

India

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Legislation and enforcement

1 What is the relevant legislation?

Copyright law in India is governed by the Copyright Act, 1957, which has been amended six times, with the last amendment in 2012. It is a comprehensive statute providing for copyright, moral rights (known as author's special rights) and neighbouring rights (rights of broadcasting organisations, performers and droit de suite). The Act provides for exhaustive economic rights (copyright) in various works that are transferable. Moral rights exist in perpetuity and are vested in the authors and their legal representatives, being non-transferable and enforceable by the authors and legal representatives even when the copyright in the work has been assigned.

The Copyright Rules, 2013 came into force from 14 March 2013 and provide for the procedure to be adopted for relinquishment of copyright, compulsory licences, statutory licences, voluntary licences, registration of copyright societies, membership and administration of affairs of copyright societies and performers' societies.

2 Who enforces it?

Copyright can be enforced in civil courts and criminal courts. Civil remedies for the copyright owner include injunction, damages and a rendition of accounts. Infringement of copyright is also an offence under the Act and may incur imprisonment of up to three years and a fine of up to 200,000 rupees. The Copyright Act provides an enhanced penalty on second and subsequent conviction.

The Copyright Board constituted under the Act provides an alternative forum for resolving certain limited disputes, such as those pertaining to assignments and payment of royalties. The Act also provides for border enforcement of copyright and other rights and provides for the confiscation of infringing copies of copyright works as prohibited goods, which is carried out by the customs department under the supervision of the Commissioner of Customs provided there is an order within 14 days from the date of detention from the court that has jurisdiction.

3 Are there any specific provisions of your copyright laws that address the digital exploitation of works? Are there separate statutory provisions that do so?

Amendments to the Copyright Act, 1957 till 2012 have ensured that, with the advent of satellite television and the internet, the definitions of rights are such that all digital platforms and formats are covered. The last amendment to the Copyright Act by the Copyright (Amendment) Act 2012 introduced specific provisions for dealing with the circumvention of technological measures pertaining to copyrighted works and provides solutions at par with that for infringement of copyright. This addition to the Act is specifically to deal with digital piracy and amending digital protection measures used to check piracy. By virtue of the newly inserted section 65A of the Act, any person who circumvents an effective technological measure applied for the purpose of protecting rights conferred under the Act, with the intention of infringing such rights, shall be punished with imprisonment that may extend to two years and would also be liable to a fine. Similarly, section 65B provides that any person who removes or participates in the removal of rights management information or the dissemination of copies of works from which rights management information has been removed shall be

punished with imprisonment of up to two years and shall also be liable to pay a fine. The Copyright Rules, 2013 also provide for maintaining of records by a person permitted to circumvent technological measures as per the Act.

These provisions are described in question 46.

4 Do your copyright laws have extraterritorial application to deal with foreign-owned or foreign-operated websites that infringe copyright?

Yes. The Copyright Act, 1957 provides jurisdiction to a copyright owner to sue if he or she is conducting business in India.

Additionally, the courts have jurisdiction to adjudicate upon disputes arising within the territories of India. Hence, a website based outside India that facilitates infringement of copyright by providing infringing copies of a work to users in India will confer jurisdiction on the courts in India to adjudicate the matter.

The courts may block complete access to a website by ordering that all internet service providers (ISPs) refrain from providing access to specific websites and block access to the infringing copies by the users of the ISP. Courts in India continue to block several infringing websites and other file-sharing websites that facilitate infringement through ISPs in India. Civil action against regular pirate websites by geo-blocking them within the territories of India has become a popular measure to counteract infringement. Such actions are often being taken by the motion picture producers of Bollywood and by sports broadcasters. Recently, the Delhi High Court has also issued orders to the government departments (Department of Telecommunications and Department of Electronics and Information Technology) to monitor and hence prevent URLs with infringing content from resurfacing under a different URL despite an injunction order restraining the former URL.

Agency

5 Is there a centralised copyright agency? What does this agency do?

Yes. There are two centralised copyright agencies in India: the Copyright Office and the Copyright Board. The Copyright Board does not have jurisdiction over civil copyright litigation.

The Copyright Office is headed by the Registrar of Copyrights. The function of the Copyright Office is to maintain the Register of Copyrights. The Registrar also has certain regulatory functions in relation to copyright societies, serves as a registry and provides secretarial support to the Copyright Board.

The Copyright Board is a quasi-judicial tribunal that is empowered to rectify errors in the Register of Copyrights, to grant compulsory licences, and to fix the rates of licence fees in cases of statutory and compulsory licences; it also provides an alternative forum for the resolution of certain disputes between assignors and assignees. The chairman of the Copyright Board is a person who has been a judge of a high court or is qualified for appointment as a judge of a high court. It has been clarified by the High Court that despite no expressed statutory provision for review powers, the Copyright Board has the power to review its own decision if it is to correct procedural infirmities.

The Copyright Board has however not been functional for the last five years. The government of India has recently passed the

Finance Bill, 2017 which proposes to merge the Copyright Board with the Intellectual Property Board. The Intellectual Property Board was previously constituted to hear appeals from the decisions of the Trademark Registry and Patent Office.

Subject matter and scope of copyright

6 What types of works are copyrightable?

The Copyright Act provides a closed list of protected works under section 13. These works are original literary, dramatic, musical, artistic, sound recordings and cinematographic works. Copyright law in India also protects neighbouring rights (ie, broadcast reproduction rights and performers' rights).

7 What types of rights are covered by copyright?

The Copyright Act, 1957 sets out the following rights of copyright to the copyright owners:

- In the case of literary, dramatic or musical works – the exclusive right to reproduce including storage in any medium by electronic means, issue copies, public performance, make any film or sound recording in respect of that work, to translate and to adapt the work and the right of communication to the public (which is defined widely enough to cover dissemination over the internet).
- In the case of computer programs – all rights as mentioned for literary works in addition to selling or giving on hire, or offering for sale or hire for commercial rental any copy of the computer program.
- In the case of artistic works – to reproduce the work in any material form. This may include storing it in any medium by electronic or other means or depicting a two-dimensional work in three dimensions or vice versa. Copyright in an artistic work also includes the exclusive right to communicate the work in public, issue copies of it, include it in a cinematograph film, and translate or adapt the work in any way.
- In the case of cinematograph films – to make copies of the film (on any medium, electronic or otherwise) including copies in the form of photographs that form a part of the film, sell or give on hire, or offer for sale or hire any copy of the film, to sell, give or offer for sale on commercial rental copies of the film and communicate the film to the public.
- In the case of sound recordings – to make any other sound recording embodying it on any medium including storing of it on any medium, to sell or give on commercial rental or offer for sale such rental and to communicate the sound recording to the public.

The author enjoys moral rights independent of copyright, being the right to paternity and integrity, which exists despite assignment of copyright. However, this does not extend to adaptation of a computer program for fair dealing purposes. It is also specifically stated that violation of moral rights (specific to the right to integrity) is judged objectively.

Moral rights can be enforced by the legal representatives of the author. The 2012 amendments to the Act provide that a legal representative of an author can exercise both paternity as well as integrity rights in a work. The 2012 amendments also consciously omit the previous co-extensive term of moral rights with copyright by specifically removing the copyright term restriction on a claim for right to integrity by the legal representative. Moral rights are not assignable (although on general principles as it is a civil right and not a fundamental right under the Indian constitution, moral rights can be waived).

8 What may not be protected by copyright?

The 'idea/expression' dichotomy is applied generally, as in other common law jurisdictions, as is now required under article 9.2 of the TRIPS Agreement. Any work that is made substantially from the infringement of any other work does not enjoy any copyright protection.

As per section 15 of the Copyright Act, a design (which may be the reproduction of an original artistic work) does not get copyright protection if the same is registered under the Designs Act, 2000. Additionally as per section 15(2) of the Copyright Act, 1957, copyright in any design ceases to have copyright protection if the same is capable of being registered under the Designs Act, 2000 but has not been and more than 50 copies of the work have been made by any industrial process. However, in a recent judgment in 2015 by the Delhi High Court, it has been held

that in order to be a subject matter registrable as a design for the operation of section 15(2), the said work should be 'novel' and this is the sole condition for operation of section 15(2) in order to deny copyright protection to artistic works not registered as designs.

9 Do the doctrines of 'fair use' or 'fair dealing' exist?

The Copyright Act contains an exhaustive list of non-infringing uses. The doctrine of 'fair dealing' applies to the extent and nature of such uses as specifically delineated in section 52 of the Copyright Act.

10 What are the standards used in determining whether a particular use is fair?

Fair dealing under Indian law is an exhaustive provision for each kind of copyright work specified under section 52 of the Copyright Act. It is not open-ended as under the US concept of 'fair use'.

11 Are architectural works protected by copyright? How?

Yes. Architectural works are protected as a form of artistic work. However, an injunction cannot be taken out against a structure that has already been erected. Also, no order for demolition of the structure can be granted.

12 Are performance rights covered by copyright? How?

Performance rights are protected under the Copyright Act, 1957 as special rights that are separate from copyright. These exclusive rights of a performer are independent of and without prejudice to the rights conferred on authors of works that are performed.

The exclusive rights of a performer consist of the following:

- the right to make sound recordings or visual recordings of the performance including reproduction of it in material form including storing of it any medium by electronic or other means and issuance of copies to the public; communication of it to the public and selling or giving it on commercial rental or offer for sale or for commercial rental; and
- the right to broadcast or communicate the performance to the public, except where the performance is already broadcast.

Once a performer has, by way of a written agreement, given his or her consent for incorporation of his or her performance in a cinematograph film, he or she cannot object to the producer enjoying the exclusive performer's rights, provided that there is no contract to the contrary.

Performers are entitled to the unalienable right to royalties from commercial exploitation of a performance, ie, the right to receive royalties (R3 right). This right is unaffected by a performer's written consent to allow his or her performance to be incorporated in a film. Hence, the right to royalties of performers would have to be dealt with separately from other performers' rights when parties negotiate upon how the performance will be incorporated in a film and the mutual considerations between them.

With the passing of the Copyright (Amendment) Act, 2012, the concept of performers' rights has been cemented and exclusive rights have been granted to a performer akin to copyright in original works. This is in accordance with provisions of the WIPO Performances and Phonograms Treaty and the 2012 amendments to the Copyright Act have also granted moral rights to performers giving them extra protection. The rules accompanying the Copyright Act further provide the setting up of a separate 'performers' society' for each class of 'performers'.

The Indian Singers' Rights Association (ISRA) has been registered with the government of India as a copyright society for singers as a class of performers. The purpose of the copyright society is to administer the rights of the singers who are its members and collect royalty on their behalf for their exclusive rights as per the Copyright Act. The Delhi High Court has passed an injunction order dated 19 December 2014 restraining a club in Delhi from infringing the performers' rights of singers in a lawsuit prevented on behalf of Indian Singers' Rights Association [CS(OS) No. 3958 of 2014]. The suit was decreed in favour of ISRA on 30 September 2016.

13 Are other 'neighbouring rights' recognised? How?

Yes. The Copyright Act provides for broadcasting reproduction rights and rights of performers over their performances under Chapter 8 of the Act. Droit de suite is recognised under section 53A of the Act.

14 Are moral rights recognised?

Yes. The Copyright Act provides for protection of moral rights of authors in their works and of performers in their performances. Performers' moral rights were provided by the Copyright (Amendment) Act of 2012.

Moral rights of an author consist of the following:

- the right to claim authorship of the work (paternity right); and
- the right to claim damages in respect of any distortion, mutilation, modification or other acts in relation to the work if such distortion, etc, would be prejudicial to his or her honour or reputation (integrity right). (Prior to the 2012 amendment, such remedy was available only against mutilation, modification, etc, of a work during the term of the copyright in the work. However, this moral right is now a perpetual right of the author and his or her heirs.)

Moral rights of a performer consist of the following:

- the right to claim to be identified as the performer of his or her performance except where omission is dictated by the manner of the use of the performance; and
- the right to restrain or claim damages in respect of any distortion, mutilation or other modification of his or her performance that would be prejudicial to his or her reputation. (Mere removal of a portion of a performance for the purpose of editing, or to fit a recording of a performance within a limited duration, or any other modification required for purely technical reasons, is not deemed to be prejudicial to the performer's reputation.)

Copyright formalities**15 Is there a requirement of copyright notice?**

No. There is no legal requirement. (The '©' mark was considered useful to protect copyright in those countries that were members of the Universal Copyright Convention (UCC) but not of the Berne Convention, but after the TRIPS Agreement the UCC is of little practical importance.)

In practice, some form of notice such as '©', or a longer notice such as '©, name of owner, date', is often displayed on or next to the copyrighted work.

16 What are the consequences for failure to display a copyright notice?

There are no adverse consequences.

17 Is there a requirement of copyright deposit?

There is no requirement of copyright deposit.

18 What are the consequences for failure to make a copyright deposit?

Not applicable.

19 Is there a system for copyright registration?

Yes. A register in the prescribed form called the Register of Copyrights is available at the Copyright Office with the names or titles of registered works, and the names and addresses of authors, publishers and owners of copyrights and other such particulars as prescribed. The author, or publisher or owner of, or another person interested in, the copyright in a work, may apply for its registration.

20 Is copyright registration mandatory?

No. Copyright subsists in a work for its entire term and there is no formal requirement of registration in order to be entitled to copyright protection. However, the Register of Copyrights, wherein registrations are recorded, serves as prima facie proof of the particulars therein. Hence, registration is useful due to its initial evidential value.

21 How do you apply for a copyright registration?

A prospective registrant may apply for registration of copyright in the following manner:

- an application is to be made to the Registrar of Copyrights in accordance with Form IV in triplicate along with the prescribed fee;
- the person applying for registration shall give notice of the application to every person who claims or has interest in the subject of the copyright;
- if no objection to such registration is received by the Registrar within 30 days, the Registrar shall enter the particulars;
- if the registration receives any objection, the Registrar may enter such particulars in the register after holding an inquiry; and
- the Registrar of Copyrights shall send a copy of the entries to the parties concerned.

22 What are the fees to apply for a copyright registration?

The fees that are to be paid to the Registrar of Copyrights along with a prescribed application for registration of copyright in a work are as follows:

- for literary, dramatic, musical or artistic works – 500 rupees per work;
- for literary or artistic works used in relation to any goods – 2,000 rupees per work;
- for a cinematograph film – 5,000 rupees per work; and
- for a sound recording – 2,000 rupees per work.

23 What are the consequences for failure to register a copyrighted work?

Since registration is not mandatory, there are no adverse consequences for failure to register a work. However, it is advisable to own a registration as enforcement agencies in India including the police and customs do not take action without the existence of a copyright certificate.

Ownership and transfer**24 Who is the owner of a copyrighted work?**

As a general rule, the author of a work is the first owner of copyright in a work. For an original literary, musical, dramatic and artistic work, it is the person who created or composed such work and for a sound recording and cinematograph film, it is the producer of such a work. In case of a photograph, it is the photographer. For computer generated works, the author (ie, first owner of copyright) is the person who causes the work to be created.

The exceptions to this rule are covered in section 17 of the Copyright Act, as summarised below:

- In the case of literary, dramatic or artistic works made by the author in the course of his or her employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship for the purpose of publication in the newspaper, magazine or periodical, then the proprietor of the publication shall be the first owner of the work for the purposes of its publication in a newspaper, magazine or similar periodical. In all other respects, the author is the first owner.
- In the case of a work that is a photograph, painting, portrait, engraving or cinematograph film that has been created at the instance of any person for valuable consideration, then such person is the first owner of the copyright in the work. However, this does not affect the rights of an author in any original literary, dramatic, musical or artistic work that is incorporated in a cinematograph film. In the case of *Indian Heritage Society & Anr. v Meher Malhotra & Anr* [CS(OS)No. 2717 of 2011], the Delhi High Court granted a permanent injunction in favour of the plaintiff who was not the photographer, but was held to be the first owner of copyright in the photographs. This was because it was at the plaintiff's instance that the photographs were taken for a valuable consideration paid to the photographer.
- In the case of a work created by an author in the course of his or her employment under a contract of service or apprenticeship, then the employer is the first owner of the work. However, this does not affect the rights of an author in any original literary, dramatic, musical or artistic work that is incorporated in a cinematograph film as has been clarified by the 2012 amendments to the Copyright Act.

- In the case of any address or speech delivered, the person making the address or delivering the speech, or the person on whose behalf he or she does so, is the first owner of the work.
- In the case of a government work, the government is the first owner of the work.
- In the case of a work made or first published by a public undertaking, the public undertaking will be the first owner of the work.
- In the case of works created by international organisations, the international organisation would be the first owner of the work.

25 May an employer own a copyrighted work made by an employee?

If a person in the course of his or her employment under a contract of service or apprenticeship creates any work, his or her employer becomes the first owner of the copyright in the work so long as there is no contract to the contrary. Hence, an employer's ownership is automatic by virtue of the employer-employee relationship. However, for any literary, musical, artistic and dramatic works that are incorporated in a film, the employer does not become the first owner of the copyright and the employee author retains the first ownership. A specific assignment of copyright in such a case is required by the employer.

26 May a hiring party own a copyrighted work made by an independent contractor?

In the absence of an assignment in favour of the hiring party, the first owner of the copyright is the independent contractor. The hiring party would have only an equitable right to use the material created for the purpose of hiring or commission, and possibly against any assignment detrimental to such use.

To own the copyright, the hiring party would have to obtain an assignment in writing from the independent contractor.

27 May a copyrighted work be co-owned?

Yes. Work of joint authorship is established only when the work is produced by the collaboration of two or more authors where the contribution of one author is not distinct from the contribution of the other author or authors.

28 May rights be transferred?

Yes. Copyright and neighbouring rights can generally be transferred by assignment, by testamentary disposition or by inheritance.

However, moral rights are not assignable. Furthermore, with the amendment of the Copyright Act in 2012, authors of literary or musical works that are included in cinematographic films or sound recordings have the inalienable right to receive royalties for exploitation of their works, and this right to receive royalties cannot be assigned by the author to anyone except his or her own legal heirs or to a copyright society for the purpose of collection and distribution of royalties. Additionally, apart from other specific requirements listed in the Copyright Act for a valid assignment (eg, identifying the work, right assigned, territory, duration) it is also necessary to specify both the royalty and other consideration payable in the assignment agreement and this may also be applicable for licence agreements.

29 May rights be licensed?

Yes, the owner of a copyright may either license the entire copyright or the licence may be confined to one or more interest in the copyright. The copyright may be licensed to more than one person non-exclusively. However, a licence would not result in change of ownership in a work. Like assignment, the granting of any licence is also required to be in writing and the details of work, territory and term should be specified. If it is not specified, the term shall be presumed to be five years and the territory shall be presumed to be restricted to India only. A licence agreement needs to be in writing. However, there is no requirement for it to be signed as is mandatory for assignment agreements.

30 Are there compulsory licences? What are they?

Yes. The Copyright Board is empowered to grant compulsory licences with regard to Indian and foreign works. Some of the purposes for which compulsory licences may be granted are:

- when a work has been withheld from the public because the owner of the work has refused to grant a licence to republish or perform the work;
- a work or a translation thereof has been withheld from the public because the author of the work is dead or cannot be found, or because the copyright owner cannot be found; and
- a compulsory licence is required for making a work available to persons with disabilities.

The Copyright Act also provides for statutory licences to broadcasters and statutory licences for cover versions.

31 Are licences administered by performing rights societies? How?

Yes. Performing rights societies, such as the Indian Performing Right Society Limited (IPRS) and Phonographic Performance Limited (PPL) and Indian Singer's Rights Association (ISRA), are forms of 'copyright societies' for collection, licensing, administration and enforcement of rights, and these have been registered as 'copyright societies' with the government of India. These societies collect performance royalties for literary and musical works and for sound recordings and cinematograph film. There are two other copyright societies, namely the Indian Reprographic Rights Organisation (IRRO) and copyright society for singers as performers called the Indian Singers' Rights Association (ISRA), which were registered in 2013.

32 Is there any provision for the termination of transfers of rights?

A copyright may be transferred in one of two ways, namely by assignment or by licensing; licences may be exclusive or non-exclusive.

Assignments can be in part or in full in a future or existing work subject to statutory presumptions such as the term, unless specified otherwise in the agreement or unless the agreement provides a contingency. Rights not utilised in a work within a period of one year from the date of assignment or license are deemed to lapse back to the assignor.

An assignment more than five years old can be revoked by the Copyright Board if the author can show that it is, or has become, onerous. Transfers of rights might also, conceivably, be held to be unlawful under the law of contract. Again, a licence would normally be liable to termination if the licensee failed to comply with the conditions of the licence.

33 Can documents evidencing transfers and other transactions be recorded with a government agency?

Yes. If the copyright in a work has been registered with the Copyright Office and its particulars have been recorded in the Register of Copyrights, then transfer of ownership may be recorded in the Register pursuant to an application to the Registrar of Copyrights in a prescribed form, along with a prescribed fee.

Duration of copyright

34 When does copyright protection begin?

Copyright protection begins the moment a work comes into existence (ie, date of creation).

35 How long does copyright protection last?

The term of copyright depends on the nature of the work:

- literary, dramatic, musical or artistic work – throughout the life of the author and 60 years from the beginning of the year following the year in which the author dies;
- anonymous or pseudonymous work – 60 years from the beginning of the year following the year when the work is published;
- posthumous works – 60 years from the beginning of the year following the year when the work is first published;
- cinematograph films, government work, work of a public undertaking, or work of an international organisation – 60 years from the beginning of the year following the year of first publication;
- broadcast reproduction rights – 25 years from the beginning of the year following the year in which the broadcast is made; and
- performers' rights – 50 years from the beginning of the year following the year in which the performance is made.

36 Does copyright duration depend on when a particular work was created or published?

In certain cases, as mentioned in question 35.

37 Do terms of copyright have to be renewed? How?

No. There is no renewal of copyright under Indian law as neither registration nor renewal are required for subsistence of copyright in a work for its entire term.

38 Has your jurisdiction extended the term of copyright protection?

It has done so in the case of:

- Photographs - Pursuant to the Copyright (Amendment) Act, 2012, photographs are co-terminus with other artistic works. Therefore, instead of enjoying a sixty year post-publication term, copyright in photographs now effectively subsists till sixty years after the death of the photographer.
- The term of protection of performers' rights was also extended in 1999 from 25 years to 50 years.
- The term of protection for all works, whether calculated after the death of the author or from the date of publication (as specified in question 35 for different works), was increased from 50 years to 60 years.

Copyright infringement and remedies**39 What constitutes copyright infringement?**

Copyright infringement occurs when any of the following occur:

- unauthorised use of the exclusive rights of the owner of a copyright whether in relation to the whole or a substantial part of the copyright work;
- permitting a place to be used for infringing purposes on a profit basis; and
- displaying or exhibiting in public by way of trade or distributing for the purpose of trade or importing infringing copies of a work.

40 Does secondary liability exist for indirect copyright infringement? What actions incur such liability?

The terms 'indirect', 'secondary', 'vicarious' and 'contributory' infringement are not mentioned in Indian copyright law, although they are sometimes used. The acts referred to would generally amount to infringement under Indian law, as in the case of jurisdictions that have similar wording in their copyright statutes, such as Australia or the UK.

41 What remedies are available against a copyright infringer?

- civil remedies - these provide for injunctions, damages, rendition of accounts, delivery and destruction of infringing copies and damages for conversion;
- criminal remedies - these provide for imprisonment, fines, seizure of infringing copies and delivery of infringing copies to the owner; and
- border enforcement - the Act also provides for prohibition of import and destruction of imported goods that infringe the copyrights of a person with the assistance of the customs authorities of India.

42 Is there a time limit for seeking remedies?

Yes. The period of limitation for filing a suit for damages for infringement of copyrights is three years from the date of such infringement.

43 Are monetary damages available for copyright infringement?

Yes, besides damages the copyright owner can also claim rendition of account of profits.

44 Can attorneys' fees and costs be claimed in an action for copyright infringement?

Yes. Litigation costs are a standard request in infringement suits, but the decision to award such costs is at the discretion of the court. Costs awarded seldom cover actual legal expenses. However, the Commercial Courts, Commercial Division and Commercial Division Appellate Division of High Courts, 2015 ('Commercial Courts Act'),

which was enacted recently, had brought forth amendments in the Code of civil Procedure and specifically provides for payments of costs, lays down scenarios in which costs are to be paid and the method of calculation of costs. Since the Commercial Courts Act was introduced very recently, the effects of these amendments will be seen in the near future.

45 Are there criminal copyright provisions? What are they?

Yes. The Copyright Act, 1957 has provided for enforcement of copyrights through a series of penal provisions under Chapter 13 of the Act. The following are the principal penal provisions under the Act:

- Under section 63, where any person knowingly infringes or abets infringement of the copyright in a work and any other right as covered by the Copyright Act, 1957 (broadcast reproduction rights, performers' rights, moral rights, etc), such person may be punished with imprisonment of a minimum term of six months and a maximum term of three years, and a fine of between 50,000 and 200,000 rupees.
- Section 65A penalises circumvention of effective technological measures that may be applied to copies of a work with the purpose of protecting any of the rights conferred under the Act (ie, copyrights, performance rights). The punishment under this provision is imprisonment that may extend to two years and payment of a fine. Section 65A was inserted by the Copyright (Amendment) Act, 2012.
- Section 65B makes unauthorised removal or alteration of 'rights management information' punishable with imprisonment of up to two years and payment of a fine. The provision makes the unauthorised distribution, broadcast or communication to the public of copies of the work punishable in the same manner if the person is aware that electronic rights management information in the copy has been removed or altered. Section 65B was inserted by the Copyright (Amendment) Act, 2012.
- Section 63A provides for enhanced penalty on second or subsequent convictions under section 63 (see point (i)).
- Other provisions in the chapter provide penalties for offences such as using infringing copies of a computer program, making or possessing plates for the purpose of making infringing copies of works, and making false entries in the Register of Copyrights.

46 Are there any specific liabilities, remedies or defences for online copyright infringement?

Yes. The amendment of 2012 introduced certain provisions that are specifically relevant to copyright infringement and the internet.

Under the fair use provisions of the Act, section 52(1)(b) provides that transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public does not constitute infringement of copyright. This provision provides safe harbour to internet service providers which may have incidentally stored infringing copies of a work for the purpose of transmission of data.

Section 52(1)(c) further provides that transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration that is not expressly prohibited by the right holder would not be infringement of copyright, unless the person responsible is aware of infringement or has reasonable grounds for believing that such storage is that of an infringing copy.

Under section 52(1)(c), if the owner of a copyright work, in a written complaint to the person responsible for digitally storing an infringing copy of the work, complains that such transient or incidental storage is an infringement, then the person responsible would have to refrain from facilitating access to the infringing copy of the work for a period of 21 days. If within 21 days, the person responsible does not receive an order from a competent court that directs the person responsible to refrain from providing access, then access may be resumed at the end of that period.

Therefore, if A, the owner of a short story, finds that his or her short story has been published on the website of B, he or she may write a complaint to B declaring that B must refrain from providing the public with access to A's short story. B would then have to remove A's short story from visibility or accessibility on his or her website for 21 days, within which time A must persuade a competent court that it should order the complete removal of the infringing version or copy of the

Update and trends

The Copyright Board is proposed to be merged with the Intellectual Property Appellate Board leading to speedier resolution of disputes.

The Supreme Court of India gave its decision in *International Confederation of Societies of Authors and Composers v Aditya Pandey & Ors* on 20 September 2016 dealing with the underlying rights of authors and composers in a sound recording post and pre copyright 2012 Amendment to the Copyright Act.

The Appellate Bench of the Delhi High Court laid down the scope of the safe harbour defence available to internet intermediaries in its *Myspace Inc. v Super Cassettes Industries Limited* judgement dated 23 December 2016.

The Appellate Bench of the Delhi High Court also confirmed the view of the Single Judge in the DU Photocopy case (*The Chancellor Masters & Scholars of University of Oxford & Ors. v Rameshwari Photocopy Service & Ors.*) dealing with scope of fair dealing with respect to reproduction of course materials on the instructions of education institutions to students.

work. If the court does not issue such an order within that period of time, then B may resume making the short story available to the public on his or her website. This provision was inserted in the Act by the Copyright (Amendment) Act, 2012 which came into force on 21 June 2012. It is yet to be seen in practice.

Apart from the above-mentioned provisions, the entire scheme of the Copyright Act makes it amply clear that all the provisions of the Act must be applied to electronic and digital media in the same manner they are applied to conventional media. The recent copyright amendment of 2012 has also clarified this in many places. Remedies against copyright infringement on the internet are not dealt with separately under that Act as the provisions sufficiently cover all forms of exploitation of works, including exploitation over the internet, and the remedies for copyright infringement would apply to the internet as they would to any other medium or platform.

47 How may copyright infringement be prevented?

No degree of vigilance can guarantee an 'infringer-free' environment, but certain deterrent measures must be adhered to by copyright owners, for instance:

- documentation of instances of use;
- registration of copyright;
- proper notice of copyright;
- monitoring the activities of habitual infringers;
- making independent contractors and employees subject to confidentiality;
- having proper licensing agreements incorporating a proper control mechanism; and
- publicising a successful infringement trial (if resources allow).

Relationship to foreign rights**48 Which international copyright conventions does your country belong to?**

India is a member of the following conventions and agreements that concern its copyright regime:

- the Berne Convention;
- the Universal Copyright Convention;
- the Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of their Phonograms (Phonograms Convention); and
- the TRIPS Agreement.

49 What obligations are imposed by your country's membership of international copyright conventions?

Having ratified the Berne Convention and the Universal Copyright Convention, works first published outside India in any of the convention countries enjoy protection in India at par with the protection granted to Indian works with the exception that if the term specified in the country of origin is shorter than that in India, the work will be protected for the shorter term in India.

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