



## PROTECTING CREATIVE WORKS: EXPLORING COPYRIGHT PROTECTION UNDER INDIAN COPYRIGHT LAW

**AUTHOR** – BHAGYAMMA G, PH.D. SCHOLAR (LAW) DEPARTMENT OF STUDIES IN LAW, UNIVERSITY OF MYSORE AND ASSISTANT PROFESSOR, SARADA VILAS LAW COLLEGE, KRISHNAMURTHY PURAM, MYSORE, KARNATAKA, INDIA – 570004

**BEST CITATION** – BHAGYAMMA G, PROTECTING CREATIVE WORKS: EXPLORING COPYRIGHT PROTECTION UNDER INDIAN COPYRIGHT LAW, *ILE INTERNATIONAL LAW REVIEW*, 1 (1) of 2023, Pg. 56-70, APIS – 3920 – 0021 | ISSN – 2583-8172.

### Abstract

*This paper highlights the significance of copyright in the cultural and economic development of nations, emphasizing its role in preserving and enhancing cultural legacies. It traces the evolution of copyright law from its early beginnings in response to the printing press to the modern legal frameworks in different countries. This work mentions key milestones in the history of copyright, including the Licensing Act of 1662 in England, the Act of Queen Anne in 1704, and the development of copyright law in the United States and India. It underscores the multifaceted objectives of copyright, which go beyond rewarding authors to promoting innovation in science and the arts. This piece of work also explains the nature of copyright as a form of intangible property that grants creators exclusive rights over their works, highlighting the various rights covered by copyright law. It clarifies that copyright protects the expression of ideas, not the ideas themselves, and provides insights into the types of works eligible for copyright protection.*

**Keywords:** Copyright's Cultural Significance, Evolution of Copyright Law, Historical Milestones, Multifaceted Objectives and Copyright's Nature and Scope

### INTRODUCTION

Copyright is a fundamental component of a country's cultural and economic development. The preservation and enrichment of a nation's cultural heritage hinge on the level of protection afforded to various forms of creative works such as literature, drama, music, art, cinematography, films, and sound recordings. Encouraging intellectual creation is recognized as a fundamental prerequisite for the progress of society, the economy, and culture.

The historical development of copyright law can be traced back to the emergence of the idea of protecting the rights of authors and creators. Before the invention of the printing press, copying books and manuscripts was a laborious manual process. However, the game-changing invention of Johannes Gutenberg's

printing press in 1436 in Germany marked the beginning of a need to protect the interests of printers and booksellers.<sup>46</sup>

As the art of printing rapidly spread across Europe, King Richard III of England allowed foreigners to import manuscripts and books for printing in England. This decision attracted foreign influence in the book trade, ultimately leading to England's emergence as a significant center for the printing industry in Europe.<sup>47</sup>

The proliferation of this technological innovation gave rise to a class of intermediaries who invested in bringing books to print. These intermediaries, known as stationers in England,

<sup>46</sup> Jonathan Band, 'The Copyright Paradox: Fighting Content Piracy in the Digital Era' (2001) 19 *The Brookings Review* 32.

<sup>47</sup> Wendy Bishop and David Starkey, 'Copyright and Intellectual Property', *Keywords in Creative Writing* (University Press of Colorado 2006) <<https://www.jstor.org/stable/j.ctt4cgr61.16>> accessed 27 August 2023.



were both printers and booksellers. In 1523 and 1528, restrictions were introduced in England by Henry VIII, prohibiting the importation of books altogether by 1533. The rationale was that England had sufficient printers and bookbinders. In 1529, a system of privileges was established for printing books, leading to the formation of the Stationers' Company in London, comprising 97 publishers.<sup>48</sup>

In 1556, a royal charter was granted to the Stationers' Company, giving them the authority to administer a private registration system for all published works. Any book intended for printing or reprinting had to be registered with the company before publication.<sup>49</sup> The company had the power to address copyright infringements by seizing and destroying illegal copies.<sup>50</sup> In 1662, England passed the Licensing Act, which prohibited the printing of any book that was not licensed and registered with the Stationers' Company. This marked the first clear legal effort to protect literary copyright and combat piracy.<sup>51</sup> The Act authorized the seizure and confiscation of unauthorized copies and imposed fines on printers. The Act of Queen Anne, passed in 1704 in the United Kingdom, represented the world's first copyright law with basic rules. Authors of books not yet printed were granted the sole right to print for 14 years from the date of publication, with the possibility of a 14-year extension if the author was still alive. Infringers would forfeit the infringing books and pay a fine for each sheet, with half going to the Crown and half to the plaintiff or any interested party. Lawsuits could only be initiated if the book's title had been entered in the Register Book of the Company of Stationers before publication. Before 1709, copyright protection was recognized by common law but was lost upon publication. Several statutes were adopted over time to improve copyright protection. In 1911, the Copyright Act abolished

the common law copyright, but it specified that this did not abrogate the right to restrain breaches of trust or confidence.

In the United States, the Revolutionary period in 1776 infused strong nationalistic sentiments into the English concept of copyright.<sup>52</sup> In 1790, the first U.S. Copyright Act was passed. The concept of copyright subsequently spread throughout the English-speaking world.<sup>53</sup>

In India, the earliest statutory law on copyright was the Copyright Act of 1847, enacted during the East India Company's rule. This act affirmed the applicability of English copyright law to India. The Copyright Act of 1911, while repealing earlier statutes, also made its provisions applicable to British colonies, including India.<sup>54</sup>

In 1914, India enacted the Indian Copyright Act, which modified some provisions of the Copyright Act of 1911 and added new provisions to make it applicable in India. The Indian Copyright Act of 1914 remained in force until it was replaced by the Copyright Act of 1957.<sup>55</sup>

The primary objectives of copyright law are not only to reward authors' labor but also to promote the progress of science and the useful arts. Copyright grants authors the right to their original expressions while encouraging others to build upon these ideas and information. It is a bundle of rights intended to stimulate creativity and strike a balance between the interests of copyright owners and the broader society. The Copyright Act of 1957 in India outlines specific provisions for free uses, aiming to maintain this delicate balance.<sup>56</sup>

Copyright, at its core, represents an intangible form of property. It is a testament to the fact that the creator or owner of a work has brought

<sup>48</sup> Band (n 1).

<sup>49</sup> Ali Amirmahani, 'Digital Apples and Oranges: A Comparative Analysis of Intermediary Copyright Liability in the United' (2015) 30 Berkeley Technology Law Journal 865.

<sup>50</sup> Band (n 1).

<sup>51</sup> Shyamkrishna Balganes, 'Copyright Infringement Markets' (2013) 113 Columbia Law Review 2277.

<sup>52</sup> Sayed Quadrat Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (2022) 4 Indian Journal of Law and Legal Research 1.

<sup>53</sup> Sayed Quadrat Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (2022) 4 Indian Journal of Law and Legal Research.

<sup>54</sup> *ibid*.

<sup>55</sup> Bishop and Starkey (n 2).

<sup>56</sup> Sayed Quadrat Hashimy, 'The Doctrine of Copyright Exhaustion in Software Under Indian Copyright Act: A cursory Glance' (2022) 4 Indian Journal of Law and Legal Research 1.



it into existence. As the rightful owner, they have the authority to dispose of this property either through outright sale (assignment of rights) or by granting licenses to others. Copyright comprises a bundle of exclusive rights, often referred to as "negative rights." These rights empower the copyright owner to prevent anyone else from copying their work or engaging in actions that, according to copyright law, are exclusively reserved for the owner. This bundle of rights extends to a wide array of creative works, including novels, computer programs, plays, sheet music, and paintings. In essence, the author or creator of a copyrighted work possesses the exclusive rights to reproduce, publish, perform, communicate, and adapt their creation.<sup>57</sup>

Under copyright law, the author of a work enjoys a range of specific rights, as outlined in Section 14 of the copyright Act. These rights encompass the right to publish the work, communicate it to the public, translate it, abridge it, and more.<sup>58</sup>

Copyright protects the expression of ideas, not the ideas themselves. The following types of works may be protected under copyright laws: literary works (such as written works and computer code), dramatic works (including scripts for films and plays), musical works (comprising melodies), artistic works (encompassing paintings and photographs), published editions of the aforementioned works, sound recordings, films, television and radio broadcasts, cable programs, and live performances.<sup>59</sup>

Copyright protection is automatically conferred upon an author as soon as they create and express their work in a tangible form. However, there are certain elements and subject matter that copyright does not protect, including ideas or concepts, discoveries, procedures or methods, subject matter lacking original

authorship, and works or subject matter not recorded in tangible form through writing or recording.<sup>60</sup>

Copyright is a fundamental concept in the world of intellectual property, protecting the rights of creators and their works. In India, the Copyright Act of 1957 lays out the legal framework for copyright protection.<sup>61</sup> Section 14 of this Act defines the meaning and scope of copyright, outlining the exclusive rights granted to creators and owners of various types of works. This article delves into Section 14 of the Copyright Act, discussing its provisions and implications.

#### SECTION 14: THE MEANING OF COPYRIGHT

Section 14 of the Copyright Act provides a comprehensive definition of copyright, detailing the exclusive rights that creators and owners enjoy with regard to different categories of works.<sup>62</sup>

For literary, dramatic, or musical works, creators have the exclusive right to reproduce their work in any material form, including print, digital, or any other medium. They also have the right to publish their work and control its distribution to the public. Authors can perform their works in public, giving them control over live performances.<sup>63</sup> Additionally, authors can produce, reproduce, perform, or publish translations or adaptations of their works and communicate their works via radio diffusion or loudspeakers to the public. For artistic works, artists hold the exclusive right to reproduce their creations in any material form and to publish them. They can decide whether their works can be included in cinematograph films and have control over adaptations of their works. Creators of cinematograph films have the right to make copies of their films, display the visual content to the public, and make sound recordings

<sup>57</sup> *ibid.*

<sup>58</sup> Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (n 7).

<sup>59</sup> Sayed Qudrat Hashimy and Emmanuel Elimhoo Kimey, 'Protection of Digital Contents under Indian Copyright Law in the Light of International Conventions' (2022) 5 International Journal of Law Management and Humanities 1302.

<sup>60</sup> Liang Guo and Xiangyi Meng, 'Digital Content Provision and Optimal Copyright Protection' (2015) 61 Management Science 1183.

<sup>61</sup> Bishop and Starkey (n 2).

<sup>62</sup> Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (n 7).

<sup>63</sup> *ibid.*



associated with the film. They can also communicate their films via radio diffusion.

Record creators can make copies of their records, cause the recording to be heard in public, and communicate records via radio diffusion. The Copyright Act specifies conditions for copyright assignment, including the requirement for written assignments, clarity on work identification, duration, territorial extent, and royalty arrangements. Assignments can be revised, extended, or terminated through mutual agreements, and default duration and territorial extent rules apply in the absence of specific terms.<sup>64</sup>

The Copyright Office in New Delhi administers the provisions of the Copyright Act, overseen by the Registrar of Copyrights, who holds powers akin to a civil court. The office maintains records of works and their creators, available for public inspection.

An Appellate Board established under the Copyright Act handles appeals related to copyright disputes, including determining copyright duration, settling assignment disputes, and granting compulsory licenses for republishing works withheld from the public. Performer's rights have expanded to grant performers exclusive rights to their performances, including sound or visual recordings, reproduction, and communication to the public. Performers also enjoy moral rights, such as the right to be identified and to prevent distortion or modification of their performances.<sup>65</sup>

Broadcast reproduction rights protect broadcasters from unauthorized reproduction, covering rebroadcasting, recording of broadcasts, and reproduction of sound or visual recordings. Exceptions exist for private use and fair dealing for criticism, review, and news reporting.<sup>66</sup>

<sup>64</sup> *ibid.*

<sup>65</sup> Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (n 8).

<sup>66</sup> Sayed Quadrat Hashimy, 'The Paradigm of Fair Trial in Adversarial System: A Legal Discourse' [2023] Available at SSRN 4352538.

The Copyright Act extends protection to foreign works, treating works first published outside India as if they were first published within India and allowing for the application of copyright provisions to works created by international organizations.

The concept of copyright plays a crucial role in balancing the economic rights of authors and copyright owners with the broader interests of society. Copyright is established through statutes, and its limitations are primarily statutory. These limitations come in three main forms:

### ***Limited Duration of Copyright***

The term of copyright protection is limited to the life of the author and an additional sixty years after their death, typically referred to as sixty years post mortem auctoris (PMA). After the copyright term expires, the work enters the public domain.

### ***Doctrine of Fair Use***

The second statutory limitation pertains to fair use, which allows for certain uses of copyrighted material without requiring permission from the copyright holder. This doctrine is especially important for purposes such as private study and research, teaching, and news reporting.<sup>67</sup>

### ***Non-Voluntary Licenses (Compulsory or Statutory Licenses)***

The third limitation involves the grant of non-voluntary licenses, governed by copyright law. These licenses permit the use of protected works under specific conditions, often subject to a fee determined by a competent authority.<sup>68</sup>

Subject matter that copyright covers includes original literary, dramatic, musical, and artistic works, as well as cinematograph films and sound recordings. Section 13(a) protects original works, while Section 13(b) and (c) safeguard derivative works, enabling the commercial

<sup>67</sup> Balganes (n 6).

<sup>68</sup> Bishop and Starkey (n 2).



manifestation of original works and the specified fields within those domains.<sup>69</sup> Thus, copyright is a multifaceted legal concept that safeguards intellectual property while considering the needs of both creators and society. Understanding the nature and limitations of copyright is essential for anyone involved in creating, using, or benefiting from copyrighted materials.

Copyright protection constitutes a cornerstone in safeguarding original literary works, which encompass verbal or numerical expressions stemming from the human intellect.<sup>70</sup> These literary creations need not possess aesthetic brilliance but must emerge from substantial independent skill, creative labor, or judgment. The concept of originality, as defined by Black's Law Dictionary, denotes independent creation with a minimum degree of creativity.<sup>71</sup>

A pivotal case, *University of London Press Ltd. v. University Tutorial Press Ltd.*,<sup>72</sup> established that original literary works can enjoy copyright protection irrespective of their aesthetic appeal or stylistic quality.

The Supreme Court, in *Eastern Book Company v. D.B. Modak*,<sup>73</sup> categorizes literary works into two classes: primary or prior works, which are not reliant on existing subject matter, and secondary or derivative works, which build upon existing subject matter.

The essence of the originality test in copyright law pertains to the expression of ideas rather than the ideas themselves. Copyright revolves around the originality of how thoughts are articulated in print or writing.<sup>74</sup>

In *Machmillan v. Cooper*,<sup>75</sup> it was underscored that copyright safeguards the effort, skill, and resources invested by an individual, rather than the raw materials upon which such efforts are expended. The "sweat of the brow" doctrine, once rewarding compilers for collecting facts, has been discarded in the United States. Copyright necessitates originality, demanding that a work be independently created by the author with at least a minimal degree of creativity.

Originality is not synonymous with novelty; a work can be original even if it bears a resemblance to other works by mere chance and not by deliberate copying. Originality mandates independent selection or arrangement, coupled with a degree of creative input.

The "sweat of the brow" doctrine no longer holds sway in copyright law, as it prevented authors from saving time and effort by relying on prior compilations. The scope of original literary works spans beyond textbooks, encompassing diverse written forms like question papers, headnotes, editorial comments, business letters, research theses, and dissertations, among others.<sup>76</sup> Materials related to courses, research reports, laboratory notebooks, and student coursework are also eligible for copyright protection. Copyright does not extend to facts or events; it exclusively safeguards the original expression of these facts or events.

Copyright subsists in expressions, not ideas. Ideas merit copyright protection only when they are fully developed into concrete concepts. Words or slogans, while essential for marketing, typically do not qualify for copyright protection and are instead governed by laws concerning unfair competition. Copyright protection for fictional characters hinges on their detailed

<sup>69</sup> Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (n 7).

<sup>70</sup> Bishop and Starkey (n 2).

<sup>71</sup> Sayed Qudrat Hashimy, 'Claims of Disclaimer in the Dirty Picture, Biopic on Silk or Dancing Star: Dancing to the Beat of Controversy and Indian Copyright Enigmas' (2023) 7 Mukt Shabd Journal 484.

<sup>72</sup> 'University of London Press v. University Tutorial Press' <<https://www.theipmatters.com/post/university-of-london-press-v-university-tutorial-press>> accessed 3 September 2023.

<sup>73</sup> 'Eastern Book Company & Ors vs D.B. Modak & Anr on 12 December, 2007' <<https://indiankanoon.org/doc/1062099/>> accessed 3 September 2023.

<sup>74</sup> 'Claims of Disclaimer in The Dirty Picture, Biopic on Silk or Dancing Star: Dancing to the Beat of Controversy and Indian Copyright Enigmas' <[https://scholar.google.com/citations?view\\_op=view\\_citation&hl=en&user](https://scholar.google.com/citations?view_op=view_citation&hl=en&user)

[https://scholar.google.com/citations?view\\_op=view\\_citation&hl=en&user](https://scholar.google.com/citations?view_op=view_citation&hl=en&user) =\_XhWcpEAAAAJ&cstart=20&pagesize=80&citation\_for\_view=\_XhWcpEAAAAJ:ZIQyR8VWHtoC> accessed 2 September 2023.

<sup>75</sup> 'Macmillan And Company Ltd. vs K. And J. Cooper on 14 December, 1923' <<https://indiankanoon.org/doc/1257788/>> accessed 3 September 2023.

<sup>76</sup> Hashimy, 'Claims of Disclaimer in the Dirty Picture, Biopic on Silk or Dancing Star' (n 26).



delineation and portrayal, signifying their distinctiveness and uniqueness.

***Titles of literary works do not enjoy copyright protection.***

1. Copyright can apply to abridgments of literary and dramatic works, provided these abridgments significantly condense the original work while retaining its essential meaning.
2. Original computer programs, encompassing both object code and source code, fall under copyright protection, which extends to preparatory design materials and associated software development tools.
3. Original dramatic works, covering recitations, choreographic works, and entertainments, are subject to copyright, although cinematograph films are not.
4. Choreographic works must be documented in writing to qualify for copyright protection, and scenic arrangements or acting forms also attain protection if they are documented.
5. Original musical works, comprising music or graphical notation, are eligible for copyright protection, contingent on their originality.
6. Artistic works, such as paintings, sculptures, drawings, engravings, and photographs, are protected under copyright law, irrespective of their artistic quality.
7. Works of architecture and artistic craftsmanship also qualify for copyright protection.
8. Cinematograph films enjoy copyright protection, with no specific requirement for originality.
9. Sound recordings and version recordings are copyright-protected, provided they involve original creative effort.
10. Copyright can extend to adaptations of existing works, including conversions,

abridgments, and versions suitable for reproduction.

**OWNERSHIP OF COPYRIGHT**

Ownership of copyright is a fundamental pillar within the realm of intellectual property law, establishing the framework for determining who possesses the legal authority to govern and reap the rewards of creative works. Delving deeper into this intricate landscape, we navigate the nuances surrounding copyright ownership across a spectrum of creative forms. In the domains of literary, dramatic, and musical works, the general rule dictates that the originator of the piece assumes the role of the initial copyright holder, as defined by the Copyright Act of 1957 in India. However, it is crucial to differentiate between ideas and their expressions. Copyright safeguards the tangible expressions of ideas rather than the ideas themselves. When one individual shares an idea for a story, image, or play with another, the copyright for the concrete work stemming from that idea belongs to the individual who transforms it into a physical form. The act of merely recording another person's words does not confer authorship or copyright ownership upon the recorder. In cases of collaborative efforts where multiple authors contribute to a work and their individual contributions are challenging to distinguish, the outcome is categorized as a work of joint authorship. Each co-author enjoys equal rights and a share of copyright ownership, although clarity in establishing this joint authorship is vital. For composite works such as encyclopedias, a duality of copyrights exists - one encompassing the entire compilation and separate copyrights assigned to individual contributions. The person responsible for gathering and structuring the compilation typically assumes the role of the compilation's author, while individual authors retain copyrights over their respective contributions.

In scenarios where employees create works during their employment, special rules apply. Works produced as part of their job



responsibilities for entities like newspapers or magazines typically bestow copyright ownership upon the employer. However, when employees create works during their general employment but not necessarily within their job scope, the employer may lay claim to the copyright, unless specific agreements dictate otherwise.

Copyright extends to public speeches and lectures, with the initial copyright belonging to the individual delivering the discourse. In the domain of artistic works, the creator typically assumes the role of the first copyright holder, except in cases of photographs, where the photographer becomes the author. For computer programs, the individual responsible for creating the program initially holds the copyright, as defined by the Copyright Act.<sup>77</sup>

In the realm of cinematograph films, the producer typically claims the role of the initial copyright owner. Sound recordings, initially excluded from copyright protection, now have provisions regulating their ownership in accordance with the Copyright Act.<sup>78</sup>

Government-created works diverge based on jurisdiction, with many considering works produced by government employees as part of their official duties to be public domain and, therefore, exempt from copyright protection. Economic rights form the cornerstone of copyright ownership, granting the holder exclusive rights to reproduce, issue copies to the public, perform, communicate, create cinematograph films or sound recordings, adapt, and translate the work.<sup>79</sup>

Certain legal provisions, such as S.53A, may grant authors or their heirs a share in the resale price of original manuscripts beyond specific threshold prices, even after copyright assignment. However, this right typically expires at the culmination of the copyright term.

<sup>77</sup> Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (n 8).

<sup>78</sup> Hashimy, 'The Doctrine of Copyright Exhaustion in Software Under Indian Copyright Act' (n 11).

<sup>79</sup> Guo and Meng (n 15).

A comprehensive comprehension of copyright ownership intricacies is imperative for creators, users, and individuals engaged in licensing or assigning copyright. Copyright law establishes the foundation for safeguarding creative works while ensuring that creators and artists can legitimately enjoy the fruits of their labor.<sup>80</sup>

Under the Copyright Act of 1957, copyright owners wield a spectrum of exclusive rights over their creative works, which encompass computer programs, artistic creations, cinematograph films, and sound recordings.<sup>81</sup> For computer programs, copyright proprietors possess the exclusive prerogative to reproduce the program in any manifestation, be it electronic storage or otherwise. They can also disseminate copies to the public, execute or communicate the program to the public, craft cinematograph films or sound recordings grounded in the program, fashion translations or adaptations, and dispense copies of the program.<sup>82</sup> There are exceptions where rental is not considered the primary purpose.

In the realm of artistic works, including paintings, sculptures, and photographs, copyright holders can replicate the work through various means, encompassing electronic and three-dimensional depictions. They retain the right to convey the work to the public, issue copies to the public, incorporate the work into cinematograph films, create adaptations, and execute other actions concerning adaptations. Owners of cinematograph films enjoy the exclusive entitlement to replicate the film, vend or rent copies, and transmit the film to the public, including via satellite or cable. In the domain of sound recordings, copyright owners can produce other sound recordings embodying the same work, distribute or rent copies, and transmit the sound recording to the public.

<sup>80</sup> 'Article 300A Constitution of India: Persons Not to Be Deprived of Property Save by Authority of Law' <<https://www.latestlaws.com/bare-acts/central-acts-rules/article-300a-constitution-of-india-persons-not-to-be-deprived-of-property-save-by-authority-of-law>> accessed 2 September 2023.

<sup>81</sup> Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (n 8).

<sup>82</sup> Band (n 1).



Beyond the economic rights, the Copyright Act recognizes moral rights for authors. These rights are predicated on the notion that literary and artistic works mirror the personality of their creators. The principal moral rights encompass the Right of Paternity, which permits an author to assert authorship, thwart false claims of authorship, and insist on the inclusion of their name on all copies of their work. Additionally, the Right of Integrity empowers authors to prevent alterations or distortions of their work that could tarnish their reputation or honor.

Moral rights are of profound significance as they safeguard the personal and creative facets of an author's work, transcending monetary considerations. These rights endure even after the assignment of copyright to others and serve as a bulwark for preserving an author's reputation and artistic integrity.

Moral rights, as enshrined in Section 57 of the Copyright Act of 1957 in India, play a vital role in safeguarding the artistic and creative integrity of authors. This provision draws inspiration from Article 6 bis of the Berne Convention. It bestows upon the author certain rights that endure independently of their copyright, even after the partial or complete assignment of that copyright.

#### **UNDER SECTION 57, AN AUTHOR HAS THE RIGHT:**

##### ***Right of Authorship***

Authors can claim authorship of their work. This means they have the exclusive right to be recognized as the creator of the work.<sup>83</sup> No one else can falsely claim authorship, and authors can demand that their name be appropriately attributed to their work on all copies.<sup>84</sup> Right of Integrity: Authors also possess the right of integrity, which empowers them to prevent any distortion, mutilation, modification, or other acts that could harm the honor or reputation of their work. This right ensures that the work remains

<sup>83</sup> Hashimy, 'Claims of Disclaimer in the Dirty Picture, Biopic on Silk or Dancing Star' (n 26).

<sup>84</sup> Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (n 7).

true to the artist's original vision. However, it's important to note that authors do not have the right to restrain or claim damages in the case of adaptations of computer programs, as specified under Section 52.<sup>85</sup> Furthermore, Section 57 includes provisions related to computer programs. It permits the adaptation of a computer program commonly known as "debugging," which is essential for maintaining and improving the functionality of software.<sup>86</sup>

Therefore, making copies or adaptations of a computer program is allowed in two specific circumstances: first, for the purpose of using the program as originally intended, and second, for creating backup copies as temporary protection against loss, destruction, or damage, but only for the intended purpose.

Regarding the term of copyright protection in India, the Copyright Act of 1957 outlines specific durations for different types of works.<sup>87</sup> Published Literary, Dramatic, Musical, and Artistic Works. Copyright subsists until sixty years from the beginning of the calendar year following the author's death. In cases of joint authorship, this duration applies to the author who passed away last. Anonymous and Pseudonymous Works: Copyright remains valid for sixty years from the beginning of the calendar year following the first publication of the work.

##### ***Cinematograph Films***

Copyright protection for cinematograph films endures for sixty years from the beginning of the calendar year following the year of publication, which encompasses making the work available to the public through copies or public communication.<sup>88</sup>

<sup>85</sup> 'The Legal Landscape of Fair Use/Fair Deal Rights in the United States and India: A Perspective on Copyright Disclaimers'

<[https://scholar.google.com/citations?view\\_op=view\\_citation&hl=en&user=\\_XhWcpEAAAAJ&cstart=20&pagesize=80&citation\\_for\\_view=\\_XhWcpEAAAAJ;jevOW3VBe2YC](https://scholar.google.com/citations?view_op=view_citation&hl=en&user=_XhWcpEAAAAJ&cstart=20&pagesize=80&citation_for_view=_XhWcpEAAAAJ;jevOW3VBe2YC)> accessed 2 September 2023.

<sup>86</sup> Sayed Qudrat Hashimy, 'The Legal Landscape of Fair Use/Fair Deal Rights in the United States and India: A Perspective on Copyright Disclaimers' (2023) 3 Trinity Law Review 1.

<sup>87</sup> *ibid.*

<sup>88</sup> Hashimy, 'Claims of Disclaimer in the Dirty Picture, Biopic on Silk or Dancing Star' (n 26).





### ***Sound Recordings***

Copyright in sound recordings also lasts for sixty years, starting from the beginning of the calendar year following the year of publication.<sup>89</sup>

### ***Posthumous Works***

In the case of literary, dramatic, or musical works or engravings that had copyright at the time of the author's death, and if these works or any adaptations remained unpublished until that point, copyright persists until sixty years from the beginning of the calendar year following the first publication or adaptation.<sup>90</sup>

### ***Government Works***

For works owned by the government, the duration of copyright protection is also sixty years from the beginning of the calendar year following the year of first publication.

### ***Works of Public Undertakings***

In the case of works owned by public undertakings, copyright protection extends for sixty years from the beginning of the calendar year following the year of first publication.

### ***Works of International Organizations***

For works associated with international organizations governed by Section 41, copyright endures for sixty years from the beginning of the calendar year following the year of publication.

These provisions ensure that creators and rights holders enjoy protection for their works while also respecting the public's right to access and benefit from these creations over time. Assignment of Copyright and Licenses play pivotal roles in the realm of copyright law, facilitating the sharing and utilization of creative works while safeguarding the rights of creators.<sup>91</sup> Through copyright assignments, creators can empower others to exploit their

work within predefined terms, ensuring that royalties are rightfully distributed. These assignments can be total or partial, and amendments introduced in 2012 prevent the assignment of rights to mediums or modes that did not exist during the original agreement, protecting creators from unforeseen technological developments.<sup>92</sup> Furthermore, prospective owners have the unique opportunity to assign rights to works that have yet to be created, providing a framework for future collaborations.

The mode of assignment is standardized, requiring written agreements that meticulously detail the work, assigned rights, duration, and scope. In cases where assignments need to be revoked due to valid reasons, Section 19A of the Copyright Act empowers the Appellate Board to take corrective measures. On the other hand, authors can voluntarily relinquish some or all of their copyright through formal notifications, ensuring their creative legacy aligns with their wishes.<sup>93</sup>

Licenses, distinct from assignments, grant individuals or entities specific rights to a copyrighted work, often within well-defined limits. Exclusive licenses bestow rights exclusively to the licensee, while non-exclusive licenses allow the copyright owner to grant similar permissions to others. Compulsory licenses serve public interest by providing access to copyrighted works under specific circumstances, protecting against monopolies.<sup>94</sup> The parameters considered by the Appellate Board when granting compulsory licenses include the work's publication or performance status, the copyright owner's willingness to allow republication or public performance, and the reasonableness of broadcasting terms.

Cancellation and termination provisions ensure that licenses do not become instruments of abuse. The Appellate Board can cancel licenses

<sup>89</sup> Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (n 8).

<sup>90</sup> Hashimy, 'The Doctrine of Copyright Exhaustion in Software Under Indian Copyright Act' (n 11).

<sup>91</sup> Amirmahani (n 4).

<sup>92</sup> *ibid.*

<sup>93</sup> Bishop and Starkey (n 2).

<sup>94</sup> Band (n 1).



for various reasons, such as a failure to fulfill specified obligations or obtaining a license through fraudulent means. Termination mechanisms, as outlined in Section 32(13) of the Copyright Act, ensure that licenses for translating non-Indian works into other languages have defined endpoints.<sup>95</sup>

Therefore, assignment and licensing mechanisms within copyright law strike a balance between protecting creators' rights and promoting the dissemination of creative works, fostering a vibrant cultural and artistic landscape while respecting the interests of copyright owners and the public alike.

### **Fair use**

Section 52 of the Copyright Act outlines a comprehensive list of permitted acts that do not constitute copyright infringement. These provisions balance the interests of copyright holders with the public's right to access and utilize creative works for specific purposes.<sup>96</sup> The Copyright Act recognizes that certain uses of copyrighted materials are essential for research, education, reporting, and cultural preservation. One crucial provision allows for fair dealing with literary, dramatic, musical, or artistic works for research or private study.<sup>97</sup> This permits individuals to use copyrighted materials for academic and personal growth without infringing on copyright. Similarly, fair dealing provisions allow for criticism, review, and reporting of current events in newspapers, magazines, radio broadcasts, and cinematograph films, acknowledging the importance of commentary and analysis in the media.<sup>98</sup>

In the legal realm, the Copyright Act allows the reproduction of copyrighted materials for judicial proceedings and reports of such proceedings. This ensures that the legal system

can function effectively without violating copyright. Additionally, it permits the reproduction of literary, dramatic, musical, or artistic works for use by legislative bodies and educational institutions.<sup>99</sup> For educational purposes, the Act allows the reading or recitation of excerpts from published works and the publication of short passages in collections meant for educational institutions. This fosters an environment of learning and research within educational institutions.

Other provisions consider the use of copyrighted works in examinations, performances within educational institutions, and the creation of records under specific conditions. Furthermore, the Act permits the public exhibition of cinematograph films once the copyright term has expired, enabling the public to access and enjoy classic films without copyright restrictions.

Notably, the Act provides exceptions for the reproduction of certain materials published in official gazettes, legislative acts, and reports of government-appointed bodies, ensuring transparency and access to crucial information.<sup>100</sup> Architectural and artistic works permanently situated in public places can be photographed, painted, drawn, or engraved without infringing copyright. This promotes cultural preservation and the documentation of public art. The Act also allows for the inclusion of artistic works in cinematograph films, provided they are part of the background or incidental to the film's primary subject matter. This recognizes the role of artistic works in film production. Additionally, creators themselves can use objects they have made while working on an artistic project without infringing copyright. This provision acknowledges the relationship between creative processes and the physical artifacts that result from them. In cases where three-dimensional objects are created based on two-dimensional artistic works, the Act ensures that these objects do not appear to be direct

<sup>95</sup> Philip G Altbach, 'Knowledge Enigma: Copyright in the Third World' (1986) 21 Economic and Political Weekly 1643.

<sup>96</sup> Hashimy, 'The Legal Landscape of Fair Use/Fair Deal Rights in the United States and India' (n 41).

<sup>97</sup> Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (n 7).

<sup>98</sup> Hashimy, 'The Legal Landscape of Fair Use/Fair Deal Rights in the United States and India' (n 41) 45.

<sup>99</sup> Guo and Meng (n 15).

<sup>100</sup> Band (n 1).



reproductions, considering the perceptions of non-experts. Lastly, architectural structures can be reconstructed according to original architectural plans without violating copyright. This provision supports the preservation and restoration of historic buildings.

#### REMEDIES FOR COPYRIGHT INFRINGEMENT

Remedies for copyright infringement serve as the legal mechanisms to protect the rights of copyright owners and deter individuals or entities from unlawfully using copyrighted works. These remedies can be broadly categorized into civil and criminal remedies under the Copyright Act.

##### *Civil Remedies*

1. Copyright owners can seek an injunction from the court to prevent further unauthorized use or distribution of their copyrighted work. An injunction is a court order that restrains the infringing party from engaging in the infringing activity. It serves as a preventive measure to stop ongoing or potential infringement.

2. Copyright owners have the right to claim damages in civil cases to compensate for the losses incurred due to copyright infringement. These damages can include both actual damages, which cover the financial harm suffered, and statutory damages, which are predetermined amounts set by law and can be claimed without the need to prove actual financial losses.

3. The court can order the infringing party to deliver up all infringing copies of the copyrighted work in their possession. This remedy helps prevent the further distribution of unauthorized copies.

4. In some cases, copyright owners may be entitled to an account of profits made by the infringing party through the unauthorized use of their copyrighted work. This remedy ensures that infringers do not benefit financially from their wrongdoing.

##### *Criminal Remedies*

1. The Copyright Act defines various offenses related to copyright infringement, and copyright owners can initiate criminal proceedings against infringers.

2. Section 63 of the Copyright Act establishes the offense of infringement of copyright or other rights. This offense covers both copyright infringement and the infringement of other rights conferred by the Act.

#### THE PENALTIES FOR COPYRIGHT INFRINGEMENT UNDER SECTION 63 ARE AS FOLLOWS

A person found guilty of copyright infringement can be sentenced to imprisonment for a term not less than six months but which may extend to three years. In addition to imprisonment, the court can impose a fine ranging from Rs 50,000 to Rs 2 lakhs on the infringing party. The Act also addresses the knowing use of infringing copies of computer programs. In such cases, the penalties include:

- Offenders can face imprisonment for a period of seven days to three years.
- The fine can range from Rs 50,000 to Rs 2 lakhs.

These criminal remedies serve as a deterrent against copyright infringement by imposing both prison sentences and substantial fines on individuals or entities found guilty of knowingly infringing copyright or other rights under the Copyright Act. They reinforce the importance of respecting intellectual property rights and discourage unauthorized use or distribution of copyrighted works. Copyright owners have the option to pursue either civil or criminal remedies, depending on the nature and severity of the infringement.

#### COPYRIGHT AND AI, PARTICULARLY CHAT GPT

Copyright and AI, particularly Chat GPT, have become increasingly important topics as technology continues to advance. Copyright is a multifaceted concept that encompasses both negative and statutory rights, often referred to as conventional or traditional rights. These



rights are established by statutes and extend to various forms of creative works, including literary pieces, songs, movies, software, paintings, and more. Copyright holders automatically gain the right to reproduce their work and prevent others from copying it.<sup>101</sup> They can also derive various subsidiary rights, such as distribution, public performance, and display of their work.<sup>102</sup> The term "original" is somewhat relative, as even works based on existing literature, like commentaries, can be considered original if they provide a unique perspective. Protecting copyrighted material may not always involve statutory measures, but creators can safeguard their work in conventional ways. In the case of literary works, protection depends on the effort and interpretation put into the work. For instance, while many know the content of the Ramayana, an individual's interpretation and character portrayal in their own style constitute original work that cannot be copied. Singing a song with a pleasing voice and accurate notation is the result of continuous practice, as exemplified by renowned artists like S.P. Balasubrahmanyam, P. B. Srinivas, S. Janaki, and P. Susheela. Song composition can lead to multiple copyright claims, including those by the singer, music composer, and producer.<sup>103</sup>

Registration of a literary work under the Copyright Act is not mandatory, but it facilitates the assertion of rights. The courts recognize property rights associated with registered works, which can be subject to civil or criminal remedies.<sup>104</sup> Even when foreign authors create works, Indian courts have jurisdiction to address copyright violations under certain circumstances.

The international framework for the protection of copyrights has evolved over the years to address the challenges posed by new forms of creative works, including computer programs.

Here's an expansion on the international treaties and agreements related to copyright protection, particularly in the context of software:

### ***Berne Convention (1886)***

The Berne Convention is one of the oldest international copyright treaties. While it does not explicitly mention computer programs, it lays the foundation for recognizing them as literary works. The extent of protection granted to software varies among member countries based on their domestic legislation. Additionally, it sets a minimum term of protection for applied art, including computer programs, at 25 years from the making of the work.<sup>105</sup>

### ***Universal Copyright Convention (UCC) 1971***

The UCC, in its national treatment provisions, extends protection to software created by authors from UCC member countries. It simplifies copyright formalities, such as registration and notice requirements, making it easier for authors to secure protection for their works internationally. This provision applies mainly to works first published outside the country that requires these formalities.

### ***TRIPS (Trade-Related Aspects of Intellectual Property Rights)***

TRIPS is a comprehensive international agreement that explicitly includes computer programs within the scope of copyright-protected works. It offers three forms of protection for software: copyright, patent, and trade secret regimes. It requires member states to protect software as literary works under the Berne Convention.<sup>106</sup> Additionally, TRIPS recognizes patent protection for software-related inventions, provided they meet specific patentability criteria established by individual countries.

<sup>101</sup> Hashimy, 'The Legal Landscape of Fair Use/Fair Deal Rights in the United States and India' (n 41).

<sup>102</sup> Amirmahani (n 4).

<sup>103</sup> Thomas MS Hemnes, 'The Adaptation of Copyright Law to Video Games' (1982) 131 University of Pennsylvania Law Review 171.

<sup>104</sup> Hashimy, 'Claims of Disclaimer in the Dirty Picture, Biopic on Silk or Dancing Star' (n 26) 486.

<sup>105</sup> Hashimy and Kimey (n 14) 315.

<sup>106</sup> Hashimy, 'The Doctrine of Copyright Exhaustion in Software Under Indian Copyright Act' (n 11).



### ***WIPO Copyright Treaty (WCT) 1996***

The WCT is a special agreement under the Berne Convention, aimed at addressing copyright issues in the digital age. It explicitly states that computer programs are protected as literary works under the Berne Convention. Furthermore, it extends protection to compilations of data when their arrangement shows sufficient originality.<sup>107</sup> The WCT also grants software makers the right to control rentals of computer programs and requires nations to protect against the circumvention of technological protection measures.

### ***European Community Directive on the Legal Protection of Computer Programs (EC Software Directive)***

In 1991, the EC Software Directive required member countries to extend copyright protection to computer programs. It introduced provisions that allowed limited reverse engineering for compatibility purposes, provided the necessary information was not readily available and the reverse engineering was confined to aspects related to compatibility. This directive has had a significant impact on the protection of software within the European Union.

### ***Differences in Approach***

The United States and the European Union have different approaches to reverse engineering, a practice common in the software industry. The United States allows reverse engineering, provided it doesn't lead to wholesale copying of a computer program. In contrast, the European Union, under the EC Software Directive, has specific conditions for reverse engineering to ensure compatibility.<sup>108</sup> These international agreements collectively provide a framework for the protection of copyrights, including those related to computer programs. They acknowledge the evolving nature of creative

works and aim to strike a balance between protecting intellectual property and fostering innovation and compatibility in the software industry.

### **CONCLUSION**

In conclusion, this paper has shed light on the vital role of copyright in shaping the cultural and economic development of nations, with a particular focus on the context of Indian copyright law. Copyright serves as a linchpin for preserving and enriching cultural legacies, fostering creativity, and encouraging innovation in various forms of creative expression.

The historical evolution of copyright law, from its early origins rooted in the response to the printing press to the modern legal frameworks worldwide, has been discussed. Key milestones such as the Licensing Act of 1662 in England and the Act of Queen Anne in 1704 have shaped the landscape of copyright protection. Furthermore, this paper has emphasized the multifaceted objectives of copyright, extending beyond mere author rewards to the advancement of science and the arts. The delicate balance between protecting the rights of creators and promoting wider societal progress has been highlighted, with specific reference to India's Copyright Act of 1957. It has been clarified that copyright, as a form of intangible property, grants creators exclusive rights over their works, often referred to as "negative rights," which enable them to control the use and dissemination of their creations. The various rights covered by copyright law, as outlined in Section 14 of the Copyright Act, have been enumerated, including publication, public communication, translation, and abridgment. Additionally, the distinction between protecting the expression of ideas rather than the ideas themselves has been elucidated. The paper has defined the types of works eligible for copyright protection, encompassing a wide range of creative expressions, from literary and dramatic works to sound recordings and live performances. It has also underscored the automatic nature of copyright protection upon the creation of a

<sup>107</sup> Pheh Hoon Lim, 'Copyright in Logos and Exhaustion of Rights under the First Sale Doctrine in Grey Markets' (2012) 7 *Journal of Intellectual Property Law & Practice* 663.

<sup>108</sup> *ibid.*



tangible work. Thus, copyright law plays a pivotal role in fostering creativity, safeguarding the rights of creators, and contributing to the cultural and economic vitality of nations. Understanding the provisions and implications of copyright, as outlined in Section 14 of the Indian Copyright Act, is essential for creators, policymakers, and stakeholders in the intellectual property landscape. Copyright remains a cornerstone in the ongoing narrative of intellectual property protection, ensuring that the creative works of individuals continue to enrich societies around the world.

#### REFERENCE

1. Altbach PG, 'Knowledge Enigma: Copyright in the Third World' (1986) 21 Economic and Political Weekly 1643
2. Amirmahani A, 'Digital Apples and Oranges: A Comparative Analysis of Intermediary Copyright Liability in the United' (2015) 30 Berkeley Technology Law Journal 865
3. 'Article 300A Constitution of India: Persons Not to Be Deprived of Property Save by Authority of Law' <<https://www.latestlaws.com/bare-acts/central-acts-rules/article-300a-constitution-of-india-persons-not-to-be-deprived-of-property-save-by-authority-of-law>> accessed 2 September 2023
4. Balganes S, 'Copyright Infringement Markets' (2013) 113 Columbia Law Review 2277
5. Band J, 'The Copyright Paradox: Fighting Content Piracy in the Digital Era' (2001) 19 The Brookings Review 32
6. Bishop W and Starkey D, 'Copyright and Intellectual Property', *Keywords in Creative Writing* (University Press of Colorado 2006) <<https://www.jstor.org/stable/j.ctt4cgr61.16>> accessed 27 August 2023
7. 'Claims of Disclaimer in The Dirty Picture, Biopic on Silk or Dancing Star: Dancing to the Beat of Controversy and Indian Copyright Enigmas' <[https://scholar.google.com/citations?view\\_op=view\\_citation&hl=en&user=\\_XhWcpEAAAAJ&start=20&pagesize=80&citation\\_for\\_view=\\_XhWcpEAAAAJ:ZIQyR8VWHtoC](https://scholar.google.com/citations?view_op=view_citation&hl=en&user=_XhWcpEAAAAJ&start=20&pagesize=80&citation_for_view=_XhWcpEAAAAJ:ZIQyR8VWHtoC)> accessed 2 September 2023
8. 'Eastern Book Company & Ors vs D.B. Modak & Anr on 12 December, 2007' <<https://indiankanoon.org/doc/1062099/>> accessed 3 September 2023
9. Guo L and Meng X, 'Digital Content Provision and Optimal Copyright Protection' (2015) 61 Management Science 1183
10. Hashimy SQ, 'Protection of Video Games under Indian and the United States of America Copyright Law' (2022) 4 Indian Journal of Law and Legal Research 1
11. —, 'Protection of Video Games under Indian and the United States of America Copyright Law' (2022) 4 Indian Journal of Law and Legal Research
12. —, 'The Doctrine of Copyright Exhaustion in Software Under Indian Copyright Act: A cursory Glance' (2022) 4 Indian Journal of Law and Legal Research 1
13. —, 'The Paradigm of Fair Trial in Adversarial System: A Legal Discourse' [2023] Available at SSRN 4352538
14. —, 'The Legal Landscape of Fair Use/Fair Deal Rights in the United States and India: A Perspective on Copyright Disclaimers' (2023) 3 Trinity Law Review 1
15. —, 'Claims of Disclaimer in the Dirty Picture, Biopic on Silk or Dancing Star: Dancing to the Beat of Controversy and Indian Copyright Enigmas' (2023) 7 Mukta Shabd Journal 484
16. Hashimy SQ and Kimey EE, 'Protection of Digital Contents under Indian Copyright Law in the Light of International Conventions' (2022) 5 International Journal of Law Management and Humanities 1302



17. Hemnes TMS, 'The Adaptation of Copyright Law to Video Games' (1982) 131 University of Pennsylvania Law Review 171
18. Lim PH, 'Copyright in Logos and Exhaustion of Rights under the First Sale Doctrine in Grey Markets' (2012) 7 Journal of Intellectual Property Law & Practice 663
19. 'Macmillan And Company Ltd. vs K. And J. Cooper on 14 December, 1923' <<https://indiankanoon.org/doc/1257788/>> accessed 3 September 2023
20. 'The Legal Landscape of Fair Use/Fair Deal Rights in the United States and India: A Perspective on Copyright Disclaimers' <[https://scholar.google.com/citations?view\\_op=view\\_citation&hl=en&user=\\_XhWcpEAAAAJ&start=20&pagesize=80&citation\\_for\\_view=\\_XhWcpEAAAAJ:jevOW3VBe2YC](https://scholar.google.com/citations?view_op=view_citation&hl=en&user=_XhWcpEAAAAJ&start=20&pagesize=80&citation_for_view=_XhWcpEAAAAJ:jevOW3VBe2YC)> accessed 2 September 2023
21. 'University of London Press v. University Tutorial Press' <<https://www.theipmatters.com/post/university-of-london-press-v-university-tutorial-press>> accessed 3 September 2023