

International **Comparative** Legal Guides



Copyright **2021**

A practical cross-border insight into copyright law

Seventh Edition

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1 Copyright Subsistence

1.1 What are the requirements for copyright to subsist in a work?

The first and foremost requirement is “*originality*”. The word “original” has not been defined in the Copyright Act, 1957 (the Act), but has derived its connotation through case laws. It is largely understood as a work that “owes its origin to the author”; the work must originate from the skill and labour of the author and must not be a copy of any other work. Another prerequisite of copyright protection is the fixation of work in a tangible form. The Indian regime follows the fundamental rule of copyright law laid down in Article 9(2) of Trade Related Intellectual Property Rights (TRIPs) and Article 2 of WCT, 1996, that copyright does not subsist in ideas and only protects original expression of the ideas.

1.2 Does your jurisdiction operate an open or closed list of works that can qualify for copyright protection?

The category of works which can qualify for copyright protection is a closed and exhaustive list. However, the definition of some of these categories is open and inclusive in nature. In India, copyright can subsist in original literary, dramatic, musical and artistic works; cinematograph films and sound recordings. No straight jacket definition is given for literary works under the Act and it merely states that the literary work includes computer programs, tables and compilations including computer databases. The definitions of dramatic work and artistic work are also inclusive in nature. Dramatic work has been defined as including any piece of recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise. Similarly, artistic work is also defined in inclusive terms and states that it means a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, a work of architecture and *any other work of artistic craftsmanship*.

The word “cinematograph” in cinematograph films has also been defined to include any works produced with a process analogous to cinematography. Musical works include graphical notations of music and sound recordings means a recording of sounds from which such sound may be produced regardless of the medium on which such recording is made or the method by which such sounds are produced.

1.3 In what works can copyright subsist?

Copyright subsists in the following categories of works:

- **Original** literary, dramatic, musical and artistic works.
- Cinematograph films.
- Sound recordings.

It is important to highlight that the word “original” is prefixed to literary, dramatic, musical and artistic works and not to cinematograph films and sound recordings, as the latter are works made by using the former categories of works. For example, a cinematograph film is made by making use of a script which is a dramatic work. Though there is no express stipulation regarding “originality” in respect of cinematograph films and sound recordings, copyright does not subsist in a cinematograph film if a substantial part of that film is an infringement of the copyright in any other work. Likewise, copyright does not subsist in a sound recording made in respect of a literary, dramatic or musical work if in making the sound recording, copyright in such work has been infringed.

1.4 Are there any works which are excluded from copyright protection?

Copyright does not protect ideas but only their expression. It does not subsist in a cinematograph film if a substantial part of that film is an infringement of the copyright in any other work. Likewise, copyright does not subsist in a sound recording made in respect of a literary, dramatic or musical work if in making the sound recording, copyright in such work has been infringed. In case of a work of architecture, copyright subsists only in the artistic character and design, and does not extend to processes or methods of construction.

1.5 Is there a system for registration of copyright and, if so, what is the effect of registration?

System:

Acquisition of copyright is automatic and the right comes into existence as soon as the work is created. However, securing a formal registration is highly advisable for enforcement purposes because the registration certificate acts as *prima facie* evidence of ownership of copyright. The author/publisher/owner, or any other person interested in the copyright in any work, may make an application to the Registrar of Copyrights for entering particulars of that work in the Register of Copyrights. In case of

an artistic work, which is used or is capable of being used in relation to any goods or services, the application must also include a statement that no trade mark that is identical/deceptively similar to the said artistic work has been applied for registration or is registered under the Trade Marks Act in the name of any person other than the Applicant. This statement must also be corroborated by a certificate from the Registrar of Trade Marks.

After filing the application, a waiting period of 30 days is observed for any third party objections that may come up against the copyright application. In case of no third party objection, the application goes ahead for scrutiny by the Examiner. In case of any discrepancy, a letter is sent to the Applicant for compliance and must be returned within 30 days. Based on the reply of the Applicant, the Registrar may allow the application to proceed to registration, or may conduct a hearing if they are not satisfied with the response. In case no discrepancy letter is issued, the application straight away proceeds to registration.

Effect:

The Register of Copyrights is *prima facie* evidence of the particulars entered therein. The documents purporting to be copies of any entries therein, or extracts therefrom certified by the Registrar of Copyrights and sealed with the seal of the Copyright Office, are admissible as evidence in all courts without further proof or production of the original.

1.6 What is the duration of copyright protection? Does this vary depending on the type of work?

The duration of copyright protection varies depending on the type of work. The term of protection for different kinds of works is as follows:

- Literary, dramatic, musical and artistic works – Life of author plus 60 years from the beginning of the calendar year which follows the year in which the author dies.
- Cinematograph films – 60 years from the beginning of the calendar year which follows the year in which the cinematograph film was published.
- Sound recording – 60 years from the beginning of the calendar year which follows the year in which the sound recording was published.

1.7 Is there any overlap between copyright and other intellectual property rights such as design rights and database rights?

India does not allow parallel protection and statutorily clarifies that copyright does not subsist in any design which has been registered under the Designs Act, 2000. Furthermore, though unregistered designs are protected under the realm of copyright law, copyright in any unregistered design, which is capable of being registered under the Designs Act, will cease to exist if the article to which the design has been applied is reproduced more than 50 times by an industrial process by the owner of the copyright or, under his licence, by any other person.

There is also an overlap with respect to the protection of artistic works between copyright law and trade mark law. The artistic work which is used or capable of being used in relation to any goods or services can be protected both under trade mark and copyright laws.

The definition of “literary work” includes computer programs, tables and compilations including computer databases. Thus, databases are protected under the copyright law as literary work. However, to obtain copyright protection for tables, compilations and computer databases, the work must exhibit some creativity

or originality in the selection or arrangement of the contents of the work. If the labour and skill required to make the selection and to compile the work which forms its items is negligible then no copyright can subsist in it.

1.8 Are there any restrictions on the protection for copyright works which are made by an industrial process?

Copyright in any unregistered design which is capable of being registered as an industrial design will cease to exist if the article to which the design has been applied is reproduced more than 50 times by an industrial process by the owner of the copyright or, under his licence, by any other person.

2 Ownership

2.1 Who is the first owner of copyright in each of the works protected (other than where questions 2.2 or 2.3 apply)?

There is a distinction between the author of a work and the owner of copyright therein, especially in those cases where the author has created the work in the course of employment, or at the instance of another person, and/or under a contract governing the ownership of copyright. Nevertheless, the first owner, generally (as per the Act), is the author of the work and since the term “author” has been defined in the Act for several categories of works, the first owner for each category of work will be as follows:

- the author/creator in respect of a literary or dramatic work;
- the composer in respect of a musical work;
- the artist in respect of an artistic work (“artistic work” includes a painting, sculpture, drawing, engraving, photograph, work of architecture and any other work of artistic craftsmanship) other than a photograph;
- the person taking the photograph in respect of a photograph;
- the producer, in relation to a cinematograph film or sound recording; and
- the person who causes the creation of the work in the case of any literary, dramatic, musical or artistic work which is computer-generated.

Where the work is a public speech or address, the person who delivers such work in public shall be the first owner of the copyright therein. However, if such work is made/delivered by a person on behalf of another person, such other person on whose behalf the work is so made or delivered will be the first owner.

2.2 Where a work is commissioned, how is ownership of the copyright determined between the author and the commissioner?

When a work is commissioned, generally the copyright in the work remains vested with the author/creator of the work, unless the rights are assigned in favour of the commissioner in the form of a written and duly executed document/assignment agreement. Where the assignee/commissioner becomes entitled only to a particular set of rights out of those comprised in the copyright through the assignment, he/she shall be treated as the owner of those rights, and as regards the rest of the rights comprised in the copyright which have not been so assigned, the author shall be treated as the owner.

However, specifically in the case of a photograph, painting, portrait, engraving or a cinematograph film made or created for valuable consideration, the person who has commissioned such work shall be the first owner of the copyright therein (in the absence of any agreement to the contrary).

If the work in question is a public speech or address which is made on behalf of another person/commissioner, then the commissioner shall be the first owner of the copyright therein.

2.3 Where a work is created by an employee, how is ownership of the copyright determined between the employee and the employer?

The general rule is that the employer shall have copyright in the work created/authored by an employee in the course of employment unless there happens to be an agreement to the contrary.

Where any literary, dramatic or artistic work is made by the author in the course of employment by the proprietor of a newspaper, periodical, etc. for the purpose of publication in such media, the proprietor shall be the owner of the copyright in the work (in the absence of any agreement to the contrary). However, such ownership of the proprietor/employer shall be limited to the publication/reproduction of the work in such or other similar media, while in all other respects, the author would still remain the first owner of the copyright of the work.

In the case of a public speech/address, the person making or delivering such work or the person on whose behalf such work is so made or delivered shall be the first owner of the copyright therein, even if either of them is employed by another person who arranges such speech or public address, or on whose behalf or premises such address or speech is delivered.

2.4 Is there a concept of joint ownership and, if so, what rules apply to dealings with a jointly owned work?

In India, the Act recognises the concept of “work of joint authorship”, which means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author(s). The courts in India have not yet fully defined and determined as to what amounts to an active and close intellectual collaboration, which is essential in the case of claiming joint authorship. In the case of *Angath Arts Private Limited v. Century Communications Ltd. and Anr. 2008(3) ARBLR 197(Bom)*, the High Court of Bombay held that the “joint owner of a copyright cannot, without the consent of the other joint owner, grant a licence or interest in the copyright to a third party”. Further, in the case of a work of joint authorship, all the authors (two or more) have to individually satisfy the conditions essential for subsistence of copyright in the work. Joint authors enjoy all the rights granted by the Act as mentioned above, including bringing a suit for infringement and being entitled to reliefs such as injunction, damages, account of profits, etc. The term of copyright of a work of joint authorship is calculated with respect to the author who dies last.

3 Exploitation

3.1 Are there any formalities which apply to the transfer/assignment of ownership?

An assignment of copyright must conform to the following formalities:

- Must be in writing and should be signed by the assignor or his duly authorised agent.

- Must identify the work, and shall specify the rights assigned, their duration, territorial extent and the amount of royalty and any other consideration payable.

3.2 Are there any formalities required for a copyright licence?

A copyright licence must conform to the following formalities:

- Must be in writing and should be signed by the licensor or his duly authorised agent.
- Must identify the work, and specify the rights licensed, their duration, territorial extent and the amount of royalty and any other consideration payable.

3.3 Are there any laws which limit the licence terms parties may agree to (other than as addressed in questions 3.4 to 3.6)?

If the author is a member of a Copyright Society, a copyright licence in any work contrary to the terms and conditions of the rights already licensed to Copyright Societies shall be void. Further, no copyright licence in any work to make a cinematograph film can affect the right of the author to claim an equal share of royalties and consideration payable in case of utilisation of the work in any form, other than for the communication to the public of the work along with the cinematograph film in a cinema hall. Likewise, no copyright licence in any work to make a sound recording which does not form part of any cinematograph film can affect the right of the author to claim an equal share of royalties and consideration payable for any utilisation of such work in any form.

3.4 Which types of copyright work have collective licensing bodies (please name the relevant bodies)?

The 1994 amendment in the copyright statute extended the operation of legal provisions relating to collective licensing bodies called the Copyright Societies to all rights relating to all domains of works.

Presently, the following four Copyright Societies are registered in India:

- Indian Reprographic Rights Organization (IRRO) for authors and publishers.
- Indian Singers Rights Association (ISRA) registered for performers’ (Singers’) Rights.
- Indian Performing Rights Society Limited (IPRS) for musical works.
- Phonographic Performance Limited (PPL) for sound recordings. (Re-registration is pending.)

Further, the following applications for registration as a Copyright Society are pending:

- The Recorded Music Performance (RMPI) for sound recordings.
- The Cinefil Producers Performance Limited (CINEFIL) for cinematograph films.
- Screenwriters Association of India (SRAI) for literary works.

3.5 Where there are collective licensing bodies, how are they regulated?

The collective licensing bodies called the Copyright Societies are regulated by the following:

1. Authors and owners – the authors and owners, whose rights are administered, have collective control over these Copyright Societies. These societies, in such manner as prescribed, have to:
 - obtain approval of authors/owners of rights for their procedure of collection and distribution of fees;
 - obtain approval for utilisation of any amounts collected as fees for any purpose other than distribution to the authors/owners of rights; and
 - provide such owners regular, full and detailed information concerning all its activities in relation to the administration of their rights.
2. Registrar of Copyrights – Copyright Societies shall submit to the Registrar of Copyrights such returns as may be prescribed. Any officer authorised by the Central Government may call for any report/record of any Copyright Society to check whether the fees collected by the society in respect of rights administered by it are being utilised or distributed in accordance with the provisions of the Act.
3. Central Government – the Registrar of Copyrights submits the applications received for registration of Copyright Societies to the Central Government. The Government may then register such association of persons as a Copyright Society. In case the Copyright Society is being managed in a manner detrimental to the interests of the owners of rights concerned, the Central Government may cancel the registration of such society, after an inquiry has been conducted.

3.6 On what grounds can licence terms offered by a collective licensing body be challenged?

Any person aggrieved by the tariff scheme published by the Copyright Societies may appeal to the Intellectual Property Appellate Board (IPAB) and the Board may, after holding any necessary inquiry, make orders necessary to remove any element, anomaly or inconsistency therein.

4 Owners' Rights

4.1 What acts involving a copyright work are capable of being restricted by the rights holder?

In respect of all categories of works, the Act clearly sets out those acts which are capable of being restricted by the rights holder. Such acts are as follows:

For a literary, dramatic or musical work (other than a computer program which also falls into the category of literary works), acts of reproducing in any material form, including storing electronically, issuing copies to the public if not already in circulation, performing or otherwise communicating to the public, making a cinematograph film or sound recording of the work, making any translation or adaptation or effectuating any of the above in respect of a translation or adaptation of the work, can be restricted.

For a computer program, in addition to all the above acts, selling and giving via commercial rental or offering for sale or rental any copy of the computer program can be restricted by the rights holder provided the rental is directly related to the computer program in question.

For an artistic work, acts of reproducing in any material form including storing electronically, depicting a two-dimensional work in three dimensions or *vice versa*, issuing copies to the public

if not already in circulation, performing or otherwise communicating the work to the public, making a cinematograph film out of the work, making any adaptation or effectuating any of the above in respect of an adaptation of the work, can be restricted.

For a cinematograph film, making a copy of the film including a photograph of any image forming a part thereof and/or storing of such copy in any medium by electronic or other means, the sale or commercial rental of, or offering for sale or for rental any copy of the film, and screening the film to the public, can be restricted.

For a sound recording, making any other sound recording containing the recording in question, or storing it in any medium by electronic or other means, offering for sale or commercial rental any copy of the sound recording, and communicating it to the public, can be restricted.

In India, the most common types of violation of the above rights as regards infringement actions are with respect to artistic works overlapping with trade mark law, and piracy in the media and entertainment space pertaining to musical works, sound recordings and cinematograph films.

4.2 Are there any ancillary rights related to copyright, such as moral rights, and, if so, what do they protect, and can they be waived or assigned?

Yes, the moral rights of an author are duly recognised and protected under law, whereby the author can claim authorship of the work irrespective of any subsequent assignment of copyright therein. Moreover, these rights serve to protect against any distortion, mutilation, modification or degradation of the work affecting the author's honour or reputation, even after the expiration of the term of copyright and can thus be exercised also by the author's legal heirs/representatives. Moral rights, which are independent of the author's copyright, can be understood as the author's right to paternity and integrity with respect to the work. These special rights of an author cannot be assigned; however, as to whether the author may waive or relinquish them remains debatable as the Act does not specifically cover such a scenario. However, in the case of *Sartaj Singh Pannu v. Gurbani Media Pvt. Ltd. and Ors.*, 2015, the court observed that if a waiver of moral rights with regard to credit/paternity/authorship is voluntary, the same would not be contrary to public policy and would thus be permissible. As such, waiving a moral right may be permissible on a case-by-case basis, especially if it is not opposed to public policy.

4.3 Are there circumstances in which a copyright owner is unable to restrain subsequent dealings in works which have been put on the market with his consent?

Yes, such circumstances do exist and are recognised where subsequent dealings in works cannot be restrained by the copyright owner. More particularly, in the case of literary (not being a computer program), dramatic, artistic or musical works, a copy of the work which has been sold even once, or is otherwise already in circulation, cannot be restrained by the copyright owner from being issued to the public. This concept is also referred to as the principle of exhaustion.

As far as parallel importation is concerned, it has been the subject of much debate and deliberation as to whether India should follow the doctrine of national exhaustion or international exhaustion. However, at the time of writing this chapter, India follows the national exhaustion principle owing to a catena of judgments in this regard. As such, the online availability with

regard to any subsequent dealings in copyrighted content would also be subject to and similarly attract the principle of national exhaustion. However, the courts are yet to fully address how this principle applies to digital content protected by copyright.

5 Copyright Enforcement

5.1 Are there any statutory enforcement agencies and, if so, are they used by rights holders as an alternative to civil actions?

Apart from the right to a civil action by way of filing a suit for infringement, remedies under criminal law are also provided to the rights holders. The rights holders or the authorised representatives can file an official complaint to the local police authorities informing them of the infringement of their rights, or directly approach the Magistrate and file a criminal complaint so that the competent court can direct the police authorities to investigate the matter further. The police machinery has a pertinent role in combatting copyright infringement. Special state-specific cells/units such as the Anti-Piracy Cell – Kerala Police, Telangana Intellectual Property Crime Unit (TIPCU), etc. have been created and rights holders may approach such cells/units for the protection and enforcement of their rights. Additionally, the owner of copyright or his duly authorised agent may give a notice to the Customs authorities to suspend the clearance of imported infringing copies of work.

In view of the above, criminal remedies can be considered an alternative to civil actions.

5.2 Other than the copyright owner, can anyone else bring a claim for infringement of the copyright in a work?

Apart from the owner of copyright, an exclusive licensee can also bring a claim for infringement.

5.3 Can an action be brought against 'secondary' infringers as well as primary infringers and, if so, on what basis can someone be liable for secondary infringement?

An action can be brought against secondary infringers in addition to primary infringers, and both can be impleaded as co-defendants in an infringement lawsuit or as co-accused in a criminal complaint for infringement. Secondary infringers can be made liable for copyright infringement if they have been indirectly involved in, have contributed to or abetted an act of infringement. Although secondary infringement has not been so defined under the Act, one such instance wherein secondary liability can arise is when a person, without a licence from the copyright owner, permits for profit any place to be used for communicating the work to the public and where such communication constitutes infringement of the copyright in the work. The defence to this is when the person involved was not aware and had no reasonable grounds to believe that such communication to the public would constitute infringement of copyright.

Thus, for a case of secondary infringement to be made out, the intent and/or knowledge on the part of the secondary infringer as to the occurrence of infringement is material, and any indirect involvement or contribution in violating any of the bundle of rights of the owner of copyright in a work with such knowledge or intent, either express or implied, would constitute secondary infringement.

Further, even intermediaries or internet service providers (ISPs) can be made liable for secondary infringement regarding hosting digital content protected by copyright, if it is shown that they have contributed or possess actual knowledge of such infringement.

5.4 Are there any general or specific exceptions which can be relied upon as a defence to a claim of infringement?

Any activity that falls under the scope of fair use or similar provisions such as fair dealing in any work for private or personal use, including research/criticism or review/reporting of current events or current affairs, reproduction of work by a teacher or pupil in the course of instructions, reproduction of any work for the purpose of judicial proceedings or its reporting, the reading and recitation in public of reasonable extracts from a published literary or dramatic work, storing of work in any medium by electronic means by a non-commercial public library, for preservation if the library already possesses a non-digital copy of the work, etc., does not constitute infringement.

Apart from the above, the following is a non-exhaustive list of defences that can be used while defending a claim of infringement:

- Challenging the subsistence of copyright – disputing the originality of the work.
- Claiming multiple originality by proving that the defendant had no access to the work created by the plaintiff.
- Challenging the right of the plaintiff to sue – preliminary objection on maintenance of the suit.
- Suit/complaint barred by limitation – preliminary objection on maintenance of the suit.
- No knowledge of infringement – in case of a civil action, if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement, and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may, in the circumstances, deem reasonable.

Furthermore, in case of criminal complaints, if the offence is not committed for commercial gain, the degree of fine/imprisonment may be reduced.

5.5 Are interim or permanent injunctions available?

Yes, both interim and permanent injunctions are available as civil remedies in cases of copyright infringement. The courts in India are also ready to award *ex parte ad interim* injunctions in cases where there is an urgent need made out for restraining the act of infringement in question. In cases where temporary injunctions are granted, the trinity of a *prima facie* case, *irreparable injury* and *balance of convenience* is always assessed by the courts in India.

5.6 On what basis are damages or an account of profits calculated?

The grant of damages is generally meant to restore the plaintiff to the position in which he/she would have been had the infringement in question not taken place. Calculating damages involves the determination of loss caused to the plaintiff by the infringement. Punitive damages can be awarded in addition to

basic amounts, especially if the act of infringement has been grave or flagrant in nature. Damages can also be exemplary in nature so as to set a deterrent for others. In *Time Incorporated v. Lokesh Srivastava (2005)30 PTC3(Del)*, it was observed that "... the time has come when the Courts dealing with actions for infringement of trade marks, copyrights, patents, etc. should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers who indulge in violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them".

However, in cases where a defendant proves that he was not aware and had no reasonable grounds for believing that copyright subsisted in the work at the date of infringement, the plaintiff will be entitled only to an injunction against the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies, as the court may, in the circumstances, deem reasonable.

5.7 What are the typical costs of infringement proceedings and how long do they take?

The usual cost of an infringement proceeding before a High Court in India (such as the Delhi High Court), from institution of the suit up to obtaining an order of preliminary injunction may be in the range of USD 11,500 to USD 15,000; whereas the all-inclusive cost of filing a law suit and obtaining an order of permanent injunction from the court against the infringement may be in the range of USD 26,500 to USD 35,000 as reaching this stage involves a full trial. Infringement proceedings that are taken to full trial can take two to three years to conclude, whereas *ex parte* orders can be passed in just a few days from initiation of the suit.

5.8 Is there a right of appeal from a first instance judgment and, if so, what are the grounds on which an appeal may be brought?

- Yes; in the case where the first instance judgment is passed by the District Court, an appeal may be instituted in the High Court. Further, in cases where the first instance judgment is passed by a Single Judge of the High Court, the appeal may be brought before the Division Bench. Also, in some cases, a special leave to appeal may be granted by the Supreme Court against first instance judgment passed by any court under Article 136 of the Constitution of India.
- In cases of seizure and disposal of infringing copies, an aggrieved person may, within 30 days of the date of order of Magistrate, file an appeal in the Court of Session.
- Certain substantive grounds, amongst others, on which an appeal may be brought include where there is a question of fact involved or there has been misappreciation or non-appreciation of facts or evidence in relation to the law in force, where there is concealment of facts or evidence which requires consideration afresh, or where a question of law needs to be addressed, etc.

5.9 What is the period in which an action must be commenced?

The period of limitation for filing the suit is three years from the date of infringement. Where the cause of action for filing a suit

for infringement of copyright is a recurring one or continuing in nature, the limitation period of three years would commence on the date of such last infringement. Further, if sufficient and reasonable cause is shown for condonation of delay in instituting a lawsuit for infringement, the period of limitation of three years can be extended in accordance with judicial discretion and case law.

6 Criminal Offences

6.1 Are there any criminal offences relating to copyright infringement?

Yes; the following are the offences relating to copyright infringement:

- Knowingly infringing or abetting the infringement of copyright.
- Knowingly making use on a computer of an infringing copy of a computer program.
- Knowingly making, or possessing, any plate for the purpose of making infringing copies of any work in which copyright subsists.
- Circumvention of effective technological measures with the intention of committing copyright infringement.
- Knowingly removing or altering any rights management information without authority.
- Knowingly distributing, importing for distribution, broadcasting or communicating to the public, without authority, copies of any work or performance, and knowing that electronics rights management information has been removed or altered without authority.
- Making or causing to be made a false entry or a writing falsely purporting to be a copy of any entry in the Register of Copyrights. Producing/tendering or causing to be produced or tendered as evidence any such entry or writing, knowing the same to be false.
- Knowingly making false statements or representation for the purpose of deceiving or influencing any authority or officer.
- Publishing a sound recording or a video film in contravention of the provisions that lay down the particulars to be included in such works.

6.2 What is the threshold for criminal liability and what are the potential sanctions?

Conviction for any offence mentioned in question 6.1 shall entail criminal liability. Different sanctions including a fine and/or imprisonment, seizure of infringing copies and delivery or disposal thereof are codified for different offences and their varying degrees. The fine may go up to a maximum of approximately USD 2,700, and the maximum prescribed imprisonment can extend up to three years. Each and every subsequent conviction for such offence of copyright infringement shall also entail the same maximum limits in terms of monetary fines and imprisonment.

7 Current Developments

7.1 Have there been, or are there anticipated, any significant legislative changes or case law developments?

Legislative and procedural changes

The most significant legislative development has been the

proposal of the Draft Copyright (Amendment) Rules, 2019 by the Government of India to amend the existing Copyright Rules, 2013. In addition to adhering to the idea of “Digital India”, the Draft Rules also seek to replace the use of the term “Copyright Board” with “Intellectual Property Appellate Board”, as the two have now merged by virtue of the Finance Act, 2017. Earlier, the IPAB was exercising original and appellate jurisdiction in respect of patents, trade marks and geographical indications (GIs) but not copyright. Another objective of the Draft Rules is to bring more transparency and accountability in the functioning of Copyright Societies and distribution of royalties to authors/owners of works. Therefore, a new requirement has been introduced whereby the Copyright Societies must submit and make available on its website, for at least three years, a transparency report for every financial year. Also, as per the Draft Rules, every application for registration of copyright in a computer program may now be accompanied by only the first 10 and last 10 pages of the source code (instead of the entire source code and object code) where the source code is longer than 20 pages, or the entire source code if less than 20 pages. However, there should be no blocked-out or redacted portions. The Draft Rules have not yet been brought into effect.

The Copyright Office has also undertaken measures to enhance efficiency and facilitate a seamless registration of copyright applications. Prosecution of applications for literary, dramatic and artistic works can be completely carried out online without the requirement for physical copies if the size of the subject work is 5MB or below. The requirement of manual signatures on applications has been discarded and a scanned image of signatures can be uploaded online for signing the application. Even replies to discrepancy letters can be filed online [upload limit 500KB].

Clarification issued by the Copyright Office

Upon examination of representations received from various stakeholders, the Copyright Office issued clarification on the question as to whether it is essential to obtain a licence for using sound recordings in furtherance of any marriage-related function or not. While providing clarification in respect of the aforesaid question, the Copyright Office has reiterated that marriage processions and other social festivities associated thereto are included within the purview of the term *religious ceremony* under the said Section 52 (1) (za) of the Act. Section 52 of the Act enlists certain acts that do not constitute an infringement of copyright. Specifically, Section 52 (1) (za) of the Act states as follows:

“the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority.

Explanation - For the purpose of this clause, religious ceremony including a marriage procession and other social festivities associated with a marriage.”

The Copyright Office clarified that in view of the above-stated provision and the explanation thereto, any sound recording being used in the course of a religious ceremony, including a marriage procession and other social festivities associated thereto, shall not amount to infringement of copyright and hence no licence is required.

Case law developments

Recently, in *Zee Entertainment Enterprises Ltd v. Ameya Vinod Khobkar & Ors*, the Bombay High Court decided that assignment of copyright in respect of the original film will not imply an automatic assignment of copyright in the sequel of that film if nothing related to sequel is mentioned in the assignment deed. It

is important to keep this decision in mind while drafting agreements, assignments and licences to provide specifically for the transfer, assignment or creation of any rights relating to sequels.

Clarification regarding copyright protection on facts and incidents in the public domain was given in the case of *Giant Rocket Media And Entertainment Pvt. Ltd. v. Ms. Priyanka Ghatak And Ors*. wherein the Delhi High Court held that the true story of the murder of Syed Modi, who was an eight-time national badminton champion, is already in the public domain and therefore there cannot be any copyright on the story *per se*. The Delhi High Court held that, since the story is not a fictional story, and is merely the narration of the crime and its prosecution, the Plaintiff did not have sufficient grounds to claim exclusive rights over the contents. Each party can create a separate script and narration of the same story. In this case, the Plaintiff had failed to showcase the comparison of the two sets of scripts to show similarities in the script/narration.

Last year, the Delhi High Court in *MRF Ltd v. Metro Tyres Ltd* held that the scope of protection of a cinematograph film is on par with other original works and, therefore, the test of substantial similarity laid down in *R.G. Anand v. M/s Deluxe Films and Ors. (1978) 4 SCC 118* will apply. The Hon’ble High Court observed that making a copy of a cinematograph film does not just mean making a physical copy of the film by a process of duplication, but it also refers to another film which substantially, fundamentally, essentially and materially resembles/reproduces the original film. Consequently, copying of fundamental/essential/distinctive features of a film would constitute infringement. The Hon’ble High Court disagreed with the judgment passed by the Bombay High Court in *Star India v. Leo Burnett* (which held that “to make a copy” means to make a physical copy by process of duplication) on the grounds that: (i) the finding that a cinematograph film does not require originality is not in consonance with the Berne Convention; and (ii) it was not brought to the attention of the Bombay High Court that the 1998 *Norowzian v. Arks* judgment (UK) (heavily relied upon by the Bombay High Court to reach its conclusion) has been overruled in relation to the issue of law and the Appeal Court has held that a film is entitled to protection as an original work.

7.2 Are there any particularly noteworthy issues around the application and enforcement of copyright in relation to digital content (for example, when a work is deemed to be made available to the public online, hyperlinking, etc.)?

In addition to the merger of the Copyright Board with the IPAB, another significant change brought by the Draft Copyright (Amendment) Rules, 2019 relates to statutory licences for broadcasting of literary and musical works and sound recordings. The words “radio and television broadcast” have been replaced with the words “each mode of broadcast”. The proposed words “each mode of broadcast” are broad in nature and can possibly be interpreted to include internet-based services as well.

Last year, the Delhi High Court, through its judgment in *UTV Software Communication Ltd. and Ors. v. 1337X.TO and Ors.*, had introduced the remedy of “dynamic injunctions” under which the rights holders do not need to go through the time-consuming process of a judicial order in order to get blocking orders issued to ISPs. By virtue of this judgment, the plaintiffs have been allowed to approach the Joint Registrar of the Delhi High Court (an administrative position), to extend an injunction order already granted against a website to another similar “mirror/redirect/alphanumeric” website which contains the same content as that of the already blocked/injuncted website. The

Court also directed the Ministry of Electronics and Information Technology of the Government of India to explore the possibility of a technologically feasible method to caution the viewers of infringing content to refrain from viewing/downloading such infringing material or otherwise be liable to penalties in the form of fines.

Recently, in *Jagran Prakashan Limited v. Telegram FZ LLC & Ors.*, an *ad interim* injunction was granted against Telegram FZ LLC (Defendant No. 1), the owner of the instant messaging application “Telegram”, and allowed users to create channels on the said application without disclosing their identity. The Plaintiff publishes the leading newspaper Dainik Jagran. The users of “Telegram” app had created fake Dainik Jagran channels and were circulating digital copies of Dainik Jagran newspaper. As the identity of users was not disclosed, the Plaintiff prayed for a John Doe Order. The Court observed that Defendant No. 1 cannot escape from intermediary liability and an *ad interim* injunction was granted against Defendant No. 1 and unknown defendants. Defendant No. 1 was also directed to disclose the identities of the users operating the infringing channels and block/take down the channels within 48 hours of receipt of the Order.

7.3 Have there been any decisions or changes of law regarding the role of copyright in relation to artificial intelligence systems, including the use of copyright in those systems and/or any work generated by those systems?

There has not been any specific legislative or case law development with respect to copyright and artificial intelligence. However, it will be interesting for the readers to know that the Indian Government has recently launched the National Artificial Intelligence (AI) Portal (<https://indiaai.in/>), a joint initiative of the National Association of Software and Service Companies (Nasscom) and the National e-Governance Division of the Ministry of Electronics and Information Technology (MeitY). This portal is a one-stop platform and a reservoir of resources for information on AI-related advancements in India.



Aprajita Nigam is working as a Managing Associate with LexOrbis and commands an in-depth understanding of all domains of intellectual property laws. From her previous experience in General Litigation, she has enriched the firm by providing her keen insight into contentious issues. At LexOrbis, her work includes handling trade mark, copyright and design matters (contentious/non-contentious) risk assessment, oppositions, cancellation, review and appeals, suits for copyright/trademark infringement, domain name complaints, etc. She is a valued member of the legal research team of LexOrbis, and has received much appreciation for her articles published in leading IP publications. Aprajita has a diverse client portfolio, encompassing Fortune 500 companies, multi-national corporations, small- and medium-sized enterprises, and technology start-ups.

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