

An Analytical Study of Copyright Laws in India and England

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Abstract: Copyright, a very sensitive right which always is seeking protection and causing trouble for the lawmakers to bring out the best laws for the protection of it. The laws related to the copyright are constructed very carefully and deliberately in order provide the best protection to the copyright holder. Copyright becomes one of the main concerns of the lawmakers because of the fact that it encourages the authors to do research work and discover and innovate new insights and also to bring new paradigms of various sciences, literature and other things. Copyright right not merely encourages the authors to keep on innovating, but it also gives them a sense of protection, that their work is safe and they are being acknowledged for what they have discovered. Moreover, not only the authors of books are given protection under the copyright laws but the performers and the creators who compose music, computer software, and performs in public are also protected by the same copyright law. Hence, it becomes utmost important for the legislators to make and enact the best possible laws. The researchers in this research work have gone through the Copyright laws of England and India and have analysed the various section of the copyright laws of both the countries. The researchers have intended to bring some new insights and have proposed some suggestion which might prove to be of help in bringing out the best possible copyright protection to the copyright holders after analysing the copyright law of England.

1. Introduction

What is Copyright? A Copyright is a negative right. It is a negative right in the sense that it is not given to every individual living in the society or world, rather it is a right given only to those who use their intellect, skill and labour to create something. A copyright is said to be the right of the original author, owner or the creator only. Copyright is both a personal as well as a right against the society [1]. It is a right against the society because if anyone without prior permission and license of the original creator or the owner, uses the work it amounts to copyright infringement.

Copyright, by contrast, is a right given against the copying of defined types of cultural, informational and entertainment productions. Classically, these have been "literary and artistic works" – the creation of authors, playwrights, composers, artists and film directors.

Copyright is a kind of an umbrella which provides the owners and the creators with a shelter of protection of the interest. Copyright is a bundle of right which includes the right to make copies, the right of reproduction, right to sell, right to translate and the right of adoption of the works. Without these rights, it is nearly impossible to save the right of the economic interest of the copyright holders.

Copyright not only protects the interest of the authors but also encourages them to create more of such works. The main objective of giving the copyright protection is to protect the economic interest and to recognize the work of the author. Copyright also strives to protect the interest of the creators by providing them with a time-bound protection.

The term of copyright varies from countries to countries. Usually, the protection of copyright is the lifetime of the author and after his life, 50 to 70 years. In India, the term of copyright protection is 60 years after the life of the author, and in case of a joint ownership it is again 60 years but commencing only after the death of the last deceased author.

With the modernisation of the computers, the copying techniques and machines, the infringement has also become rampant. Countries strive to make changes to their infringement laws in order to battle the violation of the infringement. Because saving the interest of the creator, owner and author, is at the heart of every copyright law.

2. Analysis of Copyright Act, 1957(India) & UK's(England) Copyright, Design And Patent Act, 1988.

1) Works which are protected.

• Works in which copyright subsists.(INDIA):

Section 13:

- (a) original literary, dramatic, musical and artistic works,
- (b) cinematographic films and
- (C) sound recordings. [2]

• Works in which copyright subsists. (ENGLAND):

Section 1:

- (a) original literary, dramatic, musical and artistic works,
- (b) sound recordings, films or broadcast, and
- (c) the typographical arrangements of published works. [3]

Analysis: The Copyright Act 1957, do provide protection to most of the works but, not all the works. While the law in England is much diverse and covers almost every type of work which needs to be protected.

2) Ownership

• OWNERSHIP OF COPYRIGHT. (INDIA):

Section 17: The holder of the copyright or its owner under this act means the person who is in possession of and enjoys the legal right to the work.

• OWNERSHIP OF COPYRIGHT. (ENGLAND):

Section 9: Primary rights and the first ownership rights are always given to the original author or the creator.

Analysis: The Copyright Act, 1957 is very clear in its application that, it can only be an author who can have the ownership of the work so created. The law in England is also similar but is much wider in its scope. But there is an

exception to this. This exception provides that a copyright cannot belong to the author where the employee in due course of his employment has made any artistic, literary, musical and dramatic work. In such cases, the first owner shall be the employer only.

3) Rights.

• *Rights of the Author(INDIA):*

Reproduction of the work.

Derivative rights or the rights to derive.

Distribution rights.

The right of performing the work publicly.

Right to display the copyrighted work publicly

The performance of a sound recording in public and its transmission by digital audio transmission. [4]

• *Rights of the Author(ENGLAND):*

Right to make the copy/ copying rights.

Right to issue copies of the work.

Right to rent or lend the copyrighted work.

Right to perform, show, or play the copyrighted work in public.

Right of communication of the work to the public

Adaptation rights. [5]

Analysis: The copyright laws of both the countries provides same rights to the author. So, it can be said that India has provided every possible right to the owners of the copyrights.

4) Term of protection:

• *Term of copyright(India):*

Section 22: the most basic term of protection given by this section is for a period of 60 years. Every dramatic, musical, literary and artistic work is to be protected for the lifetime of the author and 60 years after his life by virtue of this section. [6]

• *Term of copyright(England):*

Section 12: the work of the author is copyrighted for the life time of the author. And after the life of the author, the work is protected for another period of 70 years which is calculated from the end of the calendar year of the death of the author. [7]

Analysis: The copyright in India provides slightly lesser protection to the original/copyrighted works. Another thing which the authors/researchers came across while analysing the laws of both the countries is that in case of the joint ownership of the work the extended term of protection commences when the last author dies.

1. What works are deemed to be the works of the Government.

• *Provisions relating to government work (India)*

If there is no claim as to the ownership of the copyright or there is no agreement in relation to the ownership of the copyright, the government in every such case shall be the owner of the copyright. [8]

• *Provisions relating to government work (England)*

Under section 9 of the COPYRIGHT, DESIGN AND PATENT ACT, 1988, it is well established/ settled that the

creation of a work during the course of an employment is deemed to be a work of the employer. Therefore where any officer and the servant of the Crown has created a work in the due course of his duty, such works shall be deemed to be the works of the Crown or the Crown will have the copyright claims over such works. [9]

2. General Exceptions

• *The general exception to infringements(INDIA)*

Under section 52 Of the Copyright Act, 1957 there are a certain number of exception which does not amount to Infringement. These exceptions include:

(i) fair dealing, which further includes the use of a literary, musical, or artistic work for-

(a) research purpose

(b) review

(c) criticism or for any other private study

(d) or for reporting any current event in a newspaper, journal or periodical. [10]

• *General exceptions to infringements(ENGLAND)*

There are two major exceptions provided by the Copyright Act, 1988

(a) fair dealing

(b) using the work for research purpose and private study. [11]

Analysis: The copyright laws of both the nations provides a very similar kind of exceptions to the copyrighted works. This can be mainly because most of the India legal provision is adopted from the laws of England.

3. Conclusion

Both the Indian copyright law and the England's copyright laws are somewhat similar to each other, mainly because of the reason that India was once a colonial state of the Britain(U.K.). Most of the provisions were made itself by the English law makers in the copyright laws of India and, though the copyright laws in India are not much different when they are compared with that of the England's copyright, yet their application is different in India in comparison to England. The copyright laws in England are much clearer, free from ambiguity and covers almost every aspect over which a copyright can be claimed yet it is somewhat different from Indian laws likewise the Indian copyright Act 1957 clearly specifies the provisions in relation to the joint ownership of the works but the England's copyright act does not clearly provide for the joint ownership of the author.

References

- [1] Upendra Baxi, Copyright Law and Justice in India, 19 (The Indian Law Institute, New Delhi, 1986).
- [2] Copyright Act, 1957, available at: <http://www.copyright.gov.in/Documents/Copyrightrules1957.pdf> (Visited on 18 Apr. 18).
- [3] COPYRIGHT, DESIGN AND PATENT ACT, 1988, available at: <https://www.legislation.gov.uk/ukpga/1988/48/contents> (Visited on 18 Apr. 18).

- [4] Copyright Act, 1957, available at: <http://www.copyright.gov.in/Documents/Copyrightrules1957.pdf> (Visited on 18 Apr. 18).
- [5] COPYRIGHT, DESIGN AND PATENT ACT, 1988, available at: <https://www.legislation.gov.uk/ukpga/1988/48/contents> (Visited on 18 Apr. 18).
- [6] Copyright Act, 1957, Section 22: the term of copyright shall in any literary, dramatic, musical and artistic work be the lifetime of the author and after his death, the protection is given for a period of 60 years, available at: <http://www.copyright.gov.in/Documents/Copyrightrules1957.pdf> (Visited on 18 Apr. 18).
- [7] COPYRIGHT, DESIGN AND PATENT ACT, 1988, Section 17: Copyright expires at the end of the period of 70 years from the end of the calendar year in which the author dies, available at: <https://www.legislation.gov.uk/ukpga/1988/48/contents> (Visited on 18 Apr. 18).
- [8] Supra note, 2 at 2.
- [9] Supra note, 3 at 2.
- [10] Copyright Act, 1957, Section 52: The following acts shall not constitute an infringement of copyright, namely:
- (a) a fair dealing with a literary, dramatic, musical or artistic work for the purposes of —(i) research or private study;(ii) criticism or review, whether of that work or of any other work
 - (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, available at: <http://www.copyright.gov.in/Documents/Copyright rules1957.pdf> (Visited on 18 Apr. 18).
- [11] COPYRIGHT, DESIGN AND PATENT ACT, 1988, U.K “Fair dealing” in a copyrighted work is a major exception to copyright in UK law and is a term used to describe acts which are permitted to a certain degree. These uses include (among others): (1) Making of incidental transient or temporary copies. United Kingdom Copyright, Designs and Patent Act 1988 (as amended) Section 28A.
- [12] (2) Private and research study purposes. United Kingdom Copyright, Designs and Patent Act 1988 (as amended) Section 29, available at: <https://www.legislation.gov.uk/ukpga/1988/48/contents> (Visited on 18 Apr. 18).