

Abstract

Copyright means the sole right to produce or reproduce whole the work or any substantial part thereof in any material whatsoever and the *copyright in a work* shall be deemed infringed by any person who, does anything, the sole right to do which is conferred on the owner of the copyright.

Legal protection of author's rights is relatively young. It got its phillip in the aftermath of Industrial Revolution. The first Copyright Statute, thus, dates back only to less than three hundred years.

Copyright has a special role to play in today's world, particularly in the context of development. In the course of development programmes and in the attempts towards a new International Economic Order, due emphasis is being laid on the development of science and education as a means to economic development. There has, thus, been a marked realisation in a number of developing countries including India of the need to protect literary and artistic works as a source of social progress and cultural development. Copyright protection involves ensuring not only payment of attractive and reasonable royalties to the authors, but also suitable protection for publishers, for the opportunity available to an author to have his works disseminated depends equally on the laws protecting publishers. It is increasingly apparent that the spread of education and improvement of educational standards is the very basis of the development process, so is the need

for an effective copyright system to encourage national intellectual creativity in order to sustain the development process itself.

Any country wishing to stimulate or inspire its own authors, composers or artists, and thus, augment its national cultural heritage, must provide effective copyright protection. This calls for an updated national copyright legislation, which has to be framed with due regard to the national needs and in a manner that best serves the national interests. Such a legislation should provide for the protection not only of the creators of Intellectual Work but also of those (the Performers, Producers of Phonograms and Broadcasting Organisations) who help in the dissemination of such works, in respect of their own rights.

Today, we are surrounded by technological marvels - radio and television broadcasting (terrestrial and by satellite), cable distribution systems, audio and video recording, reprography in all its forms, and computers - and skills to link these technologies into vast multifacility networks. Reprography, tape - recording and computer storage have made reproduction of works easy as well as comparatively inexpensive and within a reach of such a large number of users that control of reproduction by the copyright owners is often impossible. Cable television and satellite broadcasts could ignore national boundaries making effective control very difficult indeed. Then the latest and probably the greatest development in the whole history of Information Technology has come by as a result of fast developing *Internet*. The *Internet*, with nearly 90 million persons connected, is the biggest single phe-

nomenon showing that the global village is within our reach. There are 100,000 *Web Sites* already and the number doubles every two-and-a-half months. This new development of *Internet* has given rise among others, to intricate issues relating to copyright law. The *Internet* and the *World Wide Pages* are full of Copyright material being used or published by people other than the creators. The Copyright laws do not specifically include materials sent zooming around the *Internet* in email, binary files or as *World Wide Pages* and, thus, there is an urgent need to extend copyright laws to them. It is the jurisdictional wrangles that make *Internet* copyright violators think that they are above the law.

It is in this background that the present study wishes to make an indepth analysis of aforesaid issues which have a bearing on our national life.

To keep pace with the new technological developments, the Indian Copyright Act, 1957 was amended in 1983 & 1984. The wave of liberalisation of Indian economy was, indeed, a positive and major step in the direction of free-market and competition. But out-dated copyright law was a major hurdle in integrating India with the international business community. The United States, infact, did keep India as a black listed trade partner under the notoriously called *Super 301* and asked India to make its Patent, Copyright and Trademark laws more effective and at par with International Standards. It was at this stage that Copyright (Second Amendment) Bill, 1992 was introduced in the Parliament. The present study was designed around this time. It is, indeed,

heartening to note that the said Bill was finally passed and assented to in 1994. The present work proposed to undertake a comparative study of Indian copyright law with that of copyright laws of United Kingdom and United States. It was thought proper to study English Copyright law not only because Indian law on the subject has heavily borrowed from the former but also due to India's historical links with Great Britain. The choice of United States was again made for two reasons, first, the United States Copyright law has also for historical reasons been influenced by the British Common law and secondly, as in the early years of Independence from Britian, United States opted for national needs rather than the copyright protection, how far India can benefit from the United States's experiences when in the changed global scenario, it is the United States itself which threatened India to update its copyright regime. The study, thus, wishes to test the hypothesis that Indian Copyright law is highly inadequate as compared to Copyright laws of United Kingdom and United States even after the latest amendment.

Using the research techniques both doctrinaire as well as comparative methods of research, the study has been divided into twelve chapters :

Chapter one or introduction discusses the ideology of copy-right, justification of copyright, major systems of copyright in the world, the research problem, the scope of the study, the survey of existing literature etc.

Chapter two makes an attempt to give historical account of

copyright law. It discusses the copyright in antiquity, middle ages and the effect of invention of printing on the copyright law. An effort has been made to examine various International Conventions on the question of copyright. The historical background of copyright law in U.K., U.S.A. and India has also been surveyed.

Chapter three investigates the question of subject - matter of copyright and the rights which the copyright law confers on the authors. It discusses the varied treatment in different countries as to the question what should be copyrightable. The issue of moral rights of authors and their significance is also examined.

Chapter four examines the question of copyright protection under International law. It discusses the issues of treatment of foreigners in copyright law, principles of International Copyright Conventions, national treatment, limitations of the principle of national treatment and the system of applying International Copyright Conventions to the national law.

Chapters five to eight, examine the vital aspects of subjects of copyright in the three countries. Only such subjects have been taken which have been affected by the new technological developments and about which the law has been recently amended in the countries selected by the present study.

Chapter five, thus, deals with the question of copyright in literary, dramatic and musical works. The issue of "originality" and various types of works protected as literary, dramatic & musical works form the subject matter of this chapter.

Chapter six examines the question of copyright in computer

programs and computer generated works. The copyright in screen display, databases, problems relating to ownership of copyright when the computer program has been developed by freelance staff etc. have also been discussed.

Chapter seven discusses an important area of copyright i.e. copyright in architectural designs. The question of ownership of copyright of an architects' work during the course of employment or where his services were only partially hired are discussed. The question of publication as to architectural designs and recent legislative changes in this regard are also examined.

Chapter eight discusses the crucial issue of performers rights under copyright laws. It examines the status of a performer in the three countries under study and the recent amendments in this regard. The judicial response in this regard is also put to critical evaluation.

Chapter nine discusses the most vital area of neighbouring rights with emphasis on International Conventions. The Rome Convention, Stockholm Convention and Phonogram Convention are discussed in at length. The challenges posed by satellite and cable transmission are also taken care of.

Chapter ten discusses the question of infringement of copyright in U.K., U.S.A. and India. The various types of infringements and issues relating to them are examined. The defences available in a case of infringement of copyright and controversies relating to them have also been discussed. The "fair-use" defence is also studied in all its manifestations.

Chapter eleven examines the civil and criminal remedies available under the three copyright systems in case of an infringement of copyright. It makes an indepth study of judicially created remedies such as Anton Pillor Order. The recent legislative activity as to criminal remedies is also taken care of.

Chapter twelve sums up the whole study and discusses the various conclusions which can be derived from other wise independent and self explanatory chapters of this study. The future challenges to the copyright law are discussed in great details. The suggestions for further reforming and making Indian law more effective are also discussed & further areas of researches indicated.

Holding the entire study in retrospect, following broad conclusions can easily be drawn.

It emerges from the study that the idea of copyright protection only began to emerge with the invention of printing, which made it possible for literary works to be duplicated by mechanical processes. The study brings out the conceptual differences between the Anglo - United States systems on the one hand and Civil Law systems on the other. While the Common Law countries (U.K., U.S.A. & India) treat copyright, ineffect, as a form of property and lay emphasis on the economic rights of authors, the Civil law countries (notably France) in addition to economic rights, also emphasise moral rights of the authors and treat the work of an author as an expression of his personality. But with the recent changes in the United Kingdom and Indian Copyright laws, moral

rights of authors have found a prominent place in the common law countries as well.

As to the 'subject-matter of copyright', the study reveals that there is substantial similarity in the laws of the three countries studied here. In these three countries, there is a general agreement that the quality or merit of a work are matters of taste and do not enter into the question of what is a work. Nor is there a prescribed degree of originality, ability or amount of skill and knowledge necessary to create the work, or a measure of resources used to produce it. Unlike for a patent, where *novelty* is essential, there is no such requirement for copyright. It means no more than the creator can truthfully say - 'This is all my own work'. As to the categories of the works which are given copyright protection, the study has revealed that some national legislations (U.K., U.S.A. & India) contain a definition of the works protected, others do not (e.g. Italy). Broadly speaking, there are two categories of works. The first is the one which mentions works named in the Berne Convention 1886 : 'literary and artistic works' which include 'dramatic, musical and dramatico-musical works'. The second is a category of recent types of works, cinematograph films, sound recordings, broadcasts. The first category works are protected as *copyright* in the Common Law countries while term used for the second category in the Civil Law jurisdictions is *neighbouring rights*.

As to the 'rights of authors', the study has revealed that economic rights of authors under the International Copyright

Conventions and in the national legislations are not uniform though there is substantial similarity in them as far as U.K., U.S.A. and India are concerned. These rights differ in the terminology. Several rights do overlap and the precise scope of each right varies from one country to another. One significant aspect of the 1994 Indian Amendment in this regard is narrowing down of author's moral rights. Now, an author may restrain or claim damages in respect of any distortion, mutilation or modification of the work if it is done before the expiration of the term of copyright and if such acts would be prejudicial to his honour or reputation. However, an exception has been carved out in the law for adaptation of computer programs for the purposes of *debugging*. Moral rights have been narrowed down because the prior provisions whereby even distortion, mutilation and modification of the work which are not pre-judicial to the author's honour or reputation would violate the author's moral rights and were in excess of the requirements of the Berne Convention. It should be noted, however, that the provision of moral rights under Indian law goes well beyond the requirements of the TRIPS Agreement which exempts countries from any rights or obligation arising from the provisions of the Berne Convention on moral rights. Infact the exclusion of moral rights from the purview of the TRIPS Agreement reflects the lack of moral rights under American Copyright jurisprudence .

Similarly on the issue of 'treatment of foreigners', the study has revealed apart from conventional protection, the copyright protection to foreign authors varies considerably. In the U.K.,

works are protected if the maker at the time of publication is a qualified person (qualified persons are British and Irish nationals or person domiciled or resident in the U.K.) or if they are first published in the U.K. or an associated territory. The U.S. having won independence from Britain and wanting to create its own culture became protectionist. Copyright protection, thus, was granted only to American citizens and the residents in the U.S. Even a century later when copyright was gradually granted to some foreign authors (country by country), copies of foreign works had to be printed in the U.S. But the Indian law protects foreign authors in the same manner as its own nationals subject to the condition of reciprocity.

As to the copyright in 'literary, dramatic and musical works', the study has found substantial similarity in the laws of the three countries studied here. A large variety of works such as compilations, selections, abridgments, headnotes of law reports, advertisements, examination papers etc. are protected as 'literary works'. The ambit of dramatic works has also been enlarged though actors *gags* are not covered. On the issue of musical works, the study found that U.S. law is far less ambiguous as compared to U.K. and India as it extends copyright protection to 'accompanying words' as well. The protection to musical works in films is still not adequate and the response of Indian judiciary in this regard is, indeed, unfortunate.

On the issue of 'copyright in software', the study has found that the legislative activity on copyrightability of software has

been quite recent one and the countries studied here are bringing quick amendments in quest of keeping pace with the fast changing computer technology. The 1994 Indian Amendment brings Indian law in conformity with the Uruguay Round Agreement on Trade - Related Intellectual Property Rights (TRIPs) which requires countries to provide authors and their successors in title the right to authorise or to prohibit the commercial rental of originals or copies of their copyright works. However, it is to be noted that the TRIPs Agreement is less stringent than the amended Indian law in that it allows a purchaser of a copyrighted work to sell his copy and adds the caveat that, in respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

At present, few computers in which copyright material is stored are interconnected (at least in a developing country like ours), and access to networked computers is limited for the most part to business users. However, with the dramatic growth in the use of personal computers in the home, accompanied by the rapid spread of computer networks not only between businesses but also among individuals, the copyright problems posed by computer use are likely to increase exceptionally. Infact, the latest use of Internet has already posed greatest ever challenge to copyright law. The globe-girdling Internet links 3.2 million computers in over 150 countries.¹² This network is virtual That is it doesn't exist in physical form. Highly sophisticated computer software makes computer-to-computer connectivity possible. Apparently seam-

less, and silently creating a global library is the World Wide Web. In this library are located many many Web sites (or bookshelves of the electronic type on computer). And these bookshelves are crammed with books. Internet jargon calls them *Home Pages*. Each page combines texts, graphics and pictures. Basically, information in the multimedia format. An Internet user who visits a Web site has freedom for random access. Web users are, thus, able to see, select, read and copy what may be a copyrighted material. Thus the problem of the nature of 'home-taping' has emerged in a highly dangerous manner and the law as it exists today is unable to cope with it. The U.S. Government has constituted a Committee in March 1996 to examine the issue and recommended amendments in the copyright law to meet the worst challenge posed by technology to it. The Internet's development has indeed totally changed the dissemination of information even to the extent of replacing printed works completely. The day has come when a large number of houses and offices throughout the globe are linked to a computer centre via viewer/printer consoles'. The result is that the supply of one copy of a new work to a central point would make it or selections from it, available to all offices and houses which are linked to the central point. Bearing in mind as discussed in this study that the whole concept of copyright in modern times arose from the invention of the printing press, even its partial replacement by computers amounts to a revolutionary change. It is suggested that in this changed scenario the copyright owners have to exercise their copyright at the input stage and look

to the computer disseminator for the royalties in the same way that they have looked towards their publishers in the past. As copyright owner has always been recognised both under International law and under most national laws (including U.K., U.S.A. and India) entitled to his reproduction right, there seems no good reason why he should not be entitled to control copyright through Internet and payment of royalties before his work is put on Internet Web.

As to the question of copyright protection to 'architectural designs', the study has found that the protection granted to architects under the United States law prior to 1976 was highly insufficient as compared to the protection enjoyed by their counterparts in U.K. and India. The protection to architects in India has been further widened by the 1994 Amendment which replaced the term *architectural work of art* by *work of architecture*.

As to the vital question of 'performers rights', the study has revealed that despite recent legislative activity in U.K. and India and despite specific inclusion of performers rights in the latest amendments, the plight of cine actors performing in films still continues due to conferment of copyright only on the film producers. But these amendments do otherwise give sufficient protection to other neighbouring right owners such as Producers of Phonograms and Broadcasting Organisations.

As to the infringement of copyright and types of infringement such as primary and secondary, the study found remarkable similarity in the copyright laws of the countries studied. As to the infringement in respect of computer programs, the study has

revealed that Indian copyright law is infect better than its counter part in the United States.

Finally, the study reveals substantial similarity as far as remedies for copyright violations are concerned. The British remedy of Anton Pillor Order is quite effective and should be expressly recognised in Indian Copyright Act. On the question of Criminal remedies, certainly the American law is much more stringent as compared to U.K. and India.

On the whole, thus, it can be safely said that Indian law as on the Statute book does not sound all that immature and is almost at par with that of U.K., U.S.A. and International standards yet it has so far not been put to any real use. The Indian Judges should also develop greater sensitiveness towards copyright violations. What, therefore, is urgently required is the generation of copyright conciousness as an aspect of India's social, economic and cultural development.