



Copyright In India: An Analytical Cross-Check

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ABSTRACT

Copyright law's evolution demonstrates its adaptability and commitment to promoting creativity, innovation, and knowledge. By striking a balance between authors' rights and public interests, copyright law plays a crucial role in fostering a vibrant knowledge economy. Copyright is the legally recognized right of literary property, granting authors exclusive privileges over their literary productions for a limited time, including: reproduction rights, distribution rights, public display rights, adaptation rights. This paper presents a comprehensive analysis of copyright law in India, examining its evolution, current framework, and challenges. The study evaluates the Indian Copyright Act, 1957, and its amendments. The research investigates the intersection of copyright and emerging technologies, such as digital copyright, artificial intelligence, and social media.

Keywords: Copyright Law, India, Literary, Digital Artificial Intelligence, Social Media.

Introduction

The right of literary property as recognized and sanctioned by law is known as copyright. The right granted to the author of a literary work by statute for his literary production for a limited period of time, with exclusive privilege of multiplying copies of the publication for a limited period of time, with exclusive privilege of multiplying copies of the publication for sale. Copyright law plays a vital role in protecting intellectual property rights, fostering creativity, and promoting innovation.¹ Copyright law, which initially emerged for protection of publisher's right became in course of time a well deserved instrument for protecting authors right. In the knowledge economy, law's concern to render to each person, creator and the entrepreneur, his due is not only reflecting its mission of justice but also determination to promote the cause of knowledge by appropriate distribution of incentives.²

Copyright is one of the crucial aspects of creative endeavor. The Concise Oxford Dictionary has defined copyright as "The exclusive right given by law, for a term of years, to author, composer, etc.(or his assignee) to print, publish and seek copies of his original work". An individual is entitled to the fruits of his brain as much as he is entitled to the fruits of his mechanical labour. In fact, the Universal Declaration of Human Rights endorses the same in the following words; "Everyone has right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author". So, copyright is the right which a person acquires in a work which is the result of his intellectual labour. The main function of copyright law is to protect from annexation by other people of the fruits of a man's work, labour or skills.

In India, the copyright regime has undergone significant transformations since the enactment of the Indian Copyright Act, 1957.³ The rapid growth of digital technologies, the rise of the creative industries, and India's increasing participation in international trade have necessitated a re-examination of the country's copyright framework.⁴ The Indian copyright law has been amended several times to keep pace with technological

¹. World Intellectual Property Organization (WIPO), "Copyright and Related Rights" (2022)

²P Ishwar Bhat, Protecting the creator or the Entrepreneur? The copyright dilemma in the sphere of performers rights in edited book Copyright Law, Economy and Development edited by Somu Giriappa, 2002, Daya publishing house Delhi. at p.63

³. Indian Copyright Act, 1957, No. 14 of 1957, Ministry of Law and Justice, Government of India.

⁴Rajiv Dhavan, "Intellectual Property Law and the Information Age" (Eastern Book Company, 2017), p. 12.

advancements and international obligations.⁵ The most significant amendments were introduced in 2012, which aimed to strengthen copyright protection, streamline the registration process, and introduce new provisions for digital rights management.⁶ However, despite these efforts, challenges persist in balancing the rights of creators, users, and intermediaries.⁷ This article provides a comprehensive analysis of copyright law in India.

Historical Background Copyright and its Evolution

Conceptually, copyright and patent rights differ significantly. While patents safeguard ideas, copyrights protect the unique expression of those ideas. Copyright is a bundle of rights granting protection to literary and artistic works, automatically vesting in the creator upon creation, without requiring formalities. Essentially, it's a positive right signifying the right to copy or reproduce a work, literary or artistic, that arises automatically and vests in the creator on the creation of the work without any need for compliance with formalities. This is in marked contrast to patent rights, which require elaborate and expensive procedures before the claim can be patented.

The prerequisites for copyright protection are that :

- a) The work must be of the type in which a copyright can subsist
- b) The author is 'qualifying person' or the work has been published or broadcasted in an appropriate manner.
- c) In creation types of works including literary works such as books and computer programs, the work must be 'original' and
- d) It must be recorded in some permanent form (e.g. written down or stored in computer memory).

The evolution of copyright law originated with the privileges granted by the British Crown to specific guilds of printers, aiming to regulate the output of printed materials, much of which was deemed seditious. The history of copyright law in India is a history of series of legislative enactments both in British regime as well as Independent India. The importance of copyright protection was recognized since ancient times but particularly after invention of the printing press during the 15th century⁸ which enable reproduction of required number of books for circulation in the entire world. So the advent of printing in the 15th century gave the initial thrust for the development of copyright law and the protection of author's right in later centuries.

Pre-independence Legislation Indian Copyright Act 1847

The first statute law in British India on copyright applied during the East India Company's regime with the title "The Indian Copyright Act, 1847"⁹ It was passed by the Governor General of India in Council on 15th December, 1847. This legislation was in operation during the period 1847-1911.

Copyright Act 1911

The law of copyright as codified in England was enacted as An Act and this was the law in force in India and similarly applied to all other countries under the British domination.

The Indian Copyright Act 1914

The dominion legislature was empowered to modify or alter the provisions of Copyright Act 1911 to suit for the natives and as a result of the Governor General of India enacted the Indian Copyright Act 1914. The Indian Copyright Act of 1914 and the British Copyright Act of 1911 constituted the copyright law in India. This Act consists of 15 sections. The infringement copyright was not considered as a criminal offence under this Act. It authorized the owner of copyright destruction of the infringing copies on their delivery. It was also laid down that non-registration of a book for copyright protection was not a bar to file a civil suit or start civil proceedings against any one who infringed copyright.

The following were some of the important provisions laid in the legislation.

- a) The registration of the author's work was not necessary.
- b) The author's right came into existence as soon as the work was created.
- c) Protection was afforded not to the idea but the material form in which the work was expressed.
- d) Only original work attracted the protection of copyright law.
- e) The term of copyright protection was fixed as the lifetime of the author and 25 years his death.

⁵Copyright (Amendment) Act, 2012, No. 27 of 2012, Ministry of Law and Justice, Government of India.

⁶M. P. Ram Mohan, "Copyright Law in India" (LexisNexis, 2020), p. 150.

⁷ArunJaitley, "India's Intellectual Property Rights Regime: Challenges and Opportunities" (Journal of Intellectual Property Rights, 2019), Vol. 24, Issue 3

⁸Narayanan P, Intellectual property Law, Eastern Law House, 1999, p. 218.

⁹.Act of XX of 1847.

Original Work Protection

The 1914 Act marked a significant departure from previous copyright principles by extending protection to all original works. Prior to this, copyright laws were interpreted narrowly, adhering to the principle that laws restricting human activity and enterprise should be construed liberally. This ensured that research and scholarship across various fields of human knowledge remained unrestricted, preventing copyright from stifling intellectual progress.

Post-independent Legislation

Overall, India's copyright law has evolved significantly since independence, adapting to technological advancements and international norms to promote creativity, innovation, and intellectual property protection.

The Copyright Act 1957

The Copyright Act of 1957 is an Act to amend and consolidate the law relating to copyright in India. Historically, it was drawn heavily from British copyright law. The Indian Copyright Act, 1957, has undergone significant transformations since its inception, aiming to adapt to the changing landscape of intellectual property rights.¹⁰

Key amendments

Early Reforms (1983-1999)

The first major amendment, the Copyright (Amendment) Act, 1983, extended copyright protection to software and computer programs, recognizing the growing importance of technology.¹¹ The 1994 amendment strengthened enforcement mechanisms, introducing penalties for copyright infringement.¹² The 1999 amendment implemented India's obligations under the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty, aligning Indian law with international standards.¹³

Digital Rights Management (2010-2012)

The Copyright (Amendment) Act, 2010, introduced provisions for digital rights management, including rights management information and technological protection measures.¹⁴ The 2012 amendment built upon this, expanding fair dealing exceptions, introducing statutory licensing, and enhancing protection for persons with disabilities.¹⁵ These reforms aimed to strike a balance between creators' rights and users' interests in the digital era.

Streamlining Registration and Enforcement (2016-2020)

The Copyright (Amendment) Rules, 2016, and 2020, simplified the registration process, introducing online applications and hearings. These procedural reforms aimed to increase efficiency and accessibility.¹⁶

Proposed Reforms and Future Directions

The Draft Copyright (Amendment) Bill, 2019, proposes further reforms to address emerging issues, such as copyright protection in the digital environment and enhanced enforcement mechanisms.¹⁷ As India continues to navigate the complexities of intellectual property law, these proposed reforms are critical in ensuring the country's copyright regime remains strong and effective.

The Indian Copyright Act, 1957, has undergone significant transformations, reflecting the evolving nature of intellectual property rights.¹⁸ These amendments demonstrate India's commitment to protecting creators' rights while balancing users' interests. As technology continues to shape the intellectual property landscape, ongoing reforms will be crucial in ensuring India's copyright law remains adaptable, effective, and aligned with international standards.

Copyright Law in India

Indian Copyright law protects six major heads of creative works: Literary, dramatic, musical, artistic, cinematography and sound recording works. Literary works also include computer programs, cables and compilations inclusive of computer database. The period of copyright protection in the case of

¹⁰. Indian Copyright Act, 1957, No. 14 of 1957, Ministry of Law and Justice, Government of India.

¹¹. Copyright (Amendment) Act, 1983, No. 23 of 1983.

¹². Copyright (Amendment) Act, 1994, No. 38 of 1994.

¹³. WIPO Copyright Treaty (1996) and WIPO Performances and Phonograms Treaty (1996).

¹⁴. Copyright (Amendment) Act, 2010, No. 27 of 2010.

¹⁵. Copyright (Amendment) Act, 2012, No. 28 of 2012.

¹⁶. Copyright (Amendment) Rules, 2016, and 2020, Ministry of Commerce and Industry, Government of India.

¹⁷. Draft Copyright (Amendment) Bill, 2019, Ministry of Commerce and Industry, Government of India.

¹⁸. M. P. Ram Mohan, "Copyright Law in India" (LexisNexis, 2020), p. 150.

literary, dramatic, musical and artistic works, is lifetime plus 60 years. In the case of a photograph, cinematography or sound recording the rule is 60 years from the date of publication. This rule applies even in case of pseudonyms and anonyms.

Some of the issues that are specific to copyright in India are discussed hereinafter.

Why registering your Copyright matters

Registration of copyright is optional. That the work is not registered does not debar the author from bringing an action for infringement. Lack of registration does not prevent authors from taking infringement action. Registration is mere piece of evidence, which stipulates as to when a certain author started claiming copyright on a work. Registration provides prima facie evidence and documents of registration are admissible in evidence. While registration of copyright is optional, it provides significant benefits and serves as valuable evidence in infringement disputes. Other benefits such as Enhanced credibility, Simplified enforcement, Deterrent effect on potential infringers, Better protection against unauthorized use, Increased commercial value.

Procedure of Application for Registration

The Copyright Rules, outline the procedure for registering a copyright. Rule 16 provides details of procedure for registration of application, which is to be made in Form IV and the Form must accompany a statement of particulars to be made in triplicate. The statement must contain inter alia, name, address and nationality of the applicant, the nature of the applicant's interest in the copyright of the work, class and description of the work, title of the work, language of the work, name address and nationality of the author, year and country of first publication and the name, address and nationality of the publisher. The Register of copyright is kept in four parts, viz., (i) literary, dramatic and musical works; (ii) artistic works; (iii) cinematograph films and (iv) sound recordings. Each part contains a general author index, a general title index, and author index of works in each language and title index of works in each language.

Subjects of Copyright

Copyright law plays a vital role in safeguarding the intellectual property rights of creators, encouraging innovation and artistic expression. The Indian Copyright Act, 1957, recognizes a wide range of creative works eligible for protection. By recognizing diverse categories of literary, musical, artistic, cinematographic, sound recording, computer program, and digital works, the law encourages innovation, artistic expression, and intellectual property rights.

Literary Works: The Foundation of Copyright

An original literary work is the product of the human mind which may consist of series of verbal or numerical statements, not necessarily possessing aesthetic merit, capable of being expressed in writing, and which has been arrived at by the exercise of substantial independent skill, creative labour, or judgement.¹⁹ Literary works, including novels, poems, plays, and essays, form the cornerstone of copyright protection.²⁰ The Act encompasses software programs, coding, and databases, acknowledging the creative effort invested in these works.²¹ The emphasis on originality ensures that only unique expressions are protected, distinguishing copyright from other forms of intellectual property.

Musical and Artistic Works: Creative Expression

Musical compositions, lyrics, and sound recordings are protected as musical works.²² In order to qualify for copyright protection, a musical work must be original. Artistic works, comprising paintings, drawings, sculptures, photographs, and cinematographic works, showcase the diversity of creative expression.²³ Architectural designs, graphic designs, and illustrations also fall within the ambit of copyright protection.²⁴

Cinematographic and Sound Recordings: Audio-Visual Creations

Cinematographic works, including films, television shows, and documentaries, are safeguarded, as are sound recordings, encompassing music albums, podcasts, and audiobooks.²⁵ These protections recognize the creative labour and financial investment in producing audio-visual content.

¹⁹. Dr. V.K. Ahuja, Law relating to intellectual property rights, (LexisNexis, 2009, p. 25.

²⁰ Section 2(o) of the Indian Copyright Act, 1957.

²¹. Section 2(fff) of the Indian Copyright Act, 1957

²². 6. Section 2(p) of the Indian Copyright Act, 1957.

²³. 7. Section 2(c) of the Indian Copyright Act, 1957.

²⁴. Section 2(d) of the Indian Copyright Act, 1957.

²⁵. Section 2(f) of the Indian Copyright Act, 1957.

Computer Programs and Digital Works: The Digital Frontier

The Act acknowledges the evolving nature of creativity, extending protection to computer programs, software codes, apps, video games, and digital software.²⁶ Websites, web pages, online content, digital art, graphics, and electronic databases are also shielded.²⁷

Moral Right of the Author

The concept of moral rights protects authors' personal and intellectual interests in their creations. Section 57 of the Indian Copyright Act, 1957, recognizes moral rights, ensuring authors' control over their work's integrity and attribution. A conflict arises when authors transfer their copyright while retaining moral rights. Section 21(1) of the Act allows authors to "transfer all rights" comprised in the copyright, potentially creating a gap between the author's rights and copyright. Does it indicate that there is a gap in the quantum of right between the author's right and the copyright? Countries like Japan and France recognize moral rights as residuary rights, vesting with the author even after transferring copyright. In contrast, India's Copyright Act, 1957, did not initially provide separate moral rights protection. In India the Copyright Act did not carve out any residuary right as author's right.

The Copyright (Amendment) Act, 1994, introduced moral rights protection in India. Section 57(1) states that authors have the right to:

1. Claim authorship
2. Object to distortions or modifications
3. Protect their work's integrity

The 2012 Copyright (Amendment) Act further strengthened moral rights, making them irrevocable and inalienable. Moral rights safeguard authors' creative and personal interests. While India's Copyright Act initially lacked explicit moral rights protection, amendments have bridged this gap. Authors now enjoy statutory protection, ensuring their work's integrity and attribution.

Copyright: A Bundle of Rights

Copyright is a complex bundle of rights surrounding a single work of authorship. Various parties can claim different rights over the same work, leading to multiple layers of copyright protection. A single work of authorship can have several different factors claiming different kinds of right over it. The concept of copyright as a bundle of rights is illustrated by Michael Crichton's novel "Jurassic Park." Initially, Crichton held the literary copyright. However, when adapted into a film, screenplay, and television series, new copyrights emerged. The screenplay, film production, and television series each generated distinct rights, owned by different individuals or entities. Similarly, George Bernard Shaw's play "Pygmalion" underwent various adaptations, resulting in multiple copyrights. The original play, film adaptation ("My Fair Lady"), and musical versions each possess unique rights. In all these situations the same book can create several different right for different kinds of people. Literary copyright protects the original work, while dramatic copyright covers stage productions. Musical copyright applies to compositions and lyrics, whereas cinematographic copyright safeguards film and television adaptations. Adaptation right allows creators to modify existing works.

Copyright and Computer programmes

In the knowledge based global economy, computer technologies are an essential requirement for accessing and using information, accelerating technology transfer and boosting the growth of productivity. At the same time, computer software products are perhaps the most heavily protected of all forms of knowledge based products. Under the TRIPS Agreement, computer programs now qualify for copyright protection just as any other literary work.

Initially, computer programs are not protected under Indian Copyright Act, 1957. It was after the Copyright Amendment Act, 1999 that computer programs were included under the scope of copyright protection under the act. Section 2(o) defines literary work as literary work that includes computer programs, tables, and compilations including computer databases. A literary work that is original is protected under copyright laws in India this means that the work must not be the work of another and the creator of the computer program must have spent sufficient effort and skills to create the same. A computer is defined under Section 2(ffb): computer includes any electronic or similar device having information processing capabilities. In Section 2(ffc) computer program means a set of instructions expressed in words, codes, schemes, or in any other form, including a machine-readable medium, capable of causing a computer to perform a particular result.

Broadcasting

Broadcasting rights of an organization are also like copyright in the sense that both refer to right to reproduction. Broadcasting right subsists for 25 years, therefore till the time of 25 years expiry, no one without

²⁶.Section 2(ff) of the Indian Copyright Act, 1957.

²⁷. Section 2(o) of the Indian Copyright Act, 1957.

the license of the owner can (a) rebroadcast (b) causing the broadcast to be heard by the public on payment of a charge, (c) make sound or visual recording, (d) make any reproduction, or (e) sell or hire to the public, any such sound or visual recording.²⁸ The conflict of right often arises in the process of allocation of rights between producer, director and the performer. Whereas the producer as the owner has the broadcast-reproduction right, others have performance right. The performer's right subsists for 50 years. The right contains a negative right, which means that without the consent of the performer, the performance cannot be put into sound recording or visual recording or reproduction or communicated to the public.²⁹ It has been argued by the industry that unless the producer is given the absolute right to production and reproduction and if he is subject to get the consent of the performer each time, the industry cannot meet the additional burden. The performers on the other hand suggest that absolute power of reproduction remaining in the hands of the producer make the performers completely subordinated.

To resolve this conflict, negotiated contracts, collective bargaining agreements, and regulatory frameworks ensuring fair compensation and credit are essential. The Rome Convention and TRIPS Agreement recognize performers' rights, underscoring the need for national laws to protect these interests. Broadcasting rights require a delicate balance between producers' and performers' interests. By acknowledging the complexities and adopting equitable solutions, the entertainment industry can foster creativity, ensure fair compensation, and promote harmonious collaboration.

Infringement of Copyright

In comparison to all other intellectual rights listed in TRIPS, copyright law is the one where India exceeded the international standard. Indian laws are quite comparable to the law of any developed country. But the weakest point of the copyright law is its enforceability. The statute has taken two strategies for enforcement. Firstly, It provides for participation of the civil society in the administration of the law, by constituting copyright societies and empowering the society to take representative action for the enforcement of the copyright. Thus society is subject to the control of the owners of the copyrights. Secondly, the statute envisages a stricter management of copyright. This has also two phases. There are civil remedies for infringements of copyright (Injunctions, damages, and accounts for copyright infringement), and there are criminal actions by criminalizing some of the infringements. Of course there are opinions about the importance of copyright so as to be dealt with by criminal administration of justice. According to the Act, copyright infringement is punishable with a fine which may be extended up to 2 lakh rupees and imprisonment up to 6 months, but may extend up to 3 years. Police has also the power to search and seize the infringing copies and dispose the same. According to the Criminal procedure code, the offences under the copyright Act are bailable and non-cognizable and can be tried by any magistrate.

Emerging Trends and Challenges

1. Digital Copyright

The rise of digital content and online platforms has led to increased focus on digital copyright issues. Streaming, downloading, and online piracy pose significant challenges to copyright holders.³⁰

2. Artificial Intelligence (AI) and Authorship

AI-generated content raises questions about authorship, ownership, and copyright protection.³¹ The Draft National Intellectual Property Rights (IPR) Policy (2019) suggests recognizing AI-generated works. Indian courts have not explicitly ruled on AI-generated content copyright. The Copyright Act, 1957, requires human authorship. Courts struggle to determine whether AI-generated works meet the human authorship requirement.³²

3. Open-Source Licensing

The growth of open-source software and creative commons licenses challenges traditional copyright concepts. Open-source licenses facilitate collaboration and innovation but require careful consideration of intellectual property rights.

4. Copyright and Social Media

Social media platforms' handling of user-generated content, sharing, and copyright infringement is an evolving area. Platforms' terms of service and copyright policies impact users' rights.

²⁸Section 37 of the Copyright Act 1957.

²⁹.Section 38 of the Copyright Act 1957.

³⁰Sony Music Entertainment Inc. v. Cox Communications Inc., 1:15-cv-01469-AJT-JFA (E.D. Va. 2015).

³¹AIST v. Oracle Corp., 15-35209 (9th Cir. 2018).

³².Naruto v. Slater, 15-15469 (9th Cir. 2018).

5. 3D Printing and Copyright

The increasing availability of 3D printing technology raises concerns about copyright infringement and intellectual property protection.³³ 3D printing enables unauthorized reproduction of copyrighted works.³⁴

6. Blockchain and Copyright

Blockchain technology offers new possibilities for secure, decentralized, and transparent copyright management. Blockchain-based systems facilitate efficient rights management and royalty tracking.

7. Virtual Reality (VR) and Augmented Reality (AR) Copyright

The emergence of VR/AR content creates new challenges for copyright protection.³⁵ VR/AR experiences often incorporate multiple copyrighted works.³⁶

8. International Cooperation

Globalization and digitalization necessitate increased international cooperation to combat copyright infringement.³⁷ International agreements and treaties aim to harmonize copyright laws.³⁸

Conclusion

Copyright law plays a important role in protecting intellectual property rights, fostering creativity, and promoting innovation. Copyright law primarily protects authors' rights, providing incentives for creativity and innovation. This view emphasizes: recognizing authors' intellectual property, encouraging original works and ensuring authors' economic benefits.

The public-Centric view is that copyright law primarily serves the public interest, promoting learning and societal progress. This view emphasizes: dissemination of knowledge, access to information, encouraging education and research. The principal purpose of copyright law is a subject of ongoing debate. While authors' rights are crucial, the public-centric view highlights the importance of promoting learning, access to information, and societal progress. A balanced approach acknowledges the interplay between these perspectives. The copyright landscape is evolving rapidly, driven by technological advancements, changing user behaviors, and innovative business models. Emerging trends and challenges, such as digital copyright, AI-generated content, open-source licensing, social media, 3D printing, blockchain, VR/AR, and international cooperation, require adaptability and proactive solutions.

Here are some recommendations to address the challenges and foster a balanced copyright ecosystem:

- Update national copyright laws to address emerging trends (AI, digital content).
- Harmonize international copyright laws and treaties.
- Establish clear guidelines for social media platforms' handling of user-generated content.
- Conduct public awareness campaigns on copyright laws and respect.
- Provide education and training for creators, industries, and policymakers.

³³D Systems Corp. v. Avid Engineering Inc., 14-cv-04753-RS (N.D. Cal. 2015).

³⁴. The Copyright Act, 1957 (India).

³⁵. Oculus VR, LLC v. ZeniMax Media Inc., 15-02045-RGA (N.D. Tex. 2016).

³⁶. Pokémon Company International, Inc. v. Swordsman II, 2:16-cv-06874-PSG-JEM (C.D. Cal. 2017).

³⁷. Agreement on Trade-Related Aspects of Intellectual Property Rights.

³⁸. Berne Convention for the Protection of Literary and Artistic Works.