

Copyright Laws

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Abstract

This paper would be talking about Copyright laws. We will be dealing with the facts as to what copyright law is, why do we need them, how do we stop infringement. Some people aren't even aware of these rights and as a result they don't even get to know what rights they hold. Copyright is a form of intellectual property protection provided by the law. The main topic with which we would be dealing with in this paper would be how a writer, cinematographer or for that matter anyone would get their rights of protection on their work and till when. This paper will be dealing with the fact that how do we spread awareness amongst the people so that they can claim their rights.

Introduction

“The earth is the mother of all people, and all people should have equal rights upon it. This clearly states that we all live on earth and every one of us hold equal rights and opportunities. Each and every person has a right over everything that one wants. Copyright is one of those rights that every individual can have it for the protection of his own work.

Copyright is a right given by the law to creators, dramatic, musical, and artistic works and producers of cinematograph films and sound recordings. In fact, this right is a bundle of right like that of communication to the public, adaption and translation of the work. Composition also falls into this category. It is a protection available for original works of authorship that are fixed in a tangible form, whether published or unpublished.

Important here is to understand that copyright law covers the “form of material expression”, not the actual concepts, ideas, techniques, or facts in a particular work.

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Main reason as to why a work must be fixed in a tangible form in order to receive copyright protection. It is mainly the owner's right and that is what the primary motive is to protect the effort, creativity of the work's creator.

Exclusive right including of the copyright owner:

1. Reproduce the work
2. Prepare "derivative works"
3. Distribute copies of the work by sale, lease, or other transfer of ownership
4. Perform the work publicly
5. Display the work publically.

The copyright owner also has the right to transfer his or her exclusive rights to others as well. This transfer may be done through a contract. Although it is not required legally but keeping a record of it is always a good and acceptable idea. ²

Types of copyright

Public Performing Right

This right is granted to authorize the performance or transmission of the work in Public.

Public Performance License

This right is granted to perform the work in, or transmit the work to, the public.

Reproduction Right

This right is granted to authorize the reproduction of a musical work as in a record, cassette or CD.

Mechanical License

This is granted to record the company the right to reproduce and distribute a specific composition at an agreed upon fee per unit manufactured and sold.

Synchronization License

This right is granted to synchronize the musical composition in timed relation with audio-visual images on film or videotape.

²FindLaw, What Is a Copyright? available at <https://smallbusiness.findlaw.com/intellectual-property/what-is-copyright.html>.

Digital Performance Right in Sound Recordings

This right is granted for sound exchange along with record companies license the exclusive rights on behalf of copyright owners in a sound recording underlying musical works.³

Works which require copyright

Works means any kind of work like that of literary, dramatic, musical or artistic work, cinematograph film or sound recording.

“Work of joint authorship” means a work produced by collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.

Artistic work

- A painting, a sculpture, a drawing, an engraving or a photograph, whether or not any such work possesses artistic quality
- A work of architecture
- A work of craftsmanship

Musical work

It includes recordings of sounds from which sounds may be produced regardless of the medium on which such recording is made or the method by which recordings are produced.

Government works

It includes the works which are made and published by or under the direction or control of the government or any other department of the government, any legislature in India, any court, tribunal or any judicial authority in India.

Indian work

It includes any literary, dramatic or musical work

1. The author of which is a citizen of India.

³Broadcast Music, Types of Copyrights, available at https://www.bmi.com/licensing/entry/types_of_copyrights.

2. Which is first published in India.
3. The author of which, in the case of an unpublished work is, at the time of the making of the work, a citizen of India. ⁴

Indian perspective on copyright protection

A.Economic rights of the author.

B.Moral rights of the author.

Economic Rights:

The copyright subsists in original literary,dramatic,musical and artistic works;cinematographs films and sound recordings. The authors of copyright enjoy economic rights under section 14 of the Act. The rights are mainly, in respect of literary, dramatic and musical, other than computer program, to reproduce work in any material form including the storing of it in any medium by electronic means, to issue copies of work to the public, to perform the work in public or communicating to the public. In case of computer program, the author enjoys in addition the other mentioned rights, the right to sell or give on hire, or offer for sale or hire any copy of the computer program regardless whether such copy has been sold or given on hire on earlier occasions. In case of artistic work ,the right available to the author include the right to reproduce the work in any material form, including the depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work, to communicate or issues copies of the work to the public, including cinematograph work, and to make adaption of the work, in that the author enjoys the right to make copy of the film including a photograph of any image ,to sell or give on hire or offer for sale or hire, and to communicate the film to the public. These rights are also available to authors of sound recording.

Moral Rights

Section 57 of the Act defines the two basic “moral rights” of an author.

- (i) Rights of paternity
- (ii) Rights of integrity

The right of paternity refers toe right of an author to claim authorship of work and a right to prevent all others from claiming authorship of his work. Right of integrity empowers the author to prevent distortion,mutilation, or other alterations of his work,

⁴By Secretary to Government Of India, available at <http://copyright.gov.in/documents/handbook.html>.

or any other action in relation to said work, which would be prejudiced to his honor or reputation. The proviso to section 57(1) provides that the author shall not have any right to restrain or claim damages in respect of any adaption of a computer program to which section 52(1) (aa) applies. It must be noted that failure to display a work or to display it to the satisfaction of the author shall not be deemed to be infringement of the rights conferred by this section. The legal representatives of the author may exercise the rights conferred upon an author of a work by section 57(1), other than the right to claim authorship of the work.⁵

Authorship and Ownership

Copyright protects the rights of authors i.e. creators of intellectual property.

Ordinarily the author is the first owner of copyright in a work.

Rights in case of literary works

- To reproduce the work
- To issue copies to the work in public
- To perform the work in public
- To communicate the work in public
- To make cinematograph film or sound recording in respect of the work
- To make a translation of the work
- To make adaption of the work

Rights in dramatic work

- To reproduce the work
- To communicate the work to the public or perform the work in public
- To issue copies of the work in public
- To include the work in any cinematography film
- To make any adaption of the work
- To make translation of the work

Rights in an artistic work

- To reproduce the work
- To communicate the work to the public
- To issue copies of the work to the public
- To include the work in any cinematograph film

⁵Mahendra Kumar Sunkar, Copyrights Laws in India, <http://www.legalserviceindia.com/article/1195-Copyright-Law-in-India.html>.

-To make any adaption of the work

Rights in a musical work

- To reproduce the work
- To issue copies of the work in public
- To perform the work in public
- To communicate the work in public
- To make cinematograph film or sound recording in respect of the work
- To make translation of the work
- To make adaption of the work

Rights in a cinematograph film

- To make a copy of the film including a photograph of any image forming part thereof
- To sell or give on hire or offer for sale or hire a copy of the film
- To communicate the cinematograph film to the public

Rights in a sound recording

- To make any other sound recording embodying it.
- To sell or give on hire, or offer for sale or hire, any copy of the sound recording
- To communicate the sound recording to the public.⁶

Registration of copyright

Certificate of registration of copyright and the entries made therein serve as prima facie evidence in a court of law with reference to dispute relating to ownership of copyright.

Copyright facilitates exist for having the work registered in the Register of Copyrights maintained in the Copyright Office of the Department of Education. The entries made in the Register of Copyrights serve as prima-facie evidence in the court of law. The Copyright office has been set up to provide registration facilities to all types of works and is headed by Registrar of Copyrights.

⁶By Secretary to Government Of India, available at <http://copyright.gov.in/documents/handbook.html>.

Procedure for Registration are as follows:

1. Application of registration is to be made on Form IV (Including Statement of Particulars and Statement of Further Particulars) as prescribed in the first schedule to the Rules;
2. Separate applications should be made for registration of each work;
3. Each application should be accompanied by the requisite fee prescribed in the second schedule to the Rules;
4. The application should be signed by the applicant or the advocate in whose favor a Vakalatnama or Power of Attorney has been executed. The Power of Attorney signed by the party and accepted by the advocate should also be enclosed. Each and every column of Statement should be replied specifically.

Both published and unpublished works can be registered. Copyright in works published on or before 21st January 1958; before the Copyright Act, 1957 came in force also be registered provided the work will still enjoy copyright.

When a work has been registered as unpublished and subsequently it is published the applicant may apply for changes in particulars entered in the Register of Copyright in Form V with prescribed fee.⁷⁷

Term of copyright

The general rule is that copyright lasts for 60 years. 60-year period is counted from the year following the death of the author. In case of cinematograph films, sound recordings, photographs, work of government and works of international organizations the 60-year period is counted from the date of publication.

Copyright infringement

There are some copyright infringements:

1. Making infringing copies for sale or hire or selling or letting them for hire;
2. Permitting any place for the performance of works in public where such performance constitutes infringement of copyright;

⁷⁷*Ibid.*

3. Distributing infringing copies for the purpose of trade or to such an extent so as to affect prejudicially the interest of the owner of copyright;
4. Public exhibition for infringing copies by way of trade and
5. Importation of infringing copies into India.

A copyright owner can take legal action against any person who infringes the copyright in the work. The copyright owner is entitled to remedies by way of injunctions, damages and accounts.

The District Court concerned has the jurisdiction in civil suits regarding copyright infringement.

Any person who knowingly infringes or abets the infringement of the copyright in any work commits criminal offence under Section 63 of the Copyright Act. The minimum punishment for infringement of copyright is imprisonment for six months with minimum fine of Rs.50,000/- ⁸

How to avoid copyright infringement?

Copyright laws are designed to protect the creator of original works, which are creative expressions from others using and profiting their work, without permission. The idea is that the author or creator owns the rights to the work and can decide if and how others use his or her creation.

There are various tips through which copyright infringement can be stopped:

1. Use caution if it's not your original work: if you have not created the work, then it's not yours. So it's better not to use it as your own and that will avoid infringement.
2. It's important to use the licensing terms: Everyone who writes shares something or the other but there's some kind of license present everywhere. It's better to read it every time to avoid issues.

⁸*Ibid.*

3. Don't believe the urban legends: While open source code has reduced the cost of software development, it can be a landmine to use if you do not read the license for rules regarding commercial use. It is not as open as it seems.
4. Look for Fair Use: This basically refers to the fact that if you are using a photo or an article for educational or uncommercial purposes, they you may be exempt from infringement.

Overall it's important to understand the copyright laws or rights for any original creations to avoid copyright infringement. Being diverted by fines or legal action can take up valuable time and resources. ⁹

Rights are protected in works, not in ideas, themes or plots

Copyright subsists in work, not in ideas. Idea is not a subject-matter of copyright.

In *R.G Anand v. Delux Films*, the Supreme Court laid down certain propositions after careful considerations and elucidation of various authorities and the case law on the issue of infringement of copyright:

- A. There can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of copyright in such cases is, confined to the form, manner and arrangements and expression of the idea by the author of the copyrighted work.
- B. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case, the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there, it would amount to violation of the copyright. In other words, in order to be actionable, the copy must be substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

⁹Mary Juetten, *how to avoid copyright infringement*, <https://www.legalzoom.com/articles/how-to-avoid-copyright-infringement>.

- C. One of the surest and safest test to determine whether, or not, there has been a violation of copyright is to see if, the reader, spectator or the viewer after having read or seen both the work is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.
- D. Where the theme is the same but is presented and treated differently so that the subsequent work becomes completely new work, no question of violation of copyright arises.
- E. Where, however apart from the similarity appearing in the two works there are also material and broad dissimilarities which negate the intention to copy the original and the coincidences appearing in the two works are clearly incidental, no infringement of the copyright comes into existence.
- F. As a violation copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case laws.
- G. Where the question is of the violation of the copyright of stage play by a film producer or a director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has much broader perspective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a color and complexion different from the manner in which the copyright work has expressed the idea. Even so if the viewer after seeing the film gets a totality of impression that the film is by and large copy of the original play, violation of the copyright may be said to be proved.

Thus only the original way or manner of presentation of an idea is protected by copyright law. ¹⁰

Conclusion

Copyright laws confers upon the owner of the work a bundle of exclusive rights in respect of reproduction of the work and other acts which enables the owner to get financial benefits by exercising such rights. If any of these acts relating to the work is

¹⁰V.K AHUJA, LAW RELATING TO INTELLECTUAL PROPERTY RIGHTS, P.g.no.149-150(Third Edition)2017.

carried out by a person other than the owner without a license from the owner or a competent authority under the Act, it constitutes infringement of copyright in the work. Since copyright is granted only for a limited period, there will be no infringement if the reproduction of the work or the other acts concerned are carried out after the term of the copyright has expired. The exclusive rights conferred on the owner depends on the nature of the work in which copyright subsists. Accordingly, the type of acts which will constitute infringement will depend upon the nature of the work.

Copyright is a proprietary right and accordingly its infringement is actionable without proof of damage or likelihood of damage. If therefore infringement is established there is no need to consider whether the defendant's work is likely to compete with the plaintiff's work.

Copyright protection is a prerequisite for any person who is the owner of its object a prophylactic it violates its civil accountability. The main purpose for doing this is to limit the accountability of the software that facilitates various use. For copyright protection to be constructive and unprejudiced in reality, and how people behold this act, it should only prevent the use of illegality, as piracy is a matter of great concern. These measures should be taken care only to protect the originality of work and the effort and the effort which has been put up by the copyright owner. Copy protection measures are prevented by CSS are mediocre. CSS prevents some illegal activities and automatically informs the legitimate purchaser to measure disc and prevent crimes which are taking place. The main objective is to prevent the copying of the material that one has been purchased and there is fair use of copyrighted work as directed by the Supreme Court. If any right is violated, then the Copyright holders need compensation for their creation of work. It becomes an issue of property right and practicability. The simplest type of compensation available to them are "Copy Protection". If another measures start being in use it will change the relationship between the "Content Creator", "Distributor" and "Advertiser" and lastly but not the least The "Consumer".

