

Copyright Law in India

What is Copyright?

Copyright is a form of intellectual property protection granted under Indian law to the creators of original works of authorship such as literary works (including computer programs, tables and compilations including computer databases which may be expressed in words, codes, schemes or in any other form, including a machine readable medium), dramatic, musical and artistic works, cinematographic films and sound recordings.

Copyright law protects expressions of ideas rather than the ideas themselves. Under section 13 of the Copyright Act 1957, copyright protection is conferred on literary works, dramatic works, musical works, artistic works, cinematograph films and sound recording. For example, books, computer programs are protected under the Act as literary works.

Copyright refers to a bundle of exclusive rights vested in the owner of copyright by virtue of Section 14 of the Act. These rights can be exercised only by the owner of copyright or by any other person who is duly licensed in this regard by the owner of copyright. These rights include the right of adaptation, right of reproduction, right of publication, right to make translations, communication to public etc.

Copyright protection is conferred on all Original literary, artistic, musical or dramatic, cinematograph and sound recording works. Original means, that the work has not been copied from any other source. Copyright protection commences the moment a work is created, and its registration is optional. However it is always advisable to obtain a registration for a better protection. Copyright registration does not confer any rights and is merely a prima facie proof of an entry in respect of the work in the Copyright Register maintained by the Registrar of Copyrights.

As per Section 17 of the Act, the author or creator of the work is the first owner of copyright. An exception to this rule is that, the employer becomes the owner of copyright in circumstances where the employee creates a work in the course of and scope of employment.

Copyright registration is invaluable to a copyright holder who wishes to take a civil or criminal action against the infringer. Registration formalities are simple and the paperwork is least. In case, the work has been created by a person other than employee, it would be necessary to file with the application, a copy of the assignment deed.

One of the supreme advantages of copyright protection is that protection is available in several countries across the world, although the work is first published in India by reason of India being a member of Berne Convention. Protection is given to works first published in India, in respect of all countries that are member states to treaties and conventions to which India is a member. Thus, without formally applying for protection, copyright protection is available to works first published in India, across several countries. Also, the government of India has by virtue of the International Copyright Order, 1999, extended copyright protection to works first published outside India.

Indian perspective on copyright protection:

The Copyright Act, 1957 provides copyright protection in India. It confers copyright protection in the following two forms:

- (A) Economic rights of the author, and
- (B) Moral Rights of the author.

(A) Economic Rights:

The copyright subsists in original literary, dramatic, musical and artistic works; cinematographs films and sound recordings. The authors of copyright in the aforesaid works enjoy economic rights u/s 14 of the Act. The rights are mainly, in respect of literary, dramatic and musical, other than computer program, to reproduce the work in any material form including the storing of it in any medium by electronic means, to issue copies of the work to the public, to perform the work in public or communicating it to the public, to make any cinematograph film or sound recording in respect of the work, and to make any translation or adaptation of the work. In the case of computer program, the author enjoys in addition to the aforesaid rights, the right to sell or give on hire, or offer for sale or hire any copy of the computer program regardless whether such copy has been sold or given on hire on earlier occasions. In the case of an artistic work, the rights available to an author include the right to reproduce the work in any material form, including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work, to communicate or issues copies of the work to the public, to include the work in any cinematograph work, and to make any adaptation of the work. In the case of cinematograph film, the author enjoys the right to make a copy of the film including a photograph of any image forming part thereof, to sell or give on hire or offer for sale or hire, any copy of the film, and to communicate the film to the public. These rights are similarly available to the author of sound recording. In addition to the aforesaid rights, the author of a painting, sculpture, drawing or of a manuscript of a literary, dramatic or musical work, if he was the first owner of the copyright, shall be entitled to have a right to share in the resale price of such original copy provided that the resale price exceeds rupees ten thousand.

(B) Moral Rights:

Section 57 of the Act defines the two basic 'moral rights of an author. These are:

- i. Right of paternity, and
- ii. Right of integrity.

The right of paternity refers to a right of an author to claim authorship of work and a right to prevent all others from claiming authorship of his work. Right of integrity empowers the author to prevent distortion, mutilation or other alterations of his work, or any other action in relation to said work, which would be prejudicial to his honour or reputation.

The proviso to section 57(1) provides that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer program to which section 52 (1)(aa) applies (i.e. reverse engineering of the same).

It must be noted that failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section. The legal representatives of the author may exercise the rights conferred upon an author of a work by

section 57(1), other than the right to claim authorship of the work.

Indian Judiciary Response:

The response of Indian judiciary regarding copyright protection can be grouped under the following headings:

1. Ownership of copyright,
2. Jurisdictional aspect,
3. Cognizance taken by the court,
4. Infringement of copyright,
5. Availability of alternative remedy, and
6. Rectification of copyright.

(1) **Ownership of copyright:** The ownership in copyright may vest in different persons under different circumstances.

In **Eastern Book company v Navin J.Desai**, the question involved was whether there is any copyright in the reporting of the judgment of a court. The Delhi High court observed: It is not denied that under section 2(k) of the Copyright Act, a work which is made or published under the direction or control of any Court, tribunal or other judicial authority in India is a Government work.

Under section 52(q), the reproduction or publication of any judgment or order of a court, tribunal or other judicial authority shall not constitute infringement of copyright of the government in these works. It is thus clear that it is open to everybody to reproduce and publish the government work including the judgment/ order of a court. However, in case, a person by extensive reading, careful study and comparison and with the exercise of taste and judgment has made certain comments about judgment or has written a commentary thereon, may be such a comment and commentary is entitled to protection under the Copyright Act.

The court further observed: In terms of section 52(1)(q) of the Act, reproduction of a judgment of the court is an exception to the infringement of the Copyright. The orders and judgments of the court are in the public domain and anyone can publish them. Not only that being a Government work, no copyright exists in these orders and judgments. No one can claim copyright in these judgments and orders of the court merely on the ground that he had first published them in his book. Changes consisting of elimination, changes of spelling, elimination or addition of quotations and corrections of typographical mistakes are trivial and hence no copyright exists therein.

In **Godrej Soaps (P) Ltd v Dora Cosmetics Co**, the Delhi High Court held that where the carton was designed for valuable consideration by a person in the course of his employment for and on behalf of the plaintiff and the defendant had led no evidence in his favour, the plaintiff is the assignee and the legal owner of copyright in the carton including the logo.

(2) **Jurisdictional aspect:** The question of territorial jurisdiction of the court to deal with copyright infringement was considered by the courts on several occasions.

In **Caterpillar Inc v Kailash Nichani**, the plaintiff, a foreign company, was carrying on business in several places in India including Delhi, through its Indian distributors and collaborators. The plaintiff claimed the relief of ad-interim injunction for preventing infringement of its copyright by the defendant, though the defendant was dealing in different goods.

The Delhi high Court held that it was not necessary to show that the business being carried on

by the plaintiff in Delhi should necessarily be in respect of footwear and articles of clothing as well. It is sufficient if the business was being carried on by the plaintiff in Delhi and further that there was an infringement of plaintiff's copyright in respect of certain goods, which were being sold by the defendant in Delhi.

The court further held that section 62 of the Copyright Act makes an obvious and significant departure from the norm that the choice of jurisdiction should primarily be governed by the convenience of the defendant. The legislature in its wisdom introduced this provision laying down absolutely opposite norm than the one set out in section 20 CPC. The purpose is to expose the transgressor with inconvenience rather than compelling the sufferer to chase after the former.

In **Lachhman Das Behari Lal v Padam Trading Co**, the Delhi High Court observed that the plaintiff being a firm functioning at Delhi, the suit filed by it in the Delhi courts is maintainable and is not liable to be rejected under Order 7 Rule 11 of the CPC as prayed. The Court further observed that the plea regarding want of territorial jurisdiction is not covered by Order 7 rule 11 of CPC. The court observed that even if it is held that this court has not the territorial jurisdiction, the plaint cannot be rejected. At the most it can be returned for presentation to the proper court.

In **Exphar SA and Anr v Eupharma Laboratories Ltd & Anr**, the Supreme Court finally settled the position in this regard. The Court observed: Section 62(2) cannot be read as limiting the jurisdiction of the District Court only to cases where 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 presently works for gain.

It prescribes an additional ground for attracting the jurisdiction of a court over and above the normal grounds as laid down in Section 20 of the C.P.C. Even if the jurisdiction of the Court were restricted in the manner construed by the Division Bench, it is evident not only from the cause title but also from the body of the plaint that the Appellant No 2 carries on business within the jurisdiction of the Delhi High Court.

The Appellant No 2 certainly a person instituting the suit. The Division Bench went beyond the express words of the statute and negated the jurisdiction of the Court because it found that the Appellant No 2 had not claimed ownership of the copyright, infringement of which was claimed in the suit. The appellant No 2 may not be entitled to the relief claimed in the suit but that is no reason for holding that it was not a person who had instituted the suit within the meaning of Section 62(2) of the Act.

(3) Cognizance taken by the court: To prevent copyright infringement, timely cognizance taking by the appropriate court is absolutely essential. The taking of cognizance by the court depends upon the limitation period as mentioned in the Limitation Act, 1963 and Cr.P.C, 1973.

In **David Pon Pandian v State**, the Madras High Court, while dealing with section 68A of the Copyright Act, observed: The Court can take cognizance of the offence if the charge sheet is filed within the period of limitation prescribed under Section 468 of the Cr.P.C and in computing the period of limitation, the date of commission of the offence is to be reckoned as the starting point. If the charge sheet is not filled so, the Court has no power to entertain the complaint.

The court referred the decision of the Supreme Court in **State of Punjab v Sarwan Singh** in

which it was observed: 'The object of Cr.P.C in putting a bar of limitation on the prosecution was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of Court by filing vexatious and belated prosecutions long after the date of the offence.

The object, which the statute seeks to sub-serve, is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution. It is, therefore, of utmost importance that any prosecution, whether by State or a private complainant, must abide by the letter of the law or to take the risk of the prosecution failing on the ground of limitation

In **Shree Devendra Somabhai Naik v Accurate Transheet Pvt Ltd**, the Gujarat High Court explained the inter-relationship between Article 137 of the Limitation Act, 1963 and section 50 of the Copyright Act, 1957.

The Court observed:

The order passed by the by the Copyright Board is an order whereby it is held that the provisions of Article 137 of the Limitation Act are not applicable and the board has also held that the Copyright Board is a Tribunal and quasi-judicial authority for all other purposes except for the purposes which are specifically provided in the Copyright Act.

It is an order by which an application under Section 50 of the Copyright act is entertained and the Copyright Board will decide the same on merits. The Copyright Board does not believe the delay alleged by the present appellant. Entertaining an application is a matter of discretion. In the present case, the Copyright Board in its wisdom, overruling the contention that the application was barred by limitation, decided to entertain the application. It is a discretionary order

(4) Infringement of copyright:

A copyright owner cannot enjoy his rights unless infringement of the same is stringently dealt with by the Courts .The approach of the Indian Judiciary in this regard is very satisfactory.

In **Prakashak Puneet Prashant Prakashan v Distt.judge, Bulandshahr and Ashok Prakashan (Regd)** the Allahabad High Court held that if the petitioner publishes a book by adding any word before or after the book 'Bal Bharati, he infringes the copyright of the respondent.

In **Hindustan Pencils Ltd v Alpna Cottage Industries** the Copyright Board of Goa held that where the similarities between the artistic works of the parties are fundamental and substantial in material aspects, it would amount to copyright violation and the defendant's copyright is liable to be expunged from the register of copyright.

The Board referred the decision of **Prem Singh v Cec Industries** wherein it was observed: ' In a case where the first party himself is shown to have adopted or imitated a trademark and copyright of a third party, then Courts can resolutely decline to step in aid of this party because honesty of action is the crux of the matter and Courts protection is extended only on the principle that damage to a party who has acquired goodwill or reputation in certain trading style for making his goods, should not be allowed to be affected by the dishonest user of the same by another.

The Board further referred the decision of the apex court in R.G. Anand v M/S Delux Films where the Court observed: 'Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case, the Courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work with some variations here and there. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of the act of piracy.

In Ushodaya Enterprises Ltd v T.V. Venugopal the division bench of the Andhra Pradesh High Court held that even though the defendant has registered the carton under the Trademark Act, that may not come to the aid of the defendant as the case of the plaintiff is that it owns a copyright of the artistic work under the Copyright Act and no registration is required for the same. Thus the court held that the plaintiff was justified in alleging infringement of his artistic work.

In Khajanchi Film Exchange v state of MP the appellants apprehending the violation of their copyright in the film, prayed for the writ of Mandamus without first exhausting the alternative remedy available under the Copyright Act. The Division Bench of the Madhya Pradesh High Court Observed: There is no dispute in the submission that it is the duty of police to be watchful in the area and detect crime and punish the criminal in accordance with law. But the petitioners did not complain that any stage nor did they seek action from other functionaries of the State. They ask for mandamus without putting the grievance before the respondent and seeking their reaction. The writ petition was filed 16 days before the release of the film. Enough time appellants had, to approach the authorities/ police and later to the respondents giving their reaction to the grievance and how it was ready to deal with the matter. Therefore, unless the demand was put across and reaction awaited for some time, moving the court was premature and unsustainable. Therefore, petition was filed on mere apprehension that appellants would be deprived of their rights which did not exist when claim for mandamus was made. Mandamus can be granted only when default, commission, or omission takes place which had not happened in this case.

In Jolen Inc v Shoban Lal Jain the Madras High Court held that laches and acquiescence is a good defence to an action for copyright infringement. The court held that the plaintiff having allowed the defendant to carry on the business under the trade name of the plaintiff for 7 years is prima facie guilty of acquiescence and it cannot claim for relief of injunction against the defendant as the balance of convenience is in favour of him.

(5) Availability of alternative remedy: The availability of an efficacious alternative remedy prevents a person from invoking the writ jurisdiction of the High court.

In Khajanchi Film Exchange and Another v State of M.P and others petitioners instead of approaching the concerned authorities filed a writ petition in the High Court. The Madhya Pradesh High Court observed: The film was not yet released. The petitioners did not approach

the respondents.

There was no failure on the part of the respondents in performance of their legal duties with respect of the right complained of. The entire machinery was put to doubt by the petitioners on the basis of the averments made in the writ petition that it is to the common knowledge that they do not take action.

Thus apprehending infringement of their rights, the writ petition was filed. The petitioners should have approached the concerned authorities first; and in the event of their failure to take preventive measures/seizure of cassettes under the M.P. Police Regulations and the copyright Act, the petitioners should have approached this Court. If a writ is entertained and relief readily granted before release of the movie without approaching the respondents who have to prevent threatened violation of copyright, it would open a flood gate of litigation.

The copyright Act provides adequate safeguards and procedure. It cannot be said that a mere apprehension that certain offence may take place, a writ can be filed seeking a direction that no such offence be allowed to take place. First authorities have to be asked to prevent it.

The function of the police is to prevent piracy and unauthorized exhibition. In the instant case there was no inaction on the part of the police and other concerned officials and they were unnecessarily dragged in writ petition without even putting them to notice of proposed writ. No demand notice was served, no specific complaint was lodged. Thus writ is not maintainable.

(6) Rectification of copyright:

In the rectification proceedings, an entry in the Copyright Register pertaining to a particular copyright can be expunged by the Copyright Board.

In **Lal Babu Priyadarshi v Badshah Industries** the Division bench of the Patna high Court Observed: Rule 16(3) of the Copyright Rules, 1958 which embodies the principle of natural justice provides that when there is a rival claim with regard to subject matter of the copyright then no order can be passed in favour of any party without hearing the application of the other applicant. Non-observance of the said provision will vitiate the order with regard to the entry in the Register of the Copyright.

The said requirement cannot be waived nor non-observance of the said provision can be said to be a mere irregularity. If a person making an application under section 45 is not aware of the rival claim then the matter would be different. But in this case, as is evident from the notice sent by the appellants through their counsel, they were aware of the claim of the respondents and as such they should have given notice to the respondents intimating them of their intention to file an application for registration so that the respondents could have raised objections and, thereafter, the matter would have been decided in terms of provisions contained in Section 45, read with Rule 16.

In this case Rule 16 has not been followed before making the entry in the Register of Copyright under section 45 and, thus, the Board rightly came to the conclusion that non-observance of the provisions of Rule 16 (3), which is mandatory in nature, has vitiated the certificate of registration in favour of the appellants.

Copyright Infringement:

Direct Infringement: Direct infringement is a strict liability offence and guilty intention is not essential to fix criminal liability. The requirements to establish a case of copyright infringement under this theory are:

1. Ownership of a valid copyright; and
2. Copying or infringement of the copyrighted work by the defendant.

Thus, a person who innocently or even accidentally infringes a copyright may be held liable under the Copyright Act of the U.S. and under the laws of various other countries. The guilty intention of the offender can be taken into account for determining the quantum of damages to be awarded for the alleged infringement.

Contributory infringement:

The contributory infringement pre-supposes the existence of knowledge and participation by the alleged contributory infringer. To claim damages for infringement of the copyright, the plaintiff has to prove:

1. That the defendant knew or should have known of the infringing activity; and
2. That the defendant induced, caused, or materially contributed to another person's infringing activity.

Vicarious Infringement:

Vicarious copyright infringement liability evolved from the principle of respondent superior. To succeed on a claim of vicarious liability for a direct infringer's action, a plaintiff must show that the defendant:

1. Had the right and ability to control the direct infringer's actions; and
2. Derived a direct financial benefit from the infringing activity.

Thus, vicarious liability focuses not on the knowledge and participation but on the relationship between the direct infringer and the defendant.

Legal precedent for vicarious copyright infringement liability has developed along two general relational lines. The first relational line involves the employer/employee relationship, whereas the second involves the lessor / lessee relationship.

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

1. Internet Service Providers (ISPs),
2. Bulletin Board Services Operators (BBSO),
3. Commercial Web Page owner/operators, and
4. Private users.

(1) Internet Service Providers (ISPs):

An ISP most often provides Internet access and he may be held liable for copyright infringement. In *Religious Technology Center v Netcom On-Line Communication Services, Inc* a former minister uploaded some of the copyrighted work of the Church of Scientology to the Internet. He first transferred the information to a BBS computer, where it was temporarily stored before being copied onto Netcom's computer and other Usenet computers.

Once the information was on Netcom's computer, it was available to Netcom's subscribers and Usenet neighbors for downloading for up to eleven days. The plaintiffs informed Netcom about the infringing activity; nonetheless, Netcom refused to deny the subscriber's access because it was not possible to prescreen the subscriber's uploads, and kicking the subscriber off the Internet meant kicking off the rest of the BBS operator's subscribers. Thus, plaintiffs sought a remedy against Netcom for infringement under all three theories –direct, contributory, and vicarious.

The court first analyzed whether Netcom directly infringed plaintiff's copyright. Since Netcom did not violate plaintiff's exclusive copying, distribution, or display rights, Netcom was held not liable for direct infringement. The court then analyzed the third party liability theories of contributory and vicarious infringement. The court held that Netcom would be liable for contributory infringement if plaintiffs proved that Netcom had knowledge of the infringing activity.

The court then analyzed whether Netcom was vicariously liable. Here, once again the court found that a genuine issue of material fact supporting Netcom's right and ability to control the uploader's acts existed. The court found that Netcom did not receive direct financial benefit from the infringement. Thus, the court found that the Netcom was not liable for direct infringement, could be liable for contributory infringement if plaintiffs proved the knowledge element, and was not liable for vicarious infringement.

(2) Bulletin Board Services:

The BBSs are more vulnerable to copyright infringement litigations than the ISPs because they can operate independent of the World Wide Web.

The first case in this category was *Playboy Enterprises, Inc v Frena*. In this case, the defendant operated a subscription BBS that allowed the subscribers to view, upload, and download material. The court held that Frena had violated Playboy's exclusive distribution right and their exclusive display right. Because Frena supplied a product containing unauthorized copies of copyrighted work, he has violated the distribution right. Moreover, because Frena publicly displayed Playboy's copyrighted photographs to subscribers, he violated the display right.

The court concluded that Frena was liable for direct infringement, though Frena himself never placed infringing material on the BBS and despite his arguments that he was unaware of the infringement. The court relied upon the strict liability theory and held that neither intent nor knowledge is an essential element of infringement.

In *Sega v Maphia* the BBS was providing services to numerous subscribers who upload and downloaded files to and from the BBS. The evidence clearly showed that the BBS operator knew that subscribers were uploading unauthorized copies of Sega's video games to and downloaded from his BBS. The court held that since the BBS operators only knew and

encouraged uploading and downloading, but did not himself upload or download any files, he was not liable for direct infringement.

The court, however, found the BBS operator contributory liable. Regarding the knowledge element, the BBS operator admitted that he had knowledge of the uploading and downloading activity. The court rejected the BBS operator's asserted fair use defense since their activities were clearly commercial in nature. Further, the nature of the copyrighted games was creative rather than informative and the entire copyrighted works were copied, uploaded, and downloaded. This copying had adversely affected the Sega's sale.

(3) Commercial Web sites:

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

(4) Private Users:

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

On-line copyright issues in India:

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

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

(1) Copyright Act, 1957 and on-line copyright issues: The following provisions of the Copyright Act, 1957 can safely be relied upon for meeting the challenges of information technology:

- a. The inclusive definition of computer is very wide which includes any electronic or similar device having information processing capabilities. Thus, a device storing or containing a copyrighted material cannot be manipulated in such a manner as to violate the rights of a copyright holder.
- b. The term computer Programme has been defined to mean a set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result. It must be noted that Section 13(a) read with Section 2(o) confers a copyright in computer Programme and its infringement will attract the stringent penal and civil sanctions.
- c. The inclusive definition of literary work includes computer programmes, tables and compilations including computer databases. Thus, the legislature has taken adequate care and provided sufficient protection for computer related copyrights.

- d. The copyrighted material can be transferred or communicated to the public easily and secretly through electronic means. To take care of such a situation, the Copyright Act has provided the circumstances which amount to communication to the public. Thus, making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available, may violate the copyright. The communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public.**
- e. The copyright in a work is infringed if it is copied or published without its owner's consent. The Copyright Act provides that a work is published if a person makes available a work to the public by issue of copies or by communicating the work to the public. Thus, the ISPs, BBS providers, etc may be held liable for copyright violation if the facts make out a case for the same.**
- f. The copyright in a work shall be deemed to be infringed when a person, without a license granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a license 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. 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**
- g. The Copyright Act specifically exempts certain acts from the purview of copyright infringement. Thus, the making of copies or adaptation of a computer Programme by the lawful possessor of a copy of such computer Programme from such copy in order to utilize the computer Programme for the purpose for which it was supplied or to make back-up copies purely as a temporary protection against loss, destruction, or damage in order only to utilize the computer Programme for the purpose for which it was supplied, would not be copyright infringement.**

Similarly, the doing of any act necessary to obtain information essential for operating inter-operability of an independently created computer Programme with other programmed by a lawful possessor of a computer Programme is not a copyright violation if such information is not otherwise readily available. Further, there will not be any copyright violation in the observation, study or test of functioning of the computer Programme in order to determine the ideas and principles, which underline any elements of the Programme while performing such acts necessary for the functions for which the computer Programme was supplied. The Act also makes it clear that the making of copies or adaptation of the computer Programme from a personally legally obtained copy for non-commercial personal use will not amount to copyright violation.

- h. If a person knowingly makes use on a computer of an infringing copy of a computer Programme, he shall be held liable for punishment of imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be**

less than fifty thousand rupees but which may extend to two lakh rupees. However, if the computer Programme has not been used for gain or in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgment, not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees.

It must be noted that copyright can be obtained in a computer Programme under the provisions of the Copyright Act, 1957. Hence, a computer Programme cannot be copied, circulated, published or used without the permission of the copyright owner. If it is illegally or improperly used, the traditional copyright infringement theories can be safely and legally invoked. Further, if the medium of Internet is used to advance that purpose, invoking the provisions of the Copyright Act, 1957 and supplementing them with the stringent provisions of the Information Technology Act, 2000, can prevent the same.

(2) Information Technology Act, 2000 and on-line copyright issues:

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

- a. Section 1(2) read with Section 75 of the Act provides for extra-territorial application of the provisions of the Act. Thus, if a person (including a foreign national) violates the copyright of a person by means of computer, computer system or computer network located in India, he would be liable under the provisions of the Act.
- b. If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network accesses or secures access to such computer, computer system or computer network or downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium, he shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected. Thus, a person violating the copyright of another by downloading or copying the same will have to pay exemplary damages up to the tune of rupees one crore which is deterrent enough to prevent copyright violation.
- c. While adjudging the quantum of compensation, the adjudicating officer shall have to consider the following factors:
 - i. The amount of gain or unfair advantage, wherever quantifiable, made as the result of the default;
 - ii. The amount of loss caused to any person as a result of the default;
 - iii. The repetitive nature of the default.Thus, if the copyright is violated intentionally and for earning profit, the quantum of damages will be more as compared to innocent infringement.
- d. A network service provider (ISP) will not be liable under this Act, rules or regulations made there under for any third party information or data made available by him if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention. The network service provider under section 79 means an intermediary and third party information means any information dealt with by a network service provider in his capacity as an intermediary.
- e. The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.[55]

The future of copyright in India:

The copyright laws in India are set to be amended with the introduction of the provisions for anti-circumvention and Rights Management Information in the Indian copyright regime although India is under no obligation to introduce these changes as it is not a signatory to WCT or WPPT.

With the amendment of the Copyright Act in 1994, which came into force on 10 May 1995, the situation with regard to copyright enforcement in India has improved. According to Ramdas Bhatkal of Popular Prakashan, Bombay, "We had problems of piracy relating to medical textbooks before the law was amended. At that time we found that while the law may be on our side, it was necessary to get a court order for search and this meant that there was sufficient notice to the pirate to take defensive action before the court order could be implemented. Therefore we preferred to accept the situation and did nothing. Since the changes which make copyright violation a cognizable offence it has been possible to use the legal mechanism as a deterrent."

Section 64 of the Indian Copyright Act 1957 provides that "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, wherever found, and all copies and 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."

"Copying a book is similar to stealing somebody's jewellery. Large scale organized copying is like robbing a jeweller's shop or a bank. But then, there is a major difference. In the case of a bank robbery the newspapers are full of sensational news and the whole might of the State, especially the police, jumps in to catch the culprit, there is pressure of public opinion even on the judge trying the case. The effect is electric.

On the other hand, in the case of a book pirate, the police justify their inaction by pointing to murder dockets; the State deflects the desperate appeals of Copyright owners with nonchalance and the judge sits with a 'so what' attitude while the man on the street remains in stark oblivion.

"The copyright does not protect the idea but it does protect the skill and the labour put in by the authors in producing the work. A person cannot be held liable for infringement of copyright if he has taken only the idea involved in the work and given expression to the idea in his own way. Two authors can produce two different works from a common source of information each of them arranging that information in his own way and using his own language. The arrangement of the information and the language used should not be copied from a work in which copyright subsists."

Before I conclude, I must make it clear that despite the variety of cases given in this paper, there is not much piracy of books in India. By and large, to save their business interests, publishers and distributors try to enforce copyright to the best of their abilities. Yet, piracy hurts them hard because the books which get pirated invariably are the few with good margin and high demand. Deprived of the profits from such bestsellers the book industry starved of the much needed capital for growth and investment in literary works of significance but low sales potential, especially by up-coming authors. Harsher measures are therefore needed to curb piracy.

Another area of copyright infringement which needs to be tightened up relates to protection of author's rights vis-a-vis the assignee or the licensee. There is need to develop a model contract, too, which should also provide protection for the author's rights in the fast changing scenario of electronic publishing, Internet, etc.

Conclusion:

The provisions of the abovementioned two enactments show that the Copyright protection in India is strong and effective enough to take care of the Copyright of the concerned person. The protection extends not only to the Copyright as understood in the traditional sense but also in its modern aspect.

Thus, on-line copyright issues are also adequately protected, though not in clear and express term. To meet the ever-increasing challenges, as posed by the changed circumstances and latest technology, the existing law can be so interpreted that all facets of copyright are adequately covered. This can be achieved by applying the purposive interpretatio technique, which requires the existing law to be interpreted in such a manner as justice is done in the fact and circumstances of the case.

Alternatively, existing laws should be amended as per the requirements of the situation. The existing law can also be supplemented with newer ones, specifically touching and dealing with the contemporary issues and problems. The Information Technology Act, 2000 requires a new outlook and orientation, which can be effectively used to meet the challenges posed by the Intellectual Property Rights regime in this age of information technology.

Till the country has such a sound and strong legal base for the protection of Intellectual Property Rights, the judiciary should play an active role in the protection of these rights, including the copyright. The situation is, however, not as alarming as it is perceived and the existing legal system can effectively take care of any problems associated with copyright infringement.