

**A Handbook  
on  
Copyright in India**

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## What is Copyright?

Copyright comprises a bundle of rights which exists in various types of works including:

- Literary works such as books, pamphlets, magazines
- Dramatic works
- Music
- Artistic works including photographs
- Films
- Artistic architectural works

Copyright is the exclusive right as defined by the Copyright Act, 1957 to do or to authorize the doing of certain acts in respect of these works. Some of these rights are:

- to reproduce the work in any material form
- to publish the work
- to perform the work in public
- to produce, reproduce, perform or publish any translation of the work
- to communicate the work to the public
- to adapt the work
- to translate the work
- to include the work in a cinematograph film

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## Fair Use

Indian Law does not specifically speak of fair use. However, there are a number of exceptions to copyright which are listed in the Copyright Act. The bulk of these exceptions allow the use of copyrighted material without a licence for the purposes of:

- research
- review
- criticism
- education

The Act spells out exactly which acts do not constitute an infringement of copyright. Some of these acts are:

- the reading or recitation in public of any reasonable extract from a published literary or dramatic work
- the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution
- the publication in a newspaper, magazine or other periodical of a report of a lecture delivered in public
- the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture
- the reproduction of a literary, dramatic, musical or artistic work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding

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## Who Owns the Copyright to a Work?

Usually, the first owner of copyright in a work is its author.

The 'author' is:

- in relation to literary or dramatic work, the author of the work
- in relation to a musical work, the composer
- in relation to an artistic work other than a photograph, the artist
- in relation to a photograph, the photographer
- in relation to a film, the owner of the film at the time of its completion and
- in relation to a record, the owner of the original plate from which the record is made, at the time of the making of the plate.

Since this is the law, this general rule is obviously subject to a number of exceptions. For example:

- The person who commissions a photograph is usually the first owner of the copyright in the photo if he has paid for it to be taken.
- An employer is usually the first owner of the copyright in works which his employees make in the course of their employment under a contract of service or apprenticeship.
- Subject to contract, the Government is the first owner of the copyright in a government work.

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## The Term of Copyright

Copyright does not last indefinitely.

The term of copyright is sixty years. However, the term begins at different times depending on:

- the type of work and
- whether or not the author is known.

Some of the circumstances for which the Act makes provision are:

- if the author is known, and the work is a published literary work, copyright subsists for sixty years after the death of the author
- if a literary work whose author is known has not been published at the time of the death of its author, the term begins after it has been published
- in the case of a photo or a film, the term begins after its publication

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## Assignment and Licences

The copyright in any work can be assigned. This can be done:

- either wholly or partially
- either generally or subject to limitations
- either for the whole term of the copyright or any part of the term

An assignment or licence must:

- be in writing
- be signed by the assignor / licensor or by his duly authorised agent
- identify the works assigned / licensed and specify the rights assigned / licensed
- specify the duration and territorial extent of the assignment/ licence
- specify the amount of royalty payable, if any, to the author or his legal heirs

An assignment may be revised, extended or ended by the parties on terms they agree to.

If the assignee or licensee does not make use of the rights assigned or licensed, as the case may be, within one year of the assignment or licence, the agreement automatically lapses.

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## The Registration of a Copyright

The moment a work is created, copyright subsists in it. This copyright which has already come into existence can be registered.

The author or publisher of a work, or the owner of or other person interested in the copyright in any work may make an application to the Registrar of Copyrights to have the copyright registered.

On the receipt of an application in respect of any work, the Registrar of Copyrights may, after holding an inquiry, enter the particulars of the work in the Register of Copyrights.

Registration is not essential. It results in the names or titles of works, and the names and addresses of authors, publishers and owners of copyright being entered in the Register of Copyrights.

Entries in this Register are presumed to be true by courts although the presumption is rebuttable.

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## Copyright Infringement

Copyright in a work is deemed to be infringed when any person:

1. does anything which [the copyright owner has the exclusive right](#) to do
2. permits any place to be used for the communication of a work to the public for profit if the communication infringes the copyright in the work
3. makes for sale or hire, or sells or lets for hire, or by way of trade displays, distributes or offers for sale or hire any infringing copies of a work
4. exhibits in public any infringing copies of a work by way of trade
5. imports into India any infringing copies of a work

A person is deemed to have infringed copyright only if he acts:

1. in contravention of a licence granted by the copyright owner or the Registrar of Copyrights
2. without a licence granted by the copyright owner or the Registrar of Copyrights

It is a criminal offence to knowingly infringe a copyright. Also, civil proceedings can be initiated against an infringer.

Infringing copies of works and plates used to produce them are deemed to belong to the copyright owner.

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## Penalties and Remedies

If the copyright in any work is infringed, three types of action can be taken.

Civil proceedings can be initiated against a person who infringes copyright. The owner of the copyright or exclusive licensee can pray to the Court for:

1. an injunction
2. damages for conversion and otherwise
3. an account of profits

Since knowingly infringing copyright is a criminal offence, infringers can be punished with:

1. imprisonment
2. fines
3. the seizure of infringing copies of the work

In addition to this, an administrative remedy in the form of an Anton Piller Order can be obtained. These orders direct opponents to allow applicants to search their premises for evidence (of infringement) and seize such evidence. They are granted if there is a very strong prima facie case against the opponent. The suspected infringer is not warned in advance that a search will take place. This ensures that he does not have the opportunity to conceal or destroy evidence.

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