INFLUENCE OF BERNE CONVENTION ON COPYRIGHT LAWS IN INDIA

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INTRODUCTION

Copyright is an exclusive legal right given to the owner of the intellectual property, in simple terms it means that it is a legal right for the creator and for only people who are been authorized by the creator have exclusive right to reproduce the work. The creative work be in any form for example, art, literacy, educational, etc.

In India, Copyright is a form of intellectual property, & the protection has been granted under Indian law to the creators of original work of authorship such as literary work (including computer related programs, table and compilations including computer database which can be expressed in words, or in any other form, dramatics, musical and other artistic works, cinematographic films and even sound recordings. In India Copyright laws came into existence under the legislation of 1914 this legislation was modelled after the Copyright Laws of United Kingdom, the Copyright Act 1911. The Copyright Laws in effect currently in India have grown and adapted overtime to be a complaint to most of the international treaties and conventions that govern the field of copyrights. The current functions in the field of copyright in India are governed by the Copyright Act, 1957 with amendments in the years 1983, 1984, 1992, 1999 and 2012 along with the Copyright Rules, 2013.

THE COPYRIGHT ACT 1957

The act provides copyright protection in India. It confers the protection in the following two forms:

1. Economic rights of the author and

But when there is need of protection the work outside the country? Then how will a creator/ author will take protection against his work, creativity etc. so for the protection of the work outside the
teritory there are several other laws, treaties, conventions on copyright and protection of the work done by their creators. For example: The Berne Convention For protection Of Literary and artistic works 1886.

This convention is known as the Berne Convention. This is the oldest international treaty in the field of copyrights. The need for a uniform system in the field of copyrights led to the formulation and adoption of the Berne Convention on September 9 1886, for the protection of literary and artistic works. This Convention is open to all states.

ANALYSIS

Berne convention enforces a requirement that the countries recognize copyrights held by the citizens of all other parties to the convention. That means, Indian Copyright Laws applies to anything published or performed in India, regardless of where it was originally create

India is a Signatory of Berne convention, Berne Convention's primary function is protection of original works and legal rights of their creators/ authors

This Convention is based on three basic principles:

1- The Principle of National Treatment
2- Automatic Protection
3- Independence of Protection

The Principle of National Treatment

It means that each and every member country of Berne Convention must treat the works of other members countries of Convention equally with the treatment provided to the works of nationals. Otherwise, there should not be any discrimination in the treatment of works and protection should be accorded equally. This helps a nation with a low-level protection getting better protection abroad than it can get at home. The national will eventually bring pressure to bear on the authorities of his country for better protection

Automatic Protection
Under Berne Convention, no formalities are required as preconditions to protection. The works created protection even without following the formalities of registration. In other words, member countries do not require their authors and publishers to give notice of the copyrighted status of the work in order for the work to be protected by law.

**Independence Of Protection**

Enjoyment and exercise of the rights granted in is independent of the existence of protection in the country of origin of the work. International copyright protection is independent of the existence or extent of protection afforded by the country where the work originates. Protection in each member state is governed by that state’s own domestic law. By becoming a signatory to the Convention, in any of its versions, a country guarantees to enact laws that effectuate these goals.

**LANDMARK CASE FOR THE BERNE CONVENTION LAWS**

In “Mr Ltd. versus. Metro Tyres Ltd” Plaintiff, MRF Limited is engaged in the business of manufacturing, marketing and sale of a series of tyres in India. One such series is known as MRF NV series “REVZ”. In order to publicize their goods, the plaintiff produced an advertisement; and under the copyright regime of India, Plaintiff is the author of said advertisement. In October 2016, it came into knowledge of plaintiff that the defendant, who is engaged in the same business has produced a similar advertisement.

Plaintiff contended that by bare perusal, it can be clearly seen that the defendant’s advertisement is nothing but a substantial copy of the plaintiff’s advertisement. Plaintiff immediately filed a complaint with the Advertising Standards Council of India (ASCI). ASCI forwarded the complaint of plaintiff to defendant. On receipt of the complaint the defendant filed a suit to restrain the plaintiff from issuing threats and to restrain the ASCI from proceeding with the said complaint. This suit of defendant was dismissed by the Court. After this the plaintiff filed the suit before the Hon’ble Delhi High Court.

The Hon’ble High Court of Delhi after viewing the plaintiff’s and defendant’s advertisements and

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1 Mrf Ltd. versus. Metro Tyres Ltd July 1 2019
applying the test given in the R.G. Anand case, prima facie opined that the two advertisements were neither substantially nor materially similar but, this judgment has answered some important questions in the copyright regime of India, and the Hon’ble Court in its judgment made it clear that:

- The definition of copying is not limited to an actual copy made by the process of duplication but it is wider than that, and includes an imitation or reproduction in it.

- The copyright infringement test was laid down in case of R.G Anand v. M/s Deluxe Films and OR’s. can be applied not only on literary works but also applicable to cinematograph films.

- The word ‘original’ in section 13(1) is not limited to literary, dramatic, musical and artistic works but also covers cinematograph films in it.

At the outset, although the cases did share an intricate similarity as to the object of the law, their applicability to the scenario mentioned was different. in so far as the proof required to invoke infringement provisions were not met. The Courts though did a meticulous job at defining the spheres of what situations can petition the provisions of the copyright regime in case of ‘copying’ of a work and at defining the scope of ‘copying’. Further the Court settled a long-standing discrepancy as to the applications of the word ‘original’ to copyrighted or copyrightable work which is going to lay a precedent to settle future matters which includes similar questions of law.

Another case of India in relation to Berne convention copyright laws is “M/s Entertainment network versus M/s Super Cassette Industries Ltd”

M/s Entertainment Network (India) owner of FM Radio “Radio Mirchi” Ltd filed an plea in the supreme court against M/s Super Cassette Industries Ltd owner of “T-Series”. The matter involved understanding of Section 31 of the Copyright Act, 1957. On request various Radio Station for grant to obligatory license to all the stations, the Copyright Board at Hyderabad in terms of Section 31(1)(b) of Copyright Act, the board in its judgement dated 19.11.2002 fixed the standards rate of payment for a period of 2 year. Super Cassettes was not a party therein. The Board fixed royalties initially for a period of 2 yrs. An appeal there against is preferred before the Bombay High Court. Meanwhile on 28 January 2003, the appellant filed an application before the Copyright Board in Delhi for grant of compulsory license in terms of Section 31(1)(b) of the Act against Super
Cassettes. The respondent filed an objection contending that as the case for infringement was pending before the Delhi High Court, no application for compulsory license could be entertained. The high court, on an application filed by the appellant, clarified that the respondent was free to piece its submission before the Copyright Board that the person infringing the Copyright should not be granted compulsory license. The Board directed the parties to come along with respective witnesses. However, when respondent intended to present an oral evidence, it was declined and application was allowed for granting a compulsory license to Appellant. Appellant filed an appeal against a said order before the Bombay High Court questioning the rates of compensation only and was tagged with the various other appeals filed against the order dated 19.11.02 passed by the Copyright Board at Hyderabad. Bombay High Court opinion that in terms of Section 31 of the Act, grant of an obligatory license on reasonable remuneration is permissible Respondent preferred two-fold appeals before the Delhi High Court and by judgement dated 30.6.2004, the respondent’s appeal was allowed for remitting the matter back to the Copyright Board to review the application of the appellant for grant of compulsory license under Section 31 of the Act after giving acceptable opportunity to the parties to adduce evidence and to dispose of the same by a reasoned order.

The High Court furthermore directed that the appellant must file an undertaking that it would not broadcast the sound recordings of the respondent. Against the said order the present appeal was filed in supreme court. The Supreme Court has to deal with two judgements one from the Bombay High court and another from the Delhi High court. Whereas the Bombay High Court opined that in terms of Section 31 of the Act, grant of compulsory license on reasonable remuneration is permissible; the Delhi High Court held otherwise. The supreme Court of India vide its jurisdiction to entertain any application for grant of compulsory license. How far and to what extent appellant has infringed the right of the respondent is a matter which may be taken into consideration by the Board. A suit was filed and injunction was granted. Apart from the fact that the appellant offered to take a license held negotiations with the respondents in the suit as soon as it came to know that Super Cassettes is not a member of PPL, it gave an undertaking, Each case must be considered on its own fact. However, we do not approve the manner which the Board has dealt with the matter. It has refused to examine the witness. Supreme court was in the opinion that the order of the board should set aside and the matter be remitted to the Board again for the Consideration of the matter was afresh on the merit and not on the terms appeal was allowed
CONCLUSION

The Berne Convention has 38 articles along with six articles as special provisions applicable to the developing countries. It contains provisions relating to establishment of a union, description of works protected under the provisions of convention, extent of protection, eligibility norms for protection of works, terms of protection, explanation of various rights forming part of copyrights, financial aspects, infringements, enforcement of rights, etc. The substantive provisions of the 1886 Berne Convention did not change significantly from the principles adopted in the bilateral agreements and the national copyright laws on which they rested. Earlier bilateral agreements were followed, adopting national treatment as its pivotal principle. But, like the bilateral agreements, the 1886 convention also carved out an exception for term of protection, subjecting to a rule of national reciprocity.

Article 2 of the Convention governs the type of works which it protects. According to this article, the Convention applies to every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression. It also contains an illustrative, but non-exclusive list of the types of literary works Berne convention enforces a requirement that the countries recognize copyrights held by the citizens of all other parties to the convention. That means, Indian Copyright Laws applies to anything published or performed in India, regardless of where it was originally create