

INTRODUCTION

Introduction Intellectual property (IP) is related to human brain applied for creativity and invention. Various efforts in terms of inputs of manpower, time, energy, skill, money, etc., are required to invent or create something new. As per law, legal rights or monopoly rights are given to creator or innovator to harvest the economic benefits on their invention or creation. These Intellectual property rights (IPR) are territorial rights that can be registered with a legal authority in some presentable or tangible form which can be sold or bought or licensed, similar to physical property. IPR provides a secure environment for investors, scientists, artists, designers, traders etc. to foster innovation and scientific temper. In the present scenario of Globalisation, IPR is the focal point in global trade practices and livelihood across the world. A balanced IPR System is one of the key mechanisms to support country's innovation and development objectives.

The development of any society directly depends on IPR and its policy framework. Lack of IPR awareness results in the death of inventions, high risk of infringement, economic loss and decline of an intellectual era in the country.

What is Copyright?

Copyright is an intellectual property right that law gives to a creator of literary, dramatic, musical, and artistic work and a producer of cinematograph films and sound recordings. It also applies to architectural works and computer program/software. It can be understood as a bundle of rights that include the right of reproduction, communication, adaptation, and translation of the work. Copyright ensures protection to the rights of authors over their creations and in turn aims at rewarding creativity.

The Copyright Law in India

The Copyright Act, 1957 (Act) along with Copyright Rules, govern the laws related to copyright protection in India. Mere ideas, knowledge or concepts are not copyrightable. Having said that copyright protects the original expression of information and ideas. Copyright can be claimed by either the creator or the person who has inherited the rights of ownership from the original creator or an agent who is allowed to act on behalf of the creator.

The Copyright Act provides an economic right to the author to reproduce the work, to issue copies, to perform or communicate it to the public, to make any cinematograph film or sound recording or to make any adaptation or translation of the work. The Act also provides a paternity right- right to claim authorship of the work; an integrity right- right to protect one's honor and reputation and a general right- right to not have a work falsely attributed to oneself. These moral rights remain with the author even after assignment of the copyright.

When it comes to enforcement, Copyright Board used to adjudicate certain cases pertaining to copyright, however with the passing of the Finance Bill in 2017, the board was dissolved, and its functions were transferred to the Intellectual Property Appellate Board (IPAB). Subsequently, the IPAB was abolished in 2021, and powers were finally transferred to Commercial Courts (a division of High Courts).

Objective of Copyright

The objective of copyright is to provide creators and authors with exclusive rights to their original works, thereby incentivizing the creation and dissemination of new and valuable intellectual and artistic creations. Copyright is a legal concept that grants creators the exclusive right to reproduce, distribute, perform, display, and create derivative works based on their original creations. This protection is intended to encourage innovation and creativity by providing creators with the assurance that they can control and financially benefit from their works.

Key objectives of copyright include:

Encouraging Creativity: Copyright aims to stimulate the creation of original works by providing creators with the means to control the use of their creations and derive economic benefits from them.

Financial Incentives: By granting creators exclusive rights to their works, copyright serves as an economic incentive. Creators are more likely to invest time, effort, and resources in creating new works if they know they can reap financial rewards and protect their investment.

Cultural and Educational Benefits: Copyright is designed to balance the interests of creators with the public interest. While providing creators with exclusive rights, copyright also includes limitations and exceptions to ensure that the public can access and use works for purposes such as education, research, and criticism.

Promoting Innovation: Copyright protection extends to various forms of creative expression, including literature, music, art, software, and more. By protecting these creations, copyright contributes to the advancement of technology, culture, and knowledge.

Fostering a Creative Economy: Copyright is seen as a mechanism to support and sustain industries that depend on creative works, such as publishing, music,

film, and software development. It helps create a framework for licensing and commercial transactions.

It's important to note that the balance between the rights of creators and the public interest is a dynamic and sometimes debated aspect of copyright law. Overly restrictive copyright measures can stifle innovation and access to knowledge, while weak protection may discourage creators. Striking the right balance is an ongoing challenge for lawmakers and the legal system.

Requirement Of Copyright

Copyright is a legal concept that grants the creator of an original work exclusive rights to its use and distribution, usually for a limited time, with the intention of enabling the creator to receive compensation for their intellectual investment. The requirements for copyright protection generally include the following:

Originality: The work must be original and not a direct copy of someone else's work. It should demonstrate a minimal level of creativity or originality, meaning it's not merely a simple, mechanical reproduction.

Fixation: The work must be fixed in a tangible medium, such as written on paper, saved to a computer file, recorded on audio or video, etc. It should exist in a form that can be perceived or reproduced.

Creativity: While not all works need to be highly creative, there should be some level of creativity involved in the creation of the work. This requirement is often more relevant for certain types of works like literature, art, music, etc.

Independence: The work must be independently created by the author and not copied from someone else.

Duration: Copyright protection is not eternal. It has a limited duration, after which the work enters the public domain and can be freely used by the public. The duration varies by jurisdiction but is typically the life of the author plus a certain number of years.

Registration (optional): In many jurisdictions, copyright protection is automatic upon the creation of the work. However, registering the work with a copyright office provides additional legal benefits, such as the ability to sue for statutory damages and attorney's fees in case of infringement.

Notice (historical): While not a strict requirement today, including a copyright notice (e.g., © [year] [author]) was historically important for copyright

protection. However, with international treaties like the Berne Convention, such notice is no longer required for protection.

It's important to note that copyright laws can vary by jurisdiction, so the specific requirements and duration may differ from one country to another. Additionally, certain types of works, like facts, ideas, systems, or methods of operation, are generally not eligible for copyright protection.

Copyright As a Bundle of Rights

Economic Rights:

1. The Right of Reproduction: The right of reproduction commonly means that no person shall make one or more copies of a work or of a substantial part of it in any material form including sound and film recording without the permission of the copyright owner. The most common kind of reproduction is printing an edition of a work. Reproduction occurs in storing work in the computer memory.

2. The Right of Publication or Communication to Public: Communication to the public means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion. It is not necessary that any member of the public actually sees, hears or otherwise enjoys the work so made available. For example, a cable operator may transmit a cinematograph film, which no member of the public may see. Still, it is a communication to the public. The fact that the work in question is accessible to the public is enough to say that the work is communicated to the public.

3. The Right of Performance: the authors have the right to generate revenues through performances. Concerts and world tours by singers is an example. These performances can be executed in public and private forms.

4. The Right of Audio-Visual Expression: This right confers the author to represent his/her work in audio-visual format, commonly referred to as the cinematographic expression. The author holding rights in the literary, dramatic and musical works including sound recording also has the right to make the cinematographic film by using those works.

5. The Right of Translation and Adaptation: Adaptation involves the preparation of new work in the same or different form based upon an already existing work. The Copyright Act defines the following acts as adaptations:

- Conversion of a dramatic work into a non-dramatic work
- Conversion of a literary or artistic work into a dramatic work
- Re-arrangement of a literary or dramatic work
- Depiction in a comic form or through pictures of a literary or dramatic work.
- Transcription of a musical work or any act involving re-arrangement or alteration of existing work.

The making of a cinematograph film of a literary or dramatic or musical work is also an adaptation. For example, the movie “Dil Bechara” was an adaptation of the novel “Fault in our Stars” and so was the movie “Ram-Leela” which was an adaptation of William Shakespeare’s “Romeo-Juliet”.

Moral Rights:

Moral rights generally include the right to paternity and the right to integrity.

1. Right to Paternity: As the “creator” of a work, the author can claim ownership over their work and prevent others from claiming ownership have the work attributed to them.

2. Right to Integrity: this right allows the author to claim damages in the case when someone tries to damage the reputation of the work, mutilate, modify or alter his work inappropriately which may cause harm to the work and the author.

What is Framing?

Web browsers allow Web authors to divide pages into “frames”. A frame is an independently controllable window on a Web site through which pages from another Web site can be viewed. Since it is possible for a site to call a frame’s contents from a different location, a programmer might “frame” another’s Web content beneath his own navigation or banners. This allows him to use creative content owned by another entity to sell banner advertising on its on site. A typical use of frames is to have one frame containing a selection menu in one frame and another frame that contains the space where the selected (linked to) files appear.

In *Washington Post Co. v. Total News, Inc.* [97 Civ.1190 (S.D.N.Y.)] The Washington Post filed a complaint against an online news site, Total News, the publisher of the Web site www.totalnews.com. TotalNews, an aggregator of web news sources, employed frame technology to display news sites from around the Web. Total News had created pages with frames that contained hyperlinks to other news Web sites, such as The Washington Post, CNN, USA Today, Time and Sports Illustrated, etc. Web users, therefore, could use www.totalnews.com to access articles from various sources. The TotalNews Web site generated its revenue from advertising, which it placed in a static border frame. Clicking on a hyperlink to ‘The Washington Post’ within the Total News Web page displayed the content of The Washington Post page within a frame that was surrounded by TotalNews’s URL, logo, banner, advertisements and information. Six content providers – CNN, TimeWarner, Reuters, The Washington Post, The Wall Street Journal and the LA Times, sued TotalNews, claiming that such framing was the Internet equivalent of pirating copyrighted material. They also alleged misappropriation, trademark infringement and trademark dilution. The plaintiffs complained that TotalNews has designed a parasitic Web site that republishes the news and editorial content of other Web sites in order to attract both advertisers and users. Total News settled the case by agreeing to link to, rather than frame, the Post’s Web pages of various plaintiffs and the court did not have an opportunity to decide any of the legal issues that were raised by the plaintiffs.

What is Linking?

The interactive feature of the Internet's most popular information access tool, the World Wide Web, to hyperlink defines its very culture distinguishing it from any other communications medium. On the Internet, a link is a selectable connection from one word, picture, or information object to another. Links usually appear as highlighted, underlined, otherwise prominent text or picture that can be selected by the user, resulting in the immediate delivery and view of another file. The highlighted object is referred to as an anchor. The anchor reference and the object referred to constitute a link. A link may lead either to another file in the same Web site, or to a file on a different computer located elsewhere on the Internet. Internet browsers automatically decipher the instructions given by links and retrieve the specified file. A single Web page may contain many links to other Web pages.

Linking is the sine qua non for the World Wide Web and in fact links are what make the World Wide Web a web. Links allow quick access to information that otherwise could take much time and effort to find. Linking is of two types:

Surface linking: When the home page of a site is linked it is the case of surface linking.

Deep linking: When a link bypasses the home page and goes straight to an internal page within the linked site it is the case of deep linking.

Copyright Infringement in India

As per the Copyright Act, 1957, the use of a copyrighted work without the permission of the owner results in copyright infringement. Infringement occurs when a third person unintentionally or intentionally uses/copies the work of another without giving credit. It is usually classified into two categories, i.e. primary and secondary infringement.

Primary infringement occurs when there is an actual act of copying, while secondary infringement occurs when unauthorised dealings take place, such as selling or importing pirated books, etc. In the case of secondary infringement, the infringer will know about infringement, while in the case of primary infringement, the infringer may or may not know about infringement.

The following elements should be present for copyright infringement:

- The copyrighted work is the original creation of the author
- The copyright infringement work is actually copied from the work of the author

Instances Where Copyright Infringement Occurs

As per the Copyright Act, 1957, a copyright infringement occurs in India in the following cases:

- Copies of copyrighted work are made for hire/sale without authority or permission, such as online piracy
- Infringing copies are distributed for personal and trade gains
- Copyrighted work is performed in a public place
- Infringing copies are imported into India
- Public exhibition of infringing copies prejudicial to the owner
- Reproduction of a dramatic, literary, artistic or musical work other than in the form of a cinematograph film
- Creating a recording embodying the copyrighted sound recording
- Copy of the cinematographic film

Copyright Infringement Examples

- When someone downloads movies from an unauthorised source, it will be copyright infringement.
- When a person uses a television serial clip in a youtube video without giving credit and publishes the serial clip on youtube, it amounts to copyright infringement.
- When someone uses a song's music as background music in his/her song, it results in copyright infringement.

Information Technology Act Related To Copyright

Information Technology Act, 2000, is the primary legislation in India that deals with issues related to electronic governance and cybercrime. While it covers various aspects of electronic transactions, digital signatures, and data protection, it may not directly address copyright issues.

Copyright-related matters in India are primarily governed by the Copyright Act, 1957. This Act provides the legal framework for the protection of literary, artistic, and musical works. It outlines the rights of copyright owners and the limitations on those rights.

However, with the evolution of technology and the internet, there have been amendments and discussions about addressing copyright infringement in the digital realm. The Copyright (Amendment) Act, 2012, introduced provisions related to digital rights management and the liability of internet service providers.

In the context of information technology and copyright, certain aspects of the Information Technology Act may indirectly touch upon copyright issues, especially when it comes to dealing with electronic records, online piracy, and digital infringement. For instance, the Act addresses offenses related to unauthorized access to computer systems and data, which may include unauthorized access to copyrighted materials.

It's essential to consult the most recent and updated legal sources or seek legal advice to get accurate and current information on how the Information Technology Act and the Copyright Act intersect and address issues related to copyright in the digital domain. Legal frameworks can evolve, and new laws may be enacted or existing ones amended after my last knowledge update in January 2022.