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Copyright Registration: Is it required?

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The status of copyright registered software is much better than that of an unregistered one...What could be the consequences and risk if you developed software application and launched it in the market without any Intellectual Property protection. If the software is free or paid one, and another company claims to be the owner of such software, what will be the course of action? In such case you will be asked to produce the evidence to prove the originality and ownership or valid title of the work, in the absence of which it becomes difficult to safeguard the interests of your own work. However, if you have registered the work with the registrar of copyrights, the certificate of registration is a valid proof of ownership that can be produced as evidence. In another situation, you want to raise capital by taking loan for the business against the software developed by you, the bank may refuse to grant a loan without having any intellectual property protection on the software.

Why copyright, not patent?

Now the question arises as to why to go for copyright protection when we have a strong patent regime in India. Patents generally protect inventions which are new/novel, inventive and have an industrial application. Moreover, the subject matter should not fall under any of the categories defined under Section 3 [Inventions not patentable] and 4 [Inventions relating to atomic energy] of the Indian Patents Act 1970. Section 3(k) of Indian Patents Act, 1970 clearly states that "computer program per se is not patentable". This, however, does not include those software programs that control the hardware in some or the other form such as embedded system software and more. However, pure software applications, such as a banking software, railways software system, software for general everyday use, web browsers, word processors, and spreadsheet, specialized software such as computer aided design software, accountancy software and others, come within the purview of non-patentable inventions under Indian Patent Law. For such software application, the only recourse for intellectual property protection is under copyright law, which does not protect the basic idea or concept behind the software program, but only the form and the manner in which it is expressed.

The basic difference between patents and copyright is that patents protect the Idea or the concept behind an invention whereas a copyright protects the expression of that Idea. There is another good reason to go for copyright rather than a patent is that generally the software patent applications should be limited to inventions having significant present and future commercial value. If the commercial life of software is only a few years, patent protection may not make much sense because it will take at least three to four years for the software patent to be granted and that too is not sure thing to happen due to strict patent laws in India. The period for patent registration is a long one in the light of technology boom where a latest technology becomes obsolete in few months.

Extent of copyright protection

Since copyright protects the expression of Idea, now the meaning of the term “expression” has to be understood well before any further discussion. We all know that one idea can be expressed in a number of different ways by different people. A person who expresses an idea can first claim copyright individually on such expression of the idea. A person who writes such a software program first, gets a copyright only in the manner it is written and not the methods and algorithms behind it. Copyright protection subsists in both source code and object code that are protected against literal copying. However, look and feel of the software gets protection as artistic work.

Registration of the copyright

Copyright is a form of intellectual property protection granted under Indian Copyright Act 1956, to the creators of original works of authorship such as literary works, dramatic, musical and artistic works, cinematographic films and sound recordings.

Registration of the copyright creates a public record of the claim of copyright ownership with the statutory authorities that index the records on the copyright register which contains work’s title and the author’s name. The copyright register is accessible to anyone and helps people find out the owners of copyright whom they can get licenses from to use a copyright work and helps to prevent fraudulent transfers of copyright ownership.

The purpose of copyright is to promote learning and progress in intellectual pursuits by encouraging authors to make their works available to the public. Since the copyright protection for abstract ideas would undermine that goal by permitting one author to have a monopoly on the idea itself, the idea is left in the public domain while leaving various expressions to the exclusive exploitation by the authors.

Copyright Protection worldwide

It is interesting to note that even though copyrights operate territorially, it is recognized virtually worldwide under the Berne Convention and is applicable uniformly to its 184 member states that include countries such as India, U.S., UK, China, Japan and more. This basically means that a copyright registration in one of the member states will have the same effect, in terms of copyright protection, in the rest of the member states from the date of its registration. Conventions and bilateral agreements address the availability of protection for foreign authors and grant protection to foreign authors under the principles of national treatment or formal reciprocity.

Is registration really needed?

The most interesting fact about copyright is that the copyright protection arises automatically and is inherent when an author fixes an original work on any tangible medium of expression. Under the Indian Copyright Act, the owner of a copyright may register his or her copyright claim with the Copyright Office, but no formal registration is required to create the rights of copyright. Registration is, however, a prerequisite to initiating an action for copyright infringement as it establishes prima facie proof of rights. As per the Indian Copyright Act, the Registers of Copyrights shall be prima facie evidence of the particulars entered therein and documents purporting to be copies of any entries therein, or extracts there from certified by the Registrar of Copyrights and sealed with the seal of the Copyright Office shall be admissible in evidence in all courts without proof or production of the original. Copyright registration is compulsory in case the owner wants to raise a loan from a bank based upon the copyright work. In order to qualify for copyright registration, the work should be original, without any strict prerequisite to novelty or uniqueness as is required under Indian Patent Law. To be original, a work should be created independently rather than being copied from someone else’s work. In other words, the work should be the personal expression of the author. This factor must be distinguished from the concept of novelty, which usually is not required. Independent development is valid defense to a claim of copyright infringement. Copyright protection is conferred automatically the moment the software code is embodied in some medium like ROM, Magnetic Tape, diskette, paper or any other tangible medium. One point worth noting here is that even though the copyright protection arises automatically upon its fixation on a tangible medium, the real problem arises when someone copies an unregistered work. In such a case the protection is no longer automatic and even being an

owner, one can not file lawsuit without registering the work. One can not stop infringement without copyright registration. Apart from that there is one more reason to file for copyright registration as soon as possible, is that one can save a decent amount of money that may be wasted in a lawsuit for copyright infringement which includes lawyer fees and litigation costs.

Even if not registered, a copyright notice can be affixed on the work and generally consists of the following four elements:

- * The symbol © (the letter C in a circle) or the word "Copyright"
- * The year of first publication of the work; and
- * The name of the owner of copyright.
- * "All rights reserved" at the end.

Conclusion

A prompt copyright registration of software is necessary to prevent unauthorized claiming and copying by others. It also greatly benefits in extracting maximum benefits by way of assigning, licensing and raising capital. It is also true that not all the works are worth registering but in most situations, a work is valuable enough to be registered.

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