

Copyrights

All of us have created something original on several occasions, perhaps even on a daily basis. The very act of speaking, writing, or even doodling is an act of possible creation of an intellectual property. The most relevant form of intellectual property towards any form of such expressions is copyright. As long as no copying of another's material is involved, the person who has written or doodled or drawn or recorded a speech is the owner of copyrighted material.

Having said this, the next level of detail that must be taken into account while discussing copyrights is when does this right arise? While as soon as some form of expression has occurred one has created copyrighted material, the rights associated with this form of intellectual property can be effectively enforced only on meeting the condition of reducing the expression into a tangible form. Reducing the expression to a tangible form means any form which is consistently reproducible without any loss during transfer. Such means may include written version, recordings on a medium like a cassette tape, a computer file, painted version on a canvas etc. Once this expression is affixed onto some tangible medium, then the creator of such material can confidently proclaim to the world that he or she is the owner of an intellectual property right and can also assert these rights.

WHAT DOES COPYRIGHT PROTECT?

Now, let us also examine this “expression” a little more carefully. Copyrights will protect the expression of ideas but not the ideas itself. This distinction must be clearly understood. As an example, consider a person standing on a mountaintop during sunset. This person becomes inspired by the sight and comes back to paint that image that is now affixed in her mind's eye. The sunset as seen from the mountaintop is the idea, while the

author's death, or a finite period for anonymous or corporate authorship. Registration is not mandatory for copyrights and the mere act of creative expression in any medium awards the creator the copyright protection. Only the creator of such work or those deriving their rights through the creator can rightfully claim copyright.

RIGHTS GIVEN UNDER COPYRIGHT PROTECTION IN INDIA

Copyrighted works can be classified into various types of works:

Literary work
 Dramatic work
 Musical work
 Artistic work
 Sound recording, and
 Cinematograph film.

Each of these kinds of work is associated with different rights as given below.

For literary work, copyright is the exclusive right to:

- Reproduce the work
- Issue copies of the work to the public
- Perform the work in public
- Communicate the work to the public
- Make cinematograph film or sound recording in respect of the work
- Make any translation of the work
- Make any adaptation of the work.

In addition to all the rights applicable to a literary work, owner of the copyright of a computer program enjoys the rights to sell or give on hire or offer for sale or hire, regardless of whether such a copy has been sold or given on hire on earlier occasion.

For dramatic work copyright is the exclusive right to:

- Reproduce the work
- Communicate the work to the public or perform the work in public
- Issue copies of the work to the public
- Include the work in any cinematograph film
- Make any adaptation of the work
- Make translation of the work.

For artistic work, copyright is the exclusive right to:

- Reproduce the work
- Communicate the work to the public
- Issue copies of the work to the public
- Include the work in any cinematograph film
- Make any adaptation of the work.

For musical work, copyright is the exclusive right to:

- Reproduce the work
- Issue copies of the work to the public
- Perform the work in public
- Communicate the work to the public
- Make cinematograph film or sound recording in respect of the work
- Make any translation of the work
- Make any adaptation of the work.

For cinematograph film, copyright is the exclusive right to:

- Make a copy of the film including a photograph of any image forming part thereof
- Sell or give on hire or offer for sale or hire a copy of the film
- Communicate the cinematograph film to the public.

For sound recording, copyright is the exclusive right to:

- Make any other sound recording embodying it
- Sell or give on hire, or offer for sale or hire, any copy of the sound recording
- Communicate the sound recording to the public.

Related Rights: Besides the rights in above classes, the Copyright Act provides protection in two special categories, **Performer's Rights** and **Broadcaster's Rights**.

Performer's Rights: As a performer, every individual has certain rights. These basic rights include the right to obtain some remuneration for one's work, and to obtain information about how one (including one's appearance) and other talents (acting, singing or other) may have been used in the final product. It includes the right to:

- Make a sound recording or visual recording of the performance;
- Reproduce the sound recording or visual recording of the performance;

- Broadcast the performance;
- Communicate the performance to the public otherwise than by broadcast.

Broadcaster's Rights: media broadcasters would have the right to protect the content of their media transmissions. Moreover, they would have the right to protect their broadcasts from reproduction, retransmission, and even from public communication. It includes the right to:

- Re-broadcast the broadcast;
- Cause the broadcast to be heard or seen by the public on payment of any charges;
- Make any sound recording or visual recording of the broadcast;
- Make any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence; and sell or hire to the public, or offer for such sale or hire, any sound recording or visual recording of the broadcast.

INTERNATIONAL PROTECTION

As is the case, with all forms of Intellectual Property Rights, Copyright as provided by the Indian Copyright Act is valid only within the borders of our country. To secure protection to Indian works in foreign countries, India has become a member of the following international conventions on copyright and neighbouring (related) rights:

- Berne Convention for the Protection of Literary and Artistic works.
- Universal Copyright Convention.
- Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms.
- Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties.
- Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement.

TERM OF COPYRIGHT

In India the copyright lasts for life of author or owner +60 years. In the case of cinematograph films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organisations, the 60-year period is

counted from the date of publication. All terms of copyright generally run through the end of the calendar year in which they would otherwise expire, so a work enters the public domain on the first of the year following the expiration of its copyright term. For example, a book published on 29 April 1901 will enter the public domain on 1 January 1962, not 16 March 1961 ($1901 + 60 = 1961$).

The term for protection for Performer's Rights and Broadcaster's Rights is 25 years from the date of publication.

ADMINISTRATION OF COPYRIGHTS

The Copyright is administered under the Ministry of Human Resource and Development under the Central Government. An important development under the Copyright Act as amended in 1994, was the establishment of a Copyright Board. The Copyright Board is a deemed civil court and all the proceedings of the Board are deemed to be judicial proceedings.

REGISTRATION OF COPYRIGHT

As mentioned earlier, the very act of creating and fixing any expression gives the author or performer a copyright, because as per the Berne Convention, this right is an automatic right. Though it is not mandatory to apply for registration for copyright, however, the registration of copyright will serve as *prima facie* evidence in a court of law in any dispute relating to ownership of copyright. Registration will provide clear evidence of the manner and the text for which the copyright protection was sought and the date on which it was created. Thus, it is always advantageous to register any material to avoid any future disputes and to establish outright authorship.

The procedure for registration is set forth in Chapter VI of the Copyright Rules, 1956, and as amended, it includes:

- Application for registration is to be made on Form IV as prescribed in the first schedule to the Rules;
- Separate applications should be made for registration of each work;
- Each application should be accompanied by the requisite fee prescribed in the second schedule to the Rules; and
- The applications should be signed by the applicant or the advocate in whose favour a Power of Attorney has been executed. The Power of Attorney signed by the party and accepted by the advocate should also be enclosed.

- **For sound recordings**

Phonographic Performance Limited (PPL) Flame Proof Equipment Building, B.39, Off New Link Road, Andheri (West), Mumbai-400 053.

COPYRIGHT INFRINGEMENT

Any violation of the rights conferred under the copyright to the owner of copyrighted works is deemed a act of infringement. These include:

- Making unauthorised copies for sale or hire or selling or letting them for hire;
- Permitting any place for the performance of works in public where such performance constitutes infringement of copyright;
- Distributing unauthorised copies for the purpose of trade or to such an extent so as to affect prejudicially the interest of the owner of copyright;
- Public exhibition of unauthorised copies by way of trade; and
- Import of unauthorised copies into India.

The remedies may be obtained by way of injunctions, damages and accounts. The concerned District Court has the jurisdiction in civil suits regarding copyright infringement. Additionally, all unauthorised copies of any work in which copyright subsists and all plates used or intended to be used for the production of such unauthorised copies are deemed to be the property of the owner of the copyright. The copyright infringement is a criminal offence under Section 63 of the Indian Copyright Act. A minimum punishment for infringement of copyright is imprisonment for six months with the minimum fine of Rs. 50,000/-. In the case of a second and subsequent conviction the minimum punishment is imprisonment for one year and fine of one lakh rupees.

FAIR USE

Use of copyrighted work without the permission of the owner is allowed in select instances including:

- For the purpose of research or private study,
- For criticism or review,
- For reporting current events,
- In connection with judicial proceeding,
- Performance by an amateur club or society if the performance is given to a non-paying audience, and
- The making of sound recordings of literary, dramatic or musical works under certain conditions.

This clause is present to ensure that even after the author or the creator has assigned all the rights – including economic rights – to another entity, the author or creator still holds certain rights over the work. Thus, the current owner has some obligations towards the work that may include appropriate attributions such as naming the author. Furthermore, this work may also not be misused by the current owner to misrepresent the author.

Typically, moral rights are perpetual rights, and last forever, and in many countries the law states that explicitly. Moral rights cannot be assigned, but in many countries, such rights can be waived through the signing of appropriate contracts.