

THE COPYRIGHT ACT, 1957

The Copyright Act, 1957, together with the Copyright Rules, 1958 is the governing law for copyright protection in India. Indian copyright law is in uniformity with the international standards as contained in the TRIPS Agreement. The Copyright Act, 1957, following the amendments in 1999, 2002 and 2012, fully exhibits the Berne Convention for Protection of Literary and Artistic Works, 1886 and the Universal Copyrights Convention, to which India is a party. Also, India is a party to the Geneva Convention for the Protection of Rights of Producers of Phonograms and is a dynamic member of the World Intellectual Property Organization (WIPO) and United Nations Educational, Scientific and Cultural Organization (UNESCO).

○ Subject Matter of Copyright:

According to the Section 13 of The Copyright Act, 1957, copyright prevails in the following works: (a) original literary, dramatic, musical and artistic works; (b) cinematograph films; and (c) sound recordings.

The subject matter of copyright can be classified in the following heads:

1. Original literary works:

Section 2(o) of the Act gives an inclusive definition of literary work. The copyright exists in the original literary work. It covers the following works –books, question papers, law reports, headnote, business letters, research theses and dissertations, directories, catalogues, computer database stored on tape or by other electronic means etc. Even the adaptations, abridgements and translations are covered under the original literary works.

2. Original dramatic works:

An original dramatic work requires some independent skill, labour or judgment which must be capable of being physically performed. It includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting in a form which is fixed in writing or otherwise excluding cinematograph films.

3. Original musical works:

Section 2(p) of the Act defines “musical work”. It covers work consisting of music and graphical notations of such work but excludes any words or any action, likely to be sung, spoken or performed with the music. The Act makes a clear division between musical work and a song which may or may not be without music.

4. Original artistic works:

It covers paintings, sculptures, drawings, engravings, photographs, work of architecture and any other work of artistic craftsmanship.

5. Cinematograph films and sound recordings:

Section 2(f) of the Act defines “cinematograph films” to mean any work of visual recording and includes a sound recording associated such visual recording. Soundtracks are also protected as a part of the cinematograph film and not as a sound recording. Although the Act does not demand that the cinematograph films must be ‘original’ to be fit for copyright protection, no copyright exists in a cinematograph film if a substantial portion of the film is a breach of the copyright in any other work.

Similarly, sound recordings are also protected under the Act.

○ Concept of Originality:

The work to be protected under the Act must be original and should not have been copied from another work. Section 13(a) protects original works. It is essential to set the distinction between the idea and the expression contained in the original work. The Copyright Act is not interested in the originality of ideas but with the expression of thought. Such expression must not be copied from another work but must originate from the author.

○ Ownership of Copyright:

As a general rule, the author of a literary, dramatic or musical work is the first owner of the copyright in that work with some notable exceptions. As per, section 2(d) of the Act, “author” means:

- (a) In case of a literary or dramatic work, the author of the work;
- (b) In case of a musical work, the composer;
- (c) In case of an artistic work other than a photograph, the artist;
- (d) In case of a photograph, the photographer;
- (e) In case of a cinematograph film or sound recording, the producer; and
- (f) In case of any computer-generated work, the person who causes the work to be generated.

○ Term of Copyright:

Copyright in work does not subsist in perpetuity. As per the Section 22 of the Act, any literary, dramatic musical and artistic work published within the lifetime of the author enjoys copyright protection until sixty years from the start of the calendar year next following the year in which the author dies.

In case of copyright of posthumous, anonymous and pseudonymous works, cinematograph films, sound recordings, works of Government, public undertakings and international organization, the term of protection subsist until sixty years from the beginning of the calendar year next following the year in the work is first published.

The Act also provides broadcasting reproduction right to every broadcaster which lasts for 25 years from the start of the calendar year next following the year in the broadcast has been done.

○ Rights available to the author:

The Copyright Act, 1957 grants following two rights to the author:

- 1. Economic rights of the author, and
- 2. Moral rights of the author.

1. Economic rights of the author:

- **Right of reproduction**

It is one of the most important rights available to the author under the copyright laws. This right permits the author to reproduce the work in any material form, as well as the storing of it in any medium by electronic means.

- **Right to Distribute**

The person who owns the copyright has the right to distribute his work in any manner he deems fit. The author is also entitled to transfer the whole or some rights in favour of any other person while retaining others. He has the right to issue copies of the work to the public, not being copies already in circulation.

- **Right to do Derivative Works**

The Act grants the right to make adaptation or translation of the work to the copyright owner. For example, - making a movie based on a novel.

- **Right to Publicly Perform**

The copyright owner has the right to perform his works publicly or communicate it to the public. For example, he may perform dramas based on his work or may perform at shows. This includes the right of the owner to make his work accessible to the public on the internet. This enables the owner to decide the terms and conditions to access his work.

Right to make any cinematograph film or sound recording in respect of his work.

2. Moral rights of the author:

In addition to the protection of economic rights, the Act also protects the moral rights of the author. Moral rights, also known as 'Droit moral', originated in French law. The author has a right to claim moral rights in his work even after the assignment of the work.

Section 57 of the Act recognizes the moral rights of the author. The moral rights of the author are independent of the author's copyright and the remedies available to him for the infringement of his copyright. Section 57 provides additional rights on the author of a work.

There are mainly two moral rights available to the author:

1. **Right of paternity (Droit de paternité)** This right provides the author with a right to claim authorship of his work and can restrain all others from claiming authorship of his work. Under this right, he can demand that his name should appear in all copies of his work. He can also prevent others from using his work.
2. **Right of integrity:** It means that the author has a right to restrain or claim damages in respect of any distortion, mutilation or other alteration of his work, or any other action in relation to the said work if it would harm his honour or reputation.

However, the author shall not have any right to claim damages with respect to any adaptation of a computer programme to which section 52(1)(aa) applies. It permits making of copies or adaptation of a computer programme for the common purpose commonly known as 'debugging'.

○ **Assignment of copyright and licenses :**

There are two ways using which a copyright owner can transfer some or all of his copyright rights which are through: (i) assignment or (ii) licenses.

(i) Assignment of copyright (Section 18)

Assignment of copyrights refers to transfer or to assign of ownership by the copyright owner to some other person. The owner of the copyright in work is free to allocate copyright either wholly or partially for the entire or any part of such copyright to any person. Section 18 also allows assignment by a prospective owner of the copyright in any future work, but the assignment itself takes place only after “the work” comes into existence and not before. Before the work comes into existence, the assignment will have no effect.

Mode of assignment (section 19):

Section 19 of the Act lays down the following conditions for the assignment of copyright:

1. It should be in writing and signed by the assignor or his duly authorized agent.
2. The assignment of copyright must identify such work and specify the rights assigned and the duration and territorial extent of such assignment.
3. It must also specify the amount of royalty payable to the author or his legal heirs during the currency of the assignment, and the assignment would be subject to revision, extension or termination on mutually agreed terms.
4. In case the assignee does not exercise the rights assigned to him/her under any of the other sub-sections within the period of one year from the date of assignment, the assignment in respect of such rights shall be considered to have failed after the termination of the said period, unless, otherwise specified in the assignment.
5. If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.
6. In case the territorial extent of assignment of the rights is not provided, it would be presumed to extend within India.
7. Nothing in sub-section (2) or sub-section (3) or sub-section (4) or subsection (5) or sub-section (6) would be applicable to assignments made before the coming into force of the Copyright (Amendment) Act, 1994.
8. Assignment of copyright in any work in contradiction with the terms and conditions of the rights already allocated to a copyright society in which the author of the work is a member is to be considered void.
9. If there is an assignment of copyright in any work to make a cinematograph film, the author's right to claim an equal share of royalties and consideration payable in case of using the work in any form other than for the communication to the public along with the cinematograph film in a cinema hall shall remain unaffected.

10. Similarly, in case of assignment in any work to make a sound recording, the author's right to claim an equal share of royalties and consideration payable for any exploitation of such work in any form shall remain unaffected.

Revocation of assignment (Section 19 A):

The Act empowers the Appellate Board to revoke an assignment on receipt of a complaint from the assignor and after holding an inquiry as it may deem necessary provided the assignee fails to make sufficient exercise of rights assigned to him, and such failure is not attributable to any act or omission of the assignor.

No order of revocation shall be passed by the Appellate Board unless it is satisfied that the terms of assignment are harsh to the assignor in case the assignor is also the author.

No order of revocation of assignment is to be made within a period of five years from the date of assignment. The Appellate Board is required to make efforts to pass the final order within six months from the date of receipt of the complaint. In case of delay, the Appellate Board shall record reasons thereof.

(ii) Licence :

The licence refers to official permission to do, use or own something. The copyright Act, 1957 permits the owner of the copyright of any work to grant a licence to permit a third party to use and distribute copyrighted work.

There can be two kinds of licences, namely: (i) Exclusive licence and (ii) Non- Exclusive licence. An exclusive license means a licence which confers on licensor or licensee and persons authorized by him to the exclusion of others any right comprised in the copyright in work. In case of a non-exclusive licence, the copyright owner reserves the right to grant licenses to more than one person.

Section 30 of the Act permits copyright owner in any existing work or the prospective owner of the copyright in any future work to grant any interest in the right by way of license in writing by him or his duly authorized agent. In case of a licence relating copyright in any future work, the licence shall come into effect only when such future work comes into existence.

According to Section 30A of the Act, the provisions of section 19 are applicable with necessary adaptations and modifications, in relation to a licence under section 30.

- **Difference between assignment and licence:** A license does not convey the copyright but only grants a right to do something, without which the acts are considered as an infringement. Therefore, no transfer of ownership occurs in the case of licenses. On the other hand, an assignment involves the transfer of ownership of the copyright. The assignee also has the power to reassign. The licence being a personal right, it is not transferable or assignable without the grantor's consent. Moreover, the assignee can sue for infringement without joining the assignor, whereas the licensee cannot sue in his own name for infringement of the copyright since copyright belongs to the licensor.
- **Various types of licenses under the Copyright Act, 1957:** The Act provides for seven types of licences as discussed below:

1. A compulsory licence for the works withheld from public (Section 31)

The Act empowers the Appellate Board to direct the registrar to issue a compulsory licence in work which has been withheld from the public if a complaint is made to it in writing provided that the owner has been approached first for the grant of licence and he has been refused to republish or perform the public. The Appellate Board shall provide the copyright owner with a reasonable opportunity of being heard after holding an inquiry as it may deem necessary, may, if it is satisfied that the ground for such refusal is not reasonable, direct the registrar of copyrights to grant the licence to the complainant. The Board is also empowered to cancel the licence on certain grounds as provided in the Act.

2. The compulsory licence in unpublished or published works (Section 31A)

In case of any posthumous or anonymous unpublished work or published work, anyone can make an application to the Copyright Board for a license to publish or communicate such works of translations to the public. However, before the application, the applicant should publish his proposal to do so in an English national newspaper.

3. Compulsory licenses for the benefit of the disabled (Section 31B)

The application may be made by any person working for the benefit of disabled persons to the Appellate Board for a compulsory license to publish any copyrighted work for the benefit of such persons. It is also provided that it should not be a case to which section 52(1)(ZB) applies. The compulsory licence must specify the means and format of the publication, the period during which the licence may be exercised and in case of issue of copies, the number of copies that may be issued along with the rate of royalty.

4. Statutory license for Cover Version (Section 31C)

Section 31C of the Copyright Act allows for the grant of statutory licenses for making cover versions of any sound recordings. Such sound recordings shall be in the same medium as the last recording if the medium is no longer in current commercial use. No alteration in the literary or musical work is to be made without the consent of the owner of rights. This section also requires the Copyright Board to decide the minimum amount of royalty to be paid for the making of such a version.

5. Statutory licenses for Broadcasting literary, musical works and sound recording (Section 31 D)

This section enables broadcasting organizations desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published subject to its provisions. Prior notice is required to be given by the broadcasting organization stating the duration and territorial coverage of the broadcast. It is also required to pay royalties to the owner of rights in each work as fixed by the Appellate Board. No fresh alterations which are not technically required are to be made without the owner's consent.

6. License to produce and publish translations (Section 32)

This section empowers the Appellate Board to issue a compulsory license to produce and publish a translation of literary or dramatic work in any language after a period of 7 years from the date of publication of the work.

7. License to reproduce and publish works for limited purposes (Section 32A)

The Appellate Board may issue licenses to publish a work in India in case the 'relevant period' from the date of the first publication of an edition of a literary, scientific or artistic work - the copies of such edition are not made available within India, or such copies have not been put on sale in for a period of six months.

○ Neighbouring Rights :

There are several rights which are ancillary to copyright. These include performer's rights and broadcast reproduction rights. Since they do not come directly under the ambit of copyright, yet they are related to it, they are called neighbouring rights. These are discussed below in detail:

1. Performer's Rights:

The Indian Copyright Act, for a very long time, did not confer the due recognition to the rights of the performers and it was only in 1994, that the Copyright Act was amended to grant certain rights to the performers.

According to section 38 of the Act, any performer appearing or engaging in any performance shall have a special right called the "performer's right" in relation to such performance. Moreover, the performer's right subsists for a period of 50 years from the start of the calendar year next following the year in which the work is performed.

Section 38A was inserted in the Act by the amendment of 2012, which provides exclusive rights to the performers. The performers have exclusive right to do or to authorize the doing of any of the given acts with respect to the performance or any substantial part thereof, namely-

(a) making a sound recording or a visual recording of the performance, including-

Reproducing it in any material form including the storing of it in any medium by electronic or any other means;

Issuance of copies of it to the public not being copies already in circulation;

Communication of it to the public;

Selling or giving it on rental or offer for sale or for commercial rental any copy of the recording;

(b) broadcasting or communicating the performance to the public except where the performance is already broadcast.

Once a performer has given written consent to the incorporation of his performance in a cinematograph film, he cannot object to the enjoyment by the producer of the film of the performer's right in the same. However, he shall be entitled to receive royalties in case of making of the performances for commercial use.

Moral Rights of performers (Section 38 B)

Section 38 B deals with the moral rights of the performers. It provides two moral rights to the performers which are available to them independently of their rights after assignment either wholly or partially. These are -

(i) The right to be acknowledged as a performer of his performance except where omission is dictated by the manner of the use of performance, and

(ii) The right to restrain or claim damages for any distortion, mutilation or other alteration of his performance that would be prejudicial to his performance

However, mere removal of any portion of performance for editing purposes or any other modification required for technical reasons shall not be considered to be prejudicial to the performer's right.

2. Broadcast Reproduction Rights

In India, no broadcast enjoyed copyright protection prior to the 1957 amendment. The Copyright Act provides every broadcasting organization with a special right known as

“broadcasting reproduction right” with regard to its broadcasts.

The right subsists until 25 years from the beginning of the calendar year next following the year in which the broadcast is made.

Section 37 of the Act provides the owner of the copyright in a broadcast exclusive right to the following acts:

1. Re-broadcast the broadcasts, or
2. Causing the broadcast to be heard or seen by the public by charging money, or
3. Making of sound or visual recording of the broadcast, or
4. Reproduction of sound recording or visual recording
5. Selling or giving on commercial rental

○ Exceptions to the performer’s right and broadcast reproduction rights (Section 39)

Section 39 of the Act provides that no broadcast reproduction right or performer’s right shall be deemed to be infringed by-

- (a) Making of any sound recording or visual recording for the personal use, or solely for bona fide teaching or research purposes; or
- (b) Using a part of a performance or of a broadcast in the reporting of current events or for a bona fide review, teaching or research; or
- (c) Such other acts, with any required adaptations and modifications, which do not result in infringement of copyright under section 52

○ Infringement of copyright

Infringement of copyright refers to the Act of using or causing the production of copyright-protected work without the permission of the copyright owner. The copyright is granted only for a limited term. Therefore, there will be no infringement of copyright if the reproduction of the work or other such acts is carried out after the expiry of the limited-term.

According to section 51 of the Copyright Act, 1957, copyright in work is deemed to be infringed:

- (a) when anyone without a proper license or in violation of the terms of the licence -
 - (i) does anything, the exclusive right to do which rests upon the copyright owner, or
 - (ii) Permit for profit any piece to be used for the communication of the work to the public where such communication amounts to an infringement of the copyright in work.
- (b) when any person, makes for sale or hire, or sells or lets for hire or by way of trade exhibitions or offers for sale or hire any infringing copies of the work, or
 - (i) distributes, either for the purpose of trade or to such an extent as to affect the copyright owner, any infringing copies of the work prejudicially, or

- (ii) exhibit in public by way of trade any infringing copies of the work, or
- (iii) imports into India,

any infringing copies of the work excluding one copy of any work, for the private and domestic use of the importer.

Any reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film will be considered an infringing copy.

Acts provided in section 51(a) are known as primary acts of infringement, whereas the acts provided in section 51(b) are known as secondary acts of infringement.

○ Permitted acts in relation to copyright infringement:

Section 52 of the Act provides a long list of certain acts not amounting to infringement of copyright. The rationale behind having permitted uses in the Act is to strike a balance between the interests of the copyright holder and the interests of the society at large. Each clause of section 52 makes clear – both the type and class of work to which it applies and the specific exempted use of such work.

Section 52 of the Act states that the following acts will not amount to an infringement of copyright, namely:

1. A fair dealing with any work, not being a computer programme, for the purpose of –
 - (i) Private or personal use, including research;
 - (ii) Criticism or review
 - (iii) Reporting of current events and current affairs
2. Making copies or adaptation of a computer programme for certain permitted purposes
3. Temporary or incidental storage of a work or performance
4. Reproduction of work for judicial proceedings
5. Reproduction of work in the legislature's work
6. Reproduction of work in a certified copy made under any law
7. Reading or recitation in public
8. Publication of short passages in a collection composed of non-copyright matter for instructional use
9. Reproduction of any work –
 - (i) By a teacher or a student in the course of instruction; or
 - (ii) Questions answered in exams; or
 - (iii) In answers to such questions
10. Performance of a work in the course of activities of the educational institution
11. Causing a recording to be heard in certain cases
12. Performance of a work by amateur club or society
13. Reproduction of articles on a current topic in periodicals, etc.
14. Storing of work in the electronic medium by the non-commercial public library
15. Reproduction for the use of libraries
16. Reproduction or publication of unpublished works
17. Reproduction or publication of any matter in Official Gazette, Act of legislatures, judgments of courts etc.
18. Publication of translations of Acts of Legislatures
19. Making or publishing of a painting, photograph, etc. of a work of architecture
20. Making or publishing of a painting, photograph, etc. of a sculpture or other artistic work

21. Incidental inclusion of artistic work in the cinematograph film
22. Usage of artistic work by the author himself in certain circumstances
23. Making a 3D object from a 2D artistic work
24. Reconstruction of a building in accordance with architecture drawings
25. Exhibition of cinematograph film after the termination of copyright term in literary, dramatic, musical or artistic work
26. Empirical recording for the purpose of broadcast
27. Performance or communication of work in an official ceremony
28. Reproduction of work in an accessible format for disabled persons
29. Importation of copies of literary or artistic work for certain purposes
30. Translations and adaptations of a literary, dramatic or musical.

○ **Remedies for infringement of copyright:**

In case of infringement, the copyright holder is empowered with certain remedies under the Act. Three types of remedies are provided by the Act to the copyright owners: (i) civil remedies, (ii) compensatory remedies, and (iii) criminal remedies.

- **Civil remedies :**

Section 55 provides the civil remedies in cases of infringement of copyright. They are:

1. Interlocutory Injunction

It is the most important remedy available against copyright infringement. Injunction refers to a judicial order from a court to refrain a person from doing something. It provides speedy and effective relief to the copyright owner by preventing further infringements of his copyright.

2. Mareva injunction

The main purpose of the Mareva injunction is to prevent the defendant from disposing of assets which may be essential to satisfy the plaintiff's claim or removing them from the jurisdiction of the court.

3. Anton Piller orders

The order was named 'Anton Piller Order' after one of the first reported cases in which such an order was made which were Anton Piller K.G. v. Manufacturing Processes Ltd., 2014. The order

These orders are only made in the most extreme circumstances.

4. John Doe orders

The John Doe order is issued against unknown persons, who allegedly committed some wrong, but whose identities cannot be identified by the plaintiff. This is a judicial order that grants the right to seize evidence without any previous notice. This aids in the prevention of the destruction of relevant evidence

- **Compensatory remedies:**

These remedies can be divided into 3 divisions, namely: (i) Damages, (ii) damages for conversion, and (iii) account of profits.

- (i) Damages – These are compensatory in nature. The main purpose of an award of damages is to restore the plaintiff to his position before the infringement.
- (ii) Damages for conversion
- (iii) Account for profits- The plaintiff is entitled to go for damages or for the account of profits. He cannot have both. The plaintiff would be refused an account for profits if there were no profits.

- **Criminal Remedies:**

Under the Copyright Act, 1957 the following criminal remedies are available for copyright infringement:

- (i) Imprisonment up to 3 years but, not less than 6 months
- (ii) Fine which may not be less than 50,000 but, may extend up to 2,00,000
- (iii) Search and seizure of infringing goods
- (iv) Delivery of infringing goods to the copyright owner