

Copyright Registration of Photographs

By **Siddhant08** - February 21, 2018



Siddhant Sarangi of School of Law, KIIT discusses the various intricacies in applying for a Copyright Registration of Photographs.

Introduction

For almost the last 200 years there has been a debate whether photography is an art or not, the photographic society of London established in 1853, the members called this technique "too literal to compete with other works of art" however with the sale of the Andreas Gursky's Photograph of the Rhine for a whopping 4.3 million the debate is officially over and hence the need for clearing the air about whose work is a photograph.

Copyright regime in India

Summarising the definition of copyright as under Article 14 of the Indian Copyright Act 1957, a copyright means the exclusive right to do or to authorise the doing of any act in respect to a work or any substantial part. The authority here is given to the owner of the artistic work, therefore it is necessary to understand who the owner of an artistic work is and in this case who is the owner of the copyright of a photograph.

The first owner of the Copyright

The Indian Copyright Act 1957 under Article 2(c)(i) of Copyright Act defines "*artistic work as a painting , a sculpture, a drawing,(including a map, chart or plan) an engraving or a photograph whether or not any such work possesses artistic quality*" The Indian Copyright act, therefore, provides literary protection both the photographer and the person who hires.

Section 17(a) of the Indian Copyright Act talks about who are the first owners of a literary work and provides that, in case of a literary or an artistic work even with the

absence of an agreement done in the course of employment the proprietor of a newspaper, magazine goes to the proprietor of the magazine, newspaper or periodical shall have ownership over the work. It further goes on to clarify that in case of a photograph taken in exchange for valuable consideration at the instance of any person, that person even without the presence of an agreement shall be the first owner of the photograph.

Interpretation of S17(a) leads us to understand that there can be a contract between the employer and the employee about the ownership of the photograph. The ownership shall go to the author if the work is not done by any employer or even not in the course of employment. In the following cases, the ownership of the photograph shall go to the author.

To know more about Copyright registration please visit

Copyright Registration of Photographs: Procedure to follow

The Procedure for filing for copyright starts with,

- The filing of an application and the payment of fees before the copyright office (<http://copyright.gov.in/frmformsDownload.aspx>).
- A diary number is issued and a 30 day waiting period is given for any objection to be raised.
- If no objections raised then the work is scrutinised by the examiner and in case of no discrepancy forwards it to the Deputy Registrar for registration who approves it.
- However if objections are filed then the Registrar send letters to both parties, following a reply and after hearing both the parties by the registrar, he decides, if the application is accepted or not. If accepted it follows the same procedure as before.
- In both cases, however, if discrepancies are found in the application then the discrepancy letter is issued to the applicant and after a reply from the applicant a hearing by the Registrar.
- In case of acceptance of the copyright an acceptance letter is sent and in case of a rejection letter is sent.
- In India, as per section 25 of the Copyright Act, the Photographs are provided copyright protection for a period of 60 years from the date of publication [this just means the date of the photograph].
- (<http://copyright.gov.in/frmWorkflow.aspx>)

How is originality determined in a photograph?

The concept of threshold of originality as a concept in copyright law is used to assess if a particular work can be copyrighted. It distinguishes between works which are sufficiently original to warrant copyright protection or not.

In this context, of a copyright for a photograph, everything from the angle at which the photograph is taken to every minute detail about the placement of an object if differentially placed can warrant a copyright.

Let us take the example of an object placed, which is clicked by a photographer at a perpendicular angle. It is an original work. The same object under the same light conditions but clicked at a 70-degree angle shall also be considered as original work.

Generally, copyright is registered for work where there is a reasonable apprehension that the rights relating to which are very much likely to be infringed. This means that if one takes a photograph of a wonder of the world its very unlikely that he will get a copyright on that.

In the case of Jonathan Mannion Vs Coors Brewing Co 377 F.Supp.2d 444, the company had used a part of the photograph taken by Mannion for a billboard in Los Angeles. The court held that *"(1) rendition, (2) timing, and (3) creation of the subject can influence the copyrightability of a photograph"*

Challenging a copyright.

The originality of the work is the most important concept in copyright law. As discussed above the owner of the work is either the person who has hired the photographer to click and if not hired, then the real owner of the photograph is the person who has clicked. The thing about photographs lies in the concept and that differentiates one work from the other.

The choice of subject matter, even if it has been used by another, is a statement of a vision at a moment and the results of that vision is the originality of the Photograph.

What else can be challenged?

1. Ownership of a photograph.
2. Resale of a photograph

In the Camera House, Bombay Vs State of Maharashtra, AIR 1969 Bom 437 , the Bombay High Court held that *"On behalf of the assesseees, reliance was also placed on the provisions of the Indian Copyright Act 957, for the purpose of showing that it is impossible in law that there could be any sale of a customer's photograph, either to the customer himself or to anybody else. It is contended that, in view of the fact that, under section 17 of the Copyright Act, the copyright in a photograph vests in the customer whose photograph it is, there can be no sale of the photograph to the customer who is already the owner of that photograph under the relevant provisions of the Copyright Act. It is further contended that there could be no sale of the photograph of the customer to anybody else, in view of the fact that the customer, whose photograph it is, is the sole owner of the copyright therein. In view of the conclusion at which I have arrived on the question of severability, it is not necessary for me to consider the argument advanced on behalf of the assesseees in the present case based on the provisions of the Copyright Act."*

The above-mentioned case clears the air about the issues about who the owner of a photograph is and can the person who has clicked can resell the photograph. In the

above-mentioned case, though was about a question on taxation, on income arising out of the sale of a photograph, the Bombay High Court made it clear that the only the owner has the right to sell or resale the photograph, Therefore it can be concluded that the person who hires for the photograph to be clicked owns not only the actual copy but also the negatives and is to be treated as the owner of that intellectual property.

How protected

A Photographer might register a copyright in a photograph but the same is recommended not mandatory. The copyright protection commences as soon as the work is created. As under copyright law, the expression of an idea is copyrightable but not the idea.

Indian Copyright Act 1957 under section 51 protects the infringement of the expression of photographers. Any violation or infringement of the rights of the author is copyright infringement. Also, Indian Courts have held that the publication of a photograph without the permission of the author/owner from another published material is an infringement of the photograph. However when the same photograph is used by another person without any intention of obtaining illegal profits then it won't amount to infringement. Also if the photograph is used for legislative, or academic purpose then it won't amount to copyright infringement of fair use and are the permissible use of photographs without the prior consent of the photographer.

The Copyright Act, 1957 is exhaustive in nature. It provides safeguards not only to traditional paper photographs taken but, also the online photographs though not expressly mentioned. The existing copyright law can competently overcome the challenges posed by latest technology and has a strong legal base for the protection of copyright.

International regime on the protection of photographs and rights of photographers

The Indian Copyright Act is in compliance with most international treaties such as Berne Convention for protection of Literary and Artistic works 1886, the Universal Copyright Convention 1951, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement of 1995. The International Copyright Order has been passed to protect the copyright in member countries of the convention.

- Article 2 of the Berne Convention states that “the expression literary and artistic work shall include every production in the artistic domain, whatever may be its mode or form of its expression”. The Article further includes “photographic works to which are assimilated works expressed by a process analogous to photography;”
- Article 7 of the Berne Convention for the Protection of Literary and Artistic Works provides that it is up to the legislation to provide the term for copyright of the photographs. However, the minimum time that is provided by the convention is 25 years from the date of publication.
- The Universal Copyright Convention is another International document which protects literary and artistic works. This Convention with close to 50 signatories also provides for the protection of photographs. This Convention provides for 10 years of minimum protection for photographs.

Conclusion

As George Bernard Shaw puts it “Imagination is the beginning of creation” This encourages people to create. Copyright is extremely important to authors because it constitutes the ownership of one’s original work. Having ownership means you can protect your work as intellectual property and control who makes money off of it — ideally you and those to whom you assign rights.

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