

TO BE INTRODUCED IN RAJYA SABHA

Bill No. XXIV of 2010

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:—

1. (1) This Act may be called the Copyright (Amendment) Act, 2010.Short title and
commence-
ment.

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

14 of 1957.

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

(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 38B;”;

(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. In section 14 of the principal Act,—

Amendment
of section 14.

(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;”.

2 of 1911.
16 of 2000.

4. In section 15 of the principal Act, for the words and figures, “Designs Act, 1911”, wherever they occur, the words and figures “Designs Act, 2000” shall be substituted.

Amendment
of section 15.

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

Amendment
of section 17.

“(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 (1) of section 13;”.

- Amendment of section 18. **6.** 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.”.
- Amendment of section 19. **7.** 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.”.
- Amendment of section 19A. **8.** In section 19A 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”.
- Amendment of section 21. **9.** 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:—
- “(2A) 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.”.
- Amendment of section 22. **10.** In section 22 of the principal Act, the brackets and words “(other than a photograph)” shall be omitted.
- Omission of section 25. **11.** Section 25 of the principal Act shall be omitted.
- Amendment of section 26. **12.** 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. In section 30 of the principal Act, for the words “writing signed by him”, the words “writing by him” shall be substituted. Amendment of section 30.

14. In section 30A of the principal Act and in its marginal heading, for the words, figures and letter, “section 19 and 19A”, the word and figures “section 19” shall be substituted. Amendment of section 30A.

15. In section 31 of the principal Act,— Amendment of section 31.

(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. In section 31A of the principal Act,— Amendment of section 31A.

(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. After section 31A of the principal Act, the following sections shall be inserted, namely:— Insertion of new sections 31B, 31C, and 31D.

43 of 1961.

1 of 1996.

‘31B. (1) An organisation, registered under section 12A of the Income-tax Act, 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, 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. Compulsory licence for benefit of disabled.

(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.

Statutory
licence for
cover
versions.

31C. (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.

31D. (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.

Statutory licence for radio broadcasting of literary and musical works and sound recording.

(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. In section 33 of the principal Act,—

Amendment of section 33.

(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. After section 33 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 33A.

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

Tariff Scheme by copyright societies.

(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.”.

- Amendment of section 34. **20.** In section 34 of the principal Act, for the words “owner of rights”, wherever they occur, the words “author of works” shall be substituted.
- Omission of section 34A. **21.** Section 34A of the principal Act shall be omitted.
- Amendment of section 35. **22.** 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.
- Amendment of section 36A. **23.** In section 36A 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”, the words, brackets and figures “the Copyright (Amendment) Act, 2010” shall be substituted.
- Amendment of section 37. **24.** 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 recording referred to in clause (c) or clause (d), ”.
- Amendment of section 38. **25.** In section 38 of the principal Act, sub-sections (3) and (4) shall be omitted.
- Insertion of new sections 38A and 38B. **26.** After section 38 of the principal Act, the following sections shall be inserted, namely:—
- Exclusive right of performers. **“38A. (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 producer 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.

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

(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. For section 39A of the principal Act, the following section shall be substituted, Substitution of a new section for section 39A.
namely:—

“39A. (1) Sections 18,19, 30, 30A, 33, 33A, 53, 55, 58, 63, 64, 65, 65A, 65B 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: Certain provisions to apply in case of broadcast reproduction right and performer’s rights.

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. 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. Amendment of section 40.

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

“Provided that it does not exceed the period provided under this Act;”.

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

(i) for the words “relation to any goods”, the words “relation to any goods or services” shall be substituted;

(ii) for the words and figures “section 4 of the Trade and Merchandise Marks Act, 1958” the words and figures “section 3 of the Trade Marks Act, 1999” shall be substituted.

43 of 1958.
47 of 1999.

Amendment
of section 52.

31. 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 complaint 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. Section 52B of the principal Act shall be omitted.

Omission of section 52B.

33. For section 53 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 53.

“53. (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,—

Importation of infringing copies.

(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.”.

Amendment of section 55.

34. 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”.

A m e n d m e n t of section 57.

35. 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.

Insertion of new sections 65A and 65B.

36. After section 65 of the principal Act, the following sections shall be inserted, namely:—

Protection of technological measures.

“65A. (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 the 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.

65B. 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,

Protection of
Rights
Management
Information.

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. 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.

Amendment
of section 66.

38. 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 31B;

(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 31C;

(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 31C;

(cD) the manner in which prior notice may be given by a broadcasting organisation under sub-section (2) of section 31D;

(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 31D;”;

(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 33A;

(ccB) the fee which is to be paid before filing an appeal to the Copyright Board under sub-section (2) of section 33A;”;

(iii) clause (db) shall be omitted.

Amendment
of section 78.

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 the 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 of 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 above-mentioned 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.

KAPIL SIBAL.

NEW DELHI;
The 30th March, 2010.

Notes on clauses

Clause 1.—This clause provides for the short title and commencement of the proposed legislation.

Clause 2.—This clause seeks to amend section 2 of the Copyright Act, 1957 (hereinafter referred to as 'the Act') relating to interpretation.

Clause (d) of section 2 of the Act defines the word "author". Sub-clause (v) of the said clause (d) provides that in relation to a cinematograph film or sound recording, the author of the works is the producer. It is proposed to amend the aforesaid sub-clause so as to provide that both the producer and the principal director are authors of a cinematograph film. Sub-clause (vi) provides that in case of any literary, dramatic, musical or artistic work, which is computer-generated, the author is the person who causes the work to be created. It is proposed to renumber the aforesaid sub-clause as sub-clause (vii) and to insert a new sub-clause (vi) providing that in relation to a sound recording, the producer shall be the author.

Clause (f) of the aforesaid section 2 defines "cinematograph film" to mean any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films. It is proposed to amend the aforesaid clause (f) by omitting the words "on any medium produced through a process from which a moving image may be produced by any means".

The proposed new clause (fa) seeks to provide that the expression "commercial rental" does not include 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.

Clause (ff) of section 2 defines the term "communication to the public" which means making any work 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 copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available. It is proposed to amend the aforesaid clause in order to extend the communication to the public simultaneously or at places and times chosen individually.

Clause (m) of section 2 defines the expression "infringing copy" as a reproduction of a literary, dramatic, musical or artistic work or a copy of a cinematograph film made on any medium by any means or any other recording embodying the same sound recording, made by any means or the sound recording or a cinematographic film of broadcasting of a programme or performance if reproduction of sound recording is made or imported in contravention of the provisions of the Act. It is proposed to insert a proviso to the aforesaid clause so as to provide 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.

Clause (qq) of section 2 defines the word "performer" which includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance. It is proposed to insert a proviso to the aforesaid clause so as to provide that in a cinematograph film a person whose performance is casual or incidental in nature and, in the normal course of industry practice, 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 38B.

It is proposed to insert a new clause (xa) in section 2 in order to define the term "Rights Management Information", which means the title or other information identifying the work or performance, the name of the author or performer, the name and address of the

owner of rights, terms and conditions regarding the use of the rights and the number or code that represents the above information but does not include any device or procedure intended to identify the user.

It is also proposed to insert a new clause (xxa) in order to define the expression "visual recording", which means the recording in any medium, by any method including the storing of it by electronic means, of moving images or of the representations thereof, from which they can be perceived, reproduced or communicated by any method.

Clause (z) defines the term "work of joint authorship" which means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors. It is proposed to insert an *Explanation* to the aforesaid clause clarifying that for the purpose of the said clause cinematograph film is also to be treated as a work of joint authorship except in cases where the producer and the principal director would be the same person.

Clause 3.—This clause seeks to amend section 14 of the Act relating to the meaning of copyright.

Sub-clause (i) of clause (c) of the said section relates to the exclusive right of the author in case of an artistic work to reproduce the work in any material form including depiction in three-dimensions of a two-dimensional work or in two-dimensions of a three-dimensional work. It is proposed to substitute the aforesaid sub-clause (i) so to provide that the exclusive right of the author to reproduce the work in any material form including the storing of it in any medium by electronic or other means or depiction in three-dimensions of a two-dimensional work or depiction in two-dimensions of a three-dimensional work.

Clause (d) of section 14 relates to the exclusive right to do or authorise to do in case of a cinematograph film to make a copy of the cinematograph film, including a photograph of any image forming part thereof, to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions and to communicate the film to the public. It is proposed to amend the aforesaid clause to extend the exclusive right of the author including the storing of it in any medium by electronic or other means and to sell or give on commercial rental or offer for sale or for such rental, any copy of the film.

Clause (e) of section 14 relates to the exclusive right of the author in case of a sound recording. Sub-clause (i) relates to making any other sound recording embodying it. It is proposed to amend the aforesaid sub-clause for extending the exclusive right of the author including the storing of it in any medium by electronic or other means. Sub-clause (ii) is proposed to be substituted by a new sub-clause providing that selling or giving on commercial rental or offer for sale or for such rental, any copy of the sound recording shall also come within the purview of exclusive right.

Clause 4.—This clause seeks to amend section 15 of the Act relating to special provision regarding copyright in designs registered or capable of being registered under the Designs Act, 1911 so as to make change in the references to the repealed Designs Act, 1911 to that of the Designs Act, 2000.

Clause 5.—This clause seeks to amend section 17 of the Act relating to first owner of copyright. It is proposed to insert new sub-clauses (f) and (g). Sub-clause (f) provides that in the case of a cinematograph film produced on or after the commencement of the Copyright (Amendment) Act, 2010, the producer and principal director shall be treated jointly as the first owner of copyright. Sub-clause (g) provides that in 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. It also provides that such an agreement is not needed in case where the owner and principal director of the film would be the same person. Further, it provides that in case of any work

incorporated in a cinematograph film, 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 6.—This clause seeks to amend section 18 of the Act relating to assignment of copyright.

Sub-section (1) of the aforesaid section provides that the owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof. However, in the case of the assignment in any future work, the assignment shall take effect only when the work comes into existence. It is proposed to insert a second proviso to sub-section (1) to provide 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. It is also proposed to insert another proviso to provide 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 other form other than as part of 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.

Clause 7.—This clause seeks to amend section 19 of the Act relating to mode of assignment.

The aforesaid section provides that no assignment of copyright in any work is valid unless it is in writing signed by the assignor or his duly authorised agent. The assignment of copyright in the work shall also specify the rights assigned and the duration and territorial extent of such assignment and it shall also specify the royalty, if any, payable to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties. If the assignee fails to exercise the rights assigned to him within a period of one year from the date of assignment the same shall expire unless otherwise specified in the assignment. If the period or the territorial extent of assignment is not stated the specified period shall be deemed to be five years from the date of assignment and the territorial extent shall be within India, as the case may be. It is proposed to amend sub-section (3) so as to provide that the assignment shall specify the other considerations besides the royalty, if any, payable. It is proposed to insert a new sub-section (8) to section 19 to provide that any assignment of copyright in any work contrary to that of 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 deemed to be void. It is also proposed to insert a new sub-section (9) to section 19 providing that no assignment of 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 in case of utilisation of the work in any form other than as part of cinematograph film or sound recording.

Clause 8.—This clause seeks to amend section 19A of the Act relating to disputes with respect to assignment of copyright. The aforesaid section, *inter alia*, provides that, on receipt of a complaint from the aggrieved party the Copyright Board may hold inquiry and pass orders as it may deem fit including an order for the recovery of any royalty payable. It is proposed to insert a new proviso as second proviso to the aforesaid section to provide that pending disposal of an application for revocation of assignment the Copyright Board may pass any 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.

Clause 9.—This clause seeks to amend section 21 of the Act relating to right of author to relinquish copyright. Sub-section (1) of the aforesaid section, *inter alia*, provides that the author of a work may relinquish all or any of the rights comprised in the copyright in the work by giving notice in the prescribed form to the Registrar of Copyrights. It is proposed to amend the said sub-section so as to enable the relinquishment of rights either by a notice to the Registrar of Copyrights or by way of public notice. It is also proposed to amend the

said section by inserting a new sub-section (2A) providing that 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.

Clause 10.—This clause seeks to amend section 22 of the Act relating to term of copyright in published literary, dramatic, musical and artistic works (other than a photograph) published within the life-time of the author until sixty years from the beginning of the calendar year next following the year in which the author dies. It is proposed to amend the aforesaid section so as to bring photographs also within the ambit of that section.

Clause 11.—This clause seeks to omit section 25 of the Act relating to term of copyright in photographs. This is consequential to the amendment proposed *vide* clause 10 of the Bill.

Clause 12.—This clause seeks to amend section 26 of the Act relating to term of copyright in cinematograph films. The said section lays down that in case of a cinematograph film copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the film is published. It is proposed to amend the aforesaid section by inserting a proviso thereto providing that in 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.

Clause 13.—This clause seeks to amend section 30 of the Act relating to licences by owners of copyright. The said section provides that the owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorised agent. It is proposed to amend the aforesaid section so as to do away with the requirement of signing by the owner of the copyright in such cases.

Clause 14.—This clause seeks to amend section 30A relating to application of sections 19 and 19A of the Act. This section provides that sections 19 and 19A of the Act shall apply in relation to a licence under section 30 as they apply in relation to assignment of copyright in a work. It is proposed to amend the aforesaid section 30A so as to exclude the applicability of section 19A relating to disputes with respect to assignment of copyright.

Clause 15.—This clause seeks to amend section 31 of the Act which deals with compulsory licensing in works withheld from public. This section provides that if the owner of copyright in any Indian work has refused to republish or allow the republication or has refused the performance in public of the work, and the work is withheld from the public or has refused to allow communication to the public by broadcast of the work recorded in sound recording, the Copyright Board may on basis of the complainant and after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, direct the Registrar of Copyrights to grant to the complainant a licence. It is proposed to amend the aforesaid section by amplifying the applicability of the section from “Indian work” to “any work”. The “*Explanation*” relating to the definition of “Indian work” is also proposed to be omitted. It is further proposed to substitute the word “complainant” with the words “such person or persons who, in the opinion of the Copyright Board, is or are qualified to do so”. It also proposed to omit sub-section (2) so as to enable the Copyright Board to grant compulsory licence to more than one person.

Clause 16.—This clause seeks to amend section 31A of the Act relating to compulsory licence in unpublished Indian works. It is proposed to amend the aforesaid section so as to allow compulsory licensing to publish or communicate to the public such work or a translation thereof in any language for all works whether they are unpublished works or published works or communication to the public and the work is withheld from the public in India where the author is dead or unknown or cannot be traced or the owner is not found.

Clause 17.—This clause seeks to insert new sections 31B, 31C and 31D in the Act.

The proposed new section 31B seeks to provide for compulsory licence for the disabled. It provides that an organisation, registered under section 12A 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 the prescribed form, for 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, after inquiry to establish credentials of the applicant and after giving to the owners of rights in the work a reasonable opportunity of being heard dispose of such application within two months from the receipt of the application and direct the Registrar of Copyrights to grant to the applicant such a licence to publish the work that a compulsory licence needs to be issued to make the work available to the disabled. 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 the number of copies that may be issued. The Board 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. 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.

The proposed new section 31C seeks to provide statutory licence to any person desiring to make a cover version of 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 in the same medium as the last recording, unless the medium of the last recording is no longer in current commercial use. The person making the sound recordings shall, in the prescribed manner, give prior notice of his intention to make the sound recordings, 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. They 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 section 31C of the Act.

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 recording until the expiration of five calendar years after the end of the year in which the first sound recording of the work was made and shall pay royalty for a minimum of 50,000 copies of each work during each calendar year in which copies of it are made. 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. 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 by rules 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 recordings. 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 clause, 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.

The proposed new section 31D seeks to deal with statutory licence for broadcasting of literary and musical works and sound recordings. It provides that any broadcasting

organisation desiring to communicate to the public by way of a broadcast or by way of performance of a literary or musical work, including sound recording which has already been published may do so. The broadcasting organisation shall give prior notice, in such manner as may be laid down by rules, by stating the duration and territorial coverage of the broadcast, and shall pay an advance to the owner of rights in each work royalties in the manner and at the rate fixed by the Copyright Board. The names of the authors and the principal performers of the work shall be announced with the broadcast. 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. The broadcasting organisation shall maintain such records and books of account, and render to the owners of rights such reports and accounts, as may be prescribed by rules 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 broadcast. However, the provision of the section shall not affect the operation of any licence issued or any agreement entered into before the coming into force of the Copyright (Amendment) Act, 2010.

Clause 18.—This clause seeks to amend section 33 of the Act relating to registration of copyright society by providing that registration of copyright society shall only be done by authors and they would re-register in accordance with the provisions of this section within a period of one year from the date of commencement of the Copyright (Amendment) Act, 2010.

Clause 19.—It is proposed to insert a new section 33A in the Act which deals with Tariff Scheme by copyright societies. This section seeks to provide that every copyright society shall publish its tariff scheme in such manner as may be laid down by rules. Any aggrieved person may appeal against the tariff scheme to the Copyright Board which may, after holding enquiry make orders to remove any unreasonable element, anomaly or inconsistency therein. The aggrieved person shall continue to pay such fee that had fallen due before making the appeal until the appeal is decided, and the Board shall not stay the collection of such fee pending disposal of the appeal. However, the Board may, after hearing the parties, fix interim tariff to be paid by the aggrieved party.

Clause 20.—This clause seeks to amend section 34 of the Act which deals with administration of rights of owner by copyright society. It provides that any owner of rights may authorise exclusively a copyright society to administer any right in any work by issue of licences or collection of licence fees or both and he shall have the right to withdraw such authorisation without prejudice to the rights of the copyright society under any contract. Clause (iii) of sub-section (3) of the said section provides that a copyright society may distribute the fees among owner of rights after making deductions for its own expenses. It is proposed to amend the aforesaid section by providing that administration of a copyright society shall be by the author of works and not by the owner of rights.

Clause 21.—This clause seeks to omit section 34A of the Act relating to payment of remuneration by copyright society.

Clause 22.—This clause seeks to amend section 35 of the Act relating to control over the copyright society by owner of works. It is proposed to amend the said section so as to enable the administration of a copyright society only by author of works.

Clause 23.—This clause seeks to amend section 36A of the Act relating to rights and liabilities of performing rights societies. The said section provides that the provisions of Chapter VII relating to copyright societies shall not affect the rights and liabilities of performing rights societies which had accrued or were incurred on or before the day prior to the commencement of the Copyright (Amendment) Act, 1994, or any legal proceedings in respect of any such rights or liabilities pending on that day. It is proposed to amend the said section so as to provide that the provisions of Chapter VII shall not affect the rights and liabilities of copyright societies which had accrued or were incurred on or before the day prior to the commencement of the Copyright (Amendment) Act, 2010.

Clause 24.—This clause seeks to amend section 37 of the Act relating to broadcast reproduction right. Clause (e) of sub-section (3) of the aforesaid section provides that any person who during the continuance of broadcast reproduction right without licence from the owner of rights sells or hires to the public or offers for such sale or hire, any such sound recording or visual recording shall be deemed to have infringed the broadcast reproduction right. It is proposed to substitute the aforesaid sub-clause (e) by providing that if any person sells or gives on commercial rental or offer for sale or for such rental, any sound recording or visual recording without licence he shall be deemed to have infringed the broadcast reproduction right.

Clause 25.—This clause seeks to omit sub-sections (3) and (4) of section 38 of the Act relating to performer's right as a consequential to the insertion of a new section 38A in the Act *vide* clause 26 of the Bill.

Clause 26.—This clause seeks to insert new sections 38A and 38B in the Act.

The proposed new section 38A seeks to deal with exclusive rights of performer's. Sub-section (1) of the proposed section 38A provides that the performer's right as the exclusive right to do or authorise the doing of any of the acts in respect of the performance or any substantial part thereof, without prejudice to the rights conferred on authors, namely, to make a sound recording or a visual recording of the performance or to do certain acts in respect of such recording, to reproduce it in any material form including the storing of it in any medium by electronic or any other means, to issue copies of it to the public not being copies already in circulation, to communicate it to the public, to sell or give on commercial rental or offer for sale or for commercial rental any copy of the recording and to broadcast or communicate the performance to the public except where the performance is already a broadcast performance.

Sub-section (2) of the proposed section 38A provides that 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 producer of the film of the performer's right in the same film and notwithstanding anything mentioned above, the performer shall be entitled to royalties in case of making of the performances for commercial use.

The proposed new section 38B seeks to deal with moral rights exclusive right of performers. The performer of a performance shall independently of his right after the assignment, either wholly or partially of his right, have the right 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 to restrain or claim damages in respect of any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation. Further, it is clarified that the 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.

Clause 27.—This clause seeks to substitute a new section for section 39A in the Act providing that certain provisions of the Act would apply in case of broadcast reproduction right and performer's rights.

Sub-section (1) of the proposed section 39A seeks to provide that sections 18, 19, 30, 30A, 33, 33A, 53, 55, 58, 63, 64, 65 65A, 65B and 66 of the Act will apply in relation to the broadcast reproduction right in any broadcast and the performers' right in any performance as they apply in relation to copyright in a work. However, 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. Sub-section (2) seeks to provide that 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, or as the case may be, is made.

Clause 28.—This clause seeks to amend section 40 of the Act which deals with power to extend copyright to foreign works.

Section 40 empowers the Central Government to apply, by order published in the Official Gazette, the provisions of the Act to certain works first published in any territory outside India, unpublished works, etc., subject to certain conditions.

Clause (iii) of the proviso to the aforesaid section provides that such order may provide that the term of copyright in India shall not exceed that conferred by the law of the country to which the order relates. It is proposed to amend the said clause (iii) so as to stipulate therein that the term of copyright of a work in respect of which the order relates shall in no case exceed the term of copyright available under the Copyright Act, 1957.

Clause 29.—This clause seeks to amend section 40A relating to power of Central Government to apply Chapter VIII to broadcasting organisations and performers in certain other countries.

Clause (ii) of sub-section (2) of the aforesaid section provides that the term of the rights of broadcasting organisation and performers in India shall not exceed such term as is conferred by the law of the country to which the order under sub-section (1) relates. It is proposed to amend the said clause (ii) by providing that the term of the rights of broadcasting organisations and performers covered under the said section 40A does not in any case exceed the period provided under the Act.

Clause 30.—This clause seeks to amend section 45 of the Act relating to entries in the Register of Copyrights. It is proposed to amend the aforesaid section so as to make it in conformity with the provisions of the Trade Marks Act, 1999 instead of those of the Trade and Merchandise Marks Act, 1958 as the latter Act has been repealed and re-enacted by the former Act.

Clause 31.—This clause seeks to amend section 52 of the Act relating to certain acts not to be infringement of copyright.

Sub-clause (i) seeks to substitute clause (a) of sub-section (1) of the aforesaid section. The proposed new clause (a) seeks to provide that a fair dealing with any work, not being a computer programme for the purposes of private and personal use, including research; criticism or review, whether of that work or of any other work, and the reporting of current events, including the reporting of a lecture delivered in public shall not constitute an infringement of copyright.

It is also proposed to insert an *Explanation* to clause (a) so as to clarify that storing of any work in any electronic medium for the aforesaid purposes, 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.

Sub-clause (ii) seeks to substitute clause (b), (c), (d), (e), (f), (g), (h), (i) and (j) of sub-section (1) of the aforesaid section 52 with new provisions.

The new clause (b) of section 52 seeks to provide that the transient and incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public shall not constitute an infringement of copyright. Similarly, clause (c) seeks to provide that 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 also shall not constitute an infringement of copyright. It also provides that if the person responsible has prevented the storage of a copy, on a complaint from any person, he may require such person to produce an order within fourteen days from the competent court for the continued prevention of such storage. Clause (d) seeks to provide that the reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding shall not constitute an infringement of copyright. Clause (e) seeks to provide that 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

shall not constitute an infringement of copyright. Clause (f) seeks to provide that the reproduction of any work in a certified copy made or supplied in accordance with any law for the time being in force shall not constitute an infringement of copyright. Clause (g) seeks to provide that reading or recitation in public of any reasonable extract from a published literary or dramatic work shall not constitute an infringement of copyright. Clause (h) seeks to provide that 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 shall not constitute an infringement of copyright. It is also 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. The *Explanation* clarifies that 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.

Clause (i) seeks to provide that the reproduction of any work by a teacher or a pupil in the course of instruction or as part of the questions to be answered in an examination; or in answers to such questions shall not constitute an infringement of copyright.

Clause (j) seeks to provide that 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 shall not constitute an infringement of copyright.

Clause (m) of sub-section (1) of section 52 is proposed to be omitted.

Clause (n) of sub-section (1) of section 52 is substituted by a new clause which seeks to provide that 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 shall not constitute an infringement of copyright.

Clause (o) of sub-section (1) of section 52 is proposed to be amended to extend its applicability to non-commercial public libraries as well.

Clause (v) seeks to insert a new clause (ya) in sub-section (1) so as to seek to provide that 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 shall not constitute an infringement of copyright.

Clause (vi) seeks to substitute the words “dramatic, artistic or” for “dramatic or”.

Clause (vii) seeks to insert new clauses (zb) and (zc).

Clause (zb) seeks to provide that 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 shall not constitute an infringement of copyright.

Clause (zc) seeks to provide that 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 shall not constitute an infringement of copyright.

Clause 32.—This clause proposes to omit section 52B of the Act relating to accounts and audit of copyright societies.

Clause 33.—This clause seeks to substitute section 53 of the Act relating to importation of infringing copies.

Sub-section (1) of the proposed section 53 seeks to provide that the owner of any right conferred by the Act in respect of any work or of 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 that he is the owner of the said right, with proof thereof, and 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.

Sub-section (2) seeks to provide that the Commissioner on being satisfied, after scrutiny of the evidence furnished by the owner of the right, 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. It is also 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.

Sub-section (3) seeks to provide that 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.

Sub-section (4) seeks to provide that 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.

Clause 34.—This clause seeks to amend section 55 of the Act relating to civil remedies for infringement of copyright.

This clause seeks to extend the presumption of authorship in case of civil remedies for infringement of copyright as is applicable to literary, dramatic, musical or artistic works to subject to the provisions of sub-section (3) of section 13, a cinematograph film or a sound recording as well.

Clause 35.—This clause seeks to amend section 57 of the Act relating to author's special rights.

In clause (b) of sub-section (1) of the aforesaid section it is proposed to omit the words "which is done before the expiration of the term of copyright" so as to extend moral rights even after expiry of term of copyright. Sub-section (2) of the aforesaid section is proposed to be amended by omitting the words "other than the right to claim authorship of the work".

Clause 36.—This clause seeks to insert two new sections 65A and 65B in the Act.

The proposed new section 65A deals with protection of technological measures. Sub-section (1) of the said section seeks to provide that any person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by the 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. Sub-section (2) seeks to provide that nothing in sub-section (1) shall prevent any person from doing anything referred to therein for a purpose not expressly prohibited by the Act. It also seeks to provide 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 the purpose for which he has been facilitated or doing anything necessary to conduct encryption research using a lawfully obtained encrypted copy or conducting any lawful investigation or 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 operator or doing anything necessary to

circumvent technological measures intended for identification or surveillance of a user or taking measures necessary in the interest of national security.

The proposed section 65B in the Act deals with protection of rights management information. The proposed section seeks to provide that any person, who knowingly removes or alters any rights management information without authority, or 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. It also provides 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 of the Act against the persons indulging in such acts described above.

Clause 37.—This clause seeks to amend section 66 of the Act relating to disposal of infringing copies or plates for purpose of making infringing copies. The said section, *inter alia*, provides that the court trying any offence under the Act may order that all the copies of the work or places of infringing copies to be delivered to the owner of the copyright. It is proposed to amend the said section so as to empower the court to make such other order as it may deem fit regarding the disposal of such infringing copies or plates.

Clause 38.—This clause seeks to amend section 78 of the Act relating to power of the Central Government to make rules.

It is proposed to amend sub-section (2) of the said section specifying the various matters referred to in sub-section (1) of section 31B, sub-sections (2) and (5) of section 31C, sub-sections (2) and (6) of section 31D, and sub-sections (1) and (2) of section 33A in respect of which rules may be made. It is also proposed to omit clause (db) of sub-section (2) as a consequential to the omission of section 52B vide clause 32 of the Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 17 of the Bill seeks to insert new sections 31B, 31C, 31D in the Copyright Act, 1957. The proposed new section 31B deals with compulsory licence for disabled. Sub-section (1) of the said section 31B, *inter alia*, provides that an organisation registered under section 12A of the Income-tax Act, 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, 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. The said sub-section empowers the Central Government to make rules laying down the form and the manner in which an organisation may apply to the Copyright Board under that sub-section for compulsory licence for disabled and the fee which may accompany such application.

2. The proposed new section 31C of the Act deals with statutory licence for cover versions. Sub-section (2), *inter alia*, provides that 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 by the Central Government by rules. Sub-section (5) of the said section empowers the Central Government to make rules specifying the register and books of account and the details of existing stock which a person making sound recording may maintain under that sub-section.

3. The proposed new section 31D of the Act deals with statutory licence for radio broadcasting of literary or musical work and sound recording. Under sub-section (2) of the said section, the Central Government is empowered to prescribe the form of notice which every 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 already published. Under sub-section (6) of the said section, every broadcasting organisation desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work or sound recording already published shall maintain such records and books of account, and render to the owners of rights such reports and accounts, 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.

4. Clause 19 of the Bill seeks to insert new section 33A relating to Tariff scheme by copyright societies. Sub-section (1) of the said section provides that every copyright society shall publish its Tariff Scheme in such manner as may be prescribed. Accordingly, the Central Government may make rules laying down the manner in which a copyright society may publish its Tariff Scheme. Sub-section (2) of the said section provides that any person who is aggrieved by the Tariff Scheme of a copyright society may appeal to the Copyright Board. The proviso to the said sub-section, *inter alia*, empowers the Central Government to prescribe the fee which is required to be paid by the aggrieved person to the copyright society that had fallen due before making the appeal.

5. Clause 38 of the Bill seeks to amend section 78 of the Act relating to power of the Central Government to make rules. Sub-section (1) of the aforesaid section lays down that the Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act. Sub-section (2) enumerates the matters in respect of which such rules may be made. It is proposed to amend sub-section (2) so as to specify the matters referred to in clauses 31B, 31C, 31D and 33A in respect of which rules may be made by the Central Government. It is also proposed to omit clause (db) of sub-section (2) of section 78 as it has become redundant consequent upon omission of section 52B *vide* clause 32 of the Bill. Sub-section (3) of section 78 provides that every rules made under that section shall be laid before both houses of Parliament.

6. The matters in respect of which rules may be made under the afore-mentioned provisions are matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE COPYRIGHT ACT, 1957

(14 OF 1957)

* * * * *

2. In this Act, unless the context otherwise requires,— Interpretation.

* * * * *

(d) "author" means,—

* * * * *

(v) in relation to a cinematograph film or sound recording, the producer;
and

(vi) in relation to any literary, dramatic, musical or artistic work which is
computer-generated the person who causes the work to be created;

* * * * *

(f) "cinematograph film" means any work of visual recording on any medium
produced through a process from which a moving image may be produced by any
means and includes a sound recording accompanying such visual recording and
"cinematograph" shall be construed as including any work produced by any process
analogous to cinematography including video films;

(ff) communication to the public means making any work 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 copies of such work regardless of whether any
member of the public actually sees, hears or otherwise enjoys the work 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;

* * * * *

(m) "infringing copy" means,—

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction
thereof otherwise than in the form of a cinematographic film;

* * * * *

(qq) "performer" includes an actor, singer, musician, dancer, acrobat, juggler, conjurer,
snake charmer, a person delivering a lecture or any other person who makes a performance;

* * * * *

(z) "work of joint authorship" means a work produced by the collaboration of two or
more authors in which the contribution of one author is not distinct from the contribution of
the other author or authors;

* * * * *

14. For the purposes of this Act, "copyright" means the exclusive right subject to the Meaning of
provisions of this Act, to do or authorise the doing of any of the following acts in respect copyright.
of a work or any substantial part thereof, namely:—

* * * * *

(c) in the case of an artistic work,—

(i) to reproduce the work in any material form including depiction in three

dimensions of a two dimensional work or in two dimensions of a three dimensional work;

* * * * *

(d) in the case of a cinematograph film,—

(i) to make a copy of the film including a photograph of any image forming part thereof;

(ii) to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;

* * * * *

(e) in the case of a sound recording,—

(i) to make any other sound recording embodying it;

(ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions;

* * * * *

Explanation.—For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

Special Provision regarding copyright in designs registered or capable of being registered under the Designs Act, 1911.

15. (1) Copyright shall not subsist under this Act in any design which is registered under the Designs Act, 1911.

2 of 1911.

(2) Copyright in any design, which is capable of being registered under the Designs Act, 1911 but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright, or, with his licence, by any other person.

2 of 1911.

* * * * *

CHAPTER IV

OWNERSHIP OF COPYRIGHT AND THE RIGHTS OF THE OWNER

First owner of copyright.

17. Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that—

(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

(b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply,

the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(cc) in case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;

(d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(dd) in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

Explanation.—For the purposes of this clause and section 28A, "public undertaking" means—

(i) an undertaking owned or controlled by Government; or

(ii) a Government company as defined in section 617 of the Companies Act, 1956; or

(iii) a body corporate established by or under any Central, Provincial or State Act;

(e) in the case of a work to which the provisions of section 41 apply, the international organisation concerned shall be the first owner of the copyright therein.

18. (1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole of the copyright or any part thereof:

Assignment of copyright.

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.

* * * * *

19.(1) * * * * *

Mode of assignment.

(3) The assignment of copyright in any work shall also specify the amount of royalty payable, if any, to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

* * * * *

19A. (1) * * * * *

Disputes with respect to assignment of copyright.

(2) If any dispute arises with respect to the assignment of any copyright, the Copyright Board may, on receipt of a complaint from the aggrieved party and after holding such inquiry as it considers necessary, pass such order as it may deem fit including an order for the recovery of any royalty payable:

Provided that Copyright Board shall not pass any order under this sub-section to revoke the assignment unless it is satisfied that the terms of assignment are harsh to the assignor in case the assignor is also the author:

Provided further that no order of revocation of assignment under this sub-section, shall be made within a period of five years from the date of such assignment.

1 of 1956.

* * * * *

Right of author to relinquish copyright. **21. (1)** The author of a work may relinquish all or any of the rights comprised in the copyright in the work by giving notice in the prescribed form to the Registrar of Copyrights and thereupon such rights shall, subject to the provisions of sub-section (3), cease to exist from the date of the notice.

* * * * *

CHAPTER V

TERM OF COPYRIGHT

Term of copyright in published literary, dramatic, musical and artistic works. **22.** Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author until sixty years from the beginning of the calendar year next following the year in which the author dies.

Explanation.—In this section the reference to the author shall, in the case of a work of joint authorship, be construed as a reference to the author who dies last.

* * * * *

25. Term of copyright in photographs.—In the case of a photograph, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the photograph is published.

26. Term of copyright in cinematograph films.—In the case of a cinematograph film, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the film is published.

* * * * *

CHAPTER VI

LICENCES

Licences by owners of copyright. **30.** The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorised agent:

Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence.

Explanation.—Where a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence.

Application of sections 19 and 19A. **30A.** The provisions of sections 19 and 19A shall, with any necessary adaptations and modifications, apply in relation to a licence under section 30 as they apply in relation to assignment of copyright in a work.

Compulsory licence in works withheld from public. **31. (1)** If at any time during the term of copyright in any Indian work which has been published or performed in public, a complaint is made to the Copyright Board that the owner of copyright in the work—

(a) has refused to re-publish or allow the re-publication of the work or has refused to allow the performance in public of the work, and by reason of such refusal the work is withheld from the public; or

(b) has refused to allow communication to the public by broadcast, of such work or in the case of a sound recording the work recorded in such sound recording, on terms which the complainant considers reasonable,

the Copyright Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of

Copyrights to grant to the complainant a licence to re-publish the work, perform the work in public or communicate the work to the public by broadcast, as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Copyright Board may determine; and thereupon the Registrar of Copyrights shall grant the licence to the complainant in accordance with the directions of Copyright Board, on payment of such fee as may be prescribed.

Explanation.—In this sub-section, the expression "Indian work" includes—

(i) an artistic work, the author of which is a citizen of India; and

(ii) a cinematograph film or a sound recording made or manufactured in India.

(2) Where two or more persons have made a complaint under sub-section (1), the licence shall be granted to the complainant who in the opinion of the Copyright Board would best serve the interests of the general public.

31A. (1) Where, in the case of an Indian work referred to in sub-clause (iii) of clause (1) of section 2, 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 such work or a translation thereof in any language.

Compulsory licence in unpublished Indian works.

* * * * *

CHAPTER VII

COPYRIGHT SOCIETIES

38 of 1994. **33.** (1) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 commence or, carry on the business of issuing or granting licences in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (3):

Registration of copyright society.

Provided that an owner of copyright shall, in his individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society:

38 of 1994. Provided further that a performing rights society functioning in accordance with the provisions of section 33 on the date immediately before the coming into force of the Copyright (Amendment) Act, 1994 shall be deemed to be a copyright society for the purposes of this Chapter and every such society shall get itself registered within a period of one year from the date of commencement of the Copyright (Amendment) Act, 1994.

* * * * *

(3) The Central Government may, having regard to the interests of the authors and other owners of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights and the ability and professional competence of the applicants, register such association of persons as a copyright society subject to such conditions as may be prescribed:

Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

(4) The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the owners of rights concerned, cancel the registration of such society after such inquiry as may be prescribed.

* * * * *

34. (1) Subject to such conditions as may be prescribed,—

Administration of rights of owner by copyright society.

(a) a copyright society may accept from an owner of rights exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and

(b) an owner of rights shall have the right to withdraw such authorisation without prejudice to the rights of the copyright society under any contract.

(2) It shall be competent for a copyright society to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act, to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign country by such foreign society or organisation:

Provided that no such society or organisation shall permit any discrimination in regard to the terms of licence or the distribution of fees collected between rights in Indian and other works.

(3) Subject to such conditions as may be prescribed, a copyright society may,—

- (i) issue licences under section 30 in respect of any rights under this Act;
- (ii) collect fees in pursuance of such licences;
- (iii) distribute such fees among owners of rights after making deductions for its own expenses;
- (iv) perform any other functions consistent with the provisions of section 35.

Payment of remunerations by copyright society.

34. (1) If the Central Government is of the opinion that a copyright society for a class of work is generally administering the rights of the owners of rights in such work throughout India, it shall appoint the society for the purposes of this section.

(2) The copyright society shall, subject to such rules as may be made in this behalf, frame a scheme for determining the quantum of remuneration payable to individual copyright owners having regard to the number of copies of the work in circulation:

Provided that such scheme shall restrict payment to the owners of rights whose works have attained a level of circulation which the copyright society considers reasonable.

Control over the copyright society by the owner of rights.

35. (1) Every copyright society shall be subject to the collective control of the owners of rights under this Act whose rights it administers (not being owners of rights under this Act administered by a foreign society or organisation referred to in sub-section (2) of section 34) and shall, in such manner as may be prescribed,—

* * * * *

(c) provide to such owners regular, full and detailed information concerning all its activities, in relation to the administration of their rights.

* * * * *

Rights and liabilities of performing rights societies.

36A. Nothing in this Chapter shall affect any rights or liabilities in any work in connection with a performing rights society which had accrued or were incurred on or before the day prior to the commencement of the Copyright (Amendment) Act, 1994, or any legal proceedings in respect of any such rights or liabilities pending on that day.

38 of 1994.

CHAPTER VIII

RIGHTS OF BROADCASTING ORGANISATION AND OF PERFORMERS

Broadcast reproduction right.

37. (1) * * * * *

(3) During the continuance of a broadcast reproduction right in relation to any broadcast, any person who, without the licence of the owner of the right does any of the following acts of the broadcast or any substantial part thereof,—

- (a) re-broadcasts the broadcast; or
- (b) causes the broadcast to be heard or seen by the public on payment of any charges; or

(c) makes any sound recording or visual recording of the broadcast; or

(d) makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence; or

(e) sells or hires to the public, or offers for such sale or hire, any such sound recording or visual recording referred to in clause (c) or clause (d).

shall, subject to the provisions of section 39, be deemed to have infringed the broadcast reproduction right.

38.(1)* * * * * Performer's right

(3) During the continuance of a performer's right in relation to any performance, any person who, without the consent of the performer, does any of the following acts in respect of the performance or any substantial part thereof, namely:—

(a) makes a sound recording or visual recording of the performance; or

(b) reproduces a sound recording or visual recording of the performance, which sound recording or visual recording was—

(i) made without the performer's consent; or

(ii) made for purposes different from those for which the performer gave his consent; or

(iii) made for purposes different from those referred to in section 39 from a sound recording or visual recording which was made in accordance with section 39; or

(c) broadcasts the performance except where the broadcast is made from a sound recording or visual recording other than one made in accordance with section 39, or is a re-broadcast by the same broadcasting organisation of an earlier broadcast which did not infringe the performer's right; or

(d) communicates the performance to the public otherwise than by broadcast, except where such communication to the public is made from a sound recording or a visual recording or a broadcast,

shall, subject to the provisions of section 39, be deemed to have infringed the performer's right.

(4) Once a performer has consented to the incorporation of his performance in a cinematograph film, the provisions of sub-sections (1), (2) and (3) shall have no further application to such performance.]

* * * * *

39A. Sections 18, 19, 30, 53, 55, 58, 64, 65 and 66 shall, with any 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:

Other provisions applying to broadcast reproduction right and performer's right.

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 effect without the consent of the owner of rights or performer, as the case may be, or both of them.

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40A. (1) * * * * Power of Central Government to apply Chapter VIII to broadcasting organisations and performers in certain other countries.

(2) Every order made under sub-section (1) may provide that—

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(ii) the term of the rights of broadcasting organisations and performers in India shall not exceed such term as is conferred by the law of the country to which the order relates;

* * * * *

Entries in register of Copyrights.

45. (1) The author or publisher of, or the owner of or other person interested in the copyright in, any work may make an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights:

Provided that in respect of an artistic work which is used or is capable of being used in relation to any goods, the application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trade Marks referred to in section 4 of the Trade and Merchandise Marks Act, 1958, to the effect that no trade mark identical with or deceptively similar to such artistic work has been registered under the Act in the name of, or that no application has been made under that Act for such registration by, any person other than the applicant.

43 of 1958.

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Certain acts not to be infringement of copyright.

52. (1) The following acts shall not constitute an infringement of copyright, namely:—

(a) a fair dealing with a literary, dramatic, musical or artistic work not being a computer programme for the purposes of—

- (i) private use including research;
- (ii) criticism or review, whether of that work or of any other work;

* * * * *

(b) a fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events—

- (i) in a newspaper, magazine or similar periodical; or
- (ii) by broadcast or in a cinematograph film or by means of photographs.

Explanation.—The publication of a compilation of addresses or speeches delivered in public is not a fair dealing of such work within the meaning of this clause;

(c) the reproduction of a literary, dramatic, musical or artistic work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding or for the purpose of a report of a judicial proceeding;

(d) the reproduction or publication of a literary, dramatic, musical or artistic work in 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;

(e) the reproduction of any literary, dramatic or musical work in a certified copy made or supplied in accordance with any law for the time being in force;

(f) the reading or recitation in public of any reasonable extract from a published literary or dramatic work;

(g) the publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for the use of educational institutions, 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 the use of educational institutions, 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 passage 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;

- (h) the reproduction of a literary, dramatic, musical or artistic 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;

(i) 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 sound recording, if the audience is limited to such staff and students, the parents and guardians of the students and persons directly connected with the activities of the institution or the communication to such an audience of a cinematograph film or sound recording;

(j) the making of sound recordings in respect of any literary, dramatic or musical work, if—

(i) sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work;

(ii) the person making the sound recordings has given a notice of his intention to make the sound recordings, has provided copies of all covers or labels with which the sound recordings are to be sold, and has paid in the prescribed manner to the owner of rights in the work royalties in respect of all such sound recordings to be made by him, at the rate fixed by the Copyright Board in this behalf:

Provided that—

(i) no alterations shall be made which have not been made previously by or with the consent of the owner of rights, or which are not reasonably necessary for the adaptation of the work for the purpose of making the sound recordings;

(ii) the sound recordings shall not be issued in any form of packaging or with any label which is likely to mislead or confuse the public as to their identity;

(iii) no such sound recording shall be made until the expiration of two calendar years after the end of the year in which the first sound recording of the work was made; and

(iv) the person making such sound recordings 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 further 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 clause, 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;

(n) the publication in a newspaper, magazine or other periodical of a report of lecture delivered in public;

(o) the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a public library for the use of the library if such book is not available for sale in India:

* * * * *

(y) in relation to a literary, dramatic or musical work recorded or reproduced in any cinematograph film, the exhibition of such film after the expiration of the term of copyright therein :

Provided that the provisions of sub-clause (ii) of clause (a), sub-clause (i) of clause (b) and clauses (d), (f), (g), (m) and (p) shall not apply as respects any act unless that act is accompanied by an acknowledgment—

(i) identifying the work by its title or other description; and

(ii) unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

* * * * *

Accounts and audit.

52B. (1) Every copyright society appointed under section 34A shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, in such form and in such manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor General of India.

(2) The accounts of each of the copyright societies in relation to the payments received from the Central Government shall be audited by the Comptroller and Auditor General of India at such intervals as may be specified by him and any expenditure incurred in connection with such and it shall be payable by the copyright society to the Comptroller and Auditor General.

(3) The Comptroller and Auditor General of India or any other person appointed by him in connection with the audit of the accounts of the copyright society referred to in sub-section (2) shall have the same rights and privileges and authority in connection with the audit as the Comptroller and Auditor General has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts and other documents and papers and to inspect any of the offices of the copyright society for the purpose only of such audit.

(4) The accounts of each of the copyright societies as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Importation of infringing copies

53. (1) The Registrar of Copyrights, on application by the owner of the copyright in any work or by his duly authorised agent and on payment of the prescribed fee, may, after making such inquiry as he deems fit, order that copies made out of India of the work which if made in India would infringe copyright shall not be imported.

(2) Subject to any rules made under this Act, the Registrar of Copyrights or any person authorised by him in this behalf may enter any ship, dock or premises where any such copies as are referred to in sub-section (1) may be found and may examine such copies.

(3) All copies to which any order made under sub-section (1) applies shall be deemed to be goods of which the import had been prohibited or restricted under section 11 of the Customs Act, 1962 and all the provisions of the Act shall have effect accordingly:

51 of 1962.

Provided that all such copies confiscated under the provisions of the said Act shall not vest in the Government but shall be delivered to the owner of the copyright in the work.

* * * * *

Civil remedies for infringement of copyright.

55. (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right:

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defedant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

(2) Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher, as the case may be, appears on copies of the work published, or, in the case of an artistic work, appeared on the work when it was made, the person, whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

* * * * *

57. (1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—

Author's special right.

* * * * *

(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of seciton 52 applies.

Explanation.—Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this seciton.

(2) The right conferred upon an author of a work by sub-section (1) other than the right to claim authorship of the work, may be exercised by the legal representatives of the author.

* * * * *

66. The court trying any offence under this Act may, whether the alleged offender is convicted or not, order that 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 the purpose of making infringing copies, be delivered up to the owner of the copyright.

Disposal of infringing copies or plates for purpose of making infringing copies.

78.(1) * * * * *

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may make rules to provide for all or any of the following matters, namely:—

* * * * *

(db) the form and the manner in which the copyright society shall maintain accounts and other relevant records and prepare annual statements of accounts and the manner in which the quantum of remuneration is to be paid to individual owner of rights under sub-section (1) of section 52B.

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RAJYA SABHA

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BILL

to amend the Copyright Act, 1957.

(Shri Kapil Sibal, Minister of Human Resource Development)

GMGIPMRND—1627RS(S5)—15-04-2010.