

# The Copyright (Amendment) Bill, 2010

*A Bill further to amend the Copyright Act, 1957*

Be it enacted by Parliament in the Sixty-first Year of the Republic of India as follows—

**Prefatory Note—Statement of Objects and Reasons.**—The Copyright Act, 1957 was enacted to amend and consolidate the law relating to copyrights in India. To meet with the national and international requirements and to keep the law updated, the Act has been amended five times since then, once each in the years 1983, 1984, 1992, 1994 and 1999. The 1994 amendment was a major one which harmonised the provisions of the Act with Rome Convention, 1961 by providing protection to the rights of performers, producers of phonograms and broadcasting organisations. It also introduced the concept of registration of Copyright Societies for collective management of the rights in each category or copyrighted works. The last amendment in 1999 introduced a few minor changes to comply with the obligations under the Trade Related Aspects of Intellectual Property Rights (TRIPS).

2. The Act is now proposed to be amended with the object of making certain changes for clarity, to remove operational difficulties and also to address certain newer issues that have emerged in the context of digital technologies and the Internet. The two World Intellectual Property Organisation (WIPO) Internet Treaties, namely, WIPO Copyright Treaty (WCT), 1996 and WIPO Performances and Phonograms Treaty (WPPT), 1996 have set the international standards in these spheres. The WCT and the WPPT were negotiated in 1996 to address the challenges posed to the protection of Copyrights and Related Rights by digital technology, particularly with regard to the dissemination of protected material over digital networks such as the Internet. The member countries of the WIPO agreed on the utility of having the Internet treaties in the changed global technical scenario and adopted them by consensus. In order to extend protection of copyright material in India over digital networks such as Internet and other computer networks in respect of literary, dramatic, musical and artistic works, cinematograph films and sound recordings works of performers, it is proposed amend the Act to harmonise with the provisions of the two WIPO Internet Treaties, to the extent considered necessary and desirable. The WCT deals with the protection for the authors of literary and artistic works such as writings, computer programmes; original databases; musical works; audiovisual works; works of fine art and photographs. The WPPT protects certain “related rights” which are the rights of the performers and producers of phonograms. However, India has not yet signed the abovementioned two treaties. Moreover, the main object to make amendments to the Act is that it is considered that in the knowledge society in which we live today, it is imperative to encourage creativity for promotion of culture of enterprise and innovation so that creative people realise their potential and it is necessary to keep pace with the challenges for a fast growing knowledge and modern society.

3. The amendments proposed in the Bill, inter alia seeks to,—

- (i) make the provisions of the Act in conformity with World Intellectual Property Organisation’s WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) and to ensure protection to the copyright holders against circumvention of effective technological measures applied for purpose of protection of their rights and circumvention of rights management information and to provide for punishment for two years and fine for violation of such rights;
- (ii) provide exclusive rights and moral rights to performers in conformity with the WIPO Performances and Phonograms Treaty (WPPT);
- (iii) provide for definition of new terms, namely “commercial rental”, “Rights Management information” and “visual recording” and to amend the existing definitions of the terms “author”, “cinematograph films”, “communication to the public”, “infringing copy”, “performer” and “work of joint authorship”;
- (iv) make provision for storing of copyrights material by electronic means in the context of digital technology and to provide for the liability of internet service providers;
- (v) enhance the term of copyright for photographers to “life plus sixty years” instead of only sixty years as at present;
- (vi) introduce copyright term of seventy years for principal director;
- (vii) extend the copyright term for the producer for another ten years that is from sixty years to seventy years if he enters into an agreement with the principal director;
- (viii) give independent rights to authors of literary and musical works in cinematograph films;
- (ix) clarify that the authors would have rights to receive royalties and the benefits enjoyed through the copyright societies;

- (x) ensure that the authors of the works, in particular, author of the songs included in the cinematograph films or sound recordings, receive royalty for the commercial exploitation of such works;
  - (xi) allow the physically challenged persons to access to copyright material in specialised formats;
  - (xii) make provision for compulsory licensing for certain entities for publication of copyright works in other formats.
  - (xiii) introduce statutory licensing for version recordings of all sound recordings to ensure that while making a sound recording of any literary, dramatic or musical work the interest of the copyright holder is duly protected;
  - (xiv) introduce a system of statutory licensing to broadcasting organisations to access to literary and musical works and sound recordings without subjecting the owners of copyright works to any disadvantages;
  - (xv) make provision for compulsory licence (through the Copyright Board) to publish or communicate to the public such work or translation where the author is dead or unknown or cannot be traced or the owner of the copyright work in such work cannot be found;
  - (xvi) make provision for formulation and administration of copyright societies by the authors instead of the owners;
  - (xvii) make provision for formulation of a tariff scheme by the copyright societies subject to scrutiny by the Copyright Board;
  - (xviii) provide for continuous payment of royalties by aggrieved party pending the appeal before the Copyright Board and the Copyright Board may fix interim tariff pending appeal on the tariff scheme; and
  - (xix) strengthen enforcement of rights by making provision of control of importing infringing copies by the Customs department, disposal of infringing copies and presumption of authorship under civil remedies.
4. The notes on clauses explain in detail the various provisions of the Bill.
5. The Bill seeks to achieve the above objects.

**1. Short title and commencement.**—(1) This Act may be called the **Copyright (Amendment) Act, 2010**.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2. Amendment of Section 2.**—In Section 2 of the Copyright Act, 1957 (14 of 1957) (hereinafter referred to as the principal Act),—

- (i) in clause (d),—
  - (a) in sub-clause (v), for the words “cinematograph film or sound recording, the producer; and”, the words “cinematograph film, the producer and the principal director;” shall be *substituted*;
  - (b) sub-clause (vi) shall be re-numbered as sub-clause (vii) thereof, and before sub-clause (vii) as so re-numbered, the following clause shall be *inserted*, namely—
 

“(vi) in relation to a sound recording, the producer; and”;
- (ii) in clause (f), the portion beginning with the words “on any medium” and ending with the words “produced by any means” shall be *omitted*;
- (iii) after clause (f), the following clause shall be *inserted*, namely—
 

‘(fa) “commercial rental” does not include the rental, lease or lending of a lawfully acquired copy of a computer programme, sound recording, visual recording or cinematograph film for non-profit purposes by a non-profit library or non-profit educational institution.’;
- (iv) for clause (ff), the following shall be *substituted*, namely—
 

‘(ff) “communication to the public” means making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing physical

copies of it, whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available.

*Explanation.*—For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public;’;

(v) in clause (m), the following proviso shall be *inserted*, namely—

“Provided that a copy of a work published in any country outside India with the permission of the author of the work and imported from that country into India shall not be deemed to be an infringing copy;”;

(vi) in clause (qq), the following proviso shall be *inserted*, namely—

“Provided that in a cinematograph film a person whose performance is casual or incidental in nature and, in the normal course of the practice of the industry, is not acknowledged anywhere including in the credits of the film shall not be treated as a performer except for the purpose of clause (b) of Section 38-B;”;

(vii) after clause (x), the following clause shall be *inserted*, namely—

‘(xa) “Rights Management Information” means,—

- (a) the title or other information identifying the work or performance;
- (b) the name of the author or performer;
- (c) the name and address of the owner of rights;
- (d) terms and conditions regarding the use of the rights; and
- (e) any number or code that represents the information referred to in sub-clauses (a) to (d),

but does not include any device or procedure intended to identify the user;’;

(viii) after clause (xx), the following clause shall be *inserted*, namely—

‘(xxa) “visual recording” means the recording in any medium, by any method including the storing of it by any electronic means, of moving images or of the representations thereof, from which they can be perceived, reproduced or communicated by any method;’;

(ix) in clause (z), the following Explanation shall be *inserted*, namely—

*Explanation.*—For the purposes of this clause, a cinematograph film shall be deemed as a work of joint authorship except in cases where the producer and the principal director is the same person;”.

**3. Amendment of Section 14.**—In Section 14 of the principal Act,—

(i) in clause (c), for sub-clause (i), the following sub-clause shall be *substituted*, namely—

“(i) to reproduce the work in any material form including—

- (A) the storing of it in any medium by electronic or other means; or
- (B) depiction in three-dimensions of a two-dimensional work; or
- (C) depiction in two-dimensions of a three-dimensional work;”;

(ii) in clause (d),—

(a) for sub-clause (i), the following sub-clause shall be *substituted*, namely—

“(i) to make a copy of the film, including—

- (A) a photograph of any image forming part thereof; or
- (B) storing of it in any medium by electronic or other means;”;
- (b) for sub-clause (ii), the following sub-clause shall be *substituted*, namely—
  - “(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film;”;
- (iii) in clause (e),—
  - (a) in sub-clause (i), after the words “embodying it”, the words “including storing of it in any medium by electronic or other means” shall be *inserted*;
  - (b) for sub-clause (ii), the following sub-clause shall be *substituted*, namely—
    - “(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;”.

**4. Amendment of Section 15.**—In Section 15 of the principal Act, for the words and figures, “Designs Act, 1911 (2 of 1911)”, wherever they occur, the words figures “Designs Act, 2000 (16 of 2000)” shall be *substituted*.

**5. Amendment of Section 17.**—In Section 17 of the principal Act, in the proviso, after clause (e), the following clauses shall be *inserted*, namely—

“(f) in the case of a cinematograph film produced on or after the commencement of the Copyright (Amendment) Act, 2010, the producer and the principal director shall be treated jointly as the first owner of copyright;

(g) in the case of a cinematograph film produced before the commencement of the Copyright (Amendment) Act, 2010, the principal director shall enjoy the copyright for a period of ten years after the expiry of the duration of copyright in the cinematograph film subject to the principal director entering into a written agreement with the owner of the copyright in the film during the subsistence of copyright:

Provided that an agreement referred to in this clause shall not be necessary in case where the owner and principal director are the same person:

Provided further 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 (l) of Section 13;”.

**6. Amendment of Section 18.**—In Section 18 of the principal Act, in sub-section (1), after the proviso, the following provisos shall be *inserted*, namely—

“Provided further that no such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work:

Provided also that the author of the literary or musical work included in a cinematograph film or sound recording shall not assign the right to receive royalties from the utilisation of such work in any form other than as part of the cinematograph film or sound recording except to the legal heirs or to a copyright society for collection and distribution and any agreement to the contrary shall be void.”.

**7. Amendment of Section 19.**—In Section 19 of the principal Act,—

- (i) in sub-section (3), for the words “royalty payable, if any”, the words “royalty and any other consideration payable” shall be *substituted*;
- (ii) after sub-section (7), the following sub-sections shall be *inserted*, namely—
  - “(8) The assignment of copyright in any work contrary to the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member shall be void.
  - (9) No assignment of the copyright in any work to make a cinematograph film or sound recording shall affect the right of the author of the work to claim

royalties or any other consideration payable in case of utilisation of the work in any form other than as part of the cinematograph film or sound recording.”.

**8. Amendment of Section 19-A.**—In Section 19-A of the principal Act, in sub-section (2), in the second proviso, for the words “Provided further that”, the following shall be *substituted*, namely—

“Provided further that, pending the disposal of an application for revocation of assignment under this sub-section, the Copyright Board may pass such order, as it deems fit regarding implementation of the terms and conditions of assignment including any consideration to be paid for the enjoyment of the rights assigned:

Provided also that”.

**9. Amendment of Section 21.**—In Section 21 of the principal Act,—

- (i) in sub-section (1), for the words “the Registrar of Copyrights”, the words “the Registrar of Copyrights or by way of public notice” shall be *substituted*;
- (ii) after sub-section (2), the following sub-section shall be *inserted*, namely—

“(2-A) The Registrar of Copyrights shall, within fourteen days from the publication of the notice in the Official Gazette, post the notice on the official website of the Copyright Office so as to remain in the public domain for a period of not less than three years.”.

**10. Amendment of Section 22.**—In Section 22 of the principal Act, the brackets and words “(other than a photograph)” shall be *omitted*.

**11. Omission of Section 25.**—Section 25 of the principal Act shall be *omitted*.

**12. Amendment of Section 26.**—In Section 26 of the principal Act, the following proviso shall be *inserted*, namely—

“Provided that in the case of a principal director, the copyright shall subsist until seventy years from the beginning of the calendar year next following the year in which the film is published.”.

**13. Amendment of Section 30.**—In Section 30 of the principal Act, for the words “writing signed by him”, the words “writing by him” shall be *substituted*.

**14. Amendment of Section 30-A.**—In Section 30-A of the principal Act and in its marginal heading, for the words, figures and letter, “Sections 19 and 19-A”, the words and figures “Section 19” shall be *substituted*.

**15. Amendment of Section 31.**—In Section 31 of the principal Act,—

- (i) in sub-section (1),—
  - (a) for the words “any Indian work”, the words “any work” shall be *substituted*;
  - (b) for the words “licence to the complainant” the words “licence to such person or persons who, in the opinion of the Copyright Board, is or are qualified to do so” shall be *substituted*;
  - (c) the Explanation shall be *omitted*;
- (ii) sub-section (2) shall be *omitted*.

**16. Amendment of Section 31-A.**—In Section 31-A of the principal Act,—

- (i) in the marginal heading, for the words “Indian works”, the words “or published works” shall be *substituted*;
- (ii) for sub-section (1), the following sub-section shall be *substituted*, namely—

“(1) Where, in the case of any unpublished work or any work published or communicated to the public and the work is withheld from the public in India, the author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found, any person may apply to the Copyright Board for

a licence to publish or communicate to the public such work or a translation thereof in any language.”.

**17. Insertion of new Sections 31-B, 31-C and 31-D.**—After Section 31-A of the principal Act, the following sections shall be *inserted*, namely—

‘31-B. *Compulsory licence for benefit of disabled.*—(1) An organisation, registered under Section 12-A of the Income Tax Act, 1961 (43 of 1961) and working primarily for the benefit of persons with disability, and recognised under Chapter X of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), may apply to the Copyright Board, in such form and manner and accompanied by such fee as may be prescribed, for a compulsory licence to publish any work in which copyright subsists for the benefit of such persons, in a case to which clause (zb) of sub-section (1) of Section 52 does not apply and the Copyright Board shall dispose of such application as expeditiously as possible and endeavour shall be made to dispose of such application within a period of two months from the date of receipt of the application.

(2) The Copyright Board may, on receipt of an application under sub-section (1), inquire, or direct such inquiry as it considers necessary to establish the credentials of the applicant and satisfy itself that the application has been made in good faith.

(3) If the Copyright Board is satisfied, after giving to the owners of rights in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, that a compulsory licence needs to be issued to make the work available to the disabled, it may direct the Registrar of Copyrights to grant to the applicant such a licence to publish the work.

(4) Every compulsory licence issued under this section shall specify the means and format of publication, the period during which the compulsory licence may be exercised and, in the case of issue of copies, the number of copies that may be issued:

Provided that where the Copyright Board has issued such a compulsory licence it may, on a further application and after giving reasonable opportunity to the owners of rights, extend the period of such compulsory licence and allow the issue of more copies as it may deem fit.

(5) The Copyright Board may specify the number of copies that may be published without payment of royalty and may fix the rate of royalty for the remaining copies.

31-C. *Statutory licence for cover versions.*—(1) Any person desirous of making a cover version, being a sound recording in respect of any literary, dramatic or musical work, where sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work, may do so subject to the provisions of this section:

Provided that such sound recordings shall be in the same medium as the last recording, unless the medium of the last recording is no longer in current commercial use.

(2) The person making the sound recordings shall give prior notice of his intention to make the sound recordings in the manner as may be prescribed, and provide in advance copies of all covers or labels with which the sound recordings are to be sold, and pay in advance, to the owner of rights in each work royalties in respect of all copies to be made by him, at the rate fixed by the Copyright Board in this behalf:

Provided that such sound recordings shall not be sold or issued in any form of packaging or with any cover or label which is likely to mislead or confuse the public as to their identity, and in particular shall not contain the name or depict in any way any performer of an earlier sound recording of the same work or any cinematograph film in which such sound recording was incorporated and, further, shall state on the cover that it is a cover version made under this section.

(3) The person making such sound recordings shall not make any alteration in the literary or musical work which has not been made previously by or with the consent of

the owner of rights, or which is not technically necessary for the purpose of making the sound recordings:

Provided that such sound recordings shall not be made until the expiration of five calendar years after the end of the year in which the first sound recordings of the work was made.

(4) One royalty in respect of such sound recordings shall be paid for a minimum of fifty thousand copies of each work during each calendar year in which copies of it are made:

Provided that the Copyright Board may, by general order, fix a lower minimum in respect of works in a particular language or dialect having regard to the potential circulation of such works.

(5) The person making such sound recordings shall maintain such registers and books of account in respect thereof, including full details of existing stock as may be prescribed and shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording:

Provided that if on a complaint brought before the Copyright Board to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this section, the Copyright Board is, prima facie, satisfied that the complaint is genuine, it may pass an order ex parte directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty.

*Explanation.*—For the purposes of this section “cover version” means a sound recording made in accordance with this section.

31-D. *Statutory licence for radio broadcasting of literary and musical works and sound recording.*—(1) Any broadcasting organisation desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published may do so subject to the provisions of this section.

(2) The broadcasting organisation shall give prior notice, in such manner as may be prescribed, of its intention to broadcast the work stating the duration and territorial coverage of the broadcast, and shall pay to the owner of rights in each work royalties in the manner and at the rate fixed by the Copyright Board.

(3) In fixing the manner and the rate of royalty under sub-section (2), the Copyright Board may require the broadcasting organisation to pay an advance to the owners of rights.

(4) The names of the authors and the principal performers of the work shall, except in case of the broadcasting organisation communicating such work by way of performance, be announced with the broadcast.

(5) No fresh alteration to any literary or musical work, which is not technically necessary for the purpose of broadcasting, other than shortening the work for convenience of broadcast, shall be made without the consent of the owners of rights.

(6) The broadcasting organisation shall—

- (a) maintain such records and books of account, and render to the owners of rights such reports and accounts; and
- (b) allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such broadcast,

in such manner as may be prescribed.

(7) Nothing in this section shall affect the operation of any licence issued or any agreement entered into before the commencement of the Copyright (Amendment) Act, 2010.’.

**18. Amendment of Section 33.**—In Section 33 of the principal Act,—

- (i) in sub-section (1),—
  - (a) for the words, brackets and figures “the Copyright (Amendment) Act, 1994”, wherever they occur, the words, brackets and figures “the Copyright (Amendment) Act, 2010” shall be *substituted*;
  - (b) for the words “No person or association of persons”, the words “No association of authors” shall be *substituted*;
  - (c) in the first proviso, for the words “owner of copyright”, the words “author of work” shall be *substituted*;
  - (d) in the second proviso, for the words “a performing rights society”, the words “the copyrights societies” shall be *substituted*;
- (ii) in sub-section (3), for the words “owner of rights”, the words “author of works” shall be *substituted*.
- (iii) in sub-sections (4) and (5), for the words “owner of rights”, the words “author of works” shall be *substituted*.

**19. Insertion of new Section 33-A.**—After Section 33 of the principal Act, the following section shall be *inserted*, namely—

“33-A. *Tariff Scheme by copyright societies.*—(1) Every copyright society shall publish its Tariff Scheme in such manner as may be prescribed.

(2) Any person who is aggrieved by the tariff scheme may appeal to the Copyright Board and the Board may, if satisfied after holding such inquiry as it may consider necessary, make such orders as may be required to remove any unreasonable element, anomaly or inconsistency therein:

Provided that the aggrieved person shall pay to the copyright society any fee as may be prescribed that has fallen due before making an appeal to the Copyright Board and shall continue to pay such fee until the appeal is decided, and the Board shall not issue any order staying the collection of such fee pending disposal of the appeal:

Provided further that the Copyright Board may after hearing the parties fix an interim tariff and direct the aggrieved parties to make the payment accordingly pending disposal of the appeal.”

**20. Amendment of Section 34.**—In Section 34 of the principal Act, for the words “owner of rights”, wherever they occur, the words “author of works” shall be *substituted*.

**21. Omission of Section 34-A.**—Section 34-A of the principal Act shall be *omitted*.

**22. Amendment of Section 35.**—In Section 35 of the principal Act and its marginal heading,—

- (a) for the words “owners of rights”, wherever they occur, the words “author of work” shall be *substituted*;
- (b) in sub-section (1), in clause (c), for the word “owners”, the word “author” shall be *substituted*.

**23. Amendment of Section 36-A.**—In Section 36-A of the principal Act,—

- (a) for the words “performing rights society”, the words “copyright society” shall be *substituted*;
- (b) for the words, brackets and figures “the Copyright (Amendment) Act, 1994 (38 of 1994)”, the words, brackets and figures “the Copyright (Amendment) Act, 2010” shall be *substituted*.

**24. Amendment of Section 37.**—In Section 37 of the principal Act, in sub-section (3), for clause (e), the following clause shall be *substituted*, namely—

“(e) sells or gives on commercial rental or offer for sale or for such rental, any such sound recording or visual or recording referred to in clause (c) or clause (d),”.

**25. Amendment of Section 38.**—In Section 38 of the principal Act, sub-sections (3) and (4) shall be *omitted*.

**26. Insertion of new Sections 38-A and 38-B.**—After Section 38 of the principal Act, the following sections shall be *inserted*, namely—

“38-A. *Exclusive right of performers.*—(1) Without prejudice to the rights conferred on authors, the performer’s right which is an exclusive right subject to the provisions of this Act to do or authorise for doing any of the following acts in respect of the performance or any substantial part thereof, namely—

- (a) to make a sound recording or a visual recording of the performance, including—
  - (i) reproduction of it in any material form including the storing of it in any medium by electronic or any other means;
  - (ii) issuance of copies of it to the public not being copies already in circulation;
  - (iii) communication of it to the public;
  - (iv) selling or giving it on commercial rental or offer for sale or for commercial rental any copy of the recording;
- (b) to broadcast or communicate the performance to the public except where the performance is already broadcast.

(2) Once a performer has, by written agreement, consented to the incorporation of his performance in a cinematograph film he shall not, in the absence of any contract to the contrary, object to the enjoyment by the procedure of the film of the performer’s right in the same film:

Provided that, notwithstanding anything contained in this sub-section, the performer shall be entitled for royalties in case of making of the performances for commercial use.

38-B. *Moral rights of the performer.*—The performer of a performance shall, independently of his right after assignment, either wholly or partially of his right, have the right,—

- (a) to claim to be identified as the performer of his performance except where omission is dictated by the manner of the use of the performance; and
- (b) to restrain or claim damages in respect of any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation.

*Explanation.*—For the purposes of this clause, it is hereby clarified that mere removal of any portion of a performance for the purpose of editing, or to fit the recording within a limited duration, or any other modification required for purely technical reasons shall not be deemed to be prejudicial to the performer’s reputation.”.

**27. Substitution of a new section for Section 39-A.**—For Section 39-A of the principal Act, the following section shall be *substituted*, namely—

“39-A. *Certain provisions to apply in case of broadcast reproduction right and performer’s rights.*—(1) Sections 18, 19, 30, 30-A, 33, 33-A, 53, 55, 58, 63, 64, 65, 65-A, 65-B and 66 shall, with necessary adaptations and modifications, apply in relation to the broadcast reproduction right in any broadcast and the performer’s right in any performance as they apply in relation to copyright in a work:

Provided that where copyright or performer’s right subsists in respect of any work or performance that has been broadcast, on licence to reproduce such broadcast, shall take without the consent of the owner of right or performer, as the case may be, or both of them:

Provided further that the broadcast reproduction right or performer’s right shall not subsist in any broadcast or performance if that broadcast or performance is an infringement of the copyright in any work.

(2) The broadcast reproduction right or the performer's right shall not affect the separate copyright in any work in respect of which, the broadcast or the performance, as the case may be, is made."

**28. Amendment of Section 40.**—In Section 40 of the principal Act, in the proviso, in clause (iii), after the words "the order relates" the words "but such a term of copyright shall not exceed the term of copyright provided under this Act" shall be *inserted*.

**29. Amendment of Section 40-A.**—In Section 40-A of the principal Act, in sub-section (2), in clause (ii), the following proviso shall be *inserted*, namely—

"Provided that it does not exceed the period provided under this Act;"

**30. Amendment of Section 45.**—In Section 45 of the principal Act, in sub-section (1), in the proviso,—

- (i) for the words "relation to any goods", the words "relation to any goods or service" shall be *substituted*;
- (ii) for the words and figures "Section 4 of the Trade and Merchandise Marks Act, 1958 (43 of 1958)" the words and figures "Section 3 of the Trade Marks Act, 1999 (47 of 1999)" shall be *substituted*.

**31. Amendment of Section 52.**—In Section 52 of the principal Act, in sub-section (1),—

- (i) for clause (a), the following clause shall be *substituted*, namely—
  - "(a) a fair dealing with any work, not being a computer programme, for the purposes of—
  - (i) private or personal use, including research;
  - (ii) criticism or review, whether of that work or of any other work;
  - (iii) the reporting of current events, including the reporting of a lecture delivered in public.

*Explanation.*—The storing of any work in any electronic medium for the purposes mentioned in this clause, including the incidental storage of any computer programme which is not itself an infringing copy for the said purposes, shall not constitute infringement of copyright.;"

- (ii) for clauses (b), (c), (d), (e), (f), (g), (h), (i) and (j), the following shall be *substituted*, namely—

"(b) the transient and incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public;

(c) transient and incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy:

Provided that if the person responsible for the storage of a copy, on a compliant from which any person has been prevented, he may require such person to produce an order within fourteen days from the competent court for the continued prevention of such storage;

(d) the reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;

(e) the reproduction or publication of any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature;"

(f) the reproduction of any work in a certified copy made or supplied in accordance with any law for the time being in force;

(g) the reading or recitation in public of reasonable extracts from a published literary or dramatic work;

(h) the publication in a collection, mainly composed of non-copyright matter, bona fide intended for instructional use, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for such use in which copyright subsists:

Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

*Explanation.*—In the case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more of those authors in collaboration with any other person;

(i) the reproduction of any work—

(i) by a teacher or a pupil in the course of instruction; or

(ii) as part of the questions to be answered in an examination; or

(iii) in answers to such questions;

(j) the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a sound recording if the audience is limited to such staff and students, the parents and guardians of the students and persons connected with the activities of the institution or the communication to such an audience of a cinematograph film or sound recording;”;

(iii) for clause (n), the following clause shall be *substituted*, namely—

“(n) the storing of a work in any medium by electronic means by a non-commercial public library, for preservation if the library already possesses a non-digital copy of the work;”;

(iv) in clause (o), for the words “public library”, the words, “non-commercial public library” shall be *substituted*;

(v) after clause (v), the following clause shall be *inserted*, namely—

“(w) the making of a three-dimensional object from a two-dimensional artistic work, such as a technical drawing, for the purposes of industrial application of any purely functional part of a useful device;

(vi) in clause (y), for the words “dramatic or”, the words “dramatic, artistic or” shall be *substituted*;

(vii) after clause (za) and the Explanation thereunder, the following clauses shall be *inserted*, namely—

“(zb) the adaptation, reproduction, issue of copies or communication to the public of any work in a format, including sign language, specially designed only for the use of persons suffering from a visual, aural or other disability that prevents their enjoyment of such works in their normal format;

(zc) the importation of copies of any literary or artistic work, such as labels, company logos or promotional or explanatory material, that is purely incidental to other goods or products being imported lawfully.”.

**32. Omission of Section 52-B.**—Section 52-B of the principal Act shall be *omitted*.

**33. Substitution of new section for Section 53.**—For Section 53 of the principal Act, the following section shall be *substituted*, namely—

“53. *Importation of infringing copies.*—(1) The owner of any right conferred by this Act in respect of any work or any performance embodied in such work, or his duly authorised agent, may give notice in writing to the Commissioner of Customs, or to any other officer authorised in this behalf by the Central Board of Excise and Customs,—

- (a) that he is the owner of the said right, with proof thereof; and
- (b) that he requests the Commissioner for a period specified in the notice, which shall not exceed one year, to treat infringing copies of the work as prohibited goods, and that infringing copies of the work are expected to arrive in India at a time and a place specified in the notice.

(2) The Commissioner, after scrutiny of the evidence furnished by the owner of the right and on being satisfied may, subject to the provisions of sub-section (3), treat infringing copies of the work as prohibited goods that have been imported into India, excluding goods in transit:

Provided that the owner of the work deposits such amount as the Commissioner may require as security having regard to the likely expenses on demurrage, cost of storage and compensation to the importer in case it is found that the works are not infringing copies.

(3) When any goods treated as prohibited under sub-section (2) have been detained, the Customs Officer detaining them shall inform the importer as well as the person who gave notice under sub-section (1) of the detention of such goods within forty-eight hours of their detention.

(4) The Customs Officer shall release the goods, and they shall no longer be treated as prohibited goods, if the person who gave notice under sub-section (1) does not produce any order from a court having jurisdiction as to the temporary or permanent disposal of such goods within fourteen days from the date of their detention.”

**34. Amendment of Section 55.**—In Section 55 of the principal Act, in sub-section (2), for the portion beginning with the words “a name purporting to be” and ending with the words “as the case may be, appears”, the following shall be *substituted*, namely—

“or, subject to the provisions of sub-section (3) of Section 13, a cinematograph film or sound recording, a name purporting to be that of the author, or the publisher, as the case may be, of that work, appears”.

**35. Amendment of Section 57.**—In Section 57 of the principal Act,—

- (i) in sub-section (1), in clause (b), the words “which is done before the expiration of the term of copyright” shall be *omitted*;
- (ii) in sub-section (2), the words “other than the right to claim authorship of the work” shall be *omitted*.

**36. Insertion of new Sections 65-A and 65-B.**—After Section 65 of the principal Act, the following sections shall be *inserted*, namely—

“65-A. *Protection of technological measures.*—(1) Any person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by this Act, 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.

(2) Nothing in sub-section (1) shall prevent any person from,—

- (a) doing anything referred to therein for a purpose not expressly prohibited by this Act:

Provided that any person facilitating circumvention by another person of a technological measure for such a purpose shall maintain a complete record of such other person including his name, address and all relevant particulars necessary to identify him and purpose for which he has been facilitated; or

- (b) doing anything necessary to conduct encryption research using a lawfully obtained encrypted copy; or
- (c) conducting any lawful investigation; or
- (d) doing anything necessary for the purpose of testing the security of a computer system or a computer network with the authorisation of its owner; or
- (e) operator; or
- (f) doing anything necessary to circumvent technological measures intended for identification or surveillance of a user; or
- (g) taking measures necessary in the interest of national security.

65-B. Protection of Rights Management Information.—Any person, who knowingly,—

- (i) removes or alters any rights management information without authority, or
- (ii) distributes, imports for distribution, broadcasts or communicates to the public, without authority, copies of any work, or performance knowing that electronic rights management information has been removed or altered without authority,

shall be punishable with imprisonment which may extend to two years and shall also be liable to fine:

Provided that if the rights management information has been tampered with in any work, the owner of copyright in such work may also avail of civil remedies provided under Chapter XII against the persons indulging in such acts.”.

**37. Amendment of Section 66.**—In Section 66 of the principal Act, after the words “delivered up to the owner of the copyright”, the words “or may make such order as it may deem fit regarding the disposal of such copies or plates” shall be *inserted*.

**38. Amendment of Section 78.**—In Section 78 of the principal Act, in sub-section (2),—

- (i) after clause (c), the following clauses shall be *inserted*, namely—
    - “(cA) the form and manner in which an organisation may apply to the Copyright Board for compulsory licence for disabled and the fee which may accompany such application under sub-section (1) of Section 31-B;
    - (cB) the manner in which a person making sound recording may give prior notice of his intention to make sound recording under sub-section (2) of Section 31-C;
    - (cC) the register and books of account and the details of existing stock which a person making sound recording may maintain under sub-section (5) of Section 31-C;
    - (cD) the manner in which prior notice may be given by a broadcasting organisation under sub-section (2) of Section 31-D;
    - (cE) the reports and accounts which may be maintained under clause (a), and the inspection of records and books of account which may be made under clause (b) of sub-section (6) of Section 31-D;”;
  - (ii) after clause (cc), the following clauses shall be *inserted*, namely—
    - “(ccA) the manner in which a copyright society may publish its Tariff Scheme under sub-section (1) of Section 33-A;
    - (ccB) the fee which is to be paid before filing an appeal to the Copyright Board under sub-section (2) of Section 33-A;”;
  - (iii) clause (db) shall be *omitted*.
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