



# COPYRIGHT ENFORCEMENT TOOL KIT









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This Tool Kit is prepared by INTTL ADVOCARE and seeks to explain the basic concepts of Copyright Law in India with a view to aid enforcement authorities in combating widespread piracy



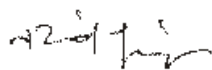
# FOREWORD



Copyright is a right given by law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. Indian copyright law is one of the strongest and best in the world. Creativity being the keystone of progress no civilized society can afford to ignore the basic requirement of encouraging its growth and progress. Economic and social development of a society is directly linked to creativity. The protection provided by copyright to the creative productions of writers, artists, designers, dramatists, musicians, architects and producers of sound recording, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more, and motivates others to create. It is in this context that the enforcement of Copyright and related rights is of utmost importance for the sustainable growth of the national economy.

The Intellectual Property Rights (IPR) Division at FICCI is intensively involved with issue pertaining to protection and enforcement of Copyrights. This Copyright Enforcement Tool Kit has been developed to serve as a ready reckoner for the enforcement agencies to deal with Copyright related crimes.

I would like to thank FICCI's IPR committee members, who have provided valuable inputs for this project, and knowledge partners "Inttl Advocure" who have contributed considerably towards the development of the Copyright Enforcement Tool Kit. I also take this opportunity to thank the Economic Offences Wing, Delhi Police for their inputs and experiences which played a pivotal role in development of the Tool Kit

A handwritten signature in black ink, which appears to read 'A. Didar Singh'.

**Dr. A. Didar Singh**  
Secretary General  
FICCI



Mr. Dipankar Barkakati  
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*T*ake this opportunity to thank the UK Intellectual Property Office, for the support and initiative for strengthening of the Copyright enforcement. I also thank "Inttladvocare" for developing this toolkit and all the Committee members for the efforts and inputs for developing this Tool Kit.

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# Chapter 1

## Frequently Asked Questions

### 1. What is Copyright?

Copyright is an Intellectual Property which is a creation of human intellect in the form of literature, dramatic, musical, artistic, cinematographic or sound recording works. Copyright, as clear from its nomenclature, is a "right against copying". It protects the original work originating from authors against any form of imitation or reproduction which causes prejudice to or deprives the copyright owner from commercially exploiting his work. Copyright infringement is the unauthorized imitation of the original work or its use by way of reproduction, communication to public, sale, offer for sale etc. It is a civil as well as a criminal offence under the Copyright Act, 1957 (hereinafter, "Copyright Act").

For example, if A writes a book, he alone can get it published and circulated and nobody can print A's book without his permission. In case a publisher agrees to pay a licence fee/royalty to A on each book published by him, A may allow the publisher to publish his book under a written agreement.

Another example would be that if a producer B makes a movie/music CD, nobody can make copies of the CD in any medium without B's permission. If someone copies the CD without B's permission, he would be infringing B's copyright in the CD.

### 2. What things/works are protected by Copyright?

- Original Literary (e.g. written works, source codes of computer programmes), Dramatic (e.g. scripts for films and dramas), Musical (e.g., melodies) and Artistic works (e.g. paintings, photographs);
- Cinematographic films; and
- Sound recordings

Other than these, the Copyright Act also provides for the following rights:

- Broadcast Reproduction Rights (Section 37)

- Author's Special/Moral Rights (Section 57)
- Performer's Rights (Section 38)
- Performer's Moral Rights (Section 38B)
- Right to have particulars to be included in sound recordings and video films (Section 52A)
- Resale Share Rights (Section 53A) [Infringement not a criminal offence]

### 3. What is not protected by copyright?

- Ideas or concepts
- Discoveries
- Procedures
- Methods
- Works or other subject matter that have not be made in a tangible form in a recording or writing
- Subject matter that is not of original authorship

### 4. Who is the owner of Copyright?

The owner of the copyright in a work depends upon the nature of the work and rights therein. For different works, there are different owners. Generally, the author of a work is the owner of the copyright in it. The ownership of copyright in a work depends upon the applicability of Section 17 to the situation. Ownership can also be transferred by way of assignment/licence as provided under Sections 18 and 30 to 32A of the Copyright Act respectively.

### 5. What amounts to proof of authorship?

The basic premise for copyright is that the author will be the owner of copyright. This is the person who actually makes the work and was the source of originality.

- In case of a literary, dramatic, musical or artistic work, the name of the author or the publisher appearing on copies of the work as published; and

- In case of an artistic work, the name appearing on the work where it was made.
- Additionally, a person claiming to be an author of a work may prove his authorship with the aid of documentary evidence in relation to his preparation of the work in order to prove his claim of authorship. For example, in case of literary works, an author can produce draft versions of the work, in case of an artistic work, he/she can produce initial sketches of the work etc.

## **6. What is the difference between an 'author' and an 'owner' of copyright?**

The author is generally the first owner of copyright subject to the situations provided under the provisos to Section 17 of the Copyright Act. The author and owner of copyright may be two different people.

## **7. When is Copyright Infringed?**

Copyright is infringed when the act specified in Section 14 relating to the work is carried out by a person other than the owner or without licence from the owner or a competent authority under the Act it constitutes infringement of copyright. [For detailed discussion, please see Chapter 3, Page 18]

## **8. What are the exceptions to Copyright Infringement?**

The exceptions to infringement of copyright are provided under Section 52 of the Copyright Act.

## **9. Is Registration of Copyright compulsory?**

No. Registration of copyright is not compulsory.

## **10. What are the offences under the Copyright Act?**

- Infringement of copyright or other right conferred by the Copyright Act except resale share rights conferred by Section 53A;
- Knowing use of infringing copy of computer programme;
- Possession of plates for purpose of making infringing copies;

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*[For a tabular representation, see Page 29]*

- Circumvention of an effective technological measure applied for the purpose of protecting any of the right conferred by the Copyright Act, with the intention of infringing such rights;
- Knowingly breaching Rights Management Information;
- Making false entries in register etc., for producing or tendering false entries;
- Making false statements for the purpose of deceiving or influencing any authority or officer; and
- Contravention of Section 52A

## 11. What is the punishment for the offence of infringement of copyright and other offences under the Copyright Act?

Offence	Punishment
Sections 51/63	<p>Not less than 6 months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.</p> <p>Provided that where the infringement has not been made for gain in the course of trade or business] the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.</p> <p>Enhanced Penalty on second and subsequent conviction (Section 63A) - Imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees</p> <p>Provided that where the infringement has not been made for gain in the course of trade or business the court may, for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees.</p>
Section 63B	Imprisonment for a term which shall not be less than seven days but which

[For a tabular representation, see Page 29]

Offence	Punishment
	Provided that where the computer programme has not been used for gain or in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgment, not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees.
Section 65	Imprisonment which may extend to two years and shall also be liable to fine.
Section 65A	Imprisonment which may extend to two years and shall also be liable to fine.
Section 65B	Imprisonment which may extend to two years and shall also be liable to fine.
Section 67	Imprisonment which may extend to one year, or with fine, or with both.
Section 68	Imprisonment which may extend to one year, or with fine, or with both.
Section 68A	Imprisonment which may extend to three years and shall also be liable to fine.

## 12. Who can take cognizance of an offence under the Copyright Act?

No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class can try any offence under this Act.

## 13. Is there any appeal against the orders of Magistrate?

Other than the provisions of the Code of Civil Procedure, 1908, the Copyright Act also prescribes the procedure for an appeal from the order of the Magistrate in certain cases such as orders under Section 64 (2) and orders under Section 66 of the Copyright Act. (Section 71)

## 14. Can offences under the Copyright Act be compounded?

No.

## 15. Are the Offences under the Copyright Act bailable?

Offences punishable with maximum sentence of less than three years imprisonment are bailable in nature.

## 16. Whether the offences under the Copyright Act are "warrant-case" or "summons case"?

Offences under the Copyright Act can be "summons-case" or "warrant-case" depending on the nature of the offence. [For what offences are summons or warrant cases under the Copyright Act, please see tabular chart on Page 36]

## 17. Can a police officer seize infringing goods without warrant?

Yes, a police officer not below the rank of sub-inspector has the power to seize infringing copies without a warrant.

## 18. What are the amendments to the Copyright Act and when did they come into effect?

- The Copyright (Amendment) Act, 1983 - 09.08.1984
- The Copyright (Amendment) Act, 1984 - 08.10.1984
- The Copyright (Amendment) Act, 1992 - 28.12.1991
- The Copyright (Amendment) Act, 1994 - 10.05.1995
- The Copyright (Amendment) Act, 1999 - 15.01.2000
- The Copyright (Amendment) Act, 2012 - 21.06.2012

## 19. What major changes have been introduced by the Copyright (Amendment) Act, 2012?

- The term "commercial rental" has been added to the definition clause as Section 2 (fa);
- The definition of "communication to the public" has been amended;
- The definition of "performer" has been amended;
- The term "Rights Management Information" has been included as Section 2(xa);
- Term "visual recording" has been included as Section 2 (xxa);
- Section 17 has been amended to include a proviso "provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses



(b) and (c) shall affect the right of the author in the work referred to in clause (a) of sub-section (1) of section 13";

- Clause (e) of Section 37 has been substituted to read "(e) sells or gives on commercial rental or offer for sale or for such rental, any such sound recording or visual recording referred to in clause (c) or clause (d)";
- Sub-sections (3) and (4) to Section 38 have been omitted;
- New Section - Exclusive Rights of performers has been added as Section 38A;
- New Section - Moral Rights of performers have been added as Section 38B;
- A new Section 53 (Importation of infringing Copies) has been substituted for the old Section 53;
- Section 57 has been amended so as to allow restrain and claim damages for any alteration, mutilation etc. even after the expiry of term of Copyright and also allowing the legal heirs to exercise the right to claim authorship of work;
- New Sections for Protection of Technological Measures and Rights Management Information have been inserted as Section 65A and 65B respectively.

## **20. Is there any measure/provision under the Copyright Act to stop the entry of imported infringing goods/copies in the Indian market? If yes, what is the measure and how is the same to be implemented?**

Yes, Section 53 of the Copyright Act. The owner of any right in a copyrighted work can give notice to the Commissioner of Customs or to any other officer authorized in this behalf by the Central Board of Excise and Customs stating his ownership (along with some proof) and requesting for the infringing copies be treated as prohibited goods.

It should also be noted that in order to control the import of works infringing copyrights, the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 were introduced. Under these Rules, an application along with a general bond and an indemnity bond need to be submitted by the copyright holder with the customs authorities. Once the application is fixed, a Unique Permanent Registration Number (UPRN) number is allotted to the copyright holder which is valid for a period of 5 years.

On his satisfaction as to the ownership of rights in such goods, the Commissioner has the power to detain such goods. It should be noted that the Commissioner has the power to release all such detained goods (in the event of a challenge against the detention by the importer) if the right-holder does not produce before him, any order from a Court of competent jurisdiction as to the temporary or permanent disposal of the detained goods within fourteen days from the date on which the goods were detained.

## 21. What is the term of Copyright protection?

Work	Term of copyright
Published Literary work, Dramatic work, Musical work and Artistic work	Lifetime of author + 60 years from beginning of year commencing after death of author <b>(Section 22)</b>
<b>Anonymous and pseudonymous works</b>	
Published Literary work, Dramatic work, Musical work and Artistic work	60 years from beginning of year commencing after the work is first published. (Section 23(1))
Published Literary work, Dramatic work, Musical work Artistic work where identity of author is disclosed before the expiry of the period mentioned in Section 23(1)	Lifetime of author + 60 years from beginning of year commencing after death of author. <b>(Section 23(2))</b>
<b>Posthumous Works</b>	
Literary work, Dramatic work, Musical work or an Engraving (Artistic Work)	60 years from the beginning of the calendar year commencing after the year in which the work is first published or, where adaptation of the work is published in any earlier year, from the beginning of calendar year next following that year. (Section 24)
Cinematograph film	60 years from beginning of year commencing after publication year <b>(Section 26)</b>
Sound recording	60 years from beginning of year commencing after publication year <b>(Section 27)</b>
Government Works	60 years from beginning of year commencing after the year in which the record is first published
Works of Public Undertakings	60 years from beginning of year commencing after

	the year in which the work is first published
Work	Term of copyright
Works of International Organisations	60 years from beginning of year commencing after the year in which the record is first published
Broadcast Reproduction Rights	25 years from beginning of year commencing after the year in which the broadcast is made <b>(Section 37)</b>
Performer's Rights	50 years from beginning of year commencing after

## 22. Does Copyright exist in a foreign work?

Copyright of nationals of countries that are members of the Berne Convention for the Protection of Literary and Artistic Works, Universal Copyright Convention and the TRIPS Agreement are protected in India through the International Copyright Order.

## 23. Is Copyright of foreign works protected in India?

Yes. Copyrights of works of the countries mentioned in the International Copyright Order are protected in India, as if such works are Indian works.

## 24. Can an author relinquish copyright and, if so, how?

The author of a work may relinquish all or any of the rights comprising the copyright in the work by giving notice in the prescribed Form I to the Registrar of Copyrights or by giving a public notice.

# Chapter 2

## Introduction

This tool kit has been designed in order to generate awareness among the police authorities on copyright law, its practice and enforcement. It is recognized globally that copyright piracy is a serious crime which not only adversely affects the creative potential of the society by denying the creators their legitimate dues, but it also causes huge economic losses to all those who had invested their money in creation of copyrighted materials. Simply put, if a person is accused of piracy, then someone is claiming that the person has unlawfully copied part or all of their work.

Owners of copyright are concerned about piracy/copyright infringement because they do not get paid for the hard work that they put in making the work. Sometimes, they do not even recover the cost of production of their work due to piracy of their work. This acts as a disincentive to create more works in future. Common examples of copyright infringement include computer softwares, video games, music CDs and DVDs. In today's digital world, one can download most pirated versions of music, games and software online.

Globalization has forced copyright issues to the international forefront because a large number of copyrighted products are traded internationally. Protection of copyright, therefore, is a priority matter in the national agenda of many countries especially from the developing world. The estimated industry losses owing to piracy in India are as follows:<sup>1</sup>

Sl. No.	Industry	Estimated Losses (in Rs.)
1.	Books	241 crores
2.	Movie	5,991 crores
3.	Music	2,692 crores
4.	Software	18,306 crores
5.	Video game	811 crores

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<sup>1</sup>Special 301 Report on Copyright Protection and Enforcement, 2013, International Intellectual Property

Besides protecting creative potential of the society, copyright also contributes to a nation on the economic front. Copyright based industries together generate huge employment in the country of its origin. The national economy also benefits from the contribution made by these industries in the form of excise duty, sales tax, income tax etc. from the production and sale of copyrighted products. Given the natural demand for such products from across national boundaries, exports help consolidate country's foreign exchange reserves position. Copyright based industries comprising mainly the print & publishing industry, audio cassette/CD industry, film and video industry and computer softwares etc. contribute handsomely to the state exchequers.

In India, it is estimated that copyright based industries like the print industry, the entertainment and media industry and the software industry including the gaming industry contribute about 5% to the annual GDP. Entertainment tax is collected by the individual State governments at the rates prescribed by them. These range from zero in states like Rajasthan, Punjab, Himachal Pradesh and Jammu and Kashmir to as high as 110% in Jharkhand. Delhi collects entertainment tax at the rate of 15% on the admission price of each ticket. Film piracy therefore, directly causes losses to the state exchequer by denying them the collection of entertainment taxes.

Piracy also leads to the creation of huge amounts of black money in the economy as the sales of pirated materials remain unaccounted and often, this money is used to fund other illegal activities. Therefore, it is extremely important to ensure the protection of copyright laws and end the menace of piracy.

The Copyright Act, 1957 (as amended in 2012) is a forward-looking piece of legislation including all the above mentioned international requirements and the general opinion is that barring a few aspects, the amended Copyright Act is capable of facing copyright challenges of digital technologies including those of Internet. Various features of the Copyright Act have been discussed in greater detail following parts of this tool kit.

# Chapter 3

## Infringement of Copyright

Copyright infringement is an unauthorized act of imitation of the original work or its uses by way of reproduction, communication to public, sale, offer for sale etc. If such unauthorized act is committed by any person, it constitutes copyright infringement which is a civil as well as criminal offence. Copyright owners generally have the right to authorise or prohibit any of the following in relation to their works:

- Copying of the work in any way e.g. photocopying/reproducing a printed page by handwriting, typing or scanning into a computer or taping live or recorded music;
- Issuing copies of the work to the public;
- Public delivery of lectures or speeches etc.;
- Broadcasting of the work, audio/video or including it in a cable programme; and
- Making adaptations of the work such as by translating a literary or dramatic work, transcribing a musical work or converting a computer program into a different computer language or code.

Further, Section 2 (m) of the Copyright Act defines an "infringing copy" in terms of the various works as:

Sl. No.	Work	Infringing copy
1.	Literary work	<p>Reproduction of it other than in cinematographic film</p> <p><b>Example:</b> A writes a poem, B reads it out and records it. The sound recording would be an infringing copy. But if B includes the poem in a movie, the movie would not be an infringing copy. However, B would still be infringing A's copyright in the poem.</p>
2.	Artistic work	<p>Reproduction of it other than in cinematographic film</p> <p><b>Example:</b> X makes a painting. Y prints the painting on a bedsheet. The bedsheet would be an infringing copy.</p>



Sl. No.	Work	Infringing copy
3.	Dramatic work	Reproduction of it other than in cinematographic film  <b>Example:</b> Screenplay of a movie which is an acting form affixed in writing is a dramatic work. Person X copies that work and makes a book out of it. The said book is an infringing copy.
4.	Musical work	Reproduction of it other than in cinematographic film  <b>Example:</b> A makes an instrumental version of the song "kajra re", the instrumental version would be an infringing copy
5.	Cinematographic film	Copy of the film made in any medium, by any means <b>Example:</b> Pirated CDs/DVDs
6.	Sound recording	Any other recording embodying it, made by any means  <b>Example:</b> Pirated CDs/DVDs
7.	Programme/ Performance (in which broadcast right or performer's	Sound recording or cinematographic film of the programme/performance  Example: A goes to watch the shooting of the show "Kaun Banega Crorepati" and makes a video recording of it on his phone. The

## Prohibition on import of Infringing Copies

The importation of infringing copies is also prohibited by Section 53 of the Copyright Act and its corresponding Rule 79 of the Copyright Rules, 2013. As per these provisions, a right holder (or his authorised representative) may give notice to the Commissioner of Customs providing details and proof of his ownership of rights in such work and request him to treat such goods as infringing and therefore, proceed to detain them. It should also be noted that in order to control the import of works infringing copyrights, the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 were introduced. Under these Rules, an application along with a general bond and an indemnity bond need to be submitted by the copyright holder with the customs authorities. Once the application is fixed, a Unique Permanent Registration Number (UPRN) number is allotted to the copyright holder which is valid for a period of 5 years.

On his satisfaction as to the ownership of rights in such goods, the Commissioner has the power to detain such goods. It should be noted that the Commissioner has the power to release all such detained goods (in the event of a challenge against the

detention by the importer) if the right-holder does not produce before him, any order from a Court of competent jurisdiction as to the temporary or permanent disposal of the detained goods within fourteen days from the date on which the goods were detained.

## Infringement of literary works

There exists a considerable chunk of infringers engaged in print piracy in India. Studies estimate that nearly 20-25% of the books sold in India are pirated<sup>2</sup>. This generally takes place in three principal ways:

- i. wholesale reprinting of text and trade books;
- ii. unauthorised translations; and
- iii. commercial photocopying of books/journals

## Infringement of Computer Softwares

Like other copyright based industries, the software industry also faces several forms of piracy. In fact, piracy in software is more than in other works because it is relatively easy to copy softwares in computers especially in personal commuters and for all practical purposes, the pirated version looks and performs in an identical manner as the original. The five principal types of software piracy involve:

- i. **Counterfeiters** - Counterfeiting in the software industry is practiced on massive scale. The most flagrant software counterfeiters produce CDs, documentation and packaging that look very similar to those of the software publisher;



**Counterfeit windows software CD**

<sup>2</sup>Ariel Bogle, *The world of Indian book piracy*, available at <http://www.mhpbooks.com/the-world-of-indian-book-piracy/>

- ii. **Resellers** - Reseller piracy occurs in the software distribution channel, when distributors or dealers either make copies of software onto CDs, or the internal storage/hard disk of computers that they are selling, without authorisation from the software publisher;
- iii. **Mail order houses** - This consists of the unauthorised copying of software onto diskettes, CDs, or other media and distribution of such software by post;
- iv. **Bulletin boards** - Bulletin board pirates engage in unauthorised reproduction and distribution of software via the internet. Typically, this involves an individual computer user who has installed a number of software programmes on his computer, and who allows other users to connect to his computer through the internet and copy the programmes onto their discs. In most cases, the pirate is also an infringer as he has copied the programme onto his own computer without the copyright holder's consent; and
- v. **End-user piracy** - End-user piracy takes place when a user copying software onto hard disks of more computers than the number authorised by the publisher. This form of piracy perhaps takes place on a wider scale than other forms because end-users often make substantial copies of the softwares possessed by them and then distribute or exchange the same.

## Infringement of artistic works

The most common instance of infringement of artistic works is the reproduction of the artistic works on items of sale or on counterfeit products. The infringer uses the artistic labels, logos and devices of popular brands and pastes the same on infringing products such as tiffins, bags, watches, t-shirts, note pads, stationary, etc. For example:



*Infringement of the artistic work in the "Angry birds" & "Ben 10" logo and pictures*

## Infringement of sound recordings

The music and sound recording industry faces three types of piracy:

- i. First, there is a simple way by which songs from different legitimate cassettes/CDs (and thus, different right holders) are copied and put in a single cassette/CD. These are then packaged to look different from the original products and sold in the market. For example, if a person downloads songs of various artists from the internet, saves them on a CD and sells them as a collection in the market, it would amount to infringement of copyright in the sound recordings.



- ii. Second, there is counterfeiting, when songs are copied and packaged to look as close to the original as possible using the same label, logos etc. These products are misleading in the sense that ordinary end users think that they are buying original products. In that case, the infringer not only infringes the sound recording but also the artistic work on the cover of the CD.

## Infringement of Cinematograph Films

All parties involved in the legitimate transaction of films - from the producers to theatre owners lose heavily because of widespread video and cable piracy. The Government also loses because pirates' activities do not bring in any revenue in the form of entertainment tax at theatres and excise duty and sales tax at the points of legitimate production/selling. As stated earlier, this leads to considerable losses to the state exchequers. In India, illegal video recording of movies in theatres is also a major form of piracy of movies which has affected the revenues of movie producers.



*Counterfeit CDs sold at a variety of video libraries across India*

## Online infringement and the Information Technology Act

Piracy over the internet happens in many different ways. Online piracy is on a rise and it is soon to replace physical piracy. Nowadays, one can download anything for free - be it movies, music, softwares or books (ebooks).

According to studies commissioned by the Motion Picture Distributors' Association (MPDA), major international BitTorrent portals were heavily used by Indian downloaders and almost 6.5% of IP addresses located could be traced back to an Indian IP address.

## Intermediary liability under Copyright Act

According to the proviso to Section 52 (c) of the Copyright Act read with Rule 75 of the Copyright Rules, 2013, intermediaries, including Internet Service Providers like Airtel, Reliance, BSNL, MTNL etc. and online service providers (websites) like Youtube, Facebook, Twitter, blogs etc. are under an obligation to refrain from facilitating 'access' to the infringing content on receiving a complaint about the infringing content from the right-holder.

Accordingly, if an intermediary receives a complaint of copyright infringement from the right-holder, it is bound to take steps to refrain access to such content for a period of 21 days, within 36 hours from the receipt of the complaint.

# Chapter 4

## What is not infringement?

Section 52 of the Copyright Act balances individual interests vis-à-vis public interests by providing certain exceptions to copyright infringement i.e. it lays down certain acts that do not amount to infringement of copyright. Inter alia, the following are the important exceptions to infringement of copyright:

- i. Fair dealing in any work for private or personal use, including research; [Section 52 (1) (a) (i)]
- ii. Fair dealing in any work for criticism or review; [Section 52 (1) (a) (ii)]
- iii. Fair dealing in any work for reporting of current events and current affairs (including the reporting of a lecture delivered in public); [Section 52 (1) (a) (iii)]
- iv. Making of copies or adaptations of computer programmes by lawful possessors to utilize it or to make backup copies of it; [Section 52 (1) (aa)]
- v. Making of copies or adaptations of computer programmes for non-commercial personal use; [Section 52 (1) (ad)]
- vi. Reproduction for a judicial proceeding or for reporting of judicial proceedings; [Section 52 (1) (d)]
- vii. Reproduction by a teacher or pupil in the course of instruction, as a part of questions to be answered in an exam, or in answers to such questions; [Section 52 (1) (i)]
- viii. Performance of literary, dramatic, musical work or cinematograph film in the course of activities of an educational institution, provided the audience is limited to students, parents, staff or persons associated with the institution; [Section 52 (1) (j)]
- ix. Playing of recordings in residential complexes, clubs or other not-for-profit organisations; [Section 52 (1) (k)]
- x. Performance of literary, musical or dramatic works by amateur clubs/societies before a non-paying audience, or for the benefit of a religious organisation; [Section 52 (1) (l)]



- xi. Storing any work in any medium by electronic means by a non-commercial public library, if the library already possesses a non-digital copy of the work; [Section 52 (1) (n)]
- xii. Making a painting, drawing, engraving or photograph of a work of architecture; [Section 52 (1) (s)]
- xiii. Reproduction, adaptation, issue of copies or communication to the public of any work in any format for the benefit of persons with disability for their private and personal use, educational purpose or research on a non-profit basis [Section 52 (1) (zb)]

For example, A and B click photograph of the same beautiful tree from the same angle and have identical looking photographs. Both A and B are entitled to separate copyright in their own photograph and one photograph does not infringe the other.

### **Note of Caution:**

Police officials should not assume the role of adjudicating upon the claims and should limit their role to an investigating and implementing agency.

# Chapter 5

## Penalties for Copyright Infringement

The Copyright Act provides the owners of copyright (authors as well as licensees) with a dual legal machinery for enforcement of their rights in the form of both civil and criminal remedies.

### Civil remedies

Civil remedies available to owners of copyright are provided for in Chapter XII of the Copyright Act. These, inter alia include grant of injunctions, damages, declaration of authorship etc.

Civil remedies		
S. No	Provision	
1.	Section 55	Provides for the civil remedies by way of injunction, damages, rendition of accounts etc. Further, sub-section (3) extends discretion to the Courts with respect to costs of the legal proceedings.
2.	Section 58	Provides for additional safeguards for owners of copyrights by creating a deeming fiction in their favour. According to the provision, all infringing copies of any work in which copyright subsists, and all plates used or intended to be used for production of such infringing copies, shall be deemed to be the property of the owner of the copyright.
3.	Section 66	Empowers the Court trying an offence of copyright infringement to order delivery up of all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for

It should be noted that civil remedies for copyright infringement are also available to certain other persons apart from the author of the concerned work. As per Section 54 of the Copyright Act, an "owner of copyright" includes

- i. An exclusive licensee of the work; and
- ii. The publisher of any anonymous or pseudonymous literary, dramatic, musical or artistic work (if name(s) of the author(s) is not disclosed publicly or to the satisfaction of the Copyright Board)

## Criminal remedies

Criminal remedies available to owners of copyright are provided for in Chapter XIII of the Copyright Act. Legal remedies include imprisonment and/or monetary fines depending upon the gravity of the crime.

Criminal remedies		
S. No	Provision	
1.	Section 63	Any person who knowingly infringes or abets the infringement of copyright is considered as an offender and is punishable with a minimum of six months imprisonment which may extend to three years and a fine between fifty thousand and two lakh rupees.
2.	Section 63A	Provides for an enhanced penalty in case of second and subsequent convictions. On conviction, a subsequent offender is punishable with a minimum of one year imprisonment which may extend to three years and a fine between one to two lakh rupees
3.	Section 63B	Any person who knowingly uses an infringing copy of a computer programme an offence which is punishable with a minimum of seven days imprisonment which may extend to three years and a fine between fifty thousand and two lakh rupees.
4.	Section 65	Any person who knowingly makes, or has in possession, any plate for the purpose of making infringing copies of any work in which copyright subsists shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.
5.	Section 65A	Any person who circumvents an effective technological measure applied for the protecting the owner's rights, with the intention of infringing such rights, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.
6.	Section 65B	It makes the removal/alteration of rights management information and distribution/selling of copies of works with such altered RMI an offence punishable with imprisonment which may extend to two years along with fine.
7.	Section 67	Any person makes or causes to be made a false entry in the Register of Copyrights or makes or causes to be made a writing falsely purporting to be a copy of any entry in such register, or produces or tenders or causes to be produced or tendered as evidence any such entry or writing, knowing the same to be false, he shall be punishable with

S. No	Provision	
		imprisonment which may extend to one year, or with fine, or both.
8.	Section 68	Any person makes a false statement or representation knowing the same to be false, with a view to deceive any authority and/or influence any person to do or omit to do anything, he shall be punishable with imprisonment which may extend to one year, or with fine, or with both.
9.	Section 68A	Any person who publishes a sound recording or video film in contravention of Section 52A of the Copyright Act, which mandates the display of particulars of the author, owner and the censor certificate (if required) on them shall be punishable with imprisonment which may extend to three years and also be liable to fine.
10.	Section 69	In case an offence under the Copyright Act is committed by a company or a partnership firm, all directors, partners, managers, secretaries etc. who are responsible for the conduct of the business of the said company/partnership firm shall be guilty of such offence along with the company/partnership firm as the case may be. However, such persons shall not be liable if they prove that they exercised all due diligence to prevent the commission of such offence or it was committed without their knowledge.

## Power of Police to seize infringing copies

According to Section 64 of the Copyright Act, on being satisfied that an offence of infringement of copyright in any work has been, is being or is likely to be committed, all police officers, not below the rank of a sub-inspector have the power to seize, without warrant, all copies of the infringing work as well as all plates used for the purpose of making infringing copies of the work. Such police officer is required to then produce such seized copies and/or plates before a Magistrate as soon as practicable.

## Cognizance

The Courts of the Metropolitan Magistrate or a Judicial Magistrate of first class have jurisdiction in criminal actions relating to copyright infringement. (Section 70)

# Chapter 6

## Applicability of Criminal Law and Procedure

### Relevant provisions under the Indian Penal Code

In addition to the offence of copyright infringement under Section 63 of the Copyright Act, the following offences/provisions under the Indian Penal Code, 1860 are also relevant for effective protection of copyright:

Provision	Remarks
<b>Section 107:</b> Abetment of a thing	Whether Cognizable/ Bailable - Depends as per the offence of which there was a abetment - Triable by Court by which offence abetted is triable - Non - compoundable
<b>Section 120B:</b> Punishment of criminal conspiracy	Whether Cognizable/Bailable - Depends as per the offence of which there was a criminal conspiracy - Triable by Court by which abetment of the offence which is the object of conspiracy is triable - Non - compoundable
<b>Section 174:</b> Non-attendance in obedience to an order from public servant	Non-Cognizable - Bailable - Triable by any Magistrate - Non-Compoundable
<b>Section 177:</b> Furnishing false information	Non-Cognizable - Bailable - Traible by any Magistrate - Non-Compoundable
<b>Section 179:</b> Refusing to answer public servant authorized to question	Non-Cognizable - Bailable- Triable by any Court - Triable by any Magistrate - Non-Compoundable
<b>Section 204:</b> Destruction of document to prevent its production as evidence	Non-Cognizable - Bailable- Triable by Magistrate of the first class - Non-Compoundable
<b>Section 206:</b> Fraudulent removal or concealment of property to prevent its seizure	Non-Cognizable - Bailable- Triable by any Magistrate-Non Compoundable

as forfeited or in execution	
Provision	Remarks
<b>Section 217:</b> Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture	Non-Cognizable - Bailable- Triable by any Magistrate-Non Compoundable
<b>Section 417:</b> Punishment for cheating	Non-Cognizable - Bailable - Triable by any Magistrate - Compoundable by the person cheated with the permission of the court.
<b>Section 420:</b> Cheating and dishonestly inducing delivery of property	Cognizable - Non-bailable-Triable by Magistrate of the first class - Compoundable by the person cheated with the permission of the court.
<b>Section 465:</b> Punishment for forgery	Non-Cognizable - Bailable -Triable by Magistrate of the first class - Non-Compoundable
<b>Section 466:</b> Forgery of record of court or of public register, etc.	Non-Cognizable - Non-bailable - Triable by Magistrate of the first class - Non-compoundable
<b>Section 468:</b> Forgery for purpose of cheating	Cognizable - Non-bailable - Triable by Magistrate of the first class - Non-Compoundable
<b>Section 471:</b> Using as genuine a forged document	Cognizable - Bailable - Triable by Magistrate of the first class - Non-compoundable
<b>Section 481:</b> Using a false property mark	Non-Cognizable - Bailable - Triable by any magistrate - Compoundable by the person to whom loss or injury is caused by such use with the permission of the Court
<b>Section 486:</b> Selling goods	Non-cognizable - Bailable- Triable by any Magistrate -

### Machinery under Criminal Procedure Code to apply

As the offence of infringement of copyright is a penal offence, the Copyright Act prescribes a very limited procedure, the procedure for complaints, prosecution, arrest, investigation, summoning, evidence and trial are all governed by the Code of Criminal Procedure, 1973 (hereinafter, "CrPC") except for those procedures which are specifically provided under the Copyright Act namely, Sections 64, 66 and 70. The Copyright Act is a special Act and hence its provisions will prevail over any inconsistent provisions of the CrPC.

## Classification: Cognizable/Non-Cognizable

A cognizable case is one in which a police officer may arrest without warrant (Section 2 (c) of the CrPC). On the other hand, a non-cognizable case is one in which a police officer does not have the authority to arrest without a warrant (Section 2 (I) of the CrPC). To determine whether specific offences under the Copyright Act are cognizable or non-cognizable, reference needs to be made to Part II of the 1st Schedule of the CrPC, which is as under:

### 1<sup>st</sup> Schedule

#### II - Classification of offences Against Other Laws in the CrPC

Offence	Cognizable or non-cognizable	Bailable or non-bailable	By what Court triable
1	2	3	4
If punishable with death, imprisonment for life, or imprisonment for more than 7 years.	Cognizable	Non-Bailable	Court of Session
If punishable with imprisonment for 3 years, and upwards but not more than 7 years.	Cognizable	Non-Bailable	Magistrate of the first class
If punishable with imprisonment for	Non-cognizable	Bailable	Any Magistrate

As per the above table, Sections 65, 65A, 65B, 67 and 68 of the Copyright Act are non-cognizable and bailable as they entail imprisonment of less than three years.

Offences under Sections 63, 63B, and 68A of the Copyright Act provide for imprisonment up to three years and as per the table above, should fall under Item II of Part II of the 1st Schedule and accordingly be cognizable and non-bailable. However, there are contradicting views on whether such offences are cognizable or not. While the Hon'ble Kerala and Gauhati High Courts have held that such offences are cognizable, the Hon'ble Andhra Pradesh and Delhi High Courts have held otherwise. The decision of the Delhi High Court is presently under appeal before the Hon'ble Supreme Court.



## Classification: Summons-case/Warrant-case

A summons-case is one which is punishable with imprisonment of up to 2 years [Section 2(w)]. On the other hand, a warrant-case is one which is punishable with imprisonment for more than 2 years. [Section 2(x)]

To determine, whether a case is a "summons-case" or "warrant case", one has to see the punishment prescribed for the offence. Offences under the Copyright Act can be "summons-case" or "warrant-case" depending on the nature of the offence. A tabular chart of the offences and their nature is provided below:

Provision	Punishment	Nature
Section 51/63	Not less than 6 months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.	Warrant-Case
	Provided that where the infringement has not been made for gain in the course of trade or business] the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.	
Section 63B	Imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:	Warrant-Case
	Provided that where the computer programme has not been used for gain or in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgment, not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees.	
Section 65	Imprisonment which may extend to two years and shall also be liable to fine.	Summons-Case
Section 65A	Imprisonment which may extend to two years and shall also be liable to fine.	Summons-Case
Section 65B	Imprisonment which may extend to two years and shall also be liable to fine.	Summons-Case

Provision	Punishment	Nature
Section 67	Imprisonment which may extend to one year, or with fine, or with both.	Summons-Case
Section 68	Imprisonment which may extend to one year, or with fine, or with both.	Summons-Case
Section 68A	Imprisonment which may extend to three years and shall also be liable to fine.	Warrant-Case

## Procedure for recordal of complaint and investigation

**Relevant Provisions:** Sections 100, 160, 161, 162, 165, 167, 169, 170, 172, 173 of the CrPC and Section 64 of the Copyright Act

The procedure for recordal of complaint and investigation is generally governed by Chapter XII (Sections 154 to 176) of the CrPC titled "Information to the police and their powers to investigate".

**For Cognizable offences** - Any person aware of the commission of any cognizable offence may give information to the police and may, thereby set the criminal law in motion. Such information is to be given to officer in charge of the police station having jurisdiction to investigate the offence. The information so received shall be recorded in such a form and manner as is provided in Section 154 of the CrPC. The information as recorded under Section 154 is usually known and referred to as the First Information Report or FIR.

If on the basis of the FIR, the station house officer has reason to suspect the commission of a cognizable offence, he is required to send a report of the same to the concerned Magistrate (Section 157, CrPC). Unreasonable delay in sending the said report to the magistrate is bound to affect the prosecution case and might lead to inference adverse to the prosecution case<sup>3</sup>.

If an FIR is not registered by the SHO concerned, the same should be brought to the notice of the higher police officers. If still no FIR is registered, a complaint can be filed before the Magistrate under Section 200 read with Section 156 (3) of the CrPC who may direct the police to register the FIR or may take cognizance of the complaint and keep the complaint with him for further proceedings. As per Section 210 of the CrPC, if there is a complaint case and a police case, both of them will be clubbed by the Magistrate.

<sup>3</sup>*Mahabir Singh vs. State, 1979 Cr LJ 1159 (Delhi High Court)*

**For Non-Cognizable offences** - If any person gives information of the happening of a non-cognizable offence, the police official has to enter the substance of the information in a book to be kept by such an officer. The officer shall then refer the complainant/informant to the magistrate concerned.

Once Magistrate orders for investigation, the police officer may exercise the same power for investigation as an officer-in-charge of a police station may exercise in case of a cognizable offence. A Complaint can also be made to the Magistrate under Section 190 of the CrPC directly. Thereafter, the magistrate may by virtue of Section 156 (3) direct an investigation by the police in similar manner as a cognizable offence.

## Search, Seizure and Arrest

- Once a cognizable offence is made out or investigation in case of a non-cognizable offence is ordered for by the Magistrate, the Police may proceed to obtain evidence in the matter. The power of search and seizure of the police are governed by Section 165, CrPC read with Section 64, Copyright Act. Accordingly, any police officer not below the rank of a sub-inspector, in order to investigate the facts and circumstances of a case, may proceed to the spot after sending a report to the Magistrate recording his satisfaction that an offence under the Copyright Act has been or is being committed. If necessary, he may seize without warrant, all copies of work infringing work of the copyright holder. Such police officer is also authorised to personally conduct a search within the limits of police station of which he is attached. In doing so, the provisions under Section 165 of the CrPC must be followed.
- **Section 100 (4) of the CrPC** mandates that the investigating officer shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or of any other locality if no such inhabitant of the said locality is available or willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do. The search must be conducted in the presence of such witnesses.

In case of a cognizable offence, arrest can be made without a warrant but in case of non-cognizable offences, arrest warrant is required.

## Investigation by Sub-Inspector

The power of police to investigate any cognizable offence is uncontrolled by the Magistrate, and it is only in those cases when the police decides not to investigate the case that the Magistrate can intervene.

## Summoning of witnesses:

During the investigation process, if the investigating officer considers it necessary, he may order in writing, attendance of a witness before himself, residing within the limits of his own or adjoining police stations and examine such witnesses (Sections 160 & 161, CrPC). It is pertinent to note that under Section 162 of the CrPC, statement of such persons, if reduced in writing, need not be signed by the person making it.

When any person is arrested and detained in custody and it appears that the investigation cannot be completed within a period of 24 hours and the police official, not below the rank of Sub-Inspector, believes that the acquisition is well founded, he shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in his diary and forward the accused to such Magistrate seeking further detention for the accused in such custody as such Magistrate thinks fit, a term not exceeding 15 days in whole. (Section 167, CrPC)

If upon investigation, it appears to the police officer that there is not sufficient evidence or reasonable ground of suspicion, release such person from his custody on executing a bond with or without sureties. (Section 169, CrPC)

The investigating officer making an investigation is to maintain a diary setting forth, the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation. (Section 172 (1), CrPC)

## Police Report (Section 173, CrPC)

The investigation should be completed without unnecessary delay and upon such completion, the police official shall prepare his report and forward to a Magistrate empowered to take cognizance of the offence on a police report. The police report shall contain details as referred in Section 173 (2) and more specifically (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so by whom; (e) whether the accused has been arrested; (g) whether he has been forwarded in custody under Section 170.

## Charge

Chapter XVII of the CrPC, Sections 211 to 224 deal with charge. Charges are framed under Section 240 of the CrPC in case of a warrant case. However, there is no formal framing of charge in summons-cases.

## Trial

Under the CrPC, there are different provisions for the trial of a summons-case and a warrant-case. Chapter XIX of the CrPC, Sections 238 to 250 deal with the trial of a warrant-case by the Magistrate. Chapter XX of the CrPC, Sections 251 to 259 deal with the trial of a summons-case by the Magistrate. Since under the Copyright Act the offences are punishable for up to 2 years and more than 2 years, hence the provisions of both summon case and warrant case are applicable, according to the offence made out against the accused.

Chapter XXIA of the CrPC, Sections 265A to 265 L deal with plea bargaining and the same are applicable to the offences under the Copyright Act.

Disposal of the property is dealt under Chapter XXXIV of the CrPC, Sections 451 to 459.

## Some other applicable provisions of CrPC

As almost all the provisions of the CrPC are applicable in a complaint for infringement of copyright, we are listing herein the most relevant ones that would be found useful.

Provision	Offence
Section 41	When police may arrest without warrant
Section 47	Search of place entered by person sought to be arrested
Section 51	Search of arrested persons
Section 91	Summons to produce document or other thing
Section 94	Search of place suspected to contain stolen property, forged documents, etc
Section 100	Persons in charge of closed place to allow search
Section 101	Disposal of things found in search beyond jurisdiction
Section 102	Power of police officer to seize certain property-
Section 154	Information in cognizable cases
Section 155	Information as to non-cognizable cases and investigation of such cases
Section 156	Police officer's power to investigate cognizable cases
Section 157	Procedure for investigation
Section 158	Report how submitted
Section 160	Police Officer's power to require attendance of witnesses
Section 161	Examination of witnesses by police
Section 164	Recording of confessions and statements
Section 168	Report of investigation by subordinate police officer
Section 169	Release of accused when evidence deficient
Section 170	Cases to be sent to Magistrate when evidence is sufficient
Section 173	Report of police officer on completion of investigation
Section 190	Cognizance of offences by Magistrates
Section 200	Examination of complainant
Section 211	Contents of charge
Section 212	Particulars as to time, place and person

Section 213	When manner of committing offence must be stated
Section 214	Words in charge taken in sense of law under which offence is punishable
Provision	Offence
Section 215	Effect of errors
Section 218	Separate charges for distinct offences
Section 219	Three offences of same kind within year may be charged together
Section 220	Trial for more than one offence
Section 239	When accused shall be discharged -
Section 240	Framing of charge
Section 245	When accused shall be discharged
Section 246	Procedure where accused is not discharged
Section 305	Procedure when a corporation or registered society is accused
Section 451	Order for custody and disposal of property pending trial in certain cases.
Section 452	Order for disposal of property at conclusion of trial.
Section 454	Appeal against orders under section 452 or section 453.
Section 457	Procedure by police upon seizure of property.
Section 464	Effect of omission to frame, or absence of, or error in, charge.



# Chapter 7

## Challenges faced in criminal prosecution

As the law on copyright is fairly complex, there are various challenges faced by Courts, copyright owners as well as by the police investigating crime of infringement. In this part, we discuss certain challenges, common myths and issues that create problems in proper and effective enforcement of copyright law.

- In criminal law, any person can set the law in motion i.e. it is not essential that the complaint should be lodged by the owner/author of the copyright only.
- There is a common misconception that copyright infringement is a trivial offence and can be taken lightly in comparison to other heinous crimes. On the contrary, infringement of copyright should be taken seriously as it affects the national economy at large. Today, we all work on computers and use various softwares and applications, which would not have been made without the protection of copyright. The growing IT industry across India is also investing heavily. Infosys, the IT major has recently announced investment of over 100 crores in Noida. This would not have been possible if softwares were not protected under the Copyright Act. Thus, copyright infringement cases should not be taken lightly and all efforts to ensure effective criminal prosecution should be made.
- The most common defence of an accused in a copyright case is that the recovery has been planted on him and infringing articles have not been recovered from his possession. Generally, the accused hires rented accommodation, without any rent agreement/lease deed and his defence is that the said rented accommodation does not belong to him. Hence, care must be taken to recover the infringing articles in the presence of two public persons from the same locality in compliance of the mandatory provisions of Section 100 of the CrPC and the landlord of the said rented accommodation should be made a witness. Other documentary evidence should also be collected during search to link the accused with the said rented accommodation. Once the recovery is proved to be from the accused, it is easier to get the accused convicted.
- Proper record should be maintained and produced before the Court regarding previous involvement of the accused in similar offences. Generally, persons involved in such offences are habitual offenders, as the conviction rate is low and there are high returns in these offences.

- Some authorized distributors of the products are also involved in these kind of offences as it is easier to sell the spurious goods by those authorized distributors along with the original goods. Sometimes there is not much difference in the quality of the original and spurious goods.
- People think that when they purchase a book, music CD or DVD, they have the right to do anything with the copyrighted work. This is incorrect. Although one may own that particular copy of the work, the original author/creator continues to own the copyright in the work itself. The buyer of the book/CD/DVD cannot reproduce or perform the work without the permission of the copyright owner. For example, A purchases a book. The book is now his property. However, the contents of the book are still the intellectual property of the copyright holder. Therefore, A cannot photocopy the book and sell/distribute such photocopies.
- People think copyright is infringed only if one charges fees for a public performance or makes money from the copies distributed by him. This is also incorrect. Copyright is infringed even if somebody does not charge money for the distributing copies or making public performances of copyrighted works. For example, A buys a CD of the movie '3 Idiots' and shows the movie for free to a public gathering. A is guilty of copyright infringement.
- People think that the operating softwares such as Windows, Linux etc. comes free along with the computer/laptop. Also, the people who assemble computers most often download infringing copies of various softwares. This is not correct. Computer softwares are protected by copyright law and knowing use of an infringing copy of a computer software is an offence punishable under Section 63B of the Copyright Act with maximum imprisonment of three years along with fine of upto Rs. 2 lakh.
- People think that when an author or artist dies, the copyright in their works ends and thereafter, one is free to do anything they like with their works. This is wrong. When an author dies, his or her copyright does not die with him. Under Indian copyright law, copyright continues to exist for 60 years after the death of author. For example, the famous author Shri R.K. Narayan who wrote 'Malgudi Days' died in 2001 but his legal heirs continue to receive the benefit of his works as his copyright is valid till the year 2061.
- Another misconception is that if one acknowledges the source of the work, copyright is not infringed. This is absolutely wrong. Including someone else's copyrighted text and quoting the name of the original author may help, but it might not be sufficient to protect against an accusation of copyright infringement,

especially if a lot of content has been copied without taking permission of the author.

- Another common problem is that often, authorities insist on producing a copyright registration certificate before initiating any action as they believe that registration of copyright is mandatory. We have already discussed that copyright registration is not compulsory.
- The lack of awareness about the Copyright Act is also a major problem. According to Section 17, the author of a commissioned work is not the owner of the copyright in the work. For example, if somebody makes a power point presentation or an engineering drawing or some fashion designer's employee makes certain designs during the course of his/her employment, the ownership of copyright automatically gets transferred to the employer without requirement of any license or assignment agreement. The only thing that the employer will have to prove is that the concerned author was his employee and the work was made by the employee during the course of his employment.
- Another major problem is that the police and the public at large understand copyright law in a very limited manner i.e. in terms of physical piracy of books, music, movies etc. However, copyright infringement is a very broad issue. For example, Sarat Chandra Chattopadhyay wrote 'Devdas'. Now, if a movie producer picks his novel and uses the words of his novel as dialogues in the movie, then there would be an infringement of copyright in the literary work of 'Devdas'. However, Bimal Roy's movie 'Devdas' used only the plot and story of Sarat Chandra Chattopadhyay's book and therefore, there was no infringement. The Shah Rukh Khan movie titled 'Devdas' was released in 2002 after 64 years of Sarat Chandra Chattopadhyay's death. Hence, even if it would have used the same content from the novel, there would have been no infringement as the copyright in the novel had expired. Therefore, it is necessary to understand the 'work' that is sought to be protected and the rights flowing from that work.
- Another challenge that is faced is in protection of foreign works. Foreign entities/individuals having copyright in a work are also entitled to protection of their copyright in India on account of the International Copyright Order, 1999 provided under Section 40 of the Copyright Act.
- Getting bail in copyright infringement case is easy. Generally, Courts grant bail within a week. After getting bail, the accused starts making and selling other kinds of spurious goods from a different location. There is no proper check on the accused during trial, as to whether he is still indulged in the same or similar illegal

activities. The police should report such instances to Court so that the bail can be cancelled.

- Another problem is the delay that is caused in filing investigation reports in copyright infringement cases. Even the Courts have taken note of this fact in *M/s. Apronto Tools Pvt. Ltd. vs. State*, 1994 CriLJ 421 that even a small amount of delay in filing of the final investigation report by the police can cause great loss of revenue to the complainant as the accused may flood the market with infringing goods. The Copyright Act also emphasizes on the powers of seizure without warrants under Section 64 as seizures help in collecting important evidence against the accused.
- Another problem relates to the non-awareness of Section 52 of the Copyright Act which provides for certain exceptions to copyright infringement. The Police should be conscious of these exceptions.
- Many times before the raid, the information is leaked to the accused and the raid becomes infructuous. It should be ensured that the information on raids is not leaked.
- The prosecution witness except the police officers are generally not conversant with the court procedure and the manner how to give the statement in the court and to stand the cross examination of the defence lawyer. After the registration of the case, the witness is called after so many years to appear as a witness and by that time, he does not remember most of the facts of the case. Hence, the witnesses should be made well prepared before appearing as witnesses.

## Points to remember

- Ascertain whether the complainant is the copyright holder or is an authorised representative of such copyright holder. If he is an authorised representative, check his authority.
- Understand the nature of the Complaint and the 'work' in respect of which the complaint is being made. In case the complaint is oral the same should be reduced in writing, to be signed by the person complaining.
- Satisfy yourself that the Complainant/Copyright holder has prima facie rights in his favour.
- Though, registration of Copyright is not compulsory, the same will be prima facie proof of ownership if the copyright holder has obtained one. Not holding a Copyright registration will not mean that he does not have copyright.

- In case the question is of infringement of literary works such as books, magazines, pamphlets, brochures etc., the copyright holder has to prima facie prove (1) his rights, interest or association with the work; (2) that the literary work in which he is claiming copyright was in existence prior in time to the infringing work; and (3) the infringing work is a substantial reproduction of the copyrighted work. For example, if the complaint relates to a book, the names of the author and publisher, the publication year and the contents of the original book should be compared with the alleged infringing copy.
- The officer should also ask for any assignment/licence agreement in favour of the person claiming ownership or such license in the work in question.
- In case of cinematograph films, the officer can check the name of the producer appearing on the CD/DVD and also check with the Board of Film Certification Office (Censor Board) to prima facie ensure himself that claimant is the owner of copyright in the movie.
- In case of sound recordings, there would be a written agreement of assignment or license from the author of the relevant work (For example, for lyrics-the lyricist, for music-the music composer etc.) in favour of the owner/assignee or licensee which can be checked to determine existence of rights.
- In case the complainant is trying to protect a foreign work, the officer should confirm that the country, which the copyright holder belongs to, is a signatory to the relevant international convention and is entitled to protection under Section 40 of the Copyright Act.
- The officer must understand the chain of title of the copyrighted work, which is conferred upon the complainant.
- Delays in effecting search and seizure of infringing goods must be avoided on any ground including failure on behalf of the complainant to furnish all requisite documents.
- The officer should not only seize the infringing copies but also the plates/devices that are used to make such infringing copies.
- If the accused claims a defence under Section 52 of the Copyright Act, the officer should prima facie be satisfied that such defence is untenable before proceeding with seizure/arrest. The officer should bear in mind that his role is limited to enforcement and should desist from adjudicating upon the parties' claims.

- The officer should act fast on receiving a complaint and also try to investigate and file his report expeditiously. Even a small amount of delay in copyright infringement cases can cause huge losses to the right-holders.
- Power to seize in terms of Section 64 of the Act should not be exercised in an arbitrary manner.
- It should always be remembered that even if civil proceedings are pending between the complainant and the accused, it does not mean that concurrent criminal proceedings are barred under law. (R. Kalyani vs. Janak C. Mehta & Ors., (2009) 1 SCC 516)
- A proper record regarding the previous involvement of the accused in similar offences should be maintained and produced before the Court. Generally, persons accused of piracy are habitual offenders as the conviction rate is low and there are high returns in these offences.
- Sometimes, even authorized distributors of the products are involved in instances of piracy as it is easier to sell spurious goods by such authorized distributors along with the original goods. Sometimes there is not much difference in the quality of the original and spurious goods as the accused is not paying the sales tax, excise and other taxes and also not incurring any expenses on advertisement and other promotional campaigns of the goods involved. This amount can easily be spent by the accused on maintaining the quality of the goods.

