

Annex 2|*Copyright Act*

Copyright Act in India

CHAPTER III Copyright

13. Works in which copyright subsists.-

(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,-

- (a) original literary, dramatic, musical and artistic works;
- (b) cinematograph films; and
- (c) 45 [sound recording];

(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 40 or section 41 apply, unless,-(i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;(ii) in the case of an unpublished work other than a 43 [work of architecture] the author is at the date of the making of the work a citizen of India or domiciled in India; and(iii) in the case of 44 [work of architecture] the work is located in India.

Explanation.- in the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist-

- (a) in any cinematograph film a substantial part of the film is an infringement of the copyright in any other work;
- (b) in any 45 [sound recording] made in respect of a literary, dramatic or musical work, if in making the 46 [sound recording], copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a 47 [sound recording] shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the 48 [sound recording] is made.

(5) In the case of a 49 [work of architecture] copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

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 depiction in three dimensions of a two dimensional work or 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 an 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 cinematograph film, -(i) to make a copy of the film, including a photograph of any image forming part thereof;(ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;(iii) to communicate the film to the public;
- (e) In the case of sound recording, -(i) to make any other sound recording embodying it;(ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;(iii) to communicate the sound recording to the public.

Explanation.- For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

CHAPTER V

Term of Copyright

22. Term of copyright in published literary, dramatic, musical and artistic works.- Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author until 62[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.

23. Term of copyright in anonymous and pseudonymous works.-

- (1) In the case of a literary, dramatic, musical or artistic work (other than a photograph), which is published anonymously or pseudonymously, copyright shall subsist until 63[sixty] years from the beginning of the calendar year next following the year in which the work is first published :Provided that where the identity of the author is disclosed before the expiry of the said period, copyright shall subsist until 64[sixty] years from the beginning of the calendar year next following the year in which the author dies.
- (2) In sub-section (1), references to the author shall, in the case of an anonymous work of joint authorship, be construed,-
 - (a) where the identity of one of the authors is disclosed, as references to that author;
 - (b) where the identity of more authors than one is disclosed, as references to the author who dies last from amongst such authors.
- (3) In sub-section (1) references to the author shall, in the case of a pseudonymous work of joint authorship, be construed,-
 - (a) where the names of one or more (but not all) of the authors are pseudonymous and his or their identity is not disclosed, as references to the author whose name is not a pseudonym, or, if the names of two or more of the authors are not pseudonyms, as references to such of those authors who dies last;
 - (b) where the names of one or more (but not all) of the authors are pseudonyms and the identity of one or more of them is disclosed, as references to the author who dies last from amongst the authors whose names are not pseudonyms and the authors whose names are pseudonyms and are disclosed; and
 - (c) where the names of all the authors are pseudonyms and the identity of one of them is disclosed, as references to the author whose identity is

disclosed or if the identity of two or more of such authors is disclosed, as references to such of those authors who dies last.

Explanation.- For the purposes of this section, the identity of an author shall be deemed to have been disclosed, if either identity of the author is disclosed publicly by both the author and the publisher or is otherwise established to the satisfaction of the Copyright Board by that author.

24. Term of copyright in the posthumous work.-

- (1) In the case of a literary, dramatic or musical work or an engraving, in which copyright subsists at the date of the death of the author or, in the case of any such work of joint authorship, at or immediately before the date of the death of the author who dies last, but which, or any adaptation of which, has not been published before that date, copyright shall subsist until 65[sixty] years from the beginning of the calendar year next following the year in which the work is first published or, where an adaptation of the work is published in any earlier year, from the beginning of the calendar year next following that year.
- (2) For the purposes of this section a literary, dramatic or musical work or an adaptation of any such work shall be deemed to have been published, if it has been performed in public or if any records made in respect of the work have been sold to the public or have been offered for sale to the public.

25. Term of copyright in photographs.-In the case of a photograph, copyright shall subsist until 66[sixty] years from the beginning of the calendar year next following the year in which the photograph is published.

26. Term of copyright in cinematograph films.-In the case of a cinematograph film, copyright shall subsist until 67[sixty] years from the beginning of the calendar year next following the year in which the film is published.

27. Term of copyright in records.-In the case of a 68[sound recording], copyright shall subsist until 69[sixty] years from the beginning of the calendar year next following the year in which the 70 [sound recording] is published.

28. Term of copyright in Government work.- In the case of Government work, where Government is the first owner of the copyright therein, copyright shall subsist until 71[Sixty] years from the beginning of the calendar year next following the year in which the work is first published.

28A. Term of copyright in works of public undertakings.- In the case of a work, where a public undertaking is the first owner of the copyright therein, copyright shall until 73[sixty] years from the beginning of the calendar year next following the year in which the work is first published.

29. Term of copyright in works of international organisations.- In the case of a work of an international organisation to which the provisions of section 41 apply, copyright shall subsist until 74[sixty] years from the beginning of the calendar year next following the year in which the work is first published.

CHAPTER VI LICENCES

30. Licences by owners of copyright.- The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorised agent: Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence.

Explanation.- Where a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence.

30A. Application of sections 19 and 19A.- The provisions of sections 19 and 19A shall, with any necessary adaptations and modifications, apply in relation to a licence under section 30 as they apply in relation to assignment of copyright in a work.

31. Compulsory licence in works withheld from public.-

(1) If at any time during the term of copyright in any Indian work which has been published or performed in public, a complaint is made to the Copyright 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 76[broadcast], of such work or in the case of 77[sound recording] the work recorded in such [sound recording], on terms which the complainant considers reasonable; the Copyright 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 Copyright Board may determine; and thereupon the

Registrar of Copyrights shall grant the licence to the complainant in accordance with the directions of the Copyright Board, on payment of such fee as may be prescribed.

Explanation.- In this sub-section, the expression "Indian work" includes- (i) an artistic work, the author of which is a citizen of India; and(ii) a cinematograph film or a record made or manufactured in India.

- (2) Where two or more persons have made a complaint under sub-section (1), the licence shall be granted to the complainant who in the opinion of the Copyright Board would best serve the interests of the general public.

31A. Compulsory licence in unpublished Indian works.-

- (1) Where, in the case of an Indian work referred to in sub-clause (iii) of clause (a) of section 2, the author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found, any person may apply to the Copyright Board for a licence to publish such work or a translation thereof in any language.
- (2) Before making an application under sub-section (1), the applicant shall publish his proposal in one issue of a daily newspaper in the English language having circulation in the major part of the country and where the application is for the publication of a translation in any language, also in one issue of any daily newspaper in that language.
- (3) Every such application shall be made in such form as may be prescribed and shall be accompanied with a copy of the advertisement issued under sub-section (2) and such fee as may be prescribed.
- (4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, direct the Registrar of Copyrights to grant to the applicant a licence to publish the work or a translation thereof in the language mentioned in the application subject to the payment of such royalty and subject to such other terms and conditions as the Copyright Board may determine, and thereupon the Registrar of Copyrights shall grant the licence to the applicant in accordance with the direction of the Copyright Board.
- (5) Where a licence is granted under this section, the Registrar of Copyrights may, by order, direct the applicant to deposit the amount of the royalty determined by the Copyright Board in the public account of India or in any other account specified by the Copyright Board so as to enable the owner of the copyright or, as the case may be, his heirs, executors or the legal representatives to claim such royalty at any time.
- (6) Without prejudice to the foregoing provisions of this section, in the case of a work referred to in sub-section (1), if the original author is dead, the Central Government may, if it considers that the publication of the work is

desirable in the national interest, require the heirs, executors or legal representatives of the author to publish such work within such period as may be specified by it.

- (7) Where any work is not published within the period specified by the Central Government under sub-section (6), the Copyright Board may, on an application made by any person for permission to publish the work and after hearing the parties concerned, permit such publication on payment of such royalty as the Copyright Board may, in the circumstances of such case, determine in the prescribed manner.]

32. Licence to produce and publish translations.-

- (1) Any person may apply to the Copyright Board for a licence to produce and publish a translation of a literary or dramatic work in any language 2[after a period of seven years from the first publication of the work].
- (1A)80 Notwithstanding anything contained in sub-section (1), any person may apply to the Copyright Board for a licence to produce and publish a translation, in printed or analogous forms of reproduction, of a literary or dramatic work, other than an Indian work, in any language in general use in India after a period of three years from the publication of such work, if such translation is required for the purposes of teaching, scholarship or research: Provided that where such translation is in a language not in general use in any developed country, such application may be made after a period of one year from such publications.
- (2) Every 81[application under this section] shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the translation of the work.
- (3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar of Copyrights such fee as may be prescribed.
- (4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a translation of the work in the language mentioned in 82[the application-(i) subject to the condition that the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the translation of the work sold to the public, calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed manner; and(ii) where such licence is granted on an application under sub-section (1A), subject also to the condition that the licence shall not extend to the export of copies of the translation of the work outside India and every copy of such translation shall contain a notice in the language of such translation

that the copy is available for distribution only in India: Provided that nothing in clause (ii) shall apply to the export by Government or any authority under the Government of copies of such translation in a language other than English, French or Spanish to any country if-

- (1) such copies are sent to citizens of India residing outside India or to any association of such citizens outside India; or
- (2) such copies are meant to be used for purposes of teaching, scholarship or research and not for any commercial purpose; and
- (3) in either case, the permission for such export has been given by the Government of that country]83[Provided further that no licence under this section] shall be granted, unless-
 - (a) a translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorised by him, 82[within seven years or three years or one year, as the case may be, of the first publication of the work], or if a translation has been so published, it has been out of print;
 - (b) the applicant has proved to the satisfaction of the Copyright Board that he had requested and had been denied authorisation by the owner of the copyright to produce and publish such translation, or that 84[he was, after due diligence on his part, unable to find] the owner of the copyright;
 - (c) where the applicant was unable to find the owner of the copyright, he had sent a copy of his request for 85[such authorisation by registered air mail post to the publisher whose name appears from the work, and in the case of an application for a licence under sub-section (1)], not less than two months before 85[such application];(cc)84 a period of six months in the case of an application under sub-section (1A) (not being an application under the proviso thereto), or nine months in the case of an application under the proviso to that sub-section, has elapsed from the date of making the request under clause (b) of this proviso, or where a copy of the request has been sent under clause (c) of this proviso, from the date of sending of such copy, and the translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or nine months, as the case may be;(ccc) in the case of any application made under sub-section (1A),-(i) the name of the author and the title of the particular edition of the work proposed to be translated are printed on all the copies of the translation;(ii) if the work is composed mainly of illustrations, the provisions of section 32A are also complied with;]
 - (d) the Copyright Board is satisfied that the applicant is competent to produce and publish a correct translation of the work and possesses the

means to pay to the owner of the copyright the royalties payable to him under this section;

- (e) the author has not withdrawn from circulation copies of the work; and
- (f) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.

(5)84 Any broadcasting authority may apply to the Copyright Board for a licence to produce and publish the translation of-

- (a) a work referred to in sub-section (1A) and published in printed or analogous forms of reproduction; or
- (b) any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities, for broadcasting such translation for the purposes of teaching or for the dissemination of the results of specialised, technical or scientific research to the experts in any particular field.

(6) The provisions of sub-sections (2) to (4) in so far as they are relatable to an application under sub-section (1A), shall, with the necessary modifications, apply to the grant of a licence under sub-section (5) and such licence shall not also be granted unless-

- (a) the translation is made from a work lawfully acquired;
- (b) the broadcast is made through the medium of sound and visual recordings;
- (c) such recording has been lawfully and exclusively made for the purpose of broadcasting in India by the applicant or by any other broadcasting agency; and
- (d) the translation and the broadcasting of such translation are not used for any commercial purposes. Explanation.- For the purposes of this section,-
 - (a) "developed country" means a country which is not a developing country;
 - (b) "developing country" means a country which is for the time being regarded as such in conformity with the practice of the General Assembly of the United Nations;
 - (c) "purposes of research" does not include purposes of industrial research, or purposes of research by bodies corporate (not being bodies corporate owned or controlled by Government) or other associations or body of persons for commercial purposes;
 - (d) "purposes of teaching, research or scholarship" includes-(i) purposes of instructional activity at all levels in educational institutions, including Schools, Colleges, Universities and tutorial institutions; and(ii) purposes of all other types of organised educational activity.]

32A. Licence to reproduce and publish works for certain purposes.-86

- (1) Where, after the expiration of the relevant period from the date of the first publication of an edition of a literary, scientific or artistic work,-
 - (a) the copies of such edition are not made available in India; or
 - (b) such copies have not been put on sale in India for a period of six months to the general public, or in connection with systematic instructional activities at a price reasonably related to that normally charged in India for comparable works by the owner of the right of reproduction or by any person authorised by him in this behalf, any person may apply to the Copyright Board for a licence to reproduce and publish such work in printed or analogous forms of reproduction at the price at which such edition is sold or a lower price for the purposes of systematic instructional activities.
- (2) Every such application shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the work to be reproduced.
- (3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar of Copyrights such fee as may be prescribed.
- (4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a reproduction of the work mentioned in the application subject to the conditions that,-(i) the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the reproduction of the work sold to the public, calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed manner;(ii) a licence granted under this section shall not extend to the export of copies of the reproduction of the work outside India and every copy of such reproduction shall contain a notice that the copy is available for distribution only in India :
Provided that no such licence shall be granted unless-
 - (a) the applicant has proved to the satisfaction of the Copyright Board that he had requested and had been denied authorisation by the owner of the copyright in the work to reproduce and publish such work or that he was, after due diligence on his part, unable to find such owner;
 - (b) where the applicant was unable to find the owner of the copyright, he had sent a copy of his request for such authorisation by registered airmail post to the publisher whose name appears from the work not less than three months before the application for the licence;
 - (c) the Copyright Board is satisfied that the applicant is competent to

reproduce and publish an accurate reproduction of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section;

- (d) the applicant undertakes to reproduce and publish the work at such price as may be fixed by the Copyright Board, being a price reasonably related to the price normally charged in India for works of the same standard on the same or similar subjects;
 - (e) a period of six months in the case of application for the reproduction and publication of any work of natural science, physical science, mathematics or technology, or a period of three months in the case of an application for the reproduction and publication of any other work, has elapsed from the date of making the request under clause (a), or where a copy of the request has been sent under clause (b), from the date of sending of a copy, and a reproduction of the work has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or, three months, as the case may be;
 - (f) the name of the author and the title of the particular edition of the work proposed to be reproduced are printed on all the copies of the reproduction;
 - (g) the author has not withdrawn from circulation copies of the work; and
 - (h) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.
- (5) No licence to reproduce and publish the translation of a work shall be granted under this section unless such translation has been published by the owner of the right of translation or any person authorised by him and the translation is not in a language in general use in India.
- (6) The provisions of this section shall also apply to the reproduction and publication, or translation into a language in general use in India, of any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities.

Explanation.- For the purposes of this section, "relevant period", in relation to any work, means a period of-

- (a) seven years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to, fiction, poetry, drama, music or art;
- (b) three years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to, natural science, physical science, mathematics or technology; and
- (c) five years from the date of the first publication of that work, in any other case.

CHAPTER XI

Infringement of Copyright

51. When copyright infringed. -Copyright in a work shall be deemed to be infringed-

- (a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act-(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or(ii)101 permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or
- (b) when any person-(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or(iii) by way of trade exhibits in public, or(iv) imports 102***** into India, any infringing copies of the work103Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.

Explanation.- For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy".

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 a literary, dramatic, musical or artistic work 104[not being a computer programme] for the purposes of-(i) 105private use, including research;(ii) criticism or review, whether of that work or of any other work; "
 - (aa)106 the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy-(i) in order to utilise the computer programme for the purposes for which it was supplied; or(ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied;"121A"
 - (ab) the doing of any act necessary to obtain information essential for operating inter-operability of an independently created computer

programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available;

- (ac) the observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied;
- (ad) the making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use; ;

52A. Particulars to be included in records and video films. 117 (1) No person shall publish a¹¹⁸[sound recording] in respect of any work unless the following particulars are displayed on the[sound recording] and on any container thereof, namely:-

- (a) the name and address of the person who has made the [sound recording];
 - (b) the name and address of the owner of the copyright in such work; and
 - (c) the year of its first publication.
- (2) No person shall publish a video film in respect of any work unless the following particulars are displayed in the video film, when exhibited, and on the video cassette or other container thereof, namely:-
- (a) if such work is a cinematograph film required to be certified for exhibition under the provisions of the Cinematograph Act, 1952, a copy of the certificate granted by the Board of Film Certification under section 5A of that Act in respect of such work;
 - (b) the name and address of the person who has made the video film and a declaration by him that he has obtained the necessary licence or consent from the owner of the copyright in such work for making such video film; and
 - (c) the name and address of the owner of the copyright in such work.