International Journal of Innovation and Applied Studies
ISSN 2028-9324 Vol. 2 No. 2 Feb. 2013, pp. 104-112

http://www.issr-journals.org/ijias/

Rights of the Author: Possible Extensions under Copyright Law in India

Dr. Navdeep Kour Sasan

The Law School,
University of Jammu,
Jammu, Jammu & Kashmir, India

ABSTRACT: Copyright is an intellectual property right and is creation of a statute. In India, the Copyright Act of 1957 forms the basis of protection of the copyright works. The owners of the copyright enjoy variety of rights in the form of economic and moral rights. These rights are transferable and the subsequent owner enjoys certain economic benefits, almost similar to those of the author of the work. Keeping in mind the interest of the authors who transfer their copyright to the producers of the cinematograph films or the sound recordings, some new provisions have been inserted by the Copyright (Amendment) Act, 2012, which has been drafted in a very impartial manner so as to empathize the authors of the literary or musical works that are included in the cinematograph films or the sound recordings by the producers of such works. For enjoying the fruits of their labor and skill, the authors of the aforesaid works have been embargoed not to assign or waive their right to receive royalties on equal basis with the producers of the respective works. Besides, the authors of the work, independent of their copyright in the work, have also been conferred with the certain special rights.

KEYWORDS: Intellectual Property, Copyright, Author, Economic rights, Moral rights.

1 INTRODUCTION

The perception that an author of the work should have an exclusive copyright in his work of intellectual creativity, took a solid shape in the eighteenth century. As before it, the publishers or the entrepreneurs exploiting the work considered them as the major risk-takers; they, thus, acquired the work from the author and organized its printing and sale. This resulted into the evolutionary conflicts of interests on the question of the ownership and authorship of the work [1]. The conflicts, however, were later resolved by conferring statutory rights to the creator of the works. In India, the copyright in different works has been given to its creators by law governing the copyright, which has been passed and amended from time to time. After independence of India, the Copyright Act of 1957 (hereinafter, Copyright Act or the principal Act) confers copyright or an 'exclusive right' to the author of the work. The Act contemplates that no copyright exists in any work, other than provided in the Copyright Act (Section 16 of the Copyright Act, 1957). Copyright is a unique kind of intellectual property [2], which is the outcome of human intellect and comes into existence as soon as it is created. There is a need to protect this work of the human genius so as to encourage the authors of the work to contribute more to the field, which in turn would promote the intellects to produce more new woks in the field and also which is necessary to continue the inflow of new technological thoughts. Economy of the nation depends to some extent upon the import and export of such material, thus there is a great need to protect such works. In order to grow in the state of interdependence, it is necessary that the originators of the work must be rewarded with some monopoly rights and at the same time, it is also important to maintain a balance between the authors' rights and the public interest. For that purpose, the works, whether published or unpublished, but falling within the gamut of the copyright laws, must be protected against infringement. The copyright can be granted for the new and original works and for those which are not just an imitation of protected works. However, the novelty and originality of thought for granting protection under the copyright laws, necessarily is not to be weighed on the same footing as that of the patents. The copyright law, however, does not require that the intellectual investment in a work must necessarily be original or new, rather, the standard of originality required for copyright is low (as held in Jagdish Prasad Gupta v. Parmeshwar Prasad Singh, AIR 1966 Pat. 1965). What is required under copyright law is that the manner of expression of the thought must be original.

Corresponding Author: Dr. Navdeep Kour Sasan (navdeipkoursasan@gmail.com)

The degree of originality in case of works forming subject matter of copyright is not similar as required in case of a patent, which demands non- obviousness, besides novelty and usefulness of the invention for claiming protection and no anticipation of the work should be there by those possessing skill in that pertinent art. Besides, the copyright protection to the author of the work finds its justification in the fact that he who produces something with his skill and labour, normally would be allowed to enjoy the fruits of his labour. The Madras High Court, while explaining the basis of protection to the work of intellectual creation, in the case of ***Sulamanglam R. Jayalakshmi*** v. ***Meta Musical*** (AIR 2000 Mad. 454) ***said***:

> *"The primary function of copyright law is to protect the fruits of man's work, labour, skill or test from annexation by the other people.* [3]*"*

The copyright exists in the expression and not mere idea. The manifestation of the idea in some substantial form, i.e. book, work of art, music, drama, film, sound recording, etc., would qualify that work for protection as a 'copyright work'. The Supreme Court of India in a leading case of ***R. G. Anand*** v**.** ***Delux Films*** (AIR 1978 SC 1613) very lucidly declared that there can be no copyright in an idea, subject matter, themes, plot or historical facts [4]. It appears from the term 'copyright' that it is a single right enjoyed by the owner of the work, but in fact the copyright consists of a bundle of legal rights in the same work. The owner of the work not only possess the right as such; for certain limited period; to prevent others from copying his work, or doing any other act which according to the copyright law can only be done by the author of the work, nevertheless, the law also grants him some economic as well as moral rights. The conferment of these rights, however, is not unlimited so as to give absolute monopoly to the owner of the work where he gets absolute freedom to determine as to who can access his ideas or information, but, on the contrary, the law seeks to establish an equilibrium between the rights of the owner and the public interest in having access to ideas and information with equally important public interest in encouraging and rewarding the formulation and publication of such ideas and information.

This article is an earnest and conscientious effort to explore into the field of copyright, where the author of the work is granted with exclusive rights to deal with his work in a manner and the extent provided by law. To deal with the issue in question, it would not be out of place if I draw a line of distinction between the individual rights on one hand and the public interest on the other. For the purpose, the article is divided into three parts. First part deals with the ascertainment of the question as to who can enjoy the so called exclusive right in a copyright work. In order to answer this question, it becomes pertinent to ascertain as to who is the owner of the work. For this purpose, the concept of authorship and ownership is discussed and dealt in with a great precision. The second part relates to finding answer to the question on the rights of the author. In this context it is significant to discuss as to what are various economic and moral rights enjoyed by the author as extensions of the exclusive rights and copyright protection? Lastly, based upon the law enacted on the subject matter of copyright in 1957 and in the light various amendments including the new amendment in 2012, and the case law wherever available on the subject as laid down by the courts in India, conclusion has been drawn at the end of the article.

2 LOCUS STANDI: WHO CAN CLAIM OWNERSHIP?

In general, the 'author' of the work is the 'first owner' of the copyright with respect to his work (Section 17 of Copyright Act, 1957). However, this impression is subject to other provisions of the Copyright Act, which provide for such instances where the author of the work may not be the owner of the work. Prior to dealing with these circumstances, it becomes indispensable to determine as to who can be the author of the work? Author means (Section 2(d) of the Copyright Act, 1957):

i. the author of the work in relation to a literary or dramatic work;
ii. the composer in relation to a musical work;
iii. the artist in relation to an artistic work other than a photograph;
iv. the person taking the photograph, in relation to a photograph;
v. the producer in relation to a cinematograph film or sound recording; and
vi. the person who causes the work to be created in relation to any literary, dramatic, musical and artistic work which is computer generated.

The 'composer' and the 'producer,' as the authors of the musical works and the cinematograph films respectively, have been further defined in the Copyright law. The 'composer' in relation to a musical work means the person who composes the music regardless of whether he records it in any form of graphical notation (Section 2 (ffa) of the Copyright Act, 1957). The 'producer' in relation to a cinematograph film means a person who takes the initiative and responsibility for making the work (Section 2 (uu) of the Copyright Act, 1957). With the objective to recognize the intellectual contributions of the principal director in the cinematograph films, concept of joint authorship of producer and the principal director was proposed in the Copyright (Amendment) Bill, 2010 [5]. Accordingly, it was proposed that as per clause 2(d) (vi) both producer and the principal director would be the authors of the cinematograph film. Also sub clause (vi) in relation to the sound recording, the producer was proposed to be the author. Further, clause 2 (z) defining the term 'work of joint authorship' was proposed to

be modified by insertion of an Explanation clarifying that the cinematograph film would be treated as a work of joint authorship except in cases where the producer and principal directors are same persons. However, these proposed provisions in the 2010 Amendment Bill did not find any mention in the 2012 Amendment Act where the definition of the author, especially, the producer of the cinematograph film, has been kept unchanged. This might possibly be due to the opposition by the representatives of Film and Television Producers Guild of India made during the consultation process held with regards to the Copyright (Amendment) Bill, 2010, where the proposed co-ownership to the principal director was considered by them as unfair and unjustified on the fact that it would be the producer who was to face the potential risk of loss as compared to the principal director who charges upfront fee for his services, irrespective of any profit or loss. It was also emphasized that the contract negotiated freely between the producer and the director could be made in a way so as to incorporate the percentage of profit to be shared by them (as in [5]).

The Copyright Act provides for such classes of persons, who though not the authors of the work, yet become the first owners of the copyright of a work under certain circumstances. Clauses (a) to (e) of Section 17 (1) of the Copyright Act enumerate such instances where not the author but someone else for whom work is done in course of employment and to certain extent and for certain purposes can have the ownership. The provisions conferring ownership to others, those who may be:

The proprietor of the newspaper, magazine or similar periodical [s.17 (a)];
The person who has paid value consideration for the work [s.17 (b)];
The employer under a contract of service or apprenticeship [s. 17 (c)];

4. The person who delivers or on whose behalf the speech is delivered or an address is made [s. 17 (cc)] (Inserted by the Copyright (Amendment) Act, 1983) ;
5. Government in case of Government work [s. 17 (d)];
6. Public undertakings [s. 17 (dd)] (Inserted by the Copyright (Amendment) Act, 1983); and
7. e. International Organizations [s. 17 (e)].

Clause 2(v) under the 2010 Amendment Bill sought to amend Section 17 of the principal Act of 1957, where under producer and principal director were to be treated jointly as the first owner of the copyright after the bill was to be passed as 2010 Amendment Act, however, the same could not be passed. Later, the Copyright (Amendment) Act, 2012, added that in section 17 of the principal Act, in clause (e) the following proviso shall be inserted at the end, namely:

> *"Provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) shall affect the right of the author in the work referred to in clause (a) of sub-section (1) of section 13."* (Section 13 (1) (a) of the Copyright Act, 1957, deals with the original literary, dramatic, musical and artistic works).

The Supreme Court, in the case of ***Vicco Laboratories*** v. ***Art Commercial Advertising Pvt. Ltd***., AIR 2001 SC 2753, rejected the claim of ownership made by the petitioner in the famous T.V. Serial *"Yeh Jo Hai Zindagi*", on the ground that the petitioner failed to establish that the respondent produced the serial acting as his agent or produced it during the course of his employment or for any valuable consideration paid by him to the respondent or at the instance of the respondent.

As it is evident from the provisions contained in Section 17 that there are certain exceptions to the rule that the author is the first owner of his work, it would also be not inappropriate if a question arises in our minds as to what if the first owner who is not the author of the work assigns the work to some third person? Does the right of the author of the work to claim royalty comes to an end after he creates the work for valuable consideration? In ***Indian Performing Rights Society*** v. ***Eastern India Motion Pictures,*** AIR 1977 SC 1443, the Supreme Court laid down that when a cinematograph film producer commissions a composer of a music or lyricist for a reward or valuable consideration for the purpose, the producer of a cinematograph film could defeat the rights of a music composer or the lyricist in the manner stipulated in the provisions (b) and (c) of Section 17 of the Copyright Act, 1957(See [3] at 53). Also in case of ***Eastern Motion Pictures*** v. ***Performing Rights Society*** AIR 1978 Cal 477, the Calcutta High Court held that when a cinematograph film producer commissions a composer of music or a lyricist for reward or valuable consideration for the purpose of making his cinematograph film, then the first owner of such music or lyrics would be the producer of the film (See [3] at 53). Though, no definitional changes were brought in clause (2) (d) by the 2012 amendment of the copyright law, nonetheless, certain provisions protecting the economic interests of the authors of the copyright work have been incorporated. The Copyright (Amendment) Act, 2012 also brought some changes to the provisions of Section 17 and 18 of the principal Act of 1957. In Section 19 of the principal Act, the words 'royalty and any other consideration payable' have been substituted in sub-section (3) for the words 'royalty payable, if any'. Besides sub-section (8), sub-sections (9) and (10) have been inserted in Section19, which also protect the economic interests of the authors of the work. Sub- section (9) reads as:

> *"No assignment of copyright in any work to make a cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilization of the work in any other form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall."*

Further, sub-section (10) provides as:

> "*No assignment of copyright in any work to make a sound recording which does not form part of any cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable for any utilization of such work in any form."*

Both the above new inserted provisions protect the economic rights of the authors of the work irrespective of any consideration paid to them by the person who commissions them for producing that work. Moreover, proviso inserted after sub-section (1) of Section 18 prohibits the author of the literary or musical work, included in the cinematograph film, to assign or waive the right to receive royalties to be shared on an equal basis with the assignee of the copyright for the utilization of such work in any form other than the communication to the public, of the work along with the cinematograph film in a cinema hall. Additionally, the economic interests of author of literary or musical work whose work is included in the sound recording but do not form the part of the cinematograph film, are protected by imposing a prohibition to assign or waive the right to receive the royalties to share on equal basis with the assignee of the copyright for any utilization of such work. Moreover, in Section 34 and 35 of the principal Act, for the words 'owner of rights' the words 'author and other owners of right' have been substituted, wherever they appeared in the principal Act before the enactment of the Copyright (Amendment) Act, 2012.

Notwithstanding anything in sub-section (9) and (10) of Section 19, if it is found that the ownership vests with a single author or it is a work of joint authorship: depending upon the number of authors; the rights would be enjoyed equally by all of them. In the case of ***Levy*** v. ***Rutley***, 1871 LR 6 CP 523, the court held that in order to constitute joint authorship, it is necessary that there should be a common design and co-operation in carrying out the design. If two persons agree to jointly write a play, agreeing on the general outline and design and sharing the labour of working it out, each author would be contributing to the whole production and they might be said to be the joint authors of it, but to constitute joint authorship, there must be a common design (See [2] at 309). Similarly, the Delhi High Court in the case of ***Najma Heptulla*** v. ***M/S Orient Longman Ltd.,*** AIR 1989 Del 63, took the issue of authorship of a book entitled: *"India Wins Freedom"*, and observed that the work was the result of active and close intellectual collaboration between two persons, namely, Maulana Abul Kalam and Humayun Kabir. In the work in question, it was found that the work was result of the contribution of both of them, where one provided the material for the book, whereas, the other wrote the same in English. It was, thus, held that such a work could not be considered as a sole creation of either of the two, and was a work of joint authorship. The Copyright Act, 1957 under Section 2(z) recognizes the work of joint authorship and defines it as:

> *"a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors."*

The new amendment in the Copyright law has increased the horizon of the author's rights, which earlier could be restricted when that work was created in course of employment of others, or for a valuable consideration or when it was a commissioned work, especially, in case the work was created for the purpose of its inclusion in the cinematograph film.

3 RIGHTS OF THE AUTHOR

The Copyright Act, 1957 protects not only the economic or commercial interests of the author, but also his social interests in the form of moral rights or certain special rights. Besides, their protection under the Berne Convention for the Protection of Literary and Artistic Works, 1886, and the Universal Copyright Convention, 1952, these rights are also protected by the Copyright Act, 1957. Section 13 of the Copyright Act, deals with the subject matters which can be protected as copyright works. Various classes of works have been mentioned so as to include original literary, dramatic, musical and artistic works; cinematograph films and sound recordings. Section 14 of the Copyright Act as amended in 1994, defines copyright as an exclusive right to the owner of the copyright and also confers some economic rights to the author along with permission to do certain acts in respect of a work or with respect to any substantial part of such work. Section 51 of the Copyright Act explains the infringement of the copyright in general, whereby an act of a person without license from the owner of the copyright or the Registrar of Copyright, or in contravention of any conditions imposed by a competent authority under the Act, does anything, the exclusive right of doing which is conferred upon the owner of the copyright; or permits for profit the use of any place for the communication of the work to the public where such communication constitutes an infringement of the copyright, unless he had a knowledge of the same (Substituted by the Copyright (Amendment) Act, 1994), or where a

person for the purpose of sale, trade, etc., displays or offers for sale the infringing copies of the work, under section 51 shall be guilty for the offence of copyright infringement. Thus, no person other than the owner of the copyright can do anything with respect to the work in which the copyright subsists. The Privy Council in ***Macmillan and Co. Ltd***. v. ***K & J Cooper***, AIR 1924 PC 75, while explaining the basis of copyright law held: "The moral basis on which the principle of protective provisions of Copyright Act rests is the Eighth Commandant- i.e., "Thou shall not steal". The owner's work is protected besides his entitlement to earn monetary gain from the work produced by his intellectual labour. In ***Garware Plastics and Polyester Ltd., Bombay*** v. ***M/S Telelink,*** AIR 1989 Bom.33, the Bombay High Court observed: "The Copyright Act is meant to protect the owner of the copyright against unauthorized performance of his work thereby entitling him monetary gain from his intellectual property."

The Economic rights confer upon the author of the work to derive profits by exploitation of his work. For the purpose of convenience we can classify economic rights as:

1. Right to Reproduce work;
2. Right to Adaptation and Translation of work;
3. Right to Distribute Copies of work or Commercial Rental;
4. Right of Public Performance; and
5. Right to Broadcast work

3.1 RIGHT TO REPRODUCE WORK

The most fundamental and valuable right of the author is the right to reproduce his work. This right is recognized by the Berne Convention on the Protection of Literary and Artistic Works, 1886, by the Universal Copyright Convention, 1952 and also by the Indian law on copyright contained in the Copyright Act, 1957. Section 14 of the Copyright Act confers the right to the author of the work to reproduce his work or to authorize others to do so. In case of literary, dramatic or musical works, as well as computer programmes, the right is not restricted to reproduce the work in the same form; rather the reproduction of the work can be done in any material form, including the storing of it in any medium by electronic means (Sections 14 (a) (i) and 14 (b) (i)). In case of artistic works, the right extends to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work (Section 14 (c) (i), substituted by the Copyright (Amendment) Act, 2012) . In case of cinematograph film, the reproduction right extends to the making of copies of the film including photographs of any images forming part of the film and storing it in any medium by electronic or other means(Section 14 (d) (i), substituted by the Copyright (Amendment) Act, 2012). From the different provisions discussed under Section 14 of the Copyright Act, one can infer that the term 'reproduction' is used for the literary, dramatic, musical and artistic works, whereas, the words 'make any copy' and 'make an sound recording' has been used to express the right of reproduction in case of cinematograph films and sound recordings respectively. The Copyright Act, however, does not define the term 'reproduction' or 'copy'. In order to explain the meaning of these terms, the court in case of ***Star India (P) Ltd.*** v**. *Leo Burnett India (P) Ltd.*,**(2003) 27 PTC 81 Bom, discussed the following points some of which were: (1)What is the meaning of right to reproduce Under Section 14 (d) of the Copyright Act of 1957with respect to the cinematograph film? (2) Is reproduction right of cinematograph film different from that granted in case of literary, dramatic, musical or artistic works? In this case, a telecast of commercial by the defendants (in February 2000) for a consumer product "Tide Detergent", with a title: *'Kyon Ki Bahu Bhi Kabhi Saas Banegi'* created a controversy, wherein the plaintiff who was the owner of television serial *'Kyon Ki Saas Bhi Kabhi Bahu Thi'* ; a cinematograph film within the meaning of Section 2(f) of the Copyright Act (Substituted by Act 38 of 1994, Section 2, for clause (f), w. e. f., May 10, 1995), contended that the overall impression of any viewer, who sees both the works, would be that the subsequent work of the defendants is a copy of the original work of the plaintiffs and that it was sufficient to create an impression in the minds of the viewers that the plaintiffs are whole heartedly and unreservedly endorsing the product of the defendants, who used the identical characters being played by the same artists in their commercial. The question which came for the consideration for the court was whether the commercial made by the defendants is a copy of the work of the plaintiff. The while explaining the meaning of the term 'reproduction' and the 'copy of the work', used in Section 14 with respect to the literary, dramatic, musical, artistic works or computer programmes, on one hand and that for the cinematograph film and sound recording on the other, held that their extent varies in degree only, where one confers the exclusive right to reproduce the work in any mater form in case of the former category of works and in the latter to make copy of the respective works, which means making of the physical copy of the film itself. Consequently, such interpretation by the court gave a green signal to the telecast of the commercial that could not be treated as the copy of the work and the production of same cinematograph film by another would not amount the infringement of the copyright of the first film as making copy of the work without consent of the owner would constitute an infringement of the work. Also that if the subsequent film has been produced separately and even if it resembles the first film, it would not amount to infringement as it is not the copy of first film which as such has been prohibited by the law [6]-

[7]. The scope of the right to reproduce a work, thus, depends upon the nature of the subject matter in question. As in case of literary works, the reproduction right stretches to a series of works, which are considered as literary works under Section 2(o) of the Copyright (Amendment) Act, 1994. The Courts in India have declared that copyright subsists in various literary works such as dissertation, question papers, encyclopedias, dictionaries, head notes of Law Reports, etc (See [4],pp.27-28).

3.2 RIGHT TO ADAPTATION AND TRANSLATION OF WORK

Section 2 (a) of the principal Act defines the term 'adaptation', which, depending upon the nature of the work, confers the author with a right to convert the work into other form, or the right to perform the work in public, or to abridge the work, or to make any arrangement or transcription of the work, or rearrangement or alteration of the work (For the detailed definition of the term 'adaptation', see; Section 2(a) of the Copyright Act, 1957). Adaptation is usually understood to involve adapting an already existing work, in which the copyright subsists, from one form to another, for example, from novel to a drama or film, or from two dimensional to three dimensional form, etc. Once the work is adapted, the author of the work can enjoy the reproduction right or the right to make copies of work depending upon the nature of the work so adapted. However, adaptations also permit alterations to the work in same form, as publication of the new edition of the book, where modifications in the law book so as to incorporate new developments in the field. In case of artistic works, especially, the 'works of architecture' as defined under section 2 (b) (Substituted for the words 'architectural works of art' by the Copyright (Amendment) Act, 1994), which means any building or structure having character or design, or any model for such building or structure, the owner of the work such as building often alters the maps of the buildings from time to time so as to make the house more modern as per the trend in the property market or otherwise, that may frequently lead to conflict with the copyright of the author of the work, who in this case would be an architect. Thus, in such works the question arises whether alteration is permissible to the owner of the work as against the author of the work? In order to protect the works of architecture and works relative to architecture against unauthorized reproduction by the owners of the work, and also resolve this issue of conflicting interests of the owner and the author, the UNESCO and the WIPO suggested a way-out so as to protect the owner from the act of infringement against the author on one hand, and protection of the economic interest of the author, which is as under:

> *"The author of the work of architecture should enjoy the exclusive right of authorizing alterations of that work, except where the alteration is of a kind that is of great importance to the owner of the building or other similar construction and that does not amount to a distortion, mutilation or other modification which would be prejudicial to the honour or reputation of the author of the work of architecture."* [8]

The owner of the copyright can prevent others from reducing the contents of the work and by simply omitting certain material and copying some, and then claiming copyright on it. As abridgement of the work involves a sense of judging the things, skill, labour, etc., every abridgement does not entitle the creator of the abridged work a copyright in that work. A genuine abridgement of the work amounts to the creation of an original work, which can entitle the author of that work with the copyright. Thus, copying certain passages and omitting others would not entitle the author of that work a copyright. Thus, a digest of any literary work is an abridgement. In the case of ***Raghunathan*** v. ***All India Reporter***, AIR 1971 Bom. 48, the Bombay High Court held that a genuine abridgement of the literary work is an original work and is the subject matter of copyright abridgement amounts to the reproduction of an original work in a much more precise and concise way (See [4], pp. 28). In case of translated works, as in ***Blackwood & Sons Ltd.*** **v.** ***Parsuraman***, AIR 1959 Mad. 410, the Madras High Court held that a translation is entitled to the copyright protection and also reproduction of that work in any other language, without the consent of the owner, would amount to infringement of the original work [9]. However, the right of translation itself vests in the owner of the work, which is capable of translation, as in case of literary works. Lord Atkinson in the case of ***Macmillan and Co. Ltd***. v. ***K & J Cooper***, AIR 1924 PC 75, observed that in order "to constitute a true and equitable abridgement, the entire work must be preserved in its precise import and exact meaning, and then the act of abridgement is an exertion of the individuality employed in molding and transferring a large work into a small compass, thus rendering it less expensive and more convenient both to the time and use of the reader."(See [2], pp. 278) Besides that "independent labor must be apparent." (See [2], pp. 278)

3.3 RIGHT TO DISTRIBUTE COPIES OF WORK AND COMMERCIAL RENTAL

The right to distribution implies sale, lease, rental, lending, etc., of the work to the public. In other words, possession of copies of the work by any of the methods of distribution amounts to 'distribution'. The right to distribute the copies of the work vests exclusively by the first owner of the work. The right to distribute the copies of the cinematograph work was not expressly mentioned in the Berne Convention on Literary and Artistic Works, 1886. The right to distribute the cinematograph works, however, under the Copyright Act, 1957, is conferred upon the author of the work in a different manner, by giving

him right to sell or of commercial rental. Under Section 14 (d) (ii), gives right to sell or give on commercial rental or offer for sale or for such rental, any copy of the film (Substituted by the Copyright (Amendment) Act, 2012). Further, in case of sound recordings, right to distribute the copies is available in the same manner as in case of the cinematograph film (Section 14 (e) (ii), substituted by the Copyright (Amendment) Act, 2012). However, the right to issue copies of the work to the public not being the copies in circulation is available in case of literary, dramatic, musical or artistic works (Section 14 (a) (ii) and (c) (iii) of the Copyright Act, 1957). In the case of a computer programme, distribution right can be inferred from the provision contained in Section 14 (b) (ii),(Substituted by the Copyright (Amendment) Act, 1999), which confers on the holder of the right, a right to sell or give on commercial rental or offer for sale or commercial rental any copy of the computer programme. But where the computer programme itself is not the essential object of rental, the concept of commercial rental does not apply in that case. The question which needs to be answered at this stage is whether right to distribute gets exhausted in relation to the copy after its first sale? Article 6 of the TRIPS Agreement contains the a reference to the doctrine of exhaustion, whereby, exhaustion of the distribution right has been subjected to the provisions of Articles 3 and 4 of the TRIPA Agreement, which refer to the principles of National Treatment (NT clause) and the Most- favored Nation Treatment (MFN clause).The so called *'first sale doctrine'* or the *'doctrine of exhaustion'* is explicitly recognized in the U.S. (17 U.S.C. s.109(a)). The Doctrine says that once someone buys a legitimate copy of a work, they can do whatever they want with it, including sell it to others, or lend it out, or whatever. They just can't make extra copies of it. In a very famous case of ***Bobbs-Merril Co.*** v. ***Straus***, (210 U.S. 339 (1908)) [10], the Supreme Court of the United Nations held that once the owner of the copyrighted work, Bobbs- Merril, has sold his book called *'The Castaway'* without any restriction regarding sale by the purchaser of that article, parts with all his right to control the sale of it, By selling his copies at wholesale, the owner exhausts his right to vend and cannot restrict later on by instituting a suit of infringement, against the retailer, Straus, from reselling the copies at a second hand price, that is, below what is mentioned on each copy. The court found that the copyright law, basically, gave the owner of the right to restrict others from making their own copies of the work. However, it did not give them the rights to control what happened to books after they sold them. In India, however, the owner of the computer programmes, which are the objects of the copyright, and also the owner of the sound recordings have been conferred with the commercial rental rights, which do not thus attract the first sale doctrine and are clear exceptions to this rule. But in case of dramatic, musical, artistic and literary works, other than the computer programmes, the use of the words *'not being copies already in circulation,'* itself suggest that the right of the author to distribute the copies of his work extends only to the extent of new copies which have to be sold for the first time and not beyond that. Thus, the doctrine of exhaustion is applicable in respect to certain works which are not the subject of commercial rental; however, subject to other provisions, as Section 53 A, inserted by the Copyright (Amendment) Act, 1994 that permits share in the resale of the work where the value of resale is rupees ten thousand or more, though not explicitly referred in the Indian copyright law. In respect of distribution rights, in contrast to the American first- sale doctrine, some countries grant to the artists or their heirs, the right to follow (*droit de suite,* a French maxim), which means a right to receive a fee on resale of their works of art. In India, resale share to the author; if he is the first owner of the rights under Section 17, or to his legal heirs; in the original copy of a painting, sculpture or drawing, or of the original manuscript of a literary or dramatic work or musical work, in the case of resale for a price exceeds ten thousand rupees. Despite the fact that the copyright has been assigned, he has a right to share in the resale price of such original copy or manuscript in accordance with the provisions of Section 53 A. The resale share right, however shall come to an end after the expiration of the term of the copyright.

3.4 RIGHT OF PUBLIC PERFORMANCE

The Copyright law in India recognizes the right of the public performance in respect of the literary, dramatic or musical works. Section 2 (q) of the Copyright Act defines the term performance in relation to performer's right to mean any visual or acoustic presentation made live by one or more performers (Substituted by the Copyright (Amendment) Act, 1994). An actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance is a performer within the meaning of Section 2 (qq) of the Copyright Act. However, a proviso has been inserted by the Copyright (Amendment) Act to clause (qq) of Section 2, which provides that "in a cinematograph film a person whose performance is casual or incidental in nature and, in the normal course of the practice of the industry, is not acknowledged anywhere including in the credits of the film shall not be treated as a performer except for the purpose of the clause (b) of section 38B."

3.5 RIGHT TO BROADCAST WORK

The Rome Convention of 1961 defines the term 'broadcasting' under Article 3 (f). Under it broadcasting means transmission by wireless means for public reception of sounds of images and sounds. Even simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization has also been covered by the Convention

under the term 'rebroadcasting.' On the pattern of the Indian copyright law also defines the term 'broadcast' to mean communication to the public by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images ; or by wire and includes a re-broadcast (Inserted by the Copyright (Amendment) Act, 1983). From this definition it is clear that the broadcasting right also include the right to communicate the work to the public. "Communication to the public' under Section 2(ff), which is substituted by the Copyright (Amendment) Act, 2012, means "making any work or performance 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 physical copies of it , whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available." An explanation is provided to show that the communication through the 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 public. Thus we see that one of the notions of the right to communication to public is the notion of public. In the case of ***Garware Plastic and Polyester Ltd., Bombay*** v. ***M/S Telelink***, AIR 1989 Bom.33, the Bombay High Court while determining the question as to whether causing a video film to be shown over a Cable Television Network by a person having no video copyright over such film amounted to broadcasting, resulting in the infringement of the copyright over the film? Or in other words, whether it amounts to the communication to public? In order to answer this question, the court felt a need to discussed the term 'public' as against communication in private, which essentially depends upon the persons receiving the communication The court held that in this case as the communication of the film over the cable television network was meant for the public having in view the nature of the audience of the Cable TV Network, thus amounted to infringement of the copyright.

4 SPECIAL RIGHTS OF THE AUTHOR

The author of the work has the right to preserve and protect his moral rights. The protection accorded by the moral rights, however, is different from the economic rights. Whereas the economic rights protect the economic interests of the author by preventing others from exploiting the work without the consent of the author, the moral rights focus on the protection of the author's personality. Section 57 of the Copyright Act supports this view and protects the moral rights along with the right of the author to claim authorship in the work *(droit de paternite)*, or in other words the right of paternity) as Author's Special Rights. As amended by the Copyright (Amendment) Act, 2012, Section 57 gives the author of the work a right to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work, if such distortion, mutilation, modification or other act would be prejudicial to his reputation. Thus this provision confers the right of reputation *(droit de respect de l'oeuvre)* in order to preserve the integrity of the author of the work, despite the fact that the author has assigned his work either wholly or partially. This right is independent of the author's copyright. Further, this provision does not speak of the publisher's or owners special rights. In the case of ***Wiley Eastern Ltd***. v. ***Indian Institute of Management***, 1995 PTR 53 (Del.), the court held that the words " Action prejudicial to his honour or reputation" under Section 57 (1) (b) refers only to the author of the work and not to any other person related with the work in any manner.. Section 57 is a special provision for the protection of the special rights of the author. The object of the section is to put the intellectual property on higher footing than the normal objects of copyright. Further, that the language used in Section 57 is of widest amplitude and cannot be restricted to the literary' expression only and also covers other expressions such as visual and audio manifestations, as was held in the case of ***Mannu Bhandari*** v. ***Kala Vikas Pictures Pvt. Ltd.*** AIR 1987Del. 13.

5 CONCLUSION

In India, an author of the copyright works under the Copyright Act, 1957, possess a right to protect his works against unauthorized infringement. His rights under the copyright law extend to protect his economic and moral rights. The economic rights are undermined by the technological innovations and face threat from the growing and ever enlarging technology, which has resulted into the increased incidents of piracy of the copyrighted works, further necessitates its protection not only within, but beyond the territorial regimes of a country. Besides, protecting the economic rights of the author, his reputation and personality are also protected against any distortion, mutilation or modification of the work. The judicial interpretation of these rights has been remarkable in giving them life in the real sense of term. Though the Copyright (Amendment) Act of 2012 has incorporated many changes to protect the rights of the author to share the royalty with the producer(s) of the cinematograph films and the sound recordings, still the rights of the authors awaits protection and justice for the works available on the internet.

REFERENCES

[1] W.R. Cornish, "Intellectual Property: Patents, Copyright, Trade Marks and Allied Marks," (Delhi: Universal Law Publishing Co. Pvt. Ltd., 2003), 2nd Indian Reprint, at 297.

[2] Dr. B. L. Wadehra, "Law Relating to Intellectual Property," (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2012), 5th Edition Reprint, at 26

[3] Meenu Paul, "Intellectual Property Laws," (Faridabad: Allahabad Law Agency, 2009), 3rd Edition, at 21.

[4] Dr. M. K. Bhandari, "Law Relating to Intellectual Property Rights," (Allahabad: Central Law Publications, 2010), 2nd Edition, at 27.

[5] 227th Report by the Department- Related Parliamentary Standing Committee on Human Resource Development on the Copyright (Amendment) Bill, 2010, presented to the Rajya Sabha and laid on the table of the Lok Sabha on November 23, 2010; Rajya Sabha Secretariat, New Delhi, November 2010/ Agrahayana, 1932 (Saka). Available at: http:// rajyasabha.nic.in

[6] N. S. Gopalakrishnan and T.G. Agitha, "Principles of Intellectual Property," (Lucknow: Eastern Book Co., 2009) 1st Edition, at 224-233;

[7] Arathi Ashok, "Economic Rights of Authors under Copyright Law: Some emerging Judicial Trends," Journal of Intellectual Property Rights, Vol.15, Jan. 2010, at 49.

[8] The Committee of Governmental Experts on Works of Architecture, while dealing with the questions concerning the protection of works of architecture and works relative to architecture suggested the right of authorizing alterations. See, UNESCO/WIPO/CGE/WA/3, dated July 28, Principle WA. 4, Para 30, at 9,
Available at: www.wipo.int/mdocarchives/UNESCO_WIPO_CGE_WA_86/UNESCO_WIPO_CGE_WA_3_E.pdf (last visited: September 10, 2012)

[9] Dr. Raghbir Singh, Law Relating to Intellectual Property, (Delhi: Universal Law Publishing Co. Pvt. Ltd., 2008), 2nd Edition, Vol. 2, at 893.

[10] Bobbs- Merril Co. v. Straus, (210 U.S. 339 (1908)). Available at: http://www.invispress.com/law/copyright/bobbs.html (Last visited: September 10, 2012).