entries in the Copyright Register, however, are prima facie evidence of the particulars entered therein as per Section 48. Certified copy of the entries in the Copyright Register with seal of the Copyright Office is prima facie evidence of the particulars entered in the Register. Rule 20 of the Copyright Rules, 1958 entitles any person to have copies of the Register of Copyrights or Indexes on payment of a specified fee. It reads as under;

- 1) *Any person shall be entitled to take copies of, or make extracts from, the Register of Copyrights or Indexes on payment of the fee specified in the Second Schedule subject to such supervision as the Registrar of Copyrights may arrange.*
- 2) *The Registrar of Copyrights shall, on an application made in that behalf and on payment of the fee specified in the Second Schedule, furnish a certified copy of any entries made in the Register of Copyrights and Indexes thereof.*

The only effect of registration is this *prima facie* evidence value. This, however, is rebuttable evidence. It is always open to parties to adduce evidence at a trial to conclusively prove when it is subject of an issue. In the case of **Camlin Pvt Ltd. v. National Pencil Industries**, [AIR 1986 Delhi 444] the Delhi High Court held the certificates under the Copyright Act only prima facie, show that the particulars mentioned in the certificate are entered, in the copyright register I am of the view that the mere fact that something is entered in the Copyright Register, does not as, a matter of law establish that what. is registered is in fact and in law copyrightable subject matter. This is so because, the sine qua non to the existence of copyright, is the expenditure of skill and labour on any work which originated

from its author and unless the original work, on which skill and labour has been expended by its author is produced in Court to prima facie show that the work has originated from an author, it cannot be said that there is copyright in any work.

However, if the registration is done wrongly, then the Copyright Board can expunge the same. This happened in the case *HMT Ltd. v. Girmar Knitwear* [1994 IPLR 217 Copyright Board]. In this case, the plaintiffs were the registered proprietors of the trademark HMT written in an artistic style since 1965. They had been extensively using the same also. The defendants, however, registered an identical logo as their copyrighted work in 1981. They started using the same in their hosiery products. The Copyright Board ordered expunging of the entries in the Copyright Register on the ground that the trademarked logo belonged to another party who had been using the same prior to the registrant.

Self Assessment Questions

(Spend 3 minutes each)

1) What is the value of copyright registration in a case on copyright infringement?

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2) Does registration give any extra rights to the registrant?

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5.7 COPYRIGHT OFFICE AND THE REGISTRAR OF COPYRIGHT

Sections 9 and 10 of the Copyright Act provide for the establishment of a Copyright Office under a Registrar of copyright.

For administration of certain provisions of the Copyright Act, 1957, the Copyright Office has been created. This Office is under the immediate control of the Registrar of copyright. He is to act under the superintendence and direction of the Central Government. He will be assisted by Deputy and Assistant Registrars as may be decided by the Central Government.

No specific qualifications have been laid down for the appointment as Registrar. The Act says only that the Registrar shall be appointed by the Central Government. Normally, it is the head of the Copyright Division in the Department of Higher Education of the Ministry of Human Resource Development who is appointed as Registrar of copyrights.

There is only one office for entire India. This is located in New Delhi. The office is under the Ministry of Human Resource Development. The address is Copyright Office, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi – 110001

The Registrar of Copyright is not only the head of the Copyright Office, but is also the secretary of the Copyright Board.

The duties of the Registrar include, apart from the registration of works, the administration of the Copyright Office and the functions as Secretary of the Copyright Board, the following:

- Issue of compulsory licences on the orders or directions of the Copyright Board
- Receipt of Returns and Reports from Copyright Societies
- Issue of certified copies of extracts of entries in the Copyright Register
- Publication in the official gazette of notice for relinquishment of copyright of any person
- Correction of entries in the Copyright Register in the following cases:
 - 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.
- Issue of orders banning import into India of infringing copies of works, after holding enquiry as he deems fit

In regard to the banning of the import into India of infringing copies of any work, the Act says that the Registrar of Copyright, on application by the owner of the copyright in any work or by his duly authorised 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 ordered. As part of the procedure for this the Registrar of Copyrights or any person authorised by him in this behalf may enter any ship, dock or premises where any such copies may be found and may examine such copies. All copies to which any order issued by the Registrar in this regard applies shall be deemed to be goods of which the import has been prohibited or restricted 120 [under Section 11 of the Customs Act, 1962], and all the provisions of that Act shall have effect accordingly. It is also 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.

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.

The Registrar of Copyrights possess the powers of a civil court when trying a suit under the Code of Civil Procedure, 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.

An explanation clarifies that for the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Registrar of Copyrights shall be limits of the territory of India.

The Act also provides that orders for payment of money passed by Registrar of Copyrights to be deemed to be a decree of a civil court and shall be executable in the same manner as a decree of such court.

The Registrar of Copyrights is, thus, a quasi judicial authority under the Copyright Act.

Self Assessment Questions

(Spend 3 minutes each)

7) Write a paragraph on the Copyright Office of India.

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8) What are the functions of the Registrar of Copyright?

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9) What are the powers of the Registrar of Copyrights?

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5.8 COPYRIGHT REGISTER

The copyright Register is to be maintained by the Copyright Office. It should contain the names or titles of works and the names and addresses of authors, publishers and owners of copyright and other particulars as may be prescribed. The Register is maintained as per the class and category of works. Rule 15 of the Copyright Rules lays down the form of the Register. It says

The Register of Copyrights shall be kept in six parts as follows :

Part I - Literary works other than computer programmes, tables and compilations including computer data bases and dramatic works.

Part II - Musical works

Part III - Artistic works

Part IV - Cinematograph films

Part V - Sound recordings

Part VI - Computer programmes, tables and compilations including computer data bases.

Index

As per Section 18 of the Copyright Act, the Copyright Office is required to maintain the following indexes arranged alphabetically in the form of cards:

- 1) A general author index
- 2) A general title index
- 3) An author index of works in each language
- 4) A title index of works in each language

The Register as well as the Indexes are open to the public for inspection at any reasonable time. Persons can also obtain certified copies of the entries in the register and index by applying for the same with the prescribed fee.

5.9 PROCEDURE FOR REGISTRATION

The procedure for registration is laid down in Section 45 of the copyright Act, 1957 and Rule 16 of the Copyright Rules, 1958. An application for registration of copyright is to be made in Form IV prescribed in the Rules. The Form requires the following particulars to be furnished by the applicant:

- 1) Name, address and nationality of the applicant
- 2) Nature of the applicant's interest in the copyright of the work
- 3) Class and description of the work
- 4) Title of the work
- 5) Language of the work
- 6) Name, address and nationality of the author and, if the author is deceased, the date of his decease
- 7) Whether work is published or unpublished

- 8) Year and country of first publication and name, address and nationality of the publishers.
- 9) Years and countries of subsequent publications, if any, and names, addresses and nationalities of the publisher.
- 10) Names, address and nationalities of the owners of the various rights comprising the copyright in the work and the extent of rights held by each, together with particulars of assignment and licences, if any.
- 11) Names, addresses and nationalities of their persons, if any, authorized to assign or license the rights comprising the copyright.
- 12) If the work is an "artistic work", the location of the original work, including name, address and nationality of the person in possession of the work. (In the case of an architectural work, the year of completion of the work should also be shown).
- 13) If the work is an 'artistic work' which is used or is capable of being used in relation to any goods, the application shall include a certificate from the Registrar of Trademarks in terms of the proviso to sub-section (1) of Section 45 of the Copyright Act, 1957.

For literary, dramatic, musical and artistic works, the Rules ask for the following additional information:

- 1) Is the work to be registered—
 - a) an original work ?
 - b) a translation of a work in the public domain ?
 - c) a translation of a work in which copyright subsists ?
 - d) an adaptation of a work in the public domain ?
 - e) an adaptation of a work in which copyright subsists ?
- 2) If the work is a translation or adaptation of a work in which copyright subsists:
 - a) Title of the original work.
 - b) Language of the original work.
 - c) Name, address and nationality of the author of the original work and, if the author is deceased, the date of his decease.
 - d) Name, address and nationality of the publisher, if any, of the original work.
 - e) Particulars of the authorisation for a translation or adaptation including the name, address and nationality of the party authorising.

Each and every column of the Statement of Particulars and Statement of Further Particulars should be replied specifically. Separate application is to be made for each work. You cannot combine the application for registration of two or more works. The application should be signed by the applicant or the advocate in whose favour a *Vakaltnama* or Power of Attorney has been executed. The Power of Attorney signed by the party and accepted by the advocate should also be enclosed. Each and every column of the Statement of Particulars and Statement of Further Particulars should be replied specifically.

The application is to be accompanied by the prescribed fee. The following are the fee prescribed for various classes of works:

Literary, dramatic, musical or artistic work	Rs. 50 per work
Literary or artistic work which is used or is capable of being used in relation to any goods	Rs. 400 per work
Cinematograph film	Rs. 600 per work
Sound Recording	Rs. 400 per work

The application is to be submitted in triplicate. This can be submitted in person at the Copyright Office or sent by post or courier. Presently, e-filing has also been introduced by the Copyright Office.

The following persons can submit the application for registration of a work: author, publisher, owner, any other person interested in the copyright in any work. As per the Copyright Act, author includes producers of cinematograph films and sound recordings and in case of computer-generated work, the person who causes the work to be created.

Rule 16 of the Copyright Rules, 1958 prescribed the details of the application for registration of copyright. As per this,

- 1) *Every application for registration of copyright shall be made in accordance with Form IV and every application for registration of changes in the particulars of copyright entered in the Register of Copyright shall be made in accordance with Form V.*
- 2) *Every such application shall be in respect of one work only, shall be made in triplicate and shall be accompanied by the fee specified in the Second Schedule in this behalf.*
- 3) *The person applying for registration shall give notice of his application to every person who claims or has any interest in the subject-matter of the copyright or disputes the rights of the applicant to it.*
- 4) *If no objection to such registration is received by the Registrar of Copyrights within thirty days of the receipt of the application by him, he shall, if satisfied about the correctness of the particulars given in the application, enter such particulars in the Register of Copyrights.*
- 5) *If the Registrar of Copyrights receives any objections for such registration within the time specified in sub-rule (4), or, if he is not satisfied about the correctness of the particulars given in the application, he may, after holding such inquiry as he deems fit, enter such particulars of the work in the Register of Copyrights as he considers proper.*
- 6) *The Registrar of Copyrights shall, as soon as may be, send, wherever practicable, a copy of the entries made in the Register of Copyrights to the parties concerned.*

विशेषज्ञ

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पाठ्यक्रम सम्पादक

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सर्वाधिकार सुरक्षित। इस कार्य का कोई भी अंश इन्दिरा गांधी राष्ट्रीय मुक्त विश्वविद्यालय की लिखित अनुमति के बिना किसी भी रूप में मिनियोग्राफ (मुद्रण) द्वारा या अन्यथा पुनः प्रस्तुत करने की अनुमति नहीं है।

इन्दिरा गांधी राष्ट्रीय मुक्त विश्वविद्यालय के बारे में और अधिक जानकारी विश्वविद्यालय के कार्यालय, मैदान गढ़ी, नई दिल्ली-110 068 से प्राप्त की जा सकती है।

इन्दिरा गांधी राष्ट्रीय मुक्त विश्वविद्यालय की ओर से निदेशक (जेंडर एवं विकास अध्ययन विद्यापीठ) द्वारा मुद्रित एवं प्रकाशित।

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खंड परिचय

विभिन्न स्रोतों से एकत्रित किये गये सामग्री/आंकड़े को लिखित रूप से प्रस्तुत किये गये शोध निष्कर्षों में रूपान्तरित करना शोध प्रक्रिया का एक प्रमुख भाग है। दोनों प्रक्रियाएं आपस में एक दूसरे से संबंधित हैं। हम केवल वही लिखते हैं जो हम जानते हैं और जो हम जानते हैं वह वही होता है जोकि हम अपने आसपास की दुनिया में देखते हैं, एक दूसरे से बातचीत करके, पारस्परिक क्रिया से एकत्रित कर पाते हैं।

मिल्स (1959:5.7) ने कहा है कि सामाजिक कल्पना (sociological imagination) उसके करने वाले को व्यापक ऐतिहासिक परिदृश्य में समाज के आन्तरिक जीवन और उसके विभिन्न सदस्यों के बाह्य कार्य व्यापार (external career) को समझने की क्षमता प्रदान करती है। वह यह समझने में भी उसकी सहायता करती है कि किस प्रकार व्यक्ति दिन-प्रतिदिन के अपने अनुभवों में उलझकर कई बार अपनी सामाजिक स्थिति के प्रति भ्रामक रूप में सजग हो जाता है। उलझनों के अन्तर्गत नवीन समाज का ढाँचा प्राप्त किया जाता है और उसी ढाँचे के अन्दर विभिन्न पुरुषों और महिलाओं की मनोवैज्ञानिक स्थितियों को प्रतिपादित किया जाता है। इस तरह के साधनों से व्यक्तियों की व्यक्तिगत व्याकुलताओं पर समाज की समस्याओं के रूप में ध्यान देने से उनके प्रति जनता का निर्लिप्त भाव सार्वजनिक विषयों में रूपान्तरित हो जाता है।

संक्षेप में, यह बताता है कि क्यों सामाजिक कल्पना से ही, जिससे अब मनुष्य ने समझना शुरू किया है, दुनिया में क्या हो रहा है, यह समझना आवश्यक है कि समाज के अन्दर जीवितियों और इतिहास के समय-समय पर एक-दूसरे के सम्पर्क में आने पर क्या हुआ।

मिल्स (Mills) ने बताया कि हम क्योंकि इस विषय के संबंध में जानकारी प्राप्त करने के लिये आकुल होते हैं और किस प्रकार अपने सामाजिक जीवन के विषय में जानकारी प्राप्त करना चाहते हैं। आगे मिल्स ने बताया।

अकेले सामाजिक विज्ञानी के लिये, जोकि अपने आपको क्लासिकीय परम्परा का एक भाग समझता है, सामाजिक विज्ञान एक कला का व्यवहार है। एक सामाजिक विज्ञानी के रूप में आपको वह सब ग्रहण (एकत्रित) करना होगा जोकि आप अनुभव करते हैं और फिर उसे छँटना होगा; आपको एक फाइल बना लेनी चाहिये, जोकि, मैं समझता हूँ, एक समाजशास्त्री का यह कहने का तरीका है कि एक ज़रनल रखिये। कई क्लासिकीय लेखक ज़रनल रखते हैं, समाजशास्त्री की व्यवस्थित रूप से देखने की आवश्यकता की पूर्ति के लिये यह आवश्यक है; आपकी फाइल में सम्मिलित विभिन्न विषयों के अन्तर्गत उन विषयों पर व्यक्त विचार, व्यक्तिगत टिप्पणियाँ पुस्तकों से नोट किये गये उनके अंश, जीवितियों से संबंधित विषय तथा परियोजना की रूपरेखा आदि होते हैं।

इस प्रकार सीराइट मिल्स समाजशास्त्रियों को अपनी सामाजिक वास्तविकताओं को समझने की क्षमता विकसित करने के लिये परामर्श देता है। यहाँ पर सीराइट मिल्स के इनक्लासिकल विचारों को देने का उद्देश्य यह बताना है कि समाजशास्त्र को समझने की कला बहुआयामी है और अपनी योजना पद्धति के अनुसरण में सामग्री/आंकड़े एकत्र करने पर ध्यान देने के साथ-साथ उसके विश्लेषण और प्रस्तुतिकरण पर भी पूरा ध्यान देना आवश्यक है। ब्लॉक 7 के इकाइयों में विषय विशेष संबंधी शोध (फील्ड रिसर्च) और उसके आकार निर्धारण तथा गुणात्मक शोध सामग्री/आंकड़ों के विश्लेषण पर बल दिया गया था। अब हम सूचना विज्ञान के नये विकसित व उपलब्ध साधनों के प्रयोगपर ध्यान देंगे।

5.12 SUMMARY

In this Unit we have seen the evolution of the international regime of copyright in the matter of formalities for securing protection for copyright. We have seen that initially the Berne Convention for the Protection of Literary and Artistic Works left the national regimes which provided for certain formalities for getting copyright protection untouched. Later, since that proved to be a problem for works securing protection across territories, it opted for a formality free protection.

We have also seen that the Universal Copyright Convention opted for a different approach to formalities for securing copyright protection. It opted for a very simple procedure of the person claiming copyright by inserting the symbol (c) in a published work.

We have also seen how the registration procedure was introduced in India in 1957. We have detailed discussion on the approach of the courts to this new provision. Over the time, the law became clear that registration is voluntary in India and not mandatory and that registration as such is not essential for claiming copyright. We have also discussed the advantages of registration.

We then examined the provisions regarding Copyright Office and Registrar of copyright in the Copyright Act, 1957. The Registrar can order stoppage of import of infringing copies and even the impounding of such infringing copies. We found that the Act gives certain powers of a civil court to the Registrar in the matter of discharge of his duties and functions.

We have explored the procedures for getting a work registered. We had a look at the relevant form and the fee for registration. We also examined the special procedure for getting an artistic work capable of being used as a trademark registered with the Copyright Office and found that it required production of a certificate from the Registrar of Trademarks to the effect that the mark is either not registered in the Trademark Register or it is registered in the name of the applicant only.

We then examined the entries in the Copyright Register. We also studied how mistakes in the entries in the Register can be corrected or rectified and what are the powers of the Registrar and Copyright Board in that regard.

5.13 TERMINAL QUESTIONS

- 1) Write a page on the provisions in the Berne Convention and in the Berne Convention on the formalities for securing copyright protection.
- 2) What is the approach of the courts to the provision for registration in the Indian Copyright Act?
- 3) What are the advantages of copyright registration?
- 4) Describe the procedure for registration of copyright in India.

5.10 SPECIAL PROVISIONS FOR REGISTRATION OF ARTISTIC WORK USED AS TRADEMARK

There are special provisions for the registration of artistic works used or are capable of being used as trademarks. Such applications should be accompanied by a certificate from the Registrar or Trademarks to the effect that no trademark identical with or deceptively similar to such artistic work has been registered or applied for under the Trade Marks Act, 1999 in the name of another person. This enables the two registries registering the same work in two different names. There have been few cases where different parties claimed different intellectual property rights over the same work. In the case of *Lokhara & Co. v. Shivakumar Bhanwarlal Kila* [1995 IPLR 138 Raj], interim injunction was granted against another party using as a trademark a label for *bidis* that the plaintiff registered as his copyrighted work. In the case of *Hindustan Pencils v. Universal Trading Co.* [1999 PTC 379 Copyright Board], an already registered artistic work was directed to be removed since it was already a trademark in use by another party.

5.11 CORRECTION OF ENTRIES IN THE REGISTER

Sections 49, 50 and 50 A of the Act and Rule 17 of the Rules provide for correction of entries in the Register of copyrights by the Registrar of Copyrights. These are, however, limited to errors in name, address or particulars and errors occurred by accidental slip or omission. Rectification of an entry in the Register can be made, *suo motu* or on application from an interested person, but only after giving an opportunity to the person affected, as per the principles of natural justice. The Registrar should also communicate the alteration made to the person affected. The orders of the Registrar are subject to appeal before the Copyright Board. Entries of the correction made in the Register are to be published in the Gazette.

Form V has been prescribed in the Rules for application for making corrections in the entries in the Register. This is to be accompanied with prescribed fee. One column in the Form relates to the reasons for the change proposed. If such changes are consequent on assignments or licences of copyright, attested copies of the deeds of assignments or licences should be enclosed with the application.

The Copyright Board can order 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.

This can be done by the Board on application of the Registrar of Copyrights or of any person aggrieved. Persons affected are the owners, or assignees of the copyright.

Cases have occurred where the Copyright board had ordered rectification on the ground of suppression of material facts before the Registrar of Copyrights. In the case of *Hindustan Pencils Pvt Ltd. v. Universal Trading Company* [1999 PTC 379 Copyright Board] the registrant was not the actual owner which fact was not revealed to the Registrar.

There are cases where the Copyright Board set aside the registrations. Shri Ratna Shankar Prasad, son of late Shri Jai Shankar Prasad, the famous Hindi litterateur,

may years after the death of his father had moved 25 applications for the registration of his name as a copyright holder in those works authored by his father. The Copyright Office made the entries in the Copyright Register in December 1971. This was objected to by the National Newspaper to whom, the author had assigned his copyrights. On their appeal, the Copyright Board ordered removal of the entries.

Another power vested with the Copyright Board is that of fixing the share in the resale-price of a painting, sculpture or drawing, or of the original manuscript of a literary, dramatic or musical work under Section 53A of the Copyright Act. This share goes to the author of the work if he was the first of rights as per Section 17 or his legal heirs. This right is only so long as the copyright lasts in that work.

This share is to be fixed by the Copyright Board and the decision of the Copyright Board in that respect is final. However, the resale price share shall not exceed ten per cent of the resale price. Disputes under this section shall also be dealt with by the Copyright Board and its decision in that respect shall also be final.

Self Assessment Questions

(Spend 3 minutes each)

10) How can be submit an application for registration of copyright?

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11) What are the documents to be attached with copyright registration application?

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12) How can wrong entries in Copyright Register be rectified?

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5.12 SUMMARY

In this Unit we have seen the evolution of the international regime of copyright in the matter of formalities for securing protection for copyright. We have seen that initially the Berne Convention for the Protection of Literary and Artistic Works left the national regimes which provided for certain formalities for getting copyright protection untouched. Later, since that proved to be a problem for works securing protection across territories, it opted for a formality free protection.

We have also seen that the Universal Copyright Convention opted for a different approach to formalities for securing copyright protection. It opted for a very simple procedure of the person claiming copyright by inserting the symbol (c) in a published work.

We have also seen how the registration procedure was introduced in India in 1957. We have detailed discussion on the approach of the courts to this new provision. Over the time, the law became clear that registration is voluntary in India and not mandatory and that registration as such is not essential for claiming copyright. We have also discussed the advantages of registration.

We then examined the provisions regarding Copyright Office and Registrar of copyright in the Copyright Act, 1957. The Registrar can order stoppage of import of infringing copies and even the impounding of such infringing copies. We found that the Act gives certain powers of a civil court to the Registrar in the matter of discharge of his duties and functions.

We have explored the procedures for getting a work registered. We had a look at the relevant form and the fee for registration. We also examined the special procedure for getting an artistic work capable of being used as a trademark registered with the Copyright Office and found that it required production of a certificate from the Registrar of Trademarks to the effect that the mark is either not registered in the Trademark Register or it is registered in the name of the applicant only.

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- 1) Write a page on the provisions in the Berne Convention and in the Berne Convention on the formalities for securing copyright protection.
- 2) What is the approach of the courts to the provision for registration in the Indian Copyright Act?
- 3) What are the advantages of copyright registration?
- 4) Describe the procedure for registration of copyright in India.

5.14 ANSWERS AND HINTS

Self Assessment Questions

- 1) Refer to Section 5.3
- 2) Refer to Section 5.3
- 3) Refer to Section 5.3
- 4) Refer to Section 5.4
- 5) Refer to Section 5.4
- 6) Refer to Section 5.4
- 7) Refer to Section 5.6
- 8) Refer to Section 5.6
- 9) Refer to Section 5.7
- 10) Refer to Section 5.7
- 11) Refer to Section 5.7
- 12) Refer to Section 5.7

Terminal Questions

- 1) Refer to Section 5.3
- 2) Refer to Section 5.9, 5.5
- 3) Refer to Section 5.5
- 4) Refer to Section 5.9

5.15 REFERENCES AND SUGGESTED READINGS

- 1) International Copyright and Neighbouring Rights by S. M. Stewart, Chapters 1 and 2.
- 2) Copyright and Industrial Designs by P. Narayanan.
- 3) Lal's Commentary on Copyright Act.
- 4) Iyengar's The Copyright Act, 1957.
- 5) How Copyright Works in Practice by Kala Thairani.

Sections 44 to 50A of the Copyright Act, 1957 deal with registration of copyright. The relevant Rules are Rules 15 to 19 of the Copyright Rules, 1958. Section 44 requires maintenance of a register called Register of Copyrights at the Copyright Office. In this register the names or titles of works and names and addresses of authors, publishers and owners of copyright and such other particulars as may be prescribed.

Section 45 is about the entries in the Register of Copyrights. It says that the author or publisher or the owner of copyright in any work. The relevant sections are reproduced below.

Section 9. Copyright Office

- 1) *There shall be established for the purpose 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*

Sect 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.ion 10

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:*

Provided that in respect of an artistic work which is used or is capable of being used in relation to any goods or services, the application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trade Marks referred to in section 4 3 of the Trade and Merchandise Marks Act, 1958 Trade Marks Act, 1999, to the effect that no trade mark identical with or deceptively similar to such artistic work has

been registered under that Act in the name of, or that no application has been made under that Act for such registration by, any person other than the applicant.

- 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.

46. Indexes.

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

47. Forms 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 Register of Copyrights shall be prima facie evidence of the particulars entered therein and documents purporting to be copies of any entries therein, or extracts there from 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 or production of the original.

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.

50A. Entries in the Register of Copyrights, etc., to be published.

Every entry made in the Register of Copyrights or the particulars of any work entered under section 45, the correction of every entry made in such register under section 49, and every rectification ordered under section 50, shall be published by the Registrar of Copyrights in the Official Gazette or in such other manner as he may deem fit.

UNIT 6 ASSIGNMENTS, LICENCES, REVOCATIONS

Structure

- 6.1 Introduction
- 6.2 Objectives
- 6.3 Assignments
- 6.4 Licences
- 6.5 Revocations
- 6.6 Transmissions by Testamentary Disposition
- 6.7 Relinquishment of Copyrights
- 6.8 Summary
- 6.9 Terminal Questions
- 6.10 Answers and Hints
- 6.11 References and Suggested Readings

6.1 INTRODUCTION

Copyright is the creation of statute. It is a set of exclusive rights over works. These rights are given to the authors. These rights include rights of reproduction, distribution, communication to the public, translation, adaptation and so on. It is almost impossible for any author to actually use all these rights. Therefore, exploitation of the rights involves other persons. The law, therefore, makes provisions for authorising others to exercise the rights. These can be done in two ways: one through assignments and another through licences. Assignments mean the rights are effectively transferred to from one to another. It is a kind of sale. Licence does not involve transfer of the right. It only authorises another person to do certain acts with the permission of the right owner. It is a licence to do something which is the exclusive right of the copyright owner.

What one should remember is that there is difference between transfer of physical property and transfer of intellectual property. If an author sells his manuscript to another person without assigning the copyrights to that person, the receiver cannot reproduce or publish the manuscript. Similarly, physical copies can also be transferred without assigning the copyright.

Another important point is that the assignments and licences need not be for all the rights in a work. It can be for any one right or more than one right. It can even be for part of a right. It can be for the entire duration of the copyright or for a limited time.

Copyright extends both economic rights and moral rights. Economic rights are the ones which enable an author to allow other people to do certain acts with reference to his works for which he can demand certain payments such as royalties. They facilitate economic rewards for the author. Moral rights are right to authorship and right to protect the integrity of the work. These rights not necessarily have any economic impact. The law makes a distinction between

economic rights and moral rights in the matter of assignments and licences. While economic rights can be transmitted through assignments and licences, moral rights are inalienable. Therefore, moral rights have no place in assignments and licences.

The law has made elaborate provisions on these matters.

6.2 OBJECTIVES

After reading this unit, you should be able to:

- give an exposure to the provisions on the Copyright Act regarding assignments, licences, revocations, testamentary transmissions and other forms of transmission of rights; and
- look into the formalities that are required, if any, in this regard.

6.3 ASSIGNMENTS

Statute

Sections 18 to 19A of the Copyright Act 1957 deal with assignment of copyright. Section 20 is about transmission of copyright in manuscript by testamentary disposition and Section 21 is about the right of the author to relinquish his copyright. The relevant sections regarding assignment read as under:

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.

Provided further that no such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work.

Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilization of such work in any form other than for communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void.

Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilization of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void.

- 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.

- 1) *No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorised agent.*
- 2) *The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment.*
- 3) *The assignment of copyright in any work shall also specify the amount of royalty payable, to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.*
- 4) *Where the assignee does not exercise the rights assigned to him under any of the other sub-sections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.*
- 5) *If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.*
- 6) *If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.*
- 7) *Nothing in sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) or sub-section (6) shall be applicable to assignments made before the coming into force of the Copyright (Amendment) Act, 1994.*

19A Disputes with respect to assignment of copyright.

- 1) *If an assignee fails to make sufficient exercise of the rights assigned to him, and such failure is not attributable to any act or omission of the assignor, then, the Copyright Board may, on receipt of a complaint from the assignor and after holding such inquiry as it may deem necessary, revoke such assignment.*
- 2) *If any dispute arises with respect to the assignment of any copyright the Copyright Board may, on receipt of a complaint from the aggrieved party and after holding such inquiry as it considers necessary, pass such order as it may deem fit including an order for the recovery of any royalty payable:*

Provided that the Copyright Board shall not pass any order under this sub-section to revoke the assignment unless it is satisfied that the terms of assignment are harsh to the assignor in case the assignor is also the author:

Provided further that pending the disposal of an application for revocation of assignment under this sub-section, the Copyright Board may pass such order, as it deems fit regarding implementation of the terms and conditions of assignment including any consideration to be paid for the enjoyment of the rights assigned:

Provided also that no order of revocation of assignment under this sub-section, be made within a period of five years from the date of such assignment

- 3) *Every complaint received under sub-section (2) shall be dealt with by the copyright Board as far as possible and efforts shall be made to pass the final order in the matter within a period of six months from the day of receipt of the complaint and any delay in compliance of the same, the Copyright Board shall record the reasons thereof.*

Assignment of Copyright

Copyright is a private property right. It can be assigned partially or wholly to another person. The laws of private property apply mutatis mutandis to copyright assignments too.

The following points have to be remembered in assignments:

- It has to be in writing
- It has to be signed by the owner of the rights or his authorised agent
- It should identify the work
- It should specify the rights being assigned
- It should specify the duration of the assignment
- It should specify the territories for which the rights are assigned
- It should specify the amount of royalty payable, if any.
- If the period of assignment is not stated in the agreement, it will be deemed as five years
- If the territorial extent of the assignment is not stated in the agreement it will be presumed as extending to the whole of India

Form of Assignment

No specific form has been fixed for assignment deal. It can be effected by a mere letter. However, it has to be in writing. In a case pertaining the Tamil translation of the Autobiography of Pandit Jawaharlal Nehru, the issue of form of writing and whether it should contain the signature of the author came up. This was the case of Srimangal & Co. V. Books (India) Pvt. Ltd. In 1936 a Tamil translation of the autobiography was published by Srimangal and Co., with the approval of the author. Later, the author cancelled the assignment. He then authorised Books (India) Pvt. Ltd to bring out the Tamil translation. Srimangal also brought out copies of the Tamil translation. Thereupon in 1959 Books (India) Pvt. Ltd filed a case of infringement against Srimangal and Co. They produced as evidence of the assignment of the Tamil translation right to them by the author, a letter written by his Assistant Private Secretary, which stated:

“He (the author) has in fact given the permission to Books (India) Ltd., Madras to bring out a Tamil edition of his autobiography. This was done in the beginning of 1957 and it is this firm that has the right now and your (Srimangal and Co.) publishing or selling the book is an infringement of their right. It is open to that firm to take any steps in this matter they consider fit and proper.”

The court accepted the argument of the defendant that the assignment should be in writing signed by the author or by his authorized agent, but it held that no particular form can be insisted. It held:

No particular form of assignment under Section 19 is required and it will suffice if the assignment can be culled out in writing from some document... That the assignment has been authorised by the author is evident from his signature or that of his authorised agent. The requirement of Section 19 is fully satisfied by such document.

Many a time, in the absence of any particular format the words used in an agreement may raise disputes. In the case of *Cine India v. Muthu Enterprises* [(1992) 1 LW 74c Mad] in the agreement it was stated that the picture mentioned in the agreement is leased to the other part. The court construed this as transfer of every right in the negative of the film.

Joint Ownership Assignments

The assignments have to be by the owner of the copyright. The first owner of the copyright is the author. Most times, the first assignment is between the author and his publisher.

When there are more than one author or owner of copyright, all the owners or their legal representatives have to sign the assignment deed. Otherwise, the deed will not be valid.

Disputes of assignment often arise on account of joint ownership. In such cases the assignment has to be by all the authors and/or owners. Such an issue came up in the case of *Nay Sahitya Prakash v. Anand Kumar*. This related to the assignment of copyright in the work ‘Sapna’ of Shri Ram Naresh Tripathi. After Shri Tripathi’s death, his widow and three sons had joint ownership on the same. However, one of the sons permitted one publishing house to publish the same without taking the assignment agreement of the other owners. In its judgement the Allahabad High Court held, “A joint owner of a copyright cannot without the consent of the other joint owner, grant a licence or interest in it and the other joint owner aggrieved by such grant can sue the licensee for infringement of the right.”

Assignment of Rights

The assignment deed should specify the work and the specific rights on that work which it assigns to another.

This is perhaps the most important part of the assignment deed. Sometimes, uses not anticipated at the time of the assignment may arise in the future on account of technological developments. For example, use of music as ring tones in mobile phone is a use that was not contemplated few decades ago. If an assignment deed had very specifically stated the rights and the exploitations which are assigned

to the other party and had not included 'use as ring tones' in that, then the assignee cannot claim that right. In the case of *Sholay Media & Entertainment Pvt Ltd. & Anr. v. Vodafone Esssar Mobile Services Ltd & Ors*, in the Delhi High Court (decided on 9.5.2011) this was the issue. The court took the view that the wordings of the deed could be interpreted both ways. The issue boiled down to the meaning of the expression 'any other device' used in the agreement as to the use of the work in a 'record'. This was not further explored in the instant case. It is always advisable to be specific about the rights and uses and the medium on which the same can be used when assigning copyrights.

The agreement deed can be a general assignment of all rights that accrue to the owner as per the Copyright Act or it can be a partial assignment or it can be assignment without any limitations or it can be an assignment subject to limitations and conditions.

The 2012 amendments have brought in certain limitations on the assignment. These apply to two kinds of cases. A general assignment will not apply to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made. For example, if in the future a new medium or mode of exploiting a work arises, an assignment made now will not apply to that. However, if the assignment specifically referred to such medium or mode of exploitation, then it will apply.

A second kind of limitation is in the case of a new right for equal sharing of royalties in the case of literary or musical work included in a cinematograph film. The amendment provides that the author of the literary or musical work included in a cinematograph film cannot assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilization of such work in any form other than for communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copy right society for collection and distribution and any agreement to contrary shall be void. Thus, the new proviso creates an inalienable right for the author to receive royalties on an equal basis in the case of literary and musical works included in a cinematograph film in the cases of all exploitations except through the screening in a theatre. The assignment to make a cinematograph film based on the work also will not affect this right. Thus, if a song included in a cinematograph film is played separately on radio or TV, the lyric writer has a right for an equal share in the royalties on account of such exploitation and that right cannot be assigned except to his legal heirs or a collecting society.

Case Law

In the case of *M/S International Film v Shri Rishi Raj* decided by the Delhi High Court on 23 October, 2008, the issue was the rights and medium use that were not contemplated at the time of the assignment deed. The court looked into different views taken by two other High Courts in the matter. Relevant extracts are reproduced below.

One view which has been taken by the Madra High Court in the case of *Raj Video Vision v. K. Mohanakrishnan and another*; AIR 1998 Madras 294 at para 10 page 297 :

However, the conclusion which can be arrived at is that when the producers themselves were not aware of their future rights accrued due to scientific

advancements, it cannot be said they had already transferred the rights not in existence by way of assignments. The assignments cannot be made on rights not in existence and therefore it can be safely decided that the video rights of the film were not given to the assignees M/s Azam and Company and the assignee in turn an assignors could not have assigned the video rights to the 2nd defendant herein.

In para 13 of the above said judgment the learned High Court has also referred another decision of Madras High Court in Raj Video Vision, Registered Partnership Firm Rep. by its *Partners v. M/s. Sun T.V.* (1994) 2 LW 158 who has also taken the almost the same view. The relevant portion of para 13 is reproduced hereunder :-

While considering the satellite right which was not contemplated in the year 1986, it was held 'what was not contemplated at the time of agreement cannot be claimed by the applicants now'. While considering this view taken by the learned Judge which is more appropriate to the present case and if that view is taken for consideration in the instant case, in the year 1961 when the Negative Right was given to M/s. Azam and Company neither party could have dreamt of the later scientific advancements of video, satellite, etc. could not have assigned or granted those rights.

The second view is taken by the Bombay High Court on the same point. In the case of *Maganlal Shivani v. Khosla Enterprises* wherein the present defendant was the plaintiff in Suit No. 925/99 S.S.Nijjar, J, vide order dated 17th August 1999 has considered the same point and has given his finding in Para 7 of the judgment which is reproduced herein below:

"I have considered the arguments put forward by the learned counsel for the parties. A perusal of clause(1) of the agreement shows that the plaintiff has been granted the sole exclusive and perpetual copyrights of exploitation, distribution and exhibition , commercial as well as non-commercial, in respect of the said pictures in 35mm, as well as any reduced size or sizes. This includes the rights of television and all other rights attached to such exploitation. These rights have been assigned to the plaintiff for the price of £16,700 (Pound Sterling Sixteen Thousand Seven Hundred only). The overseas territories are mentioned which include USA and Canada. In my view, the most natural meaning to be given to the aforesaid clause is that plaintiff has been given perpetual copyrights of exploitation, distribution and exhibition of films. These rights include the rights of television and all other rights attached to such exploitation. The phrase all other rights attached to such exploitation cannot be read to mean that the other rights referred only to television right. The clause clearly shows that the plaintiff is the sole exclusive and perpetual copyright holder for exploitation of the films. The size of the pictures viz. 35 mm. as well as any reduced size or sizes cannot be read to mean that all other rights where the film is exhibited through the medium of video cassettes and DVD has been excluded. Ultimately what was assigned to the plaintiff was the right to exploit and exhibit the films through different sizes of the film and by the medium of television. Video cassettes, VCD and DVD are only improved versions of exhibiting the film. What was earlier done by the spool containing the film, is now being done by video cassettes and DVDs. Satellite broadcasting can also not be said to be excluded from the television rights which had been granted to the plaintiff. By using the satellite channels the plaintiff is still exhibiting the films on television. In fact the clause

clearly indicates that all rights for exploiting the film had been assigned to the plaintiff. Prima facie, I am also of the view that the defendants have acted in infringement of the negative covenant contained in clause 5 of the agreement. The judgment relied upon by Mr. Shah in the case of Video Master (supra) is distinguishable. Therein the court was interpreting a clause pertains only to the assignment of video right. The court accepted that there are several ways of communication and each one is separately divisible and can exist in different persons at the same time. There is no dispute with the aforesaid proposition. The court, however, has to construe clause 1 of the agreements in the present suit which has assigned all the copyrights to the plaintiffs without any restrictions. Prima facie, I am of the view that no restrictions can be placed on the enjoyment of the copyright of the film which is vested in the plaintiff only on the ground that the mode of execution in the film had not been invented at the time when the agreement had been entered into. With regard to jurisdiction of this court, I am of the considered opinion that by virtue of Section 62 (2) of the Copyright Act, it is not necessary to seek leave under clause 12 of the Letters Patent. I am also satisfied that the copyright of the plaintiff has been infringed within the territorial jurisdiction of this court by defendants No.1 to 3 by entering into an agreement with defendant No.4 with regard to satellite and video rights. This agreement has been entered in Bombay.”

The said order was also challenged before a Division Bench of the Bombay High Court by the defendant in Appeal No. 1246/99 in the case of *Khosla Enterprises and others v. Maganlal Savani*. The said appeal was dismissed on 10th January 2000 by a Division Bench consisting of Y.K.Sabharwal, J. (as his Lordship then was) and Smt. Ranjana Desai, J, confirming the order passed by Nijjar, J.

The same view was taken by the Bombay High Court in another case reported in 2000 PTC 556 in the case of *Maganlal Savani v. Roopam Pictures Pvt Ltd*. The relevant Paras 5 and 6 of the said judgment are reproduced herein below:-

“ The defendants contested the application and submitted that the telecasting of the picture through Satellite was not assigned to the plaintiff. The counsel appearing for them submits that in fact in the year 1973 when the agreement was executed between the parties, this satellite television was not under the contemplation of the parties at all. Therefore the plaintiff No. 1 cannot object to any other party doing satellite telecast of the picture as it is not in the contracted territory. Prima facie the contention of the learned counsel for the defendants that in 1973 the parties would never envisage that the picture should be given for satellite telecasting to the plaintiff No. 1, appeared to be sound. But the rights which was assigned to the plaintiff No.1 is to take the satellite telecasting or any other manner which may be able to do by the first plaintiff through scientific device or technology. In this context it is relevant to quote the relevant paragraph of the agreement. The Assignors hereby agree and under-take that the said picture shall not be exploited or distributed or exhibited commercially, non-commercially or in any other manner whatsoever, in the contracted Territory, either by themselves, their servants or agents or otherwise and hereby agree to indemnify and keep indemnified the Assignees against such unauthorized distribution or exploitation or exhibition of the said picture in the contracted territory. Any breach in this connection will make the Assignors liable to the damages which in no case shall be less than twice the amount of the price.”

What is assigned to the first plaintiffs the exploitation, distribution and exhibition commercially or otherwise of the picture. In this context we have to give a wider meaning of the term "exploitation". Exploitation of a film takes in all the scientific and technological device that may be invented in future also and the plaintiff could make use of those inventions. Given such an interpretation of the word "exploitation" the objection raised by first plaintiff in conducting satellite telecasting of the picture "Chupke Chupke" will per se violative of the provisions of the agreement. The similar view has been taken by this court in the context of interpreting similar contract in Notice of Motion No. 8663/99 dated 17th August 1999. I need not go into the details of that order because the matter has been taken in appeal before the Division Bench of this Court and Division Bench of this Court by order dated 10.1.2000 in Appeal No. 1246/99 upheld the order of the learned single Judge and held that the exploitation is taking of the kind of exploit, including the internet, satellite telecast. It is profitable to quote the observation of the Division Bench.

We find no infirmity in the prima facie opinion expressed by the learned single Judge that the phrase all other rights attached to such exploitation cannot be read to mean that the other rights referred only to television rights and the clause shows that the plaintiff is the sole exclusive and perpetual copyright holder for exploitation of the films in question.

In view of this, I find that the agreement executed between the first plaintiff and the first defendant will take in satellite telecast of the said film also.

In a recent judgment of the Bombay High Court reported in 2008 (Vol. 110) Bombay Law Reporter 925 in the case of *Maganlal Shivani v. Uttam Chitra* by V.V. Chandrachud, J. the Hon'ble court while considering the earlier judgment at length agreed with the judgment of Nijjar, J. (as his Lordship then was). The relevant Paras 4 and 5 of the said judgment are reproduced below: The Assignors hereby agree and undertake that the said Picture shall not be exploited or distributed or exhibited commercially, non-commercially or in any other manner whatsoever, in the Contracted Territory either by themselves, their servants or agents or otherwise and hereby agree to indemnify and keep indemnified the Assignees against such unauthorized distribution or exploitation or exhibition of the said picture in the Contracted Territory.

By virtue of Clause (1), the assignor (the First Defendant) has granted to the assignee, "the sole, exclusive and perpetual copyright of exploitation, distribution and exhibition, commercial as well as noncommercial, in respect of the said pictures in 35 mm as well as in reduced size or sizes..." for the territories spelt out therein. Exploitation is an act or process of exploiting, making use of or working up; a process of utilization by the application of industry (Black's Law Dictionary, 5th Edition page 519. P.Ramanatha Aiyar, Law Lexicon, Vol.II, page 724). The provisions of Clause (1) must prima facie be juxtaposed together with Clause (4) under which the assignors have agreed and undertaken that the films shall not be exploited or distributed or exhibited commercially, non-commercially or in any manner whatsoever in the contracted territory. The positive act of assignment in Clause (1) is coupled with the negative obligation precluding the assignors from exploiting the films in the contracted territories.

The right which has been assigned is to exploit, distribute and exhibit the film in 35 mm as well as in reduced size or sizes, including all the rights of Television, High Seas, Air "and all other rights attached to such exploitation, distribution and exhibition". The assignment of these rights is prima facie absolute.

Prima facie, at the ad-interim stage, the interpretation of Clause (1) of the Agreement of assignment in the present case is not res integra. A similar clause came up for interpretation before S.S. Nijjar, J (as the Learned Chief Justice then was), in a judgment dated 17th August 1999 in *Maganlal Savani v. Khosla Enterprises* (Notice of Motion 863 of 1999 in Suit 925 of 1999). It was urged on behalf of the Defendants that at the time when the agreement was executed in 1971-72, there was no occasion to assign copyrights in Video, satellite transmission and DVD since such media was unknown on the date of the agreement and only rights for exhibiting of the film were assigned together with terrestrial television. The Learned Single Judge, while rejecting the submission, held as follows:

A perusal of Clause (1) of the agreement shows that the Plaintiff has been granted the sole exclusive and perpetual copyrights of exploitation, distribution and exhibition, commercial as well as non-commercial, in respect of the said pictures in 35 mm as well as any reduced size or sizes. This includes the rights of television and Page 0931 all other rights attached to such exploitation.... In my view, the most natural meaning to be given to the aforesaid clause is that Plaintiff has been given perpetual copyrights of exploitation, distribution and exhibition of films. These rights include the rights of television and all other rights attached to such exploitation. The phrase all other rights attached to such exploitation cannot be read to mean that the other rights referred only to television rights. One of the submissions which was urged before the Learned Single Judge was that the reference in Clause (1) to a 35 mm or reduced size of film would show that Video Cassettes and DVDs were excluded. Rejecting the submission, the Learned Single Judge, while upholding the case of the Plaintiff, held thus: The size of the pictures viz., 35 mm. as well as any reduced size or sizes cannot be read to mean that all other rights where the film is exhibited through the medium of video cassettes and DVD has been excluded. Ultimately what was assigned to the Plaintiff was the right to exploit and exhibit the films through different sizes of the film and by the medium of television. Video cassette, VCD and DVD are only improved versions of exhibiting the film. What was earlier done by the spool containing the film, is now being done by video cassettes and DVDs. Satellite broadcasting can also not be said to be excluded from the television rights which had been granted to the Plaintiff. By using the satellite channels the Plaintiff is still exhibiting the films on television. In fact the clause clearly indicates that all rights for exploiting the film had been assigned to the Plaintiff.... Prima facie, I am of the view that no restrictions can be placed on the enjoyment of the copyright of the film which is vested in the Plaintiff only on the ground that the mode of exhibition of the film had not been invented at the time when the agreement had been entered into. The judgment of Mr. Justice Nijjar was carried in appeal and a Division Bench of this Court in its order dated 10th January 2000 (*Khosla Enterprises v. Maganlal Savani*, Appeal 1246 of 1999) held thus:

Having heard Learned Counsel for the parties and read various clauses of the Agreement dated 21st October, 1970, in particular Clause 1 thereof, we find no infirmity in the prima facie opinion expressed by the Learned Single Judge that

the phrase 'all other rights attached to such exploitation' cannot be read to mean that the other rights referred only to television rights and the clause shows that the Plaintiff is the sole, exclusive and perpetual copyright holder for exploitation of the films in question.

The Division Bench, however, directed the Plaintiff to the suit to maintain accounts in respect of the exploitation of the films. The same view of the Learned Single Judge has been reiterated in a judgment of T.K. Chadrashekhara Das, J. dated 20th June 2000 in *Maganlal Savani v. Rupam Pictures (P) Ltd.* (Notice of Motion 1481 of 2000 in Suit 1806 of 2000. A judgment of another Learned Single Judge, S.U. Kamdar, J. in Page 0932 *Shemaroo Video P. Ltd. v. Movie Tee Vee Enterprises*, 2006(1) All MR 37, adopts the same line of reasoning. An Appeal against the judgment of Kamdar J. is stated to be pending. The judgment of S.S. Nijjar, J., as noted earlier, has been approved by the Division Bench.

In *A.A. Associates v. Prem Goel and Ors*, AIR 2002 Delhi 142 decided by V. S. Aggarwal, J, the Delhi High Court had also an occasion to deal with both the views i.e. one was taken by the Madras High Court and another by the Bombay High Court and Hon'ble Judge has agreed with the view taken by the Bombay High Court. The relevant Paras 17- 20 of the said decision are reproduced below:-

"It is common knowledge that with the passage of time the television rights have assumed great importance. Whenever an agreement therefore has been arrived at the intention of the parties cannot be lost sight of. The intention of the parties will spell as to what exactly was agreed and intended to be performed by the parties.

Reference in this connection can well be made to the decision from the Madras High Court in *Raj Video Vision v. M/s Sun TV* 1994-2-LW.158. Somewhat a similar question came up for consideration in that court. It was held that intention of the parties have to be determined to find out as to whether it included all other rights or it was confined to features or television or satellite. The Madras High Court held that satellite television broadcasting right is an independent right for which a copyright could not have claimed. It was further held:

".....Thus, looked at from any angle, satellite TV broadcasting rights are independent rights and the same have to be assigned specifically and so far as such rights have not been assigned in favour of the applicant/plaintiff specifically, the plaintiffs cannot claim any copyright in the same or seek any order of injunction on the ground of alleged infringement by the defendant. The plaintiff/applicants therefore in my opinion have no prima facie case....."

The attention of the court has also been drawn towards the decision of the Bombay High Court in the case of *Video Master v. Nishi Productions* 1998 PTC (18) 117. The Bombay High Court referred to the differences and clauses/species of the communication and held that theatrical rights include the right to exhibit the cinematograph film in theatres, terrestrial rights is the right to exhibit the film on Doordarshan and satellite broadcasting rights is the right to exhibit/communicate the film by satellite signals to public with or without cable and through the satellite medium. While the cable TV right is right to exhibit a film by cable originated programme.

One finds itself in respectful agreement of these pleas as projected by the defendants. It is true that in the agreement it has not specifically been mentioned that the rights exclude the cable television or any other satellite rights but the intention of the parties can easily be inferred from the nature of the transaction that had been arrived at..."

After having gone through the above said decisions, we are of the view that there cannot be any restriction being imposed on the enjoyment of copyright which is vested with the earlier exclusive owner on the ground that the exhibition of the film on DVD and satellites and video have not been invented at the time when the agreement had been entered into. As a matter of fact it is common knowledge that with the passage of time television rights have become important and whenever an agreement has been arrived at, we have to see the intention of the parties which will indicate as to what exactly was agreed and intended to be performed.

Having regard to the above, with great respect we are unable to agree with the decision given by the Madras High Court in the judgment reported in the case of *Raj Video Vision v. K. Mohana Krishnan*. Rather we agree with the views taken by the Bombay High Court and followed a learned Single Judge of this Court.

A final position in the matter will have to await a decision of the supreme Court. The above views, however, highlight the need to be specific in the assignment deeds, failing which it can lead to unanticipated losses to the assignor due to unanticipated new uses going to the assignee.

Period of assignment

The Act lays down that the period of the assignment should be clearly stated in the assignment deed. If not stated it will be deemed as five years. That means after five years the rights will return to the assignor.

Territory

The law also requires that the extent of the territory for which the rights have been assigned should be specifically stated in the assignment deed. However, like in the case of period of assignment, in this case also there is a deemed presumption in the absence of specification that the assignment is for the entire territory of India.

Future Work

Copyright in a future work can also be assigned. However, such an assignment does not really bind the author to produce the work within a given time in a particular way. This kind of agreement is sometimes used by publishers when they take the right of publication from an author to make sure that the future works of the author also come to them. This right is now subject to the limitations regarding the literary and musical work included in a cinematograph film.

Non exercise of the right by the assignee

Non-exercise of the rights by the assignee may result in his losing the rights and the rights returning to the assignor. In the absence of any specific clause in the agreement deed regarding the termination of the assignment for non-exercise of the rights, if the assignee does not exercise his right within a period of one year

from the date of assignment then the assignment will be deemed to have been lapsed. However, if the failure to exercise is because of some action or non-action of the assignor, then the assignment will not lapse. If the failure to exercise his right on part of the assignee is not attributable to the assignor then the copyright board may hold an enquiry and revoke such assignment. The Board can order recovery of any royalty payable.

Self Assessment Questions

(Spend 3 minutes each)

1) What is assignment of copyright?

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2) What are the points to be taken care of in an assignment deed?

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3) If the period and the territory for which the assignment has been made is not indicated in the deed what would be the effect?

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4) In a book of joint ownership can one of the authors assign the copyright to another party, without the other's consent and signature?

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Annexure

Statute

The Copyright Act has devoted an entire chapter to licences.

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 authorised 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.

30A. Application of sections 19 and 19A

The provisions of sections 19 and 19A shall, with any necessary adaptations and modifications, apply in relation to a licence under section 30 as they apply in relation to assignment of copyright in a work.

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 the public; or*
 - b) *has refused to allow communication to the public by broadcast, of such work or in the case of sound recording the work recorded in such sound recording, 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 [broadcast], 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.*

31A. Compulsory licence in unpublished Indian works

- 1) *Where, in the case of an Indian work referred to in sub-clause (iii) of clause (a) of section 2, the author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found, any person may apply to the Copyright Board for a licence to publish such work or a translation thereof in any language.*
- 2) *Before making an application under sub-section (1), the applicant shall publish his proposal in one issue of a daily newspaper in the English language having circulation in the major part of the country and where the application is for the publication of a translation in any language, also in one issue of any daily newspaper in that language.*
- 3) *Every such application shall be made in such form as may be prescribed and shall be accompanied with a copy of the advertisement issued under sub-section (2) and 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, direct the Registrar of Copyrights to grant to the applicant a licence to publish the work or a translation thereof in the language mentioned in the application subject to the payment of such royalty 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 applicant in accordance with the direction of the Copyright Board.*
- 5) *Where a licence is granted under this section, the Registrar of Copyrights may, by order, direct the applicant to deposit the amount of the royalty determined by the Copyright Board in the public account of India or in any other account specified by the Copyright Board so as to enable the owner of the copyright or, as the case may be, his heirs, executors or the legal representatives to claim such royalty at any time.*
- 6) *Without prejudice to the foregoing provisions of this section, in the case of a work referred to in sub-section (1), if the original author is dead, the Central Government may, if it considers that the publication of the work is desirable in the national interest, require the heirs, executors or legal representatives of the author to publish such work within such period as may be specified by it.*
- 7) *Where any work is not published within the period specified by the Central Government under sub-section (6), the Copyright Board may, on an application made by any person for permission to publish the work and after hearing the parties concerned, permit such publication on payment of such royalty as the Copyright Board may, in the circumstances of such case, determine in the prescribed manner.*

31B. Compulsory licence for benefit of disabled

- 1) *An organisation, registered under section 12A of the Income-tax Act, 1961 and working primarily for the benefit of persons with disability, and recognized under Chapter X of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, may apply to the Copyright Board, in such form and manner and accompanied by such fee as may be prescribed, for a compulsory licence to publish any work in which copyright subsists for the benefit of such persons, in a case to which clause (zb) of sub-section (1) of section 52 does not apply and the Copyright Board shall dispose of such application as expeditiously as possible and endeavour shall be made to dispose of such application within a period of two months from the date of receipt of the application.*
- 2) *The Copyright Board may, on receipt of an application under sub-section (1) inquire, or direct such inquiry as it considers necessary to establish the credentials of the applicant and satisfy itself that the application has been made in good faith.*
- 3) *If the Copyright Board is satisfied, after giving to the owners of rights in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, that a compulsory licence needs to be issued to make the work available to the disabled, it may direct the Registrar of Copyrights to grant to the applicant such a licence to publish the work.*
- 4) *Every compulsory licence issued under this section shall specify the means and format of publication, the period during which the compulsory licence may be exercised and, in the case of issue of copies, the number of copies that may be issued:*

Provided that where the Copyright Board has issued such a compulsory licence it may, on a further application and after giving reasonable opportunity to the owners of rights, extend the period of such compulsory licence and allow the issue of more copies as it may deem fit.

- 5) *The Copyright Board may specify the number of copies that may be published without payment of royalty and may fix the rate of royalty for the remaining copies.*

31C. Statutory licence for cover versions

- 1) *Any person desirous of making a cover version, being a sound recording in respect of any literary, dramatic or musical work, where sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work, may do so subject to the provisions of this section:*

Provided that such sound recordings shall be in the same medium as the last recording, unless the medium of the last recording is no longer in current commercial use.

- 2) *The person making the sound recordings shall give prior notice of his intention to make the sound recordings in the manner as may be prescribed, and provide in advance copies of all covers or labels with which the sound recordings are to be sold, and pay in advance, to the owner of rights in*

each work royalties in respect of all copies to be made by him, at the rate fixed by the Copyright Board in this behalf:

Provided that such sound recordings shall not be sold or issued in any form of packaging or with any cover or label which is likely to mislead or confuse the public as to their identity, and in particular shall not contain the name or depict in any way any performer of an earlier sound recording of the same work or any cinematograph film in which such sound recording was incorporated and, further, shall state on the cover that it is a cover version made under this section.

- 3) *The person making such sound recordings shall not make any alteration in the literary or musical work which has not been made previously by or with the consent of the owner of rights, or which is not technically necessary for the purpose of making the sound recordings:*

Provided that such sound recordings shall not be made until the expiration of five calendar years after the end of the year in which the first sound recordings of the work was made.

- 4) *One royalty in respect of such sound recordings shall be paid for a minimum of fifty thousand copies of each work during each calendar year in which copies of it are made:*

Provided that the Copyright Board may, by general order, fix a lower minimum in respect of works in a particular language or dialect having regard to the potential circulation of such works.

- 5) *The person making such sound recordings shall maintain such registers and books of account in respect thereof, including full details of existing stock as may be prescribed and shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording:*

Provided that if on a complaint brought before the Copyright Board to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this section, the Copyright Board is, prima facie, satisfied that the complaint is genuine, it may pass an order ex parte directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty.

Explanation.

For the purposes of this section "cover version" means a sound recording made in accordance with this section.

31D. Statutory licence for radio broadcasting of literary and musical works and sound recording

- 1) *Any broadcasting organisation desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published may do so subject to the provisions of this section.*

- 2) *The broadcasting organisation shall give prior notice, in such manner as may be prescribed, of its intention to broadcast the work stating the duration and territorial coverage of the broadcast, and shall pay to the owner of rights in each work royalties in the manner and at the rate fixed by the Copyright Board.*
- 3) *The rates of royalty for radio broadcasting shall be different from television broadcasting and the copyright Board shall fix separate rates for radio broadcasting and television broadcasting.*
- 4) *In fixing the manner and the rate of royalty under sub-section (2), the Copyright Board may require the broadcasting organisation to pay an advance to the owners of rights.*
- 5) *The names of the authors and the principal performers of the work shall, except in case of the broadcasting organisation communicating such work by way of performance, be announced with the broadcast.*
- 6) *No fresh alteration to any literary or musical work, which is not technically necessary for the purpose of broadcasting, other than shortening the work for convenience of broadcast, shall be made without the consent of the owners of rights.*
- 7) *The broadcasting organisation shall —*
 - a) *maintain such records and books of account, and render to the owners of rights such reports and accounts; and*
 - b) *allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such broadcast, in such manner as may be prescribed. in such manner as may be prescribed.*
- 8) *Nothing in this section shall affect the operation of any licence issued or any agreement entered into before the commencement of the Copyright (Amendment) Act, 201.*

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 after a period of seven years from the first publication of the work.*
- 1A) *Notwithstanding anything contained in sub-section (1), any person may apply to the Copyright Board for a licence to produce and publish a translation, in printed or analogous forms of reproduction, of a literary or dramatic work, other than an Indian work, in any language in general use in India after a period of three years from the publication of such work, if such translation is required for the purposes of teaching, scholarship or research:*

Provided that where such translation is in a language not in general use in any developed country, such application may be made after a period of one year from such publications.

- 2) *Every application under this section 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 82[the application-*
 - i) *subject to the 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; and*
 - ii) *where such licence is granted on an application under sub-section (1A), subject also to the condition that the licence shall not extend to the export of copies of the translation of the work outside India and every copy of such translation shall contain a notice in the language of such translation that the copy is available for distribution only in India:*

Provided that nothing in clause (ii) shall apply to the export by Government or any authority under the Government of copies of such translation in a language other than English, French or Spanish to any country if-

- 1) *such copies are sent to citizens of India residing outside India or to any association of such citizens outside India; or*
- 2) *such copies are meant to be used for purposes of teaching, scholarship or research and not for any commercial purpose; and*
- 3) *in either case, the permission for such export has been given by the Government of that country*

Provided further that no licence under this section] 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 authorised by him, within seven years or three years or one year, as the case may be, 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 proved to the satisfaction of the Copyright Board that he had requested and had been denied authorisation by the owner of the copyright to produce and publish such translation, or that he was, after due diligence on his part, 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 authorisation by registered air mail post to the publisher whose name appears from the work, and in the case of an application for a licence under sub-section (1), not less than two months before such application;*

- cc) *a period of six months in the case of an application under sub-section (1A) (not being an application under the proviso thereto), or nine months in the case of an application under the proviso to that sub-section, has elapsed from the date of making the request under clause (b) of this proviso, or where a copy of the request has been sent under clause (c) of this proviso, from the date of sending of such copy; and the 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 authorised by him within the said period of six months or nine months, as the case may be;*
- ccc) *in the case of any application made under sub-section (1A),-*
- i) *the name of the author and the title of the particular edition of the work proposed to be translated are printed on all the copies of the translation;*
 - ii) *if the work is composed mainly of illustrations, the provisions of Section 32A are also complied with;*
- 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.*
- 5) *Any broadcasting authority may apply to the Copyright Board for a licence to produce and publish the translation of-*
- a) *a work referred to in sub-section (1A) and published in printed or analogous forms of reproduction; or*
 - b) *any text incorporated in audio-visual fixations prepared had published solely for the purpose of systematic instructional activities, for broadcasting such translation for the purposes of teaching or for the dissemination of the results of specialised, technical or scientific research to the experts in any particular field.*
- 6) *The provisions of sub-sections (2) to (4) in so far as they are relatable to an application under sub-section (1A), shall, with the necessary modifications, apply to the grant of a licence under subsection (5) and such licence shall not also be granted unless-*
- a) *the translation is made from a work lawfully acquired;*
 - b) *the broadcast is made through the medium of sound and visual recordings;*
 - c) *such recording has been lawfully and exclusively made for the purpose of broadcasting in India by the applicant or by any other broadcasting agency; and*
 - d) *the translation and the broadcasting of such translation are not used for any commercial purposes.*

Explanation.- For the purposes of this section,-

- a) *“developed country” means a country which is not a developing country;*
- b) *“developing country” means a country which is for the time being regarded as such in conformity with the practice of the General Assembly of the United Nations;*
- c) *“purposes of research” does not include purposes of industrial research, or purposes of research by bodies corporate (not being bodies corporate owned or controlled by Government) or other associations or body of persons for commercial purposes;*
- d) *“purposes of teaching, research or scholarship” includes-*
 - i) *purposes of instructional activity at all levels in educational institutions, including Schools, Colleges, Universities and tutorial institutions; and*
 - ii) *purposes of all other types of organised educational activity.*

32A. Licence to reproduce and publish works for certain purposes

- 1) *Where, after the expiration of the relevant period from the date of the first publication of an edition of a literary, scientific or artistic work,-*
 - a) *the copies of such edition are not made available in India; or*
 - b) *such copies have not been put on sale in India for a period of six months to the general public, or in connection with systematic instructional activities at a price reasonably related to that normally charged in India for comparable works by the owner of the right of reproduction or by any person authorised by him in this behalf, any person may apply to the Copyright Board for a licence to reproduce and publish such work in printed or analogous forms of reproduction at the price at which such edition is sold or a lower price for the purposes of systematic instructional activities.*
- 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 work to be reproduced.*
- 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 reproduction of the work mentioned in the application subject to the conditions that,-*
 - i) *the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the reproduction 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;*

- ii) *a licence granted under this section shall not extend to the export of copies of the reproduction of the work outside India and every copy of such reproduction shall contain a notice that the copy is available for distribution only in India :*

Provided that no such licence shall be granted unless-

- a) *the applicant has proved to the satisfaction of the Copyright Board that he had requested and had been denied authorisation by the owner of the copyright in the work to reproduce and publish such work or that he was, after due diligence on his part, unable to find such owner;*
- b) *where the applicant was unable to find the owner of the copyright, he had sent a copy of his request for such authorisation by registered airmail post to the publisher whose name appears from the work not less than three months before the application for the licence;*
- c) *the Copyright Board is satisfied that the applicant is competent to reproduce and publish an accurate reproduction of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section;*
- d) *the applicant undertakes to reproduce and publish the work at such price as may be fixed by the Copyright Board, being a price reasonably related to the price normally charged in India for works of the same standard on the same or similar subjects;*
- e) *a period of six months in the case of application for the reproduction and publication of any work of natural science, physical science, mathematics or technology, or a period of three months in the case of an application for the reproduction and publication of any other work, has elapsed from the date of making the request under clause (a), or where a copy of the request has been sent under clause (b), from the date of sending of a copy, and a reproduction of the work has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or, three months, as the case may be;*
- f) *the name of the author and the title of the particular edition of the work proposed to be reproduced are printed on all the copies of the reproduction;*
- g) *the author has not withdrawn from circulation copies of the work; and*
- h) *an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.*
- 5) *No licence to reproduce and publish the translation of a work shall be granted under this section unless such translation has been published by the owner of the right of translation or any person authorised by him and the translation is not in a language in general use in India.*
- 6) *The provisions of this section shall also apply to the reproduction and publication, or translation into a language in general use in India, of any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities.*

Explanation.- For the purposes of this section, "relevant period", in relation to any work, means a period of-

- a) *seven years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to, fiction, poetry, drama, music or art;*
- b) *three years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to, natural science, physical science, mathematics or technology; and*
- c) *five years from the date of the first publication of that work, in any other case.*

32B. Termination of licences issued under this chapter

- 1) *If, at any time after the granting of a licence to produce and publish the translation of a work in any language under sub-section (1A) of section 32 (hereafter in this sub-section referred to as the licensed work), the owner of the copyright in the work or any person authorised by him publishes a translation of such work in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for the translation of works of the same standard on the same or similar subject, the licence so granted shall be terminated:*

Provided that no such termination shall take effect until after the expiry of a period of three months from the date of service of a notice in the prescribed manner on the person holding such licence by the owner of the right of translation intimating the publication of the translation as aforesaid:

Provided further that copies of the licensed work produced and published by the person holding such licence before the termination of the licence takes effect may continue to be sold or distributed until the copies already produced and published are exhausted.

- 2) *If, at any time after the granting of a licence to produce and publish the reproduction or translation of any work under section 32A, the owner of the right of reproduction or any person authorised by him sells or distributes copies of such work or a translation thereof, as the case may be, in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for work of the same standard on the same or similar subject, the licence so granted shall be terminated:*

Provided that no such termination shall take effect until after the expiry of a period of three months from the date of service of a notice in the prescribed manner on the person holding the licence by the owner of the right of reproduction intimating the sale or distribution of the copies of the editions of work as aforesaid:

Provided further that any copies already reproduced by the licensee before such termination takes effect may continue to be sold or distributed until the copies already produced are exhausted

Licences are ways of authorising a non-right holder to do certain acts which are the exclusive rights of the owner of copyright. This does not involve transfer of the right but only permission to perform certain particular action. The right remains with the copyright owner. If the licensee does something beyond the terms of the licence, it will become an infringement of the copyright of the owner.

Licences are of two types. One is the licence given by the copyright owner. This is a voluntary licence. The owner issues the licence on his own terms and conditions. Many a time it is against payment royalty or compensation. Non-fulfilment of the terms and conditions of a licence entails cancellation or revocation of the licence.

Another set of licences are licences issued by an authority. This authority could be the Central Government or the Copyright Board or the Registrar of Copyrights. These can be broadly categorised as compulsory licences. Such licences are also attached with terms and conditions, but the terms and conditions are not prescribed by the owner. They are either given in the statute or prescribed by the authority which issues the licence. Like in the case of voluntary licences, in this case also, non-fulfilment of the terms and conditions of the licence entails cancellation or revocation.

Another categorisation of licences are into exclusive licences and non-exclusive licences. Exclusive licence means licences which are given exclusively to a particular party. The copyright owner will not issue an identical or similar licence to another party. For example, if Penguin UK gives an exclusive licence to Penguin India, to print, publish and distribute 5000 copies of a novel in which they hold the copyright, they cannot issue a similar licence for that work to any other published so long as the licence is valid. It does not debar them from issuing a licence to another party for printing and publishing and distributing that work in Pakistan.

Non-exclusive licence gives the owner the right to issue similar or identical licences to other parties. For example, if a company permits the use of its database on scientific research by one company, it will usually be through a non-exclusive licence. They can permit another company also such access to the same database. The decision on whether to go for exclusive licence or non-exclusive licence depends on the nature of the work involved and the right. Ordinarily for printing and publishing a work in a territory, the printer and publisher seeks a non-exclusive licence. Otherwise, when he comes out with a print of the book, the other licensee may also come out with a similar edition, but at a lower price thus undercutting his market. That is the reason in such cases the licensee seeks exclusive licences.

Most of the licences cover only limited rights and do not include all the rights enshrined in a copyrighted work. It is given for a special purpose such as printing and publishing or communication to the public. Even within a right, the licence can be very restrictive. For example, an author may give the publishing right for hardbound copies to one publisher and for paperback copies to another publisher. He may give the rights for publishing in one country to one publisher and in another country to another publisher. He may give translation right for one language to one person and for another language to another. He may give the right for making a cinematograph film based on his novel in Hindi to one producer and in Bengali to another producer.

Ordinarily licences are not assignable, unlike an assignment. This is because it is given for a special purpose and does not involve transfer of rights. However, it is legally permissible to include terms in the licence which enables the licensee assign his licence to another person.

Most of the conditions pertaining to assignment are applicable to licences by the owner. Thus the mode of licence and disputes with regard to licence are as provided for assignments.

Licence and Assignment

There are major differences between licence and assignment. For one, assignment is a transfer of rights from one person to another and licence is a permission to do a particular act or exercise a particular right in a limited way. In the case of assignment the assignee becomes the owner of the particular right assigned to him as per the terms of the agreement. This means that if another person infringes that particular right within the territory where he is having the right and during the period of the assignment, he can take legal action against that person. A licensee cannot take such action since he is not the owner of the copyright.

In the case of ***K.I. George and Anr. v. C. Cheriyan and Ors.*** [AIR 1986 Ker 12] the issue of difference between assignment and licence came up as the plaintiff submitted that the licence granted to his client is not an assignment of copyright. The court observed the following passage in Halsbury's ***Laws of England***, 4th Edn., para 880, as relevant in this context:

"A licence is not a partial assignment of copyright, it is merely leave to do something which would otherwise be unlawful. A licensee has, however, the right to make alterations except, in so far as his licence expressly or impliedly restricts that right. A licensee, unless he is an exclusive licensee, cannot sue for infringement of copyright unless he joins the copyright proprietor as co-plaintiff in the action, and a purchaser in good faith and for value of the proprietor's interest without notice of a previous licence is unaffected by it. The licensee can, however, sue the assignor for damages for breach of contract if the latter does not protect his interests.

Where the doing of anything is authorised by the grantee of a licence or a person deriving title from the grantee, and it is within the terms or implied terms of the licence for him to authorise it, then, for the purposes of the Copyright Act, 1956, it is taken to be done with the licence of the grantor and of every other person, if any, upon whom the licence is binding."

Such issues normally come up in the cases of exclusive licence agreements between author and publisher. The observation of the Munsiff in the above referred case as quoted by the High Court is relevant. He said, "In the case of an agreement between author and publishers, the most important point to be determined is whether any copyright is to be vested in the publisher or whether licence alone is intended. In the case of a licence which is a publishing agreement will normally be an exclusive licence the grant is subject to certain conditions"

In ***Deshmukh and Co. (Publishers) v. Avinash Vishnu Khandekar and Ors.*** [2006 (2) BomCR 321], also this issue came up and the court observed:

An assignment transfers an interest in, and deals with the copyright itself as provided under Section 14 of the Act, but licence does not convey the copyright

but only grants a right to do something, which in the absence of licence would be unlawful. An assignment transfers title in the copyright, a licence merely permits certain things to be done by the licensee. The assignee being invested with the title in the copyright may reassign. The licence is personal, and therefore, not transferable or assignable without the grantors' consent. Furthermore, the assignee can sue for infringement without joining the assignor. The licensee cannot sue in his own name for infringement of the copyright, since copyright belongs to the licensor.

The court further observed

Sections 18, 19 and 19A of the Copyright Act, deal with Assignment of copyright. Assignment of copyright may be for the whole of the rights or for the part of the rights only. Assignment of copyright may be general i.e. without any limitation being placed on the assignee or assignment may be subject to certain limitations. Assignment may be for full term of copyright or for a limited period of time. Assignment may be on territorial basis i.e. for a particular territory of the country. Copyright can be assigned on different conditions referred to hereinabove.

In cases of agreements between authors, publishers and sellers, it is sometimes difficult to determine whether it is an exclusive licence or partial assignment of the copyright to publish and sell. If the agreement contains express words or terms as to copyright then an inference can be drawn. To determine whether a document is an assignment or merely confers a licence, regard must be had to the substance and not to the form of words used. The question usually arises in the context of whether there has been a partial assignment or an exclusive licence of the right in question, the distinction is a slender but an important one. Different authors have unequivocally expressed that it is difficult to extract from the cases as to whether any given transaction is an assignment or a licence.

It also stated

An assignment carries with it the whole interest in the thing assigned, including the right to re-assign, while licence is personal and not assignable without the grantor's consent. An exclusive licence is a leave to do a thing and a contract not to give leave to anybody else to do the same thing. And it confers no interest or property in the thing but only makes an action lawful which, without it, would have been unlawful. A licensee has no title to sue in his own name, but the assignee, as respects the rights assigned, is treated, for the purposes of this Act as the owner of copyright with all rights which attach to an owner of copyright and can prevent the infringements without any specific clause in the agreement.

In *Mishra Bandhu Karyalaya v. Shivratan Lal Koshal*, the Madhya Pradesh High Court held :

In the case of agreements between authors and publishers or theatrical producers, it is, often difficult to distinguish between a sole and exclusive licence and an assignment of copyright. Where the agreement between the author and his publisher contains no express term as to the copyright. If the consideration is payment to the author of royalties or a share of the profits instead of a sum of money paid down, the inference is that the copyright is not assigned, but that a sole and exclusive licence is conferred upon the publisher.

In the case of *K.P. Sundaram v. Rattan Prakashan Mandir*, [AIR 1983 Delhi 46] the Court held :

It is extremely difficult sometimes to distinguish in case of agreement between authors and publishers and sellers, whether it is an exclusive licence or partial assignment of the copyright to publish and sell. If the agreement contains express words or terms as to copyright then inference can be drawn. Whether the agreement contains no such terms, but the consideration is the payment of royalties or a share of profits instead of down right payment, then the copyright is not assigned. It would be a case of conferment of an exclusive licence to publish and sell.

One can say that the courts examine the circumstances and terms and conditions of the agreement to decide whether a particular agreement between an author and a publisher is one of assignment or exclusive licence.

Form of Licence

The Copyright Act does not prescribe any particular form for grant of licence, just like for assignment. The Act however insists that it should be in writing and signed by the author or his duly authorised agent. Taking into account other laws, one can say that a licence agreement should contain the following:

- a) Particulars of the work which is licensed
- b) Period for which licence is issued
- c) Particulars of the rights licensed
- d) Geographical area for which the licence is issued
- e) Details of Royalty or other payments to be made to the author by the licensee
- f) Terms and conditions regarding extension
- g) Terms and conditions regarding revocation of the agreement
- h) Terms and conditions regarding revision of the agreement
- i) Whether any transfer or further licensing is permitted or not.

Section 19 of the Copyright Act regarding assignment is applicable to cases of licensing also. As per this, where the licensee does not exercise the rights licensed to him within a period of one year from the date of licence, the licence will be deemed to have lapsed unless otherwise specified in the licence. Similarly, if the period of licence is not stated, it shall be presumed to be five years from the date of licence. If no territorial limit is indicated in the licence it will be taken as the whole of India

Licence in a Future Work

One of the interesting features of the Copyright Act is that it provides for licensing a future work, that is a work not yet created. There have been many instances of this. Many such cases relate to agreements between author and publisher. The agreement, however, cannot require the author to create and produce the work. In the US courts have also taken the view that in such agreements periods should be specified; otherwise, the agreement can be declared invalid.

In the US case of *Harms v. Stern* [229 Fed 42,43], the court said:

Such an agreement, it may be conceded, might be invalid if an author undertook for a present consideration to give an exclusive right in all writings which he might at any time in the future produce. Such an agreement might be contrary to public policy and void, just as an agreement by an inventor transferring to another a right in all inventions he might at any time thereafter make might be void.

Compulsory Licences

Compulsory licences are issued for the purposes specified in the Copyright Act. The rationale for such licences is to balance the rights of the owner and the wider public interest. As stated in Article 27 of the Universal Declaration of Human Rights, everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Granting of exclusive rights on works should not become a tool to deprive others totally from accessing and enjoying those works, provided the owner is compensated.

The following are the instances where a compulsory licence can be issued:

- i) Withholding from the public of an Indian work which has been published or performed in public or communicated to the public
- ii) An Indian work whose author is dead or unknown or cannot be traced
- iii) Translation of an Indian literary or dramatic work seven years after publication of the work
- iv) Translation of a non-Indian work three years after publication of the work (one year in case the translation is in a language not in general use in any developed country)
- v) Non-availability of copies of a literary, scientific or artistic work at a price reasonably related to that normally charged in India for comparable works after certain stipulated periods and for certain periods after the first publication.

A special provision has been incorporated through the 2012 amendments to provide for compulsory licence for benefit of disabled. Any person or organisation working for the benefit of persons with disability can approach the Copyright Board for a compulsory licence to publish a copyrighted work in a format that can be used by the disabled.

Compulsory licences are issued by the Registrar on the directions of the Copyright Board. The Copyright Board may issue such directions on a complaint or request from a person and after making such inquiries as it considers necessary. It may also give an opportunity to the party concerned to be heard.

Statutory Licences

The copyright amendments in 2012 have brought in the concept of statutory licences to the regime of copyright. These apply in the following cases:

- a) For cover versions
- b) For broadcasting of literary and musical works and sound recordings.

Earlier, cover versions were covered under the section dealing with exceptions to copyright. Now they have been brought in under statutory licences. The Copyright Board can fix the royalties to be paid. In the case of literary and musical works and sound recordings, broadcasting organisations can also avail of the statutory licence provision. In this case also the rates of royalties are to be fixed by the copyright Board. The statutory licence provisions are accompanied by elaborate conditions which the parties making use of the same have to fulfil.

Self Assessment Questions

(Spend 3 minutes each)

5) What is a licence in copyright?

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6) How is a licence different from assignment?

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7) What should be the content of a licence of copyright?

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8) What is compulsory licence?

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9) Which are the situations in which a compulsory licence can be issued?

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10) Who are the authorities to issue compulsory licence?

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6.5 REVOCATIONS

Revocations of assignments and licences are to be as per the terms of the assignment or the licence. When the assignment deed or the licence deed does not contain terms regarding revocation, it leads to disputes. Such disputes are to be submitted to the Copyright Board. The contexts in which such disputes may arise include:

- a) Non-exercise of the rights assigned by the assignee
- b) Non-payment of the royalty or compensation provided in the assignment
- c) Non-exercise of the rights licensed by the licensee
- d) Non-payment of the royalty or compensation provided in the licence
- e) Transfer of licence to a third party without the approval of the licensor

Sometimes, disputes could also arise in cases where the assignee transfers his assignment in violation of the terms of the agreement.

Complaints or applications to the Copyright Board are to be submitted to the Registrar of Copyrights who is the Secretary of the Copyright Board.

In matters of disputes with respect of assignment or licence of any copyright, the aggrieved party can complain to the Copyright Board. The Copyright Board is to take into account the total circumstances which resulted in non-fulfilment of the terms of the assignment or licence. If the terms on the assignee or licensee were too harsh then the Board may not revoke the assignment or the licence. Further, no order of revocation of assignment or licence under such circumstances can be made by the Copyright Board until five years have passed since the assignment of licence.

6.6 TRANSMISSION BY TESTAMENTARY DISPOSITION

Ordinarily rights over the material copy and the copyright are different. However, 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, 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. This, of course, is subject to the condition that the will or testament does not indicate a contrary intention. The "manuscript" includes a typed copy or a computer printout also, besides a copy made by hand.

6.7 RELINQUISHMENT OF COPYRIGHTS

The copyright Act has a special provision extending a right of relinquishment to the author. As per Section 21, 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 or through a public notice. A copy of the public notice is to be forwarded to the Registrar of copyrights. The Registrar is required to publish the notice in the Official Gazette and also on the website of the copyright office. The relinquishment will be effective from the date of notice. However, such relinquishment of all or any of the rights comprised in the copyright in a work shall not affect any rights subsisting in favour of any person on the date of the notice. A Form for the notice for relinquishment has been prescribed in the Copyright Rules. The Notice is to attach a an affidavit made before a Magistrate stating that the applicant was the author of the work in question and that he is relinquishing the right as specified along with a statement with the following details:

- 1) Description of the work :
 - a) Class of the work (Literary, Dramatic, Musical, Artistic, Cinematograph Film, Record).
 - b) Title of the works.
 - c) Full name, address and nationality of the author.
 - d) Language of the work.
 - e) Name, address and nationality of the publisher.
 - f) Year of first publication.
 - g) Country of first publication.
 - h) If the copyright in the work is registered under Section 45, the Registration number.
- 2) Rights owned by the deponent on the date of the affidavit.
(If the rights are owned jointly with others, state names, addresses and nationalities of the joint owners.)
- 3) Extent to which rights are relinquished.
- 4) Reasons for relinquishment of the rights.
(The information given here will be kept strictly confidential).

In the case of *Jagdish Prasad Gupta v. Parameshwar Prasad Sing* [AIR 1966 Pat 33] the High Court pointed out that the paper setters of the question papers can relinquish their copyrights in favour of the Bihar School Examination Board.

Self Assessment Questions

(Spend 3 minutes each)

11) What are the contexts in which revocation of an assignment can take place?

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12) What is the position regarding the copyright in an unpublished literary work whose manuscript passed onto a person through a will but without any conditions?

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13) Can an author relinquish his copyright in a work?

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6.8 SUMMARY

In this Unit we have seen the provisions in the Copyright Act and Rules regarding assignment, licensing, and relinquishment of copyright.

Copyright is a private property right and like all private property rights it can be transferred. Such transfer is made through assignments.

All assignments have to be in writing though no specific form has been prescribed in the Copyright Act or Rules for the assignment. The assignment deed should be signed by the owner of the copyright in the work being assigned. If there is more than one owner all the owners should sign the deed. It should also contain the name of the work, the rights being assigned, the duration of the assignment

and the territory for which the assignment is valid. Sometimes, the assignment contains details regarding circumstances for revocation of the deed, the conditions for extension of the deed and so on. It is better to have clear and detailed terms and conditions regarding all aspects of the assignment in the assignment deed.

The Copyright Board has jurisdiction over disputes regarding assignment.

Unlike in the case of assignment, in licence the right does not get transferred in licence. In this case only a permission is given for a particular act within the copyright. While an assignee can sue for infringement, a licensee cannot do so, he being not the owner of any copyright. Otherwise, most of the conditions which are applicable to assignments are applicable to licences by the owners. In case of voluntary licences also the disputes can be agitated before the Copyright Board.

Besides owners, the Copyright Board can issue licences in certain cases. These are known as compulsory licences. These are issued on application by some person and after making due inquiry and depending on the case after giving a hearing to the copyright owner. Mostly these circumstances pertain to non-availability of the work concerned to the public.

6.9 TERMINAL QUESTIONS

- 1) What are the requirements for a valid copyright assignment?
- 2) What are the differences between assignment and licence?
- 3) What are the circumstances in which a compulsory licence can be issued?
- 4) Can a person relinquish his copyright? If so, how?

6.10 ANSWERS AND HINTS

Self Assessment Questions

- 1) Refer to Section 6.3
- 2) Refer to Section 6.3
- 3) Refer to Section 6.3
- 4) Refer to Section 6.3
- 5) Refer to Section 6.4
- 6) Refer to Section 6.5
- 7) Refer to Section 6.5
- 8) Refer to Section 6.8
- 9) Refer to Section 6.8
- 10) Refer to Section 6.8
- 11) Refer to Section 6.9
- 12) Refer to Section 6.9
- 13) Refer to Section 6.11

Terminal Questions

- 1) Refer to Section 6.3
- 2) Refer to Section 6.5
- 3) Refer to Section 6.8
- 4) Refer to Section 6.11

6.11 REFERENCES AND SUGGESTED READINGS

- 1) **International Copyright and Neighbouring Rights by S. M. Stewart, Chapters 1 and 2.**
- 2) **Copyright and Industrial Designs by P. Narayanan.**
- 3) **Lal's Commentary on Copyright Act.**
- 4) **Iyengar's The Copyright Act, 1957.**
- 5) **How Copyright Works in Practice by Kala Thairani.**

UNIT 7 COPYRIGHT SOCIETIES

Structure

- 7.1 Introduction
- 7.2 Objectives
- 7.3 Copyright Societies in India
- 7.4 Procedure for Registration
- 7.5 Functions of Copyright Society
- 7.6 Registered Copyright Societies of India
- 7.7 Summary
- 7.8 Terminal Questions
- 7.9 Answers and Hints
- 7.10 References and Suggested Readings

7.1 INTRODUCTION

Copyright is a private property right. It is a bundle of exclusive rights. It is one intellectual property right which is given without any formality. The scope of copyright is so vast that it covers billions of works. Since any original work gets copyright the quantum of works in copyright regime is very vast. It extends from literary works to dramatic works to artistic works to music and also includes cinematograph films and sound recording. The exclusive rights include right of reproduction, distribution, communication to the public, translation, adaptation and so on. No owner of copyright can keep track of all the uses that others make of his works which can be anywhere in the world since copyright extends beyond the territorial boundaries of the author's country of residence or work.

It is in this background that the concept of collective administration of copyright by societies came up. It means that the management and protection of copyright in works are undertaken by a society of owners of such works. A copyright owner can become a member of the society. When he becomes a member of a copyright society, that society, because of its organisational facilities and strength, is able to keep a better vigil over the uses made of that work throughout the country and collect due royalties from the users of those works. The copyright societies generally enter into reciprocal agreements with similar societies in other countries for collecting royalties for the uses of its members' works in those countries.

From the perspective of users also collective administration societies have certain uses and advantages. They do not have to run after individual owners to get the licences. For a person who wants to play Hindi film music in a restaurant in Imphal, Manipur, it is not an easy task to locate all the copyright owners in thousands of Hindi film songs. With a copyright society to administer the rights and if the copyright owners of the Hindi film music are all members of that society, he needs to approach only one agency.

Even in the case of broadcasting and telecasting organisations also copyright societies become handy. For example, the BBC alone uses on an average 60,000 music items every week. It will be an almost impossible task for them to track all

the owners in these pieces. As per the scheme of copyright societies, with licences from one or two societies they can easily carry on their business.

In most countries of the world copyright administration is performed by a network of not-for-profit copyright collecting societies known variously as authors' societies or copyright societies. They generally have a statutory basis and may enjoy monopoly powers, with legislation seeking to accommodate the interests of both copyright users and individual members.

The functions of these societies can broadly be categorized as under:

- license the works in which they hold the copyright or for which they act as agent on behalf of their members for specific uses
- monitor use of those rights
- collect revenue relating to use of the rights
- distribute revenues as royalties to members
- enter into reciprocal arrangements with foreign collecting societies to collect and distribute local royalties to foreign right holders and to receive and distribute royalties earned overseas to local right holders

Societies generally use two distinct types of licences: blanket licences and specific licences.

Blanket licences authorise copyright users to use, for a specific period of time, all works for which the licensing body is responsible. Such a licence might for example provide a broadcaster with a single annual authorisation encompassing many thousands of songs owned by thousands of composers, lyricists and publishers.

Specific licences deal with particular uses of a specific work in a particular context and for a specific time.

Collective administration, particularly of secondary uses such as broadcasting, has developed with the proliferation of rights and uses. Collective administration spreads the cost of administration over all members of the society. 'Blanket licensing' reduces the cost to consumers, with users paying a single fee for access to the whole of a society's repertoire, thereby eliminating high transaction costs that would be incurred through clearing rights with every individual author, publisher, composer, lyricist, artist, performer and record company.

Collective licensing applies to a single territory but reciprocal agreements between societies mean that it allows right holders to gain remuneration for uses across the globe.

History of collective administration societies in Europe goes back to 1851, when the Societe des Auteurs, Compositeurs et Editeurs de Musique (SACEM) was established in France as a copyright collecting society for creators and publishers. SACEM replaced the Société des gens de lettres (Society of French Writers), founded in 1837 by Honore de Balzac and Victor Hugo. It served as a model for other societies such as the UK Performing Rights Society (PRS), German Gesellschaft für Musikalische Aufführungs (GEMA) and Australia's Indian Performing Right Society (IPRS). The American Society of Composers, Authors & Publishers (ASCAP) was established in 1914. BONUS, the first Reproduction

Rights Organisation, was founded in Sweden in 1973 to serve right owners and users of printed materials; which since the late 1960's had been subject to extensive photocopying.

There is no single collective rights management body covering all countries. There are, however, regional societies, such as for Europe. The problem of across the border enforcement is managed by reciprocal arrangements between societies. This is encouraged by several organisations of authors and other copyright owners, such as the Confederation Internationale des Societes Auteurs & Compositeurs (CISAC); the International Federation of Reproduction Rights Organisations (IFRRO), the Bureau International des Sociétés Gérant les Droits D'Enregistrement et les Reproduction Mecanique (BIEM) and other bodies. CISAC was formed in 1926 by the national rights management bodies. IFRRO began in 1980 as a working group of the Copyright Committee of the International Publishers Association (IPA) and the International Group of Scientific, Technical & Medical Publishers (STM). It is primarily concerned with photocopying and digital dissemination of text publications.

Given below is a list of copyright societies in different countries. This is only an illustrative list and not a complete one. It, however, illustrates the different kinds of societies; some go by the membership type, some go by the right being administered and so on.

Argentina

- AADI (Asociación Argentina de Intérpretes)
- ARGENTORES (Sociedad General de Autores de la Argentina)
- CADRA (Centro de Administración de Derechos Reprográficos de la República Argentina).
- Sociedad Argentina de Autores y Compositores de Música (SADAIC)
- CAPIF (Cámara Argentina de Productores de Fonogramas y Videogramas).
- SADAFO (Sociedad Argentina de Autores Fotográficos)

Armenia

- ARMAUTHOR

Australia

- Christian Video Licensing International Australia
- Copyright Agency Limited (CAL)
- Phonographic Performance Company of Australia (PPCA)
- Screenrights (Audio-Visual Collecting Society Ltd)
- VISCOPY Australia

Austria

- Autoren, Komponisten und Musikverleger
- Motion Picture Licensing Company

Belgium

- SABAM

Brazil

- ECAD (Escritório Central de Arrecadação e Distribuição)
- Motion Picture Licensing Corporation Brasil

Canada

- Access Copyright – The Canadian Copyright Licensing Agency (formerly CanCopy)
- Alliance of Canadian Cinema Television and Radio Artists Performers' Rights Society (ACTRA)
- American Federation of Musicians of the United States and Canada (AFM)
- ArtistI
- Audio Ciné Films Inc.
- Audio-Video Licensing Agency (AVLA)
- Border Broadcasters' Inc. (BBI)
- Canadian Artists' Representation Copyright Collective (CARCC)
- Canadian Broadcasters Rights Agency (CBRA)
- Canadian Musical Reproduction Agency Ltd. (CMRRA)
- Canadian Private Copying Collective (CPCC)
- Canadian Retransmission Collective (CRC)
- Canadian Retransmission Right Association (CRCC)]
- Canadian Screenwriters Collection Society (CSCS)
- Christian Copyright Licensing Inc. (CCLI)
- Christian Video Licensing International (CVLI)
- Copyright Collective of Canada (CCC)
- Criterion Pictures
- Directors Rights Collective of Canada (DRCC)
- Direct Response Television Collective (DRTVC)
- Educational Rights Collective of Canada (ERCC)
- FWS Joint Sports Claimants (FWS)
- Major League Baseball Collective of Canada Inc. (MLB)
- Producers Audiovisual Collective of Canada (PACC)
- Playwrights Guild of Canada (PGC) (formerly Playwrights Union of Canada)
- Re:Sound Music Licensing Company
- Société civile des auteurs multimedia (SCAM)
- Société de gestion collective des droits des producteurs de phonogrammes et vidéogrammes du Québec (SOPROQ)
- Société des auteurs et compositeurs dramatiques (SACD)
- Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada (SODRAC)

- Society of Composer, Authors and Music Publishers of Canada (SOCAN)
- Société québécoise de gestion collective des droit de reproduction (COPIBEC)
- Société québécoise des auteur dramatiques (SoQAD)

Chile

- Motion Picture Licensing Corporation Chile
- SCD (Sociedad Chilena del Derecho de Autor)

Colombia

- Sociedad de Autores y Compositores de Colombia SAYCO y la Asociación Colombiana de Intérpretes y Productores Fonográficos ACINPRO

Croatia

- ZAMP

Cyprus

- Asteras Collective Rights Management

Denmark

- Christian Video Licensing International Denmark

KODA

- Motion Picture Licensing Company Denmark

Europe

- Association of European Performers' Organisations AEPO-ARTIS

Finland

- Kopiosto (Copyright organization for authors, publishers and performing artists, collecting fees for photocopying, radio and tv programmes)
- Teosto (authors and composers of musical works)
- Gramex (performers and publishers of musical works)
- Kuvasto (arts)
- Tuotos (audiovisual works)
- Sanasto (literal works)

France

- SACD Société des auteurs et compositeurs dramatiques
- SACEM Société des auteurs, compositeurs et éditeurs de musique
- SCAM Société civile des auteurs multimédia
- SDRM Société pour l'administration du droit de reproduction mécanique des auteurs, compositeurs et éditeurs
- ADAGP Société des auteurs dans les arts graphiques et plastiques
- SCELFF Société civile des éditeurs de langue française
- CFC Centre français d'exploitation du droit de copie
- SEAM Société des éditeurs et auteurs de musique

- SESAM
- SORIMAGE
- ADAMI Société pour l'administration des droits des artistes et musiciens interprètes
- SPEDIDAM Société de perception et de distribution des droits des artistes interprètes de la musique et de la danse
- SPRE Société pour la perception de la rémunération équitable
- SORECOP Société pour la rémunération de la copie privée sonore
- COPIE FRANCE Société pour la rémunération de la copie privée audiovisuelle
- SCPA Société civile des producteurs associés
- SCPP Société civile pour l'exploitation des droits des producteurs phonographiques
- SPPF Société civile des producteurs de phonogrammes en France
- PROCIREP Société civile des producteurs de phonogrammes en France
- ANGOA Agence nationale de gestion des oeuvres audiovisuelles
- ARP Société civile des auteurs, réalisateurs et producteurs
- SOFIA Société française des intérêts des auteurs de l'écrit
- SAIF Société des auteurs de l'image fixe
- SAJE Société des auteurs de jeux
- AVA Société des arts visuels associés
- EXTRA-MEDIA
- SAI Société des artistes-interprètes

Germany

- Christian Copyright Licensing International Germany
- Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (GEMA)
- GÜFA (Gesellschaft zur Übernahme und Wahrnehmung von Filmaufführungsrechten mbH)
- Motion Picture Licensing Corporation Germany
- VG Bild-Kunst
- VG Wort

Hungary

- Artisjus (music, literature)
- EJI (performers)
- FilmJUS (movies)
- MAHASZ (record producers)
- HUNGART (visual artists)
- RSZ (reprography)

India

- IRRO (The Indian Reprographic Rights Organisation)
- PPL (Phonographic Performance Limited)
- IPRS (Indian Performing Right Society)
- SCRIPT (Society for Copyright Regulation of Indian Producers for Film and Television)

Ireland

- Christian Copyright Licensing International
- IMRO (Irish Music Rights Organisation)
- Motion Picture Licensing Company Ireland
- PPI (Phonographic performance Ireland)

Israel

- ACUM representing authors, composers, lyricists, poets, arrangers and music publishers.
- ESHKOLOT representing performers.

Italy

- IMAE (Institute for the Protection of Performing Artists)
- Motion Picture Licensing Corporation Italy
- SIAE

Japan

- JASRAC (Japanese Society for Rights of Authors, Composers and Publishers)

Kenya

- KOPIKEN (The Reproduction Rights Society of Kenya)
- MCSK (Music Copyright Society of Kenya)
- KAMP (Kenya Association of Music Producers)
- PRSK (Performers Rights Society of Kenya)

Malaysia

- Motion Picture Licensing Company Malaysia
- MACP (Music Authors' Copyright Protection)
- PRISM (Performers & Artistes Rights Malaysia)
- PPM (Public Performance Malaysia)

Mauritius

- Mauritius Society of Authors

Mexico

- Motion Picture Licensing Corporation

Netherlands

- Bescherming Rechten Entertainment Industrie Nederland (BREIN) (Broken link)
- Buma/Stemra
- SENA
- Musicopy

New Zealand

- Christian Copyright Licensing International (CCLI) New Zealand
- Christian Video Licensing International New Zealand
- PPNZ Music Licensing
- APRA New Zealand

Norway

- Kopinor (books, newspapers, magazines, sheet music, and similar publications)
- Motion Picture Licensing Company Norway
- TONO (Copyright collective for authors and composers of musical works)

Poland

- Motion Picture Licensing Company Poland
- ZAiKS

Portugal

- Motion Picture Licensing Company
- SPA
- GDA
- Audiogest

Romania

- Motion Picture Licensing Company Romania

Russia

- RAO
- Russian Organization for Intellectual Property VOIS (Collective society related rights)

Singapore

- Christian Copyright Licensing International Singapore
- Christian Video Licensing International Singapore
- COMPASS (Composers and Authors Society of Singapore)
- Motion Picture Licensing Company Singapore

Spain

- AISGE Artistas Intérpretes Sociedad de Gestión
- CEDRO Centro Español de Derechos Reprográficos

- DAMA Derechos de Autor de Medios Audiovisuales
- EGEDA Entidad de Gestión de Derechos de los Productores Audiovisuales
- Motion Picture Licensing Company Spain
- SGAE Sociedad General de Autores y Editores

South Korea

- KOMCA (Korea Music Copyright Association)

South Africa

- Christian Copyright Licensing International South Africa
- Christian Video Licensing International South Africa

Sweden

- STIM Swedish Performing Right Society
- COPYSWEDE

Switzerland

- Motion Picture Licensing Company Switzerland
- ProLitteris
- SSA
- SUISA
- SUISSIMAGE
- SWISSPERFORM

United Kingdom

- Authors' Licensing & Collecting Society (ALCS)
- Artists' Collecting Society (ACS)
- Broadcasting Data Services (BDS)
- British Equity Collecting Society (BECS)
- Christian Copyright Licensing International United Kingdom
- Christian Video Licensing International United Kingdom
- Copyright Licensing Agency (CLA)
- Design and Artists Copyright Society (DACS)
- Directors UK (D-UK), formerly the Directors' and Producers' Rights Society (DPRS)
- Educational Recording Agency (ERA)
- Motion Picture Licensing Company (MPLC)
- Newspaper Licensing Agency (NLA)
- Open University Worldwide (OUW)
- PRS for Music, formerly MCPS-PRS Alliance
- Phonographic Performance Limited (PPL)
- Publishers' Licensing Society (PLS)
- Video Performance Limited (VPL)

United States of America

- Artists Rights Society of New York (ARS)
- American Society of Composers, Authors and Publishers (ASCAP)
- Christian Copyright Licensing International
- Christian Video Licensing International
- Copyright Clearance Center (CCC)
- Motion Picture Licensing Corporation (MPLC)

Some organisations work on regional basis. Overall, what the list tells us is that societies are formed by different kinds of authors and also on the basis of the rights. For example, performing right society, which one finds in many countries administer only performing right. It is also seen that societies exist where it is difficult for individual owners to administer the right. For example, right of reproduction in the sense of publication is usually administered by the owner, for this right is not used by a large number of persons. Similar is the case with the right of translation which also is administered by the individual author. At the same time, right of communication to the public, particularly when it involves music, is administered by a society. In a way small rights are administered by collective administration or copyright societies, in which cases they mostly issue licences.

An author has listed the following kinds of licences issued by these societies:

- a) Radio and television broadcasting
- b) Public reception of broadcasts
- c) Cable transmission
- d) Theatrical representation
- e) Public performance and recitation
- f) Mechanical reproduction
- g) Graphic reproduction
- h) Private recording
- i) Public lending and rental
- j) Artists' resale rights

This list reflects the kind of rights and exploitations which are more amenable to collective administration than big rights like right to publish and edition.

Self Assessment Questions

(Spend 3 minutes each)

1) What is collective administration of copyright?

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2) What is the rationale of collective administration?

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3) What are the rights usually administered by collective administration societies?

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7.2 OBJECTIVES

After reading this unit, you should be able to:

- acquaint the students with an understanding of the concept of collective administration of copyrights. It also aims to present the provisions in this regard in the Copyright Act and Rules including the procedure for registration of societies.

7.3 COPYRIGHT SOCIETIES IN INDIA

The Copyright Act in Section 33 provides for the registration of copyright societies for issuing or granting licences in respect of copyrighted works. The intention of the provision is the interests and convenience of both the authors and other owners of copyright and the public in particular the group of persons who are most likely to seek licences. The Act also prohibits anyone from doing the business of issuing or granting licences in respect of copyright unless it is a registered society. The owners, however, in an individual capacity can do the same in respect of their works.

7.4 PROCEDURE FOR REGISTRATION

Registration is to be done with the Central Government. The Government will register an applicant society taking into account their ability and professional competence.

The Act also provides that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

The copyright society need not necessarily be incorporated but must comprise seven or more owners of copyright and should be formed for the purpose of

carrying on the business of issuing or granting licences in respect of any class of works.

The application is to be submitted in the prescribed application form and should be signed by all members of the governing body of the society and also the Chief Executive.

The eligibility conditions insist that the society should be formed for dealing with copyright business and other activities ancillary thereto.

The Amendments to the provisions regarding collective administration of copyright were made in 1994. At that time certain performing right societies were functioning in India like the Indian Performing Right Society. The amendment provided for the registration of such a society as a copyright society, if it is desirous of carrying on business as a copyright society.

Registration of an applicant society can be refused by the Central Government on the following grounds:

- That the applicant has no professional competence to carry on the business or has not sufficient funds to manage the affairs
- There exists another registered copyright society for administering the same class of works and it is functioning well
- That the Government has reason to believe that the members of the applicant are not bona fide copyright owners or they have not voluntarily signed the instrument setting up the society

Decision in regard to registration or rejection is to be taken within sixty days of the application. In case of rejection, the applicant should be given an opportunity of being heard.

As soon as after registration, the society can start working as a copyright society. But the registration can be suspended or cancelled. This is to be done after holding proper enquiry. Such enquiry can be ordered on the complaint of the Registrar of copyrights or any owner of copyrights that the society is being managed in a manner detrimental to the interests of the owners of rights concerned. Detailed procedure is laid down in the Copyright Rules for such enquiry.

Registration can also be cancelled if at any time it is found that any of the particulars furnished in the application for registration is untrue or incorrect and misleading in any manner.

7.5 FUNCTIONS OF A COPYRIGHT SOCIETY

The main business of a copyright society are

- Issuing or granting licences in respect of any work in which copyright subsists or in respect of any other right given by the Copyright Act, which it has been authorised by the right owner to administer
- Collect the fee for the same, and
- Distribute the fee collected to the owners

These are subject to certain conditions, namely,

- 1) A copyright society may issue licences and collect fees in accordance with its Scheme of Tariff in relation to only such works as it has been authorised to administer in writing by the owners of rights and for the period for which it has been so authorised.
- 2) The distribution of fees collected shall be subject to a deduction not exceeding fifteen per cent of the collection on account of administrative expenses incurred by the copyright society.

A copyright society may accept from an owner of rights exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and an owner of rights shall have the right to withdraw such authorisation without prejudice to the rights of the copyright society under any contract.

A copyright society can enter into agreement with any foreign society or organisation administering rights corresponding to the rights which it is administering, to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign country by such foreign society or organisation. This is, however, subject to the proviso that no such society or organisation shall permit any discrimination in regard to the terms of licence or the distribution of fees collected between rights in Indian and other works.

A Copyright Society is required to frame a scheme for determining the quantum of remuneration payable to individual copyright owners having regard to the number of copies of the work in circulation. This is also subject to the proviso that such scheme shall not restrict payment to the owners of rights whose works have attained a level of circulation which the copyright society considers reasonable.

In order to protect the interests of the copyright owners, detailed provisions have been made in the Rules regarding the control and involvement of the owners in the running of the society. Every copyright society is subject to the collective control of the owners of rights whose rights it administers. The society is required to obtain the approval of such owners of rights for its procedures of collection and distribution of fees and for the utilisation of any amounts collected as fees for any purpose other than distribution to the owner of rights. It is also required to provide to the owners regular, full and detailed information concerning all its activities, in relation to the administration of their rights

An interesting feature added by the 2012 amendments is that of giving equal rights to authors and owners of rights. Even in the Governing Council of a society, their representation has to be equal. This is to ensure that copyright societies do not ride rough shod over the rights of authors under pressure of owners of rights who might have obtained the rights from authors.

The law also provides that all fees distributed among the owners of rights shall, as far as may be, be distributed in proportion to the actual use of their works.

Every copyright society is also required to **maintain the following registers:**

- i) A register of owners of **copyright and other rights** to be called the “Register of Owners” in respect of which the copyright society has been authorised by the owners to **issue or grant licences**. The register shall contain the names of the owners, their addresses, the nature of rights authorised to be administered by the copyright society, date of publication of the work, the date on which the copyright society becomes entitled to and the duration of such right.
- ii) A register to be called the “Register of Agreements” containing a copy of every agreement entered into by the copyright society with the owners for the purpose.
- iii) A register to be called the “Register of Fees” containing particulars of fees and mentioning the name of persons or organisations from whom the fees have been realised, the amount so realised and the date of realisation.
- iv) A register to be called the “Disbursement Register” containing details of disbursements made to each owner of copyright, category-wise, mentioning the name of the owner, nature of his copyright and the date and amount of disbursement made to him.

One of the first things that a society is required to do is to prepare and get the approval of the Members for a Tariff Scheme. This scheme should contain the nature and quantum of fees or royalties which it proposes to collect in respect of such copyright or other rights administered by it. The new Section 33A mandates that every copyright society shall publish its tariff scheme in such manner as may be laid down by rules. Any aggrieved person may appeal against the tariff scheme to the Copyright Board which may, after holding enquiry, make orders to remove any unreasonable element, anomaly or inconsistency therein. The aggrieved person shall continue to pay such fee that had fallen due before making the appeal until the appeal is decided and the Board shall not stay the collection of such fee pending disposal of the appeal. However, the Board may, after hearing the parties, fix interim tariff to be paid by the aggrieved party

A society is also required to prepare and get the approval of the Members a Distribution Scheme detailing the procedure for collection and distribution of the fees or royalties specified in the Tariff Scheme among the owners of copyright or other rights whose names.

The law also lays down detailed instructions regarding maintenance of accounts and holding of meetings of the members of the society.

Every copyright society is required to file a return called the annual return with the Registrar of Copyrights within one month from the conclusion of each annual general meeting of owners setting out the following details, namely :—

- i) the date of the annual meeting of owners held immediately preceding the filing of the annual return, the number of owners who attended the meeting in person or by proxy, and the minutes of such meeting;
- ii) the up-to-date list of the owners of rights, their names and addresses as recorded in the Register of Owners maintained by the copyright society,
- iii) audited accounts of the copyright society;

- iv) the Tariff Scheme;
- v) the Distribution Scheme; and
- vi) a statement approved by its governing body or Board of directors setting out a full and detailed account of all its activities during the year in relation to the rights of the owners

7.6 REGISTERED COPYRIGHT SOCIETIES OF INDIA

The following are the registered copyright societies in India:

- a) For cinematograph and television films: Society for Copyright Regulation of Indian Producers for Film and Television (SCRIPT), Mumbai
- b) For musical works: The Indian Performing Right Society Limited (IPRS) Mumbai
- c) For sound recording: Phonographic Performance Limited (PPL), Mumbai
- d) For reprographic (photo copying) works: Indian Reprographic Rights Organization (IRRO), New Delhi .

Self Assessment Questions

(Spend 3 minutes each)

4) What are the conditions for registration of a copyright society in India?

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5) What are the main functions of a copyright society?

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6) Which are the copyright societies registered in India?

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7.7 SUMMARY

In this Unit, we have studied the history and development of the concept of copyright collection societies internationally and the provisions in Indian law regarding copyright societies.

Copyright is not one right but a bundle of exclusive rights. It is difficult for individual authors to monitor all uses of their works all over the world. This is particularly so in the case of small rights like communication to the public or public performance. While the author of a book can individually handle the publication right, the owners of a musical work have difficulty monitoring all the uses. It is to tide over this difficulty that the collective administration of copyright concept was brought in.

Collective administration means the copyright owner entrusts the monitoring, licensing, collection of royalties and distribution of the royalties to a society. Mostly the members of these societies are the owners. It is easy for a society to monitor the uses of a large number of works.

Such societies originated in Europe in the nineteenth century and slowly spread across the world. The jurisdiction of each society is the country in which it is set up. But reciprocal arrangements with other national societies enable them to take care of the uses of the works of their members in other countries.

Main functions of the societies are issue of licences for public performance, photocopying, broadcasting and so on.

The Indian Copyright Act provides for the setting up of copyright societies by the owners of copyrights to administer copyrights. Only registered societies can do copyright business apart from the owners themselves. The societies are registered with the Central Government. While registering a society, the government ensures that the societies protect the interests of the owners of copyright, that it does not spend more than fifteen per cent of the income on administrative expenditures, and that the royalties are distributed proportionate to the use of the works. In order to take care of the public interest and the interest of the users, the law also provides for an approved tariff scheme for the uses to be finalised and notified by each society. Ordinarily only one society may be registered in a particular class of works.

Elaborate procedures have been laid down in the Copyright Rules for the functioning of copyright societies. If a society does not function properly, the Central Government after holding proper enquiry can suspend or cancel its registration.

Complaints against the registration of societies, their functioning, the tariff schemes, etc. Can be filed before the Copyright Board who have the power to adjudicate in these matters.

In India, at present four societies have been registered one each for cinematograph films, sound recordings, public performance of music and reprography.

7.8 TERMINAL QUESTIONS

- 1) What role does a copyright society play in protecting the rights of an author?
- 2) What is the procedure for registration of a copyright society in India?
- 3) How the functioning of a copyright society is regulated in India?

7.9 ANSWERS AND HINTS

Self Assessment Questions

- 1) Refer to Section 7.1
- 2) Refer to Section 7.1
- 3) Refer to Section 7.1
- 4) Refer to Section 7.4
- 5) Refer to Section 7.5
- 6) Refer to Section 7.6

Terminal Questions

- 1) Refer to Section 7.3
- 2) Refer to Section 7.4
- 3) Refer to Section 7.5

7.10 REFERENCES AND SUGGESTED READINGS

- 1) International Copyright and Neighbouring Rights by S. M. Stewart.
- 2) Copyright and Industrial Designs by P. Narayanan.
- 3) Copinger and Skone James on Copyright.
- 4) Lal's Commentary on Copyright Act.
- 5) Iyengar's The Copyright Act, 1957.
- 6) How Copyright Works in Practice by Kala Thairani.

Statutory Provisions

33. Registration of Copyright Society

- 1) *No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 commence or, carry on the business of issuing or granting licences in respect of any work in which copyright subsists on respect or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (3):*

Provided that owner of copyright shall, in his individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society:

Provided further that the business of issuing or granting license in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered under this Act

Provided also that the performing rights society functioning in accordance with the provisions of section 33 on the date immediately before the coming into force of the Copyright (Amendment) Act, 1994 shall be deemed to be a copyright society for the purposes of this Chapter and every such society shall get itself registered within a period of one year from the date of commencement of the Copyright (Amendment) Act, 1994.

- 2) *Any association of persons who fulfils such conditions as may be prescribed may apply for permission to do the business specified in sub-section (1) to the Registrar of Copyrights who shall submit the application to the Central Government.*
- 3) *The Central Government may, having regard to the interests of the authors and other owners of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights and the ability and professional competence of the applicants, register such association of persons as a copyright society subject to such conditions as may be prescribed:*

Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

(3A) The registration granted to a copyright society under sub-section (3) shall be for a period of five years and the may be renewed from time to time before the end of every five years on a request in the prescribed form and the Central Government may renew the registration after considering the report of Registrar of Copyrights on the working of the copyright society under section 36:

Provided that the renewal of the registration of a copyright society shall be subject to the continued collective control of the copyright society being share with the authors of works in their capacity as owners of copyright or of the right to receive royalty:

Provided further that every copyright society already registered before the coming into force of the copyright (Amendment) Act, 2012 shall get itself registered under this Chapter within a period of one year from the date of commencement of the Copyright (Amendment) Act, 2012.

- 4) *The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the authors and other owners of rights concerned, cancel the registration of such society after such inquiry as may be prescribed.*
- 5) *If the Central Government is of the opinion that in the interest of the authors and other owners of rights concerned, or for non-compliance of sections 33A and sub-section (3) of section 35 and section 36 or any change carried out in the instrument by which the copyright society is established or incorporated and registered by the Central Government without prior notice to it, it is necessary so to do, it may, by order, suspend the registration of such society pending inquiry for such period not exceeding one year as may be specified in such order under sub-section (4) and that Government shall appoint an administrator to discharge the functions of the copyright society.*

33A. Tariff Scheme by Copyright societies

- 1) *Every Copyright Society shall publish its tariff scheme in such manner as may be prescribes.*
- 2) *Any person who is aggrieved by the tariff scheme may appeal to the Copyright Board and the Board may, if satisfied after holding such inquiry as it may consider necessary, make such orders as may be required to remove any unreasonable element, anomaly or inconsistency therein:*

Provided that the aggrieved person shall pay to the copyright society any fee as may be prescribed that has fallen due before making an appeal to the Copyright Board and shall continue to pay such fee until the appeal is decided, and the Board shall not issue any order staying the collection of such fee pending disposal of the appeal:

Provided further that the Copyright Board may after hearing the parties fix an interim tariff and direct the aggrieved parties to make the payment accordingly pending disposal of the appeal.

34. Administration of rights of owner by copyright society

- 1) *Subject to such conditions as may be prescribed,-*
 - a) *a copyright society may accept from an owner of rights exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and*
 - b) *an author or other owners of rights shall have the right to withdraw such authorisation without prejudice to the rights of the copyright society under any contract.*
- 2) *It shall be competent for a copyright society to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act, to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said*

copyright society in India, or for administering in India the rights administered in a foreign country by such foreign society or organisation:

Provided that no such society or organisation shall permit any discrimination in regard to the terms of licence or the distribution of fees collected between rights in Indian and other works.

- 3) *Subject to such conditions as may be prescribed, a copyright society may-*
 - i) *issue licences under section 30 in respect of any rights under this Act;*
 - ii) *collect fees in pursuance of such licences;*
 - iii) *distribute such fees among an author or other owners of rights of rights after making deductions for its own expenses;*
 - iv) *perform any other functions consistent which the provisions of section 35.*

35. Control over the copyright society by the an author or other owners of rights of rights

- 1) *Every copyright society shall be subject to the collective control of the owners of rights under this Act whose rights it administers (not being owners of rights under this Act administered by a foreign society or organisation referred to in sub-section (2) of section (34) and shall, in such manner as may be prescribed,-*
 - a) *obtain the approval of such an author or other owners of rights of rights for its procedures of collection and distribution of fees;*
 - b) *obtain their approval for the utilisation of any amounts collected as fees for any purpose other than distribution to the owner of rights; and*
 - c) *provide to such an author or other owners of rights regular, full and detailed information concerning all its activities, in relation to the administration of their rights.*
- 2) *All fees distributed among the an author or other owners of rights of rights shall, as far as may be, be distributed in proportion to the actual use of their works.*
- 3) *Every copyright society shall have a governing body with such number of persons elected from among the members of the society consisting of equal number of authors and owners of work for the purpose of the administration of the society as may be specified.*
- 4) *All members of the copyright society shall enjoy equal membership rights and there shall be no discrimination between authors and owners of rights in the distribution of royalties.*

36. Submission of returns and reports

- 1) *Every copyright society shall submit to the Registrar of Copyrights such returns as may be prescribed.*
- 2) *Any officer duly authorised by the Central Government in this behalf may call for any report and also call for any records of any copyright society for the purpose of satisfying himself that the fees collected by the society in respect of rights administered by it are being utilised or distributed in accordance with the provisions of this Act.*

36A. Rights and liabilities of copyright societies

Nothing in this Chapter shall affect any rights or liabilities in any work in connection with a copyright society which had accrued or were incurred on or before the day prior to the commencement of the Copyright (Amendment) Act, 2012, or any legal proceedings in respect of any such rights or liabilities pending on that day.”

UNIT 8 COPYRIGHT BOARD

Structure

- 8.1 Introduction
- 8.2 Objectives
- 8.3 Jurisdiction of the Board
- 8.4 Composition of the Board
- 8.5 Powers of the Board
- 8.6 Procedures of the Board
- 8.7 Summary
- 8.8 Terminal Questions
- 8.9 Answers and Hints
- 8.10 References and Suggested Readings

8.1 INTRODUCTION

Section 11 of the Copyright Act requires the Central Government to constitute a Copyright Board headed by a Chairman with not less than two and not more than 14 other members. Registrar of Copyrights is to be Secretary of the Copyright Board. Section 12 of the Copyright Act also lays down the powers of the Copyright Board and deems it to be a civil court for the purposes of Sections 345 and 346 of the Code of Criminal Procedure, 1973 and also that all the proceedings of the Board would be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code.

Statute

The statutory provisions read as under:

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 two other members.*
- 2) *The salaries and allowances payable to and the other terms and conditions of service of the chairman and other members of the Copyright Board shall be such as may be prescribed:*

Provided that neither the salary and allowances nor the other terms and conditions of service of the chairman or any other member shall be varied to his disadvantage after appointment.

- 3) *The Chairman of the Copyright Board shall be a person who is, or has been, a Judge of a High Court or is qualified for appointment as a Judge of a High Court.*
- 4) *The Central Government may, after consultation with the Chairman of the Copyrights Board, appoint a Secretary to the Copyright Board and such other officers and employees as may be considered necessary for the efficient discharge of the functions of the Board.*

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 section 15 of the States Reorganisation Act, 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.*
- 3) *If there is a 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, the opinion of the Chairman shall prevail

- 4) *The Chairman may authorise any of its members to exercise any of the powers conferred on it by section 74 and any order made or act done in exercise of those powers by the member so authorised 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 sections 345 and 346 of the Code of Criminal Procedure, 1973, and all proceedings before the Board shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code.*

The concept of a copyright Board was brought in for the first time in the Copyright Act, 1957. The previous Act had no provision for a Copyright Office or a Registrar of Copyright or a quasi judicial body to hear appeals against the decisions of the Registrar of Copyrights. The Copyright Board, a quasi-judicial body, was constituted for the first time in September 1958, consequent on bringing into force of the new Act on 21 January 1958.

The reason for setting up the Board was to provide the people with a speedy and less expensive way of settling disputes. In the Statement of Objects and Reasons for the Copyright Bill, 1955, which resulted in the Copyright Act, 1957, with regard to Copyright Board, it has been stated that the Copyright Board "will determine the reasonableness of the rates of fees, charges or royalties claimed by

performing rights societies, consider applications for general licences for public performance of works and will assess compensation payable under the Bill in certain circumstances.”

The Joint Committee of the Parliament which examined the Copyright Bill in 1955, that led to the Copyright Act, 1957, certain amendments in the proposed section relating to Copyright Board and made the following observation:

The Committee feels that the Copyright Board should consist of independent persons and should not contain any representatives of the interested parties. In order to ensure the impartiality of the Board an express provision has been made that a member of the Board who is interested in any matter arising before the Board should not take part in proceedings of the Board when that matter is under consideration. Since the Copyright Board has important functions perform under the Bill, the Committee feels that it should be permissible for the Government to appoint a Judge of the Supreme Court as Chairman of the Board. IN the opinion of the Committee the function of the Registrar of Copyrights should be restricted to administrative matters only. The Registrar of Copyrights will not, therefore, be a member of the Board but will act as its Secretary. The Committée is of the view that the Copyright Board should function through various branches sitting in at different places in India so that the people should have an easy access to it. The jurisdiction of the Copyright Board has accordingly been divided into various zones constituted under Section 15 of the State Reorganisation Act, 1956.

The objective of establishing a Copyright Board was to impart justice to people affected fast and cheap. That is why the Board has been directed to hold sittings in each zone of the country for cases pertaining to that zone. The law makers were also concerned about ensuring the impartiality of the Board.

Through the amendments made in 2012, the copyright Board has been made a permanent standing board in place of the earlier ex-officio membership.

Few other countries also have such Boards. Functions vary depending on the country. For example, the Copyright Board of Canada is an economic regulatory body empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of copyrighted works, when the administration of such copyright is entrusted to a collective-administration society. The Board also has the right to supervise agreements between users and licensing bodies and issues licences when the copyright owner cannot be located.

Self Assessment Questions

(Spend 3 minutes each)

- 1) What was the reason for establishment of a Copyright Board?

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2) Mention another country where there is a Copyright Board and what are its functions.

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8.3 JURISDICTION OF THE BOARD

The jurisdiction of the Copyright Board extends to the whole of India. The Board goes on circuit to different parts of the country to hear the cases of those areas. The meetings of the Board are held in five different zones of the country. The five zones are Northern, Eastern, Western, Southern and Central Zones. These are as per the States Reorganisation Act, 1956. This facilitates administration of justice to authors, creators and owners of intellectual property as well as Intellectual Property attorneys near their place of location or occupation.

The Board is entrusted with the task of adjudication of disputes pertaining to copyright registration, assignment of copyright, grant of Licences in respect of works withheld from public, unpublished Indian works, production and publication of translations and works for certain specified purposes. It also hears cases in other miscellaneous matters instituted before it under the Copyright Act, 1957. The meetings of the Board are held in the five different zones of the country. This facilitates administration of justice to authors, creators and owners of intellectual property as well as Intellectual Property attorneys near their place of location or occupation.

The five different zones are as prescribed in the state Reorganisation Act 1956. These are:

- i) The Northern Zone, comprising the States of Haryana, Punjab, Himachal Pradesh, Rajasthan and Jammu & Kashmir and the Union Territories of Delhi and Chandigarh.
- ii) The Central Zone comprising the States of Uttar Pradesh and Madhya Pradesh.
- iii) The Eastern Zone comprising the States of Bihar, West Bengal, Orissa, Assam, Manipur and Tripura.
- iv) The Western Zone comprising the States of Gujarat and Maharashtra and the Union Territories of Dadra and Nagar Haveli and Goa, Daman and Diu.
- v) The Southern Zone comprising the States of Andhra Pradesh, Tamil Nadu, Karnataka and Kerala and the Union Territory of Pondicherry.

8.4 COMPOSITION OF THE BOARD

Initially the number of members in the Board was eight. Through an amendment in 1994, the number was raised to fourteen with a view to facilitating creation of benches on a regional basis and to improve the functioning of the Board. The Chairman of the Board could constitute Benches of three or more members to hear cases. However, the members were ex-officio. After the 2012 amendments, the Board has acquired a permanent stature in that now there has to be a Chairman and two full time members.

The Chairman of the Board is to be a person who is or has been a Judge of a High Court or is qualified for appointment as a Judge of a High Court. As per the Copyright Rules, 1958, the Chairman and other members of the Copyright Board are appointed for period not exceeding five years. The Board is usually constituted for a period of five years. However, the Chairman and other Members are eligible for reappointment. The Registrar of Copyright is the ex officio Secretary of the Copyright Board.

The Copyright Board was last reconstituted under the Chairmanship Justice Ramesh Chandra Chopra (retired) for a period of five years or till further orders, whichever is earlier, with effect from the 15th July, 2011. The composition of the Board is as under:

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| 1) Justice Ramesh Chandra Chopra (retired), | Chairman |
| 2) Joint Secretary to the
Government of India,
in charges Copyrights,
Ministry of Human Resources Development,
Department of Secondary and
Higher Education, Shastri Bhavan,
New Delhi-110001. | Member |
| 3) Joint Secretary and Legal Adviser,
Ministry of Law & Justice,
(Department of Legal Affairs),
Shastri Bhavan, New Delhi-110001 | Member |
| 4) Law Secretary to the
Government of Haryana | Member |
| 5) Law Secretary to the
Government of Gujarat | Member |
| 6) Law Secretary to the
Government of Maharashtra | Member |
| 7) Law Secretary to the
Government of Goa | Member |
| 8) Law Secretary to the
Government of Kerala | Member |
| 9) Law Secretary to the
Government of Bihar | Member |
| 10) Law Secretary to the
Government of Uttaranchal | Member |

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| 11) Director,
National Law School of India University,
Bangalore, Karnataka | Member |
| 12) Director,
National University of Juridical Sciences,
Kolkata, West Bengal. | Member |
| 13) Director,
National Law Institute University,
Bhopal, Madhya Pradesh | Member |
| 14) Director,
Indian Law Institute (ILI),
Bhagwan Das Road, New Delhi | Member |
| 15) Director,
Indian Society of International Law
Bhagwan Das Road, New Delhi | Member |

After the 2012 amendment, new appointment of Chairman and two members have to be made. A regular secretary and other office staff also have to be provided to the Copyright Board.

8.5 POWERS OF THE BOARD

The cases in which the copyright Board can adjudicate are those mentioned in Sections 6, 19A, 23, 31, 31A, 31B, 31C, 31D, 32, 32A, 50, 52, 53A, 54, and 72 of the Copyright Act, 1957.

Section 6 specifies that if any question arises as to the following matters it shall be referred to the Copyright Board:

- a) Whether a work has been published
- b) What is the date of publication for the purpose of calculating the term of copyright
- c) Whether the term of copyright for any work is shorter in any other country than that provided in respect of that work under the Indian Copyright Act, 1957.

Publication is defined in Section 3 as meaning making a work available to the public by issue of copies or by communicating the work to the public. Communication to the public means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.

Proviso to Section 6 clarifies the meaning of publication for the purpose of that section with the statement that if in the opinion of the Copyright Board, the issue of copies or communication to the public was of an insignificant nature, it shall not be deemed to be publication. This would mean that if someone has brought out a work with small number of copies, say 100, it cannot qualify as publication. Similarly, if a work is made available on the Net but very few people accessed

the same, it cannot be construed as communication to the public for the purpose of Section 6. The Board is not required to examine whether the reasonable requirements of the public are met or not.

Disputes with respect to assignment of copyright

As per Section 19A(2) of the Copyright Act, 1957 all disputes pertaining to assignment deeds are supposed to be decided by the Copyright Board. The Act states, "If any dispute arises with respect to the assignment of any copyright the Copyright Board may, on receipt of a complaint from the aggrieved party and after holding such inquiry as it considers necessary, pass such order as it may deem fit including an order for the recovery of any royalty payable." Copyright Board can conduct inquiry and revoke assignment upon receiving complaint if an assignee fails to make sufficient exercise of the rights assigned to him. It can pass an order which can include recovery of any royalty payable. However, the Copyright Board cannot pass order unless it is satisfied that the terms of assignment are harsh to the assignor. Further, no order of revocation of assignment under this provision can be made within a period of five years from the date of such assignment.

While the courts uphold the powers of the Copyright Board to hear disputes about assignments they have clarified that such jurisdiction does not extend to deciding whether there is an infringement or not.

Compulsory Licences

The powers granted to the Copyright Board under Sections 31, 31A, 32, 32A and 32B pertain to the grant of compulsory licences. These relate to different circumstances for grant of compulsory licences like the following:

- a) Published Indian works withheld from the public
- b) Unpublished Indian works
- c) Translations

Compulsory Licence in works withheld from the public

Under Section 31 the Copyright Board can grant compulsory licence, if at any time during the term of the copyright in any Indian work which has been published or performed in public, a complain is made to it, that the owner of the copyright in the work (a) has refused to re-publish or allow the re-publication or the work or has refused to allow the performance in public of the work, any by reason of such refusal the work is withheld from the public, or (b) has refused to allow communication to the public by broadcasting of such work or in the case of a sound recording the work recorded in such sound recording, on terms which the complainant considers reasonable. The Copyright Board is required to give an opportunity to the parties concerned of being heard before passing an order. If the Copyright Board is satisfied about the unreasonableness of the grounds, it will direct the Registrar of Copyrights to grant to the complainant a licence to re-publish the work, perform the work in public or communicate the work to the public by broadcast. However, such licence involves payment to the owner of copyright of such compensation and also subject to such other terms and conditions as the copyright Board may determine. The complainant, of course, has to pay the prescribed fee to the Copyright Office.

The expression Indian work for the purpose of Section 31 includes artistic work by an Indian citizen as well as cinematograph film and sound recording made in India.

Compulsory Licence in unpublished or published works

Section 31 A empowers the Copyright Board to direct the Registrar of Copyrights to grant licences to publish unpublished or published works in cases where the author of the work is dead or unknown or cannot be traced or the owner of copyright in such work cannot be found. Such directions are to be issued on an application by a person interested in publishing the same. Before submitting the same he should publish his proposal in a daily newspaper in the English language with good circulation. If the application is for the publication of a translation in any language, he should also publish the proposal in a daily newspaper in that language.

Compulsory Licence for Benefit of Disabled

Section 31B entrusts the Copyright Board to decide on applications by persons for compulsory licence for publication of works in an accessible format for persons with disabilities. Such publications can be for a profit. The Board, after necessary enquiries and also after hearing the owners of the copyright in the works concerned, decides the grant of such licence and also the means and format of publication, the period during which the compulsory licence may be exercised, the number of copies as well as the rate of royalty.

Statutory Licence for Cover Versions and for Broadcasting of Literary and Musical works and Sound Recordings

Sections 31C and 31D provide for statutory licences for cover versions of sound recordings and also for broadcasting of literary and musical works and sound recordings. The rate of royalty for such licences are to be fixed by the Copyright Board. Complaints in this regard are also to be heard and decided by the Copyright Board.

Licence to produce and publish translation

The Copyright Board has powers under Section 32 of the Copyright Act to grant an applicant to produce and publish a translation of a literary or dramatic work in any language. The request to the Board, however, can be made only after a period of seven years from the first publication of the work.

In this case also the Board has to hold an inquiry after giving due notice to the persons interested. Before granting the licence, the Board has to satisfy itself that a translation of the work in the targeted language has not been published by the copyright owner or any person authorised by him during the seven year period after publication. It can also take into consideration, if a translation has been published, if it is out of print. It may also look into whether the applicant had approached the copyright owner and if he had been denied permission to do the translation. Sometimes, the applicant was unable to find the copyright owner. That fact also will be considered by the Copyright Board. The licence will be granted only if the translation is not available. In any case, the owner is to be given an opportunity to be heard.

The licence under this section will not be an exclusive licence. Further, the applicant will have to pay royalty in respect of copies of the translation of the work sold to the public calculated at such rates as the Copyright Board may determine.

If, at any time after the grant of the licence for publication of a translation, the owner of the copyright in the work or any person authorised by him publishes a translation of such work in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for the translation of works of the same standard, the licence shall be terminated. This is provided under Section 32B.

However, no such termination shall take effect until after the expiry of three months from the date of service of a notice on the person holding the licence by the owner of the right of translation intimating the publication of the translation.

It is also provided in the Act that copies of the licensed work produced and published by the person holding such licence before the termination of the licence takes effect may continue to be sold or distributed until the copies already produced and published are exhausted.

Licence to reproduce and publish works for certain purposes

An important change made in the copyright Act in 1984 was the inclusion of Section 32A regarding Licence to reproduce and publish works for certain purposes. This section empowers the Copyright Board to grant licence to reproduce and publish an edition of a literary, scientific or artistic work. The prerequisites for making such an application to the Copyright Board are:

- a) The copies of such edition are not made available in India; or
- b) Such copies have not been put on sale in India for a period of six months
- c) Seven years have expired from the date of the first publication of the work if it is a work relating to fiction, poetry, drama, music or art
- d) Three years have expired from the date of first publication of that work if it is relating to natural science, physical science, mathematics or technology
- e) Five years have expired from the date of first publication in other cases.

These licences also will not be exclusive. Detailed procedures have been laid down in the Act for issue of such licences by the Copyright Board.

Like the licence to publish translation, in this case also, if, at any time after the grant of the licence to produce and publish the reproduction or translation, the owner of the copyright in the work or any person authorised by him sells or distributes copies of such work or a translation of such work in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for the translation of works of the same standard, the licence shall be terminated. This is provided under Section 32B.

However, no such termination shall take effect until after the expiry of three months from the date of service of a notice on the person holding the licence by the owner of the right of translation intimating the publication of the translation.

It is also provided in the Act that copies of the licensed work produced and published by the person holding such licence before the termination of the licence takes effect may continue to be sold or distributed until the copies already produced and published are exhausted.

Copyright Societies

Another set of powers of the Copyright Board pertains to the functioning of copyright societies. The powers of the Copyright Board to adjudicate in matters relating to copyright societies have been upheld in a number of judgements of the Supreme Court and various High Courts.

One of the issues that were agitated before courts was the jurisdiction of the Copyright Board to decide the question of authority of the copyright society. The courts have held that the Board has the powers. The following observations of the Calcutta High Court in the case, *Eastern India Motion Pictures v. Performing Rights society Ltd* [AIR 1978 Cal 477] are illuminating in this regard:

On the question of jurisdiction of the Board, we are of the opinion that the contentions of the respective counsel appearing for the parties before us represent two extreme views of the matter. We are unable to accept the contention of Mr. Bachawat that merely because the question of authority of the society was raised, the Board had no jurisdiction to go into the matter any further. In our opinion that would make the provisions of the said Act infructuous and unworkable. In any case if the authority of the society concerned is questioned by any objector, that would be the end of the matter. In our opinion that was not the intention of the Legislature. On the other hand we are also not in a position to accept the extreme contention of Mr. Sen that the question of the authority of the society cannot be agitated or gone into at all in a proceeding before the Board. That would entitle a complete outsider to maintain such a proceeding before the Board even if it is found that such a Society had no authority at all to initiate any such proceeding. It has to be pointed out that Sub-section (1) of Section 33 of the Act specifically uses the expression "in respect of which it has authority to grant such licence". If in a given case it is shown that the society has no authority to grant such licence that would be the end of the matter. Accordingly if the authority of the society is challenged the Board has the jurisdiction to go into the same. As a matter of fact in view of the decision of the Supreme Court referred to above, it is no longer an open question. The Supreme Court's decision was on an appeal from the Board's decision and it was held by Supreme Court that the Society therein had no authority. Accordingly we hold that the Board had jurisdiction to decide the question of authority of the society concerned.

Self Assessment Questions

(Spend 3 minutes each)

3) What are the powers of the Copyright Board?

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4) What are the cases in which a compulsory licence can be issued by the Copyright Board?

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5) What are the cases in which an appeal can be filed to the Copyright Board on the decisions of the Registrar of Copyrights?

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8.6 PROCEDURES OF THE BOARD

Section 12 of the Copyright Act provides that the Copyright Board will have the powers to regulate its own procedure. It can fix the place and timing of hearing. However, the Board shall ordinarily hear any proceeding instituted before it within the zone in which the person instituting the proceeding actually and voluntarily resides or carries on business or employed.

The Board may exercise and discharge its powers and functions through Benches constituted by the Chairman.

In matters of difference of opinion among the members of the Board as well as a Bench, the opinion of the majority shall prevail. In case the Members are evenly divided, then the opinion of the Chairman shall prevail.

The following are the various functions of the Copyright Board:

- 1) Decide disputes regarding whether a work comes within the ambit of the definition of 'publication' in Section 3 of the Act
- 2) Decide cases relating to assignment of rights
- 3) Issue compulsory Licences in works withheld from the public
- 4) Grant licences in the case of unpublished and published work where the author is dead or unknown or cannot be traced.
- 5) Grant licences to produce and publish translations
- 6) Grant licence to produce and publish foreign works, if the copies of an edition are not made available in India to the general public at reasonable price
- 7) Issue Rectification order for mistakes and errors in the Register of Copyrights

- 8) Establish identity of the author of an anonymous or pseudonymous work
- 9) Decide disputes relating to copyright societies
- 10) Hear appeals on the decisions of the Registrar of copyrights
- 11) Fix royalty rates for cover versions and for broadcasting of literary and musical works and sound recordings under statutory licence provisions
- 12) Decide cases in statutory licence matters.

The Board has the powers of a civil court in respect of the following matters:

- 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.

The Chairman can authorise any of its members to exercise any of these powers. In such a case, the orders or acts done by that member shall be deemed to be done by the Board.

Further, as per the Act, the Copyright Board is deemed to be a Civil Court for the purposes of Sections 345 and 346 of the Code of Criminal Procedure. All proceedings before the Board are deemed judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code.

The Act specifically prohibits any Member of the Copyright Board from taking part in any proceedings before the Board in respect of any matter in which he has a personal interest.

The Act also has provided that any act done or proceeding taken by the Copyright Board shall be questioned on the ground merely of the existence of any vacancy in the constitution of the Board.

Applications, notice, statement or any other document to be filed or sent to the Board or by the Board is to be sent by hand or pre-paid registered post.

Every written intimation from the copyright Board is deemed to have been duly communicated to any person if such intimation is sent to the known address of such person by pre-paid registered post. Therefore, if such person changed his address, there is no onus on the Copyright Board to trace out his new address.

In any proceedings before the Copyright Board, any party may appear and be heard either in person or by a pleader or other person duly authorised by such party.

The costs of and incidental to the proceedings before the Copyright Board shall be in the discretion of the Board.

Self Assessment Questions**(Spend 3 minutes each)**

6) How a Bench of the Copyright Board is constituted?

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7) How a decision is taken in case of difference of opinion among the members of a Bench?

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8) What powers of a civil court do the copyright Board enjoy?

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8.7 SUMMARY

In this Unit, we have examined the various provisions in the Copyright Act and Copyright Rules regarding the constitution, powers and functions and procedures of the Copyright Board.

Copyright Board is a new concept introduced for the first time in the Copyright Act, 1957. The previous Act had not similar provision. It was constituted for the first time in 1958 and thereafter being reconstituted regularly from time to time. The objective of setting up the Copyright Board is to provide for an easy, faster and cheaper and fair means to decide disputes regarding licences, royalties etc.

The Board as per the 2012 amendment will consist of a Chairman and two other Members. Decisions in the bench and the Board are to be taken on the majority views. Where there is an equal division of views, the view of the Chairman will prevail.

The following are the kind of cases which come under the purview of the Copyright Board:

- 1) Disputes regarding whether a work comes within the ambit of the definition of 'publication' in Section 3 of the Act
- 2) Application for issue of Compulsory Licences in works withheld from the public
- 3) Application for grant of Grant licences in the case of unpublished work where the author is dead or unknown or cannot be traced.
- 4) Application for Grant licences to produce and publish translations
- 5) Application for Grant licence to produce and publish foreign works, if the copies of an edition are not made available in India to the general public at reasonable price
- 6) Issue Rectification order for mistakes and errors in the Register of Copyrights
- 7) Matters relating to establishment of identity of the author of an anonymous or pseudonymous work
- 8) Decide disputes relating to copyright societies
- 9) Appeals on the decisions of the Registrar of copyrights
- 10) Fix royalty rates for cover versions and for broadcasting of literary and musical works and sound recordings under statutory licence

The copyright Board has the powers of a civil court.

8.8 TERMINAL QUESTIONS

- 1) What are the powers of the Copyright Board?
- 2) Describe the cases in which a compulsory licence can be issued by the Copyright Board?
- 3) How the Benches of the Copyright Board are constituted and where the sittings of the Bench are held?

8.9 ANSWERS AND HINTS

Self Assessment Questions

- 1) Refer to Section 8.3
- 2) Refer to Section 8.3
- 3) Refer to Section 8.5
- 4) Refer to Section 8.5
- 5) Refer to Section 8.5
- 6) Refer to Section 8.6
- 7) Refer to Section 8.6
- 8) Refer to Section 8.6

Terminal Questions

- 1) Refer to Section 8.5
- 2) Refer to Section 8.4

8.10 REFERENCES AND SUGGESTED READINGS

- 1) International Copyright and Neighbouring Rights by S. M. Stewart.
- 2) Copyright and Industrial Designs by P. Narayanan.
- 3) Copinger and Skone James on Copyright.
- 4) Lal's Commentary on Copyright Act.
- 5) Iyengar's The Copyright Act, 1957.
- 6) How Copyright Works in Practice by Kala Thairani.

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