The Law of Copyright in India

by

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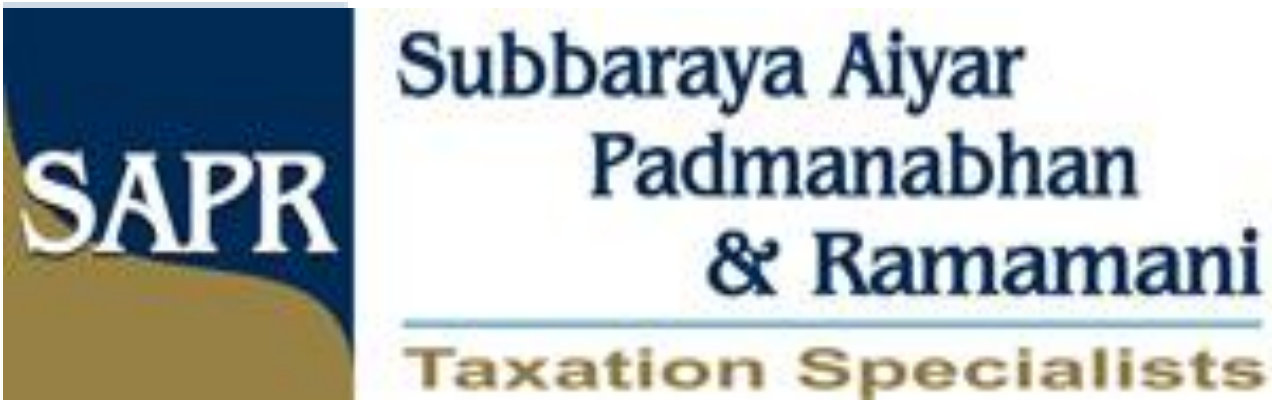

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1. INTRODUCTION

Intellectual Property Rights are the legal rights that are granted to a person for any creative and artistic work, for any invention or discovery, or for any literary work or words, phrases and symbols or designs for a stipulated period of time. The owners of Intellectual Property are granted certain exclusive rights through which they use their property without any disturbance and can prevent the misuse of their property. Intellectual property is any innovation, commercial or artistic, or any unique name, symbol, logo or design used commercially. In India, Intellectual Property is governed under the Patents Act, 1970; Trademarks Act, 1999; Indian Copyright Act, 1957; Designs Act, 2001, etc.

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. It is a bundle of rights including, *inter alia,* rights of reproduction, communication to the public, adaptation and translation of the work. The only criterion to determine whether a person is entitled to copyright protection is originality in expression.

The term "copyright" is not defined under the Indian Copyright Act, 1957 (hereinafter referred to as "Copyright Act"). The general connotation of the term copyright refers to the "right to copy" which is available only to the author or the creator, as the case may be. Thus, any other person who copies the original work would be amount to infringement under the Copyright Act. Copyright ensures certain minimum safeguards of the rights of authors over their creations. Creativity being the keystone of progress, no civilized society can afford to ignore the basic requirement of encouraging the same. Economic and social development of a society is dependent on creativity. The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more and motivates others to create.

On the other hand, what is created by him/her cannot be claimed ownership for generations all together as it might harm the social justice. Therefore, a term of life plus sixty years is being adopted in India for the purpose of determining the period of copyright. This period may vary from country to country. If copyright protection is applied rigidly, it can hamper progress of the society. Therefore, copyright laws are enacted with necessary exceptions and limitations to ensure that a balance is maintained between the interests of the creators and of the community.

Many types of exploitation of work which are for various social purposes such as education, religious ceremonies, and so on are exempted from the operation of the rights granted in the Act. Copyright in a work is considered as infringed only if a **substantial part** is used unauthorized. What is 'substantial' varies from case to case. More often than not, it is a matter of quality rather than quantity. For example, if a lyricist copy a very catching phrase from another lyricist's song, there is likely to be infringement even if that phrase is very short. The best example would be "Oh, Pretty women" dealt in the case of **Campbell Vs Acuff Ross Music Inc**.[1],

The copyright law therefore, to strike a balance between promoting innovativeness amongst the creators and the interest of the general public has excluded a fair deal of works that is permitted without specific permission of the copyright owners. In order to protect the interests of users, some exemptions have been prescribed in respect of specific uses of works enjoying copyright such as research or private study, criticism or review, reporting of events, judicial proceeding, performance made before a non-paying audience etc.

Copyright may be acquired for almost all the visible things like script, photo, book, essay, films, videos, architecture etc and also intangible things such as music. The most important criteria to determine whether the said article is copyrightable or not, is based on its **originality**. Also copyright can be only for things that are worth copying and not otherwise. For example, a baby scribing in a pad cannot be copyrighted.

Copyright protects the **expression** and not the content or substance per se. For example, an author writes about making of an aircraft. Here, the idea of making of the plane is not protected but the only the way of expressing is protected. The idea is protected under the Patent law and not under Copyright Act.

Copyright also does not protect the titles per se or the names, word or a set of words. But there can be exceptions based on the facts and circumstances of each case. For example, the actor Shah Rukh Khan has copyrights his name (SRK) and the music composer A.R.Rahman copyrighted the title "Jai Ho" for the Oscar song which is currently under litigation. It is noteworthy to mention here that the defendant can always take a stand of cancellation of copyright in any suit unless he is estopped by any implied or express acceptance.

Copyright may also be granted for things that would come under patents, trademarks or designs. As copyright protects only the expression and nothing more, it is not much preferred in practice except in case of film industry. This will be dealt elaborately in forth coming topics.

[1] 510 U.S. 569 (1994)

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of ***reproduction, communication to the public, adaptation and translation*** of the work. There could be slight variations in the composition of the rights depending upon the nature of work.

1.1 Work in which copyright subsists (Chapter III, Section 13 of Copyright Act)

- Literary works (including computer programmes, tables and compilations including computer literary data bases)
- Dramatic works
- Musical works
- Artistic works
- Cinematograph films
- Sound recordings.

1.2 Foreign Works

The copyright of foreign works is also protected in India. Copyright of nationals of countries who are members of the Berne Convention for the Protection of Literary and Artistic Works, Universal Copyright Convention and the TRIPS Agreement are protected in India through the International Copyright Order, as if such works are Indian works

Copyright as provided by the Indian Copyright Act is valid only within the borders of the country. To secure protection to Indian works in foreign countries, India has become a member of the following international conventions on copyright and neighbouring (related) rights:

a. Berne Convention for the Protection of Literary and Artistic works.
b. Universal Copyright Convention.
c. Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms.
d. Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties.
e. Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

1.3 Registration of Copyright

Copyright is automatic once the original work is created and it does not require any formality. However, certificate of registration of copyright and the entries made therein serve as *prima facie* evidence in a court of law with reference to dispute relating to ownership of copyright.

Procedure for registration:

Chapter VI of the Copyright Rules, 1956 sets out the procedure for the registration under the Copyright Act. The procedure for registration is as follows:

a. Application for registration is to be made on Form IV (Including Statement of Particulars and Statement of Further Particulars) as prescribed in the first schedule to the Rules ;

b. Separate applications should be made for registration of each work;

c. Each application should be accompanied by the requisite fee prescribed in the second schedule to the Rules ; and

d. The applications should be signed by the applicant or the advocate in whose favour a Vakalatnama or Power of Attorney has been executed. The Power of Attorney signed by the party and accepted by the advocate should also be enclosed.

Each and every column of the Statement of Particulars and Statement of Further Particulars should be replied specifically.

Both published and unpublished works can be registered. Copyright in works published before 21st January, 1958, i.e., before the Copyright Act, 1957 came in force, can also be registered, provided the works still enjoy copyright. Three copies of published work may be sent along with the application.

If the work to be registered is unpublished, a copy of the manuscript has to be sent along with the application for affixing the stamp of the Copyright Office in proof of the work having been registered. In case two copies of the manuscript are sent, one copy of the same duly stamped will be returned, while the other will be retained, as far as possible, in the Copyright Office for record and will be kept confidential.

Also it would also be open to the applicant to send only extracts from the unpublished work instead of the whole manuscript and ask for the return of the extracts after being stamped with the seal of the Copyright Office.

When a work has been registered as unpublished and subsequently it is published, the applicant may apply for changes in particulars entered in the Register of Copyright in Form V with prescribed fee.

1.4 Some of the advantage of Registration are:

- Registration establishes a public record of the copyright claim.
- Before an infringement suit may be filed in court, registration is necessary for works.
- Registration establishes sufficient evidence in court concerning the validity of the copyright and the facts stated in the copyright certificate.
- If registration is made, statutory damages and attorney's fees will be available to the copyright owner in court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner.
- Registration allows the owner of the copyright to record the registration with the Indian Customs for protection against the importation of infringing copies.

2. Brief History of Copyright Law in India

The evolution of Copyright Law in India is spread over three phases. The law of copyright was introduced in India during the reign of the British Rule in India via the British Copyright Act, 1911. This Act had very different provisions in comparison to today's law. The term of the Copyright was life time of the author plus seven years after the death of the author. However the total term of copyright cannot exceed the period of forty-two years. The government could grant a compulsory licence to publish a book if the owner of copyright, upon the death of the author, refused to allow its publication. Registration of Copyright with the Home Office was mandatory for enforcement of rights under the Act. This was the first phase.

The second phase was in 1914, when the Indian legislature under the British Raj enacted the Copyright Act of 1914. It was almost similar to the British Copyright Act of 1911. However the major change that was brought in this Act was the criminal sanction for infringement. The 1914 Act was constantly amended a number of times. Subsequently, India saw the third phase of its copyright law evolution in the introduction of the Indian Copyright Act, 1957 which was enacted in order to suit the provisions of the Berne Convention. This Act was enacted by Independent India and is the main Act by which we are governed till date.

3. Ownership

Generally, the creator or the author of the work is the owner of the work and therefore entitled to get the copyright for the work. Where the author of the work is employed by another person, the work belongs to the employer of the author. And where creation of the works is incidental, but not the purpose, the work belongs to the authors. But in practice, out of the contractual agreement between the employer and the employee, the creation during the course of employment would be belonging to the employer.

There may be a situation where a particular final work involves many copyrightable sub-divisions such as film wherein many works such as music, lyrics, dramatic works etc are copyrightable. The authors in the creation of such work are many such as:

a. In the case of a musical work, the composer.

b. In the case of a cinematograph film, the producer.

c. In the case of a sound recording, the producer.

d. In the case of a photograph, the photographer.

e. In the case of a computer generated work, the person who causes the work to be created.

f. In the case of Script, the writer. Etc.

Where the work is made by the author in the course of his employment under a contract of service or apprenticeship, for the purpose, the said employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work. For example, where the composer of the music copyrights his creation and later provides the same to the film for some consideration, the work is still owned by the author only.

3.1 Concept of Originality

As per Section 13 of the Indian Copyright Act, copyright subsists in dramatic, artistic, musical works as well as cinematographic films and sound recordings. The Copyright Act as such does not define the term "*originality*" but the Indian courts have relied on various doctrines laid down by the foreign courts.

The Privy Council, in the case ***Macmillan & Company Ltd. v. Cooper***[2]***,*** approved the principle laid down in ***University of London Press v. University Tutorial Press***[3] **,** which laid down that copyright over a work arises and subsists in that work due to the *skill and labour spent* on that work, rather than due to inventive thought. This is more popularly known as the '**sweat of the brow**' theory. It has been held that originality derives merely from the fact that sufficient labour, skill, capital and effort (whether physical or otherwise) has been applied in the work. This "*sweat of the brow*" theory was adopted in India, as evidenced from the Delhi High Court judgment in the case of ***Burlington Home Shopping v. Rajnish Chibber***[4], wherein it was held that a compilation may be considered a copyrightable work by virtue of the fact that the there was devotion of time, labour and skill in creating the said compilation from many available works.

In the case of ***Feists Publication Vs Rural Telephone Services***[5]**,** the court introduced another concept for determining originality namely ***minimum modicum of creativity*** wherein it has been held that it must be independently created by the author and that it possesses at least some minimal degree of creativity in it to make it eligible for attaining originality. As per the judgment any independent creation with certain degree of creativity would be considered as original.

The Indian Supreme Court, in its landmark judgment of ***Eastern Book Company*** **v.** ***D.B. Modak***[6]***,*** departed from both these approaches and established the standard of originality that fell midway between 'sweat of the brow' and 'minimum modicum of creativity'. In doing so, the Indian Supreme Court was followed the reasoning given by the Canadian Supreme Court in ***CCH Canadian Ltd.*** **v.** ***Law Society of Upper Canada***[7]. But in practice, this midway standard is

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[2] *Macmillan Company* v. *J.K. Cooper,* (1924) 26 BOMLR 292

[3] *University of London Press Ltd.* v. *University Tutorial Press Ltd.,*[1916] 2 Ch. 601

[4] 61 (1995) DLT 6

[5] 499 U.S. 340 (1991)

[6] *Eastern Book Company* v. *D. B. Modak,*AIR 2008 SC 809

[7] [2004] 1 SCR 339, 2004 SCC 13

extremely difficult to practice and implement. According to this midway standard, an 'original' must be a "*product of an exercise of skill and judgment*", where 'skill' is "*the use of one's knowledge, developed aptitude or practised ability in producing the work*" and 'judgment' is "*the use of one's capacity for discernment or ability to form an opinion or evaluation by comparing different possible options in producing the work*". As per the Canadian Supreme Court, this exercise of skill and judgment must not be "so trivial that it could be characterized as a purely mechanical exercise" and must be "*more than a mere copy of another work*." At the same time, "*creativity is not required*" to make the work 'original'. It is thus evident that a great deal of ambiguity exists around the practical implementation of this standard.

3.2 Ownership Rights

The owner of the Copyright has the following rights under the Act:

3.2.1 REPRODUCTION

The Copyright confers upon the assessee the sole right to reproduce the authored work. In other words, no other person except the author shall make copies (one or many) of the work or copy the substantial part of the work in any form including sound and film recording etc without the permission of the copyright owner. For example, a person buys a film CD and the person makes multiple copies of it and sells it to others. This would amount to copyright infringement.

3.2.2 COMMUNICATION

Communication to the public means making any work available to general public for the purpose of being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion. It is not necessary that any member of the public actually sees, hears or otherwise enjoys the work so made available. For example, a cable operator may transmit a cinematograph film, which no member of the public might have seen. Still it is a communication to the public. The fact that the work in question is accessible to the public is enough to say that the work is communicated to the public.

3.2.3 ADAPTATION

Adaptation involves the preparation of a new work in the same or different form based upon an already existing work. The Copyright Act defines the following acts as adaptations:

a. Conversion of a dramatic work into a non-dramatic work

b. Conversion of a literary or artistic work into a dramatic work

c. Re-arrangement of a literary or dramatic work

d. Depiction in a comic form or through pictures of a literary or dramatic work

e. Transcription of a musical work or any act involving re-arrangement or alteration of an existing work.

For example, the book "*Five Point Someone"* written by Chetan Bhagat was made as a film named "*3 Idiots*" in Hindi. It is noted that the concept of the film alone was taken and not the whole of its expression. Again, the remake of the film "*3 idiots*" was done in Tamil in the name of "*Nanban*". Again here some alterations were made to suit the targeted audience and therefore, only amounted to copying of idea and not the expression.

3.2.4 TRANSLATION

Similarly, the owner has the full and sole authority to translate the work done by him in one language to one or many other languages. Any other person interested in doing so must get the prior permission of the owner. For example, a film taken in English can be dubbed or remade only by the owner or any other person with the consent of the owner.

3.3 Life of Right

Generally copyright lasts for Life + 60 years in India.

Work	Life
Original literary, dramatic, musical and artistic works	60-year from the year following the death of the author. In case of joint authorship, the date has reference to author who dies last.
Posthumous Work	60 years from the date of demise of the owner
Anonymous and pseudonymous publications	60 years from beginning of the calendar year following the year of publication.
Photographs	60 years from the beginning of the calendar year next following the year in which the photograph is published
Work of Government, Public undertaking and	60 years from the year next to the year of

International Organisation	publication
Cinematographic film	60 year from the post calendar year of the release of the Film

4. Distinction between Copyright, Patent, Trademark

Copyrights, trademarks, and patents are commonly referred to as "intellectual property." Each one gives the owner exclusive rights to the work, meaning the owner has the right to prevent anyone else from using their work. Each one deals in different spheres and the main difference is as follows:

a. A copyright protects the expression of a person's ideas. Copyright protection is given to creative works like writing, computer programs, music, lyrics, graphic designs, sculpture, photographs, movies, and sound recordings. The expression must be "original," which, in this context, means a work that is not an copy of another work.

b. In order to qualify for a patent, an invention must be novel, which means that it is something new. The invention must also be useful and not necessarily very important, but it must have some use and also must not be obvious. Non-obvious means a person who is in the field (Phosita) and understands the subject views the invention as a surprising and significant development in the field.

c. A trademark protects something that is used to identify origin of a product or a service. A trademark describes something and is not the thing being described. An example of a trademark would be a corporate identity, such as a logo, which is placed on products to inform consumers that the product originated from that particular company.

For Example, Mr.X invents a plane that can travel in both the atmosphere as well as space. Mr.X would get patent for the plane as the idea is novel and non-obvious and fulfil other requirements like usefulness and technical solution. Then Mr.X puts "X" symbol in his plane implying his creation or show causing the source. This would be eligible for Trademark. Then, after some time he decides to write a book on the invention and provides a CD with it. The expression of the book and CD is protected under the copyright.

4.1 Other differences between copyright, patent, and trademark

a. Copyright is automatic. As soon as you create a work, you have copyright protection. Registration is necessary in order to defend that protection, but the registration is not what creates the copyright.

b. Trademarks and patents come into being only when you register them and your registration is approved. The approval is not automatic. Trademark may also become automatic under the common law after the usage of the particular mark for a certain number of years. For patents, registration is a must, if not, considered waived.

c. One of the most important differences between patents, trademarks, and copyrights is that patents and copyrights will expire. As a general rule, copyrights for your new work will last for lifetime, plus an additional sixty years. A patent will last for twenty years after the date of application for the patent. Once copyrights or patents expire, they cannot be revived. Trademark expires on non-renewal of the mark registered. Trademarks also are issued for a finite period, but they can be renewed. In theory, a trademark could last forever.

d. Copyright and patent after the expiry of certain period would come to public domain and can be copied by anyone constituting no infringement. Trademark on the other hand lasts forever until renewed by the proprietor

e. A copyright is generally, technically territorial, or only good within the country of origin. Most nations, however, have agreements with other countries to honour each others' copyrights. Not every country shares such relationships, however, and a few countries provide little or no protection for works produced in other nations. Patent and Trademark are generally has international character.

f. Under Copyright, the work of the author cannot be copied in the sense that expression cannot copied which may actual or substantially similar but does not protect the content or substance per se. Similarly, under Trademark, if the brand name or logo are not easy to distinguish, a consumer might confuse the product from one company with that of the other. A trademark does not, however, prevent other people or businesses from producing the same product or services under a different mark.

4.2 Overlap between copyright, patent, and trademark

There can be some overlap between Copyright, trademark and patents, especially between copyright and trademark. If you paint a picture, that picture is protected by copyright. What if someone sees your picture and wants to use it as a logo for the company they run? Now, that same picture could be a trademark. The picture's status as a trademark does not affect its copyright status. Both protections will be there, and it is only a question of which protection you use to enforce your rights in the work. That, in turn, depends on how those rights are violated. If your picture is just copied, it's a copyright infringement. If it's used to sell a different product, it's probably a trademark infringement as well.

5. Licensing

The copyright owner may grant a license and transfer some or all of his rights to others to exploit his work for monetary benefits. A license is different from an assignment as licensee gets certain rights subject to the conditions specified in the license agreement but the ownership of those rights is not vested with him while in case of an assignment the assignee becomes the owner of the interest assigned to him. A license may be exclusive or of non-exclusive type.

5.1 Voluntary Licensing

The owner of the Copyright in any existing or future work may grant any interest in the work by way of license. As regards the future works the license shall take effect only when the works comes into existence. For a license to be valid it must be in writing and signed by either the owner or his duly authorized agent. And where a person to whom a license relating to copyright in any future work dies before the work comes into existence, his legal representative shall be entitled to the benefit of the license.

A License Agreement generally contains the following particulars:

- Identification of the work licensed
- Duration of the license
- Territorial extent of the license
- Amount of royalty payable
- Conditions relating to revision, extension and/or termination of license

- Any dispute in respect of the license shall be settled by the Copyright Board or by way of Arbitration.
- Allowability of sub-licensing etc.

5.2 Compulsory Licensing

Compulsory Licensing can be invoked under certain circumstances with respect to both published works and unpublished works. Compulsory licenses can also be obtained for the purposes of production and publication or translation of the work. The procedure for obtaining compulsory licensing with respect to the Indian works and foreign works is different.

5.2.1 Compulsory licensing on Published Works

With respect to the Indian works published or performed in public, compulsory licenses can be obtained by making a complaint to the Copyright Board on the ground that the owner has:

- Refused to re-publish or allow the republication of the work or has refused to allow the performance of the work in public and by reason of such refusal the work is withheld from the public.
- Refused to allow the communication of the work to the public by broadcast of the work or work in the sound recording on such terms, which the complainant considers reasonable.
- · Refused to allow the performance of the work in pubic and by reason of such refusal work is withheld from public;

5.2.2 Compulsory licensing on Published Works

Compulsory licenses can also be obtained with respect to the unpublished works by making an application to the Copyright board in the following circumstances:

- Author is dead
- Author is unknown
- Author cannot be traced
- Author cannot be found

Before making an application in respect of an unpublished work the applicant is required to publish his proposal in one issue of a daily newspaper in the English language having circulation in major part of the country and also in one issue of any daily newspaper in that language.

Compulsory licensing with regard to copyright is mostly paper realism as books or films are seldom licensed compulsorily. Recently, the compulsory licensing was enforced in the field of Patents which were not welcomed by the foreign counterparts as this would reduce their income. This law supported by conventions such as Vienna Conventions and TRIPS has to be taken advantage to include the foreign works and the foreign books must be made available to the general public at a lesser cost.

5.3 Cancellation of License

The Copyright Board can cancel the license granted on any of the following grounds:

- The licensee has failed to produce and publish the translation of the work within the specified period or the extended period.
- The license was obtained by fraud or misrepresentation as to any essential fact.
- The licensee has contravened any of the terms and conditions of the license.

6. **Assignment**

The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof.

A right to assign work under the Copyright Act 1957 arises naturally when the work comes into existence. However, certain rights are specific to certain types of subject matter/work. Further an author/owner is entitled to multiple rights broadly categorised as Economic rights and Moral rights. The owner of a copyright may grant an interest in the copyright by a License.

The Act prescribes that a prospective owner of a copyright in future work may assign the copyright, to any person, either wholly or partially, although the assignment shall take effect only when the work comes into existence.

6.1 The requirements for a valid assignment

a. It must be in writing.

b. It should be signed by the Assignor.

c. The copyrighted work must be identified and must specify the rights assigned.

d. It should have the terms regarding revision, royalty and termination.

e. It should specify the amount of royalty payable, if any, to the author or his legal heirs.

f. In the event the Assignee does not exercise the rights assigned to him within a period of one year, the assignment in respect of such rights is deemed to have lapsed unless otherwise specified in the Agreement.

g. If the period of assignment is not stated, it is deemed to be five years from the date of assignment, and if no geographical limits are specified, it shall be presumed to extend within India.

h. If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within the whole of India.

The above provisions apply both to registered and unregistered copyright. Apart from the above requirements, in case of registered copyright, the following additional steps also have to be taken.

In case of Registered Copyright the Assignee has to make an application for registration of changes in the particulars of copyright entered in the Register of Copyrights in **Form V under Rule 16 of Copyright Rules, 1958** to be delivered by hand or registered post. Attested copies of the deeds of assignments should be enclosed with the application.

6.2 Difference between Assignment and License

a. Assignment of copy right and copyright license are two forms of contract involved in the exploitation of copyright work by a third party. License is an authorization of an act without which authorization would be an infringement. Licensing usually involves licensing of some of the rights and not the whole. Licenses can be exclusive or non exclusive. An assignment involves the disposal of the copyright. The author (assigner)

assigns the copyright to another person (assignee) or transfers the ownership of the copyright[8].

b. Assignee will be the owner of the copyright as regard rights so assigned. The owner will be the owner of the copyright of remaining rights. The assignment could be for whole duration of the copyright or for a short duration. In case of Licensing, the ownership shall always vest with the owner (Licensor).

c. The licensee can join with the owner of the copyright and as a party to the infringement, and take an action for infringement against third party[9] but a bonafide purchaser in good faith and for consideration of the proprietors interest without notice of previous licensee is unaffected by it[10]. On the other hand, in case of assignment, where the ownership is transferred, the assignee himself can take action against the third party.

d. The licensee can however, sue the licensor for damages for breach of contract if the latter does not protect his interest. A licensee has a right to make alterations except in so far as his license expressly or impliedly restricts the right. A failure to pay royalties enables the licensor to revoke the license. But in the case of assignment it is not possible[11]. But if there is any harsh terms which affects the author's right, it can lead to revocation if a complaint is made to the copyright Board. Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects to the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

e. Under Section 30 of the Copyright Act, if the licensee in the case of future work dies before the work comes in to existence his legal representatives shall be entitled to such works, in the absence of any provision to the contrary. The expression "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence. The owner of the copyright has the power to assign his entire rights or assign only some of the rights. In case the rights are split up there is only partial assignment.

[8] Brad Sherman and Lionel Bently,Intellectual Property Laws, oxford university press,Ist edition.

[9] Bharat Law House Vs. Wadhwa AIR 1988,Del 6

[10] Coopinger.Intellectual property laws

[11] Gramophone Co of India Ltd v. Shanti Films Corpn AIR 1997 Cal 63

6.3 Mode of assignment

No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorized agent. It shall identify the work, specify the rights assigned, duration, territorial extent of such assignment, amount of royalty payable to the author. If the period is not stated it shall be deemed to be five years and territorial extend shall be presumed to extend within India. If the assignee does not exercise such rights within one year from the date of such assignment it shall be deemed to have lapsed unless otherwise specified in the assignment. The assignor can file a complaint to the copyright board if the assignee fails to make sufficient exercise of the rights assigned, failure not attributable to the act or omission, then copyright. board after such enquiry as it deem necessary may revoke the assignment, this provision may be used for u/s 31 as a ground for compulsory licensing.

Also regarding any dispute to assignment it follows the same procedure including an order for recovery of any royalty payable. If the terms of the assignment is harsh to the assignor (owner), it can be revoked, but after five years from the date of assignment. In the case of unpublished work the author must be a citizen of India or domiciled in India at the time of the creation of the work. Copyright in an architectural work will subsist only if the work is located in India irrespective of the nationality of the author.

7. Infringement

In dealing with copyright, we should bear in the mind that copyright does not protect novelty but only originality. Copyright protects only the expression and not the idea. Therefore, if it is the only method of expressing the work, it cannot be protected. Best example would be the Telephone Directory wherein the Name, Address, Phone No. are given and also given in alphabetical order. There can be no other way of expressing the same. Therefore, this would not amount to copyright infringement. This is popularly referred to as Idea-Expression Dicothomy.

7.1 The key factors required for initiating any infringement case are:

- Prove ownership of Copyright
- Infringer has copied (Substantially Similar)

Once the rights of the owner have been established, the next step is to prove that that there is an actual infringement. If the defendant makes copies of a copyrighted work and commercially exploits such copies or any blatant infringement, nothing further needs to be proved to establish infringement apart from what has been discussed above. However, more complicated

questions arise when the defendant the alleged infringing work involved relates to something, which is similar, but not identical with the plaintiff's work. In such cases, in order to prove infringement, the plaintiff must show the following:[12]

a. The defendant ***copied*** directly from the plaintiff's work, and

b. The elements copied, when taken together, amounts to an **improper appropriation**.

Realizing that direct evidence of copying will be rarely available, courts have universally allowed copyright owners to prove copying on the basis of circumstantial evidence, specifically through inferences from the defendant's **access** to the plaintiff's work and from any similarities between two works[13].

In the case of ***Super Cassette Industries Vs Nodules Co. Ltd*** ., the defendant played cassette in Hotel amounts to copyright infringement. This was clearly held to be act of infringement of author's right over copyright.

Copying can, therefore, be proved by **inference**. It can be inferred that the defendant has in fact copied the plaintiff's work from the fact that the defendant had access to the plaintiff's work and from the similarities between his work and that of the plaintiff's. The rationale behind this is that given the sufficient opportunity that the defendant had to copy the plaintiff's work in addition to the striking similarity between the two works, the evidence in hand is indicative of copyright infringement.

In the case of ***Roma Mitra Vs State of Bihar***[14], the Plaintiff, a student gave the work to the guide. The guide published the work as her own. The published article was substantially similar and therefore, amounted to copyright infringement.

In the case of ***Ty Ink Vs GMA Accessories***[15], it was held that Similarity between works is highly unlikely to have been in accident of independent creation. This is an evidence of access.

Therefore, there is a reciprocal relationship between *proof of access* and *similarity* and this relationship is subject to two important limitations[16]:

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[12] *Arnstein* v. *Porter*, 154 F.2d 464

[13] Paul Goldstein's Goldstein on Copyright, Vol. II 3rd edn., Aspen Publishers, p.no. 9.6. *Urmi Juvekar v. CNN-IBN*

[14] Criminal Miscellaneous no. 31757 OF 2000

[15] *959 F.Supp. 936 (1997)*, 132 F.3d 1167 (7th Cir. 1997)

[16] *Arnstein*v. *Porter*, 154 F.2d 464

In the case of ***S.K. Dutt vs Law Book Co. And Ors.***[17], the court determined the amount of substantiality should be more than half of the total work. It has also held that where the half of the work is copied and the remaining being original work, it does not constitute infringement.

a. **"**If there are no similarities, no amount of evidence of access will suffice to prove copying".

b. **"**If evidence of access is absent, the similarities must be so striking as to preclude the possibility that plaintiff and the defendant arrived at the same result."

Therefore, to summarise the Condition to prove infringement can be summarized as follows:

a. Closely Similarity

b. Unlawful

c. Some connection

d. Access to original work

7.2 Tests Applied

7.2.1 The Protected Expression Test

The first test for improper appropriation is to identify whether the defendant's work copies any protected expression from the plaintiff's work, i.e., exclude those elements from the plaintiff's work, which are not protectable under law. Examples of such elements are expressions which to which the Idea-Expression Doctrine applies or the doctrine of "*Scenes a faire*" applies. This arises in situations where the idea and expression merge and since copyright law does not protect ideas per se, that element is not protected under copyright. Also, this relates to those elements, which necessarily have to be present in any form of expression of an idea and hence, not protected under copyright. The Court first separates these elements from the work that is alleged to be copied.

Of course, in reality, the most difficult task is to determine the point at which the unprotectible ideas in a copyrighted work end and where the protected expression starts. In ***Nichols* v. *Universal Pictures Corp.***[18], Judge Learned Hand held that

[17] AIR 1954 All 570

[18] *Nichols* v. *Universal Pictures Corp*., 45 F.2d 119

"When the plagiarist does not take out a block in situ, but an abstract of the whole, decision is more troublesome. Upon any work, and especially upon a play, a great number of patterns of increasing generality will fit equally well, as more and more of the incident is left out. The last may perhaps be no more than the most general statement of what the play is about, and at times might consist only of its title; but there is a point in this series of abstractions where they are no longer protected, since otherwise the playwright could prevent the use of his "ideas," to which, apart from their expression, his property is never extended."

Therefore, if the idea can be expressed only in a particular method, it cannot be protected under the copyright law. Best example would be the Telephone Directory wherein the Name, Address, Phone No. are given and also given in alphabetical order. There can be no other way of expressing the same. Therefore, would not amount to copyright. But even in these works, if the work has been found to have been copied by the defendant, then the court may grant injunction and other remedial measures as the author has put his labour to do the said work. Generally, in these cases, the court would restrict the use of the available information for 3-4 years or any number of years as the case may be, that would be required to generate the information. For example, for the acquiring the names, address and phone numbers of the local people in a place, a person may require 1-2 years of time to acquire the information which he has copied from the existing phone book. Then the court may restrain the defendant for the period of 1-2 years from publishing the said work.

In the case of ***20th Century Fox Interstate Ltd Vs Zee TV Ltd***.[19], the plaintiff and the defendant were in the same kind of business i.e TV shows which was copied by the defendant. The court held that this does not amount to infringement as it comes under Idea-Expression Dicotomy and there is no other way of expressing the idea. It was also held that mere outline of copyright is not copyrightable except being distinct.

In the case of ***Campbell Vs Acuff Ross Music Inc***.[20], the plaintiff composed a song that begins with "Oh, Pretty Women" which became very famous. The defendant copied the famous 1st line of the song alone and completed the song in his own words and expression. The court held that the act did not constitute infringement.

In the case of ***The University of Oxford and Ors. Vs. Rameshwari Photocopy Services and University of Delhi (CS(OS) 2439/2012***) famously known as ***Rameshwari Photocopy case*** or the ***Delhi Photocopy case***, wherein the Delhi University compiled the required portion from the books of Oxford, Cambridge and Taylor & Francis and distributed to its students. Infringement

[19] I.A Nos.4776, 4777/2005 in C.S (OS) No.868/2005

[20] 510 U.S. 569 (1994)

suit was filed by publishers Oxford University Press, Cambridge University Press and Taylor & Francis. The issue here is the University copied the copyrighted work and thereby the infringed but on the other hand, it was issued to the students (for academic purpose) which comes under the fair dealing but for a consideration which may not be acceptable under the fair use. The case is before the court and is yet to be decided by the Courts of law.

7.2.2 Audience Test

To establish infringement, the plaintiff should demonstrate that any audience would find the expression in the defendant's work substantially similar to the plaintiff's work. Courts sometimes refer to this test as an "audience test " and sometimes as an "ordinary observer" test. This principle of test is from the prospective of a third person, or a layman, the two works should be seem so substantially similar that a layman they would not be able to distinguish between the two.

7.3 Contributory Infringement

Contributory infringement is where the copyrighted work is duplicated by another person without the consent of the owner or existence of any lawful excuse by another with the aid of another. This may be simply put a abetment to an offence. For example, a person has a Rs.1000 note and takes a color Xerox in a shop. The person is an infringer and the Xerox shop is abettor or the person who commits contributory infringement.

Similarly, where a book or compact disc is copyrighted which can be easily ascertained, any person who helps in the offence of infringement like making duplicates copies, translation, adaptation, communication to public etc, would amount t contributory infringement.

In the ***A&M Records, Inc. v. Napster, Inc.***[21], the Defendant maintained a central unit which enabled two or more remote computers to share all the music files in other system. The defendant was held vicariously liable and for contributing to the infringement.

In the case of ***Sony Corp. of America v. Universal City Studios, Inc.***[22]**,** the Supreme Court of the United States which ruled that the making of individual copies of complete television shows for purposes of time shifting does not constitute copyright infringement though the lower courts considered it to be a contributory infringement, but it is only a fair use.

7.4 Acts which may not amount to Infringement

[21] 239 F.3d 1004 (2001)

[22] 464 U.S. 417 (1984)

The act/ copying by defendant may not always amount to infringement. Some examples of acts which do not constitute Infringement under the Copyright Act are as follows:

- Fair dealing such as criticisms, personal use, newspaper report, review etc.
- Adaptation of Computer Program
- Judicial Proceedings
- Exclusive work of member of House of Legislature
- Non-Corporate matter for institution purpose
- Question Papers
- With Consent
- Non-paying Audience
- Issue being Current Topic such as economic, social, political Etc.
- Made less than 3 copies
- Research or Private study
- Available in Official Gazette.
- Report of committee or Commission
- After the expiry of Copyright.

7.5 Fair Use

For the purpose of deciding fair use of the work, the following factors has to be taken into consideration before determining it to be an copyright Infringement.

a. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

b. the nature of the copyrighted work;

c. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

d. the effect of the use upon the potential market for or value of the copyrighted work.

At the outset, it should be mentioned that the "Fair Use" of the work depends upon facts and circumstances of each case. In a copyright infringement case dealing with fair use, the duty of the court is to first determine whether the defendant has use the copyrighted information in a natural or justifiable manner or has taken advantage of already existing work of the plaintiff. In deciding that, the court has to deal with the above mentioned factors before coming to any conclusion.

The purpose and character of the use plays a major role in determining the copyright infringement. If the defendant has used it for a purpose which is justifiable or excusable under the Copyright Act, it may not constitute infringement. It is important that the each fact is weighted properly in deciding fair use.

For example, if a person writes a book on topic "Mother's care" and gets his book copyrighted and subsequently, another person with title "Mother's care" writes a article on mother's care on child. Under ordinary circumstances, it may be an infringement, but here it is just an article on care of mother towards the child to an non-paying audience with no commercial element involved in it. Therefore, it would be come under fair use not amounting to infringement.

In the case of ***Harper & Row v. Nation Enterprises***[23], Former President Gerald Ford had written a memoir including an account of his decision to pardon Richard Nixon. Ford had licensed his publication rights to Harper & Row, which had contracted for excerpts of the memoir to be printed in *Time*. Instead, *The Nation* magazine published 300 to 400 words of verbatim quotes from the 500-page book without the permission of Ford, Harper & Row, or *Time* magazine. *The Nation* asserted as a defense that Ford was a public figure, and his reasons for pardoning Nixon were of vital interest, and that appropriation in such circumstances should qualify as a fair use. The court ruled that fair use is not a defense to the appropriation of work by a famous political figure simply because of the public interest in learning of that political figure's account of an historic event.

As stated before, the concept of fair use come into play once the act of the defendant is justifiable or is excusable under the law. In the case of ***Eastern Book Company Vs D.B.Modak***[24], the plaintiff reported the judgments of the courts along with a head notes giving synopsis of the judgment. Question arose as to whether judgment can be given copyright to an individual who

[23] 471 U.S. 539 (1985)

[24] AIR 2008 SC 809

reported the judgment. The court held negatively and held that head notes alone were eligible for copyright and not the judgment.

Secondly, the nature of use by the defendant is very crucial in determining the liability of the defendant. If the defendant uses the subject matter of the copyright that exploitative of the plaintiff work, it would be infringement. Also if the defendant uses the copyrighted work in a manner that defame or derogates the author or his work, it would amount to infringement.

In ***Phoolan Devi v. Shekhar Kapoor***[25]**,** (1995-PTC Del), the plaintiff claimed that the basis of the film, being a novel dictated by the illiterate plaintiff herself had been considerably mutilated by the film producer. The plaintiff sought a restraint order against the defendant, from exhibiting publicly or privately, selling, entering into film festivals, promoting, advertising, producing in any format or medium, wholly or partially, the film "Bandit Queen" in India or else where. Granting an injunction, held that "the defendant had no right to exhibit the film as produced violating the privacy of plaintiff's body and person. The balance of convenience is also in favour of restraining the defendants from exhibiting the film any further as it would cause further injury to the plaintiff. No amount of money can compensate the indignities, torture, and feeling of guilt and shame which has been ascribed to the plaintiff in the film. Therefore, the defendants were refrained from exhibiting the film in its censored version till the final decision of the suit."

In ***Smt. Mannu Bhandari, Appellant v. Kala Vikas Pictures Pvt. Ltd. and another***[26], AIR 1987 Delhi 13, the court observed that "section 57 lifts the author's status beyond the material gains of copyright and gives it a special status. An author's right to restrain distortion etc. of his work is not limited to a case of literary reproduction of his work. The restraint order in the nature of injunction under section 57 can be passed even in cases where a film is produced based on the author's novel. The language of section 57 is of the widest amplitude and cannot be restricted to 'literary' expression only. Visual and audio manifestations are directly covered. The court observed that by reading the contract with section 57, it is obvious that modifications, which are permissible, are such modifications, which do not convert the film into an entirely new version from the original novel. The modifications should also not distort or mutilate the original novel. The fact that Mannu Bhandari is the author of the story will be published in all the credits. This is for giving due recognition to the author's reputation." The court therefore, directed certain modifications and deletions to the film before screening it.

[25] 57 (1995) DLT 154, 1995 (32) DRJ 142

[26] AIR 1987 Delhi 13, ILR 1986 Delhi 191

In cases of factual matters, there cannot be much of infringement except where they are literally copied as the facts per se cannot be copyrighted and copying the same is justifiable act. For example, News cannot be said to have been copied by another. The case is also applicable to factual matter or scheme or the scene of an individual. One must bear in mind that copyright does not protect idea but only the expression. For example, a person writes a story and another person copies the story with same number of persons, their characters, situation etc but in his own words. This would not amount to infringement as the expression is not copied here.

The Supreme Court's decision in ***R.G.Anand v. Delux Films***[27] would show that infringement in India is normally established through comparison of the two works from a holistic perspective. Although the said decision does specifically state, for instance, that ideas *per se* are not protectable, the similarity in the ideas between the two works involved in that case seems to have been a factor that the Court considered. Therefore, the law in India prescribes more of a total "**look and feel**" or the "**Lay Observer Test**" of the work involved, as seen from the perspective of a layman.

Again, if the subject matter is copied by the defendant making substantial changes to the original work or modifies the original work to suit the targeted audience, it may not be an act of infringement. For example, the book 'Five point someone' was transformed into a Hindi movie named 'Three Idiots'. Again the same was translated to Tamil by the name 'Nanban'. All of these does not constitute infringement as some changes were made to suit the interest of the targeted audience by the copier and therefore, this work becomes a original work.

If the author creates any fictional stories and it is copied by the defendant, it may be a blatant copying of the author's work leading to infringement. But, if the copying is of the kind that may naturally occur in the course, it may not be an infringement. For example, hero or heroine of the film introduced with the song cannot be copyrighted. This is called as scenes affair Doctrine.

Also, it is of utmost important that the act of the defend causes some effect upon the author. If the act of the defendant deteriorates the reputation of the author or the defendant by copying the authors work becomes the competitor of the author covering the targeted audience or by any other way affects the rights available under the Copyright Act, the act of the defendant would constitute infringement under the Copyright Act. Some of the defenses available for the defendant are as follows:

- Not Copyrightable

[27] 1978 AIR 1613, 1979 SCR (1) 218

- Consent
- Public Interest
- Permitted acts
- Fair Dealings
- Education
- Libraries and Archieves
- Computer programs
- Adaptation
- Statutory License etc.

In the case of ***Hubbard v. Vosper***[28]**,** the court held as under

"It is impossible to define what is 'fair dealing.' It must be a question of degree. You must consider first the number and extent of the quotations and extracts. Are they altogether too many and too long to be fair? Then you must consider the use made of them. If they are used as a basis for comment, criticism or review, that may be a fair dealing. If they are used to convey the same information as the author, for a rival purpose, that may be unfair. Next, you must consider the proportions…. Other considerations may come to mind also. After all is said and done, it must be a matter of impression…."

Therefore, there cannot be straight line jacket in determining infringement or fair use by the defendant. It is must be decided on case to case basis only based on facts and circumstances of each cases before the court.

7.6 Computer Programs

In India, the Intellectual Property Rights (IPR) on computer software is also covered under the Copyright Law unlike US where the computer programs are given patent protection. Accordingly, the copyright of computer software is protected under the provisions of Indian Copyright Act 1957. Major changes to Indian Copyright Law were introduced in 1994 and came into effect from 10 May 1995. These changes or amendments made the Indian Copyright law one of the toughest in the world.

[28] (1971) 1 All E.R. 1023

The amendments to the Copyright Act introduced in June 1994 were, in themselves, a landmark in the India's copyright arena. For the first time in India, the Copyright Law clearly explained:

• The rights of a copyright holder

• Position on rentals of software

• The rights of the user to make backup copies

Since most software is easy to duplicate, and the copy is usually as good as original, the Copyright Act was required. Some of the key aspects are as follows:

a. According to section 14 of this Act, it is illegal to make or distribute copies of copyrighted software without proper or specific authorization.

b. The violator can be tried under both civil and criminal law.

c. A civil and criminal action may be instituted for injunction, actual damages (including violator's profits) or statutory damages per infringement etc.

d. Heavy punishment and fines for infringement of software copyright.

e. Section 63 B stipulates a minimum jail term of 7 days, which can be extended up to 3 years.

In the case of ***Whelan Associates Inc. v. Jaslow Dental Laboratory, Inc.***[29]**,** the plaintiff and the defendant had the same output but through different process. This was done through different programming language. The court considered it as an infringement and protected the Structure, Sequence and Organization (SSO)

In certain cases, just by running the program, the person in the field would be able to under the ingredient and the programs in it commonly referred to as Black Box Test.

Subsequently in the case of ***Computer Associates International, Inc. v. Altai, Inc***[30], the court overruled Vellan's Case and came up with three tier test to be applied for determining the software copyright infringement.

a. Abstraction

b. Filtration

[29] 97 F.2d 1222, 230 USPQ 481

[30] 982 F.2d 693 (2d Cir. 1992)

c. Comparison

From the above ruling, the court must first break down the program alleged to be infringing into its constituent structural parts, thus segregating the ideas from the expressions through *abstraction*. Then, by examining each of these expressions for exceptions such as the Merger Doctrine, accounting for an expression that is necessarily incidental to those ideas, and other expressions which are public knowledge and are openly available in the public domain, a court would thereafter be able to *filter* out all non-protectable material. Left with the kernel(s) of creative expression after following this process of elimination, the court's last step would be to *compare* this material, protected by copyright, with the allegedly infringing program. This would involve something similar to the test of 'substantial similarity' discussed above. On the whole, one may clearly see the similarities between the test laid down in the Altai case and the original tests followed in the context of other works.

Recently, the government of India has come with an idea of protecting Computer Aided Software (CAD) under the patent laws. Here the government wishes to protect the software not with copyright law but with Patent laws so as to encourage the innovation on software development. As reiterated in previous paragraphs, the copyright protects only the expression and many concepts such as Structure, Sequence and Organization crops up. But this does not in any way protect the creator's inventive or innovative thought. Also under the Patents Act, a Computer Program *per se* cannot be patented. Therefore, the software *per se* is not given the patent rights but software that is made specifically in relation to a hardware would be protected under the Patents Act.

This law is under the developmental stage and has not yet seen the light of the day. We may wait for the law to come and the trial and error method would be the best method for the any laws of these kinds. From the outline, it seems to put an end to the highly controversial topic of providing software with copyright or patent protection.

8. **Remedies**

8.1 CIVIL REMEDIES :

The most importance civil remedy is the grant of interlocutory injunction since most actions start with an application for some interlocutory relief and in most cases the matter never goes beyond the interlocutory stage. The other civil remedies include damages - actual and conversion; attorney's fees, rendition of accounts of profits and delivery up.

8.1.1 INTERLOCUTORY INJUCTIONS

The principles on which interlocutory injunctions should be granted were discussed in detail in the English case of ***American Cyanamid v Ethicon Ltd[31]. [1975] AC 368 (HL(E)].*** After this case, it was believed that the classic requirements for the grant of interim injunction are:

- Prima facie case
- Balance of Convenience; and
- Irreparable injury

In the case of ***Series 5 Software Ltd. v Philip Clarke & Others[32],*** Laddie J re-examined the principles and took a fresh look at what Cyanamid had actually decided. The learned judge held :

- The grant of an interlocutory injunction was a matter of discretion and depended on all the facts of the case;
- there were no fixed rules;
- the court should rarely attempt to resolve complex issues of disputed fact or law;
- major factors the court should bear in mind were (i) the extent to which damages were likely to be an adequate remedy and the ability of the other party to pay (ii) the balance of convenience (iii) the maintenance of the status quo, and (iv) any clear view the court may reach as to the relative strength of the parties' case.

Thus, this case places emphasis on the merits and the effect may well be to obtain a non-binding view by a judge on the merits. This may lengthen the hearing of application for interlocutory injunction as parties may lead evidence on the merits but it may have the overall effect of putting an early end to the main action.

8.1.2 PECUNIARY REMEDIES

Under the Copyright laws of some countries like the United Kingdom, it is essential for the plaintiff to elect between damages and an account of profits although in the two recent cases,

[31] [1975] AC 396]

[32] [1996]FSR 273

namely ***Baldock v Addison [1994] FSR 665*** and ***Island Records v Tring International Plc [1995]*** FSR 560, the Court held that there could be a split trial and a procedure could be adopted by which the trial could be divided so that once liability has been established, thereafter the plaintiff would be able to seek discovery in order for him to make an informed decision on which of the two of the remedies to elect, namely damages or account of profits. In ***Cala Homes (South) Ltd. v Alfred McAlpine Homes East Ltd [I995] FSR 818***, Laddie J held that additional statutory damages could be granted even where the plaintiff elected for account of profits.

Under Sections 55 and 58 of the Indian Copyright Act, 1957, the plaintiff can seek the following three remedies, namely

- account of profits
- compensatory damages and
- conversion damages which are assessed on the basis of value of the article converted.

8.1.3 ANTON PILLOR ORDER

The Anton Piller Order derives its name from a Court of Appeal decision *in* ***Anton Piller AG vs Manufacturing Processes***[33]. An Anton Piller Order has the following elements:

- An injunction restraining the defendant from dealing in the infringing goods or destroying, them;
- An order that the plaintiffs solicitors be permitted to enter the premises of the defendants, search the same and take goods in their safe custody; and
- An order that defendant be directed to disclose the names and addresses of suppliers and customers and also to file an affidavit will a specified time giving this information.

8.1.4 MAREVA INJUNCTION

Mareva Injunction is an order which temporarily freezes assets of a defendant thus preventing the defendant from frustrating the judgment by disposal of such assets.

[33] [1976] Ch 55

8.1.5 NORWICH PHARMACAL ORDERS

These orders are made to ascertain information from third parties to enable the plaintiff or the defendant to produce evidence before the courts of law.

8.2 CRIMINAL REMEDIES

Criminal remedy includes imprisonment of the infringer and the infringing copies seized. Besides one can get ANTON PILLER order from court, which means that court grants an ex-parte order if it feels that the case is balanced in favour of copyright holder. The owner can claim damages from the infringer. The author can get an order for search of defendant's premises, if there is clear evidence to show the presence of infringing copies in the premises of infringer. The infringer is be liable for imprisonment ranging 6 months to 3 years and/or fine of Rs.50,000/- to Rs. 2 lakhs. For the first time, the punishment would be for a period of 6 months to 3 years and/or Rs.25,000 to 2 lakhs and for the second Time it would be for 1 to3 years and/or Rs.50,000 to 2 lakhs. And for infringement on computer Program, the punishment may vary from 7 days up to 3 years and/or Rs.50,000 – 2 lakhs.

8.3 ADMINISTRATIVE REMEDIES

An application can be made by the owner of copyright in any work or by his duly authorized agent, to the Registrar of Copyrights to ban the import of infringing copies into India and the delivery of infringing copies of copyrighted article which were earlier confiscated from infringer to the owner of the copyright.

8.3.1 Copyright Board

There are no special courts for the purpose of dealing with copyright cases. The regular courts try these cases which basically lack knowledge and expertise in the field of copyright. There is a Copyright Board to adjudicate certain cases pertaining to copyright. The government has set up a Copyright Enforcement Advisory Council (CEAC) to adjudicate certain matters relating to copyright.

<u>Powers of Copyright Board</u>

The Copyright Act provides for a quasi-judicial body called the Copyright Board consisting of a Chairman and two or more, but not exceeding fourteen, other members for adjudicating

certain kinds of copyright cases. The Chairman of the Board is of the level of a judge of a High Court. The Board has the power to:

i. hear appeals against the orders of the Registrar of Copyright;

ii. hear applications for rectification of entries in the Register of Copyrights;

iii. adjudicate upon disputes on assignment of copyright;

iv. grant compulsory licences to publish or republish works (in certain circumstances);

v. grant compulsory licence to produce and publish a translation of a literary or dramatic work in any language after a period of seven years from the first publication of the work;

vi. hear and decide disputes as to whether a work has been published or about the date of publication or about the term of copyright of a work in another country;

vii. fix rates of royalties in respect of sound recordings under the cover-version provision; and

viii. fix the resale share right in original copies of a painting, a sculpture or a drawing and of original manuscripts of a literary or dramatic or musical work.

The Registrar of Copyrights has the powers of a civil court when trying a suit under the Code of Civil Procedure in respect of the following matters, namely,

a. summoning and enforcing the attendance of any person and examining him on oath;

b. requiring the discovery and production of any document;

c. receiving evidence on affidavit;

d. issuing commissions for the examination of witnesses or documents;

e. requisitioning any public record or copy thereof from any court or office;

f. any other matters which may be prescribed.

8.3.2 Copyright Society

A copyright society is a registered collective administration society. Such a society is formed by copyright owners as a group. The minimum membership required for registration of a society is seven. Ordinarily, only one society is registered to do business in respect of the same class of

work. A copyright society can issue or grant license in respect of any work in which copyright subsists or in respect of any other right given by the Copyright Act.

Basically the a copyright society performs the following functions:

i. Issue licences in respect of the rights administered by the society.

ii. Collect fees in pursuance of such licences.

iii. Distribute such fees among owners of copyright after making deductions for the administrative expenses.

Generally, it is necessary to obtain licenses from more than one society. For example, playing of the sound recording of music may involve obtaining a licence from the IPRS for the public performance of the music as well as a licence from the PPL for playing the records, if these societies have the particular work in their repertoire.