The copyright is a work of creativity and is an exclusive right in favor or the author of the original work. The rights of copyright are conferred under The Copyright Act, 1957. There are various categories of work which can be registered under the law. The validity of the registration of copyright is 60 years in general from the end of the year in which it is first published. The legal treatment is different for different type of work, the intent of the IPR in copyright is to protect the original work irrespective of its quality or artistic merit.

The copyright is a negative right which prohibits unlawful copying of an original work of literature, dramatics, the computer program including computer databases and tables, artistic work, musical work, cinematography and sound recording. Copyright ensures some minimal right in favour of the author of the original work to protect their creativity from copying or counterfeiting the same, thereby safeguarding and rewarding creativity.

**Is it necessary to register a work to claim copyright?**

No. The copyright comes into existence at the time of its creation in favour of the creator of the work. The registration of the work with the registrar of copyright serves as a prima facie proof about the ownership of the copyright, and the certificate of registration of copyright serves as admissible evidence in the court of law.

The copyright application is filed at the office of the Registrar of Copyrights, located at Plot no. 32, Boudhik Sampada Bhawan, Sector 14, Dwarka, New Delhi- 110075.

**Whether a published work can be registered under copyright?**

Yes. Both published as well as unpublished work can be registered under copyright, and there is no bar in registering an already disclosed or published the work.

**Whether a Computer Programm can be registered under Copyright**

Yes. A computer is considered as a literary work along with computer database and its tables. Hence it can be very well registered under copyright. For registration, the “Source Code” and the “Object Code” need to be supplied for registration of copyright for a computer programme or software.

**Types of Copyright**

### **Literary Work**

The original creation of literature which may be in any form like work of fiction, biography, technical books or paper, dramatics, script, thesis, research work, tables, compilation and computer programmes including computer databases. It can be claimed irrespective of its quality, style or literary merit

**Artistic Work**

As per section 2 of the Copyright Act, the copyright in artwork subsists in an original artistic work comprising of paintings, sculptures, graphics, cartoons, etchings, lithographs, photography, drawings, plans, maps, diagrams, charts, buildings, models of buildings, moulds and casts for sculptures

### Cinematograph Film

A cinematograph is a work of visual recording along with the sound recording accomplished by any process whether analogous or digital including the video films. It includes visual recording in any medium and by any method of storing it. By definition, every recorded work with moving visuals/images will be considered a cinematograph

**Dramatic Work**

The dramatic work is also a kind of literary work which includes any piece for recitation, or an arrangement of performing a play, work of choreographing or dumb show entertainment, a scenic arrangement or the work of acting based on a fixed writing work. but does not include a cinematograph film.

A dramatic work includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include a cinematograph film.

### **Music Work**

A musical work is a distinct copyrightable work in itself and does not include lyrics or any sound. The works of the sound recording are though dependent on music work, but to protect musical work a separate application must be moved with the musical work. The author of sound recording need to take permission from the author of music work

Musical work means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music. A musical work need not be written to enjoy copyright protection.

**Sound Recording**

The songs which contain singers voice with or without music, a recorded speech or an audio, or podcast is the examples of sound recording. This includes any work of recording sound regardless of its medium or storage. In case the sound recording also has music then permission from the author of music work must be obtained

[**Economic Rights vs Moral Rights**](https://www.lawyr.it/index.php/dictionary/1016-economic-v-moral-rights)**=** Intellectual Property Rights once granted or obtained offer dual protection, which consists of the right to economic exploitation of the creation by the right holder and the protection of the creator’s non-pecuniary interests.

**Economic Rights (German: Verwertungsrechte, Polish: autorskie prawa majątkowe, Greek: οικονομικά δικαιώματα) =** As IPR constitute primarily property rights, the term Economic Rights refers to the exclusive right of the right holder to authorise or prohibit the reproduction, distribution, exportation or importation, or other exploitative activities, such as rental and lending, public performance, communication to the public and adaptation in cases of copyrighted work or use and storage in cases of trademarks, of the by IPR protected creation by third parties, which have not previously obtained a license, within the boarders of the states in which the intellectual property right has been granted or obtained.

**Moral Rights (German: Urheberpersönlichkeitsrechte, Polish: autorskie prawa osobiste, Greek: ηθικά δικαιώματα) =** The concept of Moral Rights relies on the connection between a person and their creation, as moral rights constitute the right of the creator to protect the integrity and ownership of their work to maintain the “indestructible creational bond” that exists between their personality and their creation, and as such can only be held by a natural person. The scope of moral rights varies depending on the state’s cultural conceptions of authorship and ownership, the ratio for the protection of IPR and the type of creation for which protection has been grated or obtained. However, it usually includes the right to paternity for inventors, the right to attribution and right to object to false attribution for authors, the right to publish or divulge a work, to object to alterations or destruction of the original work, the right to object to excessive criticism, the right to withdraw a work from circulation, and the right to dictate forms and means of performance for copyrighted work.

Whereas Economic Rights can be freely transferred, this is not the case for Moral Rights, which can be merely waived in some jurisdictions

**Moral rights**

The Berne Convention, in Article 6bis, requires its members to grant authors the following rights: (i) the right to claim authorship of a work (sometimes called the right of paternity or the right of attribution); and (ii) the right to object to any distortion or modification of a work, or other derogatory action in relation to a work, which would be prejudicial to the author’s honor or reputation (sometimes called the right of integrity).

These and other similar rights granted in national laws are generally known as the moral rights of authors. The Berne Convention requires these rights to be independent of authors’ economic rights. Moral rights are only accorded to individual authors and in many national laws they remain with the authors even after the authors have transferred their economic rights. This means that even where, for example, a film producer or publisher owns the economic rights in a work, in many jurisdictions the individual author continues to have moral rights.

**What constitutes copyright infringement?**

Copyright infringement occurs when any of the following occur:

* unauthorised use of the exclusive rights of the owner of a copyright whether in relation to the whole or a substantial part of the copyright work;
* permitting a place to be used for infringing purposes on a profit basis; and
* displaying or exhibiting in public by way of trade or distributing for the purpose of trade or importing infringing copies of a work.

*Vicarious and contributory liability*

**Does secondary liability exist for indirect copyright infringement? What actions incur such liability?**

The terms ‘indirect’, ‘secondary’, ‘vicarious’ and ‘contributory’ infringement are not mentioned in Indian copyright law, although they are sometimes used. The acts referred to would generally amount to infringement under Indian law, as in the case of jurisdictions that have similar wording in their copyright statutes, such as Australia or the United Kingdom.

*Available remedies*

**What remedies are available against a copyright infringer?**

The remedies provided by the Copyright Act, 1957 against infringement of copyright are:

* civil remedies - these provide for injunctions, damages, rendition of accounts, delivery and destruction of infringing copies and damages for conversion;
* criminal remedies - these provide for imprisonment, fines, seizure of infringing copies and delivery of infringing copies to the owner; and
* border enforcement - the Act also provides for prohibition of import and destruction of imported goods that infringe the copyright of a person with the assistance of the customs authorities of India.

*Limitation period*

**Is there a time limit for seeking remedies?**

Yes. The period of limitation for filing a suit for damages for infringement of copyright is three years from the date of such infringement.

*Monetary damages*

**Are monetary damages available for copyright infringement?**

Yes, besides damages the copyright owner can also claim rendition of account of profits.

*Attorneys’ fees and costs*

**Can attorneys’ fees and costs be claimed in an action for copyright infringement?**

Yes. Litigation costs are a standard request in infringement suits, but the decision to award such costs is at the discretion of the court. Costs awarded seldom cover actual legal expenses. However, the Commercial Courts, Commercial Division and Commercial Division Appellate Division of High Courts Act 2015 (Commercial Courts Act), which was enacted recently, had brought forth amendments in the Code of Civil Procedure and specifically provides for payments of costs, lays down scenarios in which costs are to be paid and the method of calculation of costs. Since the Commercial Courts Act was introduced very recently, the effects of these amendments will be seen in the near future.

*Criminal enforcement*

**Are there criminal copyright provisions? What are they?**

Yes. The Copyright Act, 1957 has provided for enforcement of copyright through a series of penal provisions under Chapter 13 of the Act. The following are the principal penal provisions under the Act:

1. Under section 63, where any person knowingly infringes or abets infringement of the copyright in a work and any other right as covered by the Copyright Act, 1957 (broadcast reproduction rights, performers’ rights, moral rights, etc), such person may be punished with imprisonment of a minimum term of six months and a maximum term of three years, and a fine of between 50,000 and 200,000 rupees.
2. Section 65A penalises circumvention of effective technological measures that may be applied to copies of a work with the purpose of protecting any of the rights conferred under the Act (ie, copyright, performance rights). The punishment under this provision is imprisonment that may extend to two years and payment of a fine. Section 65A was inserted by the Copyright (Amendment) Act, 2012.
3. Section 65B makes unauthorised removal or alteration of ‘rights management information’ punishable with imprisonment of up to two years and payment of a fine. The provision makes the unauthorised distribution, broadcast or communication to the public of copies of the work punishable in the same manner if the person is aware that electronic rights management information in the copy has been removed or altered. Section 65B was inserted by the Copyright (Amendment) Act, 2012.
4. Section 63A provides for enhanced penalty on second or subsequent convictions under section 63 (see point (i)).
5. Other provisions in the chapter provide penalties for offences such as using infringing copies of a computer program, making or possessing plates for the purpose of making infringing copies of works, and making false entries in the Register of Copyrights.

*Online infringement*

**Are there any specific liabilities, remedies or defences for online copyright infringement?**

Yes. The 2012 amendments to the Act introduced certain provisions that are specifically relevant to copyright infringement and the internet.

Under the fair use provisions of the Act, section 52(1)(b) provides that transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public does not constitute infringement of copyright. This provision provides safe harbour to internet service providers that may have incidentally stored infringing copies of a work for the purpose of transmission of data.

Section 52(1)(c) further provides that transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration that is not expressly prohibited by the rights holder would not be infringement of copyright, unless the person responsible is aware of infringement or has reasonable grounds for believing that such storage is that of an infringing copy.

Under section 52(1)(c), if the owner of a copyright work, in a written complaint to the person responsible for digitally storing an infringing copy of the work, complains that such transient or incidental storage is an infringement, then the person responsible would have to refrain from facilitating access to the infringing copy of the work for a period of 21 days. If within 21 days, the person responsible does not receive an order from a competent court that directs the person responsible to refrain from providing access, then access may be resumed at the end of that period.

Therefore, if A, the owner of a short story, finds that his or her short story has been published on the website of B, he or she may write a complaint to B declaring that B must refrain from providing the public with access to A’s short story. B would then have to remove A’s short story from visibility or accessibility on his or her website for 21 days, within which time A must persuade a competent court that it should order the complete removal of the infringing version or copy of the work. If the court does not issue such an order within that period of time, then B may resume making the short story available to the public on his or her website. This provision was inserted in the Act by the Copyright (Amendment) Act, 2012 which came into force on 21 June 2012. It is yet to be used in practice.

Apart from the above-mentioned provisions, the entire scheme of the Copyright Act makes it amply clear that all the provisions of the Act must be applied to electronic and digital media in the same manner they are applied to conventional media. The Copyright (Amendment) Act, 2012 has also clarified this in many places. Remedies against copyright infringement on the internet are not dealt with separately under that Act as the provisions sufficiently cover all forms of exploitation of works, including exploitation over the internet, and the remedies for copyright infringement would apply to the internet as they would to any other medium or platform.

*Prevention measures*

**How may copyright infringement be prevented?**

No degree of vigilance can guarantee an ‘infringer-free’ environment, but certain deterrent measures must be adhered to by copyright owners, for instance:

* documentation of instances of use;
* registration of copyright;
* proper notice of copyright;
* monitoring the activities of habitual infringers;
* making independent contractors and employees subject to confidentiality;
* having proper licensing agreements incorporating a proper control mechanism; and
* publicising a successful infringement trial (if resources allow).