



Intellectual Property Attorneys

# Indian Copyright Law

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# Governing Act



Copyright Act, 1957

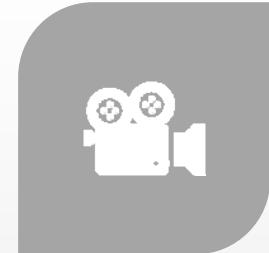
Last amended in **2021** through the **Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021**

# Works protected

## Section 13(1)



ORIGINAL LITERARY,  
DRAMATIC, MUSICAL  
AND ARTISTIC WORKS



CINEMATOGRAPH  
FILMS



SOUND RECORDINGS

# Works protected

LITERARY WORK

- **Section 2(o)**
  - Books
  - Computer Programmes

DRAMATIC WORK

- **Section 2(h)**
  - Choreographic works
  - Plays

MUSICAL WORK

- **Section 2(p)**
  - Compositions
  - Graphical Notations

# Works protected

## ARTISTIC WORK

- **Section 2(c)**
- Painting
- Sculpture
- Photograph
- Work of Architecture

## CINEMATOGRAPH FILMS

- **Section 2(f)**
- Works of visual recordings

## SOUND RECORDINGS

- **Section 2(xx)**
- Recorded audio songs

## Requirements of protection

### Section 13(2)

The work must be first published in India; or

If the work is published outside India, the author, on the date of publication, must be an Indian citizen; or

If the work is first published outside India, and the author was dead at the time of publication, but was an Indian citizen at the time of their death; or

If it is an unpublished work, the author, on the date of making of the work, must be a citizen of or domiciled in India; or

If it is a work of architecture, it must be located in India

International Copyright Order, 1999 - Works made/published in the member countries of Berne Convention, the Universal Copyright Convention and the World Trade Organization are protectable in India in the like manner as if they were made/published in India

## Requirements of protection

The work must be “original”.

The expression “original” is not defined under the Act.

To determine “originality”, Indian Courts had for long followed “sweat of the brow” doctrine originally propounded in *University London Press v. University Tutorial Press* - [1916] 2 Ch. 601.

## Requirements of protection

***Eastern Book Company v. D B Modak***

***- AIR 2008 SC 809 – Supreme Court of India***

- *The work which comes into being should be original in the sense that by virtue of selection, coordination or arrangement of pre-existing data contained in the work, a work somewhat different work in character is produced.*

Not every effort or industry, or expending of skill, results in copyrightable work, but only those, which create works that are somewhat different in character, involve some intellectual effort, and involve a certain degree of creativity.

# Idea- Expression Dichotomy

No copyright exists in an idea

Protection is confined to the form, manner, arrangement and expression of the idea [*R.G. Anand v. Delux Films and Ors., Supreme Court of India (1978)*]

It is the original expression of thought or information in some concrete form that is the protectable subject matter under the Act and not merely an original thought or information *per se*

# Whether registration is mandatory?

- FAQ Section of the Copyright Office's website
  - *Ques: Is it necessary to register a work to claim copyright?*
  - *Ans: No. Acquisition of copyright is automatic and it does not require any formality. Copyright comes into existence as soon as a work is created and no formality is required to be completed for acquiring copyright. However, certificate of registration of copyright and the entries made therein serve as *prima facie* evidence in a court of law with reference to dispute relating to ownership of copyright.*

# Whether registration is mandatory?

## Section 45. Entries in register of Copyright

*“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.”*

# Whether registration is mandatory?

- **Conflicting Judicial Opinions**
  - Most of the High Courts have held that copyright registration under the Act is not mandatory.
    - Madras High Court
    - Calcutta High Court
    - Kerala High Court
    - Gujarat High Court
    - Patna High Court
    - Allahabad High Court
    - Andhra Pradesh High Court
    - Madhya Pradesh High Court (Full Bench)
    - Bombay High Court
    - Delhi High Court
  - Some of the High Courts have held otherwise.
    - Orissa High Court
    - Bombay High Court

# Whether registration is mandatory?

***Sanjay Soya Private Limited v. Narayani Trading Company (Bombay HC 2021)***

Registration is not mandatory and remedies for infringement are available even without registration;

An earlier decision of its coordinate Bench in *Dhiraj Dharamdas Dewani v. Sonal Info Systems Pvt. Ltd* to the contrary was without due regard to the law;

No provision in the Copyright Act suggests that registration is mandatory;

Legislative history shows a provision suggesting that suit for infringement could not be initiated without registration was later removed from the text;

Berne Convention mandates equal protection to the works of other member countries and without any formality.

# Ownership of copyright

- **The author of a work is the first owner.**
- **Author – Section 2(d)**

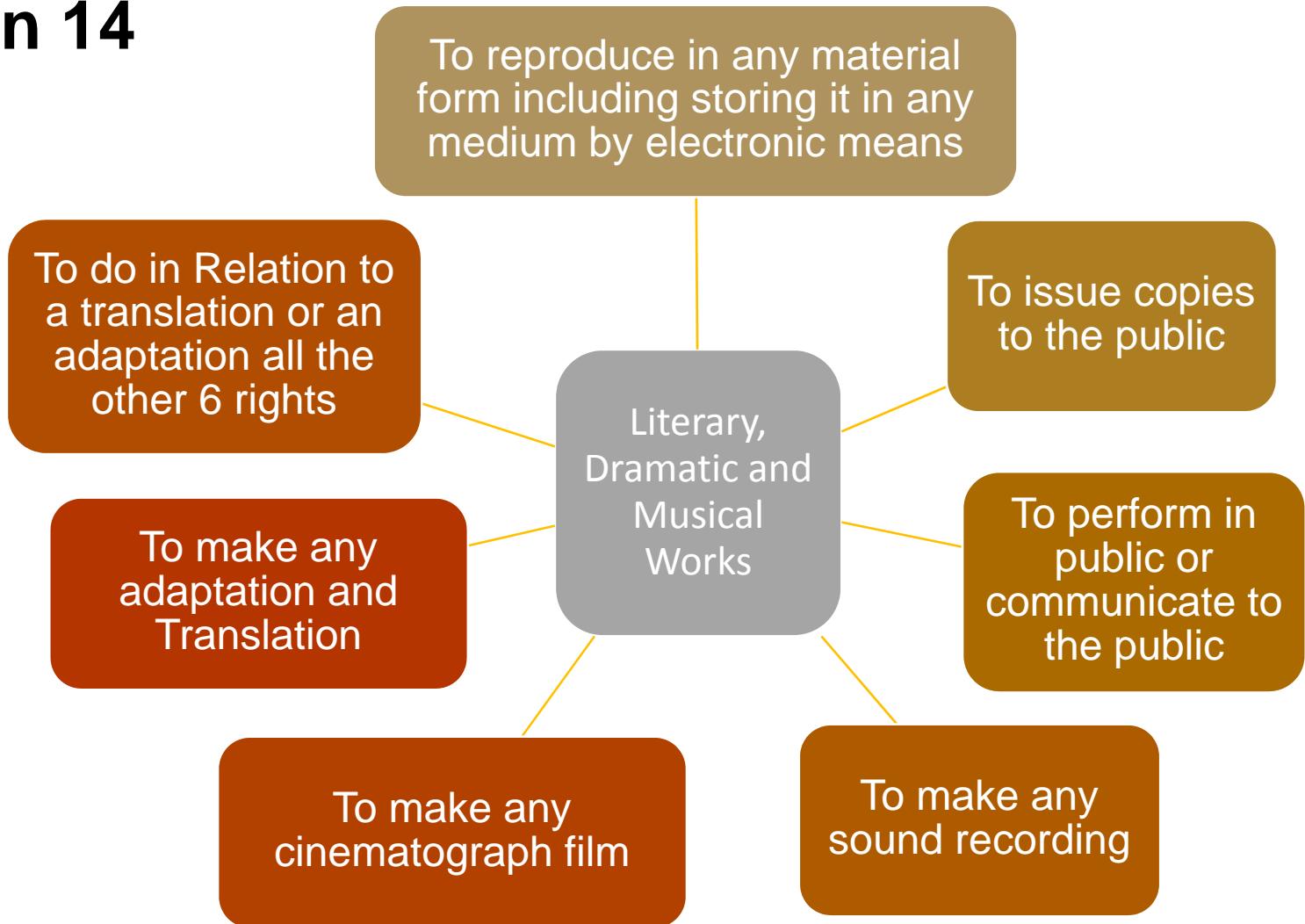
Category	Author
Literary or dramatic work	The author of the work
Musical work	The composer
Artistic work	The artist
Photograph	The person taking the photograph
Cinematograph film or sound recording	The producer
Literary, dramatic, musical or artistic work which is computer-generated	The person who causes the work to be created

# Ownership of copyright

- **Section 17 - Exceptions to author being the first owner**

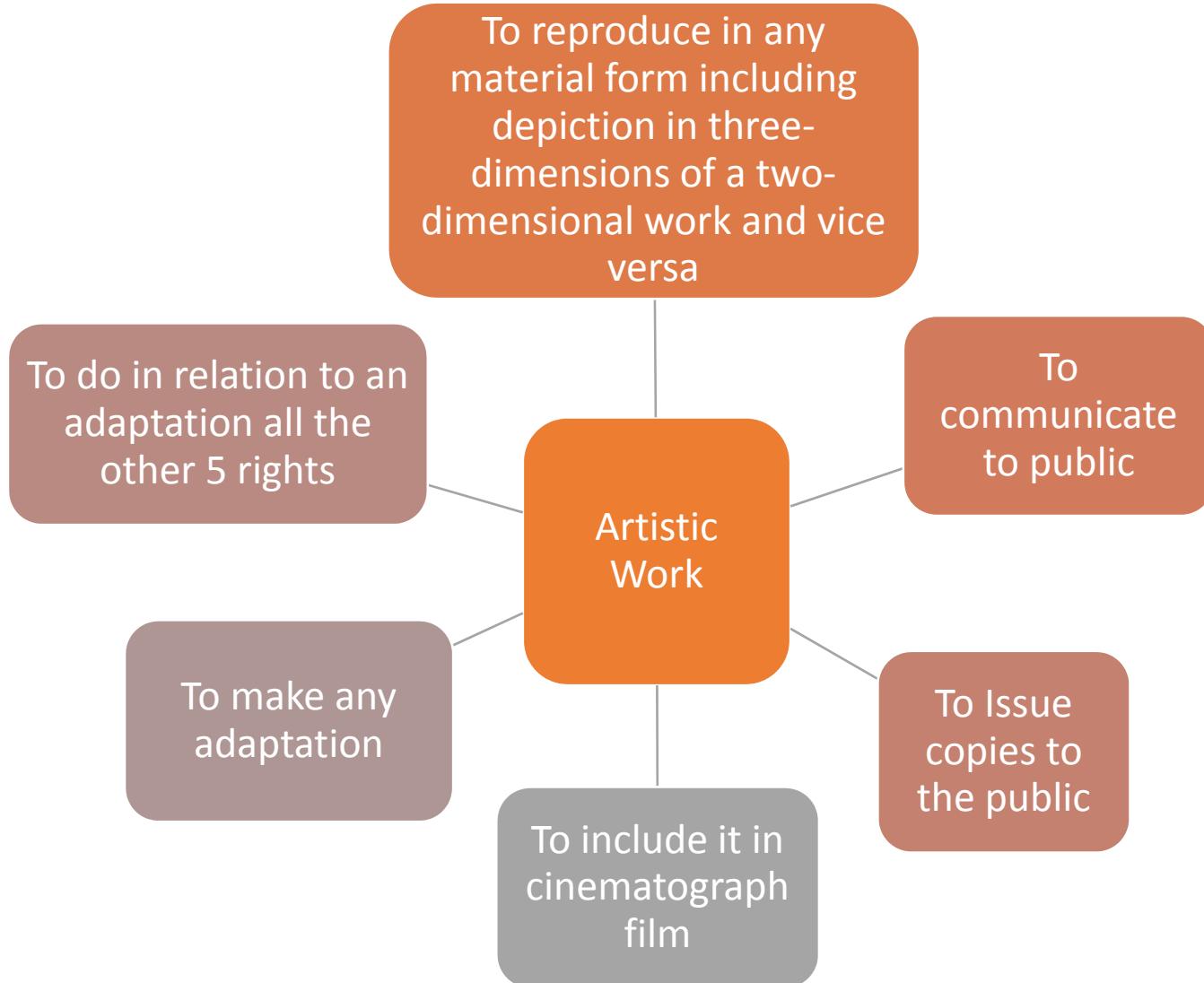
Category	Owner
Works made in the course of employment	The employer
Commissioned works	The person commissioning the work
Government work (includes work made or published by any Court/Tribunal or other judicial authority)	The Government
Work made or published by or under the direction or control of any public undertaking	The Public Undertaking
Work made or published by or under the direction or control of international organisation	The international organization concerned

# Economic Rights – Section 14



Computer programme – Additional right to sell or give on commercial rental

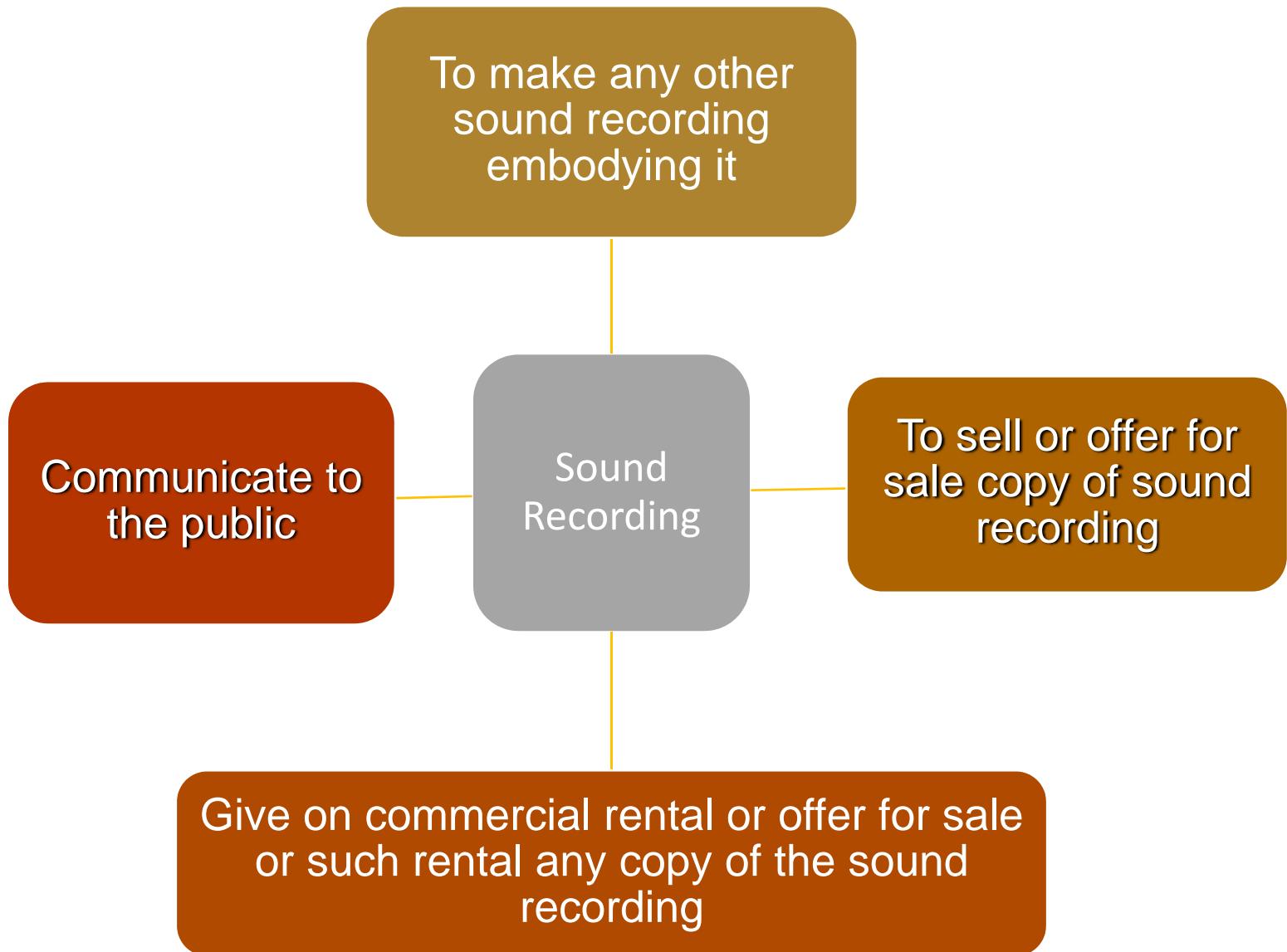
# Economic Rights – Section 14



## Economic Rights – Section 14



## Economic Rights – Section 14



## Assignment and licensing (existing and future works)

- Must be in writing, signed by the assignor/ licensor or by his/her duly authorised agent
- Must identify the work and the specific rights being assigned/ licensed, the duration and territorial extent of the assignment/ license
- If the duration is not stated, the assignment/ license would be deemed to be for 5 years from the date of assignment/ license
- If the territorial extent is not specified, the assignment/ license would be presumed to extend within India

# Exploitation of Economic Rights – Sections 18 and 19

# Exploitation of Economic Rights – Sections 18 and 19

## Assignment and licensing (existing and future works)

- Must specify the amount of royalty and any other consideration payable
- If the granted rights are not exercised within one year from the date thereof, these would be deemed to lapse at the end of one year unless otherwise agreed
- In the case of works of joint authorship, consent of all authors are required for exploitation of any rights.

# Term of Copyright

Category of work	Term of copyright
Literary, dramatic, musical and artistic works	<p>Life of author + 60 years from the beginning of the calendar year next following the year in which the author dies</p> <p>E.g., Mahashwetadevi died on 28 July 2016. Her works are within copyright for 60 years from January 1, 2017.</p>
Cinematograph films, sound recordings, government works, works of public undertakings and works of international organizations	<p>60 years from the beginning of the calendar year next following the year in which the work is first published.</p> <p>E.g., Brahmastra was released on Sept 9, 2022. The film is within copyright for 60 years from January 1, 2023.</p>

## Author's special rights/ Moral rights – Section 57

The right to claim authorship of the work (right of paternity)

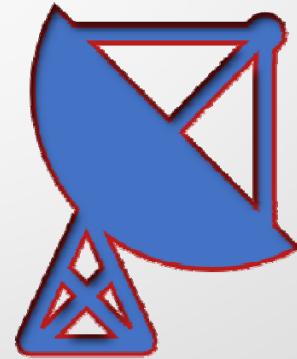
The right to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work if the same is prejudicial to the honor or reputation of the author (right of integrity).

The failure to display a work or to display it to the satisfaction of the author does not infringe author's special rights.

These rights cannot be assigned or waived

# Related/ Neighboring Rights

- Broadcast Reproduction Right – Section 37
  - Available to Broadcasting Organisations.
  - 25 years from the beginning of the calendar year next following the year in which the broadcast is made.

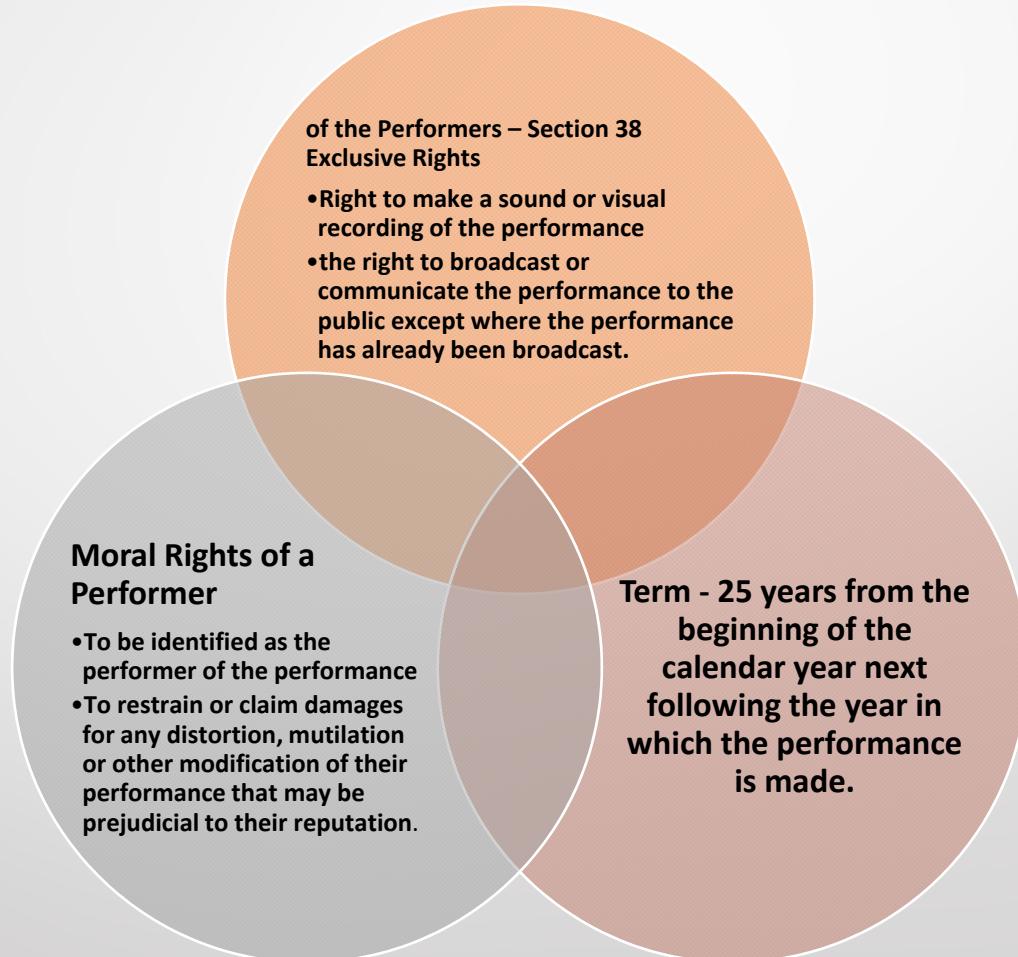


# Related/ Neighboring Rights

- Performers' Rights – Section 38
  - '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.
  - 'Performance' in relation to performers' right means any visual or acoustic presentation made live by one or more performers.



# Related/ Neighboring Rights



## Primary Infringement

- Unauthorized exercise of exclusive rights conferred on the copyright owner under Section 14.
- Violation of the terms of a license.
- Selling, letting for hire, offering for sale or hire, distributing, exhibiting or importing infringing copies of the work

## Secondary Infringement

- Knowingly permitting for profit, any place to be used for the unauthorized communication of a work to the public

# Infringement – Section 51

## Test of Infringement

- *R.G. Anand v. Delux Films - 1978 (4) SCC 118 Supreme Court of India*
- **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 the similarities are on fundamental or substantial aspects of the mode of expression** adopted in the copyrighted work.
- If the defendant's work is **nothing but a literal limitation of the copyrighted work** with some variations here and there it would **amount to violation of the copyright.**
- 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 an act of piracy.

## Test of Infringement

- *R.G. Anand v. Delux Films - 1978 (4) SCC 118 Supreme Court of India*
- One of the surest and the safest test to determine whether there has been a violation of copyright is **to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.**
- Where **the theme is the same but is presented and treated differently** so that the subsequent work becomes a completely new work, **no question of violation of copyright arises.**
- If, apart from the similarities appearing in the two works **there are also material and broad dissimilarities** which negative the intention to copy the original and the **coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.**

## Test of Infringement

- ***R.G. Anand v. Delux Films - 1978 (4) SCC 118 Supreme Court of India***
  - Whether or not the defendant not only adopted the idea of the copyrighted work but has also adopted the manner, arrangement, situation to situation, scene to scene with minor changes or super-additions or embellishment here and there.
  - If on a perusal of the copyrighted work the defendant's work appears to be a transparent rephrasing or a copy of a substantial and material part of the original, the charge of plagiarism must stand proved.
  - Care however must be taken to see whether the defendant has merely disguised piracy or has actually reproduced the original in a different form, different tone, different tenor so as to infuse a new life into the idea of the copyrighted work adopted by him. In the latter case there is no violation of the copyright.

## Remedies for Infringement

### Civil Remedies – Section 55

- Injunction, Damages and Accounts

### Criminal Remedies – Section 63

- Imprisonment (6 months to 3 years)
- Fine (Fifty Thousand to Two Lakhs)

# Acts not amounting to infringement

- Section 52 – Complete Code in itself – 33 exceptions.
- Section 52(1)(a) - Fair Dealing or the purpose of:
  - private or personal use including research;
  - criticism or review;
  - reporting of current events and current affairs including the reporting of a lecture delivered in public.
- Fair dealing is purely a question of fact which cannot be prejudged and can only be decided on a case-to-case basis **[ESPN Stars Sports v. Global Broadcast News Ltd. and Ors. - 2008 (38) PTC 477 (Del)]**
- A rough and ready thumb rule to apply to an event or an affair being newsworthy would be the time period of 24 hours within which the event or the affair remains a news **[New Delhi Television Limited v. ICC Development (International) Limited & Anr.]**
- 52(1)(q)(iv) - **Reproduction or publication of any judgement or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgement or order is prohibited by the court, the tribunal or other judicial authority, as the case may be**

# Acts not amounting to infringement

- Although not provided for in the Act, the Delhi High Court in *India TV Independent News Service Pvt. Ltd. and Ors. v. Yashraj Films Pvt. Ltd. - 2013 (53) PTC 586 (Del)*, recognized “*de-minimis*” use as a valid defense to copyright infringement.
- The issue of trivial copyright violations should be preferably adjudicated upon with reference to the de-minimis principle by considering the following factors:
  - the size and type of the harm caused,
  - the cost of adjudication,
  - the purpose of the violated legal obligation,
  - the effect on the legal rights of third parties, and
  - the intent of the wrongdoer.

## Pro tips for start-ups

- There is more to IP than patents...
- Do not take copyrights and trademarks lightly!
- Your website, printed matter, artistic logos etc are all protectable as copyright
- Put a copyright notice on your website to protect its contents
- If you make printed brochures, make sure you place a copyright notice
- A copyright notice for a work created by me today is like this: **© 2022 Latha R Nair**
- If you have an artistically represented logo, an additional tool to protect it is copyright
- If you are an intermediary, know your rights and obligations.



Intellectual Property Attorneys

# Thank you for the opportunity!!

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