

## **COPYRIGHT**

Copyright is the set of exclusive rights granted to the author or creator of an original work, including the right to copy, distribute and adapt the work. Copyright lasts for a certain time period after which the work is said to enter the public domain. Copyright gives protection for the expression of an idea and not for the idea itself.

Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. Creativity being the keystone of progress, no civilized society can afford to ignore the basic requirement of encouraging the same. Economic and social development of a society is dependent on creativity.

### **Classes of works for which copyright protection is available**

Indian Copyright Act affords separate and exclusive copyright protection to the following 7 classes of work:

1. Original Literary Work
2. Original Dramatic Work
3. Original Musical Work
4. Original Artistic Work
5. Cinematograph Films
6. Sound recording
7. Computer Programme

### **Copyright law in India**

The Copyright Act of 1957, The Copyright Rules, 1958 and the International Copyright Order, 1999 governs the copyright protection in India. It came into effect from January 1958. The Act has been amended in 1983, 1984, 1992, 1994 and 1999. Before the Act of 1957, copyright protection was governed by the Copyright Act of 1914 which was the extension of British Copyright Act, 1911. The Copyright Act, 1957 consists of 79 sections under 15 chapters while the Copyright Rules, 1958 consists of 28 rules under 9 chapters and 2 schedules

### **Assignment of copyright**

Sec.18 of the Copyright Act, 1957 deals with assignment of copyright. The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof.

### **Transmission of copyright by testamentary disposition**

Where under a bequest a person is entitled to the manuscript of a literary, dramatic or musical work, or to an artistic work, and the work was not published before the death of the testator, the bequest can, unless the contrary intention is indicated in the testator's will or any codicil thereto, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death. Manuscript means the original document embodying the work, whether written by hand or not.

### **Relinquish copyright**

The author of a work can relinquish all or any of the rights comprised in the copyright in the work by giving notice in Form I to the Registrar of Copyrights and thereupon such rights will cease to exist from the date of the notice. On receipt of notice the Registrar of Copyrights will publish it in the Official Gazette and in such other manner as he may deem fit. The relinquishment of all or any of the rights comprised in the copyright in a work will not affect any rights subsisting in favour of any person on the date of the notice given to the Registrar.

### **Term of copyright**

Section 22 to 29 of the Copyright Act, 1957 deals with the term of copyright. Copyright generally lasts for a period of sixty years.

### **Rights of Broadcasting Organization and of Performers**

Every broadcasting organization will have a special right to be known as 'broadcast reproduction right' in respect of its broadcasts. The broadcast reproduction right will subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made.

### **Intellectual Property Rights (IPR) of Computer Software**

In India, the Intellectual Property Rights (IPR) of computer software is covered under the Copyright Law. Accordingly, the copyright of computer software is protected under the provisions of Indian Copyright Act 1957. Major changes to Indian Copyright Law were introduced in 1994 and came into effect from 10 May 1995. These changes or amendments made the Indian Copyright law one of the toughest in the world. The amendments to the Copyright Act introduced in June 1994 were, in themselves, a landmark in the India's copyright arena.

### **Copyright Infringements**

Some of the commonly known acts involving infringement of copyright:

- ✓ Making infringing copies for sale or hire or selling or letting them for hire;
- ✓ Permitting any place for the performance of works in public where such performance constitutes infringement of copyright;
- ✓ Distributing infringing copies for the purpose of trade or to such an extent so as to affect prejudicially the interest of the owner of copyright ;
- ✓ Public exhibition of infringing copies by way of trade; and
- ✓ Importation of infringing copies into India.

## **Civil Remedies for Copyright Infringement**

A copyright owner can take legal action against any person who infringes the copyright in the work. The copyright owner is entitled to remedies by way of injunctions, damages and accounts.

## **The Criminal Offence**

Any person who knowingly infringes or abets the infringement of the copyright in any work commits criminal offence under Section 63 of the Copyright Act. The minimum punishment for infringement of copyright is imprisonment for six months with the minimum fine of Rs. 50,000/-. In the case of a second and subsequent conviction the minimum punishment is imprisonment for one year and fine of Rs. one lakh.

## **International Copyright**

Copyrights of works of the countries mentioned in the International Copyright Order are protected in India, as if such works are Indian works. Copyright of nationals of countries who are members of the Berne Convention for the Protection of Literary and Artistic Works, Universal Copyright Convention and the TRIPS Agreement are protected in India through the International Copyright Order. The list of such countries is mentioned in the schedule of the International Copyright Order, 1999.

## **Licences**

Provisions with regard to licences are detailed in Chapter VI of the Copyright Act, 1957.

Copyright Licence is granted by the owner of the copyright in any existing work or the prospective owner of the copyright in any future work in writing signed by him or by his duly authorized agent. In the case of a licence relating to copyright in any future work, the licence will take effect only when the work comes into existence. Where a person to whom a licence relating to copyright in any future work is granted dies before the work comes into existence, his legal representatives, in the absence of any provision to the contrary in the licence, will be entitled to the benefit of the licence.

## **Registration of a work under the Copyright Act, 1957**

Copyright comes into existence as soon as a work is created and no formality is required to be completed for acquiring copyright. However, facilities exist for having the work registered in the Register of Copyrights maintained in the Copyright Office of the Department of Education. The entries made in the Register of Copyrights serve as *prima-facie* evidence in the court of law. Procedure for registration of a work is covered under Chapter VI of the Copyright Rules, 1958.

## **Procedure for registration**

- 1) Application for registration is to be made on Form IV (Including Statement of Particulars and statement of Further Particulars) as prescribed in the first schedule to the Rules
- 2) Separate applications should be made for registration of each work

- 3) Each application should be accompanied by the requisite fee prescribed in the second schedule of the Rules and,
- 4) The applications should be signed by the applicant or the advocate in whose favour a Vakalatnama or Power of Attorney has been executed. The Power of Attorney signed by the party and accepted by the advocate should also be enclosed.

**The following Statement of Further Particulars should be submitted in triplicate along with the Application for Registration of Copyright (Form IV) -**

1. Is the work is to be registered

- a. an original work?
- b. a translation of a work in the public domain?
- c. A translation of a work in which Copyright subsists?
- d. an adaptation of a work in the public domain?
- e. an adaptation of a work in which Copyright subsists?

2. If the work is a translation or adaptation of a work in which Copyright subsists:

- a. Title of the original work
- b. Language of the original work
- c. Name, address and nationality of the author of the original work and if the author is deceased, the date of decease
- d. Name, address and nationality of the publisher, if any, of the original work
- e. Particulars of the authorization for a translation or adaptation including the name, address and nationality of the party authorizing.

**Second schedule to the Copyright Rules, 1958 - Fee payable under the Copyright Act, 1957**

For a licence to republish a Literary, Dramatic, Musical or Artistic work (Section 31, 31-A and 32-A)	Rs. 400/- per work
For licence to republish a Cinematograph Film (Section 31)	Rs. 600/- per work
For a licence to republish a sound recording (Section 31)	Rs. 400/-

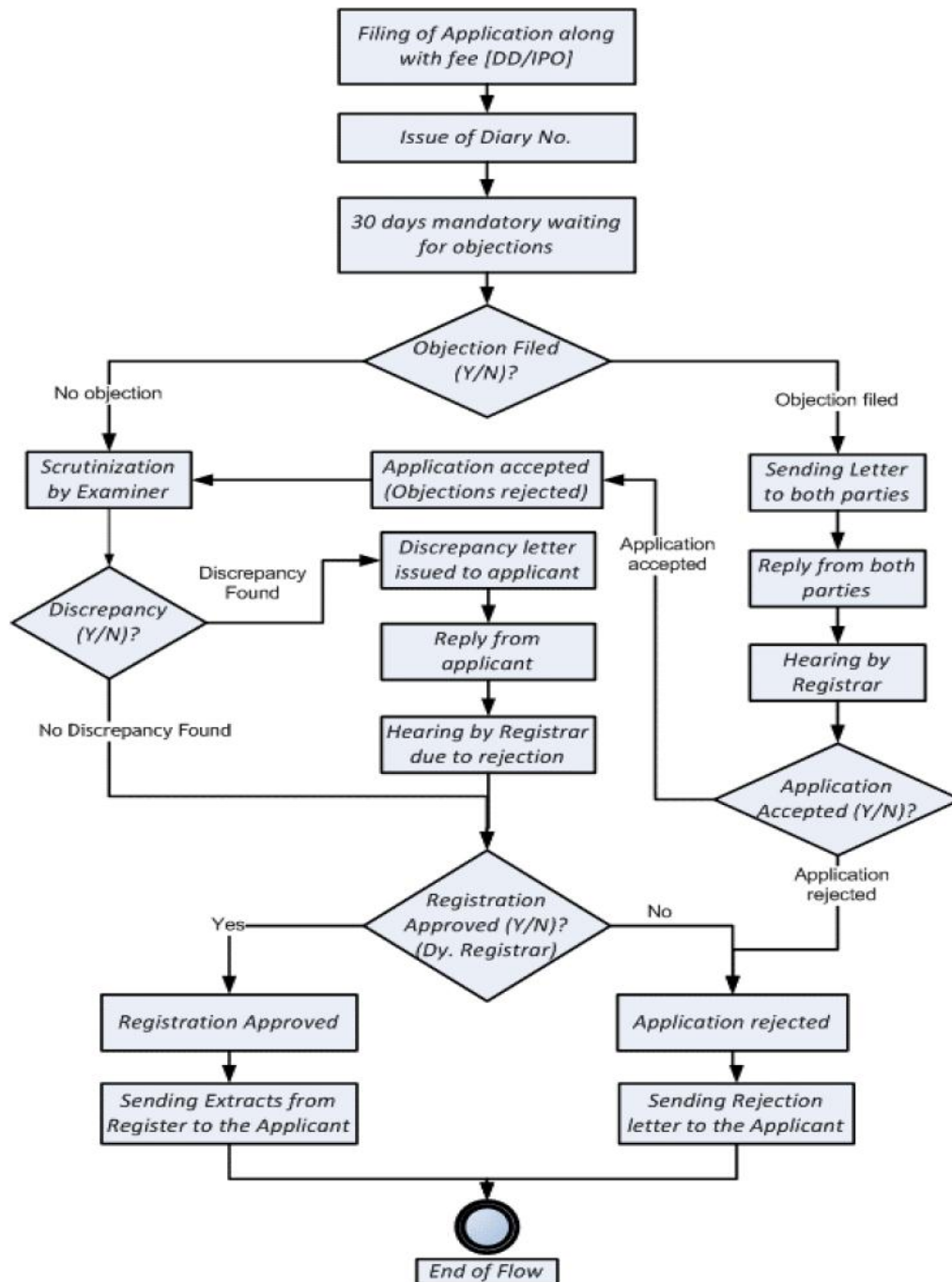
	per work
For a licence to perform an Indian work in public or to communicate the work to the public by Broadcast (Section 31)	Rs. 200/- per work
For an application for a licence to produce and publish a translation of a Literary or Dramatic work in any Language ) (Section 32 & 32-A	Rs. 200/- per work
For an application for registration of copyright in a:	
Literary, Dramatic, Musical or Artistic work	Rs. 50/- per work
Provided that in respect of a Literary or Artistic work which is used or is capable of being used in relation to any goods (Section 45)	Rs. 400/- per work
For an application for change in particulars of copyright entered in the Register of Copyrights in respect of a:-	
Literary, Dramatic, Musical or Artistic work	Rs. 50/- per work
Provided that in respect of a literary or Artistic work which is used or is capable of being used in relation to any goods (Section 45)	Rs. 200/- per work
For an application for registration of Copyright in a Cinematograph Film (Section 45)	Rs. 600/- per work
For an application for registration of change in particulars of copyright entered in the Register of Copyrights in respect of Cinematograph film (Section 45)	Rs. 400/- per work
For an application for registration of copyright in a Sound Recording (Section 45)	Rs. 400/- per work
For an application for registration of changes in particulars of copyright	Rs. 200/-

entered in the Register of Copyrights in respect of Sound Recording (Section 45)	per work
For taking extracts from the indexes (Section 47)	Rs. 20/- per work
For taking extracts from the Register of Copyrights (Section 47).	Rs. 20/- per work
For a certified copy of an extract from the Register of Copyrights of the indexes (Section 47)	Rs. 20/- per work
For a certified copy of any other public document in the custody of the Register of Copyright or the Copyright Board	Rs. 20/- per work
For an application for prevention of importation of infringing copies (Section 53) per place of entry	Rs. 400/- per work

#### **Time taken for registration**

After filing application and receiving diary number the applicant should wait for a mandatory period of 30 days so that no objection is filed in the Copyright office against the claim that particular work is created by the applicant. If such objection is filed it may take another one month time to decide as to whether the work could be registered by the Registrar of Copyrights after giving an opportunity of hearing the matter from both the parties. If no objection is filed the application goes for scrutiny from the examiners. If any discrepancy is found the applicant is given 30 days time to remove the same. Therefore, it may take 2 to 3 month's time for registration of any work in the normal course. The cooperation of the applicant in providing necessary information is the key for speedy disposal the matter. Any person aggrieved by the final decision or order of the Registrar of Copyrights may, within three months from the date of the order or decision, appeal to the Copyright Board.

## Copyright Registration Workflow





## **Copyright Board**

The Copyright Board, a quasi-judicial body, was constituted in September 1958. The jurisdiction of the Copyright Board extends to the whole of India. The meetings of the Board are held in five different zones of the country. This facilitates administration of justice to authors, creators and owners of intellectual property including IP attorney's near their place of location or occupation.

The Copyright Board consists of a Chairman and two or more, but not exceeding fourteen, other members for adjudicating certain kinds of copyright cases. The Chairman of the Board is of the level of a judge of a High Court. The Board has the power to:

- i. hear appeals against the orders of the Registrar of Copyright;
- ii. hear applications for rectification of entries in the Register of Copyrights;
- iii. adjudicate upon disputes on assignment of copyright;
- iv. grant compulsory licences to publish or republish works (in certain circumstances);
- v. grant compulsory licence to produce and publish a translation of a literary or dramatic work in any language after a period of seven years from the first publication of the work;
- vi. hear and decide disputes as to whether a work has been published or about the date of publication or about the term of copyright of a work in another country;
- vii. fix rates of royalties in respect of sound recordings under the cover-version provision; and
- viii. fix the resale share right in original copies of a painting, a sculpture or a drawing and of original manuscripts of a literary or dramatic or musical work.

## **Copyright Enforcement Advisory Council (CEAC)**

The Government has set up on November 6, 1991 a Copyright Enforcement Advisory Council (CEAC) to review the progress of enforcement of Copyright Act periodically and to advise the Government regarding measures for improving the enforcement of the Act.