रजिस्ट्री सं० डी०एल०-33004/94 REGISTERED NO. DL-33004/94

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 1
PART II—Section 1
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 54] नई दिल्ली, बृहस्पतिवार, जून 9, 1994/ ज्येष्ठ 19, 1916
No. 54] NEW DELHI, THURSDAY, JUNE 9, 1994/ JYAISTHA 19, 1916

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 9th June, 1994/Jyaistha 19, 1916 (Saka)

The following Act of Parliament received the assent of the President on the 9th June, 1994, and is hereby published for general information:—

THE COPYRIGHT (AMENDMENT) ACT, 1994

No. 38 OF 1994

[*9th June, 1994*]

An Act further to amend the Copyright Act, 1957

BE it enacted by Parliament in the Forty-fifth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Copyright (Amendment) Act, 1994.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment of section 2.

14 of 1957.

2. In section 2 of the Copyright Act, 1957 (hereinafter referred to as the Princippal Act),—

(*i*) in clause (*a*),—

(*a*) in sub-clause (*iii*), the word "and", occuring at the end, shall be omitted;

(*b*) in sub-clause (*iv*), the word "and" shall be inserted at the end;

(*c*) after sub-clause (*iv*) as so amended, the following sub-clause shall be inserted, namely:—

"(*v*) in relation to any work, any use of such work involving its re-arrangement or alteration;";

(*ii*) in clause (*b*) and in all other provisions of the principal Act, for the words "architectural work of art", wherever they occur, the words "work of architecture" shall be substituted;

(*iii*) in clause (*d*), for sub-clauses (*v*) and (*vi*), the following sub-clauses shall be substituted, namely:—

"(*v*) in relation to a cinematograph film or sound recording, the producer; and

(*vi*) in relation to any literary, dramatic, musical or artistic work whi; is computer-generated, the person who causes the work to be created;"

(*iv*) for clause (*f*), the following clause shall be substituted, namely:—

'(*f*) "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;';

(*v*) for clause (*ff*), the following clauses shall be substituted, namely:—

'(*ff*) "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;

(*ffa*) "composer", in relation to a musical work, means the person who composes the music regardless of whether he records it in any form of graphical notation;

(*ffb*) "computer" includes any electronic or similar device havin g information processing capabilities;

(*ffc*) "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;

(*ffd*) "copyright society" means a society registered under sub-section (*3*) of section 33;';

(*vi*) for clause (*m*), the following clause shall be substituted, namely:—

'(*m*) "infringing copy" means,—

(*i*) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(*ii*) in relation to a cinematographic film, a copy of the film made on any medium by any means;

(*iii*) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(*iv*) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance,

if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;';

(*vii*) for clause (*o*), the following clause shall be substituted, namely:—

'(*o*) "literary work" includes computer programmes, tables and compilations including computer data basis;';

(*viii*) for clause (*p*), the following clause shall be substituted, namely:—

'(*p*) "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;';

(*ix*) for clause (*q*), the following clause shall be substituted, namely:—

'(*q*) "performance", in relation to performer's right, means any visual or acoustic presentation made live by one or more performers;';

(*x*) after clause (*q*), the following clause shall be inserted, namely:—

'(*qq*) "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;';

(*xi*) clause (*r*) shall be omitted;

(*xii*) in clause (*t*) and in all other provisions of the principal Act, for the word "record", wherever it occurs, the words "sound recording" shall be substituted;

(*xiii*) after clause (*u*), the following clause shall be inserted, namely:—

'(*uu*) "producer", in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work;';

(*xiv*) clause (*w*) shall be omitted;

(*xv*) for clause (*x*), the following clauses shall be substituted, namely:—

'(*x*) "reprography" means the making of copies of a work, by photocopying or similar means;

(*xx*) "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.'.

Substitution of new section for section 3.

3. For section 3 of the principal Act, the following section shall be substituted, namely: —

Meaning of publication.

'3. For the purposes of this Act, "publication" means making a work available to the public by issue of copies or by communicating the work to the public.'.

Substitution of new section for section 6.

4. For section 6 of the principal Act, the following section shall be substituted, namely:—

Certain disputes to be decided by Copyright Board.

'6. If any question arises,—

(*a*) whether a work has been published or as to the date on which a work was published for the purposes of Chapter V, or

(*b*) whether the term of copyright for any work is shorter in any other country than that provided in respect of that work under this Act,

it shall be referred to the Copyright Board constituted under section 11 whose decision thereon shall be final:

Provided that if in the opinion of the Copyright Board, the issue of copies or communication to the public referred to in section 3 was of an insignificant nature it shall not be deemed to be publication for the purposes of that section.'.

Amendment of sections 11.

5. In section 11 of the principal Act,—

(*a*) in sub-section (*1*), for the word "eight", the word "fourteen" shall be substituted;

(*b*) in sub-section (*3*), the words "the Supreme Court or" shall be omitted.

Amendment of section 12.

6. In section 12 of the principal Act,—

(*a*) after sub-section (*2*), the following proviso shall be inserted, namely:—

"Provided that, if the Chairman is of opinion that any matter of importance is required to be heard by a larger bench, he may refer the matter to a special bench consisting of five members.";

(*b*) in sub-section (*3*), for the proviso, the following proviso shall be substituted, namely:—

"Provided that where there is no such majority, the opinion of the Chairman shall prevail.";

(*c*) in sub-section (*4*), for the words "The Copyright Board", the words "The Chairman" shall be substituted.

Substitution of new section for section 14.

7. For section 14 of the principal Act, the following section shall be substituted, namely:—

Meaning of copyright.

'14. For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this 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 by electronic means;

(*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 specified in relation to the work in sub-clauses (*i*) to (*vi*);

(*b*) in the case of a computer programme,—

(*i*) to do any of the acts specified in clause (*a*);

(*ii*) to sell or give on hire, or offer for sale or hire any copy of the computer programme, regardless of whether such copy has been sold or given on hire on earlier occasions;

(*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 specified in relation to the work in sub-clauses (*i*) to (*iv*);

(*d*) in the case of a cinematograph film,—

(*i*) to make a copy of the film, including a photograph of any image forming part thereof;

(*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 a 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.'.

Amendment of section 19.

8. In section 19 of the principal Act, for sub-section (*2*), the following sub-section shall be substituted, namely - -

"(*2*) The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment.

(*3*) The assignment of copyright in any work shall also specify the amount of royalty payable, if any, to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

(*4*) Where the assignee does not exercise the rights assigned to him under any of the other sub-sections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

(*5*) If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

(*6*) If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.

(*7*) Nothing in sub-section (*2*) or sub-section (*3*) or sub-section (*4*) or sub-section (*5*) or sub-section (*6*) shall be applicable to assignments made before the coming into force of the Copyright (Amendment) Act, 1994.".

Substitution of new section for section 19A.

9. For section 19A of the principal Act, the following section shall be substituted, namely:—

Disputes with respect to assignment of copyright.

"19A. (*1*) If an 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, then, the Copyright Board may, on receipt of a complaint from the assignor and after holding such inquiry as it may deem necessary, revoke such assignment.

(*2*) If any dispute arises with respect to the assignment of any copyright the Copyright Board may, on receipt of a complaint from the aggrieved party and after holding such inquiry as it considers necessary, pass such order as it may deem fit including an order for the recovery of any royalty payable:

Provided that the Copyright Board shall not pass any order under this sub-section to revoke the assignment unless it is satisfied that the terms of assignment are harsh to the assignor in case the assignor is also the author:

Provided further that no order of revocation of assignment under this sub-section, shall be made within a period of five years from the date of such assignment.".

Insertion of new section 30A.

10. After section 30 of the principal Act, the following section shall be inserted, namely:—

Application of sections 19 and 19A.

"30A. The provisions of sections 19 and 19A shall, with any necessary adaptations and modifications, apply in relation to a licence under section 30 as they apply in relation to assignment of copyright in a work.".

Substitution of new Chapter for Chapter VII.

11. For Chapter VII of the principal Act, the following Chapter shall be substituted, namely:—

"CHAPTER VII

COPYRIGHT SOCIETIES

33. (1) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 commence or, carry on the business of issuing or granting licences in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (*3*):

Provided that an owner of copyright shall, in his individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society:

Provided further that a performing rights society functioning in accordance with the provisions of section 33 on the date immediately before the coming into force of the Copyright (Amendment) Act, 1994 shall be deemed to be a copyright society for the purposes of this Chapter and every such society shall get itself registered within a period of one year from the date of commencement of the Copyright (Amendment) Act, 1994.

(*2*) Any association of persons who fulfils such conditions as may be prescribed may apply for permission to do the business specified in sub-section (*1*) to the Registrar of Copyrights who shall submit the application to the Central Government.

(*3*) The Central Government may, having regard to the interests of the authors and other owners of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights and the ability and professional competence of the applicants, register such association of persons as a copyright society subject to such conditions as may be prescribed:

Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

(*4*) The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the owners of rights concerned, cancel the registration of such society after such inquiry as may be prescribed.

(*5*) If the Central Government is of the opinion that in the interest of the owners of rights concerned, it is necessary so to do, it may, by order, suspend the registration of such society pending inquiry for such period not exceeding one year as may be specified in such order under sub-section (*4*) and that Government shall appoint an administrator to discharge the functions of the copyright society.

Administration of rights of owner by copyright society.

34. (*1*) Subject to such conditions as may be prescribed,—

(*a*) a copyright society may accept from an owner of rights exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and

(*b*) an owner of rights shall have the right to withdraw such authorisation without prejudice to the rights of the copyright society under any contract.

(*2*) It shall be competent for a copyright society to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act, to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign country by such foreign society or organisation :

Provided that no such society or organisation shall permit any discrimination in regard to the terms of licence or the distribution of fees collected between rights in Indian and other works.

(*3*) Subject to such conditions as may be prescribed, a copyright society may—

(*i*) issue licences under section 30 in respect of any rights under this Act;

(*ii*) collect fees in pursuance of such licences;

(*iii*) distribute such fees among owners of rights after making deductions for its own expenses;

(*iv*) perform any other functions consistent with the provisions of section 35.

Payment of remunerations by copyright society.

34A. (*1*) If the Central Government is of the opinion that a copyright society for a class of work is generally administering the rights of the owners of rights in such work throughout India, it shall appoint that society for the purposes of this section.

(*2*) The copyright society shall, subject to such rules as may be made in this behalf, frame a scheme for determining the quantum of remuneration payable to individual copyright owners having regard to the number of copies of the work in circulation:

Provided that such scheme shall restrict payment to the owners of rights whose works have attained a level of circulation which the copyright society considers reasonable.

Control over the copyright society by the owner of rights.

35. (*1*) Every copyright society shall be subject to the collective control of the owners of rights under this Act whose rights it administers (not being owners of rights under this Act administered by a foreign society or organisation referred to in sub-section (*2*) of section (34) and shall, in such manner as may be prescribed,—

(*a*) obtain the approval of such owners of rights for its procedures of collection and distribution of fees;

(*b*) obtain their approval for the utilisation of any amounts collected as fees for any purpose other than distribution to the owner of rights; and

(*c*) provide to such owners regular, full and detailed information concerning all its activities, in relation to the administration of their rights.

(*2*) All fees distributed among the owners of rights shall, as far as may be, be distributed in proportion to the actual use of their works.

Submission of returns and reports.

36. (*1*) Every copyright society shall submit to the Registrar of Copyrights such returns as may be prescribed.

(*2*) Any officer duly authorised by the Central Government in this behalf may call for any report and also call for any records of

any copyright society for the purpose of satisfying himself that the fees collected by the society in respect of rights administered by it are being utilised or distributed in accordance with the provisions of this Act.

Rights and liabilities of performing rights societies.

36A. Nothing in this Chapter shall affect any rights or liabilities in any work in connection with a performing rights society which had accrued or were incurred on or before the day prior to the commencement of the Copyright (Amendment) Act, 1994, or any legal proceedings in respect of any such rights or liabilities pending on that day.".

Amendment of Chapter VIII.

12. In Chapter VIII of the principal Act, for the heading "RIGHTS OF BROADCASTING AUTHORITIES", the heading "RIGHTS OF BROADCASTING ORGANISATION AND OF PERFORMERS" shall be substituted.

Substitution of new section for section 37.

13. For section 37 of the principal Act, the following section shall be substituted, namely:—

Broadcast reproduction right.

'37. (*1*) Every broadcasting organisation shall have a special right to be known as "broadcast reproduction right" in respect of its broadcasts.

(*2*) The broadcast reproduction right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made.

(*3*) During the continuance of a broadcast reproduction right in relation to any broadcast, any person who without the licence of the owner of the right does any of the following acts of the broadcast or any substantial part thereof,—

(*a*) re-broadcasts the broadcast; or

(*b*) causes the broadcast to be heard or seen by the public on payment of any charges; or

(*c*) makes any sound recording or visual recording of the broadcast; or

(*d*) makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence; or

(*e*) sells or hires to the public, or offers for such sale or hire, any such sound recording or visual recording referred to in clause (*c*) or clause (*d*)

IndiaCode

shall, subject to the provisions of section 39, be deemed to have infringed the broadcast reproduction right.'.

Substitution of new section for section 38.

14. For section 38 of the principal Act, the following section shall be substituted, namely:—

Performer's right.

'38. (*1*) Where any performer appears or engages in any performance, he shall have a special right to be known as the "performer's right" in relation to such performance.

(2) The performer's right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the performance is made.

(*3*) During the continuance of a performer's right in relation to any performance, any person who, without the consent of the performer, does any of the following acts in respect of the performance or any substantial part thereof, namely:—

(*a*) makes a sound recording or visual recording of the performance; or

(*b*) reproduces a sound recording or visual recording of the performance, which sound recording or visual recording was—

(*i*) made without the performer's consent; or

(*ii*) made for purposes different from those for which the performer gave his consent; or

(*iii*) made for purposes different from those referred to in section 39 from a sound recording or visual recording which was made in accordance with section 39; or

(*c*) broadcasts the performance except where the broadcast is made from a sound recording or visual recording other than one made in accordance with section 39, or is a re-broadcast by the same broadcasting organisation of an earlier broadcast which did not infringe the performer's right; or

(*d*) communicates the performance to the public otherwise than by broadcast, except where such communication to the public is made from a sound recording or a visual recording or a broadcast,

shall, subject to the provisions of section 39, be deemed to have infringed the performer's right.

(*4*) Once a performer has consented to the incorporation of his performance in a cinematograph film, the provisions of sub-sections (*1*), (*2*) and (*3*) shall have no further application to such performance.'.

Substitution of new sections for section 39.

15. For section 39 of the principal Act the following sections shall be substituted, namely, -

Acts not infringing broadcast reproduction right or performer's right.

"39. No broadcast reproduction right or performer's right shall be deemed to be infringed by—

(*a*) the making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of *bona fide* teaching or research; or

(*b*) the use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for *bona fide* review, teaching or research; or

(*c*) such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under section 52.

Other provisions applying to broadcast reproduction right and performer's right.

39A. Sections 18, 19, 30, 53, 55, 58; 64; 65 and 66 shall, with any necessary adaptations and modifications, apply in relation to the broadcast reproduction right in any broadcast and the performer's right in any performance as they apply in relation to copyright in a work:

Provided that where copyright or performer's right subsists in respect of any work or performance that has been broadcast, no licence to reproduce such broadcast shall take effect without the consent of the owner of rights or performer, as the case may be, or both of them."

Amendment of section 51.

16 In section 51 of the principal Act -

(*1*) in clause (*a*), for sub-clause (*ii*), the following sub-clause shall be substituted namely: --

"(*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";

(*2*) for the proviso, the following proviso shall be substituted namely:

"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."

Amendment of section 52.

17. In section 52 of the principal Act, in sub-section (*1*),—

(*1*) in clause (*a*),—

(*i*) after the words "artistic work", the words ", not being a computer programme," shall be inserted;

(*ii*) for sub-clause (*i*), the following sub-clause shall be substituted, namely:—

"(*i*) private use, including research;";

(*2*) after clause (*a*), the following clause shall be inserted, namely:—

"(*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 purpose 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;";

(*3*) in clause (*i*), the words "or the communication to such an audience of a cinematograph film or sound recording" shall be inserted at the end;

(*4*) for clause (*j*) and (*k*), the following clauses shall be substituted, namely:—

"(*j*) the making of sound recordings in respect of any literary, dramatic or musical work, if—

(*i*) sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work;

(*ii*) the person making the sound recordings has given a notice of his intention to make the sound recordings, has provided copies of all covers or labels with which the sound recordings are to be sold, and has paid in the prescribed manner to the owner of rights in the work royalties in respect of all such sound recordings to be made by him, at the rate fixed by the Copyright Board in this behalf:

Provided that—

(*i*) no alterations shall be made which have not been made previously by or with the consent of the owner of rights, or which are not reasonably necessary for the adaptation of the work for the purpose of making the sound recordings:

(*ii*) the sound recordings shall not be issued in any form of packaging or with any label which is likely to mislead or confuse the public as to their identity;

(*iii*) no such sound recording shall be made until the expiration of two calendar years after the end of the year in which the first sound recording of the work was made; and

(*iv*) the person making such sound recordings shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording:

Provided further that if on a complaint brought before the Copyright Board to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this clause, the Copyright Board is, *prima facie*, satisfied that the complaint is genuine, it may pass an order *ex parte* directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty;

(*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;";

(*5*) for clause (*s*), the following clause shall be substituted, namely:—

"(*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;";

(*6*) clause (*w*) shall be omitted;

(*7*) after clause (*y*), the following clauses shall be inserted, namely:—

"(*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.".

Insertion of new section 52B.

18. After section 52A of the principal Act, the following section shall be inserted, namely:—

Accounts and audit.

"52B. (*1*) Every copyright society appointed under section 34A shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, in such form and in such manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(*2*) The accounts of each of the copyright societies in relation to the payments received from the Central Government shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the copyright society to the Comptroller and Auditor-General.

(*3*) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the audit of the accounts of the copyright society referred to in sub-section (*2*) shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts and other documents and papers and to inspect any of the offices of the copyright society for the purpose only of such audit.

(*4*) The accounts of each of the copyright societies as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.".

Insertion of new section 53A.

19. In Chapter XI, after section 53 of the principal Act, the following section shall be inserted, namely:—

Resale share right in original copies.

"53A. (*1*) In the case of resale for a price exceeding ten thousand rupees, of the original copy of a painting, sculpture or drawing, or of the original manuscript of a literary or dramatic work or musical work, the author of such work if he was the first owner of rights under section 17 or his legal heirs shall, notwithstanding any assignment of copyright in such work, have a right to share in the resale price of such original copy or manuscript in accordance with the provisions of this section:

Provided that such right shall cease to exist on the expiration of the term of copyright in the work.

(*2*) The share referred to in sub-section (*1*) shall be such as the Copyright Board may fix and the decision of the Copyright Board in this behalf shall be final:

Provided that the Copyright Board may fix different shares for different classes of work:

Provided further that in no case shall the share exceed ten per cent. of the resale price.

(3) If any dispute arises regarding the right conferred by this section, it shall be referred to the Copyright Board whose decision shall be final.'.

Amendment of section 57.

20. In section 57 of the principal Act, for sub-section (*1*), the following sub-section shall be substituted, namely.—

(*1*) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—

(*a*) to claim authorship of the work; and

(*b*) 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 his honour or reputation:

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (*aa*) of sub-section (*1*) of section 52 applies.

Explanation.—Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.".

Amendment of section 63.

21. In section 63 of the principal Act,-

(*1*) in clause (*b*), the words, figures and letter "except the right conferred by section 53A" shall be inserted at the end;

(2) in the proviso, after the words "Provided that", the words "where the infringement has not been made for gain in the course of trade or business" shall be inserted.

Amendment of section 63A.

22. In the first proviso to section 63A of the principal Act, after the words "Provided that", the words "where the infringement has not been made for gain in the course of trade or business" shall be inserted.

Insertion of new section 63B.

23. After section 63A of the principal Act, the following section shall be inserted, namely:—

Knowing use of infringing copy of computer programme to be an offence.

"63B. Any person who knowingly makes use on a computer of an infringing copy of a computer programme shall be punishable with imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the computer programme has not been used for gain or in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgment

not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees.".

Amendment of section 78.

24. In section 78 of the principal Act, in sub-section (2),—

(i) after clause (c), the following clauses shall be inserted, namely:—

"(ca) the conditions for submission of application under sub-section (2) of section 33;

(cb) the conditions subject to which a copyright society may be registered under sub-section (3) of section 33;

(cc) the inquiry for cancellation of registration under sub-section (4) of section 33;

(cd) the conditions subject to which the copyright society may accept authorisation under clause (a) of sub-section (1) of section 34 and the conditions subject to which owners or rights have right to withdraw such authorisation under clause (d) of that sub-section;

(ce) the conditions subject to which a copyright society may issue licences, collect fees and distribute such fees amongst owners of rights under sub-section (3) of section 34;

(cf) the manner in which the approval of the owners of rights regarding collection and distribution of fees, approval for utilisation of any amount collected as fees and to provide to such owners information concerning activities in relation to the administration of their rights under sub-section (1) of section 35;

(cg) the returns to be filed by copyright societies to the Registrar of Copyrights under sub-section (1) of section 36;";

(ii) after clause (d), the following clauses shall be inserted, namely:—

"(da) the manner of payment of royalty under clause (j) of sub-section (1) of section 52;

(db) the form and the manner in which the copyright society shall maintain accounts and other relevant records and prepare annual statements of accounts and the manner in which the quantum of remuneration is to be paid to individual owner of rights under sub-section (1) of section 52B.".

K. L. MOHANPURIA,
Secy. to the Govt. of India.

PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 1994.