CHAPTER: FIVE

ROLE OF COPYRIGHT SOCIETIES AND PUBLISHING INDUSTRY
INTRODUCTION

The pace of change has been so rapid in recent years in technology, in the effects of change have been so far reaching. An important feature of the Copyright Act is to regulate the activities of the performing rights societies functioning for the public performance of the copyright works in their repertoire. The enormous advances made by technology in the proliferation of the mechanical means of reproducing and broadcasting music and sound recordings created a situation where it became difficult to protect the rights of writers and composers as well as of those who reproduce recorded music. In consequence, performing rights societies were set up to act as intermediaries or agents to collect appropriate fees in respect of such performances and pay an adequate sum to the copyright owner. In the earlier Copyright Act of 1924 there was no provision for judicial scrutiny of the tariffs charged by these societies who functioned in an arbitrary manner. But the Copyright Act, 1957 has laid down certain obligations on them in order to regulate their activities.

Section 63 is a penal section that spells out punishment of imprisonment for a term not less than 6 months but which may extend up to 3 years with fine which shall be more than 50,000 rupees but which may also extend to two lakh rupees, Section 63 also provides for enhanced punishment for second and every subsequent offence. Section 64 empowers a police officer, not below the rank of sub inspector to seize without warrant all copies of the work and the plates used for the purpose of making infringement copies and produce them before the magistrate.

1. Need for Copyright Societies:

It is very difficult for an individual writer, composer or musician or other person to sell his original work in the country or abroad without any risk of shutting out the potential licensees or buyers or misuse by such persons and getting the appropriate commercial benefit. It is also not practice for an individual to sell his work
and fixing the royalty and collecting of the fees and to keep track of the copies or frequency of display not a technical and commercial person to evaluate the potential of the work. The selling of the products, getting the agreements signed negotiations for royalty and collection of royalty fees are considered to a business. The business is suppressed to be done through technical experts in the field of business. It is also not possible for an individual to check any infringement of his original work and getting the matter legally objected in the right forum. It was in this background the need of an agency, who can look after the whole community of right holders in a particular field to combinedly form a society to take a common interest and cause for their benefit.

2. Reasons for violation of copyright:

The very essence of copyright is the protection of works from duplication, where as the term use mean not only reading and copying but also photocopying and downloading etc. following are some common reasons for violation of copyright by most of the user:

I) Shrinking budgets/scarcity of fund in the L & IC.
II) Non-availability of books due to out of print.
III) Delay in supply/procurement of books/journals.
IV) High cost of books/journals.
V) Urgent need of a portion or chapter from a book and no time to take permission from the copyright holder.
VI) Ignorance of Intellectual property rights.
VII) Due to language barriers the user sometimes goes for translation of a book without prior permission.
VIII) Unauthorized downloading of software programmes, database and copying of audio/video cassettes containing educational and recreational materials.
3. Piracy menace in Music in Asia:

Problem of piracy has arisen with the rapid advance of technology. New techniques of printing, recording and fixation of broadcast or recorded programmes have made easy the pirate’s job. While film makers have no stone unturned to ensure that film they produce does not find it’s way into the drawing rooms in India. Country the big bad boys of the industry, video pirates and cable operators, music makers are at their wit’s end. Mira Nair, the producer of the much linked film “Monsoon Wedding” hired layers and security agency to physically track each of the 86 prints of the movie and also secured indemnities against the leakage of prints at any point so that the security agencies and cinema house owners would reply the costs in case of a leakage. “Lagaan” print was leaked in transit. Pirated “Asoka DVD and video cassettes of the film have been seized in Manhattan, NY in America. It’s said estimated that the makers of ‘Asoka’ have lost hundreds of thousands of dollars in theater collections due to piracy since the film was released.

Globally counter feting and piracy have risen to 5-7 % of total world trade or above 200-300 billion dollars lost in revenue. According to recent estimates from the European Union most of fakes originate in Asia, where absolutely everything is counterfeited. At the top end, piracy is carried out by organized syndicates with powerful patrons in government and armed forces according to the International Federation of the photographic industry one in every three recordings sold world wide is pirated. The IFPI has been created to protect the interests of music industry world wide. It has consultative status with World Intellectual Property Organization (WIPO), UNESCO and the ILO. When the Hongkong Customs and Excise department first began its crackdown on fake music and movie CD’s in 1992, the Criminal gangs moved their factories to Malaysia. An illegal optical disk plant pay more than $ 1 million in profits every month – says an investigator “It’s like wining a lottery ticket week after week”. It coast around $ 5 million to buy machines from Germany to Taiwan that churn out more than 1 million CD’s a month of music, movies, software, videogames or whatever is in demand. The pirates cover their initial outlay within
three four months. After that it’s cream. Each CD costs about 15 Cents and it sells for around $ 5. However under the US copyright Act, It will be interesting to note that there is no statutory provision for an action for contributory infringement of a copyright by providing an actual infringer with the necessary equipment or materials to make a copy of a copyright work, there the court have recognized the existence of such a right. Any avid newspaper reader will recall the US Federal courts decision in the Sony Corporation of America Universal city studios involving the Napster Inc. Napster provides a service through which the computer users can, through the Internet, download music recordings that were resident of computers of any other person which logged on to Napster’s site at the time.

4. Piracy in Music : Picture in India :

Police in India carryout reoids detect piracy. Cassette sales pirate recordings in 1998 were estimated at 177 million units making India the world’s largest pirate market in volume and sixth in value. Pirate sales in India account for nearly 30 % of total unit sales.

Piracy has been defined by WIPO in its draft model provision on counterfeiting and piracy as, the manufacturing of copies of protected work’s performances, phonograms or broadcasts provided that such copies are manufactured on commercial basis.

From the operational angle, piracy falls into three specific categories :

I) Pirates Recordings.
II) Counterfeits and
III) Bootleg.

I) Pirate Recording :

These are unauthorized duplications of music from legitimate recordings for commercial gain. Pirated CDs or music cassettes sells as “Top Ten” /
"Bollywood Hits" or a combination of hit titles of different music companies. The packing and presentation of a pirate copy does not usually resemble a legitimate commercial release.

Table No. 1 Showing raids carried out in India:

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<tbody>
<tr>
<td>No. of Raids</td>
<td>759</td>
<td>947</td>
<td>1054</td>
<td>541</td>
</tr>
<tr>
<td>Cassettes</td>
<td>1,213,426</td>
<td>5,94,486</td>
<td>7,69,711</td>
<td>2,65,597</td>
</tr>
<tr>
<td>Seized CDs Seized</td>
<td>40,200</td>
<td>33,357</td>
<td>75,225</td>
<td>53,096</td>
</tr>
<tr>
<td>CCPs cards seized</td>
<td>376</td>
<td>292</td>
<td>348</td>
<td>174</td>
</tr>
<tr>
<td>Inlay cards seized</td>
<td>3,726,437</td>
<td>3,253,803</td>
<td>3,357,879</td>
<td>437,459</td>
</tr>
<tr>
<td>Computer CD writer seized</td>
<td>2</td>
<td>15</td>
<td>30</td>
<td>28/13</td>
</tr>
<tr>
<td>Arreets</td>
<td>855</td>
<td>1096</td>
<td>1175</td>
<td>584</td>
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</tbody>
</table>

II) Counterfeiting:

Pertains to unauthorized copying of the sound, artwork trademark, label and packaging of the original recording. The aim is to mislead the consumer into thinking. They are buying the genuine product.

III) Boot Legging:

This is the recording, duplication and sale of a performance such as live concert or broadcast without the permission of the artist or the Record Company which may be entitled to control the recording rights of the artists performances.

Thus, while pirates have nearly killed the music industry in countries likes Asia, Bangladesh, Sri Lanka etc. The association of producers of sound recordings formed the Indian phonographic industry in 1936, which is now called as the Indian
music industry IMI. It is the premier organization working to uphold the interests of creative phonogram produces and give a sense of solidarity, purpose of an direction to various companies engaged in producing recorded music. It has members such as HMV, Universal Music, Tips, Venus, Magna sound, BMG Cresscendo, Sony music etc. companies.

5. How to recognize Pirated version:

<table>
<thead>
<tr>
<th>Counterfeit Cassettes</th>
<th>Pirated Cassettes</th>
</tr>
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<tbody>
<tr>
<td>1. Inlay cards will different in quality and color of printing.</td>
<td>1. Inlay card may show poor quality print.</td>
</tr>
<tr>
<td>2. Cassettes will not have the name of company on the leader tape.</td>
<td>2. The cassettes may carry a vague or unknown brand name.</td>
</tr>
<tr>
<td>3. Company name will be missing on cassettes.</td>
<td>3. Will bear combination of title there belonging to different companies.</td>
</tr>
<tr>
<td></td>
<td>4. Requirements of Sec. 52 A such as name and address of the persons who have made the sound recording &amp; year of publication will usually be missing.</td>
</tr>
<tr>
<td></td>
<td>5. A compilation of the songs from different albums under names such as Top ten, Bollywood hits etc.</td>
</tr>
<tr>
<td></td>
<td>Pirated CD’s</td>
</tr>
<tr>
<td></td>
<td>1. Sources identification code missing.</td>
</tr>
<tr>
<td></td>
<td>2. Print on the inlay cards may be fussy and be poor quality.</td>
</tr>
</tbody>
</table>
6. Hitherto performing Rights Societies – Now Copyright Societies:

Prior to the amendment Act of 1994 the provisions under sections 33 to 36 for setting up of performing rights societies were concerned with forming societies which could only issue or grant licenses for performances in India of any work in which copyright subsisted. These societies had a limited field of operation viz. granting licenses for the purposes of literary dramatic or music – work, which is of such a nature that it can be performed in public i.e. a stage play based on a novel etc.

The copyright Amendment Act 1994 has replaced SS 33 to 36 and has extended the operation of the legal provisions to all classes of work, in which copyright may subsist under the Act. Section 33 of the Act provides are allowed to carry on the business of issuing or granting license in respect of any work in which copyright subsists. The Central Govt. has been empowered to register copyright societies in subsection (3). It shall have regard to:-

I) The interests of the authors and other owners or rights under this Act.
II) The interest and convenience of the public and
III) In particular of persons, who are most likely to seek license (prospective licenses) in respect of the relevant rights).
IV) The ability and professional competence of the applicants (association), if satisfied as to above the Central Govt. may register such associations of persons as copyright society, subject to such conditions as may be prescribed.

The present chapter on “Copyright Societies” (Chapter VII : SS 33 – 364) has been inserted by 1994 amendment w.e.f. 10 May 1995. it provides for the registration of copyright societies by the Central Govt. from the above date no person or association of persons shall commence or carry on the business of issuing or granting license in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in association with the registration granted under sub-section (3) by the Central Government.
Thus the copyright societies may not only deal in copyright but they may also be established for performers rights and broadcast reproduction rights. Any association of persons who fulfill such conditions as may be prescribed may apply to the registrar of copyrights for permission to do such business. The Registrar is required to submit the above application for permission to the Central Govt. Central Govt. may register such association of persons as a copyright society subject to such conditions as may be prescribed one society for one class of work.

Ordinary not more than one copyright society shall be registered by the Central Government to do business in respect of the same class of works. Existing performance right societies are to be deemed to be themselves registered within one year from the commencement of Amending Act of 1994.

The act has given the overriding power to the Central Govt. that if a copyright Society is managed contrary or detrimental to the interest of the owners of the rights concerned it may, after satisfying itself through an enquiry in the prescribed manner, cancel the registration of such society. The Central Govt. has also got authority in the interest of the owners of rights to suspend the registration of such a society, pending enquiry for a period not exceeding one year. The Govt. in such a case shall appoint an administrator to discharge the functions of the copyright society under sub-clause (5) of section 33.

7. Power and procedure of Copyright Society:

Section 34 of the Act enacts various rights, powers and procedures of copyright society as under copyright society may accept from an owner of rights exclusive authorization to administer any right in any work:

1. by issue of license or
2. collection of license fees or both.
The owner of rights shall have the right to withdraw such authorization without prejudice to the rights of the copyright society, under any contract.

It should be alright for a copyright society to enter into an agreement with any foreign society or organization administering the rights, corresponding to all rights under this act. The agreement with such a foreign society may include administration to those rights which are being administered by the concerned copyright society in India in the foreign country and administration in India on behalf of the foreign society the right being administered by such foreign society in relation to foreign works.

However, no such society shall permit any discrimination in regard to the terms of the license, disbursement of fees collected between Indian and other works. Copyright is entitled to issue license or collect fees in pursuance of such licenses and distribute such fees among the owners of the right, after making deductions for its own expenses. There is a residuary power wherein the society may perform any function which is not inconsistent with the basic norm that copyright society has to sub-serve the interest of owners of rights.

Copyright society shall be subject to the collective control of the owners of the rights under the Act, whose right is administers. The society shall submit to the registrar of the copyright such returns as may be prescribed by the Central Govt.

Also there is another body ‘SCRIPT’ i.e. “Society for Copyright Regulation of India producers for Films and Television” that is registered by the Registrar of Societies, Greater Bombay, Mumbai during 1998 to protect the copyrights of Cinematography films and TV films and to prevent piracy of films.

8. Why Piracy in Music Industry should not be tolerated?

Piracy costs the music industry and the Government crores of rupees every year. It is estimated that out of nearly 4 - 9 crore cassettes sold each months, 1.6 crore
are illegally manufactured and sold by pirates. Though not the creators of the intellectual property the pirates evade payment of royalty, excise duty, sales tax and the promotion and publicity costs consumers pay for a poor quality product. Artists and other right holders are robbed of their royalties. Music companies are deprived of their rightful revenue. Govt. is deprived of its revenue through evasion of taxes, piracy results in loss to the exchanger of nearly Rs. 19 crore in Sales Tax, Excise and Income Tax. It is only the pirates who stand to gain.

9. Government’s Commitments:

The ministry of Human Resource Development is responsible for copyright administration and it has set up a “Copyright Enforcement Advisory Council to control infringement on copyrights. The copyright Enforcement Advisory Council has advised setting up of special policy cells in the states to deal with copyright complaints.

The Berne convention was establishment in 1986 in Berne to protect international copyright through mutual co-operation. It is administrated (WIPO). The Universal Copyright Convention (UCC) was adopted in 1952 and is administrated by UNESCO India is also a party to the Geneva Convention 1971 for protection of producer of phonograms against unauthorized duplication of their phonograms.

10. Legal relationships between Libraries and Publisher:

Probably the most important area of law pertaining to the relationship between libraries and publisher is copyright law. International convention and National legislation relation to copyright and the so called “neighboring” rights provide the legal framework for the use of the intellectual property that is central to the publishing industry’s commercial viability. In protecting the copyright owners exclusive right to authorize a wide range of uses of an original work, copyright law ensures the owner’s right to control the commercial exploitation of the work for the duration of its term of
protection. However, those same International conventions and National laws also recognize the need to protect the “Public Interest” through limitations and exceptions to copyright that permit certain uses that are carried out for purpose of research, education and private study. Libraries and their private study have a large stake uses obviously have a large stake in those exceptions.

In Canada we have recently been though the process of amending our copyright legislation to address a number of outstanding issues, among which was the matter of exceptions for libraries, archives and museums. In the debate over the proposed legislation, those representing authors, musicians, publishers and the copyright collectives in the bill were too broad in scope. Some went so far as to suggest that the very notion of exceptions to copyright is in appropriate. They claims that the sole purpose of copyright law is to protect the economic and moral rights of authors and that copyright law is not the place for government to address the interests of the users of copyrighted works.

It is not uncommon for librarians and publishers to take opposing views on this issue. Clearly the protection of intellectual property rights is an issue of Central concern in copyright has important implications for more than just property rights. As an instrument than just property rights law must address broader social values as well. It should promote research and the advancement of knowledge. It should promote and protect our cultural heritage, we should not, therefore, limit the scope of what can be achieved through copyright strictly to the protection of individual provides us with an opportunity to support cultural enterprise in a broader sense, to protect the works of our writer, musicians and artists for future generations, and to do what we can to ensure the continued vitality of both creative and scholarly endeavor.

The Berne Convention makes it clear that exceptions and limitations to copyright are entirely appropriate, provided they do not control the normal economic exploitation of his or her work. If we accept the basic notion that copyright law is
about more than just the protection of rights must be viewed in the context of broader social values and public policy objectives.

From a library perspective what is reasonable includes provisions within copyright law to permit the fair use of copyrighted works for the purpose of research, education and private study.

One of the most contentious issues dividing publishers and librarians today centres on the interpretation of “fair use” in the context of digital technologies. Obviously digital technologies have the potential to undermine as well as to enhance copyright protection and we need to be certain that the economic and moral rights of the copyright owner are not infringed by the illegitimate use of those technologies. But, it is important to make a distinction between illegitimate use and legitimate exceptions to copyright.

11. Checklist for Publisher :

A publisher should taken into consideration the following points, while publishing a work :

<table>
<thead>
<tr>
<th><strong>DO’s</strong></th>
<th><strong>DON'Ts</strong></th>
</tr>
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<tbody>
<tr>
<td>1. Works must be original.</td>
<td>1. Works should not have been copied from elsewhere.</td>
</tr>
<tr>
<td>2. Put a copyright notice in the form © on the work.</td>
<td>2. Don’t sell any book by making photocopies of it or publish a book by copying substantial extracts or pictures from such book, which violates the copyright of some one.</td>
</tr>
<tr>
<td>3. Executive a commercial arrangement with the owner of the copyright for assignment of copyright as per section 19 of the copyright Act, 1957.</td>
<td>3. Don’t publish any work without getting license for use from owner of the copyright.</td>
</tr>
<tr>
<td>4. Includes the clause in the agreement</td>
<td>4. Don’t copy anything slavishly from a</td>
</tr>
</tbody>
</table>
that the liability for infringement of copyright in any manner will be that of author.

5. Although copyright registration is not compulsory but it is good to obtain registration as it can be produced as a concrete piece of evidence in a court to check infringement of copyright.

6. Report the matter to associations of trade in case of piracy or infringement of copyright for taking up the matter in arbitration, if possible.

7. Register a complaint to police immediately in case of infringement.

8. File either a civil suit or criminal complaint as per the situation in case of violation of your copyright.

9. Develop a standard form for obtaining permission to reproduce a drawing or any other material from another book.

10. Last but not least consult a legal expert in the field to determine the merits of your case.

book without taking due permission from the holder of copyright of the said book because that will amount to "unfair use".

5. Don’t download blindly just about anything from the internet as the same may amount to violation of copyright.

6. Don’t presume that unregistered copyright is of no value, because the registration is not necessary as the right comes to existence the moment the work has been created.

7. Don’t get silly or in haste without informing the police (which now have a special cell to detect this kind of crime in every majority) in case of piracy etc.

8. Don’t conceal anything minor while registering the criminal complaint or while filing civil suit which may prove very clear at a later stage.

9. Don’t hesitate to take the help of a legal expert at the hour of dire need, because the technical aspect of law relating to copyright is difficult to be understood by a person on his own.
12. Some Tips to Improve Productivity:

Let us now look at what librarians or booksellers can do or should do in employing IT to make our lives easier and render our services more productive and effective? Here are same random tips and thoughts in this direction:

12.1 E-mail is a must:

All booksellers and librarians, however small, must have an e-mail account. E-mail correspondence tends to be short. It also gets quick replies. Delivery and receipts notices can be obtained. Delivery is very fast. Booksellers can use additions, books reviews, exchange rate revision, exhibitions, special discounts, etc.

12.2 Directory of Indian Booksellers Online:

ALSD and such other organizations can come out with a directory of Indian book sellers and publishers giving there e-mail or website address. This will help librarians correspond with book sellers easily either for placing orders or for getting quotations fast. Appendices – Two (ii) gives website addresses of some important Indian publishers, book seller and printing house.

12.3 Set up an Intranet:

Intranets can work even without line internet connection. Libraries should immediately setup an Intranet. Even Windows 95 operating system provides a personal web server software that enables you to keep information in a central location that can be accessed by all in the network using a standard internet browser like Netscape or Internet Explores.
12.4 **Subscribe to Mailing lists:**

Librarians with e-mail facility can subscribe to mailing lists of special interest to themselves or to their clients. Book sellers associations may set up mailing lists or E-groups to share information quickly. It is very simple to set up an E-group.

12.5 **Procure more CD’s:**

Indexes of CD’s available in the library may be prepared and exchanged with other libraries. Now a day, it is easy to make copies of CD’s also for a small fee. Duplicate CD’s can be swapped among libraries.

12.6 **Prefer books with CD Supplement:**

In the case of libraries attached to computer, IT or software companies, they have the advantage of getting many printed books along with CD’s. The amount of information made available in CD as supplements to the books is enormous. It is worthwhile preparing detailed table of contents of such CD’s and circulate them among users.

12.7 **Online Ordering:**

Ordering books is an extremely simple process. Just choose the title you need by placing them in shopping cart. Once you are through, you can delete or modify the selections out in shopping cart, enter your credit card details and press SUBMIT button. Your order is confirmed within minutes and you get a “Smart Receipt” for your payment too. Books are dispatched by courier within a day. The invoice you get includes courier charges and there are no surprises. A printed invoice is also sent by snail mail subsequently.
13. Challenges:

The challenges that lie ahead for librarians and publishers the priority issues in that would be the following:

1. The resolution of understanding issues related to “fair use” and other exceptions to copyright in a digital environment.
2. The development of an economically viable means of maintaining the support structure for scholarly communications.
3. The establishment of an effective and efficient means of formulating and managing license for the use of electronic publications that meets the needs of consumers as well as suppliers.
4. The development of standards for metadata, electronic resources locators and electronic document architecture to facilitate access to and management of electronic publications.
5. Cooperative planning of infrastructures programmes to administer the registration of electronic publications.

Copyright societies, libraries, publishers play an important role in the Information continuous. Though our effort individually and collectively we add significant value to the process of Information Exchange. We have very real mutual interests in the efficient management of published materials and effective users access to those materials. As we grapple with the newly emerging technologies and with a changing market environment we are in very significant ways attempting to redefine and reposition ourselves. Though constructive dialogue and collaborative effort we can successfully resolve the issue that challenge us today and lay the ground work for productive and mutually beneficial relationship in the future.