

COPYRIGHT ACT AND TRIPS ON COPYRIGHT PROTECTION: A SUBJECT OF DEBATE

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Abstract: *The Copyright Act was enacted for the purpose of the making author's work available to the public by issue of copies or by communicating the work to the public. Copyright means where the exclusive right is given to the author to do or authorize the doing of any of certain things under section 14 of the Copyright Act. The act makes it clear that no person shall be entitled to copyright or any similar right in any work, whether published or unpublished unless otherwise expressly provided. The researcher highlight the debate of copyright whether copyright does more harm than good. The researcher explain the relevant provisions of section 13, 14 and 16 relating to the Act; also the relevant hon'ble Supreme Court Judgments in this regard. The researchers express the view that the copyright laws in theory are important and should be strictly enforced but the current laws are excessive in the length of granting time protection. Copyright protection should be more similar to patent protection, maybe just a few years more. Copyright owners should not be deprived of the basic rights to claim ownership to works they have created. By eliminating copyright laws altogether will diminishes the incentive to create and innovate the work; but also there is no reason to encourage a generation who possess a false sense of entitlement of copyright claims.*

Index Terms - Copyright, Copyright debate, Section-13, 14, 16 of Copyright Act, 1957, TRIPS Agreement

Introduction

The Superman comic books are copyrighted, which means that they cannot be reproduced and distributed for sale without authorization from the copyright owner. The copyright also prohibits anyone else from creating similar works involving the Superman character present in the comic books. However, the copyright does not prohibit anyone from creating a work about a super-human character in general. [1]

One more example, it could be questioned whether copyright subsists in posting photographs from one's phone through an application. It is clear from the incorporation of the Berne Convention that copyright automatically extends to such a work. Since the publication of a work on the Internet cannot be confused with the submission of the work in the public domain, publication of photographs into a smartphone application should be considered equally. The big problem with social networks and application is that, without regard to copyright protection, when publishing images to an application, the user is only as protected as the terms of service permit. In 2012, Instagram hogged the international spotlight because of the modification of the terms of service. [2] The decision to change the terms of service provoked intense negative reactions, ranging from ordinary people to celebrities in the four corners of the world. Competitors, such as Yahoo, which is the owner of Flickr, tried to take profit of the Instagram controversy by stating, "We feel very strongly that sharing online shouldn't mean giving up rights to your photos". Because the creators of Instagram feared to see a tragic decline of subscribers, they decided to take a step back and restore the original terms of service. Despite the restoring of the original terms and the victory of copyright owners and users rights in their photographs published through Instagram are still questionable-

Most countries take the protection of creative works very seriously, as shown by existing copyright protection. However such protection is unintentionally relinquished by most users when clicking to agree to terms of service. It is commonly known that people who sign standard form contracts rarely read them, despite the traditional legal doctrine imposing a 'duty to read'. In fact, it is no secret that users click to agree to terms of service by placing their trust and goodwill into the service provider. Considering that copyright protection applies to an individual as long as he does not relinquish his right, and given that users relinquish their rights on the Internet without even knowing it, the situation appears problematic.[3]

Copyright Debate

In 2017, the legendary Bollywood star Amitabh Bachchan Lashes out at copyright limitations by sending a legal notice to poet-turned-politician Kumar Vishwas over a public recital (and subsequent video) of one of his father's poems. It truly baffles the mind as to why one of Bollywood's richest men would want to prevent the enjoyment and access to his father's poetry, which is regarded as a pinnacle of Hindi romantic poetry.[4]

Whether creative works should be seen as a natural right of the creator has been a much debated topic since the inception of the concept of intellectual property rights. The Delhi High Court's DU Photocopy case judgement is appropriate to throw some light in this case also. [5] "Copyright especially in literary works, is thus not an inevitable, divine or natural right that confers on authors the absolute ownership of their creations. It is designed rather to stimulate activity and progress in the arts for the intellectual enrichment of the public. Copyright is intended to increase and not to impede the harvest of knowledge. It is intended to motivate the creative activity of authors and inventors in order to benefit the public." So it becomes necessary to understand the concept of Copyright.

1. Concept of Copyright

Today almost every nation has a copyright law in place and is mostly standardized to some extent through international and regional agreements such as the Berne Convention and the European copyright directives. The Copyright law has a very unique history. It is believed that the evolution of Copyright law in India has been in three phases. [6]

1.1 First Phase

The law of copyright was introduced in India only when the British East India Company was established in 1847. This Act had very different provisions in comparison to today's law. The term of the Copyright was life time of the author plus seven years after the death of

the author. But in no case could the total term of copyright exceed a period of forty-two years. The government could grant a compulsory licence to publish a book if the owner of copyright, upon the death of the author, refused to allow its publication. Registration of Copyright with the Home Office was mandatory for enforcement of rights under the Act. This was the first phase.

1.2 Second and third phase

The second phase was in 1914, when the Indian legislature under the British Raj enacted the Copyright Act of 1914. It was almost similar to the United Kingdom Copyright Act of 1911. But the major change that was brought in this Act was criminal sanction for infringement. Number of times amendment were brought to this Act up till 1957. Subsequently, India saw the third phase of Copyright law in 1957. The Copyright Act, 1957 was enacted in order to suit the provisions of the Berne Convention. [7]

2. Legal frame work of Copyright Protection

Indian copyright law is at parity with the international standards as contained in TRIPS. The (Indian) Copyright Act, 1957, pursuant to the amendments in the year 1999, fully reflects the Berne Convention for Protection of Literary and Artistic Works, 1886 and the Universal Copyrights Convention, to which India is a party. India is also a party to the Geneva Convention for the Protection of Rights of Producers of Phonograms and is an active member of the World Intellectual Property Organization (WIPO) and United Nations Educational, Scientific and Cultural Organization (UNESCO). [8]

2.1 TRIPs Agreement on Copyrights [9]

TRIPS require member states to provide strong protection for intellectual property rights and lay down various provisions in relation to it. [10]

- 1) Copyright terms must extend at least 50 years, unless based on the life of the author. [11],[12]
- 2) Copyright must be granted automatically and not based upon any formality, such as registrations, as specified in the Berne Convention. [13]
- 3) Computer programs must be regarded as “literary works” under copyright law and receive the same terms of protection.
- 4) National exceptions to copyright (such as “fair use” in the United States) are constrained by the Berne three-step test.
- 5) Patents must be granted for “inventions” in all “fields of technology” provided they meet all other patentability requirements (although exceptions for certain public interests are allowed [14] and must be enforceable for at least 20 years. [15]
- 6) Exceptions to exclusive rights must be limited, provided that a normal exploitation of the work [16] and normal exploitation of the patent is not in conflict. [17]
- 7) No unreasonable prejudice to the legitimate interests of the right holders of computer programs and patents is allowed.
- 8) Legitimate interests of third parties have to be taken into account by patent rights. [18]
- 9) In each state, intellectual property laws may not offer any benefits to local citizens which are not available to citizens of other TRIPS signatories under the principle of national treatment with certain limited exceptions. [19],[20]

2.2 Indian Copyright Act, 1957

2.2.1 “Originality” concept under Copyright:

Section 13 of India’s Copyright Act, 1957

Copyright can subsist only in “original” literary, dramatic, musical and artistic works. [21] The act does not define “original” or “originality” and what these concepts entail has been the subject-matter of judicial interpretations in India and various other jurisdictions. As copyright law protects only the expression of an idea, and not the idea itself, the “work” must originate from the author and the idea need not necessarily be new. Views diverge with respect to two important doctrines pertaining to how originality accrues in any copyrighted work the “sweat of the brow” [22] doctrine and the “modicum of creativity” doctrine. [23] These are the two tests on each end of the debate for ascertaining “originality.”

The “sweat of the brow” doctrine relies entirely on the skill and labour of the author, rendering the requirement of “creativity” in a work nearly redundant. This doctrine was first adopted in the UK in 1900 in the case where an oral speech was reproduced verbatim in a newspaper report and the question was whether such verbatim reproduction would give rise to copyright in the work. [24] The court held that because the reporter expended skill and labour to reproduce the speech, the work merited copyright protection. This is still the position in the UK, and countries such as New Zealand and Australia largely follow in the UK’s footsteps and apply the sweat of the brow doctrine to determine originality in a work.

In contrast, the US Supreme Court in another case discarded the sweat of the brow doctrine [25] and held that a “modicum of creativity” or a “creative spark” [26] in the end product is an essential condition for a work to qualify as original, as mandated under the US constitution.

2.2.2 India’s position

The Supreme Court of India reviewed the concept of originality in detail [27] because prior to this, the Indian courts, implicitly, followed the English approach to originality. The appellants in this case were the publishers of Supreme Court Cases (SCC), a series of law reports which contains all the Supreme Court’s judgments. The appellants alleged that the respondents, who had created software packages that contained Supreme Court judgments, had copied the contents of their publication verbatim.

The appellants copy-edited the raw judgments and provided various inputs such as headnotes, cross-references, standardization and formatting of the text, paragraph numbering, verification, etc., which in their view required considerable skill, labour, expertise and expenditure. The appellants claimed that SCC constitutes an “original literary work” under section 13 of the Copyright Act and the respondents had infringed their right under section 14 by copying their work.

The Supreme Court interestingly diverted from its standard practice of following the English sweat of the brow doctrine and adopted the view that “Novelty or invention or innovative idea is not the requirement for protection of copyright but it does require minimal degree of creativity.” Applying the “creativity” standard, the court held that mere copy editing of the judgment would not merit copyright protection as this involves labour and nothing else. However, since some creativity is involved in the production of headnotes, footnotes, editorial notes, etc., these would qualify for copyright protection and the respondents were not allowed to copy them.

The Supreme Court appears to have adopted a middle path and relied on the judgment, [28] where the Supreme Court of Canada took the view that the sweat of the brow approach was a rather low standard to establish originality as it shifted the balance of copyright protection mainly in favour of the owner as against public interest, and the modicum of creativity standard was too high as “creativity” implied that the creation must be “novel” or “non-obvious” and these concepts are mostly synonymous with patents and not copyright.

Adopting a neutral approach the court held that in order to claim copyright protection “the author must produce material with exercise of his skill and judgment which may not be creativity in the sense that it is not novel or non-obvious, but at the same time it is not the product of merely labour and capital”.

The Supreme Court clearly sought to establish a balance between the right of authors to exploit their work and reap benefits and at the same time ensure the right of the public to freely access copyrighted works. By departing from the sweat of the brow doctrine, the courts discarded both the low threshold and the higher threshold in favour of a middle-of-the-road approach. This would mean that each case would be scrutinized on its individual merits to establish originality as per the current approach. [29]

2.2.3 Nature of Copyright:

Section 14 of India's Copyright Act, 1957 [30]

2.2.3.1 Literary, dramatic, musical or artistic works

Copyright is a right which subsists in a number of different kinds of works, such as literary, dramatic, musical or artistic works, sound recording, and cinematograph films.[31] The Copyright Act, 1957 governs the law relating to copyright in India. The exclusive rights are granted to the owner of the copyright to do certain acts in relation to the copyright work. For example, copying the work and use the copyright work in any other way including issuing the work to the public, renting or lending copies of the work to the public, performing, showing or playing the work in public, communicating the work to the public. Further, the right extends to broadcasting of the work and the making available to the public of the work by electronic transmission in such a way that member of the public may access it from a place and at a time individually chosen by them and adaptation of the work or doing any of the above in relation to the adaptation. These rights are referred as restricted acts under copyright law enabling the owner to recoup his economic rights. No other person can copy that work which has been produced by the author. Any person doing any of the acts restricted by copyright without the licence of the owner, does or authorises another to do, infringe the copyright in the work, for which civil and criminal liability can be enforced under the Act. Hence, the owner of a copyright has to take action to prevent others from engaging in specified kinds of activity infringing his rights.

2.2.3.2 Sound recording, and cinematograph films

Section 14 of the Act defines ‘copyright’ means an exclusive right to do or authorize the doing of any of the works specified.[32] Copyright is the term to describe the bundle of rights which are granted by statute, for limited periods of time and subject to certain exceptions, in respect of original literary, dramatic, musical or artistic works, such as novels, plays, poems, musical compositions, paintings, sculptures as well as of sound recordings, films broadcasts and typographical arrangements of published editions. These are proprietary rights, giving the owner the right to do or authorize other persons to do the acts restricted by the copyright law. [33]

Copyright means the right to copy, specific, a property right in an original work of authorship (including literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, and architectural works; motion pictures and other audio-visual works; and sound recordings) fixed in any tangible medium of expression giving the holder the exclusive right to reproduce adapt, distribute, perform and display the work.[34]

“Copyright is a monopoly of limited duration, created and wholly regulated by the legislature and an author has therefore no other title to his published works than that given by statute.”[35] “The term means that the right to make copies of a given work, at first it meant simply written work - and to stop others from making copies without one’s permission.”[36] The copyright holder has a property interest in preventing others from reaping the fruits of his labour, not in preventing the authors and thinkers of the future from making use of, or building upon, his advances. [37] The process of creation is often an incremental one, and advances building on past developments are far more common than radical new concepts.[38] Where the infringement is small in relation to the new work created, the fair user is profiting largely from his creative efforts rather than free-riding on another’s work. A prohibition on all copying whatsoever would stifle the free flow of ideas without serving any legitimate interest of the copyright holder.”[39]

2.3 Exclusive right

Copyright is defined as the exclusive right to make copies, licence and exploit a literary musical or artistic work, whether printed, audio, video, etc. works generated, such right by law on or after the statute comes into force and are protected for a period of time after his or her death. [40] Copying means an imitation, reproduction or transcript of an original; written matter intended to be reproduced in printed form; to make copy or copies. [41] Copyright consists of making available multiple rights on the same work normally referred as ‘bundle of rights.’ In a literary work for e.g. the author can reproduce a hardback or paperback editions, the work may be converted into dramatic and cinematographic versions and it may be used for adaptation, abridgement and translation. A work may also be converted into a play or a musical work which can be performed in public.

2.4 Computer programme as Literary Work

The computer software or computer program is considered as a literary work and accepted by almost all the countries. Few countries have also recognized the computer programs under patent law, for e.g. the United States recognition of computer program as literary work has brought in various questions of applicable legal principles of traditional/analogous media and adoption of such principles to the digital media and its implication. The researcher intends to study the impact of this technological development and the changes that had to be adopted into the copyright law.

3. Copyright is a Creation of Statute

Section 16 of the Copyright Act

There cannot be copyright which exist in any work except as provided by the statute. There is no common law copyright. [42] Hence, any person shall be entitled to copyright or any similar right in any work, whether published or not, within the provisions of the Act and none. [43] Copyright subsist in every original literary, dramatic or musical work or adaptation of every original artistic work; and in every sound recording, cinematograph film, sound and television broadcast, and published edition of a literary, dramatic or musical work. Copyright exist whether published or unpublished only in accordance with the provisions of the Act or any other law in force. Ideas and opinions are not the subject matter of copyright, but only the form in which ideas and opinions are expressed, and then only to the extent that a substantial part of the form must not be plagiarised.[44]

4. Copyright is a Negative Right

Copyright law is a negative right, which prevents the copying of physical material existing in the field of literature and arts. The exclusive right is a negative right, which is a right granted to the authors by preventing others not to copy or reproduce his work without permission. The right is granted with a view of preventing others to avail themselves of the work of others unfairly. Its object is to protect the writer and the artist from the unlawful reproduction of exploitation of his material. [45] This negative right also extends by preventing others

without the consent or licence of the author to exercise any other form of right attached to copyright. For e.g. any conversion into a cinematograph or adaptation into a musical work of any literary work needs permission to do so. [46]

Conclusion

Copyright exists in original work of the author with his skill, labour and capital. The copyright being a creation of the statute has to be claimed within the four corner of the Act. Copyright is a negative right which will not allow to copy but may create similar work without copying. To claim copyright in the first instance the three requirement of law are, ideas are not protected and only ideas put into a particular expression, it should have a fixation and it should be original work derived from the author and which is not copied from some other work. In the digital era the concept of idea, fixation and originality requirements have come to the fore which are major challenges to be tackled. And lastly, the originality requirement should also fulfil the test followed in traditional method.

It is therefore suggested that Government should intervene "to ensure that the unconscionability in such contracts does not abolish users' rights in their property". This could be done via copyright reform or public notice requirements on how terms of service may be altered.

REFERENCE

1. "What Is a Copyright?" Findlaw, <http://smallbusiness.findlaw.com/intellectual-property/what-is-copyright.html>.
2. To help us deliver interesting paid or sponsored content or promotions, you agree that a business or other entity may pay us to display your username, likeness, photos (along with any associated metadata), and/or actions you take in compensation with paid or sponsored content or promotions, without any compensation to you.
3. "The Instagram Controversy: A Victory for Copyright?" Law Right, 26 Apr. 2017, www.law-right.com/the-instagram-controversy-a-victory-for-copyright/.
4. Copyright is individual property, and should rightfully belong to the designated heirs of an author, similar to physical property. Copyright vests naturally in all creations and the Copyright Act, by virtue of establishing rights, limits this natural right. Allowing the use of a creative work without permission (i.e. putting it in the public domain) diminishes the worth of the work.
5. THE CHANCELLOR, MASTERS & SCHOLARS OF THE UNIVERSITY OF OXFORD & ORS. V. RAMESHWARI PHOTOCOPY SERVICES & ORS. (DU PHOTOCOPYING CASE), CS (OS) NO.2439/2012.
6. "Copyright: History of Copyright Law in India – BananaIP Counsels." BananaIP Counsels, 3 Feb. 2011, <https://www.bananaip.com/ip-news-center/history-of-copyright-law/>.
7. "India: Copyright Law In India." Copyright Law In India - Intellectual Property - India, <http://www.mondaq.com/india/x/406982/Licensing+Syndication/Copyright+Law+In+India>.
8. "Originality' Concept under India's Copyright Regime." Vantage Asia, 10 Aug. 2016, <https://www.vantageasia.com/originality-concept-under-indias-copyright-regime/>.
9. "TRIPS on Copyrights and Provisions in Indian Law." The Lex-Warrior: Online Law Journal, 15 Sept. 2013, <http://lex-warrior.in/2013/06/trips-copyrights-provisions-indian-law/>.
10. Trade Related Aspects of Intellectual Property Rights herein after refereed as TRIPS Agreement came into effect on 1 January 1995 deals in a wide range of intellectual property subject matter areas, such as copyright, trademark, patent etc.
11. Article 12 of TRIPS Agreement deals with term of protection
12. "Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making."
- Article 14 defines "Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations"
13. Article 9 describes Relation to the Berne Convention
- Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom.
- Copyright protection shall extend to expressions and not to ideas, procedures, and methods of operation or mathematical concepts as such.
14. Article 27 describes Patentable Subject Matter
- 27.2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect order public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.
- 27.3. Members may also exclude from patentability:
 - A. diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
 - B. plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.
15. Article 33 defines term of Protection
- "The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date."
16. Article 13 defines limitations and exceptions
17. Article 30 deals with exceptions to rights conferred
- "Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties."
18. *Id.*
19. Article 3 defines National Treatment
- Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection (3) of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967),

the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.

Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

20. Article 5 deals with “The obligations under Articles 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.”

21. Section 13 of India’s Copyright Act, 1957

22. The sweat of the brow doctrine

“An author gains rights through simple diligence during the creation of a work. Substantial creativity or “originality” is not required. The creator is entitled to such rights on account of efforts and expense put in by him in the creation of such a work. For Example, the creator of a telephone directory or a database must have a copyright over the product not because such a compilation of data showcases any creativity, or the author has expressed anything original, but merely because of the effort, time and money invested by the creator to collect and organise all the data in a specific manner. But such a compilation must be the work of the author himself and must not be copied from another source.”

23. Modicum of creativity doctrine

The concept of “originality” has undergone a paradigm shift from the “sweat of the brow” doctrine to the “modicum of creativity” standard put forth in *Feist Publication Inc. v. Rural Telephone Service* by the United States Supreme Court. The doctrine of “sweat of the brow” provides copyright protection on basis of the labour, skill and investment of capital put in by the creator instead of the originality. In *Feist’s* case, the US Supreme Court totally negated this doctrine and held that in order to be original a work must not only have been the product of independent creation, but it must also exhibit a “modicum of creativity”. The Supreme Court prompted ‘creative originality’ and laid down the new test to protect the creation on basis of the minimal creativity. This doctrine stipulates that originality subsists in a work where a sufficient amount of intellectual creativity and judgment has gone into the creation of that work. The standard of creativity need not be high but a minimum level of creativity should be there for copyright protection. “Analysis of Doctrines: ‘Sweat of the Brow’ & ‘Modicum of Creativity’ Vis-a-Vis Originality in Copyright Law.” *Indialaw Blog*, 23 Nov. 2016, www.indialaw.in/blog/blog/law/analysis-of-doctrines-sweat-of-brow-modicum-of-creativity-originality-in-copyright/.

24. *Walter v. Lane*

25. *Feist Publications Inc v. Rural Telephone Service Company Inc* (1991)

26. Originality requires independent creation plus a modicum of creativity.

27. *Eastern Book Company and Others v. DB Modak and another* (2007).

28. *CCH Canadian Ltd v Law Society of Upper Canada* (2004)

29. “‘Originality’ Concept under India’s Copyright Regime.” *Vantage Asia*, 10 Aug. 2016, <https://www.vantageasia.com/originality-concept-under-indias-copyright-regime/>

30. Section 14 a) in the case of literary, dramatic or musical work , not being a computer programme, (i) to reproduce the work in any material form including the storing of it in any medium by electronic means; (ii) to issue copies of the work to the public not being copies already in circulation; (iii) to perform the work in public, or communicate it to the public; (iv) to make any cinematograph film or sound recording in respect of the work; (v) to make any translation of the work; (vi) to make any adaptation of the work; (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi); (b) In the case of a computer programme, (i) to do any of the acts specified in clause (a) and (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme. However, such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental. (c) in the case of an artistic work,- (i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work; (ii) to communicate the work to the public; (iii) to issue copies of the work to the public not being copies already in circulation; (iv) to include the work in any cinematograph film; (v) to make any adaptation of the work; (vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv); (d) in the case of a cinematograph film,- (i) to make a copy of the film, including a photograph of any image forming part thereof; (ii) to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions; (iii) to communicate the film to the public; (e) In the case of a sound recording- (i) to make any other sound recording embodying it; (ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions; (iii) to communicate the sound recording to the public. Explanation: For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

31. Section 14

32. *Id.*

33. Copinger and Skone James P by Kevin Garnett, Gillian Davies and Gwilym Harbottle, 15th Ed. 2005, Vol. 1, p 2

34. Black’s Law Dictionary, Thomson, West group, 8th ed. 1999, p 361

35. Ethan S Drone, A treaties on the law of property in intellectual productions 2 (1879) cited at Black’s Law Dictionary, Thomson, West group, 8th ed. 1999, 361

36. Paul Goldstein, Copyrights Highway Paul Goldstein, Copyright’s Highway from Gutenberg to the Celestial Jukebox 138 (Stanford Univ. Press 2003) (1994); “before the 1976 Copyright Act (US) the term copyright implied a statutory right created by Congress in order to promote the progress of science. In the beginning the first Copyright Act 1790 protected only maps, charts, and books. Protection was gradually extended to musical compositions and graphic works. In the middle of the 19th century, photography was developed and then protected and at the end of the century by motion pictures and the end of the 20, h century digital technology and multimedia forms of authorship seriously challenge the gradual compartmentalised approach to granting new rights and new subject matter...” William F Party, Copyright Law and Practice, Black’s Law Dictionary, Thomson, West group, 8,h ed. 1999 p 361.

37. Atari Games Corp. and Tengen Inc. v Nintendo of America Inc., quoting from the opinion of the New Kids on the Block v News Am. Publishing
38. Lewis Galoob Toys Inc. v Nintendo, No. 91-16205, slip op. at 5843 (9th Cir. 1992)
39. Sega Enterprises Ltd v Accolade Inc., 24 U.S.P.Q2d 1561 (9th Cir. 1992)
40. Webster's Encyclopaedic Unabridged Dictionary of the English Language, Gramercy Books, New York, 1996; 'Copyright' is an incorporeal right, being the exclusive privilege of printing, reprinting, selling and publishing his own original work which the statute law first gave to an author in 1709, by 8 Anne, c 19, for a particular time, cited at Wharton's Law Lexicon with Exhaustive Reference to Indian Case Law, Universal Law Publishing Co., 2009.
41. 'Copy' means a copy which is substantially the same as the original variation in any form the original should not be vital in nature or should not be such that can possibly mislead a reasonable person in meeting to allegation. If the copy differs in material particulars from the original the same cannot be cured after the period of limitation, Chandrakant Uttam Chodankar v Dayanand Raju mandrakar, (2005) 2 SCC 188 cited at Wharton's Law Lexicon with Exhaustive Reference to Indian Case Law, Universal Law Publishing Co., 2009 407; 'Copy' in legal sense the transcript of an original writing; reproduction of something; a writing like another from another as opposed to an original; that which comes so near to the original as to give to every person seeing it the idea created by the original; a reproduction or imitation, as of a writing, printing, drawing painting or other work of art, so as to have another or other similar work to the original, Advanced Law Lexicon, P Aiyar Ramanatha, Lexis Nexis, Butterworths Wadhwa, 3rd ed. Reprint 2009.
42. A property right that comes into existence when the work was created rather than when it was published; In US the statute has retained the common law's recognition the property right. The common law copyright still applies in a few areas notably common-law copyright received before January 1978 remains entitled to protection. Cited at Black's Law Dictionary, Thomson, West group, 8th ed. 1999
43. Manojah Cine Productions v Sundaresan, AIR 1976 Mad 22 (DB); Richmark Camera Services v Neison Horded (1981) FSR 413 at p 414, cited at Narayanan P, Law of Copyright and Industrial Designs, 4th ed. Eastern Law House, p 14
44. Me. Crum v Eisner, (1917) 87 L.J.Ch. 99
45. *Id.*
46. "Copyright law is concerned in essence with the negative right of preventing the copying material. It is not concerned with the reproduction of ideas, but with the reproduction of the form in which ideas are expressed. Ideas it has always been admitted... are free as air. A copyright is not a monopoly unlike patents and registered designs, which are. Thus if it can be shown that two precisely similar works were in fact produced wholly independently of one another, there can be no infringement of copyright by one of the other. The position is that, if the ideas embodied in the plaintiffs work is sufficiently general; the mere taking of that idea will not infringe. If however, the idea is worked out in some detail in the plaintiffs work and the defendant reproduces the expression of that idea, then there may be an infringement. In such a case it is not the idea which has been copied but its detailed expression." *Supra* n. 3, Para 2- 05, page 27

