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Assignment of Copyrights: An Overview on 2012 Amendment

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ABSTRACT

In this research paper , we will discuss the assignment of copyright with existing or future work with respect to the conditions therein; artistic , literary , dramatic and other works . Different aspects with the right to assignment and certain amendments made to protect the authors' s interest and the impact of 2012 amendment will be discussed with the brief introduction of licensing vis'a vis related subject matter. Limitations imposed on copyright assignment and furthermore requisites for assigning the copyright , referring to relevant sections will be emphasized. Assigning be revoked or not along with disputes in assignment , this insists on the powers of copyright board , will be dealt with in the paper. Since assignment between parties is a contract , therefore the terms of such contract , any transactions related forms the part of the subject. Ahead all this , there is an ambiguity with the copyright as an intellectual property since it is a non- tangible property , it has no physical existence , so the topic will be elaborated further.

Keywords: *Economic rights , 2012 amendment.*

I. INTRODUCTION

Copyright is a protection given to the creators of certain types of works as an acknowledgment to their intellectual input¹. The objective of copyright has always been the protection of the interest of a creator, coupled with dissemination of knowledge. Though this protection started with the recognition of rights of authors in their books, but modern technology has substantially changed the nature of work and its mode of exploitation.

Economic rights allow an owner to reap economic benefits from his intellectual creations. According to section 14 of the Copyright Act, 1957, different rights are recognised with respect to the nature of the work. As per this section, it is the exclusive right of the owner to do or authorise the doing of the acts provided thereunder.

The owner of copyright work can generate wealth not only by exploiting it himself but also by sharing it with others for mutual benefits. This can be done by way of assignment or licensing of copyright.

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II. ASSIGNMENT OF COPYRIGHT (SECTION 18)

The owner of the copyright of a work has the right to assign his copyright to any other person. The effect of assignment is that the assignee becomes entitled to all the rights related to the copyright to the assigned work. However, mere grant of right to publish and sell the copyrighted work amounts to publishing right and not assignment of copyright.

Where the assignee of a copyright becomes entitled to any right comprised in the copyright, he shall be treated as the owner of the copyright in respect of those rights. The assignor shall also be treated as the owner of copyright with respect to unassigned rights. The legal representatives of the assignee shall be entitled to the benefits of assignment, if the assignee dies before the work comes into existence.

In *Video Master v. Nishi Production*³, the Bombay High Court considered the issue whether assignment of video rights would include the right of satellite broadcast as well. The Court agreed with the contentions of defendant that there were different modes of communication to the public such as terrestrial television broadcasting (Doordarshan), satellite broadcasting and video TV. The owner of the film had separate copyright in all those modes, and he could assign it to different persons. Thus, satellite broadcast copyright of film was a separate right of the owner of the film and the video copyright assigned to the plaintiff would not include this.

III. MODE OF ASSIGNMENT (SECTION 19)

As per section 19, assignment of copyright is valid only if it is in writing and signed by the assignor or his duly authorized agent. The assignment of a copyright in a work should identify the work and specify kind of rights assigned and the duration and territorial extent of such assignment. Further, it should specify the amount of royalty payable, if any, to the author or his legal heirs during the continuance of assignment and the assignment will be subject to revision, extension or termination on terms mutually agreed upon by the parties.

If the period of assignment is not mentioned it will be deemed to be taken as five years from the date of assignment. If the territorial extent of such assignment is not stipulated, it will be taken as applicable in whole of India.

Also, Section 19(8) contemplates that the assignment of copyright work against the terms and conditions on which rights have been assigned to a particular copyright society where the author of the work is a member shall be void. Further, Section 19(9) and section 19(10) opine that the assignment of copyright for making cinematograph film or sound recording shall not affect the right of the author to claim an equal share of the royalties and consideration payable with respect

to use of his protected work.

In *Saregama India Ltd v. Suresh Jindal*⁴, it was held that the owner of the copyright in a future work may assign the copyright to any person either wholly or partially for the whole of the copyright or any part thereof and once the assignment is made the assignee for the purpose of this Act is treated as the owner of the copyright.

IV. DISPUTES WITH RESPECT TO ASSIGNMENT OF COPYRIGHT (SECTION 19A)

As per section 19(a) the Appellate Board may on the receipt of a complaint from the assignor and on holding such inquiry as it may deem necessary, revoke such assignment, if the assignee fails to make sufficient exercise of the rights assigned to him, and such failure is not attributable to any act or omission of the assignor.

In case of a dispute with respect to the assignment of copyright, the Appellate Board may pass a suitable order on receiving a complaint from the aggrieved party and after holding such inquiry as it considers necessary including an order for the recovery of any royalty payable.

V. ASSIGNMENT BY OPERATION OF LAW (SECTION 20)

When the owner of a copyright dies the copyright will pass on to his personal representative as part of the estate, provided that no will has been executed. Section 20 provides that if a person is entitled for copyright under bequest and such work has not been published before the death of the testator, unless contrary intention is shown under testator's will or any codicil thereto, such person shall be considered as having copyright in the work so far as testator was the owner of copyright immediately before his death.

(A) Licensing of copyright

The owner of copyright may grant a license to do any of the act in respect of which he has an exclusive right to do. The license can be classified into following categories:

VI. VOLUNTARY LICENSE (SECTION 30)

The author or the copyright owner has exclusive rights in his creative work and he alone has right to grant license with respect to such work. According to section 30 of the Copyright Act 1957, the owner of the copyright in a work may grant any interest in his copyright to any person by license in writing, which is to be signed by him or by his duly authorised agent. A license can be granted not only in existing work but also in respect of the future work, in this situation assignment shall come into force when such future work comes into existence. Where a licensee of the copyright in a future work dies before such work comes into existence, his legal

representatives shall be entitled to the benefit of the license if there is no provision to contrary.

The mode of license is like an assignment deed, with necessary adaptations and modifications in section 19 (section 30A). Therefore, like an assignment, a license deed in relation to a work should comprise of following particulars:

(A) Duration of license

The rights which have been licensed Territorial extent of the licensed The quantum of royal payable Terms regarding revision Extension and termination Voluntary licenses can be:

- Exclusive - The term exclusive license has been defined in Section 2(j) as a license which confers on the licensee and persons authorized by him, to the exclusion of all other persons, any right comprised in the copyright work.
- Non-exclusive – It does not confer right of exclusion. It is mere grant of an authority to do a particular thing which otherwise would have constituted an infringement. When owner grants an exclusive right, he denudes himself of all rights and retains no claim on the economic rights so transferred.
- Co-exclusive – Here the licensor grants a license to more than one licensee but agrees that it will only grant licences to a limited group of other licensees.
- Sole license – Where only the licensor and the licensee can use it to the exclusion of any other third party.
- Implied license – Author impliedly allows or permits the use of his work. For example, he had knowledge that someone is using his work but he did not take any action.

(B) Compulsory license

Being a member of Berne Convention, India has incorporated the provision of compulsory license in the Copyright Act, 1957. The Act provides for grant of compulsory license for Indian work in the public interest, in certain circumstances.

License to Reproduce and Publish Works for Certain Purposes (Section 32-A)

According to this section, any person may apply to the Copyright Board for a license to reproduce and publish any literary, scientific or artistic work after the expiration of the relevant period from the date of first publication of an edition of such work, if the copies of such edition are not made available in India , or such copies have not been put on sale in India for a period of six months to the general public or in connection with systematically instructional activities at a price reasonably related to that normally charged in India for comparable works by the

owner of the right of reproduction or by any person authorised by him in this behalf.

VII. CONCLUSION

The term 'assignment' and 'license' are not interchangeable. An assignment is different from a license. Generally, in absence of any provision to the contrary the assignee becomes the owner of the assigned work, whereas in case of a license the licensee gets the right to exercise particular rights only.

An assignment may be general, i.e. without limitation or an assignment may be subject to limitations. It may be for the whole term of copyright or any part thereof. An assignment transfers an interest in and deals with copyright itself as provided under section 14 of the Act, but license does not convey the copyright but only grants a right to do something, which in absence of license would be unlawful. An assignment transfers title in copyright, a license merely permits certain things to be done by licensee. The assignee being invested with the title in the copyright may reassign.
