

**A
Brief Introduction
of
Copyright
and
Its Different
Aspects**



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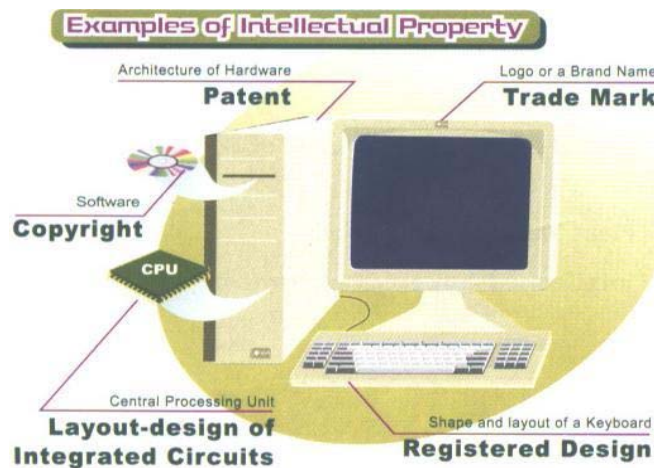
A Brief Introduction of Copyright & Its Different Aspects

What is Intellectual Property?

Intellectual Property (IP) refers to the creations of the mind in the fields of inventions, literary and artistic works, scientific works, symbols, names and images used in industry, commerce & communication areas.

IP is divided mainly into two categories such as **Industrial Property** and **Copyright & Related Rights**. Now-a-days new fields of Intellectual Property are also emerging that cover traditional knowledge, genetic resources, geographical indication etc.

Industrial Property includes patent for invention, industrial design, integrated circuits, utility models, trade marks etc.



Source: Intellectual Property in Honkong

What do you understand by Copyright?

Copyright is a legal term that describes the right given to the creators of a broad range of literary & artistic works. It is a protection system that covers published and unpublished works, whatever the form of expression provided such works are fixed in a tangible or material form. Copyright provides exclusive rights to the creators to use or to authorize to use their works.

The definition of copyright may differ from country to country according to the country legislation. However, the basic concepts remain almost the same and consist largely the provisions of International Treaties and Conventions such as the TRIPS Agreement, the Berne Convention, the Rome Convention & other relevant Conventions.

In the Nepalese context, the existing Copyright Act, 2002 provides the exclusive rights to the creators/authors on their creations. Copyright is the legal protection extended to the owners of the rights in an original work which they have created.

Copyright includes moral and economic rights which are the exclusive rights protected by law.

The Copyright Act, 2002 is primarily based upon the Copyright Act, 1965 and is also the replacement of it.

Copyright includes;

1. Literary works;

- Novels, Stories and Poetical Works.
- Text books, Articles, Essays and Biographies.
- Encyclopedias and Dictionaries.
- Letters, Reports and Memorandum.
- Tables and Compilations.
- Thesis and pamphlets.

2. Artistic works;

- Paintings, Sculptures, Drawings, Engravings & Photographs.
- Work of Architecture, being either buildings or models of building,
- Work of Craftsmanship,

3 Musical works,

4 Dramatic and choreographic works,

5 Audio visual works/ Film and multimedia,

6 Computer program etc.

What are the Exclusive Rights?

The original creators/authors of works, protected by copyright, have Exclusive Right to use or authorize others to use the work on agreed terms.

The following rights are the exclusive rights provided to the creators/authors by Copyright:

- Right of reproduction.
- Right of translation.
- Right of adaption, arrangement and other alteration.
- Right of public performance.
- Right of broadcasting.
- Right of communication to the public.
- Right of distribution.
- Right of rental.

What are the Related Rights?

Related Rights are those rights that provide protection to those who assist intellectual creators such as in the communication & dissemination of the creators'

works to public. These rights are also called neighboring rights. The Related Rights include–

- Right of Performers (Actors and singers in their performance).
- Right of Sound Recording Organizations (Cassette Recordings and Compact Disks in their recording).
- Right of Broadcasting Organizations (Radio and Television in their Programs).

What are the Moral & Economic Rights?

1. Moral Rights: –

Copyright Law protects the Moral Rights, which involve the right to claim authorship of a work and the right to oppose changes to it that could harm the creators' rights. It will not be transferred in any condition.

As per the Copyright Law owners/authors shall have the following moral rights:–

- Right of authorship.
- Right of disclosure.
- Right to make necessary amendment for improvement.
- Right concerning the works integrity.

In Nepalese context, section 8 of the Copyright Act, 2002 has the provision regarding the protection of the moral rights.

2. Economic Rights: –

Economic Rights are the creators' rights which can be transferred through the written agreement to the business holders/users with clear provision regarding the royalty/remuneration to the creators.

Economic right of owners shall have the exclusive rights to carry out the following aspects of works:–

- Right of Reproduction.
- Right of Broadcasting.
- Right of Public Performance.
- Right of Adaption.
- Right of Translation.
- Right of Public Recitation.
- Right of Public Display.
- Right of Distribution.

What are the Copyright based Industries?

The copyright based industries are the industries engaged in creation, production or manufacturing, performance, broadcasting, communication, exhibition, publication, distribution, sales of work and other protected subject matters.

On the basis of nature of the products and services the copyright based industries can be categorized into the following four main groups: –

- 1. Core copyright industries:**
 - Press and literature.
 - Music, theatrical production and operas.
 - Motion picture and video.
 - Radio and television.
 - Photography.
 - Software and databases.
 - Visual and graphic arts.
 - Advertising services.
 - Collective Management Society.
- 2. Independent industries:**
 - TV sets, Radios, VCRs, all media players, Electronic game equipments.
 - Computers and equipments.
 - Musical instruments.
 - Photographic and cinematographic instruments.
 - Photocopiers.
 - Blank recording materials.
 - Paper (industries).
- 3. Partial copyright industries:**

Coins, Jewelry, Apparel, Textile, Furniture, Carpets, Toys/Games, Architecture, Engineering, Surveying, Museums.
- 4. Non-dedicated support industries:**

Telephony, Internet, general transportation, general wholesale and retailing.

What are the terms of Protection on works offered by the Copyright Act, 2002?

The Copyright Act, 2002 provides the following terms of protection to the authors/creators of the work:–

- Economic & Moral Rights of a creator/author shall be protected throughout the life and the next fifty years after his death.
- In case of a work of joint authorship, the term provided after the death of the author shall be calculated from the death of the last surviving author.
- The rights shall be protected for 50 years from the published date in case of institutional creations.
- Photographic works and applied arts are protected for 25 years from the year of preparation of the work.
- The rights of sound recording shall be protected for 50 years from the publication of such a sound recording.
- The broadcasts of broadcasting organization shall be protected for 50 years from the year of commencement of such broadcast.

- The performance of performer shall be protected for 50 years from the year of performance.

What are the rights of Performer, Producer of Phonograms and Broadcasting Organization as per the Copyright Act, 2059?

The Performer shall have the right to perform the following acts:

- To make public communication of one's own performance.
- To determine the modality or medium of performance.
- To reproduce and distribute of the copies of the performance by sale or ownership transfer or rent.
- To revise and amend the performance.
- To object the modification of the performance.
- To broadcast the performance.
- To mention name in the use of the performance.

The Sound Recording Producer shall have the following rights:

- To reproduce the sound recording, directly or indirectly, in any manner or in any form.
- To import copies of the sound recording.
- To make easily available by sale or ownership transfer of original or copies of the sound recording.

The Broadcasting Organization shall have the right to carry out the following act:

- To re-broadcast the subject it has broadcast.
- To communicate its broadcast to make easily available to the general public.
- To make fixation of its own broadcast.
- To reproduce the fixation of its broadcast.

What are types of infringement of the protected rights?

Following acts shall be considered to have infringement as per Nepalese Copyright Act: –

- The activities such as production, reproduction, communication to public, duplicate, sell etc. of the copyrighted materials which are done without agreement/authorization of the copyright owner or against to the agreement.
- The act of change of the language or the structure of any other creations or import of such products to get the economic benefit.
- The activities that support the unauthorized reproduction of the copyrighted materials.

What shall be the Punishment for the violation of Protected Rights?

Any violation of Protected right is subjected to the following financial and physical punishments:

- The infringer of any protected right shall be punished with a fine of ten thousands rupees to one hundred thousand rupees or 6 months imprisonment or both as per the nature of the infringement. The repetition of the violation will be subjected to the double the punishment with seizure of the unauthorized materials.
- Compensation for the loss caused to the copyright owner by infringer of the protected right shall also be realized & provided to the copyright owner.
- The case of violation of copyright shall be the state case. District Court is responsible for the initial treatment of case and at least the Police Inspector shall investigate and inquiry into the case.

What are the international Treaties/Convention that Nepal is a party to?

- WIPO (World Intellectual Property Organization) Convention, 1967 since February 4, 1997.
- Paris Convention for the Protection of Industrial Property, 1883 since June 22, 2001.
- World Trade Organization, 1995 since April 23, 2004.
- Berne Convention for the protection of Literary and Artistic Works, 1886, since January 11, 2006.
- On-going efforts to accede to the International Convention for the protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), 1961.

What must be done for the effective protection of Intellectual Property?

- Written agreement with the right owner is necessary for the purpose of production and reproduction of the copyrighted materials.
- Promote the use of the original goods and make goods available at the reasonable prices.
- Use of the proper business and negotiation skills with the complete and detail contracts for business transactions between the right owners and users.
- The right holder & business holder should maintain the ethics as per the agreement or the contract regarding the use of creations/materials.
- There must be a clear written agreement between the parties involved in the creation before filing for the registration in Nepal Copyright Registrar's Office.

How is Copyright different from Intellectual Property Right (IPRs)?

Copyright is the right given to the creator of a creation. It encompasses a bundle of rights. Similarly, the term "Intellectual Property Rights" doesn't only include Copyright but also covers a wider range of rights such as trade marks, patent, industrial designs or rerecording and performance rights. Effectively, Copyright is a subject of IPRs. IPRs is the collaboration of Copyright and industrial property right.

What happens when it is unclear to confine the Copyright owner?

The confinement of the Copyright owner is quite challengeable and also difficult job because only the physical object does not convey ownership of Copyright. It may be the matter of research for the purpose of identifying the ownership of Copyright. It is not necessary to have Copyright ownership within the rights of authorship. The person (s) who is outside the periphery of Copyright may also claim the ownership of Copyright. This can arise through two situations,

- a) The person (s) who created the piece of work was employed at the time, and the work was created as part of his/her duties. In this situation, the employer can claim the Copyright ownership.
- b) The original creator may have sold, given or bequeath the Copyright to one person/institution but sold, given or bequeathed the physical object to another person/institution. In this situation the owner of the physical object does not own the Copyright, but the person who bought or was given the Copyright can claim the Copyright ownership.

What is the litigation against the infringement of Copyright as per the Nepalese Copyright Act, 2059?

As per the existing Copyright Act of Nepal, the infringement of Copyright is treated as the state case. The case resumes by filling of the First Information Report (FIR) in the police authority. At least, the rank of Police Inspector investigates and inquires the infringement cases. The District Government Attorney files the case by demanding the necessary penalty, imprisonment and compensation (if required) in the District Court. The District Court, on the basis of the evidence, settles the case. The party, having dissatisfaction can appeal against the decision of the District Court in the concerned Appellate Court.

On the other side, Nepal Copyright Registrar's Office also collects the complaints related to the infringement of Copyright and tries to settle the disputes through arbitration.

What are the directly concerned government and other related agencies in the copyright law in Nepal?

Different government agencies are directly involved for the protection of Copyright such as;

- Nepal Copyright Registrar's Office.
- Office of the Attorney General/District Attorney Office.
- Courts.
- Nepal Police.
- Custom Office

Likewise the non-governmental organizations are also working for the protection of Copyright are;

- Copyright Protection Society Nepal.
- Music Royalty Collection Society Nepal.

What are the items which have not protected by Nepal Copyright Act, 2002?

As per the Nepal Copyright Act, 2002, any thought, religion, process, concept, principle, court judgment, administrative decision, methods of operation, folk song, folk tale, proverb and general data have not protected.

What are the essential documents required for the registration of any creation?

Any person, intending to register a creation for copyright protection should submit the following documents:

- Fulfillment of the application form which is distributed free of cost by Nepal Copyright Registrar's Office. The form can be downloaded from www.nepalcopyright.gov.np
- A photocopy of the citizenship of the right owner.
- Postage stamp of Rs 5/-
- Rs. 100/- cash for registration fees. (Receipt will be provided by Nepal Copyright Registrar's Office).
- Written agreement with the involved parties if the creation/work has been prepared by two or more parties/persons.

For more information:

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