
Alert 398 - India – Creators welcome amendments to Copyright Act

The Lok Sabha, the lower house of Parliament, unanimously passed the much awaited *Copyright (Amendment) Bill, 2010* ('the Bill') on 22 May 2012. The Bill was first introduced into the Rajya Sabha, the upper house, on 19 April 2010; the Rajya Sabha gave a green signal to the Bill on 17 May 2012. The Bill introduces a range of amendments to the *Copyright Act, 1957*, aimed at bringing Indian laws into line with international norms and World Intellectual Property Organisation (WIPO) standards. It has been greeted with enthusiasm by creators, musicians, writers and actors, whose rights have not been adequately protected in the past.

Key amendments are summarized below:

- For the first time, the Bill makes special provision for artists e.g. lyricists or composers, whose work is used in films or sound recordings. They will now be entitled to a royalty from the broadcasting organization each time their work is broadcast by radio or television. **[Section 31D]**. Previously, only the producer benefited: no royalties were paid to the creators. The right to royalties from such works when used in cinematograph films or sound recordings rests with the creators of the work and can only be assigned to legal heirs or copyright societies acting in their interest **[Section 18]**.
- The Bill adds three definitions namely "commercial rental", "rights management information" and "visual recording" and amends the definitions of "cinematograph film", "communication to the public" and "performer". These amendments provide additional clarity and address a number of issues that arise in the context of digital technologies and the Internet.
- The definition of 'copyright' has been extended to give to the owner of copyright in artistic works, cinematograph films and sound recordings, the exclusive right to store the work in any medium by electronic or other means.
- The Bill stipulates a time-frame of six months within which disputes regarding copyright assignments should be determined by the Copyright Board **[Section 19A]**. This is a welcome development and should result in a reduction of current delays.

- The scope of compulsory licensing provisions has been extended to apply to the copyright works of foreign authors, and to include multiple grants [**Section 31**]. This may increase the accessibility of works of foreign authors, particularly where access is for the public benefit.
- Any person working for the benefit of disabled persons may apply for a compulsory licence to publish any copyright work for the benefit of such persons [**Section 31B**].
- The Bill bans the production of cover versions of any literary, dramatic or musical work for a period of five years from the date of first recording of the original work. It provides for statutory licensing in respect of cover versions after the expiration of said five years. [**Section 31C**]. This provision should help protect music composers from remake/remix versions being made available immediately following public release of their work.
- Every copyright society is required to publish its Tariff scheme; in case of dispute, the aggrieved party can appeal to the Copyright Board [**Section 33A**]. This will certainly introduce greater transparency in relation to the payment of authors' royalties.
- The Bill protects performers' rights by allowing the performer to make a sound or visual recording of his performance, and to reproduce it in any medium, and issue copies to the public, by way of sale or commercial rental. Although a performer will have entered into an agreement with the producer in relation to incorporation of his performance in a cinematographic work, he will retain the right to exploit the performance for other commercial purposes [**Section 38A**].
- A performer will have the right to be identified as the performer unless omission of such identification is dictated by the manner of use of the performance. Also, he shall have the right to prevent any distortion or modification of his performance that would be prejudicial to his reputation [**Section 38B**].
- The Bill empowers Customs to detain infringing works. [**Section 53**]. By virtue of this amendment, Customs is empowered to confiscate unauthorised work/s coming into India. The Owner must give notice in writing (for a specified period which shall not exceed one year) to the Commissioner of Customs to treat such works as prohibited goods. The demurrage and the cost of storage of these works will be borne by the Owner. Also, the Owner must produce an Order from a Court (having jurisdiction) within 14 days of the detention, specifying temporary or permanent disposal of such

works; otherwise, Customs shall release the goods to the importer and they shall no longer be treated as 'prohibited'.

- Sections 65A and 65B have been introduced to grant protection to technological measures and rights management information, respectively. Any person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by Act, or knowingly removes or alters any rights management information and thus distributes, imports for distribution, broadcast or communicates to the public, without authority, copies of any such work, shall be punishable by up to two years' imprisonment and liable for a fine.
- Any work prepared for the physically challenged in special formats, such as Braille, is exempted from the ambit of copyright infringement.

The Bill will now be submitted for Presidential approval, after which it will be officially notified in the Official Gazette by the Government of India. The *Copyright (Amendment) Act, 2012*, incorporating these provisions, will then come into force.

Comment

These amendments, which bring India's copyright law into line with global practices, are being particularly welcomed by creators. Given the scale and importance of India's film industry, composers and songwriters whose works are being used in film should obtain particularly significant benefit.

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