

Copyright Protection For Computer Software An Indian Prospective

13 September 2013

by [Sugandha Nayak](#)

S&A Law Offices

Your [LinkedIn Connections](#)
with the authors

In India the Copyright Act, 1957 grants protection to original expression and computer software is granted protection and is not a computer program per se. The computer software which has a technical effect is patentable under the Copyright Act, 1957. In the interest of the public interest and society (CIS) the number of software patents granted in India is approx 200 from the year 1999 till 2012. Computer software which does not have a technical effect is protected under copyright law. For a copyright protection, computer software must be put into a form and skill must be put into it to impart its originality. But a program which only generates multiplication tables or algorithms is not eligible for protection. Apart from being original not copied from elsewhere, the work should be first published in India or outside India on the date of publication or if the work is published outside India the author on the date of publication or if the author is a citizen of India¹.

In case of unpublished work², the author on the date of making of a work should be a citizen of India or domicile in India. Protection to a foreign copyright author's work which is published in any other country which is a member of the Berne Convention is granted to an author who is a citizen of India. In India, computer software does not form the subject matter of patent as it is not a technical invention which is provided under the Indian Patent Act in conformity with the provision of TRIPS, Berne Convention, WIPO Copyright Treaty, etc.

Author's Right

The Copyright Act protects the author's economic and moral rights in the copyrighted work as stated in section 17 of the Copyright Act, 1957. In the case of computer software/programmes, the copyright owner is entitled to the public make any cinematographic films or sound or adaptation of the work, apart from the right 'to sell or to let for commercial rental any copy of the computer software/ programmes. Such commercial rental does not apply in relation to the computer programme itself is not essential object of the rental. This provision on rental rights is in line with Article 17 of the TRIPS Agreement in the Act in 1999. Even though the TRIPS Agreement does not specifically protect the moral rights, but the same is protected under the Copyright Act, 1957.

Computer Program- A Literary Work

Section 2 (o) defines 'literary work' and includes computer programs, tables and compilations including computer programmes. The author of a work in which the copyright subsists which includes original literary work. The author of a work is the first owner of the work if a work is made in course of employment under a contract of service or apprenticeship, then the employer is the author in the absence of any contract to the contrary⁴. These provisions of the copyright law are applicable mutatis mutandis to computer programmes.

Software Contracts

Software contracts, like many other transactions, are governed by the common law principle as embodied in the nature of sale or assignment/ license. If the computer software is considered as a 'good', the Sale of Goods Act, 1930 applies to the execution of the sale contract. Section 2(7) of the Sale of Goods Act, 1930 defines 'good' as 'every kind of movable property, other than money, and includes stock and shares, growing crops grass...' This definition of goods includes all types of movable property.

In *Tata Consultancy Services v. State of Andhra Pradesh*⁶, the Supreme Court considered computer software is diskettes, floppy, magnetic tapes or CD ROMs, whether canned (Shrink-wrapped) or uncanned (customized), whether independently, whether it is branded or unbranded, tangible or intangible; is a commodity capable of being transferred, etc. and therefore as a 'good' liable to sale tax. The court stated that, 'it would become goods provided it has the following attributes: (a) capable of being bought and sold; (b) capable of being transmitted, transferred, delivered, stored or noncustomized satisfies these attributes, the same would be goods.'

Infringement of Copy right and Legal Remedies for the Computer software

Section 51 defines infringement of copyright and states that a person infringes copyright of another if he unauthorizedly copies or reproduces the work in whole or in part. Civil remedies to copyright infringement are provided in chapter XII of Copyright Act, 1957 where civil remedies to copyright infringement and criminal liability provisions are provided in chapter XII of Copyright Act, 1957 where civil remedies to copyright infringement are punishable with imprisonment of upto three years and a fine up to Rs. 2 Lacs⁷. A person who knowingly uses the work in infringement of copyright is punishable with imprisonment for not less than seven days extendable up to three years and a fine up to Rs. 2 Lacs. Section 62 of the Copyright Act, 1957 entitles a Plaintiff to file for a suit for injunction against the defendant in the jurisdiction where Plaintiff resides or carries on business or works for gain. In fact, of late Indian Courts have accepted jurisdiction where Plaintiff resides or carries on business or works for gain. In fact, of late Indian Courts have accepted jurisdiction where Plaintiff resides or carries on business or works for gain. In fact, of late Indian Courts have accepted jurisdiction where Plaintiff resides or carries on business or works for gain.