CHAPTER: 4

COPYRIGHT LAW IN INDIA
Western concept of Intellectual property rights involves creating restrictive monopoly of knowledge which is quite contrary to the age old Indian belief where 'knowledge' has always been in public domain and 'Copyright' is not an exception to this general rule. The epics, the fables, the story of panchtantras had been shared freely without creating any monopoly rights in favour of anyone. The transition of the knowledge management system of ancient India to the modern India was strongly influenced as usual by two hundred years of British rule. Therefore, it is necessary to trace the genesis of present Copyright law in India right from the advent of the Britishers.

In India, ancient record of the laws never indicated about the presence of any Copyright law before the English Copyright Act, 1842 in its history but lots of valuable works had been created from century to century in this country. Like Shakespeare, Wordsworth and Keats in the foreign literature India had also 'Ram Charit Manas', 'Shakuntale' 'Arthasastra' etc. the few of the worthy creations by Tulsi Das, Kalidas and Koutilya without giving any monopoly of rights over their creations. The protection of these creations was not available in the sense of copyright, only non-enforceable moral obligations were experienced in our ancient creations.

India, like most developing countries, received modern Copyright Law as a gift from its colonial rules. Prior to the 1957 Act, the colonial India had the

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Copyright Act of 1847, the first Copyright Act\textsuperscript{155} for Indian and then the Act of 1914 which was heavily tilled towards the UK Copyright Act of 1911 and known as replica of the British Copyright Act of 1911, textually as well as principle wise, though with a few suitable modification. This new statute, the imperial copyright Act 1911, was the next in the historical pipe made applicable to the Indian polity as it existed during the Queen’s regime.

On this Copyright Act of 1911, the Supreme Court of India opined that: \textsuperscript{156}

“it seems to us that the fundamental idea of violation of copyright or imitation is the violation of the Eighth Commandment ‘\textit{thou shall not steal}’ which forms the moral basis of the protective province of the Copyright Act of 1911. It was a free law operating in an enslaved regime as the Indian Legislature had very limited power of amendment by way of modification or addition which was conferred by Section 27\textsuperscript{157} of the Act”.

Again Lal’s commenting on the Imperial Copyright Act, 1911 was that:

“Prior to Indian enactments on the subject the law in force was the Imperial Copyright Act, 1911 which, with slight modification, was made applicable to this country by the Indian Copyright Act (Act no. III of 1914). The Imperial Copyright Act, 1911 either operating as \textit{proprio vigore} or as applied by the Indian Copyright Act, 1914, was ‘a law in force in the territory of India immediately before the commencement of


\textsuperscript{157} Sec. 27 of Imperial Copyright Act 1911 stated as :

“The Legislature of any British possession to which this Act extends may modify or add to any of the provisions of this Act in its application to the possession, but except so far as such modifications and additions relate to procedure and remedies, they shall apply only to works the authors whereof were, at the time of the making of the work, resident in the possession and to works first published in the possession.”
The Bombay High Court has observed that the applicability of the Copyright Act of 1911 depends upon the provisions of the Constitution of India which makes this Act applicable even after the commencement of the Constitution. 

In this context, it is relevant to note that the copyright is a territorial concept though international repercussion, development and amendments of an Act in independent India, is a constitutional guarantee. This Act could hardly stand the test of time and was subsequently repealed by the Copyright Act, 1914. The preamble of this last pre-independent statute, on the species of civil law, also specifically indicated the application of British Copyright Act, 1911 in British India whereas, it is expedient to modify and act to the provisions of the Copyright Act, 1911. Undoubtedly, the preamble was the key to open the mind of the legislature; the same was forced to apply a foreign law on a foreign land. This law continued to be the law of the land until 1957 when the need was felt to enact our own statute on copyright not only because of the change in the constitutional status of India but also in the light of growing public consciousness about rights.

The passive area of intellectual property law in India received a jolt by advancement in the technique of reprography, audio-visual technologies and the exponential growth of personal computers with capacities unheard of in the

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159 Article 372 of the Constitution of India.

160 N.T. Raghunathan Vs All India Reported Limited, AIR 1971, Bom. 48(51)

161 Preamble to the Copyright Act, 1914.

162 Jagjit Kumar Vs Jagdish Chandra AIR 1982 M.P. 144(145); Tribhuvan Prakash Nayyer Vs Union of India, AIR 1970 SC 540.

163 Quote Article 372(2) of the Constitution of India which permits next the pre-independent statute operative even after India has been liberated of colonial clutches. Also N.T. Raghunathan Vs All India Reported Limited, AIR 1971, Bom. 48 (51).
past. World opinion in defence of the human rights in terms of intellectual property laid the foundation of international conventions, municipal laws, commissions, codes and organisation, calculated to protect works of art, literature etc., and India responded to this universal need by enacting the Copyright Act, 1957.

4.1 A GLIMPSE OF INDIAN COPYRIGHT LAW:

In India, the Copyright Act, 1957 (as amended up-to-date), the Rules made thereunder and the International Copyright Order, 1999 govern the facets of copyright, related rights and neighbouring rights. The Act was originally divided into 15 Chapters with 79 sections. Moreover, the Central Government by virtue of Sec. 78 of the Copyright Act is empowered to make rules by its notification in the Official Gazette for carrying out the purposes of this Act. The Copyright is granted and protected as per the provisions of the Act and there exists no common law right. Under the Constitution of India, the matter of Copyright fall under Entry 49 of List-I which is the Union list and it is a subject of Central law. Thus, the parliament has the exclusive right to frame laws on this subject. On the international plan, India is a part of the Berne Convention for Protection of Artistic and Literary Works (1886), the Universal Copyright Convention (1952) and the Agreement on Trade and Related Aspects of Intellectual Property Rights, (TRIPs). However, India has not ratified the WIPO Copyright Treaty 1996 and WIPO Performances and Phonogrammes Treaty 1996, till date.

165 Indian Performing Right Society Limited Vs Eastern Indian Motion Pictures, Assm., AIR 1977 SC 1443 (1453).
166 Manojah Cine Production Vs A. Sudarshan, AIR 1976 Mad 22.
167 Schedule 7, List I Entry 49, Patent, Inventions and Design; Copyright, Trade-marks and Merchandise marks.
4.2 THE OBJECTS AND REASON OF PASSING COPYRIGHT ACT 1957:

The objects and the reasons for the passing Copyright Act of 1957 were stated in the Parliament as follows:

"the existing law relating to Copyright is contained in the Copyright Act 1911 of the UK as modified by the Indian Copyright Act 1914 apart from the fact that the UK Act does not fit in with the changed constitutional status of India, it is necessary to enact an independent, self-contained law on the subject of copyright in the light of growing public consciousness and the rights and obligations of authors and in the light of experience gained in the working of the existing law during the last 50 years. New and advanced means of communication like broadcasting, lithography etc., also call for certain amendments in the existing law. Adequate provision has also to be made for fulfillment of international obligations in the field of copyright which India might accept. A complete revision of the Law of Copyright, therefore, seems inevitable."168

The intention of the legislature behind enacting the copyright legislation was to regulate the commercial monopoly and competing interests of the person concerned. Notwithstanding, in our independent Copyright Statute we have extensively borrowed the principles from new Copyright Act, 1956 of the UK. Indeed, we respect the erudite views of Justice Deshmukh of the Bombay High Court who observed that:

"the interpretation of the statute must be based on the law of the land and English statutes may be used as an aid to thinking if some roots of the copyright law bear historical significance to the law of the English

soil, however, it must stated that the Indian Judiciary extensively refers to English cases in deciding cases relating to copyright".  

Actuality, not just the judiciary but even the legislature extensively borrowed from British laws and foreign Constitutions while drafting the Constitution of India. At this juncture, the noble words of Dr. Ambedkar, Chairman, Constituent Assembly can be recalled, when the Draft Constitution was being described as ‘lacking in originality’ and a copy of the Government of India Act 1935 and other Constitutions. He stated that:

“As to the accusation that the Draft Constitution has reproduced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any rights in fundamental ideas of a Constitution.”

We share the similar view as that of the great architect of the Constitution and we must consider that settled laws as well, not for saving time and labour, but for learning from the erudite views of our predecessor officers of legal standing, whether they be Indian or Foreign for even in delivering a judgment, the judge relies on the previous body of knowledge where such ‘knowledge’ comes from the public domain of settled principles of law grounded in case laws.

Furthermore, the jurisprudential foundations of the position of copyright were internationally sensitive and where no precedent existed, it was considered wise to affirm the view of a Court of a foreign nation. This was a matter relating to the copyrightability of case law reported as to whether the legal protection was wide to cover entire report itself or was limited to parts of it such as headnotes, marginal notes etc. Since judgments happen to be in the

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169 J.N. Bagga Vs All India Reporter Limited, AIR Bom. 302(308).
170 CAD Volume IV at www.parliamentofindia.nic.in/ls/debates.
171 N.T. Raghunathan Vs All India Reported Limited, AIR 1971, Bom. 48(51)
public domain\textsuperscript{172} vide section 17 and section 52 of the Indian Copyright Act, 1957. The Court had referred to the English case of \textit{Sweet Vs Benning}\textsuperscript{173} which decided the same facts and situation but on the English soil and read the dictum of that decision in this case before it. However, the 1957 Act has introduced a number of new provisions also.

In real sense of the term the first ‘independent’ statute of India was the Copyright Act of 1957 which kick started the modern copyright law in conformity with the Berne and the Universal Copyright Convention. The Act is both a substantive as well as procedural in nature and provided for legal remedies to enforce the right. Thus, it can be drawn that any country wishing to stimulate or inspire its own authors, composers or artists, and thus augment its cultural heritage, must provide for effective copyright protection.\textsuperscript{174}

On the first hand, it gives the definition of words to be understood in copyright parlance such as an ‘author’ would not be merely an author of a literary piece for the purposes of copyright but an author, as understood in copyright parlance is one who is the creator of the work. Similarly other terms such as ‘reproduction’, ‘artistic work’, ‘work’, ‘reprography’ etc. has been ascertained a definite connotation and scope, to be understood within the parameters of copyright coinage. It further defines the various categories of copyrighted works\textsuperscript{175} and spells out the exclusive rights which constitute copyright in such different categories of copyrighted works\textsuperscript{176}, including term of copyright, such as literary, dramatic work, artistic work, sound recording etc.


\textsuperscript{173} (1855) 139 ALL ER 838.


\textsuperscript{175} Section 2 of Indian Copyright Act, 1957.

\textsuperscript{176} Section 14 of Indian Copyright Act, 1957.
4.3 AMENDMENTS:

Due to the global problem of piracy caused by the advanced technology the Berne and United Copyright Conventions were revised in 1971 at Paris, special concessions were drawn in favour of the developing countries for the larger interests of the public to have access to foreign works. Thus, to make the Indian Law at par with international one the Copyright Amendment Act, 1983 came in operation in conformity with the international developments as India is party to it.

However, the above amendment failed to cope up with the challenges of piracy which was the need of the hour and consequently to combat the new issues of emerging technological advancement, the amendment Act of 1984 was passed. It was the first initiatives of the government to recognise piracy as a grave threat to copyright industries of billions.

After this the Copyright Act has been amended several times i.e.1992, 1994 and finally in 1999 to counter the challenges thrown by the technological advancement, comply the TRIPs requirements, to prevent the piracy related problems and regulate the cases of infringement of copyright of domestic as well as foreign creations.

The amendments of Copyright Act 1957 are discussed in details under the following heads:

4.3.1 INDIAN COPYRIGHT LAW AND AMENDMENT ACT, 1983:

India is a member of the Berne Convention and the United Copyright Convention. The Copyright Act 1957 conforms to these two conventions but both the convections were revised at Paris in the year 1971 enabling developing countries to grant compulsory licences for translation and reproductions of works of foreign origin, required for the purpose of research or teaching or for the purposes of systematic instructional activities, if these rights could not be obtained on freely negotiated terms and conditions enabling their publications
or ensuring their availability at prices reasonable in their context, the object of the international community shall not be feasible. In persuasion of the international development the amendments of Indian Copyright law was also effected in order to avail these benefits. Provisions are also made for publication of unpublished works where the author is either dead or unknown, as the owner of the copyright cannot be traced. Further, the Copyright Board has been empowered to decide disputes arising out of such assignment which may extend to permitting the author to withdraw from the assignment. Broadcasting authorities are now permitted to translate foreign works for broadcasting for the purpose of systematic instrumental activities. Provisions have also been made for copyright in lectures, address etc. delivered in public and for the publication of the entries made in copyright register.\textsuperscript{177}

4.3.2 INDIAN COPYRIGHT LAW AND AMENDMENT ACT, 1984:

After few months to the Copyright Amendment Act, 1983, more remarkable technological challenges appeared before the owners or authors and to cope up with those challenges once again parliamentary amendment was made to the Act of 1957. This amendment was also to make the Indian copyright laws at par with the international copyright laws. This amendment was related to inclusion of video film, introduction of duplication equipment, protection of computer programme, empower the police to search without warrant, enhancement of punishment and declaration of the infringement of copyright and related rights as an economic offence etc.

4.3.3 INDIAN COPYRIGHT LAW AND AMENDMENT BILL, 1992:

A Bill in the name of ‘The Copyright Cess Bill 1992 was introduced for the purpose of imposing a levy and collection of a cess on copying equipment and for the transfer of them to the owners of rights. The bill was not passed by the parliament and subsequently lapsed.

\textsuperscript{177} The Object of the Copyright (Amendment) Act, 1983.
4.3.4 INDIAN COPYRIGHT LAW AND AMENDMENT ACT, 1992:
A very small but important amendment was made by the parliament in the year 1992 by which the term of the copyright was extended for a period of ten years which raised the term of copyright protection and total period of copyright become life plus 60 years in general.

4.3.5 INDIAN COPYRIGHT LAW AND AMENDMENT ACT, 1994:
This amendment was the major amendment of the Copyright Act 1957. This amendment was to bring the Indian Copyright law in conformity with TRIPs agreement. This amendment brought lots of changes in the main Act. It changes the definition of the term ‘adaptation’ and ‘author’ in terms of cinematograph film, reconstitution of ‘Copyright Board’ and its power, changes made in the rights of the owner of the copyright and the assignments and licences of the copyright, brought ‘Copyright Societies’ in place of Performing Rights Societies, introduction of the ‘special rights to performers’, ‘Broadcasting rights’, identifying the act not constituting the infringements, introduction of ‘author’s special rights’, changes in offences relating to use of infringing copy of a computer programme and changes in the rule making powers of the Central Government.

4.3.6 INDIAN COPYRIGHT LAW AND AMENDMENT ACT, 1999:
The Amendment in the year 1999 was also to conform to the principles of TRIPs agreement in India. This amendment was mainly related to some sections like section 38, 40A, 42A and 52 etc. Under these sections parliament brought certain changes to cope with the changes brought throughout the world by the TRIPs agreement. The performer rights that were protected for 25 years previously, extended to 50 years in this amendment. Second important amendment was the power of the Central Government to apply Chapter-VIII of the Act to broadcasting organisations and performers in certain other countries, has been inserted by this amendment of Copyright Act. On the same platform if
it appears to the Central Government that a foreign country does not give or has not undertaken to give adequate protection to rights of broadcasting organisations or performers, the Central Government may, by order published in the Official Gazette, direct that such of the provisions of this Act shall not apply to broadcasting organisations or performers.

The analysis of the Law relating to Copyrights in the light of the TRIPs agreement, 1994 as it forms the base, has set the standards concerning the availability, scope and use of Intellectual Property Rights. It provides the parameters for the range of works that fall within the copyright regime along with the rights that can be claimed by the copyright owner and stipulates the term of protection and the limitations and exceptions in exercising these rights.\(^{178}\) The Indian Copyright law is not beyond the reach of the policies and principles adopted in the TRIPs agreement. The above amendments of the Indian copyright law were made firstly, to keep the Indian copyright law on the same footage as the international copyright law and secondly, to protect the intellectual property from flouting by the use of modern mechanism developed due to the technological advancement of the time. It not only checks the technological gap but also tried to enforce the treaty obligations by honouring its international commitments in furtherance of Article 253 of the Indian Constitution. The present Copyright Law, subsequent to the 1999 Amendments finds itself in complete compliance with TRIPs and other international instrumental compliance.

4.4 SUBJECT MATTER OF PROTECTION:

Now a day the subject matter of protection of Copyright is same throughout the globe because copyright is become of international nature and due to advancement of technology any one can violate the rights of others from any part of the world. As per different sub-sections of section 2 of Copyright Act,

\(^{178}\) Articles 9 to 14 of TRIPs Agreement, 1994.
1957 and judicial interpretations from time to time many matters are eligible to get the protection. Analysing all the classifications and categorizations of the works as provided under different sub-Sections of Section 2 of the Copyright Act, 1957 and taking reference from the judicial views of different High Courts and the Supreme Court of India, the following heads of copyrighted and related works will enjoy the copyright protection under the current uptodate amended legislation:

- Literacy works;
- Dramatic works;
- Musical works;
- Artistic work including sculpture, painting, engraving, architect and all works where artistic craftsmanship is involved;\(^{179}\)
- Cinematograph film;
- Sound recording;
- Literary, dramatic works or musical works in the form of computer programming or computer generated programme including computer software;
- Adaptation, Translation and Reproduction of work;
- Creating unpublished works;\(^{180}\)
- Foreign works including the works of International Organisation;
- Literary works such as poems, articles, works of fiction, factual works such as encyclopedias as dictionaries etc.;
- Thus, question papers set for the examination;\(^{181}\)
- Research theses and dissertations prepared by students;\(^{182}\)

\(^{179}\) Section 2(c) of Indian Copyright Act, 1957.

\(^{180}\) Copyright is the protection of expression and thus protection starts as soon as the works is given a shape by giving expression.

\(^{181}\) Jagdish Prasad Vs Parmeshwar Prasad, AIR 1966 PAT 33.

\(^{182}\) Fatesh Singh Mehta Vs Singhal, AIR 1990 RAJ 8(14).
• Compilation of a book on household and accounts and domestic arithmetic;\(^\text{183}\)
• Schools textbooks;\(^\text{184}\)
• Guide books;\(^\text{185}\)
• Dictionary;\(^\text{186}\)
• A book of scientific questions and answers;\(^\text{187}\)
• Questionnaire for collecting statistical information;\(^\text{188}\)
• Head notes of a judgment;\(^\text{189}\) and
• Lecture notes have all come under the class of literary works entitles for copyright protection.
• Musical work such as songs operas, instrumental music etc.;
• Works of art and architecture;
• Photographs, technical drawings, motion picture (Cinematograph film), computer programme etc.;
• Live performance of a drama fixed in a storage devise such as a compact disk etc.

In *Blackwood Vs Parasuraman*\(^\text{190}\), Madras High Court held that:

“translation of literary work is itself a literary work and is entitled to copyright protection; reproduction of publication of translation without consent or license of the owner of copyright in the original would amount to infringement”

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\(^{183}\) Manohar Lal Gupta Vs State of Haryana(1977) 79 PUNJ LR 181 (Del).

\(^{184}\) Shaikh Ghafoor Bakhsh and Sons Vs Jwala Prasad Singhal, AIR 1921 ALL 95.

\(^{185}\) E.M. Foster Vs A.M. Parasuram, AIR 1964 MAD 331.

\(^{186}\) Givindan Vs Gopalkrishnan, AIR 1955 MAD 319.

\(^{187}\) Joral Vs Houlston (1857) 3 Kay & J 708.

\(^{188}\) Interfirm Comparison(Australia) Pty Ltd. Vs Law Society of New South Wales, (1977) RPC 149.

\(^{189}\) N.T. Raghunathan Vs All India Reporter, AIR 1971 Bom. 48.

\(^{190}\) AIR 1959 MAD 410.
4.4.1 ORIGINALITY:

The basic premise to be protected by copyright is originality. The work should be original and not infringing any other’s copyrighted material to enjoy one’s copyright status under the Copyright Act. At the same occasion it is submitted that originality does not imply literary merit or accuracy standing in the same manner as ‘an artistic work is protected even if it lacks artistic quality’.\(^\text{191}\) The copyright criteria is that the work should not constitute unauthorised reproduction from another existing source in substantial terms so as to constitute infringement as per provision of the Act\(^\text{192}\), obviously considering the concessions in favour of public interest\(^\text{193}\) and the constitutional guarantee of freedom of speech and expression.

4.5 RIGHTS BESTOW BY THE INDIAN COPYRIGHT ACT 1957:

Copyright is a bundle of rights arising out of statute itself and judicial interpretations of copyright and related laws. It confers a set of rights upon the authors or creators in order to protect their moral, economic and material interests:

4.5.1 ECONOMIC RIGHTS:

The copyright subsists in original literary, dramatic, musical and artistic works; cinematographs films and sound recordings.\(^\text{194}\) The authors of copyright in the aforesaid works enjoy economic rights.\(^\text{195}\) The rights are mainly, in respect of literary, dramatic and musical works, other than computer program, to reproduce the work in any material form including the storing of it in any medium by electronic means, to issue copies of the work to the public, to perform the work in public or communicating it to the public, to make any

\(^{191}\) Section 2(c)(i) of the Indian Copyright Act, 1957.

\(^{192}\) Section 51 of the Indian Copyright Act, 1957.

\(^{193}\) Section 52 of the Indian Copyright Act, 1957.

\(^{194}\) Section 13 of the Indian Copyright Act, 1957.

\(^{195}\) Section 14 of the Indian Copyright Act 1957.
cinematograph film or sound recording in respect of the work and to make any translation or adaptation of the work. In the case of computer program, the author enjoys in addition to the aforesaid rights, the right to sell or give on hire or offer for sale or hire any copy of the computer program regardless, whether such copy has been sold or given on hire on earlier occasions. In the case of an artistic work, the rights available to an author include the right to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work, to communicate or issues copies of the work to the public, to include the work in any cinematograph work and to make any adaptation of the work. In the case of cinematograph film, the author enjoys right to make a copy of the film including a photograph of any image forming part thereof, to sell or give on hire or offer for sale or hire, any copy of the film, and to communicate the film to the public. These rights are similarly available to the author of sound recording. In addition to the aforesaid rights, the author of a painting, sculpture, drawing or of a manuscript of a literary, dramatic or musical work, if he was the first owner of the copyright, shall be entitled to have a right to share in the resale price of such original copy provided that the resale price exceeds rupees ten thousand. Copyright is not a single statutory right. It extends multiple rights comprising of a bundle of different rights in the same work. It is seldom that the author of a copyright work himself exploits the work for monetary benefit. It includes all ways and means through which the copyright owner can normally exploit the work. Ordinarily, it is not possible for copyright holder to exploit all the rights. Therefore, it is in his interest that he should transfer his rights by way of

196 Section 14(a) of the Indian Copyright Act, 1957.
197 Section 14(b) of the Indian Copyright Act, 1957.
198 Section 14(c) of the Indian Copyright Act, 1957.
199 Section 14(d) of the Indian Copyright Act, 1957.
200 Section 14(e) of the Indian Copyright Act, 1957.
201 Section 53A of the Indian Copyright Act, 1957.
assignment or license to those, whose business is to exploit the rights of the creator so that the work enjoys market coverage and the copyright holder secure his fair share of profits for his intellectual, labour, investment and time.

The transfer of the copyright, fully or partially, can be done either by assignment or licensing. Assignment and Licenses are the functional equivalent of ‘Lease’ and ‘Sale’ for the transfer of tangible property. Both acts involve economic rights, apart from other rights, of the authors/owners.

4.5.2 MORAL RIGHTS:

France was the founder of not only the ‘droit d’auteur’ or ‘moral rights’ vested in a copyright but the duration of copyright extending to 50 years after the death of the authors/owners. The Indian statute on the subject recognises ‘moral rights’ as an inalienable right under the head of the authors ‘special rights’. Copyright law in Indian was thus, brought at the same footing with the Berne Convention in conformity with article 6bis of the Berne Convention. Section 57 of the Copyright Act, 1957 protects the author’s right of paternity as also the right of integrity. Distortion, mutilation or modification which established to be prejudicial to the author’s reputation or honour is actionable.

In case of Smt. Manu Bhandari Vs Kala Vikash Pictures Ltd., it was observed, in respect of Section 57 of the Copyright Act 1957:

“Section 57 is a special provision for the protection of author’s moral rights. The object of it is to put the Copyright on a higher footing than normal matters of right, the language of Section 57 is of widest

203 Though it has been used in the contractual sense.
205 AIR 1987 DEL 13(17); Ganapati Prasad Vs Paranandi, AIR 1992 AP 230.
amplitude. It cannot be restricted to literary expressions only. Audiovisual manifestations are also directly covered under it”.

Thus, Section 57 of the Copyright Act, 1957 defines the two basic moral rights of an author. These are:

(i) Right of paternity; and
(ii) Right of integrity.  

4.5.2.1 Right of paternity:

The right of paternity refers to a right of an author to claim authorship of work and a right to prevent all others from claiming authorship of his work.

4.5.2.2 Right of integrity:

Right of integrity empowers the author to prevent distortion, mutilation or other alterations of his work, or any other action in relation to said work, which would be prejudicial to his honour or reputation.

The proviso to section 57(1) provides that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer program to which section 52(1)(aa) applies (i.e. reverse engineering of the same). It must be noted that failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section. The legal representatives of the author may exercise the rights conferred upon an author of a work by section 57(1) rather than the right to claim authorship of the work.

Creative expressions are as old as human societies. Copyright and the Related Rights cover protection for the broadest range of innovative works.

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207 Explanation to Section 57(1) of the Indian Copyright Act, 1957.
208 Section 57(2) of the Indian Copyright Act, 1957.
It provides a framework for the protection of creative works that’s expressions fixed in any medium. Copyright by its very nature interfaces with the publishing, photography, computer generated works, entertainment including films, drama, architectural, works of artistic craftsmanship, audio recordings, dance forms, educational, transmission/ broadcasting, art including industrial drawing, sculpture, painting, lectures etc. There is thus, copyright of the creators in literary, dramatic, musical and artistic works and neighbouring rights or related rights for those who produces sound recordings, films, broadcasts, cable casts and published editions.

Fundamental to copyright are the recognition of the creator and the owner of the work. Hence documentation and establishment of the author, the time and place of creation of the work, the nature of the creative work and the circumstances under which the work is created are of paramount importance. Based on these parameters, the work qualifies for a copyright or neighbouring and related rights (in some texts also defined as entrepreneurial copyrights). Accordingly, the copyright law has provisions for ownership, nature of the right, the duration of the right and scope of monopoly.\(^{211}\)

For example, it is reported that an author and a government-owned publisher have settled their copyright infringement litigation, the Vietnam investment Review has reported. Nguyen Thi Thu Hue, an author of popular love stories had sued the Literature Publishing House, a government-owned company for publishing 10 of her stories without her permission or paying her for them.\(^{212}\)

In India, the case of Amar Nath Sehgal Vs Union of India,\(^{213}\) is illustrative and leading in the contention of moral rights. In the present case, the Plaintiff Amar

\(^{210}\) Professor Prabuddha Ganguli, Advisor, VISION-IPR, Relevance of Copyright and Related Rights for SMEs, at www.ircc.iitb.ac.in/IPCourse04/copyright_PGWIP0.doc.


\(^{212}\) Published in Managing Intellectual Property as news, March, 2003, p. 6.

\(^{213}\) 2002 IV AD (DEL) 349; 2002(2) ARBLR 130(DEL) 97; (2002) DLT 439; 2002(63) DRJ 558.
Nath Sehgal received a proposal in 1957 from the Government of India to create a bronze mural for display in the Vigyan Bhawan, to which he readily agreed, the plaintiff produces a bronze mural sculpture which was placed at the entrance of Vigyan Bhawan and in the words of the learned Judge:

"it symbolised a delicate balance between culture and material aspects in national perspective and science of rural and modern India being its theme".

The mural was pulled down and consigned to the store room belonging to the Union of India in the year 1979. This act of destruction was established to be without the permission, consent or authorization of the plaintiff. As a result, the plaintiff moved to the Court under Section 57 of the Copyright Act 1957. Union of India defended the suit by urging that it was the owner of mural and had a right to consign the same to a store room. It further contended that the Plaintiff was paid the price for the work. Defence of limitation was also set up. It was averred that the mural was removed in the year 1979 and the suit being filed after 13 years which attracting the Limitation Act. In response the plaintiff stated that since suit was one for violation of his moral rights which would last for his lifetime and having not waived the same, suit could not be said to be barred be limitation. Unlike other forms of IPR, copyright subsists as soon as the work is created and fixed in a tangible medium and the moral and other rights begins from that very date of bringing the idea into creative existence.

4.5.3 PUBLICATION:

'Publication' under the Copyright Act has been defined as making a work available to the public by issue of copies or communicating the work to the public. In order that there shall be an 'issue of work', not only the copies are to be made but the copies must be issued to the public, more clearly, issue for the
purposes of sale is not essential, although no doubt, its reproductions are issued for such a purpose which would amount to a publication of work.\textsuperscript{214}

The question, whether the copies of the work or the record have been issued to the public in sufficient quantities, will, in each case, depend upon its own facts and circumstances and the nature of the work. It is a question of fact and can be decided by the Copyright Board under the jurisdiction conferred upon it by virtue of the provision of the copyright law.\textsuperscript{215}

'Publication' refers to the circumstances under which a work ceases to fall within the class of unpublished work and becomes a published work. A work cannot be orally published. There can be no publication of a literary, dramatic, musical or artistic work, or of record, if they exist in a single copy thereof. To constitute publication, not only the copies of the work or record must be made but they must be issued to the public for any purposes whatsoever, whether for sale or for any other purposes.\textsuperscript{216} A private circulation of copies does not amount to publication.\textsuperscript{217} Communication of the work can take place when the work is heard, seen or otherwise enjoyed.\textsuperscript{218} Copyright, neighbouring rights and related rights are therefore of immense significance to all sectors including the Small and Medium Size Enterprises (SMEs) involved in traditional businesses and electronic businesses of creative arts, crafts, technologies.

\textsuperscript{214} White Vs Geroch, (1819) 2 B & Ald 298 as referred in Lal's, Commentary on the Copyright, 1957(Act 14 of 1957) with the Copyright Rules, 1958 & Neighbouring Rights, 4\textsuperscript{th} ed., Delhi Law House, 2006, p.83

\textsuperscript{215} Section 11 of the Copyright Act 1957


\textsuperscript{217} Prince Albert Vs Strange, (1894) 1 M&G 25 as referred in T.R. Srinivasa Iyengar, The Copyright Act, 1957, 5\textsuperscript{th} Edn., Law Book Company, 1985, p. 36.

\textsuperscript{218} Ashwani Kumar Bansal, Economic Rights of the Copyright owner with special reference to the Right to Communication in Law of Copyright: From Gutenberg's Invention to Internet, Prof. A.K. Koul, V.K. Ahuja eds., Faculty of Law, University of Delhi, 2001, p.45
4.6 COPYRIGHT OFFICE AND REGISTRATION:

Copyright in India arises as soon as the work is ‘fixed’ in a tangible medium. The Nation adheres to the principles of ‘automatic’ protection and registration of works is not mandatory to avail the protection of copyright. The Act has established a Copyright Office under the immediate control of the Registrar of Copyrights, an administrative authority who shall act under the superintendence and directions of the Central Government. Such a facility exists at the Copyright Office at New Delhi or other regional offices where the Registrar of Copyrights, headed by the Registrar of Copyright maintained to provide registration for all types of works. There exists a set procedure for registration of a work under the Copyright Rules 1958 which has been suitably amended from time to time and registration is provided for both published and unpublished works.

However, registration of works is not a condition precedent to avail copyright protection. Registration serves as a *prima facie* evidence of copyright ownership in the Court of Law. In the case of *Asian Paints (I) Ltd. Vs Jaikishan Paints & Allied Products*, the High Court of Bombay has observed:

“Registration under the Copyright Act is optional and not compulsory. Registration is not necessary to claim a copyright. Registration under the Copyright Act merely raises a *prima facie* presumption in respect of the particulars entered in the Register of Copyright. The presumption is however not conclusive. The Copyright subsists as soon as the work is created and given a material form even if it is not registered”.

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219 Section 9 of Indian Copyright Act 1957.
220 Chapter X of the Indian Copyright Act 1957 and Form IV of Copyright Rules are relevant for the registration process.
In the case of *International Association of Lions Clubs Vs National Association of Indian Lions*, the same Court held that registration thereof, is only a *prima facie* evidence of an ownership of such a copyright and Design.

### 4.7 NON-COMPULSORY REGISTRATION:

Section 44 of the Copyright Act, 1957 provides for registration of a work in which copyright subsists but it is not necessary to claim copyright. Copyright sunbursts as soon as the work is created and given a material form.

In *R.G. Anand's Case*, the Supreme Court rejected a contrary view which had been taken by a Division Bench of the Madhya Pradesh High Court terming it as being 'wrongly decided'. It was the case of *Mishra Bandhu Karyalaya Vs Section Kosha* in which the High Court held that:

> "under the Act of 1957, the registration of the work with the Registrar of Copyright is a condition precedent for acquiring copyright in respect of it, and that the author has no right or remedy unless the work is registered."

The Apex Court held to the contrary, that registration of works is not mandatory for availing copyright protection. Therefore, through the catena of cases, the Courts in India have upheld the principle of 'automatic protection' and that registration in not a condition prerequisite for availing copyright protection which inheres in the work upon its creation from the mind and manifestation in a tangible medium. Section 45 of the Copyright Act, 1957 read with Rule 16 of The Copyright Rules, 1958 prescribes detailed procedure for registration of copyright in India. The Copyright is conferred only upon authors or those who are natural person form whom the work has originated, or

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222 2006 (33) PTC 79 (BOM) 91
223 AIR 1978 SC 1613
224 AIR 1970 MP 261
225 AIR 1978 SC 1613
the authors may be legal persons to whom copyright has been assigned in accordance with law, by the authors from whom the work had originated.227

4.8 COPYRIGHT BOARD:

The Copyright Act of India provides dual legal machinery to the right holders for enforcing their rights. The enforcement is possible through (1) the Copyright Board and (2) the Courts.228

The Act has established a quasi-judicial body called the Copyright Board229 entrusted with the task of adjudication of disputes pertaining to copyright registration, assignment of copyright, grant of licenses in respect of works withheld from public, unpublished Indian works, production and publication of translations and works for certain specified purposes. It also hears cases in other miscellaneous matter instituted before it under the Copyright Act, 1957.230 The Registrar of Copyrights is to perform the secretarial functions of the Board and thus has been statutorily designated as the Secretary of the Copyright Board231 who is duty bound to perform under the direction and control of the Chairman of the Copyright Board.

Copyright Board is a quasi-judicial body constituted by the Central Government. The constitution of the Board has been clearly laid down in the Copyright Act, 1957. The Board shall consist of a Chairman and other members. The person to be appointed as a Chairman of the Copyright Board should be qualified to hold the office of a judge of a High Court or could be holding such position or must have held. The members as aforesaid shall be eligible for reappointment. The Copyright Board shall be deemed to be a Civil

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229 Section 11 of Indian Copyright Act, 1957. An order made under section 3 of the Act is quasi-judicial in nature. Also referred in Gramophone Company of India Ltd. Vs Birendra Bahadur Pandey, AIR 1984 SC 667, point 40 of the last page of the judgment.
230 http://www.copyright.gov.in/mainboard.asp
231 http://www.copyright.gov.in/cpr.asp
Court for the purpose of sections 345 and 346 of the Code of Criminal Procedure, 1973 and all proceedings before the Board shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, 1860.\textsuperscript{232}

As regards the power and procedure of the Copyright Board, it is pertinent to note that the Board is autonomous as in the sense that it shall have the power to regulate its own procedure including the fixing of places and times of its sitting.\textsuperscript{233} Further it has been expressly provided that the Board shall hear any proceeding instituted before it under this Act within the zone in which, at the time of the institution of the proceeding, the person instituting the proceeding actually and voluntarily resides or carries on business or personally works for gain.\textsuperscript{234} The disputes which the Board is empowered to decide shall be through a Bench comprising of not less than three members constituted by the Chairman of the Board from amongst its members. In exceptional cases which involve decision on any matter of importance, the matter can be referred by the Chairman to a Special Bench comprising of five members. The Act also stipulates the dictate that 'no person shall be a judge of his own cause or decide a matter in which he has personal interest',\textsuperscript{235} by application of which no member of the Copyright Board shall take part in any proceedings in which he has a personal interest.

The Board comprises of people with legal standing since copyright itself is a specialized branch of Intellectual Property Law. The terms and conditions of service of the Chairman are prescribed in Rule 3 of the Copyright Rules, 1958. Moreover, the Board has been entrusted with the powers of a Civil Court\textsuperscript{236} and its proceedings are deemed to be judicial proceedings. The Board also enjoys

\textsuperscript{232} Section 12(7) of the Indian Copyright Act, 1957.
\textsuperscript{233} Section 12(1) of the Indian Copyright Act, 1957.
\textsuperscript{234} Proviso to section 12(1) of the Indian Copyright Act, 1957.
\textsuperscript{235} Section 12(5) of the Indian Copyright Act, 1957.
\textsuperscript{236} Section 12(7) of Indian Copyright Act, 1957
appellate jurisdiction by virtue of section 72(1) of the Copyright Act, 1957. The
decisions of the Copyright Board can be challenged in the Higher Courts. As per explanation to section 12 of the Indian Copyright Act, 1957 read with Section 15 of the States Reorganisation Act, 1956, India has been divided into five zones to ascertain the jurisdiction of the Copyright Board.

4.9 COPYRIGHT SOCIETY:

The Copyright Society is such a legal entity which safeguards the interests of owners of the work in which a copyright subsists. Chapter VII of the Copyright Act (Section 33 to 36A) deals with the Copyright Societies. The Copyright(Amendment) Act, 1994 made the working of Performing Rights Societies wider in respect of rights relating to granting licences for the performance in India.

The Copyright Society is empowered to do the following acts in furtherance of administration of copyrights in India:

(i) To issue licenses under section 30, in respect of any rights under this Act;

(ii) To collect fees in pursuance of such licences;

(iii) To distribute such fees among owners of rights after making deductions for its own expenses;

(iv) To pay remuneration to individual copyright owners;

(v) To submit returns and reports to the Registrar of Copyrights; and

237 Section 72(2) of Indian Copyright Act, 1957
238 In this sub-section "Zone" means a zone specified in section 15 of the States Reconstructions Act 1956 (37 of 1956)
(vi) To perform any other functions consistent with the provisions of section 35 of the Act.

4.10 LIMITATIONS ON COPYRIGHT:

There are three types of limitation identifiable in the Copyright statute which can be broadly classified under the heads of limited duration of copyright, permitted uses and non-voluntary licenses (statutory or compulsory licenses). The Act intends to advance the welfare of the society by disseminating ideas, schemes, etc. to maximize availability of literature, music, arts or the technological knowledge to the public.241

In the case of *Penguin Books Ltd. Vs M/s India Book Distributors*,242 Justice Rohtagi observed:

"Copyright is a property right, throughout the world retarded as a form of property worthy of special protection in ultimate public interest. The law starts from a premise that protection must be as long as broad possible and should provide only those expectations, limitations which are essential in public interest."

Therefore, it is imperative that the law must be prepared to respond in order to ensure both a continued creation of intellectual and cultural works and the availability of such works to the public.243 The twin goal seeks to achieve this through a set of statutory limitations in public interest. The practice to encourage the public access to works under Indian copyright law is essentially managed by two methods: copyright licensing and extensive provisions on exceptions to copyright protection. Interestingly, the Indian Copyright Act

242 *AIR 1985 DEL 29(35)*
243 Supra F.N. 241, ALT(710).
rejects the terminology of ‘exceptions’, instead making reference to acts that are “not to be infringement of copyright”.  

4.11 DURATION OF COPYRIGHT:

The Berne Convention provides for a minimum terms which applied uniformly to all signatory nations which is 50 years after the life terms of the author, however the signatories are free to increase the terms of protection, but not to reduce less than the agreed international consensus. For example, in Europe and United States, the term of protection is life plus seventy years. Copyright in India, subsists for a period of 25 to 60 years, depending upon the nature of the work. The Act provides a copyright for works whether published or unpublished for a lengthy though limited period of 60 years excluding the life of the author which shall commence to run after the death of the author. The municipal statute provides a longer term of 60 years post mortem auctoris which is 10 years more than the international requirement under the Berne or the TRIPS agreement. However, in cases where the work falls under the category of a cinematograph film, sound recording, photograph, posthumous publications, anonymous organisations, the 60 years period is counted from the date of publication.

4.12 PERMITTED APPLICATIONS:

Indian Copyright law specifies permissible uses under Section 52 of Copyright Act, 1957. This happens to be the longest section of the Copyright Act and refers to a set of exceptions to copyright law. These provisions enable

244 Supra F.N. 154.


246 The term of Copyright protection has increased with the Amendments to the Copyright Act in 1992 before which is the Berne requirement of 50 years.
legitimate use of new copyrighted works for the educational, scientific, cultural advancement of the society which is the implied objective of copyrights law as could be derived from the first copyright law of this country. The permitted applications under the aforesaid section can be broadly classified as acts constituting 'fair dealing' and acts, 'other than fair dealing' which do not amount to infringement of copyright.

4.13 FAIR DEALING:

Fair dealing is permitted for private use including for the purpose of educational study or research or criticism or review. Such a 'fair dealing' provisions also extends to reproduce literary, dramatic, musical or artistic work for the purposes of reporting current events in a newspaper, magazine or similar periodical or by broadcast or even in a cinematograph film or by means of photographs or using excerpts of a performance or of a broadcast in the reporting of current events or for bonafide review, teaching or research. Further, it has been inserted through an amendment in 1994 that the act of making copies or adaptation or a computer programme by the lawful possessor of such copy constitutes fair use if the use is to utilize the programme for the purpose for which it was supplied or as a means to offer temporary protection against loss, destruction or damage of the programme.

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247 Supra F.N. 79, p. 211.
248 Section 52(a)(i) of the Indian Copyright Act, 1957 as substitute by Act 38 of 1994, section 17 (w.e.f. 10-05-1995)
249 In the United State it is called 'Parody'.
250 Section 52(a)(ii) of the Indian Copyright Act, 1957.
251 Section 52(b)(i) of the Indian Copyright Act, 1957.
252 The word 'broadcast' has been substituted by Act 23 of 1983, section 2, for 'radio-diffusion' (w.e.f. 09-08-1984)
253 Section 52(b)(ii) of the Indian Copyright Act, 1957.
254 Section 39(b) of the Indian Copyright Act, 1957 as substituted by Act 38 of 1994, section 15 (w.e.f. 10-05-1995).
In the case of Civic Chandran Vs Ammini Amma, the court observed:

"The terms 'fair dealing' has been not defined as such in the Act. But section 52(1)(a) and (b) specifically refers to 'fair dealing' of the work and not to reproduction of the work. Accordingly, it may be reasonable to hold that the re-production of the whole work or a substantial portion of it as such will alone be permitted even as 'fair dealing'. Further the court held that 'in a case like the one on hand, court will have to take into inconsideration; (1) the quantum and value of the matter taken in relation to the comments or criticism; (2) the purpose for which it is taken; and (3) the likelihood of competition between the two works' similar to the four factor test of the U.S. fair use doctrine.'"

The same Court quoting Lord Justice Denning and held that:

"It is impossible to define what is 'fair dealing'. It must be a question of degree. The 'Fair Dealing' provisions can be said to reflect the notions which were instrumental in shaping the Berne Three-Step-Test".

In fact, Senftleben opines that in so far as the making of quotations for criticism and review and the reporting of current events are concerned, the fair dealing provisions automatically constitute a special case in sense of the three-step test. Fair dealing is not a license to violate the exclusive right of the copyright owner. One cannot copy from another and claim protection under the garb of fair dealing. Simply giving the credit to the original author would not help either. Even where the user has copied a substantial part of the work, it would be considered as 'fair' and 'legitimate' since copyright protection requires reseanable skill and labour to reach the threshold of originality and quality for protection. Nevertheless, in the case of fair dealing, the British concepts somewhat narrower than the US doctrine of 'fair use' which may not

255 1996 PTC 670 (Ker HC) 675-677.
be entirely relevant to the Indian copyright statute.\textsuperscript{257} Notwithstanding, there has been applicability of ‘fair use’ in at least one case law.

In one case before the High Court of Andhra Pradesh, involving an appeal where the trial court had held that the film was an adaptation of the novel and since copyright permission had not been obtained, the act constituted piracy. The Court read the four-factor-test as an important criteria in adjudging where the cinematographic film infringes the copyrighted literary work and arrived at the conclusion that if the person, infringing the copyrighted work obtains, a direct pecuniary benefit from the use of the copy in its stream of commerce, then it would be considered to be an unfair use for profit.\textsuperscript{258}

\section*{4.14 ASSIGNMENT:}

Provision relating to assignment is located under section 18 of the Copyright Act and Section 19, 19A relates to the modes of assignment. The Statute stipulates that the owner of the copyright can assign the entire copyright or make the partial assignment of the rights on certain terms and conditions for a limited period or for the whole term of copyright. In order to safeguard the interest of the assignor and the assignee, the Act stipulates that the assignment, which is in the nature of the contract, shall be in writing. Assignment of a copyright is valid only if it is in writing\textsuperscript{259} and signed by the assignor or by his duly authorised agent. Prime importance is the fact that the assignment of copyright in any work shall identify such work and shall specify the rights assigned and the duration and territorial extent of such assignment.\textsuperscript{260} It is important and in the larger interest of the contracting parties in relation to the assignment of the work that they observe the legal stipulation as stated above. In case, they do not follow or any reason, be it by positive act or ignorance of

\begin{itemize}
  \item \textsuperscript{257} Supra F.N. 154.
  \item \textsuperscript{258} K. Mumari \textit{Vs} Muppala Ranganayakamma, 1987 (2) ALT 699 (718).
  \item \textsuperscript{259} K. A. Venugopal Setty \textit{Vs} Dr. Suryakantha U. Kamath, AIR 1992, KER 1.
  \item \textsuperscript{260} Section 19(2)of the Indian Copyright Act, 1957.
\end{itemize}
law, the period of assignment shall be deemed to be five year from the date of assignment and the territorial extent shall be presumed to be within India.

In the case of Sunil Agarwal Vs Kumkum Tandon, it was observed that Section 18 of the Copyright Act, 1957 confers ownership rights in a copyright on the assignment.

4.15 LICENSING:

The term 'Licence' has been derived from the Latin term 'licentia' which means 'freedom' or 'liberty'. The Licence does not transfer ownership; it only grants a right to use the licensor's property. Once the license comes to an end the licensee may be subjected to an action for infringement just like the rest of the world. The licensee must remember that the right to use the Copyright is permitted only to the extent described in the license agreement because a license is construed as reserving all other rights.

Section 30-32B of the Copyright Act, are concerned with provisions related to licensing. Section 30 of the Copyright Act, 1957 empowers the owner of copyright to grant an interest in the right by a license in writing. The section also purports that license can be granted in relation to the copyright which shall vest in a future work and can only take effect once the work comes into existence. A license is granted by the right holder to any person in pursuance of a contract in writing. The contract specifies as to what rights have been licensed and for what duration.

The role of copyright is to harmonise the relationship and balance the conflicting interest of the society and the copyright industry/creator at the same

261 1995 II AD(Del)627;1995(33) DRJ 599.
263 Ibid, p. 215
264 Ibid, p. 216
265 Ibid, p. 217
time not to lose foresight that the bargain between the authors, the intermediaries and the industries with which copyright is destined to get involved is to make a successful commercial product of intellect and here comes the role of the law to ensure that in getting the works to the public, the entrepreneurs do not indulge in unhealthy market practices nor the belt of the law is tied so tight that legitimate returns on investment cannot be reaped.

Thus, for the above reason the provisions for licensing under the Indian Legislation on Copyright can be broadly classified into two categories, Voluntary Licensing and Compulsory Licensing.

4.15.1 VOLUNTARY LICENSING:

Chapter 6 of Indian Copyright Act, 1957 deals with the licensing of copyrighted work. Licensing ordinarily involves a contractual agreement to exploit the exclusive right which is conferred to the creator of the work by the process of contractual bargaining between the creator and the entity/organisation which shall be responsible in getting the work across to the public. In the process, the author gets his returns from the sales of his work by way of royalty and the responsible entity earns its share of investment from the profits. Indeed, the author has to exercise due care and caution in licensing of his rights to get a fair share of his intellectual efforts and not bent to the bargaining pressure of the entrepreneur.

In the case of _Deshmukh and Co. (Publishers) Pvt. Ltd. Vs Avinash Vishnu Khandeka_,266 High Court of Bombay has aptly described the features of a 'Licence' in the context of copyright contracts:

"The copyright comprises of schedule rights which can be exercised independent of each other. The licence is a personal right which cannot be transferred except in certain circumstances. Licence is a right to do some positive act. Licence is a personal right and creates no more than

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266 2006 (2) Bom CR 321; 206 (32) PTC 358 (Bom.); 2005 (3) Mah LJ 387
personal obligation between a licensor and licensee. The licence is generally revocable at the will of the grantor. There are different kinds of licences. A Licence may be exclusive or non-exclusive; exclusive licence means a licence which confers on licensor or licensee and persons authorised by him to the exclusion of all other persons (including the owner of the copyright) any right comprised in the copyrighted work. In the case of non-exclusive licence the owner of copyright retains the right to grant licenses to more than one person or to exercise it himself. Licence is a personal right and licensee may not always be entitled to make alternations to the terms. These are broad guidelines.”

4.15.2 COMPULSORY LICENSING:

The Indian copyright Act has its scales inclined in favour of access to knowledge and wider diffusion of Indian works. Though, it seeks to protect the rights of the authors in the best possible manner, nevertheless, it has elaborate statutory provisions to encourage public access to works through the system of compulsory licensing. The system comes into operation in the circumstances when the work which has been previously published or performed in public is not available in the market and the owner of the copyright has refused to allow republication, public performance or communication of the work by way of broadcasting. To simplify, in case where the copyright holder has refused to grant the public, the right to access the work, a complain can be filed before the quasi judicial body i.e. the Copyright Board.

Compulsory licence is granted to produce and publish a translation of a literary or dramatic work in any language after a period of seven years (three years if the translation is a non-Indian work) for the purpose of teaching, scholarship or research and one year if such a translation is in a language not in any general use in any developed country from the first publication of the work under
certain conditions.\textsuperscript{267} The royalty paid at the rate prescribed by the Board is required to be kept in the public account of India or such other account which may be claimed by the copyright owner or his legal heirs, executors or legal representatives at any time.\textsuperscript{268}

In the case of \textit{Phonographic Performance Ltd. Vs Music Broadcast (P) Ltd.},\textsuperscript{269} the learned counsel submitted the provision under Article 27 of the Universal Declaration of Human Rights.\textsuperscript{270} It is submitted that compulsory licence is provided to ensure that the members of the public are not deprived of the enjoyment of the copyright work. At the same time, rights of the owner of the copyright cannot be put in jeopardy and the scheme of the Act is that a compulsory licence is granted only when such work is withheld from the public.

Section 31 of the Indian Copyright Act 1957, also empowers the Board to conduct the necessary enquiry into the complaint with a co-relative duty to hear the owner of the copyright, in furtherance of natural justice principles. If the Board is satisfied upon the facts and circumstances of the particular case that such refusal is not reasonable, then it shall direct the Registrar of Copyrights to grant a license to the complainant to republish the work. However, such a license shall not be issued, by prejudicing the rights of the owner of copyright and towards the end the provision mandates that the compulsory license to republish the work shall be granted to the complainant, after the Board determines among the terms and conditions, the suitable compensation which


\textsuperscript{269} 2004(29) PTC 282 BOM (286).

\textsuperscript{270} Article 27 of UDHR:
(i) Everyone has the right freely to participate in cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
(ii) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
should be given to the owner of copyright by the complainant and it is only after this, the Registrar of Copyright is empowered to grant the license to the complainant in accordance with the directions of the Copyright Board.

In the case of *Super Cassette Industries Ltd. Vs Entertainment Network (India) Ltd.*\(^{271}\) The Delhi High Court observed:

"It is clearly incorporated in the language of this section that the case of the complainant for grant of compulsory licence can be considered if the work has been withheld from public and after giving reasonable opportunity to the owner of the copyright, upon holding an, enquiry and, arriving at, the conclusion that grounds of refusal are not reasonable. Once the copyright is in the public domain, refusal has to be on reasonable and valid grounds."

It has further observed:

"The Board while adjudicating the application for compulsory licence must also determines that the parties before the Board have their competing commercial interest. The public interest can only be safeguarded by the Board. This indeed is the main duty and obligation of the Board, Any decision which is taken by the Board must be taken while keeping larger public interest in view. The Board has carefully maintained the balance between creations of monopoly which is generally considered opposed to public interest and protecting intellectual property rights as a measure to encourage creativity in the respective fields."

Thus, it can clearly be observed that the Indian law reflects the concerns about the access to knowledge/information by the citizen of the country and elaborately provides for the compulsory licensing of works in public interest. Indeed, one can say that, the statutory instrument of licensing reflects the loss

\(^{271}\) AIR 2004 DEL 326 (344).
of control for the owner of copyright and deprives him of his power to negotiate the terms of his publication, however, that shall not deter this Quasi-Judicial Board\textsuperscript{272} to grant a compulsory license to meet the larger goal of copyright which is to provide the public access to copyrighted works. However, this provision\textsuperscript{273} applies only to ‘works’ which is first published in the country or the author of which is a citizen of India. Compulsory licensing provisions do not apply to licensing reproduction of foreign works. But the copyright statute enlists provisions for compulsory license to translate foreign literary and dramatic works in certain circumstances and under certain terms and conditions. Thus, the provision of compulsory licensing is a control mechanism which would ensure that the society is not deprived of their access to creative works and the copyright owner is not unjustly deprived of his fair returns.

\textbf{4.15.2.1 COMPULSORY LICENSE IN TRANSLATION OF FOREIGN WORKS:}

The statute enlists detailed provisions on licensing wherein any person may apply to the Copyright Board to produce and publish a translation of a literary or dramatic foreign work, in any language, but after a specified period of seven years from the first publication of such work. Where the application concerns itself with the translation of foreign works and it is for the purpose of teaching, scholarship or research,\textsuperscript{274} any person may apply to the Copyright Board, after three years from the date of first publication circumstance that such a language is not in general use in any ‘developed country’\textsuperscript{275} and entitles any person to apply to the copyright Board in this regard for a license to produce and publish

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{272} State of Himachal Pradesh Vs Raja Mahindra Pal, AIR 1999 SC 1786: (1999) 4 SCC 43. (It was submitted that the power of the Copyright Board under section 31 of the Act is quasi-judicial in nature.\textsuperscript{272}
\item \textsuperscript{273} As per explanation to Sec. 31 of the Indian Copyright Act, 1957.
\item \textsuperscript{274} Such ‘purpose’ has been defined in the explanation clause of section 32 of Chapter VI of the Indian Copyright Act, 1957.
\item \textsuperscript{275} ‘Developed Country’ has been defined in the explanation clause of section 32 of Chapter VI of the Indian Copyright Act, 1957.
\end{itemize}
\end{footnotesize}
a translation of a literary work in any language, subject to the condition that the copyright owner has denied authorisation to produce and publish such translations and such work has not been published in such a language or if the work though published, is out of print. The scope of this provision extends to the translation, being produced and published by way of printed or analogous forms of reproduction.

4.16 INTERNATIONAL COPYRIGHT:

Copyright being territorial, the statutes protecting copyright are applicable within the territorial boundaries of a nation state. However, the same statute protects foreign works as well. Section 40 of the Copyright Act confers the power on the Central Government to extend the provision of the Copyright Act to foreign works. The Act read with the International Copyright Order, 1999 affords protection to works of all Berne and UCC signatories. The same protection as if a work shall not exceed that which is enjoyed by it in its country of origin. The benefits granted to foreign works will not extend beyond what is available to the works in the home country and that to only on a reciprocal basis, i.e., to say the foreign country must grant similar protection to works entitled to copyright under the Act.

India follows the principle of reciprocity in granting protection to foreign authors whose work is first published in India. It can also be noted that where the foreign country does not give adequate protection to works by Indian authors, the Government of India may by order deny protection to works first published in India whose author is a citizen of a foreign country. Thus, it is through the principle of national treatment that foreigners enjoy the same rights

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276 Section 32(1) of the Indian Copyright Act, 1957
277 Proviso 3(b) to Section 32(4) of the Indian Copyright Act, 1957.
278 Appendix to the International Copyright Order.
280 Ibid.
as nationals except in terms of protection which may vary, but it cannot be less than the Berne standard set out by the Berne Convention.

4.17 ON-LINE COPYRIGHT ISSUE IN INDIA:

The reference to on-line copyright issues can be found in the following two major enactments:

(1) The Copyright Act, 1957, and
(2) The Information Technology Act, 2000.

4.17.1 (1) ON-LINE ISSUES AND COPYRIGHT ACT:

The following provisions of the Copyright Act, 1957 can safely be relied upon for meeting the challenges of advanced technology etc.:

(a) The inclusive definition of computer is very wide which includes any electronic or similar device having information processing capabilities.\textsuperscript{281} Thus, a device storing or containing a copyrighted material cannot be manipulated in such a manner as to violate the rights of a copyright holder.

(b) The term computer programme has been defined to mean a set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result.\textsuperscript{282} It must be noted that Section 13(a) read with Section 2(o) confers a copyright in computer programme and its infringement will attract the stringent penal and civil sanctions.

(c) The inclusive definition of literary work includes computer programmes, tables and compilations including computer databases.\textsuperscript{283}

\textsuperscript{281} Section 2(ffb) of Copyright Act, 1957
\textsuperscript{282} Section 2(ffc) of Copyright Act, 1957
\textsuperscript{283} Section 2(o) of Copyright Act, 1957
Thus, the legislature has taken adequate care and provided sufficient protection for computer related copyrights.

(d) The copyrighted material can be transferred or communicated to the public easily and secretly through electronic means. To take care of such a situation, the Copyright Act has provided the circumstances which amount to communication to the public. Thus, making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available, may violate the copyright.\(^{(284)}\) The communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public.\(^{(285)}\)

(e) The copyright in a work is infringed if it is copied or published without its owner’s consent. The Copyright Act provides that a work is published if a person makes available a work to the public by issue of copies or by communicating the work to the public.\(^{(286)}\) Thus, the ISPs, BBS providers, etc. may be held liable for copyright violation if the facts make out a case for the same.

(f) The copyright in a work shall be deemed to be infringed when a person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act:

\(^{(284)}\) Section 2(ff) of Copyright Act, 1957  
\(^{(285)}\) Explanation to Section 2(ff) of Copyright Act, 1957  
\(^{(286)}\) Section 3 of Copyright Act, 1957
(i) Does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) Permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright. 287

(g) The Copyright Act specifically exempts certain acts from the purview of copyright infringement. Thus, the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme 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 in order only to utilize the computer programme for the purpose for which it was supplied, would not be copyright infringement. 288 Similarly, the doing of any act necessary to obtain information essential for operating inter-operability of an independently created computer programme with other programmes by a lawful possessor of a computer programme is not a copyright violation if such information is not otherwise readily available. 289 Further, there will not be any copyright violation in the observation, study or test of functioning of the computer programme in order to determine the ideas and principles, which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied. 290 The Act also makes it clear that the making of copies or adaptation of the computer

287 Section 51(a) of Copyright Act, 1957
288 Section 52(1) (aa) of Copyright Act, 1957
289 Section 52(1) (ab) of Copyright Act, 1957
290 Section 52(1) (ac) of Copyright Act, 1957
programme from a personally legally obtained copy for non-commercial personal use will not amount to copyright violation.\textsuperscript{291}

(h) If a person knowingly makes use on a computer of an infringing copy of a computer programme, he shall be held liable for punishment of imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees. However, if the computer programme has not been used for gain or in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgment, not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees.\textsuperscript{292}

It must be noted that copyright can be obtained in a computer programme under the provisions of the Copyright Act, 1957.\textsuperscript{293} Hence, a computer programme cannot be copied, circulated, published or used without the permission of the copyright owner. If it is illegally or improperly used, the traditional copyright infringement theories can be safely and legally invoked.

4.17.2 ONLINE ISSUES AND INFORMATION TECHNOLOGY ACT:

The following provisions of the Information Technology Act, 2000 are relevant to understand the relationship between copyright protection and information technology:

(a) Section 1(2) read with Section 75 of the Act provides for extra-territorial application of the provisions of the Act.\textsuperscript{294} Thus, if a person (including a foreign national) violates the copyright of a person by

\textsuperscript{291} Section 52(1) (ad) of Copyright Act, 1957
\textsuperscript{292} Section 63B of Copyright Act, 1957
\textsuperscript{293} Section 13(1) (a) read with Section 2(o) of Copyright Act, 1957
\textsuperscript{294} Praveen Dalal and Shruti Gupta: The Unexplored Dimensions of Right To Privacy, IJCL, Vol. III, No 2, May 2004, p.22
means of computer, computer system or computer network located in India, he would be liable under the provisions of the Act.

(b) If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network accesses or secures access to such computer, computer system or computer network or downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium, he shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected. Thus, a person violating the copyright of another by downloading or copying the same will have to pay exemplary damages up to the tune of rupees one crore which is deterrent enough to prevent copyright violation.

(c) While adjudging the quantum of compensation, the adjudicating officer shall have to consider the following factors:

   (i) The amount of gain or unfair advantage, wherever quantifiable, made as the result of the default;
   (ii) The amount of loss caused to any person as a result of the default;
   (iii) The repetitive nature of the default. Thus, if the copyright is violated intentionally and for earning profit, the quantum of damages will be more as compared to innocent infringement.

(d) A network service provider (ISP) will not be liable under this Act, rules or regulations made there under for any third party information

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295 Section 43(b) of The Information Technology Act, 2000
296 Section 43(b) of The Information Technology Act, 2000
297 Section 47 of The Information Technology Act, 2000
or data made available by him if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.\textsuperscript{298} The network service provider under section 79 means an intermediary and third party information means any information dealt with by a network service provider in his capacity as an intermediary.\textsuperscript{299}

(e) The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.\textsuperscript{300}

4.17.3 INTERNET AND ESTABLISHED BODY RESPONSIBLE FOR COPYRIGHT ISSUE:

The advent of information technology has made it difficult to apply the traditional theories to various cyberspace entities and organizations. These cyberspace players can be grouped under the following headings:

(1) Internet Service Providers (ISPs),

(2) Bulletin Board Services Operators (BBSO),

(3) Commercial Web Page owner/operators, and

(4) Private users.

4.17.3.1 (a) INTERNET SERVICE PROVIDERS (ISPs):

Internet Service Providers most often provides Internet access and he may be held liable for copyright infringement. But in India neither under Copyright Act, 1957 nor under Information Technology Act, 2000, ISP has made unconditional liable instead a flexible conditional liability has been imposed.

\textsuperscript{298} Section 79 of The Information Technology Act, 2000
\textsuperscript{299} Explanation to Section 79 of The Information Technology Act, 2000
\textsuperscript{300} Section 81 of The Information Technology Act, 2000
As per I.T. Act ISP shall be made liable only if it has previous knowledge about the materials and it has not taken appropriate steps to protect the interest of the authors/owners\textsuperscript{301}. The provision for liability has been clearly provided under US copyright law. In \textit{Religious Technology Center Vs Netcom On-Line Communication Services, Inc.}\textsuperscript{302} a former minister uploaded some of the copyrighted work of the Church of Scientology to the Internet. He first transferred the information to a BBS computer, where it was temporarily stored before being copied onto Netcom’s computer and other Usenet computers. Once the information was on Netcom’s computer, it was available to Netcom’s subscribers and Usenet neighbors for downloading for up to eleven days. The plaintiffs informed Netcom about the infringing activity; nonetheless, Netcom refused to deny the subscriber’s access because it was not possible to prescreen the subscriber’s uploads, and kicking the subscriber off the Internet meant kicking off the rest of the BBS operator’s subscribers. Thus, plaintiffs sought a remedy against Netcom for infringement under all three theories: direct, contributory, and vicarious. The Court first analyzed whether Netcom directly infringed plaintiff’s copyright. Since Netcom did not violate plaintiff’s exclusive copying, distribution, or display rights, Netcom was held not liable for direct infringement. The court then analyzed the third party liability theories of contributory and vicarious infringement. The court held that Netcom would be liable for contributory infringement if plaintiffs proved that Netcom had knowledge of the infringing activity. The court then analyzed whether Netcom was vicariously liable. Here, once again the court found that a genuine issue of material fact supporting Netcom’s right and ability to control the uploader’s acts existed. The court found that Netcom did not receive direct financial benefit from the infringement. Thus, the court found that the Netcom was not liable for direct infringement, could be liable for contributory infringement if

\textsuperscript{301} Section 79 of Information Technology Act, 2000  
\textsuperscript{302} 907 F.Supp.1361 (N.D. Cal.1995)
plaintiffs proved the knowledge element, and was not liable for vicarious infringement.

4.17.3.2 (b) BULLETIN BOARD SERVICES:

The BBSs are more vulnerable to copyright infringement litigations than the ISPs because they can operate independent of the World Wide Web. The first case in this category was *Playboy Enterprises, Inc Vs Frena*.\(^{303}\) In this case, the defendant operated a subscription BBS that allowed the subscribers to view, upload, and download material. The court held that Frena had violated Playboy’s exclusive distribution right and their exclusive display right. Because Frena supplied a product containing unauthorized copies of copyrighted work, he has violated the distribution right. Moreover, because Frena publicly displayed Playboy’s copyrighted photographs to subscribers, he violated the display right. The court concluded that Frena was liable for direct infringement, though Frena himself never placed infringing material on the BBS and despite his arguments that he was unaware of the infringement. The court relied upon the strict liability theory and held that neither intent nor knowledge is an essential element of infringement.

In *Sega Vs Maplia*\(^ {304}\) the BBS was providing services to numerous subscribers who upload and downloaded files to and from the BBS. The evidence clearly showed that the BBS operator knew that subscribers were uploading unauthorized copies of Sega’s video games to and downloaded from his BBS. The court held that since the BBS operators only knew and encouraged uploading and downloading, but did not upload or download any files himself, he was not liable for direct infringement. The court, however, found the BBS operator contributory liable. Regarding the knowledge element, the BBS operator admitted that he had knowledge of the uploading and downloading

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\(^{303}\) 839 F. Supp. 1552(M.D. Fla.1993).

\(^{304}\) 948 F. Supp .923 (N.D. Cal.1996).
activity. The court rejected the BBS operator's asserted fair use defense since their activities were clearly commercial in nature.

4.17.3.3 (c) COMMERCIAL WEB SITES:

The Web Page owners must be cautious of the things they post on their Web Pages so that they do not violate the stringent provisions of the copyright laws. A Web Page owner cannot successfully plead and prove that they were unaware about the copyrighted material because copyright notices are prominently given in authorized software. They also have the controlling power over the content of their pages. The owners are usually the parties that actually perform upload to their pages.

4.17.3.4 (d) PRIVATE USERS:

A computer user who uploads copyrighted material to the Internet is liable for direct infringement. This liability could be avoided only if he can prove the fair use doctrine. Thus, an Internet user should not post copyrighted material on the Internet in a casual manner.

4.18 INFRINGEMENT OF COPYRIGHT:

Right to reproduction is the core of all economic rights. It occupies the central importance amongst the bundle of copyrights. To establish the case of infringement, the copyright owner must show only that he or she (1) owns a valid copyright, and (2) the defendant exercise one or more of the owner's exclusive rights to reproduce, to publicly distribute, to publicly perform, to publicly display or to adapt the copyrighted work.305

Section 51 of the Indian Copyright Act, 1957 discussed in detailed that when Copyright in a work shall be deemed to be infringed, In particular clause(b) states that Copyright shall be deemed to be infringed when any person:

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305 Ashly Aull, Fair Use and Educational Uses of Content available at http://cyber.law.harvard.edu/home/dl_fairuse.
(i) makes for sale or hire, or sells or lets for hire or by way of trade
displays or offers for sale or hire, or
(ii) distributes either for the purpose of trade or to such an extent as to
affect prejudicially the owner of the copyright, or
(iii) by way of trade exhibits in public, or
(iv) imports (except for the private and domestic use of the importer)
into India, any infringing copies of the work.

Opinion of Justice S. Murtaza Fazal Ali quoting from American Jurisprudence
in the case of R.G. Anand Vs Deluxe Films\(^{306}\) can be referred here:

"Infringement of a copyright is a trespass on a private domain owned
and occupied by the owner of the copyright, and, therefore, protected by
law, and infringement of copyright, or piracy, which is a synonymous
term in this connection, consists in the doing by any person, without the
consent of the owner of the copyright, of anything the sole right to do
which is conferred by the statute on the owner of the copyright"

Section 2(m) defines 'infringing copy' to mean:

(i) In relation to a literary, dramatic, musical or artistic work, a
reproduction thereof, otherwise that in the form of a
cinematographic film;
(ii) In relation to a cinematographic film, a copy of the film made on
any medium by any means;
(iii) In relation to a sound recording, any other recording embodying
the same sound recording, made by any means;
(iv) In relation to a programme or performance in which such a
broadcast reproduction right or a performer’s right subsists under
the provisions of this Act, the sound recording or a
cinematographic film of such programme or performance, if such

\(^{306}\) AIR 1978 SC 1613.
reproduction, copy of sound recording is made or imported in contravention of the provisions of this Act.

The infringer invades a statutorily defined province guaranteed to the copyright holder alone. But he does not assume physical control over the copyright; nor does he wholly deprive its owner from its use.\(^\text{307}\)

**4.18.1 MODES OF COPYRIGHT INFRINGEMENT/ PIRACY IN INDIA:**

Nowadays, copyright infringement is a prevalent phenomenon throughout the globe and India is not an exception to this menace. Infringement means unauthorised reproduction, importation 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 authorised party undertakes any of the above mentioned activities with respect to a copyrighted product, it amounts to infringement of the copyright. Copyright infringement is thus like any other theft which leads to loss to the owner of the property. Besides economic loss, infringement also adversely affects the creative potential of a society as it denies creative people such as authors, artists or creators from their legitimate dues.

There are different ways through which infringement of copyright takes place. 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, infringement generally takes place through unauthorised reproduction of the film in video forms and/or displaying the video through cable networks without taking proper authorisation from the

\(^{307}\) US Vs La Macchina, 871 F Supp. 535.
film producer (the right holder). Computer software is pirated by simply copying it onto another machine not authorised for its use. In fact, there are numerous other ways through which infringement of copyrighted works takes place. The nature and extent of infringement also vary across the segments of the copyright industry. It is, therefore, necessary to discuss the nature and extent of the problems of infringement segment wise.

The study of infringement of copyright can be discussed under two major categories: i) The manual or traditional modes of infringement; and 2) The electronic or non-traditional modes of infringement.

4.18.1.1 MANUAL OR TRADITIONAL MODES OF INFRINGEMENT:

This includes those modes of infringement which have been recognised as elementary case of infringement. The history of infringement shows that this practice is available since the introduction of copyright and related rights in the globe. These are as follows:

4.18.1.1.1 LITERARY WORKS:

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 ways: (i) wholesale reprinting of text and trade books 2) unauthorised translations and 3) commercial photocopying of books/journals. Many a time piracy takes the form of publishing fake books. Book piracy, in India, primarily depends on two factors, namely, the price of the book and its popularity. These two factors have positive contribution to acts of infringement of copyright in this area. Infringement 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 pirates first identify
the 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 the process of infringement is generally less. The infringement is also seasonal in nature. The entire process of printing through selling gets over within one of two month generally.

Besides the above, piracy in the form of mass photocopying of books is 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 but what happens many a time is that the entire book is photocopied including the cover pages. In this process student community and the photocopy operators gain but the publishers lose 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 publisher buys reprint 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 and are sold beyond the contract period just to exhaust the old stock.

The other way through which piracy takes place is printing/ selling of books meant for review. Many foreign publishers send books to India for review. The pirates somehow get access to such books and make quick prints to sell in Indian market. All these happen much before the authorised Indian distributors get their copies for selling of original books in India. Naturally, the distributors' sales get affected adversely.
4.18.1.1.2 SOUND RECORDINGS:

The sound recording industry faces three types of infringement. First, there is a simple way by which songs from different legitimate cassettes/CDs (and thus different rightholders) 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 label, 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 unauthorised 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 eighties it was thought that infringement of copyright of sound recordings would become things of the past. But in reality CD piracy is the greatest threat to today's music world. In fact, CDs piracy has got an international vigour. Fortunately or unfortunately, CD industry is still in it 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. Cassette 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 30% in 1995 to about 27% in 2005, India is the world's sixth largest pirate market in value terms but third in volume terms.\textsuperscript{308}

The popularity of Indian music has gone beyond the national boundaries. There is large demand for Indian music in the neighbouring 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 the West Asia. Similarly, foreign audio products are also subject to piracy in Indian soil.

\textbf{4.18.1.1.3 CINEMATOGRAPHIC WORKS:}

Copyright in cinematographic works is more complex in nature as there a variety of copyrights exist 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 exhibit 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 days 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 the 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 cannot be used for showing the film in cables or through satellite channels because showing films in cables or satellite channels require acquisition of separate sets of rights namely 'cable

\textsuperscript{308} According to a survey conducted jointly by Business Software Alliance (BSA) and NASSCOM in May 2006.
rights’ and ‘satellite rights’ etc. A cable network is generally limited to local areas as it requires receivers (viewers' 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 the cases, reach to end-users through cable networks only. The cable networks in India works 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. The programmes of satellite channels reach to the viewers through cable networks. The (main) cable operators do not pay anything to satellite 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 sound tracks account for almost $\frac{3}{4}$th 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 them is a rightholders of its own right.

Infringement of copyright of cinematographic works takes two principal forms, namely ‘video piracy’ and ‘cable piracy’. However, infringement of copyright in one form can spill over and affect the revenues of the other. ‘Video piracy’ takes place when a film is produced in the form of video cassette without taking proper authorisation from the right holder i.e. producer. Two types of video piracies are common in India. One, where video right for films has not been sold at all (by the producer) 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 unauthorised transmission of films through cable network. As mentioned above, showing a film in a cable network requires acquisition of proper authorisation from the rightholders. But many a time, films, especially the new releases, are shown through cables without such authorisation, which tantamount to infringement of copyright.

Infringement of copyright is a rare phenomenon in satellite channels because such channels are organised and generally do not show films without buying proper rights. But there are cases where right of one channel operator is violated by others.

4.18.1.2 ELECTRONIC OR NON-TRADITIONAL MODES OF INFRINGEMENT:

This includes such modes of infringement which have been entered in the field of piracy business after the development of technology. Electronic machine, digital technology and instruments are rampantly used to infringe the copyright of the authors/owners here and there because most of the countries in this world are lacking in laws for the protection of copyright from electronic or online modes of infringement. These are as follows:

4.18.1.2.1 SOFTWARE PIRACY:

The infringement of copyright 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 programmes in most of the developed countries occurs through a two-tiered 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 warehouses 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 users can be individuals, commercial enterprises, educational institutions and government establishments. Sometimes, software publishers also deal directly with a small number of the larger 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 forms of piracy. In fact, infringement of copyright in software is more than in others because it is relatively easy to copy software in computers especially in PCs and for all practical purposes the pirated version looks and performs in an identical manner as the original. The five principal types of software piracy involve (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 infringement of copyright 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 authorisation from the software publisher.

Identifying pirated software is not an easy task. This is primarily for two reasons. First, as mentioned earlier there is hardly any difference between
original software and pirated software, once it is copied onto hardware. Second, detection of infringement of copyright requires access to software or hardware or both, which may not be feasible in many cases. However, there are some ways through which an unauthorised copy of software can be identified. Many times publishers supply softwares in packaged form which contain software on diskettes with printed labels giving manufacturer'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, end-user 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 simplest pirated copies may be spotted easily on 'black-disks', which do not contain manufacture's 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 programmes copied onto it can be found and identified. Then users can be asked to produce the proof of original possession (e.g. original packages, 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 infringement of copyright. In India software piracy is costing the IT industry quite dear. Total losses due to software piracy in India stood at a staggering figure of about Rs. 500 crores (US $151.3 million) showing about 60 per cent piracy rate in India.\footnote{According to a survey conducted jointly by Business Software Alliance (BSA) and NASSCOM in May 2006.}

4.18.1.2.2 INTERNET OR ON-LINE INFRINGEMENT:

Internet activities like caching, browsing, mirroring, scanning, uploading, downloading or file swapping may result in:
(a) Transmission of information form one computer system or network to another, involving temporary storage (RAM) of the information;

(b) An unauthorised storage of such information is a violation of the copyright owner's exclusive right to make copies, i.e. to reproduce the copyrighted work;

(c) A violation of the copyright owner's exclusive distribution right;

(d) An appearance of a copyright image in a web browser infringing the copyright owner's public display right;

(e) An infringement of the copyright owner's exclusive right to make adaptation, (rearrangement or alteration).

Hence, the Copyright Act, in the present form, has no provision against those who violate the copyright owner's statutory 'exclusive' right to fix (store), reproduce, distribute, public display (perform) and/or re-arrangement (adaptation), when cache, browse, upload, download, scan or transmit any information (copyright material) in the Internet without seeking authorisation from the copyright owner. Even section 52 of the Copyright Act containing provisions on fair dealing, is silent on internet related activities like caching, browsing, uploading, downloading etc.

Moreover, by extending section 51(a) (ii) of the Act, to include network service provider within its ambit would make the service provider liable for copyright infringement on account of its caching and/or mirroring activities. Its role to provide access service to download, transit (distribute or swap files), exhibit (public display), someone else's copyrighted work would amount to copyright infringement. The immunity offered to the service providers under the said section is rather limited. For assistance, one may also take cognizance of

310 Section 14 of the Copyright Act 1957.
Section 79 of Information Technology Act, 2000 which speaks about the Network Service Provider not to be made liable in certain cases:

“For the removal of doubts, it is hereby declared that not person providing any service as a network service provider shall be liable under this Act, rules or regulations made hereunder for any third party information or data made available by him if he proves that the offence of contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.”

Whereas, it also defines the NSP and TPI which is given under the explanation for the purpose of the above Section of the Information Technology Act, 2000, this provides:

(a) 'network service provider' means an intermediary; and
(b) 'third party information' means any information dealt with by a network service provider in his capacity as an intermediary;

Thus, the abovesaid section expresses the legislative intent of granting immunity to the network service provider. The said immunity is absolute if and only if the ISP proves for any third party information that:

(i) he had no knowledge that the information content transmitting is unlawful; or
(ii) he had exercised all due diligence to prevent transmission (or publication) of unlawful information content.

But case should be taken, as Section 15(a)(ii) of the Copyright Act pertains to 'communication is the work to the public where such communication constitutes an infringement of the copyright in the work' whereas Section 79 of the Information Technology Act, 2000, is silent about any infringement of the Copyright for any third party information or data. Copyright is the relevant law.

311 Section 79 of The Information Technology Act, 2000
dealing with these sorts of protection by bringing the software and other internet related matters under the premise of the Copyright Act.

4.18.1.2.3 INFRINGEMENT IN PLAYING TELEVISION CHANNEL:

The concept of 'Communication to Public' is central theme to Copyright and a subject of copyright protection. The question as to what constitutes communication to public depends on the particular act of communication. The exhibition of any copyrighted work in a closed circle of family or friends or personal viewing is outside the purview of infringement. However, when such an exhibition is made to an audience who avail the facility in hotels etc., it amounts to communication to public which if done without licence or permission of copyright holder may invite infringement proceedings.

Recently, the present issue has been analysed by the Apex Court in the Super Cassette Industries Limited Vs Entertainment Network (India) Limited Case312, where the plaintiff Super Cassette Industries Limited is copyright holder of an array of literary and musical works, sound recordings, music videos and cinematographic videos and manufacture, and sells VCDs, DVDs and Cassettes containing these works. It also licenses the right to exploit its works. The defendants are engaged in the business of hotels/restaurants. The plaintiff alleged infringement of its copyright in musical works by the defendant by exhibiting the musical works to its guests in their restaurant/ hotels and sought interim injunction against them which was granted by the court. Plaintiff contended that titles in which it had copyright were being played in the hotel rooms, without a proper licence. Such usage would amount to public performance, or communication to public, of the work, the exclusive rights to which were granted only to the copyright holder or a duly licensed person under the Act. The explanation to Section 2 (ff) of Copyright Act, 1957 inserted in 1995 specifically mandates that making a work available by

312 AIR 2004, DEL. 326(344)
simultaneous means of communication in hotels rooms would amount to a communication to the public. Plaintiff relied on Sections 14 and 51 of the Copyright Act to make out a case of infringement. It was submitted that guests in the defendant's hotel rooms would amount to a distinct public audience, since, the defendant and not the cable operator provides the service directly to the customers. The television sets installed in the rooms by the defendant are the means through which electronic signals are converted into audio and video signals and therefore constitute a separate act of communication to the public distinct from the act of the cable operator. He relied on the judgment delivered in Performing Right Society Vs Hammonds Bradford Brewery Co. Ltd.,\textsuperscript{313} where it was held that the hotel which through its wireless set makes available to its guests acoustic presentations was in fact communicating it publicly. He also cited the judgment of Garware Plastics and Polyester Ltd. Vs Telelink,\textsuperscript{314} where the Court held that broadcasting of content through cable channels to various households etc. amounts to public performance. The defendant in its written statement demanded rejection of plaint stating therein absence of a cause of action as required by CPC.\textsuperscript{315} They averred that the broadcast itself and the receiving of such broadcast would not amount to infringement under section 51 of the Act. He submitted that he was merely receiving the signals transmitted by the cable operator and because the plaintiff does not dispute the legality of the cable operator's content, the defendant itself could not be held liable for infringement of the work through communication to the public, since it has obtained the consent of the cable operator to receive such content.

The issue here is whether communication via playing a television channel, the contents of which were broadcasted by the cable operator or the channel itself could be held as infringement of the copyright? The court decided this issue in

\begin{itemize}
\item \textsuperscript{313} (1934) Ch. 121.
\item \textsuperscript{314} AIR 1989 Bom 331.
\item \textsuperscript{315} Order 8 Rule 11 of the CPC, 1908.
\end{itemize}
the affirmative and held that such a communication being in the control of the defendant was an infringement of copyright by virtue of the provisions of Copyright Act\textsuperscript{316}. The Parliamentary intention was to exclude commercial establishments from the benefit of non-infringement, thus, the court would also not extend the law beyond its meaning to take care of any perceived broader legislative purpose. The court also considered the question of proportions saying that:

“the placing of a common television in a motel reception, accessible to all but without keeping a television set, in each hotel room, or placing such a set in a grocery shop for the recreation of the owner, or a wayside restaurant, may not fall within the mischief of the definition of infringement. Proportion in this context, would necessarily imply the nature of the activity of the establishment and the integral connection, the infringement complained of has with it.”

The plaintiff was thus, able to prove copyright infringement in that defendants were using cable connection and extending facilities of television to their patrons in the hotel rooms for payments received. \textit{Prima facie}, the content of songs and videos broadcast were communications to the public.

4.19 REMEDIES FOR THE INFRINGEMENT:

Taking reference from Copyright Act, 1957 and recent development through judicial response the remedies can be discussed under the following heads:

- CIVIL REMEDIES
- CRIMINAL REMEDIES
- ADMINISTRATIVE REMEDIES
- OTHER REMEDIES

\textsuperscript{316} Section 52 and 2(ff) of Indian Copyright Act, 1957
4.19.1 CIVIL REMEDIES:

Copyright Act provides different types of civil remedies available under the civil court of justice\(^{317}\). The owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of above mentioned modes of remedy as they are conferred by law for the infringement of a copyright.\(^{318}\) The provisions for the civil remedies in India are provided from Section 54 to 62 of the Copyright Act, 1957. Further the civil remedies under the Copyright Act are also divided into two categories: **Preventive Civil Remedies and Compensatory Civil Remedies.**

4.19.1.1 PREVENTIVE CIVIL REMEDIES:

This again includes the Anton Pillar Order and Injunctions. These types of remedies are preventive in nature which prohibits the offender from doing something. These remedies also advocates about the negative rights of the owner over the infringement or to be infringed copyrights.

**Anton Pillar Order:** This form of order actually made under the court’s inherent power. It was invented and used for the first time by English exponent, Lord Denning in *Anton Pillar K.G. Vs Manufacturing Process Limited.*\(^{319}\) Presently, it has got recognition in the provision of TRIPs also.\(^{320}\) Where there is a possibility of the defendant destroying or disposing of the incrimination material, the Court may take an order in order to inspect the premises of the defendant on an ex-parte application by the plaintiff without giving notice of the application to the defendant. It is not a search warrant. It only authorise entry and inspection of the defendant, by

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\(^{317}\) Sections 54-62 of the Indian Copyright Act, 1957

\(^{318}\) Section 55 of the Indian Copyright Act, 1957


\(^{320}\) TRIPS Agreement, Para 2 of Article 50.
permission, in the absence of which the act would tantamount to the tort of trespass.\(^{321}\)

**Injunction:** The main remedy sought in most copyright suits is an injunction to restrain the defendant from continuing to do acts which constitute infringement.\(^{322}\) It is granted to safeguard the interests of the copyrights owner of his legitimate benefits where there is a likelihood that irreparable harm shall be caused to the copyright holder. It is an interim relief granted during the pendency of the proceedings. The injunctions can be temporary and permanent which may depend upon the situation and circumstances of the case. The laws relating to injunction are contained in the Specific Relief Act, 1963.

### 4.19.1.2 COMPENSATORY CIVIL REMEDIES:

This includes Damages, Accounts of Profit and Delivery of infringing copies. These sorts of remedies are curative in nature and compensate the owner or the creator to save him from pecuniary/economic loss which may arises from the act of infringement.

**Damages:** Apart from the injunction, Copyright Act also provides remedies by means of Damages.\(^{323}\) The Copyright owner can either claim for damages or accounts of profit and not both since the spirit behind this legal remedy is that the plaintiff must be compensated and he cannot be compensated twice for the same violated act. However, the remedy of injunction can be joined either with that of damages or accounts, but the remedies of accounts and damages can in no case be joined.\(^{324}\)

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\(^{321}\) Prof. A.K. Kaul, Dr. V.K. Ahuja, Law of Copyright: From Gutenberg's Invention to Internet, in Law of Copyright: From Gutenberg's Invention to Internet, Prof. A.K. Kaul, V.K. Ahuja, eds., Faculty of Law, University if Delhi, 2001, p. 16-17.

\(^{322}\) Section 55(1) of the Indian Copyright Act, 1957

\(^{323}\) Section 55 of the Indian Copyright Act, 1957

\(^{324}\) Pillalamari Lakshmikant and others Vs Ramkrishna Pictures, AIR 1981 AP 224
Accounts of Profit: This kind of remedy is available to the owner of the copyright generally along with damages but sometimes along with injunctions also. Thus, in case of suit of infringement of copyright the owner may seek the relief in form of accounts as well as of damages. Further, since damages were awarded and the decree of damages became final, the publishers were not entitled to the relief of accounts. Thus, the court held that the remedies of damages and accounts are remedies in the alternative and the two reliefs are incompatible.325

Delivery of infringing copies: If any infringing copy of the copyrighted materials has been ceased or collected from any place or custody of any person infringing the rights of the owner than the infringing copies of the copyrighted materials should be delivered to the original copyright owner or creator.

4.19.2 CRIMINAL REMEDIES:

This is another kind of remedy available to the owner/holder of the copyright under the Indian Copyright Act, 1957. Sections 63 to 70 of the above the Copyright Act deals with the provision of criminal remedy in India. When any person knowingly infringe (a) the copyright in a work or (b) any other right conferred by the Copyright Act, (viz. broadcasting, reproduction, special rights) or knowingly to abet such infringement.326

Punishment: It is further added that the work of infringement shall be punishable with imprisonment for a term which may extend to three years.

Fine: Along with the punishment a fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees can also be imposed.

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325 Ibid
326 Section 63 of the Indian Copyright Act, 1957
Though, the court has been empowered to impose a lesser punishment or fine for adequate and special reasons to be mentioned in the judgment. It also provides that the punishment increases for the second or further conviction.\textsuperscript{327}

It is however, clarified that the construction of a building or other structural work infringes or which, if completed would infringe the copyright in some other work is not an offence under the Act.\textsuperscript{328} The amendment Act has also widened the powers of the police, it empowers any police office, not below the rank of a sub-inspector, if he satisfied that an offence of infringement of copyright in any work has been or is being or is likely to be committed, to seize without warrant, all infringing copies of the work ‘wherever found’ and he is thereupon required to produce before a magistrate all copies and plates so seized as soon as practicable.\textsuperscript{329}

4.19.3 ADMINISTRATIVE REMEDIES:

Except the abovementioned remedies another kind of remedy is known as administrative remedy. This is also known as quasi-judicial remedy available under the Copyright law in India.\textsuperscript{330} The copyright owner can prevent importation of such copies in the Indian Territory which would infringe the copyrights of a work made in India. The Registrar of Copyrights can make an order to that effect upon receipt of such application by the owner of the copyright (or his agent) and after conducting due inquiry. Further the Registrar or any person authorised by him on his behalf is empowered to enter into any ship, dock, premises where any such copies may be found and can examine such copies. The copies so confiscated shall not vest to the Government, but shall be delivered to the owner of the copyright in the work. An appeal under

\begin{itemize}
\item [327] Section 63 of the Indian Copyright Act, 1957
\item [328] Explanation to section 63 of the Indian Copyright Act, 1957
\item [329] Section 64 of the Indian Copyright Act, 1957
\item [330] Section 53 of the Indian Copyright Act, 1957
\end{itemize}
section 72 of the Copyright Act lies to the Copyright Board against the order of the Registrar.

The journey of the Copyright law from the Pre WTO to the Post WTO era clearly emanates the position of copyright in India especially in the age of technological and electronic advancement. A crafting effort has been made to transparently deal with various aspects of this unique Intellectual Property Rights, Copyright, with special emphasis on its influence on the various stakeholders of ‘creativity’ down the ages. Historically, India’s stands on the international level has been to strike an equitable balance and ensured that the copyright monopoly is responsibly restricted in public interest. Again we refer to Senftleben who quoted Singh, (a part of the delegation which represented India at 1967 Stockholm Conference for the revision of the Berne Convention) who pointed that ‘protection of the author’s rights could not be considered apart from the rights of users’. 331 India historically has placed reliance on the primacy of the public interest and continues to do so in the milieu of its socio-economic development. The infringement in the context of the online, electronic and digital uses have been a real challenge before India where the protections really lacking. The broadcast and telecast areas are also out of reach of the present law in India where the rights of the performers and producers etc. are grossly infringed. These areas are to be taken seriously by the authority concerned in the process of making or amending the laws relating to copyright in India. There is need for statutory action on this subject and we need to act fast. Delay can only mean denial.