Getting the Deal Through: Copyright

Thought Leadership • November 6, 2017

Pravin Anand and Nishchal Anand take an in-depth look into the scope, workings and development of Indian Copyright law, and agencies administering it. Excerpts taken from the chapter published in *Getting the Deal Through - Copyright 2017*.

What is the relevant legislation

Copyright law in India is governed by the Copyright Act, 1957, which has been amended six times, with the last amendment in 2012. It is a comprehensive statute providing for copyright, moral rights (known as author's special rights) and neighbouring rights (rights of broadcasting organisations, performers and droit de suite). The Act provides for exhaustive economic rights (copyright) in various works that are transferable. Moral rights exist in perpetuity and are vested in the authors and their legal representatives, being non-transferable and enforceable by the authors and legal representatives even when the copyright in the work has been assigned. The Copyright Rules, 2013 came into force from 14 March 2013 and provide for the procedure to be adopted for relinquishment of copyright, compulsory licences, statutory licences, voluntary licences, registration of copyright societies, membership and administration of affairs of copyright societies and performers' societies.

Specific provisions addressing digital exploitation of works

Amendments to the Copyright Act, 1957 till 2012 have ensured that, with the advent of satellite television and the internet, the definitions of rights are such that all digital platforms and formats are covered. The last amendment to the Copyright Act by the Copyright (Amendment) Act 2012 introduced specific provisions for dealing with the circumvention of technological measures pertaining to copyrighted works and provides solutions at par with that for infringement of copyright. This addition to the Act is specifically to deal with digital piracy and amending digital protection measures used to check piracy. By virtue of the newly inserted section 65A of the Act, any person who circumvents an effective technological measure applied for the purpose of protecting rights conferred under the Act, with the intention of infringing such rights, shall be punished with imprisonment that may extend to two years and would also be liable to a fine. Similarly, section 65B provides that any person who removes or participates in the removal of rights management information or the dissemination of copies of works from which rights management information has been removed shall be punished with imprisonment of up to two years and shall also be liable to pay a fine. The Copyright Rules, 2013 also provide for maintaining of records by a person permitted to circumvent technological measures as per the Act.

Standards used in determining whether use is fair

Fair dealing under Indian law is an exhaustive provision for each kind of copyright work specified

under section 52 of the Copyright Act. It is not open-ended as under the US concept of 'fair use'.

Specific liabilities, remedies or defences for online copyright infringement

The amendment of 2012 introduced certain provisions that are specifically relevant to copyright infringement and the internet. Under the fair use provisions of the Act, section 52(1)(b) provides that transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public does not constitute infringement of copyright. This provision provides safe harbour to internet service providers which may have incidentally stored infringing copies of a work for the purpose of transmission of data. Section 52(1)(c) further provides that transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration that is not expressly prohibited by the right holder would not be infringement of copyright, unless the person responsible is aware of infringement or has reasonable grounds for believing that such storage is that of an infringing copy.

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