

Copyright and Related Rights Law

Dr. Rohan Cherian Thomas

Faculty of Law

NALSAR University of Law, Hyderabad

WEEK - 09

LECTURE – 41

Registration, Publication and Part I of Term

Welcome back to this course on copyright and related rights law. In the previous weeks, we have discussed what works are, what originality is, what performers' rights are, what broadcasting rights are, we have understood resale share rights, and the right to receive royalties. This week we are going to touch upon a few interesting topics pertaining to registration, publication, and term of copyright. And then to look at the most important considerations within the Copyright Act, which is the application of section 14 copyright. Let us then start this session and focus first on the question of registrations. Let us ask ourselves whether the registration of a work is a mandatory requirement for the purpose of the subsistence of copyright.

Why is this an important question? In other areas of intellectual property, such as patent law, for example, unless and until the invention goes through the patent prosecution process and is registered, no intellectual property subsists in that particular invention. Similarly, with respect to a trademark, the registration of the trademark is considered a very beneficial formality to undergo. But is it so with respect to copyright, and is it in fact a mandatory consideration? In section 45 of the Copyright Act, which talks about entries and the register of copyrights. It is said that the author, publisher, owner, or any other person interested in the copyright of any work may make an application in the prescribed form.

Accompanied by the prescribed fee to the registrar of copyrights for entering the particulars of the work in the register of copyrights. What's important here, as you can see, is the highlighted portion, which is that this is not a mandatory requirement. The author, the publisher, the owner, or the interested person may make an application. Therefore, registration is completely optional. It may or may not be done.

And even without registration, what this means is that copyright should subsist in the work. If we look at the origin of this particular application, we can find it within the

International Intellectual Property Instrument specifically on copyright, which is the Berne Convention to which India is a party. Article 5, clause 2 of the Berne Convention states that the enjoyment and exercise of these rights shall not be subject to any formality. In other words, where registration is a formality that needs to be completed for obtaining copyright protection, such a formality would not be mandatory. In other words, upon the creation of a work, copyright would subsist.

But you would wonder if copyright subsists in a work despite undergoing any registration. What is the benefit of registering? And why would anybody go through the registration process when the work has copyright protection without it? The answer to this can be seen in Section 48 of the Copyright Act, which says that the register of copyrights will be prima facie evidence of the particulars entered therein. It states that the register of copyrights shall be prima facie evidence of the particulars entered and documents purporting to be copies of any entries therein or extracts therefrom, certified by the registrar of copyrights. And sealed with the seal of the copyright office, it shall be admissible in evidence in all courts without further proof or production of the original. What we see is a very important consideration: once copyright is registered in a work, the registration itself can be considered evidence of the copyright in that particular work.

But does this mean that registration provides validity for the originality of that work? That is a question that we must ask. Because what that will mean is that simply by virtue of the registration of one's work, the copyright in that work cannot now be challenged. Is that the case? If so, then registration is, in fact, providing a huge benefit to copyright holders. Let us take a look at this case that has arisen before the Bombay High Court. This is Sanjay Soya Private Limited versus Narayani Trading Company.

In this particular case, the Bombay High Court had clearly established that registration is not a mandatory requirement. Because if any such mandatory requirement is placed under the Copyright Act, it would run counter to India's international obligation as a member of the Berne Convention. And as we have seen, the Berne Convention states that copyright can be enjoyed or should be enjoyed without any formalities. What this will logically mean is that copyright attaches automatically the moment a work comes into existence. It is not dependent on registration.

But what the court says is that if an original work can show priority in time, it can effectively defeat a registered copyright. What this means is that we should understand that if a work is registered under the Copyright Act, The fact that copyright can subsist in a work without any registration means that registration itself cannot guarantee the validity of copyright in that work. If another work can show priority, meaning if a work can demonstrate that it was created earlier in time compared to the registration date of the later work, Then it is possible that a work which has copyright in it, despite not being registered, can defeat the copyright in a registered work. Having understood the

importance of registration with respect to a work, let us now understand the relevance of publication. Let us first understand what "publication" means.

The ordinary meaning of publication is the preparation and issuing of a book, journal, or piece of music for public sale. Publication has also been defined in the Indian Copyright Act. Section 3 states that, for the purposes of this Act, publication means making a work available to the public by issuing copies or by communicating the work to the public. What we understand is that when a work comes into existence, copyright will attach to that work. It is not dependent on registration.

Publication would mean that this work is now being brought out for the purpose of public utilization. So the Act states that publication would then mean that such a utilization is happening by way of issuance of copies or by way of communicating the work to the public. But a more important question that we should ask is whether publication is necessary for the subsistence of copyright. In the previous query, we were looking at whether registration is a necessity for the subsistence of copyright. We understood that it is not so.

But what about the publication? After all, isn't copyright awarded to authors for their works received by the public? And if so, then shouldn't publication be a necessary consideration? What we see is that under section 13 of the Copyright Act, which talks about works in which copyright subsists. You can see section 13, clause 2, subclause 2. It reads, copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 40 or section 41 apply, unless— In the case of an unpublished work other than a work of architecture, the author is, at the date of making the work, a citizen of India or domiciled in India. You can see that section 13 is only concerned with the questions of domicile and citizenship. And as far as the question of copyright subsisting in an unpublished work is concerned, it clearly states that copyright can subsist.

Therefore, we can say that publication is not a necessary requirement for copyright to subsist in it. Providing the work for public access is one consideration for copyright. Another important consideration that we must keep in mind is to incentivize creative expressions. And therefore, that line of justification can, in fact, help us understand why unpublished works should have copyright subsisting in them. Having now understood the importance of registration and publication, let us now move to understanding the term of protection.

Let us first look at Section 22. Section 22 reads, "Term of copyright in published literary, dramatic, musical, and artistic works." Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical, or artistic work published within the lifetime of the author until 60 years from the beginning of the calendar year next

following the year in which the author dies. The explanation reads, "In this section, the reference to the author shall, in the case of a work of joint authorship, be construed as a reference to the author who dies last." Having seen this provision, what we understand is that upon publication of a work, the term of copyright will then be considered.

The term of copyright for such a published work would be the life of the author plus a period of 70 years. How do we calculate this term? Let us take a look at an illustration that will help us understand the calculation of terms. X is the author of a literary work. The work came into existence in 2022. It was published on 23 July 2025.

X dies on 12 January 2029. How do we calculate the term? Let us first understand that when the work came into existence, that is, in 2022— Copyright attaches to that work. But the term of copyright will be considered from the point of publication of that particular work. And therefore, because the author was alive until 12 January 2029, the copyright term will be from 23rd July 2025, and the 60-year term will be counted from the next calendar year. You can see the terminology is the beginning of the calendar year following the year in which the author dies.

The calendar year starts on 1st January 2030, and therefore the copyright term will be from 23rd July 2025 to 1st January 2090, which is effectively the life of the author plus 60 years. I hope this illustration helps explain how we calculate the term of protection. Now use the explanation that talks about joint authors' term of protection and see how you would apply it in this particular illustration. What does the explanation say? In this section, the reference to the author shall, in the case of joint authorship, be construed as a reference to the author who dies last. What we will understand is that in this particular illustration, if we say that X and Y are joint authors and Y were to die, say in 2035.

Then the copyright in the work will be considered valid for 60 years from 2036. As has been stated, the term will be calculated; the 60 years will be calculated in reference to the author who dies last. In consideration of the next line of terms of protection, which is with respect to anonymous works and pseudonymous works, let us first understand what an anonymous work is. An anonymous work is simply a work in which the identity of the author is not revealed. There could be many reasons why an author does not want to reveal their name.

And such works are called anonymous works. What are pseudonymous works? Pseudonymous works are those in which the author goes by a name that is fictional or a pseudonym. So to use a fictional name is also to mean that the real identity of the author is not revealed. Therefore, both an anonymous and a pseudonymous work share a common characteristic: the identity of the author is not revealed. Let us see how this calculation is taking place.

In section 23, you can see that it talks about the term of copyright in anonymous and pseudonymous works. It states that in the case of a literary, dramatic, musical, or artistic work other than a photograph that is published anonymously or pseudonymously, Copyright shall subsist until 60 years from the beginning of the calendar year next following the year in which the work was first published. Provided that where the identity of the author is disclosed before the expiry of the said period, copyright shall subsist until 60 years from the beginning of the calendar year next following the year in which the author dies. What are we understanding? Because an anonymous work does not reveal the identity of the author. What section 23 states is that the 60 years of copyright and the term of protection that will apply to this work will be based on the calendar year following the publication date.

It doesn't talk about the author's life. The clear line of reasoning here for why it doesn't talk about the life of the author is that the identity of the author is unknown, and therefore it would not be logical to apply a copyright to the life of the author. In turn, then, what the provision says is that if, in fact, the identity of the author is revealed, Then section 22 application will essentially take place. The copyright will subsist during the lifetime of the author and persist until 60 years from the beginning of the calendar year next following the year in which the author dies. Let us consider how identity can be revealed.

The explanation of this provision states that the identity of an author shall be deemed to have been disclosed if either the identity of the author is disclosed publicly by both the author and the publisher. or is otherwise established to the satisfaction of the commercial court by that author. In these ways, the identity of the author can be revealed. Let us consider an illustration that will help us understand how this term of protection must be considered.

X is the author of a literary work. The work came into existence in 2022. It was published anonymously on 23 July 2025. The term, because it is connected to the date of publication, will be 60 years from the calendar year in which the work is published, and therefore it will be from 1st January 2026 to 1st January 2086. Suppose the identity of the author is revealed on 23rd June 2054; then we must see at what point the author dies. If the author dies on 12 December 2064, we can say that the 60-year component of the term will begin from the calendar year following the year in which the author has died.

The life of the author, plus these 60 years, which is effectively the term under section 22, will take over where the identity of the author is revealed. Let us now look at how this particular provision talks about joint authorship. It says, in reference to subsection 1, that the author shall, in the case of an anonymous work of joint authorship, be construed where the identity of one of the authors is disclosed as references to that author. Where the identity of more than one author is disclosed as references to the author who dies last

among such authors. We see that the Copyright Act grants the benefit of the term of protection to the joint author who dies last.

Therefore, whoever discloses his identity, whichever author discloses his identity, it is that author whose date of death will be used in calculating the remaining period of copyright. In cases of joint authorship, whichever joint author dies last. Let us now consider what the situation would be in terms of pseudonymous works. Let us look at what this provision says. In subsection 1, references to the author shall, in the case of pseudonymous works of joint authorship, be made.

Be construed, where the names of one or more, but not all, of the authors are pseudonyms, and their identity is not disclosed, as references to the author whose name is not a pseudonym. or if the names of two or more of the authors are not pseudonymous as references to those authors who died last. As you can see, both with respect to anonymous works and with respect to pseudonymous works, the consideration of the term of protection is connected to the revelation of the identity of the author. If the author has not used a pseudonym, then that particular author, his term, his age, and his date of death will be considered. Next, this provision states, where the names of one or more, but not all of the authors are pseudonyms and the identity of one or more of them is disclosed as references to the author who died last among the authors, whose names are not pseudonyms, and the authors whose names are pseudonyms and are disclosed, and where the names of all the authors are pseudonyms, and the identity of one of them is disclosed as references to the author whose identity is disclosed, or if the identity of two or more such authors is disclosed, as references to those authors who died last.

The principle, then, is the same as we see with respect to anonymous works: the term of protection must be seen from the perspective of the revelation of identity, If the identity of an author is known, then it is that author whom we will consider. If the identity of the other authors, who are pseudonymous, is revealed, then it will be in terms of whichever joint author dies last. In the next session, we will continue this understanding of terms with respect to certain other types of works. Thank you for joining me. See you all in the next session.