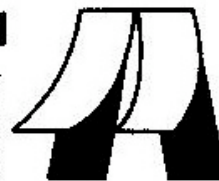


# ALTERNATIVE LAW FORUM

#4, 3rd Cross, 8th Main, Vasanthanagar  
Bangalore - 560 052. Ph: 22356845

E-mail: [alforum@vsnl.net](mailto:alforum@vsnl.net) Website: [www.altlawforum.org](http://www.altlawforum.org)



**To:**

**Madhukar Sinha**

Registrar of Copyright  
Ministry of Human Resource Development  
B-2/ W3 Curzon Road Barracks  
Kasturba Gandhi Marg  
New Delhi – 110001  
[[madhukars@nic.in](mailto:madhukars@nic.in) / [akkhurana.edu@sb.nic.in](mailto:akkhurana.edu@sb.nic.in)]

**cc:**

**Sunil Kumar**

Joint Secretary  
Department of Higher & Secondary Education  
Ministry of Human Resource Development  
Shastri Bhavan  
New Delhi - 110001

**13 July 2006** (*following from communication on 8 July 2006*)

Dear Mr Sinha,

This is a follow-up to the letter and draft review we sent you dated 8 July 2006. This is our final submission. This document incorporates a section that includes draft provisions to accompany our comments and suggestions, and further expands the list of organisations in India that support our review of, and suggestions around, the Indian Copyright Act, 1957.

To recap from the last letter, this review takes into consideration the amendments proposed, and comprehensively examines both the existing Act and the proposals to it.

We would like to note our gratitude to the Department of Higher & Secondary Education and the Copyright Office for placing the Act in entirety, along with the proposed amendments, and affiliated information on the website [www.copyright.gov.in](http://www.copyright.gov.in) as this has greatly aided our own access to the history and present of copyright legislation in India.

We attach a short summary of our perspective as follows in the review:

Access to knowledge and cultural goods is critical to ensure full participation of the public in political and cultural life and to ensure benefit to them from any scientific and technological advancement. The copyright system seeks to promote the efficient dissemination of knowledge in the public domain by maintaining a balance between enabling rewards to producers of knowledge on the one hand, and access to these copyright goods for the public, on the other. It is therefore critical that laws pertaining to copyright in any country be drafted in a manner that best ensures an ideal balance between public and private interest.

This review seeks to examine the implications of the proposed amendments, as well as to re-examine some of the existing provisions from a public interest perspective.

The copyright law of a sovereign nation is influenced by the status of that nation's accession to the major international conventions, treaties and trade rules, which in the case of India, are:

- (i) The Berne Convention for the Protection of Literary and Artistic Works ("Berne Convention")
- (ii) The agreement on trade related aspects of intellectual property rights ("TRIPs") which also incorporates the Berne Convention

Additionally, there are a number of other copyright-related treaties like the WIPO Copyright Treaty ("WCT") and the WIPO Performances and Phonograms Treaty ("WPPT") which bind signatory nations to additional changes to their copyright law. It is to be noted that India is only bound to the terms of the Berne Convention and the TRIPs agreement, and not to either the WCT or the WPPT. We are therefore not legally obliged to any commitments beyond those obligated under TRIPs and Berne.

We note that some of the proposed amendments to the Act seek to introduce provisions related to the WCT and WPPT, and we need to be extremely cautious before introducing any amendments that may be detrimental to public interest. For instance the current proposals seek to introduce Digital Rights Management ("DRM") into the Act, and we review why this is not in the best interests of a developing country.

We also note that it is important for government to recognize and rely on flexibilities of the Berne Convention and the TRIPs agreement which enable access to knowledge and information, by ensuring easy access to copyrighted materials in respect of educational, private or general use, and via any media or form. For instance, we note that the present amendment seeks to promote greater access to knowledge and information for persons with any sensory disabilities. This is a welcome move, especially if enacted with a thorough review of the details of the need, and the enabling provision thereof.

Lastly, a short note on who we are. This review was drafted at the Alternative Law Forum ("ALF") by Lawrence Liang, Achal Prabhala and Nirmita Narasimhan, and is supported by important consumer-rights organisations, disabled-rights groups, film producers' associations, NGOs and universities from across India, namely:

Citizen consumer and civic Action Group ("CAG")  
 Independent Documentary Producers Association ("IDPA")  
 National Association for the Blind ("NAB")  
 Centre for the Study of Developing Societies ("CSDS")  
 Voice (Voluntary Organization In Interest of Consumer Education)  
 Consumer Online Foundation  
 Drishtiviklang Sangh (Association of the Visually Handicapped)  
 M S Swaminathan Research Foundation  
 Mahiti (International Open Source Network - India)  
 Tata Institute of Social Sciences ("TISS")

It is also supported by the renowned legal scholar and former Vice Chancellor of Delhi University, Professor Upendra Baxi. More details on the organisations, and the designated contact with respects to this review, follow on the next page. We trust that you will find our suggestions useful, and we look forward to clarifying any part of this document, as necessary.

Sincerely,

**Achal Prabhala and Lawrence Liang** (on behalf of the reviewers)

**Alternative Law Forum**[www.altlawforum.org](http://www.altlawforum.org)

Alternative Law Forum (“ALF”) is a collective who work on various aspects of law, legality and power. ALF’s work includes the provision of legal services; it also acts as a centre for generating quality resources that intervene in legal education and scholarship.

No 4 Ground Floor

3rd Cross, Vasanthanagar

Bangalore – 560052

Phone: 080 – 22356845/ 080 – 22370028

Contacts: [Lawrence Liang](mailto:Lawrence.Liang@vsnl.net), [Achal Prabhala](mailto:Achal.Prabhala@vsnl.net), [Nirmita Narasimhan](mailto:Nirmita.Narasimhan@vsnl.net) (alforum@vsnl.net)

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**Citizen consumer and civic Action Group**[www.cag.org.in](http://www.cag.org.in)

Citizen consumer and civic Action Group (“CAG”) is a non-profit, non-political and professional organisation that works towards protecting citizens’ rights in consumer and environmental issues and promoting good governance processes including transparency, accountability and participatory decision-making.

No 8, Fourth Street, Venkateswara Nagar,

Adayar, Chennai – 600020, INDIA.

Phone: 044 - 24460387

Telefax: 044 – 24914358

Designated contact: [Bharath Jairaj](mailto:Bharath.Jairaj@gmail.com) (cag.india@gmail.com)

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**Indian Documentary Producers’ Association**[www.idpaindia.org](http://www.idpaindia.org)

The Indian Documentary Producers’ Association (“IDPA”) is a non-profit organisation that came into being in 1956. It is registered as a public trust under the Bombay Public Trust Act 1950. Today IDPA is India’s single largest association of producers of documentaries, animation films, advertisement films and TV programmes.

223, Famous Cine Studio Building

20 Dr E. Moses Road, Mahalakshmi, Mumbai 400 011

Phone: 022-2496 1020 / 2492 0757

Designated contact: [Chandita Mukherjee](mailto:Chandita.Mukherjee@vsnl.net) (seascape@vsnl.net)

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**National Association for the Blind**[www.nabindia.org](http://www.nabindia.org)

The National Association for the Blind (“NAB”) is a not for profit non-governmental organisation working to economically and socially integrate persons with blindness or low vision into mainstream society for the past 50 years all over India, through its 65 District level and 19 State level branches. Production of books in Braille and production of Talking Books are an integral part of NAB’s efforts to empower persons with blindness or low vision, with knowledge and skills.

Sector 5, R.K. Puram

New Delhi – 110022

Phone: 011-26102944/ 011-26176379

Designated contact: [Dipendra Manocha](mailto:Dipendra.Manocha@gmail.com) (dipendra.manocha@gmail.com)

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**Centre for the Study of Developing Societies**

[www.csdshdelhi.org](http://www.csdshdelhi.org) and [www.sarai.net](http://www.sarai.net)

Centre for the Study of Developing Societies (“CSDS”) is one of India’s oldest and most respected independent social science research institutions. Sarai is a CSDS programme covering media politics and the urban experience.

29 Rajpur Road,

Delhi 110054.

Phones: 011-23960040/ 011- 23942199

Designated contact: Ravi Sundaram ([ravis@sarai.net](mailto:ravis@sarai.net))

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**Consumer Online Foundation**

[www.consumeronline.org](http://www.consumeronline.org)

Consumer Online Foundation (“COF”) is a registered Trust formed with the motive of ensuring that modern technologies and communication media are used to serve the greater common good. COF manages one of the country’s largest resource centres on Indian consumer law and policy and its researchers are involved in various legal remedies of problems affecting consumers.

Address: Consumer Online Foundation

C-128, IInd Floor, Defence Colony,

New Delhi 110024

Fax: 91-11-24332339

Designated contact Joseph Pookat ([director@consumeronline.org](mailto:director@consumeronline.org))

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**Drishtiviklang Sangh (Association of Visually Handicapped)**

Drishtiviklang Sangh has been working for the welfare of the blind community in Rajasthan since 1993 and is particularly focused on advocacy work related to computer literacy among blind people.

E-639, Vaishali Nagar, Jaipur-302021.

Phones/ Fax 9414071296

Designated contact: inesh Kumar Gujar ([dkgujar@pnb.co.in](mailto:dkgujar@pnb.co.in))

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**Voice**

<http://www.consumer-voice.org>

VOICE (Voluntary Organization In Interest of Consumer Education) – is a voluntary action group whose objective is to protect and further the interests of the consumer. The organization was founded by teachers and students at Delhi University. VOICE has articulated consumer interest and continues to do so, as a member of the Central Committee on Food Standards, Consumer Protection council (Delhi). Electronics Test Lab Advisory Committee, Committee on Urban Waste Management, and the Committee on the Issue of Fluoride in Toothpaste and MSG in Foods.

Address: 441, Jangpura, Mathura Road,

New Delhi-110 014

Phones/ Fax: Ph:011-24379078-80 Fax:011-24379081

Designated contact: Bejon Misra ([cvoice@vsnl.net](mailto:cvoice@vsnl.net) , [cpt@consumer-voice.org](mailto:cpt@consumer-voice.org))

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**M S Swaminathan Research Foundation**[www.mssrf.org](http://www.mssrf.org)

M S Swaminathan Research Foundation ("MSSRF") is an NGO with a focus on science-based development, particularly addressing the poor and the marginalised. MSSRF's approach is pro-Nature, pro-poor and pro-women, the organisation works in the areas of food and nutrition security, ICT-enabled development, biodiversity and eco-technology.

Third Cross Street, Taramani Institutional Area

Chennai 600 113

Designated contact: Dr Subbiah Arunachalam ([arun@mssrf.res.in](mailto:arun@mssrf.res.in))

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**Mahiti (International Open Source Network – India)**[www.mahiti.org](http://www.mahiti.org) / [www.iosn.net](http://www.iosn.net)

Mahiti is an information and communications support organisation for the Indian voluntary sector, and houses the International Open Source Network – India ("IOSN"). IOSN is the regional United Nations Development Programme regional centre of excellence for free and open software.

Vijay Kiran, 2<sup>nd</sup> Floor

314/1 7<sup>th</sup> Cross, Domlur

Bangalore 560071

Phone: 080-41150580

Designated contact: Sunil Abraham ([sunil@mahiti.org](mailto:sunil@mahiti.org))

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**Tata Institute of Social Sciences**[www.tiss.edu](http://www.tiss.edu)

Tata Institute of Social Sciences (TISS) is one of India's premier social science universities. Founded in 1936, over the years the Institute has made a significant contribution to policy, planning, action strategies and human resource development, in several areas – ranging from sustainable rural and urban development to education, health, communal harmony, human rights and industrial relations

Mumbai: P.O. Box 8313 , Deonar, Mumbai 400 088.

Phone/Fax: 22-2556 3289 /90

Designated Contact: Vijay Nagraj ([vijay@tiss.edu](mailto:vijay@tiss.edu))

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**Professor Upendra Baxi**[baxiupendra@aol.com](mailto:baxiupendra@aol.com)

Professor Upendra Baxi is one of India's foremost legal scholars. Currently, (since 1996) he is Professor of Law in Development, University of Warwick. He has served as Professor of Law, University of Delhi (1973-1996) and as its Vice Chancellor (1990-1994.) He has also served as: Vice Chancellor, University of South Gujarat, Surat (1982-1985); Honorary Director (Research) The Indian Law Institute (1885-1988.) He was the President of the Indian Society of International Law (1992-1995.)

Professor Baxi graduated from Rajkot (Gujarat University), read law in University of Bombay, and holds LL.M degrees from University of Bombay and University of California at Berkeley, which also awarded him with a Doctorate in Juristic Sciences. He has been awarded Honorary Doctorates in Law by the National Law School University of India, Bangalore, and the University of La Trobe, Melbourne.

His leading books include: *The Indian Supreme Court and Politics* (1979); *The Crisis of the Indian Legal System* (1982); *Courage, Craft and Contention: The Indian Supreme Court in Mid-Eighties* (1985); *Towards a Sociology of Indian Law* (1986); *Liberty and Corruption: The Antulay Case and Beyond* (1990); *Marx, Law, and Justice: Indian Perspectives* (1993); *Inhuman Wrongs and Human Rights* (1994); *Mambrino's Helmet? Human Rights for a Changing World* (1994); *The Future of Human Rights* (2002.)

A-51 Law Apartments  
No. 72 Kararduma Road  
Delhi 1100092  
Ph: 00-91-11-22379471

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## **Colour and Format Key**

**BLACK TEXT** refers to text of the current Indian Copyright Act, 1957

**SHADED TEXT** refers to text outside the current Indian Copyright, 1957, as below –

**BLUE TEXT** refers to substantive proposed amendments\*\*

**RED TEXT** refers to comments, problems and suggestions as posed by us

**{{TEXT}}** when BLUE/ RED refers to deletions

**TEXT** when BLUE/ RED refers to additions

*\*\* In this review, we only comment on substantive amendments to the Indian Copyright Act, 1957: that is, all amendments except those which involve a mere renumbering change, such as (aa) to (1).*

## **Summary of this Review**

- PROPOSED AMENDMENTS TO THE ACT THAT WE ENDORSE

2 (f)  
2 (qq)  
2 (xxx)  
14 (c) (i)  
14 (d)  
14 (e) (i)  
14 (e)(ii)  
15  
19 (3)  
19A (2)  
30A  
31 (1)(b)  
31(2)  
33A [inclusion: category as per proposed amendment]  
34A  
38 (3)  
38 (4)  
38A [inclusion: category as per proposed amendment]  
38B [inclusion: category as per proposed amendment]  
39A  
52 (1)(a)  
52 (1)(c)(i) [inclusion: category as per proposed amendment]  
52 (1)(c)(ii) [inclusion: category as per proposed amendment]  
52 (1)(a)(i)  
52 (1)(a)(iii)  
52 (1)(ac)  
52 (1)(c)  
52 (1)(c)(i) [inclusion: category as per proposed amendment]  
52 (1)(c)(ii) [inclusion: category as per proposed amendment]  
52 (1)(d)  
52 (1)(e)  
52 (1)(g)  
52 (1)(h)(iii)  
52 (1)(m)  
52 (1)(4)  
52B  
53  
55 (2)  
57 (2)  
66

- PROPOSED AMENDMENTS TO THE ACT THAT WE POSE PROBLEMS TO AND SUGGESTIONS FOR

- 2 (ff)
- 2 (xa)
- 22
- 25
- 52 (1)(b)
- 52 (1)(j)
- 52 (1)(n)
- 52 (1)(za)
- 65A [inclusion: category as per proposed amendment]
- 65B [inclusion: category as per proposed amendment]

- SECTIONS OF THE CURRENT ACT THAT WE POSE PROBLEMS TO AND SUGGESTIONS FOR

- 2 (m)
- 14 (a) (ii)
- 21 (1)
- 22
- 23
- 24
- 26
- 27
- 28
- 28A
- 29
- 30
- 31
- 31A
- 32 (1A)
- 32 (5)
- 32A
- 52 (1)(c)
- 52 (1)(g)
- 52 (1)(i) [letter i]
- 52 (1)(o)
- 52 (1)(q)(iii)
- 52 (1)(r)
- 52 (1)(u)

--BEGINS--

## INDIAN COPYRIGHT ACT, 1957

### CHAPTER I

#### Preliminary

[4th June, 1957] An Act to amend and consolidate the law relating to copyright.  
Be it enacted by Parliament in the Eighth Year of the Republic of India as follows:

**1. Short title, extent and commencement.** -(1) This Act may be called the Copyright Act, 1957.

(2) It extends to the whole of India.

(3) It shall come into force on such date<sup>2</sup> as the Central Government may, by notification in the Official Gazette, appoint.

**2. Interpretation.** -In this Act, unless the context otherwise requires,-

(a) "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;<sup>3</sup>

(iv) in relation to a musical work, any arrangement or transcription of the work;<sup>4</sup> and

(v)<sup>5</sup> in relation to any work, any use of such work involving its re-arrangement or alteration;

(b) "work of architecture" means any building or structure having an artistic character or design, or any model for such building or structure;<sup>6</sup>

(c) "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) work of architecture;<sup>7</sup> and

(iii) any other work of artistic craftsmanship;

(d) "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<sup>8</sup> or sound recording the producer; and
  - (vi) in relation to <sup>9</sup> [any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;]
- [(dd) <sup>10</sup> "broadcast" means communication to the public-
- (i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or
  - (ii) by wire, and includes a re-broadcast;]
- (e) "calendar year" means the year commencing on the 1st day of January;
- (f) <sup>11</sup> "cinematograph film" means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films;

**Proposed amendment:** delete {{on any medium produced through a process from which a moving image may be produced by any means}}.

**Comments:** Endorsed

(ff) <sup>12</sup> "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.

*Explanation.*- For the purposes of this clause, 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;

**Proposed amendment:** "communication to the public" 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 otherwise 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.

**Problem:** The current definition of "communication to the public" is too broad, and is inclusive of all spaces, regardless of whether any public has received that communication, and regardless of any commercial transactions that are attached to the communication.

**Suggestion:** To limit the scope of the term "communication to the public" as it pertains to the copyright system, by separating commercial and non-commercial communication.

(ffa) <sup>13</sup> "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;

(ffb) <sup>14</sup> "computer" includes any electronic or similar device having information processing capabilities;

(ffc) <sup>15</sup> "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;

(ffd) <sup>16</sup> "copyright society" means a society registered under sub-section (3) of section 33

(g) "delivery", in relation to a lecture, includes delivery by means of any mechanical instrument or <sup>17</sup>[broadcast] by;

(h) "dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include a cinematograph film;

[(hh) <sup>18</sup> "duplicating equipment" means any mechanical contrivance or device used or intended to be used for making copies of any work;]

(i) "engravings" include etchings, lithographs, wood-cuts, prints and other similar works, not being photographs;

(j) "exclusive licence" means a licence 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 licensee" shall be construed accordingly;

(k) "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 other judicial authority in India;

[(l) <sup>19</sup> "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;]

(m) <sup>20</sup> "infringing copy" means,-

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;

(iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;

**Problem:** In light of the opening up of the global knowledge market, and rising access to the internet, it is important to reconsider parallel importation to facilitate greater access to knowledge: that is, the import of products placed on the market in another sovereign jurisdiction with the consent of the copyright holder.

**Suggestion:** Include a provision under Section 2 (m) to note that an imported copyrighted work that has been placed on the market in another sovereign jurisdiction with the consent of the copyright holder, is *not* an infringing copy.

(n) "lecture" includes address, speech and sermon;

(o) <sup>21</sup> "literary work" includes computer programmes, tables and compilations including computer <sup>35A</sup> data bases;

(p) <sup>22</sup> "musical work" means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music;

(q) <sup>23</sup> "performance", in relation to performer's right, means any visual or acoustic presentation made live by one or more performers;

(qq) <sup>24</sup> "performer" includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance;

**Proposed amendment:** "Provided that in a cinematograph film an extra, that is, a person whose performance is casual or incidental in nature and, in the normal course of industry practice, is not acknowledged anywhere including in the credits of the film, shall not be treated as a performer except for the purpose of clause (b) of section 38B"

**Comments:** Endorsed

<sup>25</sup> \*\*\*\*\*

(s) "photograph" includes photo-lithograph and any work produced by any process analogous to photography but does not include any part of a cinematograph film;

(t) "plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, negative, <sup>26</sup> [duplicating equipment] or other device used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which <sup>27</sup> Sound recording for the acoustic presentation of the work are or are intended to be made;

(u) "prescribed" means prescribed by rules made under this Act;

(uu) <sup>28</sup>"producer", in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work;

29 \*\*\*\*\*

30 >\*\*\*\*\*

(x) <sup>31</sup>"reprography" means the making of copies of a work, by photo-copying or similar means;

(xx) <sup>32</sup>"sound recording" means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced;

(y) "work" means any of the following works, namely:-

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

(ii) a cinematograph film;

(iii) a <sup>33</sup>[sound recording];

(z) "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 from the contribution of the other author or authors;

(za) "work of sculpture" includes casts and models.

**Proposed amendment:** "Section 2 (xa) "Rights Management Information", means –

(i) the title or other information identifying the work or performance;

(ii) the name of the author or performer;

(iii) the name and address of the owner of rights;

(iv) terms and conditions regarding the use of rights; and

(v) any number or code that represents the above information;

but does not include any device or procedure intended to identify the user."

**Suggestion:** Please see suggestions under proposed amendment for Section 65A.

**Proposed amendment:** "Section 2 (xxx)

"visual recording" means that the recording in any medium, by any method including the storing of it by electronic means, of moving images or of the representations thereof, from which they can be perceived, reproduced or communicated by any method."

**Comments: Endorsed**

**3. Meaning of publication.** <sup>34</sup> For the purposes of this Act, "publication" means making a work available to the public by issue of copies or by communicating the work to the public.

**4. When work not deemed to be published or performed in public.** - Except in relation to infringement of copyright, a work shall not be deemed to be published or performed in public, if published, or performed in public, without the licence of the owner of the copyright.

**5. When work deemed to be first published in India.** - For the purposes of this Act, a work published in India shall be deemed to be first published in India, notwithstanding that it has been published simultaneously in some other country, unless such other country provides a shorter term of copyright for such work; and a work shall be deemed to be published simultaneously in India and in another country if the time between the publication in India and the publication in such other country does not exceed thirty days or such other period as the Central Government may, in relation to any specified country, determine.

**6. Certain disputes to be decided by Copyright Board.** <sup>35</sup> If any question arises,-

(a) whether a work has been published or as to the date on which a work was published for the purposes of Chapter V, 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, it shall be referred to the Copyright Board constituted under section 11 whose decision thereon shall be final:

Provided that if in the opinion of the Copyright Board, the issue of copies or communication to the public referred to in section 3 was of an insignificant nature it shall not be deemed to be publication for the purposes of that section.

**7. Nationality of author where the making of unpublished work is extended over considerable period.** -Where, in the case of an unpublished work, the making of the work is extended over a considerable period, the author of the work shall, for the purposes of this Act, be deemed to be a citizen of, or domiciled in, that country of which he was a citizen or wherein he was domiciled during any substantial part of that period.

**8. Domicile of corporations.** - For the purposes of this Act, a body corporate shall be deemed to be domiciled in India if it is incorporated under any law in force in India.

1. *The Act has been extended to Goa, Daman and Diu by Reg. 12 of 1962, s. 3 and Sch.; to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and Sch. 1; to Pondicherry by Reg. 7 of 1963, S. 3 and Sch. 1; and brought into force in the State of Sikkim (w.e.f. 27-4-1979): vide Notification No. S.O. 226(E), dated 27-4-1979, Gazette of India, Extraordinary, Part II, Section 3(ii), page 430*

2. *21st January, 1968, vide Notification No. S.R.O. 269, dated 21-1-1958, Gazette of India, Extraordinary, Part II, Section 3, page 167*

3. *Certain words omitted by Act 38 of 1994, s. 2.*

4. *Ins. by Act 38 of 1994, s. 2.*

5. *Ins. by Act 38 of 1994, s. 2.*

6. *Subs. by Act 38 of 1994, s. 2, for 'architectural work of art'.*

7. *Subs. by Act 38 of 1994, s. 2 for "architectural work of art",*

8. *Ins. by Act 38 of 1994. s. 2.*

9. *Ins. by Act 38 of 1994, s. 2.*
10. *Subs. by Act 23 of 1983, s. 3 (w.e.f. 9-8-1984)*
11. *Subs. by Act 38 of 1994, s. 2*
12. *Subs. by Act 38 of 1994, s. 2.*
13. *Subs. by Act 38 of 1994, s. 2.*
14. *Ins. by Act 38 of 1994, s. 2.*
15. *Ins. by Act 38 of 1994, s. 2.*
16. *Subs. by Act 38 of 1994, s. 2.*
17. *Subs. by Act 23 of 1983, s. 2, for "radio-diffusion" (w.9.f. 9-8-1984)*
18. *Subs. by Act 66 of 1984, s. 2 (w.e.f. 8-10-1984)*
19. *Subs. by s. 3, ibid for cl. (1) (w.e.f. 9.8.1984).*
20. *Subs. by Act 38 of 1994, s. 2.*
21. *Subs. by Act 38 of 1994, s. 2.*
22. *Subs. by Act 38 of 1994, s. 2*
23. *Subs. by Act 38 of 1994, s. 2*
24. *Subs. by Act 38 of 1994, s. 2.*
25. *Clause (r) omitted by Act 38 of 1994, s. 2.*
26. *Ins. by Act 68 of 1984, s. 2 (w.e.f. 8-10-1984).*
27. *Subs. by Act 38 of 1994, s. 2 for "records'*
28. *Ins. by Act 38 of 1994, s. 2.*
29. *Clause (v) omitted by Act 23 of 1983, s. 3 (w.e.f. 9.8.1984)*
30. *Clause (w) omitted by Act 38 of 1994, s. 2.*
31. *Subs. by Act 38 of 1994, s. 2.*
32. *Ins. by Act 38 of 1994, s. 2.*
33. *Subs. by Act 38 of 1994, s. 2. for "record".*
34. *Subs. by Act 38 of 1994, s. 3.*
35. *Subs. by Act 38 of 1994, s. 6*

[35A. . *Subs. by Act 49 of 1999, Section 2, for databasis (wef 15.1.2000)]*

## CHAPTER II

### Copyright Office and Copyright Board

**9. Copyright Office.** - (1) There shall be established for the purposes of this Act an office to be called the Copyright Office.

(2) The Copyright Office shall be under the immediate control of the Registrar of Copyrights who shall act under the superintendence and direction of the Central Government.

(3) There shall be a seal for the Copyright Office.

**10. Registrar and Deputy Registrars of Copyrights** - (1) The Central Government shall appoint a Registrar of Copyrights and may appoint one or more Deputy Registrars of Copyrights.

(2) A Deputy Registrar of Copyrights shall discharge under the superintendence and direction of the Registrar of Copyrights such functions of the Registrar under this Act as the Registrar may, from time to time, assign to him; and any reference in this Act to the Registrar of Copyrights shall include a reference to a Deputy Registrar of Copyrights when so discharging any such functions.

**11. Copyright Board.** - (1) As soon as may be after the commencement of this Act, the Central Government shall constitute a Board to be called the Copyright Board which shall consist of a Chairman and not less than two or more than <sup>36</sup> [fourteen] other members.

(2) The Chairman and other members of the Copyright Board shall hold office for such period and on such terms and conditions as may be prescribed.

(3) The Chairman of the Copyright Board shall be a person who is, or has been, a Judge <sup>37</sup> \* \* of a High Court or is qualified for appointment as a Judge of a High Court.

(4) The Registrar of Copyrights shall be the Secretary of the Copyright Board and shall perform such functions as may be prescribed.

**12. Powers and procedure of Copyright Board.** - (1) The Copyright Board shall, subject to any rules that may be made under this Act, have power to regulate its own procedure, including the fixing of places and times of its sittings:

Provided that the Copyright Board shall ordinarily hear any proceeding instituted before it under this Act within the zone in which, at the time of the institution of the proceeding, the person instituting the proceeding actually and voluntarily resides or carries on business or personally works for gain.

*Explanation.*- In this sub-section "zone" means a zone specified in section 15 of the States Reorganisation Act, 1956.

(2) The Copyright Board may exercise and discharge its powers and functions through Benches constituted by the Chairman of the Copyright Board from amongst its members, each Bench consisting of not less than three members.

<sup>38</sup> "Provided that, if the Chairman is of opinion that any matter of importance is required to be heard by a larger bench, he may refer the matter to a special bench consisting of five members.";

(3) If there is a difference of opinion among the members of the Copyright Board or any Bench thereof in respect of any matter coming before it for decision under this Act, the opinion of the majority shall prevail:

<sup>39</sup> Provided that where there is no such majority, the opinion of the Chairman shall prevail.

(4) The <sup>40</sup> [Chairman] may authorise any of its members to exercise any of the powers conferred on it by section 74 and any order made or act done in exercise of those powers by the member so authorised shall be deemed to be the order or act, as the case may be, of the Board.

(5) No member of the Copyright Board shall take part in any proceedings before the Board in respect of any matter in which he has a personal interest.

(6) No act done or proceeding taken by the Copyright Board under this Act shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Board.

(7) The Copyright Board shall be deemed to be a civil court for the purposes of <sup>41</sup> [sections 345 and 346 of the Code of Criminal Procedure, 1973], and all proceedings before the Board shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code.

*36. Subs. By Act 38 of 1994, s. 11 for "eight".*

*37. Certain words omitted by Act 38 of 1994, s. 11*

*38. Ins. by Act 38 of 1994, s. 12.*

*39. Subs. By Act 38 of 1994, s. 12.*

*40. Subs. By Act 38 of 1994, s. 12, for 'Copyright Board'*

*41. Subs. By Act 23 of 1983, s. 6, for certain words (w.e.f. 9-8-1984).*

## CHAPTER III

### Copyright

**13. Works in which copyright subsists.**- (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,-

(a) original literary, dramatic, musical and artistic works;

(b) cinematograph films; and

(c) <sup>42</sup>[sound recordings;]

(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 40 or section 41 apply, unless,-

(i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;

(ii) in the case of an unpublished work other than a <sup>43</sup> [work of architecture] the author is at the date of the making of the work a citizen of India or domiciled in India; and

(iii) in the case of <sup>44</sup> [work of architecture] the work is located in India.

*Explanation.*- in the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist-

(a) in any cinematograph film a substantial part of the film is an infringement of the copyright in any other work;

(b) in any <sup>45</sup> [sound recording] made in respect of a literary, dramatic or musical work, if in making the <sup>46</sup> [sound recording], copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a <sup>47</sup> [sound recording] shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the <sup>48</sup> [sound recording] is made.

(5) In the case of a <sup>49</sup> [work of architecture] copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

**14.**<sup>50</sup> **Meaning of copyright.**-For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, 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 work to the public not being copies already in circulation;

**Problem:** The right “to issue copies of the work to the public not being copies already in circulation” when interpreted as being within the national context, restricts parallel importation. This could consequently restrict access to the global knowledge market, particularly as facilitated by the internet.

**Suggestion:** To amend the right “to issue copies of the work to the public not being copies already in circulation” as applying to any part of the world, with explicit wording added to Section 14(a)(ii) to clarify the same, such as, the right “to issue copies of the work to the public not being copies already in circulation anywhere in the world”.

(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 or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme,-

(i) to do any of the acts specified in clause (a);

<sup>51A</sup>“(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 dimensions of a two dimensional work or in two dimensions of a three dimensional work;

**Proposed amendment:** Replace sub-clause (i) with the following words: “to reproduce the work in any material form, including the storing of it in any medium by electronic means, and also including depiction three dimensions of a two dimensional work or in two dimensions of a three dimensional work”

**Comments:** Endorsed

(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 sub-clauses (i) to (iv);

(d) In the case of cinematograph film, -

**Proposed amendment:** In sub-clause (i) after the words “part thereof” add [“including storing of it in any medium by electronic means”](#).

**Comments:** Endorsed

**Proposed amendment:** [\(ii\) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film;](#)

**Explanation:** [For the purposes of this clause “commercial rental” shall not include the rental, lease or lending of a lawfully acquired copy of a cinematograph film for non-profit purposes by a non-profit library or non-profit educational institution.](#)

**Comments:** Strongly endorsed. The separation of commercial rentals from non-commercial rentals facilitates the non-commercial rental of films for broad educational and non-profit purposes.

(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 sound recording, -

(i) to make any other sound recording embodying it;

**Proposed amendment:** In sub-clause (i) after the words “embodying it” add [“including storing of it in any medium by electronic means”](#)

**Comments:** Endorsed

**Proposed amendment:** [\(ii\) to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;](#)

**Explanation:** [For the purpose of this clause, “commercial rental” shall not include the rental, lease or lending of a lawfully acquired copy of a sound recording for non-profit purposes by a non-profit library for non-profit educational institutions.](#)

**Comments:** Strongly endorsed. The separation of commercial rentals from non-commercial rentals facilitates the non-commercial rental of sound recordings for broad educational and non-profit purposes.

(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.

*Explanation* : For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

**15. Special provision regarding copyright in designs registered or capable of being registered under the Designs Act, 1911.**-(1) Copyright shall not subsist under this Act in any design which is registered under the <sup>51\*\*\*</sup> Designs Act, 1911.

(2) Copyright in any design, which is capable of being registered under the Designs Act, 1911, but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright or, with his license, by any other person.

**Proposed amendment:**

(a) In the title of the section, replace the figures "1911" with "2000"

(b) In sub-sections (1) and (2) of Section 15 replace the figures "1911 (2 of 1911)" with "2000 (Act No.16 of 2000)".

**Comments:** Endorsed

**16. No copyright except as provided in this Act.**-No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or any other law for the time being in force, but nothing in this section shall be constructed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

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42. Subs. by Act 38 of 1994, s. 12, for "records"

43. Subs. by Act 38 of 1994, s. 12, for `architecture work of art'.

44. Subs. by Act 38 of 1994, s. 12, for "an architectural work of art'.

45. Subs. by Act 38 of 1994, s. 12, for 'record'.

46. Subs. by Act 38 of 1994, s. 12, for 'rerord'.

47. Subs. by Act 38 of 1994, s. 12, for `record'.

48. Subs. by Act 38 of 1994, s. 12, for "record'.

49. Subs. by Act 38 of 1994, s. 2, for "architecture work act'.

50. Subs. by Act 38 of 1994, s. 14.

51. The words "Indian Patents and" omitted by Act 23 of 1983, s.7(w.e.f. 9-8-1984)

[51A. Subs by Act 49 of 1999, Section 3, for sub clause (ii) (wef 15.1.2000)]

## CHAPTER IV

### Ownership of Copyright and the Rights of the Owner

**17. First owner of copyright.**-Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein

Provided that-

(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work 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;

(b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

[(cc)<sup>52</sup> in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;]

(d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

[(dd)<sup>53</sup> in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

*Explanation.*- For the purposes of this clause and section 28A, "public undertaking" means-

(i) an undertaking owned or controlled by Government; or

(ii) a Government company as defined in section 617 of the Companies Act, 1956; or

(iii) a body corporate established by or under any Central, Provincial or State Act;]

(e) in the case of a work to which the provisions of section 41 apply, the international organisation concerned shall be the first owner of the copyright therein.

**18. Assignment of copyright.** -(1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof:

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.

(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

(3) In this section, the expression "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

**19. Mode of assignment.**- [(1)]<sup>54</sup> No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorised agent.

(2)<sup>55</sup> The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment.

(3)<sup>56</sup> The assignment of copyright in any work shall also specify the amount of royalty payable, if any, to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

**Proposed amendment:** replace ~~{the amount of royalty payable, if any,}~~ with "any consideration payable, including royalty"

**Comments:** Endorsed

(4)<sup>57</sup> Where the assignee does not exercise the rights assigned to him under any of the other sub-sections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

(5)<sup>58</sup> If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

(6)<sup>59</sup> If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.

(7)<sup>60</sup> Nothing in sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) or sub-section (6) shall be applicable to assignments made before the coming into force of the Copyright (Amendment) Act, 1994.

**19A<sup>61</sup> Disputes with respect to assignment of copyright.**-(1) If an assignee fails to make sufficient exercise of the rights assigned to him, and such failure is not attributable to any act or

omission of the assignor, then, the Copyright Board may, on receipt of a complaint from the assignor and after holding such inquiry as it may deem necessary, revoke such assignment.

(2) If any dispute arises with respect to the assignment of any copyright the Copyright Board may, on receipt of a complaint from the aggrieved party and after holding such inquiry as it considers necessary, pass such order as it may deem fit including an order for the recovery of any royalty payable:

Provided that the Copyright Board shall not pass any order under this sub-section 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 :

Provided further that no order of revocation of assignment under this sub-section, be made within a period of five years from the date of such assignment.

**Proposed amendment:** Add "[Provided further that, pending disposal of an application for revocation of assignment under this section, the Copyright Board may pass such order as it deems fit regarding implementation of the terms and conditions of assignment, including any consideration to be paid for the enjoyment of the rights assigned](#)"

**Comments:** Endorsed

**20. Transmission of copyright in manuscript by testamentary disposition.**-Where under a bequest a person is entitled to the manuscript of a literary, dramatic or musical work, or to an artistic work, and the work was not published before the death of the testator, the bequest shall, unless the contrary intention is indicated in the testator's will or any codicil thereto, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

*Explanation.*- In this section, the expression "manuscript" means the original document embodying the work, whether written by hand or not.

**21. Right of author to relinquish copyright.**-(1) 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 to the Registrar of Copyrights and thereupon such rights shall, subject to the provisions of sub-section (3), cease to exist from the date of the notice.

**Problem:** Relinquishment by an author, of all or any of the rights comprised in the work, would be made easier by providing an alternative means of communicating the same.

**Suggestion:** In addition to communication to the Registrar of Copyrights, allow for any public notification of relinquishment as a valid alternative.

(2) On receipt of a notice under sub-section (1), the Registrar of Copyrights shall cause it to be published in the Official Gazette and in such other manner as he may deem fit.

(3) The relinquishment of all or any of the rights comprised in the copyright in a work shall not affect any rights subsisting in favour of any person on the date of the notice referred to in sub-section (1).

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52. *Ins. by s. 8, ibid. (w.e.f. 9-8-1984)*

53. *Ins. by Act 23 of 1983, s. 8 (w.e.f. 9-8-1984)*

54. S. 19 re-numbered as sub-section (1) thereof by s. 9, *ibid.*, (W.G.f. 9-8-1984)
55. (Subs. by Act 38 of 1994, s. 19.)
56. (Subs. by Act 38 of 1994, s. 19)
57. (Subs. by Act 38 of 1994, s. 19)
58. (Subs. by Act 38 of 1994, s. 19.)
59. (Subs. by Act 38 of 1994, s. 19.)
60. (Subs. by Act 38 of 1994, s. 19.)
61. Subs. by Act 38 of 1994, s. 19

## CHAPTER V

### Term of Copyright

**22. Term of copyright in published literary, dramatic, musical and artistic works.**-Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author until <sup>62</sup>[sixty] years from the beginning of the calendar year next following the year in which the author dies.

*Explanation.*- In this section the reference to the author shall, in the case of a work of joint authorship, be construed as a reference to the author who dies last.

**Proposed amendment:** In Section 22, delete the words in parentheses {{{other than a photograph}}}

**Problem1:** Article 7(4) of the Berne Convention, to which India is bound, sets out the minimum terms for copyright in relation to photographic works. It specifies that the minimum term is 25 years from the *making* of such a work. The amendment to Section 22 unnecessarily proposes a copyright term for photographic works which is far in excess of the minimum requirement.

**Suggestion1:** Treat photographic works as a separate category from literary, dramatic, musical or artistic work as defined in the Act as it currently stands, and apply the minimum copyright term specified by the Berne Convention to photographic works in Section 25.

#### **Additional problems and suggestions:**

**Problem2:** Article 7(1) of the Berne Convention sets out the minimum terms for copyright in relation to literary, dramatic, musical or artistic works. It specifies that the minimum copyright term is for the life of the author plus 50 years from his death. Currently Section 22 proposes a copyright term for literary, dramatic, musical or artistic works that is far in excess of the minimum requirement.

**Suggestion2:** Amend Section 22 to reflect that the term of copyright for literary, dramatic, musical or artistic works is for the life of the author plus 50 years from his death, in line with Berne Convention 7(1).

**23. Term of copyright in anonymous and pseudonymous works.**-(1) In the case of a literary, dramatic, musical or artistic work (other than a photograph), which is published anonymously or pseudonymously, copyright shall subsist until <sup>63</sup>[sixty] years from the beginning of the calendar year next following the year in which the work is first published :

Provided that where the identity of the author is disclosed before the expiry of the said period, copyright shall subsist until <sup>64</sup>[sixty] years from the beginning of the calendar year next following the year in which the author dies.

(2) In sub-section (1), references to the author shall, in the case of an anonymous work of joint authorship, be construed,-

(a) where the identity of one of the authors is disclosed, as references to that author;

(b) where the identity of more authors than one is disclosed, as references to the author who dies last from amongst such authors.

(3) In sub-section (1) references to the author shall, in the case of a pseudonymous work of joint authorship, be construed,-

(a) where the names of one or more (but not all) of the authors are pseudonymous and his or their identity is not disclosed, as references to the author whose name is not a pseudonym, or, if the names of two or more of the authors are not pseudonyms, as references to such of those authors who dies last;

(b) where the names of one or more (but not all) of the authors are pseudonyms and the identity of one or more of them is disclosed, as references to the author who dies last from amongst the authors whose names are not pseudonyms and the authors whose names are pseudonyms and are disclosed; and

(c) where the names of all the authors are pseudonyms and the identity of one of them is disclosed, as references to the author whose identity is disclosed or if the identity of two or more of such authors is disclosed, as references to such of those authors who dies last.

*Explanation.-* For the purposes of this section, the identity of an author shall be deemed to have been disclosed, if either identity of the author is disclosed publicly by both the author and the publisher or is otherwise established to the satisfaction of the Copyright Board by that author.

**Problem:** Article 7(3) of the Berne Convention sets out the minimum terms for copyright in relation to anonymous or pseudonymous works. It specifies that the minimum copyright term is 50 years from the time such work is made lawfully available to the public.

**Suggestion:** Amend Section 23 to reflect that the copyright term for anonymous and pseudonymous works shall be 50 years after the work has been lawfully made available to the public, in line with Berne Convention 7(3). Further, for the clause related to “where the identity of the author is disclosed before the expiry of the said period”, amend the copyright term thus provided to be in line with any literary, musical, dramatic or artistic work (other than a photograph), which is for the life of the author plus 50 years after his death, in line with Berne Convention 7(1).

**24. Term of copyright in the posthumous work.**-(1) In the case of a literary, dramatic or musical work or an engraving, in which copyright subsists at the date of the death of the author or, in the case of any such work of joint authorship, at or immediately before the date of the death of the author who dies last, but which, or any adaptation of which, has not been published before that date, copyright shall subsist until <sup>65</sup>[sixty] 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.

(2) For the purposes of this section a literary, dramatic or musical work or an adaptation of any such work shall be deemed to have been published, if it has been performed in public or if any records made in respect of the work have been sold to the public or have been offered for sale to the public.

**Problem:** Article 12 of the agreement on trade-related aspects of intellectual property rights (“TRIPs”) to which India is bound by virtue of membership at the World Trade Organisation (“WTO”) stipulates a minimum copyright term of 50 years from the time of publication, or from the making of the work, for works other than photographic works or applied art, when calculated on a

basis other than the life of a natural person. The copyright term applied here to posthumous works is far in excess of the minimum term stipulated in TRIPs.

**Suggestion:** Amend Section 24 to make the copyright term for posthumous works as 50 years from the time such work published or, from the time an adaptation of the work is published, in line with TRIPs Article 12.

**25. Term of copyright in photographs.**-In the case of a photograph, copyright shall subsist until <sup>66</sup>[sixty] years from the beginning of the calendar year next following the year in which the photograph is published.

**Proposed amendment:** Delete Section 25 in entirety

**Problem:** As explained in Problem1, under Section 22, photographic works have a minimum copyright term of 25 years from the *making* of such work, as specified in Berne Convention 7(4), as opposed to literary, dramatic, musical or artistic works, which have a longer minimum copyright term of 50 years, as specified in Berne Convention 7(1).

**Suggestion:** Retain the section, with an amendment to the copyright term; that is, delete sixty years, and change to twenty five years, in line with Berne Convention 7(4).

**26. Term of copyright in cinematograph films.**-In the case of a cinematograph film, copyright shall subsist until <sup>67</sup>[sixty] years from the beginning of the calendar year next following the year in which the film is published.

**Problem:** Article 7(2) of the Berne Convention sets out the minimum terms for copyright in relation to cinematograph works. It specifies that the minimum copyright term is 50 years from the time that the cinematograph was made available to the public with the consent of the author, or failing that, 50 years from the time of its making. The current copyright term afforded to cinematographs is far in excess of the minimum requirements.

**Suggestion:** Amend Section 26 to reflect that the term of copyright for cinematographs is 50 years from the time it was made available to the public with the consent of the author, or failing that, 50 years from the time of its making, in line with Berne Convention 7(2).

**27. Term of copyright in records.**-In the case of a <sup>68</sup>[sound recording], copyright shall subsist until <sup>69</sup>[sixty] years from the beginning of the calendar year next following the year in which the <sup>70</sup>[sound recording] is published.

**Problem:** Article 12 of the agreement on trade-related aspects of intellectual property rights ("TRIPs") to which India is bound by virtue of membership at the World Trade Organisation ("WTO") stipulates a minimum copyright term of 50 years from the time of publication, or from the making of the work, for works other than photographic works or applied art, when calculated on a basis other than the life of a natural person. The copyright term applied here to sound recording is far in excess of the minimum term stipulated in TRIPs.

**Suggestion:** Amend Section 27 to make the copyright term for sound recordings as 50 years from the time of publication, or from the making of the work, in line with TRIPs Article 12.

**28. Term of copyright in Government work.**- In the case of Government work, where Government is the first owner of the copyright therein, copyright shall subsist until <sup>71</sup>[Sixty] years from the beginning of the calendar year next following the year in which the work is first published.

**Problem:** Article 12 of TRIPs stipulates a minimum copyright term of 50 years from the time of publication, or from the making of the work, for works other than photographic works or applied art, when calculated on a basis other than the life of a natural person. The copyright term applied here to government works is far in excess of the minimum term stipulated in TRIPs.

**Suggestion:** Amend Section 28 to make the copyright term for government works as 50 years from the time of publication, or from the making of the work, in line with TRIPs Article 12.

<sup>72</sup>**[28A. Term of copyright in works of public undertakings.-** In the case of a work, where a public undertaking is the first owner of the copyright therein, copyright shall until <sup>73</sup>[sixty] years from the beginning of the calendar year next following the year in which the work is first published.

**Problem:** Article 12 of TRIPs stipulates a minimum copyright term of 50 years from the time of publication, or from the making of the work, for works other than photographic works or applied art, when calculated on a basis other than the life of a natural person. The copyright term applied here to works of public undertakings is far in excess of the minimum term stipulated in TRIPs.

**Suggestion:** Amend Section 28A to make the copyright term for public undertakings as 50 years from the time of publication, or from the making of the work, in line with TRIPs Article 12.

**29. Term of copyright in works of international organisations.-** In the case of a work of an international organisation to which the provisions of section 41 apply, copyright shall subsist until <sup>74</sup>[sixty] years from the beginning of the calendar year next following the year in which the work is first published.

**Problem:** Article 12 of TRIPs stipulates a minimum copyright term of 50 years from the time of publication, or from the making of the work, for works other than photographic works or applied art, when calculated on a basis other than the life of a natural person. The copyright term applied here to works of international organisations is far in excess of the minimum term stipulated in TRIPs.

**Suggestion:** Amend Section 29 to make the copyright term for works of international organisations as 50 years from the time of publication, or from the making of the work, in line with TRIPs Article 12.

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62. Subs. by Act 13 of 1992, s. 2 for 'fifty'.  
 63. Subs. by Act 13 of 1992, s. 2 for 'fifty'.  
 64. Subs. by Act 13 of 1992, s. 2 for `fifty".  
 65. Subs. by Act 13 of 1992, S. 2 for `fifty'  
 66. Subs. by Act 13 of 1992, s. 2 for 'fifty'.  
 67. Subs. by Act 13 of 1992, s. 2 for `fifty'.  
 68. Subs. by Act 38 of 1994, s. 2 for "record".  
 69. Subs. by Act 13 of 1992, 2 for `fifty'.  
 70. Subs. by Act 38 of 1994, s. 2 for "record"  
 71. Subs. by Act 13 of 1992, s. 2 for "fiW"  
 72. Ins. by Act 23 of 1983, s. 11 (w.e.f. 9-8-1994)  
 73. Subs. by Act 13 of 1992, s. 2 for "lifty"  
 74. Subs. by Act 13 of 1992, s. for "fifty"

## CHAPTER VI

### LICENCES

**30. Licences by owners of copyright.**- The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorised agent:

Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence.

*Explanation.*- Where a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence.

**Problem:** The requirement of license in writing precludes the ability to use diverse, internet-based models of licensing, such as for example, those provided by Creative Commons<sup>1</sup>.

**Suggestion:** Expansion of the modes of licensing works in Section 30 to include any form of licensing, not restricted to written licenses alone.

<sup>75</sup> **30A. Application of sections 19 and 19A.**-The provisions of sections 19 and 19A shall, with any necessary adaptations and modifications, apply in relation to a licence under section 30 as they apply in relation to assignment of copyright in a work.

**Proposed amendment:** delete {{sections 19 and 19A}} and replace with "[section 19](#)"

**Comments:** Endorsed

**31. Compulsory licence in works withheld from public.**-(1) If at any time during the term of copyright in any Indian work which has been published or performed in public, a complaint is made to the Copyright Board that the owner of copyright in the work- (a) has refused to republish or allow the republication of the work or has refused to allow the performance in public of the work, and by reason of such refusal the work is withheld from the public; or

(b) has refused to allow communication to the public by <sup>76</sup>[broadcast], of such work or in the case of <sup>77</sup>[sound recording] the work recorded in such [sound recording], on terms which the complainant considers reasonable; the Copyright Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyrights to grant to the complainant a licence to republish the work, perform the work in public or communicate the work to the public by [broadcast], as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Copyright Board may determine; and thereupon the Registrar of Copyrights shall grant the licence to the complainant in accordance with the directions of the Copyright Board, on payment of such fee as may be prescribed.

*Explanation.*- In this sub-section, the expression "Indian work" includes-

<sup>1</sup> [www.creativecommons.org](http://www.creativecommons.org)

- (i) an artistic work, the author of which is a citizen of India; and
- (ii) a cinematograph film or a record made or manufactured in India.

(2) Where two or more persons have made a complaint under sub-section (1), the licence shall be granted to the complainant who in the opinion of the Copyright Board would best serve the interests of the general public.

**Proposed amendment:** Substitute in Section 31(1)(b), {{the complainant}} with "such person or persons who, in the opinion of the Copyright Board, is or are qualified to do so"

**Comments:** Strongly endorsed. The amendment will allow broader participation by ordinary users and creators in the copyright system, by not limiting the license potentially ensuing under Section 31 for use only by the complainant, but extending it to a broader class of individuals and organizations as judged competent to republish, perform or communicate the work to the public

**Proposed amendment:** Delete sub-section 2.

**Comments:** Endorsed.

**Additional problems and suggestions:**

**Problem1:** Sec 31 currently applies only to Indian works, and Sec 32A applies only to foreign works. Furthermore, different criteria apply to the compulsory licensing of Indian and foreign works. For example, in the case of foreign works, unreasonable pricing is considered grounds for compulsory licensing; for Indian works, it is not. Since there is no reason why the considerations in Sec 31 *and* Sec 32A should not apply collectively to all works (whether Indian or foreign), and given the globally dispersed nature of knowledge and cultural goods, the sections need to be merged.

**Suggestion1:** Merge Sections 31 and Sec 32A, in the following manner:

- (a) Include scope of coverage to be all works, whether Indian or foreign
- (b) Include as grounds for compulsory license, the collective grounds specified in Sections 31 and 32A, namely (i) refusal to republish or allow republication or performance and the possibility that by such refusal, the work is withheld from the public (ii) refusal to allow communication to the public by broadcast or sound recording on terms which the complainant considers reasonable (iii) after the relevant period of publication, copies are not made available or copies have not been put on sale for a period of 6 months, at a price reasonable or comparable in India
- (c) Include common procedures for obtaining such a license and deciding appropriate compensation to the rights-holder; and harmonize the time provisions for when such an application may be filed, in line with procedures laid out in Section 31, that is, at any time after the commencement of the copyright term on such material as is in question.

**Problem2:** Anti-competitive behaviour on the part of copyright industries (including, but not restricted to, regulated anti-competitive practices such as abuse of dominant position) is not referenced in any specific way within Sections 30 - 32B of the Act.

**Suggestion2:** Include a clause the merged Section 31 (from the merger of Section 31 and 32A of the current Act) that references anti-competitive behaviour in consonance with the Competition Act 2002.

**31A. Compulsory licence in unpublished Indian works.**-(1) Where, in the case of an Indian work referred to in sub-clause (iii) of clause (a) of section 2, the author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found, any person may apply to the Copyright Board for a licence to publish such work or a translation thereof in any language.

**Problem:** As referenced in Problem1 under Section 31, works accessed and potentially of use in India might be from anywhere in the world. In the event that an author is dead, unknown or untraceable, there is likely to be much greater difficulty with foreign works than there might be with Indian works, when the search originates in India.

**Suggestion:** Amend "Indian works" in title and body to "any works".

(2) Before making an application under sub-section (1), the applicant shall publish his proposal in one issue of a daily newspaper in the English language having circulation in the major part of the country and where the application is for the publication of a translation in any language, also in one issue of any daily newspaper in that language.

(3) Every such application shall be made in such form as may be prescribed and shall be accompanied with a copy of the advertisement issued under sub-section (2) and such fee as may be prescribed.

(4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, direct the Registrar of Copyrights to grant to the applicant a licence to publish the work or a translation thereof in the language mentioned in the application subject to the payment of such royalty and subject to such other terms and conditions as the Copyright Board may determine, and thereupon the Registrar of Copyrights shall grant the licence to the applicant in accordance with the direction of the Copyright Board.

(5) Where a licence is granted under this section, the Registrar of Copyrights may, by order, direct the applicant to deposit the amount of the royalty determined by the Copyright Board in the public account of India or in any other account specified by the Copyright Board so as to enable the owner of the copyright or, as the case may be, his heirs, executors or the legal representatives to claim such royalty at any time.

(6) Without prejudice to the foregoing provisions of this section, in the case of a work referred to in sub-section (1), if the original author is dead, the Central Government may, if it considers that the publication of the work is desirable in the national interest, require the heirs, executors or legal representatives of the author to publish such work within such period as may be specified by it.

(7) Where any work is not published within the period specified by the Central Government under sub-section (6), the Copyright Board may, on an application made by any person for permission to publish the work and after hearing the parties concerned, permit such publication on payment of such royalty as the Copyright Board may, in the circumstances of such case, determine in the prescribed manner.

**32. Licence to produce and publish translations.**- (1) Any person may apply to the Copyright Board for a licence to produce and publish a translation of a literary or dramatic work in any language 2[after a period of seven years from the first publication of the work].

(1A)<sup>80</sup> Notwithstanding anything contained in sub-section (1), any person may apply to the Copyright Board for a licence to produce and publish a translation, in printed or analogous forms of reproduction, of a literary or dramatic work, other than an Indian work, in any language in

general use in India after a period of three years from the publication of such work, if such translation is required for the purposes of teaching, scholarship or research:

**Problem:** Indian works are not covered under such licence, the assumption being that only foreign works require translation. However, works published in one of the 23 official Indian languages (like, for instance, English), or any of the other languages in operation, are not always translated into *other* Indian languages. The problem expressed and sought to be resolved here, in Section 32, is thus applicable equally across Indian and foreign works.

**Suggestion:** Amend “a literary or dramatic work, other than an Indian work” to read “any literary or dramatic work”

Provided that where such translation is in a language not in general use in any developed country, such application may be made after a period of one year from such publications.

(2) Every <sup>81</sup>[application under this section] shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the translation of the work.

(3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar of Copyrights such fee as may be prescribed.

(4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a translation of the work in the language mentioned in <sup>82</sup>[the application-

(i) subject to the condition that the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the translation of the work sold to the public, calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed manner; and

(ii) where such licence is granted on an application under sub-section (1A), subject also to the condition that the licence shall not extend to the export of copies of the translation of the work outside India and every copy of such translation shall contain a notice in the language of such translation that the copy is available for distribution only in India:

Provided that nothing in clause (ii) shall apply to the export by Government or any authority under the Government of copies of such translation in a language other than English, French or Spanish to any country if-

(1) such copies are sent to citizens of India residing outside India or to any association of such citizens outside India; or

(2) such copies are meant to be used for purposes of teaching, scholarship or research and not for any commercial purpose; and

(3) in either case, the permission for such export has been given by the Government of that country] <sup>83</sup>[Provided further that no licence under this section] shall be granted, unless-

(a) a translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorised by him, <sup>82</sup>[within seven years or three years or one year, as the case may be, of the first publication of the work], or if a translation has been so published, it has been out of print;

(b) the applicant has proved to the satisfaction of the Copyright Board that he had requested and had been denied authorisation by the owner of the copyright to produce and publish such translation, or that <sup>84</sup>[he was, after due diligence on his part, unable to find] the owner of the copyright;

(c) where the applicant was unable to find the owner of the copyright, he had sent a copy of his request for <sup>85</sup>[such authorisation by registered air mail post to the publisher whose name appears from the work, and in the case of an application for a licence under sub-section (1)], not less than two months before <sup>85</sup>[such application];

[(cc) <sup>84</sup> a period of six months in the case of an application under sub-section (1A) (not being an application under the proviso thereto), or nine months in the case of an application under the proviso to that sub-section, has elapsed from the date of making the request under clause (b) of this proviso, or where a copy of the request has been sent under clause (c) of this proviso, from the date of sending of such copy, and the translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or nine months, as the case may be;

(ccc) in the case of any application made under sub-section (1A),-

(i) the name of the author and the title of the particular edition of the work proposed to be translated are printed on all the copies of the translation;

(ii) if the work is composed mainly of illustrations, the provisions of section 32A are also complied with;]

(d) the Copyright Board is satisfied that the applicant is competent to produce and publish a correct translation of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section;

(e) the author has not withdrawn from circulation copies of the work; and

(f) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.

[(5) <sup>84</sup> Any broadcasting authority may apply to the Copyright Board for a licence to produce and publish the translation of-

**Problem:** With the proliferation of cheaper media technology, and relative ease of production, several NGOs and educational/ media organizations can use audio-visual instruction in socio-economic development work.

**Suggestion:** Amend "broadcasting authority" to read "any interested person or organization"

(a) a work referred to in sub-section (1A) and published in printed or analogous forms of reproduction; or

(b) any text incorporated in audio-visual fixations prepared had published solely for the purpose of systematic instructional activities, for broadcasting such translation for the purposes of teaching or for the dissemination of the results of specialised, technical or scientific research to the experts in any particular field.

(6) The provisions of sub-sections (2) to (4) in so far as they are relatable to an application under sub-section (1A), shall, with the necessary modifications, apply to the grant of a licence under sub-section (5) and such licence shall not also be granted unless-

- (a) the translation is made from a work lawfully acquired;
- (b) the broadcast is made through the medium of sound and visual recordings;
- (c) such recording has been lawfully and exclusively made for the purpose of broadcasting in India by the applicant or by any other broadcasting agency; and
- (d) the translation and the broadcasting of such translation are not used for any commercial purposes.

*Explanation.*- For the purposes of this section,-

- (a) "developed country" means a country which is not a developing country;
- (b) "developing country" means a country which is for the time being regarded as such in conformity with the practice of the General Assembly of the United Nations;
- (c) "purposes of research" does not include purposes of industrial research, or purposes of research by bodies corporate (not being bodies corporate owned or controlled by Government) or other associations or body of persons for commercial purposes;
- (d) "purposes of teaching, research or scholarship" includes-
  - (i) purposes of instructional activity at all levels in educational institutions, including Schools, Colleges, Universities and tutorial institutions; and
  - (ii) purposes of all other types of organised educational activity.]

**[32A.Licence to reproduce and publish works for certain purposes.-**<sup>86</sup>(1) Where, after the expiration of the relevant period from the date of the first publication of an edition of a literary, scientific or artistic work,-

- (a) the copies of such edition are not made available in India; or
  - (b) such copies have not been put on sale in India for a period of six months to the general public, or in connection with systematic instructional activities at a price reasonably related to that normally charged in India for comparable works by the owner of the right of reproduction or by any person authorised by him in this behalf, any person may apply to the Copyright Board for a licence to reproduce and publish such work in printed or analogous forms of reproduction at the price at which such edition is sold or a lower price for the purposes of systematic instructional activities.
- (2) Every such application shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the work to be reproduced.
- (3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar of Copyrights such fee as may be prescribed.

(4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a reproduction of the work mentioned in the application subject to the conditions that,-

(i) the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the reproduction of the work sold to the public, calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed manner;

(ii) a licence granted under this section shall not extend to the export of copies of the reproduction of the work outside India and every copy of such reproduction shall contain a notice that the copy is available for distribution only in India :

Provided that no such licence shall be granted unless-

(a) the applicant has proved to the satisfaction of the Copyright Board that he had requested and had been denied authorisation by the owner of the copyright in the work to reproduce and publish such work or that he was, after due diligence on his part, unable to find such owner;

(b) where the applicant was unable to find the owner of the copyright, he had sent a copy of his request for such authorisation by registered airmail post to the publisher whose name appears from the work not less than three months before the application for the licence;

(c) the Copyright Board is satisfied that the applicant is competent to reproduce and publish an accurate reproduction of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section;

(d) the applicant undertakes to reproduce and publish the work at such price as may be fixed by the Copyright Board, being a price reasonably related to the price normally charged in India for works of the same standard on the same or similar subjects;

(e) a period of six months in the case of application for the reproduction and publication of any work of natural science, physical science, mathematics or technology, or a period of three months in the case of an application for the reproduction and publication of any other work, has elapsed from the date of making the request under clause (a), or where a copy of the request has been sent under clause (b), from the date of sending of a copy, and a reproduction of the work has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or, three months, as the case may be;

(f) the name of the author and the title of the particular edition of the work proposed to be reproduced are printed on all the copies of the reproduction;

(g) the author has not withdrawn from circulation copies of the work; and

(h) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.

(5) No licence to reproduce and publish the translation of a work shall be granted under this section unless such translation has been published by the owner of the right of translation or any person authorised by him and the translation is not in a language in general use in India.

(6) The provisions of this section shall also apply to the reproduction and publication, or translation into a language in general use in India, of any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities.

*Explanation.*- For the purposes of this section, "relevant period", in relation to any work, means a period of-

(a) seven years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to, fiction, poetry, drama, music or art;

(b) three years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to, natural science, physical science, mathematics or technology; and

(c) five years from the date of the first publication of that work, in any other case.

**Problem:** See Problem1 as stated under Section 31

**Suggestion:** Delete Section 32A, and merge with Section 31, under stipulations specified in Suggestion1 under Section 31.

**32B. Termination of licences issued under this chapter.**-(1) If, at any time after the granting of a licence to produce and publish the translation of a work in any language under sub-section (1A) of section 32 (hereafter in this sub-section referred to as the licensed work), the owner of the copyright in the work or any person authorised by him publishes a translation of such work in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for the translation of works of the same standard on the same or similar subject, the licence so granted shall be terminated:

Provided that no such termination shall take effect until after the expiry of a period of three months from the date of service of a notice in the prescribed manner on the person holding such licence by the owner of the right of translation intimating the publication of the translation as aforesaid:

Provided further that copies of the licensed work produced and published by the person holding such licence before the termination of the licence takes effect may continue to be sold or distributed until the copies already produced and published are exhausted.

(2) If, at any time after the granting of a licence to produce and publish the reproduction or translation of any work under section 32A, the owner of the right of reproduction or any person authorised by him sells or distributes copies of such work or a translation thereof, as the case may be, in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for work of the same standard on the same or similar subject, the licence so granted shall be terminated:

Provided that no such termination shall take effect until after the expiry of a period of three months from the date of service of a notice in the prescribed manner on the person holding the licence by the owner of the right of reproduction intimating the sale or distribution of the copies of the editions of work as aforesaid:

Provided further that any copies already reproduced by the licensee before such termination takes effect may continue to be sold or distributed until the copies already produced are exhausted.]

**Proposed amendment:** Insert“Section 33A

(1) Every copyright society shall publish its tariff scheme in such manner as may be prescribed

(2) Any person who is aggrieved by the tariff scheme may appeal to the Copyright Board and the Board may, if satisfied after holding such enquiry as it may consider necessary, make such orders as may be necessary to remove any unreasonable element, anomaly or inconsistency therein;

Provided that the aggrieved person shall pay to the copyright society any such prescribed fee that has fallen due before making an appeal to the Board and shall continue to pay such fee until the appeal is decided, and the Board shall not stay the collection of such fee pending disposal of the appeal.”

**Comments:** Endorsed

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75. *Ins. by Act 38 of 1994, s. 30. )*

76. *Subs. by Act 23 of 1983, s. 2 for "radio-diffusion" (w.e.f. 9-8-1984)*

77. *Subs. by Act 38 of 1994, s. 2 for "record"*

78. *Lins. by Act 23 of 1983, s. 12 (w.e.f. 9-8-1984).*

79. *Subs. by Act 38 of 1994, s. 12 (w.e.f. 9-8-1984).*

80. *Ins. by S. 13, *ibid.* (w.e.f. 9-8-1984).*

81. *Subs. by Act 23 of 1983, for "such application" (w.e.f. 9-8-1984).*

82. *Subs. by s. 13, *ibid.*, for certain words (w.e.f. 9-8-1984).*

83. *Subs. by s. 13, *ibid.*, for "Provided that no such licence" (w.e.f. 9-8-1984).*

84. *Ins. by s.13, *ibid* (w.e.f. 9-8-94).*

85. *Subs. by Act 23 of 1983, s. 13 for certain words (w.e.f. 9-8-94).*

86. *Ins. by Act 23 of 1983, s. 14 (w.e.f. 9-8-1984).*

## CHAPTER VII

### Copyright Societies

**33.<sup>1</sup> Registration of Copyright Society.-** (1) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 commence or, carry on the business of issuing or granting licences in respect of any work in which copyright subsists on respect or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (3):

Provided that owner of copyright shall, in his individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society:

Provided further that the performing rights society functioning in accordance with the provisions of section 33 on the date immediately before the coming into force of the Copyright (Amendment) Act, 1994 shall be deemed to be a copyright society for the purposes of this Chapter and every such society shall get itself registered within a period of one year from the date of commencement of the Copyright (Amendment) Act, 1994.

(2) Any association of persons who fulfils such conditions as may be prescribed may apply for permission to do the business specified in sub-section (1) to the Registrar of Copyrights who shall submit the application to the Central Government.

(3) The Central Government may, having regard to the interests of the authors and other owners of rights under this 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 relevant rights and the ability and professional competence of the applicants, register such association of persons as a copyright society subject to such conditions as may be prescribed:

Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

(4) The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the owners of rights concerned, cancel the registration of such society after such inquiry as may be prescribed.

(5) If the Central Government is of the opinion that in the interest of the owners of rights concerned, it is necessary so to do, it may, by order, suspend the registration of such society pending inquiry for such period not exceeding one year as may be specified in such order under sub-section (4) and that Government shall appoint an administrator to discharge the functions of the copyright society.

**34.<sup>87</sup> Administration of rights of owner by copyright society.-**(1) Subject to such conditions as may be prescribed,-

(a) a copyright society may accept from an owner of rights exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and

(b) an owner of rights shall have the right to withdraw such authorisation without prejudice to the rights of the copyright society under any contract.

(2) It shall be competent for a copyright society to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act, to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign country by such foreign society or organisation:

Provided that no such society or organisation shall permit any discrimination in regard to the terms of licence or the distribution of fees collected between rights in Indian and other works.

(3) Subject to such conditions as may be prescribed, a copyright society may-

(i) issue licences under section 30 in respect of any rights under this Act;

(ii) collect fees in pursuance of such licences;

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

(iv) perform any other functions consistent with the provisions of section 35.

**34A.** <sup>88</sup>**Payment of remuneration by copyright society.**- (1) If the Central Government is of the opinion that a copyright society for a class of work is generally administering the rights of the owners of rights in such work throughout India, it shall appoint that society for the purpose of this section.

(2) The copyright society shall, subject to such rules as may be made in this behalf, frame a scheme for determining the quantum of remuneration payable to individual copyright owners having regard to the number of copies of the work in circulation:

Provided that such scheme shall restrict payment to the owners of rights whose works have attained a level of circulation which the copyright society considers reasonable.

**Proposed amendment:** Delete Section 34A

**Comments:** Endorsed

**35. Control over the copyright society by the owner of rights.**- <sup>89</sup>(1) Every copyright society shall be subject to the collective control of the owners of rights under this Act whose rights it administers (not being owners of rights under this Act administered by a foreign society or organisation referred to in sub-section (2) of section (34) and shall, in such manner as may be prescribed,- (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 the administration of their rights.

(2) 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.

**36.Submission of returns and reports.**<sup>90</sup> (1) Every copyright society shall submit to the Registrar of Copyrights such returns as may be prescribed.

(2) Any officer duly authorised by the Central Government in this behalf may call for any report and also call for any records of any copyright society for the purpose of satisfying himself that the fees collected by the society in respect of rights administered by it are being utilised or distributed in accordance with the provisions of this Act.

**36A.Rights and liabilities of performing rights societies.**<sup>91</sup> Nothing in this Chapter shall affect any rights or liabilities in any work in connection with a performing rights society which had accrued or were incurred on or before the day prior to the commencement of the Copyright (Amendment) Act, 1994, or any legal proceedings in respect of any such rights or liabilities pending on that day."

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*1. The Act has been extended to Goa, Daman and Diu by Reg. 12 of 1962, s. 3 and Sch.; to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and Sch. 1; to Pondicherry by Reg. 7 of 1963, S. 3 and Sch. 1; and brought into force in the State of Sikkim (w.e.f. 27-4-1979): vide Notification No. S.O. 226(E), dated 27-4-1979, Gazette of India, Extraordinary, Part II, Section 3(ii), page 430*

*86a. Subs. by Act 38 of 1994, s. 33*

*87. Subs. by Act 38 of 1994, s. 34*

*88. Ins. by Act 38 of 1994, s. 34A*

*89. Subs. by Act 38 of 1994, s. 35*

*90. Subs. by Act 38 of 1994, s. 36*

*91. Ins. of Act 38 of 1994, s. 36A*

## CHAPTER VIII

### Rights of Broadcasting <sup>92</sup> Organisation and of Performers

**37.<sup>93</sup> Broadcast reproduction right.**-(1) Every broadcasting organisation shall have a special right to be known as "broadcast reproduction right" in respect of its broadcasts.

(2) The broadcast reproduction right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made.

(3) During the continuance of a broadcast reproduction right in relation to any broadcast, any person who, without the licence of the owner of the right does any of the following acts of the broadcast or any substantial part thereof,-

(a) re-broadcasts the broadcast; or

(b) causes the broadcast to be heard or seen by the public on payment of any charges; or

(c) makes any sound recording or visual recording of the broadcast; or

(d) makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence; or

(e) sells or hires to the public or offers for such sale or hire, any such sound recording or visual recording referred to in clause (c) or clause (d) shall, subject to the provisions of section 39, be deemed to have infringed the broadcast reproduction right.

**38.<sup>94</sup> Performer's right-** (1) Where any performer appears or engages in any performance, he shall have a special right to be known as the "performer's right" in relation to such performance.

(2) The performer's right shall subsist until <sup>96A</sup> fifty years from the beginning of the calendar year next following the year in which the performance is made.

(3) During the continuance of a performer's right in relation to any performance, any person who, without the consent of the performer, does any of the following acts in respect of the performance or any substantial part thereof, namely :-

(a) makes a sound recording or visual recording of the performance; or

(b) reproduces a sound recording or visual recording of the performance, which sound recording or visual recording was-

(i) made without the performer's consent; or

(ii) made for purposes different from those for which the performer gave his consent; or

(iii) made for purposes different from those referred to in section 39 from a sound recording or visual recording which was made in accordance with section 39; or

(c) broadcasts the performance except where the broadcast is made from a sound recording or visual recording other than one made in accordance with section 39, or is a re-broadcast by the same broadcasting organisation of an earlier broadcast which did not infringe the performer's right; or

(d) communicates the performance to the public otherwise than by broadcast, except where such communication to the public is made from a sound recording or a visual recording or a broadcast, shall, subject to the provision of section 39, be deemed to have infringed the performer's right.

**Proposed amendment:** Delete Section 38 (3)

**Comments:** Endorsed

(4) Once a performer has consented to the incorporation of his performance in a cinematograph film, the provisions of sub-sections (1), (2) and (3) shall have no further application to such performance.

**Proposed amendment:** Delete Section 38 (4)

**Comments:** Endorsed

**Proposed amendment:** "Section 38A

(1) For the purposes of this Act, and without prejudice to the rights conferred on authors, "performer's right" means the exclusive right, subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of the performance or any substantial part thereof, namely:-

(a) to make a sound recording or a visual recording of the performance or to do any of the following acts in respect of such recording, namely:-

(i) to reproduce it in any material form including the storing of it in any medium by electronic or any other means;

(ii) to issue copies of it to the public not being copies already in circulation;

(iii) to communicate it to the public;

(iv) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the recording.

*Explanation:* For the purpose of this clause "commercial rental" shall not include the rental, lease or lending of a lawfully acquired copy of a sound recording or a visual recording for nonprofit purposes by a non-profit library or non-profit educational institution.

(b) to broadcast or communicate the performance to the public except where the performance is already a broadcast performance.

(2) Once a performer has by written agreement consented to the incorporation of his performance in a cinematograph film he shall not, in the absence of any contract to the contrary, object to the enjoyment by the producer of the film of the performer's right in the same film.

**Comments:** Strongly endorsed. The separation of commercial rentals from non-commercial rentals facilitates the non-commercial rental of sound or visual recordings of a performance for broad educational and non-profit purposes.

**Proposed amendment:** “Section 38B, Moral Rights of the Performer:

Independently of the performer’s right and even after the assignment, either wholly or partially of the said right, the performer of a performance shall have the right

(a) to claim to be identified as the performer of his performance except where omission is dictated by the manner of the use of the performance, and

(b) to restrain or claim damages in respect of any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation

*Explanation:* The mere removal of any portion of a performance for the purpose of editing, or to fit the recording within a limited duration, or any other modification required for purely technical reasons shall not be deemed to be prejudicial to the performer’s reputation.”

**Comments:** Endorsed

**39.<sup>95</sup> Acts not infringing broadcast reproduction right or performer’s right.** – No broadcast reproduction right or performer’s right shall be deemed to be infringed by-

(a) the making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of *bona fide* teaching or research; or

(b) the use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for *bona fide* review, teaching or research; or

(c) such order acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under section 52.

**39A.<sup>96</sup> Other provisions applying to broadcast reproduction right and performer’s right.-** Sections 18, 19, 30, 53, 55, 58, 64, 65 and 66 shall, with any necessary adaptations and modifications, apply in relation to the broadcast reproduction right in any broadcast and the performers’ right in any performance as they apply in relation to copyright in a work :

Provided that where copyright or performer’s right subsists in respect of any work or performance that has been broadcast, no licence to reproduce such broadcast shall take effect without the consent of the owner of rights or performer, as the case maybe, or both of them.

**Proposed amendment:** Change {{Other provisions applying to broadcast and reproduction right and performer’s right. – Sections 18, 19, 30, 53, 55, 58, 64, 65 and 66}} to “Other provisions applying to broadcast and performer’s right. – Sections 18, 19, 30, 30A, 33, 33A, 53, 55, 58, 63, 64, 65, 65A, 65B and 66”

**Comments:** Endorsed

92. Subs. by Act.38 of 1994, cl. 12 for 'Authorities'

93. Subs. by Act 38 of 1994, s. 37

94. Subs. by Act 38 of 1994, s. 38

95. Subs. by Act 38 of 1994, s. 39

96. Subs. by Act 38 of 1994, s. 39A.

[96A. Subs. By Act 49 of 1999, Section 4, for twenty five years (wef 15.1.2000)]

## CHAPTER IX

### International Copyright

**40. Power to extend copyright to foreign works.--** The Central Government may, by <sup>97</sup> order published in the Official Gazette, direct that all or any provisions of this Act shall apply-

(a) to work first published in any class territory outside India to which the order relates in like manner as if they were first published within India;

(b) to unpublished works, or any class thereof, the authors whereof were at the time of the making of the work, subjects or citizens of a foreign country to which the order relates, in like manner as if the authors were citizens of India;

(c) in respect of domicile in any territory outside India to which the order relates in like manner as if such domicile were in India;

(d) to any work of which the author was at the date of the first publication thereof, or, in a case where the author was dead at that date, was at the time of his death, a subject or citizen of a foreign country to which the order relates in like manner as if the author was a citizen of India at that date or time; and thereupon, subject to the provisions of this Chapter and of the order, this Act shall apply accordingly:

Provided that-

(i) before making an order under this section in respect of any foreign country (other than a country with which India has entered into a treaty or which is a party to a convention relating to copyright to which India is also a party), the Central Government shall be satisfied that that foreign country has made, or has undertaken to make, such provisions if any, as it appears to the Central Government expedient to require for the protection in that country of works entitled to copyright under the provisions of this Act;

(ii) the order may provide that the provisions of this Act shall apply either generally or in relation to such classes of works or such classes of cases as may be specified in the order;

(iii) the order may provide that the term of copyright in India shall not exceed that conferred by the law of the country to which the order relates;

(iv) the order may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities, if any, as may be prescribed by the order;

(v) in applying the provisions of this Act as to ownership of copyright, the order may make such exceptions and modifications as appear necessary, having regard to the law of the foreign country;

(vi) the order may provide that this Act or any part thereof shall not apply to works made before the commencement of the order or that this Act or any part thereof shall not apply to works first published before the commencement of the order.

<sup>98A</sup> "40A. (1) If the Central Government is satisfied that a foreign country (other than a country with which India has entered into a treaty or which is a party to a convention relating to rights of

broadcasting organisations and performers to which India is also a party) has made or has undertaken to make such provisions, if any, as it appears to the Central Government expedient to require, for the protection in that foreign country, of the rights of broadcasting organisations and performers as is available under this Act, it may, by order published in the Official Gazette, direct that the provisions of Chapter VIII shall apply -

- (a) to broadcasting organisations whose headquarters is situated in a country to which the order relates or, the broadcast was transmitted from a transmitter situated in a country to which the order relates as if the headquarters of such organisation were situated in India or such broadcast were made from India;
- (b) to performances that took place outside India to which the order relates in like manner as if they took place in India;
- (c) to performances that are incorporated in a sound recording published in a country to which the order relates as if it was published in India;
- (d) to performances not fixed on a sound recording broadcast by a broadcasting organisation the headquarters of which is located in a country to which the order relates or where the broadcast is transmitted from a transmitter which is situated in a country to which the order relates as if the headquarters of such organisation were situated in India or such broadcast were made from India.

(2) Every order made under sub-section (1) may provide that -

- (i) the provisions of Chapter VIII shall apply either generally or in relation to such class or classes of broadcasts or performances or such other class or classes of cases as may be specified in the order;
- (ii) the term of the rights of broadcasting organisations and performers in India shall not exceed such term as is conferred by the law of the country to which the order relates;
- (iii) the enjoyment of the rights conferred by Chapter VIII shall be subject to the accomplishment of such conditions and formalities, if any, as may be specified in that order;
- (iv) Chapter VIII or any part thereof shall not apply to broadcast and performances made before the commencement of the order or that Chapter VIII or any part thereof shall not apply to broadcasts and performances broadcast or performed before the commencement of the order;
- (v) in case of ownership of rights of broadcasting organisations and performers, the provisions of Chapter VIII shall apply with such exceptions and modifications as the Central Government may, having regard to the law of the foreign country, consider necessary."

**41. Provisions as to works of certain international organisations. -(1) Where-**

(a) any work is made or first published by or under the direction or control of any organisation to which this section applies, and

(b) there would, apart from this section, be no copyright in the work in India at the time of the making or, as the case may be, of the first publication thereof, and

(c) either-

(i) the work is published as aforesaid in pursuance of an agreement in that behalf with the author, being an agreement which does not reserve to the author the copyright, if any, in the work, or

(ii) under section 17 any copyright in the work would belong to the organisation; there shall, by virtue of this section, be copyright in the work throughout India.

(2) Any organisation to which this section applies which at the material time had not the legal capacity of a body corporate shall have and be deemed at all material times to have had the legal

capacity of a body corporate for the purpose of holding, dealing with, and enforcing copyright and in connection with all legal proceedings relating to copyright.

(3) The organisation to which this section applies are such organisations as the Central Government may, by <sup>98</sup>order published in the Official Gazette, declare to be organisations of which one or more sovereign powers or the Government or Governments thereof are members to which it is expedient that this section shall apply.

**42. Power to restrict rights in works of foreign authors first published in India.** -If it appears to the Central Government that a foreign country does not give or has not undertaken to give adequate protection to the works of Indian authors, the Central Government may, by order published in the Official Gazette, direct that such of the provisions of this Act as confer copyright on works first published in India shall not apply to works, published after the date specified in the order, the authors whereof are subjects or citizens of such foreign country and are not domiciled in India, and thereupon those provisions shall not apply to such works.

<sup>98B</sup> "42A. If it appears to the Central Government that a foreign country does not give or has not undertaken to give adequate protection to rights of broadcasting organisations or performers, the Central Government may, by order published in the Official Gazette, direct that such of the provisions of this Act as confer right to broadcasting organisations or performers, as the case may be, shall not apply to broadcasting organisations or performers whereof are based on incorporated in such foreign country or are subjects or citizens of such foreign country and are not incorporated or domiciled in India, and thereupon those provisions shall not apply to such broadcasting organisations or performers."

**43. Orders under this Chapter to be laid before Parliament.**- Every order made by the Central Government under this Chapter shall, as soon as may be after it is made, be laid before both Houses of Parliament and shall be subject to such modifications as Parliament may make during the session in which it is so laid or the session immediately following.

97. *For International Copyright Order, 1991, see Gazette of India, Extraordinary, Pt. II, Sec. 3, No. 561*

98. *For Copyright (International Organisations) Order, 1991, see Gazette of India, Pt. II, Sec. 3, No. 561*

*[98A. Ins. By Act 49 of 1999, Section 5 (wef 15.1.2000)]*

*[98B. Ins. By Act 49 of 1999, Section 6(wef 15.1.2000)]*

## CHAPTER X

### Registration of Copyright

**44. Register of Copyrights.** -There shall be kept at the Copyright Office a register in the prescribed form to be called the Register of Copyrights 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.

**45. Entries in register of Copyrights.** -(1) 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 accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights :

<sup>99</sup> [Provided that in respect of an artistic work which is used or is capable of being used in relation to any goods, the application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trade Marks referred to in section 4 of the Trade and Merchandise Marks Act, 1958, to the effect that no trade mark identical with or deceptively similar to such artistic work has been registered under that Act in the name of, or that no application has been made under that Act for such registration by, any person other than the applicant.]

(2) On receipt of an application in respect of any work under sub-section (1), the Registrar of Copyrights may, after holding such inquiry as he may deem fit, enter the particulars of the work in the Register of Copyrights.

**46. Indexes.** -There shall be also kept at the Copyright Office such indexes of the Register of Copyrights as may be prescribed.

**47. Forms and inspection of register.** -The Register of Copyrights and indexes thereof kept under this Act shall at all reasonable times be open to inspection, and any person shall be entitled to take copies of, or make extracts from, such register or indexes on payment of such fee and subject to such conditions as may be prescribed.

**48. Register of Copyrights to be *prima facie* evidence of particulars entered therein.** -The Register of Copyrights shall be *prima facie* evidence of the particulars entered therein and documents purporting to be copies of any entries therein, or extracts therefrom certified by the Registrar of Copyrights and sealed with the seal of the Copyright Office shall be admissible in evidence in all courts without further proof or production of the original.

**49. Correction of entries in the Register of Copyrights.** -The Registrar of Copyrights may, in the prescribed cases and subject to the prescribed conditions, amend or alter the Register of Copyrights by-

(a) correcting any error in any name, address or particulars; or

(b) correcting any other error which may have arisen therein by accidental slip or omission.

**50. Rectification of Register by Copyright Board.** -The Copyright Board, on application of the Registrar of Copyrights or of any person aggrieved, shall order the rectification of the Register of Copyrights by-

- (a) the making of any entry wrongly omitted to be made in 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.

**[50A. Entries in the Register of Copyrights, etc, to be published.** <sup>100</sup> Every entry made in the Register of Copyrights or the particulars of any work entered under section 45, 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.]

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99. *Added by Act 23 of 1983, s. 16 (w.e.f. 9-8-1984).*

100. *Ins. by Act 23 of 1983, s. 17 (w.e.f. 9-8-1984).*

## CHAPTER XI

### Infringement of Copyright

**51. When copyright infringed.** -Copyright in a work shall be deemed to be infringed-

(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act-

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii)<sup>101</sup> permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person-

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or

(iv) imports <sup>102\*\*\*\*\*</sup> into India, any infringing copies of the work

<sup>103</sup>Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.

*Explanation.*- For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy".

**52. Certain acts not to be infringement of copyright.** -(1) The following acts shall not constitute an infringement of copyright, namely:

(a) a fair dealing with a literary, dramatic, musical or artistic work <sup>104</sup>[not being a computer programme] for the purposes of-

(i) <sup>105</sup>private use, including research;

(ii) criticism or review, whether of that work or of any other work; "

#### Proposed amendment:

Section 52 (1)(a): Replace {{a literary, dramatic musical or artistic work}} with "any work"

Section 52 (1)(a)(i): Replace {{private use, including research}} with [“private and personal use, including research”](#)

Section 52 (1)(a)(iii): Add

[“Explanation: The storing of any work in any electronic medium for the above purposes, including the incidental storage of any computer programme which is not itself an infringing copy for the said purposes, shall not constitute infringement of copyright.”](#)

**Comments:** Endorsed

(aa)<sup>106</sup> the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy-

(i) in order to utilise the computer programme for the purposes for which it was supplied; or

(ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied;”

<sup>121A</sup>“(ab) the doing of any act necessary to obtain information essential for operating interoperability of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available;

(ac) the observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied;

**Proposed amendment:** Replace {{the observation, study or test}} with [“for the purpose of observing, studying or testing”](#)

**Comments:** Endorsed

(ad) the making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use;

(b) a fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events-

(i) in a newspaper, magazine or similar periodical, or

(ii) by <sup>107</sup>[broadcast] or in a cinematograph film or by means of photographs.

<sup>108</sup>[Explanation.- The publication of a compilation of addresses or speeches delivered in public is not a fair dealing of such work within the meaning of this clause;]

**Proposed amendment:** Delete Section 52 (1)(b) in entirety

**Problem:** We are not sure of the rationale behind this deletion, but we note that as the media is among the most important sources of information for the public, this restricts the right of criticism

or review of the media *in the media*, effectively curtailing the scope of information that the media may provide. Furthermore, this deletion violates the fundamental right to receive information under Article 19(1)(a) of the Indian Constitution – The Right to Freedom of Speech and Expression, thus restricting freedom of speech and expression.

**Suggestion:** Do not delete this provision; retain in current form.

(c) 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;

**Proposed amendment:** Amend {{a literary, dramatic, musical or artistic work}} to “[any work](#)”

**Comments:** Endorsed

**Proposed amendment:** Add new clause under Section 52 (1):<sup>\*\*\*</sup>

“(c) (i) [the transient and incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public;](#)

[\(ii\) such transient and incidental storage for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy;](#)

[Provided that if the person responsible has prevented the storage of a copy on a complaint from any person, he may require such person to produce an order from the competent court for the continued prevention of such storage.”](#)

**Comments:** Endorsed

**Additional problems and suggestions:**

**Problem:** The report of a judicial proceeding often needs to be interpreted in order to be made understandable by a lay public; and this is often by means of criticism and review. However, under the current provision, use of literary, dramatic, musical or artistic works, for such a purpose is not explicitly allowed.

**Suggestion:** Amend “for the purpose of a report of a judicial proceeding” to “for the purpose of a report of a judicial proceeding or the criticism and review of a judicial proceeding”

(d) 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;

**Proposed amendment:** Amend {{a literary, dramatic, musical or artistic work}} to “[any work](#)”

<sup>\*\*\*</sup> In Section 52, a significant renumbering of clauses and sub-clauses has been proposed. For the sake of clarity, this text primarily refers to the numbers and categories as they appear in the current Indian Copyright Act, 1957, as amended to date. In this “Proposed Amendment” however, we quote the clause as it is named in the proposed amendment (that is, the inclusion of a new clause - Section 52 (1)(c) quoted here is not to be confused with the existing Section 52 (1) (c).)

**Comments:** Endorsed

(e) 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;

**Proposed amendment:** Amend {{a literary, dramatic, musical or artistic work}} to “[any work](#)”

**Comments:** Endorsed

(f) the reading or recitation in public of any reasonable extract from a published literary or dramatic work;

(g) the publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for the use of educational institutions, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for the use of educational institutions, in which copyright subsists :

Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

**Proposed amendment:** Amend the first instance of {{the use of educational institutions}} to “[instructional use](#)” and amend the subsequent instance of {{the use of educational institutions}} to “[such use](#)”

**Comments:** Endorsed**Additional problems and suggestions:**

**Problem:** The fair dealing provisions here are too restrictive to realistically provide for the inclusion of small amounts of copyrighted material in collections which primarily comprise non-copyright material.

**Suggestion:** Amend the accompanying provision to read: “[Provided that not more than reasonable extracts, as necessary, from works by the same author, are published by the same publisher, during any academic year](#)”

*Explanation.*- In the case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more of those authors in collaboration with any other person;

(h) the reproduction of a literary, dramatic, musical or artistic work-

(i) by a teacher or a pupil in the course of instruction; or

(ii) as part of the questions to be answered in an examination; or

(iii) in answers to such questions;

**Proposed amendment:** Amend {{a literary, dramatic, musical or artistic work}} to “[any work](#)”

**Comments:** Endorsed

(i) the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a <sup>109</sup>[sound recordings] if the audience is limited to such staff and students, the parents and guardians of the students and persons directly connected with the activities of the institution <sup>110</sup>[or the communication to such an audience of a cinematograph film or sound recording].

**Problem:** While this provision allows educational institutions to take advantage of multimedia instructional opportunities, the likely presence of *bona fide* visitors at the institution's functions and activities would needlessly restrict the institution's ability to avail of the benefits of this provision.

**Suggestion:** Amend {{persons directly connected with}} to "persons interested in"

(j) <sup>111</sup> the making of sound recordings in respect of any literary, dramatic or musical work, if-

(i) sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work;

(ii) the person making the sound recordings has given a notice of his intention to make the sound recordings, has provided copies of all covers or labels with which the sound recordings are to be sold, and has paid in the prescribed manner to the owner of rights in the work royalties in respect of all such sound recordings to be made by him, at the rate fixed by the Copyright Board in this behalf:

Provided that-

(i) no alterations shall be made which have not been made previously by or with the consent of the owner of rights, or which are not reasonably necessary for the adaptation of the work for the purpose of making the sound recordings;

(ii) the sound recordings shall not be issued in any form of packaging or with any label which is likely to mislead or confuse the public as to their identity;

(iii) no such sound recording shall be made until the expiration of two calendar years after the end of the year in which the first sound recording of the work was made; and

(iv) the person making such sound recordings shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording:

Provided further that if on a complaint brought before the Copyright Board to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this clause, the Copyright Board is, *prima facie*, satisfied that the complaint is genuine, it may pass an order *ex parte* directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty;

**Proposed amendment:** Replace Section 52 (1)(j) with

"(j) the making of sound recordings in respect of any literary, dramatic or musical work, if-

(i) sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work;

(ii) the sound recordings are in the same medium as the last recording, unless the medium of the last recording is no longer in current commercial use;

(iii) the person making the sound recordings has given a notice of his intention to make the sound recordings, has provided copies of all covers or labels with which the sound recordings are to be sold, and has paid in the prescribed manner to the owner of rights in each work royalties in respect of all copies to be made by him, at the rate fixed by the Copyright Board in this behalf;

(iv) The sound recordings are not sold or issued in any form of packaging or with any cover or label which is likely to mislead or confuse the public as to their identity, and in particular shall not contain the name or depict in any way any performer of an earlier sound recording of the same work or any cinematograph film in which such sound recording was incorporated and, further, shall state on the cover that it is a version made under section 52(1)(j) of the Act;

(v) no alterations to the composition of any literary or musical work are made which have not been made previously by or with the consent of the owner of rights, or which are not technically necessary for the purpose of making the sound recordings;

(vi) five calendar years have expired after the end of the year in which the first sound recording of the work was made;

(vii) royalty is paid for a minimum of 50,000 copies of each work during each calendar year in which copies of it are made;

Provided that the Copyright Board may by general order fix a lower minimum in respect of works in a particular language or dialect having regard to the potential circulation of such works;

(viii) the person making such sound recordings shall maintain such registers and books of account in respect thereof, including full details of existing stock, as may be prescribed and shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording;

Provided that if on a complaint brought before the Copyright Board to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this clause, the Copyright Board is, prima facie, satisfied that the complaint is genuine, it may pass an order ex parte directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty;"

**Problem:** Section 52(1)(j) allows for the making of version recordings by companies other than those that made the original sound recording. This has been a very important provision, since it has allowed small companies to emerge, and produce mainly for marginalized language markets, in diverse geographical locations. The provisions of Section 52(1)(j) as they currently stand, are also, generally credited with the de-monopolisation of the music industry in India.

Section 52(1)(j) has extensively enhanced the Indian music landscape. It has led to a transformation in the distribution and creation of cultural goods. One significant economic aspect of these provisions is worth noting: in the early 1980s, as audio cassettes proliferated, a number of small companies were able to use Section 52(1)(j) to produce and sell vast numbers of so-called 'version recordings' in hitherto under-served languages and genres, significantly enhancing the domain of folk culture. (For an account of this economic and cultural phenomenon, see Peter Manuel's *Cassette Culture: Popular Music and Technology in North India*, New Delhi: Oxford University Press, 2001).

The proposed amendments pose the following problems:

(a) Section 52(1)(j)(vi) stipulates that five calendar years must have passed after the original recording was made, before a version recording can be made. This significantly extends the existing wait-period of two years, and can seriously impact the ability of smaller companies to enter the music industry, since the value of such music may diminish tremendously in that time.

(b) Section 52(1)(j)(vii) stipulates that royalty for a minimum of 50,000 copies is to be paid annually for the production of a 'version', regardless of number of copies actually produced or sold. Since most version recordings generally cater to a small audience, the minimum royalty proposed is unfeasible to their continued existence. While the proposed amendment clarifies that the Copyright Board may have the power to stipulate a "lower minimum in respect of works in a particular language or dialect", the default minimum royalty stipulated makes it difficult or impossible for small music companies to continue to produce music in marginalized languages and dialects.

(c) The proposed amendment would only benefit large, well-capitalised music companies. Any fears of the misuse of the provision by companies wishing to piggy-back on the success of particular songs (through remixes, for instance) have already been addressed by the courts in their interpretation of the provision to Section 52(1)(j)(ii) – through, for instance, *Super Cassettes v. Bathla Industries*, (2003) PTC 280 (Del).

**Suggestions:** In light of the strong socio-economic arguments proposed above, to retain Section 52 (1)(j) in its current form, in entirety.

(k) <sup>112</sup> the causing of a recording to be heard in public by utilising it,-

(i) in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein; or

(ii) as part of the activities of a club or similar organisation which is not established or conducted for profit;

(iii) as part of the activities of a club, society or other organisation which is not established or conducted for profit;

(l) the performance of a 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;

(m) 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;

**Proposed amendment:** Delete Section 52 (1)(m)

**Comments:** Endorsed

(n) the publication in a newspaper, magazine or other periodical of a report of a lecture delivered in public;

**Proposed amendment:** Delete Section 52 (1)(n) in entirety

**Problem:** Refer to Problem under Section 52 (1)(b). Deletion of this provision restricts free speech and information and further restricts the scope of reportage – as such deletion will encourage monopolization in media coverage of what are essentially public events, turning such public events into private goods.

**Suggestion:** Do not delete Section 52 (1)(n); retain as is.

(o) the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a public library for the use of the library if such book is not available for sale in India;

**Problem1:** The term “public library” does not explicitly include libraries connected to educational and research institutions.

**Suggestion1:** To amend {{public library}} to “public library or library connected to an educational or research institution”

**Problem2:** Libraries in this day and age, typically hold more than just books (for example, documentary and feature films). Further, the existence of internet-based retailers makes most works published elsewhere in the world, available for sale in India. While purchase from internet-based retailers is technically possible, in fact, high costs, delayed procurement time and licensing barriers on use can severely restrict the actual purchase and use of such material by libraries. In comparison to the exception for educational use, it is important to note here that there are *no* restrictions on the number of reproductions possible under Section 52(h), and *no* limitations on the scope of material to works not available in India.

**Suggestion2:** In this exception, for all places where the term {{book}} appears, amend to “any work.” Remove the condition {{if not available for sale in India.}} thus making the exception for library use consistent with the exception for broad educational use.

(p) the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access :

Provided that where the identity of the author of any such work or, in the case of a work of joint authorship, of any of the authors is known to the library, museum or other institution, as the case may be, the provisions of this clause shall apply only if such reproduction is made at a time more than <sup>121B</sup> sixty years from the date of the death of the author or, in the case of a work of joint authorship, from the death of the author whose identity is known or, if the identity of more authors than one is known from the death of such of those authors who dies last;

(q) the reproduction or publication of-

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

(ii) 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;

(iii) the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government;

**Problem:** This exception is limited to government reports: however, the quantity and range of information produced by the government in current times extends far beyond mere reports. Furthermore, government-commissioned knowledge and information produced independently or within government institutions is also not covered.

**Suggestion:** Amend {{the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government}} to read “the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government and any government information as available publicly under the Right to Information Act or any commissioned information and knowledge that is wholly funded by the government (such as a book resulting solely from government funding)”.

(iv) any judgement 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;

(r) the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made thereunder-

(i) if no translation of such Act or rules or orders in that language has previously been produced or published by the Government; or

(ii) where a translation of such Act or rules or orders in that language has been produced or published by the Government, if the translation is not available for sale to the public:

Provided that such translation contains a statement at a prominent place to the effect that the translation has not been authorised or accepted as authentic by the Government;

**Problem:** The translation of other government information (such as reports, or other information and knowledge that is commissioned and wholly funded by government) is not addressed. In the event that such translation needs be made to English, or immediately (as the case is likely to be with such works) Section 32 is inadequate to address such needs.

**Suggestion:** Amend Section 52(1)(r) to cover the production of a publication of a translation of any government information as available publicly under the Right to Information Act or any government-commissioned information and knowledge that is wholly funded by the government (such as a book resulting solely from government funding), in the event that such a translation has not been made available by the authors within a reasonable time period.

(s)<sup>113</sup> the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture;

(t) the making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work falling under sub-clause (iii) of clause (c) of section 2, if such work is permanently situate in a public place or any premises to which the public has access;

(u) the inclusion in a cinematograph film of-

**Problem:** While this exception considerably enhances the ease by which cinematographs may be created without the worry of undue, cumbersome legal liability, since it is limited to

cinematographs, it potentially restricts similar use in other works, particularly as related to provisions for criticism and review as expressed in 52(1)(a)(ii).

**Suggestion:** Amend {{a cinematograph film}} to “any work”

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

(ii) 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;

(v) 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 :

Provided that he does not thereby repeat or imitate the main design of the work;

114\*\*\*\*\*

(x) the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed :

Provided that the original construction was made with the consent or licence of the owner of the copyright in such drawings and plans;

(y) in relation to 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 therein :

Provided that the provisions of sub-clause (ii) of clause (a), sub-clause (a) of clause (b) and clauses (d), (f), (g), (m) and (p) shall not apply as respects any act unless that act is accompanied by an acknowledgment-

(i) identifying the work by its title or other description; and

(ii) unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

**Proposed amendment:** Amend {{literary, dramatic or musical work}} to “literary, dramatic, artistic or musical work”. Delete ((Provided that the provisions of sub-clause (ii) of clause (a), sub-clause (a) of clause (b) and clauses (d), (f), (g), (m) and (p) shall not apply as respects any act unless that act is accompanied by an acknowledgment-

(i) identifying the work by its title or other description; and

(ii) unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.}}

**Comments:** Endorsed

(z)<sup>115</sup> the making of an ephemeral recording, by a broadcasting organisation using its own facilities for its own broadcast by a broadcasting organisation of a work which it has the right to

broadcast; and the retention of such recording for archival purposes on the ground of its exceptional documentary character;

(za)<sup>116</sup> 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.

*Explanation.*- For the purpose of this clause, religious ceremony including a marriage procession and other social festivities associated with a marriage.

(2) The provisions of sub-section (1) shall apply to the doing of any act in relation to the translation of a literary, dramatic or musical work or the adaptation of a literary, dramatic, musical or artistic work as they apply in relation to the work itself.

**Proposed amendment:** Add new clauses under Section 52, namely (z), (za), (zb)<sup>\*\*\*</sup>

“(z) the making of a three-dimensional object from a two dimensional artistic work, such as a technical drawing, for the purposes of industrial application of any purely functional part of a useful device.

(za) The reproduction, issue of copies or communication to the public of any work in a format, including sign language, specially designed only for the use of persons suffering from a visual, aural or other disability that prevents their enjoyment of such works in their normal format.

(zb) the importation of copies of any literary or artistic work, such as labels, company logos or promotional or explanatory material, that is purely incidental to other goods or products being imported lawfully.”

**Comments/ Problems:** While we strongly endorse the inclusion of these amendments, especially Section 52(1)(za) in that it promotes access to knowledge and information for people with a disability, the wording of the current clause precludes the possibility of disabled people using a format other than one specially designed for their use (for example, it precludes the use of any audio, or an Adobe PDF file, among other essential formats). This is extremely problematic, given that a condition of access to knowledge and information for people with a disability is that they are able to take advantage of the enormous amounts of such material currently available in widespread formats; especially given the time, labour and technical costs of conversion; the preference for some formats over others (for example, audio over Braille, as the situation demands) and the fact that widespread formats such as audio are indispensable to facilitating their access. A related problem is that the export of such work (for example, through inter-library loans) to neighbouring countries, *provided* similar clauses in the law exist to make such import legal (in the receiving country), should be permitted, given the advantages of regional and international sharing of resources for people with a disability.

**Suggestions:** This clause should regulate the *intended* use of work, not the form or medium of the work itself, in order to provide any meaningful access to knowledge and information for people with a disability. Therefore, amend Section 52 (1)(za) to read “The reproduction, issue of copies, communication to the public, or export (when possible), of any work in any form or

<sup>\*\*\*</sup> In Section 52, a significant renumbering of clauses and sub-clauses has been proposed. For the sake of clarity, this text primarily refers to the numbers and categories as they appear in the current Indian Copyright Act, 1957, as amended to date. In this “Proposed Amendment” however, we quote the clause as it is named in the proposed amendment (that is, the inclusion of a new clause - Section 52 (1)(z) and (1)(za) quoted here is not to be confused with the existing Section 52 (1) (z) and (1)(za))

medium, where such usage is intended only for the use of persons with a visual, aural or other disability that prevents their enjoyment of such works in their original format”.

**[52A. Particulars to be included in records and video films.** <sup>117</sup> (1) No person shall publish a <sup>118</sup>[sound recording] in respect of any work unless the following particulars are displayed on the [sound recording] and on any container thereof, namely:-

- (a) the name and address of the person who has made the [sound recording];
- (b) the name and address of the owner of the copyright in such work; and
- (c) the year of its first publication.

(2) No person shall publish a video film in respect of any work unless the following particulars are displayed in the video film, when exhibited, and on the video cassette or other container thereof, namely :-

- (a) if such work is a cinematograph film required to be certified for exhibition under the provisions of the Cinematograph Act, 1952, a copy of the certificate granted by the Board of Film Certification under section 5A of that Act in respect of such work;
- (b) the name and address of the person who has made the video film and a declaration by him that he has obtained the necessary licence or consent from the owner of the copyright in such work for making such video film; and
- (c) the name and address of the owner of the copyright in such work.]

**52B. Accounts and Audit.** <sup>119</sup> (1) Every copyright society appointed under section 34A shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, in such form and in such manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of each of the copyright societies in relation to the payments received from the Central Government shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the copyright society to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the audit of the accounts of the copyright society referred to in sub-section (2) shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts and other documents and papers and to inspect any of the offices of the copyright society for the purpose only of such audit.

(4) The accounts of each of the copyright societies as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

**Proposed amendment:** Delete Section 52B in entirety

**Comments:** Endorsed

**53. Importation of infringing copies.** -(1) The Registrar of Copyrights, on application by the owner of the copyright in any work or by his duly authorised agent and on payment of the prescribed fee, may, after making such inquiry as he deems fit, order that copies made out of India of the work which if made in India would infringe copyright shall not be imported.

(2) Subject to any rules made under this Act, the Registrar of Copyrights or any person authorised by him in this behalf may enter any ship, dock or premises where any such copies as are referred to in sub-section (1) may be found and may examine such copies.

(3) All copies to which any order made under sub-section (1) applies shall be deemed to be goods of which the import has been prohibited or restricted <sup>120</sup>[under section 11 of the Customs Act, 1962], and all the provisions of that Act shall have effect accordingly:

Provided that all such copies confiscated under the provisions of the said Act shall not vest in the Government but shall be delivered to the owner of the copyright in the work.

**Proposed amendment:** Replace Existing Section 53 with:

“(1) The owner of any right conferred by this Act in respect of any work or of any performance embodied in such work, or his duly authorised agent, may give notice in writing to the Commissioner of Customs, or to any other officer authorised in this behalf by the Central Board of Excise and Customs,

(a) that he is the owner of the said right, with proof thereof, and

(b) that he requests the Commissioner for a period specified in the notice, which shall not exceed one year, to treat infringing copies of the work as prohibited goods, and expected to arrive in India at a time and a place specified in the notice.

(2) The Commissioner on being satisfied, after scrutiny of the evidence furnished by the owner of the right, may, subject to the provisions of sub-section (3), treat infringing copies of the work as prohibited goods that have been imported into India, excluding goods in transit:

Provided that the owner of the work deposits such amount as the Commissioner may require as security having regard to the likely expenses on demurrage, cost of storage and compensation to the importer in case it is found that the works are not infringing copies.

(3) When any goods treated as prohibited under sub-section (2) have been detained, the Customs Officer detaining them shall inform the importer as well as the person who gave notice under sub-section (1) of the detention of such goods within forty-eight hours of their detention.

(4) The Customs Officer shall release the goods, and they shall no longer be treated as prohibited goods, if the person who gave notice under sub-section (1) does not produce any order from a court having jurisdiction as to the temporary or permanent disposal of such goods within fourteen days from the date of their detention.”

**Comments:** Endorsed

**53A. Resale share right in original copies.** <sup>121</sup> (1) In the case of resale for a price exceeding ten thousand rupees, of the original copy of a painting, sculpture or drawing, or of the original manuscript of a literary or dramatic work or musical work, the author of such work if he was the first owner of rights under section 17 or his legal heirs shall, notwithstanding any assignment of

copyright in such work, have a right to share in the resale-price of such original copy or manuscript in accordance with the provisions of this section:

Provided that such right shall cease to exist on the expiration of the term of copyright in the work.

(2) The share referred to in sub-section (1) shall be such as the Copyright Board may fix and the decision of the Copyright Board in this behalf shall be final :

Provided that the Copyright Board may fix different shares for different classes of work :

Provided further that in no case shall the share exceed ten per cent of the resale price.

(3) If any dispute arises regarding the right conferred by this section, it shall be referred to the Copyright Board whose decision shall be final.

101. Subs. by Act 38 of 1994, s. 51.

102. Certain words omitted by Act 65 of 1984, s. 3 (w.e.f. 8-10-1984).

103. Subs. by Act 38 of 1994, s. 5 1

104. Ins. by Act 38 of 1984, s. 52.

105. Ins. by Act 38 of 1994, s. 52.

106. Ins. by Act 38 of 1994, s. 52.

107. Subs. by Act 23 of 1983, s. 2, for "radio-diffusion" (w.o.f. .9-8-1994).

108. Ins. by s. 18, *ibid* (w.e.f. 9-8-1984).

109. Subs. by Act 38 of 1984, s. 2, for "record".

110. Ins. by Act 38 of 1994, s. 52.

111. Subs. by Act 38 of 1994, s. 52.

112. Subs. by Act 38 of 1994, s. 52

113. Subs by Act 38 of 1994, s. 52

114. Clause (w) omitted by Act 38 of 1994, s. 52.

115. Ins. by Act 38 of 1994, s. 52.

116. Ins. by Act 38 of 1994, s. 52.

117. Ins. by Act 65 of 1984, s. 4 (w.e.f. 8-10-1984).

118. Subs. by Act 38 of 1994, s. 2 for 'record'.

119. Ins. by Act 38 of 1994, s. 52B

120. Sub. by-Act 23 Df 1983, s. 19, for "under section 19 of the Sea Custorns Act, 1878" (w.e.f. 9-8-1984).

121. Ins. by Act 38 of 1994, s. 53A.

[121A. Ins. By Act 49 of 1999, Section 7(wef 15.1.2000)]

[121B. Subs. By Act 49 of 1999 Section 7 for fifty years (wef 15.1.2000)]

## CHAPTER XII

### Civil Remedies

**54. Definition.** -For the purposes of this Chapter, unless the context otherwise requires, the expression "owner of copyright" shall include-

(a) an exclusive licensee;

(b) in the case of an anonymous or pseudonymous literary, dramatic, musical or artistic work, the publisher of the work, until the identity of the author or, in the case of an anonymous work of joint authorship, or a work of joint authorship published under names all of which are pseudonyms, the identity of any of the authors, is disclosed publicly by the author and the publisher or is otherwise established to the satisfaction of the Copyright Board by that author or his legal representatives.

**55. Civil remedies for infringement of copyright.** - (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, 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 :

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

(2) Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher, as the case may be, appears on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

**Proposed amendment:** Amend ~~Where, in the case of a literary, dramatic, musical or artistic work, a name purporting~~ to Where, in the case of a literary, dramatic, musical or artistic work or, subject to the provisions of sub-section (3) of section 13, a cinematograph film or sound recording, a name; amend ~~as the case may be, appears on the copies~~ to as the case may be, of that work appears on the copies

**Comments:** Endorsed

(3) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the court.

**56. Protection of separate rights.** - Subject to the provisions of this Act, where the several rights comprising the copyright in any work are owned by different persons, the owner of any such right shall, to the extent of that right be entitled to the remedies provided by this Act and may individually enforce such right by means of any suit, action or other proceeding without making the owner of any other right a party to such suit, action or proceeding.

**57.**<sup>122</sup> **[Author's special rights.** (1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right-

(a) to claim authorship of the work; and

(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies.

*Explanation.*- Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.]

(2) The right conferred upon an author of a work by sub-section (1), other than the right to claim authorship of the work, may be exercised by the legal representatives of the author.

**Proposed amendment:** Delete {{other than the right to claim authorship of the work}}

**Comments:** Endorsed

**58. Rights of owner against persons possessing or dealing with infringing copies.** - 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, who accordingly may take proceedings for the recovery of possession thereof or in respect of the conversion thereof :

Provided that the owner of the copyright shall not be entitled to any remedy in respect of the conversion of any infringing copies, if the opponent proves-

(a) that he was not aware and had no reasonable ground to believe that copyright subsisted in the work of which such copies are alleged to be infringing copies; or

(b) that he had reasonable grounds for believing that such copies or plates do not involve infringement of the copyright in any work.

**59. Restriction on remedies in the case of works of architecture.** -(1) Notwithstanding anything contained in <sup>123</sup>[the Specific Relief Act, 1963], where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction to restrain the construction of such building or structure or to order its demolition.

(2) Nothing in section 58 shall apply in respect of the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work.

**60. Remedy in the case of groundless threat of legal proceedings.** - Where any person claiming to be the owner of copyright in any work, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of the copyright, any person aggrieved thereby may, notwithstanding anything contained <sup>124</sup>[in section 34 of the Specific Relief Act, 1963] institute a declaratory suit that the

alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in any such suit-

(a) obtain an injunction against the continuance of such threats; and

(b) recover such damages, if any, as he has sustained by reason of such threats.

Provided that this section shall not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him.

**61. Owners of copyright to be party to the proceeding.** - (1) In every civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee, the owner of the copyright shall, unless the court otherwise directs, be made a defendant and where such owner is made a defendant, he shall have the right to dispute the claim of the exclusive licensee.

(2) Where any civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee is successful, no fresh suit or other proceeding in respect of the same cause of action shall lie at the instance of the owner of the copyright.

**62. Jurisdiction of court over matters arising under this Chapter.** - (1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) For the purpose of sub-section (1), and "district court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.

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122. *Sub. by Act 38 of 1984, s. 57.*

123. *Subs. by Act 23 of 1983, s. 20, for "the Specific Relief Act, 1877" (w.e.f. 9-8-1984)*

124. *Subs. by s. 21, ibid., for "in section 42 of the Specific Relief Act, 1877" (w.e.f. 9;8-1984).*

## CHAPTER XIII

### Offences

**63. Offence of infringement of copyright or other rights conferred by this Act.** Any person who knowingly infringes or abets the infringement of-

(a) the copyright in a work, or

(b) any other right conferred by this Act, <sup>125</sup>[except the right conferred by section 53A]

<sup>126</sup>[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 fifty thousand rupees but which may extend to two lakh rupees :

Provided that <sup>127</sup>[where the infringement has not been made for gain in the course of trade or business] the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.]

*Explanation.*-Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section.

<sup>128</sup>**63A. Enhanced penalty on second and subsequent convictions.** - 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 one lakh rupees but which may extend to two lakh rupees :

Provided that <sup>129</sup>[where the infringement has not been made for gain in the course of trade or business] the court may, for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:

Provided further that for the purposes of this section, no cognizance shall be taken of any conviction made before the commencement of the Copyright (Amendment) Act, 1984.]

**"63B. Knowing use of infringing copy of computer programme to be an offence.** <sup>130</sup> Any person who knowingly makes use on a computer of an infringing copy of a computer programme shall be punishable with imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the computer programme has not been used for gain or in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgment, not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees."

**64. Power of police to seize infringing copies .** -(1)<sup>131</sup> Any police officer, not below the rank of a sub-inspector, may, if he is satisfied that an offence under section 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed, seize

without warrant, all copies of the work, and all plates used for the purpose of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable, be produced before a Magistrate.]

(2) Any person having an interest in any copies of a work <sup>132</sup>[or plates] seized under sub-section (1) may, within fifteen days of such seizure, make an application to the Magistrate for such copie. <sup>133</sup>[or plates] being restored to him and the Magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application as he may deem fit.

**65. Possession of plates for purpose of making infringing copies.** – 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 <sup>134</sup>[two years and shall also be liable to fine].

**Proposed amendment:** Insert Sections 65A & 65B

“Section 65A. Protection of Technological Measures. –

(1) Any person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by this Act, with the intention of infringing such rights, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) shall prevent any person from:

(a) doing anything referred to therein for a purpose not expressly prohibited by this Act:

Provided that any person facilitating circumvention by another person of a technological measure for such a purpose shall maintain a complete record of such other person including his name, address and all relevant particulars necessary to identify him and the purpose for which he has been facilitated; or

(b) doing anything necessary to conduct encryption research using a lawfully obtained encrypted copy; or

(c) conducting any lawful investigation; or

(d) doing anything necessary for the purpose of testing the security of a computer system or a computer network with the authorization of its owner or operator; or

(e) doing anything necessary to circumvent technological measures intended for identification or surveillance of a user; or

(f) taking measures necessary in the interest of national security.

Section 65 B. Protection of Rights Management Information. –

Any person, who knowingly

(i) removes or alters any rights management information without authority, or

(ii) distributes, imports for distribution, broadcasts or communicates to the public, without authority, copies of any work, or performance knowing that electronic rights management information has been removed or altered without authority, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine;

Provided that if the rights management information has been tampered with in any work, the owner of copyright in such work may also avail of civil remedies provided under Chapter XII of this Act against the persons indulging in such acts described above.”

**Problem:** The proposed Section 65A introduces the idea of Digital Rights Management (“DRM”) into the Copyright Act of India. This is a highly controversial topic, and we *strongly* suggest the exercise of caution before introducing such provisions as the amendments seek to do.

Firstly, it should be noted that India is under *no obligation* to enact anti-circumvention laws, as it is not mandated under the TRIPs agreement to which India is bound. India is *not* a signatory to the WIPO Copyright Treaty (“WCT”). It is the WCT that enjoins state parties to enact anti-circumvention provisions into their national law. As India is *not* a party to the WCT, it is consequently free from any obligation to enact such provisions into national law. Thus, the reasons for the inclusion of such provisions are unclear. This amendment seeks to impose ‘TRIPs-plus’ standards on India for which there is neither a necessity nor an obligation.

DRM is a term used for technologies that define and enforce parameters of access to digital media or software. The reason for the deployment such measures is – ostensibly – to ‘enforce’ the copyright of the manufacturer or the copyright-holder as the case maybe.

However, DRM is *extra-statutory*. Consequently, rights that are conferred by the law are enforced by the copyright holder himself through technological measures so as to prevent access to such digital media or software which would infringe the copyright of the copyright holder. But, more importantly, this would also mean that DRM allows for copyright holders to restrict access to digital media or software under terms which would be *currently permissible* under copyright law.

For example, if a person wished to make a copy of a legally purchased media file for personal use or for back-up, utilising the flexibility sanctioned under Section 51(1)(b)(ii) of the Indian Copyright Act, he/she would *not be able to do so* if the proposed amendments suggested here are enacted. It could also prevent private screening of digital media, which would (otherwise) be perfectly legal to do under the current Act. The inclusion of this provision means that copyright holders will be allowed to enforce *their own copyright terms* on digital media or software that they produce; *terms that are not concurrent with the current Indian Copyright Act*.

Furthermore, DRM will have a significant impact on innovation. This has particular significance for India where the fruits of innovation need to be accessible to both the innovator and the consumer. An example is the invention of the Simputer<sup>2</sup>, which was built on reverse-engineering. With the introduction of DRM and the criminalisation of its circumvention, low-cost, locally relevant and contextually appropriate computer hardware and software may never become available to the public at large.

With the inclusion of such provisions, DRM becomes a tool not for protection of copyright but for changing consumer expectations of the product that they receive. We do not believe that this is a valid duty of the current Indian Copyright Act or the amendments proposed in this instance. We further believe that the experience of the USA with regards to DRM and anti-circumvention legislation is useful and instructive to the Indian case (See APPENDIX A).

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<sup>2</sup> [www.simputer.org](http://www.simputer.org)

**Suggestions:** We recommend, in line with the findings of the UK Commission on Intellectual Property<sup>3</sup> (“CIPR”) that it is premature at the present time for developing countries to be required to go beyond TRIPs standards in this area. We strongly believe that developing countries would probably be unwise to endorse the WIPO Copyright Treaty and that they should retain their freedom to legislate on how technological measures are regulated – in the interests of safeguarding access to knowledge and information, for broad socio-economic development.

We strongly suggest that the proposed Sections 65A and 65B *not* be included into the Act (noting that there is no obligation that binds the Indian Government to do so anyway).

However, in the event that Government still decides to introduce DRM into the Act, then we strongly recommend that it introduces safeguards which will protect users from an abuse of the anti-circumvention provision; that is, safeguards that allow users to exercise all the fair dealing clauses ensured and enumerated in the current Act. This is particularly important given the manner in which DRM can affect legitimate research. (Indian researchers and students need access to copyrighted technical journals, educational materials and software: allowing for DRM in the form of the proposed amendments will seriously undermine India’s development goals.)

The proposed amendment introduces the idea of intention into the act of circumvention, stating “with the intention of infringing such rights”. This is a significant safeguard. A liberal interpretation thereof would imply that circumvention for fair dealing and other non-infringing activity is allowed. It would mean that the exceptions listed in Section 52 of the Act and elsewhere, would automatically be outside the purview of Section 65A. It would however be *better to clarify* this explicitly in the proposed amendment and introduce language which states that circumvention for the purposes of exercising any fair dealing rights, or other exceptions as listed in the Act (such as provisions for people with a disability, for instance), are exempt from being considered as infringement.

We also suggest that government provide for an administrative procedure for regular review of copyrighted works that on substantial reason and cause *should not be protected* by the provisions of Sections 65A and 65B - for example, in cases of people with a visual disability, where copyrighted works will need to be converted into appropriate formats.

For evidence and experience with respect to the suggestions above, please refer to the recommendations of select governmental and non-governmental reports on the implementation of DRM (See APPENDIX B).

**66. Disposal of infringing copies or plates for purpose of making infringing copies.** -The court trying any offence under this 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.

**Proposed amendment:** Amend {{delivered up to the owner of the copyright.}} to “delivered up to the owner of the copyright or may make such order as it may deem fit regarding the disposal of such copies or plates”.

**Comments:** Endorsed

**67. Penalty for making false entries in register, etc., for producing or tendering false entries .** -Any person who,-

<sup>3</sup> <http://www.iprcommission.org/>

(a) makes or causes to be made a false entry in the Register of Copyrights kept under this Act, or

(b) makes or causes to be made a writing falsely purporting to be a copy of any entry in such register, or

(c) produces or tenders or causes to be produced or tendered as evidence any such entry or writing, knowing the same to be false,

shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

**68. Penalty for making false statements for the purpose of deceiving or influencing any authority or officer.** Any person who, -

(a) with a view to deceiving any authority or officer in the execution provisions of this Act, or

(b) with a view to procuring or influencing the doing or omission of anything relation to this Act or any matter thereunder,

makes a false statement or representation knowing the same to be false, shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

<sup>135</sup>[**68A. Penalty for contravention of section 52A.** -Any person who publishes a <sup>136</sup>[sound recording] or a video film in contravention of the provisions of section 52A shall be punishable with imprisonment which may extend to three years and shall also be liable to fine.]

**69. Offences by companies.** -(1) Where any offence under this Act has been committed by a company, every person who at the time the offence was committed was 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:

Provided that nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*- For the purposes of this section-

(a) "company" means any body corporate and includes a firm or other association of persons; and

(b) "director" in relation to a firm means a partner in the firm.

**70. Cognizance of offences.** - No court inferior to that of <sup>137</sup>a Metropolitan Magistrate or a Judicial Magistrate of the first class] shall try any offence under this Act.

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125. *Ins. by Act 38 of 1994, s. 63.*
126. *Subs. by Act 65 of 1984, s. 5, for certain words (w.e.f. 8-10-1984).*
127. *Ins. by Act 38 of 1994, s. 63.*
128. *Ins. by Act 65 of 1984, s. 6 (w.e.f. 8-10-1984).*
129. *Ins. by Act 38 of 1994, s. 63.*
130. *Ins. by Act 38 of 1994, s. 63B.*
131. *Subs. by s. 7, ibid., for sub section (1) (w.e.f. 8-10-1984).*
132. *Ins. by Act 65 of 1984, s. 7 (w.e.f. 8-10-1984).*
133. *Ins. by s. 7, ibid, (w.e.f. 8-10-1984).*
134. *Subs. by s. 8, ibid., for "one year, or with fine, or with both' (w.e.f. 8-10-1984).*
135. *Ins. by Act 65 of 1984, s. 9 (w.9.f. 8-10-1984).*
136. *Subs. by Act 38 of 1994, s. 2, for `record'.*
137. *Subs. by Act 23 of 1983, s. 22, for "a Presidency Magistrate or a Magistrate of the first class" (w.e.f. 9- 8-1984). 73. The High Court may make rules consistent with this Act as to the procedure to be followed in respect of appeals made to it under section 72.*

## CHAPTER XIV

### Appeals

**71. Appeals against certain orders of Magistrate.** -Any person aggrieved by an order made under sub-section (2) of section 64 or section 66 may, within thirty days of the date of such order, appeal to the court to which appeals from the court making the order ordinarily lie, and such appellate court may direct that execution of the order be stayed pending disposal of the appeal.

**72. Appeals against orders of Registrar of Copyrights and Copyright Board.** - (1) 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.

(2) Any person aggrieved by any final decision or order of the Copyright Board, not being a decision or order made in an appeal under sub-section (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;

Provided that no such appeal shall lie against a decision of the Copyright Board under section 6.

(3) In calculating the period of three months provided for an appeal under this section, the time taken in granting a certified copy of the order or record of the decision appealed against shall be excluded.

**73. Procedure for appeals.** – The High Court may make rules consistent with this Act as to the procedure to be followed in respect of appeals made to it under section 72.

## CHAPTER XV

### Miscellaneous

#### **74. Registrar of Copyrights and Copyright Board to possess certain powers of civil courts.**

-The Registrar of Copyrights and the Copyright Board shall have the powers of a civil court when trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely :-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on 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 may be prescribed.

*Explanation.*- For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Registrar of Copyrights or the Copyright Board, as the case may be, shall be limits of the territory of India.

**75. Orders for payment of money passed by Registrar of Copyrights and Copyright Board to be executable as a decree.** -Every order made by the Registrar of Copyrights or the Copyright Board under this Act for the payment of any money or by the High Court in any appeal against any such order of the Copyright Board shall, on a certificate issued by the Registrar of Copyrights, the Copyright Board or the Registrar of the High Court, as the case may be, be deemed to be a decree of a civil court and shall be executable in the same manner as a decree of such court.

**76. Protection of action taken in good faith.** - No suit or other legal proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

**77. Certain persons to be public servants.** - Every officer appointed under this Act and every member of the Copyright Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

**78. Power to make rules.** - (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may make rules to provide for all or any of the following matters, namely :-

- (a) the term of office and conditions of service of the Chairman and other members of the Copyright Board;

(b) the form of complaints and applications to be made, and the licences to be granted, under this Act;

(c) the procedure to be followed in connection with any proceeding before the Registrar of Copyrights;

(ca)<sup>139</sup> the conditions for submission of application under sub-section (2) of section 33;

(cb)<sup>140</sup> the conditions subject to which a copyright society may be registered under sub-section (3) of section 33;

(cc)<sup>141</sup> the inquiry for cancellation of registration under sub-section (4) of section 33;

(cd)<sup>142</sup> the conditions subject to which the copyright society may accept authorisation under clause (a) of sub-section (1) of section 34 and the conditions subject to which owners of rights have right to withdraw such authorisation under clause (b) of that sub-section;

(ce)<sup>143</sup> the conditions subject to which a copyright society may issue licences, collect fees and distribute such fees amongst owners of rights under sub-section (3) of section 34;

(cf)<sup>144</sup> the manner in which the approval of the owners of rights regarding collection and distribution of fees, approval for utilisation of any amount collected as fees and to provide to such owners information concerning activities in relation to the administration of their rights under sub-section (1) of section 35;

(cg)<sup>145</sup> the returns to be filed by copyright societies to the Registrar of Copyrights under sub-section (1) of section 36;

(d) the manner of determining any royalties payable under this Act, and the security to be taken for the payment of such royalties;

(da)<sup>146</sup> the manner of payment of royalty under clause (j) of sub-section (1) of section 52;

(db)<sup>147</sup> the form and the manner in which the copyright society shall maintain accounts and other relevant records and prepare annual statements of accounts and the manner in which the quantum of remuneration is to be paid to individual owner of rights under sub-section (1) of section 52B;

(e) the form of Register of Copyrights to be kept under this Act and the particulars to be entered therein;

(f) the matter in respect of which the Registrar of Copyrights and the Copyright Board shall have powers of a civil court;

(g) the fees which may be payable under this Act;

(h) the regulation of business of the Copyright Office and of all things by this Act placed under the direction or control of the Registrar of Copyrights.

[(3)<sup>148</sup> Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the

session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

**79. Repeals, savings and transitional provisions.** - (1) The Indian Copyright Act, 1914, and the Copyright Act of 1911 passed by the Parliament of the United Kingdom as modified in its application to India by the Indian Copyright Act, 1914, are hereby repealed.

(2) Where any person has, before the commencement of this Act, taken any action whereby he has incurred any expenditure or liabilities in connection with the reproduction or performance of any work in a manner which at the time was lawful or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the coming into force of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such action which are subsisting and valuable at the said date, unless the person who, by virtue of this Act, becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by the Copyright Board.

(3) Copyright shall not subsist by virtue of this Act in any work in which copyright did not subsist immediately before the commencement of this Act under any Act repealed by sub-section (1).

(4) Where copyright subsisted in any work immediately before the commencement of this Act, the rights comprising such copyright shall, as from the date of such commencement, be the rights specified in section 14 in relation to the class of works to which such work belongs, and where any new rights are conferred by that section, the owner of such rights shall be-

(a) in any case where copyright in the work was wholly assigned before the commencement of this Act, the assignee or his successor-in-interest;

(b) in any other case, the person who was the first owner of the copyright in the work under any Act repealed by sub-section (1) or his legal representatives.

(5) Except as otherwise provided in this Act, where any person is entitled immediately before the commencement of this Act to copyright in any work or any right in such copyright or to an interest in any such right, he shall continue to be entitled to such right or interest for the period for which he would have been entitled thereto if this Act had not come into force.

(6) Nothing contained in this Act shall be deemed to render any act done before its commencement an infringement of copyright if that act would not otherwise have constituted such an infringement.

(7) Save as otherwise provided in this section, nothing in this section shall be deemed to affect the application of the General Clauses Act, 1897, with respect to the effect of repeals.

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139. *Ins. by Act 38 of 1994, s. 78(2).*

140. *Ins. by Act 38 of 1994, s. 78(2).*

141. *Ins. by Act 38 of 1994, s. 78(2).*

142. *Ins. by Act 38 of 1994, s. 78(2).*

143. *Ins. by Act 38 of 1994, s. 78(2).*

144. *Ins. by Act 38 of 1994, s. 78(2).*

145. *Ins. by Act 38 of 1994, s. 78(2).*
146. *Ins. by Act 38 of 1994, s. 78(2).*
147. *Ins. by Act 38 of 1994, s. 78(2).*
148. *Subs. by Act 23 of 1983, s. 23, for sub-section (3) (w.e.f. 9-8-1984).*

## Recommended Provisions

This is a set of draft provisions; we **assume** here that the current Indian Copyright Act, 1957 as it stands is **amended as proposed** by the Registrar of Copyright according to the schedule on [www.copyright.gov.in](http://www.copyright.gov.in): that is, the **numbering and inclusions reflect the changes already proposed**. This is a comprehensive list of changes that we suggest should reflect in the new Act.

Additions and deletions are marked with the changes tracked. Changed portions are also shaded for the convenience of those reading b/w copies of this document.

All section, sub-section, clause and sub-clause names below reflect the new numbering as per proposed amendments. In cases where we recommend an **inclusion** of a clause **already existing in the current Act**, that has been marked for deletion in the proposed amendments, we use the numbering as it exists in the current Act and flag it as such. In all cases, we have marked the new and old numbering, as may exist.

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### **2 (m)** "infringing copy" means,-

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;

(iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;

[Provided that, an imported copyrighted work that has been placed on the market in another sovereign jurisdiction with the consent of the copyright holder shall not be deemed as an infringing copy.](#)

**2 (ff)** "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.

*Explanation.-* For the purposes of this clause, 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. [However, any non-commercial communication by a non-profit organisation shall not be deemed to be communication to the public.](#)

**2 (xa)** “Rights Management Information”, means –

- (i) the title or other information identifying the work or performance;
  - (ii) the name of the author or performer;
  - (iii) the name and address of the owner of rights;
  - (iv) terms and conditions regarding the use of rights; and
  - (v) any number or code that represents the above information;
- but does not include any device or procedure intended to identify the user.

**Recommendation 1: Delete in entirety, following on deletion of 65A and 65B**

**Recommendation 2: Retain in entirety, if retaining 65A and 65B, as amended**

**14 (a)(ii)** to issue copies of the work to the public not being copies already in circulation [in any part of the world](#);

**21 (1)** 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 to the Registrar of Copyrights [or by any public notification](#), and thereupon such rights shall, subject to the provisions of sub-section (3), cease to exist from the date of the notice.

**22** Term of copyright in published literary, dramatic, musical and artistic works.-Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work ([other than a photograph](#)) published within the lifetime of the author until [sixty five](#) years from the beginning of the calendar year next following the year in which the author dies.

*Explanation.*- In this section the reference to the author shall, in the case of a work of joint authorship, be construed as a reference to the author who dies last.

**23** Term of copyright in anonymous and pseudonymous works.-(1) In the case of a literary, dramatic, musical or artistic work (other than a photograph), which is published anonymously or pseudonymously, copyright shall subsist until [sixty five](#) years from the beginning of the calendar year next following the year in which the work is first published :

Provided that where the identity of the author is disclosed before the expiry of the said period, copyright shall subsist until [sixty five](#) years from the beginning of the calendar year next following the year in which the author dies.

(2) In sub-section (1), references to the author shall, in the case of an anonymous work of joint authorship, be construed,-

(a) where the identity of one of the authors is disclosed, as references to that author;

(b) where the identity of more authors than one is disclosed, as references to the author who dies last from amongst such authors.

(3) In sub-section (1) references to the author shall, in the case of a pseudonymous work of joint authorship, be construed,-

(a) where the names of one or more (but not all) of the authors are pseudonymous and his or their identity is not disclosed, as references to the author whose name is not a pseudonym, or, if the names of two or more of the authors are not pseudonyms, as references to such of those authors who dies last;

(b) where the names of one or more (but not all) of the authors are pseudonyms and the identity of one or more of them is disclosed, as references to the author who dies last from amongst the authors whose names are not pseudonyms and the authors whose names are pseudonyms and are disclosed; and

(c) where the names of all the authors are pseudonyms and the identity of one of them is disclosed, as references to the author whose identity is disclosed or if the identity of two or more of such authors is disclosed, as references to such of those authors who dies last.

*Explanation.-* For the purposes of this section, the identity of an author shall be deemed to have been disclosed, if either identity of the author is disclosed publicly by both the author and the publisher or is otherwise established to the satisfaction of the Copyright Board by that author.

**24** Term of copyright in the posthumous work.- (1) In the case of a literary, dramatic or musical work or an engraving, in which copyright subsists at the date of the death of the author or, in the case of any such work of joint authorship, at or immediately before the date of the death of the author who dies last, but which, or any adaptation of which, has not been published before that date, copyright shall subsist until ~~sixty~~ **fifty** 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.

(2) For the purposes of this section a literary, dramatic or musical work or an adaptation of any such work shall be deemed to have been published, if it has been performed in public or if any records made in respect of the work have been sold to the public or have been offered for sale to the public.

**25 (INCLUSION)** Term of copyright in photographs.- In the case of a photograph, copyright shall subsist until ~~sixty~~ **twenty-five** years from the beginning of the calendar year next following the year in which the photograph is published.

**Recommendation: To include, with changes as above**

**26** Term of copyright in cinematograph films.- In the case of a cinematograph film, copyright shall subsist until ~~sixty~~ **fifty** years from the beginning of the calendar year next following the year in which the film is published.

**27** Term of copyright in records.- In the case of a sound recording, copyright shall subsist until ~~sixty~~ **fifty** years from the beginning of the calendar year next following the year in which the sound recording is published.

**28** Term of copyright in Government work.- In the case of Government work, where Government is the first owner of the copyright therein, copyright shall subsist until ~~sixty~~**fifty** years from the beginning of the calendar year next following the year in which the work is first published.

**28A** Term of copyright in works of public undertakings.- In the case of a work, where a public undertaking is the first owner of the copyright therein, copyright shall until ~~sixty~~**fifty** years from the beginning of the calendar year next following the year in which the work is first published.

**29** Term of copyright in works of international organisations.- In the case of a work of an international organisation to which the provisions of section 41 apply, copyright shall subsist until ~~sixty~~**fifty** years from the beginning of the calendar year next following the year in which the work is first published.

**30** Licences by owners of copyright.- The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorised agent, **or by licence in an analogous electronic form:**

Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence.

*Explanation.-* Where a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence.

**31** Compulsory licence in works withheld from public.- (1) If at any time during the term of copyright in any ~~Indian~~ work which has been published or performed in public **anywhere in the world**, a complaint is made to the Copyright Board that the owner of copyright in the work- (a) has refused to republish or allow the republication of the work or has refused to allow the performance in public of the work, **on terms which the complainant considers reasonable** and by reason of such refusal the work is withheld from the public; or

(b) has refused to allow communication to the public by broadcast, of such work or in the case of sound recording the work recorded in such sound recording, on terms which the complainant considers reasonable;

**(c) has engaged in practices deemed to be in violation of the provisions of the Competition Act, 2002,**

the Copyright Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyrights to grant to the such person or persons who, in the opinion of the Copyright Board, is or are qualified to do so, a licence to republish the work, perform the work in public or communicate the work to the public by broadcast, as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Copyright Board may determine; and thereupon the Registrar of Copyrights shall grant the licence to the complainant in accordance with the directions of the Copyright Board, on payment of such fee as may be prescribed.

~~Explanation.—In this sub-section, the expression "Indian work" includes—~~

- ~~(i) an artistic work, the author of which is a citizen of India; and~~
- ~~(ii) a cinematograph film or a record made or manufactured in India.~~

**31A** Compulsory licence in unpublished Indian works.—(1) Where, in the case of ~~an Indian work~~ **any work** referred to in sub-clause (iii) of clause (a) of section 2, the author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found, any person may apply to the Copyright Board for a licence to publish such work or a translation thereof in any language.

**32 (1A)** Notwithstanding anything contained in sub-section (1), any person may apply to the Copyright Board for a licence to produce and publish a translation, in printed or analogous forms of reproduction, of ~~a any~~ **any** literary or dramatic work ~~other than an Indian work~~ in any language in general use in India after a period of three years from the publication of such work, if such translation is required for the purposes of teaching, scholarship or research:

Provided that where such translation is in a language not in general use in any developed country, such application may be made after a period of one year from such publications.

**32A (DELETION)** ~~32A. Licence to reproduce and publish works for certain purposes.—(1) Where, after the expiration of the relevant period from the date of the first publication of an edition of a literary, scientific or artistic work,—~~

- ~~(a) the copies of such edition are not made available in India; or~~
- ~~(b) such copies have not been put on sale in India for a period of six months to the general public, or in connection with systematic instructional activities at a price reasonably related to that normally charged in India for comparable works by the owner of the right of reproduction or by any person authorised by him in this behalf, any person may apply to the Copyright Board for a licence to reproduce and publish such work in printed or analogous forms of reproduction at the price at which such edition is sold or a lower price for the purposes of systematic instructional activities.~~

~~(2) Every such application shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the work to be reproduced.~~

~~(3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar of Copyrights such fee as may be prescribed.~~

~~(4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a reproduction of the work mentioned in the application subject to the conditions that,—~~

- ~~(i) the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the reproduction of the work sold to the public, calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed manner;~~

~~(ii) a licence granted under this section shall not extend to the export of copies of the reproduction of the work outside India and every copy of such reproduction shall contain a notice that the copy is available for distribution only in India :~~

~~Provided that no such licence shall be granted unless-~~

~~(a) the applicant has proved to the satisfaction of the Copyright Board that he had requested and had been denied authorisation by the owner of the copyright in the work to reproduce and publish such work or that he was, after due diligence on his part, unable to find such owner;~~

~~(b) where the applicant was unable to find the owner of the copyright, he had sent a copy of his request for such authorisation by registered airmail post to the publisher whose name appears from the work not less than three months before the application for the licence;~~

~~(c) the Copyright Board is satisfied that the applicant is competent to reproduce and publish an accurate reproduction of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section;~~

~~(d) the applicant undertakes to reproduce and publish the work at such price as may be fixed by the Copyright Board, being a price reasonably related to the price normally charged in India for works of the same standard on the same or similar subjects;~~

~~(e) a period of six months in the case of application for the reproduction and publication of any work of natural science, physical science, mathematics or technology, or a period of three months in the case of an application for the reproduction and publication of any other work, has elapsed from the date of making the request under clause (a), or where a copy of the request has been sent under clause (b), from the date of sending of a copy, and a reproduction of the work has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or, three months, as the case may be;~~

~~(f) the name of the author and the title of the particular edition of the work proposed to be reproduced are printed on all the copies of the reproduction;~~

~~(g) the author has not withdrawn from circulation copies of the work; and~~

~~(h) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.~~

~~(5) No licence to reproduce and publish the translation of a work shall be granted under this section unless such translation has been published by the owner of the right of translation or any person authorised by him and the translation is not in a language in general use in India.~~

~~(6) The provisions of this section shall also apply to the reproduction and publication, or translation into a language in general use in India, of any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities.~~

~~*Explanation.*—For the purposes of this section, "relevant period", in relation to any work, means a period of~~

~~(a) seven years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to, fiction, poetry, drama, music or art;~~

~~(b) three years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to, natural science, physical science, mathematics or technology; and~~

~~(c) five years from the date of the first publication of that work, in any other case.~~

**Recommendation: Delete entire section due to merging of Section 32A into Section 31, as per comments under Section 31 in main text**

**32 (5)** Any ~~broadcasting authority~~ **interested person or organisation** may apply to the Copyright Board for a licence to produce and publish the translation of-

(a) a work referred to in sub-section (1A) and published in printed or analogous forms of reproduction; or

**52 (1) (b) (INCLUSION)** any text incorporated in audio-visual fixations prepared had published solely for the purpose of systematic instructional activities, for broadcasting such translation for the purposes of teaching or for the dissemination of the results of specialised, technical or scientific research to the experts in any particular field.

(b) a fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events-

(i) in a newspaper, magazine or similar periodical, or

(ii) by broadcast or in a cinematograph film or by means of photographs.

*Explanation.*- The publication of a compilation of addresses or speeches delivered in public is not a fair dealing of such work within the meaning of this clause;

**Recommendation: The proposed amendment includes deletion of this entire section. We recommend that it is included in entirety, as is.**

**52 (1) (d) (OLD 52 (1) (c))** the reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding **or the criticism and review of a judicial proceeding;**

(i) the transient and incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public;

(ii) such transient and incidental storage for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy;

Provided that if the person responsible has prevented the storage of a copy on a complaint from any person, he may require such person to produce an order from the competent court for the continued prevention of such storage

**52 (1) (h)** (~~OLD 52 (1) (g)~~) the publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for instructional use, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for such use, in which copyright subsists :

Provided that not more than ~~two such passages~~ **reasonable extracts** from works by the same author are published by the same publisher during any ~~period of five years~~ **academic year**.

*Explanation.*- In the case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more of those authors in collaboration with any other person;

**52 (1) (k)** (~~OLD 52 (1) (i)~~) the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a sound recordings if the audience is limited to such staff and students, the parents and guardians of the students and persons ~~directly connected with~~ **interested in** the activities of the institution or the communication to such an audience of a cinematograph film or sound recording.

**52 (1) (j)** the making of sound recordings in respect of any literary, dramatic or musical work, if-

(i) sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work;

~~(ii) the sound recordings are in the same medium as the last recording, unless the medium of the last recording is no longer in current commercial use;~~

~~(iii) the person making the sound recordings has given a notice of his intention to make the sound recordings, has provided copies of all covers or labels with which the sound recordings are to be sold, and has paid in the prescribed manner to the owner of rights in each work royalties in respect of all copies to be made by him, at the rate fixed by the Copyright Board in this behalf;~~

~~(iv) The sound recordings are not sold or issued in any form of packaging or with any cover or label which is likely to mislead or confuse the public as to their identity, and in particular shall not contain the name or depict in any way any performer of an earlier sound recording of the same work or any cinematograph film in which such sound recording was incorporated and, further, shall state on the cover that it is a version made under section 52(1)(j) of the Act;~~

~~(v) no alterations to the composition of any literary or musical work are made which have not been made previously by or with the consent of the owner of rights, or which are not technically necessary for the purpose of making the sound recordings;~~

~~(vi) five calendar years have expired after the end of the year in which the first sound recording of the work was made;~~

~~(vii) royalty is paid for a minimum of 50,000 copies of each work during each calendar year in which copies of it are made;~~

Provided that the Copyright Board may by general order fix a lower minimum in respect of works in a particular language or dialect having regard to the potential circulation of such works;

~~(viii) the person making such sound recordings shall maintain such registers and books of account in respect thereof, including full details of existing stock, as may be prescribed and shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording;~~

(ii) the person making the sound recordings has given a notice of his intention to make the sound recordings, has provided copies of all covers or labels with which the sound recordings are to be sold, and has paid in the prescribed manner to the owner of rights in the work royalties in respect of all such sound recordings to be made by him, at the rate fixed by the Copyright Board in this behalf:

Provided that-

(i) no alterations shall be made which have not been made previously by or with the consent of the owner of rights, or which are not reasonably necessary for the adaptation of the work for the purpose of making the sound recordings;

(ii) the sound recordings shall not be issued in any form of packaging or with any label which is likely to mislead or confuse the public as to their identity;

(iii) no such sound recording shall be made until the expiration of two calendar years after the end of the year in which the first sound recording of the work was made; and

(iv) the person making such sound recordings shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording:

Provided further that if on a complaint brought before the Copyright Board to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this clause, the Copyright Board is, *prima facie*, satisfied that the complaint is genuine, it may pass an order *ex parte* directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty;

**52 (1) (n) (INCLUSION)** the publication in a newspaper, magazine or other periodical of a report of a lecture delivered in public;

**Recommendation: To include in entirety, as in current Act.**

**52 (1) (n) (OLD 52 (1) (o))** the making of not more than three copies of a book **any work** (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a public library **or library connected to a research or educational institution** for the use of the library ~~if such book is not available for sale in India;~~

**52 (1) (p) (iii) (OLD 52 (1) (q) (iii))** the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature **and any government information as available publicly under the Right to Information Act or any commissioned information and knowledge that is wholly funded by the**

government (such as a book resulting solely from government funding), unless the reproduction or publication of such report is prohibited by the Government;

**52 (1) (q) (OLD 52 (1) (r))** the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made thereunder and a translation of any government information as available publicly under the Right to Information Act or any government-commissioned information and knowledge that is wholly funded by the government (such as a book resulting solely from government funding)-

(i) if no translation of such Act or rules or orders in that language has previously been produced or published by the Government; or

(ii) where a translation of such Act or rules or orders in that language has been produced or published by the Government, if the translation is not available for sale to the public:

Provided that such translation contains a statement at a prominent place to the effect that the translation has not been authorised or accepted as authentic by the Government;

**52 (1) (t) (OLD 52 (1) (u))** the inclusion in a cinematograph film any work of-

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

(ii) 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;

**52 (1) (za)** The reproduction, issue of copies or communication to the public or export (when possible) of any work in a format, including sign language any form or medium, specially designed where such usage is intended only for the use of persons suffering from a visual, aural or other disability that prevents their enjoyment of such works in their normal format.

## **65A** Protection of Technological Measures –

(1) Any person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by this Act, with the intention of infringing such rights, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) shall prevent any person from:

(a) doing anything referred to therein for for the purposes of exercising any rights granted under Section 52 (1) (b) of this Act or for a purpose not expressly prohibited by this Act:

Provided that any person facilitating circumvention by another person of a technological measure for such a purpose shall maintain a complete record of such other person including his name, address and all relevant particulars necessary to identify him and the purpose for which he has been facilitated; or

(b) doing anything necessary to conduct encryption research research on encryption or any other similar technology using a lawfully obtained encrypted copy; or

(c) conducting any lawful investigation; or

(d) doing anything necessary for the purpose of testing the security of a computer system or a computer network with the authorization of its owner or operator; or

(e) doing anything necessary to circumvent technological measures intended for identification or surveillance of a user; or

(f) taking measures necessary in the interest of national security.

## **65B** Protection of Rights Management Information –

Any person, who knowingly

(i) removes or alters any rights management information without authority, or

(ii) distributes, imports for distribution, broadcasts or communicates to the public, without authority, copies of any work, or performance knowing that electronic rights management information has been removed or altered without authority, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine;

Provided that if the rights management information has been tampered with in any work, the owner of copyright in such work may also avail of civil remedies provided under Chapter XII of this Act against the persons indulging in such acts described above.

**Recommendation 1: Delete in entirety, as per problems explained under Sections 65A & 65B in the main text**

**Recommendation 2: Retain with changes as above**

\*\*\*\*\*      \*\*\*\*\*      \*\*\*\*\*

## APPENDIX A

### Lessons from the Digital Millenium Copyright Act, 1998, USA

DRM in the United States has received explicit recognition through the Digital Millennium Copyright Act ("DMCA"), 1998. The DMCA was passed by the US Congress in pursuance of the World Intellectual Property Organisation ("WIPO") Copyright Treaty, 1996 ("WCT") which provides that contracting parties must provide for legal protection and effective legal remedies against unlawful circumvention of technological measures to protect copyright. Unlike earlier Copyright Statutes, the DMCA criminalizes not merely the infringement of copyright itself but also the technologies that facilitate infringement.

Copyright holders develop encryption technology to prevent infringement of their copyright, and the DMCA criminalizes any act intended to circumvent such technologies. The DMCA, however, goes too far in its mandate of protection and adversely affects legitimate uses and exceptions as well. The DMCA has extremely narrow exceptions to the general paradigm of anti-circumvention that it prescribes. These exceptions are much narrower than the general exceptions provided within fair use doctrine in US copyright law.

The following are some (among many) examples of the ways in which the DMCA has adversely impacted innovation, fair use and general use:

(1) In 2003, a researcher, J. Halderman, delayed the publishing of his finding of security flaws in the copy-protection software that Sony-BMG used in their CDs due to fear of litigation under the DMCA. The U.S. Copyright Office has refused permission to grant exemption to this genre of research<sup>4</sup>.

(2) Hewlett-Packard threatened a group of researchers who published security flaws in Hewlett-Packard's Tru64 UNIX Operating System. The threat was withdrawn after such action received wide publicity<sup>5</sup>.

(3) A researcher, Seth Finkelstein, managed to obtain an exemption from the U.S. Library of Congress for research on security flaws within firewalls and other such content-blocking software. The exemption, however, is extremely limited as it only grants exemption to the act of circumvention but does not allow for the distribution of tools that would further such research among scientists<sup>6</sup>.

(4) The White House Cyber Security Chief has called for DMCA reform, commenting that the DMCA had a chilling effect on legitimate security research<sup>7</sup>.

(5) DRM also has seriously adverse implications for consumers. For instance if you buy a DVD, then technically it is impossible for you to play it in any operating system apart from Microsoft Windows without using circumvention technology. This is because of the question of inter-operability, as certain proprietary formats are not designed to work with other operating systems like the GNU Linux. They can be made to function across operating systems only by circumventing the digital locks. In the US an attempt to ensure inter-operability by circumventing technology locks was held to be violation of the DMCA, (*Reimerdes v. UnitedStates*, 111 F.Supp.2d 294 (SDNY 2000)).

<sup>4</sup> [http://www.eff.org/news/archives/2003\\_10.php](http://www.eff.org/news/archives/2003_10.php)

<sup>5</sup> [http://www.eff.org/IP/DMCA/20020808\\_eff\\_bunnie\\_pr.html](http://www.eff.org/IP/DMCA/20020808_eff_bunnie_pr.html)

<sup>6</sup> [www.eff.org/IP/DMCA/unintended\\_consequences.php](http://www.eff.org/IP/DMCA/unintended_consequences.php)

<sup>7</sup> [http://www.eff.org/IP/DMCA/20030102\\_dmca\\_unintended\\_consequences.html](http://www.eff.org/IP/DMCA/20030102_dmca_unintended_consequences.html)

(6) A number of new technologies also enable greater access to materials in various ways. For instance text to speech software enables greater access to materials for persons with a visual disability, senior citizens and others. But when DRM is applied to content, it can act as lock which prevents text to speech software from working.

## APPENDIX B

### Recommendations of Selected National Committees and Non-governmental Organisations on the Implementation of Digital Rights Management

(1) Commission on Intellectual Property Rights (United Kingdom)  
[www.iprcommission.org](http://www.iprcommission.org)

"Developing countries will suffer serious costs if they undertake to impose intellectual property regimes beyond what the state of the developing country requires including the imposition of DRM friendly regimes."

(2) Standing Committee on Legal and Constitutional Affairs (Australia)  
<http://www.aph.gov.au/house/committee/laca/protection/report.htm>

In paragraph 4.4 of the Report of the Standing Committee on Legal and Constitutional Affairs, it is recommended that with relation to anti-circumvention, the exceptions must be the same as those guaranteed with respect to general copyright infringement.

Further, the committee recommends that the government monitor the potential adverse impact of threats of legal action being made against legitimate researchers in Australia conducting research into encryption, access, copy control measures, and other issues relating to computer security.

(3) Electronic Frontier Foundation (United States of America)  
[http://www.eff.org/IP/DRM/itu\\_drm.php](http://www.eff.org/IP/DRM/itu_drm.php)

The EFF suggests that DRM is most unsuited to developing countries as it can seriously undermine developmental objectives. Their research suggests that DRM has no long term benefits to developing nations if they are implemented. It also states that DRM undermines the interests of consumers, disabled people, libraries, local authors and performers, cultural production and information in the public domain.

--ENDS--