

LAW OF COPYRIGHT AND NEIGHBORING RIGHTS : NATIONAL AND INTERNATIONAL PERSPECTIVES. By V.K. Ahuja. Faridabad: Allahabad Law Agency, 2005. Pp. XVI+367, Rs. 195/-.

Copyright law is a branch of that part of the law, which deals with the rights of intellectual creators. Copyright protection is one of the means of promoting, enriching and disseminating the national cultural heritage<sup>1</sup>. The importance of copyright in this process is described in the preface to the Guide to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971) as follows:

“Copyright, for its part, constitutes an essential in the development process. Experience has shown that the enrichment of the national cultural heritage depends directly on the level of protection afforded to literary and artistic works .... encouragement of intellectual creation is one of the basic prerequisites of all social, economic and cultural development”.

Copyright is one category of intellectual property, the others being patents, designs and trade marks, each governed by a specific statute. In the wake of technological developments, the concept of copyright which was mainly restricted to the literary works was enlarged to cover not only dramatic, musical and artistic works but also extended to cinematographic films and sound recordings.

The concept of “neighboring rights” which originated subsequently, has also been brought within the purview of copyright system. Neighboring rights are of three kinds: the rights of performing artists in their performances, the rights of producers of phonograms in their phonograms, and the rights of broadcasting organizations in their broadcasts. The book under review is a good work about some important national and international issues concerning copyright and neighboring rights.

The book consists of thirteen chapters and nine important appendices. Chapter one is introduction wherein the author has discussed briefly the historical developments of the law of copyright starting from Gutenberg’s

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1 World Intellectual Property Organization, BACKGROUND READING MATERIAL ON INTELLECTUAL PROPERTY (1988) at 209.

invention of printing press to the enactment of Copyright Act, 1957. He has also thrown light on international conventions on intellectual property rights including copyright.

Chapter two and three deal with the subject matter of copyright and ownership of copyright respectively. The subject matter of copyright is the original expression of an idea in literary, artistic and other works. The author has clearly established that copyright does not give the right holder any monopoly over ideas, but only protects expression. The author quoting from a decision of Delhi High Court in Anil Gupta's<sup>2</sup> case, writes that an idea *per se* has no copyright. But if the idea is developed into a concept fledged with adequate details, then the same is capable of being protected under the Copyright Act. Copyright protection is no more confined to books, music, paintings or films, but now extends, *inter alia*, to computer software and compilation of data<sup>3</sup>. The law relating to slogans and fictional characters has been touched upon by the author. Regarding ownership of the copyright in a work, section 17 of the Indian Copyright Act, 1957 and relevant provisions of the United Kingdom's, Copyright, Designs and Patents Act, 1988 (CPDA, 1988) have been discussed.

Chapter four and five deal with the rights of the author which include economic as well as moral rights. Section 14 of the Indian Copyright Act, deals with the economic rights of the owner of copyright. The right enjoyed by the owner is a negative one, i.e. to prevent others from using his work in certain ways, and to claim compensation for the usurpation of that right.<sup>4</sup> The author should have discussed major international conventions of copyright like, Berne Convention for the Protection of Literary and Artistic works (Paris Act, 1971), Universal Copyright Convention, 1952, TRIPs Agreement, WIPO Copyright Treaty, etc. in a more detailed manner. He should also have discussed the subject in relation to the Indian Copyright Act, 1957, in a bit more detail.

In addition to the protection of economic rights, the Copyright Act also protects moral rights of the author.<sup>5</sup> Moral rights flow from the fact

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<sup>2</sup> *Anil Gupta v. Kunal Dasgupta*, 2002 (25) P.T.C. 1.

<sup>3</sup> See Article 10 of the TRIPs Agreement.

<sup>4</sup> Hugh Laddie, et.al., *THE MODERN LAW OF COPYRIGHT* (1980) at 45.

<sup>5</sup> Section 57, Copyright Act, 1957.

that a literary or artistic work reflects the personality of the creator. Moral rights or '*droit moral*' originated in French law. The moral rights are of three kinds : right of publication, right of paternity and right of integrity. They remain even if the author has assigned the copyright in relation to a work. The author has summed up these rights with the help of latest case law on the subject.

Chapter six deals very briefly with the term of copyright. Chapter seven deals with assignment and licences of copyright. The author is successful in building a proposition that the wealth can be generated not merely by exploiting the work himself but also by sharing it with others. Chapter eight deals with the role of copyright societies in the administration of copyright.

Chapters nine and ten have been devoted to analyze the "neighboring rights". Neighboring rights mainly cover three kinds of rights: performer's rights, rights of producers of phonograms, and the rights of broadcasting organizations. They are referred to as neighboring rights because they have developed in parallel with copyright, and the exercise of these rights is often linked with the exercise of copyright. This area of copyright was neglected at national as well as international level till recently. Originally, the Copyright Act, 1957 did not provide any protection to performer's rights. The protection was provided only by the Copyright (Second Amendment) Act, 1994 in India. Unlike most international conventions, which follow in the wake of national legislation and provide a synthesis of existing laws, the protection of neighboring rights was first sought to be established at the international level by the International Convention, which is known as Rome Convention, 1961. In 1996, WIPO Performances and Phonograms Treaty was adopted for the protection of these rights at the international level. The author has made a very meaningful discussion of the Treaty although India is not a party as of now.

Chapters eleven, twelve and thirteen of the book have been devoted to the study of other very important aspects of copyright. They deal with infringement of copyright, permitted acts in relation to copyright and remedies for infringement of copyright. The owner of the work has the exclusive right to do certain acts in respect of the work. If any person other than the owner does any of these acts without authority, he will be

committing an infringement of the copyright in the work. The nature of right depends upon the nature of the work. Section 51 of the Copyright Act, 1957 defines "infringement" in general terms. The United States Supreme Court in *Eisen Chimi v. Fran Cett Publication*,<sup>6</sup> rightly observed:

An infringement is not confined to literal and exact repetition or reproduction.... Paraphrasing is copying and an infringement, if carried to a sufficient extent ... the question of infringement of copyright is not one of quantity but of quality and value.

In United Kingdom, according to W.R. Cornish, copyright infringements give rise to a range of remedies such as, civil, criminal and administrative as well as of self help.<sup>7</sup> In India, the Copyright Act, 1957 provides three types of remedies against the infringement of copyright; namely civil, criminal and administrative. All of them have been discussed by the author skillfully in his book. This has been further substantiated with case law and international conventions on the subject.

The reviewer feels that there is a scope of more detailed analysis of Indian law. Still, the book indeed is an admirable work in the presentation of issues relating to copyright and neighboring rights. It has been published with care and caution and written by the author in a precise and a systematic manner. Being the first attempt by the author, it is praiseworthy. Keeping in view the amount of information contained in it, the book is very reasonably priced. The book, no doubt, is a very useful literature for the student community in general and lawyers and other legal luminaries in particular. The publishers have also maintained the quality of paper, the print and the get up. This is strongly recommended for all law libraries being a good reference work in the field of copyright.

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<sup>6</sup> (1958) 335 US.907.

<sup>7</sup> W.R. Cornish, *INTELLECTUAL PROPERTY : PATENT, COPYRIGHT, TRADE MARKS AND ALLIED RIGHTS* (London, 1997).

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