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**PROTECTION OF ECONOMIC RIGHTS UNDER COPYRIGHT LAW:  
A LEGAL STUDY**

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**ABSTRACT**

*Economic rights under copyright law are fundamental to the protection and commercialization of creative works. These rights grant authors and creators the exclusive ability to exploit their works for financial gain, ensuring that they can benefit economically from their intellectual property. Key economic rights include the right to reproduce the work, distribute copies, perform the work publicly, and create derivative works. These rights are crucial in incentivizing creativity and innovation by providing a legal framework that allows creators to control and profit from their creations.*

*In India, the Copyright Act of 1957, along with its subsequent amendments, outlines the economic rights of authors and the mechanisms for their enforcement. The Act aligns with international treaties such as the Berne Convention, ensuring that Indian copyright law is consistent with global standards. Judicial interpretations and case laws have further shaped the understanding and application of economic rights, addressing challenges posed by digital technologies and the internet.*

*Economic rights are not perpetual; they are subject to limitations and exceptions designed to balance the interests of creators and the public. These include fair use provisions, compulsory licensing, and the duration of copyright protection. Understanding the scope and limitations of economic rights is essential for authors, publishers, and legal practitioners to navigate the complexities of copyright law effectively.*

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*This abstract provides an overview of the economic rights under copyright law, highlighting their importance in fostering a vibrant creative economy and protecting the interests of creators.*

## INTRODUCTION

Copyright law safeguards the rights of authors, acknowledging their unique work and effort. The primary aim of copyright is to protect the interests of artists while facilitating the dissemination of knowledge and information. This protection initially stemmed from recognizing authors' rights to their creations. However, contemporary technology has significantly altered the nature of works and the methods of their utilization.

Historically, copyright protection for works originated from statutes, initially granted through charters by the appropriate government. The evolution of copyright law demonstrates that its fundamental purpose was to acknowledge the author's creative contributions and to confer limited ownership rights over time. While this right creates a monopoly, it is not absolute. There have always been limitations on the use of this monopoly right.<sup>2</sup>

The Copyright Act of 1957 acknowledges the creative efforts of authors by designating certain works as worthy of protection and bestowing rights upon these authors for their creations. To be eligible for copyright protection, a work must meet the criteria set forth by the Act. According to Section 13 of the Act, the works that are eligible for protection include original literary, musical, dramatic, and artistic works, as well as sound recordings and cinematographic films.

The Copyright Act of 1957 grants authors both economic and moral rights.<sup>3</sup> Economic rights enable authors to commercially exploit their creations, moral rights protect the author's personality and the integrity of their work, among other related aspects.<sup>4</sup> These rights are acknowledged by the Berne Convention of 1886, the TRIPS agreement, and various national laws.<sup>5</sup> A significant distinction introduced by TRIPS is that Member States are not required to safeguard the moral rights of authors; instead, they are only obligated to protect economic

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<sup>2</sup> S.K. Verma, 'Copyright Law and the Right to Knowledge' (2010) 45 JILI 89.

<sup>3</sup> The Copyright Act, 1957(Act 14 of 1957), s. 14.

<sup>4</sup> The Copyright Act, 1957(Act 14 of 1957), s. 13.

<sup>5</sup> Berne Convention for the Protection of Literary and Artistic Works, 1886; Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994.

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rights as stipulated in Article 9 of TRIPS<sup>6</sup>. The economic rights of the author are primarily listed in Section 14, while the moral rights are granted under Section 57 of the Copyright Act, 1957.

## **DEFINITION AND SIGNIFICANCE OF ECONOMIC RIGHTS IN COPYRIGHT**

Economic rights in copyright law pertain to the exclusive rights bestowed upon creators of original works, enabling them to oversee and reap financial rewards from their works' utilization. These rights are fundamental to copyright law, providing creators with a legal avenue to capitalize on their work. Typically, these rights encompass the abilities to:

- Reproduce the work (for instance, by making copies).
- Distribute copies to the public.
- Publicly perform or display the work.
- Authorize adaptations or derivatives.
- Manage the commercial leasing of certain types of works (like films or software).

### **SECTION 14 UNDER COPYRIGHT LAW:**

#### **1. For Literary, Dramatic, and Musical Works (excluding computer programs):**

The copyright owner has the exclusive right to:

- Reproduce the work in any material form, including storing it in electronic form.
- Issue copies of the work to the public, not already in circulation.
- Perform the work in public or communicate it to the public.
- Make any cinematographic film or sound recording of the work.
- Translate or adapt the work.

#### **2. For Artistic Works:**

The copyright owner has the exclusive right to:

- Reproduce the work in any material form, including depiction in 3D if it is a 2D work and vice-versa.

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<sup>6</sup> TRIPS Agreement, Art. 9.

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- Issue copies of the work to the public.
- Communicate the work to the public.
- Include the work in any cinematographic film.
- Make adaptations of the work.

### 3. **For Cinematograph Films:**

The copyright owner has the exclusive right to:

- Make copies of the film, including photographs of images from the film.
- Sell or give copies of the film to the public.
- Communicate the film to the public.

### 4. **For Sound Recordings:**

The copyright owner has the exclusive right to:

- Make copies of the sound recording in any material form, including storing it in electronic form.
- Sell or distribute the recording to the public.
- Communicate the sound recording to the public.

### 5. **For Computer Programs (a special category under literary works):**

The copyright owner has additional rights to:

- Sell or rent copies of the program to the public.
- Grant licenses for the use of the program.<sup>7</sup>

These rights are usually assigned for a finite duration (commonly the lifespan of the author plus additional years, varying by jurisdiction), after which the work becomes part of the public domain. Economic rights are assignable, allowing creators to sell or license them to others.

## **DIFFERENCE BETWEEN ECONOMIC RIGHTS AND MORAL RIGHTS**

S.NO	BASIS	ECONOMIC RIGHTS	MORAL RIGHTS
	Focus	Covers the financial aspects of	Covers the personal and

<sup>7</sup> The Copyright Act, 1957 (Act 14 of 1957), s. 14.

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		creative works, emphasizing the creator's ability to derive income.	reputational aspects of the creator's connection to the work, prioritizing integrity and attribution.
	Transferability	Often transferable or assignable, allowing the copyright holder to sell or license these rights.	Often non-transferable, remaining with the copyright holder and cannot be sold or assigned in many
	Duration	Typically have a limited duration, expiring after a certain period, allowing works to enter the public domain.	Often lasts for a more extended period, in some jurisdictions, they may persist even after the economic rights have expired.
	Nature of Rights	Considered a property right, emphasizing the creator's ownership and control over the commercial aspects.	Considered personal rights, reflecting the creator's personal connection to the work and their right to be associated with it in a specific way.

## **KEY INTERNATIONAL TREATIES**

### **1. BERNE CONVENTION**

The Berne Convention for the Protection of Literary and Artistic Works, established in 1886, is a fundamental international agreement shaping copyright law. It primarily acknowledges and safeguards the economic rights of authors and creators, providing a structure that allows them to control and reap financial benefits from their works globally.

#### **Economic Rights under the Berne Convention:**

- **Reproduction Right:** Article 9 of the Berne Convention endows authors with the sole right to authorize the reproduction of their works in any form or method. This

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right is crucial for creators to manage the copying and distribution of their works for profit.<sup>8</sup>

- Public Performance and Communication: The Berne Convention secures economic rights concerning the public performance of works. Article 11 bestows upon authors the sole right to authorize the public performance of their dramatic and musical works, whether live or broadcasted. This includes contemporary communication methods like radio, television, and digital streaming.<sup>9</sup>
- Translation and Adaptation Rights: Article 12 of the Berne Convention provides authors with the sole right to authorize translations and adaptations of their works. This encompasses derivative works such as film adaptations, remixes, or other alterations of the original content, allowing the author to oversee the commercial use of these new forms.<sup>10</sup>
- Right of Distribution: While the "right of distribution" is not explicitly stated in the Berne Convention, it is inferred within the broad protection it offers to authors. Controlling the public availability of works—via sale, lease, or otherwise—is a key aspect of the economic rights granted by the treaty.<sup>11</sup>
- Moral Rights versus Economic Rights: The Berne Convention acknowledges moral rights alongside economic rights. These include the right to be recognized as the author and the right to oppose changes that may damage the creator's reputation, as outlined in Article 6.<sup>12</sup> Contrary to economic rights, moral rights are inalienable and cannot be assigned or sold.<sup>13</sup>

## 2. TRIPS AGREEMENT

The TRIPS Agreement, established in 1994 as part of the WTO framework, integrates intellectual property protection (including copyright) into the global trade system. Its main objective is to promote innovation and creativity by ensuring creators have enforceable

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<sup>8</sup> Berne Convention for the Protection of Literary and Artistic Works, Sep. 9, 1886, art. 9.

<sup>9</sup> Ibid., art. 11.

<sup>10</sup> Ibid., art. 12.

<sup>11</sup> Paul Goldstein & Bernt Hugenholtz, *International Copyright: Principles, Law, and Practice*, 3rd ed., 2019, p. 112.

<sup>12</sup> Berne Convention, supra note 1, art. 6.

<sup>13</sup> Jane C. Ginsburg, *Moral Rights in Copyright Law: International Perspectives*, 2021, p. 64.

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economic rights, thereby enabling them to monetize their works both domestically and internationally.<sup>14</sup>

Key economic rights covered under TRIPS include:

- Reproduction rights (the right to make copies of the work).
- Distribution rights (the right to sell or distribute copies to the public).
- Performance and broadcasting rights (public performance or communication to the public).
- Rental rights (the right to authorize the commercial rental of certain works like software or films).<sup>15</sup>

TRIPS extends and strengthens economic rights through several critical requirements:

- Article 9: Incorporation of Berne Convention Standards

TRIPS adopts the Berne Convention's minimum standards, including protection for economic rights such as the right of reproduction, adaptation, and communication to the public.<sup>16</sup> This ensures that creators across different countries enjoy a baseline level of economic protection, enabling them to license, sell, or control their works commercially.

- Article 11: Performance and Broadcasting Rights

Under Article 11, the TRIPS Agreement mandates that authors of dramatic, musical, and literary works have economic rights over public performances and broadcasts.<sup>17</sup> These provisions enable creators to earn royalties from the commercial exploitation of their works through public shows, broadcasting, or streaming platforms.

- Article 13: Limitations and Exceptions (Fair Use)

While TRIPS protects economic rights, Article 13 acknowledges the need to balance these rights with public interest.<sup>18</sup> Member states may introduce limitations and

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<sup>14</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid., art. 9.

<sup>17</sup> Ibid., art. 11.

<sup>18</sup> Ibid., art. 13.

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exceptions to economic rights (such as fair use) as long as they do not unreasonably conflict with the normal exploitation of the work.

- Article 14: Protection of Performers, Producers, and Broadcasting Organizations  
TRIPS extends related economic rights to performers and producers. For instance, producers of sound recordings are granted exclusive rental rights, allowing them to monetize the rental or sale of their works.<sup>19</sup> This provision strengthens the economic incentives for producers and distributors of copyrighted material.

## **TYPES OF ECONOMIC RIGHTS IN COPYRIGHT**

According to Section 14 of the Copyright Act of 1957, various rights are accorded to works based on their nature. This section asserts that the author exclusively has the right to perform or authorize the performance of the activities listed therein. The significant rights commonly acknowledged for all kinds of works under this Indian statute, which have seen considerable judicial interpretation, include the rights to reproduce, distribute, and communicate the work to the public.

- **RIGHT OF REPRODUCTION**

In all types of work, including literary, dramatic, musical, artistic, cinematographic films, and sound recordings, the exclusive right to reproduce the work belongs to the author. This exclusive right to prevent copying and reproduction is the most fundamental and historically the oldest right of a copyright owner. Although the Copyright Act recognizes this right across all types of work, the terminology and scope. The Act does not define the terms 'reproduction' or 'copying,' nor does it clarify the difference between the two.

The terms 'reproduction' and 'copying' are often used interchangeably, although 'reproduction' encompasses a broader spectrum of actions.

CASE: *LADBROKE LTD V WILLIAM HILL LTD*<sup>20</sup>, it was held in this case by House of Lords that, Reproduction refers to the act of copying, and it does not encompass instances where an author or compiler independently creates a substantially similar outcome without any copying. It is important to recognize that reproduction does not require verbatim copying;

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<sup>19</sup> Ibid., art. 14.

<sup>20</sup> [1964] 1 All ER 465, 469.

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even significant reproduction qualifies as such. Additionally, reproduction includes creating a copy in a different form, regardless of whether this copy is readily discernible.

*i. REPRODUCTION RIGHTS IN LITERARY WORKS*

Literary works include books, manuscripts, articles, poems, and any other written works. Reproduction rights in literary works allow authors or copyright holders to control how their works are copied, whether in print or digital format.

CASE: Authors Guild v. Google, Inc.<sup>21</sup>

In this case, Google digitized millions of books for its Google Books project, enabling users to search and preview snippets of these texts. The Authors Guild filed a lawsuit, alleging that the project infringed upon their reproduction rights.

The case centered on whether Google's digitization and snippet display, done without explicit permission, breached authors' reproduction rights.

The court determined that Google's activities fell within the scope of fair use, reasoning that the project offered substantial public advantages, such as searchable text, without adversely affecting the market for the original works.

CASE: Eastern Book Company v. D.B. Modak<sup>22</sup>

The Eastern Book Company, a legal publishing firm, initiated a lawsuit against D.B. Modak for unauthorized reproduction of headnotes and editorial notes from its law reports in a digital format. The company argued that these headnotes constituted literary works, and Modak's reproduction without consent infringed upon its reproduction rights.

The core issue was whether the duplication of headnotes and case summaries, crafted by the Eastern Book Company, was a breach of copyright.

The Supreme Court determined that headnotes and case summaries qualify as original literary works since they involve intellectual creation. Thus, their unauthorized reproduction is a violation of copyright law.

*ii. REPRODUCTION RIGHTS IN MUSICAL WORKS*

Musical works include songs, instrumental compositions, and sheet music. Reproduction rights allow the creators or copyright holders to control the making of

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<sup>21</sup> F.3d 202 (2d Cir. 2015).

<sup>22</sup> (2008) 1 SCC 1 (India).

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copies or the use of their music in various formats, such as CDs, MP3s, or sheet music.

CASE: A&M Records, Inc. v. Napster, Inc.<sup>23</sup>

The facts were, Napster provided a peer-to-peer file-sharing service enabling users to share music files, including copyrighted songs. A&M Records filed a lawsuit against Napster for copyright infringement, claiming that Napster promoted the unauthorized duplication of music.

The central legal question was whether Napster's service violated the reproduction rights of the copyright holders by allowing the digital sharing of songs.

The court found Napster accountable for both contributory and vicarious infringement of reproduction rights, as it facilitated the unauthorized distribution and duplication of copyrighted music.

CASE: Super Cassettes Industries Ltd. v. MySpace Inc.

Super Cassettes Industries, a music company, initiated legal action against MySpace for permitting users to upload and disseminate copyrighted music and video content without proper authorization. The plaintiff argued that this constituted an infringement of their reproduction and distribution rights under Section 14.<sup>24</sup>

The core issue was whether the platform could be held accountable for copyright infringement due to its users' unauthorized reproduction and sharing of music and videos.

The Delhi High Court determined that MySpace was responsible for secondary infringement, as it had provided the platform enabling users to reproduce and distribute copyrighted content without consent. Consequently, the court ordered MySpace to put in place measures to curb any further infringement.

CASE: Indian Performing Right Society Ltd. v. Aditya Pandey & Ors.

The Indian Performing Right Society (IPRS) initiated legal action against Aditya Pandey for the unlicensed broadcast of musical compositions. The IPRS contended that such broadcasting constituted the reproduction and public dissemination of copyrighted music, necessitating a proper license.<sup>25</sup>

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<sup>23</sup> 239 F.3d 1004 (9th Cir. 2001).

<sup>24</sup> Super Cassettes Industries Ltd. v. MySpace Inc., Delhi High Court.

<sup>25</sup> Indian Performing Right Society Ltd. v. Aditya Pandey & Ors., Delhi High Court.

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The Delhi High Court sided with the IPRS, determining that the unauthorized broadcast of copyrighted musical works violated the copyright owner's rights to reproduction. The court underscored the necessity of acquiring a license prior to the broadcast of copyrighted material.

**iii. REPRODUCTION RIGHTS IN ARTISTIC WORKS**

Artistic creations encompass paintings, sculptures, drawings, photographs, and various other visual arts. Reproduction rights grant the creator the authority to oversee the copying and distribution of their work, be it in tangible form or across digital platforms.

CASE: *Bridgeman Art Library v. Corel Corp.*

Facts: Bridgeman Art Library filed a lawsuit against Corel for reproducing images of public domain artworks photographed by Bridgeman without authorization.

Legal Issue: The case centered on whether reproducing photographs of public domain works infringed reproduction rights.

Court's Ruling: The court determined that the photographs did not qualify for copyright protection as they were simply factual reproductions of public domain works and did not possess originality.

CASE: *Escorts Construction Equipment Ltd & Anr v Action Construction Equipment Pvt Ltd & Anr.*<sup>26</sup>

The plaintiffs' claim was that the defendants' Pick-N-Carry Hydraulic Self Mobile Cranes constituted a three-dimensional reproduction of the drawings for which the plaintiffs held copyright protection. Upon reviewing Section 14(c), the Court noted the following observations.

The drawings used in the design of the crane were reproduction of the original artistic work. Those copies of drawings were, in turn, used to manufacture parts of the crane. Those parts manufactured are again reproduction of the original artistic works. A reproduction of an artistic work includes a version produced by converting the work into three dimensional forms. Such drawings are capable of being infringed by copying of a three dimensional article. The court ruled that the defendants had

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<sup>26</sup> AIR 2004 Delhi 322.

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infringed upon the copyright of the plaintiffs' industrial drawings and issued an injunction in favor of the plaintiff.

**iv. *REPRODUCTION RIGHTS IN CINEMATOGRAPHIC WORKS***

Cinematographic works encompass films, videos, and other audiovisual productions. The reproduction rights for these works enable copyright owners to oversee the copying, distribution, and exhibition of films in theaters and across various platforms.

CASE: Cartoon Network LP, LLLP v. CSC Holdings, Inc.

Cablevision offered a remote DVR service enabling users to record and save TV programs on Cablevision's servers. Cartoon Network filed a lawsuit, alleging that Cablevision infringed upon their reproduction rights by creating unauthorized copies of their programs.

The legal issue centered on whether Cablevision's service infringed reproduction rights under copyright law.

The court decided in Cablevision's favor, determining that the transient storage of programs on its servers did not constitute a reproduction rights violation.

CASE: Star India Private Limited v Leo Burnett (India) Private Limited.

In this case, the plaintiff owned the copyright to the cinematographic film titled 'Kyun Ki Saas Bhi Kabhi Bahu Thi.' The defendants produced a commercial film called 'Kyun Ki Bahu Bhi Kabhi Saas Banegi,' featuring similar characters portrayed by the same actors. The court was tasked with determining whether the defendants' commercial film constituted a copy of the plaintiff's work.

The Court pointed out that the production of a cinematograph film by another person, even if identical to the first film, does not constitute copyright infringement. The term 'to make a copy' refers to creating a physical duplicate of the film itself, not another film that simply resembles it. If the second film is independently filmed or shot, regardless of its similarity to the first film, it is not a copy of the original and thus, does not constitute infringement.

**v. *REPRODUCTION RIGHTS IN SOFTWARE AND DIGITAL WORKS***

Software and digital works encompass computer programs, databases, and various digital creations. The reproduction rights for software enable the copyright owner to regulate the production, distribution, and usage of the software's copies.

CASE: Apple Computer, Inc. v. Microsoft Corp.

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Facts: Apple initiated a lawsuit against Microsoft, alleging that Microsoft's Windows operating system infringed upon the reproduction rights of Apple's Macintosh user interface.

The core legal question was whether Microsoft's replication of elements from Apple's user interface amounted to copyright infringement.

The court decided in Microsoft's favor, determining that Apple had merely licensed specific components of the user interface to Microsoft, and that Microsoft had remained within the boundaries of this license.

- **RIGHT OF DISTRIBUTION**

In addition to the right to reproduce the work, the author also possesses the right to distribute it. This involves the right to place copies of the copyrighted work into the commercial market, meaning it pertains to controlling the distribution of the work's physical copies. The scope and extent of this right are not uniform; they vary depending on the work. Once the copies are circulated, the right is exhausted.

CASE: Penguin Books Limited v India Book Distributors and others.<sup>27</sup>

Facts: Penguin Books initiated legal action against India Book Distributors for the unauthorized import and distribution of their books that were published and printed abroad. Penguin contended that this infringed upon their exclusive distribution rights.

Issue: The core issue was whether the unauthorized import and sale of copyrighted books published outside of India constituted an infringement of the copyright holder's distribution rights.

Ruling: The court decided in favor of Penguin Books, determining that importing and selling copyrighted books without the copyright holder's consent breached the distribution right as stipulated in Section 14.

CASE: Associated Publishers Ltd. v. K. Bashyam & Others (1955)<sup>28</sup>

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<sup>27</sup> (2004) 8 SCC 128.

<sup>28</sup> AIR 1955 Mad 48.

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Associated Publishers alleged that K. Bashyam, among others, was distributing unauthorized replicas of their books. These were pirated editions offered at reduced prices.

The core issue was whether the sale of pirated book copies infringed upon the copyright holder's distribution rights.

The court concluded that the defendants had indeed breached the copyright holder's distribution rights by vending pirated editions. Consequently, the court imposed damages and mandated a halt to further sales.

- **RIGHT OF PUBLIC PERFORMANCE**

The Right of Public Performance in Indian copyright law, as outlined in the Copyright Act, 1957, grants copyright holders the exclusive right to control the public performance of their works, including literary, musical, and dramatic works. This means that any public performance, whether live (e.g., concerts, plays) or through broadcasts (e.g., radio, TV), requires the permission of the copyright holder. Licensing bodies like the Indian Performing Rights Society (IPRS) facilitate this process, ensuring that artists and creators receive royalties for the use of their work in public spaces.<sup>29</sup>

This right forms part of the **economic rights** of copyright holders, allowing them to generate income by monetizing the public use of their works. By requiring payment for public performances, artists can benefit financially, whether their work is performed in concerts, played in restaurants, or broadcast over the radio. Without proper licensing, unauthorized public performances can lead to legal action, including fines or injunctions. However, exceptions exist for non-commercial, educational, and private performances under the law's fair use provisions.

In *Harms v. Martans Club*<sup>30</sup>, the plaintiffs were the owners of the copyright in a musical play called "Tip Toes." The defendants were the proprietors of a club for dining and dancing, which had a membership of 1800. At the club of the defendants the musical play was performed by their orchestral band before an audience of about 150 members and 50 guests. The question was whether the performance before the members of the club was a

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<sup>29</sup>V.K. Ahuja, *Law Relating to Intellectual Property Rights* 18 (Lexis Nexis, Haryana, 3<sup>rd</sup> edn., 2017).

<sup>30</sup>(1927) 1 Ch 526

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performance of the musical play in public. The court held that it was. In so deciding the court considered the nature of the right of the author who was protected under the Copyright Act. The court stated that the purpose was to protect the author from any injury or loss of profit by reasons of any representation of his composition in public which would have ordinarily fetched him financial gain. The performance was held to be at a public place for a profit. It considered the performance as in public.

The court distinguished such an audience from a private or domestic audience which would consist of members of the family and members of the household. The court also considered the place where the performance took place and held that the club, which accepted members from the public and guests, cannot be considered as a place which was equivalent to an enlarged family.

### ***To make any cinematograph film or sound recording***

It is the right of copyright owner of literary, dramatic or musical work to make or authorise others to make any cinematograph film or sound recording with respect to that work. However, once the author of a lyric or musical work authorised the producer of cinematograph film to make a cinematograph film of his composition by recording it on the sound track of a cinematograph film, he cannot complain of the infringement of his copyright if the owner of the cinematograph film causes the lyric or musical work recorded on the sound track of the film to be heard in public. The author of a lyric or a musical work, however, retains the right of performing it in public for profit otherwise than as a part of the cinematograph film and he cannot be restrained from doing so.<sup>31</sup>

### **• RIGHT TO COMMUNICATION TO THE PUBLIC**

Section 2(ff) of the Copyright Act, 1957 defines 'communication to the public' to mean:

*"Making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing physical copies of it, whether simultaneously or at places and times chosen*

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<sup>31</sup> Music Broadcast Private Limited v. Indian Performing Right Society Limited, 2011 (47) PTC 587 (Bom) at pp. 614-15

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*individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available.”<sup>32</sup>*

The exclusive right relates only to communicating the work to the public and not a private audience. The explanation to the definition of "communication to the public" provides that "*communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public.*"<sup>33</sup> The object of this provision is to restrict unauthorized commercial exploitation of the work by others and not private and domestic use of the work. Thus, every broadcasting organisation, shop, departmental store, showroom, emporium, restaurant, hotel, club, disco, bars, office establishments, television channels, music concerts etc. which play music, impinges on the rights of copyright owner unless they get the permission of the copyright owner or the copyright society, as the case may be.<sup>34</sup>

The author's right of communication to the public is threatened by the Internet. The Internet with its unprecedented ability to provide an easy, relatively inexpensive, and flawless means to distribute, modify and create both original and copied material to a mass audience, threatens to upset the balance between private and public interest created by the copyright legal system. Uploading copyright work on the Internet may cause a serious threat to the right of communication and the right of reproduction of the copyright owners, as the same may be downloaded by a large number of people throughout the world. Being the international nature of Internet, the copyright owner may not even be able to locate the infringers in many cases. Even though the infringers can be located yet copyright owner may not be able to sue them because of conflict of laws or lack of financial viability or otherwise.

- **RIGHT TO ADAPTATION OF THE WORK**

Copyright also subsists in the adaptation of literary, dramatic and musical works. The copyright owner of any such work has the exclusive right to make any adaptation of it,

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<sup>32</sup> N.S. Gopalakrishnan & T.G. Agitha, *Copyright Law: Theory and Practice* (2nd ed., Eastern Book Company 2017) 75;

<sup>33</sup> P. Narayanan, *Copyright Law* (1st ed., Eastern Law House 2019) 65-67.

<sup>34</sup> See also *Indian Performing Right Society Ltd. v. R. Krishnamurthy & Another*, 2012 (49) PTC 362 (Del.) at p. 364.

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Thus, making of adaptation of any such work without authority of the copyright owner is an infringement:

In India, section 2(a) of the Copyright Act, 1957 defines 'adaptation' to mean:

- (i) in relation to a dramatic work, the conversion of the work into a non- dramatic work;
- (ii) in relation to a literary work, the conversion of the work into a dramatic work by way of performance in public or otherwise
- (iii) in relation to a literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical:
- (iv) in relation to a musical work, any arrangement-or-transcription of the work; and
- (v) in relation to any work, any use of such work involving its re- arrangement or alteration.<sup>35</sup>

In addition to the aforesaid rights under section 14 of the Copyright Act, 1957 the author of an original manuscript of a literary, dramatic or musical work has a right to share in the resale price of such manuscript in India.<sup>36</sup>

#### ***Making adaptation or translation of computer programme:***

It is the exclusive right of the copyright owner of a computer programme to make adaptation or translation of the computer programme or authorize others to make such adaptation or translation.<sup>37</sup> Further, it is the exclusive right of the owner of the computer programme to do any acts discussed above in relation to such adaptation or translation.<sup>38</sup>

The expression "translation" normally envisages the conversion of a work from one language into another, in particular one human language into another. Thus, if a high-level, source code computer programme is compiled or converted into an object code

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<sup>35</sup>The Copyright Act, 1957 (Act 14 of 1957), s.2.

<sup>36</sup>Aiyer, R. (2013). *Intellectual Property Rights: A Global Perspective*. New Delhi: LexisNexis.

<sup>37</sup>The Copyright Act, 1957 (Act 14 of 1957), s.14(a)(v), 14(a)(vi) and 14(b)(i), id.

<sup>38</sup>The Copyright Act, 1957 (Act 14 of 1957), s.14(a)(vii) and 14(b)(i), id.

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programme, this will be an adaptation of the source code programme and therefore, a restricted act.

## **ASSIGNMENT- LICENSING & ECONOMIC RIGHTS**

Sections 18, 19, 19A, 20, 21 and 30 of copyright law, particularly in the context of the Indian Copyright Act, 1957, are crucial for understanding economic rights. These sections outline the rights granted to copyright holders, focusing on how these rights can be exercised commercially. Here's a summary of each section and its relationship to economic rights:

### **SECTION 18: ASSIGNMENT OF COPYRIGHT**

This section allows the copyright owner to assign their economic rights (e.g., reproduction, distribution, performance) to others through a contract.

- The assignee receives the right to commercially exploit the work and generate income.
- The copyright owner (assignor) can receive royalties or a lump sum in exchange.
- Economic control shifts from the copyright owner to the assignee.<sup>39</sup>

### **SECTION 19: MODE OF ASSIGNMENT**

This section outlines the formalities for valid assignment. It mandates that:

- The assignment must be in writing.
- It must specify the work, duration, and territorial extent of the rights assigned.
- If not specified, the assignment lasts for five years and is limited to Indian territory.
- By defining clear terms, this section ensures that both parties know the scope of economic rights being transferred.
- Prevents exploitation of the assignor by limiting the duration and territory unless explicitly stated.<sup>40</sup>

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<sup>39</sup>The Copyright Act, 1957 (Act 14 of 1957), s.18.

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**SECTION 19A: DISPUTES REGARDING ASSIGNMENT**

This section allows parties to approach the Copyright Board for remedies in case of disputes, particularly if the assignee fails to exercise the assigned rights within a reasonable time.

- Ensures that assigned economic rights are actively used for commercial benefit, preventing the assignee from sitting idle on them.
- Protects the assignor's interest in continued monetization of the work.<sup>41</sup>

**SECTION 20: RIGHTS OF LEGAL REPRESENTATIVES**

If the copyright owner dies without assigning or licensing the work, their legal representatives inherit the economic rights and can exploit the copyright commercially.

- Protects the economic value of the copyright even after the author's death, ensuring that their heirs can continue to benefit from the work.<sup>42</sup>

**SECTION 21: RESTRAINTS ON ASSIGNMENT BY FUTURE OWNER**

This section deals with the restrictions on the assignment of future works. If the work does not yet exist, any assignment is considered void unless the work is created within a specified time.

- Prevents premature assignment of economic rights, ensuring that the creator retains control and bargaining power for future works.
- Protects authors from potential exploitation.<sup>43</sup>

**SECTION 30: LICENSING OF COPYRIGHT**

This section enables the copyright owner to license specific economic rights to another person, either exclusively or non-exclusively, through an agreement.

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<sup>40</sup>The Copyright Act, 1957 (Act 14 of 1957), s.19.

<sup>41</sup>The Copyright Act, 1957 (Act 14 of 1957), s.19A.

<sup>42</sup>The Copyright Act, 1957 (Act 14 of 1957), s.20.

<sup>43</sup>The Copyright Act, 1957 (Act 14 of 1957), s.21.

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- Licensing is a flexible tool that allows the copyright owner to retain ownership while earning income through royalties.
- An exclusive license can transfer significant economic rights to the licensee, while non-exclusive licenses allow multiple parties to commercially exploit the same work.<sup>44</sup>

## **CASE STUDIES ON ECONOMIC RIGHTS IN COPYRIGHT**

- ***Super Cassettes Industries Ltd. v. MySpace Inc. (2011)***

This case in India involved Super Cassettes Industries Ltd., the owner of the popular T-Series music label, and MySpace, a social networking site that allowed users to upload content, including copyrighted music. T-Series alleged that MySpace was facilitating copyright infringement by allowing users to upload and share their music without authorization, thereby affecting their economic rights.

The court ruled in favor of T-Series, emphasizing that online platforms have a responsibility to ensure that they do not allow their users to infringe copyright. MySpace was ordered to implement proactive measures to prevent unauthorized uploads of T-Series content, including deploying filtering mechanisms. This case demonstrated the growing importance of economic rights in the digital domain and the responsibility of digital platforms to respect copyright law. It also highlighted the challenges of enforcing these rights on large user-generated content platforms, where constant monitoring is necessary.

- ***R.G. Anand v. M/s. Delux Films & Ors.***<sup>45</sup>

The plaintiff claimed that his play was plagiarized in the defendant's film. He sought compensation by arguing that his **economic rights** were infringed through unauthorized reproduction.

The Supreme Court ruled that there was **no copyright infringement** because the film was not a substantial reproduction of the plaintiff's work. The two works were not identical enough to warrant infringement.

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<sup>44</sup>The Copyright Act, 1957 (Act 14 of 1957), s.30.

<sup>45</sup>AIR 1978 SC 1613.

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This case demonstrates that mere similarity is insufficient to establish infringement. Economic rights are protected only when there is **substantial reproduction** of the original work.

- *Authors Guild v. Google, Inc. (2015)*

One of the most significant cases related to economic rights in the digital era is **Authors Guild v. Google, Inc.**, often referred to as the "Google Books" case. In 2004, Google initiated the Google Books Library Project, which involved scanning millions of books and making them searchable online. While the project aimed to increase access to knowledge, it also raised concerns about copyright infringement.

The Authors Guild, representing writers, sued Google, arguing that the scanning of books without permission violated the authors' economic rights, as it undermined their ability to control and profit from the reproduction and distribution of their works. However, after years of litigation, the U.S. Court of Appeals ruled in favor of Google in 2015. The court found that Google's use of book snippets for search and indexing purposes constituted "fair use," as it did not significantly impact the market for the original works. This case illustrates the tension between technological innovation and economic rights, showing how courts balance the interests of copyright holders with the public interest in accessing information.

- *Capitol Records, LLC v. ReDigi, Inc. (2018)*

Capitol Records v. ReDigi is another important case involving the economic rights of copyright holders in the digital age. ReDigi was an online platform that allowed users to resell legally purchased digital music files. Capitol Records sued ReDigi, arguing that the resale of digital files violated the copyright holder's exclusive right to reproduce and distribute their works.

The court ruled in favor of Capitol Records, holding that ReDigi's platform infringed on Capitol's economic rights by enabling unauthorized reproductions of digital music files. Unlike physical goods, which are subject to the "first sale" doctrine (allowing the resale of a purchased product), digital goods are easily duplicated. The court found that ReDigi's process of reselling music files created new, unauthorized copies, infringing on Capitol's exclusive rights to control the reproduction of its works. This case has had a significant

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impact on how digital goods are treated under copyright law, reinforcing the idea that digital and physical goods differ in terms of copyright protection.

- *S. D. Containers Indore v. M/s Mold Tek Packaging Ltd.*<sup>46</sup>

The defendant was accused of using copyrighted designs without authorization, thereby infringing the economic right of reproduction held by the plaintiff.

The court held that the defendant's unauthorized use of the designs amounted to copyright infringement and granted an injunction along with damages.

This case highlights the significance of economic rights related to reproduction and the remedies available in case of infringement.

## **CONCLUSION**

In summing up the research on economic rights, it is evident that these rights form the backbone of copyright law, ensuring that creators and copyright holders have exclusive control over the commercial exploitation of their works. Economic rights, which include the right to reproduce, distribute, perform, and adapt a work, enable authors, artists, musicians, filmmakers, and other creators to monetize their intellectual property, thus fostering creativity and innovation. Without these rights, the incentive to create original works would be significantly diminished, as creators would lack the legal protection to financially benefit from their efforts.

However, the digital age has fundamentally transformed how economic rights are both exercised and challenged. The advent of the internet, digital distribution platforms, and technological advancements have provided new ways for creators to reach global audiences and monetize their works. Streaming services, digital downloads, and online platforms have expanded opportunities for creators to exploit their copyright works, generating significant revenue streams through licensing, subscriptions, and pay-per-use models.<sup>47</sup>

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<sup>46</sup>2020 SCC OnLine SC 352.

<sup>47</sup>Ahuja, V.K., *Law Relating to Intellectual Property Rights*, 3rd ed. (New Delhi: LexisNexis, 2022) at 145.

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At the same time, the digital revolution has introduced new and substantial challenges to enforcing economic rights. Digital piracy remains a pervasive issue, with unauthorized copying, distribution, and streaming of copyrighted content leading to billions of dollars in losses for copyright holders.<sup>48</sup> The ease with which digital works can be copied and shared, often anonymously and across borders, complicates enforcement efforts, as seen in the **Super Cassettes Industries v. MySpace** case<sup>49</sup>. Similarly, the **Capitol Records v. ReDigi** case illustrated how traditional copyright principles, such as the "first sale" doctrine, struggle to adapt to the digital context, where resale and distribution of digital goods can lead to unauthorized reproductions.<sup>50</sup>

International jurisdictional challenges also pose a significant obstacle to enforcing economic rights in a globalized, digital environment. Copyright laws vary across countries, and while international treaties such as the Berne Convention attempt to harmonize protections, enforcement across different jurisdictions remains difficult.<sup>51</sup> Cross-border digital piracy and the presence of infringing content on servers in countries with weak copyright enforcement make it harder for copyright holders to protect their economic interests globally.<sup>52</sup>

Moreover, user-generated content platforms like YouTube and TikTok have introduced new complexities in managing copyright. The tension between platform liability and user freedom to create content using copyrighted materials is a constant issue. Platforms are now being tasked with balancing copyright enforcement and innovation, often using automated systems like Content ID, as seen in the **Authors Guild v. Google** case<sup>53</sup>. This demonstrates the legal and ethical dilemmas faced by courts and lawmakers in navigating copyright issues in the digital age.

In addition to these challenges, technological advancements such as Digital Rights Management (DRM) systems have been developed to protect digital content. While DRM offers tools for limiting unauthorized copying and distribution, it has its limitations, as it can

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<sup>48</sup>Basheer, S., "Piracy in the Digital Age: A Case for Balancing Rights and Access" (2019) 45:2 *Journal of Intellectual Property Rights* 12, at 15.

<sup>49</sup>*Super Cassettes Industries Ltd. v. MySpace Inc.*, (2011) 48 PTC 49 (Del).

<sup>50</sup>*Capitol Records, LLC v. ReDigi Inc.*, 910 F.3d 649 (2d Cir. 2018).

<sup>51</sup>Berne Convention for the Protection of Literary and Artistic Works, 1886, as revised in 1971.

<sup>52</sup>Bhandari, N., "The Challenge of Cross-Border Copyright Enforcement in the Age of Globalization" (2021) 38:4 *Indian Journal of Law and Technology* 34, at 39.

<sup>53</sup>*Authors Guild v. Google Inc.*, 804 F.3d 202 (2d Cir. 2015).

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be circumvented by skilled users and can also lead to consumer dissatisfaction.<sup>54</sup> Striking a balance between the rights of copyright holders and users' access to content remains a key issue moving forward.

Overall, the research illustrates that while economic rights remain crucial for incentivizing creativity, their enforcement in the digital age is increasingly complex. Technological advancements, global connectivity, and evolving consumption patterns require a rethinking of how economic rights are managed and enforced. Legal frameworks must continue to adapt to the changing digital landscape, balancing the need to protect creators' financial interests with the importance of public access to culture, education, and information.

Moving forward, more robust international cooperation and technological solutions will be essential in safeguarding economic rights. Governments, platforms, and creators must work together to craft policies and tools that ensure creators are justly compensated while fostering an environment that promotes innovation, creativity, and the sharing of knowledge. By addressing these ongoing challenges, copyright law can continue to serve its dual purpose of protecting economic rights and encouraging the creation and dissemination of cultural and intellectual works in the digital era.

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