

**Original Article**

## **Accessibility of Copyrighted Works for Visually Impaired and Print Disabled Persons: Indian and International Perspectives**

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*"To every cow her calf, and to every book its copy"*

- Diarmaid Mac Cearbhaill

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### **Abstract**

Rationality and creativity are the hallmark of the human being as he is only a rational and higher creative animal than any other animals. There are several activities of creativity which be an invention, a discovery, a literature, a music compositions, a dramatic works, a painting, a cinematograph film, a sound recording etc. Almost all the modern countries have recognised the contribution of these creators by affording and conferring certain rights on the persons who are responsible for creating these works called the intellectual property rights (IPRs). The intellectual creations are regarded as property. They are being protected by law. The IPRs are of varied types such as patents, trademarks, designs and copyright etc. Intellectual property helps in economic, educational and cultural development of the nation.

Copyright is one of the major kinds of IPR which is different from the patent, trademark, integrated circuits and geographical indications. Copyright helps in progress of cultural and publishing industry of the nation for which copyright is recognised as a property protected by legal mechanism. Copyright exists in creative works which are original in nature. Copyright subsists in original literary, artistic, dramatic, musical, cinematographic, sound recording and computer programmes. Copyright also further extended to performers' and broadcasting reproduction rights allied rights. The creators of these works such as authors, artists, composers and producers will get certain exclusive rights protected by a definite period. Owners of copyright to the exclusion of others will enjoy these rights protected by the law for a defined period. The person who make use of the works, protected by the copyright without consent or authorisation of the owner, amounts to infringement of copyright leading to civil and criminal liabilities.

Copyright constitutes one of the most challenging barriers in the access to information of persons with sensory impairments. Among the 57 countries with copyright exemptions, India's approach stands out as it is inclusive and non-bureaucratic, catering to the needs of persons with disabilities living in the Global South.

**Keywords:** Intellectual Property; Copyright; Visually Impaired Persons; Print Disabled Person; Infringement of Copyright; Fair Use Doctrine; Exceptions to Infringement; Accessible Format.

## Introduction

The concept of copyright is essentially a product of modern civilisation. In ancient days, works of art and literature were created mainly to achieve name and fame [1]. Copyright is a unique kind of IPR, the importance of which is increasing day by day. Traditionally the copyright does not fall in the category of industrial property. In fact, copyright was the first intellectual property, which received legal protection in the world. Copyright law unlike patent and trade secret, protects the expression of an idea rather than the underlying idea itself. The subject matter of copyright is literary, artistic, dramatic, musical etc., works. All such works are protected as long as there is an original expression of an idea. The idea and expression dichotomy enables others to express the same or similar idea with different expression or similar expression without copying or imitating and receive copyright protection as long as the expression satisfies the test of originality.

The most basic right conferred by copyright is the right to exclude unauthorised reproduction of the copyrighted work. Most laws relating to copyright also prohibit certain acts such as performing the work in public, making a sound recording or audio-visual recording of the work, making a motion picture of the work, broadcasting or publicly communicating [2] the work and translations or adaptations [3] of the work. In addition to these economic rights, most copyright laws recognise moral rights as well, which are also called as special rights, normally include the author's right to claim authorship and to protect the work from mutilation or distortion [4]. It is said that 'what is worth copying is worth protecting'. This principle is aptly applicable to the protection of copyright in relation to various works such as literary, artistic and musical works etc.

Copyright is the most vulnerable form of intellectual property, as it is the most fragile and prone to abuse and theft. Generally it is said that advancement of science and technology improves the standard of life in the society. However, in the case of copyright protection, the advancement has posed greater challenges for protection of copyright due to invention of printing machine in 1440 by Johannes Gutenberg of Mainz, Germany. With the advent of reprographic technology like photocopying, scanning and digitisation, it has become very much easy to make multiple copies and reproduction of works within a fraction of time which put greater risk of protecting copyrights of the authors and owners. Since protection of intellectual property

is based on the principle of economic reward or incentive to the creator, the authors of the copyrightable works, now feel really insecure in the present environment. The effective mechanism is need of the hour to guard the interest and to protect the rights of the owners of the copyright as all copyright systems have recognised principle of fair use doctrine to make of the copyrighted works for certain purposes including by visually impaired or print disabled persons recent past.

### *Meaning and Definition of Copyright*

Copyright is a right accorded by law to creators of literary, dramatic, musical, artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, *inter alia*, rights of reproduction, communication to the public, adaptation and translation of the work. There could be slight variations in the composition of the rights depending on the work [5].

Copyright derives from the expression of 'Copie of words' first used in 1986. The word 'copy' alone probably dates from *circa* 1485 and was used to connote a manuscript or other matter prepared for printing [6].<sup>6</sup>

The Oxford English Dictionary defines 'Copyright' as 'the exclusive right given by law for a certain term of years to an author, composer etc. (or his assignee) to print, publish and sell copies of his original work'. Chambers Encyclopaedia defines copyright in its most elementary form as 'the exclusive right to multiply copies of a book'. The Colliers Encyclopaedia defines as 'a privilege or franchise granted by the Government to authors, composers and artists .....which entitles them to the exclusive right of printing or otherwise multiplying, publishing and vending copies of the copyrighted literary or artistic production.'

The statutory definition of the copyright defined in Section 14 of the Copyright Act, 1957, copyright means the exclusive right to do or authorise others to do certain acts in relation to: 1) literary [7], dramatic [8] or musical [9] works, not being a computer programme, 2) computer programme [10], 3) artistic work [11], 4) cinematographic film [12] and 5) sound recording [13]. The nature of the acts varies according to the subject matter. Basically copyright means the right to copy or reproduce the work in which copyright subsists [14]. Apart from these works the Copyright Act, 1957 extends its protection to performer's [15] rights [16] and broadcasting [17] reproduction rights as allied rights to the copyrights.

### *Object of Legal Protection of Copyright*

Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. Creativity being the keystone of progress, no civilized society can afford to ignore the basic requirement of encouraging the same. Economic and social development of a society is dependent on creativity. The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more and motivates others to create [18]. Chinnappa Reddy, J. in *Gramophone Co. v. Birender Bahadur Pandey*, AIR 1984 SC 667 at p.676 stated about the rationale and objective of protection of copyright, he said, "An artistic, literary or musical work is the brainchild of the author, the fruit of his labour and so, considered to be his property. So highly is it prized by all civilised nations that it is thought worthy of protection by national laws and international conventions [19]."

The object of copyright law is to encourage authors, composers and artists to create more and more original works by rewarding them with the exclusive right to enjoy monetary advantages for limited period to reproduce the works for the benefit of the public. On the expiry of the term of copyright the works belong to the public domain and anyone may reproduce them without permission [20].

The hallmark of any culture is the excellence of arts and literature. In fact the quality of creative genius of artists and authors determine the maturity and vitality of protection. What the law offers is not the protection of the interest of the artist or the author alone. Enrichment of culture is of vital importance to each society and the copyright law protects the social interest [21]. The copyright law has been enacted to check the piracy i.e., the labour put by the author or the copyright owner can enjoy but not pirates, who indulge in plagiarism and other undesirable and illegal activities of theft of intellectual property [22]. Thus the objects of the copyright protection are: (1) encouragement to creative and innovative works, (2) enrichment of culture and heritage, (3) dissemination of information and knowledge, and (4) protection of the legitimate interests of authors and owners of copyright.

### *History of Copyright Law in India*

The legislative history of copyrights in India is influenced by British law on copyright. The first and

foremost copyright law in India is the Copyright Act of 1914. This Act was essentially the extension of the British Copyright Act, 1911 adopted India with suitable modifications. Then the Copyright Act, 1957 was enacted which is current law on Copyrights in India. The Copyright Act, 1957 is based on many of the principles and provisions contained in the Copyright Act, 1956 of the United Kingdom. The Copyright Act, 1957 continues with the common law traditions. Developments elsewhere have brought about certain degree of convergence in copyright regimes in the developed world.

The Copyright Act, 1957 came into effect from January 1958. This Act mainly has been amended five times since then, i.e., in 1983, 1984, 1992, 1994, 1999 and 2012. The Copyright (Amendment) Act, 2012 is the most substantial. The main reasons for amendments to the Copyright Act, 1957 include to bring the Act in conformity with WIPO Copyright Treaty (WCT), 1996 and WIPO Performers & Phonograms Treaty (WPPT), 1996; to protect the music and film industry and address its concerns; to address the concerns of the physically disabled and to protect the interests of the author of any work; incidental changes; to remove operational facilities; and enforcement of rights. Some of the important amendments to the Copyright Act in 2012 are extension of copyright protection in the digital environment such as penalties for circumvention of technological protection measures and rights management information, and liability of internet service provider and introduction of statutory licences for cover versions and broadcasting organizations; ensuring right to receive royalties for authors, and music composers, exclusive economic and moral rights to performers, equal membership rights in copyright societies for authors and other right owners and exception of copyrights for physically disabled to access any works.

The Indian Copyright Act today is compliant with most international conventions and treaties in the field of copyrights. India is a member of the Berne Convention of 1886 (as modified at Paris in 1971), the Universal Copyright Convention of 1951 and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), 1995. The two international treaties were negotiated in 1996 under the auspices of the World Intellectual Property Organization (WIPO). These treaties are called the 'WIPO Copyrights Treaty (WCT)' and the 'WIPO Performances and Phonograms Treaty (WPPT)'. 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. India is not a member of these

treaties; amendments are being mooted to make Act in compliant with the above treaties in order to provide protection to copyright in digital era. The provisions of the Act are also in harmony with two other new WIPO treaties namely, the Beijing Audiovisual Performers Treaty, 2012 and the Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired or Otherwise Print Disabled Persons, 2013.

The Copyright Rules, 2013 was notified on 14 March, 2013 replacing the old Copyright Rules, 1958. The Rules, *inter alia*, provide for procedure for relinquishment of copyright; grant of compulsory licences in the matter of work withheld from public; to publish or republish works (in certain circumstances); to produce and publish a translation of a literary or dramatic work in any language; licence for benefit of disabled; grant statutory licence for cover versions; grant of statutory licence for broadcasting literary and musical works and sound recordings; registration of copyright societies and copyright registration<sup>23</sup>

#### *Rights Conferred on Owner of the Copyright*

Copyright is purely a creation of the statute [24] so it is a statutory right not a common law right unlike a trademark. The right which an author of a work has by virtue of creating the work, but not upon the registration. The registration of copyright is not mandatory for subsistence as well as for acquiring the right in the works. Copyright is an exclusive right which is available subject to Section 13 and other provisions of the Copyright Act, 1957. Copyright is a negative right, to the prohibition of others the owner will enjoy his right. Upon confirmation of the right copyright provides bundle of multiple rights. Copyright provides both economic as well as moral rights to the authors [25]. The exact rights which conferred on the owner are listed in Section 14 of the Copyright Act, 1957. Section 14 reads that copyright means the exclusive right subject to the provisions of the Act to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:

- (a) In the case of a literary, dramatic or musical work, not being a computer programme, - (i) to reproduce the work in any material form including the storing of it in any medium like electronic form; (ii) to issue copies of the work to the public not being copies already in circulation; (iii) to perform the work in public, or communicate it to the public; (iv) to make any cinematograph film or sound recording in respect

of the work; (v) to make any translation of the work; (vi) to make any adaptation of the work; (vii) to do, in relation to a translation or an adaptation of the work any of the acts mentioned above;

- (b) In the case of a computer programme, - (i) to do any of the acts mentioned in clause (a); (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme: Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental."
- (c) In the case of an artistic work, - (i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work; (ii) to communicate the work to the public; (iii) to issue copies of the work to the public not being copies already in circulation; (iv) to include the work in any cinematograph film; (v) to make any adaptation of the work; (vi) to do in relation to an adaptation of the work any of the acts mentioned above;
- (d) In the case of cinematograph film, - (i) to make a copy of the film, including a photograph of any image forming part of it; (ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions; (iii) to communicate the film to the public;
- (e) In the case of sound recording, - (i) to make any other sound recording embodying it; (ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions; (iii) to communicate the sound recording to the public. *Explanation:* For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

Apart from these rights the owner can also transfer his rights through assignment and licences to the person who wants to exploit the rights of the owner.

#### *Term of Copyright Protection*

Copyright basically a limited right in terms of its protection. The term and duration for which the copyrights are protected is varies according to the nature of the work. Term of copyright is provided under Sections 22 – 29 of the Copyright Act, 1957. The term is shown in the following table.

Sl. No.	Works	Term
1	Literary, dramatic, musical or artistic	60 pma* (Life + 60 Years)
2	Photograph	60 years
3	Cinematograph film	60 years
4	Sound recording	60 years
5	Government work	60 years
6	Works of public undertaking	60 years
7	Works of international organizations	60 years
8	Performers right	50 years
9	Broadcast reproduction rights	25 years

\**post mortem auctoris*—after the death of the author

### Violation or Infringement of Copyright

Rights conferred upon the owner must be enjoyed and exploited by the owner for the term assigned for the particular works. The right of owner can be enforced preventing others from making use of his works. In case any person indulge in violation or infringement of copyrighted works is an encroachment upon rights of the owner of the copyright. Copyright law confers upon the owner of the work a bundle of exclusive rights in respect of the reproduction of the work and other acts which enables the owner to get financial benefits by exercising such rights. If any of these acts relating to the work is carried out by a person other than the owner without a licence from the owner or a competent authority under the Act, it constitutes infringement of copyright in the work [26]. Copyright is a limited right restricted with a definite term, after the expiry of this term there will be no infringement of copyright. Infringement of copyright depends upon the nature of the works. Infringement of the copyright varies from the work to work.

Section 51 [27] provides for when copyright infringed. - Copyright in a work shall be deemed to be infringed-

- (a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act- (i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or (ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or
- (b) when any person- (i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or (ii) distributes either for the purpose of trade or to such an extent as to

affect prejudicially the owner of the copyright, or (iii) by way of trade exhibits in public, or (iv) imports into India, any infringing copies of the work: Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.

*Explanation.*- For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy".

### Exceptions or Limitations to Infringement of Copyright

In all modern civilised countries have also provided certain exceptions or limitations on copyright protection whereby facilitated to make use of the copyright protected work without being facing the liabilities of violations. The exceptional circumstances are meant for protecting the public interest whereby the persons are allowed to use the works for genuine purposes called as 'fair use doctrine' or 'fair dealing doctrine.' The authority in copyright W. R. Cornish lists fair dealing circumstance are (1) Research and Private Study, (2) Reporting current Events, (3) Criticism and review: [28] The same has been adopted by the international as well as national level legal systems. In India there is separate provision under which the limitation clause has been adopted under section 52 of the Copyright Act, 1957. Section 52 of the Copyright Act, 1957 can be read: "52. Certain acts not to be infringement of copyright.- (1) the following acts shall not constitute an infringement of copyright, namely:

- (a) a fair dealing with any work, not being a computer programme, for the purposes of- (i) private or personal use, including research; (ii) criticism or review, whether of that work or of any other work; (iii) the reporting of current events and current affairs, including the reporting of a lecture delivered in public. *Explanation.*-The storing of any work in any electronic medium for the purposes mentioned in this clause, including the incidental storage of any computer programme which is not itself an infringing copy for the said purposes, shall not constitute infringement of copyright";

(aa) the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy- (i) in order to utilise the computer programme for the purposes for which it was supplied; or (ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied;”

(ab) the doing of any act necessary to obtain information essential for operating inter-operability of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available;

(ac) the observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied;

(ad) the making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use;

(b) the transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public;

(c) transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy: Provided that if the person responsible for the storage of the copy has received a written complaint from the owner of copyright in the work, complaining that such transient or incidental storage is an infringement, such person responsible for the storage shall refrain from facilitating such access for a period of twenty-one days or till he receives an order from the competent court refraining from facilitating access and in case no such order is received before the expiry of such period of twenty-one days, he may continue to provide the facility of such access;

(d) the reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;

(e) the reproduction or publication of any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature,

exclusively for the use of the members of that Legislature;”;

(f) the reproduction of any work in a certified copy made or supplied in accordance with any law for the time being in force;

(g) the reading or recitation in public of reasonable extracts from a published literary or dramatic work;

(h) the publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for instructional use, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for such use in which copyright subsists: Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years. *Explanation.* - In the case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more of those authors in collaboration with any other person;

(i) the reproduction of any work- (i) by a teacher or a pupil in the course of instruction; or (ii) as part of the questions to be answered in an examination; or (iii) in answers to such questions;

(j) the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a sound recording if the audience is limited to such staff and students, the parents and guardians of the students and persons connected with the activities of the institution or the communication to such an audience of a cinematograph film or sound recording;”;

(k) the causing of a recording to be heard in public by utilising it, - (i) 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 (ii) as part of the activities of a club or similar organisation which is not established or conducted for profit; (iii) as part of the activities of a club, society or other organisation which is not established or conducted for profit;

(l) the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution;

(m) the reproduction in a newspaper, magazine or other periodical of an article on current economic,

political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction;

(n) the storing of a work in any medium by electronic means by a non-commercial public library, for preservation if the library already possesses a non-digital copy of the work;

(o) the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a non-commercial public library for the use of the library if such book is not available for sale in India;

(p) the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access: Provided that where the identity of the author of any such work or, in the case of a work of joint authorship, of any of the authors is known to the library, museum or other institution, as the case may be, the provisions of this clause shall apply only if such reproduction is made at a time more than sixty years from the date of the death of the author or, in the case of a work of joint authorship, from the death of the author whose identity is known or, if the identity of more authors than one is known from the death of such of those authors who dies last;

(q) the reproduction or publication of- (i) any matter which has been published in any Official Gazette except an Act of a Legislature; (ii) any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter; (iii) the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government; (iv) any judgement or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the court, the tribunal or other judicial authority, as the case may be;

(r) the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made thereunder- (i) if no translation of such Act or rules or orders in that language has previously been produced or published by the Government; or (ii) where a translation of such Act or rules or orders in that language has been produced or published by the Government, if the translation is not available for sale to the public:

Provided that such translation contains a statement at a prominent place to the effect that the translation has not been authorised or accepted as authentic by the Government;

(s) the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture;

(t) the making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work falling under sub-clause (iii) of clause (c) of section 2, if such work is permanently situate in a public place or any premises to which the public has access;

(u) the inclusion in a cinematograph film of- (i) any artistic work permanently situate in a public place or any premises to which the public has access; or (ii) any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film;

(v) the use by the author of an artistic work, where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the work: Provided that he does not thereby repeat or imitate the main design of the work;

(w) the making of a three-dimensional object from a two-dimensional artistic work, such as a technical drawing, for the purposes of industrial application of any purely functional part of a useful device;

(x) the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed: Provided that the original construction was made with the consent or licence of the owner of the copyright in such drawings and plans;

(y) in relation to a literary, dramatic, artistic or musical work recorded or reproduced in any cinematograph film the exhibition of such film after the expiration of the term of copyright therein: Provided that the provisions of sub-clause (ii) of clause (a), sub-clause (a) of clause (b) and clauses (d), (f), (g), (m) and (p) shall not apply as respects any act unless that act is accompanied by an acknowledgment- (i) identifying the work by its title or other description; and (ii) unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

(z) the making of an ephemeral recording, by a broadcasting organisation using its own facilities for its own broadcast by a broadcasting organisation of a work which it has the right to broadcast; and the

retention of such recording for archival purposes on the ground of its exceptional documentary character;

(za) the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any *bona fide* religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority. *Explanation.* - For the purpose of this clause, religious ceremony including a marriage procession and other social festivities associated with a marriage.

(zb) the adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format, by- (i) any person to facilitate persons with disability to access to works including sharing with any person with disability of such accessible format for private or personal use, educational purpose or research; or (ii) any organisation working for the benefit of the persons with disabilities in case the normal format prevents the enjoyment of such works by such persons: Provided that the copies of the works in such accessible format are made available to the persons with disabilities on a non-profit basis but to recover only the cost of production: Provided further that the organisation shall ensure that the copies of works in such accessible format are used only by persons with disabilities and takes reasonable steps to prevent its entry into ordinary channels of business. *Explanation.* - For the purposes of this sub-clause, "any organisation" includes an organisation registered under section 12A of the Income-tax Act, 1961 and working for the benefit of persons with disability or recognised under Chapter X of the Persons with Disabilities (Equal Opportunities, Protection or Rights and Full Participation) Act, 1995 or receiving grants from the government for facilitating access to persons with disabilities or an educational institution or library or archives recognised by the Government".

(zc) the importation of copies of any literary or artistic work, such as labels, company logos or promotional or explanatory material, that is purely incidental to other goods or products being imported lawfully.

*International Aspects of Accessibility of Copyrighted Works to Visually Impaired or Print Disabled Persons*

Organisations representing the interests of visually impaired [29] people have been lobbying for action for a number of years. For example, the World Blind Union, the DAISY Consortium and IFLA Libraries for the Blind Section published an agreed

policy position in April 2004.

WIPO has itself recently published a Study on Automated Rights Management Systems and Copyright Limitations and Exceptions, which studied exceptions for the benefit of visually impaired people and exceptions applying to distance education in particular. Exceptions for the benefit of visually impaired people were also covered in a joint WIPO and UNESCO Working Group on Access by the Visually and Auditory Handicapped to Material Reproducing Works Protected by Copyright and a second study by the Secretariats of the Executive Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention which was included in a joint report by the Secretariats. The International Federation of Library Associations and Institutions (IFLA) published a Study as long ago as 1982 on Copyright and Library Materials for the Handicapped.

There have in addition been various conferences and meetings where the issues relevant to this Study have been discussed and this Study has also drawn on the presentations made at those events. For example, WIPO held an information meeting on Digital Content for the Visually Impaired in 2003 at which the International Publishers Association as well as the World Blind Union and other disability interests and national representatives gave presentations. In 2004, one of the agenda items at the World Library and Information Congress looked at the balance of copyright and licensing to give access to information for print handicapped people. These are just a few of the sources of information that have been referred to in preparing this Study.

The World Blind Union has estimated that there are about 180 million blind and partially sighted people in the world. Although this figure includes many children and young people who need access to the written word in order to study. The older people whose sight has declined as they age make up an increasingly large proportion of the total. Their preferences are more likely to be mainly a desire to access the written word for leisure reading. It is widely accepted by stakeholders of all types that it is import to increase visually impaired people's access to the written word. A figure widely quoted as the proportion of books published that are currently available in alternative formats useable by visually impaired people is no more than about 5%. Publishers and other right holders generally want visually impaired people to be able to read what they publish and visually impaired people want the barriers that prevent them reading this material removed.



However, it is also widely accepted that there is no simple or single solution and that copyright is not the only relevant issue. This Study, however, concentrates on only the copyright issues and attempts to identify the problems and possible solutions to those problems.

Based on the recommendations of several studies and seminar and conferences again the WIPO has conducted a study by constituting its standing committee in 2006. The study has been carried out by WIPO Standing Committee on Copyright and Related Rights presented a report entitled "Study on Copyright Limitations and Exceptions for the Visually Impaired [30]."

*Study on Copyright Limitations and Exceptions for the Visually Impaired*

The study conducted by WIPO builds on a number of earlier studies and reports looking at the relationship between copyright and the needs of visually impaired people who are unable to read copyright works in the form in which they have been published. In particular, the Study looks at what might be the appropriate balance between the interests of right holders on the one hand, and visually impaired users of copyright works and those assisting them on the other hand where exceptions to rights are provided, but it also looks at other possible solutions to the copyright problems that have been identified.

The framework in international treaties and conventions relating to intellectual property seems to permit exceptions for the benefit of visually impaired people. Indeed, exceptions seem possible with respect to a wide range of acts restricted by copyright that might be undertaken by those making and supplying accessible copies to visually impaired people. However, the possibility of such provision is not specifically addressed and is not mandatory under these treaties and conventions, although it is widely accepted that copyright laws should provide a balance between the interests of different stakeholders. Also, especially where several different treaties and conventions need to be considered, the conditions that might apply to exceptions is quite complicated and there may be some doubt regarding exceptions to the adaptation right in particular.

In examining exceptions for the benefit of visually impaired people in national laws, 57 countries have been found that have specific provisions that would permit activity to assist visually impaired people unable to access the written word, or to assist people with a print disability more generally, by making a

copyright work available to them in an accessible form. Some of the exceptions found in these countries would also permit other types of assistance for handicapped people, and two further countries have been found that have exceptions that would permit, amongst other things, audio description of broadcasts. It has not been possible in this Study to consider to what extent exceptions of other types would permit activity for the benefit of visually impaired people, such as exceptions permitting private copying, use of copyright works for educational purposes and those applying to activity in or by libraries. But it seems unlikely that such exceptions would provide a comprehensive solution to the legitimate needs of visually impaired people unable because of copyright constraints to access the written word.

The specific exceptions found in national laws have been analysed in some detail, for example looking at how the end beneficiary is defined, what type of copyright works can be copied or otherwise used and by what type of organisation, whether or not activity must be of a non-commercial nature and what type of accessible copies can be made. The range of provision varies considerably between countries on most of the factors considered and the variation does not generally seem to have any relationship to the needs of visually impaired people in a particular country. A number of exceptions are specifically qualified by a requirement to comply with a test the same as or similar to the 3-step test found in the Berne Convention. The majority of exceptions do not provide for any remuneration to be paid to right holders for activity under the exception.

After a long debate the WIPO came to the conclusion of the treaty to facilitate the accessibility of the copyrighted works to the visually impaired people entitled the 'Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired or Otherwise Print Disabled Persons, 2013.'

*The Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired or Otherwise Print Disabled Persons, 2013.*

In keeping with the fundamental objectives of non discrimination, equal opportunity, access, complete individual development, effective and inclusive participation in society, the Treaty of Marrakesh truly balanced human rights and intellectual property rights. Marrakesh, an international treaty that ensures visually impaired people to have easier access to books, unanimously adopted by member state of the UN's World

Intellectual Property Organization (WIPO). The treaty was approved by representatives from WIPO's 186 member states including India at "The Marrakesh Treaty to Facilitate Access to Publish Works for Persons who are Blind, Visually Impaired or otherwise Print Disabled" on June 27, 2013. After this treaty, books would be available in all sorts of formats such as Braille, for the print disabled/visually impaired, in order to enable them to read, learn and participate in the well learned society.

#### *Treaty's Agenda and the Final Verdict*

The treaty recognized the obligation of the right holder to make works accessible to persons with visual impairment and to the print disabled, recognized that though countries have different limitations and exceptions to their copyright law, but a uniform international framework to be followed and to ensure cross-border exchange of books in accessible format. The main agenda was to promote sharing of books in any accessible format for blind or visually impaired, and to alleviate the "book famine" experienced by many of the WHO estimated 300 million people from such disability in the world. According to WHO, India has more than 63 million visually impaired people, of whom about 8 million are blind.

Considering the access of knowledge, keeping the blind persons in mind, the treaty removed barriers to access, recognized the right to read, established equal opportunities and rights for blind, visually impaired and otherwise print disabled persons who are marginalized due to lack of access to published works. Adoption of this treaty has made equal and appropriate balance between Copyright Law, its exceptions and limitations. The treaty also focused to adopt national law provisions that permit the reproduction, distribution and making available published works in accessible formats without having to seek permission from organizations that serve people who are blind, visually impaired and print disabled. This will in turn increase the availability of accessible works as different countries will be able to each produce accessible versions of materials which can then be shared with each other instead of duplicating efforts by adopting the same work.

Furthermore, because copyright law is "territorial" these exemptions usually do not cover the import or export of work covered into accessible formats, even between countries with similar rules. Organization in each country must negotiate license with the right holder to exchange special format

across border, or produce their own material, a costly undertaking that severely limits access by visually impaired persons to print works of all kinds.<sup>1</sup>

#### *Substantive Provisions*

*Article 2:* of the draft lays down certain important definitions. From the definition of the work, it becomes clear that this treaty is applicable to literary and artistic work. 'Accessible format copy' is defined to mean a copy of a work in an alternative manner or form in order to enable people with visual impairments to have access to these works 'as feasibly and comfortably as a person without visual impairments or print disabilities.' The breadth of this definition is welcoming. However, the US and EU policy on digital locks as well as translation rights may pose a hurdle for the realization of access and availability of such formats. Therefore, though the law requires books to be made available easily, technology and market choices by the US and EU may hinder 'feasible and comfortable' access to such formats.

The footnote to Article 7 allows authorized entities to make use of technological measures and says that nothing should disturb such practices if they are in accordance with national laws.

*Article 3:* Another major development has been the inclusion of the 'print disabled' as a beneficiary (along with the blind and visually impaired). This is in keeping with the objectives of non-discrimination and equal opportunity. A print disabled person is someone who cannot access print due to certain visual, physical or cognitive disabilities. Example a person who has no hands cannot turn page of a printed book and is print disabled (even though his visions is fine).

*Article 4.2:* The treaty allows the owner of the copyright, the beneficiary (or someone acting on his behalf) or an 'authorized entity' to make an accessible format copy of a work without the authorization of the copyright holder. Moreover, the treaty mandates that such copies be shared only with beneficiaries and be made from lawfully obtained copies. The Indian Copyright law also allows the disabled person and non-profit third parties working for the disabled to convert works into accessible formats without authorization from the right holder.

*Article 5:* Cross border exchange of copyrighted works in accessible formats is one of the primary aims of the treaty. Technologically advanced developed nations have the capability to convert works into various formats, whereas the developing nations may not have the same capabilities. The

treaty enables easy access to converted works across borders. This is giant step for ensuring access. However, since the treaty text uses the word 'may' and gives an impression that this provision is non-mandatory, the US and EU may take advantage of such language.

*Article 9 and 14:* The treaty delegates administrative functions to the International Bureau of WIPO. The International Bureau will also help in facilitating cross border exchange of accessible formats by encouraging voluntary sharing of information so that authorized entities can identify each other. An Assembly to maintain and develop the treaty has also been created. Each Contracting State is represented by one delegate in the Assembly who has one vote[31].

#### *Indian Aspects of Accessibility of Copyrighted Works to Print Disabled Persons*

Basically the Indian Copyright Act, 1957 is not having provisions pertaining to exceptions under section 51 regarding accessibility of works for visually impaired persons. India being a proactive country is always far ahead in updating its laws in par with the international developments. It has been found that only 1% of all the books are available in accessible formats and it is stated that 47 million of the world's visually impaired persons stay in India. In order to deal with this deficit an amendment in the Indian Copyright Act, 1957 was introduced in 2012. The Copyright (Amendment) Act, 2012 especially clause (zb) has been newly inserted in sub-section (1) of section 52, which permits the conversion of a work into any accessible format exclusively for the benefit of persons with disabilities. This amendment was introduced much before the Marrakesh Treaty and in all probability would have been upheld as a shining example at the Marrakesh Conference, Morocco[32].

The Copyright Amendment Act No. 27 of 2012 updates India's copyright law and includes amendments facilitating access to works. Concerning specifically the access barriers of persons with disabilities to a wide abundance of works, despite technological advances, the Act envisages three activities:

1. Conversions by the disabled person for his/her own use and for sharing with others in the community.
2. Conversions by third parties working for the benefit of the disabled on a non-profit basis. As long as the converter (any person or organisation) operates on a non-profit basis and ensures that

converted formats are only accessed by persons with disabilities, Section 52(1)(zb) permits the conversion of a copyrighted work to any accessible format. It is very important to note that the exception extends not only to persons with print/reading disabilities/visual impairments, but to any person with a disability requiring a special format to access the work for private or personal use, educational purposes or research.

3. Conversions by for-profit organisations: Any organisation or an individual working for conversion of the works for disabled for-profit or for business, the entity can apply for a compulsory license under Section 31(B). The Copyright Board has to dispose such application within a period of two months from the date of receipt of application[33].

#### **Conclusion**

After a long demand from the persons with disabilities and NGOs working towards them for facilitating the accessibility of copyrighted works to them, the WIPO has played an important role in devising the international law for the benefit of the visually impaired persons by adopting the Marrakesh Treaty.

Prior to the Marrakesh Treaty, it was often unlawful to allow so-called authorized entities (libraries or NGO's) in one country to send accessible format books directly to authorized entities or blind individuals in another country. This resulted in large libraries of accessible books being trapped behind national borders. As a result, the same books had to be made accessible from scratch in each new country where a blind person needed it. Now cross-border shipment will be legal with little administrative burden. The treaty reiterates the requirement that the cross border sharing of work created based on limitation and exceptions must be limited to certain special cases which do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interest of the right-holder. The treaty also allows for the unlocking of digital locks on e-books for the benefit of blind people. In other words, a kindle book or iBook with digital rights management could now be unlocked and printed in Braille without consulting the rights holder. At present, 51 countries have signed the treaty making it the largest number of the countries to ever sign a WIPO-administration treaty upon adoption.

Subsequent to the commencement of Amendment Act, India also ratified Marrakesh Treaty to Facilitate

Access to Published Works for Persons who are Blind, Visually Impaired or otherwise Print Disabled, adopted on 23<sup>rd</sup> June, 2013, became the first country to do so. This would enable Indian users to use accessible format copies available in the developed countries and also allow sharing of digitized version of hitherto available printed works which when used with assistive technological measures such as read aloud capability, text to speech function or refreshable Braille display may prove very beneficial[34].

India is a more proactive without waiting for the Marrakesh Treaty in enacting the law by amending the Copyright Act in 2012 to facilitate availability of copyrighted works to the visually impaired and print disabled and allowing conversion of works in accessible formats towards them. Due to this as of 2013, 95 Indian members of DAISY (Digital Accessible Information System) have converted 25,000 books which are available to some 50,000 users. All 150-200 million Indians with disabilities could potentially benefit[35].

As this is a knowledge era so, visually impaired or print disabled should not be made further disabled to get the information and material source from the copyright protected material. This will help in enriching their knowledge, capabilities and skills and contribute the same to the society by creating more and more works of art and literature by making use of these laws.

Every country should have the widest possible copyright exceptions permitting the conversion of books and other cultural material into accessible formats for persons with disabilities[36]. However, at the same time one should also needs to respect and honour the interests of the copyright owners.

## References

1. P. Narayanan, (2002), Copyright and Industrial Designs, Third Edn., Eastern Law House, New Delhi, P.[7].
2. Communication to the public means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available. *Explanation.*- For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public (Sec. 2(ff) of the Copyright Act, 1957).
3. Adaptation means,- (i) in relation to a dramatic work, the conversion of the work into a non-dramatic work; (ii) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise; (iii) in relation to a literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical; (iv) in relation to a musical work, any arrangement or transcription of the work; and (v) in relation to any work, any use of such work involving its re-arrangement or alteration (Sec. 2(a) of the Copyright Act, 1957).
4. Jayashree Watal, (2001), Intellectual Property Rights in the WTO and Developing Countries, Oxford University Press, New Delhi, P.207.
5. <http://copyright.gov.in/Documents/handbook.html>.
6. P. Narayanan, (2002), Copyright and Industrial Designs, Third Edn., Eastern Law House, New Delhi, P.2.
7. Literary work includes computer programmes, tables and compilations including computer literary data bases (Sec. 2(o) of the Copyright Act, 1957).
8. Dramatic work includes any piece for recitation, choreographic 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 (Sec. 2(h) of the Copyright Act, 1957).
9. Musical work means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music (Sec. 2(p) of the Copyright Act, 1957).
10. Computer programme means a set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result (Sec. 2(ffc) of the Copyright Act, 1957).
11. Artistic work means- (i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality; (ii) work of architecture; and (iii) any other work of artistic craftsmanship (Sec. 2(c) of the Copyright Act, 1957).
12. Cinematograph film" means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to

- cinematography including video films (Sec. 2(f) of the Copyright Act, 1957).
13. Sound recording means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced (Sec. 2(xx) of the Copyright Act, 1957).
  14. P. Narayanan, (2002), Copyright and Industrial Designs, Third Edn., Eastern Law House, New Delhi, P.2
  15. Performer includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance (Sec. 2(qq) of the Copyright Act, 1957).
  16. Performance, in relation to performer's right, means any visual or acoustic presentation made live by one or more performers (Sec. 2(q) of the Copyright Act, 1957).
  17. 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 (Sec. 2(dd) of the Copyright Act, 1957).
  18. <http://copyright.gov.in/Documents/handbook.html>.
  19. P. Narayanan, Copyright and Industrial Designs, (2002), Third Edn., Eastern Law House, New Delhi, P. 1.
  20. P. Narayanan, (2002) Copyright and Industrial Designs, Third Edn., Eastern Law House, New Delhi, P. 3.
  21. See Manu Bhandari v. Kala Vikas Pictures Pvt. Ltd., AIR 1987, Delhi 13.
  22. See Girish Gandhi v. Union of India, AIR, 1997, Raj 78 at p.84.
  23. See <http://copyright.gov.in/>.
  24. P. Narayanan, (2002), Copyright and Industrial Designs, Third Edn., Eastern Law House, New Delhi, P. 89.
  25. Author means,- (i) in relation to a literary or dramatic work, the author of the work; (ii) in relation to a musical work, the composer; (iii) in relation to an artistic work other than a photograph, the artist;  
(iv) in relation to a photograph, the person taking the photograph; (v) in relation to a cinematograph or sound recording the producer; and (vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;] (Sec. 2(d) of the Copyright Act, 1957).
  26. P. Narayanan, (2002,) Copyright and Industrial Designs, Third Edn., Eastern Law House, New Delhi, P.155.
  27. Section 51 of the Copyright Act, 1957.
  28. W.R. Cornish, Intellectual Property, Third Edn., Universal Law Publishing Co. Pvt. Ltd., Delhi, 1996; Pp. 378-379.
  29. Wikipedia defines "Visual impairment (or vision impairment)" is a decreased ability to see to a degree that causes problems not fixable by usual means, such as glasses or medication. WHO defines the term visually impaired as follows: There are 4 levels of visual function, according to the International Classification of Diseases -10 (Update and Revision 2006): 1) normal vision, 2) moderate visual impairment, 3) severe visual impairment, and 4) blindness. Moderate visual impairment combined with severe visual impairment are grouped under the term "low vision": low vision taken together with blindness represents all visual impairment. See <http://www.who.int/mediacentre/factsheets/fs282/en/>.
  30. WIPO Document No. SCCR/15/7, Dated: February 20, 2007, prepared by Judith Sullivan, Consultant, Copyright and Government Affairs.
  31. <http://www.mondaq.com/india/x/262396/Copyright/Historic+Marrakesh+Treaty+ For+ Visually+Impaired>.
  32. <http://www.mondaq.com/india/x/262396/Copyright/Historic+Marrakesh+Treaty+ For+ Visually+Impaired>.
  33. <http://zeroproject.org/policy/india/>.
  34. Abhai Pandey, The Indian Copyright (Amendment) Act, 2012 And Its Functioning So Far, <http://www.ip-watch.org/2014/10/23/the-indian-copyright-amendment-act-2012-and-its-functioning-so-far/>.
  35. <http://zeroproject.org/policy/india/>.
  36. Nirmita Narasimhan, Centre for Internet and Society, India.
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