CHAPTER – 5

A COMPARATIVE ANALYSIS WITH FOREIGN LAWS

The onset of technological developments has been more witnessed in America & European countries as compared to the developing countries including India. Therefore the impact and effect of such developments have posed issues before the copyright jurisprudence in these nations which with their long experience of interface between the use of technological devices vis-a-vis the copyrighted works is richer than that of the developing nations, courtiers like U.S.A. & U.K. have witnessed large out of the application of digital Technology. That's why the development of copyright Jurisprudence regulating the impact of digital technology on the copyrighted works has been early & holistic.

Many legislations have been introduced in these countries which pacifically are meant for regulating the creation, reproduction and transmission of the creative works in the digital environment.

A brief study of various such legislations in these countries is as follows:-
Copyright law of the United Kingdom

5.1 Copyright, Designs and Patents Act 1988

The modern concept of copyright originated in the United Kingdom, in the year 1710, with the Statute of Anne.

The current copyright law of the United Kingdom is to be found in the Copyright, Designs and Patents Act 1988 (the 1988 Act), as amended. This came into force on 1 August 1989, for the most part, save for some minor provisions that were brought into force in 1990 and 1991.

Various amendments have been made to the original statute, mostly originating from European Union directives.

Works eligible for protection:

The types of work eligible for copyright protection include a literary, dramatic, artistic or musical work, the typographical arrangement of a published edition, a sound recording, a film, or a broadcast.

Cinema films made before 1 June 1957, the date on which the Copyright Act 1956 came into force, are not protected as film. They are either protected as a dramatic work under the Copyright Act 1911 (the 1911 Act) or as a series of photographs.
Wireless broadcasts prior to 1 June 1957 are not protected at all. The 1911 Act made no provision for them, as broadcasting had not as yet been invented when the Act was passed. Broadcasts by cable prior to 1 January 1985 are not protected at all either. Both the Acts of 1911 and 1956 made no provision for broadcasts by cable, as they had not been defined and protected as either "works" or "broadcasts" of either Acts.

Qualification for protection:

A work qualifies for copyright protection, if made after 1st June 1957 (the date on which the Copyright Act 1956 came into force), if its author is:

1. a British citizen, a British dependent territories citizen, a British National (Overseas), a British subject, or a British protected person, or
2. an individual resident or domiciled in the United Kingdom, or in another country to which the qualification clause extends, or
3. a body incorporated under the law of a part of the United Kingdom, or another country to which the qualification clause extends.
Alternatively, a work can qualify for copyright protection if its first publication took place:

1. in the United Kingdom, or
2. in another country to which the qualification clause extends.

However, a work made before 1 June 1957 can only qualify for copyright protection by its country of first publication; not by the author's nationality.

A broadcast, if made after 1 June 1957, qualifies for protection if:

1. it is made from the United Kingdom, or
2. it is made from another country to which the qualification clause extends.

Lists of the countries which trigger qualification are published in Statutory Instruments periodically. They are, in point of fact, those countries which have acceded to the Berne Copyright Convention.

First publication

First publication is defined as the first occasion that a work is published anywhere. But if a work is simultaneously published in several
countries, all within a 30 day period, each of those countries is treated as the country of first publication.

Copyright term:

Printed works

Under the 1995 Regulations, the period of author's copyright was further extended, to the lifetime of the author and 70 years thereafter. Those regulations were retrospective: they extended the copyright period for all works which were then still in copyright, and (controversially) revived the lapsed copyright of all authors who had died in the previous 70 years, i.e. since 1925.

Copyright in literary, dramatic, musical and artistic works currently expires 70 years from the end of the calendar year of the author's death. Where the work has more than one author, the copyright expires 70 years after the death of the last survivor of them.

The publisher's (separate) copyright, in the typographical arrangement of a printed work, lasts for 25 years from the end of the year in which publication occurred. This protects a publisher's copyright in all printed works: including books, magazines, newspapers, and other periodicals.
Other works:

Other works (such as sculpture, architecture, etc) will typically vary in copyright term, depending whether the author of the work is anonymous. If the author is unknown, the copyright period ends 70 years after the making of the work; or, if during that period the work is communicated to the public, 70 years after that date. If the author of the work is identifiable, copyright in the work expires 70 years after the death of the author.

In the case of a motion picture, the period of copyright is determined by the life of the principal director, the author of the screenplay, the author of the dialogue, and the composer of any original music for the film. If that person is not a national of a European Economic Area (EEA) country, and the country of origin is not in the EEA (for example, the United States of America), the period of copyright is that provided by the film's country of origin, if that period is less than the normal period under UK law. If a film does not have any of the four persons mentioned above, the duration of its copyright is 50 years.

Computer generated artistic works have a copyright protection of 50 years from creation of the work. As with other such copyrights, if the
author is not an EEA national, and the country of origin is not an EEA state, then the duration of the country of origin applies, provided it does not exceed the normal period under UK law.

Broadcasts and sound recordings each have a different period of copyright: as detailed in the sections below.

**International copyright:**

Notwithstanding that a work qualifies for copyright protection in the UK, it will not be automatically entitled to the normal period of copyright (as set out above). It may be entitled to only a shorter period of protection.

Where the author is not British (by nationality or domicile), and the work was first published outside the United Kingdom (and not published in the UK within 30 days thereafter), the period of copyright protection provided by UK law is limited to that provided by the laws of the "country of origin" of the work.

The country of origin, in the case of a broadcast, is the country the transmission originates from; and in the case of other works is the country in which the work was first published.
If a work is first published in only one country, which is a party to the Berne Convention, then that is the country of origin.

If a work is published simultaneously (i.e. in more than one country, but all within 30 days), and one of the countries is a European Economic Area (EEA) country, then the EEA country is the country of origin (even if another is a Berne Convention country); but if none of them is an EEA country, and one of them is a Berne Convention country, then the Berne Convention country is the country of origin.

If two or more Berne Convention countries qualify, and not all of them are in the EEA (such as Canada, the USA, or Australia), then the Berne Convention country with the shortest applicable copyright term determines the copyright term within the UK, if it is shorter than the normal term for such a work under UK law.

**Extension of copyright term:**

Prior to 1 January 1996, the UK's general copyright term was the life of the author plus 50 years. The extension, to the life of the author plus 70 years, was introduced by The Duration of Copyright and Rights in Performances Regulations 1995 (SI 1995/3297), implementing Council
Directive No.93/98/EEC, to harmonize the duration of copyright throughout the European Economic Community.

It contained a controversial provision, which caused certain copyrights to revive; material which had been out of copyright came back into copyright. If the 1988 Act offered a shorter term of protection than the new Regulations, and if the work was still under copyright on 1 July 1995 anywhere in the EEA, then the copyright of that work was revived. But if the 1988 Act offered a longer term than the new regulations, then the old longer term still applied.

The normal practice of British law would have been to freeze the extension, applying it only to new works, rather than reviving extinct copyrights.

**Broadcast copyright:**

In the case of a broadcast made after the commencement of the 1956 Act, the copyright in a broadcast programme expires 50 years from the end of the year in which it is broadcast: section 14(2), Copyright Act 1956. Repeating such a broadcast does not extend the period of
copyright, whether the repeat is during or after the 50 year copyright period: section 14(3), Copyright Act 1956.

The 1956 Act restricts only two matters: it prohibits recording the broadcast for commercial purposes, and it prohibits causing the broadcast (if it is a television broadcast) to be seen in public by a paying audience: section 14(4), Copyright Act 1956.

These provisions were re-enacted in substantially the same terms in the Copyright Designs and Patents Act 1988, in order to preserve the distinction (established in the 1956 Act) between broadcasts made before and after 1 June 1957.

The 1988 Act applies only to broadcasts made after it came into force on 1 August 1989: section 170 and Schedule 1 paragraph 5(1), Copyright Designs and Patents Act 1988. But it effects merely a continuation, in the main, of the pre-existing law on broadcast copyright established in the 1956 Act, while adding protection for the new technology of cable television.

**Sound recordings:**

Under the 1988 Act, copyright in a sound recording expires either (a) 50 years after the recording is made, or (b) if the recording is published during that
period then 50 years from the publication, or (c) if during the initial 50 years the recording is played in public or communicated to the public then 50 years from that communication or playing to the public, provided the author of the broadcast is an EEA citizen. Otherwise, the duration under the laws of the country of which the author is a national applies, unless such a duration would be longer than offered in UK law, or would be contrary to treaty obligations of the UK in force on 29 October 1993.

Posthumous works:

If an unpublished work was published before the 1988 Act came into force, and the author had been dead for more than 50 years, the work remained in copyright for 50 years from the end of the year of publication.

If an unpublished work is published after the 1988 Act came into force, and the author had been dead for more than 50 years, its copyright will expire at the end of 2039. Later amendments have altered this to include only authors who died more than 70 years before the Act came into force.

Publication right:

If copyright in an unpublished work has expired, the first publisher of that work gets copyright protection, but for only a short period. Works
that qualify for publication right include literary, dramatic, musical or artistic works, or a film.

A publication right only exists if the publisher of the work is an EEA national and the work is first published in an EEA country. However, no publication right can be applied to works in which Parliamentary or Crown copyright existed previously.

Publication right lasts for 25 years from first publication.

**Authors and ownership of copyright:**

Under the 1988 Act, the first owner of a copyright is assumed to be the author of the work. If a work is made by an author in the course of employment then the author's employer is the first owner of copyright.

Unlike American copyright law, the duration of the copyright term does not (after the commencement of the 1956 Act) vary depending on who owns the copyright.

The author of a work is:

- The creator of a literary, musical, dramatic or artistic work.
- The publisher of a published edition of a work.
- The producer of a sound recording.
- The producer and principal director of a film.
- The maker of a broadcast.
- If a work is computer generated, the person who made the arrangements necessary for the creation of the work.

If more than one person qualifies as an author then a work is one of joint authorship. In that case the permission of all copyright holders is required for acts that would otherwise be an infringement of copyright. It is quite possible for more than one copyright to subsist within a work. For example, if a CD of songs is produced then the following copyrights at the very least must be taken into account:

- Copyright of the sound recording.
- Copyright of the sheet music being played on the sound recording.
- Copyright of any lyrics.
- Copyright of any cover artwork.
- Copyright of the text of the insert.
- Copyright of the typographical arrangement of the insert.

However, it should be noted that photographs, portraits and engravings which were commissioned and paid for prior to the 1988 Act coming
into force have different rules governing the first ownership of copyright. In general, the copyright owners of such works is the person who commissioned and paid for them.

Under UK copyright law, an author may assign his copyright rights to another person. It is standard practice for such assignments to be made in book publishing contracts, for example. Under the 1911 Act, such assignments revert to the author's estate 25 years after the death of the author; but that only applies to works made before 1 June 1957.

**Moral rights:**

Moral rights were introduced into UK law by the 1988 Act. They come from the alien civil law system, not from the common law tradition. The 1988 Act introduced moral rights for authors of literary, dramatic, musical and artistic works and the directors of films. The moral rights include the right to be identified as the author or director of a work as appropriate, the right to object to the derogatory treatment of a work and the right to object to false attribution of a work. The rights to object to derogatory treatment and not to be falsely attributed as author operate automatically. However, the right to be identified as the author or director of a work must be asserted. Works of joint authorship have
separate moral rights for each author. Each author or director must separately assert the right to be identified as the author or director of a work.

Unlike copyright, moral rights may not be assigned to another. However they can be waived. The right to object to false attribution of a work expires 20 years after a person's death. The rights to be identified as director or author, and to object to derogatory treatment, subsist for as long as the copyright term of the work.

**Privacy right:**

A person who commissions the making of photographs or films for private and domestic use has a right to privacy. That means that such photographs may not be issued to the public, shown in public, or communicated to the public without the permission of the person who commissioned the photograph or film. Photographs jointly commissioned entitle all the commissioners to a privacy right. The right to privacy subsists for as long as the copyright term of the work.
Performance right:

Performers' and recording rights subsist for 50 years after a performance takes place, or, if a recording of the performance is released during that period for 50 years from that release. Subject to obligations that the United Kingdom was under on 29 October 1993, the duration of performance rights of non-EEA nationals is that of their home country, provided that such a duration does not exceed the duration in UK law.

Database right

Database right was created in 1996. Prior to that, under the 1988 Act, a computer database was treated as a literary work. In databases created before 27 March 1996 the copyright rules are the same as for any other literary work, and copyright lasts for the normal term of such a work. The effect of this is that copyright exists in the database if, and only if, the database’s creation is the original work of the author.

Artists resale right:

In the case of artistic works, on 14 February 2006 a new intellectual property right known as artist's resale right was created in the United Kingdom, by regulations made under the European Communities Act
1972. The right subsists for as long as copyright in an artistic work subsists and means that when a qualifying sale is made that the artist who created the work being sold is entitled to a royalty on the sale. The right is not assignable and it cannot be waived. The right can be transferred only intestate or via a will and becomes bona vacantia if no heirs exist.

**Fair dealing and other exceptions:**

UK copyright law has a set of exceptions to copyright known as fair dealing. Database right has a similar set of exceptions. Fair dealing is much more restricted than the American concept of fair use. It only applies in tightly defined situations, and outside those situations it is no defence at all against a lawsuit for copyright (or database right) infringement.

Sec.29.—(1) Fair dealing with a literary, dramatic, musical, etc, work, for the purpose of research for a non-commercial purpose, does not infringe any copyright in the work, provided it is accompanied by a sufficient acknowledgement of the source.

Sec.30.—(1) Fair dealing with a work for the purpose of criticism or review, of that or another work, or of a performance of a work, does not
infringe copyright in the work, provided it is accompanied by a sufficient acknowledgement, and provided the work has actually been made available to the public.

Copyright fair dealing with a literary, dramatic, musical or artistic work is most often encountered in the context of research or private study. Under the 1988 Act, it was originally the case that any research use was fair dealing. However, in 2003, the 1988 Act was amended to exclude commercial use from the definition of fair dealing. Fair dealing for research should be accompanied by acknowledgement if this is possible. Fair dealing with the typographical arrangement of a work for the use in research or private study is also explicitly allowed.

Database right fair dealing applies for the use of databases which have been made available to the public. If a person is a lawful user of a database, fair dealing is allowed for the extraction of substantial parts of a database, if the substantial part is extracted for teaching or research, not for commercial use, and provided the source of the material is acknowledged.

Copyright in a database is not infringed if a person with the legal right to use part or all of a database does things necessary to use or access the
contents of the database. Such permitted acts, which would otherwise infringe copyright, are allowed in spite of any licence agreement that purports to restrict such acts. Any terms of that type are null and void under UK law. Fair dealing for the purposes of private study or non-commercial research also does not infringe copyright in a database.

With computer programs, fair dealing is explicitly excluded for decompilation or copying during decompilation. However, decompilation is allowed if it is to gain information vital to creating an independent program to interact with the decompiled program, provided that the information obtained by decompilation is not used for any other purpose. The observation of programs to determine their functions and the ideas underlying them is explicitly allowed while performing the normal functions of a program, such as loading and running it. As with database use, any terms which purport to restrict this sort of activity are null and void. Backup copies of computer programs are allowed if these are necessary for the lawful use of a computer program, and again restrictive licence terms are null and void.

For a long time, the legal position of services such as Internet caches was dubious under British law, with such copies technically being
infringing. However, an amendment explicitly allows temporary copies of literary works, other than computer programs and databases; dramatic works; artistic works; musical works; typographical arrangements; films or sound recordings; provided that such temporary copies are necessary for a technical process, are transient or incidental, and only exist for the purpose of transmitting a work across a network between third parties, or only exist for a lawful use of the work. That amendment eliminates the awkward position of the caching services of Internet service providers. It is in a similar vein to an exception for the incidental inclusion of a copyright work in an artistic work, sound recording or film. However, deliberate inclusion of a copyright work negates the exception.

Beyond non-commercial research, private study, and incidental copying, another common exception to copyright is for criticism, review, or news reporting. Fair dealing for the purposes of criticism or review only applies with a sufficient acknowledgement, and provided the work being criticized or reviewed has been made available to the public. For news reporting fair dealing does not extend to photographs, and an acknowledgement is only required where reasons of practicality do not rule this out.
Visually impaired and blind people were granted an exception with the passing of the Copyright (Visually Impaired Persons) Act 2002. Where a lawful copy of a literary, dramatic, musical or artistic work, or a published edition is possessed by a visually impaired person, and the lawful copy of the work is not accessible to the visually impaired person, copies of the work can be made such that the copies are accessible to the visually impaired person. However, the making of an accessible copy of a database is not allowed if copyright in a database will be infringed, and musical works cannot be performed to make them accessible. The accessible copy must be accompanied by an acknowledgement and must carry a statement that it was made under the authority of the Copyright (Visually Impaired Persons) Act 2002’s amendments to the 1988 Act. Furthermore, if accessible copies are available commercially in a form suitable for the person who the accessible copy would be made for, then the exception does not apply.

The final major exception, that the general population commonly runs into, is that of recording broadcasts for time shifting. This was brought about by the rise of the video recorder in the early 1980s. The exception only applies to copies made for private and domestic use, not to copies made for re-sale.
Educational establishments, libraries and archives have many exceptions that are applicable only to them, which enable them to do their work. However, most people do not have to worry about these exceptions in everyday life.

**Criticisms and proposed changes:**

A 2006 survey carried out for the National Consumer Council indicated that over half of British adults infringe copyright law by copying music CDs, with 59% stating a belief that copying for personal use is legal. In 2006 The Institute for Public Policy Research called for a "public right to copy". In December 2006 Gowers Review of Intellectual Property was published, and the government began a public consultation period on proposals to legalize personal copying. In January 2008 the government proposed changes to copyright law that would legalize format shifting for personal use under some limited circumstances. Similarly to the Gowers Review, in May 2011 was published the Hargreaves Review of Intellectual Property and Growth.

**5.2 Copyright Law of USA**

The major part of American federal copyright law is contained in the copyright act 1976 and few other special legislations have also been
enacted by the US Government in order to take care of the technological developments. This chapter shall first focus on the copyright act 1976 and there after shall examine the special copyright legislations such as the Digital Millennium Copyright Act 1958, No Electronic Theft Act 1957 and Computer Software protection act 1980 etc. A brief description of these acts is as follows-

**5.2.1 Copyright Act 1976**

The main features of the 1976 Act can be summarized as detailed below:

**Subject matter of Copyright**

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

(1) Literary works;

(2) Musical works, including any accompanying words;

(3) Dramatic works, including and accompanying music;

(4) Pantomimes and choreographic works;
(5) Pictorial, graphic and sculptural works;
(6) Motion pictures and other audiovisual works;
(7) Sound recordings; and
(8) Architectural works;

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

**General Works**

**Government works**

Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.

**Exclusive Rights**

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(1) To reproduce the copyrighted work in copies or phonorecords;

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(2) To prepare derivative works based upon the copyrighted work;

(3) To distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) In the case of literary, musical dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

(5) In the case of literary, musical dramatic, and choreographic works, pantomimes, and pictorial, graphic or sculptural works, including the individual images of a motion picture or other audiovisual works, to display the copyrighted work publicly; and

(6) In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

Rights of Attribution and Integrity

(a) Rights of attribution and integrity. Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art.
(1) Shall have the right—

(A) To claim authorship of that work, and

(B) To prevent the use of his or her name as the author of any work of visual art which he or she did not create;

(2) Shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and

(3) Subject to the limitations set forth in section ii3(d), shall have the right—

(A) To prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

(B) To prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

(b) Scope and exercise of rights. Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint
work of visual art are co-owners of the rights conferred by subsection (a) in that work.

(c) Exceptions (i) The modification of a work of visual art which is the result of the passage of time or the inherent nature of the materials is not a distortion, mutilation, or other modification described in subsection (a)(3)(A).

(2) The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.

(3) The rights described in paragraphs (i) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of "work of visual art" in section 101, and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).
(d) Duration of rights. (i) With respect to works of visual art created on or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, the rights conferred by subsection (a) shall endure for a term consisting of the life of the author.

(2) With respect to works of visual art created before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, but title to which has not, as of such effective date, been transferred from the author, the rights conferred by subsection (a) shall be coextensive with, and shall expire at the same time as, the rights conferred by section 106.

(3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a) shall endure for a term consisting of the life of the last surviving author,

(4) All terms of the rights conferred by subsection (a) run to the end of the calendar year in which they would otherwise expire.

(e) Transfer and waiver.—(i) The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify
the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.

(2) Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy of that work, or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by the author, a waiver of the rights conferred by subsection (a) with respect to a work of visual art shall not constitute a transfer of ownership of any copy of that work, or of ownership of a copyright or of any exclusive right under a copyright in that work.

**Limitations on Exclusive Rights: Fair use**

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies
or phonorecords or by any other means specified by that section, for
purposes such as criticism, comment, news reporting, teaching
(including multiple copies for classroom use), scholarship, or research,
is not an infringement of copyright.

**Reproduction by Libraries**

(a) Except as otherwise provided in this title and notwithstanding the provi-
sions of section 106, it is not an infringement of copyright for a library or
archives, or any of its employees acting within the scope of their
employment, to reproduce no more than one copy or phonorecord of a work,
except as provided in subsections (b) and (c), or to distribute such copy or
phonorecord, under the conditions specified by this section, If.

**Effect of Transfer of Particular Copy or Phone Record**

(a) Notwithstanding the provisions of section 106(3), the owner of a
particular copy or phonorecord lawfully made under this title, or any
person authorized by such owner, is entitled, without the authority of the
copyright owners, to sell or otherwise dispose of the possession of that
copy or phonorecord. Notwith.

**Exemption of Certain Performances**

Notwithstanding the provisions of section 106, the following are
not infringements of copyright:
Performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made.

Performance of a no dramatic literary or musical work or of a dramatic musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly.

Performance of a no dramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if.

**Secondary Transmissions**

Certain secondary transmissions exempted. The secondary transmission of a performance or display of a work embodied in a primary transmission is not an infringement of copyright if.
Ephemeral Recordings

Notwithstanding the provisions of section 106, and except in the case of a motion picture or other audiovisual work, it is not an infringement of copyright for a transmitting organization entitled to transmit to the public a performance or display of a work, under a license, including a statutory license under section 114(f), or transfer of the copyright or under the limitations on exclusive rights in sound recordings specified by section 114(a) or for a transmitting organization that is a broadcast radio or television station licensed as such by the Federal Communications Commission and that makes a broadcast transmission of a performance of a sound recording in a digital format on a no subscription basis, to make no more than one copy or phonorecord of a particular transmission program embodying the performance or display, if.

(A) The copy or phonorecord is retained and used solely by the transmitting organization that made it, and no further copies or phonorecords are reproduced from it; and
(B) The copy or phonorecord is used solely for the transmitting organization's own transmissions within its local service area, or for purposes of archival preservation or security; and

(C) Unless preserved exclusively for archival purposes, the copy or phonorecord is destroyed within six months from the date the transmission program was first transmitted to the public.

Scope of Rights in Pictorial, Graphic, Sculptural works

(a) Subject to the provisions of subsections (b) and (c) of this section, the exclusive right to reproduce a copyrighted pictorial, graphic, or sculptural work in copies under section KM includes the right to reproduce the work in or on any kind of article, whether useful or otherwise.

(b) This title does not afford, to the owner of copyright in a work that portrays a useful article as such, any greater or lesser rights with respect to the making, distribution, or display of the useful article so portrayed than those afforded to such works under the law, whether title 17 or the common law or statutes of a State, in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.
(c) In the case of a work lawfully reproduced in useful articles that have been offered for sale or other distribution to the public, copyright does not include any right to prevent the making, distribution, or display of pictures or photographs of such articles in connection with advertisements or commentaries related to the distribution or display of such articles, or in connection with news reports.

Scope of Rights in Sound Recordings

The exclusive rights of the owner of copyright in a sound recording are limited to the rights specified by clauses (1), (2), (3) and (6) of section 106, and do not include any right of performance under section 106(4).

Scope of Rights in Non Dramatic Musical Works:

In the case of non dramatic musical works, the exclusive rights provided by clauses (1) and (3) of section 106, to make and to distribute phonorecords of such works, are subject to compulsory licensing under the conditions specified by this section.

Limitations on Exclusive Rights: Computer programs

(a) Making of additional copy or adaptation by owner of copy.

Notwithstanding the provisions of section 106, it is not an
infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

(1) That such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or

(2) That such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

(b) Lease, sale, or other transfer of additional copy or adaptation. Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred, along with the copy from which such copies were prepared, only as part of the lease, sale, or other transfer of all rights in the program. Adaptations so prepared may be transferred only with the authorization of the copyright owner.

(c) Machine maintenance or repair. Notwithstanding the provisions of section 106, it is not an infringement for the owner or lessee of a machine to make or authorize the making of a copy
of a computer program if such copy is made solely by virtue of the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes only of maintenance or repair of that machine, if.

Use of Certain Works in Connection with Non Commercial Broadcasting

(a) The exclusive rights provided by section 106 shall, with respect to the works specified by subsection (b) and the activities specified by subsection (d), be subject to the conditions and limitations prescribed by this section.

(b) Notwithstanding any provision of the antitrust laws, any owners of copyright in published no dramatic musical works and published pictorial, graphic, and sculptural works and any public broadcasting entities, respectively, may negotiate and agree upon the terms and rates of royalty payments and the proportionate division of fees paid among various copyright owners, and may designate common agents to negotiate, agree to, pay, or receive payments.
Secondary transmissions for private home viewing.

(a) Pictorial representations permitted. The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.

(b) Alterations to and destruction of buildings. Notwithstanding the provisions of section 106(2), the owners of a building embodying an architectural work may, without the consent of the author or copyright owner of the architectural work, make or authorize the making of alterations to such building, and destroy or authorize the destruction of such building.

Reproduction for blind and other people with disabilities

(a) Initial ownership. Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are owners of copyright in the work.

(b) Works made for hire. In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the
parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

(c) Contributions to collective works. Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.

Transfer of ownership.

(1) The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

(2) Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by section 106, may be transferred as provided by clause (i) and owned separately. The owner of any particular exclusive right is entitled,
to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this title.

(e) Involuntary Transfer. When an individual author's ownership of a copyright, or of any of the exclusive rights under a copyright, has not previously been transferred voluntarily by that individual author, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive rights under a copyright, shall be given effect under this title, except as provided under title.

Duration of copyright:

Works created on or after January 1, 1978

(a) In general. Copyright in a work created on or after January 1, 1978 subsists from its creation and, except as provided by the following subsections, endures for a term consisting of the life of the author and 70 years after the author's death.

(b) Joint works. In the case of a joint work prepared by two or more authors who did not work for hire, the copyright endures for a term consisting of the life of the last surviving author and 70 years after such last surviving author's death.
Duration of copyright: Works created but not published or copyrighted before January 1, 1978

(a) Copyright in a work created before January 1, 1978 but not there to fore in the public domain or copyrighted, subsists from January 1, 1978 and endures for the term provided by section 302. In no case, however, shall the term of copyright in such a work expire before December 31, 2002; and, if the work is published on or before December 31, 2002, the term of copyright shall not expire before December 31, 2047.

(b) The distribution before January 1, 1978, of a phonorecord shall not for any purpose constitute a publication of the musical work embodied therein.

Duration of copyright: Subsisting copyrights.

(a) Copyrights in their first term on January 1, 1978.

(1) (A) Any copyright, in the first term of which is subsisting on January 1, 1978, shall endure for 28 years from the date it was originally secured.

Duration of copyright: Terminal date

All terms of copyright provided by sections 302 through 304 run to the end of the calendar year in which they would otherwise expire.
Copyright Registration- In General

(a) Registration permissive. At any time during the subsistence of the first term of copyright in any published or unpublished work in which the copyright was secured on or after that date, the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim by delivering to the copyright office the deposit specified by this section, together with the application and fee specified by sections 409 and 708. Such registration is not a condition of copyright protection.

Infringement of copyright

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 122 or of the author as provided in section 106 A(a), or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright or right of the author, as the case may be.

(b) The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of section 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it.
Remedies for Infringement:

Injunction

(a) Any court having jurisdiction of a civil action arising under this title may, subject to the provisions of section 1498 of title 28, grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.

(b) Any such injunction may be served anywhere in the United States on the person enjoined; it shall be operative throughout the United States and shall be enforceable, by proceedings in contempt or otherwise, by any United States court having jurisdiction of that person. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all the papers in the case on file in such clerk’s office.

Impounding and disposition of infringing articles

(a) (1) At any time while an action under this title is pending, the court may order the impounding, on such terms as it may deem reasonable.
**Damages and profits**

(a) In general. Except as otherwise provided by this title, an infringer of copyright is liable for either.

(1) The copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or

(2) Statutory damages, as provided by subsection (c).

**Costs and attorney's fees**

In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs.

**Criminal Offenses**

(a) **CRIMINAL INFRINGEMENT**

(1) IN GENERAL- Any person who willfully infringes a copyright shall be punished as provided under section 2319 of title 18, if the infringement was committed-

(A) for purposes of commercial advantage or private financial gain;
(B) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than $1,000; or

(C) By the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution.

**Limitations on actions**

(a) CRIMINAL PROCEEDINGS.- Except as expressly provided otherwise in this title, no criminal proceeding shall be maintained under the provisions of this title unless it is commenced within 5 years after the cause of action arose.

(b) CIVIL ACTIONS.- No civil actions shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.

**Limitations on liability relating to material online**

(a) TRANSITORY DIGITAL NETWORK COMMUNICATIONS.- A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for
infringement of copyright by reason of the provider's transmitting, routing, or providing connections for, material through a system or a network controlled or operated by or for the service provider, or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections, if-

(b) SYSTEM CACHING –

(1) LIMITATION ON LIABILITY – A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the intermediate and temporary storage of material on a system or network controlled or operated by or for the service provider in a case in which-

Manufacture, importance, and public distribution of certain copies

(a) Prior to July 1, 1986 and except as provided by subsection (b), the importation into or public distribution in the United States of copies of a work consisting predominantly of nondramatic literary material that is in the English language and is protected under the title is prohibited unless the portions consisting of such material have been manufactured in the United States or Canada.
Copyright Office:

General responsibilities and organization

(a) All administration functions and duties under this title, except as otherwise specified, are the responsibility of the register of Copyrights as director of the Copyright Office of the library of Congress. The Register of Copyrights, together with the subordinate officers and employees of the Copyright Office, shall be appointed by the Librarian of Congress, and shall act under the Librarian’s general direction and supervision.

Copyright Royalty Judges; appointed and functions

(a) APPOINTMENT- The librarian of Congress shall appoint 3 full-time Copyright Royalty Judges, and shall appoint 1 of the 3 as the Chief Copyright Royalty Judge. The Librarian shall make appointments to such positions after consultation with the Register of Copyrights.

(b) FUNCTIONS- Subject to the provisions of this chapter, the functions of the Copyright Royalty Judges shall be as follows:

(1) To make determination and adjustments of reasonable terms and rates of royalty payments as provided in sections 112(e), 114, 115, 116, 118, 118, and 1004. The rates applicable under sections
114(f)(1)(B), 115, and 116 shall be calculated to achieve the following objectives:

(2) To make determinations concerning the adjustment of the copyright royalty rates under the sections 111 solely in accordance with the following provisions:

**S. 901-Definitions**

(a) As under in this chapter-

(1) a "semiconductor chip product" is the final or intermediate form of any product-

(A) having two or more layers of metallic, insulating, or semiconductor material, deposited or otherwise placed on, or etched away or otherwise removed from, a piece of semiconductor material in accordance with a predetermined pattern; and

(B) intended to perform electronic circuitry functions;

(2) a "mask work" is a series of related images, however fixed or encoded-

(A) having or representing the predetermined, three dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and
(B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product;

**S. 902- Subject matter of protection**

(a)(1) Subject to the provisions of subsection (b), a mask work fixed in a semiconductor chip product, by or under the authority of the owner of the mask work, is eligible for protection under this chapter if-

**S.904- Duration of protection**

(a) The protection provided for a mask work under this chapter shall commence on the date on which the mask work is registered under the section 908, if the date on which the mask work is first commercially exploited anywhere in the world, whenever occurs first.

(b) Subject to subsection (c) and the provisions of this chapter, the protection provided under this chapter to a mask work shall end ten years after the date on which such protection commences under subsection(a).

(c) All terms of protection provided in this section shall run to the end of the calendar year in which they would otherwise expire.
The Modern American Laws-

The development of the digital technology had started posing challenges to the copyright act of 1976, and the norms provided therein to protect the copyright were found inadequate to deal with the changes brought about by this technology.

5.2.3 Computer Software Protection Act 1980- The National Commission on New Technological uses of copyrighted works (CONTU), was appointed by the US congress in 1974 to examine the impact of the information technology and advise the congress as to the step to be taken to deal with the new technology. The commission in its report in 1978 recommended to assimilate the new technology into the existing copyright regime, i.e., to put the new wine into the old bottle. The commission recommended treating computer programmes as a form of literary work, assimilating databases to compilations under existing copyright principles, and abjuring special treatment of computer generated works because no insurmountable problems had become apparent or were foreseeable.405

The recommendations by the commission formed the basis for The Computer Software Protection Act, passed by the US congress in 1980.

405 Copyright and digital regime, paper presented by Mr. Ghayur Alam at a seminar held at Law Faculty, Delhi University, on 16-17 Feb. 2001.
5.2.4 No Electronic Theft Act 1997

The advent of the MP3 technology made it possible to compress vast amount of data into small files by using compression algorithms. This made it possible to store music in these files, which could be transmitted across the Internet like an e-mail.

The unauthorised exchange of music over the Internet created Problems for the owners of Copyright in musical work. Taking cognisance of it the government enacted the No Electronic Theft Act in 1997, which provided a criminal penalty for copyright infringement by electronic means, in case a person intentionally infringes a copyright for commercial advantage or financial gain. The term 'financial gain', here include other copyrighted works and not money necessarily, as per section 101 of the copyright law, which means that the infringers are subject to criminal liability even if they did not receive any money for the unauthorised copies of the software.

5.2.5 Digital Millennium Copyright Act 1998 (DMCA)

The digital Millennium Copyright Act was enacted on October 28, 1998 by the American government in order to extend the copyright protection to the digital medium and to implement the WIPO Copyright and performances and phonograms treaty 1996.

406 7 U.S.C. 506 (a) (1), as amended by the NET Act, 1997
The DMCA prohibits the manufacture of technology which is used to circumvent the technological measures adopted by the copyright owners to control the access to their works, protected under the Act, on the Internet. The Act rather permits the manufacture of technological measures to detect and stop the infringement of copyright online.

Title II of the DMCA, called the Online Copyright Infringement Liability Limitation ACT, (OCILLA) limits the liability of the service providers for the infringement of copyright resulting from their activities. The DCILLA limits the liability of such provides by creating five safe harbors or for the following activities by the ISPs (i) The digital network communication, (ii) System crehing, (iii) Information location tools, (iv) For storage of information, and (v) for removal of copyrighted material.

With the coming into force of the Digital Millennium Copyright Act 1988, it is not just that the Computer Software Protections Act 1980 stands amended but also the recommendation, to the US congress by National commission on New Technological uses of Copyright Works (CONTU), to assimilate the new technology into the existing copyright

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407 The Term service provider includes providers of online service or the Internet service providers, who provider connection, Transmission, routing to computer network service without altering the content of transmission.

408 17 U.S.C., Section 512
regime, has been rejected. The DMCA has shown that a new structure is necessary to solve the problems posed by the digital technology before the copyright law, and that the new wine can not fit into in the old bottle.

**Liability of service providers**

The issue of liability for the infringers of copyright on the digital medium, for the first time in any country, seems to be taken care of by the Digital Millennium Copyright Act (DMCA), 1998, in America, which was enacted to implement the WIPO Copyright and performers and phonograms traty, 1996.

The Online Copyright Infringement Liability Limitations Act (OCILLA) a part of DMCA, creates some 'safe harbours' for transmission, storage etc of infringing material to limit the liability\(^{409}\) of an OSP\(^{410}\) for such a conduct which results in violation of copyright.

Two definitions of an online service provider incorporated in the US Copyright Act amended by OCILLA by adding a new provision \(^{411}\) are as follows.

*Section 512 (K) (1)— An online service provider, in relation to a 'digital network communications' means an entity offering the transmission, routing or providing of connections for digital on-line*

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\(^{409}\) Berne TM, Copyright in cyberspace, in a seminar.

\(^{410}\) OSP - Online Service Provider

\(^{411}\) Section 512, American Copyright Act,
communications, between or among points specified by a user, of materials of the user's choosing without modification to the content of the material as sent or received. And in relation to all the others, means a provider of online services or network access, or the operator of facilities therefore, and includes an entity described in the first part.

Some of the 'safe harbours' from infringement liability to OSPs under the OCILLA for the purpose of our study are-

(a) **Information Storage** ⁴¹² - An OSP can claim limitations of liability for storing information on its system, in case it neither has knowledge of the material being infringing; nor does it have the ability to control the infringing activity; has acted expeditiously to block access or remove such a material upon the receipt of proper notice from the copyright owner.

(b) **Acts by third parties** ⁴¹³ - A service provider is not liable for the acts of third parties if it merely allows the transmission or provides connection for the information or from one part to the other.

A service provider can be exempted from liability, if it is some person other than the OSP who initiated the transmission; there was no

⁴¹² Section 512 (c) American Copyright Act,
⁴¹³ Section 512 (a) American Copyright Act,
selection of contents by the OSP and they were provided through an automatic technical process; nor was there any selection of the recipient by the OSP; 'and this was not the OSP who changed the content of the transmission etc.

(c) **System Caching**- As OSP is not liable for temporary copies made through caching, only in case, if, it has not altered that cached material; it respects the connection of the technology with the cached materials; and at the same time it complies with the conditions put on the materials of the original owner to limit access to that material by the user.\(^{414}\)

(d) **Information Location Tools**- An OSP is not liable for directing the users to the locations containing the infringing material in case, if it does not possess the knowledge of the infringing material being present on those locations; and at the same time the OSP removes or blocks access to the infringing material.\(^{415}\)

The 'safe havens' under the American Act, as explained above limit the liability of the service providers by giving them exemption from liability to a great extent thus saving them from the undue hassle of litigation in case this is shown by the service provider, to the satisfaction


\(^{415}\) Berne TM, Copyright in cyberspace, in an article presented in a seminar.
of the court that it took every necessary action to check the infringing activity from taking place online.

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\(^{416}\) Berne TM, Copyright in Cyberspace, in a seminar.

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\textsuperscript{421} Section 512 (a) American Copyright Act.

\textsuperscript{422} Section 512 (d) American Copyright Act Quoted from: T.K. Vishwanathan, Copyright Issues in the Digital Eda, in Prof. Ashwani Kr. Bansal ed, Demystifying Copyright Law (Rajasthan University Publication 2001) at P. 101.
of the court that it took every necessary action to check the infringing activity from taking place online.

As witnessed in the foregoing discussion about various special Legislations regulating the law of copyright in America & England has brought forth many novel features of their latest legislations.

We have witnessed that America has introduced the most advanced legislation like the DMCA, No Electronic Theft Act, Computer Software Protection Act, etc. and has thus extended protection to the authors of creative works in the digital Environment which has enhanced the growth of copyrighted & related industries & has put the share of theses industries in the G.D.P. of American Economy to a great extent.

India should also learn lessons from these countries & must enact such legislations not only to keep pace with the latest in the world but also to comply with its internationals obligations under various treaties & convections in this filed.