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DIGITAL PIRACY- LAW OF COPYRIGHT PIRACY: MEANING, NATURE, CONCEPT AND SUBJECT MATTER OF COPYRIGHT PIRACY

Sadhika Kochhar, Student, Amity Law School, Amity University, Noida, India

Abstract: In the present scenario, IP awareness is the key to technological innovations and in the emerging knowledge-based economy, the importance of IP is likely to go further. The awareness among the creators of information and knowledge about IPR has become essential in the digital environment because in the digital environment it is becoming difficult to prove rights violation whenever they occur. In the present paper we are discussing of Intellectual Property Rights (IPR) in the Digital environment.

In the rapidly evolving digital landscape of India, the convergence of intellectual property rights (IPR) and digital piracy has become an issue of supreme concern. This dissertation aims to offer a comprehensive assessment of this multifaceted problem by investigating both the privacy risks associated with pirated software and the advantages of embracing open-source alternatives within the Indian context

The initial segment of this study delves into the prevailing trends in digital piracy in India. It sheds light on the dynamics of software piracy, its economic implications, and the legal consequences it entails. Through a meticulous analysis of the existing legal framework and enforcement mechanisms, this paper provides valuable insights into the formidable challenges and inherent limitations associated with curbing digital piracy, particularly in the Indian landscape.

The subsequent section of the research focuses on unveiling the inherent privacy risks associated with the use of pirated software. It scrutinizes the vulnerabilities users subject themselves to when employing unauthorized software, encompassing the potential for malware infiltration, data breaches, and surveillance. This portion of the study relies on compelling case studies and empirical data to quantitatively gauge the extent of these privacy risks, underlining their profound impact on both individual users and organizations.

In stark contrast, the paper proceeds to inspect the merits and benefits of adopting open-source software solutions in India. It elucidates how open-source alternatives offer a viable and ethical substitute to pirated software, simultaneously encouraging legal and responsible software usage while mitigating privacy risks. This section delves into the cost-effectiveness, security enhancements, and customization potential inherent to open-source software, with a particular emphasis on how these qualities foster digital inclusivity and innovation within the Indian context.

In summation, the overarching goal of this dissertation is to make a meaningful contribution to the ongoing discourse surrounding digital piracy and intellectual property rights in India. It does so by providing a nuanced understanding of the privacy hazards intertwined with pirated software and advocating for the widespread adoption of open-source alternatives as an effective means of averting these risks. The findings and recommendations set forth in this study hold practical significance for policymakers, industry stakeholders, and individual users as they navigate the intricate terrain of digital technology in India. Ultimately, this research endeavours to raise awareness about the perils of pirated software and promote a more secure and ethical digital ecosystem.

Law of Copyright Piracy: Meaning, Nature, Concept and Subject Matter of Copyright Piracy

Copyright is a part of Intellectual Property. Intellectual Property consists of a series of rights in intellectual creations. Intellectual Property in its literal sense means the things, which emanate from the exercise of the

human intellect. It is the product emerging out of the intellectual labour of a human being. Generally speaking, there are two main policies on which intellectual property rights are based. The first is the policy of encouraging new intellectual creations. This is the main policy basis of patents, industrial designs and copyright. Like patent and industrial design, copyright confers an exclusive right on the owner for a finite period to prevent others from exploiting its subject matter, i.e., literary or artistic work etc. The exclusive right enables the owner to recover a reward for originality and investment in the creation of originality and thus, serves as an incentive for further investment in the development of new intellectual creations.

The second main policy basis is the orderly functioning of the market through the avoidance confusion and deception. This is the main policy basis of trademark, rights in geographical indications and protection against unfair competition.

Intellectual Property has become a central element in economic and cultural policy in a world in which the source of wealth is increasingly intellectual, as opposed to physical capital in which markets are distributed across the globe. By becoming members of WIPO States have subscribed to the importance of promoting the protection of Intellectual Property.

The world today has entered into an era of instant communication. A person sitting in the remotest corner of India can enjoy live performance taking place in the far away places like America or Africa, thanks to electronic (parallel) media. Telephone and fax have made it possible to communicate oral or written messages across the globe within seconds. The computer-aided communication technologies such as E-Mail and Internet have added altogether a new dimension to today's communication process by making it more speedy, informative and economical. The ways through which different types of information can be communicated have also undergone a sea change. These days a film song can be put in or accessed by a single device alongwith a textual message and even a painting. While all these have made communication among people more effective and efficient both in terms of time and cost, they pose the greatest threat to the copyright world. Modern communication channels, being intensively relying on a variety of copyrighted products, are liable to be pirated in large scale, if adequate precautions are not exercised.[1]

Copyright is the right given by law to the creators of literary, dramatic, musical and a variety of other works of mind. It ordinarily means the creator alone has the right to make copies of his or her works or alternatively, prevents all others from making such copies. The basic idea behind such protection is the premise that innovations require

incentives. Copyright recognises this need and gives it a legal sanction. Moreover, commercial exploitation of copyright yields income to the creators and thus making pecuniary rewards to individual's creativity.

The origin of copyright had a link with the invention of printing press by Gutenberg in the fifteenth century. With the easy multiplying facility made possible by the printing press, there was voluminous increase in the printing and distribution of books which ,in turn, led to adoption of unfair practices such as unauthorised printing by competing printers.

Though piracy was born by the end of the fifteenth century. it was only in 1710 the first law on copyright in the modern sense of the term came into existence in England. The law which was known as 'Queen Anne's Statute' provided authors with the right to reprint their books for a certain number of years. The 1710 law was confined to the rights of authors of books only, and more particularly the right to reprint. It did not include other creative works such as paintings. drawings etc. which also by that time became targets of piracy, in addition to other aspects relating to books (e.g. translation, dramatisation etc.) To overcome this problem a new enactment namely 'Engravers Act' came into existence in 1735. There followed a few more enactments in the subsequent periods and ultimately Copyright Act 1911 saw the light of the day.

Developments in this regard also took place in many other advanced countries, notably among them being France. Germany and the USA. In France a copyright decree was adopted in 1791 which sanctioned the performing right and another decree of 1793 established author's

exclusive right of reproduction. In Germany author's rights were recognised by a Saxon Order dated Feb 27, 1686. In America the first federal law on copyright, the Copyright Law 1790 provided protection to books, maps and charts.

(A) Meaning and Nature of Copyright

(i) *Meaning of Copyright*

Copyright is not merely the right to copy. The word 'Copyright' is a misnomer. The word 'copyright', according to Black's Law Dictionary is the right in literary property as recognized and sanctioned by positive law. An intangible incorporeal right granted to the author or originator of certain literary or artistic production, whereby, he is invested for a specified period with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them.

Law relating to copyright deals with the protection of rights on certain types of works resulting from the intellectual labour of human being. However, it originated as a right to protect the intellectual labour of a man in his books, in modern times it is extended to protect the Intellectual labour of a man in literary, dramatic, musical and artistic works. Copyright cultivates creativity as it secures economic benefits to the actual authors and allows recoupment for the initiative of creating the material and the investment risked in producing and marketing it[2]. Copyright confers an exclusive right in original expressions of an idea. Therefore, copyright is the right to exclude unauthorized reproduction of

the copyright work. According to the Orissa High Court in the case of *B. Rajendra Subudhi v. Brundaban Sahu*[3], "copyright does not essentially mean a right to do something, but only the right to exclude others from doing of those acts and things which are expressly mentioned in the section."

Copyright confers on an author of work a bundle of exclusive rights, which are - right to publish, distribute,

reproduce, perform, translate, to make any cinematographic film or sound recording and to make any adaptation of the work including right of rental for certain kinds of works.

(ii) *Legislative Meaning of Copyright*

For the purpose of this Act, copyright means[4] the exclusive right, subject to the provision of this Act, to do or authorize the doing of any of the following acts in respect of a work or any substantial part thereof, namely: -

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 and not being copies already in circulation;

iii. to perform the work in public, or communicate to the public;

iv. to make any cinematographic film or sound recording in respect

of the work;

v. to make any translation of the work;

vi. to make any adaptation 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 (iv).

b. in the case of computer programme

i. to do any of the work specified in clause (a);

ii. to sell or give or hire, or offer, for sale or hire, any copy of the computer programme regardless of whether such copy has been sold or given on hire on earlier occasion…"

(c) in the case of an artistic work[5]

(i) to reproduce the work in any material form including

(a) the storing of it in any medium by electronic or other means; or

(b) depiction in three-dimensions of a two-dimensional work; or

(c) depiction 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) t6 (iv);

(d) in the case of a cinematograph film,

(i) to make a copy of the film, including[6]

(a) a photograph of any image forming part thereof; or

(b) storing of it in any medium by electronic or other means;

(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film;[7]

(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 [8](including storing of it in any medium by electronic or other means);

(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;[9]

(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.

The above definition goes on to define the rights available in respect of artistic works, cinematograph film and sound recording. The basic principle on which copyright rests is that creativity in literary, dramatic, musical and artistic field needs to be rewarded like manual work and people who produce intellectual property should be able to live by their efforts while guaranteeing certain exclusive rights to creators. The copyright laws also ensure that the public's right to full

participation in the cultural life of the community by enjoying the creative efforts of gifted members of humanity is not jeopardized. This is ensured by two means: -

firstly, limiting the during in which a work enjoys copyright protection; and

secondly, allowing certain use without specific authorization by the owner of the copyrights, known as fair use provisions in copyright parlance.

(iii)*Nature of Copyright*

The law does not permit one to appropriate to himself what has been produced by the labour, skill and capital of another. This is very foundation of copyright. 'Copinger and Stoke James on Copyright'[10] have expressed themselves on the nature of copyright as under:

"Copyright law is concerned, in essence, with the negative right of preventing the copying of physical material. It is not concerned with the reproduction of ideas, but with the reproduction of the form in which ideas are expressed. Originally copyright law was concerned with the field of literature and the arts, but, in seeking, in particular, to keep up with advances in technology, the protection given by copyright law has been considerably expanded over the years. Thus, today, not only is protection given to literary, dramatic, musical, and artistic works (but also),

computer programme being protected as literary works, sound recordings, films, broadcasts, cable programmes and the typographical arrangements of published editions."

Copyright is a negative right which enables author of the work to prevent others to exercise that right which has been conferred on him by the Copyright Act. Copyright is the right to prevent copying, or the issuing copies of the work to the public, or the right to prevent the making for sale or selling infringing copies of the work.[11]

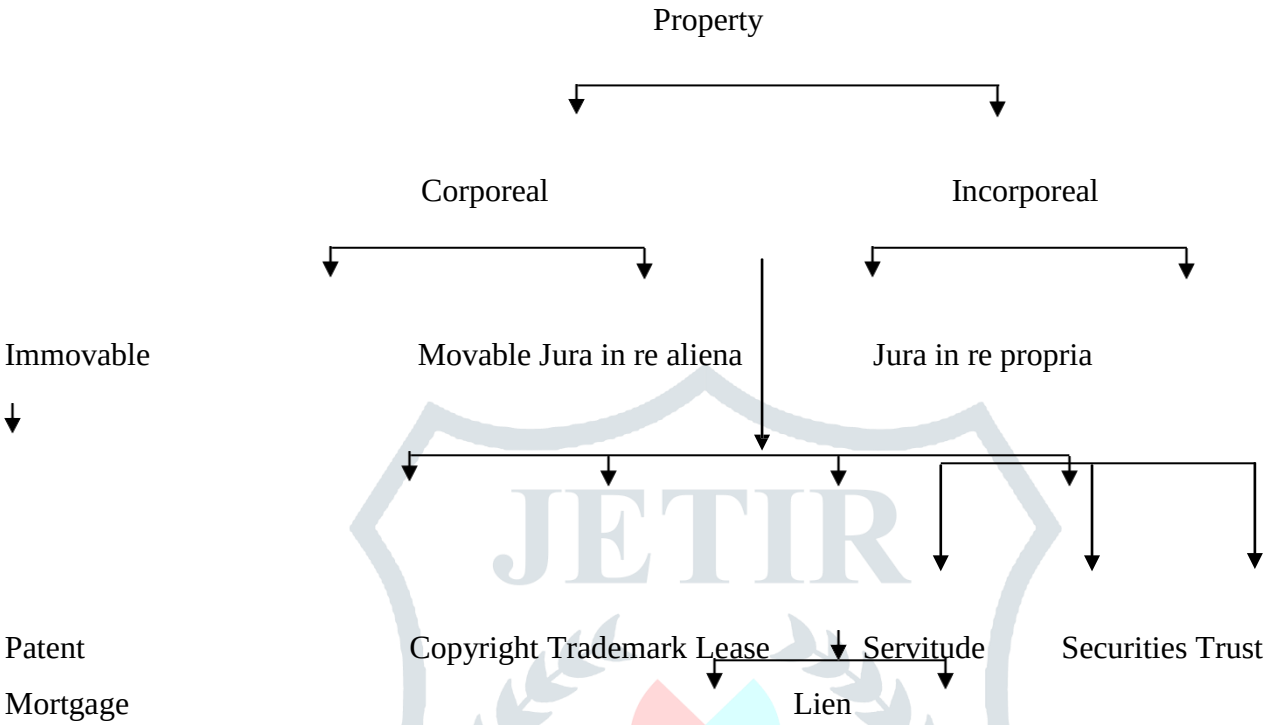
(a) *Copyright is not a Monopoly Right*

Like patent and registered design, copyright is not monopolistic in nature. 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 or the other. The copyright does not subsists in the idea but it subsists in the expression of idea. No one can monopolize the idea itself. On the same idea, more than one copyrighted material can be produced. The copyright protects only original expressions and not ideas and the test of originality in copyright is not as rigorous as in the case of other intellectual property rights. Independent creations of similar works are quite possible, although the chances of two persons expressing the same thought in identical words or ways are well nigh impossible. For example, if two painters paint a river scene, all the two paintings are likely to be different from each other. If two poets

describe sunrise, the two poems are likely to be different from each other.

(b) *Copyright is a Property Right*

Copyright is a property right. This can be understood with the help of the following figure:



As the figure indicates, property is broadly divided into corporeal property and incorporeal property. Copyright comes under the heading incorporeal property.

Incorporeal Property

Incorporeal property is intangible property. The recognition and protection of incorporeal property has been secured in recent times. Formerly, property in the form of land alone was considered to be important and valuable. The incorporeal property is again divided into two

sub-heads: Jura in re aliena and Jura in re propria. The copyright comes under latter head i.e., *jura in re propria.*

Jura in re propria

These are those rights of ownership in one's one property as are not exercised over material objects. Generally, the law of property deals with material objects However, in some cases, ownership of some non-material things produced by human skill and labour is recognized as property. The most important of such rights are: patent, copyright and trade marks.

The subject matter of this right is the literary expression of facts or thought. This right may be available to

writers, painters, engravers, sculptures, photographers, musical and dramatic personnel, computer-programmer and performers for their outstanding work. When such a person does some creative work by utilizing his intellect, skill and labours, he is entitled to exclusive copyright which is an immaterial form of property. In the care of *Mansell v. Valley Printing Co.*,[12] the court observed that "copyright is incorporeal property, distinct from physical ownership of the work in which copyright subsists. It is the right to make copies of the work, to publish the work and to do various other acts."

Even from very early times, there had been a tendency to protect intellectual creations of mankind just like other forms of property within the framework of the general theory on property propounded by great jurists like Grotius, Pufendrof, Locke Hegel, Blackstone etc. who tried to identify intellectual production of literary works also as a property.

Blackstone tried to justify the inclusion of these works within the meaning of property as under:

"There is still another species of property which being grounded on labour and invention, is more properly reducible to the head of occupancy than any other; since the right of occupancy itself is supposed by Mr. Locke and many others, to be founded on the personal labour of the occupant. And this is the right which an author may be supposed to have in his own original literary composition; so that no other person without his leave may publish or make profit of the copies."[13]

After analysing various theories of property, we find that the labour theory of property is the best theory that explains the concept of intellectual property. Eaton S. Drane and R.F. whale, are also of the view that labour theory justifies the concept of property in literary production. He explained:

"No theory, no explanation, no consideration, has been advanced by the great writers to account for the inviolability of property in the produce of labour, which does not apply with equal force and directioness to property in the fruits of intellectual industry No vital qualities have been assigned to one which are not equally inherent in other…."[14]

Copinger also supported property in copyright with labour theory and observed :

"Nothing can with great propriety be called a man's property than the fruits of his brain. The property in any article or substance accruing to him by reason of his own mechanical labour is never denied him; the labour of his mind is no less arduous and consequently no less worthy of protection of the law."[15]

A man is entitled to the fruits of his mental faculty as much as he is entitled to the fruits of his mechanical labour.

(c) *Copyright is a Negative Right*

Copyright is a Negative right meaning thereby that it is prohibitory in nature. It is a right to Prevent others from Copying or reproducing the work.

(d) *Copyright is a Multiple Rights*

Copyright is not a single right. It consist of a bundle of diffrent right in the same work.

For example, in case of literacy work copyright comprises the right of reproduction in hard back and paper back editions, the right of Serial Publication in Newspapers and Magazines, the right of pramatic and cinematographic versions, the right of translation, Adaption, abridgement and the right of Public performance.

(e) *Copyright a Statute Law*

Basically, copyright law is based on statutory provision. Before the Statute of Anne, which was the first legislation on this point, the copyright

in England was a common law right. To accommodate the appropriate provisions which were inevitable due to growth and changes in circumstances, new legislations were passed from time to time like the Copyright Act, 1842, the Copyright Act, 1911, Copyright Act, 1956 and the Copyright Designs and Patents Act, 1998.

The question arises whether even after the enactment of law on copyright, the common law right on copyright exist or not, the court has held that after the passing of legislation, the common law was taken away. In *Donaldson v. Beeket*,[16] the court by majority expressed the view that common law right after publication was taken away by the statute. The United States Supreme Court also followed the path of House of Lords and in *Wheaton v. Peters*[17], the US Supreme Court also held that the copyright in the United States was the creation of statute and there was no common law copyright. However, where these are no laws on any point, the court in United Kingdom is also applying common law principle to solve those problems. In *Millar v. Taylor*[18], the court after making a thorough examination of the then existing law both, case law, and statutory provisions, a majority of judges concluded that there was common law copyright where it was not taken by the statute.

(B) Meaning of Copyright Piracy

Copyright piracy is a phenomenon prevalent worldwide. Piracy

means unauthorised reproduction. importing or distribution either of the whole or of a substantial part of works protected by copyright. The author of a copyrighted work, being the owner, enjoys certain exclusive rights with respect to his or her works. These include right to reproduce, to publish, to adopt, to translate and to perform in public. The owner can also sell, assign, license or bequeath the copyright to another party if he wishes so. If any person other than the copyright owner or his authorised party undertakes any of the above mentioned activities with respect to a copyrighted product. it amounts to infringement of the copyright. Copyright piracy is thus like any other theft which leads to loss to the owners of the property. Besides economic loss, piracy also adversely affects the creative potential of a society as it denies creative people such as authors and artists their legitimate dues.

There are different ways through which piracy takes place. A computer software is pirated by simply copying it onto another machine not authorised for its use. Book piracy takes place when a book is reproduced by someone other than the real publisher and sold in the market. A performer's right is violated when a live performance of an artist is recorded or telecasted live without his/her permission. In a cinematographic work piracy generally takes place through unauthorised reproduction of the film in video forms and/or displaying the video through cable networks without taking proper authorisation from the film producer (the right holder). In fact. there are numerous other ways through which piracy of copyrighted works take place. The nature and extent of piracy also vary across the segments of the copyright industry.

(i) The Concept of Piracy

The word "piracy" derives from a distant Indo-European root meaning "trial" or "attempt"—or by extension, "experiment."[19] By the time of Thucydides, peiratos, who had formerly been viewed as honorable, came to signify sea-going thieves, ur-criminals or enemies of humanity. The word 'piracy' was used as the illicit "capture" of printed materials, or other forms of intellectual property, as a metaphorical extension.[20] Not until the printing revolution and the golden age of Caribbean buccaneering in the early modern period, however, did the term "piracy" come to signify intellectual theft.[21] Today, the term is ubiquitous and is employed not merely in relation to books but also in relation to music, movies, software, pharmaceuticals and inventions as well as other intellectual properties.[22]

Generally speaking, piracy refers to unauthorized use, or making copies, of creative works. Usually, in essence, this means doing so without acknowledging the originator's copyrights in monetary terms.[23] The term

'piracy' is often related to incorporating the idea of 'theft' and 'infringement' and it has negative connotations which rest on the assumptions that the institution of private property rights exists and that such an institution is justified, thereby any noncompliance is to be perceived negatively.[24] However, under scrutiny, such assumptions may not necessarily survive. There is currently no specific legal definition of digital piracy, which would be more accurately described as "digital infringement of copyright".

(ii) Piracy in the Digital Era

Piracy always attracts the most attention from copyright holders when it comes to copyright law. Just like with crimes, it could be controlled at a certain degree but seems impossible to eliminate entirely. National copyright laws used to work quite well in protecting creators and distributors' rights by the licensing regime. However, with the common use of the Internet, with a global arena, piracy goes wild. Online file sharing services and free downloads can be seen everywhere. The intellectual recourses can be obtained with a simple click of button. When a court takes down one piracy website, ten more have already appeared. As a result, piracy is no longer in the same form as it used to be, while international copyright conventions and

national copyright laws still have no distinctive difference than before.

Digital piracy is the kind of illegal copying or downloading of

digital material, such as software, music, videos, audio books. and other copyrighted materia1. It is often performed by downloading software from sites that might contain illegal contents, and then using P2P technology to download movies and books in electronic format, or using the torrent software to download one's favourite songs.[25] Indeed, piracy has become the largest transgression of the information age.

Digital piracy is the extension of traditional copyright piracy. However, it shows different characteristics compared with the traditional one. Traditional piracy has to convey through something such as books and discs. But in the Internet environment, all piracy is in the form of digital code, no matter if the infringed work is an article, music, picture or software. All of them can be processed, stored and disseminated on the Internet in an intangible form. Computers make creative works easy to be copied through the Internet. As long as the works are public on the Internet makes it possible for internet users all over the world to download them. With the intangible character, works can be copied and disseminated without limit. Due to the Internet having no boundary between nations and digital copy and dissemination could complete within a few seconds or minutes, means digital piracy could happen everywhere at any time. Besides the trait of being easily copied on the Internet, the works are also easily modified. It is very likely that the author's name is deleted, thus undermining the integrity of the work while reproducing on the network without authorization.[26]

(A) Subject matter of Copyright Piracy

Copyright is a bundle of exclusive rights which are: right to publish, distribute, reproduce, perform, translate, to make any cinematograph film or sound recording, to make any adaptation of the work including right of rental for certain kinds of work.[27]

Initially, only the author of literary works were given copyright which was also confined to right to reproduction. With the passage of time, economic benefits of other works were also realized and as a result, such type of works were also protected.

At present, the copyright subsists throughout India in: -

(a) original literary, dramatic, musical and artistic works.

(b) cinematograph films and

(c) sound recording.[28]

To become entitled to copyright in published work, the work must be first published in India. In case of

works first published outside, the author must, on the date of such publication be and in case of author was dead at that date, have been a citizen, to be entitled for copyright.[29]

In case of any unpublished work, other than architectural work of art, the author at the date of making the work must be a citizen or domiciled in India to get copyrighted.[30] But in case of an architectural work of art, the work must be located in India, and must have an artistic character and design.[31]

The Copyright Act also made it clear that the copyright shall not subsists if the cinematograph film or sound record is made by infringing any literary, dramatic or musical work. The Copyright in cinematographic film or sound record shall not affect the separate copyright of the works from which the film was made.[32]

(i) *Literary Works*

Copyright subsists in 'original literary' work. The word 'original' does not mean that the work must be the expression of original or inventive thought. Copyright Act is not concerned with the origin of ideas, but with the expression of thought and in the case of 'literary work' with the expression of thought in print or in writing. The originality which is required related to the expression of thought but the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work i.e., it originates from the author. The degree of originality required for copyright protection is minimal, the emphasis is more on the labour, skill, judgement and capital expended in producing the work.

The courts have also examined the meaning of the term 'original' used in the definition. The English Court in *University of London Press*

Ltd. v. University of Tutorial Press Ltd.[33], has observed:

"The word 'original' does not in this connection mean that the work must be the expression of original or innovative thought. Copyright Acts are not concerned with the originality of ideas, but with the expression of thought…"[34]

In *Frederick Emerson v. Chas Davies*[35], the court set out the distinction between the original composition and a piracy of copyright. Some of the points are -

"First that any new and original plan, arrangement or compilation of material will entitle the author of copyright therein whether the materials themselves, be old or new. Second, that whosoever by his own skill, labour and judgement writes a new work may have a copyright therein unless it be directly copied or evasively imitated from another's work. Third, that to constitute piracy of a copyright it must be shown that original has been either substantially copied…".

This shows that the term is used in a liberal sense. It is not on the originality of ideas that copyright stresses, but on the originality of expression of ideas. This was also followed by the Indian courts. The test

of "originality" was stated by M. P. Court in *M/s Mishra Bandhu Karyalaya v. Shivratan Koshal*[36] thus :

"The real test in adjudging the originality of a work is whether it involved any skill, labour and knowledge of the author and that being fulfilled, he could be protected by law and no one else was permitted to steal or appropriate to himself the result of labour, skill and learning." [37]

The original skill and labour constitute originality. In the case of *C. Cunniah and Co. v. Balraj and Co.*,[38] the Court observed as follows: -

"It is well established that in order to obtain copyright production of literary, dramatic. musical, and artistic works the subject dealt with need not be original, the idea expressed be something novel. What is required is the expenditure of original skill or labour in execution and not originality of thought."

Thus, it is clear that to become a literary work, the work need not have new ideas but must have a new way of presentation.

(ii) *Definition of Literary Works*

According to definition in the Act, 'literary works' includes computer programmes, tables and compilations including computer databases.[39] The 'computer programme' was included in the definition of 'literary work' by the Copyright (Amendment) Act, 1994 and the 'data- bases' by the Copyright (Amendment) Act, 1999. This statutory definition

is inclusive definition. It is not definition. The judiciary has in many cases interpreted the term 'literary work' widely to include many things. The English Court in *University of London Press Ltd. v. University Tutorial Press Ltd.*,[40] examined the meaning of the term 'literary work'. Here, the court considered whether the question paper set for examination could be treated as a literary work. Justice Peterson explained the term literary work, thus: -

"It may be difficult to define 'literary work' as used in this Act, but it seems to be plain that it is not confined to 'literary work' in the sense in which this phrase is applied. In my view, the word 'literary work' covers works, which is expressed in, print or writing, irrespective of the question whether the quality or style is high. The word 'literary' seems to be used in the sense somewhat similar to the use of the word literature and refers to written or printed matter."[41]

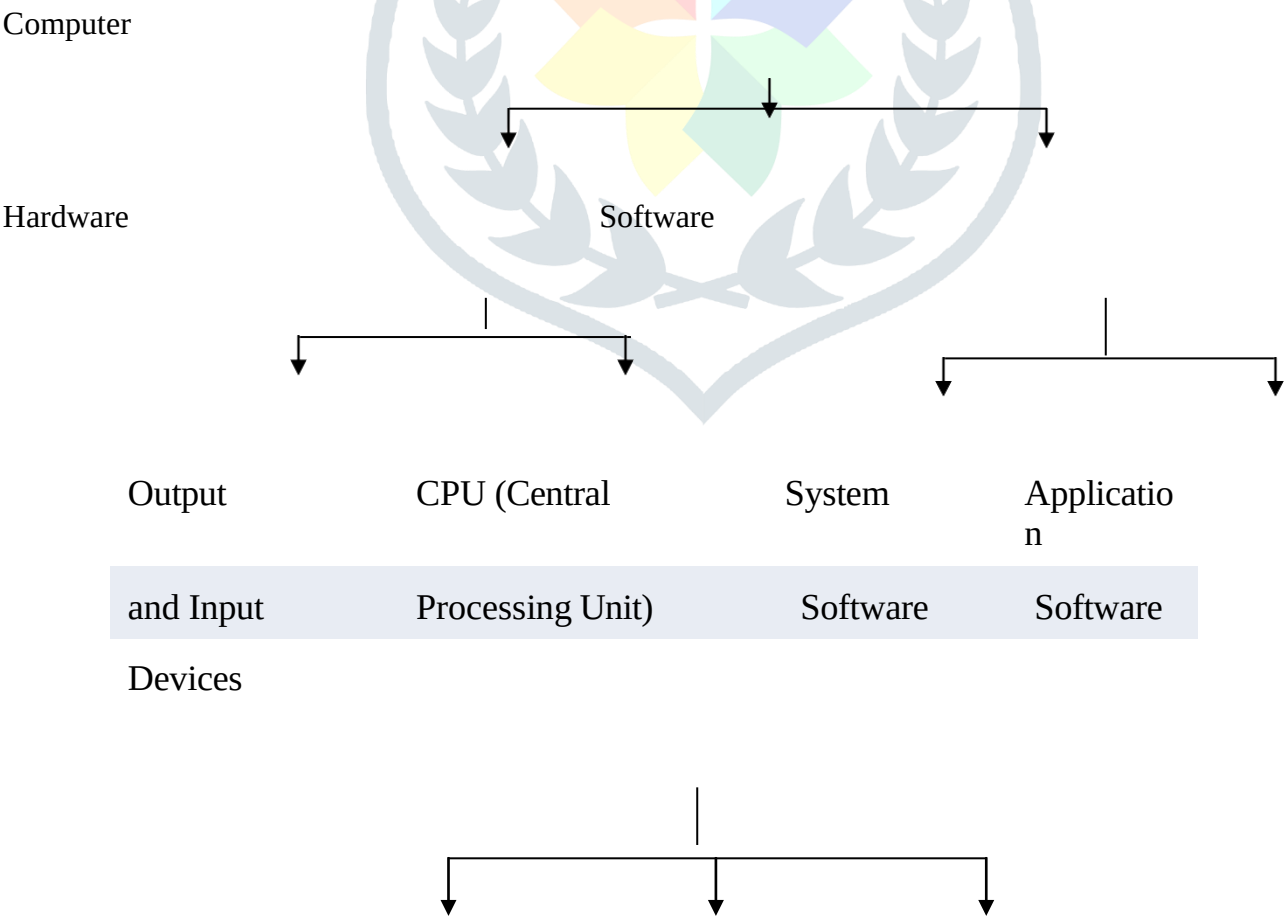
The Indian Judiciary has also followed the broad interpretation of English court. The Patna High Court in *Jagdish Prasad Gupta v. Parmeshwar Prasad Singh*[42] and Allahabad High Court in *Agarwala Publishing House, Khurja v. Board of High School and Intermediate Education, U.P.*[43] held that question papers set for examination were literary works.

The words "literary works" are not confined to works of literature in the commonly understood, sense but includes, all works expressed in

writing, whether they have any literary merit or not. Thus books on arithmetic, football coupons, a set of logarithmic tables, railway time- table, telephone directories and income tax returns have been considered as literary works, although they have no appeal to the aesthetic sense.

A literary work must be expressed in some material form. It may be in writing or print or in some form of notation or symbols. A speech or lecture even if recorded on a sound film or other recording devices would not be entitled to copyright protection as a literary work. Shorthand and Braille is considered as different types of writing. A literary work is intended to afford either information or instruction, or pleasure or in the form of literary enjoyment.

A new items introduced into the category of literary work is computer programme. A computer system is divided into two parts consisting of hardware and software. Hardware usually constitutes the mechanical, magnetic, electronic and electric devices of a computer.[44] This consists of a central processing unit (C.P.U.) the memory units and the input and output devices. The term software is used to describe the different types of computer programme. Computer programme are divided into 'application programme' and 'operating system programme'. Application programmes are designed to do specific task to be executed through the computer and operating system programmes are used to manage the internal functions of the computer to facilitate use of applications programme.[45] This is illustrated by following figure:



ALU Control Unit Memory (Arithmetic & Logical Unit)

Computer and computer programmes are also defined in the Indian Copyright Act, 1957. According to the Act, Computer includes any electronic or similar devices having information processing capabilities[46] and computer programme means a set of instructions expressed in words, cods, schemes, or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result.[47]

Thus, a computer programme can be written in three levels of computer language-high level language, lower level language and lowest level language. High level languages, which are commonly used are BASIC, COBOL, FORTRAN etc. This consists of English words and symbol and it is easy to learn. Lower level language is assembly language which consists of alphanumeric labels. This language is easily understandable by programmer. Statements of these two languages are written in source code"[48]. The third lowest level language is the machine language. This is binary language using two symbols '0' and '1' called bits. This is the only language, which can be followed by machine but very difficult for the programmer to utilize. Statements in machine language are referred as written in object code.[49]

Computer programmes are usually written in source code by the programmer. Since programme in source code is not capable of being followed by computer, this is usually translated into object code by another programme for the use of computer. If it is written in assembly language, the programme is called "assembler" and if it is written in high level language BASIC, COBOL etc., a programme called compiler or interpreter. It is used to translate into object code."[50]

To be used in a computer, object code must be available in a memory device. When the computer programme written in the source code is fed into the computer, the assembler or compiler, as the case may be, translates this into object code. By using the object code, the computer can be instructed to perform the particular task and the result can be obtained.

The important question before us is whether these two, source code and object code be treated as computer programme for affording legal protection as intellectual property. It is also doubtful whether computer operating system programme is covered by the copyright law. In all over the world, it is now well accepted that copyright law is the best media to protect the computer programme.

WIPO has already decided to protect the computer programme as literary work.[51] In addition to this the TRIPS agreement also mandates copyright protection to computer programmes.[52] Under Indian Copyright Act, 1957 after amendment in 1994 computer programme was added under literary work. Thereafter, in

1999, by amendment, database was also included in 'literary works'. Now 'literary works' includes computer programmes, tables and compilations including computer databases.[53] So the "source documents" and the "source code" of a computer program which are in writing or some form of print out would constitute literary works. It is immaterial that print out of the source code means nothing to

the ordinary reader. As we know that meaningless set of words used as a telegraph code and a system of shorthand have been accorded copyright protection.[54]

What is the situation, if there is no writing or print out of the computer programme, e.g., where the code is stored in the machine or held on a magnetic tape? The Indian Copyright Act, 1957 does not insist on writing as such, for writing is said to "include any form of notation, whether by hand or by printing, typewriting or any similar process."[55]

Thus, in *Northern Office computer (Pty) Ltd. v. Rosenstein*[56], the South African Court held that only material form of fixation such as magnetic recording is sufficient for literary work. The relevant statutory provisions were identical to those of English Act of Copyright i.e., Copyright Act, 1956. The Indian Copyright Act is also more or less similar to English Copyright Act.

There is no difference of opinion for treating source code as a computer programme for affording protection of copyright law but there has been considerable doubt as to whether object code can also be treated as computer programme. Some authors expressed the view that the object code must be protected as copyright subject matter.[57] The American Court

of Appeal in *Apple Computer Inc. v. Franklin Computer Corporation*[58], categorically observed that the object code constituted a computer programme and was covered by the provision of Copyright Act. On the question whether operating system programmes are an appropriate subject of copyright, the court observed:

"Both types of programmes instruct the computer to do something, therefore, it should make no difference for purpose of S. 102(b) whether these instructions tell the computer to help prepare an income tax return (the task of an application programme) or to translate a high level language programme form source code to its binary language object from. Since it is only the instructions which are protected, a process is no more involved because the instructions in an operating system programme may be used to activate the operation of the computer than it would be if instructions were written in ordinary English in a manual which described the necessary steps to activate an intricate complicated machine. There is, therefore, no reason to afford any less copyright protection to the instructions in an operating system programme, than, to the instruction in an application program."[59]

Some authors criticized the decision while others expressed the view that the decision was the correct exposition of law. To overcome this difficulty and afford more protection to object code, Congress came out with a separate legislation called Semiconductor Chip Protection Act, 1984. The Act extends a special from of protection to one device that is

internal to the computer technologies - the semiconductor chip.

In Australia, Australian High court in *Computer Edge Pty. Ltd. v. Apple computer Inc.*,[60] held that the programmes in the object code were not covered by copyright law. But by amendment in Australian Copyright Act, computer programme has also been added in literary work. The definition of computer programme makes it clear that programme in object code is also protected.[61]

In England, the Whitford Report on Law of Copyright and Design, 1977 and the Green paper on "Reform of the law Relating to copyright, Design and performers Protection" recommended protection of software. To fulfill this, Copyright (computer software) Amendment Act, 1985 was brought into force. The Act includes 'Computer programme' as literary work.[62] The term 'computer programme' has not been defined. According to the Act, "a version of the programme in which it is converted into or out of a computer language or code, or into a different computer language or code is an adaptation of the programme".[63] It appears that by this provision the programme in object code will also get the protection of copyright law.

The WIPO has taken steps to solve this problem. The Protocol to the Berne Convention makes it obligatory on the countries to provide protection to both source code and object code.[64] Under TRIPs agreement,

it is also mandatory to provide protection to both object and source code.[65] Thus, it is clear that at international level both source code and object code come under the category of literary work for copyright protection.

Under Indian Copyright Act, 1957, Sec. 2(ffc) as amended in 1994, defines computer programme. According to this definition, it is clear that all programmes expressed in codes are entitled to protection if it can perform a particular task or achieve a particular result. Thus, it appears that the object code recorded in floppy disc or ROM is covered by the Act. It is also clear that both application programme and operating system programme are protected. This is so inasmuch as the programme need only be capable of performing a particular task or achieve a particular result. Even though it is not specifically stated that both source and object code are covered under the definition of computer programme. India is member of the Berne Convention and has signed the GATT Final Act, the definition has to be interpreted to include source and object code.

Apart from the meaning of the term 'computer programme', there are other provisions in the 1994 Amendment Act, designed to protect computer programmes. Considering the special nature of computer programmes, new provisions, are included to give special rights and remedies, for example, Ss. 14(b), 52(1) (a), 52(1) (aa), 63(b) etc.

(iii)*Adaptation of Literary Work*

Copyright subsists also in the original adaptation of a literary work. Adaptation means the conversion of the work into dramatic work by way

of performance in public or otherwise.[66] Copyright also subsists in a genuine abridgement of an original literary work. An abridgement of an author's work has been interpreted to mean a statement designed to be complete and accurate of the thoughts, opinions and ideas by him expressed therein but set forth much more concisely in the form of compressed language of the abridger. The abridged form of literary work, if it is a original work, then, it is protected. A compilation is distinguishable from the abridgement in that the latter involves not merely the selection and arrangement of an existing works but also rendering of the same in different works. The copyright in a compilation is infringed if the arrangement is copied. Thus, the compilation is infringement of copyright but abridgement is not an infringement of copyright.

However, compilation from original source does not infringe copyright. In *Shyam Lal Paharia v. Gaya Pd. Gupta*,[67] the court after discussing the case law in a great detail enunciated the following points:-

a. a compilation which may be derived from a common source falls within the ambit of literary work;

b. a work of compilation of a nature similar to that of another will not by itself constitute as infringement of the copyright of another person's work written on the same pattern.

(iv)*Dramatic Works*

Other items included in the Act in the first category are dramatic

works, musical works, and artistic works. Dramatic work is defined as to "include any piece of recitation, choreography work or entertainment in dumb show, the scenic arrangement or acting, form of which is fixed in writing or otherwise but does not include a cinematograph film[68]. The Supreme Court in *R.G.Anand v. M/s Delux Films*[69] observed that Copyright subsists not only in the actual words of the work, but also in the dramatic incidents created. Dialogues are not essential but the work, in order to be protected, as dramatic work must express a series of consecutively related events. Adaptation in dramatic works is also protected. Adaptation in relation to dramatic work means the conversion of the work into a non-dramatic work.[70] In addition to this, Ball defines a 'dramatic composition' as a work in which the narrative is unfolded:

a. by dialogue and action, as in a spoken play, or

b. by action alone as in pantomime,

but in neither case, it must tell a connected story, or portray a series of related events.

Dramatics acting may be by voice, or by action, gesticulation or facial expression. Where the acting is by voice, it attracts both the eye and the ear. If it is without speech, as for example, in a pantomime, the acting

attracts only the eye. A dramatic composition which gives direction for mere movement and gesture is as much a composition as that which gives directions for representation by voice. Both are subject of copyright.

Dramatical-musical composition and dramatic composition are different composition. In dramatic–musical composition, besides a plot, characters and acting, there is present musical and vocal accompaniment.

For protection of copyright, the dramatic work should be printed and published. In *Tata v. Full Brook*[71], the Court held that a dramatic works, to be subject of protection against piracy by public performance, must be capable of being printed and published. In this case Farwell, L.J., observed:

"Scenic effects taken by themselves and apart from the words and incidents of the piece are not the subject of copyright, because they cannot be subject of printing and publication. Nor do I say that scenic effect may not be protected as a part and parcel of the drama. Scene do, of course, form part of drama and it is the dramatic piece, as a whole, that is protected by the Act. It is essential, however, to such protection that these should be something in nature of a dramatic entertainment."

The work in order to be protected as a dramatic work, there must be series of consecutively related events which tell some story, either in words or in dumb-show.

To constitute a work a dramatic composition, there must be a story a thread of consecutively related events either narrated or presented by dialogue. A story is a sine qua non of a dramatic work. A mere exhibition, spectacle, or arrangement of scenic effect without a story, does not possess a dramatic composition. As in literary works, ideas are not the subject matter of copyright likewise in dramatic work, emotions are not the subject-matter of copyright protection. In *R.G. Anand v. M/s Delux Film*[72], the learned District Judge has rightly held that emotions like mere ideas are not subject to pre-emption because they are common property. Quoting from the 'Law of copyright and Movie-rights' by Rustom R. Dadechanji, it was observed by learned judge:

"It is obvious that the underlying emotions reflected by the principal character in a play or book may be similar and yet that the characters and expressions of the same emotions be different that the same emotions are found in plays would not alone be sufficient to prove infringement but if similar emotins are portrayed by a sequence of events presented in like manner, expression and form then infringement would be apparent."

Justice Fazal Ali[73], quoting from the Halsbury's Law of England by Lord Hailsham, fourth edition, has made the following observations:

"There is copyright in original dramatic works and adaptations thereof, and such copyright subsists not only in actual words of the work but in dramatic incidents created, so that if these are taken there may be an infringement although no words are actually copied. There cannot be copyright in mere scenic effects or stage situations which are not reduced into some permanent form."

In addition to this, adaptation to dramatic work means, any abridgement of the work or any version of the work in which the story or

action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or periodical.[74]

Choreography is the art of arranging or designing of ballet or stage ance in symbolic language[75]. It is a form of dramatic work. In order to qualify for copyright protection it must be reduced to writing usually in the form of some notation and notes.

For Protection of scenic arrangement or acting form, it must be fixed in writing or otherwise. A cinematograph film is not included in dramatic work, it is a separate subject of copyright.

(v) *Musical Works*

Musical work means a work consisting a music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music[76]. An original work of adaptation of a musical work is also entitled to copyright. Adaptation means in relation to a musical works, any arrangement or transcription of the work[77]. Adaptation of musical works is usually called arrangements e.g., an orchestral work arranged for piano, or conversely a song written with piano accompanied orchestrated for voice and orchestra[78]. In popular music, there are many arrangements of original

songs made to suit a particular performer. Each such adaptation or arrangement is a musical work within the ambit of Copyright Act, provided there is sufficient element of intellectual creation.

'Transcription' in relation to music is defined as 'an arrangement of a musical composition for some instrument or voice other than original.

(vi)*Song*

There is no copyright in song as a 'song'. Under Sec.13 of Copyright Act, there is no mention of term 'song'. But song has indirectly copyright protection. When song is written in words by a person, the said person has copyright in those writing as a literary work. And its music has its separate copyright. It is amply clear that song itself has no copyright. In some cases, where the song is written by one person and music is given by very same person, then the same person holds the both the copyright.

Now-a-days remix songs are very popular among the young generation. The question arises whether such remix-songs are adaptation within the meaning of Copyright Act. The answer is that the such remix songs are adaptation within the meaning of the musical works and such adaptation is not infringement of the original musical composition. In *Redwood Music v. Chapell*[79], it was held that if a musical arranger so decorates, develops, transfers to a different medium or otherwise changes the simple music of a popular song so as to make his arrangement fall within the description of an original musical work, such

arrangement or adaptation is capable of attracting an independent copyright.

(vii) *Cinematograph Films*

Cinematograph films are protected under the copyright. "Cinematograph films" cover any sequence of visual images recorded on material of any description so as to capable, by use of that material of being shown as a moving picture. "The dictionary meaning of cinematograph film is a film which by rapid projection through an apparatus called cinematograph produces the illusion of motion on a screen of many photographs taken successively on a long film". The cinematograph film is also defined in the Indian Copyright Act, 1957. According to this definition:

"Cinematograph films" means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films".[80]

The term "cinematograph films" has been mentioned in Sec. 13(1)(b) of the Copyright Act, 1957. But like literary, dramatic, musical and artistic work, the term is not preceded by the term 'original'. This means that the cinematograph film must not be original. But copyright will not subsist in a cinematograph film if a substantial part of it is an infringement of the copyright in any other work. Therefore, it follows that like literary work etc., originality criteria is applicable to cinematograph film as well. A cinematograph film may be taken of a live performance like sport events, public functions or dramatic or musical performance or it may be based on the cinematograph version of a literary or dramatic work.

Video-films are also included in the definition of 'cinematograph film'[81]. The Madras High Court in *Tulsidas v. Varantha Kumari*[82] has held that 'cinematograph film' also includes television. Before amendment in the definition of 'cinematograph film', the term 'video-film' was not present in the definition of 'cinematograph film'. However, some High- Courts, like Bombay High Court in *Hanuman Prasad Tiwari v. State of Maharastra*[83] etc. by interpreting the definition included video-film also. But after the amendment the expression 'video-film' is expressly mentioned in Sec. 2 (f) of the Copyright Act, 1957.

(viii) *Sound Recording*

Sound recording is third category for which copyright subsists. This means "a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced".[84] Thus, copyright is available only to the items which fall in the above mentioned categories.

Musical works and sound recordings embodying the music are considered separate subject–matter of copyright. The copyright in the

recording of music is separate from the copyright in the music. Copyright in the music vests in the composer

and the copyright in music recorder vest in the producer of the sound recording.

Some computer games includes not only the music associated with the games at various stages of the play but also the repeated sounds which are associated with the rules and events in the game itself. These sounds, which are deliberately built in to the programme and subsequently embodied in the object code, would appear to constitute “sound recording”.

(ix)*Artistic works*

“Artistic Works” covers a wide range of works. Artistic work means and includes "a painting, a sculpture, a drawing (including a diagram, map chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality; a work of architecture; and any other work of artistic craftsmanship.”[85]

There can be a copyright in the reproduction in a different medium of an already existing work. To qualify for protection of copyright, an artistic work must be original. In respect of painting, sculpture, drawing, engraving or photograph the work need not posses any artistic quality but the author must have bestowed skill, judgement, and effort upon the work.

“A poster used in advertisement is an artistic work. The written matter in the advertisement may be considered as literary work. But advertisement slogans consisting of a few words only are not copyright matter.”[86] However, copyright does not subsists in any matter which is mechanically reproduced like label, cartoons etc. because no skill or labour is involved in the production of such mechanically produced materials.

A painting is an artistic work whether or not it possesses artistic quality. According to Concise Oxford Dictionary, “Painting is a product of the art of representing or depicting by colours on surface". A painting must be made on some surface. For the copyright protection, the painting should be painted on material surface. Facial make up is not considered as painting for the purpose of copyright protection. A work of sculpture includes casts and models. “A sculpture is the art of forming representations of objects etc., or abstract designs in the round or in relief by chiseling stone, carving wood, modeling clay, casting metal or similar processes.”

A drawing includes any diagram, map, chart, or plan. Here, the term ‘drawing’ include the mechanical and engineering drawings. In *Merchant Adventure v. M. Grew & Co.*[87], it has been held that drawings for the purpose of copyright would include any legends or explanatory notes which describe in general terms what the drawing represents. Derivative drawings often used in mechanical and engineering drawings are original works since they involve skill, labour even though they may be built upon the substratum of some pre-existing drawings. Thus, there is no doubt that engineering drawings are ‘artistic works’ within the broad meaning of the term. In *Allibert v. O’Connor*,[88] it was held that a copyright would vest in a product drawing even though it may be based upon an earlier drawing. Sufficient performance of independent labour is the

criteria for adjudging whether the drawing by itself qualifies for grant of copyright.

The term "artistic works" also includes "engravings". The meaning of engraving according to dictionary is the art of inscribing or carving figures etc. upon surfaces, or writing figures, etc., in lines on metal surfaces for printing. The term 'engravings' is also defined in the Indian Copyright Act, 1957. This definition is inclusive definition. According to the Act, "Engravings include etchings, lithographs, wood-cuts, prints and other similar works, not being photographs."[89] Copyright subsists in an engraving distinct from the copyright on the picture from which it is produced. The 'other similar work' in the definition of 'engraving' would appear to include a plate. Plate includes any stereotype or other plate, stone, block, mould, matrix, or other device used for printing or reproducing copies of any work and any matrix or other appliance by which sound recording for the acoustic presentation of the work are intended to be made".[90] Now-a-days, plastic moulded works also comes under the definition of engravings.

The term 'Artistic work' also includes 'Photographs'. Thus, photograph is also entitled to copyright protection under the heading 'artistic work'. It includes photo-lithograph and any work by any process analogous to photography but does not include any part of cinematograph film[91]. Photograph excludes cinematograph film because cinematograph film is the separate and distinct work for copyright protection under Sec. 13(1)(b) of the Indian Copyright Act, 1957. A photograph must be original, like the other subject of copyright. Original means some degree of skill and labour must have been expanded on it. A photograph of an existing photograph is not entitled to copyright protection. But where the photograph is made, which is based on two photographs is entitled to copyright protection. In *Associates v. Bashyam*,[92] it was held that, where a portrait of Mahatma Gandhi was made, based on two photographs, it was observed that it would be entitled to copyright if it is produced a result, different from the photograph and the portrait itself is original.

The other work included in the definition of artistic work is work of architecture. A work of architecture means any building or structure having as artistic character or design, or any model for such building or structure[93]. For the protection of copyright, it must have artistic quality. But in other artistic works like painting, drawing etc., there is no need of artistic quality. It is interesting to note that the building or structure, which constitutes a work of architecture, is built based on plan or map, which enjoys the separate copyright. However, in case of engineering drawings, where the machines built based on the drawing do not have the separate copyright like work of architecture. The layout of a garden containing steps, walls, ponds etc. may be considered as work of architecture. There

is express clarification in the Act that, in the case of work of architecture, copyright shall subsist only in artistic character and design and shall not extend to processes or methods of construction[94]. Thus, it is clear that in the case of architecture, there is no provision for process copyright.

The other work included in the inclusive definition of 'artistic work' is artistic craftsmanship. The object behind this protection is to protect the man who puts the product in the market on his own skill and labour from unauthorized reproduction. For the protection, there must be some artistic value of the product. Each

and every product of the craftsman is not protected only on the ground that it is the product of craftsman. For example – prototype furniture does not qualify for copyright protection. A blacksmith when he makes wrought iron-gate may be exercising artistic craftsmanship, but most of the other works cannot be considered as work of artistic craftsmanship.

(x) *Performer*

An interesting and important question as to whether the performance of a cine artiste in a film is protected by the copyright law. This question came before, Bombay High Court in *M/s. Fortune Films International v. Dev Anand*.[95] The fact of the case was that Dev Anand, a cine artiste, had acted in a Hindi film "Darling Darling" produced by the appellants. As per the agreement, a remuneration of about Rs. 7,00,000/- had to pay to the artiste before the release of the film in certain specified

territories. It was also stated in the agreement that the copyright in his work will vest with him till the amount was paid. The film was released before payment of the amount. The plaintiff obtained an injunction restraining the producer from releasing the film, invoking the provisions of the copyright Act. This was challenged before the High Court. It was contended by the appellants that there was no copyright in the performance of an artist in a film inasmuch as it was not a 'work' as per the Copyright Act, and so was not entitled to an injunction. On the other hand, plaintiff argued that the performance of an actor was covered by the definition of 'artistic work' or 'dramatic work' in the Copyright Act.

After examining the definitions of the terms 'artistic work', 'author', 'cinematograph film', 'dramatic work' 'performance' and work, Justice Desai concluded that performance of an artiste has not been recognized and included as a right in the Copyright Act. The court further observed that since the performance of an artiste did not fall in the definition of artistic work, dramatic work or cinematograph film and Copyright Act did not recognize it as a 'work' within the meaning of the Act.

An analysis of the decision makes it clear that in the opinion of the court, performer has no copyright in his performance.

In the context of right of performer, the observation of Justice V.R. Krishna Iyer, though obiter in *Indian Performing Right Society Ltd. v. Eastern India Motion Picture Association*[96] is worth mentioning. The learned Judge observed:

"This means that the composer alone has copyright in a musical work. The singer has none. This disentitlement of the musician or group or musical artists to copyright is un-Indian, because the major attraction which lends monetary value to a musical performance is not the music maker, so much as the musician. Perhaps both deserve to be recognized by the copyright law. I make this observation only because art in one sense depends on the ethos and the aesthetic best of a people, and while universal protection of intellectual and aesthetic property of creators of 'work' is an international obligation… Of course, law making is the province, of parliament; but court must communicate to the law-makers such infirmities as exist in the law."[97]

This adds more strength and validity to the demand for protection of performer's right in arts. No one can deny that there is no intellectual labour or creation in the performance of artists. If we apply the philosophy of copyright, then, there should be copyright protection to the performance.

Realising the need for protecting the performers right, the Copyright Act has been amended in 1994. The Amended Act has included a new head of right called 'Performer's right'. According to the Sec. 38 of the Amendment Act, performer's right subsists for fifty years. Earlier, before the 1999 amendment, the duration of subsistence of this right was twenty-five years. Correspondingly, in definition clause, Sec. 2(qq) has been added which defines performer. The definition is inclusive definition. According to this, "performer includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance."[98]

The right of performer shall subsist for fifty years from the beginning of the calendar year next following the year in which the performance is made.[99] The nature of performer's right like copyright is also negative in nature. Negative in the sense that it prohibits the making of sound recording or visual recording of the performance without the consent of the performer. The right of performer is violated, if any person does any of the following acts without the consent of the performer. These are:[100]

- makes a sound recording or visual recording of the performance; or
- reproduces a sound recording or visual recording without the consent of the performer; or
- makes for purposes different from those for which the performer has given consent; or
- makes for purposes different from those referred to in Sec. 39, i.e., fair dealing clause; or
- communicates the performance to the public otherwise than by broadcast, except where such communication to public is made from a sound recording or a visual recording or a broadcast;
- But what is unfortunate is the provision which takes away these rights in case the performer has consented to the incorporation of the performance in cinematograph film[101]. It appears that this sub-section has not taken care of the interests of the majority of the performer's in film industry.

In England, though the present Copyright Act is silent about these rights, the Dramatic and Musical Performer's Protection Act, 1958 takes care of the rights of performers. There has been considerable reluctance to give performer an equivalent property right, and this has in the past been sustained by objections from these very entrepreneurs. The United Kingdom was a prominent proponent of the Rome Convention for the Protection of Performers Producers of Phonograms and Broadcasting Organization (1961). It made sure that the right guaranteed to performers in contracting states went only to the "possibility of preventing" a list of acts and gave no right to authorize and prohibit as it did for sound

recording and broadcasts.

The Dramatic and Musical Performer's Protection Act, 1958 was primarily enacted for affording protection through criminal law. However, the Judiciary has invoked the provisions to extend to civil remedies also. The recent trend in England is to afford more protection to the rights of performers by treating their right as a separate category. [102]

Over last decades, the bootlegging of performance by Pop -stars

and others have grown considerably and parts of music industry have become particularly concerned. The Whitford Committee was convinced that performers should enjoy a civil right of action to injunction and damages. Following this recommendation, the Act of 1988 created two separate rights in performance.

"One for performer's which was personal, non-assignable right and one for their exclusive recording contractors which could be transferred by contractual assignment".

However, the Directive on Rental and Related Rights, insists that performers should themselves have transferable rights on a more-general basis. This Directive was implemented on July 1, 1994.

Following the Directive, the performers have four further right, which also cover the legitimate recording of the performance: -

- reproducing right;
- distribution right;
- right of rental and lending;
- right to broadcast and communicate the performance to the public.

(xi)*Rights of Broadcasting Organization*

Section 37 of the Copyright Act deals with broadcasting reproduction rights. The term 'Broadcast' means "communication to the public -

(i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or

(ii) by wire and includes re-broadcast."[103]

It might have a subjective meaning that is to say that it only applies where the sending out the signals contemplated their reception by the public or class of the public, but it is thought that the meaning is objective and that signals are broadcast if they are in fact sent out in such a way that any one having a suitable type of reception apparatus could receive them.

It is doubtful that the word 'broadcast' of any programme as used in this section is not including a television

programme to be broadcast. In United Kingdom statute, the special mention of the television broadcast may cause a little difficulty in interpreting the term broadcast in the Indian statute. The amendment of the Section by the Copyright (Amendment) Act, 1983 has deleted the word “radio diffusion” from the words “broadcast by radio diffusion” whereby the interpretation of the work broadcast as used in the section may be taken to have included a transmission by television broadcast. Thus, the acts restricted by the Copyright Act in a literary, dramatic or musical work includes broadcasting the work and causing the work to the transmitted to the subscribers by a diffusion service.

The broadcasting organizations such as television, radio have been vested with certain rights known as “Rights of Broadcasting Organization". The Copyright (Amendment) Act, 1994, has incorporated a new section in place of old Section 37 of the Act. Sec. 37 now provides that every broadcasting organization will have a special right termed as “Broadcasting Reproduction Right" in respect of broadcast. This right will subsist for twenty-five years from the beginning of the calendar year next

following the year in which the broadcast is made.[104] During this period if anybody does any acts, without licence from the owner of the right, he will be deemed to have infringed the broadcast reproduction right. These acts are[105]: -

a) re-broadcasts the broadcast; or

b) causes the broadcast to be heard or seen by the public on payment of any charges; or

c) makes any sound recording or visual recording of the broadcast; or

d) makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or where it was licenced, for any purpose not envisaged by such licence; or

e) sells or hires to public, or offers for such sale or hire, any such sound recording or visual recording referred to in clause (c) or clause (d).

But, all these acts are subject to the Section 39, which deals about exceptions. It is also known as fair dealing clause, which will be discussed in next chapter. Under this Section, licences for broadcasting of T.V. and cable network programmes of the Doordarshan is necessary, since a receipt of pre-recorded cassette programme without licence and their transmission offends likewise the Telegraph Act, 1885 and the Wireless Telegraph Act, 1933.[106]

Conclusion

Digital piracy, the unauthorized copying or distribution of copyrighted information via the Internet, poses significant challenges to copyright protection in the digital age. The ease of reproduction and distribution of material in the digital age has given birth to copyright challenges, necessitating flexible legal frameworks that strike a balance between the rights of artists and public access.The rise of online piracy has made it easier to reproduce and distribute copyrighted works without the prior approval of the original creator.

This poses a challenge onto the original creator to combat the unapproved duplication and distribution of its content. The broad reach of internet piracy makes it a threat as there are no restrictions on how many people can receive it or where in the world it can be distributed to.

Online piracy can have significant impacts on copyright infringement. The easy replication and sharing of the digital content have proven that online piracy can be of a great threat in the digital landscape. The content nowadays is easily accessible and available on an array of platforms, which makes it prone to unauthorized copying and circulation.

The decentralized nature of the internet further makes it difficult for the copyright holders to retain their control over the digital content. In the digital age, preserving copyright protection involves constant surveillance and detection of infringing content. This can be expensive and time-consuming.
The easy accessibility of the internet content nearly any and everywhere has resulted in enforcement of the copyright protection beyond the national borders. Enforcing uniformity in the copyright rules across nations is difficult due to disparate legal systems and jurisdictions.

With the emergence of new technologies comes new ways of infringing copyright. Staying updated and finding effective solutions to counter evolving piracy methods can be a constant challenge.
In conclusion, digital piracy presents a complex challenge to copyright law, requiring a multifaceted approach that balances the rights of creators with the realities of the digital age.

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