



## ERGO

*Analysing developments impacting business*

### COPYRIGHT (AMENDMENT) RULES 2021 COME INTO FORCE AND AN ORDINANCE ABOLISHES THE INTELLECTUAL PROPERTY APPELLATE BOARD

8 April 2021

It is noteworthy that two significant developments have recently taken place in relation to intellectual property laws, a brief summary of which is set out below:

#### A. **Notification of the Copyright Amendment Rules, 2021**

The Copyright (Amendment) Rules, 2021 (Amended Rules 2021) have been notified and brought into force from 30 March 2021. The key highlights of the Amended Rules 2021 are broadly set out below:

- The Amended Rules 2021 introduce a host of changes with regard to copyright societies including their registration, management and functioning. A summary of the same is set out below:

#### **Registration**

- (1) The time limit afforded to the Registrar of Copyrights to accept or reject the application for registration of a copyright society has been extended from 60 days to 180 days.

#### **Management**

- (2) The Chairman and other members of the Governing Council of a copyright society are eligible for re-election after completion of their 2-year terms.

#### **Functioning and Records**

- (3) Copyright societies are required to publish their tariff schemes once framed.
- (4) Copyright societies are required to create a system for payment of royalties through electronic modes and implement a system through which such payments are traceable.
- (5) If the royalty cannot be distributed within a quarter due to the authors / owners not being identified or located, the copyright societies are required to maintain record of unpaid royalties separately in their accounts.

- (6) If royalty remains unpaid at the end of 3 years from end of financial year in which the collection of royalty occurred, the same shall be transferred to the welfare fund of the copyright societies.
  - (7) Copyright societies are required to take all measures to identify and locate authors / owners and is required to publish certain information on its website quarterly.
  - (8) The annual transparency report for each financial year is required to be drawn up and made public by copyright societies within 6 months following the end of that financial year. The report must contain information on activities of the copyright societies, number of refusals to grant licence, information on total royalties collected etc.
  - (9) Copyright societies shall have further obligations to make available on their respective websites: (i) a facility to search from database of works; (ii) copy of the annual transparency report; and (iii) details of undistributed royalties in relation to authors / owners who cannot be identified or located.
- Part VI of the Register of Copyrights shall be limited to “computer programmes” and reference to tables and compilations shall be omitted. Further, the application for registration of computer programmes would require an applicant to furnish at least the first 10 pages and last 10 pages of the source code, or the entire source code if less than 20 pages long, without blocking or redacting any portions.
  - The chapter relating to procedure for tendering notice and manner of investigation relating to importation of infringing copies has been deleted. Consequently, the Second Schedule which prescribed fees for application for prevention of importation of infringing products stands deleted.
  - The “Copyright Board” has been substituted with the “Appellate Board”. The composition and qualifications of the Appellate Board shall be governed by the provisions of the Trade Marks Act, 1999 and the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020. This change however shall be redundant and would require further revision in view of the effect of the Ordinance issued shortly thereafter and dealt with below.
- B. Abolition of the Intellectual Property Appellate Board and effects over the Copyright Act

The Tribunals Reforms (Rationalisation and Conditions of Service Ordinance), 2021 (Ordinance) has been notified and brought into force from 5 April 2021. The Ordinance abolishes various tribunals under various statutes including the Intellectual Property Appellate Board (IPAB) and effects consequential amendments in intellectual property laws, viz. those relating to trade marks, copyright, patents and geographical indications. Whilst broadly amendments have been effected in all intellectual property statutes to replace a reference to the IPAB with a reference to the High Court, we have focused on the changes introduced to the Copyright Act, 1957 (Act) which make a reference to a High Court or a Commercial Court:

- The references to the “Appellate Board” in the Act, i.e. the IPAB have been omitted and substituted with “Commercial Court” or “High Courts”, as applicable. A wide definition of “Commercial Court” has been included by drawing reference to the ‘commercial courts’ as designated under section

3 and 4 of the Commercial Courts Act, 2015 i.e those designated at the District Court level as well as the commercial division of the High Court.

- A "Commercial Court" shall be the applicable authority to approach in case of (i) any dispute related to copyright assignments; (ii) grant and/or termination of various licenses / compulsory licenses in respect of copyrighted works and royalty fixation in respect thereof; and (iii) any appeal in relation to the tariff scheme published by a copyright society.
- Rectification of the Register of Copyrights shall be initiated before the High Courts. Further, the decisions of the Registrar of Copyrights shall also be amenable to an appeal before a Single Judge of the High Court within a period of 3 months and a further appeal to a bench of the High Court within 3 months of the order of the Single Judge.
- The appeals, applications or proceedings pending under any law before the IPAB shall be transferred to the Court before which it would have been filed had the Ordinance been in force at the time of filing of the same. Additionally, the Court is empowered to deal with such matters as it deems fit, either from the stage it stood before such transfer or from any earlier stage or de novo.

## Comments:

As regards the Amended Rules 2021, they retain most of the amendments proposed in the draft Copyright (Amendment) Rules 2019. The key amendments pertain to the regulation of management and functioning of copyright societies which could result in a more transparent and streamlined functioning of such societies. The amendments which were proposed in the draft rules of 2019 in the context of internet broadcasting are missing and probably rightly so, since the principal statute i.e. the Act itself may need changes before the Copyright Rules are amended. The interpretational conundrum with regard to internet broadcasting thus continues.

As regards the Ordinance, it nullifies the substitution of the Copyright Board with the IPAB, attempted to be effected by the Amended Rules 2021. Further, the Ordinance effects a transfer of all matters pending before the IPAB to Commercial Courts / High Court which would also be the appropriate forum for deciding new matters filed henceforth. The abolition of the IPAB (which was a specialised forum with subject matter as well as legal experts) may result in further over burdening of Courts, especially since they would now once again be required to deal with issues that may require subject matter expertise.

- *Nishad Nadkarni (Partner), Sourav Dan (Principal Associate) & Bhavik Shukla, (Associate)*

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)

*We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).*

### For private circulation only

The contents of this email are for informational purposes only and for the reader's personal non-commercial use. The views expressed are not the professional views of Khaitan & Co and do not constitute legal advice. The contents are intended, but not guaranteed, to be correct, complete, or up to date. Khaitan & Co disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause.

© 2021 Khaitan & Co. All rights reserved.

#### Mumbai

One Indiabulls Centre, 13<sup>th</sup> Floor  
Tower 1 841, Senapati Bapat Marg  
Mumbai 400 013, India

T: +91 22 6636 5000  
E: [mumbai@khaitanco.com](mailto:mumbai@khaitanco.com)

#### New Delhi

Ashoka Estate, 12th Floor  
24 Barakhamba Road  
New Delhi 110 001, India

T: +91 11 4151 5454  
E: [delhi@khaitanco.com](mailto:delhi@khaitanco.com)

#### Bengaluru

Simal, 2nd Floor  
7/1, Ulsoor Road  
Bengaluru 560 042, India

T: +91 80 4339 7000  
E: [bengaluru@khaitanco.com](mailto:bengaluru@khaitanco.com)

#### Kolkata

Emerald House  
1 B Old Post Office Street  
Kolkata 700 001, India

T: +91 33 2248 7000  
E: [kolkata@khaitanco.com](mailto:kolkata@khaitanco.com)