

COPYRIGHT 101

A Handbook On Copyright For Content Creators And Owners

#YourIPYourFuture

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FOREWORD

It gives me immense pleasure to recognize the excellent handbook titled "Copyright 101 - A Handbook on Copyright For Content Creators and Owners" authored by Ms Anushree Rauta, Founder, Iprmentlaw, Ms Romika Chawla, Contributor and assisted by: Lokesh Vyas, Contributor, a collaborative effort of and Iprmentlaw, Creative First and FICCI. This hand book provides a bird's eye view of o the basics of copyright law such as economic and moral rights, ownership, copyright registration, royalties under the compulsory and statutory licensing regimes, copyright infringement and legal remedies and copyright societies including these Frequently Asked Questions (FAQs) to help content creators and right owners understand the basics while creating content and monetizing copyright protected works and distributing such works.

It is very imperative to spread the awareness of the Copyright Act, 1957 and its amendment in 2012 and also the Copyright Rules, 2013 read along with the amendments brought to the rules in the years 2016 and 2021 respectively in India and elsewhere, by highlighting their benefits to content creators and right owners. I believe that this work will definitely spread the positive effects of the Copyright Laws in India such as copyright protection of authors' rights and performers right in the digital environment as an essential component in fostering human creativity and innovation.

I appreciate and admire the efforts made by Ms Anushree Rauta and other contributors in bringing out this excellent handbook on the Copyright laws which may be useful to every person in the society to spread its positive effect in India.

I wish the Book and the authors a great future.

G. R. Raghavender
23/4/2021
(G. R. Raghavender)

तीव्र एवं गुणवत्ता से परिपूर्ण न्याय प्रदान करने वाली कुशल विधिक एवं न्यायिक प्रणाली
कानून के शासन में लोगों का विश्वास सुदृढ़ करती है।

ABOUT IPRMENTLAW

IPRMENTLAW is a knowledge sharing initiative started by Anushree Rauta in 2018 on the less traversed field of media and entertainment laws. The blog is one of the leading entertainment blogs in India and covers latest updates, policy changes, judicial pronouncements in relation to the media and entertainment industry.

To contribute to our blog or for further information please contact

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ABOUT CREATIVE FIRST

Creative First is a forum to highlight the vital role played by the media and entertainment industry in India to foster creativity, innovation and culture, which in turn stimulates investment, jobs and economic growth. Creative First provides quality commentary, research and additional resources on the value of copyright and the promotion and protection of the creative industries.

To contribute to our blog, or for more information, please email

Ms. Lohita Sujith - info@creativefirst.film or visit www.creativefirst.film

ABOUT FICCI

Established in 1927, FICCI is the largest and oldest apex business organisation in India. FICCI is the voice of India's business and industry. From influencing policy to encouraging debate, engaging with policy makers and civil society, FICCI articulates the views and concerns of industry. It serves its members from the Indian private and public corporate sectors and multinational companies, drawing its strength from diverse regional chambers of commerce and industry across states, reaching out to over 2,50,000 companies. FICCI provides a platform for networking and consensus building within and across sectors and is the first port of call for Indian industry, policy makers and the international business community.

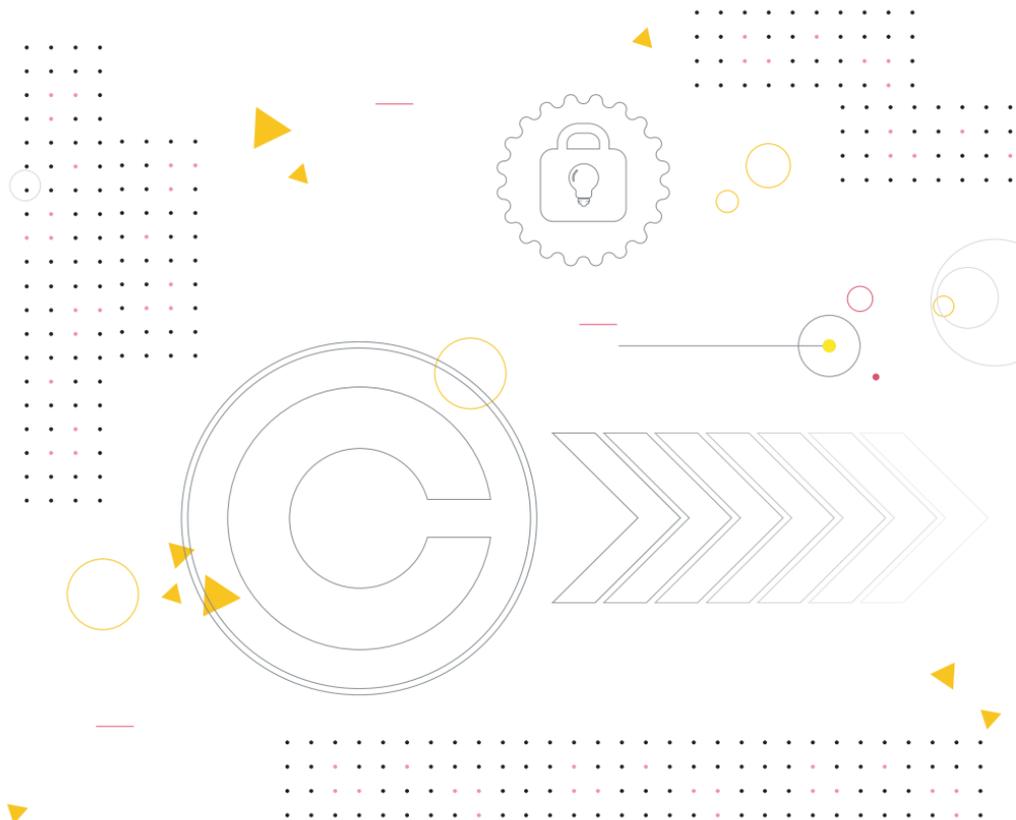
For more information visit www.ficci.com

ABOUT AUTHORS

Anushree Rauta is the founder of IPRMENTLAW and also heads the media and entertainment practice at ANM Global, a multi service law firm in India. A 2010 ILS Law College graduate, Anushree is a familiar name in the media and entertainment sector and considered to be the go to person for several top media and entertainment companies.

Romika Chawla is a 2011 Government Law College, Mumbai graduate and an independent IP, media and entertainment law practitioner.

We would like to thank Lokesh Vyas, final year law student at Nirma University for his assistance in completing this handbook



Introduction

Copyright in India is protected under The Copyright Act, 1957, supported by The Copyright Rules, 2013 read along with the amendments brought to the rules in the years 2016 and 2021 respectively. The Copyright Act, 1957 has undergone many amendments since its enactment, the most recent and substantial one being in the year 2012, that amongst others, seek to bring the said Act in conformity with India's commitment under World Intellectual Property Organization's WIPO Copyright Treaty, 1996 ("WCT") and WIPO Performances and Phonograms Treaty, 1996 ("WPPT"). In July 2018, India accepted the WCT and WPPT which are also known as the 'WIPO Internet Treaties' because of their focus on the protection of rights in a digital environment. The WCT presents a framework for the protection of authors' rights in the digital environment and also makes the protection of computer programs and databases compulsory. The WPPT is related to the rights of performers and seek to confer rights on actors, musicians, singers and producers of soundtracks akin to the rights conferred on the authors of other copyright-protected work.

India is a member of Berne Convention and Universal Copyright Convention and the Government of India in the year 1999 passed The International Copyright Order, 1999 which provides for any work which is first published in any country that is a member of any of the said conventions to be accorded the same treatment as any work which is first published in India.

Further, since India follows a common law legal system, judicial precedents form an integral part of interpretation and continue to contribute to the sources of the copyright law in India.

Given the complexity of copyright laws in India, content creators are often posed with queries on the basics of copyright. This handbook endeavors to address some of these frequently asked questions to help content creators understand the basics while creating content and monetizing and distributing such works.

What is copyright?



Copyright is a collection of rights which enable the owner of copyright to do or authorize the doing of acts such as reproduction, issue copies, communication of the work to the public, translation, adaptation, etc., depending on the nature of work. There are different sets of rights for owners of different works.

For e.g.

- ❖ Owner of a cinematograph film would have rights to distribute the film and make it available to the public such as by way of communication in the theatres, television, OTT, etc.
- ❖ Owner of a sound recording would have the right to make other sound recordings embodying it, communicate it to the public such as by way of digital streaming, DVD, public performance, etc.
- ❖ Owner of a literary work such as a book would have the right to reproduce the book, make copies of it, give adaptation rights of the book to make it into a film, etc.

There are several music industry practice terminologies which are not defined in the Copyright Act, such as:

- ❖ ***“Performing Rights”*** which refers to the right to perform the work in public, communicate the work by different modes and mediums;
- ❖ ***“Mechanical rights”*** which refers to the right to make any record in respect of the work/ reproduce the record in different formats.
- ❖ ***“Public Performance Rights”*** which refers to the playing of music (sound recordings) by any premises/establishments where the communication of these sound recordings is to the public (multiple individuals) and not for personal consumption.

- ❖ **"Synchronization Rights"** which refers to synchronizing an existing song (audio/ audio-visual) with another audio/ audio-visual work.
- ❖ **"Publishing Rights"** which refers to ownership of underlying works i.e. lyrics and musical composition.



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What are the classes of works for which copyright protection is available in India?

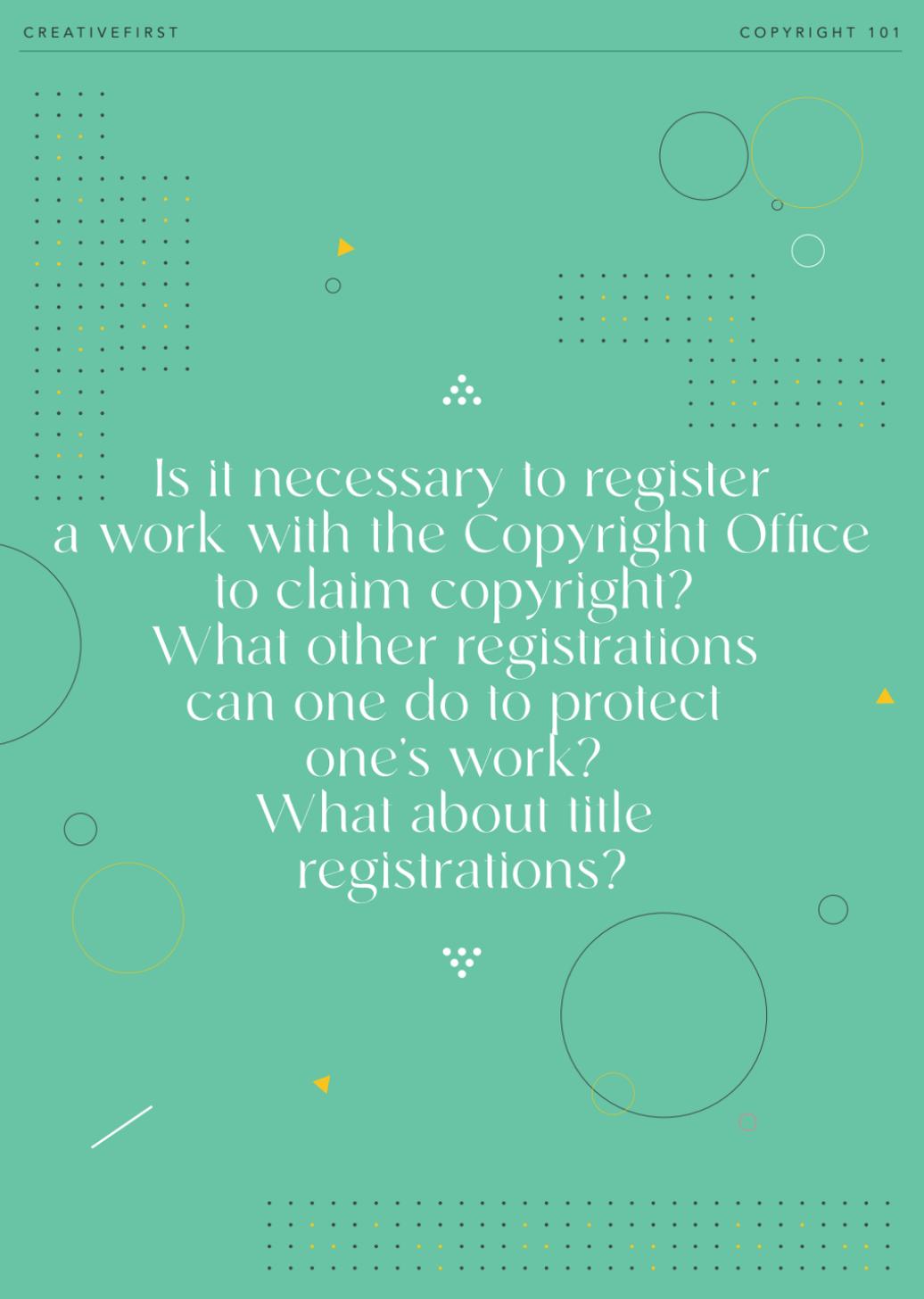
Copyright subsists throughout India in the following classes of works:

Works	Examples
Original literary, dramatic, musical and artistic works;	<ul style="list-style-type: none">❖ Literary works- Script, Book, Lyrics❖ Dramatic work- Choreography, stage plays❖ Musical work- Music composition, background music❖ Artistic Work- Photographs, drawings (e.g.. For animation projects)
Cinematograph Films	Feature films, web series, television serials, audio-visual advertisements
Sound Recordings	Songs (with or without lyrics) without visual

The background is a solid light blue color. It is decorated with various abstract geometric elements: several grids of small dots in white, yellow, and grey; several circles of different sizes and colors (white, yellow, grey, pink); several triangles (yellow and grey); and a few thin white lines. The central text is in a large, white, serif font.

Who is an author of work?

Works	Author
Literary or dramatic work	The person who creates/writes the work
Musical work	Composer
Artistic work other than photograph	Artist
Photograph	Person taking the photograph
Cinematograph film and sound recording	Producer
literary, dramatic, musical or artistic work which is computer-generated	the person who causes the work to be created



Is it necessary to register
a work with the Copyright Office
to claim copyright?
What other registrations
can one do to protect
one's work?
What about title
registrations?

A. Copyright Registration:

No. Registration of copyright is not mandatory. Copyright comes into existence as soon as a work is created and no formality is required for acquiring copyright, which is in line with India's commitment under various International conventions and treaties. However, certificate of registration of copyright and the entries made therein serve as *prima facie* evidence in a court of law with reference to disputes relating to ownership of copyright. For e.g. registration of copyright creates a public record of ownership, creates evidence of origination of the work and often prevents the misappropriation of the work by other persons who are not actual authors etc.

[See more details on the procedure for registration with the Copyright Office [here](#)]

Therefore for additional security, you may choose to get your work registered with the Copyright Office. However, in certain classes of work such as literary, dramatic, musical and artistic works, the first and foremost criterion is originality, meaning that your work must originate from you and be created independently without any copying from other works. Registration of work is secondary for entitlement of copyright and does not affect the right of copyright holders.

B. Script registrations:

If you are a screen writer, you could register your story/screenplay/script with the Screenwriters Association of India.

[See more details [here](#)]

C. Title Registrations:

Copyright does not ordinarily protect film titles. Film or series titles are protectable under trademark law. In case of single film titles, it must be proven that such a title has acquired a wide reputation among the public and the industry and has acquired a secondary meaning.

You can apply for trademark registration for your project title. If you have any specific logo, you can also procure trademark registration for the same. (See details on forms and fees [here](#).)

It would be advisable to engage a trademark attorney for filing your trademark and keeping a track on the various stages until the trademark is registered.

You can also get your title registered with film trade associations such as:

- ❖ *Producers Guild of India*
- ❖ *Indian Motion Picture Producers Association*
- ❖ *The Indian Film and Television Producers Council*
- ❖ *Western India Film Producers Association*

The background is a solid light pink color. It is decorated with various geometric elements: several grids of small dots in black and yellow, some of which are partially cut off by the edges; several circles of different sizes and colors (black outline, yellow outline, white outline); and several small yellow triangles pointing in different directions. A thin white diagonal line is located in the bottom left corner.

Does authorship give immediate ownership?

An author or creator of a work may not always be an owner of the copyright. Ownership of copyright can be in two forms:

A. First ownership of copyright

Ordinarily, an author is the first owner of copyright in the work, except in certain situations such as :

- ❖ In case of a cinematograph film made for valuable consideration at the instance of any person, such person shall be the first owner of the copyright therein, provided that no contrary intention is captured in the agreement between such persons;
For instance, when a producer commissions a writer to write the script for a cinematograph film and pays consideration to such writer, the producer becomes the first owner of copyright in the works developed by the writer, unless the agreement between the producer and the writer states otherwise, i.e., either the writer retains the ownership of copyright expressly under the agreement or merely licenses certain rights to the producer without transferring the ownership.
- ❖ In the case of a work made in the course of the author's employment under a contract of service or apprenticeship, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;
For instance, if an employee creates an artwork in the course of his/her employment for a film, the employer will be the owner of such artwork, unless there is any exception made in the agreement between employer and employee.

B. Assignment of copyright

Assignment means transfer of ownership in an existing work or future work, although transfer of ownership in future work will take place only when such works come into existence.

The author or owner of copyright in a work may assign the copyright in his work, wholly or partially, for a limited term or entire term of copyright, and for a certain or all territories of the world. Ownership is therefore transferable.

For example: In a film, there are different set of rights such as music rights, satellite rights, digital rights, theatrical rights, remake rights, etc. A producer may assign the music rights to a music label for a term of 60 years for territory of whole world or may choose to assign such rights only for limited term and limited territory.

However, the author's right to receive royalty is not assignable or transferable save and except in favour of his legal heirs or a copyright society.

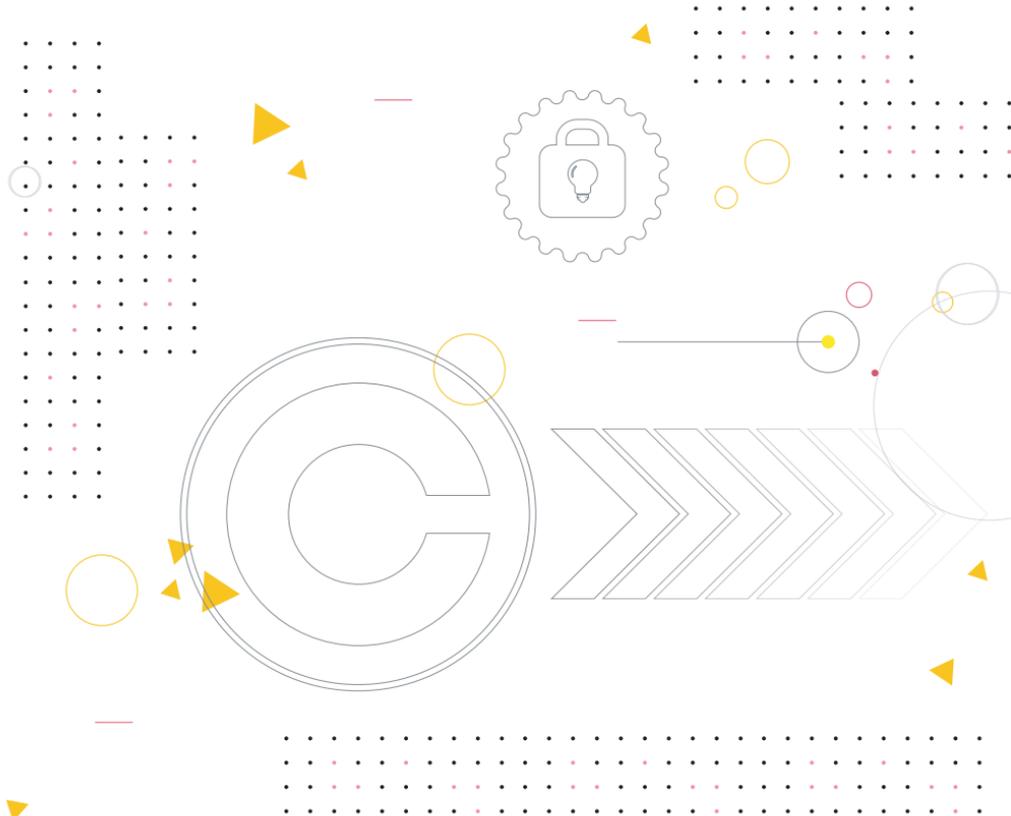
For example: when a producer engages a music composer for composing music composition for a song, the composer can assign the copyright in the composition. However, the composer cannot assign his right to receive royalties to the producer. The composer can however assign such royalty rights to a copyright society such as IPRS to collect royalties on his behalf.



What is meant by work made for hire?

Under the Indian Copyright Act 'work made for hire' is not defined, however, the concept of the phrase is imported in the wordings of Section 17 of the Copyright Act, 1957 which relates to the first ownership rights, and similar to Section 101 of the Copyright Act (title 17 of the U.S. Code) could be in two forms:

- (i) Works created under a contract of employment or apprenticeship (Contract of Service);
- (ii) Specially commissioned works (Contract for Service).



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What is the difference between assignment and license?

An assignment transfers ownership in the work. Whereas a license gives only a limited permission for usage. If one grants an assignment of copyright in a work, the assignee becomes the owner of the work and the copyright ownership no longer vests with the assignor. For instance, if you have written a script and have assigned all the rights in such script to the producer, the producer then becomes the owner of the copyright in the script, and you would not be entitled to claim any copyright in such script once the assignment is complete.

Whereas in a license, no ownership is transferred. For instance, a film producer may approach a music label that owns rights in a song to grant a synchronization license i.e., right to synchronize a clipping of a song to the producer to use the song in the film. In such a case, the producer will have the limited permission to use the song in the film, however, the ownership rights in such song continues to vest with the music label.





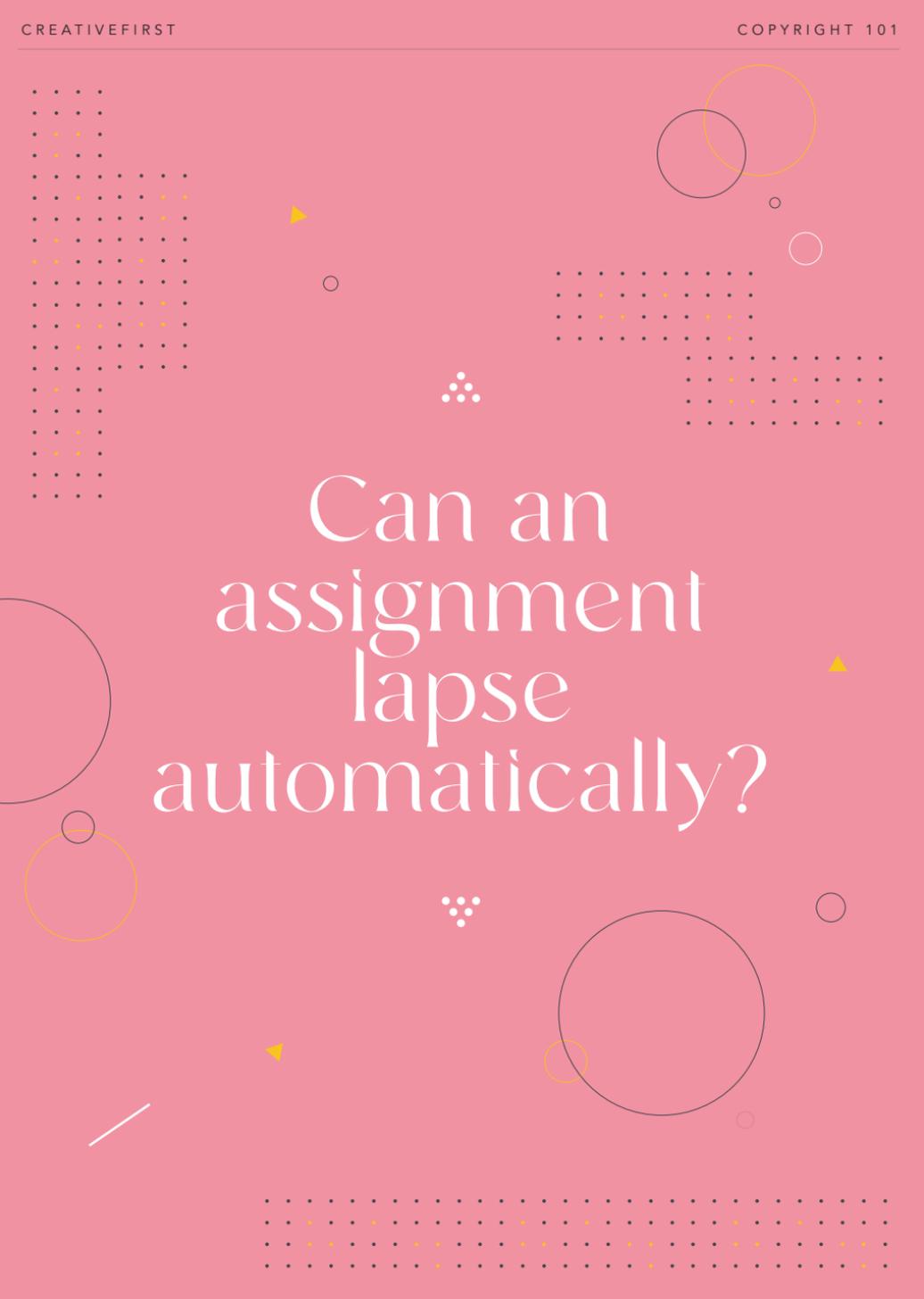
What are the essential requirements of assignment of copyright?

In order for an assignment to be valid it must:

- ❖ Be in writing.
- ❖ Identify the work, the rights assigned, the duration and territory of the assignment
- ❖ Specify the amount of royalty and other consideration payable to the author
- ❖ The assignment of copyright in any work should not be contrary to the terms and conditions of the rights already assigned to a copyright society of which the author of the work is a member. Therefore, waiver of Section 19(8) is taken from authors.

For instance, if the author is a member of a copyright society and was required to assign the rights in his present and future works for administration by the society, then the producer taking assignment of rights from the author may require the author to procure a waiver from such a copyright society for the specific works or give a specific undertaking to the producer that the assignment of rights in favour of the producer do not contradict the terms and conditions of the rights already assigned by the author to the copyright society.

Sample clause: *The author hereby acknowledges and undertakes that the assignment of copyright in the works as granted herein is not and will not be contrary to the terms and conditions of the rights already assigned to a copyright society in which the author is a member. The author confirms that this assignment of works is not, in any way, in contravention of Section 19 (8) of the Copyright Act, 1957.*

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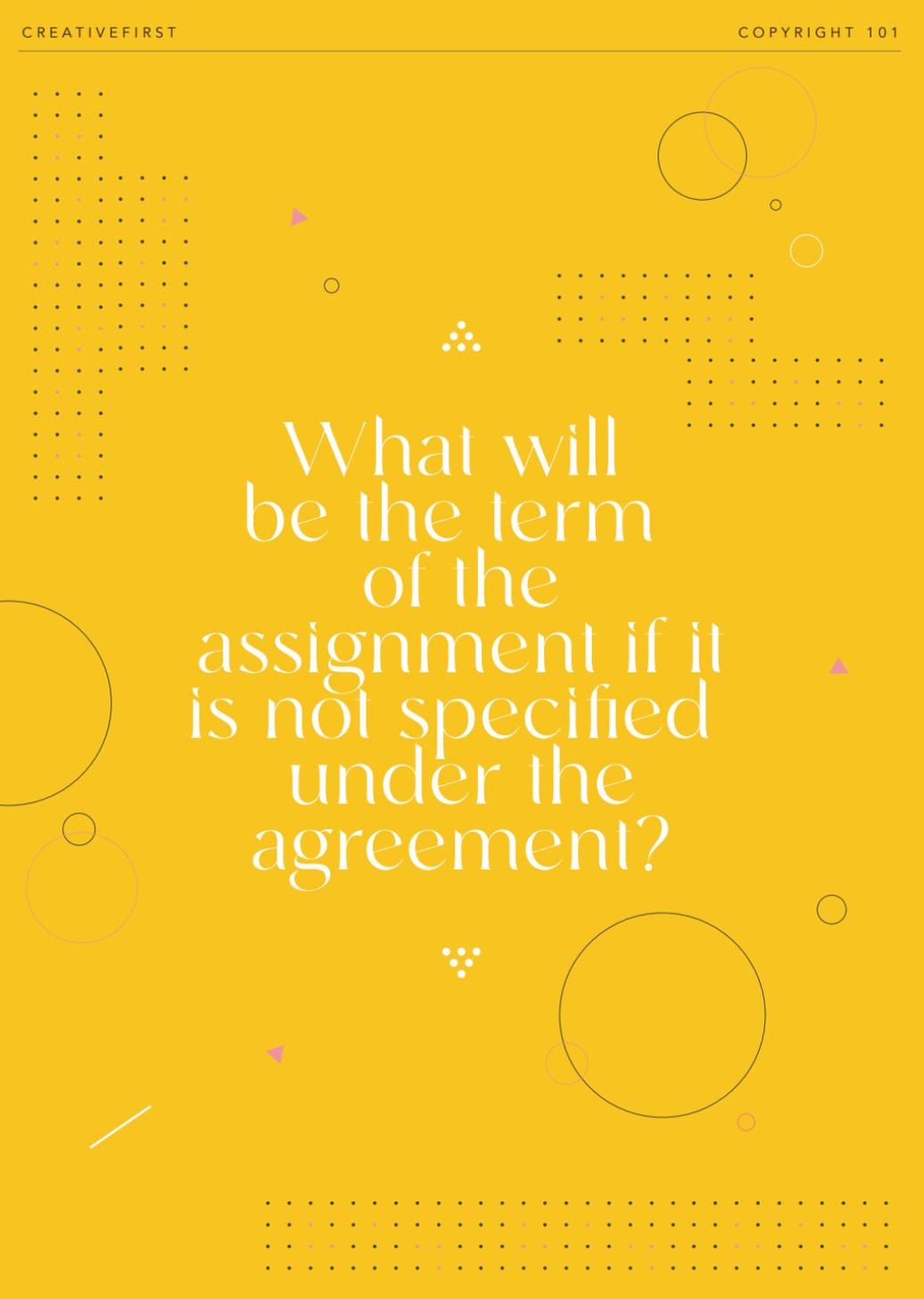
Can an assignment lapse automatically?

If the assignee does not exercise the rights assigned to him within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

Tip: Therefore, if you are procuring an assignment, always include a waiver of Section 19(4) of the Copyright Act or specifically mention that the rights shall not lapse if not exercised within one year from the date of assignment.

Sample clause: *It is agreed by the Parties that the provisions of Section 19(4) of the Copyright Act, 1957 shall have no application or effect on the terms of this Agreement. The rights assigned herein shall not lapse if not exercised within a period of one year from the date of assignment.*



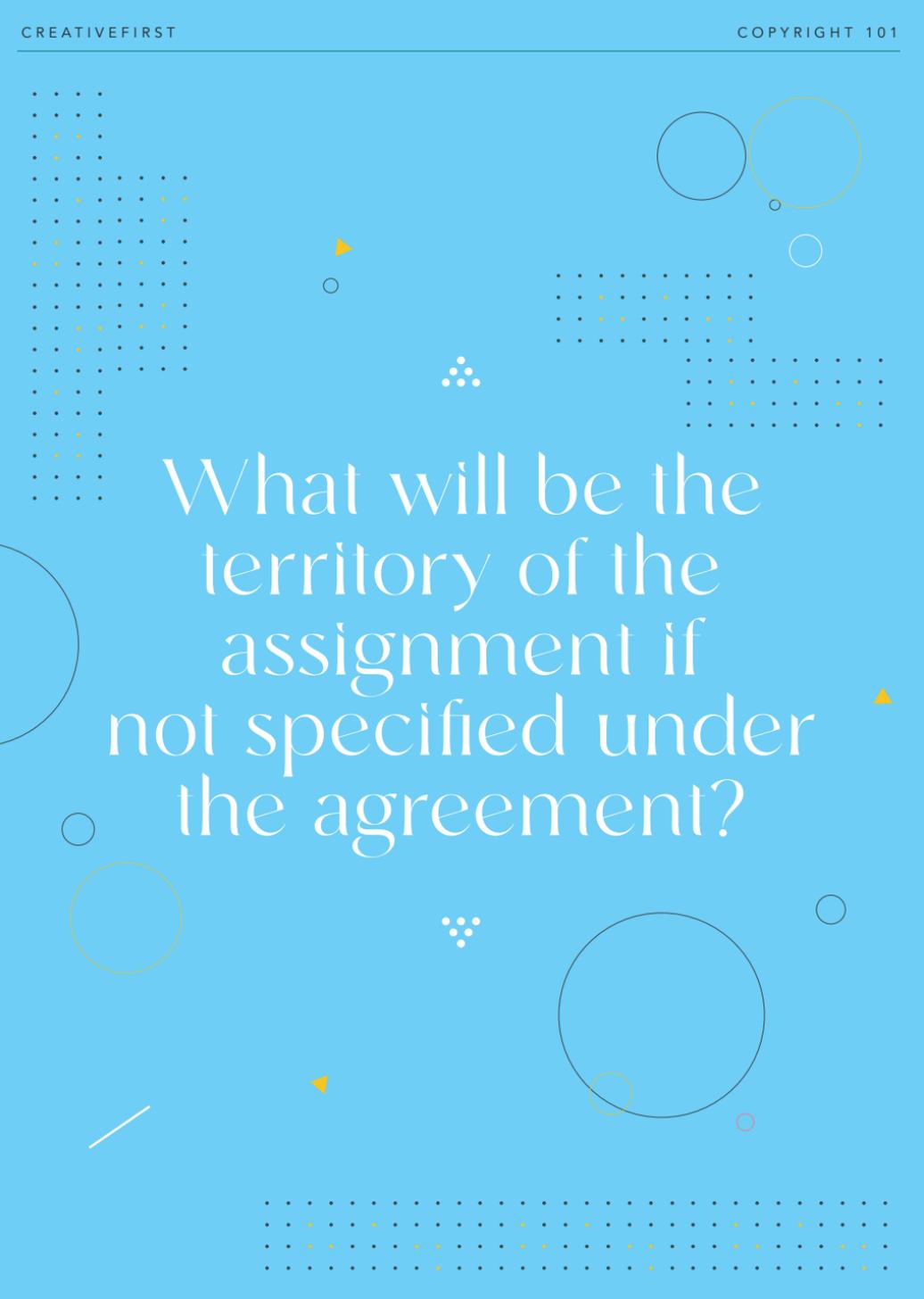


What will
be the term
of the
assignment if it
is not specified
under the
agreement?

If the term of assignment is not specifically stated in the agreement, it shall be deemed to be five years from the date of assignment (Section 19(5)).

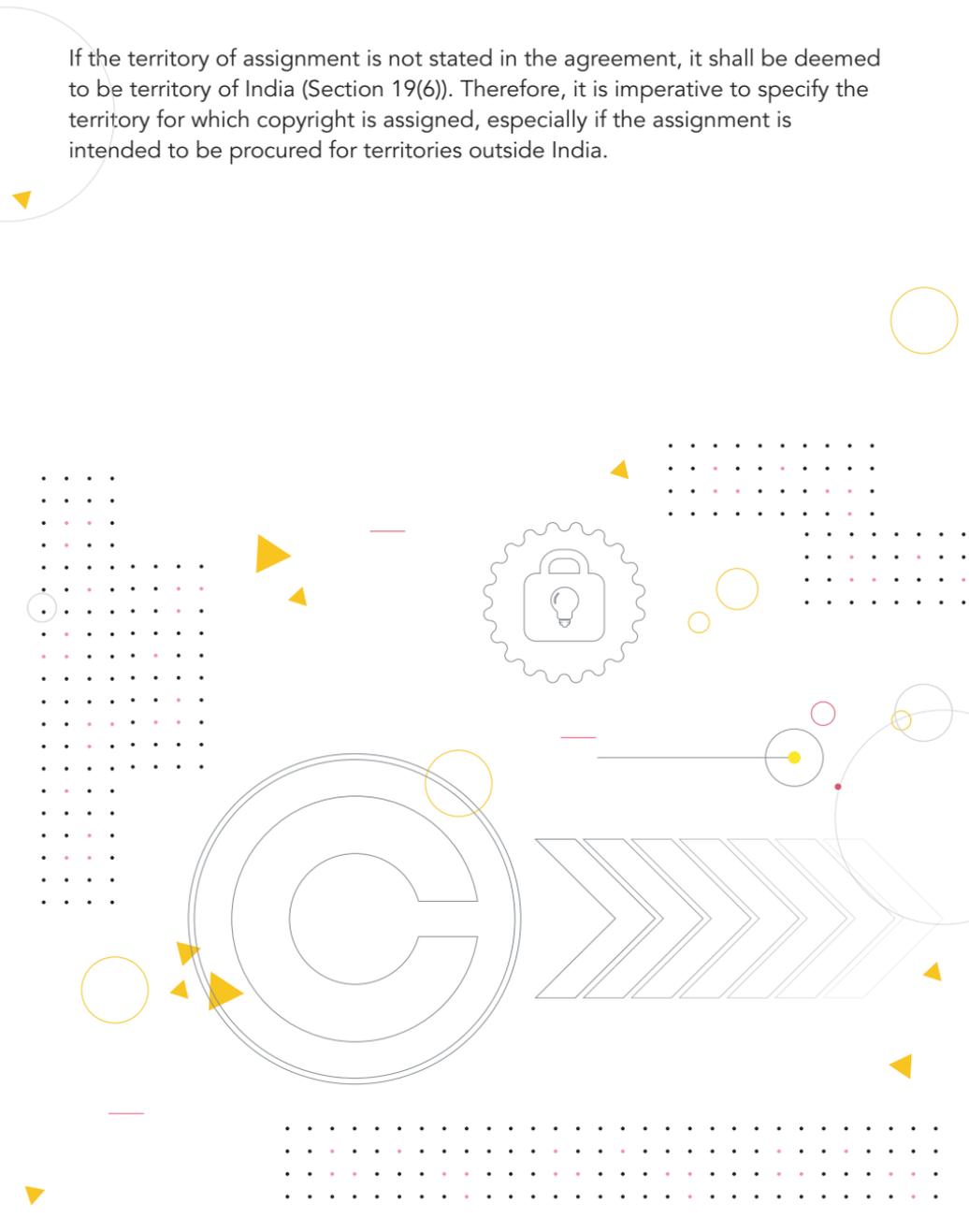
Therefore, it is imperative to specify the term/ duration of assignment of copyright in the agreements, especially if the assignment is intended to be procured for a period longer than five years.





What will be the
territory of the
assignment if
not specified under
the agreement?

If the territory of assignment is not stated in the agreement, it shall be deemed to be territory of India (Section 19(6)). Therefore, it is imperative to specify the territory for which copyright is assigned, especially if the assignment is intended to be procured for territories outside India.





What are statutory royalties under the Copyright Act?

The Copyright Act was amended in 2012, to recognize that the authors of the musical and literary works whose works are included in a cinematograph film or sound recording shall be entitled to receive royalties from the utilization of their works in any form except when the cinematograph film is communicated to the public in a cinema hall. For instance, when a song of a film (audio/ audio-visual) is performed in an event, the organizer of the event would be required to pay royalties to the authors and owners of the song.

The Copyright Act further prohibits the authors of musical and literary works included in cinematograph films or sound recordings from waiving or assigning their right to receive royalty except in favour of their heirs or to a copyright society for collection and distribution of royalty and specifies that any agreement which requires a contrary condition or covenant shall be void. The right to claim royalty for certain classes of works (such as literary and musical works) has been statutorily mandated under the Copyright Act since the amendment in the year 2012.

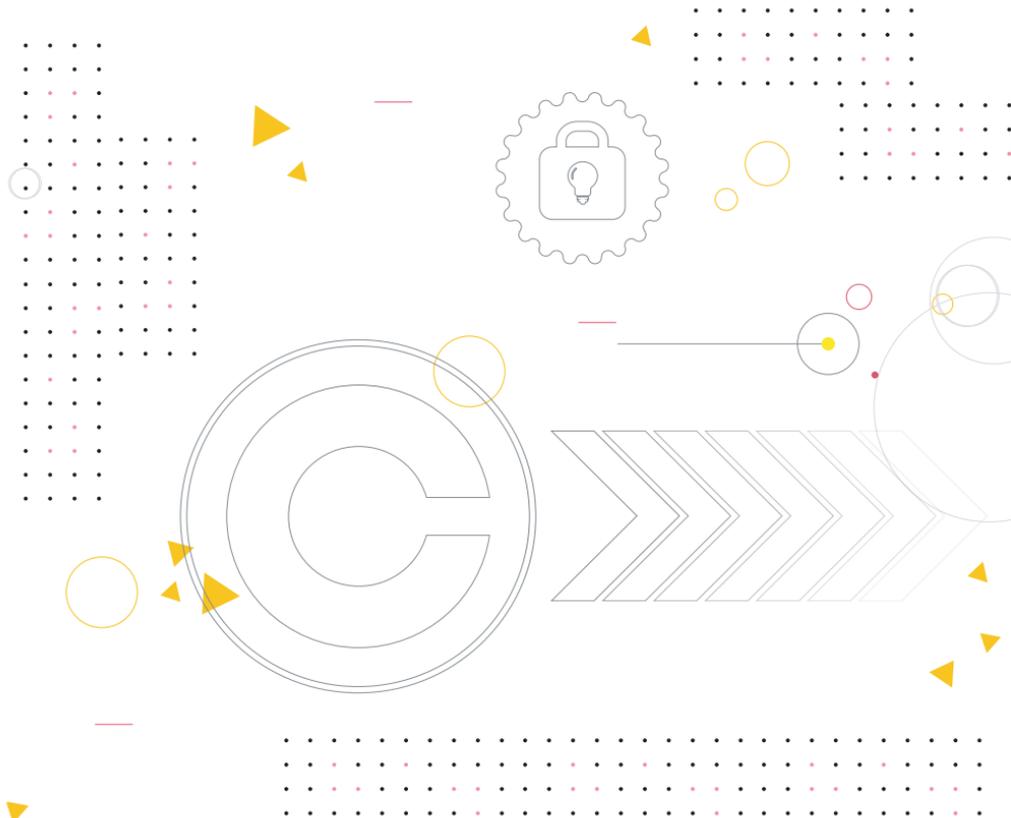
Right to receive royalty has been built in for performers as well, which includes actors, singers, etc. under the provisions of Section 38A(2), which provides that *“Once a performer has, by written agreement, consented to the incorporation of his performance in a cinematograph film he shall not, in the absence of any contract to the contrary, object to the enjoyment by the producer of the film of the performer’s right in the same film: Provided that, notwithstanding anything contained in this sub-section, the performer shall be entitled for royalties in case of making of the performances for commercial use.”*

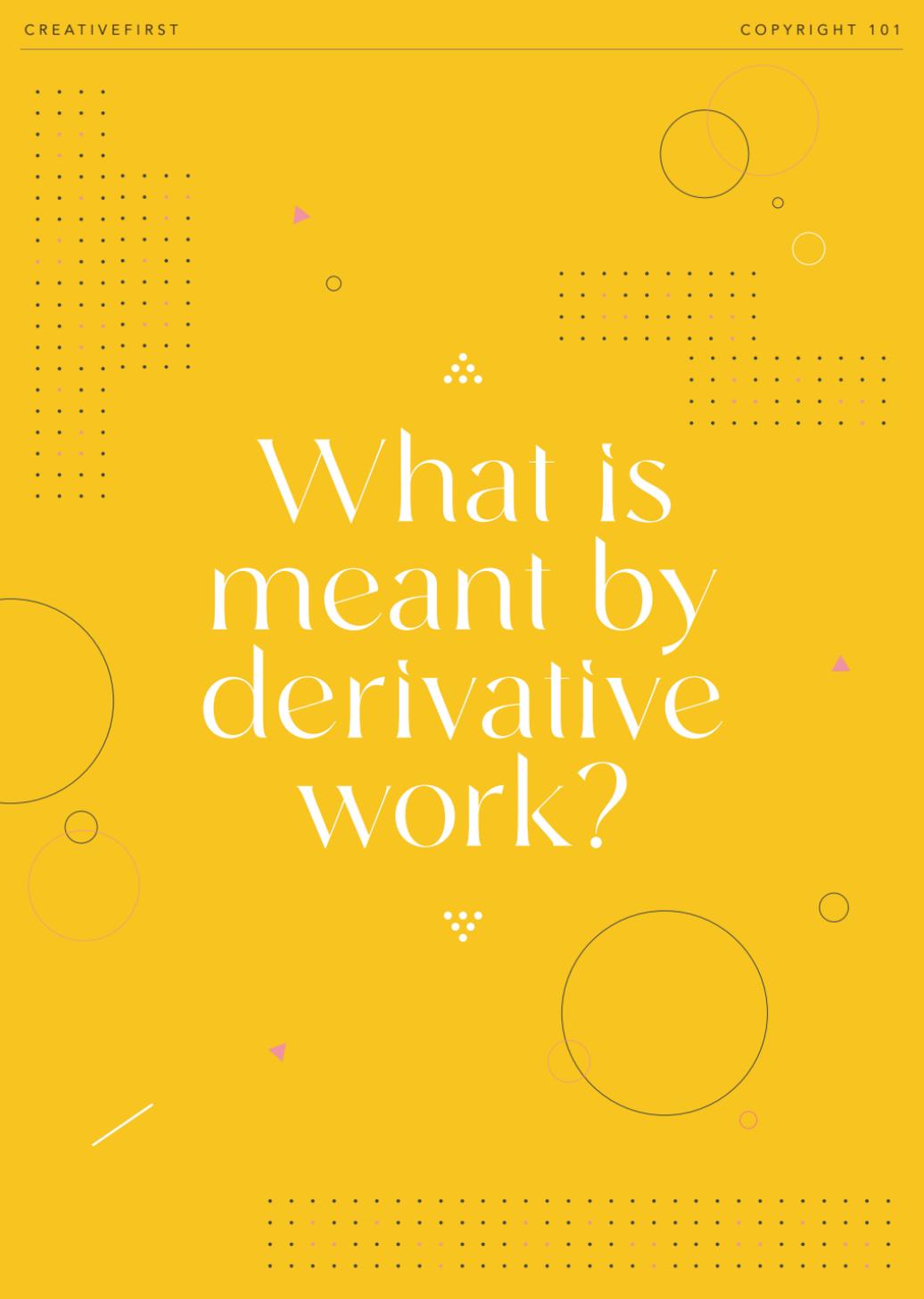
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Can an author relinquish copyright and, if so, how?

The author of a work may relinquish all or any of the rights comprising the copyright in the work by giving notice in the prescribed form to the Registrar of Copyrights or by way of public notice, and on receipt of such notice, the Registrar of Copyrights shall cause it to be published in the Official Gazette and in such other manner as he may deem fit. However, the relinquishment of the copyright in a work shall not affect any rights subsisting in favor of any person on the date of the notice. (Section 21 of Copyright Act, 1957).

For instance, an author may feel that the public should be able to utilize his works freely such as in case of a patriotic song, and thus chooses to relinquish his copyright completely thereby putting the work in public domain.



The background is a solid yellow color. It is decorated with various geometric elements: a large grid of small dots on the left side; several overlapping circles of different sizes scattered throughout; small triangles pointing in various directions; and smaller clusters of dots. At the bottom, there is a horizontal line of dots.

What is meant by derivative work?

The Indian Copyright Act does not define derivative work. A derivative work is a work based on or derived from one or more already existing works. Under the Indian Copyright Act, the term used is 'Adaptation' which involves the preparation of a new work in the same or different form based upon an already existing work and forms a part of the bundle of rights vesting with an author or owner under the Copyright Act. The Copyright Act defines the following acts as adaptations:

- (i) Conversion of a dramatic work into a non-dramatic work – e.g., Hamlet into Haider;
- (ii) Conversion of a literary or artistic work into a dramatic work - e.g., dramatization, such as stage play based on a book;
- (iii) Re-arrangement of a literary or dramatic work- e.g., selection and compilation of quotations;
- (iv) Depiction in a comic form or through pictures of a literary or dramatic work- e.g., comic book with images based on a script/novel;
- (v) Transcription of a musical work -e.g., notations
- (vi) Any act involving re-arrangement or alteration of an existing work-e.g. adding new lyrics to existing lyrics of a song.

Illustration: *If you have written a script for a feature film, the following could be derivative works of your script : Prequel, sequel, remake, web-series, television production, animation, novel, comic book, etc.*

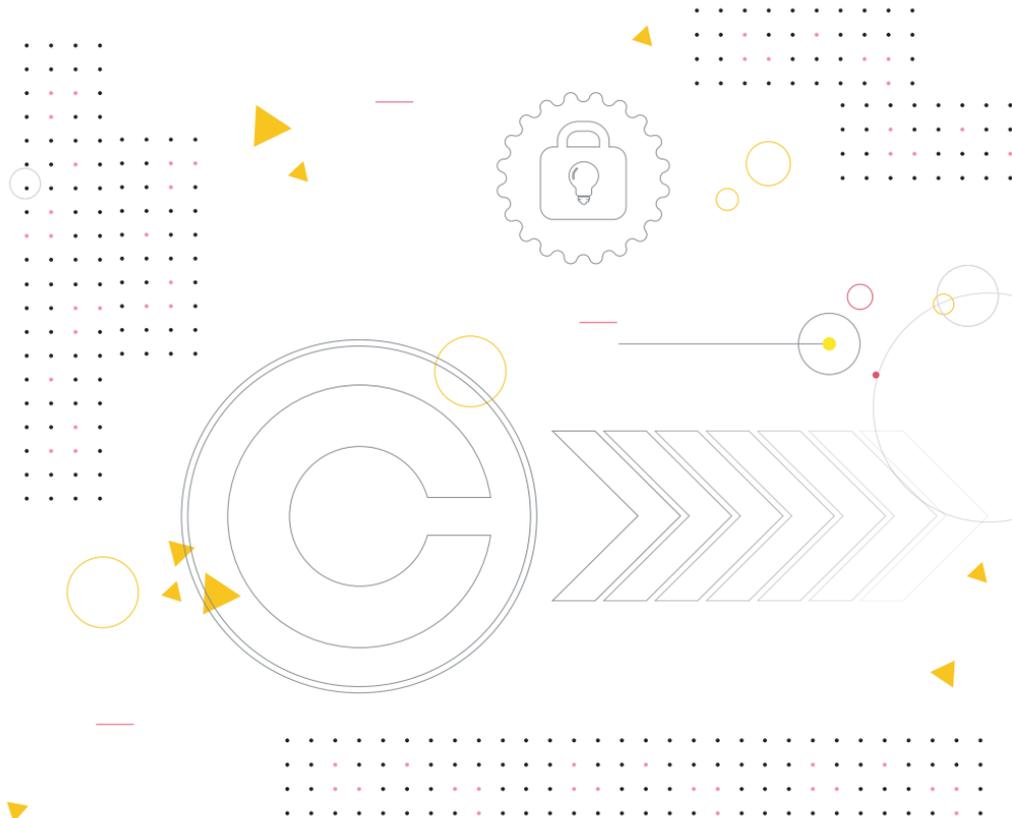
The background is a solid light blue color. It features several decorative elements: a grid of small dots in the top-left and bottom-right corners, with some dots highlighted in yellow; various circles of different sizes and colors (white, yellow, blue) scattered throughout; small yellow triangles pointing in different directions; and a thin white diagonal line in the bottom-left area.

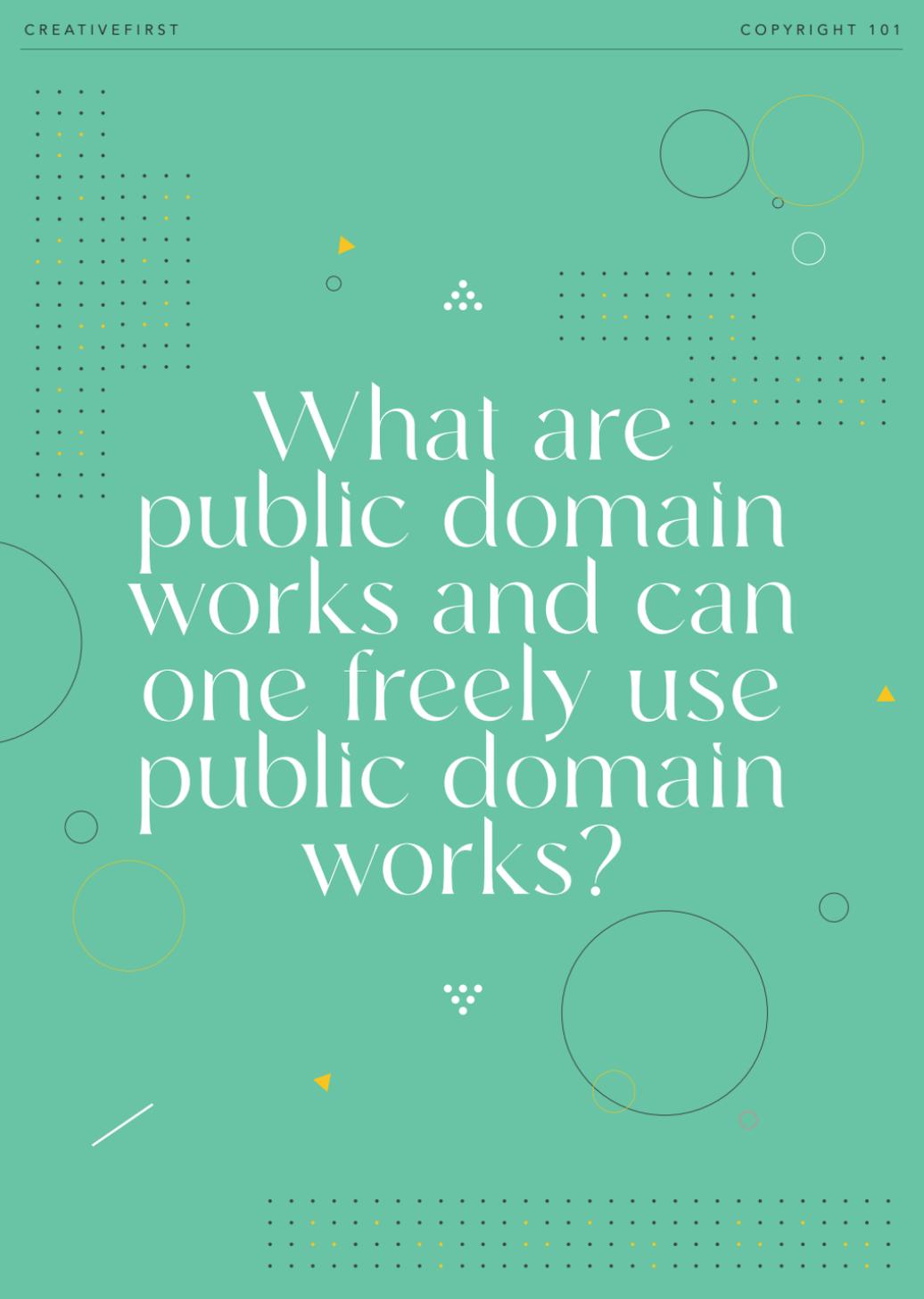
What is the term of protection of copyright?

Copyright does not last for perpetuity.

In the case of original literary, dramatic, musical and artistic works, copyright subsists for the entire duration of the lifetime of the author and continues for 60 years from the beginning of the calendar year following the year of the death of the author.

In the case of cinematograph films, sound recordings, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organizations, copyright subsists for 60 years from the beginning of the calendar year following the year of first publication.





What are public domain works and can one freely use public domain works?

A work falls in public domain when the term of the copyright in such work expires or the author relinquishes his copyright in such work. Usage of such public domain works would not amount to copyright infringement. For instance, adaptation of certain plays of Shakespeare which are now in public domain, is permissible.

However, please note the following:

- ❖ Term of copyright in a cinematograph film and sound recording is for 60 years from the beginning of the calendar year following the year of first publication, whereas term of copyright in the underlying works subsists for the entire duration of the lifetime of the author and continues for 60 years from the beginning of the calendar year following the year of the death of the author. Therefore, if a film/ song is in public domain, the term of copyright in the underlying works may still subsist and may not have expired.
- ❖ To exhibit a film which is in public domain, as per Section 52(1)(y) would not amount to copyright infringement of underlying works
- ❖ However, with respect to public domain songs (i.e., sound recording without visuals), if the term of copyright in the underlying works (publishing rights) has not expired then separate publishing rights license would be required to be procured from the owner of such rights.

Illustration of usage of song which is in public domain such as:

Song: O Beta Ji

Film : Albela (1951)

Film and Song came in public domain in the year 2012

Lyricist: Rajendra Krishna (Died on 23 September 1987)

Music Composer: C Ramachandra (Died on 5 January 1982)

Therefore lyrics will come in public domain on January 1, 2048 and music composition will come in public domain on January 1, 2043.

Therefore, the following activities are permissible in relation to the song O Beta Ji :

Use clipping of the audio-visual which is in public domain on an as is basis	✓
Recreating the song/ remixing the song	✗
Actor singing the song in the film	✗ Permission from owner of underlying works would be needed.
Using only song without visual synched in background	✗ Permission from owner of underlying works would be needed.

In the same film, Screenplay was written by Bhagwan Dada who died on February 4, 2002. Therefore the screenplay of the film Albela will come in public domain on January 1, 2063.

If any person wishes to make an adaptation such as a remake of the film Albela without permission from owner of the screenplay, such remake can be made only after 2063.

However, audio visual clipping of the film on an as is basis can be used.

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What are the moral rights of an author?

The author of a work has the right to claim authorship of the work and to restrain or claim damages in respect of any distortion, mutilation, modification or other acts in relation to the said work if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation. Moral rights are available to the authors even after the economic rights, that is to say the bundle of rights conferred by copyright, are assigned.

Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the moral rights of the author.

For example, moral rights would include right to get credits in a film. It can also be invoked if someone who makes a movie on the basis of a novel but substantially changes the story or makes major distortion in the story line, which may negatively affect the integrity of work of the original author.



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What amounts to copyright infringement?

Copyright infringement occurs when a person without a license or consent from the owner of copyright does any act, the exclusive right of which vests with the owner of copyright under the Copyright Act or violates any condition imposed when granting such license or consent, the same amounts to infringement of copyright.

For instance:

- (i) You cannot copy someone else's script and include it in your own script. That would amount to plagiarism i.e., copyright infringement.
- (ii) If a broadcaster telecasts a feature film on its television channel without obtaining a license from the owner of copyright in the feature film (e.g., producer), the same would amount to infringement of the exclusive right of the owner to communicate the feature film to the public via the means of a broadcasting television channel.
- (iii) You cannot make a remake of a film without procuring the remake rights from the original producer.
- (iv) You cannot use a photograph taken by someone else without his permission.
- (v) You cannot use another's song in your movie.

Instances of copyright infringement are not limited to above illustrations but extends to all acts the exclusive rights of which are conferred on the authors and owners under Section 14 of the Copyright Act, and further extends to all kinds of piracy of works, i.e., both physical and digital piracy. Physical piracy of works involves duplicating or reproducing of works on a mechanical contrivance. For instance, creation and sale of DVDs of a movie without the consent of the owner of the movie. Digital piracy, on the other hand, entails reproduction of copyright-protected work via means of digital distribution and lacks the requirement of capital investment to commit large-scale infringement. For instance:

- (i) Camcording of a film in a movie theatre and thereafter distribution of such recording to the public on pirated websites/platforms. This becomes especially a concern when such recordings are made available within hours of first theatrical screening of films;
- (ii) Uploading of DVD rips of films on pirated websites and hubs;
- (iii) Providing unauthorized links to stream or download films or sound recordings from various aggregators of pirated websites such as BitTorrent;

All of the above acts require little or no capital investment on the part of the pirate, however, such acts of a piracy results in enormous losses to the copyright owner by way of loss of potential revenues not just from the territory where the infringement started but potentially from around the world as the digital world is not limited by any territorial boundaries and the pirated content in the digital space can be accessed by anyone from any corner of the world.

In the recent years there has been a significant increase in the instances of piracy in India, especially digital piracy. As per *reports* from digital piracy authority MUSO, there has been a 63% increase in digital piracy since the commencement of lockdown in India in late March 2020 due to COVID-19 as compared to the last week of February 2020. This was *not* limited to India as it also increased in the US (41%), the UK (43%), 50% Spain (50%), and Italy (66%). According to the *findings* of The Irdeto Global Consumer Piracy Threat Report, media and entertainment sector loses \$2.8 billion of its annual revenue to piracy, which is not just a loss for the copyright owners but also result in loss to public exchequer.

In simple words, you cannot just lift someone else's work and use it as your own or misappropriate someone else's work for any purpose without his consent.

Further, if a person permits any place to be used for profit for the purpose of communication to the public of any work that enjoys copyright protection under the Copyright Act where such communication is not authorized by the owner of copyright in that work, amounts to copyright infringement.

It also amounts to infringement of copyright if a person sells, lets for hire, distributes, exhibits in public or imports into India an infringing copy of any work. Infringing copy includes reproduction of literary, dramatic, musical or artistic work other than in the form of a cinematograph film, a copy of a cinematograph film made on any medium and in relation to sound recording means any other recording made comprising the earlier sound recording.

Infringement of copyright is both a civil dispute and criminal offence in India and abetting (i.e., instigating, encouraging or promoting a person into committing an offence) infringement is also an offence under the Indian Copyright Act. In case of civil remedies, the applicant is entitled to injunction, damages, accounts and other remedies available for infringement of rights under the Indian laws.

If the copyright infringement is tried as a criminal offence, then the offender is liable to imprisonment for not less than 6 (six) months and extending up to 3 (three) years and with fine not less than INR 50,000/- and extending up to INR 2,00,000/-, in case of first conviction and in case of second and subsequent convictions the imprisonment may be for not less than 1 year which may extend to 3(three) years and fine of not less than INR 1,00,000/- which may extend to INR 2,00,000/-. As per judicial precedents, the criminal offence of copyright infringement is a cognizable (police officer may arrest without a warrant) and non-bailable offence.



Are there any exceptions to copyright infringement?

There are some exceptions where you can use works without requiring permission from a copyright owner.

Unlike Section 107 of the Copyright Act (title 17 of the U.S. Code) that provides for factors for determining whether a particular usage falls within the fair use doctrine and therefore not amounting to infringement of copyright in any copyright-protected work, Section 52 of the Copyright Act lays down an exhaustive list of acts that do not amount to infringement of copyright.

Such acts include fair dealing with any work for the purpose of private or personal use, research, criticism, review, reporting of current events and affairs and certain other activities such as communication of cinematograph films and sound recordings in an educational institution if the audience is limited to the students and staff of such education institution, playing of recordings in non-for-profit clubs or similar organizations, inclusion in cinematograph films of any artistic work which is permanently situated in a public place or any other artistic work if the inclusion is by way of background or is incidental to the principal matters represented in the film, in a bona fide religious ceremony including marriage procession and social festivities associated with marriage etc.

What are John Doe orders?



“John Doe” orders, aka “Ashok Kumar” orders, are typically procured by producers to curb piracy of their films where it is not possible to identify the defendants. However, they are not limited to copyright only, it has also been applied to the cases of trademark and other laws. “John Doe” orders enable the order to be served upon persons whose identity is unknown to the plaintiff at the time the action was commenced, but whose activity falls within the scope of the action. Since it is not possible to determine the infringers at the time of filing the suit, it is filed against unknown defendants and hence the name “John Doe”. This concept of “John Doe” orders is well entrenched in the common law jurisdictions of Canada, America, Australia and UK.

For instance, with piracy being rampant immediately after release of films, a film producer may procure a “John Doe” order in the form of a *quia timet* action i.e. prior to release of the film in apprehension of piracy against known and unknown infringing websites and may ask the court to direct internet service providers to block access to such rogue piracy websites. Such an action can also be taken after the infringement is known by filing a copyright infringement suit against such infringing websites.



Performers are not explicitly defined under the Copyright Act. They are defined as persons including actors, singers, musicians, dancers or any other person who makes a performance which is made live by means of visual or acoustic presentation. However, in respect of cinematograph films, such as feature films, web series, televisions serials, a person is not considered as a performer if his/her performance is casual or incidental in nature and in the normal course of practice of the industry is not acknowledged anywhere including in the credits of such cinematograph film.

However, despite such a person not being recognized as a performer for the purpose of performers' right, he/she shall continue to have the moral right to integrity which enables him/her to restrain or claim damages in case of any distortion, mutilation or other modification of his/her performance that would be prejudicial to his reputation.

For e.g., extras dancing in background or someone shown in a crowd scene.



The background is a solid yellow color. It features several decorative elements: a large grid of small dots in the top-left corner, a smaller grid in the top-right, and another grid at the bottom. There are also several circles of varying sizes, some overlapping, and a few small triangles. A thin white line is visible in the bottom-left area.

What are performers rights?

Performers' rights also called neighboring rights or rights neighboring to copyright. These are also collection of exclusive rights conferred on the performers with respect to their performance or part thereof such as :

- (i) Make a sound or visual recording of the performance,
- (ii) Reproducing or storing of performance in any medium,
- (iii) Issue copies of the performance,
- (iv) Communicate it to the public,
- (v) Sale or renting of any copy of the performance, broadcast or communicate the performance to the public.

In addition to the above mentioned economic rights, performers also enjoy moral rights of paternity and integrity under Section 38(B).

- (i) Under right to paternity, a performer can claim be identified as the performer of his performance.
- (ii) Under right to integrity, a performer can restrain or claim damage when there is any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation.

However, mere removal of any portion of a performance for the purpose of editing, or to fit the recording within a limited duration, or any other modification required for purely technical reasons is not prejudicial to the performer's reputation

After the Copyright (Amendment) Act, 2012, the performers are also entitled to receive royalty if their performances are made for commercial use.

Performers rights are also transferable in the same manner as the rights of the authors and the provisions applicable to transfer of rights of the authors apply to the transfer of performers rights as well under the Copyright Act.



What is a copyright society?

A copyright society is a registered collective administration society under Section 33 of the Copyright Act for the management and protection of the copyright of the authors and owners of works and is entitled to grant licenses in respect of any work in which copyright subsists. Such a society is formed by authors and owners. A copyright society can issue or grant licences in respect of any work for which it is authorised to by the authors or owners of the work.

The purpose of copyright society is to provide a one window license and administration system for the specific works it is set up for. Absence of such copyright societies would result in users going to each owner of works independently making it an impossible and impracticable exercise to track each owner and negotiate terms with them. Typically organizations / users who wish to exploit works would prefer taking a blanket license from a one stop shop which is a copyright society. Ease of doing business increases the revenue generation avenues and results in a win-win situation for creators, owners and users.

Membership with a copyright society benefits both authors and owners of works as they would be entitled to collect their share of royalties from the copyright society which in turn would collect it from users of the copyright society's repertoire. Additionally, authors' share of royalties cannot be collected by owners of copyright (where they are assignees of the Author) as this is restricted under the Copyright Act. Such a role can however be fulfilled by the copyright society.

A copyright society is generally registered for a particular class of work and is subject to the collective control of the authors and owners of specific class of work. The rights of such works (such as issue or grant of licences in respect of any work for which it is authorised) are administered by the society . The governing body of such society consists of equal number of authors and owners.

The rate of royalty for the licenses issued by the copyright society is determined by the tariff scheme of such society and such royalties are distributed to the authors and owners of the rights comprising such society in accordance with its distribution scheme. With respect to works included in cinematograph films or sound recordings, the business of granting licenses can only be carried out by a registered copyright society. Copyright societies are

aimed at easing the process of procuring licenses for specific class of work by being a single window license for a huge repertoire of work that it controls.

Examples of registered copyright societies in India:

- (i) Indian Performing Rights Society (IPRS) for musical composition and associated lyrics;
[See more details [here](#)]
- (ii) Indian Singers Rights Association (ISRA) for singers;
[See more details [here](#)]
- (iii) Indian Reprographic Rights Organization (IRRO) for reprographic rights in literary works;
[See more details [here](#)]

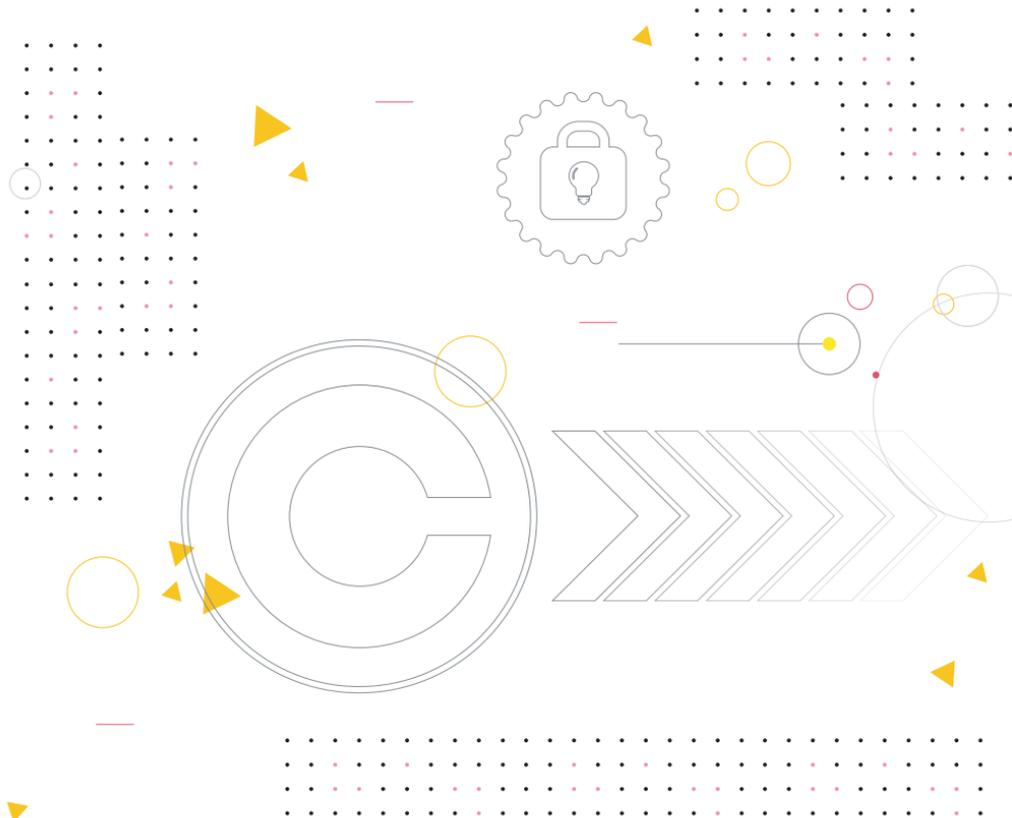


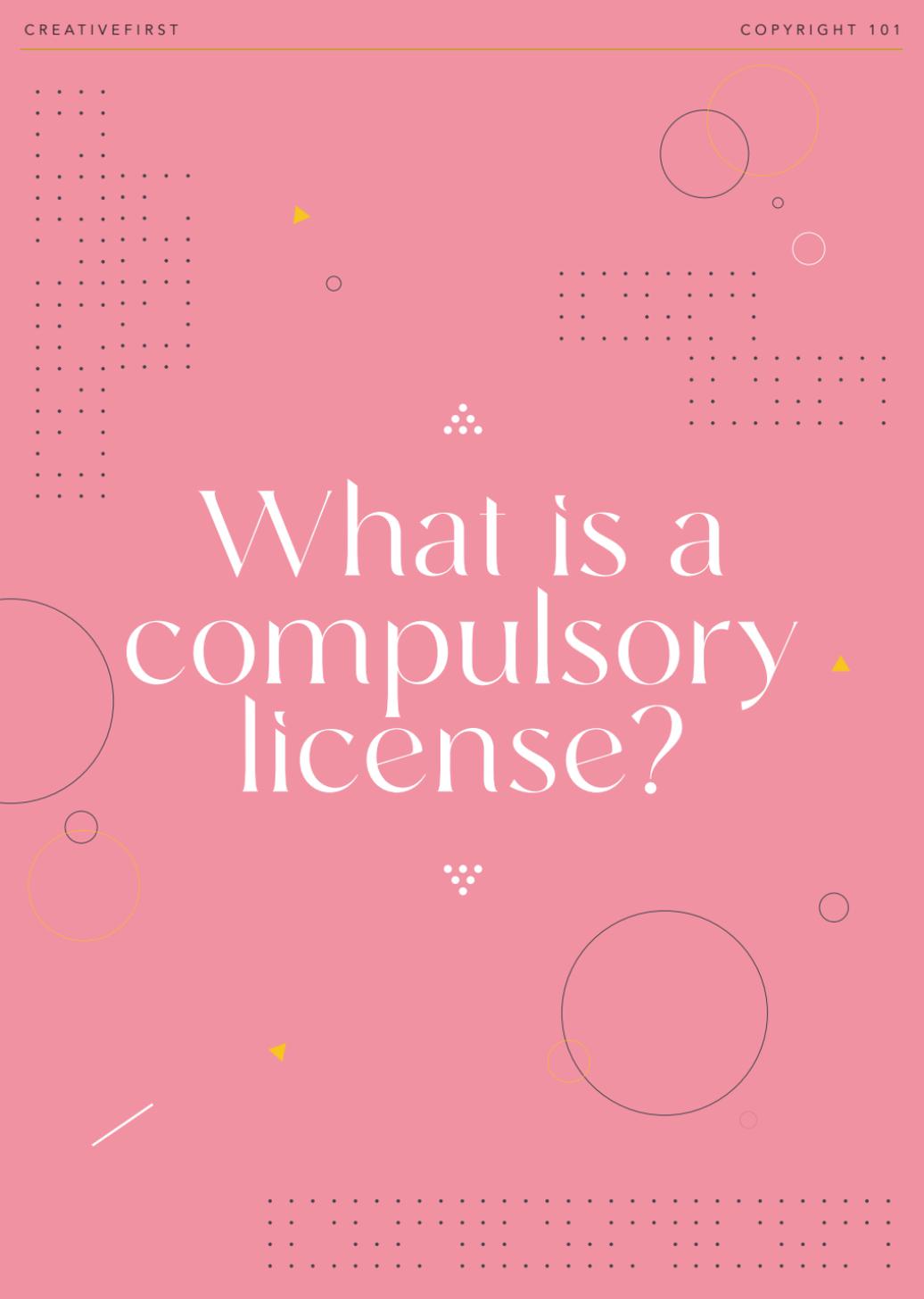
What aspects of copyright law apply to games and animations?

The same principles of copyright law discussed above apply to gaming and animation sector as well.

For instance, an animation company may engage an author to create an animated version of a character. Such animated character would constitute an artistic work under the Copyright Act.

Further, the animated film would constitute a cinematographic film under the Copyright Act. Likewise, a game would have several elements involving literary work in the form of computer programmes, as well as artistic works and other works showcased in the game.

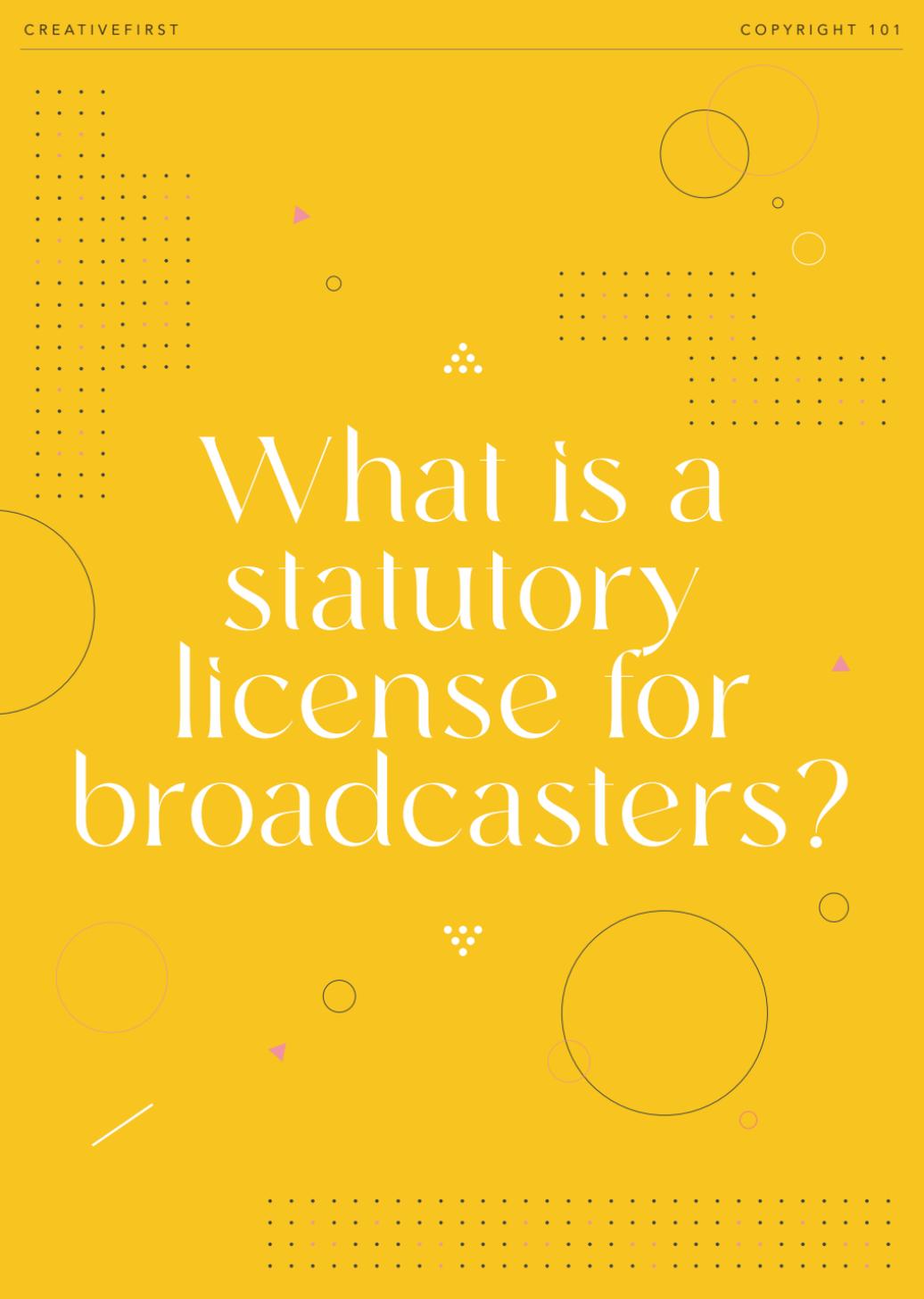


The background is a solid light pink color. It features several decorative elements: a large grid of small black dots on the left side; a cluster of five yellow triangles pointing right in the upper left; a cluster of five white circles in the upper right; a cluster of five white dots in the center; a cluster of five white dots in the lower center; a cluster of five yellow triangles pointing left in the lower left; a cluster of five white circles in the lower right; a cluster of five white dots in the bottom center; and a cluster of five white dots in the bottom right. There are also several thin white lines and circles of various sizes scattered throughout the page.

What is a compulsory license?

Section 31 of the Copyright Act deals with compulsory licences of works withheld from public. This section provides that if the owner of copyright in any Indian work has refused the performance in public of the work and withheld the work from the public or has refused communication to the public by broadcast of the work recorded in sound recording, the Commercial Court may, on the basis of a complaint received and after such inquiry as it may deem necessary, direct the Registrar of Copyrights to grant to the complainant, a licence.

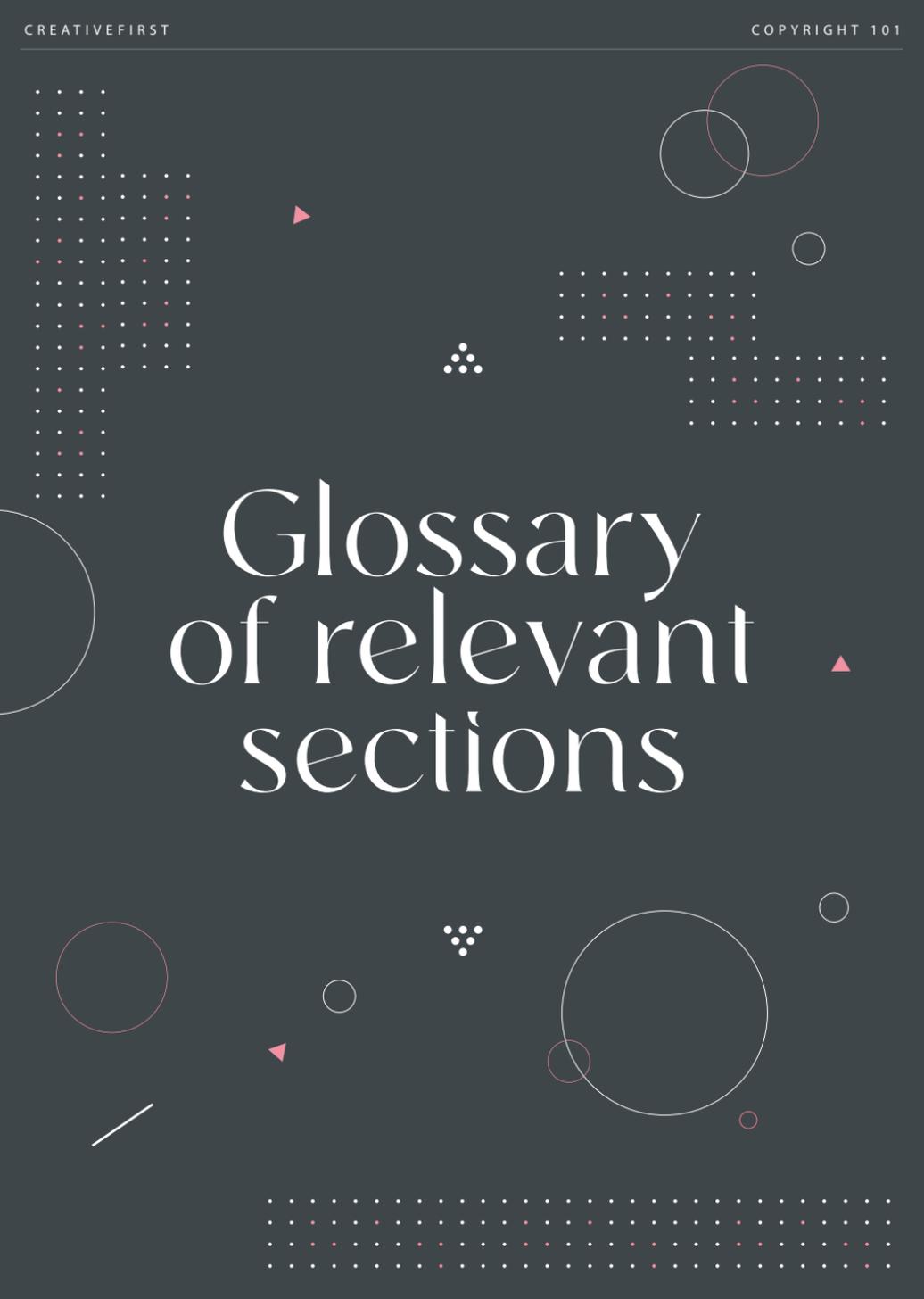


The background is a solid yellow color. It features several decorative elements: a grid of small black dots in the top-left corner; a cluster of larger black dots in the top-right; a large, thin-lined circle on the left side; a large, thin-lined circle on the bottom-right; a thin white diagonal line in the bottom-left; and various smaller geometric shapes including triangles, circles, and clusters of dots scattered throughout the page.

What is a statutory license for broadcasters?

Section 31 D enables broadcasting organisations to broadcast or communicate to the public, literary or musical works and sound recordings which have already been published if certain statutory requirements as set out in the said Section are met. Such statutory requirements include providing of prior notice to the owner of the copyright-protected work, of the intention to so broadcast furnished with details of duration and territorial coverage of such broadcast, and payment of royalties as fixed by the Commercial Court, etc.

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Glossary of relevant sections

Section 14

Meaning of copyright -

For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

(a) in the case of a literary, dramatic or musical work, not being a computer programme,—

- (i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
- (ii) to issue copies of the work to the public not being copies already in circulation;
- (iii) to perform the work in public, or communicate it to the public;
- (iv) to make any cinematograph film or sound recording in respect of the work;
- (v) to make any translation of the work;
- (vi) to make any adaptation of the work;
- (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme,—

- (i) to do any of the acts specified in clause (a);
- (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme: Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

(c) in the case of an artistic work,—

- (i) to reproduce the work in any material form including—
 - (A) the storing of it in any medium by electronic or other means; or
 - (B) depiction in three-dimensions of a two-dimensional work; or
 - (C) depiction in two-dimensions of a three-dimensional work;
- (ii) to communicate the work to the public;
- (iii) to issue copies of the work to the public not being copies already in circulation;
- (iv) to include the work in any cinematograph film;
- (v) to make any adaptation of the work;
- (vi) to do in relation to adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) in the case of a cinematograph film,—

- (i) to make a copy of the film, including—
 - (A) a photograph of any image forming part thereof; or
 - (B) storing of it in any medium by electronic or other means;
- (ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film;
- (iii) to communicate the film to the public;

(e) in the case of a sound recording,—

- (i) to make any other sound recording embodying it [including storing of it in any medium by electronic or other means];

- (ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;]
- (iii) to communicate the sound recording to the public.

Section 17

First owner of copyright - Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein: Provided that—

- (a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;
- (b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;
- (c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;
- (cc) in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such

person has delivered such address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;

(d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(dd) in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

Explanation.— For the purposes of this clause and section 28A, “public undertaking” means—

(i) an undertaking owned or controlled by Government; or

(ii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or

(iii) a body corporate established by or under any Central, Provincial or State Act;

(e) in the case of a work to which the provisions of section 41 apply, the international organization concerned shall be the first owner of the copyright therein.

Provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) shall affect the right of the author in the work referred to in clause (a) of sub-section (1) of section 13.

Section 18

Assignment of copyright

- (1) 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:

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.

Provided further that no such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work:

Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilization of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void:

Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilization of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void.

- (2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.
- (3) In this section, the expression "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

Section 19

Mode of assignment

- (1) No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorised agent.
- (2) The assignment of copyright in any work shall identify such work and shall specify the rights assigned and the duration and territorial extent of such assignment.
- (3) The assignment of copyright in any work shall also specify the amount of royalty and any other consideration payable], to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.
- (4) Where the assignee does not exercise the rights assigned to him under any of the other sub-sections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

- (5) If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.
- (6) If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.
- (7) Nothing in sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) or sub-section (6) shall be applicable to assignments made before the coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994)].
- (8) The assignment of copyright in any work contrary to the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member shall be void.
- (9) No assignment of copyright in any work to make a cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilisation of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall.
- (10) No assignment of the copyright in any work to make a sound recording which does not form part of any cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable for any utilization of such work in any form.

Section 21

Right of author to relinquish copyright

- (1) The author of a work may relinquish all or any of the rights comprised in the copyright in the work by giving notice in the prescribed form to the Registrar of Copyrights or by way of public notice] and thereupon such rights shall, subject to the provisions of sub-section (3), cease to exist from the date of the notice.

- (2) On receipt of a notice under sub-section (1), the Registrar of Copyrights shall cause it to be published in the Official Gazette and in such other manner as he may deem fit.
- (2A) The Registrar of Copyright shall, within fourteen days from the publication of the notice in the Official Gazette, post the notice on the official website of the Copyright Office so as to remain in the public domain for a period of not less than three years.
- (3) The relinquishment of all or any of the rights comprised in the copyright in a work shall not affect any rights subsisting in favour of any person on the date of the notice referred to in sub-section (1).

Section 22

Term of copyright in published literary, dramatic, musical and artistic work -

Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work published within the lifetime of the author until sixty years from the beginning of the calendar year next following the year in which the author dies.

Explanation.— In this section the reference to the author shall, in the case of a work of joint authorship, be construed as a reference to the author who dies last.

Section 26

Term of copyright in cinematograph films-

In the case of a cinematograph film, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the film is published.

Section 27

Term of copyright in sound recording-

In the case of a sound recording copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the sound recording is published.

Section 31

Compulsory license in work withheld from public

- (1) If at any time during the term of copyright in 1[any work] which has been published or performed in public, a complaint is made to the Appellate Board that the owner of copyright in the work—
- (a) has refused to republish or allow the republication of the work or has refused to allow the performance in public of the work, and by reason of such refusal the work is withheld from the public; or
 - (b) has refused to allow communication to the public by broadcast of such work or in the case of a sound recording the work recorded in such sound recording, on terms which the complainant considers reasonable;

the Appellate Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyrights to grant to the complainant a licence to republish the work, perform the work in public or communicate the work to the public by broadcast, as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Appellate Board may determine; and thereupon the Registrar of Copyrights shall grant the licence to such person or persons who, in the opinion of the Appellate Board, is or are qualified to do so in accordance with the directions of the Appellate Board, on payment of such fee as may be prescribed.

Section 31D**Statutory licence for broadcasting of literary and musical works and sound recording-**

- (1) Any broadcasting organisation desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published may do so subject to the provisions of this section.
- (2) The broadcasting organisation shall give prior notice, in such manner as may be prescribed, of its intention to broadcast the work stating the duration and territorial coverage of the broadcast and shall pay to the owner of rights in each work royalties in the manner and at the rate fixed by the Appellate Board.
- (3) The rates of royalties for radio broadcasting shall be different from television broadcasting and the Appellate Board shall fix separate rates for radio broadcasting and television broadcasting.
- (4) In fixing the manner and the rate of royalty under sub-section (2), the Appellate Board may require the broadcasting organisation to pay an advance to the owners of rights.
- (5) The names of the authors and the principal performers of the work shall, except in case of the broadcasting organisation communicating such work by way of performance, be announced with the broadcast.
- (6) No fresh alteration to any literary or musical work, which is not technically necessary for the purpose of broadcasting, other than shortening the work for convenience of broadcast, shall be made without the consent of the owners of rights.

- (7) The broadcasting organisation shall—
- (a) maintain such records and books of account, and render to the owners of rights such reports and accounts; and
 - (b) allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such broadcast, in such manner as may be prescribed.
- (8) Nothing in this section shall affect the operation of any licence issued or any agreement entered into before the commencement of the Copyright (Amendment) Act, 2012.

Section 33

Registration of Copyright society.—

- (1) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994) commence or, carry on the business of issuing or granting licences in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (3):

Provided that an owner of copyright shall, in his individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society:

Provided further that the business of issuing or granting licence in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered under this Act:

Provided also that a performing rights society functioning in accordance with the provisions of section 33 on the date

immediately before the coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994) shall be deemed to be a copyright society for the purposes of this Chapter and every such society shall get itself registered within a period of one year from the date of commencement of the Copyright (Amendment) Act, 1994.

- (2) Any association of persons who fulfils such conditions as may be prescribed may apply for permission to do the business specified in sub-section (1) to the Registrar of Copyrights who shall submit the application to the Central Government.
- (3) The Central Government may, having regard to the interests of the authors and other owners of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights and the ability and professional competence of the applicants, register such association of persons as a copyright society subject to such conditions as may be prescribed:

Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

- (3A) The registration granted to a copyright society under sub-section (3) shall be for a period of five years and may be renewed from time to time before the end of every five years on a request in the prescribed form and the Central Government may renew the registration after considering the report of Registrar of Copyrights on the working of the copyright society under section 36:

Provided that the renewal of the registration of a copyright society shall be subject to the continued collective control of the copyright society being shared with the authors of works in their capacity as owners of copyright or of the right to receive royalty:

Provided further that every copyright society already registered before the coming into force of the Copyright (Amendment) Act, 2012 (27 of 2012) shall get itself registered under this Chapter within a period of one year from the date of commencement of the Copyright (Amendment) Act, 2012.

- (4) The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the authors and other owners of right concerned, cancel the registration of such society after such inquiry as may be prescribed.
- (5) If the Central Government is of the opinion that in the interest of the authors and other owners of right concerned or for non-compliance of sections 33A, sub-section (3) of section 35 and section 36 or any change carried out in the instrument by which the copyright society is established or incorporated and registered by the Central Government without prior notice to it, it is necessary so to do, it may, by order, suspend the registration of such society pending inquiry for such period not exceeding one year as may be specified in such order under sub-section (4) and that Government shall appoint an administrator to discharge the functions of the copyright society.

Section 38A

Exclusive right of performers.—

- (1) Without prejudice to the rights conferred on authors, the performer's right which is an exclusive right subject to the provisions of this Act to do or authorise for doing any of the following acts in respect of the performance or any substantial part thereof, namely:—
- (2) Once a performer has, by written agreement, consented to the incorporation of his performance in a cinematograph film he shall not, in the absence of any contract to the contrary, object

to the enjoyment by the producer of the film of the performer's right in the same film:

Provided that, notwithstanding anything contained in this sub-section, the performer shall be entitled for royalties in case of making of the performances for commercial use.

Section 38B

Moral rights of the performer —

The performer of a performance shall, independently of his right after assignment, either wholly or partially of his right, have the right, —

- (a) to claim to be identified as the performer of his performance except where omission is dictated by the manner of the use of the performance; and
- (b) to restrain or claim damage in respect of any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation.

Explanation.— For the purposes of this clause, it is hereby clarified that mere removal of any portion of a performance for the purpose of editing, or to fit the recording within a limited duration, or any other modification required for purely technical reasons shall not be deemed to be prejudicial to the performer's reputation.

Section 52

Certain acts not to be infringement of copyright.—

- (1) The following acts shall not constitute an infringement of copyright, namely,—
 - (a) a fair dealing with any work, not being a computer programme, for the purposes of—
 - (i) private or personal use, including research;

- (ii) criticism or review, whether of that work or of any other work;
- (iii) the reporting of current events and current affairs, including the reporting of a lecture delivered in public. ...

...(u) the inclusion in a cinematograph film of— (i) any artistic work permanently situate in a public place or any premises to which the public has access; or

(ii) any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film;

...(y) in relation to a literary, 1[dramatic, artistic or] musical work recorded or reproduced in any cinematograph film, the exhibition of such film after the expiration of the term of copyright therein:

Provided that the provisions of sub-clause (ii) of clause (a), sub-clause (i) of clause (b) and clauses (d), (f), (g), (m) and (p) shall not apply as respects any act unless that act is accompanied by an acknowledgment—

- (i) identifying the work by its title or other description; and
- (ii) unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgment of his name should be made, also identifying the author;

**Section 101
of the
Copyright
Act (title 17
of the U.S.
Code)**

A “work made for hire” is—

(1) a work prepared by an employee within the scope of his or her employment; or (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

In determining whether any work is eligible to be considered a work made for hire under paragraph (2), neither the amendment contained in section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106-113, nor the deletion of the words added by that amendment— (A) shall be considered or otherwise given any legal significance, or (B) shall be interpreted to indicate congressional approval or disapproval of, or acquiescence in, any judicial determination, by the courts or the Copyright Office. Paragraph (2) shall be interpreted as if both section 2(a)(1) of the Work Made for Hire and Copyright Corrections Act of 2000 and section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106-113, were never enacted, and without regard to any inaction or awareness by the Congress at any time of any judicial determinations.²⁶ The terms “WTO Agreement” and “WTO member country” have the meanings given those terms in paragraphs (9) and (10), respectively, of section 2 of the Uruguay Round Agreements Act.

Reference:

The Copyright Act, 1957 : click [here](#);

The Copyright Rules, 2013: click [here](#);

The Copyright Rules Amendment, 2021: click [here](#);

