

What is "Copyright"?

Which types of work are subject to copyright?

Copyright ownership gives the owner the exclusive right to use the work, with some exceptions. When a person creates an original work, fixed in a tangible medium, he or she automatically owns copyright to the work.

Many types of works are eligible for copyright protection, for example:

- . Audio-visual works, such as TV shows, movies, and online videos
- . Sound recordings and musical compositions
- . Written works, such as lectures, articles, books, and musical compositions
- . Visual works, such as paintings, posters, and advertisements
- . Video games and computer software
- . Dramatic works, such as plays and musicals

Meaning of Ownership of Copyright

Owners hold specific rights but not all rights.

The law grants to owners a set of specified rights:

Reproduction of works

Distribution of copies

Making of derivative works

Public performance and display of works.

Some artworks have "moral rights" regarding the name of the artist on the work, or preventing destruction of some works.

Owners may also have rights to prevent anyone from circumventing technological protection systems that control access to the works.

Author is the copyright owner

As a general rule, the initial owner of the copyright is the person who does the creative work.

If you wrote the book or took the photograph, you are the copyright owner.

Employer may be the copyright owner

If you created the work as an employee, acting within the scope of your employment, the work may be a "**work made for hire.**"

In that event, the copyright owner is the employer.

If you are an employee, and your job is to create software code, the copyright probably belongs to your employer.

Copyrights can be transferred

The law may make you or your employer the copyright owner, but the law also allows the owner to transfer the copyright.

With a written and signed instrument, your employer can give you the copyright.

In the academic setting, we are frequently asked to transfer copyrights in our books and articles to publishers.

The ability to transfer or retain our copyrights is an opportunity to be good stewards of our intellectual works.

Copyright owners may allow public uses

A copyright owner may grant rights to the public to use a protected work.

That grant could be a simple statement on the work explaining the allowed uses, or it may be a selection of a Creative Commons license. Similarly, the movement to make works "open access" or "open source" is a choice by the owner of rights to make works available to the public.

What is an infringement of copyright?

“**Infringement**” is a legal term for an act that means breaking a law.

IP rights are **infringed** when a product, creation or invention protected by IP laws are exploited, copied or otherwise used without having the proper authorisation, permission or allowance from the person who owns those rights or their representative.

Remedies Against Infringement of Copyright

The Copyright law in India provided for remedies to be made available to the author against a copyright infringer.

The Copyright Act, 1957 provides to an author both Civil, Criminal and border enforcement remedies. They are:

1. **Civil remedies:** Provide for injunctions, damages, interpretation of accounts, delivery and destruction of infringing copies and damages for conversion.
2. **Criminal remedies:** Provide for imprisonment, fines, seizures of infringing copies and delivery of infringing copies to the owner.
3. **Border enforcement:** also provides for prohibition of import and destruction of any imported goods that infringe the copyright of a person with the assistance of the customs authorities of India.

What are civil remedies?

The more common remedies availed by authors in case of Copyright Infringement are mostly civil in nature.

Civil remedies are available to an aggrieved author of a copyright under Section 55 of the Copyright Act, 1957.

The various civil remedies are:

Interlocutory Injunctions:

One of the most important remedies for copyright infringement, in most cases, the relief is granted by injunction.

An injunction may either be interlocutory, one which is granted prior to the trial and only until after the trial or further order, or it may be final and permanent.

Applications for interlocutory injunctions are frequently made in actions for infringement of copyright since damages are rarely an adequate remedy for the injury suffered by the plaintiff.

The objective of an interlocutory injunction is to provide the plaintiff immediate and temporary protection against any continuous violation of his rights for which he cannot be adequately be compensated in terms of damages.

Pecuniary Remedies:

Copyright owners who face infringement issue also have the option to seek pecuniary remedies under Section 55 and 58 of the Copyright Act, 1957.

Under the above section, an aggrieved plaintiff can seek the following remedies:

1. Accounts of profits which allows the Author of the right to claim the sum of money equivalent to the profit which was made by the infringer through their unlawful conduct.
2. Compensatory damages which allow the Author of the right to claim the adequate compensation and damages due to him for any loss he may have suffered due to the infringement of his work.
3. Conversion damage allows the Author to assess the quantification of damages on the basis of the full value of the article converted.

Anton Pillar Orders:

Only made in the most extreme of circumstances, this type of order is drastic and its effects are far reaching.

Deriving its name from the Court of Appeals decision; *Anton Piller AG v. Manufacturing Processes* it has the following elements:

1. It can be an injunction which restrains the defendant from engaging with the infringed work or destroying them.

2. It can be an order that permits the plaintiff's solicitors to enter the premises of the defendants, to search the same and take any of the infringed goods into their safe custody.
3. It can also be an order which directs the defendant to disclose the names and addresses of any suppliers and/or customers who the defendant may have done any business with using the infringed good and is directed to also file an affidavit

Mareva Injunction:

It is an order in the form of an injunction which restrains defendant by freezing his assets temporarily, thus preventing the defendant from removing his assets outside the jurisdiction while pending hearing.

This is so that the Plaintiff can obtain the redressal from the decree or award that may be passed in the action or in reference. This form of injunction is quite recent, dating back to the 1975's and is derived from the case *Mareva Compania Naviera SA v. International Bulk Carriers SA*.