

Copyright and Related Rights Law

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LECTURE – 43

Public Domain and Relinquishment

Welcome back to this course on copyright and related rights law. This week we have already discussed the term of protection. By now, we are all very clear on the kind of terms of protection that apply to subject matters of copyright, to performances, and to broadcasts. We have understood the distinction between the application of publication, the making of the performance, the making of the work, and the making of the broadcast. In today's session, we are going to understand the consequences of the end of the term of protection, which is public domain. And we are also going to consider the voluntary giving up of copyright by a right holder.

Let us look at the first portion of our discussion today. In this first portion, we are considering the question of what happens when the term of protection expires. You would recall, we had discussed that, for instance, a literary work such as a book that has been published during the lifetime of an author, where the author is identified, as the lifetime of that author plus a period of 60 years is counted, from the beginning of the calendar year next following the year in which the author dies. What happens after these 60 years expire? We understand that the work then enters the public domain.

We must understand what the public domain is, and towards that understanding, let us recall our discussion from our first session. In the first session we had discussed the incorporeal nature of property, in which I had explained that, quite like land on which fencing can be done to keep unauthorized personnel out, similarly, copyright erects an artificial fence upon which lies the question of whether a particular act has been authorized by the copyright holder. This question of what happens after the expiration of the term of protection is unresolved. can be answered by considering this artificial fence when we say that at the point of expiry, this particular fence no longer exists. Meaning that all kinds of authorization that copyright offers would now be free for use by all members of the public without any such requirement for authorization.

Therefore, what is the public domain? Public domain, as we understand it, is all economic usage that is otherwise covered within a specific provision of section 14 under the Copyright Act. Unless it has been accepted under section 52 or other provisions of the Copyright Act, now there is no such requirement of any authorization under section 14. Let us also ask whether the expression, the fact that it is now in the public domain, Let us also understand that, in respect to the public domain, if a work is entering the public domain at the expiry of a term of protection, can it also be stated that a work is in the public domain if no copyright subsists in it? Clearly, that is possible. Therefore, the public domain and the entry into the public domain of an expression can be understood to happen in two ways. One, the expression that has been generated, even though it is not copied from anywhere, is not original; the expression is in the public domain.

Copyright does not extend to it. And second, that copyright did extend to a particular expression for which the Copyright Act provided a specific term of protection wherein there was exclusivity to the copyright holder. After the expiry of this term of protection, the work has now entered the public domain. It's free for use by any member of the public. Now consider what happens with usage without authorization from the copyright holder during the subsistence of copyright.

You would realize that what we were discussing was a question of what happens after the term of protection has ended, but during the term of protection, If any use of a work has to be done without the authorization of the copyright holder, it can only be done through a recognized form of exception that is permissible under the Copyright Act. This is something that requires its own detailed explanation and understanding, and something that we will look at in the following sessions in this course. Therefore, in terms of the use without authorization from the copyright holder during the subsistence of copyright, it would be a question of an exception. Which is permissible under the Copyright Act, and once the term of protection has ended, there is no exclusivity of usage anymore. This is not a question of an exception to an exclusive right.

It is not exclusive and free for public use. Now let us consider whether public domain means that a work is now free for use. Is this not possibly something that an author might want or could want? So in a scenario where the author does not wish to exercise his copyright, would it be possible for the author to simply give up his copyright? Give it away, not exercise it at all. It should be possible. The question is, if in fact this is something that can be done, is there a specific manner in which this should be done? And is there any specific consideration that we must keep in mind when thinking about such a giveaway? Anything serious? We must understand that whatever the reasons a person may wish to give up the copyright in a work, There is a serious consideration that any such right holder must keep in mind: the giving up of copyright is a huge giveaway.

It is but a practice that has been seen through the form of contract in the industry for authors and performers as well. Without a complete grasp of what they are giving away, people tend to engage in such giveaways of their work for free. We will attempt to understand this giveaway in terms of what it means in copyright. And then come back to the question of what the process is for the purpose of giving up copyright protection. You would recall that we had discussed it at the time of discussing assignments and licenses.

Such an agreement between the copyright holder and the user can be restricted in both duration and territory. So in terms of what copyright is, we must understand that although the term copyright is used in a singular sense, The actual number of copyrights is reflective of this particular expression, which is often used with respect to copyright: copyright is a bundle of rights. There is an inherent plurality in the singular usage of copyright, meaning that we cannot just say simply that I am giving up my copyright. Rather, the better way to understand this is to recognize the real plurality of the application of copyright, which can, for instance, be seen through a reference to section 14 of the Indian Copyright Act. We have referred to section 14 many times over the course of this particular course on copyright.

You would have seen that our reflection on section 14 indicates that section 14 has come up in various discussions on a variety of topics. In this specific consideration, we are looking to understand how copyright is not a singular right, but rather a bundle of rights, which, as you can see under section 14, the author of a literary work would enjoy. Not just the right of reproduction, but also the right of issuance of copies. The right of adaptation, the right of translation, the right to make a cinematograph film, the right to make a sound recording, the right to make a performance of the work, and the right to communicate the work to the public. These are all rights over which the author has exclusive control.

To say that an author is giving up his copyright, whether there is sufficient consideration of the seriousness of what is being given away, needs to be clearly understood. Let us consider, for example, the issuance of copies, which is a copyright within the bundle of rights. Now, the issuance of copies is connected to distribution; distribution is looking at territory, and territory can be split. So an entity that has the logistical capability to distribute a particular work in, say, the state of Rajasthan can be considered for the purpose of this particular right. Similarly, there can be other entities in other territories of India that can be considered for such a license in terms of the duration for which such a responsibility has been given.

That duration can also be limited. So, in terms of each state in India, there can effectively be a different distributor for distinct durations who has been authorized by the right holder. You would question what the relevance of such a consideration of duration is. It's important to understand that the limitation of duration helps the right holder in

understanding the efficiency of logistics, the performance of the assignee or the licensee, and where such performance is not satisfactory, to even consider non-renewals. Considering another party for the purpose of carrying forward that issuance is necessary.

But in terms of purely the monetary worth of what the issuance of copies is, if you look at that, copyright over a particular work is not limited to just India. Copyright extends to many countries around the world. Therefore, any such giving up of just this one right, which is the issuance of copies, is to give away the copyright across territories and for any such durations. Let us consider another example. Consider a cinematographic film.

Say that the author of the copyrighted work is the scriptwriter. The work is the script. How many films can be made from the same script? There can be an infinite number of movies that can be made from the same script. You would realize that by giving up the copyright to a script. Any possibility of a separate cinematograph film being made from the script is effectively given away.

Therefore, the author will give away the revenue stream that is technically possible from the usage of the script for different films. Similarly, consider sound recordings. How many sound recordings can there be of the same composition? There can be a number of sound recordings. To then just give up copyright on the composition is to give up all of this revenue. It must be kept in mind that copyright doesn't only extend to the lifetime of the author as a kind of property.

It vests with the successors of the author. And therefore, in terms of the economic impact that copyright has from its plurality of application under section 14, To give up copyright or to relinquish copyright is to consider these serious points and only then take a decision, because relinquishment cannot be undone. Once copyright is given up, there is no mechanism to bring it back. It is now effectively in the public domain. Having understood the seriousness that the issue of giving up copyright must be given, let us now look at the manner in which the Copyright Act is providing for relinquishment.

You can see under section 21 that the Act says the author has a right to relinquish his copyright. It says the author of a work may relinquish all or any of the rights comprised in the copyright in the work by giving notice in the prescribed form to the registrar of copyright. Or by way of public notice, and thereupon such rights shall, subject to the provisions of subsection 3, cease to exist from the date of the notice. As we have seen, the usage of the expression "all or any" is a reflection of careful consideration that authors can make with respect to the extent of copyright that they wish to relinquish. If the extent is to cover all the rights under section 14, then that too can be done, but there is no way that once there is a relinquishment, the copyright will somehow come back to the author.

Let us also understand that the relinquishment by the author is subject to subsection 3 of this provision. Imagine a transaction that the rights holder has entered into with another party, meaning thereby that the copyright under section 14 has been transacted by way of an assignment, for example. In such a situation, would the independent act of relinquishment of copyright by the author have any effect on the assignee? If so, then it would be wholly prejudicial to the assignee. Therefore, section 21, clause 3 provides a safeguard. It states that the relinquishment of all or any of the rights comprised in the copyright of a work shall not affect any rights subsisting in favour of any person on the date of the notice referred to in subsection 1. We have thus understood that, from section 21, it is clear that there are two ways in which relinquishment can occur. One way is by submitting a form; the specific form is Form 1. Found within the first schedule of the Copyright Rules 2013 and by way of a public notice. What a public notice is, is explained in the chapter dedicated to understanding relinquishments and the procedure for such relinquishments under the copyright rules.

Rule 5 explains public notice wherein it says that it means mentioning of notice on the work or cover of the work, or publication in one issue of a daily newspaper in the English language that has circulation in the major part of the country and also in one issue of any daily newspaper in the same language, as the work or by posting the notice on the website of the Copyright Office, at the request of the author by giving the details as required under sub rule 2. This is Subrule 2 of Rule 5. Let us take a look at it as well. It says the author relinquishing the rights under Rule 5 by giving public notice shall include in the notice the details given below. Class of the work, title of the work, full name, address and nationality, language of the work, name, address, nationality of publisher, if published with year of publication and country of first publication, if copyright in the work is registered then the registration number, the right or rights to be relinquished and the date of relinquishment of the rights.

It is very clear that any such notice or action of relinquishment must be through a specified process, and through this process, any person who is looking to relinquish his copyright. will understand the implications, the seriousness and will have time to think that what he is giving up is something that he does want to give up either in some portion or in its entirety. If this sufficient consideration is not backing the act of relinquishment, it can be disadvantageous to the author. In the next session, we are going to take a look at reproduction rights and the issuance of copyright, as well as an issue connected to the issuance of copies, which is parallel imports.

Thank you for joining me. See you all in the next session. Thank you.