



Research Paper

An Analysis on Ownership of Copyright as per Indian Copyright Act, 1957

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Abstract: Copyright is one of the rights which are available under intellectual property. Copyright as being a property right, put up important questions regarding ownership and the procedure for exploiting copyright. Authorship and ownership, in context with copyright, have two different concepts, sometimes, the author of a work will also be considered as the owner of the copyright in the work but this is not in all the cases This paper deals with meaning, limitations which is given to the author and owner under the copyright Act, 1957 and the limitations to the concept of authorship and ownership for work made in certain cases.

Keywords: Copyright, property right, copyright Act, Ownership

INTRODUCTION

Meaning of Copyright

Copyright is a unique kind of intellectual property, the right which a person gets in a work, as a result of his intellectual labour, is called his copyright. The most important

purpose of a copyright law is to protect the outcome of a man's work, labour, skill or test from being taken away by other people.

Word 'copy' according to Black's Law Dictionary means "transcription, imitation, reproduction of an original writing, painting, instrument or the identical"

Copyright has been recognised in ancient times also. The Roman Law adjudged that if one man wrote anything on the paper or parchment of another, the writing should belong to the 'owner of the blank material; meaning thereby the mechanical operation of writing by the scribe deserved to receive satisfaction.

The statutory definition of copyright means the exclusive right to do or authorise other(s) to do certain acts in relation to (Section 14 of the Copyright Act, 1957)

- literary, dramatic or musical works;
- artistic work;
- cinematograph film; and
- sound recording.

Ownership and Authorship

The authorship and Ownership as per copyright law are very important concepts to utilize the benefits in a work and put claim to copyright protection. Ownership starts from authorship. The person who derives the work is generally the first owner of the copyright in that work, provided that he or she has not created the work in the course of his or her employment, but if he or she creates the work during the course of his or her employment in that case his employer will be the first owner of copyright. The owner of the copyright in a work has the right to decide how his or her work will be exploited. He or she may grant a licence to allow another person to carry out certain acts in relation to the work, such as making copies in which case he keeps ownership of copyright. Alternatively, the owners may assign the copyright to another, that is transfer the ownership of the copyright to a new owner, waive the economic rights under the copyright law. The copyright provisions do not recognize any copyright in an idea. The originator of an idea is not the owner of the copyright; copyright belongs to the person who gives concrete form to the idea if such an idea has been communicated to him by another person.

In *Donoghue v. Allied Newspapers* [(1937) 3 All ER 503] the view expressed was "Since there is no copyright in ideas even if they are original, the originator of a brilliant idea is not the owner of the copyright in the work, unless he is also the creator of the work". Thus, if a person has a brilliant idea for a story, play or a picture and if he communicates that idea to an author or play writer or an artist, the production based on that idea is the copyright of the artist who has clothed the idea in a form whether by means of a book, play or picture and the originator of the idea has no right in the product, for which copyright subsists.

The author of a work is the person who creates it. The copyright in a work shall be conferred initially to the author. The law specifies that copyright in the work shall belong in the first instance to the author unless otherwise specified in writing under the contract of employment. From the foregoing, the author is the originator of a work.

“author” in relation to various categories of works as follows (Section 2(d) of copyright Act,1957)

- Literary or dramatic work, the author of work.
- Musical work, the 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—section 2(ffa).
- An artistic work other than a photograph, the artist.
- Photograph, the person who takes the photograph.
- Cinematograph film, the producer.
- Sound recording, the producer.
- Literary, dramatic, musical or artistic work which is computer generated, the person who causes the work to be created.

Limitations on Authorship and Ownership in certain cases

Primarily the author of a work is the first owner of the copyright. This is however, **subject to some exceptions** (Section 17 of copyright Act,1957).

- **In Literary, dramatic or artistic work**

Where a work is made by the author in the course of his employment by the proprietor of a newspaper, magazine or a periodical under a contract of service or apprenticeship for the purpose of publication in a newspaper, magazine or periodical, the said proprietor, in absence of any agreement to the contrary, will be the first owner of the copyright in the work

in so far as it 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 being so published. Except in such cases, the author will be the first owner of the copyright in the work (Section 17(a) of copyright Act,1957).

In *Thonzas v. Manorama* [AIR (1989) Ker 49], it was held that in case of termination of the employment, the employee is entitled to the ownership of copyright in the works created subsequently and the former employer has no copyright over the subsequent works so created.

The copyright in a work done by an employee on his own time and not in the course of his employment belongs to him.

- **Photograph, Painting, Portrait**
where a photograph is taken or painting or a portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person, in the absence of any agreement to the contrary, shall be the first owner of the copyright therein (section 17(b) of copyright Act,1957).
- **Work made in the course of Employment**
Where a work is made in the course of the author's employment under a contract of service or apprenticeship, the employer (not being the proprietor of a newspaper; magazine or periodical) in absence of a contract to the contrary, the employer will be the first owner of the copyright in the work so created (Section 17(c) of copyright Act,1957).
- **Lectures delivered in public**
Where any person has delivered any address or speech in public that person will be first owner of the copyright. If the address or speech

is delivered on behalf of any other person, such other person will be the owner of the copyright therein (Section 17(cc) of copyright Act,1957).

- **Government work**

A “Government work” means a work which is made and published by or under the direction or control of:

- ✓ The government or any department of the government;
- ✓ Any legislature in India;
- ✓ Any court, tribunal or other judicial authority in India;

Therefore, data compiled under the control of direction of the government, a project report and summary of an inquiry etc. come under the scope of government work. In the case of government work, the government is the first owner of the copyright in the absence of an agreement to the contrary (Section 17(d) of copyright Act,1957).

- **work made on behalf of a public undertaking**

By the Amendment Act of 1983, the Copyright Act came to contain this in 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 (section 17(dd) of copyright Act,1957).

public sector undertaking means:

- ✓ An undertaking owned and controlled by Government;
- ✓ A Government company as defined in the Companies Act, 1956; or
- ✓ A body corporate established by or under any Central or Provincial or State Act.

Government will include both Central and State Governments.

- **Work of certain international organisation**

When a work is considered to be a work of certain international organisations under the provisions of section 41, in such cases the international organisation concerned shall be the first owner of the copyright therein (Section 17(e) of copyright Act,1957).

Ownership of Copyright in Commissioned Work or Work Created at The Instance of Another

Work created at the instance of another for a valuable consideration belongs to the provider of such valuable consideration. Examples of such commissioned works are: person writing a report on a subject as a part of a research project being conducted by the company, a composer composing a Song for a film company, a painter drawing a portrait at the instance of another person.

- **Apprenticeship**

An apprentice is a student.

In **Dunk v. George Waller** [(1970) 2 WLR 241] it was held that an apprentice student bound to another for the purpose of learning his trade or calling the contract being of such a nature that the master teaches and the other serves the master with the intention of learning. Hence, the work belongs to the teacher.

- **Shorthand writer**

If the Shorthand writer takes down the matter dictated verbatim by a person, the person who dictated the matter is the author and copyright owner of the work.

- **Employee teacher**

If an employee teaching in a school, college or university writes a book on the subject he teaches or on anything else, he is the author and the owner of the copyright

because he is employed to teach and not to write text books.

- **Question papers of an examination**

Ownership copyright in examination question papers vests in the paper setter where no contract to the contrary exists. The paper setter in such a case is the author and owner and not the board of examination or the authority for whom the question papers are set.

- **Collective works**

Collective works include encyclopaedia, dictionary, year book, newspaper, magazine or generally a work in which works or parts by different authors are incorporated. The first owner of the copyright in the collective work as a whole is a person who has collected, edited and organised the work.

- **Musical work.**

The first owner of a copyright in a musical work is the composer of the work. If the work is composed in the course of employment under a contract of service, the employer will be the first owner of copyright. The person who commissions a musical work, for example, a film producer who commissions a music composer to compose the music for his film does not become the owner of the copyright but only gets a licence to use the work for the purpose for which it is commissioned. The producer only gets the right to incorporate the music in his film. All other rights are retained by the music composer.

- **Plan**

The plan of a building or a structure is the copyright of the architect. His ownership of copyright can be eliminated Only

by an agreement to the contrary. The client is not authorised to make copies of the plan except for his own study. He cannot use the pre-existing Plan even for making an extension of the building construction on the basis of the previous.

□ **Photograph**

Photograph includes photolithograph or any work produced by any process analogous to photography but does not include a cinematograph film (Section 2 (s) of copyright Act,1957).

□ **Artistic Work**

- The artist who created the work is the owner of the copyright.
- Where the work is created in the course of employment unless a contract to the contrary exists, the employer will be the owner of the copyright.
- Where the employer is the owner of the newspaper, magazine, he possesses only a limited right to use the work for publication in the newspaper or magazine.
- When the creation of artistic work is a commissioned work for valuable consideration, the person who commissioned the work is the owner of the copyright.

Meaning of Contract of service

Where a man employs another to do work for him under his control so that he can direct the time when the work shall be done, the means to be adopted to bring about the end, and the method in which the work shall be arrived at, then the contract is a contract of service.

Meaning of contract for service

If a person employs some other person for doing a specific work but leaves it to him to choose how that work shall be done,

what will be the steps shall be taken to the intended outcome, then it is known as a contract for service. His position is like that of an independent contractor who by himself will decide the approach of doing work, in this case the copyright lies with the person who is hired for that specific work and not the employer. For example, an architect appointed by the company for making a plan for a building. In such a case the copyright vests in the architect himself.

CONCLUSION:

Copyright works are exclusive in nature and it is a protection which is given to the author or the owner depending on the circumstances. There will be a limitation to the ownership of an author in the case when the author is under an agreement of contract of service then in that case the ownership will remain with the employer. Furthermore, in the case where a particular person is commissioned to do a particular work or any work which is created at the instance of any other person for a valuable consideration, in that case the ownership of the copyright in that commissioned work will persist with the person who asked to do the commissioned and not with the person who is the commissioner of the work. It is therefore recommended that the person commissioning the work should insist that the contract contains provisions for the assignment of the future copyright, so that he can claim ownership of the copyright in the commissioned work.

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