

# All Things IP



**Eshwars | House of Corporate & IPR Laws**

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## AllThings IP Newsletter – November 2019

### **COMPUTER PROGRAMME AND THE COPYRIGHT ACT, 1957**

Whether Copyright subsists in a Computer Programme? Can a Computer Programme be protected under the umbrella of Copyrights Act, 1957? What are the pre-requisites?..... These are some of the most common queries IP owners are faced with in relation to protection of their intellectual property rights on computer software programmes.

As per the Copyright Act, 1957 (“Act”), Copyright shall subsist in original literary work, dramatic work, musical work, artistic work, cinematograph films and Sound recording. A Computer Programme is included within the definition of a “literary work” and hence can be registered as such under the Act.

A Computer Programme is defined under the Act as follows:

*“A Computer Programme means a set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result.”*

#### **Pre-requisites for filing Copyright Application in respect of a Computer Programme:**

- The Computer Programme should be original and should not contain any open source software.
- The Source code and Object code should be provided in digital medium i.e. machine-readable format and not in written or text form on paper.
- No objection letter from the parties involved or interested in creation of the Computer Programme.

#### **The term of Copyright in Computer Programme:**

The Copyright registration shall be valid until sixty years after the lifetime of the Author of the Computer Programme. The said term cannot be extended or renewed for further period.

Apart from the aforesaid protection of Copyright in a Computer Programme, IP owners are also sometimes faced with a question of- How to protect certain graphical interfaces in a computer programme that are unique to them and which possess certain intrinsic intellectual property value? In this regard, it can be stated that such graphical interfaces are construed to be a graphically generated image that can be protected as an ‘Artistic Work’ in which a Copyright subsists under the Act.

Normally, such graphical interfaces and any other flow diagrams explaining a process or functionality of a computer programme or any of its aspect are registered as a Copyright under the category of an ‘Artistic Work’.

#### **Pre-requisites for filing Copyright Application in respect of an Artistic Work in the context of graphically generated images:**

- Two copies of Artistic work.



- No objection letter from the parties involved or interested in creation of the graphical generated images.

**The term of Copyright in Artistic Work:**

The Copyright registration shall be valid until sixty years after the lifetime of the Author of the graphical generated images. The said term cannot be extended or renewed for further period.

**Remedies:**

The Act provides Civil and Criminal remedies to an Owner in case of infringement of Copyright. The Owner of the Copyright is entitled to civil remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right. If a person knowingly, without a licence granted by the owner of the Copyright or Registrar of Copyrights or in contravention of the conditions of a licence so granted, uses the Computer Programme for gain or in the course of trade or business, the owner can avail criminal remedies and the infringer may be punished with imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.

We at Eshwars regularly advise our clients on various Copyright protection strategies including IPR licensing. For more information please reach out to us at: [saisunder@eshwars.com](mailto:saisunder@eshwars.com).