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Ministry of Culture, Tourism & Civil Aviation
Nepal Copyright Registrar's Office

प्रतिलिपि अधिकार बुलेटिन
सूचना तथा सचेतनाका लागि

Copyright Bulletin

नेपाल प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालयको चौमासिक प्रकाशन

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यदि तपाईंलाई बौद्धिक सम्पत्ति, प्रतिलिपि अधिकार एवं तत्सम्बन्धी अधिकारका विषयमा कुनै कानूनी वा अन्य जिज्ञासा भएमा आफूलाई लागेका प्रश्नहरु हामीलाई लेखी पठाउनुहोला । यस बुलेटिनको आगामी अङ्कहरुमा तपाईंका प्रश्नहरुको उत्तर दिने प्रयास गर्नेछौं ।

धन्यवाद ॥

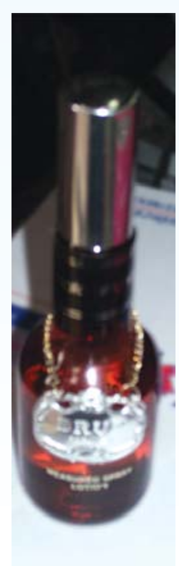
TRAINING ON COPYRIGHT AND RELATED RIGHTS

Nepal Copyright Registrar's Office (NCRO) organized a training program on Copyright and Related Rights at Dhulikhel on February 2-3, 2007. The training was targeted to the Officers of Law Enforcing Agencies especially towards the Police Inspectors of Nepal Police. The participants include fourteen participants from Nepal Police, four from District Attorney Office, one from Appellate Attorney Office and one from Ministry of Culture, Tourism and Civil Aviation (MoCTCA).

Mr. Sharada Prasad Trital, Joint Secretary, MoCTCA opened the program releasing a newly produced awareness advertisement on Copyright and Related Rights. Mr. Ram Prasad Bhattaria, Registrar (NCRO) welcomed all the participants and poured his gratitude towards all the concerned agencies for cooperation to hold this program. He further highlighted that the prime objective of the training program was to impart basic knowledge on Copyright and Related Rights and to improve the efficiency of the concerned officials in this field. Mr. Sitaram Pokharel, Chief District Officer, Kavre expressed his happiness and hoped that the training would be a step forward in an effort of executing the Copyright Act and Regulation in Nepal. Delivering the opening remarks Mr. Trital welcomed the initiation of Nepal Copyright Registrar's Office and said that copyright and related rights issues play a very high role in the cultural and economic development of any country and are gradually gaining importance in the Nepalese society too. He also hoped that the program would be very fruitful for all the participants in executing their daily activities.

The two days residential training has covered the various issues of Intellectual Property Rights especially the legal aspects of copyright and related rights including the roles of Government and the Police in the process of copyright law implementation. Mr. Jal Krishna Shrestha, Joint Secretary, MoCTCA distributed the certificates to the participants at the end of the program. He also commented that the rapid transfer of personnel is the crucial problem affecting the law enforcement in the area of copyright and related rights as in others. The program was partly supported by Copyright Protection Society of Nepal (CPSN).

COPYRIGHT IN PERFUME



In June, 2006, the Dutch Court ruled a remarkable decision by opening the door for copyright protection in the smell of a perfume on the ground that the smell should be original and is perceptible through the nose. The Dutch Copyright Act has a non – exhaustive list of subject matter that can be protected provided that they should be perceptible and original. The Court compared the smell of the perfume with the content of the book. As the content of the book is copyrightable so is the smell of the perfume. But the paper of the book and the liquid in case of perfume are not copyrightable. Thus, two different perfumes that have different ingredients but if have same smell may fall under the domain of infringement. However, two different perfumes though have similar ingredients if smell differently, then both can be copyrightable independently.

It is a common right of the copyright holder to prevent public available of his work without his consent. Thus, the court's decision may have consequences that anyone who wears perfume in public places may require a license in order to qualify his wearing as an authorized act. Thus the High Court suggested that some exceptions should be added to the Dutch Copyright Act to address such problems if the court were to consider scents copyrightable.

Source: WIPO Magazine, October 2006.

सम्पादकीय

राम प्रसाद भट्टराई
रजिष्ट्रार

बौद्धिक सम्पत्ति संरक्षणका प्रयासहरू विश्वव्यापी रूपमा जतिजति संगठित हुँदैछन्, अरूका सिर्जनाको अनधिकृत प्रयोगबाट फाइदा लिनेको संजाल पनि त्यति नै फैलिंदै गएको पाइएको छ ।

नेपाल पनि यस रोगबाट मुक्त देखिएको छैन । अरूका राम्रा सिर्जनाहरू खासगरी लेख रचना/किताब, गीत-संगीत, तस्वीर, सरकारी दस्तावेज आदिको हु-बहु नक्कल गरी उत्पादन गर्ने र दुःख नै नगरी धन कमाउने प्रवृत्ति हावी देखिएको छ । यसो हुनुमा सिर्जनाकार आफै आफ्ना सिर्जना प्रति सचेत नबन्ने र उत्पादनका सिलसिलामा जेसुकै शर्त स्वीकार्ने प्रवृत्ति एकातर्फ देखिएको छ भने अर्कोतर्फ सरकारी दस्तावेजहरूको अनधिकृत उत्पादन र बिक्रीमा जिम्मेवार निकायहरू चुप लागेर बस्ने गर्दा अरूका फल खाइदिने संस्कार देखिएको छ । यसैगरी अधिकारको उल्लंघनमा न्यायिक उपचार छिटो र प्रभावकारी बन्न नसकेको, मर्का पर्ने पक्ष उपचारका लागि प्रहरी निकाय समक्ष जान हिच्किच्याउने गरेको तथा गए पनि कानूनी उपचारको बाटो नलागी टालटुले मेल मिलाप र कब्जामा लिएका सामग्रीको भागवण्डामा सीमित रहेको पाइएको छ । यी सम्पूर्ण कमजोरीका पछाडि एकातिर अपराधिक प्रवृत्ति र अर्कोतिर अपेक्षाकृत चेतना हुन नसकेको भन्न सकिन्छ ।

नेपालको प्रतिलिपि अधिकार ऐनको सवल पक्षमा स्रष्टाहरूलाई सिर्जनामा लाग्ने वातावरण बनाई सिर्जनाको उल्लंघनमा स्रष्टाकातर्फबाट राज्य आफै उपचारमा लाग्ने र अधिकार उल्लंघनबाट भएको क्षति सम्बन्धित पक्षबाट भराइदिने हुन् । राज्यकातर्फबाट सिर्जनाकारलाई सहयोग गर्ने यस प्रकृयाबाट अत्यधिक लाभ लिनका लागि सम्बन्धित पक्ष नै चनाखो रहनु पर्दछ ।

अधिकार हननमा अनुसन्धान गर्ने प्रहरी निकायले परिवर्तित सन्दर्भ अनुरूप प्रतिलिपि अधिकार उल्लंघनमा प्राथमिकता दिनैपर्ने वातावरण सिर्जना भएको छ । यसै सन्दर्भलाई दृष्टिगत गरी नेपाल प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालयले प्रहरी निरीक्षकहरूलाई अनुसन्धानमा जिम्मेवार बनाउन प्रतिलिपि अधिकार सम्बन्धी तालीम प्रदान गरिसकेको छ भने उल्लंघनमा फैसला दिने जिल्ला न्यायाधीशहरूका लागि त्यस्तै कार्यक्रम सञ्चालन गर्न लागेको छ । त्यसैगरी सिर्जनाको व्यापक प्रयोग गर्ने प्रसारण माध्यम र सिर्जनाको उत्पादनमा संलग्न उत्पादक/प्रकाशकहरू बीच निरन्तर छलफलका माध्यमबाट चेतनामूलक कार्यहरू गरिरहेको छ ।

प्रतिलिपि अधिकारको क्षेत्रबाट नेपाल साहित्यिक तथा कलात्मक रचनाहरूको संरक्षण गर्ने अन्तर्राष्ट्रिय महासन्धि (बर्न महासन्धि) मा प्रवेश गरी अन्तर्राष्ट्रिय संरक्षण पद्धतिको पक्षधर भएको छ भने सांगीतिक सिर्जनाका क्षेत्रमा रोयल्टी संकलन संस्था स्थापना हुने तयारीमा छ । यस अवस्थामा हाम्रा सामु आन्तरिक रूपमा सिर्जनाको संरक्षण गरी स्रष्टा र लगानीकर्ता समक्ष लाभ पुर्‍याउनु पर्ने गहनतम चुनौती छ भने विदेशी सिर्जनाको जथाभावी प्रयोगबाट माथि उठी सिर्जनाको उत्पादन, पुनरुत्पादन अनुमति लिएर मात्र गर्ने बानी बसाल्नै पर्ने अवस्था छ । विदेशी सिर्जनाको उस्तै पुनरुत्पादन गर्ने गलत कार्यबाट सच्चिनका लागि पनि सम्बन्धित सबै क्षेत्र सजग हुनु जरुरी छ ।

प्रतिलिपि अधिकारको संरक्षणबाट स्रष्टाहरू लाभान्वित त हुन्छन् नै त्यस अतिरिक्त सिर्जनाको व्यावसायीकरणका क्रममा उद्योग व्यवसायको विकास, लगानी प्रबर्द्धन, लगानीमा प्रतिफल हुँदै जीवनस्तरमा वृद्धि हुन गई अन्ततोगत्वा सिर्जनशील वातावरण तयार हुन जान्छ ।

यस पुनीत कार्यमा स्रष्टादेखि प्रयोगकर्तासम्म र सरकारी निकायदेखि व्यावसयिक प्रतिष्ठानसम्म सबै पक्ष जागरुक भएमा मात्र यस क्षेत्रको व्यवस्थापन र विकास सम्भव छ । यिनै पक्षहरूलाई उजागर गर्न नेपाल प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालयले यस बुलेटिनको दोश्रो अंक प्रकाशित गरी तपाईंको हातमा सुम्पेको छ । प्रतिलिपि अधिकारका क्षेत्रमा हुनु पर्ने थप कार्यक्रमहरूका अतिरिक्त यस बुलेटिनलाई बढी उपयोगी र सूचनामूलक रूपमा विकास गर्न सबैको अमूल्य सुझावको हार्दिक स्वागत गर्दछौं ।

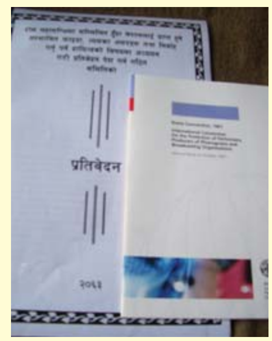
News and Events:

STUDY ON THE PRODUCTION OF SONGS/MUSIC IN NEPAL

Nepal Copyright Registrar's Office has started the study of production of songs and music in Nepal especially being based on the Kathmandu Valley in its preliminary step. For this it has underwent an agreement with Multi Engineering Trade Concern (MET) on January 12, 2007. The MET has already submitted the initial Inception Report to the Office.

The report is to produce the basic information of all the songs in various languages produced from the valley. The report is also to depict the information regarding the average sales in the music industry in the last five years and is also to find out the major areas of use of the Nepalese songs and music. This phase of study is hoped to be completed within May, 2007.

SUBMISSION OF THE PRELIMINARY REPORT ON NEPAL ACCESSION TO ROME CONVENTION



A committee formed under Mr. Jal Krishna Shrestha, Joint Secretary, Ministry of Culture, Tourism and Civil Aviation has submitted its report on "A Study of the Potential Advantages, Effects and Liabilities Incurred on Nepal Accession to Rome Convention" to the honorable Minister of Culture, Tourism and Civil Aviation, Mr. Pradeep Kumar Gyawali on October 19, 2007 amid a function.

The study report has compared the various provisions between the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), 1961 and Nepalese Copyright Act 2002. It has also assessed the various advantages, disadvantages and liabilities incurred on Nepal's accession to the Rome Convention. The report has recommended two alternatives in this direction. First is to join the Convention with deposit of reservations regarding articles 5(3), 6(2) and 16(a) (1) which necessitates the respective amendments in the Nepalese Copyright Act 2002 too. As such this recommendation also draws attention on the projection of Nepal's image while amending the domestic law to deposit reservations for the accession. The second recommendation suggests postponing the idea of accession to the Convention at present as most of the provisions of the Rome Convention has already been incorporated by the TRIPS agreement to which Nepal is a party. As neighboring countries including India are yet to become party to this convention, it was mentioned that it is still untimely to completely access the advantages and disadvantages of reservations in view of Nepal's less experience in this sector.

Receiving the report, honorable minister expressed his gratitude to the committee members for their efforts in preparing the report and said that the government is ready to initiate necessary steps to ensure the protection of IPR holders and relate it to the cultural and economic development of the nation. Mr. Madhav Prasad Ghimire, Secretary, MoCTCA

Contd on Page 7

INTELLECTUAL PROPERTY RELATED TO INTERNATIONAL TREATIES AND CONVENTIONS

WIPO Administered

(a) In the Field of Copyright and Related Rights

1. BerneConvention for the Protection of Literary and Artistic Work 1886; Completed at Paris, 1896; Revised at Berlin, 1908; Completed at Berne, 1914; Revised at Rome, 1928; Revised at Brussels, 1948; Revised at Stockholm, 1967; Revised at Paris, 1971; and Amended in 1979 (163 Member States)
2. Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations 1961. (85 Member States)
3. Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, 1971. (76 Member States)
4. Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite, 1974. (29 Member States)
5. Treaty on the International Registration of Audiovisual Works (Film Register Treaty), 1989;(Geneva) (13 Member States)
6. WIPO Copyright Treaty, 1996; (Geneva) (61 Member States)
7. WIPO Performances and Phonograms Treaty, 1996;(Geneva) (59 Member States)

(b) In the Field of Industrial Property

1. Paris Convention for the Protection of Industrial Property, 1883. (171 Member States)
2. Madrid Agreement Concerning the International Registration of Marks, 1891 (80 Member States)
3. Protocal Relating to the Madrid AgreementConcerning the International Registration of Marks, 1989 (80 Member States)
4. Hague Agreement Concerning the International Registration of Industrial Designs, 1925. (45 Member States)
5. Nice Agreement Concerning the International Classification of Goods and Service for the Purposes of the Registration of Marks, 1957. (80 Member States)
6. Locarno Agreement Establishing an International Classification for Industrial Designs, 1968. (48 Member States)
7. Patent Cooperation Treaty, 1970; (washington) (136 Member States)
8. Strasbourg Agreement Concerning the International Patent Classification, 1971. (57 Member States)
9. Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, 1973 (23 Member States)
10. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, 1977. (66 Member States)
11. Nairobi Treaty on the Protection of the Olympic Symbol, 1981. (46 Member States)
12. Trademark Law Treaty, 1994,(Geneva) (38 Member States)
13. Patent Law Treaty, 2000.(Geneva) (14 Member States)

(c) Related to Geographical Indications:

1. Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, 1891. (35 Member States)
2. Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958. (26 Member States)

WIPO and WTO Administered

1. Agreement on Trade Related Aspects of Intellectual Property Rights,(TRIPS Agreement) 1994. (150 Member States)

Source: WIPO

as on Jan. 12, 2007

Q-A Column

Q. What are related rights?

Related rights mean those rights that protect the people and organizations who are involved in the communication and dissemination of copyrighted works to the public. As such they are closely related to copyright. These rights are related to the following persons or organizations.

Performers such as singers, musicians, actors, dancers etc. in their performances.

Producers of sound recordings such as cassette recordings and CD/VCD recordings in their recordings.

Broadcasting organizations such as radio and television in their broadcasted programs.

These rights are also called **neighboring rights.**

Q.What are the rights of performers?

The rights of performers include

Public communication of one's own performance.

Determination of the process or medium of one's own performance.

Reproduction and distribution of the copies of one's own performance.

Rent the copies of one's own performance.

Amendment or revision of one's own performance.

Fixation and broadcasting of one's own performance.

Object modification to the performance.

Mention name in the use of performance.

Once a performer has consented to the incorporation of his performance in a cinematographic creation, the above rights shall have no further application to such performance.

Q.What are the rights of producers of sound recording?

The rights of producers of sound recording include

Reproduction of the copies of sound recording.

Sale or import of the copies of sound recording.

Rent or lease the copies of sound recording.

Public performance of sound recording.

Q.What are the rights of broadcasting organizations?

The rights of broadcasting organizations include

Re-broadcasting of broadcast under own production.

Public communication of one's own broadcast.

Make fixation of one's own broadcast.

Reproduction of the fixation of one's own broadcast.

Q.What are the differences between copyright and related rights?

Copyright and related rights are different in view of their nature, scope and terms of protection. Copyright protects creators in their intellectual and creative works. It protects the works of literary, artistic and scientific nature such as novels, poems, paintings, sculptures, artistic designs, computer programs etc.

Related rights are the rights closely related to copyright. The purpose of related rights is to protect those people and organizations that enhance any work protected by copyright with their substantial creative, technical or organizational skill in the process of bringing them to the public. These rights are related to performers, producers of phonogram and broadcasting organizations who acts as the intermediaries in the production, recording or diffusion of works.

The term of protection for copyright varies according to the work from 25 years to creator's life plus 50 years. The term of protection for related rights is normally 50 years. Some countries have even longer periods of protection.

लेख / रचना

नेपालमा प्रतिलिपि अधिकार कानून कार्यान्वयनको अवस्था र चुनौति

शारदाप्रसाद त्रिताल

परिचय

अवधारणाको दृष्टिले पुरानो तर प्रयोगका दृष्टिले हालैका वर्षहरुमा व्यापक भएको प्रतिलिपि अधिकारको विषयले विश्वव्यापी महत्व राखेको छ । पश्चिमी देशहरुमा करिब ३०० वर्ष अघिदेखि प्रचलनमा आएको भए पनि नेपाल जस्ता विकासोन्मुख देशहरुमा यसको प्रयोगमा भरखरै मात्र चासो बढेको छ । नेपालमा २०२२ सालमा पहिलो पटक कानूनी मान्यता पाएको प्रतिलिपि अधिकारको विषयले २०५९ सालमा नयाँ प्रतिलिपि अधिकार ऐनको तर्जुमा पछि विशेष महत्व राखेको छ । २०६१ सालमा नयाँ प्रतिलिपि अधिकार नियमावलीको तर्जुमा र नेपाल प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालयको स्थापना भई प्रतिलिपि अधिकारको विषयमा जनचेतना अभिबृद्धि हुनुको साथै यस्तो अधिकारको संरक्षणमा सरकारले महत्वपूर्ण भूमिका खेल्दै आएको छ ।

नेपाल प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालयको स्थापना भएपछि यस विषयले धेरै महत्व पाएको भए तापनि विश्वका आधुनिक कानूनी प्रणालीलाई समेटी निर्माण भएको नेपाल प्रतिलिपि अधिकार ऐन, २०५९ को कार्यान्वयनमा नेपाली परम्परागत न्याय र प्रशासनिक प्रणालीले धान्न कठिनाई हुनुको साथै कानून कार्यान्वयन गर्ने निकायहरुको क्षमतामा अभिबृद्धि नहुनाले नेपालले विविध किसिमका चुनौतिहरुको सामना गर्नु परिरहेको छ । यसै सन्दर्भमा यस लेखमा नेपालमा प्रतिलिपि अधिकार सम्बन्धी कानूनको कार्यान्वयन गर्ने सम्बन्धमा देखिएका चुनौतिहरु बारेमा संक्षिप्त चर्चा गर्ने प्रयास गरिएको छ ।

प्रतिलिपि अधिकार सम्बन्धी कानूनमा भएका मुख्य प्रावधानहरुको आंकलन

नेपालको विद्यमान प्रतिलिपि अधिकार ऐन, २०५९ ले प्रतिलिपि अधिकारलाई आर्थिक अधिकार र नैतिक अधिकारको रुपमा सुनिश्चित गरेको छ । आर्थिक अधिकारको रुपमा रचनाको सम्बन्धमा केही निश्चित कार्य गर्न पाउने अधिकार रचयिता वा प्रतिलिपि अधिकारको धनीलाई मात्र हुने व्यवस्था गरिएको छ । ती कार्यहरु हुन् - रचनाको पुनरुत्पादन गर्ने, रचनाको अनुवाद गर्ने, रचनाको परिमार्जन वा संशोधन गर्ने, संयोजन लगायत रचनाको अन्य रुपान्तरण गर्ने, रचनाको मूल र प्रतिलिपि सर्वसाधारणको लागि बिक्री वितरण वा बहालमा दिने, श्रव्य दृश्य रचना, ध्वनिअङ्कन समाविष्ट रचना, कम्प्युटर कार्यक्रम, तथ्याङ्गमा आधारित वा ग्राफ स्वरुपमा रहेको साङ्गीतिक रचनाको आफूलाई प्राप्त अधिकार हस्तान्तरण गर्ने वा बहालमा दिने, रचनाको प्रतिलिपि आयात गर्ने, मूल रचना वा सो रचनाको प्रतिलिपिको सार्वजनिक प्रदर्शन गर्ने, रचनाको प्रस्तुति गर्ने, रचनाको प्रसारण गर्ने र रचनाको सार्वजनिक सञ्चार गर्ने ।

नैतिक अधिकारको रुपमा कुनै रचनामा रचयिताको आर्थिक अधिकार निहित रहे वा नरहेको जेसुकै भए तापनि त्यस्तो रचयितालाई आफ्नो रचनाका प्रतिहरुमा वा आफ्नो रचना सार्वजनिक रुपमा प्रयोग गरिएमा त्यस्तो रचनामा आफ्नो नाम उल्लेख गर्न लगाउने, आफ्नो रचनामा वास्तविक नाम उल्लेख नगरी छद्म नाम उल्लेख गरिएको भएमा त्यस्तो रचनाको सार्वजनिक रुपमा प्रयोग गर्दा त्यस्तो छद्म नाम उल्लेख गर्न लगाउने, आफ्नो रचनालाई बङ्ग्याई वा विकृत रुपमा प्रस्तुत गरी निजले आर्जन गरेको सम्मान वा ख्यातिलाई गिराउने जस्ता कार्य रोक्ने, आफ्नो रचनामा आवश्यक संशोधन वा परिमार्जन गर्ने जस्ता नैतिक अधिकार प्राप्त हुने व्यवस्था गरिएको छ । उल्लिखित अधिकार रचयिताको जीवनभर हस्तान्तरण हुने नपाउने तर रचयिताले आफ्नो मृत्यु पश्चात् लागू हुने गरी त्यस्तो अधिकार हस्तान्तरण गर्न कसैलाई इच्छाएको भए त्यसरी इच्छाएको व्यक्ति वा संस्थालाई र त्यसरी इच्छाएको नभए नजिकको हकवालामा सर्न सक्ने व्यवस्था पनि भएको छ ।

ऐनले प्रस्तोतालाई आफ्नो प्रस्तुतिलाई प्रसारण वा सञ्चार गरी जन समक्ष पुऱ्याउने, आफ्नो प्रस्तुतिलाई प्रस्तुत गर्ने तौरतरिका वा माध्यमको निर्धारण गर्ने र पुनरुत्पादन गर्ने, आफ्नो प्रस्तुतिको प्रस्तुतीकरण वा त्यसको प्रतिलिपिहरु बिक्री वा हस्तान्तरण गरी वा स्वामित्व परिवर्तन गरी पहिलो पटक जन समक्ष पुऱ्याउने, आफ्नो प्रस्तुतिको प्रतिलिपि भाडामा दिने, निर्धारित तौरतरिका वा माध्यमद्वारा उत्पादित प्रस्तुतिलाई तारयुक्त वा तार बिहिन उपकरण मार्फत सर्वसाधारण समक्ष सर्वसुलभ हुने गरी पुऱ्याउने, आफ्नो प्रस्तुतिलाई परिमार्जन वा संशोधन गर्ने जस्ता कार्य गर्न पाउने अधिकार पनि प्रदान गरेको छ । तर प्रस्तोताले एक पटक आफ्नो प्रस्तुतिलाई श्रव्यदृश्य माध्यममा समावेश गर्न स्वीकृति दिइसकेपछि निजले त्यसमा पुनः माथि उल्लेख भए अनुसारको अधिकार प्रयोग गर्न भने नपाउने व्यवस्था गरेको छ । तापनि प्रस्तोतालाई प्रत्यक्ष श्रव्य प्रस्तुति एवं ध्वनिअङ्कनमा समायोजित प्रस्तुतिको प्रस्तोताको रुपमा आफ्नो पहिचान कायम गराउने र सोको दावी गर्न सक्ने अधिकार तथा आफ्नो प्रतिष्ठा वा ख्यातिको प्रतिकूल हुने गरी कसैले आफ्नो प्रस्तुतिलाई तोडमोड गरेको वा खण्डित गरेको वा अन्य प्रकारले अर्थान्तर हुने गरी विरुप गरेकोमा त्यस्तो कार्यलाई रोक्ने अधिकार भने हुने व्यवस्था गरिएको छ ।

यसैगरी ऐनले ध्वनिअङ्कन उत्पादकलाई कुनै पनि तरिका वा स्वरुपमा ध्वनिअङ्कनको प्रत्यक्ष वा अप्रत्यक्ष रुपले पुनरुत्पादन गर्ने, ध्वनिअङ्कनको प्रतिलिपि आयात गर्ने, ध्वनिअङ्कनको मूल प्रति वा प्रतिलिपिको बिक्री वा स्वामित्व हस्तान्तरणका अन्य तरिकाबाट त्यस्ता ध्वनिअङ्कन सर्वसुलभ गराउने, सार्वजनिक रुपमा ध्वनिअङ्कनलाई भाडामा वा सापटीमा दिने, तारयुक्त वा तारविहिन उपकरणबाट ध्वनिअङ्कनलाई एउटै खास ठाउँबाट वा आफूले चाहेको ठाउँबाट वा जनसाधारणद्वारा श्रवण गर्न सक्ने बनाउने जस्ता अधिकार हुने व्यवस्था गरेको छ । ऐनले प्रसारण संस्थालाई आफूले प्रसारण गरेको विषयलाई पुनःप्रसारण गर्ने, आफ्नो प्रसारणलाई सर्वसाधारण समक्ष सर्वसुलभ हुने गरी सञ्चार गर्ने, आफ्नो प्रसारणको समायोजन गर्ने, आफ्नो प्रसारणको समायोजनको पुनरुत्पादन गर्ने लगायतका कार्य गर्न पाउने अधिकार प्रदान गरेको छ ।

ऐनले रचना, प्रस्तोता, ध्वनिअंकन उत्पादक वा प्रसारण संस्थाको संरक्षण गर्ने सन्दर्भमा विभिन्न रचयिताको रचनालाई पनि संरक्षण प्रदान गरेको छ । त्यस्ता रचनाहरुमा नेपाल राज्य वा विश्व व्यापार संगठनको सदस्य मुलुकमा बसोबास गर्ने रचयिताबाट रचित नेपाल राज्य वा सोही मुलुकमा प्रकाशन भएको रचना, नेपाल राज्य वा विश्व व्यापार संगठनको सदस्य मुलुकमा बसोबास गर्ने उत्पादकबाट उत्पादित श्रव्य दृष्य रचना, नेपाल राज्य वा विश्व व्यापार संगठनको सदस्य मुलुकभित्र गरिएको भवनको आर्किटेक्चरल डिजायन वा भवन वा अन्य कुनै संरचनामा प्रयोग गरिएको अन्य कुनै प्रकारको कलात्मक रचना, नेपाल राज्य वा विश्व व्यापार संगठनको सदस्य मुलुक बाहेक अन्य मुलुकमा बसोबास भएको रचयिताबाट नेपाल राज्यमा प्रकाशित रचना वा त्यस्तो मुलुकको उत्पादकबाट नेपाल राज्यमा उत्पादित श्रव्य दृष्य रचना आदि हुन् ।

ऐनले नेपाल राज्य वा विश्व व्यापार संगठनको सदस्य मुलुकको प्रस्तोता, नेपाल राज्य वा विश्व व्यापार संगठनको सदस्य मुलुकमा प्रस्तुत गरिएको कुनै प्रस्तुति वा यस ऐन बमोजिम संरक्षण प्राप्त ध्वनिअङ्कनमा प्रयुक्त भएको प्रस्तुति वा ध्वनिअङ्कनमा समाविष्ट नगरेको भए पनि प्रसारणमा समाविष्ट प्रस्तुतिको प्रस्तोता समेतलाई प्रस्तोता सम्बन्धी अधिकार प्राप्त हुने प्रत्याभूति प्रदान गरेको छ । यसैगरी नेपाल राज्य वा विश्व व्यापार संगठनको सदस्य मुलुकका व्यक्तिबाट उत्पादित ध्वनिअङ्कन, नेपाल राज्य वा विश्व व्यापार संगठनको सदस्य मुलुकमा प्रकाशन भएको ध्वनिअङ्कन, उत्पादकलाई उक्त ऐन बमोजिमको ध्वनिअङ्कनको उत्पादक सम्बन्धी अधिकार प्राप्त हुने व्यवस्था छ । यस्तै नेपाल राज्य वा विश्व व्यापार संगठनको सदस्य मुलुकमा कार्यालय रहेको प्रसारण संस्थाबाट प्रसारित प्रसारण, नेपाल राज्य वा विश्व व्यापार संगठनको सदस्य मुलुकमा अवस्थित प्रसारण केन्द्रबाट प्रसारित प्रसारण संस्थालाई प्रसारण संस्था सम्बन्धी अधिकार प्राप्त हुने व्यवस्था गरिएको छ ।

प्रतिलिपि अधिकार सम्बन्धी कानून कार्यान्वयनको व्यवस्था

माथि उल्लेख भए अनुसारको नयाँ प्रतिलिपि अधिकार ऐन जारी भएपछि नेपालमा यस सम्बन्धी कानूनको कार्यान्वयनको थालनी भएको छ । उक्त ऐनको कार्यान्वयनको लागि विभिन्न निकायहरुलाई अधिकारहरु तोकिएका छन् । ती निकायहरु र तिनको कार्यक्षेत्र तल उल्लेख गरिएको छ ।

नेपाल प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालय : ऐनको दफा ३० मा उल्लेख भए अनुसार उक्त कार्यालयले प्रतिलिपि अधिकारको संरक्षण गर्ने सम्बन्धमा आवश्यक काम गर्ने, प्रतिलिपि अधिकारको दर्ता गरी त्यसको विवरण अद्यावधिक गराई राख्ने र रोयल्टी संकलन संस्थाको रेखदेख, स्थलगत निरीक्षण गर्ने तथा त्यस्तो संस्थाबाट गरिने काम कारवाहीमा कुनै कमी कमजोरी भए सुधार गर्न आवश्यक निर्देशन दिने काम कर्तव्य र अधिकारहरु तोकिएको छ ।

नेपाल प्रहरी : प्रतिलिपि अधिकारको उल्लंघन भएमा अनुसन्धान र तहकिकात गर्ने जिम्मेवारी नेपाल प्रहरीमा रहेको छ ।

सरकारी वकिल : प्रतिलिपि अधिकारको उल्लंघन भएको मुद्दा सरकारी मुद्दाको रुपमा अदालत समक्ष दायर गर्ने र त्यसको पैरवी गर्ने दायित्व सरकारी वकिलको रहेको छ ।

भन्सार कार्यालय : प्रतिलिपि अधिकारजन्य सामग्रीको अवैध रुपमा निकासी पैठारी रोक्न सहयोग पुऱ्याउने कर्तव्य भन्सार कार्यालयको दायराभित्र पर्दछ ।

अदालत : प्रतिलिपि अधिकारको उल्लंघन सम्बन्धी मुद्धाको कारवाही र किनारा गर्ने कार्य जिल्ला अदालतबाट हुने व्यवस्था छ ।

रोयल्टी संकलन संस्था : प्रतिलिपि अधिकार सम्बन्धी रचनाको रोयल्टी निर्धारण गर्ने, संकलन गर्ने, संकलित रोयल्टी वितरण गर्ने कार्यको लागि विधागत संस्थाको व्यवस्था गर्न सक्ने प्रावधान राखिएको छ ।

प्रतिलिपि अधिकार सम्बन्धी कानून कार्यान्वयनका चुनौति

प्रतिलिपि अधिकार सम्बन्धमा जनचेतना अभिबृद्धि गरी सम्बद्ध सबैलाई यसबारे जानकार बनाउने विषय चुनौतिपूर्ण रहेको छ । स्रष्टा, सर्जकहरु नै आफ्नो अधिकार प्रति सजग हुन नसकिरहेको अवस्थामा सर्वसाधारणले प्रतिलिपि अधिकारबारे जानकारी राख्न

सक्ने अवस्था कम देखिन्छ । आफ्नो अधिकारको हनन भएको थाहा पाएर पनि त्यसको उपचारका लागि प्रहरी समक्ष उजुरी गर्न हिच्किच्याउने गरेको पाइएको छ ।

विद्यमान प्रतिलिपि अधिकार सम्बन्धी कानूनमा विश्वमा प्रचलित अत्याधुनिक प्रावधानहरु समावेश गरिएको छ । मुख्यतः Berne Convention मा उल्लेख भएका मुख्य प्रावधानहरुलाई नेपालको प्रतिलिपि अधिकार ऐनमा समावेश गरिएको हुँदा कानूनी दृष्टिले निकै अग्रगामी व्यवस्था रहेको मान्न सकिन्छ । तर नेपालको कानून कार्यान्वयनको लागि संस्थागत क्षमता, साधन, स्रोत र प्रविधिको प्रयोगमा कमी कमजोरी रहेको परिप्रेक्षमा कानूनमा भएका प्रावधानहरुको समुचित उपयोग गर्न कठिनाई परेको अवस्था छ ।

प्रतिलिपि अधिकारको माध्यमबाट देशको आर्थिक अवस्थामा सुधार आउन सक्छ भन्ने बारेमा समेत अधिकांशमा अनभिज्ञता रहेको छ । यसको कारणले गर्दा प्रतिलिपि अधिकार संरक्षणको विषय ओझेलमा परेको छ । रोयल्टी संकलन संस्थाको गठनमा ढिलाइ भएको कारणले गर्दा पनि प्रतिलिपि अधिकारको आर्थिक महत्वबारे कम जानकारी हुने गरेको छ ।

प्रतिलिपि अधिकारको उल्लंघन भएको विषयमा सरकारवादी मुद्धाको रुपमा अदालती कारवाही हुने गरेको छ । यस किसिमको मुद्धा दुनियावादी वा फौजदारी हुने भन्ने विषयमा पनि भिन्न तर्कहरु रहेको पाइन्छ । यससम्बन्धी कतिपय कुराहरु दुनियावादी प्रकृतिका छन् भने कतिपय अवस्थाहरु सरकारी मुद्धाको रुपमा नै रहनुपर्ने समेत देखिन्छ । यस्तो अवस्थामा कुन प्रकियामा जाने भनेर निर्णय गर्ने विषय पनि चुनौतिपूर्ण रहेको छ ।

प्रतिलिपि अधिकारका कतिपय विषय Cyber Law को निर्माण गरी कार्यान्वयनमा ल्याउनुपर्ने विषयसंग सम्बन्धित छन् । तर नेपालमा यस सम्बन्धी कानूनको निर्माण नभएको कारणले यसलाई व्यवस्थित गर्न कठिनाई परिरहेको छ ।

प्रतिलिपि अधिकारको संरक्षणसंग सम्बन्धित संस्थागत क्षमताको विकासको विषय पनि चुनौतिपूर्ण रहेको छ । प्रतिलिपि अधिकार रजिस्ट्रारको कार्यालयको क्षमता अभिवृद्धि गर्ने र उक्त कार्यालयको कार्यलाई व्यापक बनाउने दायित्व महत्वपूर्ण रहेको छ । प्रहरी, सरकारी वकिल, अदालत र भन्सार कार्यालयहरुलाई प्रतिलिपि अधिकारको हनन हुन नदिने गरी प्रभावकारी बनाउन साधन, स्रोत र प्रविधिले सम्पन्न गर्ने विषय चुनौतिपूर्ण रहेको छ । यसैगरी यी निकायहरु बीच संस्थागत समन्वयको विषय पनि जटिल रहेको छ ।

प्रतिलिपि अधिकारसंग सम्बन्धित विषय संचार तथा सूचना प्रविधिको समुचित प्रयोगमा भरपर्ने विषय हो । तर नेपालमा संचार तथा सूचना प्रविधिको प्रयोग निकै पछाडि रहेको कारण यस्तो अधिकारको प्रचार प्रसार र प्रयोगमा कठिनाइ आइरहेको छ ।

प्रतिलिपि अधिकारसंग सम्बन्धित जनशक्ति व्यवस्थापनको विषय पनि जटील रहेको छ । प्रतिलिपि अधिकारको संरक्षण गर्ने सम्बन्धमा आइपर्ने कार्यहरु विशिष्ट प्रकृतिका छन् । यसको बारेमा जनचेतना अभिवृद्धि गर्ने, यस्ता अधिकारको हनन भएमा तिनको अनुसन्धान गर्ने, मुद्धा दायर गर्ने र अदालतद्वारा न्यायको निरुपण गर्ने विषयमा समेत विशेष योग्यता र तालिमको आवश्यकता पर्दछ । अर्को शब्दमा भन्ने हो भने यी विषयमा दक्ष जनशक्तिको आवश्यकता पर्दछ । नेपालको कर्मचारी प्रशासनमा सरुवा सम्बन्धी कानूनी प्रावधानको कारण दुई वर्ष भन्दा बढी हुनासाथ सरुवा गर्ने कारणले दक्ष जनशक्तिको प्रयोगलाई व्यवस्थित गर्न नसकेको अवस्था छ ।

निष्कर्ष

नेपालको प्रतिलिपि अधिकार सम्बन्धी कानूनी व्यवस्था सशक्त रहेको छ । यसको कार्यान्वयन गर्नमा निकै जटिल किसिमका चुनौतिहरु देखिएका छन् । धेरै नागरिकमा यसबारे पर्याप्त जानकारी नहुनुको साथै सरकारी संरचना, कार्य प्रणाली, संस्थागत समन्वय जस्ता विषयमा विशेष सुधार गर्नुपर्ने आवश्यकता छ । यसको लागि साधन, स्रोतको समुचित उपयोग गर्नुको साथै प्रहरी, सरकारी वकिल, न्यायाधीश र प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालयमा कार्यरत कर्मचारीलाई विशेष किसिमको प्रशिक्षणमा जोड दिनुपर्ने आवश्यकता रहेको छ । माथि उल्लेख गरिएका चुनौतिहरुलाई क्रमशः सामना गर्दै जानको लागि सरकारी क्षेत्रले सहजकर्ताको भूमिका खेल्ने र प्रतिलिपिको अधिकारका धनीलाई आफ्नो अधिकारको संरक्षण गर्न सजग र सक्षम बनाउने तर्फ ध्यान दिनु आवश्यक देखिएको छ ।

(लेखक संस्कृति, पर्यटन तथा नागरिक उड्डयन मन्त्रालयमा सहसचिव हुनुहुन्छ ।)

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प्रश्नोत्तर स्तम्भ

प्र. तत्सम्बन्धी अधिकार भनेको के हो ?

तत्सम्बन्धी अधिकार भन्नाले ती अधिकारहरूलाई बुझाउँछन् जसले प्रतिलिपि अधिकारजन्य सिर्जनाहरूलाई सर्वसाधारण समक्ष सञ्चार गर्ने र फैलाउने कार्यमा संलग्न व्यक्ति वा निकायहरूको संरक्षण गर्दछ । यी अधिकारहरु निम्नानुसार व्यक्ति वा निकायहरुसंग सम्बन्धित छन् ।

प्रस्तोताहरू जस्तै गायक/गायिका, संगीतकार, अभिनेता, नर्तक आदिका प्रस्तुतिहरूसँग ।

ध्वनिअंकन उत्पादकहरू जस्तै क्यासेट र सी.डी./भी.सी.डी. रिकर्डिङ्गका उत्पादकहरूका रिकर्डिङ्गहरूमा ।

प्रसारण संस्थाहरू जस्तै रेडियो र टेलिभिजनका प्रसारित कार्यक्रमहरूमा ।

यी अधिकारहरूलाई **Neighboring rights** पनि भनिन्छ ।

प्र. प्रस्तोताका अधिकारहरु के के हुन् ?

प्रस्तोताका अधिकारहरूमा -

आफ्नो प्रस्तुतिको सार्वजनिक सञ्चार गर्ने ।

आफ्नो प्रस्तुतिलाई प्रस्तुत गर्ने तौरतरिका वा माध्यमको निर्धारण गर्ने ।

आफ्नो प्रस्तुतिको प्रतिलिपिहरू पुनःउत्पादन गर्ने ।

आफ्नो प्रस्तुतिको प्रतिलिपि भाडामा दिने ।

आफ्नो प्रस्तुतिलाई परिमार्जन वा संशोधन गर्ने ।

आफ्नो प्रस्तुतिको स्थिरीकरण र प्रसारण गर्ने ।

प्रस्तुतिको परिमार्जनलाई रोक्ने ।

आफ्नो प्रस्तुतिको प्रयोग हुँदा नाम उल्लेख गर्ने ।

प्रस्तोताले एक पटक आफ्नो प्रस्तुतिलाई चलचित्रजन्य रचनामा समावेश गर्न सहमति दिइसकेपछि त्यस्तो प्रस्तुतिमा माथि उल्लेखित अधिकारहरू पुनः लागू हुने छैन ।

प्र. ध्वनिअंकन उत्पादकका अधिकारहरु के के हुन् ?

ध्वनिअंकन उत्पादकका अधिकारहरूमा -

ध्वनिअंकनका प्रतिलिपिहरू पुनःउत्पादन गर्ने ।

ध्वनिअंकनका प्रतिलिपिहरू बिक्री वा आयात गर्ने ।

ध्वनिअंकनका प्रतिलिपिहरू भाडा वा सापटीमा दिने ।

ध्वनिअंकनको सार्वजनिक सञ्चार गर्ने ।

प्र. प्रसारण संस्थाका अधिकारहरु के के हुन् ?

प्रसारण संस्थाका अधिकारहरुमा -

आफ्नो उत्पादित प्रसारणलाई पुनःप्रसारण गर्ने ।

आफ्नो प्रसारणको सार्वजनिक सञ्चार गर्ने ।

आफ्नो प्रसारणको स्थिरीकरण गर्ने ।

आफ्नो प्रसारणको स्थिरीकरणको पुनःउत्पादन गर्ने ।

प्र. प्रतिलिपि अधिकार र तत्सम्बन्धी अधिकारका बीच के के भिन्नताहरू छन् ?

प्रतिलिपि अधिकार र तत्सम्बन्धी अधिकार तिनको प्रकृति, संरक्षण क्षेत्र र संरक्षण अवधिको आधारमा फरक छन् । प्रतिलिपि अधिकारले सर्जकहरूको बौद्धिक र सिर्जनात्मक रचनामा संरक्षण प्रदान गर्दछ । यसले साहित्यिक, कलात्मक र वैज्ञानिक प्रकृतिका रचनाहरूको संरक्षण गर्दछ । जस्तै :- उपन्यास, कविता, पेन्टिङ्ग, मूर्तिकला, कलात्मक डिजाइन, कम्प्युटर कार्यक्रम आदि ।

तत्सम्बन्धी अधिकारहरू प्रतिलिपि अधिकारसित नजिकको सम्बन्ध भएका अधिकारहरू हुन् । तत्सम्बन्धी अधिकारको मुख्य उद्देश्य त्यस्ता व्यक्तिहरू वा संगठनहरूको संरक्षण गर्नु हो जसले प्रतिलिपि अधिकार संरक्षित कुनैपनि सिर्जनालाई आफ्ना अपार बौद्धिक, प्राविधिक र संगठनात्मक खुबी मार्फत परिमार्जन गरी तिनलाई सर्वसाधारण समक्ष पुर्‍याउन मद्दत गर्दछ । यी अधिकारहरू प्रस्तोता, ध्वनिअंकन उत्पादक र प्रसारण संस्थाहरूसँग सम्बन्धित छन् जसले कुनै पनि रचनाको उत्पादन, ध्वनिअंकन र प्रसारणमा मध्यस्थकर्ताको भूमिका निर्वाह गर्दछ ।

प्रतिलिपि अधिकारको संरक्षण अवधि सिर्जना अनुसार २५ वर्ष देखि सर्जकको जीवनभर र मृत्यु पश्चात ५० वर्ष सम्मका लागि हुन्छ । तत्सम्बन्धी अधिकारहरुको संरक्षण साधारणतया ५० वर्षको हुन्छ । कतिपय मुलुकहरुमा यो अवधि अरु लामो समेत रहेका छन् ।

Article

Protecting the Broadcasting Organisations

In the knowledge based societies of today, the broadcasting organizations play a unique role in offering the wide varieties of qualitative information and knowledge to the world's population. In order to support their continuity, it is necessary and timely that the broadcasting organizations are afforded an appropriate and updated IP (Intellectual Property) rights framework that will provide them with more legal security and will offer them means to combat signal piracy. The need to control broadcast piracies and provide specific rights to these broadcasting organizations has been first materialized internationally only in 1961 through the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. This Convention secures certain rights to the broadcasting organizations which include the rights to rebroadcast and fixation of own broadcasts, the reproduction of such fixations and the communication to the public of the broadcasts if such communication is made in places accessible to the public against the payment of an entrance fee.

In order to bring a balance between public interest and broadcasters' rights, the Rome Convention also allows exceptions in the national laws to the above mentioned rights as regards to private use, use of short excerpts in connection with the reporting of current events, ephemeral fixation by a broadcasting organisation by means of its own facilities and for its own broadcasts, use solely for the purpose of teaching or scientific research and in any other cases except for compulsory licenses that would be incompatible with the Berne Convention – where the national law provides exception to copyright in literary and artistic works. The Rome Convention protects the broadcasting organizations for the period of 20 years computed from the end of the year in which the broadcast took place.

The protection against the unauthorized distribution of programme-carrying signals of a broadcasting organisation transmitted by satellite is internationally protected by the Brussels Convention relating to the Distribution of Programme–Carrying Signals Transmitted by Satellite, 1974. The provisions of this Convention are not applicable however where the distribution of signals is made from direct broadcasting satellite.

Nepal is yet to become a party member to both of the Rome and Brussels Conventions. A report on Nepal's accession to the Rome Convention, 1961 recently submitted by Nepal Copyright Registrar's Office has recommended the need of more detail study before accessing to the Convention. No homework has yet been performed regarding the need of Nepal's accession to the Brussels Convention, 1974.

The Copyright Act 2002 of Nepal has provided the rights to the broadcasting organizations as mentioned in the Rome Convention and has also made provisions of exceptions where certain uses of broadcasts can be done without getting authorizations of the rights owners. Unlike the Rome Convention, the term of protection provided by the Copyright Act 2002 is up to 50 years and being a member of WTO (World Trade Organisation) it extends national treatment of protection to any broadcast by a broadcasting organisation or a broadcasting station situated in any member countries of WTO.

To update the IP rights of the broadcasters currently provided by the Rome Convention and also to control the growing signal piracy problem including the piracy of digitized pre-broadcast signals, WIPO (World Intellectual Property Organisation) has been working to conclude a Treaty for the Protection of Broadcasting Organizations since a decade. Up to the 15 sessions and one special session of the Standing Committee on the Copyright and Related Rights (SCCR) have been held so far. The treaty had been originally drafted to protect broadcasters and cable-casters including also the net-casters and the web-casters. However, it was decided in the 14th Session to draft the treaty only to incorporate the traditional broadcasters including the broadcasters and the cable-casters and eliminate the scope of net-casters and the web-casters that are to be dealt with a separate treaty. Debates and discussions went on for several years regarding the granting of the exclusive rights to the traditional broadcasters or the providing of the adequate protection measures to them through the national legislations. In the 15th session meeting, various countries especially the developing countries and countries from South America, Asia and Africa intensively argued on the need of the treaty to be drafted on a signal-based approach instead of the right-based approach.

Based on the conclusion of the 15th session meeting, the 33rd session of WIPO General Assembly gave the mandate to the First Special Session to agree and finalize on a signal based approach, the objectives, specific scope and object of protection. Thus, the First Special Session held on 17 – 19 January, 2007 based its discussion especially to set the protection of the live signals. A live signal is a signal carrying a program and lives up to the period of its transmissions of broadcast. Wiping off the much of the earlier efforts, the discussions took a new track of reducing the range of exclusive rights to be granted to the traditional broadcasters and also to make objectives, specific scope and object of protection in a signal based approach with the consideration for change in other provisions too. Under the signal based approach, the new proposal is to grant only the two types of exclusive rights to the broadcasters namely, the right to the simultaneous or deferred retransmission of broadcast and the right to fixation of their broadcast. For all other rights discussed earlier, the new proposal is to make adequate and effective legal protection in the domestic law that the broadcasting organizations are entitled to enjoy. These are in respect of direct and indirect reproduction of the broadcast; making available to the public of the original or copies of the broadcast through sale or other transfer of ownership; making available to the public of the broadcast in such a way that members of the public may access them from a place and at a time individually chosen by them; the communication to the public of the broadcast, if such communication is made in places accessible to the public against payment of an entrance fee, or using very large screens in places accessible to the public, or made in a profit making purpose.

Whatever be the approach undertaken, there is no doubt that the proposed treaty should adequately protect the broadcasting organizations against the unauthorized theft of their signals and piracy of their broadcast programmes in order to ensure their survival and provide them enough returns from their vast investment. It should not only serve as a stable legal framework for the activities of broadcasting organizations against piracy but it should also provide protection against competitors and against unfair exploitation and against free – riding. However, focus should also be kept in mind that any rights or protection offered to these traditional broadcasters should not in any way affect the rights already enjoyed by the copyright and other related right holders on their works provisioned in the various national and international copyright laws. Rights should be granted at least up to the level as provided by the Rome Convention and TRIPS Agreements. Further there should be a balance between the rights conferred to these organizations and the interests of public. For this it would be better to provision a non-exhaustive list of limitations and exceptions in the treaty that underscores the certain circumstances in which the use of broadcast could be done without getting authorizations from the right owners. Further consideration is also required regarding the importance of technological protection measures and right management information.

While the discussions are lively round the globe regarding the approach and provisions of the proposed treaty, very less concerns have been seen in the Nepalese context. It is now the right time for all the broadcasting organizations: radio and television broadcasters, cable-casters together with content rights holders and all other stakeholders to probe deep into these issues in order to preserve their respective rights.

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(The writer is Section Officer in NCRO)

(Contd from Page 2)

said that the ministry will study the report and will soon take necessary action as per the recommendations mentioned in the report.

The Committee included following members:

Names & Designations	Representing Organizations/Groups
Chairman: Joint Secretary Mr. Jalakrishna Shrestha	MoCTCA
Members: Registrar Mr. Ram Prasad Bhattarai	NCRO
Under Secretary Mr. Kailash Pd. Subedi	Ministry of Law, Justice & Parliamentary Affairs
General Manager Mr. Madan Sharma	NTV (on the behalf of Broadcasting Organizations)
General Manager Mr. Harihar Sharma	Cultural Corporation (on the behalf of Performers)
Acting MD Mr. Lumadi Pd. Timilsina	Cultural Corporation
General Secretary Mr. Shree Krishna Bhattarai	Association of Music Industries Nepal (on the behalf of Sound Recording Organizations)
Member/Lawyer Mr. Parasuram Koirala	Copyright Protection Society of Nepal
Section Officer Mr.Hari Krishna Gyawali	NCRO
Member Secretary: Legal Officer Mr. Deepak Khanal	NCRO

A TALK PROGRAM WITH THE BROADCASTING ORGANISATION

Nepal Copyright Registrar's Office held a talk program with the representatives of broadcasting organizations on December 15, 2006. The representatives from Nepal Television, Radio Nepal, and various FM stations took part in the program. The program was basically focused on the various rights included in current Copyright Act, 2002 and also on the provisions of the Proposed WIPO Broadcasting Treaty. The participants also discussed on the various problems faced by the broadcasting organizations in relation with copyright and related rights.

PARTICIPATION ON THE FIRST SPECIAL SESSION OF SCCR

The First Special Session of the Standing Committee on Copyright and Related Rights (SCCR) took place at headquarter of the World Intellectual Property Organization (WIPO), Geneva from January 17-19, 2007. Mr. Kiran Shakya, Section Officer of Nepal Copyright Registration's Office has participated the section which was focused on the discussions over proposed WIPO Broadcasting Treaty under the signal based approach. The 33rd Session of the WIPO General Assembly has given the mandate to the sessions of SCCR to agree and finalize the proposed treaty on a signal based approach, the objection, specific scope and object of protection with a view to submitting to the Diplomatic Conference that is to be held at the end 2007.

MEETING ON SOUND RECORDINGS

Nepal Copyright Registrar's Office organised a meeting on March 13, 2007 regarding the copyright and related rights issues prevalent in the sound recording industries. Representatives from Association Music Industries Nepal and various sound recording institutions participated the meeting. Various problems faced by the Nepalese music industry were discussed during the program. The participants in the meeting agreed on the need of more awareness programs to curb the rate of piracies in the market and make creators aware of their rights. The need of joint efforts in the promotion of copyright and control of piracies was also felt by most of the participants to develop the synergy.

WIPO ASIA-PACIFIC REGIONAL SYMPOSIUM

The WIPO Asia-Pacific Regional Symposium was held in Lao People's Democratic Republic, Vientiane on 13-15 Feb. 2007, organized by the World Intellectual Property Organization

Source: WIPO

(WIPO) in co-operation with the Government of Lao and with the assistance of the Japan Copyright Office (JCO). The objective of the symposium was to exchange information and views on emerging copyright and related rights issues concerning libraries and to discuss the relevant policies of the participating countries. Participants from 30 different countries were invited in the program. Mr. Shiva Prasad Khanal, Legal Officer of Nepal Copyright Registrar's Office has also participated the program. Various papers were presented on the issues and discussions were held to exchange mutual experiences.

A CO-ORDINATION MEETING ON COPYRIGHT

A Co-ordination meeting between various law enforcing agencies related to copyright was organized by Nepal Copyright Registrar's Office on March 14, 2007. Representatives from MoCTCA, Supreme Court, Attorney's Office, Appellate Court, Nepal Police and Custom Office have participated the meeting. Mutual experiences related to copyright enforcement were shared and need of a more co-ordinate efforts was realized to combat with copyright piracies. Further, the importance of pro-active society and trainings for enforcing agencies were recognized to control the counterfeiting.

AWARENESS PROGRAM

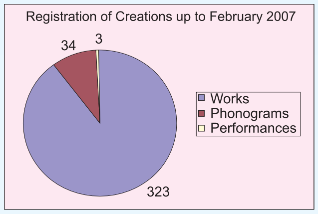
Association of Music Industries Nepal (AMIN) organized an awareness program focused on copyright and related rights issues in audio-visual materials on December 16 and 17, 2006 at Dang and Butwal respectively. The program was targeted to the members of AMIN together with various stakeholders. The participants in the program discussed on the problem of piracies in the copyrighted phonograms in the market and recommended that these programs should be continued to aware the general mass of people regarding the issues of copyright and related rights. The participants also emphasized the need to strengthen Nepal Copyright Registrar's Office in controlling copyright violations by providing it more authorities.

OTHER ACTIVITIES

- Nepal Copyright Registrar's Office has undergone an agreement with Radio Sagarmatha on December 16, 2007 to broadcast the awareness notice on Copyright and Related Rights regularly twice a week for the next six months period.
- Nepal Copyright Registrar's Office has monitored the various market places of Kathmandu, Bhaktapur, Lalitpur including Pokhara and Butwal regarding the infringement of Copyright and Related Rights.

REGISTRATION OF CREATIVE WORKS

Copyright registration in new branches of creative works such as bamboo works and metal works (sculptures) has been started in Nepal. Recently, Nepal Copyright Registrar's Office has registered an eagle and a crane made of bamboo root made by the artist Mr. Sanjay Kr. Pradhan and metal pillar with artistic design representing the People's Movement made by Senior Sculptor Mr. Thakur Pd. Mainali. Up to the period of February 2007, the office has registered total of 360 creations that comprises 323 works, 34 phonograms and 3 performances. The works include 262 literary works, 27 artistic works, 18 photographic works, 11 computer programs, 2 scientific works (architecture) and 3 sculptures.



'सिर्जनाको प्रभावकारी संरक्षणका लागि सिर्जनाको दर्ता गराऔं ।'

के तपाई आफ्ना सिर्जना दर्ता गराउने विषयमा सोंच्दै हुनुहुन्छ ? यदि तपाईं आफ्ना रचनाहरु दर्ता गराई यसको प्रभावकारी संरक्षणमा सुनिश्चित हुन चाहनुहुन्छ भने कृपया तलका बुँदाहरुमा एकैछिन ध्यान दिनुहोस् त !

- कुनै पनि प्रकारको सिर्जनाको दर्ताको लागि निर्दिष्ट फाराम भरी रु ५ को टिकट टाँस गरी यस कार्यालयमा निवेदन दिनु पर्नेछ ।
- निवेदन फाराम यस कार्यालयबाट निःशुल्क प्राप्त गर्न सकिनेछ । साथै कार्यालयको वेभसाइट www.nepalcopyright.gov.np बाट सिधै download गर्न पनि सकिन्छ ।
- निवेदन साथ निवेदकको नागरिकताको प्रतिलिपि १, पासपोर्ट साइजको फोटो प्रति २ र रचना प्रति २ संलग्न हुनु पर्नेछ ।
- रचना तयार गर्दा अन्य व्यक्ति वा संस्थाहरुको पनि संलग्नता भएकोमा ती व्यक्ति वा संस्थाहरुसंग भएका लिखित सम्झौताका प्रतिलिपिहरु संलग्न हुनु पर्नेछ ।
- रचना दर्ता बापत प्रति रचना रु १००।- दर्ता शुल्क लाग्नेछ ।

रचना दर्ता भएपछि यस कार्यालयबाट सम्बन्धित रचना धनीको नाममा प्रमाणपत्र प्रदान गरिनेछ ।

यदि तपाईंलाई निवेदन फाराम भर्न कुनै समस्या छ वा यस विषयमा थप जानकारी चाहनुहुन्छ भने निम्न ठेगानामा सम्पर्क गर्नु होला । तपाईंको सहयोगको लागि हामी सधैं प्रतीक्षारत छौं । हाम्रो ठेगाना हो :-

Nepal Copyright Registrar's Office
Kalilasthan, Kathmandu, Nepal
Tel: 977-1-4431155
Fax: 977-1-4431144, PO Box: 430
E-mail: necopyright@wlink.com.np
Web Page: www.nepalcopyright.gov.np

WIPO SPECIAL

KING BHUMIBOL ADULYADEJ TO RECEIVE WIPO'S FIRST GLOBAL AWARD

WIPO is to provide its most prestigious award "WIPO Global Leader Award" to His Majesty King Bhumibol Adulyadej, King of Thailand as recognition of his outstanding contributions to the development and promotion of intellectual property. His Majesty currently owns more than 20 patents and 19 trademarks that have been applied in a range of development projects in Thailand. His Majesty is also renowned as a prolific artist having created more than 1000 different works that includes literary works such as songs and novels together with paintings, photos and musical works.

The WIPO Global Award recognizes leadership and personal engagement in promoting intellectual property at the national, regional and international levels. It comprises a citation and a medal honoring the recipient. It also rewards exceptional personal creative and innovative activities and use of the intellectual property system to protect these works.

Source: www.wipo.org.

HOLLYWOOD WINS COPYRIGHT SUIT IN CHINA

The Beijing First Intermediate People's Court on December 2006, ordered Beijing Sohu Internet Information Services Co. Ltd. that runs some of China's most popular websites, to pay damages and costs of 1.1 million Yuan ($ 139,000) to Hollywood Movie Studio over posting of movie clips on the internet. The movies involved in the suit are Lord of the Rings, Dawn of the Dead, Harry Potter and the Prisoner of Azkaban.

Source: Reuters 2006.

गीत-संगीतको प्रयोग तथा पुन:प्रयोग सम्बन्धमा नेपाल प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालयको अनुरोध

बौद्धिक सम्पत्ति अन्तर्गत गीत-संगीतमा सम्बन्धित गीतकार, संगीतकार, गायक/गायिका, रेकर्डिङ्ग संस्थाको र चलचित्रका गीतमा निर्माताको अधिकार हुने हुँदा गीतको हस्तान्तरण, पुनरुत्पादन र प्रयोगमा लिखित सम्झौता गर्नु पर्दछ । अधिकारधनीको लिखित अनुमति बिना गीत-संगीतको रिमिक्स गर्ने, शब्द वा लय चोर्ने, गीतका बोलहरू तोडमोड गर्ने, पुनरूत्पादन गर्ने जस्ता कार्य प्रतिलिपि अधिकार ऐन, २०५९ अनुसार दण्डनीय हुन्छन् । तसर्थ सिर्जनाको सम्मान गरी सजाय र क्षतिपूर्तिबाट बचौं । ।

FORTHCOMING EVENTS

- Training/workshop for District Court Judges.
- A one-day discussion program related to proposed CMO.
- A one-day regional seminar on copyright and related rights.

प्रतिलिपि अधिकार बुलेटिन नेपाल प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालयबाट निःशुल्क वितरण गरिन्छ । यस बुलेटिनका सम्बन्धमा यदि तपाईको कुनै जिज्ञासा वा सुझाव छ भने हामीलाई यस ठेगानामा सम्पर्क गर्न नबिर्सनु होला ।

Mail to:

Photos by NCRO, © सर्वाधिकार : नेपाल प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालयमा सुरक्षित । , प्रिन्टिङ्ग : सगुन प्रिन्टिङ्ग प्रेस, टेकु ।