

Legislative Brief

The Copyright (Amendment) Bill, 2010

The Bill was introduced in the Rajya Sabha on April 19, 2010.

The Bill was referred to the Standing Committee on Human Resource Development, (Chairman Shri Oscar Fernandes) on April 23, 2010. The Committee is due to submit its report in three months.

[The Educational Tribunals Bill, 2010](#)

August 25, 2010

[The Wakf \(Amendment\) Bill](#)

August 16, 2010

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Highlights of the Bill

- ◆ This Bill amends the Copyright Act, 1957.
- ◆ Copyright in a film currently rests with the producer for 60 years. The Bill extends copyright to a director as well, but for 70 years. In some cases, this amendment also applies to films produced before the Bill.
- ◆ The Bill makes special provisions for those whose work is used in films or sound recordings (e.g. lyricists or composers). Rights to royalties from such works, when used in media other than films or sound recordings, shall rest with the creator of the work and can only be assigned to heirs, or copyright societies which act in their interests.
- ◆ The Bill allows for the production of copyrighted work in special formats (such as Braille), for use by persons with disability, without infringing copyright. It also specifies a procedure by which work can be produced in general formats, for use by such persons.
- ◆ The Act gives authors, or their representatives, the right to claim damages against use of their work (while under copyright), in a way which adversely affects their reputation. The Bill allows such a right to be exercised indefinitely, as opposed to being restricted to the term of copyright, as is the case currently.

Key Issues and Analysis

- ◆ It is unclear why directors are allowed copyright in a film for 70 years, whereas producers, and authors of other works, are allowed copyright only for 60 years.
- ◆ The Bill gives a special set of rights to authors of work used in films and sound recordings (such as scriptwriters and music composers). As these rights are not given to creators of other works, the Bill discriminates between different types of authors.
- ◆ The procedure prescribed for the issue of licences to reproduce work in non-specialised formats, for persons with disability, is not time bound. This may make the process less accessible.
- ◆ Authors and their representatives may claim damages against the use of even those works which are out of copyright, on grounds that they damage the author's reputation. This provision may affect creativity and artistic expression of others who build upon an author's work.

PART A: HIGHLIGHTS OF THE BILL¹

Context

The Copyright Act, 1957 defines the rights of authors of creative works such as books, plays, music, films and other works of art, and computer software. Such authors are the original owners of copyright in these works and have a 'bundle of rights' such as the right to distribute, perform, translate and adapt the work. These rights can also be assigned to others. The Act provides for copyright societies, which issue licences for copyrighted works and collect royalties on behalf of authors or rights holders.

Copyright in literary, dramatic, artistic and musical works lies with the author and his heirs till 60 years after his death. Copyright in photographs, films and sound recordings persist for 60 years after the work is made.

The Act also defines the limits of authors' rights and the extent to which users can make 'fair use' of a work without infringing copyright. It prescribes penalties for infringement of copyright. It provides for a registrar of copyrights as well as a copyright board, which shall adjudicate disputes under the Act.

The amendment Bill seeks to make changes to the rights of authors, as well as those of users. It also seeks to bring relevant provisions of the Act in line with the World Intellectual Property Organisation (WIPO) Copyright Treaty and Public Performances and Phonograms Treaty, 'to the extent considered necessary and desirable'.² India has not signed these treaties as yet. It is a signatory to the Berne Convention, 1886, under which countries recognise copyright of authors from other member countries.

Key Features

The Amendment Bill makes the following changes to rights of authors of different types of work: (a) it changes copyright provisions for films (b) it gives artists such as lyricists or composers greater control over rights in their work, (c) it broadens the 'moral' rights that authors enjoy over their work and extends this right to performers.

The Bill also makes the following changes to the rights of users of various types of works: (a) copyrighted works can now be produced in 'special' formats for the use of disabled persons without infringing copyright (b) it allows for the free import of copyrighted works from other countries (c) it prescribes penalties for persons who circumvent technologies used to protect copyright (d) it provides for statutory licences to be issued to broadcasters and producers of version recordings.

Copyright in Films

- The Act specifies that the 'author' of a film is the producer, who shall enjoy copyright for 60 years. The Bill provides for authorship of a film to vest with the director as well who shall enjoy copyright for 70 years.
- In case of films produced before the Bill, directors can enjoy copyright for ten more years, if an agreement to this effect is signed with the rights owner (e.g. producer) during the term of copyright (currently 60 years).

Rights to Work Used in Films or Sound Recordings

The Bill aims to give those whose work is used in films and sound recordings, such as lyricists, scriptwriters and music composers, a special set of rights over their work. It does so in the following ways:

- Under the Act, the 'author' of a film or a sound recording is the producer, who holds rights over all the work (i.e. script, music, or lyrics) used in that film. The Bill specifies that when such work is used in a media outside of that film or sound recording, the rights, including the right to royalties, will rest with the creator (i.e. lyricist, music composer). These rights can be assigned by creators to their legal heirs or a copyright society which represents their interests.
- Further, rights can only be assigned for use of work in media which is in current commercial use, or when such media are specifically covered in the assignment of rights (applies to all categories of works).

Copyright Societies

The Act establishes copyright societies which represent owners of copyright in various works. Such societies may issue licences, or collect royalties, on behalf of the rights owners they represent. The Bill makes the following changes:

- It specifies that such societies shall be 'associations of authors' and shall be subject to their collective control, rather than to the control of rights holders. The central government, while registering, or cancelling or suspending the registration of such societies, shall act according to the interests of authors themselves, rather than of owners of rights.

- Authors cannot assign copyright to anyone on terms different from which they are assigned to such societies.

Rights of Users and Fair Use – Exceptions to Copyright Infringement

- Currently, the use of a literary, dramatic, musical or artistic work for personal use, research, criticism, or reporting of current events does not infringe copyright. This provision will now apply to films and sound recordings as well.
- The Bill permits copying and distribution of copyrighted works in formats designed specially for use by persons with disability (e.g. Braille). Registered organisations who work with such persons can apply to the Board for a licence to publish any work in a general format (e.g. audio books) for use by disabled persons.
- Copyrighted work published outside India can be imported without infringing copyright.

Technological Protection Measures and Rights Management

- If a person intentionally circumvents technological measures put in place to safeguard rights protected by the Act, he is punishable with imprisonment of up to 2 years and a fine. However, such circumvention is legal if done for purposes of research, investigation or for national security. Those who facilitate circumvention for purposes not specifically prohibited, must maintain a record of the circumvention.
- Under the Bill, a person who knowingly removes information about a work and the rights attached to it (“rights management information”), or distributes work with the knowledge that such information has been removed without authority, shall be punishable with 2 years of imprisonment and a fine.

Miscellaneous Provisions

- Copyright in photographs will last for 60 years after the death of the photographer (currently 60 years from publication).
- Independent of owning the copyright, authors have the right to claim damages when their work, while under copyright, is used in ways which adversely affects their reputation. Under the Bill, this ‘moral’ right will persist forever. The Bill extends ‘moral’ rights to performers, rather than just authors as is the case now.
- The Bill prescribes a statutory licensing procedure for cover versions of existing sound recordings. Such versions can be made only five years after the original recording, with royalty payable on a minimum of 50,000 copies a year, at rates fixed by the board. A separate statutory licensing procedure has also been prescribed for broadcasters.
- Under the Bill, authors have rights in the ‘commercial’ rental of works such as films or sound recordings. Rental, storage and limited copying of copyrighted works by non-commercial public libraries is permitted.
- The Copyright Board can now issue interim orders in cases of disputes over assignment of copyright, or disputes over the tariffs announced by copyright societies. However, the collection of fees due to such societies cannot be stayed.
- A person who stores a work while it is transmitted electronically does not infringe copyright unless he knows that the work infringes copyright. The Bill also gives such persons the right to ask for a court order from a complainant before permanently removing works which may infringe copyright.

PART B: KEY ISSUES AND ANALYSIS

Copyright in Films and Sound Recordings

Rights of Directors and Producers of Films

Under the Act copyright in a film rests with the producer for 60 years. The Bill provides copyright to be held jointly by the producer and the principal director for a period of 60 years. The principal director shall hold sole copyright for a further 10 years. Further, copyright in films produced before the Bill extends to 70 years in cases where directors sign agreements with rights owners before copyright lapses, or where the same person is both director and producer.

There are three issues. Firstly, it is unclear why a director should get copyright in a film for 70 years when the producer, who typically bears the financial risk of a film’s success or failure, is entitled to copyright for a term of 60 years. Authors of other works, such as sound recordings, are also entitled to copyright protection only for 60 years.

Secondly, the effective extension of copyright by 10 years in films (in certain cases) made before the Bill, and which are due to come into the public domain soon, will affect the rights of the public to enjoy such films freely.

Third, the Act defines producer as the person who takes the initiative and responsibility for making the work. The Bill, adds “principal director” as a holder of copyright but does not define the term.

Table 1: Comparison of film copyright in India with that of the Berne Convention and other countries.

Topic	The Act	The Bill	Berne Convention	UK Law	US Law
Copyright owners	Producer	Producer & Director	Not specified	Producer & Director	Rights with employer (producer)
Term of Copyright	60 years	60 yrs (producer); 70 yrs (directors)	50 years	70 years	95 yrs from publication /120 yrs from date of creation, whichever is first

Sources: The Act; The Bill, Berne Convention, 1886;UK Copyright Designs and Patents Act, 1988; US Copyright Act,1976; PRS

Rights of Scripwriters, Lyricists and Music Composers of Films

Clauses 5, 6, 7, 33

The Bill makes a set of provisions which affect the rights of those whose work is used in films or sound recordings (such as lyricists, scripwriters and composers). It does so by making two broad changes.

Firstly, it gives such authors copyright over their work even when such work is done under employment or commission. In the case of other work produced under such conditions, and not used in films or sound recordings, rights lie with employers or the person who commissioned the work. Secondly, the Bill specifies that rights to royalty remain with the author when the work is used in media other than films or sound recordings, with such rights being assignable only to legal heirs or copyright societies. In the case of other types of work, this restriction on the ability of authors to enter into a contract, does not exist.

As these provisions are being made only for a particular category of authors, the Bill discriminates between different types of authors.

Rights of Persons with Disability to Use Works under Copyright

Clauses 17, 31

The Bill has two provisions that help persons with disability get access to copyrighted work. First, it permits adaptation and reproduction of work in a format specially designed for use of persons with disability (e.g. Braille).

Second, the Bill provides for copies produced for the use by persons with disability in non-‘special’ formats (which can also be used by the general public e.g. audio-books). Such work can only be produced by organisations recognised under the Persons With Disabilities Act, 1995, and eligible for tax exemptions under the Income Tax Act, 1961. Such organisations must apply to the Copyright Board for a licence, which is issued following an inquiry, and which will specify the number of copies that can be made, without payment of royalty.

No time limit is specified within which a licence must be issued (or rejected). The Board is only required to dispose of an application ‘as expeditiously as possible’, and ‘endeavour’ to clear such an application in two months. The factors to be taken into account while making a decision are also not mentioned. The Bill also does not provide a process of appeal against the decision of the Copyright Board (in which case the appeal lies to the High Court). This may make the process less accessible.

Moral Rights of Authors

Clause 35

The Act gives all authors ‘moral’ rights over their work, which exist independently of copyright. Authors have the right to claim authorship of their work, and the right to claim damages against any distortion or modification of their work which adversely affects their reputation (“the right to integrity”). While the right to claim authorship exists at all times, the Act restricts the right to integrity to the term of copyright. The Bill extends this right indefinitely, as well.

By allowing the right to integrity to subsist indefinitely, the ability to create new artistic works (e.g. remixes or parodies), which are inspired by existing works, may be adversely affected. Also, legal representatives of long-deceased authors will have the right to judge whether or not a new work adversely affects that author's reputation.

Under the UK law, the moral right to integrity lasts for the term of copyright, while under the French law, such rights subsist forever. Under the Berne Convention, moral rights must subsist at least for the term for which ‘economic’ rights (i.e. copyright) subsists.³

Notes

1. This Brief has been written on the basis of the Copyright (Amendment) Bill, 2010, which was introduced in the Rajya Sabha on April 19, 2010. The Bill was referred to the Standing Committee on Human Resource Development (Chairman : Shri Oscar Fernandes) on April 23, 2010. The Committee is due to submit its report in three months.
2. Statement of Objects and Reasons of the Bill.
3. Article 6 of the Berne Convention.

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