

World Intellectual Property Organization  
(WIPO) AND National Institute for Micro,  
Small and Medium Sized Enterprises(NIMSME)  
Training of Trainers Program

**COPYRIGHT & TRADE SECRETS**

15<sup>TH</sup> AUGUST 2007

Presented by Manoj Menda  
Advocate, Patent & Trade Mark Attorney.  
menda@vsnl.com

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# COPYRIGHT OBJECTIVE

- THE PRIMARY FUNCTION OF COPYRIGHT LAW IS TO PROTECT FROM ANNEXATION BY OTHER PEOPLE, THE FRUITS OF A MAN'S WORK, LABOUR, SKILL OR TASTE. THIS PROTECTION IS GIVEN BY MAKING IT UNLAWFUL AS AN "INFRINGEMENT OF COPYRIGHT" TO REPRODUCE OR COPY ANY "LITERARY, DRAMATIC, MUSICAL OR ARTISTIC WORK" WITHOUT THE CONSENT OF THE OWNER OF THE COPYRIGHT IN THAT WORK.

## COPYRIGHT OBJECTIVE

- THIS IS A NEGATIVE RIGHT WHICH PREVENTS APPROPRIATION OF LABOUR AND SKILL EMPLOYED BY ONE AUTHOR BY ANOTHER. THE MORAL BASIS OF THIS PRINCIPAL IS BASED ON THE EIGHTH COMMANDMENT “ THOU SHALT NOT STEAL”.
- WORKS’ ARE PROTECTED NOT IDEAS!

# COPYRIGHT LAW HISTORY

- IN ENGLAND PRINTERS AND BOOKSELLERS HAD COMPETITION IN THE FORM OF COPIES PREPARED BY UNAUTHORISED PERSONS.
- THEREFORE IN THE YEAR 1556 LEGAL RESTRICTIONS WERE BROUGHT ABOUT.
- LATER IN 1662 THERE WAS LICENCING ACT OF 1662. THIS WAS A STATUTE WHICH PROHIBITED PRINTING OF ANY BOOK WHICH WAS NOT LICENCED. THIS WAS THE FIRST STEP THAT WAS AIMED AT PROTECTING A LITERARY RIGHT. (THIS ACT EXPIRED IN 1679).
- THEN IN 1709 THE BRITISH PARLIAMENT PASSED THE FIRST COPYRIGHT LEGISLATION GIVING AUTHORS THE SOLE RIGHT AND LIBERTY TO PRINT BOOKS FOR A CERTAIN NUMBER OF YEARS.

- THE 1911 COPYRIGHT ACT APPLIED TO ALL COUNTRIES UNDER THE BRITISH DOMINION WHICH INCLUDED INDIA. FINALLY AFTER NUMBER OF ENACTMENTS IN A PERIOD OF AROUND TWO HUNDRED YEARS THERE CAME A CONSOLIDATED COPYRIGHT ACT 1911.
- IN 1914 THE THEN GOVERNOR-GENERAL OF INDIA ENACTED THE INDIAN COPYRIGHT ACT 1914 (CONTINUED TILL 1958).

# POST INDEPENDENCE

- ON 1<sup>ST</sup> OCTOBER 1955 COPYRIGHT LEGISLATION WAS INTRODUCED IN PARLIAMENT AND WAS LATER PASSED ON THE 4<sup>TH</sup> OF JUNE 1957 AND CAME INTO EFFECT ON 21<sup>ST</sup> JANUARY 1958.
- THE COPYRIGHT ACT 1957 WAS IN HARMONY WITH THE BERNE CONVENTION AND THE UNIVERSAL COPYRIGHT CONVENTION.

- **1983 AMMENDMENT**
- ALLOWED COMPULSORY LICENSING (SEC. 32)
- PROTECTION OF AUTHORS RIGHTS (SEC. 19A)
- ADMINISTRATION OF ACT (SEC. 50A)
  
- **1984 AMENDMENT**
- PROVISIONS FOR COMBATING PIRACY WERE BROUGHT IN AS NEW TECHNOLOGIES POSED A SERIOUS THREAT TO INDUSTRY SUCH AS PRINTING, PUBLISHING FILMS AND AUDIO RECORDING.
- MADE THE OFFENCE OF INFRINGEMENT OF COPYRIGHT COGNIZABLE.
  
- **1991 AMENDMENT**
- TERM OF COPYRIGHT WAS EXTENDED FROM 50 TO 60 YEARS ONLY FOR WORKS WHOSE TERM HAD NOT EXPIRED ON THE 28<sup>TH</sup> OF DECEMBER 1991.



# COPYRIGHT ACT AMENDED ON 9<sup>TH</sup> JUNE 1994

- SCOPE OF DEFINITIONS WIDENED:
- ADAPTION, CINEMATOGRAPH FILM, COMMUNICATION TO PUBLIC, COMPOSER, COMPUTER, COPYRIGHT SOCIETY, INFRINGING COPY, LITERARY WORK, MUSICAL WORK, PERFORMANCE, PERFORMER, PRODUCER, REPROGRAPHY AND SOUND RECORDING.
- REVISED MEANING AND CONCEPT OF PUBLICATION
- MEANING OF COPYRIGHT – SEC. 14.
- CHANGES WITH REGARDS TO ASSIGNMENT OF COPYRIGHT
- NEW CHAPTER ON COPYRIGHT SOCIETIES
- NEW PROVISION OF A RIGHT TO A SHARE TO AN AUTHOR/LEGAL HEIRS ON RE-SALE OF AN ORIGINAL COPY.

# IMPORTANT SECTIONS

- SECTION 2(a): ADAPTION
- SECTION 2(c): ARTISTIC WORK
- SECTION 2(d): AUTHOR
- SECTION 2(dd): BROADCAST
- SECTION 2(h): DRAMATIC WORK
- SECTION 2(j): EXCLUSIVE LICENCE
- SECTION 2(l): INDIAN WORK
- SECTION 2(m): INFRINGING COPY
- SECTION 2(o): LITERARY WORK
- SECTION 2(y): WORK
- CERTAIN DISPUTES TO BE DECIDED BY COPYRIGHT BOARD – SEC. 6, 74
- NATIONALITY OF AUTHOR – SEC. 7
- WORK IN WHICH COPYRIGHT SUBSISTS – SEC. 13

- MEANING OF COPYRIGHT – SEC. 14
- FIRST OWNER OF COPYRIGHT – SEC. 17
- ASSIGNMENT – SEC. 18-19
- TERM OF COPYRIGHT – SEC. 22-23
- LICENCES – CHAPTER VI – SEC. 30-32B
- INTERNATIONAL COPYRIGHT – CHAPTR IX
- REGISTRATION OF COPYRIGHT – CHAPTER X
- INFRINGEMENT OF COPYRIGHT – CHAPTER XI
- CIVIL REMEDIES – CHAPTER XII
- MORAL RIGHTS – SEC. 57
- OFFENCES – CHAPTER XIII

# EXPLANATIONS TO CERTAIN DEFINITIONS

- **“WORK”** – [SEC. 2(y)] MEANS THE SAME CLASSES OF WORK AS DEFINED UNDER SEC. 13 OF THE ACT.
- **“ARTISTIC WORK”** – [SEC. 2(c)] WOULD INCLUDE A PAINTING, A SCULPTURE, A DRAWING, AN ENGRAVING OR A PHOTOGRAPH (WHETHER OR NOT ANY SUCH WORK POSSESS ARTISTIC QUALITY).
- **“LITERARY WORK”** – [SEC. 2(o)] INCLUDES COMPUTER PROGRAMMES, TABLES & COMPILATIONS INCLUDING COMPUTER DATA BASES.
- **“MUSICAL WORK”** - [SEC. 2(p)] MEANS THE WORK CONSISTING OF MUSIC AND INCLUDES IN GRAPHICAL NOTATIONS OF SUCH WORK BUT DOES NOT INCLUDE ANY WORDS OR ANY ACTION INTENDED TO BE SUNG, SPOKEN OR PERFORMED WITH THE MUSIC.

- **“DRAMATIC WORK”**– [SEC. 2(h)] INCLUDES ANY PIECE OF RECITATION, CHOROEGRAPHIC WORK OR ENTERTAINMENT IN DUMB SHOW, THE SCENIC ARRANGEMENT OR ACTING, FORM OF WHICH IS FIXED IN WRITING OR OTHERWISE BUT DOES NOT INCLUDE A CINEMATOGRAPH FILM
- **“CINEMATOGRAPH FILM”** – [SEC. 2(f)] MEANS ANY WORK OF VISUAL RECORDING ON ANY MEDIUM PRODUCED THROUGH A PROCESS FROM WHICH THE MOVING IMAGE MAY BE PRODUCED BY ANY MEANS AND INCLUDES A SOUND RECORDING ACCOMPANYING SUCH VISUAL RECORDING
- **“SOUND RECORDING”** – [SEC. 2(xx)] MEANS THE RECORDING OF SOUNDS FROM WHICH SUCH SOUNDS MAY BE PRODUCED REGARDLESS OF THE MEDIUM

- **RIGHT TO CLAIM AUTHORSHIP [SEC. 57]:**
- **THE AUTHOR'S SPECIAL RIGHTS ARE ALSO PROTECTED INDEPENDENTLY OF AUTHOR'S COPYRIGHT. THE AUTHOR'S SPECIAL RIGHTS ARE PROTECTED EVEN AFTER ASSIGNMENT OF THE WORK.**
- **THE AUTHOR HAS A SPECIAL RIGHT TO CLAIM AUTHORSHIP OF THE WORK EVEN AFTER ASSIGNMENT OF OWNERSHIP THEREIN BY VIRTUE OF ASSIGNMENT OR TRANSMISSION AND 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 THE HONOUR OR REPUTATION OF THE AUTHOR.**

# SCOPE OF COPYRIGHT PROTECTION

- PROTECTION IS PROVIDED UPON COMPLETION FOR THE FOLLOWING INTELLECTUAL WORKS:
- LITERARY WORKS AND THEIR TRANSLATION (BOOKS)
- ORAL WORKS AND THEIR TRANSLATIONS
- TABLES, COMPILATIONS
- ARTISTIC, PICTORIAL, PHOTOGRAPH, DRAWING, PAINTING, ENGRAVINGS
- MOTION PICTURES, SOUND TRACKS
- SOUND RECORDINGS, VIDEO TAPES, AUDIO TAPES OR DISCS
- COMPUTER PROGRAMMES
- MAPS
- SCIENTIFIC-TECHNICAL ENGINEERING DESIGN DRAWINGS
- LECTURES, MUSICAL PERFORMANCES, STAGE PRESENTATIONS
- CHOREOGRAPHY OR STAGE PERFORMERS RIGHT

# ESTABLISHING COPYRIGHT

SOME METHODS TO DO SO



Copyright over a work can be proved by :

1.Registration

2.By way of admissible evidence other than copyright registration certificate.

# EVIDENCE OTHER THAN THE COPYRIGHT REGISTRATION

Some countries do not provide for registration of copyright or do not insist on registration of Copyright. So secondary evidence is needed to establish Copyright. Ownership.

Owners/creators of a work need to have some form of evidence of the date on which the material was created by them.

It should therefore be a kind of evidence that should be acceptable in a court of law to prove copyright or establish ownership over a material.

# 1. EG STATIONERS HALL in London-UK.

- Registers works of copyright owners;
- Accepts copyright evidence in the form of cassettes, CDs etc;

# SELF MAIL:US PRACTICE

Owner of a copyright may send:  
5 copies of his work by registered  
mail to himself.

Before sending, the packet must  
be sealed in the presence of a  
Notary who will give his certificate  
for the same.

## SELF MAIL CONTD..

- The sender must sign over the envelope across the seal.  
Insist that the Post Office Clerk stamps the date across the seal and the receipt.  
On receipt of the envelope, it must be kept unopened in a safe place.

## BANK MANAGER/SOLICITOR:

- **A copy of the work may also be sent to one's Bank Manager or Solicitor for safe keeping.**

# STATUTORY DECLARATION:

- A Solicitor may be asked to prepare a statutory declaration which is a statement of the owner of the copyright stating that the work was originally created by him on a particular day etc...



## CONCLUSION:

It is advisable to use these methods in conjunction with any of the others.

However, the best method is to register the work with the Copyright Office or a Copyright Society or an a body like the Stationers Hall.

# REMEDIES FOR COPYRIGHT INFRINGEMENT

- PIRACY IN BOOKS, SOUND & VIDEO RECORDINGS, SOFTWARE: ENORMOUS BILLIONS OF DOLLARS ARE MADE FROM PIRACY THAT CAUSE ECONOMIC HARM AND THEREFORE THERE ARE MORE SEVERE CRIMINAL REMEDIES.

- CIVIL REMEDIES IN COPYRIGHT  
PROCEEDINGS

- ANTON PILLAR ORDER

- JUDICIALLY CREATED DEVICE
- ANTON PILLAR KG V/S MANUFACTURING PROCESS LTD, 1976 LCH 55, RPC 1977

# EX PARTE ORDER

- AN ORDER MADE WITHOUT NOTICE OR WARNING BEING GIVEN TO THE DEFENDANT, WHO IS (NOT A PARTY TO THE PROCEEDINGS) TO PERMIT THE PLAINTIFF TO ENTER THE DEFENDANT'S PREMISES TO INSPECT AND REMOVE RELEVANT DOCUMENTS FOR SAFE-KEEPING.
- SMACKS OF BEING A SEARCH WARRANT IN CIVIL PROCEEDINGS.
- CIVIL LAWS 'NUCLEAR WEAPON'

# COPYRIGHT IN THE DESIGN

DESIGNS ACT 2000

2(c) “COPYRIGHT” MEANS THE EXCLUSIVE RIGHT TO APPLY A DESIGN TO ANY ARTICLE IN ANY CLASS IN WHICH THE DESIGN IS REGISTERED;

SECTION 11:- OF DESIGNS ACT :-

(1) WHEN A DESIGN IS REGISTERED, THE REGISTERED PROPRIETOR OF THE DESIGN SHALL, SUBJECT TO THE PROVISIONS OF THIS ACT, HAVE COPYRIGHT IN THE DESIGN DURING TEN YEARS FROM THE DATE OF REGISTRATION.

(2) IF, BEFORE THE EXPIRATION OF THE SAID TEN YEARS, APPLICATION FOR THE EXTENSION OF THE PERIOD OF COPYRIGHT ..... (ANOTHER FIVE YEARS)

# COPYRIGHT IN LOGOS

# COPYRIGHT AND TECHNOLOGY

# COPYRIGHT IN IDEAS?

- COPYRIGHT IS A PROPERTY RIGHT. THE COPYRIGHT LAW IS CONCERNED TO PREVENT THE NEGATIVE RIGHT OF COPYING MATERIALS.
- IT IS NOT CONCERNED WITH THE REPRODUCTION OF IDEAS, BUT WITH THE REPRODUCTION OF THE FORM IN WHICH IDEAS ARE EXPRESSED.

# COPYRIGHT IN IDEAS?

- IDEAS ARE FREE AS AIR.
- COPYRIGHT, IS NOT A MONOPOLY OF UNEXPRESSED IDEAS.
- THUS, IF TWO PRECISELY SAME WORKS ARE PRODUCED INDEPENDENTLY OF ONE ANOTHER, THERE CAN BE NO INFRINGEMENT OF COPYRIGHT !



THE POSITION IS THAT, IF THE IDEA EXPRESSED IN A PERSON'S WORK IS SUFFICIENTLY GENERAL, THE MERE TAKING OF THAT IDEA WILL NOT BE INFRINGEMENT.

BUT IF THE IDEA HAS BEEN EXPRESSED IN DETAIL, THE REPRODUCTION OF SUCH EXPRESSION OF THE IDEA WILL CONSTITUTE INFRINGEMENT, BECAUSE IN SUCH A CASE, IT IS NOT THE IDEA WHICH HAS BEEN COPIED, BUT ITS DETAILED EXPRESSION.

# COPYRIGHT BALANCE

THE US COPYRIGHT OFFICE AND GOVERNMENT HAS BACKED THE RIGHT OF COMPANIES TO LIMIT ACCESS TO THEIR CONTENT WHEN IT IS OFFERED ON INTERNET TO MAINTAIN A BALANCE BETWEEN THE RIGHTS OF COPYRIGHT HOLDERS AND THE PEOPLE WHO USE COPYRIGHTED MATERIAL.

SEVERAL DEBATES AND DISCUSSIONS HAVE BEEN HELD ON THE PROPER BALANCE BETWEEN HOME RECORDING AND FAIR USE RIGHTS, INTELLECTUAL PROPERTY AND NEW TECHNOLOGIES IN THE DIGITAL AGE. HOW TECHNOLOGY CAN PROTECT COPYRIGHTS WHILE ALLOWING CONSUMERS ACCESS TO DIGITAL CONTENT, WHAT NEW TECHNOLOGIES ARE BEING DEVELOPED FOR THE FUTURE?

HOW COPY PROTECTION HAS DIVIDED POLITICIANS AND THE ENTERTAINMENT INDUSTRY?

“DIGITAL FREEDOM V/S. DIGITAL RESTRAINT”  
THE EXACT DEFINITION OF FAIR USE WAS QUICK TO  
BECOME A SUBJECT OF DISAGREEMENT.  
“FAIR USE INCITES COURTS AND INDIVIDUALS TO  
ENGAGE IN A BALANCING PROCESS BETWEEN THE  
CONTENT’S USE AND IT’S COSTS”.

# KINKO'S CASE FAIR USE

- KINKO'S OPERATED A CHAIN OF PHOTOCOPY CENTERS ALL OVER THE UNITED STATES. THESE SHOPS WERE USUALLY LOCATED NEAR UNIVERSITIES AND COLLEGES.
- CERTAIN PUBLISHERS FILED AN ACTION AGAINST KINKO'S ON THE GROUNDS THAT THE KINKO WAS PREPARING COLLECTIONS OF EXCERPTS FROM COPYRIGHTED BOOKS AT THE REQUEST OF FACULTY AT THE NEARBY CAMPUSES.

- KINKO'S WAS IN FACT COPYING THE EXCERPTS, AND THEN ASSEMBLING THEM INTO "COURSE PACKETS," AND WAS THEN SELLING THEM TO THE STUDENTS AT A PRICE THAT INCLUDED A REASONABLE PROFIT. KINKO'S NEVER SOUGHT OR OBTAINED PERMISSION TO COPY ANY OF THE COPYRIGHTED MATERIAL.
- KINKO'S DEFENDED THE PRACTICE AS, AMONG OTHER THINGS, A FAIR USE. THE COURT ANALYZED KINKO'S COPYING AND CONCLUDED THAT THE USE WAS NOT FAIR, ENJOINED KINKO'S FROM CONTINUING THE PRACTICE, AND ORDERED KINKO'S TO PAY \$510,000 IN STATUTORY DAMAGES AND ATTORNEY'S FEES AND COSTS.
- KINKO SETTLED THE LITIGATION WITHOUT AN APPEAL AND ULTIMATELY PAID THE PUBLISHERS US \$1,875,000.

- THE DECISION IN KINKO'S THUS REINFORCES THE NEED TO OBTAIN PERMISSION OF THE COPYRIGHT HOLDER BEFORE REPRODUCING COPYRIGHTED MATERIALS.

- THE USE OF INFORMATION IN ALL ENVIRONMENTS, INCLUDING WITHIN EDUCATIONAL AND RESEARCH INSTITUTIONS, INVOLVES COPYRIGHT OR CONFIDENTIAL INFORMATION.
- EVERYONE WHO USES INFORMATION, EVERYONE WHO USES A LIBRARY, MAKES A COPY OF AN ELECTRONIC JOURNAL ARTICLE ON THEIR COMPUTER, OR EVEN MAKES A PHOTOCOPY, NEEDS TO KNOW THAT COPYRIGHT LAW IS APPLICABLE.



# WHAT IS PERMISSION

- OBTAINING COPYRIGHT PERMISSION IS THE PROCESS OF GETTING CONSENT FROM A COPYRIGHT OWNER TO USE THE OWNER'S CREATIVE MATERIAL.
- OBTAINING PERMISSION IS ALSO CALLED 'LICENSING'.
- PERMISSION IS OFTEN (BUT NOT ALWAYS) REQUIRED TO PROTECT CREATIVE WORKS SUCH AS, TEXT, ARTWORK OR MUSIC.

# RISK OF NOT ASKING FOR PERMISSION

- COPYRIGHT PROTECTION EXTENDS TO ANY ORIGINAL WORK AND PERMISSION IS REQUIRED FOR REPRODUCTION, DISPLAY OR DISTRIBUTION OF THE WORK.
- IF USE OF A COPYRIGHTED WORK IS WITHOUT THE APPROPRIATE PERMISSION, IT MAY AMOUNT TO VIOLATION OF THE OWNER'S RIGHT AND THUS MAY RESULT TO INFRINGEMENT OF SOMEONE ELSE'S COPYRIGHT AND MAY ALSO LEAD TO LEGAL ACTION.
- PERMISSION MAY NOT BE REQUIRED IF THE WORK HAS FALLEN INTO PUBLIC DOMAIN OR IF THE USE QUALIFIES AS 'FAIR USE'.

# COPYRIGHT PERMISSION IN WRITING

- COPYRIGHT PERMISSION AGREEMENT SHOULD ALWAYS BE IN WRITING AS THE CHANCES OF MIS-UNDERSTANDING ARE ELIMINATED AND THE TERMS OF THE AGREEMENT CAN BE EASILY ENFORCEABLE IN THE COURTS OF LAW.

## WEBSITE PERMISSION

- COPYRIGHT ALSO SUBSISTS IN A WEBSITE CONTAINING TEXT, PHOTOGRAPHS, ARTWORK, MUSIC.
- A WORK IS NOT IN PUBLIC DOMAIN MERELY BECAUSE IT HAS BEEN POSTED ON THE INTERNET IF IT LACKS A COPYRIGHT NOTICE.

# COPYRIGHT INFRINGEMENT IN WEBSITE

- THE INCREASE IN WEB COMMERCE ALSO INCREASES THE LIKELIHOOD OF BEING CAUGHT FOR UNAUTHORIZED USES.
- COPYRIGHT INFRINGEMENT OCCURS WHENEVER COPYRIGHTED MATERIAL IS COPIED FROM OR POSTED TO A WEBSITE WITHOUT AUTHORIZATION FROM THE COPYRIGHT OWNER.

**Digital Millennium Copyright Act  
(DMCA) of 1998 in the US.**

**Technical Protection Measures.**

**Limits liability of Copyright Infringement**

**Web-casting rules and regulation.**

# Digital Millennium Copyright Act (DMCA) of 1998- SAFE HARBOUR

## TAKE DOWN PROVISION 512C

**The owner of the copyright serves a notice to expeditiously to remove, or disable access to” material claimed to be infringing copyright**

Digital Millennium Copyright Act  
(DMCA) of 1998- SAFE  
HARBOUR  
TAKE DOWN PROVISION 512C

If user gives a counter-notification ISP replaces material within 10 to 14 days after receipt, unless it is notified of a pending court action/court order.



# INTERNATIONAL COPYRIGHT STRATEGY

## WHAT IS PROTECTABLE? WHERE?

Treaties: Berne Convention, Universal Convention.

Scope of protection varies for computer programs and business methods.

Scope of protection varies for data bases

COPYRIGHT INFRINGEMENT  
SOME COURT CASES

- TO SUM UP -
- WHEN A WORK IS CREATED COPYRIGHT COMES INTO EXISTENCE
- A WORK CONTRIBUTES TO KNOWLEDGE AS A WHOLE WHICH IS FOR PUBLIC GOOD.
- CREATION OF ORIGINAL WORKS ENCOURAGES FREE EXPRESSION

**Thank You**