

## Copyright in India: What Library Professionals and Users' Needs to Know

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### Abstract

Copyright is a type of Intellectual property right protection that helps to protect the intellect of human creation. This series of articles provide a rather advanced clarification on the need for greater awareness around technical and practical aspects of copyright in India. In the digital environment, copyright becomes an issue of fundamental significance in the library. The advance of digital technology results in Copyright Act being more easily violated. This becomes a consideration at every point in the process of selecting, acquiring, using, delivering, sharing, storing, and preserving information. The Copyright Act is intended to sort out a balance between the intellectual property interests of authors, publishers, and copyright owners. Librarians have a central role in this arena and cannot be passive bystanders. Current technology does not strike a good balance between protecting of intellectual property and giving access to those who need the information. At one extreme is the open source on the internet, where everything is free, even though libraries are cautious because of the danger of unauthorised access.

Keywords: Copyright; Intellectual Property Rights; IPR.

### What is copyright

Copyright is a form of intellectual property protection granted under Copyright Act to the creators of original works of authorship. It is a right in creative works such as literary works, artistic works, music, computer programs, sound recordings and films. The rights are granted exclusively to the copyright owner to reproduce the material, and for some material, the right to perform or show the work to the public.

Subject to the provisions of the Act, copyright shall subsist throughout India in the following classes of works. They are;

- ☛ *Literary work*: Computer programmes, books, articles, poems, tables and databases.

Computer programmes and software are covered under literary works and are protected in India under copyrights

- ☛ *Artistic work*: Paintings, 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
- ☛ *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 down to enjoy Copyright protection. Example: Written work of lyricist, composer and rights of the singer
- ☛ *Sound recording*: means a recording 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. Example: Sound recordings fixed in a CD-ROM, DVD-ROM, USB drive
- ☛ *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. e.g., Movies [1]

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Copyright owners can prevent others from reproducing or communicating their work without their permission or may sell these rights to someone else. Copyright does not protect ideas, concepts, styles or techniques.

Copyright is a protection that covers published and unpublished literary, scientific and artistic works, whatever the form of expression, provided such work is fixed in a tangible or material form. That is if one can see it, hear it and/or touch it that may be protected. If it is an essay, play, song, dance move, photograph, programming code, computer graphic that can be set on paper, recorded on tape or save to a hard drive, it may be protected [1].

Copyright is an exclusive right given by law for a certain term of years to an author, composer etc to print, publish and sell copies of his original work [3].

Copyright holders have the privilege to deal with their creation and works of authorship in whatever way they find appropriate. It offers a bundle of rights that the owner may exercise in relation to a particular work. These rights are:

- ✓ Right to reproduce and replicate,
- ✓ Right to communicate the work to the public,
- ✓ Right to publish the work,
- ✓ Copy, multiply and replicate,
- ✓ Sell the work,
- ✓ Right to perform the work in public,
- ✓ Make an adaptation of the work.

The Copyright owner can assign his/her current work or proposed work to a third-party in return of onetime payment or royalty. For e.g. an author is writing a book and once fixed assigns the rights to sell the printed copies of this book to a publisher. However, for the proposed work, assignment will come into force only when the book is completed and fixed in a tangible format. The Copyright owner can completely or partially assign his/her right but this assignment is only valid if it is in written format signed by the Copyright owner or his/her legal representative. Term of assignment and extent of territory must also be specified as per the Copyright Act, otherwise by default the term of protection will be 5 years and will extend for whole of India.

The creator/author can license his or her work to one or more companies with certain fixed set of terms and condition in exchange for payment.

Independent of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right:

- ✓ To claim the authorship of the work; and
- ✓ To restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work, if such distortion, mutilation, modification would be prejudicial to his honour or reputation [3].

#### *The Copyright Act, 1957*

In ancient days creative persons like artists, musicians and writers made, composed or wrote their works for fame and recognition rather than to earn a living, thus, the question of copyright never arose. The importance of copyright was recognized only after the invention of printing press which enabled the reproduction of books in a large quantity practicable. In India the first legislation of its kind, the Indian Copyright Act, was passed in 1914 which was mainly based on the UK Copyright Act, 1911.

During the last four decades modern and advanced means of communication like broadcasting, litho-photography, television, Internet etc., have made inroads in the Indian economy with the result that it became essential to fulfill international obligations in the field of copyright. This necessitated that the comprehensive legislation may be introduced to completely revise the copyright law. To this effect a Copyright Bill, 1957 was introduced in the Parliament. The Copyright Bill having been passed by the both the Houses of Parliament received the assent of the President on 4th June, 1957. It came on the Statute Book as THE COPYRIGHT ACT, 1957 (14 of 1957) [4].

The Copyright Act, 1957 as amended in 1983, 1984, 1992, 1994, 1999 and 2012 governs the copyright protection in India. The details are:

1. The Copyright (Amendment) Act, 1983 (23 of 1983) (w.e.f. 9-8-1984);
2. The Copyright (Amendment) Act, 1984 (65 of 1984) (w.e.f. 8-10-1984);
3. The Copyright (Amendment) Act, 1992 (13 of 1992) (w.e.f. 28-12-1991);
4. The Copyright (Amendment) Act, 1994 (38 of 1994) (w.e.f. 10-5-1995);
5. The Copyright (Amendment) Act, 1999 (49 of 1999) (w.e.f. 15-1-2000);
6. The Copyright (Amendment) Act, 2012 (27 of 2012) (w.e.f. 21-6-2012) [2].

#### *Term of Copyright*

The total term of protection for literary work is the author's life plus sixty years. For cinematographic

films, records, photographs, posthumous publications, anonymous publication, works of government and international agencies the term is 60 years from the beginning of the calendar years

following the year in which the work was published. For broadcasting, the term is 25 years from the beginning of the calendar years following the year in which the broadcast was made.

#### Terms of Different Classes of Copyright

SI. No.	Class of work	Terms of protection	Remarks
1.	Literary (including computer software), dramatic, musical photograph, and artistic	Life time + 60 years. The 60 year period is counted from the year following the death of the author	The period of counting 60 year for this process starts from next year following the year in which author dies. Example: if Author dies in say 2nd Nov, 1979. So, duration of protection of 60 years period will be from 1st Jan, 1980 to 31st Dec, 2040. Also, in case of joint author, year count for this process will depend upon the author who dies last. Example: Author X and Y are co-author of a work. Author X dies on 4th April 1988 and Y dies on 26th August 1991. So duration of protection of sixty years period will start from 1st Jan, 1992.
2.	Cinematograph films, Sound recordings, Posthumous Publications, Works of Government, Work in Public undertakings and Works of international organizations	60 years period is counted from the date of publication	Date of publication is always the first publication of the work.  Period starts from the beginning of next year, following the year in which film was first published.
3.	Anonymous and pseudonymous publications	In case of a literary, dramatic, musical or artistic work, which is published anonymously or pseudonymously, copyright subsist until 60 years from the beginning of the calendar year next following year in which the work is first published. Provided that where the identity of the author is disclosed before the expiry of the said period, copyright shall subsist until 60 years from the beginning of the calendar year next following the year in which author dies [5].	

#### *Copyright Registration in India*

The Indian Copyright Act provides measures for maintaining a register for recording the names and titles of the works that are registered along with the names and addresses of authors, publishers and owners of the copyrights and such other particulars as may be prescribed. The author or publisher or the owner, interested in the copyright, in any work, may make an application in the prescribed form accompanied by the prescribed fees to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights.

The Copyright is a statutory right. However, to claim a right under this Act, registration of the work is not necessary. The Act provides the legal provisions with regard to the register of the copyrights in which

the names or titles of the works along with the names and addresses of the authors, publishers and owners of copyrights are mentioned. The Act does not stipulate that registration is mandatory to claim protection under the Copyright Act. The registration only raises a presumption that the person shown is the actual author of the work. The presumption is not conclusive and where contract evidence is forwarded, the registration may be cancelled.

In case the author or the owner decides not to register, the work should be properly dated and signed. This may be useful in case of engineering drawings. In case of registered or unregistered work, the symbol "c" with circle "©" is used along with the name of author, year of first publication on the work, to signify that work is under Copyright

protection for a specific duration. If this sign is associated with any work, it means the work is Copyrighted.

The copyright office in Indian is located at New Delhi. Copyright registration process consists of the following steps:

- ✓ Application to be made in form XIV.
- ✓ One application to be made for each category of work.
- ✓ Every application should be signed by the author or owner of right.
- ✓ Application for registration of a computer programme should be accompanied by source code/object code.
- ✓ Application should be accompanied with the official fees.
- ✓ The person applying for registration shall give notice of his application to every person who claims or has any interest in the subject matter of the copyright.
- ✓ If no objection is received within 30 days by the Registrar, the particulars given in the application will be entered in the Register of Copyrights.

There are exclusive license and non-exclusive license in copyright. Exclusive license means a specific right is granted to a single owner. Licensee (individual or companies) solely has the right to use copy or distribute such work in the specific way as per the license. Example: Exclusive Right to publish a book in English is specifically given to a publisher say X in India for 10 years. However, the Publisher does not have the exclusive right to publish such book in any other language and in any other country for 10 years. Whereas non-exclusive license means specific rights to use copy or distribute more than one license (individual or companies). Example: non-exclusive right to sell a software CD is specifically given to two publishers say for example X and Y in India for 10 years tenure [5].

#### *What is not protected by Copyright?*

Many categories of material are not eligible for copyright protection.

1. Works that have not been fixed in a tangible form of expression. (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded).
2. Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of

typographic ornamentation, lettering, or colouring; mere listings of ingredients or contents.

3. Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration.
4. Works consisting entirely of information that is common property and containing no original authorship (for example – standard calendars, height and weight charts, tape measures and rules, and lists or tables taken from public documents or other common sources) [5].

#### *What is copyleft*

Copyleft is like a license or an agreement for a user using the copyleft work, specifically for software. As per the terms of copyleft, any person has right to freely use, distribute, modify software code but at the same time the user must donate the modified version of the software code under similar terms and condition to freely use, distribute and modify the modified version. This kind of software is called copyleft software. The author (developer) cannot stop others from using, modifying and redistributing as per the conditions disclosed in the GPL license. Thus, copyleft ensures:

- ✓ Software available is royalty free,
- ✓ Source codes must be disclosed,
- ✓ Freedom to modify the software,

Anybody redistributing the modified version will provide similar independence to others for freely using, redistributing, and making alteration in that software so that the whole community is benefited (Example: GNU GPL license) [5].

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