

# Understanding IPR and Copy Right Issues: A Critical Study

\*PRADEEP V HEGDE, Assistant Librarian, Institute for Social and Economic Change  
Prof. V.K.R.V. Rao Road, Nagarabhavi, Bangalore.

## Abstract

This paper attempts to study how — in order to protect and handle **Intellectual property issues**, the creators can put in place **copyright**, trademark and patents. Also the possible legal and technical recourse. Copyright refers to the legal right of the owner of intellectual property. In simpler terms, copyright is the right to copy. This means that the original creators of products and anyone they give authorization to are the only ones with the exclusive right to reproduce the work. Copyright is a form of intellectual property protection granted under Indian law to the creators of original works of authorship such as literary works (including computer programs, tables and compilations including computer databases which may be expressed in words, codes, schemes or in any other form, including a machine readable medium), dramatic, musical and artistic works, cinematographic films and sound recordings.

Copyright law protects expressions of ideas rather than the ideas themselves. Under section 13 of the Copyright Act 1957, copyright protection is conferred on literary works, dramatic works, musical works, artistic works, cinematograph films and sound recording. For example, books, computer programs are protected under the Act as literary works. Copyrights, together with patents, trademarks and industrial property rights, are part of a group of rights called "**intellectual property rights**." While the industrial property rights system is aimed at the development of the industrial economy, copyrights have as its aim the development of culture and the protection of copyright works such as music, paintings, novels, films and computer programs. The Copyright Law defines a copyright work as a "production in which thoughts or sentiments are expressed in a creative way and which falls within the literary, scientific, artistic or musical domain" (Copyright Law Article). Copyright, in a word, is a right that allows the copyright owner to permit (license) or prohibit the use of a copyright work to a person who wishes to use it. Therefore, aside from exceptions stipulated in the Copyright Law such as "reproduction for private use," it is necessary to obtain a license from the copyright owner when using copyright works. Besides copyrights, the Copyright Law protects the rights of performers (singers and musicians), record producers (record labels and others), broadcasters and cable broadcasters, whose role is to disseminate copyright works to the general public, with rights called "neighboring rights." Public recognition of copyrights and the extent of copyright protection afforded are said to be barometers of a country's cultural development. Respecting the important role that copyrights play in society, and to pay copyright owners a fair remuneration when using their works, will in turn lead to the creation of new copyright works and the development of culture.

*Key words: Copyright Law, patents, trademarks, Intellectual property rights, industrial property rights*

## Introduction

The word copyright is a mixture of two words – ‘copy’ and ‘right’. To be more precise copyright means ‘right to copy’, wherein only the creator or his authorised person has a right to reproduce a work. In simple words, a legal right which is possessed by the owner of Intellectual property is a copyright. Copyright works are in essence the expression of the author's personality as a whole, and that how a copyright work is used is a matter not just of economics, but also of the author's morality. Therefore, the Copyright Law stipulates three rights in the category of moral rights of the author.

Moral Rights ( Rights of authors, composers and other creators )
Right of making the work public
Right of determining the indication of the author's name
Right of preserving the integrity
Author's honor / popularity

### ***Right of making the work public***

The right to determine whether a copyright work is made public or not, and if it is to be made public, the manner in which it is made public.

### ***Right of determining the indication of the author's name***

The right to determine whether the name of the author is indicated with the copyright work or not, and if it is to be indicated, whether it is the author's true name or a pseudonym. For instance, one music CD could include the rights of a lyricist and a composer (copyrights), as well as the rights of a record label and a singer or a musician (neighboring rights). So to upload music from a commercially available CD to an Internet website, it is necessary to obtain a license from the copyright owner (JASRAC if the work is administered by JASRAC) as well as from the neighboring rights owners.

### ***Right of preserving the integrity***

The right to disallow the modification, distortion or mutilation of the author's copyright work.

In the realm of music, a common example of where the author's "moral rights" come into play is in "parody songs," because changing the lyrics to a song without permission from the author is in violation of the "right of preserving the integrity" explained above. "Moral rights" are rights that only the author is granted (they are personal in nature), and therefore JASRAC cannot intervene on matters of moral rights.

Aside from the "right of making the work public," the "right of determining the indication of the author's name," and the "right of preserving the integrity," which are the three rights stipulated as moral rights, the Copyright Law also considers the use of copyright works in a way that damages the author's honor or popularity as an act of infringement of the author's moral rights.

### Objective:

This paper intends to explore and analyze **Intellectual property rights (IPR)** refers to the **legal** rights given to the inventor or creator to protect their invention or creation for a period of time. Also how they protect **Infringement**, misappropriation, and enforcement as a result encourage the creation of a wide range of intellectual assets

### Concept of copyright : the nuances

In order to better understand the concept of copyright the elaboration must be taken into consideration. With the help of a significant mental or intellectual ability, when a person creates a unique product that product is viewed to be original. The unique creations including websites, computer software, musical lyrics, art, literature, poetry, graphic designs, musical compositions, novels, original architectural design, films, etc. Further, a copyright is a safeguard which protects an original work from getting duplicated. When any work is exclusively created by the independent intellect of a creator without any duplication is called Original Work of Authorship (OWA). Anyone who is the original creator of any work he automatically has a right over it and also can prevent anyone else to use it or copy it or replicate it for his own use.



The creator may voluntarily register for copyright if the creator wants to be secured end and have an upper hand in the legal system. By registering this the creator can file a suit against a person replicating his work.

Concepts such as discoveries, slogans, brand names, logos, concepts, domain name, theories, and tiles are all excluded from the purview of copyright and falls under the category of trademarks and patents. For any speech, idea, discovery etc. to a copyright needs to be written down in a physical form. This concept helps the creators

and the artist to work fearlessly and create original products, which are not subjected to replication by any other person. The roots of copyright law in India can be traced back to the East India Company's regime in 1847. During that time, the work was not automatic and the registration with the Home office was compulsory in order to enforce the copyright. The term of copyright extended to the lifetime of the author plus seven-years of post-mortem. In 1914 a new copyright legislation was passed in India with a few modifications which are as follows:

Introduction of criminal sanctions in the case of infringement of copyright. It broadened the term copyright and modified it as a 'sole right' wherein the author has the right to reproduce, change, produce or publish a translation of work. The legislation of 1914 continued till the coming of a new legislation in 1957 i.e. post independence era.

In 1957 a new Copyright law was enacted. Before the Act of 1957, the Act of 1914 was prevalent, which was an extension of the British Copyright Act, 1911. Further in May, 2012 the Parliament of India unanimously passed a bill named Copyright Amendment Bill, 2012. This Bill aimed to bring Indian copyright laws at international level and in compliance with the World Intellectual Property Organisation treaties such as the WIPO Copyright Treaty (WCT) and the WIPO Performance and Programme Treaty (WPPT). Further, the main highlights of the 2012 Amendment bill are:

- Amendments in the right to artistic work such as cinematograph films and sound recordings.
- Amendments in accordance with WCT and WPPT.
- Amendments in the mode of grant of license and assignments.
- Protection against internet piracy.
- Intellectual Property rights agreement

### **Copyright in Literary work**

Literary works are protected by copyright as they are present in physical form. Literary works include books, magazines, newspapers, journals, anthologies, novels, computer software and programmes, letters, e-mails, poetry, lyrics of songs, tables and compilations. Literary works are not only confined to the above mentioned things but also abstracts, encyclopedia entries, dictionary meanings and individual poems are protected within the shield of copyright laws.

### **Duration of Copyright**

In case of a copyright pertaining to literary work both published and unpublished the creator/ author owns the copyright which extends to his lifetime plus 60 years after his death.

## Ownership

The author or the creator of a work is generally regarded as an owner of a work in case of literary works.

Dramatics includes within itself dance, mime covering screenplays, ballets, operas etc. Copyright in the field of dramatic safeguards the creators, composers, choreographers, dramatists, poets, author and other from replication of their work.

The different types of published and unpublished work may be submitted for registration including pantomimes, treatments, plays, choreography and scripts prepared for radio, cinema and television. They may be with music or without music.

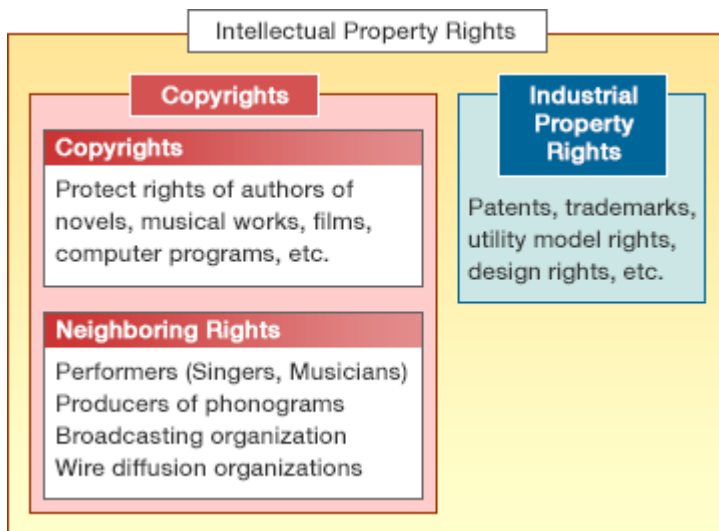
Usually, dramatic scripts are intended to be performed including spoken text, plot and direction of action etc. It however needs to be understood that all dramatic work cannot get a copyright

## Copyright Issues

Copyrights can be divided into "copyrights that are economic rights" which protect the economic value of a copyright work, and "moral rights" which protect the moral interests of the author. Moral rights are rights which allow the author of a copyright work to prevent his or her work from being altered or made public without the author's permission, and these rights are inalienable and particular to the author. Therefore, the rights that JASRAC administers are only the "economic rights" that have been entrusted to JASRAC by the authors, composers and music publishers.

"Copyrights that are economic rights" are divided into rights corresponding to the various usage forms of copyright works (rights category), and in terms of the musical copyright works which JASRAC administers, the rights illustrated below are involved.

There are cases in newer types of media, where more than one rights category is involved compositely. For instance, in music distribution over the Internet, the "right of reproduction" is exercised for the uploading of music to a server, and the "right of public transmission," which includes the right of making a work transmittable, is exercised for the acts of uploading and transmission associated with transmitting a work upon request from an end user. Academic librarians have complex barriers and problems in managing the copyright process of the labyrinth. Some of the issues are evident, but others, especially in a digital environment, are much more subtle. Issues that cause confusion and concern about copyright law's applicability include e-reserves, registration, delivery, and equal use of information. The role of academic libraries is to offer access to information to their constituents anywhere and at any time



Digital library creators and their materials, i.e., digital-born, digital turned, and acquired digital, should preserve copyright issues in the production and management of digital libraries in a legal framework to address copyright issues and protect the rights of content creators and owners. It would be a good idea to consider technical protection measures such as e-watermarking, digital signatures, authentication, etc. since DL are in the process of creating digitally born content to regulate infringement in the digital environment. In the current era of open access (OA) where information is made freely available to users, content producers should be worried about the infringement of copyrights. In addition to uploading digitized content on websites, libraries are digitizing to protect old, fragile documents and posterity. The DL is under contract or has been given licenses to use this material for digital content. Based on the license terms and conditions, the DL must sensitize and notify users, so that there is no total copyright infringement and a strong obligation to comply with the contract terms and conditions. Many owners of digital media copyright are found to rely on technological mechanisms to regulate access to digital files and recycle works. Since technology can provide protection systems, it also has the potential to create systems that can bypass this kind of protection [74]. Some of the rights management functions of computer systems could include tracking, identifying, and authenticating users, providing the copyright status of each digital object and limiting its use or charges, handling user transactions by only allowing access to not so many copies, or charging for copies, or transmitting requests to publishers [75].

Owners develop new work and get copyright protection to ensure that they can get profit from their efforts. Owner has sole authority either to sell his work or to license it to the third party who can make use of his work but if someone duplicates or reproduces the work of copyright holder without the latter's permission, then this can lead to copyright infringement, in which owner can take legal action against the infringer.

#### **Exception to Infringement under Sec.52 of The Copyright Act, 1957**

- Private or personal use, including research
- Criticism or review, whether of that work or any other work

- The reporting of current events and current affairs, including the reporting of a lecture delivered in public.

### **Remedies for Infringement of Copyright**

1. **Civil remedy:** According to Section 55 of The Copyright Act, 1957, where copyright in any work has been infringed upon, the owner of the copyright shall be entitled to all such remedies by way of injunction, damages, & accounts.
2. **Criminal remedy:** According to Section 63 of The Copyright Act, 1957, the copyright holder can take criminal proceedings against the infringer, in which there is a provision of at least six-month imprisonment, which may be extended to 3 years and with a fine of Rs. 50,000, which may extend to 2 lakhs.

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

### **Power of police to seize infringing copies:**

Any police officer, not below the rank of a sub-inspector, may, if he is satisfied that an offence under section 63 in respect of the infringement of copyright in any work has been committed, can seize copies without a warrant to produce before Magistrate.

### **Conclusion**

The purpose of copyright is to protect the rights of the owners of original work and provide economic benefits to them for their creativity and diligence. Although the registration of work is not necessary, but it is highly recommended to register as soon as one's idea is transforming into writings as it will be strong proof to be presented before the court in case of infringement. Copyright laws are a shield to protect the creator or author of original works, which are creative at the same time intellectual expressions from others using and earning a profit from their work, without the owner's permission. The idea behind copyright is that the author or creator owns the rights to his work and has the complete discretion over how others use his or her work or creation.

Copyright is the shield given by law in the hands of the original owner or author of any intellectual property to be protected against the whole world. Therefore, by giving this shield lawmakers encourage creativity and protect the original work of the creator.

## References

1. Abram, S. & Luther, J. (1 May 2004). "Born with the Chip: the next generation will profoundly impact both library service and the culture within the profession". *Library Journal*. Accessed: 26 March 2010
2. Bell, S. (15 May 2005). "Backtalk: don't surrender library values". *Library Journal*. Archived from the original on 12 June 2012. Retrieved 20 April 2010.
3. Novotny, E. (2002). "Reference service statistics and assessment. SPEC kit". Pennsylvania State University. Accessed: 16 March 2010
4. Vrana, R., and Barbaric, A. (2007). "Improving visibility of public libraries in the local community: a study of five public libraries in Zagreb, Croatia". *New Library World*; 108 (9/10), pp. 435–44.
5. CILIP (2010). "An introduction to information literacy". CILIP. London. Archived from the original on 16 June 2011. Retrieved 13 April 2010.
6. Kenney, B. (15 December 2004). "Googlizers vs. Resistors: library leaders debate our relationship with search engines". *Library Journal*. Archived from the original on 8 June 2005. Retrieved 26 March 2010.
7. Hood, D. & Henderson, K. (2005). "Branding in the United Kingdom Public Library Service". *New Library World*; 106 (1208/1209), pp. 16–28
8. "SCREW YOU, FEDS! Dozen or more US libraries line up to run Tor exit nodes". *Theregister.co.uk*. Retrieved 21 September 2015.
9. <https://libraryfreedomproject.org/libraries-tor-freedom-and-resistance/> Library Freedom Project at Kilton Library
10. <https://journals.ala.org/rusq/article/view/5704/7092> The Tor Browser and Intellectual Freedom in the Digital Age
11. "International Federation of Library Associations and Institutions (IFLA)". ifla.org. 2012. Retrieved 3 March 2012.
12. "Welcome to Indian Library Association". *Ilaindia.net*. Retrieved 9 September 2012.
13. "Welcome to Indian Association of Special Libraries and Information Centers". *Iaslic1955.org.in*. 3 September 1955.
14. "Bengal Library Association". *Blacal.org*. Retrieved 9 September 2012.
15. "Pakistan Library Association". *Pla.org.pk*. Retrieved 21 June 2013.
16. "Pakistan Librarians Welfare Organization". *Librarianswelfare.org*. Retrieved 21 June 2013.
17. Rowlands, Ian; Nicholas, David; Williams, Peter; Huntington, Paul; Fieldhouse, Maggie; Gunter, Barrie; Withey, Richard; Jamali, Hamid R.; Dobrowolski, Tom; Tenopir, Carol (2008). "The Google generation: the information behaviour of the researcher of the future". *ASLIB Proceedings*. 60 (4): 290–310. doi:10.1108/00012530810887953.
18. Miller, Ellen G. (2009). "Hard Times = A New Brand of Advocacy". *Georgia Library Quarterly*. 46 (1).



19. Isabelle-Constance von Opalinski: Schüsse auf die Zivilisation. In: Frankfurter Allgemeine Zeitung,, (German), 20 August 2014.
20. Peter Stone: Monuments Men: protecting cultural heritage in war zones. In: Apollo – The International Art Magazine. 2 Februar 2015.
21. Corine Wegener, Marjan Otter: Cultural Property at War: Protecting Heritage during Armed Conflict. In: The Getty Conservation Institute, Newsletter. 23.1, Spring 2008.
22. Eden Stiffman: Cultural Preservation in Disasters, War Zones. Presents Big Challenges. In: The Chronicle of Philanthropy. 11 May 2015.
23. Barnard, T.D.F. (ed.) (1967). Library Buildings: design and fulfilment; papers read at the Week-end Conference of the London and Home Counties Branch of the Library Association, held at Hastings, 21–23 April 1967. London: Library Association (London and Home Counties Branch)
24. Terry Belanger. Lunacy & the Arrangement of Books, New Castle, Del.: Oak Knoll Books, 1983; 3rd ptg 2003, ISBN 978-1-58456-099-9
25. Bieri, Susanne & Fuchs, Walther (2001). Bibliotheken bauen: Tradition und Vision = Building for Books: traditions and visions. Basel: Birkhäuser ISBN 3-7643-6429-7
26. Ellsworth, Ralph E. (1973). Academic Library Buildings: a guide to architectural issues and solutions. 530 pp. Boulder: Associated University Press
27. Fraley, Ruth A. & Anderson, Carol Lee (1985). Library Space Planning: how to assess, allocate, and reorganize collections, resources, and physical facilities. New York: Neal-Schuman Publishers ISBN 0-918212-44-8
28. Herrera-Viedma, E.; Lopez-Gijon, J. (2013). "Libraries' Social Role in the Information Age". Science. 339 (6126): 1382. Bibcode:2013Sci...339.1382H. doi:10.1126/science.339.6126.1382-a. PMID 23520092.
29. Irwin, Raymond (1947). The National Library Service [of the United Kingdom]. London: Grafton & Co. x, 96 p.
30. Lewanski, Richard C. (1967). Library Directories [and] Library Science Dictionaries, in Bibliography and Reference Series, no. 4. 1967 ed. Santa Barbara, Calif.: Clio Press. N.B.: Publisher also named as the "American Bibliographical Center".
31. Robert K. Logan with Marshall McLuhan. The Future of the Library: From Electric Media to Digital Media. New York: Peter Lang Publishing.
32. Mason, Ellsworth (1980). Mason on Library Buildings. Metuchen, NJ: Scarecrow Press ISBN 0-8108-1291-6
33. Monypenny, Phillip, and Guy Garrison (1966). The Library Functions of the States [i.e. the US]: Commentary on the Survey of Library Functions of the States, [under the auspices of the] Survey and Standard Committee [of the] American Association of State Libraries. Chicago: American Library Association. xiii, 178 p.

34. Murray, Stuart A.P. (2009). *The Library an Illustrated History*. New York: Skyhorse Publishing. ISBN 978-0-8389-0991-1.
35. Orr, J.M. (1975). *Designing Library Buildings for Activity*; 2nd ed. London: Andre Deutsch ISBN 0-233-96622-6
36. Thompson, Godfrey (1973). *Planning and Design of Library Buildings*. London: Architectural Press ISBN 0-85139-526-0
37. Lavallee, Andrew (July 20, 2007). "Discord Over Dewey: A New Library in Arizona Fans a Heated Debate Over What Some Call the 'Googlization' of Libraries". *Wall Street Journal*. Retrieved May 25, 2013. Some 95% of U.S. public libraries use Dewey, and nearly all of the others, the OCLC says, use a closely related Library of Congress system.
38. Andy Sturdevant. "Cracking the spine on Hennepin County Library's many hidden charms". *MinnPost*, 02/05/14.
39. Hickey, Doralyn J. (1969). "Reviewed work: The Use of the Library of Congress Classification: Proceedings of the Institute on the Use of the Library of Congress Classification Sponsored by the American Library Association, Resources and Technical Services Division, Cataloging and Classification Section, New York City, July 7-9, 1966, Richard H. Schimmelfeng, C. Donald Cook". *The Library Quarterly: Information, Community, Policy*. 39 (3): 294–296. doi:10.1086/619784. JSTOR 4306016.
40. Taylor, A. G., & Joudrey, D.N. (2009). *The organization of information*. 3rd ed. Englewood: Libraries Unlimited.
41. Chan, L. M.(2007). *Cataloging and classification: An introduction*. 3rd ed. Scarecrow Press.
42. National Library of Canada. "Class FC: a classification for Canadian history" (PDF). PDF publication. National Library of Canada. Retrieved May 21, 2017.
43. Rutherford, D. "Canadian History Call Numbers". *Queens University Library*. Retrieved May 21, 2017.