

Copyright owners and Public interest: A Study

By

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1. Owners of copyright may at times refuse to republish or allow the republication or have refused to allow the performance in public of the work which results in withholding from the public such copyrighted work and the members of the public suffer by such acts of the owner. There have been instances, where the owners refused to allow communication to the public by (Broadcast) of such work or in the case of (sound recording) the work recorded in such (sound recording) on terms which the complainant considers reasonable. The Copyright Board has the powers under Sec 31 of the Copyright Act, 1957.¹ When a complaint is made to Copyright Board of such instances, the Copyright Board shall grant the license to the complainant subject to the following conditions:-

- i) To give to the owner of the copyright in the work a reasonable opportunity of being heard;
- ii) To hold such inquiry as it may deem necessary;
- iii) If satisfied after (i) and (ii) conditions that the grounds of such refusal are not reasonable and upon such satisfaction, the Copyright Board may direct the Registrar of Copyright to grant to the complainant a license to republish the work, perform the work in public or communicate the work to the public by (broadcast) as the case may be, subject to the payment to the owner of the copyright of such compensation and subject to other terms and conditions as the Copyright Board may determine. Consequent upon such decisions, the

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¹ See for details Sec 31 of Copyright Act, 1957 as amended by the Act of 1994 w.e.f. 10-05-1995.

Registrar of Copyright may grant the license in accordance with the directions of the Copyright Board and also on payment of such fees as may be prescribed. In the event of more complainant seeking the license, the Copyright Board may grant to such a complainant who would “best serve the interest of the general public”.

2. The power of the Copyright Board cannot be exercised by the District Consumer Forums or even by State Consumer Commissions and such as they have no jurisdiction to exercise the powers to grant licenses under Sec 31 of the Copyright Act. The Supreme Court ruled² that even an interim relief cannot be granted, as there is no such power under the Act to grant interim relief. In the absence of any such express conferment of power, no implied power³ can be inferred and the intention of the legislature not to give such powers should be given effect to
3. The civil courts are vested with inherent power.⁴ Though some of the tribunals are not given the ‘inherent powers’, it was held in some cases that the power to give an interim order like stay of recovery of penalty, it was within the scope of incidental or ancillary power, the power conferred by statute by invoking the doctrine of implied powers’.⁵
4. The powers of Copyright Board under Sec 31 of the Act⁶ relates to the power to decide and compute the amount payable for the use of the Copyright which was

² Morgan Stanley Mutual Fund Vs. Kartick Das (1994) 4 SCC P.245.

³ Lingamma Vs. State of Karnataka AIR 1982, Karnataka P.18.

⁴ See for details Sec 151 of the Civil Procedure Code.

⁵ For instances the powers of Debts Recovery Tribunal, in Sec 19(1) of Recovery of money under Debts Recovery Tribunal (DRT). See also ITO M.K. Mohammed Kumbi, AIR 1969 SC P.490.

⁶ The expression ‘Act’ is referred to as Copyright Act in this study.

withheld from the public. No doubt the proceedings of the Copyright Board are deemed as ‘judicial proceedings’⁷ and the Board is deemed to be a criminal court⁸ for the purposes of Section 345 and 346 of the Criminal Procedure Code 1973. The inconvenience of the individuals should give way for public interest i.e., to serve to greater interests of the public.

5. The dual value of the rights of owners of the Copyright or anybody claiming through such owner can be stated as
 - a) Commercial value which depends on the quality, nature and public demand and the other
 - b) ‘aesthetic value’

The owners have the right to transfer their rights and also determine the terms and conditions of such transfer, in the event of their decision to transfer their copyrights. However, Sec 31 of the Act may be considered as a limitation on their rights as they could be deprived of the same against their volition. Such deprivation can be under the authority of law and must essentially relate to a ‘public purpose’. Art. 300A of the Constitution gives support to grant of compulsory license in works withheld from the public. Under the said article, Right to property is reduced to that of a legal right⁹ and no longer a fundamental right. Art 300A will be available against the executive interference and not against legislative action and consequently held as a human right and not a constitutional right.¹⁰

⁷ See Section 12 (7) of the Act.

⁸ - do - Ibid

⁹ See the objects and reasons of the Constitution 44th Amendment Act, 1978.

¹⁰ Chairman IV Pradhikaran Vs. Puri, AIR 2007 SC P.2458. See also Art 300A of the Constitution.

6. Where complaint are filed seeking a license to publish a work of an author in conditions stipulated under Sec 31 of the Act, there is no provision to grant a interim license pending the disposal of the complaint. As a consequence, members of the public are deprived of the benefit of the said copyright work, if the matter gets unduly delayed at the level of the Copyright Board in the disposal of the complaint. This is the result of the absence of the provision in the statute to grant interim license. Further the grant of interim relief may amount to the grant of total relief and the complaint itself becomes no longer a contested issue and thereafter the entire proceeding becomes an 'exercise in futility'. This point overlooks a vital issue in as much as the interim license operates till the final disposal of the complaint and it could be granted subject to terms and conditions favourable to the owners of the copyright. Treating an interim license as of a permanent nature leads to an erroneous view in as much as it temporarily accommodates the public interest in having access to the copyright work. The following objectives are raised in the matter of granting interim license.¹¹

- i) it poses a security threat to the author;
- ii) where the author has several reasons other than inadequate monetary consideration;
- iii) where the withholding is to commercially benefit an individual rather than public;
- iv) where the grant of license is detrimental to public;
- v) where the refusal by the author is not considered to be 'unreasonable'

¹¹ For details refer to Super Cassettes Industries Ltd., case, AIR 2012 SC P.3144.

7. The Copyright Board has ample powers to stipulate various conditions and terms while granting the license. One can expect that the Copyright Board may consider all such objections and if it thinks necessary to do so, it must have the power to grant interim license to satisfy the public interests without delay. The Copyright Board must make the effort to make Sec 31 workable and to serve the purpose for which it was provided in the Act. Thus, there is a need to amend Sec 31 of the Act and to insert a provision Sec 31(3) in the Act in the following terms:-

Amendment Proposed

Sec 31(3) be added to the existing Sec 31 (2) to read as follows:

Sec 31(3) power to grant interim license

- (a) “The Copyright Board shall have the power to grant interim license, pending the disposal of complaint filed before it. The power shall be exercised in a manner and subject to terms and conditions which may best serve the public interests;
- (b) That the complainant shall bear the loss suffered by the owners of the copyright in case the complaint is dismissed by the Board or the request of complainant is rejected;
- (c) That the complainant shall deposit a sum equivalent to the amount which may be finally determined by the Copyright Board as payable as compensation to the owners of the copyright. In the alternative, the complainant may furnish a bank guarantee for the amount so determined by the Copyright Board which will be ultimately become payable to the owner of the Copyright in the event of the complaint being rejected;

(d) In the event of the complainant succeeding in the case, the amount so deposited shall be refunded to the complainant excluding the amount payable to the owner of the copyright for the use of the copyright work during the temporary license period.

The aforesaid amendments, may justly reconcile with the rights of the owners of copyright with public interests.