

IMPACT OF COPYRIGHT (AMENDMENT) ACT, 2012 IN THE DIGITAL ERA

VISHNU S WARRIER

Assistant Manager – Legal, Coromandel International Limited

Citation: LW (2012) July 31

A rare political consensus, despite reservations expressed by some Members of Parliament over certain omissions in the Bill, marked the passage of the Copyright (Amendment) Bill, 2012, in Parliament in May. Almost all the speakers in the Lok Sabha and the Rajya Sabha underlined the need to protect the copyright of authors. The Copyright (Amendment) Act, 2012, seeks to make its relevant provisions conform with the World Intellectual Property Organisation (WIPO) Copyright Treaty, or WCT, 1996, and the WIPO Performances and Phonograms Treaty (WPPT), 1996, “to the extent considered necessary and desirable”.

WCT and WPPT addresses the challenges posed by digital technology to the protection of copyright and related rights, particularly with regard to the dissemination of protected material over digital networks such as the Internet and deals with copyright protection for the authors of literary and artistic works such as writings, computer programs, original databases, musical works, audio-visual works, works of fine art and photographs.

Section 13(1) of the Act says that copyright shall subsist in original literary, dramatic, musical and artistic works, cinematograph films and sound recording. Under the Act, an artist is the owner of the copyright of an artistic work because he creates it. Producers took over the rights by virtue of Section 17 (b), which says that the author of a work shall be the first owner of the copyright “in the absence of any agreement to the contrary”.

The Amendment Act introduced a proviso to Section 17 of the principal Act which says that the “agreement to the contrary” referred to in Section 17(b) would not affect the copyright of the author, which is vested with him by virtue of Section 13(1) (a). The "Right to Royalty" cannot be assigned and that when it comes to payment of royalties through media other than cinema, then producers and authors must share that royalty in equal measure. Section 18 of the principal Act, which deals with assignment of copyright.

Under this section, an author of the literary or musical work included in a cinematograph film or sound recording cannot assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright, and any such assignment to the contrary shall be void. The amended Act ensures that the visually impaired and those with disabilities can gain access to

copyrighted material in any form and format without payment of any charge. By inserting a new subsection, 52(1)(zb), that lists acts that are not to be considered as infringement of copyright.

Adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format, by any person, to facilitate persons with disability to access such work for personal use, educational purpose or research are not deemed as infringement of copyright under the new sub-section. This provision has been extended widely to cover any organisation working for the benefit of persons with disabilities in case the normal format prevents enjoyment of such works by such persons.

Proviso to the particular sub-section insist that, copies of the works in such accessible format should be made available to persons with disabilities on a non-profit basis. In such cases, cost of production can be recovered. Another proviso requires the organisation to ensure that the copies of works in such accessible format are used only by persons with disabilities and take reasonable steps to prevent its entry into ordinary channels of business.

However, as per the new section 31B, those who want to make profit and still supply those formats to the disabled can do so after paying a royalty as decided by the Copyright Board, which will grant a compulsory licence to the applicant for that purpose.

A cover version, as defined under the newly inserted sub-section 31C. It is defined as the recording of a song sung by a singer other than the original singer. In other words, the cover version exploits someone else's copyright. The new provision mandates that such cover versions cannot be made until the expiration of five calendar years after the end of the year in which the first sound recording of the work is made. Further, the Act makes it mandatory to the makers of cover version to disclose that they are cover versions and pay royalties to the owner of the copyright in respect of such work.

Issue of statutory license for broadcasting of literary and musical works and sound recording is dealt under the new section 31D. It covers both radio and television broadcasting. Copyright Board now has the sole jurisdiction to decide the quantum of royalty that has to be paid by broadcasters to owners of music, that is, producers and authors who will share the profit. However, the Board shall fix separate rates for radio and television.

The Act of 2012 ensures that any person who gets access to an unpublished work for which there is no claimant can approach the Copyright Board and obtain a compulsory licence to

publish it. Besides, it recognizes the rights of not just music directors and persons who create literary works but also performers on stage.

Hence, the new section 38(a) gives exclusive rights to performers. The definition of performers includes an actor, a singer, a musician, a dancer, a pantomime artist, a magician, a conjurer, and a snake charmer. If anyone uses his or her performance for the purpose of making money, then royalty must be paid to the original performer. The Act insists that all the rights that are available to authors and others will equally be available to these performers. Apart from the above points, performers are entitled to moral rights as well, that is, they can restrain or claim damages in respect of any distortion, mutilation or other modification of their performances that would be prejudicial to their reputation.

The Act enlarges the scope of Section 52 that deals with acts not deemed as infringement of copyright which covers reporting of current events or affairs, including the reporting of a lecture delivered in public.

The Act further includes two new Sections 65A and 65B to punish persons found guilty of piracy by using technology to take away somebody's copyright and then use that material to make profits.

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 punished with imprisonment for up to two years and shall also be liable to pay a fine under Section 65A (1).

Any person who knowingly removes or alters any rights management information without authority, or 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 punished with imprisonment for up to two years and shall also be liable to pay a fine under Section 65B (1).

It is also to be noted that Government dropped a new proviso to Section 2(m), which the Parliamentary Standing Committee has given full endorsement. Section 2(m) refers to what an “infringing copy” means, and says that if reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act, it would mean infringement. The said proviso was proposed to legalise the parallel imports of books and other copyrighted material into India, provided a copy of a work published in any country outside India with the permission

of the author of the work and imported from that country into India shall not be deemed to be an infringing copy.

If it had formed a part of the enacted Bill, would have enabled one to buy the cheapest editions available anywhere in the world without necessarily going through the publisher. This proviso would have helped Indian students gain access to the latest affordable versions of textbooks from around the world. In addition, it is to be noted that now Indian libraries and educational institutions cannot import foreign copies of books without seeking the permission of the copyright owner. Even accessible versions already available abroad cannot be imported into India.

The Copyright (Amendment) Act, 2012, makes substantial progress in filling the gaps in the parent Act so as to benefit all stakeholders. Although Copyright Act, 1957 is amended substantively, it is still far away from perfect. The amendments to the Parent Act are yet to make substantial progress in filling the gaps in the parent Act. However, the Act of 2012 will provide a clear picture on the rights of authors of creative works such as books, plays, music, films and other works of art only after its notification.