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Nepal Copyright Registrar's Office

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प्रतिलिपि अधिकार बुलेटिन

Copyright Bulletin

सृजना तथा सञ्चालनको लागि

नेपाल प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालयको त्रैमासिक प्रकाशन

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यदि तपाईंसँग वैदिक सम्पत्ति, प्रतिलिपि अधिकार एवं वस्त्रावस्त्र अधिकारका विषयमा कुनै कानूनी वा अन्य जिज्ञासा भएमा आफूलाई लोभोका ज्ञानहरू हामीलाई लेखी पठाउनुहोला । यस बुलेटिनका अगामी अङ्कहरूमा तपाईंको प्रश्नहरूको उत्तर दिने प्रयास गर्नेछौं ।

धन्यवाद ॥

Dialogue With Nepal Music Development Committee



A three-members committee constituted as per the decision of the then Ministry of Culture, Tourism and Civil Aviation dated on August 18, 2008 to hold dialogue with Nepal Music Development Committee (NMDC) performed its duty as the Terms of Reference (TOR) had determined by the Ministry. The other members of the committee that was led by Mr. Jala Krishna Shrestha, Joint-Secretary, of the then Ministry of Culture, Tourism and Civil Aviation (MOCTCA) were Mr. Ram Prasad Bhattacharya representing the same Ministry and Mr. Narayan Prasad Aryal from Nepal Copyright Registrar's Office (NCRO). Nepal Music Development Committee (NMDC), an umbrella organization of different music institutions which was struggling for the rights of Copyright holders, had submitted its nine-points demand addressing to the then Honorable Minister for Culture, Tourism and Civil Aviation and the Registrar of Nepal Copyright Registrar's Office as well. The Committee constituted by the government held dialogue with the members of NMDC in different stages and reached at a conclusion. The Committee agreed to give necessary direction to Music Royalty Collection Society Nepal (MRCSN) for the amendment of its legislation so that it would be possible to incorporate the performers (singers) with in the society. NMDC mainly was struggling for the formation of High Level Commission to study about the structural aspect of Nepal Music Development Board that they wanted to establish and to give pressure to the

government as well as MRCSN to launch the suitable royalty collection and distribution mechanism as soon as possible. After the dialogue with the committee, NMDC postponed all its programs which were against of all the related governmental & non-governmental organizations. The committee submitted its report to the then Ministry of Culture, Tourism and Civil Aviation including all the things as the Terms of Reference (TOR) had determined.

Interaction Program With Stakeholders

Nepal Copyright Registrar's Office (NCRO) organized a one day interaction program in Kathmandu on August 29, 2008 with its stakeholders especially to discuss about the possibility of inclusion of performers (singers) in the legislation of Music Royalty Collection Society Nepal (MRCSN). The program was also intended to find out the way by which Music Royalty Collection Society Nepal would start the collection of royalty as soon as possible. At the very beginning, Mr. Narayan Prasad Aryal, for Registrar, Nepal Copyright Registrar's Office highlighted the objective of the program and poured his welcome to all the guests and participants for their presence in the

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Caution is the eldest child of wisdom. -Victor Hugo

Article

Rationale and Pre-requisites to Accede to WIPO Copyright Treaty

Dr. Bal Bahadur Mukhia

1. Background:

Copyright originates from man's intellectual creativity. A well structured intellectual property system provides rights which can be a great stimulus to economic development. Copyright and related rights have gained momentous position in recent times due to the rapid scientific and technological development. With the growth of silicon chip based technology it has become possible to interact with computers and peoples throughout the world. The Internet has grown significantly in the present day world. In the present day world no one denies that the field of copyright and related rights has expanded dramatically as technological developments have brought new ways of disseminating creations throughout the world through various forms of communication as satellite broadcasting, compact discs (CD), DVD and the Internet. Global advanced information technologies, virtual networks, powerful computers, convergence of computers and television, smarter technology, multi-media technologies are developing at faster pace. Today, we witness the digitizing the data and find most of the things in the digitized form. Computer Software is inherently different from the conventional manufacturing products. Once it is developed it can be easily and cheaply reproduced. Due to its intangible nature, it flows across national boundary more easily than conventional commodities. Thus, this nature of software while simplifying global marketing makes it susceptible to illegal copying and creates a greater need for international protection.

2. Justification for Nepal to accede to WCT:

2.1 Major set of links among national systems is supplied by international treaties on the subject of copyright and related rights. It will help to facilitate protection of intellectual property and provide legal basis to collect royalty from other countries after becoming member of copyright treaties. Beginning in the 19th century many countries took their first steps toward protecting foreign works on a country to country basis. Another set of international links is created by trade agreements. In recent years, intellectual property has been recognized as an important component of trade between countries, and copyright provisions have been included in a number of their agreements on trade issues. For securing minimum copyright recognition and protection in other member countries on reciprocal basis it may be justified for Nepal to join international copyright treaty and conventions including WCT.

2.2 Technological measures, such as encryption are essential tools to stop digital piracy, it for this reason that the WIPO Copyright Treaty and the WPPT the most recent international treaties in the copyright and related rights fields contain special provisions which prohibit circumvention of such measures of technological protection for copyright work (Kamil Idris, IP: A Power Tool for Economics: 25-26). Nepal showed commitment to ratify the related Conventions including WCT, WPPT at the time of signing the membership of World Trade Organization and ratifying it on April 23, 2004. Furthermore, computer programs and multi-media productions, types of works not listed in the Berne Convention, but they come within the notion of creations in literary, scientific and artistic domain. Computer programs are protected under the copyright laws of countries as well as WIPO Copyright Treaty, 1996. Copyright Act 2002 of Nepal also has mentioned protection of computer programs and databases. Because of the aforesaid reasons it would be better for Nepal to adhere to WCT.

2.3 As Nepal has already become the member of WIPO which is the specialized agency of the United Nations and responsible for the promotion of intellectual property throughout the world through cooperation among States as well as for the administration of various multilateral treaties dealing with legal and administrative aspects of intellectual property, then why Nepal should refrain from adhering to WCT.

2.4 The preamble of WIPO Copyright Treaty (WCT), December, 23, 1996 apparently states to develop and maintain protection of the rights of authors in their literary and artistic works in a manner as effective and uniform as possible. WCT has mentioned that this Treaty shall not have any connection with treaties other than the Berne Convention, nor shall it prejudice any rights and obligations under any other. The WIPO Copyright Treaty (WCT) extends copyright protection to two additional subject matter viz. (i) computer programs and (ii) compilations data or other material (data bases) in any form which reason of the selection or arrangement of their contents constitute intellectual property. And it grants new rights corresponding to the new forms exploitation of works in the digital environment. Because of the aforementioned important provisions of WCT, Nepal may obtain benefit in promoting and protection of computer programs and databases by implementing the existing laws and modifying the laws in compliance of the provisions of WCT.

3. Pre-requisites of Nepal to adhere to WCT:

3.1 Development of communication and information started in Nepal since 1971. The application of computer and their commercialization started in Nepal in 1980s but only in 1990s computers started to become popular. Internet began in 1995 after Mercantile Communications started Internet Service. Information Technology Policy 2000 has set the vision of placing Nepal in the Global Map of

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लेख

प्रतिलिपि अधिकार कानून कार्यान्वयनमा देखिएका समस्याहरू र सुधारका पक्षहरू

वीर बहादुर राई

विश्वमा स्रष्टा र सर्जकको हित संरक्षण गर्ने र तिनीहरूका सिर्जनाको प्रवर्द्धन गर्न प्रतिलिपि अधिकार सम्बन्धी कानून कार्यान्वयनमा रहेको छ। नेपालमा पनि ढिलै भएपनि स्रष्टा र सर्जकको रचना र सिर्जनाको संरक्षण र हितको लागि प्रतिलिपि अधिकार ऐन निर्माण भै कार्यान्वयनमा रहेको छ। विश्वमा सबै शताब्दीमा नै प्रतिलिपि अधिकारले कानूनी मान्यता प्राप्त गरी सकेको भएपनि नेपालमा भने कार्यान्वयनको ऐतिहासिक पृष्ठभूमि छोटो रहेको छ।

प्रतिलिपि अधिकार सम्बन्धी कार्य गुल्मा शिक्षा, संस्कृति तथा खेलकुद मन्त्रालय र तत्पश्चात संस्कृति, पर्यटन तथा नागरिक उड्डयन मन्त्रालय (संस्कृति तथा कपिराइट शाखा)बाट सञ्चालन हुँदै आएकोमा २०६० सालको सरकारको निर्णयानुसार २०६१ सालदेखि छुट्टै कार्यालयको रूपमा नेपाल प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालय स्थापना भै कार्यरत रहेको छ।

नेपालमा प्रतिलिपि अधिकार सम्बन्धी कानूनको आवश्यकता र महत्व निकै पहिले नै महसुस भै संवत् २०२२ सालमा नेपाल प्रतिलिपि अधिकार ऐन जारी भयो। यस ऐन अनुरूप स्रष्टाको रचना संरक्षणको लागि रचनालाई अनिवार्य दर्ता गर्नुपर्ने कानूनी व्यवस्था रहेको थियो। तर कार्यान्वयनको लागि आवश्यक पर्ने नियमावली लामो समयको पछाइपछि २०४६ सालमा मात्र जारी भएवाट प्रतिलिपि अधिकार कानूनले खासै प्राथमिकता पाउन नसकेको पुष्टि हुन्छ।

अन्तर्राष्ट्रिय सन्धि, महासन्धि र सम्झौतापछि नेपालले निर्माण गरेका कानून/नियम सोही अनुरूप Compatible बनाउन विभिन्न ऐन/नियमको संशोधन/परामर्श जर्न क्रममा नेपालले WTO को समस्या प्राप्त गरेपछि WTO को पावधान अनुरूप २०२२ सालको पुरानो प्रतिलिपि अधिकार ऐन खारेज गरी प्रतिलिपि अधिकार ऐन, २०२९ जारी गरियो। सो को कार्यान्वयनको लागि प्रतिलिपि अधिकार नियमावली, २०६१ जारी भै प्रतिलिपि अधिकार सम्बन्धी कानून पूर्णरूपमा कार्यान्वयनमा रहेको छ।

नेपाल प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालय स्थापना पछि २००६ जनवरी ९१ मा नेपाल साहित्यिक तथा कलात्मक रचनाहरूको संरक्षण गर्ने अन्तर्राष्ट्रिय वन महासन्धिमा प्रवेश गरी महासन्धिको पक्ष (Party) भैसकेको छ। बौद्धिक सम्पत्ति अन्तर्गतका २ वटा पाठ्यक्रम प्रतिलिपि अधिकार एक महत्वपूर्ण विषय रहेको छ। विज्ञान र प्रविधिको विकासले सकारात्मक कार्य या प्रगतिहरू साथै गलत या नकारात्मक कार्यको उत्तिकै प्रभाव वढ्दै गएको

छ। जसको कारण समाज, राष्ट्र र व्यक्तिलाई विभिन्न समस्या र चुनौती थपिएका छन्।

प्रतिलिपि अधिकार सम्बन्धी ऐन र कानूनले तामा स्रष्टा र सर्जकको हित संरक्षण र सम्बर्द्धन गरि उनीहरूको आर्थिक र नैतिक अधिकारको सुनिश्चितता गरेका छन्। सिर्जना व्यक्त र राष्ट्रको ज्यादै महत्वपूर्ण सम्पत्ति भएपनि विभिन्न कारणले गवां यसको महत्व र आवश्यकता ओझेलमा परेको कुरा स्वीकार गर्नु नै पर्छ। नेपालमा पर्याप्त पूर्वाधारको अभाव, जनचेतनाको अभाव, प्रभावकारी कानून कार्यान्वयनको अभाव, कार्यान्वयनमा संलग्न निकायमा कार्यरत जनशक्तिमा सदस्यता र विज्ञताको अभाव आदि विषयलाई यसका चुनौतीको रूपमा लिन सकिन्छ।

मूलतः प्रतिलिपि अधिकारको माध्यमबाट स्रष्टालाई आर्थिक र नैतिक अधिकारको सुनिश्चितता, अनधिकृत प्रयोगमा नियन्त्रण र मौलिक सिर्जनाको विश्वव्यापी रूपमा प्रसारण गरि राष्ट्रिय सम्मान गर्नु जरुरी छ। तर विश्वमा आएको विज्ञान प्रविधिको विकासले विशेषतः नेपाल जस्तो विकासोन्मुख देशमा धेरै चुनौतीहरू पनि थपिएका छन्।

प्रतिलिपि अधिकार सम्बन्धी धेरै समस्याहरूमध्ये मुख्यतः निम्न रहेका छन्।

१. कानूनको कार्यान्वयनको अभाव : नेपाल प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालयलाई अर्क्याधिक अधिकारको अभाव रहेकोले कानून उल्लंघन गर्ने पक्षलाई तुरुन्त कानूनी कारवाही गरी पीडित स्रष्टा र सर्जकलाई तत्काल राहत दिन नसक्ने अवस्था रहेको छ।

२. साधन स्रोतको सीमितता र सरोकारवालासँग समन्वयको अभाव : बौद्धिक सम्पत्ति जो नितान्त मौलिक र बौद्धिक सिर्जना हुन्, यस्ता महत्वपूर्ण सिर्जना गर्ने सर्जक/स्रष्टाको क्षेत्रमा कार्य गर्ने जनशक्ति र स्रोत ज्यादै सीमित रहेका छन्। त्यसै गरी यससँग सम्बन्धित सरोकारवाला व्यक्ति तथा संस्था जस्तै गायक, रचनाकार, निर्माता, लेखक आदिमा पूर्ण चेतनाको अभावको साथै समन्वयको अभाव रहेको छ।

३. सरकारको सबै मन्त्रालय र विभाग म्तरमा Copyright Cell स्थापना हुन नसक्नु : महिला, WTO, जस्ता विषय मन्त्रालय र विभागमा Focal Point को रूपमा स्थापना भै परिचालन भैरहेका छन् तर Copyright जस्तो महत्वपूर्ण

विषयको लागि सम्बन्धित निकाय र संस्थामा ०८॥ को रूपमा मात्र भए पनि इकाई गठन हुन सकेको छैन।

४. प्रचार प्रसार र कार्यक्रमको प्राथमिकता : सरकारले विभिन्न कार्यक्रमको महत्व र विषयको गाम्भीर्यतालाई हेरी राज्यले प्राथमिकता तोक्यो त्यसको विषयमा आर्थिक लगानी गरी विभिन्न तहमा प्रचार प्रसार गर्ने कार्य गरिन्छ। तर प्रतिलिपि अधिकार सम्बन्धी कानून र सो सम्बन्धी कार्यक्रमले राज्यबाट प्राथमिकता पाउन सकेका छैनन्।

५. कानून उल्लंघन गर्नेप्रति दण्डनीयता : राज्यमा आम जनता र राष्ट्रको हितको लागि कानूनको निर्माण र संचालन गरिएको हुन्छ। कानूनी शासनको अभावमा कानून उल्लंघन गर्ने व्यक्ति र समूहलाई कडा कारवाही हुन सकेको छैन। त्यसमा पनि स्रष्टा र सर्जकका मौलिक तथा बौद्धिक सम्पत्तिको उल्लंघनमा सजाय गर्ने सम्बन्धमा प्रभावकारी कार्यान्वयन गर्ने वातावरणको अभाव रहेको छ।

६. प्रतिलिपि अधिकार सम्बन्धी कार्यालय काठमाडौँमा सीमित: प्रतिलिपि अधिकार सम्बन्धी कार्यालय केवल काठमाडौँमा मात्र रहेको र संगठनात्मक रूपमा ज्यादै सानो रहेको हुँदा रचना दर्ता सम्बन्धी कार्यलाई अधिराज्यभरका स्रष्टाको नजिक पुऱ्याई उनीहरूलाई प्रोत्साहित गर्ने, उनीहरूको सम्मान गर्ने विषयलाई सहजताका साथ सञ्चालन गर्न सकिएको छैन। जसले गर्दा समस्त स्रष्टाले चाहेर पनि प्रतिलिपि अधिकारमा समाहित भै एक साथ अघि बढ्न सकेका छैनन्।

७. सरकारका विभिन्न निकाय बीच प्रभावकारी समन्वयको कमी: सरकारका विभिन्न निकाय (प्रहरी प्रशासन, सरकारी वकील, अदालत आदि) बीचमा आ-आफ्नै संगठनको कार्यको जोत्तको कारण समन्वयको अभाव हुन गई कानूनको प्रभावकारी कार्यान्वयनमा समस्या रहेको छ।

सुधारका लागि अवलम्बन गर्नुपर्ने पक्षहरू:

स्रष्टा र सर्जकको पक्षमा कार्य गर्नको लागि सबैले समान रूपमा सहयोग र प्राथमिकता दिन जरुरी छ, जसको हाल उपलब्धता छैन। तर पनि सामान्यत निम्न विषयहरूमा ध्यान केन्द्रित गर्न सकेको खण्डमा केही हदसम्म सुधार गर्न सकिन्छ।

• सरकारले प्रतिलिपि अधिकार सम्बन्धी ऐनको प्रभावकारी कार्यान्वयन र यससँग सम्बन्धित कार्यक्रमलाई उच्च प्राथमिकता प्रदान गर्ने।

- सम्बद्ध सरोकारवाला बीच समन्वय, अन्तरक्रियाका साथै प्रतिलिपि अधिकार सम्बन्धी कानूनको प्रभावकारी कार्यान्वयनको लागि पश्यात सोत, साधन र दक्ष जनशक्तिको विकास गर्ने ।
- विभिन्न मन्त्रालय र विभागमा प्रतिलिपि सम्बन्धी Cell को गठन गरी सबै मन्त्रालय बीच समन्वयात्मक रूपमा प्रतिलिपि अधिकार संरक्षणको कार्य संयुक्त रूपमा गर्ने ।
- नेपाल प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालयलाई अभिव्यायिक निकायको रूपमा विकास गर्ने ।
- कानूनी षण्डहीनतालाई निराकरण गर्ने कानून कार्यान्वयन गर्ने निकायलाई सक्षम र दक्ष बनाउने साथै ती निकायहरूलाई जवाफदेही समेत बनाउने ।
- सरकारले प्रचारप्रसारको कार्यक्रमलाई व्यापकता दिने ।

विज्ञान र प्रविधिको विकास र प्रगतिलाई सकारात्मक रूपमा स्वीकार गर्न सकिन्छ । तर यसको कारण होमीवीच चुनौती पनि थपिएका छन् । यस्ता चुनौतीसँग जुध्न र समाधान गर्नको लागि नेपाल प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालयको साथै सम्बद्ध स्रष्टा, सर्जक र तत्सम्बन्धी अधिकार भएका समूहबीच हातेमालो गरी अघि बढ्नुपर्ने अवस्था रहेको छ । त्यसैगरी सरकारले स्रष्टा र सर्जक भनेका राष्ट्रका सम्पति हुन् र उनीहरूको सम्मान वास्तवमा राष्ट्रको सम्मान हो भन्ने धारणालाई बुझी सरकारी नीति र कार्यक्रम अगाडि वढाउनु पर्दछ । स्रष्टा तथा सर्जकको सही संरक्षणको लागि कार्यालयका साथै सम्बद्ध सबै सरकारी, गैर सरकारी र सरोकारवालाहरू एक जुट भई अघि बढेमा उनीहरूको सही संरक्षण हुन सक्दछ जसले राष्ट्रको सम्मान पनि बढ्न सक्दछ ।

Interaction Program.....

program. Mr. Nagendra Prasad Ghimire, for Secretary of the then Ministry of Culture, Tourism and Civil Aviation made his commitment to allocate additional budget for MRCSN to finalize the process of royalty collection and amend its legislation including the performers as well. He requested Nepal Music Development Committee to assist MRCSN for the amendment of its legislation. Mr. Jala Krishna Shrestha, Joint Secretary from the same Ministry requested all the participants representing different broadcasting organizations to be careful about the right of copyright owners that they get in their creations. Mr. Yadav Kharel, Chairman of MRCSN clarified about the situation of his society and his effort to finalize the procedure of royalty determination, collection and distribution. He asked for help with the government to allocate additional budget and with the NMDC to provide experts for the amendment of their legislation. Mr. Bharat Shakya, Chairman, Kathmandu Valley FM Broadcasting Forum expressed his view that his organization was positive to provide royalty for lyricists, music composers and singers as well. But he pointed out the need of joint effort of all concerned to finalise the systematic mechanism of royalty determination and collection. Mr. Krishna Gurung from NMDC poured his gratitude towards NCRO for organizing the program and made his commitment to settle down the dispute of royalty through dialogue and interaction with MRCSN and related others. The participants from different broadcasting organizations and also from NMDC had expressed their views in the related subject matters in the program.

The WIPO Digital Agenda

The WIPO Digital Agenda sets out a series of guidelines and goals for WIPO in seeking to develop practical solutions to the challenges raised by the impact of new technologies on intellectual property rights. In the field of copyright, these include issues such as promotion of the WCT and WPPT, the facilitation of e-commerce through protection of audiovisual performances and adaption of broadcasters' rights to the digital era, principles for liability of online service providers, and an appropriate framework for developing business models for the exploitation of copyright in a digital environment. The WIPO Digital Agenda received approval from WIPO's Member States at their General Assembly in September 1999. The agenda is predominantly set out to broaden the participation of developing countries through the use of WIPONET and other means for:

- access to IP information
- participation in global policy formulation, and
- Opportunities to use their IP assets in e-commerce.

(http://www.wipo.int/copyright/en/digital_agenda.htm)

The Protection of Computer Software under Copyright

In the 1970s and 1980s, there were extensive discussions on whether the patent system, the copyright system, or a sui generis system, should provide protection for computer software. These discussions resulted in the generally accepted principle that computer programs should be protected by copyright, whereas apparatus using computer software or software-related inventions should be protected by patent.

Copyright law and patent law provide different types of protection. Copyright protection extends only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts as such, whereas a patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. Copyright protection is formality-free in countries party to the Berne Convention, which means that protection does not depend on compliance with any formalities such as registration or deposit of copies. A patent is generally granted after completing an examination procedure by a government agency. Copyright protection of computer software is established in most countries and harmonized by international treaties to that effect. The law relating to the patentability of software is still not harmonized internationally, but some countries have embraced the patentability of computer software and others have adopted approaches that recognize inventions assisted by computer software.

(<http://www.wipo.int/copyright/en/faq/faq.htm#protect>)

प्रतिलिपि अधिकारको संरक्षणमा निर्वाह गर्नुपर्ने भूमिका र दायित्व

परिचय

साहित्य, गीत संगीत, कला, ज्ञान-विज्ञान, फिल्म र मल्टिमिडिया, कम्प्युटर प्रोग्राम तथा सूचना प्रविधि लगायतका क्षेत्रमा मस्तिष्कको क्रियाशीलताद्वारा मौखिक एवं बौद्धिक रचना सिर्जना गर्ने रचायिता तथा ध्वनिअंकन, प्रस्तुति र प्रसारणको क्षेत्रमा सृष्टालाई कानूनद्वारा प्राप्त हुने एकलौटी अधिकार (Exclusive Rights) लाई प्रतिलिपि अधिकार (Copyright) को रूपमा चिनिन्छ। बौद्धिक सम्पत्ति (Intellectual Property) को एक प्रमुख शाखाको रूपमा रहने प्रतिलिपि अधिकारलाई वास्तविक सिर्जनाकारलाई आफ्ना सिर्जनाको उत्पादन, पुनःउत्पादन, प्रसार, अनुकरण, संयोजन, संशोधन, परिमार्जन, अनुवाद, रूपान्तरण, सार्वजनिक प्रदर्शन, जनसमक्ष प्रस्तुति, प्रसारण र सञ्चार गर्न तथा आफ्नो अधिकार हस्तान्तरण गर्न वा ब्रह्मलमा दिन पाउने गरी प्राप्त हुने समुच्च अधिकार (Bundle of Rights) को रूपमा पनि बुझ्ने गरिन्छ। अर्कोतर्फ, वास्तविक सृष्टाका रचनालाई अंकन, चित्रांकन, अभिनय, संगीत, वादन, गायन लगायतका माध्यमद्वारा जनसमक्ष पुर्‍याउन भूमिका खेल्ने प्रस्तोता (Performer) लाई उनीहरूको प्रस्तुतिमा, प्रसारण संस्था (Broadcasting Organization) लाई उनीहरूको प्रसारणमा एवं ध्वनि अंकन उत्पादक (Producer of Sound Recording/Phonogram) लाई उनीहरूको ध्वनि अंकनमा कानूनद्वारा प्राप्त हुने अधिकारलाई तत्सम्बन्धी अधिकार (Related Rights) भनेर चिन्ने गरिन्छ। Neighbouring Rights पनि भनिने तत्सम्बन्धी अधिकारको पकृति र संरक्षण प्राप्त हुने अवधिमा भने थोरै बढेर भिन्नता रहेको पाइन्छ।

प्रतिलिपि अधिकार (Copyright) संरक्षणको आवश्यकता

प्रतिलिपि अधिकार संरक्षणको लागि गरिएको प्रथम कानूनी व्यवस्था बाहा पाउन विश्व इतिहास कलाउँदै हामी बेलायती अठारौँ शताब्दीको प्रथम दशकमा पुग्नुपर्ने हुन्छ। सृष्टाका सिर्जना संरक्षणको औपचारिक आरम्भको विश्व इतिहास यति पुरानो भएपनि नेपाली इतिहास भने करिब चार दशक पुरानो मात्र छ। वि.सं. २०२२ सालमा पहिलोपटक प्रतिलिपि अधिकार ऐनको उदय भए तापनि करिब अढाइ दशकसम्म सो सप्पत्थी नियमावली बनाउनेतर्फ सरकार उदासीन बस्दा यस क्षेत्रमा खासै काम हुन सकेन। फलस्वरूप सृष्टा, व्यवसायी, प्रयोगकर्ता तथा राष्ट्रले समेत प्रत्यक्ष पगोडा ढंगले नोक्सानी व्यहोर्नुपर्थ्यो। प्रतिलिपि अधिकारको महत्त्व बोध गर्दा यस्तो संवेदनशील विषयको संरक्षणतर्फको प्रयास प्रभावकारी हुन नसकेको देखिन्छ। यसको संरक्षणको आवश्यकतालाई देशानुसार कलाउन सकिन्छ।

- राष्ट्रका अमूल्य निधौका रूपमा रहने बौद्धिक

नारायणप्रसाद अर्याल

सम्पत्ति सम्बद्ध सिर्जनाहरूको उचित संरक्षण गर्नुपर्ने राष्ट्रिय दायित्व एवं जिम्मेवारी पूरा गर्ने।

- सृष्टाको मनोबल उठाई थप सिर्जनातर्फ उत्प्रेरित गराउन।
- सिर्जनाको व्यावसायिक एवं सांजनिक प्रयोग वापत रोयल्टी संकलन गरी त्यसको लाभ सम्बन्धित सृष्टासम्म पुर्‍याई उनीहरूको जीवननस्तरमा सुधार ल्याउन।
- प्रतिलिपि अधिकार सम्बद्ध उद्योगहरूमा लगाती अभिवृद्धि गरी थप रोजगारी सिर्जना गर्न/गराउन।
- थप राजस्व सिर्जनामार्फत राष्ट्रिय ढ्कृतीमा अभिवृद्धि गर्ने।
- नयाँ नयाँ सिर्जना, आविष्कार र रचनाको स्वाद प्रयोगकर्ताहरूलाई बिलाउन।
- आफ्ना सिर्जना उपर सृष्टालाई प्राप्त हुने आर्थिक तथा नैतिक अधिकारको पन्थामति बिलाउन।
- सिर्जनाको अतिथिउत् उत्पादन, बिक्री वितरण र प्रयोगलाई नियन्त्रण गरी व्यापारका विसंगति र अवरोधलाई घटाउन।
- नयाँ सिर्जना र आविष्कारको अन्तर्राष्ट्रियस्तरमा बिक्री तथा अतिथिउत् प्रयोग गरि गराई विदेशी मुद्रा आर्जन गर्न एवं अन्तर्राष्ट्रिय जगतमा राष्ट्रिय चिनारी बढाउन र सम्मानको अभिवृद्धि गर्न।

विभिन्न निकायहरूको भूमिका र दायित्व

एक्काइसौँ शताब्दीको आजको विश्व उवारीकरण, खुलापन र निर्जीकरणको गथ गथ्थ्याउँदै अग्रतार छ। सरकारको भूमिका "कल्याणकारी"बाट निधमनकारी, प्रवर्द्धक र उत्प्रेरकतर्फ परिवर्तित भएको छ। विकास लगायतका अन्य क्रियाकलापको सम्पादनका लागि आवश्यक कानूनी पूर्वाधारको सिर्जना गरिदिने निजी तथा गैरसरकारी क्षेत्रलाई अगाडि लगाई सरकार आफ्नो निधमनकारी दायित्व निर्वाहका खातिर अग्रसर हुने परिपाटीको आरम्भ भएको छ। अर्थात् सरकार एकैको प्रयाश अपर्याप्त हुने निजी क्षेत्र, गैरसरकारी क्षेत्र, नागरिक समाज र सर्वसाधारण सबैको संयुक्त प्रयाशद्वारा मात्र जनसत्के कार्य सम्पादन गर्न वा राष्ट्रिय लक्ष्य हासिल गर्न सकिने दृष्टिकोणले प्रथम पाउँदै गएको छ। प्रतिलिपि अधिकारको संरक्षणको लागि पनि उल्लेखित सबै पक्षले देशानुसारको भूमिका र दायित्व निर्वाह गर्नुपर्ने देखिन्छ।

नेपाल सरकार

चन्त्रिपरिषद्, संस्कृति तथा राष्ट्रिय पुनःसंरचना

मन्त्रालय, नेपाल प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालय, प्रहरी, सरकारी बौक्ल, अदालत, भन्सार लगायतका निकायहरू, जो सरकारी निकायको रूपमा क्रियाशील छन्, ले देशानुसारको दायित्व निर्वाह गर्नुपर्ने हुन्छ।

- नेपाल प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालयलाई अर्ध-व्यापिक निकायको रूपमा विकास गर्न उक्त अधिकारको व्यवस्थासहित विद्यमान प्रतिलिपि अधिकार कानून संशोधनको प्रक्रिया तुरुन्त आरम्भ गर्ने।
- नेपाल प्रतिलिपि अधिकार रजिष्ट्रारको कार्यालयको संरचनात्मक परिवर्तन गरी राष्ट्रिय प्रथम श्रेणीको पदाधिकारी प्रमुख रहने व्यवस्था गर्ने तथा विद्यमान दरवन्दी पुनरावलोकन गरी वास्तवमै अन्य विभाग सरहको संरचना कायम गर्ने, कार्यरत कर्मचारीको क्षमता अभिवृद्धिको लागि आवश्यक व्यवस्था गर्ने र प्रथम चरणमा पाँच विकास क्षेत्रमा क्षेत्रीय कार्यालय खोल्न पहल गर्ने।
- नेपाल प्रहरीभित्र एउटा छुट्टै Copyright Cell स्थापना गर्ने, रचनाको अनधिकृत उत्पादन, बिक्री वितरण र गैठारीमा नियन्त्रणका लागि निरन्तर कडा निगरानी गर्न लगाउने, प्रहरी लगायत अन्य सबै तालिम प्रदायक संस्थाका तालिम कार्यक्रममा एवं विद्यालय र कलेजस्तरका पाठ्यक्रममा धो विषयलाई पनि समावेश गर्ने लगाउने।
- प्रतिलिपि अधिकार कानून कार्यान्वयन गर्ने विभिन्न निकायहरूबीच समन्वय कायम गर्न सबै निकायका प्रतिनिधि रहने गरी एउटा उच्चस्तरीय संयन्त्रको निर्माण गर्ने।
- बौद्धिक सम्पत्ति र प्रतिलिपि अधिकारसँग सम्बन्धित मुद्दाहरूलाई प्राथमिकताका साथ लिने एवं यथासमयमै टुङ्ग्याउने परिपाटीको विकास गरी अनधिकृत उत्पादन तथा पैठारी, बिक्री वितरण र प्रयोगलाई निदृष्टाहित गर्न आवश्यक व्यवस्था गर्ने।
- व्यवसायी, सर्वसाधारण, प्रयोगकर्ता एवं कानून कार्यान्वयन गर्ने निकायमा कार्यरत पदाधिकारीहरूलाई समेत सुसूचित तथा दिक्षित गर्ने खालका सचेतनामूलक, जानबुद्धक र अन्य उपयोगी सूचना, विज्ञापन निर्माण तथा प्रसारण गर्ने, तालिम, गोष्ठी, सेमिनारहरू संचालन गर्ने।
- बौद्धिक सम्पत्ति सम्बन्धी अन्तर्राष्ट्रिय प्रमुख नियमन निकाय World Intellectual Property Organization (WIPO) को प्रमुख पहलमा भएका अन्तर्राष्ट्रिय महासन्धि, सन्धि तथा सम्झौताहरूको पक्ष हुँदा हासिल गर्न सकिने लाभहरूको पहिचान गरी सो को लागि आवश्यक पहल गर्ने।
- विभागत रूपमा रोयल्टी संकलन संस्थाहरू (CMOs)

सिर्जनामाथि रोयल्टी प्राप्त गर्ने सृष्टाको अधिकारको संरक्षण गरौं।

को गठन गर्ने सम्बन्धीत क्षेत्रका स्रष्टाहरूलाई उत्प्रेरित गर्ने र रोयल्टी निर्धारण, लेखन एवं वितरणको सर्वापेक्षित विधि निर्धारण गरी गराई वास्तविक स्रष्टाले लाभ लिन पाउने व्यवस्थाको प्रत्याभूति गर्ने।

- विद्यमान कानूनमा Berne Convention एवं अन्य अन्तर्राष्ट्रिय महासन्धि अनुकूल हुन आवश्यक देखिएका तर हानसम्म हुन नसकेका प्रावधानहरूमा आवश्यकतानुसार परिमार्जन गर्ने।

व्यवसायी (पुस्तक प्रकाशक, ध्वनिअंकन उत्पादक, विक्रेता आदि)

- स्रष्टासँग लिखित सम्झौता गरेर मात्र उनीहरूका सिर्जनाको उत्पादन/प्रकाशन गर्ने।
- प्रतिलिपि अधिकारजन्य सामग्रीको पुनःउत्पादन/पुनःमुद्रण सिर्जनाकारको सहमतिमा मात्र गर्ने, सहमतिमन्त्रा बढी प्रति पुनःउत्पादन नगर्ने।
- अधिकार धनीको सहमति नलिई आफ्नै हुगले सिर्जनाको संग्रोधन, परिमार्जन वा खण्डीकरण गरेर निजको ख्याति वा प्रतिष्ठा गिराउने कार्य नगर्ने।
- एउटा प्रकाशक/उत्पादकले प्रकाशन गरेको सामग्रीलाई गैरकानूनी ठहर्ने गरी अर्को रूपमा प्रकाशन/उत्पादन नगर्ने।
- स्रष्टा एवं प्रकाशकको नाम नै उल्लेख नगरी सहित्यिक कृति प्रकाशन नगर्ने, नीति संगीतजन्य रचनाको नयाँ रूपमा उत्पादन गर्दा त्यसका सबै

पक्ष (गीतकार, संगीतकार, गायक) को अनुमति लिने।

- उत्पादक संस्था आफैले गैरकानूनी उत्पादन नगर्ने, विक्रेताले त्यसो गरे नगरेको थाहा पाउन सरकारी निकायको सहकार्यमा निरन्तर निगरानी र अनुगमन गर्ने।
- प्रतिलिपि अधिकार धनीको सम्मान गर्ने तथा गैरकानूनी उत्पादन, विक्री वितरण र प्रयोगलाई रोक्न सक्षम हुने खालका सूचनामूलक सामग्रीहरूको निर्माण एवं प्रकाशन गर्ने।
- अन्य पूर्व निर्मित/प्रकाशित सामग्रीको त्रुटि गरीर चलचित्र बनाउने परिपार्टीको अन्त्य गर्ने।
- फोटोकॉपी, डिभिड, डाउनलोड, नक्कल तथा चोरी जस्ता क्रियाकलापबाट टाढा बस्ने।
- व्यावसायिक आचारसंहिताको पालना, नैतिकताको पक्षपोषण एवं प्रतिलिपि अधिकार सम्बन्धी कानूनद्वारा सबैलाई प्राप्त अधिकारप्रति सचेत रहने।

स्रष्टा/सर्जक

आफ्नो अधिकारप्रति सचेत रहने र उल्लंघन भएमा कानूनी उपचार खोज्न अग्रसर हुने।

- अर्को रचनाको अनधिकृत प्रयोग गर्ने नहुनेतर्फ सजग बस्ने।
- आफ्ना रचना अरुलाई प्रयोग गर्न दिँदा अनिवार्य रूपमा सम्झौता/सहमति गरेर मात्र दिने।

- विभागत रोयल्टी संकलन संस्थाहरूको गठन र रोयल्टी निर्धारण एवं वितरणको मापदण्ड तय गर्ने तदारकता देखाउने।

- सिर्जना उपरको आर्थिक तथा नैतिक अधिकारप्रति पूर्णतः चनाखा बस्ने।

- उत्पादित सिर्जनालाई बर्ता गराई भविष्यमा चोरी वा गैरकानूनी उत्पादन भएमा प्रमाणको रूपमा पेश गर्ने योग्य बनाउने।

प्रयोगकर्ता/सर्वसाधारण

- बौद्धिक सम्पत्तिजन्य रचनाको सक्कली प्रति मात्र खरीद गर्ने।
- रचनाको अनधिकृत उत्पादन, पैठारी र विक्री वितरण भएको देखेमा वा हुन लागेको थाहा पाएमा सम्बन्धित सरकारी एवं गैरसरकारी निकाय वा व्यक्तिहरूलाई जानकारी दिने।
- वास्तविक स्रष्टाहरूको मनोबल उन्नत तथा उन्नत जगहमा स्थानीयस्तरमा उनीहरूको सम्मान तथा आदरभाव गर्ने उपाय अवलम्बन गर्ने।
- प्रतिलिपि अधिकारजन्य सामग्रीको सार्वजनिक तथा व्यापारिक प्रयोग गर्नु पूर्व सम्बन्धित अधिकार धनीको अनुमति लिने र आवश्यक रोयल्टी प्रदान गर्ने।
- पठनपाठन, सन्काय, व्यक्तिगत तथा लाइब्रेरी पयोजन जस्ता स्ववर्षमा रचनाको प्रयोग गर्दा उचित प्रयोगको सिद्धान्त (Principle of Fair Use) लागू हुनेतर्फ सचेत रहने।

Q-A Column

1. What is the difference between copyright and intellectual property rights?

The term intellectual property rights includes copyright but also covers a wider range of rights such as trade-marks, patent, or performance and recording rights. Effectively copyright is a sub-set of intellectual property rights. Intellectual property rights is the collaboration of copyright and industrial property rights.

2. What happens when it is unclear who holds copyright?

Ownership of a physical object does not convey ownership of copyright and the situation is indeed more complicated. It is the matter of research for the purpose of identifying the ownership of copyright. The creator may not always be the copyright holder. This can arise through two situations:

- The person who created the piece of work was employed at the time, and the work was created as part of his/her

duties. In this situation, the copyright owner is the employer.

- The original creator may have sold, given or bequeathed the copyright to one person, but sold, given or bequeathed the physical object to another person. In this situation, the owner of the physical object does not own the copyright, the person who bought or was given the copyright does.

3. What rights do copyright owners have under the Copyright Act?

The Nepalese Copyright Act, 2002 grants a number of exclusive rights to copyright owners including:

- Reproduction right – the right to make copies of a protected work.
- Distribution right – the right to sell or otherwise distribute copies to the general public.
- Right to create adaptations -- the right to prepare new works based on the

protected work, and

- Performance and display rights – the rights to perform a protected work or to display a work in public. These bundle of rights allow a copyright owner to be flexible when deciding how to realize commercial gain from the underlying work; the owner may sell or license any of the rights on the basis of agreement.

4. What is the Berne Convention?

The Berne Convention is the latest multi-national agreement on copyright. Nepal acceded to this convention on January 11, 2006. Basically, this convention allows a certain minimum level of copyright protection in all signatory countries for any person with a copyright. While some laws & levels may be different in other countries, the creators are guaranteed at least certain protections. Countries that have not signed to the Convention offer no reciprocal agreements though the degree of Copyright violation is rampant in these countries.

Rationale.....

Information Technology. The High Level Commission for Information Technology (HLCIT) has set the vision to have information society in Nepal with access to information and technology to entire population of Nepal. Central database, National Global ID number and Machine Readable Passports are some the ongoing programs of HLCIT. Recently, with the cooperation of Korean International Cooperation Agency Government Integrated Data Center and Training Center has been established in Nepal.

3.2 Copyright Act 2002 in Section 2(a)(10) and Section 3 have incorporated computer programs and databases in which copyright subsists. Equally, the Electronic Transactions Act 2006 has also defined asymmetric crypto system, computer, computer database, software etc. and to some extent such prerequisites have been already existed in Nepal only effective implementation despite the lack of hi-tech infrastructural development. It has stipulated electronic record and digital signature, network service,

offence relating to computer, information technology tribunal, time limitation to file a complaint, Nepal Government to be a Plaintiff etc

Concluding remark: It is clearly evident that impact of multilateralism and technology is extremely pervasive and complex. Novel approaches and problems are possibly emerging or invalidating concerning the traditionally established laws with the growth of cybernetic, communication and information technologies. In Nepal, there is the existence of ineffective implementation of existing laws and weak scientific and technological infrastructure. As there exists numerous constraints like resource shortages, weak intellectual property infrastructure, ineffective law enforcement and fragile legal protection system of creative works, not well-built scientific and technological development. The various forms of piracy in Nepalese market are prevalent i.e reproduction of copyrighted works, large scale photocopying of original works without authorization of copyright owners, lack of reprography society, illegal access to cyber property including up-loading and downloading such property from Internet, computer hardware sellers provide software along with computer hardware to the

buyers without the authorization of software right holders, reproduction and sell of CDs, VCDs having musical works and/or audio-visual works as well as selling them in cheap price without authority of copyright owners, sale of pirated products and so on. At the end of this article, it may be expedient to adhere to the WCT which provides protection of computer program and original database by copyright and Nepal may request WIPO for its support in the area of technical matters as well as in modification of relevant laws and enacting required computer and digital legislation.

E-Commerce and Copyright

The emergence of new digital information technologies, such as the Internet, has a significant impact on copyright and related rights, and the copyright industries such as music, film and software throughout the world.

The international copyright laws have been updated for the digital age through the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT), collectively known as the "WIPO Internet Treaties" and the ongoing work of the Standing Committee on Copyright and Related Rights, in the field of protection of audiovisual performers and broadcasting organizations. The purpose of these treaties is to direct the member states of WIPO for the adoption of legal trends in the national laws.

<http://www.wipo.int/news/en/newsfeed.jsp>

WIPO Member States Review Key Copyright Issues

WIPO member states meeting under the auspices of the Standing Committee on Copyright and Related Rights met from November 3 to 7, 2008 in Geneva to review a number of key copyright issues. The meeting examined the current state of play WIPO's work on limitations and exceptions, the protection of audiovisual performances and the protection of broadcasting organizations. Discussions also featured the question of access to copyright-protected content by visually impaired persons.

(http://www.wipo.int/pressroom/en/articles/2008/article_0059.html)

How can an infringement be tested?

Some Examples

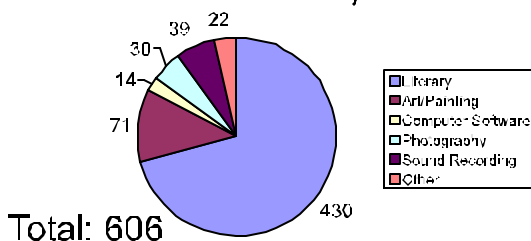
Infringement:

- reprinting an article without the copyright owner's permission;
- playing records at a dance without the copyright owners' permission;
- giving a public performance of a play without permission;
- photocopying articles for a class of students without permission;
- taping your favorite band at a music concert without permission.

Not infringement:

- quoting a few lines of the article in a research paper (fair dealing);
- playing records at home;
- giving a public performance of a play by Shakespeare (no copyright exists/public domain);
- obtaining permission from the author and paying a fee to him or her (if requested) in order to use an article;
- borrowing a musical tape from a friend to copy onto a blank tape for private use (a royalty payment to the owner of the song rights has been paid when the blank tape was purchased).

Registration of Creations up to November 15, 2008



सेवाप्रदायक संस्थाहरूबाट रिङ्गटोन उपलब्ध भराउँदा ध्यान दिनुपर्ने कुराहरू

- कुनै रचनाको नैतिक तथा आर्थिक अधिकार सो को रचयितामा मात्र निहित हुने व्यवस्था प्रतिलिपि अधिकार ऐन, २०५९ ले गरेको छ। नैतिक अधिकार हस्तान्तरण हुन नसक्ने र रचनाकारको जीवनभर र मृत्युपश्चात् पनि यस्तो अधिकारको संरक्षण हुने व्यवस्था ऐनले गरेको छ।
- रचनाकारले आफ्ना निहित आर्थिक अधिकार सम्झौताद्वारा अर्को पक्षलाई हस्तान्तरण गर्न सक्ने व्यवस्था ऐनमा छ।
- मोबाइलमा प्रयोग हुने सांगीतिक धुन सेवा प्रदायक संस्थाले सेवाग्राहीसम्म पुर्‍याउँदा त्यस्तो सांगीतिक धुनमा आर्थिक अधिकार प्राप्त पक्षको अनिवार्य सहमति लिनु पर्दछ।
- विदेशी गीत/संगीतको धुन प्रयोग गर्दा समेत उल्लेखित पक्षमा ध्यान दिनु जरुरी हुन्छ।
- सेवा प्रदायक संस्थाले लिखित सम्झौताको माध्यमद्वारा त्यस्ता सांगीतिक धुनको प्रयोग मोबाइलमा गर्ने विषयमा सम्बन्धित पक्षसँग अधिकार हस्तान्तरण गराई लिनु सक्छन्।
- कुनै पनि गीत/संगीतको आर्थिक अधिकार ध्वनिअंकन संस्थामा मात्र निहित रहेको भए त्यस्ता गीत/संगीतको प्रयोग गर्दा सम्बन्धित संस्थासँग अनिवार्य सम्झौता गरेर मात्र सांगीतिक धुनहरू प्रयोगमा ल्याउनु पर्दछ।
- मोबाइलमा प्रयोग हुने सांगीतिक धुनमा संगीतकारको अधिकार संरक्षित हुन्छ।
- विना इजाजत सांगीतिक धुनहरू सार्वजनिक एवं व्यापारिक प्रयोजनार्थ प्रयोग गर्नु गैरकानूनी कार्य हुन्छ।
- मोबाइलमा गीत प्रयोग गर्नुलाई सम्बन्धित गीतकार/संगीतकार/गायकको लिखित सहमति अनिवार्य रूपमा लिनुपर्दछ। त्यस्तो गीतमा चल्चित्र निर्माता वा ध्वनिअंकन उत्पादक संस्थाको अधिकार स्थापित हुने गरी सम्झौताद्वारा व्यवस्था गरिएको भए त्यस्ता चलचित्र निर्माता/ध्वनिअंकन उत्पादक संस्थाबाट सहमति लिनुपर्छ।

Nepal Copyright Registrar's Office

Kalikasthan, Kathmandu, Nepal

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E-mail: info@nepalcopyright.gov.np

Web Page: www.nepalcopyright.gov.np

प्रतिलिपि अधिकार बुलेटिन नेपाल प्रतिलिपि अधिकार रजिस्ट्रारको कार्यालयबाट निशुल्क वितरण गरिन्छ। यस बुलेटिनका सम्बन्धमा यदि तपाईंको कुनै जिज्ञासा वा सुझाव छ भने हामीलाई यस ठेगानामा सम्पर्क गर्न तयيار हुनुहोस्।

सम्पादकीय

स्रष्टाको सम्मान नै राष्ट्रको सम्मान



वीरबहादुर राई
सम्पादक

विश्वका प्रत्येक मुलुकहरूले स्रष्टा र सर्जकको रचनाको संरक्षणको कानूनी व्यवस्था गरेका छन्। विशेषतः अन्तर्राष्ट्रिय कानूनको रूपमा Berne Convention को निर्माण सम्पन्न सहिष्णुता तथा कलात्मक धिक्काको लागि Exclusive अधिकारको व्यवस्था ती मुलुकहरूले गरेका छन्। नेपालले पनि तमाम स्रष्टा, सर्जकको हित संरक्षण गर्न र उनीहरूको सिर्जनाको विज्ञता एवं सही सदुपयोग गर्नको लागि प्रतिलिपि अधिकार ऐन र नियमको व्यवस्था गरि उनीहरूको पक्षमा काम गर्दै आएको छ। प्रतिलिपि अधिकार ऐन र नियमले साहित्य, कला, ज्ञान, विज्ञानको क्षेत्रमा मौलिक एवं बौद्धिक रूपमा सिर्जना गरिएका रचना, प्रस्तुति, ध्वनिअंकन अदिको क्षेत्रमा स्रष्टालाई एकलौटी अधिकार प्रदान गरेका छन्। सिर्जना भन्ने विषय निकै महत्वपूर्ण हुन्छ। स्रष्टाको लाने त्याग एवं अथक प्रयास पाँछ मात्र एउटा नौलो सिर्जनाको जन्म भएको हुन्छ। नेपालका स्रष्टा तथा सर्जकको लागि पनि यसको महत्वको ख्याल गर्दै एवं उनीहरूको योगदानको कदर गर्दै तीनको सिर्जनालाई संरक्षण गर्ने तथा अनि सर्जकको हितका लागि पनि प्रतिलिपि अधिकार सम्बन्धी कानून निर्माण भएको छ र सरकारी संगठनको रूपमा NCRO को जन्म भई कार्यरत रहेको छ। नेपालका स्रष्टा र सर्जकको हितका पक्षमा हालसम्म सरकारी, गैर सरकारी तथा अन्य निक यवाट संशक्त र संयुक्त रूपमा कार्य हुन सकेको छैन। सर्जक तथा स्रष्टाले लागी समय लगाएर सिर्जना गरेका कृति तथा रचनालाई आजका उन्नत प्रौद्योगिकी दुरुपयोग गरि नकारात्मक रूपले उपयोग गर्न सहज भएको पड्ने गरेको छ। कृतिलाई फोटोकपी गरिदिने, नक्कल गर्ने (Copy), चोरी गरि आर्थिक लाभ लिने जस्ता Piracy जस्तै विषयले स्रष्टा र सर्जकलाई हानी पुर्‍याएका छन्। स्रष्टाको लागि राज्यबाट सिमित कार्य गर्दै आएको भए पनि त्यसले स्रष्टा तथा सर्जकको अधिकार पूर्ण रूपमा सुरक्षित हुन सकेको छैन। राज्यबाट हजारी भन्निम दिनहुँ जमाल्छन् तर ती मध्ये सीमित व्यक्तिले मात्र मौलिक र बौद्धिक सिर्जना गर्न सकेको पाइन्छ। त्यस्ता व्यक्ति, स्रष्टा र सर्जक र त्यसको समाप्तको रूपमा रहेका हुन्छन्। तैयान् स्रष्टा र सर्जकले आफ्ना रचनाको सही मूल्य नपाउनुका साथै अनेकन धिक्कतिहरूबाट पीडित हुनु परेको छ। स्रष्टा र सर्जकको लागि राम्रो वातावरणको निर्माण हुन सकेमा उनीहरूका सिर्जना र ज्ञानको कारणबाट राज्यले सही दिशादर्श गर्न सक्छ। आज राष्ट्रले तमाम स्रष्टाको सही मूल्य दिन र सम्मान गर्न नसक्दा जतिपथ राम्रा विषय पनि ओझेलमा परेका छन्। असल रचनाहरूले सही मूल्य पाउन सकेका छैनन्। त्यस्ता कार्य रोक्न स्रष्टा र सर्जक आफै पूर्ण रूपमा सशक्त हुँदैछन्। उनीहरूलाई संगठित हुने र सामाजिक हितको पक्षमा आवाज बढ्ने समय र फर्सद पनि नहुन सक्छ। उनीहरू समय पछिपछि केवल सिर्जना र रचनाको निर्माण गरि बौद्धिक रूपले अघि बढ्नमा तल्लीन हुने गर्दछन्। त्यसकारण उनीहरूको अधिकार र सिर्जनाको संरक्षण गर्ने कार्यमा राज्यको अहं भूमिका रहेको हुन्छ। राज्य उनीहरूको लागि यी विषयहरूमा संवेदनशील नभएको खण्डमा अराजकता, असहिष्णुता र कानूनी राज्यको उल्लंघन समेत हुन जान्छ। स्रष्टा र सर्जकको रचना र सिर्जनाको अस्मृत्युक्त र अतहेलता गर्नु नागरिक, समाज र राष्ट्रकै लागि अति हो। तसर्थ, सन्तुष्ट स्रष्टा र सर्जकको अतमैदखि सम्मान गरि राष्ट्रको गौरव बढाउनु जरुरी छ। तसर्थ भन्ने गरिन्छ कि स्रष्टाको सम्मान नै राष्ट्रको सम्मान हो।

Mail to:



Government of Nepal
Ministry of Culture & State Restructuring
Nepal Copyright Registrar's Office

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प्रतिलिपि अधिकार बुलेटिन

Copyright Bulletin

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Nov. 15, 2008

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यदि तपाईंसँग वैदिक सम्पत्ति, प्रतिलिपि अधिकार एवं तत्सम्बन्धी अधिकारका विषयमा कुनै कानूनी वा अन्य जिज्ञासा भएमा आफूलाई लोभोका ज्ञानहरू हामीलाई लेखी पठाउनुहोला । यस बुलेटिनका अगामी अङ्कहरूमा तपाईंको प्रश्नहरूको उत्तर दिने प्रयास गर्नेछौ ।

धन्यवाद ॥

Dialogue With Nepal Music Development Committee



A three-members committee constituted as per the decision of the then Ministry of Culture, Tourism and Civil Aviation dated on August 18, 2008 to hold dialogue with Nepal Music Development Committee (NMDC) performed its duty as the Terms of Reference (TOR) had determined by the Ministry. The other members of the committee that was led by Mr. Jala Krishna Shrestha, Joint-Secretary, of the then Ministry of Culture, Tourism and Civil Aviation (MOCTCA) were Mr. Ram Prasad Bhattarai representing the same Ministry and Mr. Narayan Prasad Aryal from Nepal Copyright Registrar's Office (NCRO). Nepal Music Development Committee (NMDC), an umbrella organization of different music institutions which was struggling for the rights of Copyright holders, had submitted its nine-points demand addressing to the then Honorable Minister for Culture, Tourism and Civil Aviation and the Registrar of Nepal Copyright Registrar's Office as well. The Committee constituted by the government held dialogue with the members of NMDC in different stages and reached at a conclusion. The Committee agreed to give necessary direction to Music Royalty Collection Society Nepal (MRCSN) for the amendment of its legislation so that it would be possible to incorporate the performers (singers) within the society. NMDC mainly was struggling for the formation of High Level Commission to study about the structural aspect of Nepal Music Development Board that they wanted to establish and to give pressure to the

government as well as MRCSN to launch the suitable royalty collection and distribution mechanism as soon as possible. After the dialogue with the committee, NMDC postponed all its programs which were against of all the related governmental & non-governmental organizations. The committee submitted its report to the then Ministry of Culture, Tourism and Civil Aviation including all the things as the Terms of Reference (TOR) had determined.

Interaction Program With Stakeholders

Nepal Copyright Registrar's Office (NCRO) organized a one day interaction program in Kathmandu on August 29, 2008 with its stakeholders especially to discuss about the possibility of inclusion of performers (singers) in the legislation of Music Royalty Collection Society Nepal (MRCSN). The program was also intended to find out the way by which Music Royalty Collection Society Nepal would start the collection of royalty as soon as possible. At the very beginning, Mr. Narayan Prasad Aryal, for Registrar, Nepal Copyright Registrar's Office highlighted the objective of the program and poured his welcome to all the guests and participants for their presence in the

Cont. on Page 4

Caution is the eldest child of wisdom. -Victor Hugo

Rationale and Pre-requisites to Accede to WIPO Copyright Treaty

Dr. Bal Bahadur Mukhia

1. Background:

Copyright originates from man's intellectual creativity. A well structured intellectual property system provides rights which can be a great stimulus to economic development. Copyright and related rights have gained momentous position in recent times due to the rapid scientific and technological development. With the growth of silicon chip based technology it has become possible to interact with computers and peoples throughout the world. The Internet has grown significantly in the present day world. In the present day world no one denies that the field of copyright and related rights has expanded dramatically as technological developments have brought new ways of disseminating creations throughout the world through various forms of communication as satellite broadcasting, compact discs (CD), DVD and the Internet. Global advanced information technologies, virtual networks, powerful computers, convergence of computers and television, smarter technology, multi-media technologies are developing at faster pace. Today, we witness the digitizing the data and find most of the things in the digitized form. Computer Software is inherently different from the conventional manufacturing products. Once it is developed it can be easily and cheaply reproduced. Due to its intangible nature, it flows across national boundary more easily than conventional commodities. Thus, this nature of software while simplifying global marketing makes it susceptible to illegal copying and creates a greater need for international protection.

2. Justification for Nepal to accede to WCT:

2.1 Major set of links among national systems is supplied by international treaties on the subject of copyright and related rights. It will help to facilitate protection of intellectual property and provide legal basis to collect royalty from other countries after becoming member of copyright treaties. Beginning in the 19th century many countries took their first steps toward protecting foreign works on a country to country basis. Another set of international links is created by trade agreements. In recent years, intellectual property has been recognized as an important component of trade between countries, and copyright provisions have been included in a number of their agreements on trade issues. For securing minimum copyright recognition and protection in other member countries on reciprocal basis it may be justified for Nepal to join international copyright treaty and conventions including WCT.

2.2 Technological measures, such as encryption are essential tools to stop digital piracy, it for this reason that the WIPO Copyright Treaty and the WPPT the most recent international treaties in the copyright and related rights fields contain special provisions which prohibit circumvention of such measures of technological protection for copyright work (Kamil Idris, IP: A Power Tool for Economics: 25-26). Nepal showed commitment to ratify the related Conventions including WCT, WPPT at the time of signing the membership of World Trade Organization and ratifying it on April 23, 2004. Furthermore, computer programs and multi-media productions, types of works not listed in the Berne Convention, but they come within the notion of creations in literary, scientific and artistic domain. Computer programs are protected under the copyright laws of countries as well as WIPO Copyright Treaty, 1996. Copyright Act 2002 of Nepal also has mentioned protection of computer programs and databases. Because of the aforesaid reasons it would be better for Nepal to adhere to WCT.

2.3 As Nepal has already become the member of WIPO which is the specialized agency of the United Nations and responsible for the promotion of intellectual property throughout the world through cooperation among States as well as for the administration of various multilateral treaties dealing with legal and administrative aspects of intellectual property, then why Nepal should refrain from adhering to WCT.

2.4 The preamble of WIPO Copyright Treaty (WCT), December, 23, 1996 apparently states to develop and maintain protection of the rights of authors in their literary and artistic works in a manner as effective and uniform as possible. WCT has mentioned that this Treaty shall not have any connection with treaties other than the Berne Convention, nor shall it prejudice any rights and obligations under any other. The WIPO Copyright Treaty (WCT) extends copyright protection to two additional subject matter viz. (i) computer programs and (ii) compilations data or other material (data bases) in any form which reason of the selection or arrangement of their contents constitute intellectual property. And it grants new rights corresponding to the new forms exploitation of works in the digital environment. Because of the aforementioned important provisions of WCT, Nepal may obtain benefit in promoting and protection of computer programs and databases by implementing the existing laws and modifying the laws in compliance of the provisions of WCT.

3. Pre-requisites of Nepal to adhere to WCT:

3.1 Development of communication and information started in Nepal since 1971. The application of computer and their commercialization started in Nepal in 1980s but only in 1990s computers started to become popular. Internet began in 1995 after Mercantile Communications started Internet Service. Information Technology Policy 2000 has set the vision of placing Nepal in the Global Map of

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af]msf]sf/Of ; d]j osf]cefj xg u0{
sfgg]sf] kfej sf/L sfofj ogdf ; d:of
/xsf]5 .

; wf/sf nflu cj ndag ug]kg]klfx?M

; iof / ; hsf]klfdf sfo{ug]f]nflu ; a9]
; dfq ?kdf ; xof / kfyldstf lbg h?/L 5,
h; sf]xn pknAwtf 5g\ . t/ klg ; fdfot
lgg ljifox?df wofg s]lxt ug] ; sxf]v08df
s]l xg; dd ; wf/ ug] ; ls65 .

• ; /sf/n]kltlnk clwsf/ ; Da6wl Pj]sf]
kfej sf/L sfofj og / o; ; u ; Dal6wt
sfof]nfn0{pRr kfyldstf kfp ug] .

- ;Da4 ; /f\$ /j fnf alr ; d\$ o, c\$ /lqmf\$; fy) k\$ tlnk clwsf / ; Da\$wl sfg\$sf] k\$ f] sf /l sf\$ f] og\$sf] nflu kof\$ t ; f] , ; fwg / blf hg\$ /lqmf\$] j] sf ; ugI.
- lj le\$g d\$ qfno / lj efudf k\$ tlnk ; Da\$wl Cell sf] u7g u /l ; a) d\$ qfno alr ; d\$ j ofds \$ kdf k\$ tlnk clwsf / ; Af ofsf] sf\$ f] ; eQm \$ kdf ugI.
- g\$ fn k\$ tlnk clwsf / /lhi\$ /sf] sf\$ f] honf\$ {cw\$ oflos lgsfosf] \$ kdf lj sf ; ugI.
- sfg\$ l b08xlg\$ tnf\$ {lg /fs /of ug{ sfg\$ sf\$ f] og ugI lgsfonf\$ { ; lfd / blf agpg] ; fy) tl lgsfox\$ nf\$ {hj fkb\$ l ; d] agpg] .
- ; /sf /n] k\$ f /k] f /sf] sf\$ f] onf\$ {jofkstf lbg] .

lj 1fg / k] l lwsf] lj sf ; / k\$ l tnf\$ { ; sf / fids \$ kdf ; j] lsf / ug{ ; l\$ 5 . t / o ; sf] sf / of xfdl alr r\$ f] l klg ykPsf 5g . o : tf r\$ f] l ; u h\$ w / ; dfwg ug\$ f] nflu g\$ fn k\$ tlnk clwsf / /lhi\$ /sf] sf\$ f] honf\$ { ; fy) ; Da4 ; f\$; h\$ / t ; Da\$wl clwsf / ePsf ; d\$ alr xft\$ dfnf] u / l cl3 a9kg] c] ; yf / x\$ f] 5 . To ; \$ / ; /sf /n] ; f\$ / ; h\$ eg\$ f / fids\$; Dkl\$ x\$ V pglx\$ sf] ; Ddfg jf : t jdf / fids\$; Ddfg x\$ f] e\$ g] lj ifonf\$ { a\$ h ; /sf / l gll t / sf\$ f] cull8 a9pg' kb\$. ; f\$ tyf ; h\$ sf] ; xl ; Af ofsf] nflu sf\$ f] honf\$ { ; fy) ; Da4 ; a ; /sf / l , u\$; /sf / l / ; /f\$ / j fnfx\$; Ps h6 e\$ {cl3 a9\$ f pglx\$ sf] ; xl ; Af of x\$; Sb5 h ; n] / fids\$; Ddfg klg a9\$; Sb5 .

Interaction Program.....

program. Mr. Nagendra Prasad Ghimire, for Secretary of the then Ministry of Culture, Tourism and Civil Aviation made his commitment to allocate additional budget for MRCSN to finalize the process of royalty collection and amend its legislation including the performers as well. He requested Nepal Music Development Committee to assist MRCSN for the amendment of its legislation. Mr. Jala Krishna Shrestha, Joint Secretary from the same Ministry requested all the participants representing different broadcasting organizations to be careful about the right of copyright owners that they get in their creations. Mr. Yadav Kharel, Chairman of MRCSN clarified about the situation of his society and his effort to finalize the procedure of royalty determination, collection and distribution. He asked for help with the government to allocate additional budget and with the NMDC to provide experts for the amendment of their legislation. Mr. Bharat Shakya, Chairman, Kathmandu Valley FM Broadcasting Forum expressed his view that his organization was positive to provide royalty for lyricists, music composers and singers as well. But he pointed out the need of joint effort of all concerned to finalise the systematic mechanism of royalty determination and collection. Mr. Krishna Gurung from NMDC poured his gratitude towards NCRO for organizing the program and made his commitment to settle down the dispute of royalty through dialogue and interaction with MRCSN and related others. The participants from different broadcasting organizations and also from NMDC had expressed their views in the related subject matters in the program.

The WIPO Digital Agenda

The WIPO Digital Agenda sets out a series of guidelines and goals for WIPO in seeking to develop practical solutions to the challenges raised by the impact of new technologies on intellectual property rights. In the field of copyright, these include issues such as promotion of the WCT and WPPT, the facilitation of e-commerce through protection of audiovisual performances and adaption of broadcasters' rights to the digital era, principles for liability of online service providers, and an appropriate framework for developing business models for the exploitation of copyright in a digital environment. The WIPO Digital Agenda received approval from WIPO's Member States at their General Assembly in September 1999. The agenda is predominantly set out to broaden the participation of developing countries through the use of WIPONET and other means for:

- access to IP information
- participation in global policy formulation, and
- Opportunities to use their IP assets in e-commerce.

(http://www.wipo.int/copyright/en/digital_agenda.htm)

The Protection of Computer Software under Copyright

In the 1970s and 1980s, there were extensive discussions on whether the patent system, the copyright system, or a sui generis system, should provide protection for computer software. These discussions resulted in the generally accepted principle that computer programs should be protected by copyright, whereas apparatus using computer software or software-related inventions should be protected by patent.

Copyright law and patent law provide different types of protection. Copyright protection extends only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts as such, whereas a patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. Copyright protection is formality-free in countries party to the Berne Convention, which means that protection does not depend on compliance with any formalities such as registration or deposit of copies. A patent is generally granted after completing an examination procedure by a government agency. Copyright protection of computer software is established in most countries and harmonized by international treaties to that effect. The law relating to the patentability of software is still not harmonized internationally, but some countries have embraced the patentability of computer software and others have adopted approaches that recognize inventions assisted by computer software.

(<http://www.wipo.int/copyright/en/faq/faqs.htm#protect>)

kltnlk clwsf/sf]; Af0fdf lgj fx ugkgld'sf / bflotj

 kl/ro

;fIxto, ult÷; ult, snf, 1fg-1j 1fg, lknld
 / dllm6dJ8of, sDko6/ kftqfd tyf ;ʔgf klj lw
 nufotsf lfgdf dl:tissf/lqmfzIntfāf/f dñns
 Pj-af04s /rgf l; hgf ugʔ/rlotf tyf Wjlgcsq,
 kʔtlt / kʔf/Ofsf1lfgdf ; ʔofnf0{sfggāf/f
 kfkʔ xgʔPsnf0 clwsf/ -Exclusive Rights
 nf0{kʔtlnlk clwsf/ -Copyright_sʔʔkdf
 lrlg65 . af04s ; DkIQ -Intellectual Property_
 sfʔPs kʔv zfvfsfʔʔkdf /xgʔkʔtlnlk
 clwsf/nf0{jf:tIjs l; hgfsf/nf0{cfkxgf
 l; hgfsfʔpʔkfbg, kʔpʔkfbg, kʔf/, cgs/Of,
 ;øfHg, ; zfvfg, kl/dfhgf, cgʔfb, zʔfʔt/Of,
 ;fʔhgs kʔpʔg, hg; dlf kʔtlt, kʔf/Of /
 ;-rf/ ugʔ(tyf cfkxgf)clwsf/ x:tʔt/Of ugʔ
 jf axnfdf lbg kʔpʔgʔul kfkʔ xgʔ; dRr clwsf/
 -Bundle of Rights_ sfʔʔkdf klq aʔgʔul/65
 . csʔʔkf jf:tIjs ; ʔofsf /rgfnf0{csq,
 lj R5dg, clego, ; ult, jfbg, ufog nufotsf
 dflwōdaf/f hg; dlf kʔofpg eldsf vʔgʔkʔtʔf
 -Performer_ nf0{pglx_zsfʔkʔtltdf, kʔf/Of
 ; ʔyf -Broadcasting Organization_ nf0{
 pglx_zsfʔkʔf/Ofdf Pj -Wjlg csq pʔkfb -
 Producer of Sound Recording/
 Phonogram_ nf0{pglx_zsfʔWjlg csqdf
 sfggāf/f kfkʔ xgʔclwsf/nf0{tI; Daʔwl clwsf/
 -Related Rights_ egʔ lrlgʔ ul/65 .
 Neighbouring Rights klq elggʔtI; Daʔwl
 clwsf/sʔkʔsʔt / ; Af0f kfkʔ xgʔcʔlwdf egʔ
 yʔʔ xʔt lēgʔtf /xʔʔʔkʔf065 .

kl|tlnlk clwsf/ -Copyright_ ; Alfofsf]
cfjZostf

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kyd sfqǵl Joj :yf yfxf kfpg ljZj Oltxf;
s|hfpb}xrdl ahfofl c7f/f}-ztFblsf| kyd
bzsd f klkgkjX65 . ; |6fs l; hgf ; A|f0fs|
cf|rfl/s cf/Desf|ljZj Oltxf; ol k'/fgf|
ePklg gkfnl Oltxf; eg|sl/a rf/ bzs k'/fgf|
dfq 5 . lj } +@)@@ ; fnfd klxnrfK6s k|t|n|k
clwsf/ Pǵsf| pbo eP tfklg sl/a c9f0
bzs; Dd ; fj; Daḡw lgodfjl agfpg|kmf; /sf/
pbf;lq a:b f o; IǱdf vf; }sfd xg ; sǵ .
km:j z k ; |6f, Joj ; fol, kǹr|stf|tyf /fi6ǻ
; dǵ k|olf k/f|f 9uan|gf|; fgl JoxhfYf|of|.
k|t|n|k clwsf/sf|dxlj j fǵ gubf{o:tǵ;j qgzln
lijfosf|; A|f0ftknf|kf|; kef|sf/L xǵ g;s sǵf|
blv65 . o; sf|; A|f0fs|cfjzostfn0o}fōf; f/
shfpg ; ls65 .

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ugkgj/fli60 bfl0tj Pj +hDd]f/L k7f ug{
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vhfkg / lghls/Ofsfjky k5bwpb}cuQ/ 5
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kj46 / plk}stkrkl/jltt ePsfj5 . lj sf;
nufotsf c6o lqmfnsnfksfj; Dkfbgsf nflu
cfjZos sfghL kjfwf/sfj; hgf ul/lbP/ lghl
tyf u}; /sf/L f3jnf0{cufil8 nuf0{; /sf/
cfkbfjlgodgsf/L bfloTj lqj fgsf vflit/ cu|/
xg}kl/kf6lsfjcf/De ePsfj5 . cyff /; /sf/
Psn3fjkpfz ckof(t xg)/ lghl f3q; u}; /sf/L
f3q; gful/s; dfh /; j} fwf/Of; a3fj; øSt
kpfzáf/f dfq hg; 5}sf0; Dkfbg ug{j f /fli6ø
nlo xfl; n ug{; lsgjblf6sfOfn}k-o kfpb}
uPsfj5 . k|tltnk clwsf/sfj; AfOfsfjnfllu
klg pllnjvt; a}klfn}b3fofg; f/sfjeldsf /
bfloTj lqjff ugkq}blv65 .

gkfn ; /sf/

dlGqkl/ifb\ ; :S[t tyf /fHo kgM; #rgf

dɛqfno, ɡɫɪn kɫɪnɪk ɫwɪsf/ /ɫhɪk/sɪ
sɪfɒfno, kɫɪ/ ; /sf/ɫ jɪsn, ɫɪfnt, eɪ; f/
nufɒtsɪ ɪɡsɒx?, hɪ/ ; /sf/ɫ ɪɡsɒsfɪ?kɪf
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cw4f0rlos lgsfosf)?kdf lj sf; ug{pSt
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clwsf/ sfqđ ; zñlgsf/kl̥qnf t?t cf/0e
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; Argfids kl/j tđ u/L /f-k= kyd >0l1sf
kbñwsf/L kđv /xg/JoJ :yf ug{t?f lj Bdfg
b/abñ kg/fj nfđg u/L j:f:tjd}c6o lj efu
; /xsf/; Argf sfod ug{ sfo{t sdf/f/Lsf/
lfdtf clej [4sf]nflu cfj Zos JoJ :yf ug{
/ kyd r/0fđ kfr lj sf; lřqđf lřqlo
sfofñ0 vřlřg kxn ug}.
 - gkfn kx/leq Pp6f 5š} Copyright Cell
:yfkgf ug{ /rgfsf/cglwsf pTkfbg, laqñ
lj t/0f / k?f/Ldf lřq6o0fsf nflu lg/6t/
s8f lgu/fgl ug{nufpg} kx/L nufot c6o
; a?tfnd kñfos ; :yfsf tfnd sfođmddf
Pj +lj Bfno / snñ:t/sf kf7a0mddf of/
lj ifonf0{ klq ; dfj ž ug{ nufpg} .
 - kl̥tlnlk clwsf/ sfqđ sfofñog ug{lje6g
lgsfo{x?alr ; d6jo sfod ug{; a}lgsfosf
kl̥tlgw /xg/u/L Pp6f pRr:t/0 ; 66qs/
lgdřf ug}.
 - af4s ; DkIQ / kl̥tlnlk clwsf/ ; đ ; Dałwt
d2x?nf0{kl̥yldstsf ; fy lng/Pj -əyf; dod;
6: ofpg} kl/kf6lsf/ lj sf; u/L cglwsf
pTkfbg tyf k?f/L, laqñ lj t/0f / kññnf0{
lg?; flxt ug{ cfj Zos JoJ :yf ug} .
 - JoJ ; fol ; j { fwf/0f, kññstf{Pj +sfqđ
sfofñog ug{lgsfodf sfo{t kbñwsf/lx?nf0{
; d} ; 'lřt tyf lbllft ug{l vñnsf
; r}gřdhs, 1fgj 4š / c6o pkoñl ; řgf,
lj 1fkg lgdřf tyf k/ f/0f ug{ tfnd,
ufñ7L ; lđgf/x? ; řfng ug}.
 - af4s ; DkIQ ; Dałwł c6t/fi6a kđv lgodg
lgSfo World Intellectual Property
Organization (WIPO) sf/ kđv kxndf
ePsf c6t/fi6a dxf; l6w, ; l6w tyf
; Denñfx?sf/ klf xbf xfl; n ug{; lsg/
nfex?sf/klxřfg u/L ; f/sf/nflu cfj Zos
kxn ug}.
 - lj wfut ?kdf /řqñl ; sng ; :yf? (CMOs)

1; hgfdfly /fpN6L kfkT ug{ ; |6sf| clwsf/sf ; #lf0f u/f}.

sf]u7g ug{; Da6wlt lf]hsf ; |6fx?nf0{
pTkf]/t ug]/ /f6l6l lgwf{0f; ; sng Pj +
lj t/0fsf]; jf]k0st lj lw lgwf{0f u/L u/f0{
j f:tljs ; |6fn]nfe lng kfgp]Joj :yfsf]
k|ofelt ug].

- lj Bdfg sf]g]df Berne Convention Pj +c6o
c6t/f66 dxf; l6w cg5'h xg cfjZos
b]vPsf t/ xfn; Dd xg g; s\$ f k]jwfgx?df
cfjZostfg; / k|/dfh]g ug].

Joj: fol -k'ts k\$fsz, Wjlgcsq
pTkfbs, laqmf cfb_

- ; |6f; a Inlvt ; Dem]f u/ dfq pglx?sf
l; h6fsf]pTkfbg=k\$fgz ug].
- k|tlnk clwsf/h6o ; fdu]sf]k]lpTkfbg÷
k]l6b0f l; h6fsf/sf]; xdltdf dfq ug]
; xdlte0f a9l k|t k]lpTkfbg gug].
- clwsf/ wglsf]; xdl t gln0{cfk]g}9wn]
l; h6fsf]; zfh]g, k|/dfh]g jf v08ls/0f
u/ lghsf]Voflt jf k|ti7f lu/fpg]sfo{
gug].
- Pp6f k\$fsz=pTkfbns] k\$fgz u/\$f]
; fdu]nf0{u/sfg]l 7xg]u/L cs]?kdf
k\$fgz=pTkfbg gug].
- ; |6f Pj +k\$fszsf]gfd g}pln]v gu/L
; flx]os s[t k\$fgz gug] ult ; ulth6o
/rgfsf]gof?kdf pTkfbg ubf{to; sf ; a}

k|f -ultsf/ ; ultsf/; ufos_ sf]cgdlit
lng].

- pTkfb ; :yf cfk]h]u/sfg]l pTkfbg gug]
lj qm]fn]to; f]u/]gu/\$f]yxf kfgp ; /sf/l
lgsfosf]; xsfo]f lg/t/ lgu/fgl / cgludg
ug].
- k|tlnk clwsf/ wglsf]; Ddfg ug{tyf
u/sfg]l pTkfbg, laqmf lj t/0f / k6f]nf0{
/f]g ; xfos xg]vfn]sf ; fgdhs ; fdu]k?sf]
lgd]f Pj +k\$fgz ug].
- c6o k] {lgldf÷k\$flzt ; fdu]sf]gSsn
u/ rnlrq agfpg]k|/k6lsf]c6o ug].
- k]k]k, 8la- , 8fpgnf, gSsn tyf rf]l
h:tf lqmfnsnfka6 69f a:g].
- Jofj; flos cfrf/; lwtfsf]kfngf, g]tstsf]
k|fkr]f Pj +k|tlnk clwsf/ ; Da6wl
sf]g]l/f ; ahf0{k|t clwsf/k|t ; r] /xg]

; |6f÷; h\$

cfk]g]clwsf/k|t ; r] /xg] / pln3g ePdf
sf]g]l pkrf/ v]f]g cu| / xg].

- c?sf /rgfsf]cglwsf k6f] ug{gxg]k6f
; hu a6g].
- cfk]g /rgf c?nf0{k6f] ug{lbtf clg]fo{
?kdf ; Dem]f÷; xdl t u/ dfq] lbg].

lj wfut /f6l6l ; sng ; :yfx?sf]u7g /
/f6l6l lgwf{0f Pj +lj t/0fsf]dfk08 to
ug{tbf?stf b]v]fpg].

l; h6f pk/sf]cfly\$ tyf g]ts clwsf/k|t
k0f]l rgf]v]f]a6g].

pTkfbt l; h6fn0{btf{u/f0{el]iodf rf]l
jf u/sfg]l pTkfbg ePdf k6f]0fsf]?kdf
kz ug{0f]o agfpg].

k6f]ustf; ; j { fwf/0f

- af]s ; Dk]Qh6o /rgfsf]; Ssnl k|t dfq
v/lb ug].
- /rgfsf]cglwsf pTkfbg, k]f/L / laqm
lj t/0f ePsf]b]v]f jf xg nfu\$]yxf
k]Pdf ; Da6wt ; /sf/L Pj +u/ ; /sf/L
lgsfo jf JolStx?nf0{hfgsf/L lbg].
- jf:tljs ; |6fx?sf]dg]n p7fpg tyf pTk]0f
hufpg ; yfglo:t/df pglx?sf]; Ddfg tyf
cfb/efj ug] pkfo cj n0ag ug].
- k|tlnk clwsf/h6o ; fdu]sf]; f]h]gs tyf
Jofk]l/s k6f] ug{k] ; Da6wt clwsf/
wglsf]cgdlit lng] / cfjZos /f6l6l k6f]g
ug].
- k7gk7g, ; Tsfo{ JolStut tyf nf0a]l
k6f]h]g h:tf ; Gbedf /rgfsf]k6f] ubf{
plrt k6f]sf]; 4f]t (Principle of Fair
Use) nfu" xg]k6f] ; r] /xg].

Q-A Column

1. What is the difference between copyright and intellectual property rights?

The term intellectual property rights includes copyright but also covers a wider range of rights such as trade-marks, patent, or performance and recording rights. Effectively copyright is a sub-set of intellectual property rights. Intellectual property rights is the collaboration of copyright and industrial property rights.

2. What happens when it is unclear who holds copyright?

Ownership of a physical object does not convey ownership of copyright and the situation is indeed more complicated. It is the matter of research for the purpose of identifying the ownership of copyright. The creator may not always be the copyright holder. This can arise through two situations:

- The person who created the piece of work was employed at the time, and the work was created as part of his/her

duties. In this situation, the copyright owner is the employer.

- The original creator may have sold, given or bequeath the copyright to one person, but sold, given or bequeathed the physical object to another person. In this situation, the owner of the physical object does not own the copyright, the person who bought or was given the copyright does.

3. What rights do copyright owners have under the Copyright Act?

The Nepalese Copyright Act, 2002 grants a number of exclusive rights to copyright owners including:

- Reproduction right -- the right to make copies of a protected work.
- Distribution right -- the right to sell or otherwise distribute copies to the general public.
- Right to create adaptations -- the right to prepare new works based on the

protected work, and

- Performance and display rights -- the rights to perform a protected work or to display a work in public. These bundle of rights allow a copyright owner to be flexible when deciding how to realize commercial gain from the underlying work; the owner may sell or license any of the rights on the basis of agreement.

4. What is the Berne Convention?

The Berne Convention is the latest multi-national agreement on copyright. Nepal acceded to this convention on January 11, 2006. Basically, this convention allows a certain minimum level of copyright protection in all signatory countries for any person with a copyright. While some laws & levels may be different in other countries, the creators are guaranteed at least certain protections. Countries that have not signed to the Convention offer no reciprocal agreements though the degree of Copyright violation is rampant in these countries.

Rationale.....

Information Technology. The High Level Commission for Information Technology (HLCIT) has set the vision to have information society in Nepal with access to information and technology to entire population of Nepal. Central database, National Global ID number and Machine Readable Passports are some of the ongoing programs of HLCIT. Recently, with the cooperation of Korean International Cooperation Agency Government Integrated Data Center and Training Center has been established in Nepal.

3.2 Copyright Act 2002 in Section 2(a)(10) and Section 3 have incorporated computer programs and databases in which copyright subsists. Equally, the Electronic Transactions Act 2006 has also defined asymmetric crypto system, computer, computer database, software etc. and to some extent such prerequisites have been already existed in Nepal only effective implementation despite the lack of hi-tech infrastructural development. It has stipulated electronic record and digital signature, network service,

offence relating to computer, information technology tribunal, time limitation to file a complaint, Nepal Government to be a Plaintiff etc

Concluding remark: It is clearly evident that impact of multilateralism and technology is extremely pervasive and complex. Novel approaches and problems are possibly emerging or invalidating concerning the traditionally established laws with the growth of cybernetic, communication and information technologies. In Nepal, there is the existence of ineffective implementation of existing laws and weak scientific and technological infrastructure. As there exists numerous constraints like resource shortages, weak intellectual property infrastructure, ineffective law enforcement and fragile legal protection system of creative works, not well-built scientific and technological development. The various forms of piracy in Nepalese market are prevalent i.e reproduction of copyrighted works, large scale photocopying of original works without authorization of copyright owners, lack of reprography society, illegal access to cyber property including up-loading and downloading such property from Internet, computer hardware sellers provide software along with computer hardware to the

buyers without the authorization of software right holders, reproduction and sell of CDs, VCDs having musical works and/or audio-visual works as well as selling them in cheap price without authority of copyright owners, sale of pirated products and so on. At the end of this article, it may be expedient to adhere to the WCT which provides protection of computer program and original database by copyright and Nepal may request WIPO for its support in the area of technical matters as well as in modification of relevant laws and enacting required computer and digital legislation.

E-Commerce and Copyright

The emergence of new digital information technologies, such as the Internet, has a significant impact on copyright and related rights, and the copyright industries such as music, film and software throughout the world.

The international copyright laws have been updated for the digital age through the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT), collectively known as the "WIPO Internet Treaties" and the ongoing work of the Standing Committee on Copyright and Related Rights, in the field of protection of audiovisual performers and broadcasting organizations. The purpose of these treaties is to direct the member states of WIPO for the adoption of legal trends in the national laws.

<http://www.wipo.int/news/en/newsfeed.jsp>

WIPO Member States Review Key Copyright Issues

WIPO member states meeting under the auspices of the Standing Committee on Copyright and Related Rights met from November 3 to 7, 2008 in Geneva to review a number of key copyright issues. The meeting examined the current state of play WIPO's work on limitations and exceptions, the protection of audiovisual performances and the protection of broadcasting organizations. Discussions also featured the question of access to copyright-protected content by visually impaired persons.

(http://www.wipo.int/pressroom/en/articles/2008/article_0059.html)

How can an infringement be tested?

Some Examples

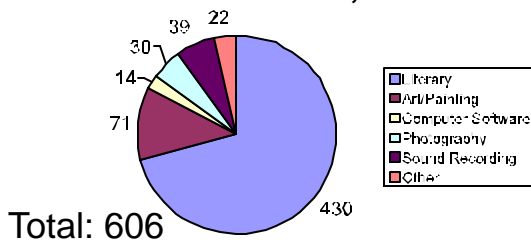
Infringement:

- reprinting an article without the copyright owner's permission;
- playing records at a dance without the copyright owners' permission;
- giving a public performance of a play without permission;
- photocopying articles for a class of students without permission;
- taping your favorite band at a music concert without permission.

Not infringement:

- quoting a few lines of the article in a research paper (fair dealing);
- playing records at home;
- giving a public performance of a play by Shakespeare (no copyright exists/public domain);
- obtaining permission from the author and paying a fee to him or her (if requested) in order to use an article;
- borrowing a musical tape from a friend to copy onto a blank tape for private use (a royalty payment to the owner of the song rights has been paid when the blank tape was purchased).

Registration of Creations up to November 15, 2008



; jkpfos ; yfx; af6 l/- 6fg pknAw u/fpbf Wofg lbgkgIs/fx;

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- ; jf kpfos ; yfn] lnlt ; Dem]f]sf]dfWodaf/f To: tf; fults wgsf]kpfu df]f0ndf ug] jfodf ; Dalwt kl; u clwsf/ x: tft/Of u/f0{lng ; Qm5g\ .
- sg]klg ult ; ultsf]cflys clwsf/ Wjlgcs; ; yfdf dfq lglxt /xsf]eP To: tf ult ; ultsf]kpfu ubf; Dalwt ; yf; u clgj fo; Dem]f u/ / dfq ; fults wgx; kpfudf Wofpg' kb5 .
- df]f0ndf kpfu xg] ; fults wgd ; ultsf/sf]clwsf/ ; Af1t x65 .
- lagf Ohfht ; fults wgx; ; fj hgs Pj -borkf/s kpfhgyf kpfu ug' u/sfgl sfo{x65 .
- df]f0ndf ult kpfu ug'bf; Dalwt ultsf; ; ultsf/-ufossf] lnlt ; xdt clgj fo; kdf lngkb5 . To: tf]ultdf rnirg lgdff jf Wjlgcs ptkbs ; yfsf]clwsf/ ; yfikt xg] u/L ; Dem]f/f Jo: yf ul/Psf]eP To: tf rnirg lgdff Wjlgcs ptkbs ; yfaf6 ; xdt lngk5{ .



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