
Topic 5: Relationship between Author and Publisher with regard to Copyright

Sukumar DAS, Managing Director, UBS Publishers' Distributors Pvt. Ltd.

Introduction

Book is essentially a repository of information, thoughts, knowledge and wisdom. It is the outcome of Author's perception based on his/her creative and pragmatic approach. The Author conceives and visualizes ideas, images and expressions and transforms them in words, be they hand-written, typed or in Microsoft word. This indeed is the first of the various processes involved in the production of any book. Again, it is an act of intellectual creation. The person responsible for this intellectual creation is the Author only.

Copyright is a set of exclusive rights that regulate the use of a particular expression of an idea or information. At its most general, it is literally "the right to copy" an original creation. In most cases, these rights are of limited duration. Copyright law covers only the form or manner in which ideas or information have been manifested, the "form of material expression". It is not designed or intended to cover the actual idea, concepts, facts, styles, or techniques which may be embodied in or represented by the copyright work.

The Author

An Author means any person engaged in the creative work, which is expressed either in print or through electronic media. For the purpose of any creative expression, an Author also includes Translator, as both of them devote time and energy in the creation of intellectual work and can be termed as professional writer. Since the Author and Translator spend considerable time and energy in the preparation of their works, their interest should obviously be protected.

This fact has been taken cognizance of by the U.N. International Convention as one of the Human Rights in the Universal Declaration of Human Rights. It has been recognized as an important legal right protecting cultural works. A cultural work is anything a person makes that enriches the human mind and heart. It does not include things that directly contribute to a more convenient life style or job, such as the invention of machines or technology, which are mainly related to the development of civilization. The legal rights that protect them are separate from copyright. They are patents, trademark, etc. and can be referred to as industrial property rights. As explained above, a good deal of thoughts and efforts are involved in the conception

and production of products that contribute to the development of either culture or civilization, *"the legal rights protecting them have also come to be referred to by the generic form intellectual property rights."*

Since the right accruing to the Author as the creator of the work is the right of ownership it can be transferred to another person and can be termed as "property right". It is the right that can be converted into money and as it accrues out of creative work produced by the human intellect it can also be considered as intellectual property right, i.e. right of intellectual ownership. Thus, the Author alone has the right for reproduction, making copies thereof or to assign it either for publication, translation, to use it for cinematographic or any other purpose. The assignment can for a specific purpose or period.

The Publisher

When in the hands of the publisher, in whatever form it may be, Author's manuscript is transformed into a presentable book and is made accessible to the people at large through Publisher's distinct techniques of marketing. To make it a presentable book, the Publisher has to edit it properly. The book has to be embellished through proper lay out and typography that invokes the interest of the reader. With all this, each book that is published has an individuality of its own based on the intellectual and professional background of the Author and Publisher's potential to embellish the book in terms of editorial input and quality of production. Thus, the Publisher endows a distinct brand image to the book.

Thus, assignment of copyright by the Author to the Publisher is essential to make his/her work available to the public at large, first by endowing professional excellence to the work and second through promotion and distribution. The second phase at the Publisher's end has a long gestation period. It takes time to get the book established, especially when it is a textbook. There have been books, which have become classics over a period of time. Of course, the Author's innovative ideas, theories, concepts and expressions have made the creative works immortal but the Publisher's role in bringing them to light cannot be glossed over. The assignment of copyright, therefore, has to be for a longer period, say during the pendency of the publication of the work or else having done a considerable spadework; the publisher can be deprived of the pecuniary

advantage that may accrue to him after a long gestation period.

Copyright

The basic concern with the protection of the intellectual world of the Author, the philosophy and principles, than to increase the property value of the work by making and selling many copies. Thus, copyright has two distinct characteristics: property rights attached to the work and the moral rights of the Author. Property rights, which are recognized by the laws of every country, make it illegal to take another person's property and exploit it without their permission. Similarly, moral rights, like the right to privacy, etc. are legally protected from infringement.

Thus, the term 'copyright' refers to the exclusive statutory right of authors, composers, playwrights, artists, publishers, or distributors to publish or dispose of their works. It is the right to control the reproduction, sale or performance of their work. It can be defined as the exclusive legal right to publish a work, authorize its publication, to produce and to sell it, reproduce, adapt, perform or publish any translation of the work, to communicate the work by broadcast or to communicate to the public by loudspeaker or any similar instrument. The copyright, in essence, is (a) the right of multiplying copies of a work for commercial or other purposes, and (b) the right of preventing all others from copying by printing or otherwise.

Equally important is the knowledge of what can be termed as copyrightable and what is non-copyrightable. The former group includes:

- Manuscript or typescript,
- Speeches,
- Letters,
- Questionnaire,
- Catalogue,
- Directory,
- Computer software,
- Slogans,
- Questions,
- Maps,
- CD Rom,
- Internet, webpage, etc.
- Domain name,
- Computer program,
- Head notes of case laws,
- Books and their new editions,
- Parodies and satires etc.
- Newspaper articles and essays.

While the non-copyrightable group includes:

- Historical facts,
- Book titles,
- Ideas and thoughts,
- News,
- Judgments.

The government has not declared Copyright registration as legal necessity but this should not be neglected by the publishers for the benefit of the author. Duly filled forms should be submitted at the following address for the registration of copyright:

Office of the Registrar of Copyright,
B-2/W-3, Curzon Road Barracks,
Kasturba Gandhi Marg,
New Delhi-110001

Relationship

There is an inextricable link between the Author and the Publisher. Both are essential. The Publisher is not a mere conduit; he is much more than this. Being closely connected with the readers and buyers at large, he knows the buyer's pulse and psyche and therefore should be in a vantage position to guide the Author what to include in the book and what type of manuscript the Author should attempt.

Though the Agreement between the Author and the Publisher largely protects the interest of the Author in consideration of his/her having entrusted the manuscript to the Publisher, there are many other issues which may, at times, act as irritants in the smooth flow of their relationship. While attempting the manuscript, the Author may either be prejudicial or get swayed in feelings to overlook the interest of the public at large. A book, when it reaches the public at large, has to be objective in narrating the events or happenings. Again, the Author, whether consciously or unconsciously, can infringe the copyright of other authors while taking information from other books. In view of all this, the Agreement between the Author and the Publisher can stipulate that the creative work in question does not contain anything libelous, infringe any copyright or contains anything which can be termed as seditious, derogatory or is not in the national interest or hurts the religious susceptibilities of the readers. Though the Publisher has to be quite circumspect while signing the Agreement, still a provision in the Agreement should stipulate that in case of any eventuality the Author shall indemnify the Publisher.

Again, since the relationship between the Author and the Publisher is for a longer duration, say even after 60 years of the death of the Author, and on the

part of the Publisher there can be merger or takeover, a provision in the Agreement should bind the successors and legal heirs as well. The Agreement, therefore, has to be drafted and signed carefully taking all possible situations in cognizance. Still, there are situations which cannot be visualized and an Arbitration clause should better be inserted to iron out the differences which may crop up.

A Coordinated Approach

In spite of all this, there have been cases when some authors do not feel satisfied with their publishers. Lack of transparency in the Publisher's account, their potential to market the book to the desired level, and their reluctance or inability to keep constant liaison with their authors at the pre and post-publication stage of the book are the major stumbling blocks in the smooth relationship of both the parties.

The Author's main interest is the large exposure of his/her book to the intended buyers culminating in optimum pecuniary benefit to him/her. The Publisher has to explore more and more channels of promotion and distribution and seek the help of the Author as well in this regard. Again, the Publisher has to be transparent while rendering royalty account to the Author.

With modernization and globalization, knowledge is no more limited to a particular region or language group, and because of increasing export efforts, demand has been generated for reprints, abridgements, adaptations and translation rights. Thus, works of successful authors are further circulated through the transaction of RIGHTS.

The necessity of obtaining Rights for all such purposes arises because of the fact that an Author has invested considerable amount of labour and money in preparing the work which is recognized by the Copyright Law.

Understandably, Buying and Selling of Rights, has the commercial interests of both the Author and the Publisher in view. Also, it is an important ingredient in the marketing of books along with the advantages of increased turnover and enhanced goodwill of the Author and his work.

Sadly, however, the painstaking and time consuming creative efforts of the author and equally laudable efforts of the publisher in proliferating that work go down the drain when boom piracy rears its ugly head. Piracy today is a menace which can no longer be ignored.

After requisite changes in the copyright law and law enforcement departments what remains to be done is to bring awareness among the publishers, printers, readers and society at large that piracy amounts to a social crime.

Children and students should be sensitized against this from school level itself, also college and university authorities should be directed to discourage photocopying of texts and books among students as Xerox is a violation of Copyright law. Furthermore, even the police and lawyers should take a hard stance on offenders and cases related to piracy respectively.

Above all, if all such measures are taken, we can ensure cordial relationship; between the author and publisher which should be mutually beneficial as well as satisfying.