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Media & Copyright Law

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Image source : <https://www.lexology.com/library/detail.aspx?g=356679bb-d670-4bbc-9b5e-9d3a4d96c511>

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What is a Copyright ?

- Copyright is a bundle of exclusive rights vested in an author of an original creative work that is fixed in a tangible form.
- These rights are for certain acts in relation to literary, dramatic, musical, and artistic works, cinematography and sound recordings.

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Duration of Copyright protection

- The period or duration of copyright begins from the moment the work is created or, under some national laws, when it is expressed or “fixed” in tangible form.

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 ²[***] 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.

- Works that are no longer subject to copyright protection enter the *public domain*.

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Rights granted to Copyright Owner

Moral Rights

The right to claim authorship of a work (sometimes called the right of paternity or the right of attribution); and

The right to object to any distortion or modification of a work, or other derogatory action in relation to a work, which would be prejudicial to the author's honour or reputation (sometimes called the right of integrity).

Economic Rights

Reproduction of the work in various forms, such as printed publications or sound recordings;
distribution of copies of the work;
public performance of the work;
broadcasting or other communication of the work to the public;
translation of the work into other languages; and
adaptation of the work, such as turning a novel into a screenplay.

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Moral Rights in the Indian Copyright Act, 1957

57. Author's special rights.— ¹[(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—

- (a) to claim authorship of the work; and
- (b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work ²[***] if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies.

Explanation.— 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 rights conferred by this section.]

(2) The right conferred upon an author of a work by sub-section (1), ³[***], may be exercised by the legal representatives of the author.

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Economic Rights in the Indian Copyright Act, 1957

³**[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,—

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Exceptions to Copyright protection

Berne Convention for the Protection of Literary and Artistic Works

Article 9

[Right of Reproduction: 1. Generally; 2. Possible exceptions; 3. Sound and visual recordings]

(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in **certain special cases**, provided that such reproduction **does not conflict with a normal exploitation** of the work and **does not unreasonably prejudice the legitimate interests of the author**.

(3) Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.

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Fair Dealing v/s Fair Use

Fair Dealing (exception to copyright infringement)

- Non-commercial research or private study
- criticism or review
- reporting current events
- illustration for instruction, quotation, or parody, caricature or pastiche

Fair Use (limitation on exclusive rights in works of authorship)

- the purpose and character of the use
- the nature of the work
- the amount used and the substantiality of what has been taken from the work
- The effect of the use on the potential market value for the work

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Section 52, Copyright Act, 1957 (India)

- private use, including research;
- criticism or review ,
- reporting current events in any print media or by broadcast or in a cinematographic film or by means of photographs,
- reproduction for the purpose of a judicial proceeding or of a report of a judicial proceeding;
- reproduction or publication of a literary, dramatic, musical or artistic work in any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature; the reproduction of any literary, dramatic or musical work in a certified copy made or supplied in accordance with any law for the time being in force;
- the reading or recitation in public of any reasonable extract from a published literary or dramatic work;
- the publication in a collection, mainly composed of non-copyright matter, bona fide intended for the use of educational institutions,
- the making of sound if made by or with the license or consent of the owner of the right in the work

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Patrick Cariou v/s Richard Prince

United States Court of Appeals, Second Circuit. 714 F.3d 694 (2013)



Patrick Cariou, Photograph from *Yes Rasta*



Richard Prince, *Graduation*

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- *"Where Cariou's serene and deliberately composed portraits and landscape photographs depict the natural beauty of Rastafarians and their surrounding environs, Prince's crude and jarring works, on the other hand, are hectic and provocative."*
- On fourth factors: *"our concern is not whether the secondary use suppresses or even destroys the market for the original work or its potential derivatives, but whether the secondary use usurps the market of the original work."*

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Campbell v/s
Acuff-Rose
Music, Inc
510 U.S. 569

Oh, Pretty Woman

Roy Orbison, The Candymen, ...

Pretty woman, walking down the street
Pretty woman, the kind I'd like to meet
Pretty woman, I don't believe you
You're not the truth
No one could look as good as you
Mercy!

Pretty woman, won't you pardon me?
Pretty woman, I couldn't help but see
Pretty woman, you look lovely as can be
Are you lonely just like me?
Rwar-r-r-r-r-r-r-r-r-r

Pretty woman, stop a while
Pretty woman, talk a while
Pretty woman, give your smile to me

Pretty woman, yeah, yeah, yeah
Pretty woman, look my way
Pretty woman, say you'll stay with me

Pretty Woman

2 Live Crew

= all the other Crew members

Ha haaa, walkin' down the street
[Pretty woman] Gir, girl, you look so sweet
[Pretty woman] You, you bring me down to the knees
[Pretty woman] You make me want to beg please
[O-o-o-o-oh, pretty woman]

You need to shave that stuff
[Big hairy woman] You know, I bet it's tough
[Big hairy woman] All that hair, it ain't legi-I-it
[Cause you look like Cousin I-I-I-I-I-I]
[Big hairy woman]

Girl, your hair won't grow
[Ball-headed woman] You got a teeny-weeny afro
[Ball-headed woman] You know, your hair could look nice
[Ball-headed woman] First you got to roll it with rice
[Ball-headed woman]
(spoken) Here, lemme get this hunk o' beans for ya,
ya know what'm sayin'? Ha ha! This better than Rice-a-Roni!
Ha ha ha ha ha!

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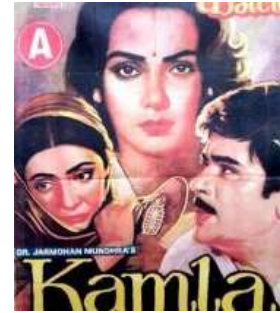
Copyright & Press Media

1. Literary works -> **Newspapers, news-magazines and blogs**
2. Cinematographic films (*any work of visual recording and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films*) -> **TV news broadcasts and news videos**
3. Sound recordings (*a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced*) -> **Radio broadcasts and news podcasts**

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Indian Express Newspapers v/s Dr Jagmohan Mundhara

AIR 1985 Bom 229



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Article 2, paragraph (8)

News of the Day and Miscellaneous Facts

(8) The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.

Article 2 (8), Berne Convention

CHAPTER IV

OWNERSHIP OF COPYRIGHT AND RIGHTS OF THE OWNER

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;

Section 17, Copyright Act 1957

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Idea- Expression Dichotomy



Ideas per se are not copyrightable; only the expression of an idea is copyrightable.



Such expression must be a specific, particular arrangement of words, designs or other forms



Fact-expression dichotomy -> factual information is in the public domain



....The cause of knowledge is best served when history is the common property of all, and each generation remains free to draw upon the discoveries and insights of the past...(Hoehling, 618 F.2d at 974)