

# **Copyright Law in India**

## **What is Copyright?**

Copyright is a form of intellectual property protection granted under Indian law to the creators of original works of authorship such as literary works (including computer programs, tables and compilations including computer databases which may be expressed in words, codes, schemes or in any other form, including a machine readable medium), dramatic, musical and artistic works, cinematographic films and sound recordings.

Copyright law protects expressions of ideas rather than the ideas themselves. Under section 13 of the Copyright Act 1957, copyright protection is conferred on literary works, dramatic works, musical works, artistic works, cinematograph films and sound recording. For example, books, computer programs are protected under the Act as literary works.

Copyright refers to a bundle of exclusive rights vested in the owner of copyright by virtue of Section 14 of the Act. These rights can be exercised only by the owner of copyright or by any other person who is duly licensed in this regard by the owner of copyright. These rights include the right of adaptation, right of reproduction, right of publication, right to make translations, communication to public etc.

Copyright protection is conferred on all Original literary, artistic, musical or dramatic, cinematograph and sound recording works. Original means, that the work has not been copied from any other source. Copyright protection commences the moment a work is created, and its registration is optional. However it is always advisable to obtain a registration for a better protection. Copyright registration does not confer any rights and is merely a prima facie proof of an entry in respect of the work in the Copyright Register maintained by the Registrar of Copyrights.

### **Register your Copyright Online**

As per Section 17 of the Act, the author or creator of the work is the first owner of copyright. An exception to this rule is that, the employer becomes the owner of copyright in circumstances where the employee creates a work in the course of and scope of employment.

Copyright registration is invaluable to a copyright holder who wishes to take a civil or criminal action against the infringer. Registration formalities are simple

and the paperwork is least. In case, the work has been created by a person other than employee, it would be necessary to file with the application, a copy of the assignment deed.

One of the supreme advantages of copyright protection is that protection is available in several countries across the world, although the work is first published in India by reason of India being a member of Berne Convention. Protection is given to works first published in India, in respect of all countries that are member states to treaties and conventions to which India is a member. Thus, without formally applying for protection, copyright protection is available to works first published in India, across several countries. Also, the government of India has by virtue of the International Copyright Order, 1999, extended copyright protection to works first published outside India.

Indian perspective on copyright protection:

The Copyright Act, 1957 provides copyright protection in India. It confers copyright protection in the following two forms:

Economic rights of the author, and Moral Rights of the author.

(A) Economic Rights:

The copyright subsists in original literary, dramatic, musical and artistic works; cinematographs films and sound recordings. The authors of copyright in the aforesaid works enjoy economic rights u/s 14 of the Act. The rights are mainly, in respect of literary, dramatic and musical, other than computer program, to reproduce the work in any material form including the storing of it in any medium by electronic means, to issue copies of the work to the public, to perform the work in public or communicating it to the public, to make any cinematograph film or sound recording in respect of the work, and to make any translation or adaptation of the work.

In the case of computer program, the author enjoys in addition to the aforesaid 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 the case of an artistic work, the rights available to an author include the right to reproduce the work in any material form, including 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, to include the work in any cinematograph work, and to make any adaptation of the work.

In the case of cinematograph film, the author enjoys the right 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, any copy of the film, and to communicate the film to the public. These rights are similarly available to the author of sound recording. In addition to the aforesaid rights, the author of a painting, sculpture, drawing or of a manuscript of a literary, dramatic or musical work, if he was the first owner of the copyright, shall be entitled to have a right to share in the resale price of such original copy provided that the resale price exceeds rupees ten thousand.

#### B) Moral Rights:

Section 57 of the Act defines the two basic 'moral rights of an author. These are Right of paternity, and

Right of integrity.

The right of paternity refers to a 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, or any other action in relation to said work, which would be prejudicial to his honour 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 adaptation of a computer program to which section 52 (1)(aa) applies (i.e. reverse engineering of the same). 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 an 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.

The ownership in copyright may vest in different persons under different circumstances.

In *Eastern Book company v Navin J.Desai*, the question involved was whether there is any copyright in the reporting of the judgment of a court. The Delhi High court observed: It is not denied that under section 2(k) of the Copyright Act, a work which is made or published under the direction or control of any Court,

tribunal or other judicial authority in India is a Government work. Under section 52(q), the reproduction or publication of any judgment or order of a court, tribunal or other judicial authority shall not constitute infringement of copyright of the government in these works. It is thus clear that it is open to everybody to reproduce and publish the government work including the judgment/ order of a court. However, in case, a person by extensive reading, careful study and comparison and with the exercise of taste and judgment has made certain comments about judgment or has written a commentary thereon, may be such a comment and commentary is entitled to protection under the Copyright Act.

The court further observed: In terms of section 52(1)(q) of the Act, reproduction of a judgment of the court is an exception to the infringement of the Copyright. The orders and judgments of the court are in the public domain and anyone can publish them. Not only that being a Government work, no copyright exists in these orders and judgments. No one can claim copyright in these judgments and orders of the court merely on the ground that he had first published them in his book. Changes consisting of elimination, changes of spelling, elimination or addition of quotations and corrections of typographical mistakes are trivial and hence no copyright exists therein.

In *Godrej Soaps (P) Ltd v Dora Cosmetics Co*, the Delhi High Court held that where the carton was designed for valuable consideration by a person in the course of his employment for and on behalf of the plaintiff and the defendant had led no evidence in his favour, the plaintiff is the assignee and the legal owner of copyright in the carton including the logo.

Copyright Infringement:

Direct Infringement: Direct infringement is a strict liability offence and guilty intention is not essential to fix criminal liability. The requirements to establish a case of copyright infringement under this theory are Ownership of a valid copyright; and Copying or infringement of the copyrighted work by the defendant.

Thus, a person who innocently or even accidentally infringes a copyright may be held liable under the Copyright Act of the U.S. and under the laws of various other countries. The guilty intention of the offender can be taken into account for determining the quantum of damages to be awarded for the alleged infringement.

Contributory infringement:

The contributory infringement pre-supposes the existence of knowledge and participation by the alleged contributory infringer. To claim damages for infringement of the copyright, the plaintiff has to prove

That the defendant knew or should have known of the infringing activity; and  
That the defendant induced, caused, or materially contributed to another person's infringing activity.

Vicarious Infringement:

Vicarious copyright infringement liability evolved from the principle of respondent superior. To succeed on a claim of vicarious liability for a direct infringer's action, a plaintiff must show that the defendant

Had the right and ability to control the direct infringer's actions; and

Derived a direct financial benefit from the infringing activity.

Thus, vicarious liability focuses not on the knowledge and participation but on the relationship between the direct infringer and the defendant.

Legal precedent for vicarious copyright infringement liability has developed along two general relational lines. The first relational line involves the employer/employee relationship, whereas the second involves the lessor / lessee relationship.

Internet and copyright infringement theories: The advent of information technology has made it difficult to apply the traditional theories to various cyberspace entities and organizations.

These cyberspace players can be grouped under the following headings

Internet Service Providers (ISPs)

An ISP most often provides Internet access and he may be held liable for copyright infringement. In *Religious Technology Center v Netcom On-Line Communication Services, Inc* a former minister uploaded some of the copyrighted work of the Church of Scientology to the Internet. He first transferred the information to a BBS computer, where it was temporarily stored before being copied onto Netcom's computer and other Usenet computers. Once the information was on Netcom's computer, it was available to Netcom's subscribers and Usenet neighbors for downloading for up to eleven days. The plaintiffs informed Netcom about the infringing activity; nonetheless, Netcom refused to deny the subscriber's access because it was not possible to prescreen

the subscriber's uploads, and kicking the subscriber off the Internet meant kicking off the rest of the BBS operator's subscribers. Thus, plaintiffs sought a remedy against Netcom for infringement under all three theories direct, contributory, and vicarious.