

# Copyright Protection for Photographers in India

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Photographs are protected under copyright law as artistic work under Section 2 (c) of Copyright Act 1957 in India. Photographs are protected under the law of Copyright as it has been included as an artistic work. Although, the quality is immaterial to qualify the work as an artistic work [so a bad photograph is still

protected under the law]. The essential element to protect the copyright in artistic work particularly a photograph requires that the photograph must be an original work where some degree of skill and effort must have been expended on it.

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 – you don't have to actually have it published in any magazine]. The term of Copyright varies in different Countries. For instance, the duration of copyright protection in US and European Union is 70 years, whereas Berne convention provides minimum duration of copyright protection i.e. 50 years.

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 and agreement. Accordingly, the foreign artistic works are given protection in India.

Ordinarily, the author is the first owner of the copyright in a work created by him. In case of a photograph, the photographer will be the first owner unless there is an agreement to the contrary. So even if you own the camera but your friend takes a photograph, which is stunning, your friend owns the copyright to the image. The rights of the Photographer are the right to reproduce, to make any adaptation of the work, publish his photographs etc.

A Photographer may opt to register the copyright in the photograph. However, for copyright protection, the registration is recommended but not mandatory. Copyright commences as soon as the work is created. Under copyright law the expression of idea is copyrightable but not idea *per se*. [So, if I take a picture of the sunset and you take the picture of the same sunset, I can't stop you, but you use my picture of the sunset on your T-Shirt, I can stop you] Section 51 of the

Copyright Act protects the copyright infringement of Photographers. Any violation of the rights of author/owner amounts to copyright infringement. Also, the Courts in India have held that the publication of a photograph by the photographer without his permission by copying it from another published material is infringement of the copyright in the photograph.

However, a person other than a photographer may use the photographs without any malafide intention of attaining undue profits from it. A person can use the photographs for teaching/research purposes, legislative purposes, judicial proceedings. This falls under principle of fair use and are permissible use of photographs without prior consent of the photographer.

The Copyright Act, 1957 is an exhaustive Act which effectively safeguards the Photographer's rights in India. The law not only protects the traditional/paper photographs taken by the Photographers but online photographs as well 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.

### **Editorial Staff**

Editorial Staff at Selvam and Selvam is a team of Lawyers, Interns and Staff with expertise in Intellectual Property Rights led by Raja Selvam.





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