

Opinion

Copyright Act Amendment: What's new and important?

By Priyanjana Bhattarai  
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House of Representatives members attending zero hour session at Parliament building in New Baneshwor, Kathmandu, on Friday, March 6, 2020. Photo courtesy: [hr.parliament.gov.np](http://hr.parliament.gov.np)

Copyright Act Amendment: What's new and important?

The Draft Bill to amend the Copyright Act, also known as the First Amendment to the Copyright Act 2059, was announced earlier this year. As Nepal has become more technologically advanced, artists now have various platforms to publish their art, such as the Internet, radio, magazines, among others. An amendment to the almost 20-year-old act was and still is the need of the hour.

Before jumping into all the legal technicalities, we must understand what copyright is. Copyright is the right given to you to protect your original expression of idea. Expression of idea means bringing the idea to life. For example, if you think of a script you must express it in some form. You cannot just go and ask someone to copyright an idea that's only in your mind. Since ideas are not protected, if any work having a similar idea is differently expressed, it will not be considered to violate the earlier work. However, the expression must have originality and a certain level of creativity.

So, coming back to the amendment and the main question in hand: Does the amendment fill the exposed gaps in the law's ability to deal with the new challenges that have been introduced by new forms of production and technologies?

The answer is both yes and no. The draft bill does bring certain changes which are impressive but does not perfectly fill all the gaps.

The first change that we come across is Section 2(a). The definition of "work" has been widened, and the meaning now includes translation, adaptation of work, dance and choreography, music composition, sound waves, handicrafts, engravings, any work in 3D, computer programmes, database, apps, mobile apps and software among the other things that were already present. This is very impressive, considering that the previous definition of work was very limited. This amendment has also made a considerable alignment with the definition provided by the Berne Convention.

Another important amendment in the same section is the addition of Section 2(n1) - the definition of a producer and Section 2 (n2) - the definition of royalty. Both these definitions were much needed and has made the act much clearer. However, the draft bill has failed to provide us the definitions of the terms added, such as sound waves, software, engravings and the like, which makes it difficult for an average man to interpret them.

The bill has also extended the scope of Section 3, which provides the protection of copyright. The section has been amended to align it with amended Section 2(a), to include adaptation of work and alteration of literary and artistic work in the purview of the protection granted by this section. The scope of Section 4 has also been widened and has included specification of any work that has been patented, or registered, as industrial designs and any kind of folk music and tale in the list of matters which are not copyrightable. Even though this was already in practice, it makes it easier for the Copyright Office to reject the applications on these grounds.

Section 5A has been added. This section provides for the cancellation of registration. However, the section only provides that the registration of any work which has been registered as a copyright but is deemed to be non-copyrightable at a later stage shall be cancelled. It does not provide us a proper explanation as well as the procedure to do so, it also does not provide us the timeline or talk about of non-use of the copyrighted work.

The bill has also extended the protection granted to anonymous works, by including economic and moral rights to the author who created a work by alteration and adaptation using the anonymous work, vide Section 6 (d1) and 7(c). Another major amendment is that protection by Section 13 is now granted to the work created by an author, producer, architect residing in Nepal or in a member of the World Trade Organisation or any member country that is a signatory to the Berne Convention for the protection of Copyright. Section 15A has been added in the draft bill which provides for the term of copyright in case of unpublished work, i.e., in case of a single author, lifetime of the author and fifty years after the death of the author, and in case of joint authors, fifty years after the death of the second author.

Section 23A has been added, which provides an exception to the copyright of the owner. It allows the use of the work for the purpose of providing access to people with special visual needs, without violating or affecting the economic right of the owner.

There have been other amendments related to the revocation of the copyright license, the use of the licensed work, infringement of copyright and the punishment for such infringement, the purpose of which was to align the Act with the Berne Convention.

Though the bill fails to cover the topics such as Fair Use exception, Compulsory licensing of copyright, Copyright societies and the procedure for obtaining royalties, the amendment is a step forward and is a ray of sunshine which paves the path for the artists and the authors in the country.

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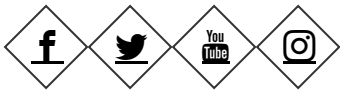
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