

Suggestions on the Amendment of the Copyright Act, 1957- Part III

November 4, 2020

SUGGESTIONS ON THE AMENDMENT OF THE COPYRIGHT ACT, 1957- PART III

Section 31B

Reasons for suggested amendments

Section 31B provides for the issuance of a compulsory license to publish a copyrighted work for the benefit of disabled persons.

The suggested amendments broaden the scope of the provision, and bring the nature of the license and the procedure for obtaining a license in line with the statutory license provisions under Section 31C and 31D. By permitting statutory licensing for such works, more organisations will be encouraged to engage in making works accessible, and the fixing of royalties by the Appellate Board will ensure proper revenue for the owners of the copyrighted works as well as reduce procedural hurdles faced by organisations and persons working for the benefit of persons with disabilities. The suggested amendments are in accordance with the suggested amendments for Section 52(1)(zb) hereunder.

Current Provision	Amended clauses
-------------------	-----------------

(1) Any person working for the benefit of persons with disability on a profit basis or for business may apply to the 1 [Appellate Board], in such form and manner and accompanied by such fee as may be prescribed, for a compulsory licence to publish any work in which copyright subsists for the benefit of such persons, in a case to which clause (zb) of sub-section (1) of section 52 does not apply and the 1 [Appellate Board] shall dispose of such application as expeditiously as possible and endeavour shall be made to dispose of such application within a period of two months from the date of receipt of the application.

(2) The 1 [Appellate Board] may, on receipt of an application under sub-section (1), inquire, or direct such inquiry as it considers necessary to establish the credentials of the applicant and satisfy itself that the application has been made in good faith.

(3) If the 1 [Appellate Board] is satisfied, after giving to the owners of rights in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, that a compulsory licence needs to be issued to make the work available to the disabled, it may direct the Registrar of Copyrights to grant to the applicant such a licence to publish the work.

(4) Every compulsory licence issued under this section shall specify the means and format of publication, the period during which the compulsory licence may be exercised and, in the case of issue of copies, the number of copies that may be issued including the rate or royalty: Provided that where the 1 [Appellate Board] has issued such a compulsory licence it may, on a further application and after giving reasonable opportunity to the owners of rights, extend the period of such compulsory licence and allow the issue of more copies as it may deem fit.]

(1) Any person working for the benefit of persons with disability on a profit basis or for business may reproduce, distribute, communicate to public, make available, publicly perform, import or export any work, in any accessible format, in accordance with the provisions of this section.

(2) Any person working for the benefit of persons with disability shall give prior notice, in such manner as may be prescribed, of its intention to reproduce, distribute, make available, publicly perform, import or export the works providing details of the nature and territorial extent, and shall pay to the owner of rights in each work royalties in the manner and at the rate fixed by the Appellate Board.

(3) In fixing the manner and the rate of royalty under sub-section (2), the Appellate Board may require any person working for the benefit of persons with disability to pay an advance to the owners of rights.

(4) The names of the authors and the principal performers of the work shall, be attributed in accordance with Section 57.

(5) Any person working for the benefit of persons with disability shall be permitted to make alterations and changes required to convert the works into accessible format.

(6) Any person working for the benefit of persons with disability shall – (a) maintain such records and books of account, and render to the owners of rights such reports and accounts; and (b) allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such accessible format copies,

in such manner as may be prescribed.

(8) Nothing in this section shall affect the operation of any licence issued or any agreement entered into before the commencement of the Copyright (Amendment) Act, 2020.

Section 31D

Reasons for suggested amendments

This provision permits broadcasting organisations to broadcast or perform published literary or musical works, and pay the copyright owners the royalties fixed by the Appellate Board. The current provision only covers literary and musical works, and broadcasting through radio and television. In light of the increased utilisation of digital broadcasting and communication of works to the public through the internet, it is necessary to include all modes and methods of broadcasting and communication to public within the scope of this section.

Further, it is essential to extend the provisions of this section to include all types of works, to encourage broadcasting organisations to engage in communicating these works to the public. The suggested amendments will help to ensure certainty in licensing fees and establish a level playing field, avoid infringement by making works available through a greater number of modes, and make it easier for broadcasting organisations to broadcast works without having to acquire licenses from multiple parties.

Also, the suggested amendments bring all forms of broadcasting and all types of works within the scope of the section.

Current provision	Amended provision
--------------------------	--------------------------

31D. Statutory licence for broadcasting of literary and musical works and sound recording.— (1) Any broadcasting organisation desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published may do so subject to the provisions of this section.

(2) The broadcasting organisation shall give prior notice, in such manner as may be prescribed, of its intention to broadcast the work stating the duration and territorial coverage of the broadcast, and shall pay to the owner of rights in each work royalties in the manner and at the rate fixed by the 1 [Appellate Board].

(3) The rates of royalties for radio broadcasting shall be different from television broadcasting and the 1 [Appellate Board] shall fix separate rates for radio broadcasting and television broadcasting.

...

(6) No fresh alteration to any literary or musical work, which is not technically necessary for the purpose of broadcasting, other than shortening the work for convenience of broadcast, shall be made without the consent of the owners of rights.

31D. Statutory licence for broadcasting:

(1) Any broadcasting organisation desirous of communicating to the public by way of a broadcast or by way of performance of a literary work, musical work, dramatic work, sound recording, or cinematograph film which has already been published may do so subject to the provisions of this section.

(2) The broadcasting organisation shall give prior notice, in such manner as may be prescribed, of its intention to broadcast the work stating the duration and territorial coverage of the broadcast, and shall pay to the owner of rights in each work royalties in the manner and at the rate fixed by the Appellate Board.

(3) The rates of royalties shall be different for different modes or forms of broadcasting and the Appellate Board shall fix separate rates for each mode or form of broadcasting.

...

(6) No fresh alteration to any literary, dramatic or musical work, which is not technically necessary for the purpose of broadcasting, other than shortening the work for convenience of broadcast, shall be made without the consent of the owners of rights.

Section 33

Reasons for suggested amendments

Section 33, as it currently stands, permits only registered copyright societies to carry on the business of issuing or granting licenses in respect of copyrighted works. It also permits a copyright owner to continue granting licenses to his own works, consistent with his obligations as a member of a copyright society.

The suggested amendments clarify the role of copyright societies to be the collective management of works, and not the business of issuing/granting licenses and collection of royalties. The suggested amendments also clarify that copyright owners have the right to grant licenses in respect of works and rights not granted to registered copyright societies.

Current Provision	Amended Provision
<p>Registration of Copyright society.– (1) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 (38 of 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):</p>	<p>Registration of Copyright society.– (1) No person or association of persons shall carry on the business of collective management of any work of authors of copyright owners, in which copyright subsists or in respect of any other rights conferred by this Act unless such association of persons is registered as a copyright society in accordance with sub-section (3).</p>
<p>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:</p>	<p>Provided that an owner of copyright shall, in his individual capacity, continue to have the right to grant licences in respect of his works and rights not granted to the registered copyright society.</p>

<p>Provided further that the business of issuing or granting licence in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered under this Act</p>	<p>Provided further that the business of collective management of rights under Section 14(a)(iv) shall be carried out only through a copyright society duly registered under this Act.</p>
--	--

Section 52(1)(b) and (c)

Reasons for suggested amendments

Sections 52(1)(b) and (c) provide fair use exceptions to intermediaries, as defined under the Information Technology Act 2000 (amended in 2008), and the Intermediary Rules 2011 passed thereunder.

Unauthorized use of copyrighted content is on the rise, because intermediaries are taking refuge under the IT Act, and are continuing to provide content despite receiving complaints and being notified of the infringement. Further, there is a lack of uniformity with respect to the actions of intermediaries in taking down or disabling access to content, the time within which appropriate action is taken, and the duration for which the infringing content is disabled. The suggested amendments clearly specify what constitutes a sufficient notification of copyright infringement as issued to an intermediary by the copyright owner, as well as the action that may be taken by an intermediary.

The current provision requires the copyright owner to obtain an order from the court requiring permanent removal of the infringing content within 21 days of notifying the intermediary. However, in light of the practical difficulties associated with obtaining such an order within 21 days, it has been suggested that this period be extended to 90 days.

<p>Current Provision</p>	<p>Amended Provision</p>
---------------------------------	---------------------------------

<p>(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:</p>	<p>(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 made aware that such storage is of an infringing copy:</p>
<p>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 facilitation 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;</p>	<p>Provided that if the person responsible for the storage of the copy has received a written complaint with proof of ownership 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 within 24 hours from facilitating such access for a period of ninety days or till he receives an order from the competent court refraining from facilitation access and in case no such order is received before the expiry of such period of ninety days, he may continue to provide the facility of such access;</p>

Section 52(1)(zb)

Reasons for suggested amendments

Section 52(1)(zb) provides an exception permitting the adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format, to enable persons with disabilities to access such works.

The suggested amendments are related to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (“Marrakesh Treaty”).

Article 4 of the Marrakesh Treaty requires countries to make a mandatory exception for the right of reproduction, the right of distribution, and the right of making available to the public as provided by the WIPO Copyright Treaty (WCT). It permits countries to make an exception for the right of public

performance, which has been proposed in the suggested amendments.

Also, to encourage more entities to get into the work of making works accessible, authorisation and recognition of organisations working for the benefit of persons with disabilities must be less stringent than registration under the Income Tax Act or the RPwD Act. Broadening the section to include any organisation working for the benefit of persons with disabilities is likely to encourage more organisations to contribute towards bringing about equality of accessibility for persons with disabilities, and an amendment has been suggested towards that end.

Current Provision	Amended clauses
--------------------------	------------------------

<p>the adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format, by—</p> <p>(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</p> <p>(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:</p> <p>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.</p> <p>Explanation.— For the purposes of this sub-clause, “any organisation” includes an organisation registered under section 12A of the Income-tax Act, 1961 (43 of 1961) and working for the benefit of persons with disability or recognised under Chapter X of the Persons with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act, 1995 (1 of 1996) 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;</p>	<p>The adaptation, reproduction, issuance of copies, distribution, making available to public, communication to public, public performance, export and import, by:</p> <p>(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</p> <p>(ii) any organisation working for the benefit of the persons with disabilities: 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:</p> <p>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.</p> <p>Explanation.— For the purposes of this sub-clause, “any organisation” includes an organisation working for the benefit of persons with disability;</p>
---	---

Part I of the recommended amendments may be accessed [here](#).

Part II of the recommended amendments may be accessed [here](#).

The suggested amendments for the Copyright Act, 1957, were submitted by:

Dr. Kalyan C. Kankanala (Senior Partner, BananaIP Counsels)

Mr. Sanjeeth Hegde (Senior Partner, BananaIP Counsels)

Ashwini Arun (Associate, BananaIP Counsels)

Neharika Vhatkar (Associate, BananaIP Counsels)