

IPR UNIT-2

1. Explain the Copyright ownership

A. COPYRIGHT OWNERSHIP

The person or entity who retains legal control over all (or some) of the rights granted under copyright law, usually the author of the work. Copyrights are generally owned by the people who create the works of expression, with some important exceptions:

Section 17 of copyright Act 1957 recognizes the author as the first owner, and also states that subject to the provision of this Act, the author of a work shall be the first owner of the copyright therein:

- In the case of literary or dramatic composition, the author
- In the case of musical work, the musician
- In the case of creative work apart from photography, the artist
- In the case of photographic work, the photographer
- In the case of cinematographic or recording work, the producer
- In case of any work generated by any computer program (virus), its creator

Rights of Copyright Owners

The Copyright Act of 1976 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 public
- Right to create adaptations (called derivative works) : the right to prepare new works based on the protected work
- Performance and display rights: the rights to perform a protected work (such as a stage play) or to display a work in public.

2. Discuss the principles of Copyright protection

A. PRINCIPLES OF COPYRIGHT PROTECTION

Copyright protection exists automatically from the time of a work is created in fixed form. The owner of a copyright has the right to reproduce the work, prepare derivative works based on the original work (such as a sequel to the original), distribute copies of the work, and to perform and display the work.

Violations of such rights are protectable by infringement actions. Nevertheless, some uses of copyrighted works are considered “fair use” and do not constitute infringement, such as use of an insignificant portion of a work for non-commercial purposes or parody of a copyrighted work.

- **Provide protection to creators and producers:** Creators and producers of creative works should receive meaningful protection, recognition and

compensation for their contributions to economic and cultural development.

- **Maintain balance between Creators, Owners and users:** Copyright law should reflect an appropriate balance between the rights of creators and copyright owners and the interests of consumers and other users of works.
- **Monitor the copy right laws regularly:** Copyright law should be regularly reviewed and updated as appropriate to respond to new technologies and uses.
- **Copyright should be cost effective and meaningful:** Copyright systems should enable rights to be meaningfully, practically, cost-effectively, and proportionally enforced.
- **Useful for the public:** A wide range of means should be available for creative works to reach the public, as enabled by Internet and other technologies—maximizing choice for both rights holders and users. It is desirable to have as much quality content as possible available in as many formats as possible.
- **Licensing should be liberalized:** Licensing should be streamlined in a content-appropriate manner and simplified to be as easy and efficient as possible, including for different types of content and across national boundaries.
- **Educate the public:** The public should be educated about the purpose, scope and nature of copyright protections, including exceptions, and the reasons for proposed changes or government action.

3. What are the international conventions related to the protection of copyright

A. International Conventions related to the protection of Copyright

Today, system of widely accepted multilateral conventions and The Most Important International Conventions related to the protection of Copyright and Neighbouring Rights are

1. Berne Convention for the Protection of Literary and Artistic Works (1886)

- **Key Principle:** Automatic protection without formal registration.
- **Minimum Standards:**
 - Protection for life of the author + 50 years (many countries extend this).
 - Rights include reproduction, translation, adaptation, public performance.
- **National Treatment:** Foreign authors receive the same protection as nationals.
- **Administered by:** World Intellectual Property Organization (WIPO).

2. Universal Copyright Convention (UCC, 1952)

- **Purpose:** Alternative to Berne for countries not ready to adopt its standards.
- **Key Feature:** Requires copyright notice (© symbol) for protection.
- **Administered by:** UNESCO.
- **Note:** Largely superseded by Berne and TRIPS in practice.

3. Rome Convention (1961)

- **Focus:** Protection of related rights—performers, producers of phonograms, and broadcasting organizations.
- **Minimum Rights:**

- Performers: Protection against unauthorized broadcasting and recording.
- Producers: Rights over reproduction of phonograms.
- Broadcasters: Rights over rebroadcasting and recording.

4. TRIPS Agreement (1994) – Trade-Related Aspects of Intellectual Property Rights

- **Part of:** WTO framework.
- **Scope:** Sets minimum standards for all IP rights, including copyright.
- **Enforcement:** Requires member countries to provide legal remedies and enforcement mechanisms.
- **Impact:** Strengthened copyright laws in many developing countries, including India.

5. WIPO Copyright Treaty (WCT, 1996)

- **Modernization:** Addresses digital rights and internet-based works.
- **Additional Rights:**
 - Protection of computer programs as literary works.
 - Rights over distribution and communication to the public.
- **Anti-Circumvention:** Prohibits bypassing digital rights management (DRM) systems.

6. WIPO Performances and Phonograms Treaty (WPPT, 1996)

- **Extension of Rome Convention:** Focuses on digital rights for performers and producers.
- **Digital Environment:** Grants rights over online distribution and streaming.

4. What are the exceptions in Copyright usage

A. 1. Fair Dealing (India) – Section 52 of the Copyright Act, 1957

Certain uses of copyrighted works are permitted without the owner's authorization. These include:

- **Private or personal use,** including research.
- **Criticism or review,** of the work or another work.
- **Reporting of current events,** including public lectures.
- **Use in judicial proceedings** or for legal advice.
- **Educational use:** Performance or display in classrooms or educational institutions.
- **Use by libraries:** Reproduction for preservation or replacement.
- **Computer programs:**
 - Making backup copies.
 - Studying or testing the program to understand its principles.
 - Ensuring interoperability with other programs.

You can find the full list of exceptions under Section 52 of the Indian Copyright Act.

2. International Principles – Berne Convention's Three-Step Test

Exceptions must meet these criteria:

1. **Special Cases:** The exception must apply to a specific situation.
2. **No Conflict with Normal Exploitation:** It shouldn't harm the market for the

work.

3. **No Unreasonable Prejudice to Author's Interests:** The creator's rights must be respected.

This test is widely adopted in international treaties and national laws.

3. Educational and Instructional Use

- **Face-to-face teaching:** Use of copyrighted material in classrooms is generally allowed.
- **Virtual education:** Some jurisdictions allow limited use in online learning environments.

4. Public Interest Exceptions

- **Use by disabled persons:** For example, the Marrakesh Treaty allows reproduction in accessible formats.
- **Government use:** In some cases, government bodies may use copyrighted works for public dissemination.

5. Transient and Incidental Storage

- Temporary storage during electronic transmission (e.g., caching or linking) is not considered infringement if done without intent to distribute infringing copies

5. Discuss in detail about Semi-conductor Chip Act

A. Meaning of Semiconductor chip Protection act: The Semiconductor Chip Protection Act of 1984 (or SCPA) is an act of the US Congress that makes the layouts of integrated legally protected upon registration and hence illegal to copy without permission. Prior to 1984,

In India, the Act for protection of the layout designs of integrated circuits in India, came into force on 4th September, 2000 and is called the SICLD (Semiconductor Integrated Circuit Layout Design) Act, 2000. The Act provides for exclusive rights to the registered proprietor of a layout design and also to the registered users.

Applications for registration of layout designers must be filed with the registrar.

Appeals against the orders of the registrar could be filed with the appellate board.

The Act also provides for criminal prosecution for infringement of layout designs.

Benefits

- Protection of effort and investments in design and improvement of circuits
- Recognition of original effort

Registration

- Registration of circuit design in India can be done in India by making an application to registrar of SICLDL, New Delhi.
- Web link- <http://mit.gov.in/content/sicldr>

The following layout designs are not registrable

- Not original
- Already commercial exploited
- Not distinctive

- Not capable of being distinguishable from any other registered layout design.
Term
- 10 years from date of filing or known date of commercialization, whichever is earlier

6. Discuss about the subject matter of Copyright

A. SUBJECT MATTERS OF COPYRIGHT

With the advent of independence, the Copyright Act, 1914 was replaced with the Copyright Act, 1957. With the Act, the Indian legislature sought to achieve two broad goals, firstly, to protect the result of man's labour, skill and work and secondly, to protect works from annexation by others. Section 13 of the Copyright Act-1957 is the section that deals with the subject matter of copyright protection (Works).

According to Section 13(1), all of India is under the purview of the Copyright, and the following classifications of works eligible for copyright can be claimed for:

Original Literary Work

It is the product of the human mind which may consist of a series of verbal or numerical statements, not necessarily possessing aesthetic merit, capable of being expressed in writing, and which has been arrived at by the exercise of substantial independent skill, creative labour, or judgment. The Copyright Act, 1957 provides an inclusive definition of literary work, according to which the literary work includes computer programming, tablets, and compilations including computer databases.

Original Dramatic Work

Dramatic work includes any piece for recitation, choreographic work or entertainment in dumb shows, the scenic arrangement or acting form which is fixed in writing or otherwise but does not include a cinematographic film.

Original Musical Work

Musical work means any work consisting of music and includes any graphical notion of such work, but does not include any words or any action intended to be sung, spoken or performed with the music. In order to qualify for copyright protection, a musical work must be original.

Original Artistic Work

Artistic work includes any painting, sculpture, drawing, or engraving photograph of any work possessing artistic qualities. However, it also includes the architecture and artistic craftsmanship of such works.

Cinematographic Films

A cinematographic film includes any work of visual recording and a sound recording accompanying such visual recording and the expression.

Cinematograph shall be understood as including any work produced by any process parallel to cinematographic including video films.

Sound Recording

As sound recording states it is recording of sounds from which that sound may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced.

7. Explain in detail the mode of assignment as in the Copyright Act.

A. 1. Legal Basis

- The assignment of copyright is governed by **Section 18 and Section 19** of the Copyright Act, 1957.
- Section 18 allows the owner of a copyright to assign it wholly or partially.
- Section 19 specifies the **mode and formalities** required for a valid assignment.

2. Essential Requirements for a Valid Assignment (Section 19)

To be legally enforceable, a copyright assignment must meet the following conditions:

a. Written Agreement

- The assignment must be **in writing**.
- It must be **signed by the assignor** or their duly authorized agent.

b. Identification of the Work

- The agreement must **clearly identify the work** being assigned.
- Ambiguity in the description can render the assignment invalid.

c. Specification of Rights

- The agreement must specify **which rights** are being assigned (e.g., reproduction, distribution, adaptation).
- If not specified, only limited rights may be presumed.

d. Duration of Assignment

- The term (duration) of the assignment must be mentioned.
- If not specified, the default duration is **five years** from the date of assignment.

e. Territorial Extent

- The geographical scope of the assignment must be defined.
- If not specified, the assignment is presumed to be valid **within India only**.

f. Royalty and Compensation

- The agreement should mention the **amount of royalty or consideration** payable to the author or their legal heirs.
- This ensures transparency and protects the author's economic interests.

3. Assignment of Future Works

- Assignment of copyright in a **future work** takes effect **only when the work comes into existence**.
- The assignee includes the **legal representatives** if the assignee dies before the work is created.

4. Revocation and Disputes

- If the assignee fails to exercise the rights assigned within **one year**, the assignment may be **revoked** unless otherwise agreed.
- Disputes regarding assignment terms can be resolved through civil litigation or arbitration, depending on the contract.

5. Judicial Interpretation

Courts have emphasized the importance of clarity and specificity in assignment agreements. For example:

- In *Saregama India Ltd. v. Suresh Jindal*, the court upheld that copyright in future works can be assigned, but only upon creation of the work.
- In *Video Master v. Nishi Productions*, the scope of assignment (e.g., whether it includes satellite rights) was scrutinized based on the language of the agreement.

8. Describe the concept of Copyrights along with the features of Copyright Act, 1957

A. Concept of Copyright

Copyright is a form of intellectual property that grants creators of original works exclusive rights over the use and distribution of their creations. It protects the *expression* of ideas, not the ideas themselves.

Key Elements:

- **Originality:** The work must be independently created and possess a minimal degree of creativity.
- **Fixation:** The work must be fixed in a tangible medium (e.g., written, recorded).
- **Automatic Protection:** Copyright arises upon creation; registration is optional but recommended for enforcement.

Rights Granted:

- **Economic Rights:** Reproduction, distribution, public performance, adaptation, and translation.
- **Moral Rights:** Right to attribution and protection against distortion or mutilation of the work.

Salient Features of Copyright Act of 1957.

- Provisions for Copyright Office and Copyright Board for the purpose of registration of copyright and for settlement of certain kinds of disputes.
- Provision for compulsory licensing of Copyright.
- Provisions to determine first ownership of copyright in different categories of work.
- The Act provides definition for various categories of work in which copyright exists.
- Scope of rights conferred on authors of copyright is adequately described.
- The Act provides comprehensive definition of copyright.
- The Act states term of copyright of different kinds of work.
- Provisions relating to assignment of ownership.
- Provisions relating to performing rights of or by societies.
- Provision for broadcasting rights.
- Provision for international copyright.

- Definition of infringement of copyright.
- Civil and criminal remedies against infringement.
- Remedies against groundless threat of legal proceedings.

9. Explain Copyright derivative works and rights of distribution

A. Copyright Derivative Works

Definition:

A **derivative work** is a creation that is based on or derived from one or more pre-existing copyrighted works. Examples include:

- Translations
- Adaptations (e.g., turning a novel into a screenplay)
- Musical arrangements
- Art reproductions
- Annotated editions or compilations

Legal Principle:

- Only the **copyright owner** of the original work has the right to create or authorize derivative works.
- Unauthorized derivative works may constitute **copyright infringement**, even if the new work adds original content.

Scope of Protection:

- The copyright in a derivative work covers **only the new, original material** added by the derivative author.
- It does **not extend** to the pre-existing material unless the author has rights over it.

Indian Context:

- Under the **Copyright Act, 1957**, derivative works are protected as literary, dramatic, musical, or artistic works if they involve sufficient originality.
- In India, the copyright in a derivative work vests with the author of the derivative work, **subject to the subsistence of copyright in the original work**

RIGHTS OF DISTRIBUTION

The rights of distribution grant the copyright owner the ability to control the manner in which a work or a copy of a work is transferred to others, whether by sale, rental, lease, or lending. This right allows the copyright holder to not only prevent the distribution of unauthorized copies of a work, but also to control the unauthorized distribution of authorized copies (However, the distribution right is limited by the "first sale doctrine", which states that after the first sale or distribution of a copy, the copyright holder can no longer control what happens to that copy). Some activities that implicate the distribution right include copying a news article and pasting it into an email that you send to colleagues, uploading a music file to a website, or renting of software or sound recordings.

The **right of distribution** allows the copyright holder to control how copies of their work are made available to the public. This includes:

- Sale

- Rental
- Lease
- Lending

Legal Basis:

- In the U.S., this is codified under **17 U.S.C. § 106(3)**.
- In India, it is part of the bundle of rights granted under **Section 14** of the Copyright Act.

10. Discuss in detail about the performer rights and duration of copyrights in India

A. RIGHTS OF PERFORMERS

Until 1994, the Copyright Act of 1957 did not recognize a performer's rights in India. The Act does not protect any performance done by an actor in a cinematographic film or any song sung by a singer for a show. . However, in 1994, pursuant to a case decided by the Bombay High Court, performers' rights were recognized by way of introducing Section 38, 39, and 39A in the Copyright Act. Performers' rights are completely independent of the rights available in ownership of work. They are categorized as related rights, protecting the interests of those who contribute to doing work.

1. Legal Recognition

- Performer's rights were formally recognized in India through the **1994 Amendment** to the Copyright Act, 1957.
- Sections **38, 39, and 39A** were introduced to define and protect these rights.

2. Definition of Performer (Section 2(qq))

Includes:

- Actors, singers, musicians, dancers
- Acrobats, conjurers, snake charmers, jugglers
- Lecturers and other individuals who give live performances

Note: Sports persons are excluded as their performances are competitive and lack creative expression.

3. Rights Granted (Section 38)

- **Exclusive Rights:**
 - To prevent unauthorized recording or broadcasting of live performances
 - To authorize reproduction and distribution of recorded performances
- **Moral Rights (Section 38B):**
 - Right to be identified as the performer
 - Right to object to distortion or mutilation of the performance

4. Limitations (Section 39)

- Rights may not apply if the performance is part of a cinematographic film and the performer has consented to its use.
- However, performers retain the right to claim **royalties** if their performance is used beyond the scope of the original agreement.

Duration of Copyrights in India

In case of original literary, dramatic, musical, and artistic works the time period of

copyright in

India is 60 years in addition to the author's lifespan. Where there are multiple authors, the term is 60 years post the death of the last author.

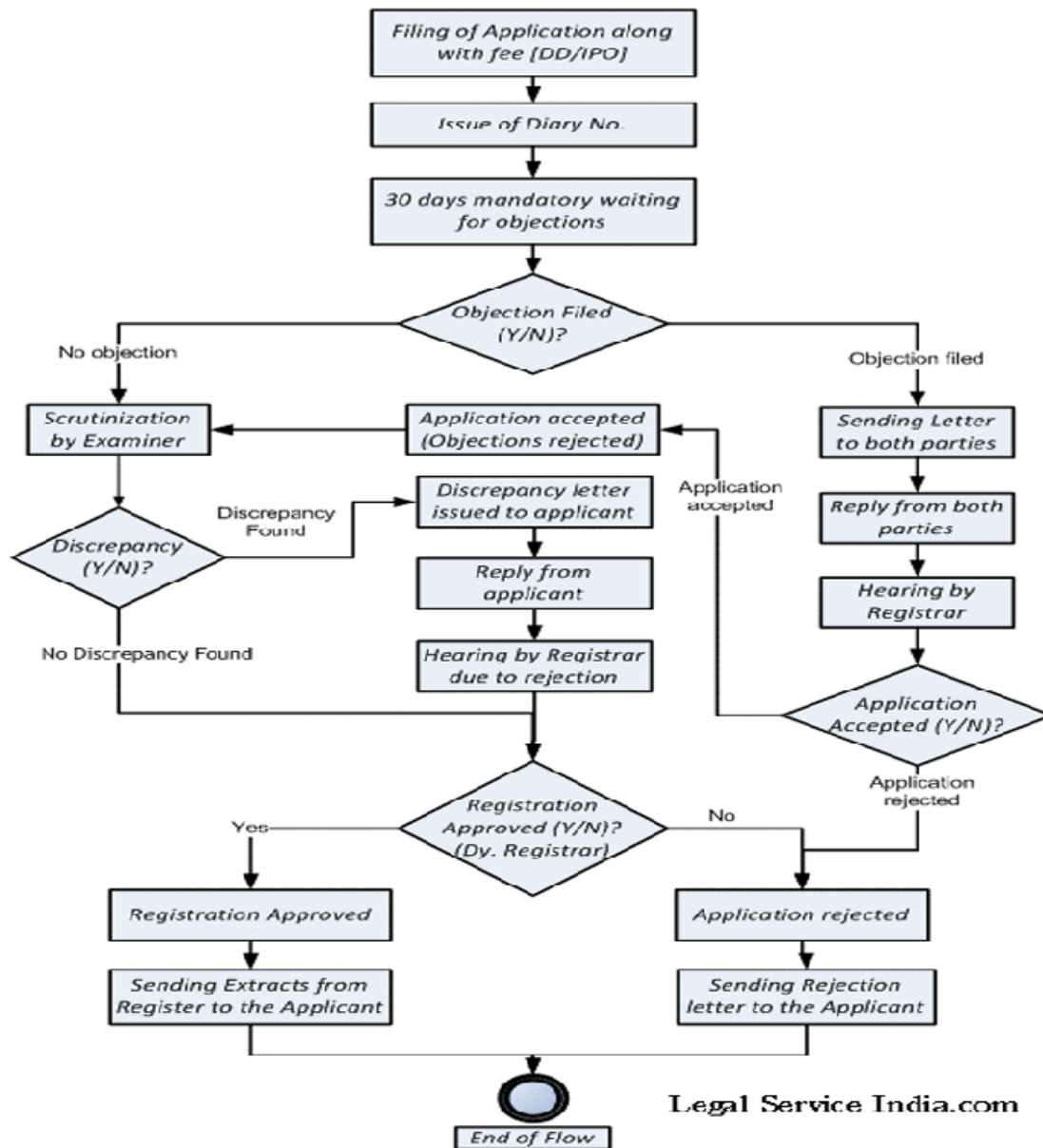
- For cinematograph films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organizations, Copyright protection subsists for a period of 60 years from the year of publication.
- In case of unpublished Cinematograph films, Photographs, and computer programs the copyright is up to 60 years from the year in which the original work was created.
- Copyright for Sound recordings is valid for 60 years from the end of the year in which that sound recording is published for the first time.
- Broadcast reproduction rights are valid for 25 years from the year of broadcast
- Performers rights last for 50 years from the year the performance was made.

11. Summaries the process of Copyright registration

A. COPYRIGHT REGISTRATION

Copyright registration is to place on record a verifiable account of the date and content of the work in question, so that in the event of a legal claim, or case of infringement or plagiarism, the copyright owner can produce a copy of the work from an official government source.

Copyright Registration Workflow



- Application for registration is to be made on 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
- 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.
- After filing an application and receiving a diary number one have to wait for a mandatory period of 30 days so that no objection is filed in the Copyright office against the one who claimed to have created that particular.
- In case no objections are raised, the examiner goes ahead to review and scrutinize the application to find any discrepancy.
- In case objections are raised by someone against the applicant, letters are sent out to both parties and they are called to be heard by the registrar.

- The final step in this process can be termed as registration. In this step, the registrar might ask for more documents. Once completely satisfied with the copyright claim made by the applicant, the Registrar of Copyrights would enter the details of the copyright into the register of copyrights and issue a certificate of registration.
- The process registration of copyright completes when the applicant is issued the Extracts of the Register of Copyrights (ROC)

12. Illustrate in detail about fair-usage and Copyright infringement with the relief and remedies in Copyrights

A. The term 'Fair Dealing' is a legal doctrine that allows an individual to make restricted use of a work without the permission of the owner. The fair nature of the dealing is mainly based on the four factors.

- The purpose of use
- The kind of work
- The amount of work used
- The effect of the use of work on the original

INFRINGEMENT OF COPYRIGHT

Copyright protection gives exclusive rights to the owners of the work to reproduce the work enabling them to derive financial benefits by exercising such rights. If any person without authorisation from the owner exercises these rights in respect of the work which has copyright protection it constitutes an infringement of the copyright. When someone purposefully or inadvertently duplicates or uses another person's work without giving them credit, it is considered infringement. Primary and Secondary infringements are the two categories into which infringement is typically divided.

Examples of copyright infringement

- Downloading and sharing MP3 files of music, videos and games without permission of the copyright owner.
- Using corporate logos without permission.
- Scanning a photograph that has been published and using it without permission or attribution.
- Placing a number of full-text articles on a course web page and allowing the web page to be accessible to anyone who can access the Internet.
- Downloading licensed software from non-authorized sites without the permission of the copyright or license holder.
- Making a movie file or a large segment of a movie available on a web site without permission of the copyright owner.

Relief and Remedy against Copyright Infringement

In India some acts that do not constitute a copyright infringement or are deemed a copyright infringement exception like fair dealing of a literary, musical, theatrical, or artistic work that is not a computer program. The following are exceptions to infringement:

- Private use along with research
- Review or criticism
- Reporting present events in any print media
- By a cinematograph films copyright or broadcast or by any means of photographs
- Reproduction of the judicial proceeding or of a report of the judicial proceeding
- Publication or reproduction of the musical, literary, dramatic, or artistic work in any work prepared by the secretariat of the legislature
- The reproduction of any literary, musical work or dramatic in a certified copy made or supplied in lines with any law for the time being in force
- The recitation or reading in public of any reasonable extract from the published literary or dramatic work
- The publication in the collection, primarily composed of non-copyright matter, is bonafide and intended for the sake of educational institutions
- The making of sound if made with or by the copyright license or consent of the owner of the right in the work