UNIT 7  THE COPYRIGHT ACT 1957

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The aim of this unit is not to make you into an expert on copyright as this is a complex legal domain but to give you a REFERENCE TOOL so that you may not have to look up copyright when dealing with your domain of BOOK PUBLISHING. However, do keep this handy when you deal with publishing anything.

In this unit the important provisions of the Copyright Act, 1957 are discussed to give you an idea about the framework of the Act and a workable knowledge in copyright. After studying this unit you will be able to describe

i)  the meaning of the terms ‘copyright’, ‘work’, ‘author’, ‘infringement’ etc.;

ii) the ownership of copyright in a work;

iii) the rights of the owner of copyright in a work;
the works in which copyright subsists;
v) the time for which copyright subsists in a particular work;
vi) the Copyright Office and Copyright Board;
vii) the procedure for registration of copyright in a work;
viii) the required Forms and the amount of fees for registration of copyright in a work;
ix) the acts in relation to a work which amounts to infringement of copyright in the work;
x) the acts in relation to a work which does not amount to infringement of copyright in the work;
xii) the various remedies in cases of infringement of copyright;
xii) the appeals from the decisions or final orders of the Court or the Registrar of Copyright or the Copyright Board; and
xiii) the Forms required for different purposes and the amount of fees required for filing application for registration of copyright, for obtaining a licence to republish a literary, dramatic, musical or artistic works etc.

7.1 INTRODUCTION

In this unit you will study the Copyright Act, 1957. The Copyright Act, 1957 is the Indian law on copyright. Prior to the Act of 1957, the law relating to copyrights in India was governed by the Copyright Act, 1914. The Copyright Act, 1957 came into force on 21-1-1958 and extends to the whole of India. Since the coming into force in 1958, this Act has been amended five times in 1983, 1984, 1992, 1994 and 1999. The most substantial amendment to the Act was made in 1994.

Please note that this unit does not exhaustively cover the Copyright Act, 1957. It only attempts to impart to you as simply and precisely as possible the essential aspects of the law of copyright in India from a practical point of view. In this unit you may find some long sentences at some places which may appear to you as difficult to understand. Do not be afraid. At the first reading, a particular sentence may be difficult to understand, but when you give a second reading the sentence will become a little bit clear to you and at the third reading it will be crystal clear.

Study of law cannot be without technical words. Although this unit discusses different provisions of the Copyright Act, 1957 in a simple and lucid manner avoiding technicalities as far as possible, nevertheless, while going through this unit you may find few technical words whose meaning you may not understand. So, it is advisable that you may purchase a small 'Legal Dictionary', which is available in any law bookshop. You may also purchase a Bare Act of the Copyright Act, 1957 published by any reputed publishing house for reference.

If you have access to Internet (World Wide Web), please visit the website of the Copyright Office at www.copyright.gov.in, download the Copyright Handbook given on the website and if possible, take a printout of the Handbook and sometimes go through it.

7.2 DEFINITIONS

Almost in every Act, definition of a few terms are given at the beginning of the Act. These terms are used at various places of the Act and are to be understood as having the same meaning, wherever they are used, as defined in the Act. Let
us now proceed to understand the meaning of few terms as defined and used at various places of the Copyright Act, 1957.

Copyright:— Section 14 of the Copyright Act, 1957 lays down the meaning of the term 'copyright' as the exclusive right (subject to the provisions of the Copyright Act, 1957) to do or authorise the doing of any of the following acts in respect of a work or any substantial part of the work, namely—

a) in the case of a literary, dramatic or musical work, not being a computer programme:
   i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
   ii) to issue copies of the works to the public not being copies already in circulation;
   iii) to perform the work in public, or communicate it to the public;
   iv) to make any cinematograph film or sound recording in respect of the work;
   v) to make any translation of the work;
   vi) to make any adaptation of the work;
   vii) to do, in relation to a translation of an adaptation of the work, any of the acts specified in relation to the work mentioned in (i) to (vi) above;

b) in the case of a computer programme:
   i) to do any of the acts specified in (a) above;
   ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

c) in the case of an artistic work:
   i) to reproduce the work in any material form including depiction in three dimensional of a two dimensional work or in two dimension of a three dimensional work;
   ii) to communicate the work to the public;
   iii) to issue copies of the work to the public not being copies already in circulation;
   iv) to include the work in any cinematograph film;
   v) to make any adaptation of the work
   vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in (i) to (iv) above;

d) in the case if a cinematograph film:
   i) to make a copy of the film including a photograph of any image forming part thereof;
   ii) to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;
   iii) to communicate the film to the public;
e) in the case of a sound recording:

   i) to make any other sound recording embodying it;

   ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions;

   iii) to communicate the sound recording to the public.

The Explanation appended to the section provides that for the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

In simple language, copyright gives the author an exclusive right to produce, reproduce, publish and perform his work in all ways known and possible. According to Black's Law Dictionary (7th Ed. p. 337) copyright is a property right in an original work of authorship (such as a literary, musical, artistic, photographic or film work) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform and display the work. Copyright subsists in expressions and not in idea. Idea is not a subject-matter of copyright. In Anil Gupta v. Kamal Dasgupta, (2002) 25 PTC 1, the Delhi High Court held that an idea per se has no copyright. But if the idea is developed into a concept fledged with adequate details, then the same is capable of registration under the Copyright Act.

**Author:**—According to section 2(d) of the Copyright Act, 1957 'author' means,—

   i) in relation to a literary or dramatic work, the author of the work;

   ii) in relation to a musical work, the composer;

   iii) in relation to an artistic work other than a photograph, the artist;

   iv) in relation to a photograph, the person taking the photograph;

   v) in relation to a cinematograph film or sound recording, the producer;

   vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created.

**Work:**—According to section 2(y) of the Act, ‘work’ means any of the following works, namely:—

   i) a literary, dramatic, musical or artistic work;

   ii) a cinematograph film;

   iii) a sound recording.

**Work of joint authorship:**— According to section 2(z) of the Act ‘work of joint authorship’ means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct form the contribution of the other author or authors.

**Government Work:**— According to section 2(k) of the Act, ‘Government work’ means a work which is made or published by or under the direction or control of—

   i) the Government or any department of the Government;

   ii) any Legislature in India;

   iii) any court, tribunal or judicial authority in India.
Indian work:— As per section 2(l) of the Act, ‘Indian work’ means a literary, dramatic or musical work,—

i) the author of which is a citizen of India; or

ii) which is first published in India; or

iii) the author of which, in the case of an unpublished work is, at the time of the making of the work, a citizen of India.

Artistic work:— According to section 2(c) of the Act, ‘artistic work’ means,—

i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;

ii) a work of architecture; and

iii) any other work of artistic craftsmanship.

Photograph:— According to section 2(s) of the Act ‘photograph’ includes photolithograph and any work produced by any process analogous to photograph but does not include any part of a cinematograph film.

Work of sculpture:— According to section 2(za) of the Act, ‘work of sculpture’ includes casts and models.

Literary work:— As per section 2(o) of the Act, ‘literary work’ includes computer programmes, tables and compilations including computer databases.

Computer:— According to section 2(ffb) of the Act, ‘computer’ includes any electronic or similar device having information processing capabilities.

Computer programme:— According to section 2(ffc) ‘computer programme’ means 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.

Adaptation:— As per section 2(a) of the Act, ‘adaptation’ means—

i) in relation to a dramatic work, the conversion of the work into a non-dramatic work;

ii) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise;

iii) in relation to a literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical;

iv) in relation to a musical work, any arrangement or transcription of the work; and

v) in relation to any work, any use of such work involving its rearrangement or alteration.

Reprography:— Section 2(x) of the Act provides that ‘reprography’ means the making of copies of a work, by photocopying or similar means.

Engravings:— According to section 2(i) of the Act, ‘engravings’ include etchings, lithographs, woodcuts, prints and other similar works, not being photographs.

Plate:— According to section 2(t) of the Act, ‘plate’ includes any stereotype or other plate, stone, block, mould, matrix, transfer, negative, duplicating equipment or
other device used or intended to be used for printing or reproducing copies of any work, any matrix or other appliance by which sound recording for the acoustic presentation of the work are made or are intended to be made.

Duplicating Equipment:—As per section 2(lh) of the Act, 'duplicating equipment' means any mechanical contrivance or device used or intended to be used for making copies of any work.

Exclusive Licence:—Section 2(j) of the Act provides that 'exclusive licence' means a licensee which confers on the licensee or on the licensee and persons authorised by him, to the exclusion of all other persons (including the owner of the copyright) any right comprised in the copyright in a work, and 'exclusive licence' shall be construed accordingly.

Copyright Society:—According to section 2(ffg) of the Act, 'copyright society' means a society registered under sub-section (3) of section 33 of the Act.

Sub-section (3) of section 33 of the Act provides that having regard to the interests of the authors and other owners of rights under the Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the applicants, the Central Government may register such association persons as a copyright society. However, ordinarily the Central Government shall not register more than one copyright to do business in respect of the same class of works.

Communication to the Public:—As per section 2(ff) of the Act, 'communication to the public' means 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.

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.

Broadcast:—Section 2(dd) of the Act provides that 'broadcast' means communication to the public—(i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sound or visual images; or (ii) by wire, and includes a re-broadcast.

Publication:—According to section 3 cf the Act, 'publication' means making a work available to the public by issue of copies or by communicating the work to the public.

### 7.3 OWNERSHIP OF COPYRIGHT

In the previous topic, you have learnt the meaning of various terms as used in the Copyright Act, 1957. Going through the definitions given in any Act has always been a boring affair. But there is no way out; you have to go through them for understanding the provisions of the Act. However, it is better not to make an attempt to commit them to memory in a single day. Just keep on going through them sometimes. Now, in this topic we shall find out the answer of the question "who owns the copyright in a particular work?".

Section 17 of the Copyright Act, 1957 provides that the author of a work shall be the first owner of the copyright in the work.

But this general rule is subject to the following conditions, namely,—
i) If the author of a literary, dramatic or artistic work is under employment by the proprietor of newspaper, magazine or similar periodical under a contract of service or apprenticeship for the purpose of publication in a newspaper, magazine or similar periodical and has made the work in the course of such employment and if there is no agreement between the author and the said proprietor that the copyright in the work made by the author shall be of the author, the proprietor shall be the first owner of the copyright so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, 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.

ii) If at the instance of any person and for a valuable consideration, any photograph is taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, such person shall be the owner of the copyright in the abovementioned work and not the author thereof. But if there is an agreement between the author and the person at whose instance the author makes the work, that the ownership of copyright in the work so made shall vest in the author, then the author will be the owner of the copyright in the work. In the absence of such agreement, the person at whose instance the work was made shall be the first owner of the copyright in the work.

iii) In the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which whatever stated in (i) or (ii) above does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work.

iv) If any person delivers any address or speech in public, he will be the first owner of the copyright in such address or speech if such address or speech is delivered by a person on behalf of some other person, such other person shall be the first owner of the copyright in the address or speech. It is immaterial whether, the person who delivers such address or speech or the person in whose behalf the address or speech in delivered of employed by any person who arranges such address or speech or as whose behalf or premises such address or speech is delivered.

v) If the work is a Government work, in the absence of any agreement to the contrary, the Government shall be the first owner of the copyright in the work.

vi) If the work is made or first published by or under the direction or control of any public undertaking, then in the absence of any agreement to the contrary, such public undertaking shall be the first owner of the copyright in the work.

The term public undertaking means—(a) an undertaking owned or controlled by Government; or (b) a Government company; or (c) a body corporate established by or under any Central, Provincial or State Act.

vii) If the work is made or first published by or under the directions or control of any international organisation, the concerned international organisation shall be the first owner of the copyright in the work.

7.4 WORKS IN WHICH COPYRIGHT SUBSISTS AND FOR HOW MUCH TIME?

After going through the previous topic, by now you know who owns copyright in a particular work. Now let us proceed to see in which work copyright subsists and for how much time.
7.4.1 Classes of Work

Section 13 of the Copyright Act provides that copyright shall subsist throughout India in the following classes of work namely—

i) original literary, dramatic, musical and artistic works;

ii) cinematograph films;

iii) sound recordings; and

iv) work of architecture

It is to be noted that, in the case of work of architecture, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

After knowing in which works copyright subsists, let us now see in which works copyright shall not subsists.

Section 13 of the Copyright Act, 1957 *inter alia* (among other things) provides that—

a) copyright shall not subsist in any work mentioned in (i) to (iii) above, if the work is a published work but is not published in India;

b) if the work is a published work mentioned in (i) to (iii) above and first published outside India, copyright shall not subsist in the work if at the date of publication the author was not a citizen of India in case the author is dead at the date of publication of the work, he was not a citizen of India at the time of his death;

c) if the work is an unpublished work mentioned in (i) to (iii) above, copyright shall not subsist in the work if at the date of the making of the work, the author was not a citizen of India or was not domiciled in India;

d) copyright shall not subsist in a work of architecture if the work is not located in India;

[Please note that whatever stated in (a) to (d) above shall not apply to the work of any international organization and to the foreign works to which the provisions of the Copyright Act, 1957 apply by virtue of an order of the Central Government.]

e) copyright shall not subsist in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;

f) copyright shall not subsist in any sound recording made in respect of a literary, dramatic or musical work, if in making the sound recording, copyright in such work has been infringed.

Where a cinematograph film or a sound recording is based on another work which has a separate copyright, the copyright in the cinematograph film or in the sound recording shall not affect the copyright in such other work.

7.4.2 Term of Copyright

By now you have the works in which copyright subsists and the works in which copyright shall not subsist. Now let us look at the term of copyright in a particular work, that is to say for how much time copyright subsists in a particular work.

Term of copyright in published literary, dramatic, musical and artistic works:—Section 22 of the Copyright Act, 1957 provides that in literary, dramatic,
musical or artistic work (other than a photograph) published within the lifetime of the author copyright shall subsist until 60 years from the beginning of the calendar year next following the year in which the author dies.

**Term of copyright in anonymous and pseudonymous works:**—According to section 23 of the Copyright Act, 1957 in a literary, dramatic, musical or artistic work (other than a photograph) which is published anonymously or pseudonymously, copyright shall subsist until 60 years from the beginning of the calendar year next following the year in which the work is first published.

**Term of copyright in posthumous work:**—Section 24 of the Copyright Act, 1957 provides that in case of posthumous work (literary, dramatic or musical work or an engraving), copyright shall subsist until 60 years from the beginning of the calendar year next following the year in which the work is first published or, where an adaptation of the work is published in any earlier year, from the beginning of the calendar year next following that year.

**Term of copyright in photographs:**—Section 25 of the Copyright Act provides that in the case of a photograph, copyright shall subsist until 60 years from the beginning of the calendar year next following the year in which the photograph is published.

**Term of copyright in Government works:**—According to section 28 of the Copyright Act, 1957 copyright in a government work of which government is the first owner, shall subsist until 60 years from the beginning of the calendar year next following the year in which the record is first published.

**Term of copyright in works of public undertakings:**—Section 28A of the Copyright Act, 1957 provides that in the case of a work, where a public undertaking is the first owner of the copyright therein, copyright shall subsist until 60 years from the beginning of the calendar year next following the year in which the work is first published.

**Term of copyright in works of international organisations:**—Section 29 of the Copyright Act, 1957 lays down that in the case of a work of any international organisation, copyright shall subsist until 60 years from the beginning of the calendar year next following the year in which the work is first published.

**Term of copyright in cinematographic film:**—According to section 26 of the Copyright Act, 1957 copyright in a cinematographic film shall subsist until 60 years from the beginning of the calendar year next following the year in which the film is published.

**Term of copyright in sound recording:**—Section 27 of the Copyright Act, 1957 provides that in the case of a sound recording copyright shall subsist until 60 years from the beginning of the calendar year next following the year in which the sound recording is published.

## 7.5 RIGHTS OF THE OWNER OF COPYRIGHT

The owner of copyright in a work has certain rights over the work. The owner of copyright in a work can earn money by exploiting the work. He can also share the work with others for mutual benefit. The owner of copyright in a work has the following right [besides whatever stated in section 14 (please refer to the definition of copyright in 2.2)] over the work in which he owns the copyright, namely—
Assignment of copyright:—Section 18 of the Copyright Act, 1957 provides that 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 in the work. Such assignment of copyright may be made either wholly or partially and either generally or subject to limitations and either for the whole of copyright or any part of the copyright. In the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.

Section 19 of the Copyright Act, 1957 provides that assignment of the copyright in any work shall be valid only if it is in writing and is signed by the assignor or by his duly authorised agent. The assignment of copyright in any work—

- shall identify such work;
- shall specify the rights assigned;
- shall specify the duration for which such assignment is made;
- shall specify the territorial extent of such assignment;
- shall specify the amount of royalty payable to the author or his legal heirs.

The parties may agree upon terms for revision, extension or termination of the assignment. If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment and if the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.

A copyright assigned can be revoked under section 19A(1) of the Copyright Act. The section provides that if an assignee fails to make sufficient exercise of the rights assigned to him and such failure is not due to any act or omission of the assignor, he (the assignor) can make a complaint to the Copyright Board for revocation of the copyright assigned. On receipt of such complaint the Copyright Board may hold such inquiry as it deems necessary and thereafter may revoke the assignment of copyright.

Licences by owner of copyright:—Section 30 of the Copyright Act, 1957 provides that the owner of the copyright in any work may grant any interest in his copyright to any person by licence in writing signed by him or by his duly authorised agent.

Author's right to relinquish copyright:—Section 21 of the Copyright Act, 1957 provides that the author of a work may relinquish all or any of the rights comprised in the copyright in the work by giving notice in the prescribed form (Form-1) to the Registrar of Copyright.

Under certain circumstances disputes may arise between the assignor and the assignee of the copyright. Section 19A(2) of the Copyright Act, 1957 provides that if any dispute arises with respect to the assignment of any copyright, the aggrieved party can make a complaint to the Copyright Board. The Copyright Board then holds such inquiry as it considers necessary and pass such order as it may deem fit including an order for the recovery of any royalty payable. However, in making such order the Copyright Board cannot pass any order to revoke the assignment unless it is satisfied that the terms of assignment are harsh to the assignor in case the assignor is also the author. It is to be noted further that no order for revocation of assignment can be made by the Copyright Board within a period of five years from the date of such assignment.
7.6 COPYRIGHT OFFICE AND COPYRIGHT BOARD

After going through the previous section, by now you know about the rights of the owner of copyright, i.e., assignment of copyright, licences of copyright by the owner and relinquishment of copyright. You also know that if any dispute arises with respect to the assignment of copyright, the Copyright Board adjudicates it.

Now let us look at the Copyright Office and Copyright Board.

7.6.1 Copyright Office

Section 9 of the Copyright Act, 1957 requires for establishment of an office to be called the Copyright Office for the purposes of the Act. The Copyright Office shall be under the immediate control of the Registrar of Copyright who shall act under the superintendence and direction of the Central Government.

The Copyright Office is situated at--B-2/W-3, Curzon Road Barracks, Kasturba Gandhi Marg New Delhi-110001

The web site of the Copyright Office is- www.copyright.gov.in

7.6.2 Registrar and Deputy Registrars of Copyrights

Section 10 of the Copyright Act, 1957 provides that the Central Government shall appoint a Registrar of Copyrights and may appoint one or more Deputy Registrars of Copyrights:

The Deputy Registrar of Copyright shall discharge such functions of the Registrar under the superintendence and guidance of the Registrar as the Registrar may assign to him.

7.6.3 Copyright Board

Section 11 of the Copyright Act, 1957 provides that the Central Government shall constitute a Board to be called the Copyright Board. The Copyright Board shall consist of a Chairman and not less than 2 or more than 14 other members. The Chairman of the Copyright Board shall be a person who is, or has been, a Judge of a High Court or is qualified for appointment as a Judge of High Court. The Registrar of Copyright shall be the Secretary of the Copyright Board and will perform all secretarial functions relating to the Copyright Board under the direction and control of the Chairman of the Copyright Board.

The Chairman and other members of the Copyright Board are appointed for a period of five years by the Central Government. However, after the expiry of their period of appointment, the Chairmen and other members of the Copyright Board shall be eligible for reappointment.

7.6.4 Powers and Procedure of Copyright Board

Section 12 of the Copyright Act, 1957 provides that the Chairman of the Copyright Board constitute Benches from among its members. Each Bench must be consisting of at least 3 members. However, if the Chairman is of opinion that any important matter is required to be heard by a larger Bench, he may refer the matter to a special Bench consisting of 5 members. The Copyright Board exercise and discharge its powers and functions through these Benches.

Regarding the power of the Copyright Board, it has the following powers—

i) The Copyright Board shall have the power to regulate its own procedure and to fix the places and times of its sittings. Ordinarily, the Copyright Board shall
hear any proceedings instituted before it within the zone in which the person
instituting the proceeding actually and voluntarily resides or carries on business
or personally works for gain.

ii) Section 73 of the Copyright Act, 1957 provides that the Registrar of Copyright
and the Copyright Board shall have the power of a civil court in respect of
(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 affidavits, (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 matter which any be prescribed.

iii) Section 75 of the Copyright Act, 1957 provides that the orders for payment
of money passed by the Registrar of Copyright or the Copyright Board is
deemed to be a decree of a civil court and shall be executable in the same
manner as a decree of such court.

iv) The Copyright Board has the power to punish for its contempt. Giving of false
evidence before the Copyright Board amounts to an offence under the Indian
Penal Code.

While deciding a dispute, if there is difference of opinion among the members of
the Copyright Board or any Bench thereof, the opinion of the majority shall prevail.
Where there is no such majority, the opinion of the Chairman shall prevail. If any
member of the Copyright Board has personal interest in the subject-matter in
relation to which a proceeding is going on before the Copyright Board, he will not
take part in the proceedings.

7.6.5 Certain Disputes to be Decided by Copyright Board

Section 6 of the Copyright Act, 1957 provides that if any question arises—

a) whether a work has been published or as to the date on which a work was
published for determining the term of copyright, or

b) whether the term of copyright for any work is shorter in any other country
than that provided in respect of that work, under this Act (Copyright Act,
1957), it shall be referred to the Copyright Board and the decision of the Copyright Board
in the matter shall be final.

7.7 REGISTRATION OF COPYRIGHT

In the previous section you have come to know about the Copyright Office and
the Copyright Board. Now, we shall discuss procedure for registration of copyright.
For the sake of convenience and simplicity we shall study the procedure for
registration of copyright under following sub-headings—

7.7.1 Register of Copyright

Section 44 of the Copyright Act, 1957 provides that a Register of Copyright in the
prescribed form shall be kept at the copyright office in which may be entered the
names or titles of works and the names and addresses of authors, publishers and
owners of copyright and such other particulars as may be prescribed.

Rule 15 of the Copyright Rule, 1958 provides that the register of copyright shall
be kept in six parts, namely—

Part I. Literary works other than computer programmes, tables and compilations
including computer data bases and Dramatic Works.
Part II. Musical Works.

Part III. Artistic Works.

Part V. Cinematograph Films.

Part V. Sound Recordings.

Part VI. Computer Programmes, tables and compilations including computer data bases.

The Register of Copyright shall contain the particulars specified in Form III (please refer to Bare Act for Form III).

Section 48 of the Copyright Act, 1957 lays down that the Register of Copyright shall be prima facie evidence of the particulars entered therein. The documents purporting to be copies of any entries therein, or their extracts certified by the Registrar of Copyright and sealed with the seal of copyright office shall be admissible in evidence in all courts without further proof or production of the original.

7.7.2 Who Can Make an Application for Registration of Copyright

According to section 45 of the Copyright Act, 1957 the following can make an application for registration of copyright, namely—

i) the author of work;

ii) the publisher of any work;

iii) owner of copyright in a work;

iv) any other person interested in the copyright in a work.

7.7.3 Procedure for Registration of Copyright

Section 45 of the Copyright Act, 1957 provides that the author or publisher of, or the owner of or other person interested in the copyright in any work may make an application in the prescribed form (application must be made in accordance with Form iv) along with prescribed fee to the Registrar of Copyright for entering particulars of the work in the Register of Copyright.

On receipt of such an application Registrar of Copyright may, after holding such inquiry as he may deem fit, enter the particulars of the work in the Register of Copyright.

Section 49 of the Copyright Act, 1957 provides that the Registrar of Copyright may amend or alter the Register of Copyrights by (a) correcting any error in any name, address or particular; or (b) correcting any other error which may have arisen therein by accidental slip or omission. Section 50 of the Act provides that on application of the Registrar of Copyright or of any other aggrieved person, the Copyright Board shall order the rectification of the Register of Copyright by—(a) the making of any entry wrongly omitted to the register, or (b) the expunging of any entry wrongly made in, or remaining on, the register, or (c) the correction of any error or defect in the Register.

Section 50A of the Act then lays down that every entry made in the Register of Copyrights or the particulars of any work entered under section 54, the correction of every entry made in such register under section 49, and every rectification ordered under section 50 shall be published by the Registrar of Copyrights in the Official Gazette or in such other manner as he may deem fit.
7.8 INFRINGEMENT OF COPYRIGHT

In the previous topic you have learnt about the registration of copyright. In this topic you will learn about the infringement of copyright. Let us now see which acts amount to infringement of copyright and which acts do not amount to infringement of copyright.

Section 51 of the Copyright Act, 1957 provides that copyright in a work shall be deemed to be infringed by any of the following acts—

i) When any person, without a licence granted by the owner of the copyright or the Registrar of Copyright or in contravention of the conditions of a licence so granted, does anything, the exclusive right to do which is conferred by the Copyright Act upon the owner of the copyright.

ii) When any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights or in contravention of the conditions of a licence so granted, 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. But if the person who so permits any place to be used for the communication of the work to the public is not aware and had no reasonable ground for believing that such communication to the public will be an infringement of copyright in the work, his permission for using of any such place does not amount to infringement of copyright.

iii) When any person makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire any infringing copies of the work.

iv) When any person distributes any infringing copies of the work either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright in the work.

v) When any person, by way of trade, exhibits in public any infringing copies of the work.

vi) When any person imports into India any infringing copies of the work. However, importing of one copy of any work for private and domestic use of the importer does not amount to infringement of copyright in the work.

Section 52 of the Copyright Act, 1957 lays down certain acts which do not amount to infringement of copyright in a particular work. According to section 52, the following acts shall not constitute an infringement of copyright:

1. A fair dealing with a literary, dramatic, musical or artistic work (not being a computer programme) for the purposes of (a) private use including research, and (b) criticism or review, whether of that work or of any other work.

2. A fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current event—
   (a) in a newspaper, magazine or similar periodical; or
   (b) by broadcast or in a cinematograph film or by means of photographs.

3. The reproduction of a literary, dramatic, musical or artistic work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding.

4. The reproduction or publication of a literary, dramatic, musical or artistic work in any work prepared by the Secretariat of a legislature or, where the legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature.
5. The reproduction of any literary, dramatic or musical work in a certified copy made or supplied in accordance with any law for the time being in force.

6. The reading or recitation in public of any reasonable extract from a published literary or dramatic work.

7. The publication in a collection of short passages from published literary or dramatic work in which copyright subsists where such publication of the collection is bona fide intended for the use of educational institution. However, the collection of such passage must describe in the title and in any advertisement issued by or on behalf of the publisher that it is intended for the use of educational institution. It is to be noted that within a period of five years not more than two such passages from works by the same author can be published.

8. The reproduction of a literary, dramatic, musical or artistic work—
   (a) by a teacher or a pupil in the course of instruction; or
   (b) as part of the questions to be answered in an examination; or
   (c) in answers, to such questions.

9. The performance of a literary, dramatic or musical work by staff and students of an educational institution or the performance of cinematograph film or a sound recording in such educational institution, in the course of the activities of the educational institution, where the audience is limited to the staff and students of the institution, the parents and guardians of the students and persons directly connected with the activities of the institution.

10. The making of sound recording in respect of any literary, dramatic or musical work, if—
   (a) the sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work;
   (b) the person making the sound recordings have given a notice of his intention to make the sound recordings, has provided copies of all covers of labels with which the sound recordings are to be sold, and has paid to the owner royalties in respect of all such sound recordings to be made by him at the rate fixed by the Copyright Board.

11. The performance of literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution.

12. The reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction.

13. The publication in a newspaper, magazine or other periodical of a lecture delivered in public.

14. The making of not more than three copies of a book by or under the direction of the person in charge of public library for the use of the library if such book is to be available for sale in India. This rule applies to pamphlet, sheet of music, map, chart or plan.

15. The reproduction, for the purpose of research or private study, or with a view to publication, of an unpublished literary, dramatic or musical works kept in a library, museum or other institution to which the public has access.
16. The reproduction or publication of—

a) any matter which has been published in any Official Gazette except an Act of a Legislature,

b) any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter;

c) the report of any committee, commission, council, board or other like body appointed by the Legislature, unless the reproduction or publication of such report is prohibited by the Government.

d) any judgment or order of a court, Tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the court, the Tribunal or other judicial authority, as the case may be.

17. The production or publication of a translation in any Indian language of an Act of Legislature and of any rule or orders made thereunder.

18. The making or publishing of painting, drawing, engraving or photograph of a work architecture or the display of a work of architecture.

19. The making or publishing of painting, drawing, engraving or photograph of a sculpture, or other artistic work, if such work is permanently situate in a public place or any premises to which the public has access.

20. The inclusion in a cinematograph film of—

a) any artistic work permanently situate in a public place or any premises to which the public has access; or

b) any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film.

21. The use by the author of an artistic work, where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the work. However, he must not repeat or imitate the main design of the work.

22. Where a literary, dramatic or musical work recorded or reproduced in any cinematograph film, the exhibition of such film after the expiration of the term of copyright in such work.

22. The performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority.

### 7.9 CIVIL REMEDIES FOR INFRINGEMENT OF COPYRIGHT

After going through the previous topic, by now you know the acts which amount to infringement of copyright and the acts which do not amount to infringement of copyright. Let us now see what are the remedies available to the owner or licenceree of a copyright if his copyright in a work is infringed. There are three types of remedies against infringement of copyright, namely, civil, criminal and administrative.
In this chapter we shall discuss about civil remedies.

Section 55(1) of the Copyright Act, 1957 provides that where copyright in any work has been infringed, the owner of the copyright shall be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right.

Thus, the following are the civil remedies for infringement of copyright, namely—

i) Interlocutory Injunction:—Injunction is an order or judgment of a court restraining some person or persons from doing certain things which are detrimental to the interests of another or the others. An interlocutory injunction is granted during the pendency of a suit and may be granted at any stage of the suit. An interlocutory injunction continue until a specified time or until the further order of the court and in any case, up to the decision of the suit. An interlocutory injunction secures immediate protection from a threatened infringement or from the continuance of infringement during the pendency of an action. Grant of interlocutory injunction is always at the discretion of the court and in granting or refusing to grant injunction the court has to weigh the possible damage to the plaintiff if the injunction is not granted or against the possible damage to the defendant if it is granted. Once the infringement and its continuance is proved the plaintiff will usually be entitled to an injunction. But the injunction would not be granted if the damage caused to the defendants by granting the injunction be out of all proportion to the seriousness of the infringement or to the possible damage to the plaintiff. Interlocutory injunction is granted under Order 39, rules 1 and 2 of the Code of Civil Procedure.

ii) Mareva Injunction:—Mareva injunction is granted to restrain the defendant from disposing of assets which may be required to satisfy the plaintiff’s claim or removing the assets from the jurisdiction of the court.

iii) Permanent Injunction:—If in a suit for infringement of copyright, the plaintiff succeeds in establishing infringement of copyright, he is entitled to a permanent injunction to restrain the defendant from infringing the copyright in future. A permanent injunction can only be granted by the decree made at the hearing and upon the merits of the suit and the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff [section 37(2) of the Specific Relief Act, 1963]. For the grant of permanent injunction it is not necessary for the plaintiff to prove any actual damage. If the plaintiff proves that his copyright has been infringed the court will grant an injunction without proof of actual damage. But the plaintiff must show that there is a probability of damage, that the defendant is likely to continue infringing the copyright, and that this is not simply trivial. A permanent injunction restraining the defendant from infringing the copyright in a particular work remains operative only during the unexpired term of the copyright.

iv) Anton Pillar Orders:—An anton pillar order in an ex parte order of the court on the application of plaintiff after a hearing in camera and in the absence of defendant, ordering the defendant or the occupier of his premises to permit the plaintiff and his solicitor to inspect the defendant’s premises.

v) Damages:—Damages means the money claimed by, or ordered to be paid to, a person as compensation for loss or injury. It is a sum of money which a person wronged is entitled to receive from the wrongdoer as compensation for the wrong. The purpose of an award of damages is to restore the plaintiff to his position before the infringement. Damages under the Copyright Act are compensatory and not punitive. Two types of damages are available to the owner of copyright in case his copyright in a work is infringed. Under the
provisions of section 55 of the Copyright Act, 1957 damages are granted for infringement of copyright and the provisions of section 58 of the Act provides that all infringing copies of any work in which copyright subsists, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright and he may take proceedings for the recovery of possession thereof or in respect of the conversion thereof.

A plaintiff may claim both damages of infringement and those for conversion as they are cumulative and not mutually exclusive, but in certain cases where the plaintiff obtains damages for infringement he may not be able to recover any damages for conversion.

vi) **Account of Profit:**—A successful plaintiff in an action for infringement of copyright's entitled to the account of profit and thereby the defendant is ordered to account to the plaintiff for profits made by infringing the plaintiff's copyright. The account of profit is not a notional computation, rather it is investigation of actual accounts. The account is of net profits, that is, the sale price of the infringing article as deducted by the manufacturing and delivery cost. It is to be noted that under the copyright Act, 1957 a successful plaintiff cannot claim both damages and account of profits. He can claim only one of them.

### 7.10 ADMINISTRATIVE REMEDIES FOR INFRINGEMENT OF COPYRIGHT

After having a discussion on the civil remedies for infringement of copyright in the previous chapter, now let us proceed to discuss about the administrative remedies for infringement of copyright.

Administrative remedy for infringement of copyright involves prohibition of importation into India of copies of a copyrighted work made outside India which, if made in India would infringe copyright in the work. This is a quick and effective remedy to the owner of copyright. The administrative remedy under the Copyright Act, 1957 is provided by section 53(1). It empowers the Registrar of Copyright to make an order prohibiting the importation into India of copies of a copyright work made outside India which, if made in India would infringe copyright in the work, on the application of the owners of copyright in such work, or his duly authorised agent, after making such inquiry as he deems fit.

### 7.11 CRIMINAL REMEDIES FOR INFRINGEMENT OF COPYRIGHT

In the previous two topics we had discussion on the civil and administrative remedies for infringement of copyright. Now in this topic we shall discuss about the criminal remedies for infringement of copyright. Infringement of copyright is an offence under the Copyright Act, 1957 and the infringer is liable to be punished for such infringement. It is to be noted that the civil and criminal remedies for infringement of copyright are distinct and independent and can be availed of simultaneously.

Section 63 of the Copyright Act, 1957 provides that any person who knowingly infringes or abets the infringement of the copyright in a work or any other right conferred by the Act (except a resale right in original copies under section 53A), shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 2,00,000. However, where the
infringement has not been made for gain in the course of trade or business, the court may, for adequate and special reasons impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Section 63A of the Act provides that whoever having already been convicted of an offence under section 63 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than Rs. 1,00,000 but which may extend to Rs. 2,00,000. However, where the infringement has not been made for gain in the course of trade or business, the court may for adequate and special reasons, impose a sentence of imprisonment for term of less than one year or a fine of less than Rs. 1,00,000.

Section 65 of the Copyright Act, 1957 provides that any person who knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.

Section 66 then lays down that the court trying an offence under the Act may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for the purpose of making infringing copies, be delivered up to the owner of the copyright.

Section 70 of the Copyright Act, 1957 provides that no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under the Act. Section 69(1) of the Copyright Act, 1957 provides that where any offence under this Act has been committed by a company, every person who at the time the offence was committed as in charge of, and was responsible to the company for, the conduct of the business of the company, as well as the company shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly.

### 7.12 APPEALS

In the previous three topics you have studied about the remedies—civil, administrative and criminal for infringement of copyright in a work. In granting such remedies the court or the Registrar of Copyright or the Copyright Board may make certain orders. A person aggrieved by such order can prefer appeal against such order to the authorities as provided under the Copyright Act, 1957.

**Appeal against Orders of the Registrar of Copyrights:**

Section 72(1) of the Copyright Act, 1957 provides that any person aggrieved by any final decision or order of the Registrar of Copyrights may, within three months from the date of the order or decision, appeal to the Copyright Board against such decision or order.

**Appeal against Orders of the Copyright Board:**

Section 72(2) of the Copyright Act, 1957 provides that any person aggrieved by any final decision or order of the Copyright Board [not being a decision or order made in appeal under section 72(1)] may, within three months from the date of such decision or order, appeal to the High Court within whose jurisdiction the appellant actually and voluntarily resides or carries on business or personally works for gain.
Appeals against Certain Order of Magistrate:—

Section 71 of the Copyright Act, 1957 provides that any person aggrieved by—

i) an order of Magistrate made under section 64(1) for restoration of infringing copies; or

ii) an order of Magistrate made under section 66 for disposal of infringing copies or plates for purpose of making infringing copies, may, within 30 days of the date of such order appeal to the court to which appeals from the court making the order ordinarily lie [as per the provisions of the Code of Criminal Procedure], and such appellate court may direct that execution of the order be staged pending disposal of the appeal.

7.13 COPYRIGHT SOCIETIES

Often the owner of copyright in creative work does not possess the required facilities to keep a vigil over the uses of his work by others or infringement of his copyright in the work by others. Therefore, the owners of the copyright works form societies to licence their works for performance or communication to the public or issue copies of the work to the public. Copyright societies licence the works of owners of copyright to those interested in the reproduction, performance or communication of the work to the public. Further, the copyright societies keep a vigil over the uses made of the works of their members throughout the country and collect due royalties from the users of the work. The copyright societies are also authorized to watch out for infringement of the copyright and take appropriate legal action against the infringers. However, the owner of copyright in a particular work will continue to have the right to grant licences in respect of his own work consistent with his obligation, if any, as member of a registered copyright society.

Section 33(3) of the Copyright Act, 1957 provides that the Central Government may, ................................................... 

register such association of persons as a copyright society. However, the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

Section 35 of the Copyright Act, 1957 provides that every copyright society shall be subject to the collective control of the owners of rights under this Act whose rights it administers and shall—

a) obtain the approval of such owners of rights for its procedures of collection and distribution of fees

b) obtain their approval for the utilisation of any amounts collected as fees for any purpose other than distribution to the owner of rights; and

c) provide to such owners regular, full and detailed information concerning all its activities, in relation to administration of their rights

Section 35(2) of the Act provides that all fees distributed among the owners of rights shall, as far as may be, be distributed in proportion to the actual use of their works.
### 7.14 LIST OF FORMS AND TABLE OF FEES

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<thead>
<tr>
<th>Sl. No.</th>
<th>Form no</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>I</td>
<td>Notice of the relinquishment of Copyright</td>
</tr>
<tr>
<td>2</td>
<td>II</td>
<td>Application for a licence for translation</td>
</tr>
<tr>
<td>3</td>
<td>IIA</td>
<td>Application for a licence for publication/translation/reproduction</td>
</tr>
<tr>
<td>4</td>
<td>IIB</td>
<td>Notice under rule 11 G</td>
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<tr>
<td>5</td>
<td>IIC</td>
<td>Application form for permission to carry on copyright business and for registration as a copyright society</td>
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<td>6</td>
<td>IID</td>
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<tr>
<td>7</td>
<td>III</td>
<td>Form of register of copyright</td>
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<td>Application for registration of changes in the particulars of copyright entered in the register of copyright</td>
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<td>10</td>
<td>VI</td>
<td>Application under section 53 of the Copyright Act, 1957</td>
</tr>
</tbody>
</table>

### TABLE OF FEES

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>Item Description</th>
<th>Fee</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>For a licence to republish a Literary, Dramatic, Musical or Artistic Work (sections 31, 31A and 32A)</td>
<td>Rs. 400 per work</td>
</tr>
<tr>
<td>2</td>
<td>For a licence to republish a Cinematograph Film (section 31)</td>
<td>Rs. 600 per work</td>
</tr>
<tr>
<td>3</td>
<td>For a licence to republish a Sound Recording (section 31)</td>
<td>Rs. 400 per work</td>
</tr>
<tr>
<td>4</td>
<td>For a licence to perform an Indian work in public or to communicate the work to the public by Broadcast (section 31)</td>
<td>Rs. 200 per work</td>
</tr>
<tr>
<td>5</td>
<td>For an application for a licence to produce and publish a translation of a Literary or Dramatic Work in any language (sections 32 and 32A)</td>
<td>Rs. 200 per work</td>
</tr>
</tbody>
</table>
| 6      | For an application for registration of copyright in a— 
(a) Literary, Dramatic, Musical or Artistic Work | Rs. 50 per work |
| 7      | For an application for change in particulars of copyright entered in the Register of Copyrights in respect of a:
(a) Literary, Dramatic, Musical or Artistic Work Rs. 50 per work

(b) Provided that in respect of a Literary or Artistic Work which is used or is capable of being used in relation to any goods (section 45) Rs. 200 per work

8. For an application for registration of copyright in a Cinematograph Film (section 45) Rs. 600 per work

9. For an application for registration of changes in particulars of copyright entered in the Register of Cinematograph Film (section 45) Rs. 400 per work

10. For an application for registration of copyright in a Sound Recording (section 45) Rs. 400 per work

11. For an application for registration of changes in particulars of copyright entered in the Register of Copyrights in respect of a Sound Recording (section 45) Rs. 200 per work

12. For taking extracts from the Register of Copyrights (section 47) Rs. 20 per work

13. For taking extracts from the Indexes (section 47) Rs. 20 per work

14. For a certified copy of an extract from the Register of Copyrights or the Indexes (section 47) Rs. 20 per copy

15. For a certified copy of any other public document in the custody of the Registrar of Copyrights or the Copyright Board Rs 20 per copy

### 7.15 SUMMING UP

Copyright is a right given by the law to the creators of literary, dramatic, musical and artistic works and produces cinematograph films and sound recordings. Copyright law gives an author or creator of a work diverse bundle of exclusive rights over his work for particular period or time. In *Gramophone Co. v. Birender Bahadur Pandey*, AIR 1984 SC 667, Chinnapa Reddy, J. observed that an artistic, literary or musical work is the brainchild of the author, the fruit of his labour and so, considered to be his property. It is therefore, recognised by all civilized nations to be worthy of protection through national laws and international conventions. Copyright law protects the owner of the copyright in a work from an unlawful reproduction or exploitation of his work by others.