

# IPR Lecture 3

## UNIT – II

# INTRODUCTION:

- In ancient days creative persons like artists, musicians and writers made, composed or wrote their works for fame and recognition rather than to earn a living, thus, the question of copyright never arose.
- The importance of copyright was recognized only after the invention of printing press which enabled the reproduction of books in large quantity practicable.

# COPYRIGHT – DEFINITION:



Copyright is a right of use given by the law to the creator of literary, dramatic, musical, artistic work , software etc for a limited period of time



**In India** all the law related to copyright is regulated by the copyright Act 1957. Its latest amendment was brought in 2012.



A copyright is an **exclusionary right**. It conveys to its owner the right to prevent others from copying, selling, performing, displaying, or making derivative versions of a work of authorship.

# Exclusive copyright

The entire bundle of rights that a copyright owner is exclusively entitled to exercise under the copyright laws.

**These rights consists of:**

- the right to reproduce (copy) the work
- the right to prepare derivative works
- the right to distribute copies of the work
- the right to perform the work, and
- the right to display the work.

# COPYRIGHT ACT, 1957



Copyright Act refers to laws that regulate the use of the work of a creator, such as an artist or author.



This includes copying, distributing, altering and displaying creative, literary and other types of work. Unless otherwise stated in a contract, the author or creator of a work retains the copyright.



Copyright does not ordinarily protect titles by themselves or names, short word combinations, slogans, short phrases, methods, plots or factual information.

## NEED FOR COPYRIGHT

- It gives you the exclusive right to reproduce or copy the work or change its form.
- Registration informs the world that you own the work.
- If you succeed in an infringement suit, you are entitled to money damages.

# Indian Perspective on Copyright Protection :

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- The Copyright Act, 1957 provides copyright protection in India.
- It confers copyright protection in the following two forms:
  - (a) Economic rights of the author
  - (b) Moral Rights of the author
    - (i) Right of Paternity
    - (ii) Right of Integrity

## TERM OF COPYRIGHT:

It varies according to the nature of work - 60 years, in India.

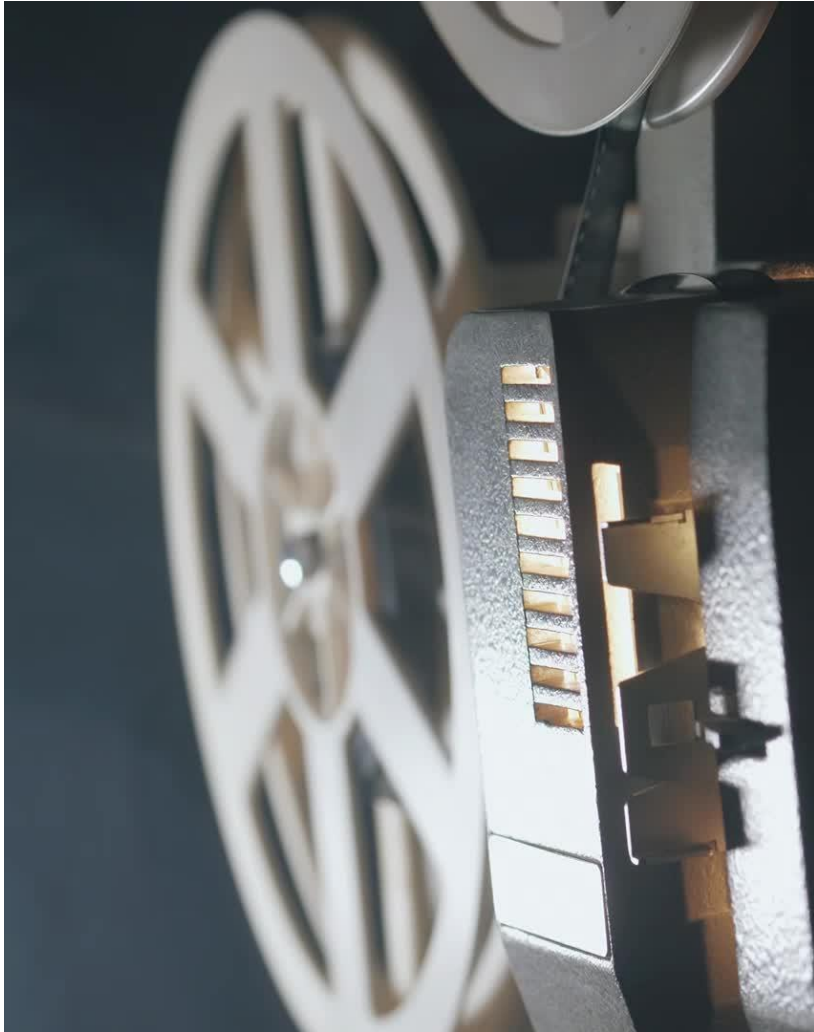
- Literary, dramatic, musical or artistic work (other than a photograph), when published during the lifetime of the author, copyright subsists during the lifetime of the author, plus 60 years.
- In the case of photographs, cinematograph films and sounds recordings; the term is 60 years from the date of publication.
- When the first owner of copyright is the government or a public undertaking, the term of copyright is 60 years from the date of publication.

# THE FUNDAMENTALS OF COPYRIGHT

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- Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings.
- In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work.
- It means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever (Kartar Singh Giani v. Ladha Singh & Others AIR 1934 Lah 777).
- Section 14 of the Act defines the term Copyright as to mean the exclusive right to do or authorise the doing of the following acts in respect of a work or any substantial part thereof, namely.





## In the case of literary, dramatic or musical work (except computer programme):

- Reproducing the work in any material form which includes storing of it in any medium by electronic means;
- Issuing copies of the work to the public which are not already in circulation.
- Performing the work in public or communicating it to the public.
- Making any cinematograph film or sound recording in respect of the work; making any translation or adaptation of the work.
- Further any of the above-mentioned acts in relation to work can be done in the case of translation or adaptation of the work.

## In the case of a computer programme:

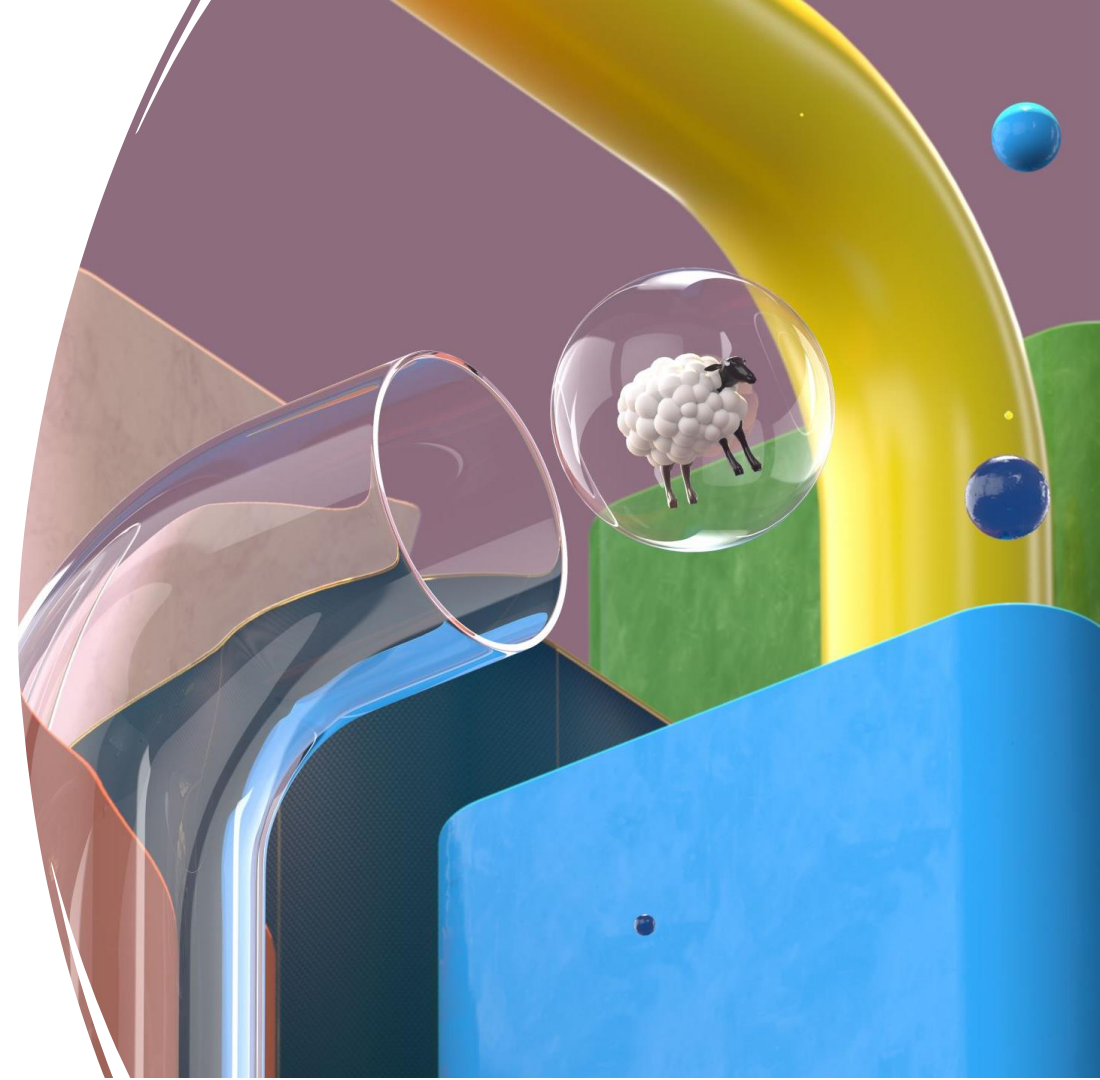
- To do any of the acts specified in respect of a literary, dramatic or musical work;
- To sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme.

**However, such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.**

## In the case of an artistic work:

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- Reproducing 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;
- Communicating the work to the public;
- Issuing copies of work to the public which are not already in existence;
- Including work in any cinematograph film; making adaptation of the work, and to do any of the above acts in relation to an adaptation of the work.





## In the case of cinematograph film and sound recording:

- Making a copy of the film including a photograph of any image or making any other sound recording embodying it.
- Selling or giving on hire or offer for sale or hire any copy of the film/sound recording even if such copy has been sold or given on hire on earlier occasions.
- Communicating the film/sound recording to the public.





## **In the case of a sound recording:**

- To make any other sound recording embodying it
- To sell or give on hire, or offer for sale or hire, any copy of the sound recording
- To communicate the sound recording to the public

# ORIGINALITY OF MATERIAL

There are **three basic requirements** for copyright ability:

- A work must be original
- A work must be fixed in a tangible form of expression; and
- A work must be a work of authorship

To be eligible for copyright protection, material must be **original**, meaning that it must have been **independently created** and must possess a **modicum of creativity**. The requirement of originality should not be confused with novelty, worthiness, or aesthetic appeal. The requirement is rather that the material must be an independent product of the author and not merely some copy or minimal variation of an existing work. A work can be original even if it is strikingly similar or identical to that of another. The Copyright Act only requires originality, meaning independent creation by the author.

**Originality does not signify novelty**; a work may be original even though it closely resembles other works so long as the similarity is fortuitous, not the result of copying.



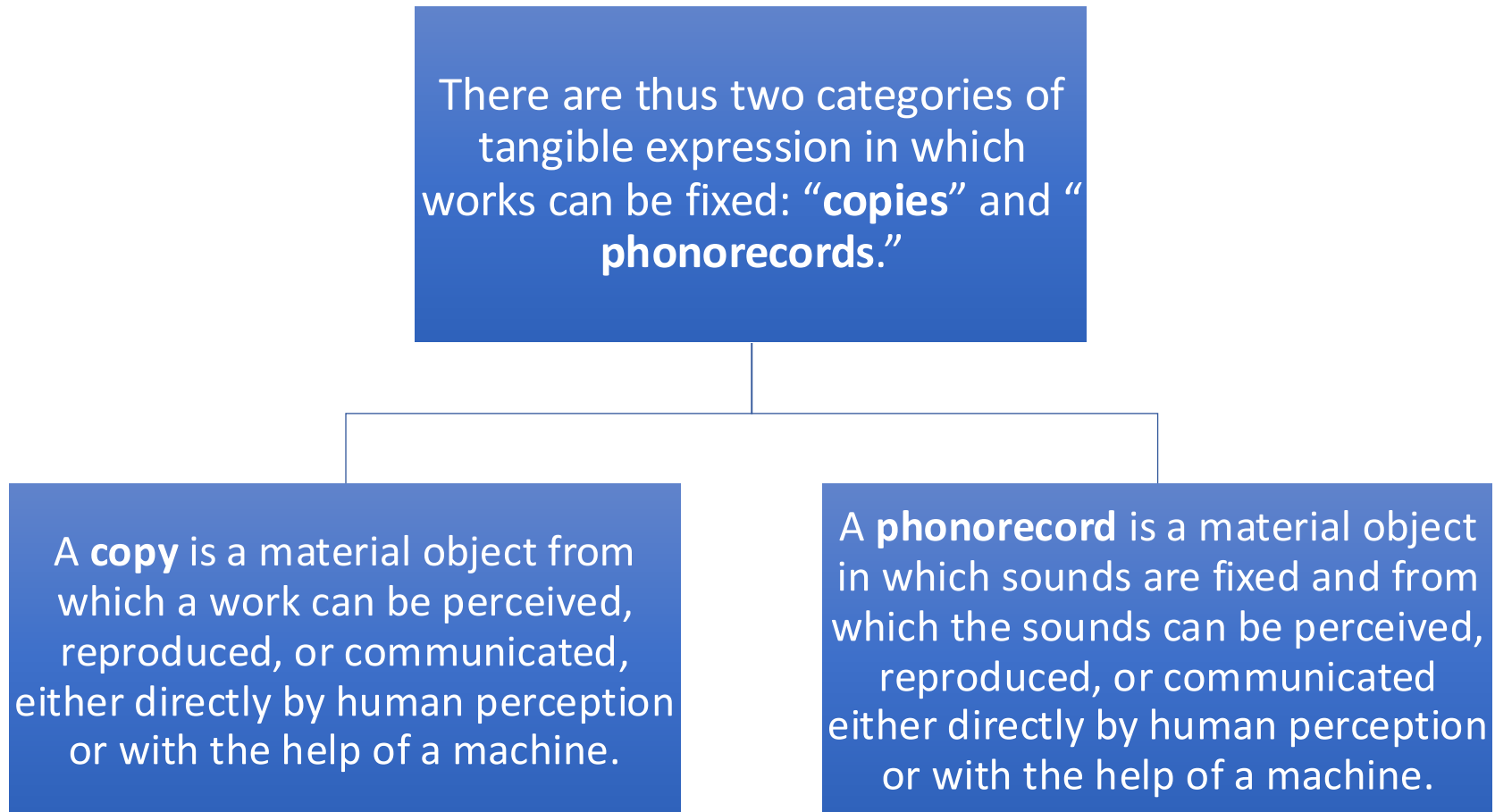
- To illustrate, assume that two poets, each ignorant of the other, compose identical poems.
- Neither work is novel, yet both are original, and, hence, copyrightable.



“**Originality**” thus does not mean “**first**”; it merely means “**independently created**” rather than copied from other works

## Fixation of Material:

- The Copyright Act protects works of authorship that are “fixed in any tangible medium of expression.”
- A work is “**fixed**” when it is embodied in a copy or phonorecord and is sufficiently permanent or stable to permit it to be perceived, reproduced, or communicated for a period of more than transitory duration.





## Works of Authorship: (17 U.S.C§102)

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- The copyright act provides that copyright protection subsists [support oneself] in original works of authorship fixed in any tangible medium of expression, now known or here after developed, from which they can be perceived, reproduced or otherwise communicated either directly or with the aid of a machine.

### 17 U.S.C. § 102

- Section 102 then lists **eight categories of protectable works**.
- The list is preceded by the phrase that works of authorship “include” those categories, demonstrating that the listed categories are not the only types of works that can be protected, but are illustrative only.

**The eight  
enumerated  
categories are  
as follows:**

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Literary works,

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Musical works (including accompanying words)

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Dramatic works (including accompanying music)

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Pantomimes and choreographic works

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Pictorial, graphic, and sculptural works

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Motion pictures and other audiovisual works

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Sound recordings

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Architectural works

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## Rights of Reproduction

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**The most fundamental of the rights granted to copyright owners is the right to reproduce the work.**

- A violation of the copy right act occurs when the the violator profits by the reproduction.
- Only the owner has the right to reproduce the work.
- Secretly taping a concert, taking pictures at a performance, or recording all violate the owner's right to reproduce.
- The suggestion of congress, in 1978 a group of authors, publishers and users established a not-for-profit entity called **Copyright Clearance Center[CCC]**.
- CCC grants licenses to academic, government and corporate users to copy and distribute the works.
- It collects royalty fees, which are distributed to the authors.
- Companies that photocopy articles from journals and magazines often enter into licensing arrangements with the CCC so they can make copies.

## Rights to Prepare Derivative Works:

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- Section 106 of the Copyright Act provides that the owner of a copyright has the exclusive right to prepare derivative works based upon the copyrighted work.
- This right is often referred to as the right to adapt the original work

“A **derivative work** is broadly defined as a work based upon one or more preexisting works, such as a translation, dramatization, fictionalized motion pictures version, abridgment condensation or any other from in which a work

- Maybe recast, transformed, or adapted.
- A work consisting of editorial revisions, annotations, elaborations, or other.

**New material represents original work of authorship.**

**Modifications is also a derivative work.**

## Rights of distribution and the first sale doctrine:

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- Section 106 (3) of the copyright act provides that the owner of a copyright has the exclusive right to distribute copies or phonorecords of the work to the public by sale or other transfer of ownership
- A violation of the distribution right can arise solely from the act of distribution itself
- The distributor did not make an unlawful copy or the copy being distributed was unauthorized. Thus, blockbuster videos too can be liable for violating an owner's right to distribute, once the author has parted with ownership of copyrighted material
- The new owner has the right to lend the book or movie to a friend, resell the work at a garage sale, or even destroy it.
- The first sale doctrine does not apply to limit the author's exclusive rights to prepare derivative works or rights of public performance and without permission of authorship the goods are not permitted to be imported into the U.S

## Rights to perform the work publicly

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- Section 106 [5] of the Copyright Act provided that in the case of all copyrighted works other than sound recording & works of architecture, the copyright owner has the exclusive right to display the work publicly.
- A display is “public” under the same circumstances in which a performance is “public”.
- New material represents original work of authorship namely if it occurs at a place open to the public (or) at a place where a substantial number of persons outside of the normal circle of a family.

## Copyright Ownership Issues [17U.S.C. §201(a)]:

- Copyright in a work protected under the copyright activists [provide with power and authority] in the author or authors of the work

**Ownership of a physical object is separate and distinct from ownership of the copyright embodied in the material object.**

- Issues about ownership arise when more than one person creates a work
- Unless copyright has been explicitly conveyed with those physical articles, the original authors generally retain all other rights associated with the works.

## Joint Works [intent to create a unitary whole]

- A joint work is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.
- One copyright exists in the created works
- Joint authors are those who “mastermind” or “supermind” the creative effort.



## Ownership Rights in Joint Works

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graph TD; A[Ownership Rights in Joint Works] --- B[If individual are authors of a joint work, each owns an equal undivided interest in the copyright as a tenant in common, [each has the right to use the work, prepare derivative works, display it without seeking the other coauthor's permission].]; A --- C[If profits arise out of such use, an accounting must be made so, that each author shares in the benefits or proceeds.]; A --- D[The death of a coauthor, his or her rights pass to heirs who then own the rights in common with the other coauthor.];
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If individual are authors of a joint work, each owns an equal undivided interest in the copyright as a tenant in common, [each has the right to use the work, prepare derivative works, display it without seeking the other coauthor's permission].

If profits arise out of such use, an accounting must be made so, that each author shares in the benefits or proceeds.

The death of a coauthor, his or her rights pass to heirs who then own the rights in common with the other coauthor.

## Ownership in Derivative or Collective Works

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- The author of the original book has rights only to his or her work and cannot reproduce or perform the derivative work without permission.
- If a work such as a book is created by one person who intends it to be complete at the time and illustrations are later added to it by another, the work cannot be a joint work because there was no intention of the parties to create a unitary whole at the time of their creation.
- The author of the derivative work cannot create further works based on the original book without permission and cannot reproduce the original work without permission.
- Multiple ownership rights may also arise if separately copyrightable works are compiled into a collection.

## For Example,

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- If essays written by Jerry Seinfeld, Ellen DeGeneres, and Paul Reiser are collected into a humor anthology by Bill Jones (with permission of the original authors), the original authors retain their exclusive rights (such as rights to reproduce, distribute, and perform) in their respective essays.
- No join work is created because there was no intent at the time the separate essays were created to merge them into a unitary whole.
- No derivative work is created because the original works have not been transformed in any way and nothing new has been added to them.
- The anthology by the compiler, Bill Jones, is a collective work and pursuant to section 201(c) of the act, Jones acquires only the right to reproduce and distribute the contributions as part of the particular collective work or any revision of the collective work.

## Works Made for Hire

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- The general rule is that the person who creates a work is the author of that work and the owner of the copyright therein, there is an exception to that principle: the copyright law defines a category of works called works made for hire.
- If a work is “**made for hire**”, the author is considered to be the employer or Commissioning party and not the employee or the actual person who created the work.
- The employer or commissioning party may be a company or an individual.
- There are **two types of works** that are classified as works made for hire;
  - ✓ works prepared by an employer within the scope of employment
  - ✓ certain categories of specially ordered or commissioned works.

## Copyright Registration

- A work is “created” when it is fixed in a copy or phonorecord for the first time.
- Although not required to provide copyright protection for a work, registration of copyright with the Copyright Office is expensive, easy and provides several advantages, chiefly, that registration is a condition precedent for bringing an infringement suit for works of US origin.
- To register a work, the applicant must send the following three elements to the Copyright Office: a properly completed application form, a filing fee, and a deposit of the work being registered.
- Registration may be made at any time within the life of the copyright

# THE APPLICATION FOR COPYRIGHT REGISTRATION

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The following persons are entitled to submit an application for registration of copyright:

- The **author** (either the person who actually created the work or, if the work is one made for hire, the employer or commissioning party)
- The **copyright claimant** (either the author or a person or organization that has obtained ownership of all of the rights under the copyright originally belonging to the author, such as a transferee)
- The **owner of exclusive right**, such as the transferee of any of the exclusive rights of copyright ownership (for example, one who prepares a movie based on an earlier book may file an application for the newly created derivative work, the movie); and
- The **duly authorized agent of the author, claimant, or owner of exclusive rights** (such as an attorney, trustee, or any one authorized to act on behalf of such parties)

# Application Forms



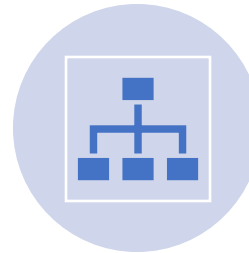
The Copyright Office provides forms for application for copyright registration.



Each form is one 8½ by 11”(inches) sheet, printed front and back.



An applicant may use photocopies of forms.



The Copyright Office receives more than 6,00,000 applications each year, each.



application must use a similar format to ease the burden of examination.



The type of form used is dictated by the type of work that is the subject of copyright.

## For Example:

One form is used for literary works, while another is used for sound recording.

Following are the forms used for copyright application.



**Form TX** (Literary works, essays, poetry, textbooks, reference works, catalogs, advertising copy, compilations of information, and computer programs).



**Form PA** (Pantomimes, choreographic works, operas, motion pictures and other audio visual works, musical compositions and songs.



**Form VA** (Puzzles, greeting cards, jewelry designs, maps, original prints, photographs, posters, sculptures, drawings, architectural plans and blueprints.



**Form SR** (Sound recording)



**Form SE** (periodicals, news papers magazines, newsletter, annuals and Journals.Etc.



## Notice of Copyright

- Since March 1, 1989 (the date of adherence by the United States to the Berne Convention), use of a notice of copyright (usually the symbol © together with the year of first publication and copyright owner's name) is no longer mandatory, although it is recommended and offers some advantages.
- Works published before January 1, 1978, are governed by the **1909 copyright Act**.



## Notice of Copyright

- Under that act, if a work was published under the copyright owner's authority without a proper notice of copyright, all copyright protection for that work was permanently lost in the United States.
- With regard to works published between January 1, 1978, and March 1, 1989, omission of a notice was generally excused if the notice was omitted from a smaller number of copies, registration was made within five years of publication, and a reasonable effort was made to add the notice after discovery of its omission.



## International Copyright Law



**Developments in technology create new industries and opportunities for reproduction and dissemination of works of authorship.**



**A number of new issues have arisen relating to the growth of electronic publishing, distribution, and viewing of copyrighted works.**



**Along with new and expanded markets for works comes the ever-increasing challenge of protecting works from piracy or infringement.**



**Copyright protection for computer programs**



**Copyright protection for Automated Databases**



**Copyright in the Electronic Age**



**The Digital Millennium Copyright Act**