UNIT 8 COPYRIGHT AND RELATED RIGHTS

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8.0 AIMS

As a publisher or as editor or even as author, you have both rights and duties. Rights to claim what is yours and get due recognition and credit and duties to protect those whose interests you would be looking after. That the publisher has a social responsibility, you would be well aware of now. That there is such a thing as a Copyright Act is also clear to you.

After going through this unit you will be able to explain:

i) The meaning of the terms ‘related rights’ and ‘neighbouring rights’

ii) What constitutes the ‘related rights’ or ‘neighbouring rights’

iii) What rights are protected as related or neighbouring rights

iv) How the related or neighbouring rights are protected under the Indian Copyright Act, 1957, and

v) The International Conventions and Treaties for the protection of related or neighbouring rights.

8.1 INTRODUCTION

Whenever a work is created, here we shall assume it is a book, there are possibilities that it may be made accessible to the public in forms other than the printed work (book). A book may be transformed into a film, a play or be serialized or abridged and so on. Even under such circumstances, the original creator of the work has some intellectual property rights and we shall try to familiarize you with this issue in this unit.
In India, the rights of creators of literary, dramatic, musical and artistic works, cinematographic films and sound recordings (phonograms) are protected by the Copyright Act, 1957 and the Copyright Rules, 1958. The Act gives the performers the “performer’s rights” and the broadcasting organizations the “broadcast reproduction rights”.

The rights of the producers of sound recordings in the sound recordings, the rights of the performing artists in their performances and the rights of the broadcasting organizations in their radio and television programmes are called the neighbouring or related rights. The rights of the performing artists are recognized because their performances give life to musical, dramatic and choreographic works and motion pictures. The rights of the producers of sound recordings are recognized because their organizational and financial resources are necessary to make the phonogram available to the public. The rights of the broadcasting organizations are recognized because they broadcast the works to the public which involves considerable investment of financial resources and as such they are genuinely interested in controlling the transmission and retransmission of their broadcast.

In this unit there is a discussion on the concept of copyright and related or neighbouring rights and their protection under the Indian law. There is also a brief discussion in this unit about the International Conventions and Treaties for protection of related or neighbouring rights.

8.2 THE CONCEPT OF COPYRIGHT AND RELATED RIGHTS

Copyright is a form of legal protection provided by statutes and is granted to authors of ‘original works’ including literary, dramatic, musical, artistic and certain other intellectual works. Copyright creates in the author an exclusive right to produce, reproduce, publish and perform his work in all ways known and his words in all ways known possible. Copyright law grants authors, composers, computer programmers and other creators the legal protection for their literary artistic, dramatic and other types of creations. Related rights or neighbouring rights refer to the category of rights granted to performers, phonogram producers and broadcasters. There are three kinds of related rights or neighbouring rights, namely—

i) rights of performers, e.g., actors, musicians etc., in their performance;

ii) rights of producers of sound recordings in their recordings; and

iii) rights of broadcasting organizations in their radio and television programmes.

According to W.R. Cornish, the right to prevent reproduction of recordings given to the producers of sound recordings and right of public performance of a dramatic or musical work are termed “neighbouring rights” under the European law.

Copyright and related rights protect works of different categories of right holders. Copyright protects the works of the authors themselves, whereas related rights are granted to certain categories of people or business that play an important role in performing, communicating or disseminating works to the public that may or may not be protected by copyright. For example, in the case of a song, copyright protects the music of the composer and the works of the author (i.e., lyricist), whereas related rights would apply to the (a) performance of the musicians and singers who perform the song; (b) sound recordings of the producer in which the song is included, and (c) the broadcast programme of the organization that produces and broadcasts the programme containing the song.
In some countries, such as India, USA and UK, the related or neighbouring rights are incorporated under copyright, whereas in some other countries, such as Germany and France, the related or neighbouring rights are not incorporated under copyright and are protected as a separate category.

Copyright is a form of intellectual property. Copyright does not protect ideas, it protects the form in which ideas are expressed. Copyright law is concerned with the negative right of preventing the copyright of a work. Its object is to protect the author from the unlawful reproduction or exploitation of his work. In order to secure copyright protection what is required is that the author must have bestowed upon the work sufficient judgment, skill and labour or capital. It is immaterial whether the work is wise or foolish, accurate or inaccurate, or whether it has or has not any literary merit. However, copyright law does not prevent a person taking what is useful from an original work and create a new work with additions and improvements. Under the guise of a copyright the owner of a copyright cannot ask the court to close all the venues of research and scholarship and all frontiers of human knowledge. Copyright is a multiple right, consisting of a bundle of different rights in the same work. These rights can be assigned or licensed either as a whole or separately. Copyright and related rights enable a business to control commercial exploitation of original works, to generate income, to take action against infringers and to use works owned by others. Under the Indian Copyright Act, 1957 although there is provision for registration of copyright, it is not necessary for the creation or enforcement of copyright.

8.3 RELATED OR NEIGHBOURING RIGHTS UNDER THE COPYRIGHT ACT, 1957

After going through the previous topic, by now you have understood what rights are covered under the related or neighbouring rights. Now, let us proceed to see how these rights are protected in India under the Copyright Act, 1957.

As mentioned earlier, related or neighbouring rights are the following—

i) rights of performers, e.g., actors musicians etc;

ii) rights of producers of sound recordings; and

iii) rights of broadcasting organizations.

In India these rights are not protected as a separate category of related or neighbouring rights, rather they are incorporated under the Copyright Act, 1957 and are given protection under the Act. In the following paras there is a discussion of these rights as provided and protected under the Copyright Act, 1957.

Right of performers under the Copyright Act, 1957.—The term ‘performers’ is defined under section 2(9q) of the Act as including an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance.

Section 38 of the Act lays down the rights of performers.

Section 38(1) of the Act provides that where any performer appears or engages in any performance, he shall have a special right to be known as the “performer’s right” in relation to such performance.

Section 38(2) provides that the performer’s right shall subsist until 50 years from the beginning of the calendar year next following the year in which the performance
is made.

The performer has the exclusive rights to do the following with respect to his performance—

a) to make sound recordings or visual recording of the performance,

b) to reproduce a sound recording or visual recording of the performance,

c) to broadcast the performance,

d) to communicate the performance to the public otherwise than by broadcast.

Section 38(3) provides that if any person does any of the following acts during the continuance of a performer’s right in any performance or in respect of any substantial part thereof without the consent of the performer, he will be deemed to have infringed the performer’s right, 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 consent of the performer; 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 (acts not infringing broadcast reproduction right or performer’s right) 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.

Section 38(4) of the Act lays down that once a performer has consented to the incorporation of his performance in a cinematograph film, the provisions of section 38(1), section 38(2), and section 38(3) shall have no further application to such performance.

However, there are certain acts which does not amount to infringement of performer’s rights section 39 provides that performer’s rights shall not be deemed to be infringed by—

a) the making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of bona fide teaching or research; or

b) the use, consistent with fair dealing, of excerpts of a performance in the reporting of current events or for bona fide review, teaching or research; or

c) such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under section 52 of the Act.

The acts under Section 52 which do not amount to infringement of performer’s rights are—
i) reproduction for the use of judicial proceedings [section 52(1)(e)];

ii) reproduction for the use of members of a legislature [section 52(1)(d)];

iii) the use in a certified copy in accordance with any law in force [section 52(1)(e)];

iv) use of sound recording or visual recording of the performance in the course of the activities of an educational institution if the audience are limited to the students, parents and guardians of the students and persons directly connected with the activities of the institution [section 52(1)(i)].

Section 39A of the Act lays down certain other provisions of the Act that apply to performer's right also. It provides that sections 18, 19, 30, 53, 55, 58, 64, 65, and 66 shall apply in relation to the performer’s right in any performance, with any necessary adaptations and modifications, as they apply in relation to copyright in a work.

The above mentioned sections in section 39A provide for the following—

Section 18 and 19—Assignment of copyright

Section 30—Licenses

Section 53—Importation of infringing copies

Section 55—Civil remedies for infringement of copyright

Section 58—Rights of owner against persons possessing or dealing with infringing copies

Section 64—Power of police to seize infringing copies.

Section 65—Possession of plates for the purpose of making infringing copies.

Section 66—Disposal of infringing copies or plates for the purpose of making infringing copies.

Rights of producers of sound recordings under the Copyright Act, 1957:—The expression ‘sound recording’ is defined under section 2(xx) of the Act. According to section 2(xx) ‘sound recording’ means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is the method by which the sounds are produced.

According to section 2(uu) of the Act, ‘producer’ in relation to a sound recording means a person who takes the initiative and responsibility for making the work.

Section 27 of the Act provides that copyright shall subsist in a sound recording until 60 years from the beginning of the calendar year next following the year in which the sound recording is published.

As per Section 14(e) of the Act, the owner of copyright in a sound recording has the following exclusive rights in relation to the sound recording, namely—

a) to make any other sound recording embodying it;

b) to sell or give on hire or offer for sale or hire, any copy of the sound recording regardless of whether such copy had been sold or given on hire on earlier occasions;
c) to communicate the sound recording to the public.

Regarding the infringement of copyright in a sound recordings, Section 51 read with section 14(1)(e) provides that the doing or authorising the doing of any of the following acts in relation to a sound recording without the consent or licence of the owner thereof constitutes the infringement of copyright in the sound recording:

a) to make any other sound recording embodying it;

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

c) to communicate the sound recording to the public;

d) to permit for profit any place to be used for the communication of the work to the public if such communication constitutes on infringement of copyright in the sound recording;

e) to make infringing copies for sale or hire, or to sell or let for hire, or by way of trade displays or to offer for sale or hire;

f) to distribute either for the purpose of trade or to such on extent as to affect prejudicially the owner of the copyright;

g) to exhibit in public by way of trade;

h) to import into India any infringing copy.

If any person copies a sound recording at home for whatever use, even if it be for research or private study, he infringes the copyright in the sound recording. However, in such cases there may be infringement of the copyright in the literary, dramatic or musical work contained in the sound recording since there is a fair dealing exception to such works.

Section 52(1)(k) of the Act provides that the causing of a recording to be heard in public by utilising it—

a) in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein; or

b) as part of the activities of a club or similar organisation which is not established or conducted for profit;

does not constitute infringement of copyright in the sound recording.

Rights of broadcasting organisation under the Copyright Act, 1957:—The term ‘broadcast’ is defined under section 2(dd) of the Act. It provides that ‘broadcast’ means communication to the public—(i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or (ii) by wire, and includes a re-broadcast.

Section 37(1) of the Act provides that every broadcasting organisation shall have a special right to be known as ‘broadcast reproduction right’ in respect of its broadcast.

Section 37(2) provides that the broadcast reproduction right shall subsist until 25 years from the beginning of the calendar year next following the year in which the broadcast is made.
Section 37(3) lays down what amounts to infringement of the broadcast reproduction rights. It provides that doing of any of the following acts by any person during the continuance of a broadcast reproduction right in relation to any broadcast without the licence of the owner of the right therein shall amount to infringement of copyright in the broadcast reproduction right,—

a) re-broadcasting the broadcast; or

b) causing the broadcast to be heard or seen by the public on payment of any charges; or

c) making any sound recording or visual recording of the broadcast; or

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

e) selling or hiring to the public, or offering for such sale or hire, any such sound recording or visual recording referred to in (c) or (d) above.

Section 39 of the Act lays down certain acts which does not amount to infringement of broadcast reproduction right. Section 39 provides that no broadcast right shall be deemed to be infringed by—

a) the making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of bona fide teaching or research; or

b) the use consistent with fair dealing, of excerpts of a broadcast in the reporting of current events or for bona fide review, teaching or research; or

c) such other acts with necessary adaptations and modifications, which do not constitute infringement of copyright under section 52 of the Act.

Under Section 52 of the Act, the following acts in relation to a broadcast does not amount to infringement of copyright in broadcast reproduction right—

a) a fair dealing for the purpose of private use, or research and criticism or review;

b) a fair dealing for reporting of current events and teaching;

c) reproduction for use in judicial proceeding;

d) reproduction for use of the members of a legislature;

e) the use in a certified copy in accordance with any law in force;

f) use of sound recording or visual recording of the broadcast in the course of the activities of an educational institution if the audience are limited to students and parents and guardians of the students and persons directly connected with the activities of the institution.

It is to be noted that the abovementioned acts can be done only with the help of a sound or visual recording of the broadcast and hence, the making of such recording is not an infringement of copyright therein.

Section 39A of the Copyright Act, 1957 provides that Sections 18, 19, 30, 53, 55, 58, 64, 65 and 66 of the Act shall, with any necessary adaptations and modifications,
apply in relation to the broadcast reproduction right in any broadcast as they apply in relation to copyright in a work.

8.4 INTERNATIONAL TREATIES AND CONVENTIONS FOR PROTECTION OF NEIGHBOURING OR RELATED RIGHTS

Under this topic we shall briefly discuss the various international conventions and treaties for the protection of related or neighbouring rights. These international conventions and treaties aim to develop international uniform rules for safeguarding the rights of the owners of copyright.

8.4.1 Berne Convention for the Protection of Literary and Artistic Works (1886)

The Berne Convention for the Protection of Literary and Artistic Works, usually known as the Berne Convention, is an international agreement governing copyright, which was first accepted in Berne, Switzerland in 1886. The Berne Convention requires its signatories to recognise the copyright of works of authors from other signatory countries (known as members of the Berne Union) in the same way it recognises the copyright of its own nationals.

8.4.2 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961)

The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations was accepted by members of the World Intellectual Property Organization on October 26, 1961. Under the agreement copyright protection is extended for the first time from the author of a work to the creators and owners of particular, physical manifestations of intellectual property, such as audio cassettes or DVDs.

8.4.3 Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (1971)

Under the Convention, each Contracting State shall protect producers of phonograms who are nationals of other Contracting States against the making of duplicates without the consent of the producer and against the importation of such duplicates, provided that any such making or importation is for the purpose of distribution to the public, and against the distribution of such duplicates to the public.


This Convention provides for the obligation of each contracting State to take adequate measures to prevent the unauthorised distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or passing through the satellite is not intended. The obligation is in respect of organisations that are nationals of a contracting state.
8.4.5 WIPO Performances and Phonograms Treaty (1996)

The Contracting Parties to the Treaty shall accord the protection provided under it to the performers (actors, singers, musicians, etc) and producers of phonograms who are nationals of other Contracting Parties. The nationals of other Contracting Parties shall be understood to be those performers or producers of phonograms who would meet the criteria for eligibility for protection provided under the Rome Convention.

8.4.6 WIPO Copyright Treaty (1996)

The WIPO Copyright Treaty lays down provisions for contracting parties to protect computer programs, whatever may be the mode or form of their expression, and compilations of data or other material in any form which by reason of the selection or arrangement of their contents constitute intellectual creations.

India is not yet a member of the WIPO Copyright treaty and the WIPO Performances and Phonograms Treaty. These treaties were negotiated essentially to provide for protection of the rights of copyright holders, performers and producers of phonograms in the internet and digital era.

8.5 SUMMING UP

Copyright and related rights protect the broadest range of creative works. In the modern world full of technological innovations, copyright, neighbouring and related rights has assumed immense significance.

At one time, only the original literary works are protected by copyright. But subsequently copyright protection was extended to dramatic, musical and artistic works, cinematographic films and sound recordings. With the coming into existence of the concept of related or neighbouring rights the rights of the performers and that of broadcasting organisations have been given recognition and brought under the purview of copyright law. Copyright law aims to encourage and reward authors, composers, artists, designers, film producers etc. by conferring certain rights on them.