



## **MARS & Partners**

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### **COPYRIGHT IN INDIA**

COPYRIGHT is one of the laws covered by the umbrella term intellectual property. It is a set of exclusive rights regulating the use of a particular expression of an idea or information. In common parlance, it can be referred to as "the right to copy" an original creation for specified duration. The registered copyright is generally symbolized with ©. It subsists in a wide range of creative, intellectual, or artistic forms or "works" but covers only the form or manner in which ideas or information have been manifested, the "form of material expression". It is not designed or intended to cover the actual idea, concepts, facts, styles, or techniques which may be embodied in or represented by the copyright work.

#### **FAQ –**

##### **1. What is Copyright?**

Sec.14 of the Copyright Act, 1957 defines the term Copyright as an exclusive right to copy or reproduce a work is conferred on a person, by operation of law.

##### **2. What is covered under the Copyright Act?**

- Literary work computer software
- Dramatic & Musical Work
- Artistic Work
- Cinematograph films
- Sound recordings

The basic condition (Sec.13) is that all the above mentioned work shall be original. Quality of the work is immaterial.

##### **3. Duration of Protection?**

The tenure of the copyright is the life of the author / artist + 60 years (Sec.23). In case of artificial person, it is 50 years from the date of first publication.

##### **4. First owner of the Copyright?**

- Author of the work
- Artist of the Artistic Work
- For cinematograph film and sound recordings, the Producer is the First owner.

##### **5. Transfer of a Copyright?**

A copyright can only be transferred by an agreement in writing.

##### **6. Registration of Copyright?**

The registration is not mandatory. All rights existing in work automatically vest with the author / artist, the moment same is created. Registration by the office of the



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Registrar of Copyrights is merely an acknowledgement of the existence of the copyright of a person.

### **7. Protection against violation of Copyright out of India?**

India is a signatory to the Berne Convention as well as Universal Copyright Convention; as such protection and legal remedies are available to Indian work out of India, as per the local laws of such country.

### **8. Protection to the foreign work in India**

All foreigners get the same kind of protection in India, as available to Indians.

### **9. Infringement of Copyright**

When a person, without any license or authority in writing copies, in similar or deceptively similar manner any work entitled to protection under the Act, shall be liable for civil and criminal action in the court of law. (Sec.51)

### **10. Legal remedies available**

Both Civil & Penal remedies are available under the Provisions of the Copyright Act –

#### **A. Civil Remedies –**

- (i) Suit for Infringement and Permanent Injunction
- (ii) Damages
- (iii) Accounts of undue and illegal profits earned by the pirate can be claimed;
- (iv) Order for destruction of infringing material can be granted by the court;
- (v) Interim injunction

#### **B. Criminal Remedies –**

- (i) All such remedies by way of injunction, damages and accounts
- (ii) An offence under the Copyright Act,1957 is cognizable, therefore the Police has direct power to registered an FIR, investigate, search and seize the goods without the orders of the Court;
- (iii) Punishment provided is minimum Six Months extending up to 3 years with fine of minimum of Rs.50,000/- up to Rs.2,00,000/- (SEC.63)

### **11. Acts not constituting infringement**

Sec 52 provides circumstances and instances where such acts may not be considered as infringement of copyright, e.g. fair use, research etc.

### **12. Protection of Computer software**

The Computer software are considered as literary and artistic work under the Act. This protection covers Computer program or software including set of instructions expressed in words, codes, schemes or in any other form, including machine



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readable medium capable of causing computer to perform a particular task or achieve a particular result. This also includes right to make copies of the original software. Heavy punishment / fines are imposed for infringement of copyright of software. The only exception is provided by section 52 of the Act, which allows a backup copy purely as a temporary protection against loss, distribution or damage to the original copy.

### **Check List of Information and Documents required for making Copyright registration application –**

1. Name, Address and Nationality of the Applicant
2. Nature of Applicant interest in the copyright of the work
3. Class and description of work
4. Title of the work
5. Language of the work
6. Name, address and nationality of the author(s) and if the author is deceased, date of his death
7. Whether work is published or unpublished
8. If published, Year and country of first publication and name, address and nationality of the first publisher
9. Year and countries of subsequent publication and name, address and nationality of the subsequent publisher(s) in chronological order