

IPR Toolkit - Pakistan

Copyrights

Introduction to Copyright

Copyright is a form of protection provided to the authors of “original works of authorship” including literary, dramatic, musical, artistic, and certain other intellectual works, both published and unpublished. In ancient times creative persons like artists, musicians and writers made, composed or wrote their work for fame and recognition rather than to earn a living and therefore the question of copyright never arose. The importance of copyright was recognized only after the invention of the printing press, which enabled the reproduction of books in large quantities. Modern copyright has been influenced by an array of older legal rights, including the moral rights of the author who created a work, the economic rights of a benefactor who paid to have a copy made, the individual property rights of the owner of a copy, and a sovereign's right to censor and to regulate the industry. England's “Statute of Anne” is regarded as the first copyright law. It was passed in 1709. This law for the first time accorded exclusive rights to authors and limited the duration of such exclusive rights to a certain number of years, after which all works would pass into the public domain.

In Pakistan the first law on copyright was the Copyright Act, 1914. It was modeled after the U.K. Copyright Act, 1911. The Copyright Ordinance, 1962 replaced the earlier Copyright Act of 1914. However, in order to extend the scope of protection to new material and to ensure stringent enforcement of copyright, the Copyright Ordinance, 1962 was amended by the Copyright (Amendment) Act, 1992.

In Pakistan, registering a work with the Registrar of Copyrights is not a requirement for obtaining copyright protection. Rather, copyright protection vests with the original creator as soon as the work is created and recorded in a material form.

The Court held in *Messers Ferozesons Pvt. Ltd. v. Dr. Col. Retd. K.U. Kureshi and others* {2003 C L D 1052(Lahore)} that failure to register the copyright does not invalidate or impair the copyright. Nor does it destroy the right to sue for copyright infringement. The court noted, however, that while registration of copyright is not required, it does provide for *prima facie* evidence of authorship and that copyright subsists in the work, in case of any dispute.

It is important to note that no copyright vests in an idea. Rather, it vests in the expression of the idea. In the case of *Independent Media v. Ali Saleem and Anr.* {2006 C L D 97 (Karachi)}, the Court held that copyright does not protect an idea but only the expression of an idea.

In Pakistan, video, textbook and consumer goods piracy deprives the government of PKR 9 billion (approximately \$114 million USD) in revenue annually.¹ Of that amount, PKR 3 billion (approximately \$38 million USD) is from video piracy and another PKR 3 billion is from consumer product piracy.² PKR 1.5 billion (approximately \$19 million USD) is from textbook piracy.³ In 2007, the Business Software Alliance, and international research firm IDC, rated Pakistan as one of the worst offenders in software piracy. The report puts piracy rates in Pakistan at eighty-four percent.⁴ Furthermore, it is reported that cable and satellite piracy caused over \$110 million in losses to legitimate channels due to illegal distribution to an estimated 4.6 million unauthorized subscribers in the year 2007.⁵ Pakistan is considered to be a hub of book piracy with certain markets in Karachi and Lahore being the source of most of the pirated books in the country. It is estimated that in 2007, book piracy resulted in a trade loss of \$55 million.⁶

Although there are various laws in the Copyright Ordinance, 1962 for battling piracy, enforcement of these laws is weak.

Market Entry Planning

Foreign companies may apply for, and be granted, protection of their Intellectual Property in Pakistan. Despite statutory provisions on protection and enforcement, Pakistan has widespread piracy. Infringement of copyright in Pakistan is so rife that the movie, music and software industries lose millions of rupees every year despite various initiatives for battling piracy. Internet piracy using the latest technologies has further aggravated this problem. Although U.S. companies, upon entering the Pakistani market, cannot rule out the possibility that their works will be pirated, there are steps that one can take to reduce the risk.

The rights holder should develop a comprehensive IPR strategy before entering the Pakistani market. Part of the overall strategy should include:

- Hiring an IPR expert who understands the laws of Pakistan and who can help ensure that your strategy is consistent with those laws.
- Having all relevant agreements in place before sharing work in which copyright subsists with any third party. These agreements should include Non-Disclosure Agreements and various other agreements specifying the relation between you and the recipient party and the rights and obligations of both the parties. It is imperative that the agreement clearly specify the ownership of the copyright, the specific works and rights being licensed or assigned, the duration, and the territorial extent of such assignment/license. The amount of royalty payable to

¹ Source: <http://www.pakistaneconomist.com/issue2000/issue11&12/cover.htm>

² Source: <http://www.pakistaneconomist.com/issue2000/issue11&12/cover.htm>

³ Source: <http://www.pakistaneconomist.com/issue2000/issue11&12/cover.htm>

⁴ Source: http://global.bsa.org/idcglobalstudy2007/studies/summaryfindings_globalstudy07.pdf

⁵ Source: <http://www.iipa.com/rbc/2009/2009SPEC301PAKISTAN.pdf>

⁶ Source: <http://www.iipa.com/rbc/2009/2009SPEC301PAKISTAN.pdf>

the author should also be specified in order to avoid any ambiguity. It is also important that the relevant clauses guarding your copyright and its confidentiality are incorporated into the agreement with special attention paid to the termination of the agreement.

- In case of any infringement, you should take immediate steps to enforce your copyright and stop the infringing activity. Sending a cease and desist notice could do this or you might initiate legal action against the infringer. You should also publish cautionary notices claiming copyright to the work in order to establish your exclusive proprietary rights to the copyrighted work.

It is important for the rights holder to remember that under Pakistani law, an assignment of copyright is only valid by written agreement. In *Shakeel Adilzadah v. Pakistan Television Corporation Ltd. and other* {1989 C L C 2447 (Karachi)} the Court held that “Copyrights can be assigned only by a written agreement. Mere circumstance that an author has been engaged by a publisher to write a book for remuneration would itself not vest the copyright in the publisher.”

Works protected under Pakistan copyright law

- Original literary works
- Original dramatic works
- Original musical works
- Original artistic works
- Cinematographic films
- Records⁷

Exclusive rights of copyright owners in Pakistan (in general, please consult law for specific rights for each type of copyrighted work)

- To reproduce the work in any material form
- To issue copies of the work to the public not being copies already in circulation
- To perform the work in public
- To communicate it to the public

⁷ The Copyright Ordinance defines “record” as “any disc, tape, wire, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom, other than a sound track associated with a cinematographic work.”

- To make any cinematographic film
- To make any sound recording
- To make any translation of the work
- To make any compilation of the work
- To make any adaptation of the work
- To offer the work for sale
- To offer the work for rental or hire

Registration procedure

Registration of copyright is not mandatory in Pakistan. In Pakistan, copyright vests from the moment the work is created and recorded in a tangible form. However, a certificate of registration is sufficient evidence in a court of law that a copyright exists in the work and that the owner named in the certificate is the owner of such copyright. A rights holder can apply for the registration of both published as well unpublished works using the following procedure:

- **Preparing the documents and filing the application**

Any person who is the owner of the copyright may make an application to the Registrar of Copyrights. The copyright owner can file the application or an attorney retained by the copyright owner can file the application on behalf of their client. A separate application has to be filed for each individual work. The registration of copyright in Pakistan is divided in four parts based on the type of work for which copyright protection is sought:

Part I - comprising of Literary, Dramatic & Musical Works

Part II - comprising of Artistic Works

Part III - comprising of Cinematographic Works

Part IV - comprising of Record Works

The application must be filed in the prescribed format at the office of the Copyright Registrar in Karachi or at the Intellectual Property Office in Lahore. The application has to be accompanied by a “Statement of Particulars” and a “Statement of Further Particulars.” The format of the forms to be filed along with the other general information is available <http://www.ipo.gov.pk/Copyright/CopyrightForms.aspx>. Moreover, in the case of artistic works, the rights holder has to publish an advertisement of the said artistic work in any national Urdu or English language daily newspaper where the rights holder resides or carries out business activities.

The rights holder applying for registration must simultaneously send a copy of his or her application to every person who claims or has an interest in the subject matter of the copyright or disputes the rights of the applicant.

- **Registration and Publication**

After the application is filed, the Registrar examines it, and if required, seeks clarification from the Applicant. If the Registrar of Copyrights does not receive any third party objection to a registration within thirty days of receipt, he enters the information into the Register of Copyrights. In the case of a dispute, the Registrar of Copyrights holds an inquiry and, once satisfied, enters the appropriate details in the Register of Copyrights. Typically registration of a copyright takes between six to eight months. After the information has been entered in the Register of Copyrights the Registrar publishes the copyright information in the Official Gazette.

Rights of Performers and Producers of Phonograms

Performer's Rights are the special rights of a performer i.e. an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture, or any other person who makes a performance (i.e. a visual or acoustic presentation made live by the performer). The producer of a phonogram is a person who records the sounds of a performance or other sounds.

The performers have the exclusive right to:

- Fix or prevent fixation⁸ of their unfixed performance;
- Reproduce the fixation of their performance;
- Broadcast the performance by wireless means;
- Communicate the live performance to the public.

The producers of phonograms, on the other hand, have the exclusive right to reproduce their fixation and rent such fixation.

If any other person reproduces the recording or rents the recording, without the consent of the performer and during the continuance of the performer's right, that act is an infringement of the performer's rights.

The rights of producers and performers last fifty years from the year in which fixation was made or the performance took place.

⁸ The Copyright Ordinance defines fixation as the incorporation of sounds or images or both in a device by means of which they can later be made aurally or visually perceivable.

Broadcaster's Rights

The Copyright Ordinance defines 'broadcasting' as communication to the public of sound or images or both by means of radio-diffusion, including communication by telecast, by wire, or by both. Every broadcasting organization has special rights with respect to its broadcasts and these rights are known as broadcast reproduction rights. The broadcasting organization has the exclusive right to:

- re-broadcast the broadcast;
- fix their broadcasts; and
- copy fixations made of their broadcasts.

If any person does any of the aforementioned acts, without a license from the broadcasting organization and while the broadcaster's rights are in effect, that act is an infringement of the broadcaster's rights.

The broadcast reproduction right lasts for twenty-five years.

Term of Copyright

The copyright in a work does not last for perpetuity. In the case of original literary, dramatic, musical and artistic works (other than photographs), the term of copyright protection in Pakistan is the life of the author plus fifty years. The fifty-year period is counted from the year following the death of the author. In the case of films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organizations, the term is 50 years beginning on the calendar year next following the year in which the work is first published.

Author's Special Rights

Even if the rights holder has relinquished or assigned the copyright in the work, he shall have the right to restrain or claim damages in respect of any distortion, mutilation or other modification of the said work. The rights holder may take action against any conduct prejudicial to his or her honor or reputation.

Infringement and Enforcement Remedies

The copyright in a work is infringed when any person, who is not authorized to do so:

- Does anything that is an exclusive right of the owner of the copyright, or
- Permits any place to be used for the performance of the work to the public for profit where such performance is an infringement, or

- Makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or
- Distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or
- By way of trade exhibits in public, or
- Imports into Pakistan, any infringing copies of the work

What is not copyright infringement:

The following acts shall not constitute copyright infringement:

- Fair dealing with a literary, dramatic, musical or artistic work, for the purposes of:
 - private study or research;
 - criticism or review, whether of that work or of any other work;
- A fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events:
 - in a newspaper, magazine or similar periodical; or
 - by broadcast or in a cinematograph film or by means of photographs;
- Reproduction of a literary, dramatic, musical or artistic work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;
- Publication in a newspaper of a report of a political speech delivered in public, unless the report is prohibited by conspicuous written notice
- The reproduction of any literary, dramatic or musical work in a certified copy made or supplied in accordance with any law;
- The reading or recitation in public of any reasonable extract from a published literary or dramatic work;
- The publication of short passages from literary or dramatic works in a collection, mainly composed of non-copyright matter, intended for the use of educational institutions subject to certain requirements.
- Reproduction or adaptation of a literary, dramatic, musical or artistic work:
 - by a teacher or a pupil in the course and for the sole purpose of instruction as part of the questions to be answered in an examination; or
 - in answers to such questions;

- Performance of a literary, dramatic or musical work by the staff and students of an educational institution, or of a film or a sound recording if the audience is limited to staff, students, the students' parents, student's guardians and persons directly connected with the activities of the institution;
- The making of records in respect of any literary, dramatic or musical work, if:
 - made with the license or consent of the owner of the right in the work; and
 - the person making the records has given notice of his or her intention to make the records, and has paid royalties in respect of all such records, at the rate fixed by the Board;

Provided that such person shall not make any alterations in, or omissions, unless similar alterations and omissions have been previously made by, or with the license or consent of, the copyright owner, or unless such alterations and omissions are reasonably necessary for the adaptation of the work;
- Causing a recording to be heard in public by utilizing it:
 - at any premises where people reside, as part of the amenities provided exclusively or mainly for residents; or
 - as part of the activities of a club, society, or other organization which is not for profit;
- Performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious, charitable or educational institution;
- Reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction;
- The publication in a newspaper, magazine or other periodical of a report of a lecture delivered to public;
- Making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a public library or a non-profit library available for use by the public free of charge or a library attached to an educational institution for the for the use of the library if such book is not available for sale in Pakistan;
- Reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in an institution to which the public has access, provided that where the identity of the author is known, this provision shall apply only if such reproduction is made more than fifty years from the date of the author's death.
- Reproduction or publication of:

- any matter which has been published in any Official Gazette or the report of any committee, commission, council, board or other similar body appointed by the Government unless the reproduction or publication of such report is prohibited by the Government;
 - any judgment or order of a court, tribunal or other judicial authority, unless the reproduction or publication is prohibited by the court, the tribunal or other judicial authority;
- The making or publishing of a painting, drawing, engraving or photograph of an architectural work of art, sculpture or other artistic work; if such work is permanently situated in a public place or any premise where public has access;
 - The inclusion in a cinematograph film of-
 - any artistic work permanently situated in a public place or any premises to which the public has access; or
 - 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;
 - The use by the author of an artistic work, where the author of such work is not the owner of the copyright, of any mold, cast, sketch, plan, model or study made by him for the purpose of the work, provided that he does not repeat or imitate the main design of the work;
 - The making of an object of any description in three dimensions of an artistic work in two dimensions, if the object would not appear, to persons who are not experts in relation to objects of that description, to be a reproduction of the artistic work;
 - The reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed, provided that the original construction was made with the consent or license of the copyright owner;
 - In relation to a literary, dramatic or musical work recorded or reproduced in any film, the exhibition of such film after the expiration of the term of copyright therein.⁹

As the copyright owner has the exclusive proprietary rights on their work, the copyright law in Pakistan provides for both civil and criminal remedies by which the rights holder can enforce rights.

Civil Litigation: A suit for infringement and passing off of copyright can be initiated in Pakistan. The rights holder can seek remedies like an injunction, damages and accounting. Furthermore, all infringing copies of the work, and any plates used or intended to be used in the reproduction of the copyrighted work are deemed to be the property of the rights holder.

⁹ This is subject to further conditions, provided for in article 57(x) of the Copyright Ordinance.

Moreover, where copyright in any work has been infringed and the owner of the copyright is unable to institute immediate regular legal proceedings due to sufficient cause, the owner or any third party with an interest in the copyright, may apply to the Court for immediate provisional orders to prevent infringement and for preservation of any evidence. This is irrespective of the fact that no regular proceedings in the form of a suit or other civil proceedings have been instituted by the owner. However any such interim order passed by the Court will cease to have effect if the regular suit has not been filed within the maximum period of thirty days. Should the rights holder initiate regular proceedings as well, the provisional proceedings will merge with the regular proceedings. The Ordinance requires that the decision of the suit for copyright infringement be decided within twelve months.

Criminal Litigation: The Copyright Ordinance, 1962 provides for criminal remedies for infringement. Any person infringing the rights of a copyright holder may be imprisoned for up to three years, or charged a fine up to one hundred thousand rupees (approximately \$1,268 USD) or both. The police also have the independent power to take action and seize without warrant all copies of the work and all plates and recording equipments wherever found and used for the purpose of making infringing copies of the work if they believe that an infringement has taken place or is likely to take place. All copies, plates and recording equipments so seized shall, as soon as practicable, be produced before a Magistrate.

Administrative Provisions: Besides the civil and the criminal remedies described above, there are also certain provisions under the copyright law and the customs law which allow a rights holder to file an application with a Customs officer who may detain any consignment containing infringing copies to be imported into or exported out of Pakistan. Such a consignment is then examined by an officer of Customs in the presence of the parties and upon determination that such consignment contains infringing copies the seized consignment shall be ordered to be confiscated and the importer or exporter shall be liable for such penalties as are described under Customs Act, 1969.

Expected Developments

A bill to implement an optical disc law is pending in Pakistan. It is expected that this bill will be passed in the near future and will help to fight piracy.

Copyright Legislations in Pakistan

The Copyright Ordinance, 1962 along with the Copyright Rules, 1967

International Copyright Treaties to which Pakistan is a signatory

- Berne Convention for the Protection of Literary and Artistic Works
- Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)

Copyright Related Websites:

<http://www.ipa.gov.pk/Copyright/Default.aspx>

<http://www.wipo.int/copyrights/en/>

<http://www.copyright.gov>

FAQs

1. When can I use the symbol ©?

As soon as you have created the work in which copyright subsists you should use the symbol © along with your name and the year in which the work was created. This applies regardless of whether the copyright has been registered.

2. What is the term of protection of a copyright in Pakistan?

Typically, the copyright in any literary, dramatic, musical or artistic work (other than a photograph) is for the life of the author plus fifty years. The fifty-year period is counted from the year following the death of the author.

3. Can I license/assign my copyright in a work to another person?

Yes. You can license/assign your copyright in a work to another person provided the arrangement has been reduced to writing. No license/assignment is valid unless a written instrument supports it.

4. Is registration mandatory to own a copyright in Pakistan?

No. It is not mandatory to register a copyright in a work in Pakistan. Though registration of copyright is legally sufficient evidence that copyright exists in the work and that the person named in the certificate as the owner is the owner of such copyright, however there is no difference in the protection granted to a copyright in a work of a registered or an unregistered copyright.

5. Who is the first owner of a copyright in a work?

Ordinarily the author is the first owner of the copyright.

6. Who is an author?

There are different authors for different kinds of work. In the case of a literary or dramatic work the person who creates the work is the author. In the case of a musical composition, the author is the composer. For film and sound recording the producer is the author while in the case of a photograph, the photographer is the author. In the case of a computer-generated work, the person who causes the work to be created is the author.

7. Can compulsory license be granted to a third party regarding the copyright in a work in Pakistan?

Yes, with respect to Pakistani works that have been published or performed in public. A person can make an application to the Board for grant of a compulsory license of such works on the following conditions. If the copyright owner:

- Has refused to republish, allow republication, or allow the public performance of the work, and by reason of such refusal the work is withheld from the public; or
- Has refused to allow communication to the public by broadcast; or
- Is dead, unknown, or cannot be found and republication of the work is necessary in the public interest.

8. Are the orders of the Registrar of Copyrights appealable?

Yes. Any final order of the Registrar of Copyrights can be appealed to the Copyright Board.