



SINGHANIA & PARTNERS LLP
SOLICITORS AND ADVOCATES

INDIA COPYRIGHT GUIDE

(Frequently Asked Questions - Indian Copyright Act 1957)

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Copyright

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1 LEGISLATION AND REGULATION

1.1 What are the main sources of copyright law?

The Copyright Act, 1957 (the "Act"), supported by the Copyright Rules, 1958 (the "Rules"), is the governing law for copyright protection in India. Substantial amendments were carried out to the Copyright Act, in May 2012.

India follows common law legal system thus relies on case laws to interpret and set precedents in law. As a result there are a number of judicial decisions that contribute to the sources of copyright law in the India.

India is a member of the Berne Conventions and Universal Copyright Convention. The Government of India has also passed the International Copyright Order, 1958. According to this Order, any work first published in any country - which is a member of any of the above conventions - is granted the same treatment as if it was first published in India.

2 SUBSISTENCE OF COPYRIGHT

2.1 What type of works can be protected by copyright?

Copyright subsists throughout India in the following classes of works:

Original literary, dramatic, musical and artistic works;
Cinematograph films; and
Sound recordings.

These are the broad categories, and can be summarised as follows:

Literary works

The term 'Literary works' covers works that are in print or writing, irrespective of the quality of style of the work. Literary work refers not only to works of prose and poetry, but anything that would be under the ambit of 'literature'. However, there will be no copyright if the work is merely a collection of words, the collection of which involved no literary skill. In India, a computer programme is treated as a "literary work" and is protected as such.

Dramatic works

A dramatic work includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include a cinematograph film.

Musical works

Musical work means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music. A musical work need

not be written to enjoy copyright protection.

Artistic works

Artistic work means a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality, a work of architecture; and any other work of artistic craftsmanship. Any colour scheme, getup, layout, or arrangement of any alphabets or features qualifies as an artistic work.

Cinematograph films

Cinematograph film means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films.

Sound Recordings

Sound recording means a recording of sounds from which sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced. A phonogram and a CD-ROM are sound recordings

2.2 What is required for works to qualify for copyright protection?

Any work which falls under any of the categories mentioned above and the work seeking to be copyrighted must be original; however, it is not necessary that the work should have some original thought or idea. The law is only concerned about the originality of the expression of thought.

2.3 What rights does copyright grant to the rights-holder?

A copyright grants protection to the creator and his representatives for the works and prevents such works from being copied or reproduced without his/ their consent.

The creator of a work can prohibit or authorize anyone to:

- reproduce the work in any form, such as print, sound, video, etc;
- use the work for a public performance, such as a play or a musical work;
- make copies/recordings of the work, such as via compact discs, cassettes, etc.;
- broadcast it in various forms; or
- translate the same to other languages

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2.4 Are moral rights protected (for example, rights to be identified as an author of a work or to object to derogatory treatment of a work)?

Yes, the Copyright Act grants an author "special rights," which exist independently of the author's copyright, and subsists even after the assignment (whole or partial) of the said copyright. The author has the right to

- claim authorship of the work; and
- restrain or claim damages with respect to any distortion, mutilation, modification, or other act in relation to the said work if such distortion, mutilation, modification, or other act would be prejudicial to
- a) his honor or repute.
- b) his honor or repute.

These special rights can also be exercised by the legal representatives of the author.

The right against distortion is available even after the expiry of the term of copyright after recent amendment. Earlier, it was available only against distortion, mutilation etc. done during the term of copyright of the work

What is the duration of copyright in protected works?

2.5 The duration of protection for copyright works varies according to the type of work and the date of creation:

It varies according to the type of work and the date of creation:

Category of work	Duration
Literary, dramatic, musical or artistic works	Copyright expires 60 years from the end of the calendar year in which the author dies. Where a work has a joint author/ co-author, 60 years from the end of the calendar year in which the last known author dies. Where the author's identity is unknown, copyright expires 60 years from the end of the calendar year in which the work was first published.
Sounds recordings	Copyright shall subsist until 60 years from the beginning of the calendar year next following the year in which the sound recording is published
Cinematograph Films	Copyright shall subsist until 60 years from the beginning of the calendar year next following the year in which the film is published

2.6 For how long do moral rights subsist in copyright works?

An author's moral right as a right against distortion is available even after the expiry of the term of copyright.

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classes of infringement: primary infringement and secondary infringement.

3.1 What acts constitute primary infringement of copyright?

Primary infringement occurs where a person performs any of the following acts without the consent of the rights-holder.

- copying;
- issuing copies of the work to the public;
- renting or lending the work to the public;
- performing, showing or playing a copyright work in public;
- communicating the work to the public; and
- making an adaptation of a copyright work or doing any of the acts listed above in relation to an adaption.

3.2 What acts constitute secondary infringement of copyright?

Secondary infringement occurs where a person, with knowledge or reasonable grounds for such knowledge:

- makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or
- distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or
- by way of trade exhibits in public, or
- imports into India,

any infringing copies of the work

3.3 Acts permitted with respect to copyright works (i.e. what exceptions apply.)

Under the Act there are certain circumstances which constitute fair dealing which is not considered as an infringement. The lists of non-infringing acts are summed up below:

Use	Conditions
Parody	There must be no intention to compete with the copyright holder, and the motive for use of copyrighted matter must not be improper.
Private use, including research	Applicable only to literary, dramatic, musical, or artistic works
Criticism or review	-
Reporting of current events, through newspaper, magazine or similar periodical, photographs, or film.	Exception - The publication of a compilation of addresses or speeches delivered in public is not fair dealing.
Reproduction of any work for the purpose of judicial proceedings or a report of judicial proceedings, or in any work produced by any house of any Legislature, exclusively for the use of the members of that Legislature.	-
The making of copies or adaptation of a computer program in order to utilize the computer program for the purposes for which it was supplied; or to make back-up copies purely as a temporary protection against loss, destruction or damage.	Must be the lawful possessor of a copy of such computer program.

Use	Conditions
Any act done to achieve operating inter-operability of an independently created computer program with other programs by a lawful possessor of a computer program.	Only applicable if such information is not otherwise readily available
The making of copies or adaptation of the computer program from a personally legally obtained copy for non-commercial personal use.	
The reproduction of any literary, dramatic or musical work in a certified copy made or supplied in accordance with any law for the time being in force.	-
The reading or recitation in public of any reasonable extract from a published literary or dramatic work.	-
The publication in a collection, mainly composed of non-copyright matter, bona fide intended for the use of educational institutions, of short passages from published literary or dramatic works, not themselves published for the use of educational institutions.	Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.
Reproduction of a literary, dramatic, musical or artistic work by a teacher or a pupil in the course of instruction; or as part of the questions to be answered in an examination; or in answers to such questions.	-
The performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a sound recording.	-The audience must be limited to such staff and students, the parents and guardians of the students and persons directly connected with the activities of the institution or the communication to such an audience of a cinematograph film or sound recording.
The making of sound recordings in respect of any literary, dramatic or musical work, if sound recordings of that work have been made by or with the license or consent of the owner of the right in the work, or the person making the sound recordings has given a notice of his intention to make the sound recordings, has provided copies of all covers or labels with which the sound recordings are to be sold, and has paid in the prescribed manner to the owner of rights in the work royalties in respect of all such sound recordings to be made by him.	
The causing of a recording to be heard in public by utilizing it, in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein; or as part of the activities of a club or similar organisation which is not established or conducted for profit; or as part of the activities of a club, society or other organisation which is not established or conducted for profit.	
The performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution.	

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Use	Conditions
The reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction.	-
The publication in a newspaper, magazine or other periodical of a report of a lecture delivered in public.	
The reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access.	-Provided that where the identity of the author of any such work or, in the case of a work of joint authorship, of any of the authors is known to the library, museum or other institution, as the case may be, the provisions of this clause shall apply only if such reproduction is made at a time more than sixty years from the date of the death of the author or, in the case of a work of joint authorship, from the death of the author whose identity is known or, if the identity of more authors than one is known from the death of such of those authors who dies last.
The storing of a work in any medium by electronic means by a non-commercial public library, for preservation if the library already possesses a non-digital copy of the work.	
The making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a non-commercial public library for the use of the library if such book is not available for sale in India.	-
The reproduction or publication of any matter which has been published in any Official Gazette except an Act of a Legislature, or any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter, or the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government, or any judgement or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the court.	-
The production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made thereunder.	-Provided that no translation of such Act or rules or orders in that language has previously been produced or published by the Government; or where a translation of such Act or rules or orders in that language has been produced or published by the Government, if the translation is not available for sale to the public. Also provided that such translation contains a statement at a prominent place to the effect that the translation has not been authorised or accepted as authentic by the Government
The making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture.	-

Use	Conditions
The making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work falling under section 2(c)(iii) of the Act, if such work is permanently situated in a public place or any premises to which the public has access.	
The inclusion in a cinematograph film of any artistic work permanently situated in a public place or any premises to which the public has access; or any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film.	
The use by the author of an artistic work, where the author of such work is not the owner of the copyright therein, of any mold, cast, sketch, plan, model or study made by him for the purpose of the work.	
The performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority.	Religious ceremony including a marriage procession and other social festivities associated with a marriage.
The adaptation, reproduction, issue of copies, or communication to the public of any work in any accessible format by any person to facilitate persons with disabilities to access to works, or any organization working for the benefit of persons with disabilities in case the normal format prevents the enjoyment of such work by such persons.	The copies of the works in such accessible format are made available on a non-profit basis and only to recover the cost of production and the organization shall ensure that the copies are used only by persons with disabilities, and take reasonable steps to prevent its entry into ordinary channels of business.

3.4 Is it permissible to provide a hyperlink to, or frame, a work protected by copyright? If so, in what circumstances?

Under the Act, hypertext linking does not per se constitute copyright infringement; however, reproducing any copyrighted work, issuing copies of the work to the public or communicating the work to the public could amount to copyright violation. But in case of hyper linking the linking site is not reproducing any work. The reproduction, if at all any, takes place at the end of the user who visits the linked page via the link. Technically, the linking site is only informing people about the presence of the work and giving the address of the site where the work is present. It is the user's discretion to access the work by clicking the link. But nevertheless the linking site is definitely aiding in the distribution of the work.

3.5 Is a licensee of copyright able to bring an infringement action?

Under the Act, an infringement of copyright is actionable by the copyright owner. When copyright is licensed, the authority to bring an infringement action depends on the type of licence involved.

An exclusive licence authorises the licensee to exercise a right which would otherwise be exercisable exclusively by the copyright owner. One such right is the right to bring an infringement action.

A non-exclusive licensee may also bring an infringement action but only where the licence is in writing and signed by the copyright owner and expressly grants the non-exclusive licensee the right of action.

4. REMEDIES

4.1 What remedies are available against a copyright infringer?

The Copyright Act provide following remedies for copyright infringement:

a) Civil

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- b) Criminal, and
- c) Administrative

However, it is only the first two remedies, namely civil and criminal, which are of any real practical importance.

Under Civil remedies, one may file for injunction, damages and accounts rendition, delivery of infringing copies and damages for conversion.

Under Criminal remedies, one may file for imprisonment and fine, seizure of infringing copies and delivery of them to the owner.

Under administrative remedies one may file for moving the Registrar to ban the import of infringing copies and delivery of the confiscated infringing copies to the owner.

4.2 Are there any specific remedies for online copyright infringement?

A Court can direct that infringing websites can be blocked by Internet Service Providers (ISPs) either as part of a John Doe order or a website blocking orders. [RK Productions vs BSNL (2012) 5 LW 626]. The Copyright Act says that any person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by the Act, with the intention of infringing such rights, shall be punishable.

4.3 Under what circumstances is copyright infringement a criminal act and what sanctions may apply?

The Copyright Act prescribes that the intentional infringement or abetment of an infringement of the copyright in a work would be considered as criminal act.

Criminal remedies for copyright infringement include :

- i) Punishment through imprisonment which may not be less than six months but which may extend to three years;
- ii) Fines which shall not be less than Rs.50,000 and which may extend to Rs.200,000.
- iii) Search and seizure of the infringing goods including plates which are defined as including blocks, moulds, transfers, negatives, duplicating equipment or any other device used or intended to be used for printing or reproducing copies of the work.
- iv) Delivery up of infringing copies or plates to the owner of the copyright.

4.4 Is there a time limit for bringing a copyright infringement claim?

The time limit for bringing in a copyright infringement claim is 3 years from the date of infringement.

4.5 Can legal (or any other) costs be recovered in an action for copyright infringement? If so, what percentage of costs will typically be recovered by the successful party?

Under the Act, the plaintiff, can seek recovery of all three remedies, namely (a) account of profits (b) compensatory damages and (c) conversion damages which are assessed on the basis of value of the article converted.

5. ENFORCEMENT

5.1 What courts can you bring a copyright infringement action in, and, what monetary thresholds, if any, apply?

Every suit or civil proceeding in respect of the infringement of copyright can be instituted before district court or above.

5.2 Are there any other ways in which you can enforce copyright?

Copyright Board

The Copyright Board is a body constituted by the central govt. to discharge certain judicial function under the Act. The Board is entrusted with the task of adjudication of disputes pertaining to copyright registration, assignment of copyright, grant of Licenses in respect of works withheld from public, unpublished Indian works, production and publication of translations and works for certain specified purposes. It does not deal with copyright infringement cases or with criminal "piracy" of copyright works.

5.3 What agency bodies are responsible for promoting and/or enforcing copyright? If so, what do they do?

In India, the Copyright Office is the government body responsible for promoting and enforcing copyright. The office is under the control of the Registrar of Copyrights who acts under the direction of the Central government. Specifically, the Copyright Office is under the aegis of the Department of Higher Education, Ministry of Human Resource Development.

5.4 What are the main collective rights management agencies that operate in your jurisdiction and who do they represent?

In India there are some registered copyright societies which undertake the management and protection of copyright in works of authors and other owners of such works. Some of them are listed below:

- 1) Musical works: The Indian Performing Right Society Limited (IPRS).
- 2) Sound recording: Phonographic Performance Limited (PPL)

- 3) Reprographic (photo copying) works: Indian Reprographic Rights Organization (IRRO)
- 4) Performers (Singers) Rights: Indian Singers Rights Association (ISRA)

5.5 Are copyright levies payable? By whom, and in what circumstances?

Indian Copyright Act does not prescribe any copyright levies

6. COPYRIGHT REFORM

6.1 **What do you consider to be the top 2 recent copyright developments**

The Indian Government amended the Copyright Act in 2012 bringing about significant changes to the extant law. The most significant of these are:

Rights of authors and music composer:

The Act declares that the authors as owner of the copyright and whereas the copyright can be assigned, the right to royalty cannot be assigned i.e. even if the author or artist assign their work they share the royalty in equal measure alongwith the producers and music companies.

Incorporation of Performer's Moral Rights:

"The Moral Rights of Performers" have been introduced. The said moral rights have been introduced to protect the performer's right so that no one is able to edit the original performance and put other things into the performance so that its nature is changed and money can be made out of it. These rights entitle the Performer to sue the person who mutilates the nature of the performance.

6.2 What do you consider will be the top 2 copyright developments in the next year

Delhi University Photocopying case

The on-going litigation between a group of leading publishers and a small photocopying shop attached to Delhi University has all the elements of a legendary 'fair dealing' debate.

The decision in the said matter would be significant in deciding the threshold for fair dealing as was decided in the case between Cambridge University Press v. Becker in May 2012. In this case it was decided that university does not require a license to photocopy below threshold value of 10%.

Safeguarding Personality Rights; Protection and Enforcement through Court System

The recent time also saw famous film actors like Rajinikanth and Sridevi attempting to safeguard their personality rights. While Rajinikanth successfully moved the Madras High Court for relief, Sridevi resorted to sending Ramgopal Varma a legal notice. Claims in India based on personality rights, image rights or celebrity rights have been on the rise in the recent past. Of late, the judicial position also seems to favor individuals, and is included to protect personality rights vis-a-vis those who try to take undue credit of the persona and reputation of a well-known personality without his or her consent.



Singhania & Partners (S&P) is one of the leading law firms of India with offices in New Delhi, Bengaluru and Hyderabad. S&P provides legal services in Corporate and Commercial, Dispute Resolution, Employment & Labor laws, Infrastructure, Intellectual Property, and Project Finance.

Singhania and Partners was established in 1999 by Mr. Ravi Singhania who is the youngest lawyer to be felicitated with the "National Law Day Award" for Corporate Laws (2006) by Prime Minister Dr. Manmohan Singh. He has also been bequeathed with innumerable legal accolades and has been consistently rated as India's top corporate-M&A, dispute resolution and project finance lawyer by several international surveys including Legal 500, Asialaw, and Chambers & Partners.

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It has a team of qualified and seasoned professionals who come from diverse educational backgrounds. The firm's professionals are trusted for their commitment to clients' interest, multidisciplinary approach and legal prowess based on its core values, which are

- highest level of accessibility
- integrity
- quality and
- responsiveness

About Firm's Intellectual Property Rights Practice

The firm's intellectual property practice has considerable experience in patents, trade mark, copyright, design, geographical indicators and domain names prosecution (opposition & infringement). The clients for this group are spread across the globe. The firm takes care of following:

- all aspects of copyright law including registration, licensing and enforcement, sale and license agreements, software licensing agreements
- assisting clients looking at potential acquisitions in due diligence and audits of intellectual properties owned/licenses by target companies and
- other IP issues related to portals, advertising, e-commerce, and internet transactions.
- trademark availability search, trademark filing, trademark prosecution, trademark watch, enforcement of trade mark rights, and trademark assignments.
- prior art and clearance searches for patents, Indian patent search, freedom to operate search, providing opinion on patentability of an invention, patent drafting, filing & prosecution, transactional issues like assignments and licenses, patent watch and technology transfer agreements.
- conducting design searches and analyses, filing and prosecuting applications, pre-registration and post-registration proceedings, assignments, licensing and technology transfer agreements.
- post registration enforcement for both trademark and patents by way of filing of oppositions, rectifications, complaints, passing-off and infringement actions
- appearing before the Courts, Tribunals and Intellectual Property Appellate Board.

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