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# Copyright 2025

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# Expert Analysis Chapter



# Q&A Chapters

# India


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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" is not 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 the 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 that qualify for copyright protection is a closed and exhaustive list of categories, encompassing original literary, dramatic, musical, and artistic works, cinematograph films, and sound recordings. However, the definition of some of these categories is inclusive. No straightforward definition is given for literary works under the Act, and it merely states that a literary work includes computer programs, tables and compilations, including computer databases. Similarly, dramatic works include any piece of recitation, choreographic work, or entertainment in a dumb show, as well as the scenic arrangement or acting form, which is fixed in writing or otherwise. Artistic works are also defined in inclusive terms and state that they mean 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.

Furthermore, cinematograph film means any work of visual recording and includes a sound recording accompanying such visual recording. The word 'cinematograph' shall be construed as including any work produced by any process analogous to cinematography, including video films. Musical works mean a work consisting of music and includes any graphical notation of such work but does not include any words or action intended to be sung, spoken or performed with the music. Sound recordings are the recordings of sounds from which such sounds may be produced, regardless of the medium or method by which such recordings are produced. So, while the list of qualifying works is closed, the definitions within each category are designed to be broad and inclusive, adapting to evolving forms of creativity and expression.

### 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 using the former categories of works. For example, a cinematograph film is made using a script, which is a dramatic work. Though there is no express stipulation regarding "originality" with respect to 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 of any other work. Likewise, copyright does not subsist in a sound recording made with respect to 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 law does not protect ideas. Copyright only exists in the material form in which the ideas are expressed. Copyright does not ordinarily protect titles by themselves or names, short word combinations, slogans, short phrases, methods, plots or factual information. Natural or historical events are also not copyrightable *per se*. However, the specific manner in which these events are depicted or presented may render them copyrightable. Judicial pronouncements are not subject to copyright as they are part of the public domain. However, headnotes or editorial notes of judgments are considered original literary works protected under the Act. A cinematograph film does not enjoy copyright protection if a significant portion infringes upon another work's copyright. Similarly, copyright doesn't apply to sound recordings made from literary, dramatic, or musical works if the recording violates the copyright of the original work. Regarding architecture, copyright covers only the artistic aspects and design, excluding construction methods or processes.

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

Acquisition of copyright is automatic, and the right comes into existence as soon as the work is created. However, securing a formal registration is 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 registration of any work, may make an application to the Registrar of Copyrights for entering particulars of that work in the Register of Copyrights. In the case of an artistic work that is used or is capable of being used in relation to any goods or services, the application must also include a statement that no trademark 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 scrutinisation 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. If no discrepancy letter is issued, the application proceeds straight to registration.

**Effect of registration:**
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 the 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 that 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 trademark law. The artistic work that is used or capable of being used in relation to any goods or services can be protected both under trademark and copyright laws.

The definition of "literary work" includes computer programs, tables and compilations including computer databases. Thus, databases are protected under 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 that forms its content 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 of 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.

### 1.9 Would Copyright subsist in a work which is created by a Generative AI tool?

The current Indian copyright law has yet to take any definitive position on the eligibility of AI-generated work for copyright. The Indian Copyright Act of 1957 does not explicitly mention AI-generated works or AI as an author. As discussed above, for the eligibility of copyright, the work must be original, i.e., it should originate from the author. It must involve a minimum degree of creativity. Generative AI tools are trained on large datasets, which form the basis of the output of these tools. These datasets are pre-existing sources; therefore, the output is a mere compilation of these datasets. There is still a debate as to whether the resulting output is an original work or if it infringes copyright.

## 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 the 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 a 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 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 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 computer-generated (whether or not using AI), who is the first owner of copyright?

The Copyright Act, 1957 was amended in 1994 to the effect that in relation to literary, dramatic, music or artistic works that are computer generated, the author of the work will be the 'person who causes the work to be created'. This provision is leading to open interpretation and resulting in both opportunities and challenges for AI-generated work. However, as of now, there has been no instance where AI has been given authorship; copyright law has a strict requirement for human authorship.

### 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 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) must individually satisfy the conditions essential for the 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:

- It must be in writing and should be signed by the assignor or his duly authorised agent.
- It must identify the work and shall specify the rights assigned, their duration, territorial extent, 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:

- It must be in writing and should be signed by the licensor or his duly authorised agent.
- It must identify the work and specify the rights licensed, their duration, territorial extent, 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.)
- Recorded Music Performance (RMPL) for sound recordings.

### 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, must:
   - 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 with regular, full, and detailed information concerning all their 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 with respect to rights administered by it are being utilised or distributed as per 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 Commercial Court, and such court 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?

With respect to all categories of works, the Act explicitly sets out those acts that 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 adaption 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 adaption 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 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 trademark 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, 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 that 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 have 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 the copyright or his duly authorised agent may give 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 a 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 an 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 an 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 grounds for believing that copyright subsisted in 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 set 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 determining the 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. Damages can also be exemplary 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 trademarks, copyrights, patents, etc., should not only grant compensatory damages but award punitive damages also to discourage and dishearten lawbreakers who indulge in violations with impunity out of lust for money so that they realise 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 work at the date of infringement, the Plaintiff will only be entitled 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 the 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 lawsuit 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 the order of the 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 the 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 a sufficient and reasonable cause is shown for condonation of a 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 of a computer for an infringing copy of a computer program.
- Knowingly making or possessing any plate to make infringing copies of any work in which copyright subsists.
- Circumvention of effective technological measures to commit 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 piece of 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 representations to deceive or influence 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. Every subsequent conviction for such an 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?

***Universal City Studios LLC. & Ors. v. DOTMOVIES.BABY & Ors***

In this case, the Universal City Studio LLC, Warner Bros. Entertainment Inc., Columbia Pictures Industries, Inc, Netflix Studios, LLC, Paramount Pictures Corporation and Disney Enterprises, Inc. (Plaintiffs) had brought a suit against 16 rogue websites (Defendants) that facilitated the unauthorised viewing, streaming, downloading, and distribution of their copyrighted content without obtaining any licences or authorisations. These websites often operated under different names and continuously evolved to evade legal actions.

The Plaintiffs had sought an *ex parte ad interim* injunction to restrain the Defendants from infringing their copyrights, including future works. The court recognised the dynamic nature of this infringement and issued a "Dynamic+ injunction" to protect copyrighted works as soon as they are created, to ensure that no irreparable loss is caused to the authors and owners of copyrighted works, as there is an imminent possibility of works being uploaded on rogue websites or their newer versions uploaded immediately upon release of the films/shows/series, etc.

***Bulgari S.P.A v. Prerna Rajpal Trading As The Amaris Flagship Store***

The Delhi High Court issued an injunction order favouring the luxury brand Bulgari SPA. The Plaintiff filed a suit against Prerna Rajpal, trading as 'The Amaris Flagship Store', alleging infringement of their intellectual property rights. The dispute primarily revolved around Bulgari's iconic collections, namely "SERPENTI" and "B. ZERO1," and a specific product, the "Serpenti Ocean Treasure Necklace. – a high-jewellery piece with an artistic work that stands out for its originality and artistic uniqueness.

The court found merit in Bulgari's claims, establishing a *prima facie* case of copyright infringement and passing off against Prerna Rajpal. The similarity between the contested products and the Defendant's acknowledgment of inspiration from Bulgari's designs strengthened the Plaintiff's case. Recognising the potential irreparable harm to Bulgari's brand reputation, the court granted interim injunctions against Prerna Rajpal and her associates. They were restrained from manufacturing, marketing, or selling products resembling Bulgari's copyrighted design and trademarks until further notice.

***Abhi Traders v. Fashnear Technologies Private Limited***

The present suit was filed by the Plaintiff, Abhi Traders, for copyright infringement and passing off and other reliefs, including damages against Defendants who were advertising, publishing, and offering for sale the garments, which were a complete copy of the Plaintiff's garments and were also misusing the photographs and images in which the Plaintiff owned rights. The Delhi High Court held that the Plaintiff had made a case for the grant of an e*x-parte ad-interim* injunction, and it was also in the interest of the consumers that such look-alike products were not permitted to be sold. The Defendant 1, Fashnear Technologies (P) Ltd, was the company that runs 'www.meesho.com'. The Plaintiff submitted that Defendant 1 was under an obligation to publish contact details of all sellers on its platform under Rule 5(3)(a) of Consumer Protection (E-Commerce) Rules, 2020 ('2020 Rules'). Defendant 1 provided no contact information on its website during the transaction process.

The omission of essential contact information, combined with the failure to respond to legitimate requests for transparency regarding the entities involved in the sale of counterfeit goods, suggested that Defendant 1 was complicit in the activities of Defendants 2 to 9. Such conduct contravened the legal obligations incumbent upon e-marketplaces and implicated Defendant 1 in aiding and abetting other Defendants in their infringing activities. Thus, Defendant 1's operations violated the regulatory framework established for e-commerce platforms, disqualifying it from availing itself of the specific immunities provided under Section 79(1) of the Information Technology Act, 2000.

The court held that the Plaintiff had made a case for the grant of an *ex parte ad interim* injunction, and it was also in the interest of the consumers that such look-alike products were not permitted to be sold. The court opined that irreparable harm would be caused if the injunction was not granted, as on online platforms and marketplaces, it was extremely easy for sellers to proliferate the images and continue to dupe customers.

The court thus prohibited Defendants 2 to 9, along with any other sellers showcasing their products on the Meesho.com platform, from reproducing, copying, publishing, or imitating any designs of the Plaintiff's clothing. This injunction also extended to the prohibition against reproducing any images related to the Plaintiff's products, including photographs. The court directed Defendant 1 to reveal all the available details of the sellers, including the address, mobile numbers, email addresses, total sales made by the sellers, GST details, and payments made to the sellers since the time listings were put up.

### 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, in NFTs or the metaverse, etc.)?

Copyright owners have been facing issues around the enforcement of copyright in the digital ecosystem where intermediaries operate under the safe harbours provided to them under Section 79 of the Information Technology Act, which immunises them from all liability with respect to infringing user-generated content appearing on their platforms, provided they take requisite due diligence measures (including implementation of notice and takedown mechanisms) as prescribed under law.

This regime sometimes leads to whack-a-mole problems because the content keeps on reappearing on these platforms.

To fight this issue, the Government has obligated significant social media intermediaries to deploy automated tools so that infringing content can be filtered. The courts are also issuing dynamic injunctions to address the issues related to the enforcement of copyright online. It is a concept that does away with the complicated process of obtaining a new blocking order every time a copyright owner is made aware of a fresh set of websites carrying infringing materials. By obtaining a dynamic inunction once, the copyright owner can approach the Joint Registrar of the High Court (an administrative officer) to extend the injunction/stay order already granted by the Court against a website to similar "redirect" or "alphanumeric" websites which contain the same content.

As regards the NFTs and the metaverse, there has not been any legislative or case law development in India. However, in the future, the traditional categories/scope of intellectual property is likely to be broadened to fit the unique requirements of the virtual world. In this world of no boundaries, questions around the territorial jurisdiction of courts to address copyright violations would arise. With the expansion of virtual concerts and the incorporation of music into games and surroundings in the metaverse, music licensing agreements would be heavily negotiated. Until now, music licences have been provided for clearly defined categories such as public performance, streaming, downloading, physical reproduction, and synchronisation. Given the varied use cases in the metaverse, existing categories might not be enough. For instance, a virtual concert in the metaverse could be construed as a hybrid of both public performance and streaming. Similarly, almost the entire usage of music in the metaverse would be synchronised to audio-visuals or digital imagery and, as such, could be construed to fall under a synchronisation licence. The music industry will have to devise new and hybrid forms of licences to cater to the specific needs of the metaverse.

**7.3 Have there been any decisions or changes of law regarding the interaction between copyright law and the creation and deployment of artificial intelligence systems? In particular, please reference any pending (or decided) disputes where copyright owners have challenged AI developers in relation to the use of works in the development of AI tools.**

In the last year, there have not been any decisions or changes of law regarding the interaction between copyright law and the creation and deployment of artificial intelligence systems. However, a Parliamentary Standing Committee Report, titled 'Review of the Intellectual Property Rights Regime in India', released on 23 July 2021, recommended the 'revisiting of IPR legislations and implementing a strong IPR framework' in order to 'extract benefits from AI'. The Committee in the report recommended that a separate category of rights for AI and AI-related inventions and solutions should be created for their protection as IPRs. It further recommends that the Department should make efforts to review the existing legislations of the Patents Act, 1970 and Copyright Act, 1957, to incorporate the emerging technologies of AI and AI-related inventions in their ambit.

The Indian courts also have shown proactive measures restraining copyright infringement by using generative AI tools. In the recent case of *Anil Kapoor v. Simply Life India and Others*, the Plaintiff Anil Kapoor, a celebrity actor from the Indian film Industry, filed the suit seeking protection of his own name, image, likeness, persona, voice and various other attributes of his personality against misuse of all hues over the internet. The Plaintiff claimed: personality rights, including the right to publicity; copyright of the dialogue and images of other associated works; and Common law rights, including the right to be protected against passing off, dilution and unfair competition. The allegation of the Plaintiff was that all the Defendants are in some manner utilising various features of the Plaintiff's persona and are misusing the same in malicious ways, for example using Artificial Intelligence to produce images and videos that are extremely derogatory. In this case, the court issued an injunction against the use of Artificial Intelligence to create fake, morphed content, especially for commercial purposes.

The authorship of AI-generated works is something that continues to be the subject of debate in India. The question remains whether AI should be given authorship rights or not. If the human creators are given copyright ownership as authors, and not the AI, the human AI creators will be incentivised to improve the AI to further scientific/technological progress, which is one of the purposes of intellectual property law. But, if the AI alone is given authorship, would humans lack the incentive to create new AI works? Also, if there is no human ownership, who would be held responsible/liable for any potential "bad act" of the AI? While answers to these questions are being sought, it is important to note that on 2 November 2020, the India Copyright Office granted copyright protection for the painting titled 'Suryast', wherein both the human author and the Artificial Intelligence RAGHAV, Artificial Intelligence Painting App were named as co-authors. In this case, in 2020, the copyright office rejected the application wherein AI (RAGHAV) was listed as the sole author. Subsequently, another application was filed where both a natural person and the AI (again, RAGHAV) were named as co-authors for a different artwork. Surprisingly, the Copyright Office granted registration for this application but issued a withdrawal notice approximately a year later.

In the withdrawal notice, the Copyright Office implied that it had mistakenly granted the registration without proper consideration. They requested the Applicant to clarify the legal status of the AI tool, RAGHAV Artificial Intelligence Painting App. The human co-author, now facing withdrawal of the registration, argued that once granted, copyright registration cannot simply be withdrawn; rather, it should undergo a rectification proceeding in court to cancel the registration. As of November 2021, the Copyright Office had issued the withdrawal notice, but the current status of the proceeding to rectify this situation is unclear. According to the Copyright Office website, the application still shows as 'registered', indicating ongoing uncertainty and potential legal challenges regarding AI-authored artworks in Indian copyright law.

Also, the Indian Government has launched the National Artificial Intelligence (AI) Portal (https://indiaai.gov.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.

**Manisha Singh** is the founder and Managing Partner of LexOrbis. She oversees and supervises all practice groups at the firm. Manisha is known and respected for her deep expertise in the prosecution and enforcement of all forms of IP rights and for strategising and managing the global patents, trademarks, and designs portfolios of large multinationals and domestic companies. She is also known for her sharp litigation and negotiation skills for both IP and non-IP litigations and dispute resolution. She has represented companies in many IP litigations with a focus on patent litigation covering all technical fields, particularly pharmaceuticals, telecommunications, and mechanics.

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LexOrbis is a premier full-service IP law firm with over 260 personnel, including 150+ attorneys, at its four Indian offices in New Delhi, Bengaluru, Mumbai, and Chennai. The firm provides client-oriented and cost-effective solutions for the protection, enforcement, transaction, and commercialisation of all forms of intellectual property in India and globally. The firm has been consistently ranked amongst the Top 5 IP firms in India over the past decade and is well-known for managing global patent, designs and trademark portfolios of many technology companies and brand owners. The firm has dedicated teams to cater to the IP lifecycle, including attorneys, engineers, scientists, and specialists to deal with patent, trademark and copyright filing, research, portfolio building and management, enforcement, protection, spotting, transacting, procurement, and consultation.

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The firm manages large and complex trademark portfolios of many global companies, small and medium enterprises, and start-ups that are expanding businesses in India and overseas. The team works closely with investigators and IP litigators to conduct online and offline use investigations and handle contentious trademark cases such as oppositions, cancellations, infringements, and passing-off actions. The group also has expert attorneys in related practice areas such as legal metrology, drugs & cosmetics, food safety, media & entertainment, fashion, sports, e-commerce, data protection, privacy and persona rights, advertisement, consumer protection, etc.

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