CHAPTER: FOUR

COPYRIGHT ISSUES

AND

ELECTRONIC INFORMATION ENVIRONMENT
INTRODUCTION

Developments in the Information Technology (IT), Electronic Publications and Digital Libraries poses challenges to the copyright holders as well as to the copyright protection in the world over. The basic questions regarding the application of existing copyright law to Electronic Information are raised by authors, publishers, users and other intermediates. There is an urgent need to reconsider the existing copyright law to make it suitable to computer and electronic age. Since knowledge knows no barriers, publications having originated in a particular country can be freely imported to any other country by modern IT. Hence, it is required to formulate copyright regulations at national and international levels. According to the international copyright convention, any work published anywhere is automatically protected by copyright rules throughout the world or at least in those countries which subscribes to the international copyright convention. But in India, the present copyright act is not adequate to deal with the technical advances emerged in the recent past like- photo duplication, facsimile transmission, communication satellites and other devices for the creation, reproduction and dissemination of Intellectual knowledge, make its imminent for reconsideration of the copyright law particularly suitable to electronic information.

The world is indeed on the threshold of information revolution which can transform the lives of people in the north and south bridging the information gap for the good of every one in the Global Village of the future, but will it happen? Can law and politics overcome the invidious obstacles. The problem that is worrying scholars, researches, educators and consumers of modern information is the possible impact that new technologies may have on the copyright law and consequent burdens on the information users.
1. Concept of Copyright:

It would not be out of place at the outset to clarify what is meant by the term copyright. Literally the term, “Copyright” comprises of two factors viz. “Copy” and “right” that is to say it is the right to copy something what this something is left to be interpreted by the statute. The Encyclopaedic dictionary of literacy and information science defines a copyright as “the right to prevent publication, statute have extended the definition to include the right to prevent multiplication as the form of copies by what so ever means”.

Encyclopaedia Britannica writes, “a copyright is the exclusive legally secured right to publish reproduce & sell the matter & form of a literacy, musical, dramatic, or artistic work”. Copyright is designed primarily to protect an artist, publisher or other owner against any unauthorized copying or his work”. For the purpose of understanding the concept of copyright in the perspective of an information technology era one must first understand the concept of intellectual property.

Origin of the Concept:

The history of the concept of copyright can be traced back to 15\textsuperscript{th} century when this concept was for the first time recognized in the city of Venice. During the 16\textsuperscript{th} century, England adopted this concept. The first statute regarding copyright is the stated of Anne passed in England in 17 to A.D. this regulation proved to be an important land mark in the history of the concept of copyright. This law asserted for the first time, the author’s primary right for copy and publication of a literary work. Thereafter similar laws were framed in Denmark (1741) United States (1790) & France (1973), it should be noted that copyright arises automatically. It is created as soon as a particular work. i.e. book, design, document etc is created. No formalities like registration etc are involved and no professional guidance or expertise is needed.
In India, the Copyright act, 1957 which govern the law relating to protection of copyright in India was successfully amended in 1983, 1984, 1992, 1994 and 1999 with a view either to check the loopholes of the principal act or to bridge the gaps created on account of the ever-changing complex scenario in this field mainly due to rapid technological advancement infringements of copyright has been made a cognizable and non-boilable offence under this law.

Piracy of text books poses a serious threat to publishers which in recent years has touched alarming heights. The tragic fact is that the anti-piracy provisions in the copyright act have not been effective in fighting the growing menace of pirated works. Thus, the lacunae behind the proper and speedy implementation of copyright law is the absence of adequate copyright enforcement mechanism and unsupportive public, who is by and large ignorant of this kind rampant sophisticated theft or is patronizing this kind of activity for their narrow self-interest (e.g. commercial photocopying) and marketing of pirated books).

While copyright is an essential concomitant of the cultural and scientific heritage of mankind, it has a special role in the context of the developing world, particularly in the publishing sector. The absence of its effective implementation will give rise to negative trends like deliberate with holding of works by national writers out of fear of having no legal protection. This will ultimately hinder the growth of indigenous creative writing and publishing. Adherence to international copyright conventions will protect indigenous authors of a developing country like India from unfair competition from works of foreign origin. In the absence of copyright protection in India, national writers of repute whose works may be in great demand abroad might prefer to place their manuscripts with foreign publishing houses who could guarantee such protection in preference to local publishers. Copyright protection is essential to provide incentives to creators (authors) and to their associates (publishers) who disseminate their works. However, the advent of internet and e-commerce and the recent enactment of the information technology act, 2000 may pose new challenges in the era of digital age.
2. Copyright: General Information:

Legally speaking, copyright means the exclusive right to do or authorize others to do certain acts in relation to:

1) Literary, dramatic or musical works.
2) Artistic work.
3) Cinematograph film and
4) Sound recording.

Basically copyright means the right to copy or reproduce the work in which copyright subsists.

Meaning of Copyright

Section 14 of the copyright act, 1957 means, the exclusive right subject to the provisions 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 –

In the case of a literary, dramatic or musical work, not being a computer programme:

I. To reproduce the work to the public not being copies already in circulation.
II. To issue copies of the work to the public not being copies already in circulation.
III. To perform the work to the public not being copies already in circulation.
IV. To make any cinematograph film or sound recording in respect of the work.
V. To make any translation of the work.
VI. To make any adaptation of the work.
VII. To do. In relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub clauses (I) to (VI). Explanation- for the purpose of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

i. Illustration

If a person writes a book, then he has the exclusive right of production and publication of the book. This right may encompass making copies of the book or adapting it to a cinematograph film or issuing copies to the public or performing it before public or translating it or its broadcasting.

ii. Works

According to section 2(y) of the copyright act, 1957, the term “works” means any of the following namely-

1). A literary, dramatic, musical or artistic work.

Example: A novel by Sarat Chandra (literary work).

An original painting by M.E Hussain (artistic work).

A play “Hamlet” staged in an auditorium (dramatic work).

A musical note by Hariprasad Chaurasia (musical work).

iii. Adaptation

Adaptation in relation to literary work means the conversion of the work into a dramatic work by way of performance in public or otherwise. 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 similar periodical. Further, in relation to any work, any use of such work involving its rearrangement or alteration.
iv. **Author**

In relation to a literary work or dramatic work ‘author’ means the author of the work.

In relation to any literary, dramatic, musical or artistic work which is computer generated, the person who causes the work to be created. Thus the author is the person who actually writes or completes the work in question although the idea of the work may have been suggested by another.

A work of joint authorship means a work produced by the collaboration of two or more authors in which the contribution of the other author or authors.

v. **Publication**

It means making a work available to the public-

I. By issue of copies or

II. By communicating the work, to the public.

vi. **Works in which Copyright subsists**

As per section 13 copyright subsists in the works (original, literary, dramatic etc). The following conditions are necessary-

I. Published work : the work is first published in India, or where it is first published outside India at the date of publication, or in a case where the author was dead at the date of publication he was a citizen of India at the time of his death.

II. Unpublished work : where the work is unpublished the author is a citizen of India or domiciled in India at the date of making of the work.

In the case of joint authors the above conditions must be satisfied by all the authors of the work.
These conditions do not apply to foreign works or works of international organizations.

vii. Ownership of Copyright

The author of a work shall be the first owner of the copyright therein. However, this is subject to the following exceptions, namely-

If he in the course of his employment by proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor, in the absence of any agreement to the country, will be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper magazine or similar periodicals or to the reproduction of the work for the purpose of its being so published.

But in all other respects the author shall be the first owner of the copyright in the work, or

II. The author may transfer his copyright (wholly or partly) of an existing work or future work by a document in writing to another person, which is called “Agreement”.

viii. Term of Copyright

The duration of copyright in any literary, dramatic etc work published within the lifetime of the author is up to 60 years from the beginning of the calendar year (i.e. year commencing on 1st January) next following the year in which the author dies. In case of a work of joint authorship, it is to be continued as a reference to the author who dies last.

In the case of copyright in an anonymous or pseudonymous work copyright shall subsist until 60 years from the beginning of the calendar year next following the year in which the work is first published.
Example: an author died on 15-11-1995 then the duration of copyright of his work which was published for the first time in 1994 is upto 60 years from the 1st January 1996 (i.e. the copyright will expire on 31st December, 2056).

ix. Licences

Any person may approach the owner of copyright in any existing work or the prospective owner in any future work to execute a commercial arrangement for a royalty payment in order to obtain a licence to exploit the work of a copyright owner.

On refusal to re-publish a work is in any manner with held from public, a complained can be made to the copyright board under section 31 of the Act and on being satisfied the board may grant a licence to the complaint the copyright board may also grant licence under section 31- A in the case of Indian work, the author of which is dead or unknown or cannot be fraced or owner can not be found. Section 32 lays down the procedure for grant of licence to reproduce and publish works for certain purposes.

x. Preparation of agreement

The copyright can be assigned from author to publisher or publisher to publisher.

The mode of assignment of copyrights is governed by section 19 of the copyright act, 1957.

This section after being amended by act 38 of 1994, lays down the following ingredients of assignment.

I). The agreement shall be in writing.
II). The agreement shall be signed by the assignor or his duly authorized agent.
III. The agreement shall specify the amount of royalty payable.

IV. The agreement shall specify that the agreement is subject to revision, extension or termination or terms mutually agreed upon by the parties.

V. The agreement shall specify the time period within which the book, copyright of which is assigned, will be published if no such time is specified it will be deemed as one year from the date of assignment and thus if a publisher is unable to publish the book in one year the author or assignor has the right to revoke the agreement.

VI. The agreement shall specify the period for which the assignment is made and if it is not mentioned it shall be deemed to be five years from the date of assignment.

VII. The agreement shall specify the territorial extent of assignment and if it is not specified it shall be deemed to extent within India.

xii. **Infringement of Copyright**

The owner of the copyright has the exclusive right in respect of the reproduction of the work and such other acts which enables the owner to get financial benefits by exercising such rights. If any of these acts relating to the work is carried out by a person other then the owner without a licence from the owner or competent person/authority under the copyright act. 1957, it constitutes infringement of copyright in the work.

Example: A book seller who is selling or displaying the unauthorized copies of the book.

xii. **Piracy**

It is a kind of illegal activity which has been caused by the rapid technological advancement. Latest techniques of photocopying and printing have made it easy to produce unauthorized copy of a book within a short span of time at a relatively low cost on a large scale. This offence deprive the author of the work from setting his legitimate due and
ultimately hampers the growth of original and creative work by the pursuit of hard work and intellectual skill and national economy as well.

xiii. Foreign works

India is a member of the Berne Convention (1886) for the protection of international copyright which is being administered by World Intellectual Property Organisation (WIPO) and of the Universal Copyright Convention (UCC) held in 1952 which is being administered by United Nations Educational, Scientific Cultural Organisation (UNESCO) and also World Trade Organisation (WTO) which regulates agreement on Trade Related Intellectual Property Rights (TRIPS). Thus, even if the copyright where is a national or resident of foreign country (if the country is a member of any of the two conventions) or (WTO) his work is automatically protected on reciprocal basis. As per the provisions of the international copyright order, 1991 foreign work is also protected in India.

xiv. Copyright Societies

Any association or persons, whether incorporated or not comprising or more owners of copyright (the applicant) formed for the purpose of carrying on business of issuing or granting licence in respect of any class of work in which copyright subsists or in respect of any other right conferred by the act may file with the registrar of copyrights an application for submission to the central govt. for grant of permission to carry on such business and for its registration as a copyright society.

 xv. Conditions for Registration

When an application for registration of a copyright society is submitted to the central govt. through the registrar of copyrights, that govt. may, within 60 days from the date of its receipt by the registrar of
copyright will register the applicant as a copyright society, if the following conditions are fulfilled, namely-

a) The applicant has professional competence to carry on its business or has sufficient funds to manage its affairs, or

b) There does not exist another well functioning copyright society registered under the act for administering the same, class of works, or

c) The central govt. has reason to believe that the members of the applicant society are bonafide copyright owners or they have voluntarily signed the instrument for the setting up the society and the application for registration. The application is found to be complete in all respects. But no such application shall be rejected for want of any of the above mentioned conditions without giving the applicant an opportunity of being heard.

xv. Documents accompanying the application

Every application is made for the purpose should be accompanied by following documents-

I). A true copy of the instrument by which the applicant is established or incorporated.

II). The consent in writing of the individuals named in the application to as members of the governing body of the applicant.

III). A declaration containing the objectives of the applicant, the bodies through which it will function and arrangements for accounting and auditing.

IV). An undertaking to the effect that the instrument by which the application is established or incorporated.

xvi. Enforcement of Copyright

For this purpose it is necessary to have-
I. A comprehensive legislation with strong measures against any kind of copyright violation.

II. An effective enforcement mechanism to enforce these provisions.

xvii. Copyright Legislation

The Principal act (copyright act, 1957) was amended in 1984 to incorporate anti-piracy legislation to check widespread piracy of books etc. and it has been made a cognizable and non-bailable offence.

The punishment for various offences has been enhanced by amending sections 63 and 65 and by inserting new sections 63A and 63B.

xviii. Relevant extracts of Law relating to committing an offence

Section 63: Any person who knowingly infringes or abets the infringement of the copyright work shall be punishable with –

1. imprisonment for a term which shall not be less than 6 months but which may be extended up to 3 years;
2. fine of not less than 50,000/- but may be extended up to Rs. 2 Lakhs.

Section 63A: The quantum of enhanced penalty on second or subsequent conviction shall be –

1. imprisonment for not less than 1 year but up to 3 years; and
2. fine of not less than Rs. 1 Lakh but may be extended up to Rs. 2 Lakhs.

Section 63B: The quantum of penalty for the offence of knowing use of infringing copy of computer programme shall be –

1. imprisonment for not less than 7 days but up to 3 years; and
2. fine of not less than 50,000/- but may be extended up to Rs. 2 Lakhs.
Note: If the infringement has not made for gain in the course of trade or business the court may reduce the punishment by mentioning adequate and special reason in judgement.

Section 63: The quantum of penalty for an offence of possession of plates for purpose of making infringing copies shall be, -
1. imprisonment up to 2 years, and
2. fine (not specified).

Section 67: The quantum of penalty for an offence of making false entries in register, etc, for producing or tendering false evidence shall be, -
1. imprisonment up to 1 year, or
2. fine, or
3. both.

Section 68: The quantum of penalty for offence of making false statement for the purpose of deceiving or influencing any authority or officer shall be,
1. imprisonment up to 1 year, or
2. fine, or
3. both.

More powers have been given to the police for prompt action and speedy apprehension of the offender by amending section 64, as any police officer not below the rank of Sub-Inspector may seize without warrant all infringing copies or the work if he is satisfied that the offence in under section 63 in respect of the infringement of copyright. The Economic Offences (Inapplicability of Limitation) Act, 1974 was amended by incorporating in the Schedule the clause (a) of section 63 of the Copyright Act, 1957 which declared infringement of copyright as an economic offence.
A new section 63B was inserted by Amending Act of 1994 to incorporate penalty provisions for knowing use of infringing copy of computer programme to be an offence.

xix. Enforcement Mechanism

a) Jurisdiction of Court – District Court, High Court (having Original Jurisdiction) have a jurisdiction to try the suits relating to copyright violation within the vicinity of which the owner of the copyright resides or carriers on business [Refer section 62].

b) Role of Police – Police can be helpful in the following ways.

i In case of a complaint regarding infringement of copyright is made, all relevant details should be elucidated from the complaint and the case should be subsequently registered.

ii An immediate raid may be conducted at the suspected/reported places or premises.

iii A thorough search can be made of the place and a proper record have to be prepared of seized articles during the raid. Proper care have to be taken to prevent evidence from being destroyed.

iv The seized articles and arrested persons should be produced before the court of competent jurisdiction.

v The investigation of the case should be cautiously completed within short span of time and follow-up preventive actions have to be taken wherever required after finding out the exact person/agency/behind the infringement of copyright.

3. Copyright issues in Electronic Information Environment:

Copyright is an economic system for ensuring the creation of new knowledge by rewarding their creators and their agents; (it provides) an assurance that the creator can determine, if, how, where, when and in what from his or her creation can be used.
From the copyright point of view, pointed material has certain advantages over the electronic information: it is permanent and authenticated, its ownership is easy to ascertain, its facilities easy identification of piracy or plagiarism. In comparison, electronic (digital) information is not so permanent; it is easy amenable to revise, modify, re-revise, re-modified without leaving any resemblance to the original. However electronic information facilitates more exhaustive searching, faster information retrieval, better storage and cheaper maintenance in addition to the saving in stacking, ease of use and transportability. It is amenable to cost-effective processing, communication and attractive especially for archival purpose since large volumes of data can be copied across different storage media without ant loss of quality.

More recently, copyright has also been applied to the computer software including software encoded on microchips. Computer programmes generates abstracts and create databases. The programmes are copyrightable, but question exist who owns the generated text? The idea that machine is capable of intellectual labour is beyond the scope of copyright. The copyright protection for computer programme centres on video displays and ROM microchips have recently been challenged by courts in US. The courts found that, if the creator of the chips and video displays fulfill the requirement for registration, deposits and copyright notices, the copyright is valid and may be defended by the court of law. But the details must be resolved through legislations. Digital information can then be stored on a server and transmitted over networks in a few minutes to multiple destinations simultaneously. An important concern of electronic information available over or accessed through networks like INTERNET is its vulnerability to manipulations, additions, deletions. Etc. this may raise problems of authenticity and reliability of electronic data. Further, these cannot be closely monitored or their use cannot be restricted as in the case of printed journals. These may result in plagiarism, authorship conflicts and impersonation. To facilitate compliance with the US Copyright Law, a group of users, publishers and authors together established the CCC in 1977 as a non-profit organization to operate a
centralized a authorizations and payment system for the use of publications, and to serve both the foreign and domestic copyright owners.

In the context, the Indian copyright Act with its amendments of 1994 is seen as a deterrent to the illegal copying and piracy of software. Although making of copies of adaptation of a computer programme by the lawful possessors does not make an infringement if the copies are made in order to utilize the computer programme for the purpose for which it was supplied, or to make backup copies purely as a temporary protection against loss, destruction or damage in order to only use the same for the purposes for which it was supplied.

Digital library makes the copyright protection a difficult task. It is easy to create digital or digitized copies of the texts, photographs, music and video which results in revenue losses to the copyright owners who not get returns when copyright violations (illegal copying) take place. To avoid this situation, they are bound to impose stringent copyright rules and mechanisms. Determining how to charge a digital library for the use of on-line digital electronic information including reference work is a challenge. When co-operative acquisition and inter library loan are being followed by a group of libraries, this issue becomes even more problematic. The copyright (Amendment) Act, 1994 enlarged the scope of the term ‘author’ to mean in relation to any literary, dramatic, musical or artistic work which is computer generated, the person who causes the work to be created. The enlargement of the meaning of the term author makes the creators of the computer generated library, artistic, dramatic and musical work covered under the ambit of copyright. The storage and retrieval system enable storage of complete texts of books, periodicals, etc. in the database which can be retrieve at the flick of the finger. After through and prolonged debates at international forums, computer programme (software) has been accepted as a ‘work’ in the copyright senesce and is eligible for protection under the copyright law. Under copyright law of the USA, software is registerable as a literary work for copyright protection. It is apprehended that in the coming decades, the storage and retrieval system might bring about the revolutionary change in the publishing sector
when it replaces, to an extant, the printing press. as input is considered reproduction, copyright conventions have viewed that the use of copyright materials in a computer requires the prior permission of the copyright owner. How does the copyright owner control the use of his work stored in the computer memory is engaging the attention of technologies, copyright specialists and jurists at the international level.

The usage statistics collection and management system being developed by ELINOR (Electronic Library and Information Retrieval On-line) electronic library product at Milton Keynes (UK) to analyses two types of statistics. The first time is for the publisher concerning the number of pages browsed, time spent and the number of pages viewed and printed by the Users. The second type statistics relate to maintain users accounts monitor and find out the heavily used documents, and to know the user reading patterns. Many digital libraries projects, in association with publishers and copyright holders, are exploring ways and means to ensure copyright clearance procedures, licensing and payment mechanisms. India and UK laws extend the copyright protection to computer databases, treating them as literary works Multimedia works classified under audio visual works are covered, through not explicitly, by the USA, UK and Indian laws. The Indian law extends protection to computer programmes i.e., computer software and computer-generated artistic or literary works, and treats storing of a work in any medium by electronic means as infringement of the copyright. the law has no provisions for electronic and on-line books, journals and electronic information. In India, such provision was made under section 33 to 36 of the Indian Copyright (Amendment) Act, 1994, which enumerate registration of copyright societies, administrations of rights of owners, payment of remuneration, control over the society by the owners of the rights, submission of returns and reports., and rights and liabilities of performing rights societies.

3.1 Electronic Copyright Management Information Systems

Several Electronic Copyright Management Systems (ECMS) are under various stages of progress like – PATRON (Performing Arts Teaching Resources
Projects On-line), CNRI (Corporation of National Research Initiatives) and ARP (Advanced Research Projects Agency). They are currently working on the design and implementation of an ECMS. The project uses digital signature technology and privacy-enhanced e-mail which may facilitates the development of high performance, interactive digital library. The CCC (Copyright Clearance Centre) is closely working with publishers, users and Universities where several pilot projects are underway to provide owner-authorized, text-based information electronically. Publishers of scientific and technical journals have been seized up in the copyright and licensing issues. For example, ACM interim copyright policies of the Association for Computing Machinery covers works published in digital form also. ACM has an ambitious electronic publication programme where in they would like to offer all the primary journals online. The University Licensing Programme (ULIP) pursued by Elsevier Science Publishers in association with OCLC and some of the Universities in the USA is exploring the electronic access to 45 primary journals in the field of materials science. Copyright policing and handling of royalties is an important aspect of digital information environment. There are different licensing schemes-per-transition fee, fixed fee, usage-based fee or a combination of any these. An ECMS with management capabilities was conceived at De Montfort University, the Electronic Reserve Copyright Management System (ERCOMS) is expected to include automated rights clearance system for handling electronic permission request, full tracking of usage and accountability automatic counts of occurrence of copyright events, and copyright management. Although the electronic information can be protected through encryption during transmission over networks, once it is decoded at the end (for usage), it is amenable to manipulation. Further, even if the publishers (or copyright holder) does not offer the work in electronic form, the users can always convert it into digitized or digital form using scanners and OCR technology in a short time.
The Copyright Act of 1957 has been last amended by the Copyright Amendment Act, 1999 and the amendments that have been made are intended to streamline the law relating to Copyright of computer software which prior to the Act of 1999 was merely included in the definition of “literary work”. The amendment brought by the Act of first define “computer” to include any electronic or similar device having information processing capabilities. It define “computer programme” as a set of instructions expressed in words codes, scheme or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or a particular result.

In the case of a computer programme copyright means to do or authorized the doing of any of the following acts –

- Reproducing the work in any material from including the storing of it in any medium by electronic means;
- Issuing copies of the work to the public not being copies already in circulation;
- Selling or giving on commercial rental a copy of the work and because “literary work” as defined includes computer programme, tables and complication and computer data bases, copyright in a computer programme subsists for the time of the author and sixty years.

A computer programme is infringed when any person without license granted by the owner of the copyright does anything the exclusive right of doing which is vested in the owner.

However, a computer programme is not infringed by the making of copies or adaptation of a computer programme by lawful possessor of a copy from such copy in order to utilize the computer programme for the purpose for which it was supplied or to make back up copies purely as a temporary protection against loss,
destruction or damage only to utilize the computer programme for the purpose for which it was supplied.

By the same token it will not be infringement -

a) To do any act necessary to obtain information essential for operating interoperability of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available;

b) To observe, study or test the functioning of the computer programme in order to determine the ideas and principles which underlie any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied; and

c) Making copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use;

d) Reproduction of a computer programme for the purpose of a judicial proceeding.

The principles propounded in the Act leave many grey areas. As it well-know copyright lies in the expression of an idea and not in the idea itself. On general principles it is now established at least in American jurisprudence that copyright protection covers both a programmes source and object codes. The language of the Act also clearly propounds that exact copying of a computer code infringes the programmer’s copyright in the code. The question that remains unanswered by the Act whether is a person, without infringing copyright, may copy the underlying structure, sequence or organization of the programme.
3.3 Protections of Software and Data:

Organizations are very careful to protect their data. This includes educating employees and makes back-up disc, protecting against and so on -

3.3.1 CD-ROM:

According to the section 2(0) of the Copyright Act, 1957 "Literary work" includes computer programmes, tables and compilations including computer databases. Thus, CD-ROMs are protected under the provisions of copyright law.

3.3.2 Internet & Web Page:

When a person browsing the Internet access a web page, he or she downloads the pictures and the text on that page onto his or her computer. By making a copy of this page in the computer's RAM, on the hard drive and on the screen, the browser has violated the author’s exclusive right to reproduce the page but this has an exception that if the matter downloads is for public information, one can even reproduce the same with due acknowledgement.

Since it is easy to create web page, these are also rife with copyright violations. Whenever any one place downloaded images or text on his or her web page, there is potential violation of the copyright owner’s exclusive right in that material. Section 2(0) of the Copyright Act, 1957 is applicable to web pages, being the computer database.

3.3.3 Domain Name:

Domain name is an address in Cyberspace. Many disputes have arisen and foreseeable because of similar names. Example <universalbook.com> and <universalbooks.com> looks same and confusing for the customer accessing the webpage. Such disputes are at present not maintainable because of lack of specific legal remedy under the Trade Marks Act, 1999 but passing off action can be taken under Civil Procedure Code, 1908.
World International Property Organisation (WIPO) has been solving these problems which are arising on international level concerning different countries. The recent results of WIPO negotiation was that the domain names <the economic times.com> and <the Times of India.com> were given back to the Indian publishers of the newspapers.

3.3.4 Computer Programmes:

Computer Programmes are part of definition of literary work under section 2(0) of the Copyright Act, 1957. There is a lot of controversy and debate, internationally on the point that whether computer programme fall under copyright or patent law. As of now the programme individually falls under copyright law and if the programme is part of computer hardware as a whole, it can be patented.

3.4 Some Legal Issue regarding the Creation of a Web site

There are major issue regarding the creation of a web site which are discussed under following points –

1. Copyright concerns;
2. Domain name concerns;
3. Trademark concerns;
4. Defamation; and
5. Linking and framing.

3.4.1 Copyright concerns:

At the time of creating a web site, we may violate the copyright act unknowingly because we don’t know the rights of a web page owner. Some rights have been exclusive given to copyright owners under the copyright Act. Included in those rights are the right to prevent others from reproducing (or copying) a work, publicly displaying a work, or distributing a work. As a result, web page authors should take care not to copy the work of others. an
Internet service provider can also be found liable for copyright infringement even when they are not directly engaged in the copying the protect materials.

3.4.2 Obtaining images for a web page:

One of the important attractions of the World Wide Web is the ability to use graphics to convey information to users. A sophisticated and subtle graphical presentation is the hallmark of some of the Web’s most popular sites. The following “rules of thumb” are meant to guide a web page creator when selecting images for incorporation into a page.

3.4.3 Creating originals images from drawing and painting programs:

It is very safe to obtain images is to create them in a drawing or other images creation program. In doing so, however, it is best to start from scratch rather than from someone else’s creation. Even if an image is significantly altered, the new image may infringe upon the copyright in the first image may infringe upon the copyright in the first image by being a “derivative work”.

3.4.4 Copying images from third-parties:

Don’t steal someone else images. The moment an original image (or string of text) is fixed on a hard drive for the first time, it is protected by copyright. Any unauthorized copying of a protected image is an infringement of the creator’s, unless the use falls within one of the very limited exceptions to the copyright law, such as “fair use”. In most cases, it is unlikely then the incorporation of an image into a commercial web-site would be considered a fair use.

3.4.5 Licensed images from the Internet:

Some images, such as Microsoft’s “Internet Explorer” logo, may be copied, but only if the would-be copier accepts the term of license defining the permissible uses of the image. Often such licenses provide that the copier
cannot alter the appearance of the image in any way, and may use the image as a link only to certain designated sites.

3.4.6 Clip-art Libraries Provided with Software:

Other sources of licensed images include clip-art files, such as those provided with Claris Home Page, Microsoft Front Page, Tripod and Adobe Page Mill software. Incorporating clip-art from these libraries into a page does not violate copyright law, as these images are licensed to the purchaser of the software for this purpose. To avoid liability, however, a webmaster must be careful to obey the terms of all applicable license agreements. For instance, the license may not allow a user to alter the images in any significant way.

3.4.7 Free Images of the Internet:

Some web sites provide images that are for use by others. These images may be used in a web page, as long as the terms proposed by the image creator are followed. Typically, this site only requires that some type of credits is given to the author, including a link back to the author’s site. However, there remains the possibility that the images were misappropriated at some point infringe the copyrights of the original author.

3.4.8 Developing text for a web page:

The guideline for text development are similar to those for obtaining images. Truly original text, development by the creator of the web site, may be used without copyright concerns. As with images, appropriating text from third parties without permission is illegal, unless there is some substantial “fair use” justification for the taking. Use of third party text pursuant to a license agreement should follow the terms of the license agreement. As for public domain works, one should never assume a work is in the “public domain” without independent investigation.
3.4.9 Developing Java Applets:

This is normally a violation of copyright law to appropriate scripting or programming from someone else without permission. Many parties have made their scripts and applets available for use by the public. In these cases, use is allowed as long as any requirements set forth by the programmer are followed.

3.5 Domain Name concerns:

The selection and protection of a domain name may be the most important detail in the creation of a web site. Domain names function as the address for a web site, and dispute over domain names have become more common and more controversial as the popularity of the Internet grows.

3.5.1 Selection a Domain name:

Domain names have a first and second level. The “.com” portion is considered the first or top level domain name, and “second” is considered a second level domain name. The most common top level domain (.COM, .ORG, .NET, .GOV, .EDU) names are administered by Inter NIC, although other top level domains are available and still more will be available soon. To obtain a domain name using one of these top level domains names, a search should be done to make sure the name is not taken. In addition, it may be wise to perform a trademark search to verify that the chosen domain name is not infringement on another party's trademark.

3.5.2 Reclaiming a Domain Name Registered by Another:

Searching for a domain name, a web master may discover that someone else has already taken their corporate name or trademark as a domain name. In most cases, there is little that can be done because the other party has equal right to use that name. In some circumstances, however, it is possible to contest a registered domain name based upon superior rights to that name. Such a contest can be made through the courts or through Inter NIC’s domain name dispute policy.
3.5.3 Protecting a domain name

In order to better protect a domain name and to avoid losing a domain name under the Inter NIC domain name dispute policy, a domain name owner should obtain a trademark registration on their domain name. In order to obtain immediate protection, a registration can be obtained.

3.5.4 Obtaining Multiple Domain Names under Different Top Level Domains

The owner of a strong trademark can obtain multiple domain names registrations under multiple top level domain names.

3.6 Trademark concerns

A trademark is a word, image, slogan, or other device designed to identify the goods or services of a particular party. Trademark infringement occurs when one party utilizes the mark of another in such a way as to create a likelihood of confusion, mistake and/or deception with the consuming public. The confusion created can be that the defendant’s products or services are the same as that of the trademark owner, or that the defendant is somehow associated, affiliated, connected, approved, authorized or sponsored by trademark owner. Since most web sites will contain discussion of products or services, web site developers should be aware of the potential trademark issues.

3.6.1 The Trademarks of others

There is nothing inherently wrong with the identification of other party’s products on a web page by using their trademarks. Nonetheless, some parties have made inappropriate claims of trademark infringement every time they see one of their marks on another party’s page. Sometimes, however, a website does violate the trademarks of another. Web page designers should avoid trademark usage that might cause confusion among viewers as to the source or sponsorship of the web page. Such use might well constitute trademark infringement.
3.6.2 Linking to another page through that party’s logo

It is common to find a link to another web page made through a company’s name, or logo. In most cases, this type of link will not cause trademark concerns unless the use causes the type of confusion discussed above. However, the use of another party’s logo without their permission may be more likely to raise the type of confusion that creates trademark infringement, since a graphical logo arguably creates a stronger impression of affiliation than mere text.

3.6.3 Selection of a trademark

To select a trademark, one should consider the relative strength of the mark. Certain marks are stronger than others. Made up words, such as Kodak or Xerox make the strongest marks. The next strongest marks are those words that have no relationship with the products or services on which they are used, such as APPLE for computers. Marks that are descriptive in nature, such as CLEASCREEN for computer monitors, may be so weak that they will not function as a trademark until they have been heavily used. After picking a mark, a trademark search should be performed to make sure that no one else has rights to the mark.

3.6.4 Protecting a trademark

Once a mark has been selected, the best way to protect a mark (in the United States) is through a federal trademark registration. If the goods or services sold under the mark will be sold internationally, trademark registrations in other countries should also be considered.

3.6.5 Defamation

The term defamation refers to a false statement made about someone or some organization that is damaging to their reputation. For a statement to be defamatory, the statement must be published to a third party, and the person publishing the statement must have known or should have
known the statement was false. The law of defamation is complex, as it has been determined by numerous court decisions rather than one national statute. In addition, a claim of defamation is subject to a variety of defense, such as the first amendment and (of course) the defense that the statement was true. Because of the complexity of defamation law, a full explanation of this area will not be set forth here, and is saved for others to provide.

While the Internet provides a new context in which a defaming statement can be made and published, there is little new law relating to Internet defamation other than liability for service providers. Nonetheless, web page developers must be careful to avoid defaming someone in their pages. If a statement is being made that they damage the reputation of a person or organization, care should be taken to make sue that the statement is not defaming.

3.6.6 Linking and framing concerns

Links between pages are the necessarily of the World Wide Web. Without widespread linking, the web as we know it would not exist. Nevertheless, there are questions about the legality of such connections. When the image from another web site is incorporated into one’s own page by means of an unauthorized IMG link, there is no direct copying by the creator of the link. Nonetheless, when the visiting browser retrieves the image from the other web site and combines it with the text on the current page, the creator of the web site may be guilty of contributory copyright infringement for creating a derivative work. Consequently, one should not include links to images found on another party’s web site without first getting permission. Frames could be used to divide a browser into two parts, with one part containing an index for the web site and the second containing content pages. While this type of use is perfectly legal, problems can arise if a frame is used to show pages from two web sites at the same time. The use of frames in this way can mislead the viewer of a site as to the creator of its content, possibly raising issues of
4. Cyber Crimes:

The rapid developments in computer and telecommunications and other technologies has lead to grown of new forms of crimes. The potential extent of cyber crime is as broad as the extent of the international communication systems. Cyber crimes have virtually no boundaries and door may affect every country in the world. There are a large number of definitions for cyber. The simple definition is “unlawful acts where in the computer is either a tool or target or both.

Let us examine the various cyber crimes.

4.1 Money Theft:

Many cyber involve the theft of money. This is a threat to every organization. The scope of such financial losses is much larger than the incidents reported. Most companies don’t reveal that they have been either victims of cyber crime. They fear the customers and shareholders.

4.2 Service Theft:

The unauthorized use of computer and internet is called service theft. Network monitoring software called ‘Sniffen’ is frequently used in monitor network traffic to evaluate the network capacity as well as reveal proof of misuse also.

4.3 Software Theft:

Computer programs are valuable property Unauthorized copying of software in software piracy is also a major issue of software theft. Unauthorized copying is illegal software is intellectual property that is protected by copyright law and user licensing agreement. We need to consider three copyright related matters. Software network piracy. Plagiarism and ownership of images sounds and
the other media. Network piracy is using electronic networks to distribute unauthorized copyrighted materials in digitized form. Piracy tends to increases prices if you use the pirated copies, you will face the following problems getting up-to-date versions; available to get help; Risk of getting a virus; and risk of getting caught. Plagiarism is exploration of another writers text findings etc. Manipulation of sounds images and video are also included in this category.

4.4 Hacking:

Hacking is a generic expression. A hack is a quick fix or clever solutions to restrictions. Hackers are people who gain unauthorized access to computer or telecommunication system for the challenge or even the principle of it. A hacker’s greatest asset is that he can easily transcend all physical barriers. According to NASSCOM chief Dewang Metha – “The concepts of countries has no meaning for a cyber criminal”. Hackers who broke into BARC were traced to have roots in England. Hackers are also helped by the fact that most countries are yet to come up with laws to counter cyber crimes. Hackers are used the ‘Sniffer’ programs which sat silently within the computer for four weeks monitoring its activities. This could allow the hackers to give unauthorized access to every computer on the networks.

4.5 Cracking:

Crackers also gain unauthorized access to IT, but do for malicious purpose. Crackers attempts to break into computer and deliberately obtain information for financial gain, shut down hardware, pirate software or destroy data.

4.6 E-mail spoofing:

A spoofed e-mail is one that appears to originate from one source but actually has been seen from another source. Spoofing the mails could spoil the people relationships. These kinds of e-mail can cause monetary damage also.
4.7 Cyber stalking:
Stalking means “pursuing stealthily”. Cyber stalking involves following a person’s movements across the internet by posting messages on the bulletin boards frequented by the victim entering the chat rooms frequented by the victim, constantly bombarding the victim with e-mails.

4.8 Data Diddling:
This kind of an attack involves altering the raw data just before it is processed by a computer and then changing it back after the processing is completed. Electricity Board in India have been victims to data diddling programs inserted when the system were being computerized by private parties.

4.9 Pornography:
The pornography is the output of abuse of computers. A lot of people use it to communicate about sex ‘Yahoo’, the internet Directory company says that the word “sex” is the most popular search word on the net. A special problem is that children may participate in sexual conversations, download hard-core pictures encounters odious adults tempting them a meeting. Many companies are concerned about the loss of productivity and the risk of sexual harassment as workers spend time online looking at sexually explicit materials.

4.10 Some possibilities to prevent these incidents:
4.10.1 Blocking the software:
Some software developers have discussed a golden opportunity in making programs like ‘Surf watch’, Net Nanny’ and ‘Cyber Patrol’. These filters screen out objectional matters. And in the case of children some programs also prevent kids from giving out personal informations such as address and credit card numbers.

4.10.2 Browser with rating:
Another method provision in browser software that contains bulletin ratings for and www files. Parents could choose a browser that has been endorsed by the Online Server Provider. Special browsers include ‘ChiBrow’, ‘Kid Desk’ and ‘Surf Monkey’.

4.10.3 Spasm and Virus threat:

One such threat is unsolicited electronic mail, already burdened by dozens of legitimate e-mail message daily, and workers can find themselves with junk mails known as Spam’s.

Another threat by misuse of technology is virus. A virus is a piece of computer code or program that is hidden within an existing program. Virus attacks are in different forms. Some virus just produce fanciful messages such as “happy birth day Dippu” on your screen. Some virus has the power to format your system within seconds. Viruses are passed in two ways by disc and networks. Virus may take several forms, the three main ones are: Boot sector viruses, file viruses; and multipartite viruses. A more recent one is the macro virus, which attacks the documents rather than programs. E.g.: Laroux.

4.10.4 Boot Sector Viruses:

The boot sector is that the part of system software containing most of the instructions for booting or powering up the system. The boot sector virus replace these boot instructions with some of its own. Once the system is in turned on, the virus is logged into memory before start of the operating system.

Example of boot sector virus is ‘Ant Cmos’, ‘Anti EXE’ and ‘NYB’.

4.10.5 Antivirus:

The tool for protecting your system from computer viruses is to install and use anti-virus software. Verities of virus fighting programs is available in the market. Across the web we will find many companies selling anti-virus software. Two of the best known and most commonly used anti-virus programs
are ‘Norton Anti-Virus’ and ‘McAfee Virus scan’. You can use virus protection software in one of two ways. First, when another user gives you a disk or file you can run your protection software and direct to scan the file for viruses. If the software detects a virus, it will ask you how you want it to proceed. Most virus protection software can delete the file or possibly remove the virus from the program. You can also direct most virus protection to run continuously so that the software scans each file you plan to open, run, save, and so on.

4.10.6 Multipartite Viruses:

Multipartite Virus is a hybrid of the file and boot sector types. The multipartite Virus infects both files and boot sector, which works better at spreading and more difficult to detect. E.g.: ‘Junkie’, ‘Parity Boot’.

4.10.7 Micro Virus:

Micro virus take advantage of a procedure in miniature program known as macros, are embedded inside common data files such as those created by e-mail or spread sheets. Micro virus are sent over computer network, until recently, such document has typically been ignored by anti-virus software.

E.g.: ‘Concept’ with Word document.
‘Laroux’ with the Excel document.

4.10.8 Logic Bomb:

Logic bomb differ from other virus in that they are set to go off at a certain date and time.

E.g.: Chernobyl Virus

4.10.9 Encryption

PGP is a computer often used for encrypting a computer message pulling them into secret code. Encryption or enciphering is the altering of data so that it is not usable unless the changes are undone. PGP (Pretty Good Privacy) is good that it is practically unbreakable. It can be downloaded from
http://nai.com. Other encryption software’s are available are such as SynCript. When you encrypt something, you scramble it, to decrypt it you unscramble it. Both activities require a key, like password. Encryption is clearly useful for some organizations especially those concerned with trade secrets, military matters and other organizations.

4.10.10 File Virus

File virus attach themselves to executable files those that actually begin a program while it is run. The virus starts working get into main memory and infect other files.

5. Copyright Piracy in India:

5.1 Copyright and National Economy:

Besides protecting creative potential of the society, copyright contributes to a nation on economic-front as well. The copyright based industries together generate huge employment in the country of its origin. The national exchequer benefit from the contribution made by these industries in the form of excise duty, sales tax, income tax etc. from the production and sale of copyright products. Given the natural demand for such products from across the national boundaries exports help consolidate country’s foreign exchange reserves position.

While there is no view on the economic importance of copyright, it is not easy to assess it property. The first and the foremost difficulty arises in defining the copyright based depends on copyrighted materials for their commercial success. But the range of activities that come under the subject of copyright is so wide that the task of defining the copyright industry become difficult. These industries are drawn from a large number of different industry classifications and they are also not readily identified as an industry in the usual sense. This makes the issue more complicated.
However, there is a general consensus on the activities that come under copyright industries. It includes printing and publishing of books, newspaper, journals & other periodicals, production and sale of audio products (Cassettes/CDs), production and distribution of cinemas, video and cables, creation of computer software & databases and their distribution radio and television broadcasting, advertising, photography, dramatic and musical performance etc. The list is not exhaustive. But the present study is confined to only the main segments of the copyright industry and covers cinematography works (includes video), sound recordings, literary works (mainly book publishing), computer software and performance.

The economic importance of copyright had been amply illustrated by a number of studies undertaken in the past in various parts of the world, notably in U.S.A., Germany, Australia, U.K., Sweden and some other developed countries. For example, a study conducted in 1993 for the U.S.A. showed that the core copyright industries comprising motion picture, computer software, music and recording and book publishing industries accounted for $238.6 billion in value added to the US economy, which approximately accounted for 3.47% of the country’s Gross Domestic Product (GDP) these industries grew at more than twice the annual growth rate of US economy as a whole between 1991 and 1993 (5.6% as against 2.7% for the economy as a whole). The total copyright industries taken together (i.e. core industries plus those distribute copyrighted products and other products those depend on wholly or principally on copyrighted materials) employed more than 5.7 million workers (about 4.8% of total U.S. workforce) and accounted for approximately 5.69% US GDP in 1993.

In India, no estimates are available to ascertain contribution of copyright base industries to the national economy. However, given the rich cultural background and huge population of the country. It is believed that copyright industries collectively contribute enormously to the economy. India is a largest audio cassette market in the world in the term of number of unit sold. In 1996,
India sold more than 350 million audio cassettes & CDs and the industry's sales turnover stood at Rs.105,605 million. India's software industry is showing a phenomenal growth. During 1996-97, the software industry in India with its size of Rs.63,100 million achieved a remarkable growth rate of above 50% over its previous year's performance. During the same period India could export software worth Rs.39,000 million and the software industry provided employment to more than 160,000 people.

The publishing industry is also quite large in the country. About 11,000 publishers are engaged in producing more than 57,000 new titles every year, of which about 22% is published in English language. In 1995-96 India exported Rs.1120 million worth of books and other printed material. A sizeable portion of this (about 29.1 percentage) went to advanced countries in the Europe. The print media in India comprising daily newspaper and numerous other periodicals e.g. weekly and annual journals/magazines is huge. In 1997, it had a total circulation of 10,57,08,191 and the turnover from print media is estimated to be as high as Rs.8000 crores (table 2.1). The other core copyright industry namely film and video, also occupies an important place in country. Film is considered as one of the best means of entertainment for the common people. India annually produces more than 600 films in major language such as Hindi, Telgu, Tamil, Malayalam & Kannada. The demand for cable & satellite TVs are also on the rise. It is estimated that during 1996 cable connection in the country had reached about 20 million houses covering approximately 10 percent of the total households in the country.

5.2 Copyright and International Relations:

The scope of copyright is not confined merely to the arena of creativity and its economic exploitation in the country of its origin. It has emerged as a major factor in international relations. In the recent past, the trade relations between the US and China deteriorated considerably over the issue of protection of Intellectual Property Right (IPR). The US maintained that the China is the worst violator of
IPRs and the loss to the US economy is more than 2 billion dollar annually because of violation of its IPRs in China’s territory. The dispute took a serious turn when US trade groups wanted trade relations with Chins to be stopped completely. It was only after the intervention of the heads of both countries any further deterioration was averted.

The importance of IPRs in general and copyright in particular in the relationships among the countries can be comprehended clearly from the above example. The Sino-US piracy dispute, through a recent one, is not the only case. With the advancement in technologies copyrighted items started flowing freely across the boundaries and piracy assumed an international dimension. Since the nineteenth century the countries felt the necessity of having copyright protections in foreign soil as well. As a result, negotiations were held between countries which in some cases resulted in the conclusion of multilateral treaties.

The first multilateral agreement on copyright is the Berne Convention which was concluded in 1886 and was meant for the providing protection to literary and artistic works. A country joining the Convention has to provide copyright protection to literary and artistic works of member countries in its own territory and also entitled for enjoying reciprocal protection from others. The Berne Convention was received seven times in 1896 (at Paris), 1908 (at Berlin), 1928 (at Rome), 1948 (at Brussels), 1967 (at Stockholm) and 1971 (at Paris) and finally in 1978. Among these, the 1971 revision (the Paris act) is of particular importance to the developing countries as it provided special concessions to these countries in making translations and reproduction of foreign literary works for educational purpose. Ninety countries are at present member of the Berne Convention.

The post Second World War era saw the emergence of the need protection copyright on a universal basis. Till then countries in the North America were not party to the Berne Convention and copyright protection in these countries were
governed by various national and regional agreement. In August, 1952 the Intergovernmental Copyright Convention (UCC). The UCC is not a substitute for the Berne Convention. Rather it tried to establish the link between countries and the countries on the Berne Union and those in North America. India is a member of both the Berne Convention and the UCC.

In recent years, the issue of IPRS figured prominently in the Uruguay Round of General Agreement on Tariffs and Trade (GATT). It is for the first time the GATT went beyond its usual mandate to include the IPRs. The Trade Related Aspects of Intellectual Property Rights (TRIPS) is set out in Annex 1C of the Final Uruguay Round Text. The text comprises 73 articles grouped in seven different parts. The standards for specific IPRs such as copyright and neighboring rights are discussed in part II.

5.3 Copyright in India:

The copyright in India has traveled a long way since it was introduced during the British rule. The first law on copyright was enacted in the year 1847 by the then Governor General of India. When Copyright Act 1911 came into existence in England, it became automatically applicable to India, being India an integral part of British Raj. This act was in force in the country until after independence when a new copyright part act (the Act of 1957) came into effect in 1958. Thereafter the Act has undergone many amendments. The latest in the series is the 1994 Amendment, which came into force in May 1995.

Besides amending the Copyright Act the Indian Government has taken few more steps in strengthening the enforcement in the country. A Copyright Enforcement Advisory Council has been set up for advising the Government on measures for improving the copyright enforcement. Training programmes and seminars are arranged for police personnel. Necessary legislation was made for bringing video shops, cable operators under regulation. State governments are encouraged to set
up IPR cells for exclusively dealing with copyright and other IPR violations. In spite of all these, enforcement of IPR violations, particularly copyright a violation has not been strong enough in the country and piracy prevails exists in all types of copyright works notably musical works, video films and softwares.

5.4 Copyright Piracy:

Copyright piracy is a phenomenon prevalent worldwide. Piracy means unauthorized 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 authorized party undertakes any of the above mentioned activities with respect to a copyrighted product, it amounts to infringements 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 authorized 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 unauthorized reproduction of the film in video forms and/or displaying the video through cable networks without taking proper authorization 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. It is, therefore, necessary to discuss the nature and extent of piracy problems segment wise. Such an attempt is made in the following paragraphs.

5.4.1 Literary Work:

Piracy of literary works means illegal reproduction of books and other printed materials and distribution/selling of these for profit. In India, the journals/magazines and other periodicals are not pirated much. Here piracy of literary works generally takes place in three principal base: 1) wholesale reprinting of text and trade books 2) unauthorized translations and 3) commercial photocopying of books/journals. Many a times piracy takes the form of publishing fake books, where authors shown in books are not the real authors.

Book piracy, in India, primarily depends on two factors, namely, the price of the book and its popularity. These two factors positively contribute to piracy. Piracy is generally confined to foreign and good indigenous books. Because these books are demanded in large quantities and are also priced high. The types of books pirated mostly are medical, engineering and other professional books, encyclopedia and popular fictions. The piracy is also wide spread with respect to books published by National Council of Educational Research & Training (NCERT), National Open School and Board(s) of secondary education. These books even if priced low are having large demand.

The pirates first identify books to be pirated and then get the same printed in large numbers through unscrupulous printers. The pirated books are normally sold with other (legitimate) books by usual retailers identified by the pirates. The number of printers/sellers involved in piracy is generally less. The piracy is also seasonal in nature. The entire process of printing through selling gets over within a month or two.
Besides the above, piracy in the form of mass photocopying of books largely prevalent in India, especially in and around educational institutions. Students borrow books from libraries and then get these photocopied from the photocopier kept at the institution where from the books are borrowed. While copyright law permits photocopying of literary works for limited private uses such as research, review or criticism what happens, many a time is that the entire book is photocopied including the cover pages. In the process student community and the photocopy operators gain, but the publisher’s loss a huge revenue. Unfortunately, the institutions turn a blind eye to this.

Sometimes even some renowned publishers involve themselves in piracy by way of selling books beyond the contract period. This happens when an Indian publishers buys re-print rights from some foreign publishers and keeps on selling books even after the expiry of the period mentioned in the agreement. This is done in the pretext of clearing old stock. Thus an impression is created that books are printed during the contract period but in reality are sold beyond the contract period just to exhaust the old stock.

The other way through which piracy takes place in printing/selling of books meant for review. The pirates somehow get access to such books and make quick print to sell in Indian market. All these happen much before the authorized Indian distributors get their copies for selling in India. Naturally, the distributor’s sales get affected adversely.

Piracy of literary works lead to loss of revenue to publishers (in terms of less sales), authors (non-payment of royalty) and the national exchequer (non-payment of income tax and other levies payable by publishers/authors). While it is believed that book piracy is high in India, it is very difficult to arrive at an estimate. Only information for secondary sources (e.g. publishers, police records etc.) can be gathered to form a rough idea on piracy. But that would reflect only the tip of the iceberg. In terms of percentage, it is believed that
about 20-25 percent of books sold (in number) in the country are pirated. Actual monetary loss due to piracy is anybody's guess.

Anti piracy drive with respect to books is generally weak in India. The industry associations are not very active in this regard. Whatever action is taken is done by the respective publishers. The enforcement machineries (such as police) are also not very active in controlling piracy for a variety of reasons. The public awareness is also very poor.

Besides the above, Indian books are also pirated abroad, especially in the neighboring countries such as Pakistan, Bangladesh etc. India exports books to a large number of countries including developed countries from Europe. During 1995-96 India exported books to the tune of Rs. 1120 million. Exports earnings could have been much more in the absence of wide spread piracy of Indian works abroad. Similarly, foreign literary works are pirated in India. Given the low and rapidly declining value of rupee in terms of hard currencies good foreign books (e.g. US books) cost very high in India. As a result majority of the readers individually can not afford to buy these books. In such circumstances, piracy provides the escape route, because a pirated foreign book in India can be as cheap as half the original price or even less. The International Intellectual Property Alliance (IIIPA) estimated that in 1995 trade loss due to piracy of US books in India amounted to $ 25 million.

5.4.2 Sound Recordings :

The sound recording industry faces three types of piracy. First, there is a simple way by which songs from different legitimate cassettes/CDs (and thus different right holders) are copied and put in a single cassette/CD. These are then packaged to look different from the original products and sold in the market. Second, there is counterfeiting, when songs are copied into and packaged to look as close to the original as possible using the same level, logos
etc. these products are misleading in the sense that ordinary end users think that they are buying original products. The third form of music piracy is bootlegging, where unauthorized recordings of performance by artists are made and subsequently reproduced and sold in the market. All these happen without the knowledge of the performers, composer or the recording company.

Earlier the music piracy was confined to cassette tapes only. With the advent of CDs in the eights it was thought that piracy of sound recordings would become things of the past. But in reality CD piracy is the greatest threat to today’s music world. Infect, with CDs piracy has got an international vigour. Fortunately, CD industry is still in its nascent stage in India. At present CD market is just 2 to 3 percent of the overall music market in the country. CDs have not taken off mainly because of high prices. In India CDs are sold on an average price ranging between Rs.150 to Rs. 550. Considering price of cassettes, the price differential (between cassettes and CDs) is quite high and prohibitive for ordinary music lovers.

Cassettes piracy in India is as old as the cassette industry itself. Govt. policy put music industry in the small scale category and volume of a record company’s cassette production was restricted to 300,000 units per annum. This led to a wide gap in the demand supply front which was ultimately bridged by the pirates. Even if music piracy percentage has declined from a high of 95% in 1985 to about 30% in 1995, India is the world’s sixth largest pirate market in value terms (table 2.2) but third in value terms (table 2.3). In 1995, more then 128 million pirate cassettes/CDs were sold as against the sale of 325 millions of legitimate audio products. The sale pirate cassettes/CDs (both in number & value) is also on the rise in the country. However in contrast to many development countries piracy of CDs is low in India. At present CD piracy is below 10% level.
The popularity of Indian music has gone beyond the National boundaries. There is large demand for Indian music in the neighboring countries such as Pakistan, West Asia as well as far off countries like USA, Canada and the UK. Indian music is also pirated in some of these foreign countries, the notable among these being Pakistan and West Asia. Similarly, foreign audio products are also subject to piracy in India soil. As per IIPA’s estimate the trade losses due piracy of American audio subjects alone in India was to the tune of US $ 10 million in 1995.

5.4.3 Cinematographic Works:

Copyright in cinematographic works is more complex in nature as there exists a variety of copyrights in a single work and many a times these rights are also overlapping. The first right in a film is the ‘theatrical right’ i.e. the right to exhibits films in theatres. The producer is the copyright holder. The distributors buy theatrical rights from producers and then make some arrangements with the theatre owners for actual exhibition to the public. The theatrical rights are limited by territory and time. Films are also released in video cassettes in fact, these day viewing film at home has become more popular than seeing the same at theatres. The producers sell the video rights to another party, who makes video cassettes for sale in market. These cassettes are meant for ‘home viewing’ only i.e. one can buy a copy of it for seeing at home with family members and friends. Such cassettes can not be used for showing the film in cables or through satellite channels. Because showing films in cables or satellite requires acquisition of separate sets of rights namely ‘cable rights’, and ‘satellite rights’.

A cable network generally limited to local areas as it requires receivers (viewer’s TVs) which are to be physically connected through cable wire to the operators. In case of satellite channels, however, there is no such physical limit as transmission takes place through air and received at the users end by dish
antenna(s). Interestingly in India satellite transmissions, in most of cases, reach to endorsers through cable networks only.

The cable networks in India work in a two-tier system. At the top there are main operators who transmit their programmes through numerous small local operators on a franchise basis. As mentioned earlier programmes of satellite channels reach the viewers through cable networks. The (main) cable operators do not pay anything to satellite channels for viewing channels for showing latter’s programmes in the network, except for pay channels (e.g. ESPN, Zee Cinema, Movie Club etc). The small cable operators, however, share their incomes with their respective main operators. The revenue for small operators comes from the subscription of viewers.

Music is an integral part of any cinematographic work. In India, film account for almost 80% of the total music market. Even if film producer has the copyright in the film, the music included in the film is the outcome of efforts undertaken by a separate group of creative people such as the composer, lyricists etc. Each of which is right holder of its own right. Generally the producer sells the rights of a music company who makes cassettes/CDs of such songs for sale in the market. The incidence of a large number of rights in a single work and the involvement of a variety of right holders make the copyright issue very complicated in cinematographic works.

Piracy of cinematographic works takes two principal forms, namely ‘video piracy and ‘cable piracy’. However, piracy is one form can spill over and affects the revenues of the other. Video piracy takes place when a film is produced in the form of video cassettes without taking proper authorization from the right holder i.e. producer. Many times producers of films sell video rights to another party (generally after six weeks or more of release in theatres) who makes video cassettes for selling or lending. The video cassettes kept for sale are meant for home viewing only. Any commercial use of such cassettes
like in video parlour or in cable networks amounts to copyright violation. Two types of video piracies are common in India. One, where video right for films has not been sold at all (by the products) but video cassettes are available in the market for buying or borrowing. And two, when video right is (legally) sold to a party, but cassettes are made and sold by others (pirates) as well.

Cable piracy is unauthorized transmission of films through cable network. As mentioned above, showing a film in a cable network requires acquisition of proper authorized from the right holder. But many a time films, especially the new release, are shown through cables without such authorization, which tantamount to piracy.

Piracy is real phenomenon in satellite channels because such channels are organized and generally do not show films without buying proper rights. But there are cases where right of one channel operator is violated by others.

It is very difficult to give a rough estimate of video piracy in India because information in this regard is scanty and accessible. But video piracy in both the forms are quite repent here. Besides this, piracy through video parlours is largely prevalent normally in the rural India or smaller towns. Perhaps more widespread and damaging is the cable piracy. These days almost all new releases are shown in the cable simultaneously with the exhibitions in theatres. As per a resolution adopted by the film Makers Combine, video release of a film can be made only after six weeks of theatrical release, but cable operators show such films much before the stipulated time period. This is a clear case of cable piracy and its extent is considerably high in country.

All parties involved in the legitimate transaction of film from the producers to the theater owner, lose, heavily because of widespread video or cable piracy. The Government also loses because pirates' activities do not bring
in any revenue such as entertainment tax at theatres and excise duty and sales
tax at the point of legitimate production/selling.

5.4.4 Computer Software:

The piracy in computer software simply means copying and distribution
of computer programmes without the copyright holder’s permission. The
software industry, generally, consists of creation and distribution of computer
programmes. Creation of computer programme is similar to writing a novel or
other literary works and it requires intellectual skill and training in software
programming. Though a software can be written by individual programmer,
most of the major software’s are the outcome of group efforts, where medium
to large sized teams spend months or even years to write a complete
programme.

Distribution of computer in most of the developed countries occurs
through a two tired system of wholesalers and dealers, similar to that of many
other industries. The software publishers make a substantial amount of their
shipments to a small number of distributors in any given country. Who
maintain well stocked warehouse and can respond quickly to orders from
hundreds or thousands of individual retail dealers or resellers. The dealers
market and provide the software products directly to end users of computers.
The end user can be individuals, commercial enterprise, educational institutions
and number of the largest dealers or resellers in an individual country.
Licensing is a common practice in software industries. The publisher of
software generally authorises its end users through the mechanism of the shrink
wrap license contained in the package.

Like other copyright based industries, the software industry also faces
several of piracy. In fact, piracy software is more than in others because it is
relatively easy to copy a software in computers especially in PCs and for all
practical purpose the pirated version looks and performs in an identical manner as the original. The five principal types of software piracy involves –

1. counterfeiters
2. resellers
3. mail order houses
4. bulletin boards and
5. end-user piracy.

Counterfeiters are relatively new phenomenon in the software industry and most flagrant software counterfeiters produce disks, documentation and packaging that look very similar to those of the software publisher. Reseller piracy occurs in the software distribution channel, when distributors or dealers either make copies of software onto floppy disks, or the internal storage device or the "hard disk" of computers that they are selling, without authorization from the software publishers. Mail-order piracy consists of the unauthorized copying of software onto diskettes, CDs, or other media and distribution of software by post. Bulletin board pirates engage in unauthorized reproduction and distribution of software via telecommunication. Typically, this involves an individual computer user who has installed a number of software programmes on his computer, and who allows other users to connect to his computer through the telephone line via modem and copy the programmes onto discs. The pirate in most cases has copied the programme onto his own computer without authorization of the copyright holder's consent is also a copyright violation. End-user piracy takes place when user copying software onto hard disc on more computers than the number authorized by the publisher. This form of piracy perhaps takes place on a wider scale than other distribute or exchange the same. Though this harms the internets of right holders, endusers definitely gain out of his because this leads to obvious economic advantages for them.
Identifying a pirated software is not an easy task. This is primarily for two reasons. First, as mentioned earlier there is hardly any difference between an original software and a pirated software, once it is copied onto a hardware. Second, detection of piracy requires access to software or hardware or both, which may not be feasible in many cases. However, there are some ways through which an unauthorized copy of a software can be identified. Many a times publishers supply software in packaged form which contain software on diskettes with printed labels giving manufacture’s name, full product name, version number, trade mark and copyright notices. Besides these, the packages also typically, contain professionally printed documentation, a keyboard template, enduser license and registration cards and other printed materials pursuant to a standard bill of materials that would apply to all packages of that particular product. In such cases, the most simple pirated copies may be spotted easily on “black-disks”, which do not contain manufactures, label but rather type written, hand-written or crudely printed labels indicating the programmes contained on the diskettes. In case of installed software it is more difficult to identify a pirated copy. Once a computer is searched, the programme copied onto it can be found and identified. Then users can be asked to produce the proof of original possession (e.g. original package, documentation, purchase record license cards etc.) of such programmes. If users fail to do so, there is a prima facie case of infringement. In some cases even test purchases can be made to secure evidence of piracy.

The extent of piracy and losses due to such piracy can not be given in exact quantities terms though it is believed that piracy in this sector is widespread. In Europe alone the software industries lose an estimated $ 6 billion a year. In fact, Europe holds the dubious distinction of accounting for about 50 percent of worldwide losses from software piracy, more than any other region including the number two Asia. According to a study of Software Publishers Association, a US based body, losses due to piracy of personnel computer business application software’s nearly equaled revenues earned by
the global software industry. In 1996, piracy cost the software industry US $ 11.2 billion, a 16 percent decrease over the estimated loses of US $ 13.3 billion in 1995. The country-specific data show that in 1996 Vietnam and Indonesia had the highest piracy rate of 99 percent and 97 percent respectively, followed by China (96%), Russia (91%), Thailand (80%) etc. in India software piracy is casting the IT industry quite dear. According to a survey conducted jointly by business software Alliance (BSA) and NASSCOM in May 1996, total loses due to software piracy in India stood at a staggering figure of about Rs. 500 crores (US $ 151.3 million) showing about 60 percent piracy rate in India.

Even police personnel, who can play a major role in combating piracy, are not fully aware of various provisions of the law. There is also lack of adequate number of personnel who can fully devote to copyright crimes alone. The police is more concerned with usual law and order problems and copyright related crimes are attached least priority.

The awareness level among end users is also very low. While buying a copyright products, majority of consumers do not look at copyright notification (e.g C or P), as long as price low (as generally is the case with pirated products) users do not mind buying pirated products even knowingly.

<table>
<thead>
<tr>
<th>Periodicals</th>
<th>Circulation (‘000)</th>
<th>Publication Frequency</th>
<th>Av. Price* (Rs.)</th>
<th>Value (Rs. ‘000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daily newspaper</td>
<td>45914</td>
<td>365</td>
<td>02</td>
<td>33517220</td>
</tr>
<tr>
<td>Tri/Bi-weekly</td>
<td>538</td>
<td>104</td>
<td>05</td>
<td>279760</td>
</tr>
<tr>
<td>Weekly</td>
<td>35475</td>
<td>52</td>
<td>15</td>
<td>27670500</td>
</tr>
<tr>
<td>Fortnightly</td>
<td>8502</td>
<td>26</td>
<td>30</td>
<td>6631560</td>
</tr>
<tr>
<td></td>
<td>Monthly</td>
<td>Quarterly</td>
<td>Half yearly</td>
<td>Annual</td>
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<td></td>
<td>13442</td>
<td>637</td>
<td>450</td>
<td>750</td>
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<td>12</td>
<td>04</td>
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<td>01</td>
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</table>

* Arrived at based on discussions with some producers/sellers of periodicals

Source: Computed using circulation figures from the Press in India, 1998 published by the Ministry of Information and Broadcasting, Govt. of India.

**Table 2: Top Ten Pirate Territories (Value)**

<table>
<thead>
<tr>
<th>Country</th>
<th>Pirates sales in US $ (million)</th>
<th>Pirate % of Total sales</th>
<th>% of World pirates sales</th>
</tr>
</thead>
<tbody>
<tr>
<td>Russia</td>
<td>363.1</td>
<td>62%</td>
<td>17%</td>
</tr>
<tr>
<td>USA</td>
<td>279.4</td>
<td>2%</td>
<td>13%</td>
</tr>
<tr>
<td>China</td>
<td>168.0</td>
<td>48%</td>
<td>8%</td>
</tr>
<tr>
<td>Italy</td>
<td>145.6</td>
<td>20%</td>
<td>7%</td>
</tr>
<tr>
<td>Brazil</td>
<td>118.8</td>
<td>1%</td>
<td>6%</td>
</tr>
<tr>
<td>Germany</td>
<td>92.2</td>
<td>3%</td>
<td>4%</td>
</tr>
<tr>
<td>Mexico</td>
<td>85.3</td>
<td>22%</td>
<td>4%</td>
</tr>
<tr>
<td>India</td>
<td>82.1</td>
<td>23%</td>
<td>4%</td>
</tr>
<tr>
<td>Pakistan</td>
<td>62.1</td>
<td>94%</td>
<td>3%</td>
</tr>
<tr>
<td>France</td>
<td>58.1</td>
<td>2%</td>
<td>3%</td>
</tr>
<tr>
<td>Total</td>
<td>1,455.0</td>
<td></td>
<td>68%</td>
</tr>
</tbody>
</table>

Source: Information Federation of Phonographic Industry (IFPI). London
<table>
<thead>
<tr>
<th>Country</th>
<th>Fines/Penalty</th>
<th>Imprisonment Terms</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S.A</td>
<td>Upto $250,000 for a first offence of infringement by an individual done in &quot;Willfully and for purposes of commercial advantage or private financial gain&quot;</td>
<td>Upto 5 years.</td>
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<tr>
<td></td>
<td>Upto $250,000 for a second offence by an individual.</td>
<td>Upto 10 years.</td>
</tr>
<tr>
<td></td>
<td>Upto $50,000 for first offence by an organization.</td>
<td>Upto 5 years.</td>
</tr>
<tr>
<td></td>
<td>Upto $500,000 for a second offence by an organization.</td>
<td>Upto 10 years.</td>
</tr>
<tr>
<td>France</td>
<td>6,000 to 120,000 France (about US $1070 to US $21,428) for a first offence of infringement. Double the above penalties for second offence.</td>
<td>3 months to 2 years.</td>
</tr>
<tr>
<td>Poland</td>
<td>Unspecified fines for unauthorized dissemination for purpose of economic gain.</td>
<td>Upto 2 years in jail.</td>
</tr>
<tr>
<td></td>
<td>Unspecified fines if the infringer turns the above offence into a regular source of income for a criminal commercial activity and organizes or directs such activity.</td>
<td>Not less than 6 months and not more than 5 years.</td>
</tr>
<tr>
<td></td>
<td>Unspecified fines for unauthorized fixation or reproduction activity.</td>
<td>Upto 2 years in jail.</td>
</tr>
<tr>
<td></td>
<td>Reported the maximum criminal fine under the penal code is code is 250 million zloty (about $11,075).</td>
<td>Upto 3 years in jail.</td>
</tr>
<tr>
<td>Hungary</td>
<td>Unspecified fine for infringements causing considerable damage.</td>
<td>Upto 3 years.</td>
</tr>
<tr>
<td></td>
<td>Unspecified fine for infringements causing particular high pecuniary damage.</td>
<td>Upto 5 years.</td>
</tr>
<tr>
<td>Greece</td>
<td>1 to 5 million Drachmas (about $4,050 to $20,485) for infringing acts.</td>
<td>At least 1 year.</td>
</tr>
<tr>
<td>Country</td>
<td>Penalty Details</td>
<td>Fine or Duration</td>
</tr>
<tr>
<td>---------</td>
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<tr>
<td>Portugal</td>
<td>The equivalent of between 150 and 250 days for infringements of enumerated acts. The above penalty doubles for repeated offence, provided that the offence in question does not constitute an offence punishable by a more severe penalty.</td>
<td>Upto 3 years.</td>
</tr>
<tr>
<td>Singapore</td>
<td>Upto $10,000 for the article or $100,000 or which is lower.</td>
<td>Upto 5 years.</td>
</tr>
<tr>
<td></td>
<td>Upto $6,666 or $66,000 for violation of the reproduction and the display rights and to the sale or importation of infringing copies.</td>
<td>Upto 3 years.</td>
</tr>
<tr>
<td></td>
<td>Upto $50,000 (US $33,335) for violation of the distribution rights.</td>
<td>Upto 3 years.</td>
</tr>
<tr>
<td></td>
<td>Upto $20,000 (US $33,335) for making or possession of a 'plate or similar contrivance for the purpose of making infringing copies of sound recording or audio - visual works and for violation of the public performance right.</td>
<td>Upto 2 years.</td>
</tr>
</tbody>
</table>

6 Web Law: Web creators should know these FAQ:

1. May I freely copy, print, and e-mail things I find on the Web?
2. May I scan any image I wish and post it on my web site?
3. May I use images from the web sites of others?
4. May I freely link to the web sites of others?
5. Someone has set up a link to my web sites without any permission — what can I do?

6. How may I keep people from taking things from my web sites?

7. Do MIDI and WAV files violate copyright laws?

8. Can other people copy my e-mail or news postings?

6.1 May I freely copy, print, and e-mail things I find on the Web?

The internet is the sort of place where it is extraordinarily easy to copy things, although it must not be forgotten that ease of copying did not start with the Internet. The cassette recorder made it easy to copy record albums. The photocopier made it easy to copy printed works. The videocassette recorder made it easy to copy movies. Floppy disks made it easy to copy computer software. In any of this media, the fact that some thing is physically easy to copy something does not mean that it is legal to copy it, or morally acceptable to copy it. Absence of a copyright notice does not mean that it is okay to copy something. Under US copyright law, for example, any original work fixed in a tangible medium is automatically protected by copyright regardless of whether any copyright formalities are done. Under the Berne Convention the absence of a copyright notice does not mean that a work is not protected by copyright. Clearly one way to solve the problem is the sample step obtaining the permission of the copyright owner. Yet another way is to confines one’s copying to items that are in the public domain, for example because they were created hundreds of years ago. Obtaining permission is a more difficult task that one might think. Suppose you see a web site that contains something you wish to copy, and suppose you obtain permission from the webmaster of that site to copy it. Does this means you may post it on your web site without fear of liability? The answer is no, unless it happens that the webmaster is in fact the owner of all rights in the work you wish to copy. Can you be sure the work was not copied (in an authorized manner) from some place else? If not, then permission from the webmaster does not put you in the clear. The legal system does, however, permit some kinds of copying if it is
done without the permission of the copyright owner. Under US law, for example, even if the copyright owner has not given permission, it is still okay to copy something so long as the copying falls within what is called “fair use”. Regrettably for those who are eager to copy things, it is not easy to say for sure what is or not fair use. Legal factors that are taken into account include: the portion of work being copied (copying a small portion is more likely to be fair use than copying a large portion; the effect of the copying on the market for the item being copied (if the copying activity makes people less likely to buy the item, then the copying is unlikely to be fair use; and the use to which the copied matter is put (quoting for use in literary criticism or for educational purpose is more likely to be fair use than some other uses). If you see something on the web and are tempted to copy it, why not just put in a link to it? For example, Internic has a policy according to which domain names are registered, and the evolve in this areas. Perhaps after some years of experience with the web, courts will decide some cases that will provide guidance as to what is not. No discussion of copyright and the web would be complete without at least a mention of the notion of “implied license”. For example, when I use my web browser to view a site, I am necessarily copying information from that site to the screen of my computer. Many web browsers have “cache” capabilities, in which case I am also necessarily copying the information into the cache as well. Most browsers have the capability to print what is on the screen, so if I print it I am automatically making a copy of it on paper. As years go on the courts will develop the notion of implied license in connection with the web, but it is clear that there is some sort of implied license that is automatically granted anyone who sets up a web site and makes it open to the public. The implied license surely includes those things we think of as “normal” web activity – viewing web pages, clicking on links, seeing the web text on the computer screen. What must not be forgotten, though, is that such an implied license is by no means a grant that permits members of the public to do whatever they may please with the material found on a web site. To draw analogies, the person who publishes a book is not granting to the public the right (via implied license) to photocopy the entry of the book and to sell the copies.
The musician who release a compact disk is not granting an implied license to set up a facility for copying the CD’s and selling the copies. Common sense suggests that if a webmaster has placed a copyright notice so that it is seen by visitors to be a web site, then the webmaster probably is trying to communicate to the public that the contents of the site are not to be freely copied in all ways. Of course, as mentioned above, the absence of a copyright notice does not mean a site is not protected by copyright. as well be appreciated from the above discussion it is impossible, of course, to answer the “may I copy this?” question in general. If you care about copying some particular item you should consult component counsel for advice.

6.2 May I scan any image I wish and post it on my web site?

The simple answer is “no”. While it is physically and technically easy to scan images out of books and magazines, and to place computer readable (GIF and JPG) copies in one’s web site, the fact that is physically and technically easy does not make it legal or moral. See the discussion above regarding copying works of others into one’s web site. The safest course of action is to obtain permission from the copying from the copyright owner before posting a scanned image into your web site? Suppose you take a photograph yourself can you freely scan it and put it on your web site? Even this sort of photograph can cause trouble. If it is a photograph of someone else, it is safest if you obtain a “model release” from the person releasing you from liability for use of the photograph. From the above discussion it should be clear that if you really care about this you should seek advice of component counsel.

6.3 May I use images from the web sites of others?

Before the web came along, the only way a publisher could make use of images from others was by physically copying the images into the work being published. The above discussions regarding the copying of the text or images
address such copying. But the web allows a new and quite interesting way of using the images of others, namely the “IMG” hypertext reference. It is physically and technically easy to include an IMG references in your web site, giving a URL (address) located on somebody else’s web site. The use of an IMG reference to somebody else’s web site is intriguing. Suppose your web site is on a machine in which you are charged “per megabyte” for it’s by visitors. Then when a visitor to your web site views one of your pages, and if the image on your page is an IMG reference pointing to somebody else’s web site, the visitor’s browser will obtain the image from the web site. It won’t run up your bill. Or suppose your web site is on a machine that has only a slow (narrow bandwidth) link to the Internet. Then if a visitor to your web site views a page of yours that contains an IMG reference to some other web site, the visitor’s retrieval of the image won’t slow down your link. It will slow down the link of that other web site instead. There are practical reasons why you might not wish to use IMG links to images on the web site of others. the image might be changed without your knowing it, leading to an unpredictable result for visitors to your web site. The image might be deleted from its web site, leaving a gaping hole in your web page.

6.4 May I freely link to the web sites of others?

URL copyrightable? Is “no”. But the world is filled with legal constraints on behaviour in addition to those that come from the copyright laws. Having discerned that the question “is a URL copyrightable?” is irrelevant, how can we arrive at an answer to the original question? an important step is to figure out what kind of link we are talking about. The previous section discusses a somewhat esoteric kind of link, the so called IMG link to someone’s website without getting permission first. But the fact is that if you were to study several hundreds web sites, you would find that the links from one web site to another are virtually all so-called HREF links, and that virtually none of them are IMG links. An HREF link is the kind we are all accustomed to. It is a region on the screen which, when selected by the visitor, causes the present screen to be erased and
causes a entirely new screen to be loaded. The words “previous section” in the
previous paragraph are an HREF link – they cause the screen to be loaded a new
with the text of the previous section. So now for clarity let us redefine the
question as “may I freely set up HREF links in my web site, to the web sites of
others?” as will be clear in a moment, the short answer to that question is “yes”.
(Except in the case of framing). In general, of course, it is desirable for one’s site
to be the subject of links from other sites. Most people who create web sites hope
that lots of people will visit, and links from other site promote this goal.

6.5 Someone has set up a link to my web site without my permission – what
can I do?

The first question would be, why do you care? Does the link cast you or
your site or your organization in a bad light? Does it lead to a situation where
someone else is taking credit for your work. For these or other reasons, as
discussed in the previous section, you may have a legitimatedgripe. Before you
spent money on lawyers, though, it is suggested that you try resolving the
problem by direct communication. Send an email or a paper letter explaining
what you want done. Then if you must, consider retaining counsel, preferably
counsel who are familiar with the internet as well as with intellectual property. If
the link is an IMG (image) reference, consider changing the URL of your image,
and put some nuisance image in the place of the original URL for the image. That
should discourage people from using your image without your permission. But
generally unless there is some special reason to the contrary, you should be
pleased if someone else up a regular (non-framed HREF) link to your web site.

There are a number of steps which the operator of a web site may take to
try to minimize the extent to which others take things from it. The simplest is
not to post on the web site. Another is to use the access controls built into the web
server to limit the range of IP addresses that are permitted to enter the site. Still
another is to set up password protection, so that only certain persons are permitted
access to your site.
6.6 How may I keep people from taking things from my Web site?

As well be appreciated, however, such suggestions would be of no help to most web site operators. Most web site operators want their web sites to be available and open to the world at large. Thus we can recommend some other steps that may dissuade others from taking things from you. These steps includes: filing copyright registrations, placing copyright notice and related notices on your web site, obtaining trademark registrations, placing trademark notices on your web site, and seeking patent protection for whatever there may be in your web site that is patentable.

6.7 Do MIDI and WAV files violate the copyright laws?

MIDI and WAV files are files which, when played back through appropriate software and hardware, reproduce sounds, music, or voices. It is more and more common place for the designer of a web page to include not only image (IMG) files to provide images, but also to include MIDI or WAV files to provide audio accompaniment for the page. A WAV file can reproduce any audio information (e.g. Homer Simpson saying “Doh”, or the entirety of a popular song as heard on the radio), while MIDI files only reproduce that which can be played on a keyboard. This discussion focuses on the law in the United States, and while many other countries have similar laws, there are differences from country to country & can other people copy my e-mail or news postings? Any original work which you fix in a tangible medium is protected by copyright. The copyright laws of most countries reserve to the copyright owner the exclusive right to make copies of such a work or to distribute it. Upon hearing this, the reader might wonder how usenet news groups (which involve copying one’s writings to thousands of news servers around the world) could possibly be legal. The answer is that when one posts to a usenet group, one is giving permission to those who operate news servers to propagate the posting in the way that news server propagate postings. Similarly if one sends emails to an email discussion group,
one is giving permission to the computer that remails the items to reemail the items. And of course one who posts material on a web site is impliedly giving visitors permission to view the site on their web browsers. It would be a mistake, however, for someone to think that because it is easy to copy things from the internet, it is always legal to do so. Similarly it would be a mistake to assume that because a person who posted news or opened a web site granted permission to the public to do certain things that the permission extends to all kinds of copying. The writer has heard of CD-ROMs being offered for sales that contain the entirety of the news postings in particular usenet groups, and it is difficult to see how this could be legal in the absence of permission from those who published the articles.