

## INTRODUCTION TO COPYRIGHT

Copyright is a right, which is available for creating an original literary or dramatic or musical or artistic work. Cinematographic films including sound track and video films and recordings on discs, tapes, perforated roll or other devices are covered by copyrights. Computer programs and software are covered under literary works and are protected in India under copyrights. The Copyright Act, 1957 as amended in 1983, 1984, 1992, 1994 and 1999 governs the copyright protection in India. The total term of protection for literary work is the author's life plus sixty years. For cinematographic films, records, photographs, posthumous publications, anonymous publication, works of government and international agencies the term is 60 years from the beginning of the calendar year following the year in which the work was published. For broadcasting, the term is 25 years from the beginning of the calendar year following the year in which the broadcast was made.

Copyright provides protection for the expression of an idea and not for the idea itself. For example, many authors write textbooks on physics covering various aspects like mechanics, heat, optics etc. Even though these topics are covered in several books by different authors, each author will have a copyright on the book written by him/her, provided the book is not a copy of some other book published earlier. India is a member of the Berne Convention, an international treaty on copyright. Under this Convention, registration of copyright is not an essential requirement for protecting the right. It would, therefore, mean that the copyright on a work created in India would be automatically and simultaneously protected through copyright in all the member countries of the Berne Convention. The moment an original work is created, the creator begins enjoying the copyright. However, an undisputable record of the date on which a work was created must be kept. When a work is published with the authority of the copyright owner, a notice of copyright may be placed on publicly distributed copies. The use of copyright notice is optional for the protection of literary and artistic works. It is, however, a good idea to incorporate a copyright notice. As violation of copyright is a cognizable offence, the matter can be reported to a police station. It is advised that registration of copyright in India would help in establishing the ownership of the work. The registration can be done at the Office of the Registrar of Copyrights in New Delhi. It is also to be noted that the work is open for public inspection once the copyright is registered.

A computer program in the Copyright Act has been defined as a set of instructions expressed in words, codes, schemes or any other form, including a machine-readable medium, capable of causing a computer to perform a particular task or achieve a particular result. It is obvious that algorithms, source codes and object codes are covered in this definition. It is advisable to file a small extract of the computer program at the time of registration rather than the full program. It is important to know that the part of the program that is not being filed, would remain a trade secret of the owner but would have to be kept well guarded by the owner. It may be noted that computer programs will become important in the area of medicines when one talks about codification of DNA and gene sequencing. Generally, all copyrightable expressions embodied in a computer program, including screen

displays, are protectable. However, unlike a computer program, which is a literary work, screen display is considered an artistic work and therefore cannot be registered through the same application as that covering the computer program. A separate application giving graphical representation of all copyrightable elements of the screen display is essential. In the digital era, copyright is assuming a new importance as many works transacted through networks such as databases, multimedia work, music, information etc. are presently the subject-matter of copyright.

### Concept of Copyright

When a person creates a literary, musical, scientific or artistic work, he or she is the owner of that work and is free to decide on its use. That person (called the "creator" or the "author" or "owner of rights") can control the destiny of the work.

Copyright according to *Black's Law Dictionary*, is the right in literary property as recognized and sanctioned by positive law. An intangible incorporeal right granted to the author or the originator of certain literary or artistic production whereby he is invested for a specified period with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them.

Copyright as defined in the *Oxford English Dictionary*, is an exclusive right given by law for a certain term of years to an author, composer, etc. (or his assignee) to print, publish and sell copies of his original work.

### DEFINITION OF COPYRIGHT

Copyright is a protection that covers published and unpublished literary, scientific and artistic works, whatever the form of expression, provided such work is fixed in a tangible or material form. This means that if one can see it, hear it and/or touch it — it may be protected. If it is an essay, if it is a play, if it is a song, if it is a funky original dance move, if it is a photograph, HTML coding or a computer graphic that can be set on paper, recorded on tape or saved to a hard drive, it may be protected. Copyright laws grant the creator the exclusive right to reproduce, prepare derivative works, distribute, perform and display the work publicly. Exclusive means only the creator of such work, not anybody who has access to it and decides to grab it. Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the work in copies or phonorecords;
- To prepare derivative works based upon the work;
- To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;

- To display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and
- In the case of sound recordings, to perform the work publicly by means of a digital audio transmission.

## WHAT ARE PROTECTED AND NOT PROTECTED BY COPYRIGHT?

### What Works are Protected?

Copyright protects "original works of authorship" that are fixed in a tangible form of expression. The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device. Copyrightable works include the following categories:

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works

These categories should be viewed broadly. For example, computer programs and most "compilations" may be registered as "literary works"; maps and architectural plans may be registered as "pictorial, graphic, and sculptural works."

### What is Not Protected by Copyright?

Several categories of material are generally not eligible for copyright protection. These include among others:

- Works that have not been fixed in a tangible form of expression (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded)
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or colouring; mere listings of ingredients or contents
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration

- Works consisting entirely of information that is common property and containing no original authorship (for example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources).

# RIGHTS CONFERRED BY COPYRIGHT

The copyright confers following rights:

- Statutory Right
- Negative Right
- Multiple Rights
- Economic Rights
- Moral Rights

## **Statutory Right**

The copyright in a work is a creation of statute. A person owns a copyright because the law recognizes the existence of such a right. The rights, which an author of a work has by virtue of creating the work, are well defined.

## **Negative Right**

Author for their own benefit without the consent or the license of the author. It does not confer any positive right on the author himself.

## **Multiple Rights**

Copyright is not a single right, but a bundle of rights, which can exist and be exploited independently. The nature of these multiple rights depends upon the categories of works, namely, literary, dramatic and musical works; original artistic works; cinematograph films; and sound recording.

## **Economic Rights**

The rights conferred on a copyright owner are economic rights because the exploitation of the work by the author by exercising these rights may bring economic benefit. The author may exploit the work himself or license others to exploit any one or more of the rights for a consideration, which may be in the form of royalty, a lump-sum payment.

## **Moral Rights**

The copyright also confers moral rights on the author. Such rights, though not statutorily defined, are as follows:

- The right to decide whether to publish or not to publish the work, i.e. right of publication.
- The right to claim authorship of a published or exhibited work.
- The right to prevent alteration or other actions that may damage the author's honour or reputation, i.e. the right of integrity.

These moral rights are recognized as "Author's Special Rights".

The copyright is a statutory right. However, to claim a right under this Act, registration of the work is not necessary. The Act provides the legal provisions with regard to the register of the copyrights in which the names, or titles of the works along with the names and addresses of the authors, publishers and owners of copyrights are mentioned. The Act does not stipulate that registration is mandatory to claim protection under the Copyright Act. The registration only raises a presumption that the person shown is the actual author of the work. The presumption is not conclusive and where contrary evidence is forwarded, the registration may be cancelled.

The Copyright Office in India is at New Delhi.

Office: Indian Copyright Office

Address: Book Promotion & Copyright Division

B.2/W.3, Curzon Road Barracks

Kasturba Gandhi Marg

New Delhi-110 001

## REGISTRATION OF COPYRIGHT IN INDIA

The Indian Copyright Act provides measures for maintaining a register for recording the names and titles of the works that are registered along with the names and addresses of authors, publishers and owners of copyrights and such other particulars as may be prescribed.

The author or publisher or the owner, interested in the copyright, in any work, may make an application in the prescribed form accompanied by the prescribed fees to the Registrar of Copyrights for entering particulars of the work in the 'Register of Copyrights'.

## OWNERSHIP OF COPYRIGHTS

In the Indian Copyright Act, 1957, the ownership for various works in which copyright subsists is as follows:

"Author" means

- In relation to a literary or dramatic work, the author of the work
- In relation to a musical work, the composer
- In relation to an artistic work other than a photograph, the artist
- In relation to a photograph, the person taking the photograph
- In relation to a cinematograph film or sound recording, the producer and
- In relation to any literary, dramatic, musical or artistic work, which is computer generated, the person who causes the work to be created.

## TRANSFER OF COPYRIGHT

The owner of the copyright in an existing work or prospective owner of the copyright in a future work may assign to any person the copyright, either wholly or partially in the following manner:

- (i) for the entire world or for a specific country or territory; or
- (ii) for the full term of copyright or part thereof ; or
- (iii) relating to all the rights comprising the copyright or only part of such rights.

## INFRINGEMENT

*Copyright in a work is deemed to be infringed:* when any person, without a license granted by the owner of the copyright or by the Registrar of Copyright, or in violation of any condition of the license so granted, or of any condition imposed by a competent authority

- does anything to the prejudice of the exclusive right of the owner of the copyright, or
- permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, until he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or when any person –
- makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or
- distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or
- by way of trade exhibits in public, or
- imports into India, any infringing copies of the work.

### Infringement of Copyright

Copyright gives the creator of the work the right to reproduce the work, make copies, translate, adapt, sell or give on hire and communicate the work to public. Any of these activities done without the consent of the author or his assignee is considered infringement of the copyright. There is a provision of 'fair use' in the law, which allows copyrighted work to be used for teaching and research and development. In other words, making one photocopy of a book for teaching students may not be considered an infringement, but making many photocopies for commercial purposes would be considered an infringement. There is one associated right with copyright, which is

## TERM OF COPYRIGHT IN INDIA

The term of copyright varies according to the nature of the work.

Copyright shall subsist in any literary, dramatic and artistic works (other than a photograph) published within the lifetime of the author until sixty years from the beginning of the calendar year next following the year in which the author dies.

In case of a photograph, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the photograph is published.

Copyright in a cinematograph film subsists until sixty years from the beginning of the calendar year next following the year in which the film is published.

Copyright subsists in a sound recording until sixty years from the beginning of the calendar year next following the year in which the work is first published. Broadcast reproduction right shall subsist until 25 years from the calendar year next following the year in which the broadcast is made.

known as the 'moral right', which cannot be transferred and is not limited by the term. This right is enjoyed by the creator for avoiding obscene representation of his/her works. The following acts are considered infringement of copyrights:

(a) *In the case of literary, dramatic or musical work, not being a computer program...*

- (i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
- (ii) to issue copies of the work to the public not being copies already in circulation;
- (iii) to perform the work in public, or communicate it to the public;
- (iv) to make any cinematography film or sound recording in respect of the work;
- (v) to make any translation of the work; to make any adaptation of the work;
- (vi) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi).

(b) *In the case of computer program...*

- (i) to do any acts specified in clauses (a);
- (ii) to sell or give on hire, or offer for sale or hire any copy of the computer program, regardless of whether such copy has been sold or given on hire on earlier occasions;

(c) *In the case of an artistic work...*

- (i) to reproduce the work in any material form including depiction in three dimensions of a two-dimensional work or in two dimensions of a three-dimensional work;
- (ii) to communicate the work to the public;
- (iii) to issue copies of the work to the public not being copies already in circulation;
- (iv) to include the work in any cinematography film;
- (v) to make any adaptation of the work;
- (vi) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi).

(d) *In the case of a cinematography film...*

- (i) to make a copy of the film including a photograph of any image forming part thereof;
- (ii) to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;
- (iii) to communicate the film to the public.

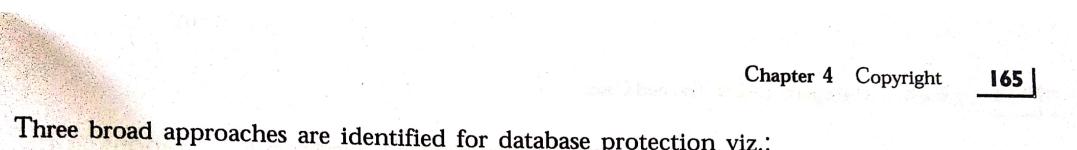
(e) *In the case of sound recording...*

- (i) to make any other sound recording embodying it;
- (ii) to sell or give on hire or offer for sale or hire, any copy of the sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions;
- (iii) to communicate the sound recording to the public.

*Explanation:* For the purpose of this section, a copy that has been sold once shall be deemed to be a copy already in circulation.

## DATABASES AND COPYRIGHT

Database as a concept has undergone a change after the Internet has narrowed the distance and put forth the vision of a global village. Today the term database constitute data stored in World Wide Web, CDs, multimedia products, networks, etc.



Three broad approaches are identified for database protection viz.:

- ***Protection of databases through contracts:*** it permits a user to use the database under a license from the database owner on payment of a fee, based upon the amount of usage and/or royalty.
- ***Protection of databases through copyright laws:*** many countries have accorded protection of databases under the copyright laws. Legal interpretations of a protection of databases considerably vary from one country to another.
- ***Sue generic system of protection of databases:*** sue generic protection of database is largely guided for the European Community. The European Parliament passed a directing bill on 11th March 1996. A similar proposal was also introduced in the 104th US Congress.