

COMPUTER SOFTWARE COPYRIGHT REGISTRATION PROCEDURE



**PREPARED BY:
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Government of Pakistan**

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INTRODUCTION OF SMEDA

The Small and Medium Enterprise Development Authority (SMEDA) was established with the objective to provide fresh impetus to the economy through the launch of an aggressive SME development strategy. Since its inception in October 1998, SMEDA had adopted a sectoral SME development approach. A few priority sectors were selected on the criterion of SME presence. In depth research was conducted and comprehensive development plans were formulated after identification of impediments and retardants. The all-encompassing sectoral development strategy involved overhauling of the regulatory environment by taking into consideration other important aspects including finance, marketing, technology and human resource development.

After successfully qualifying in the first phase of sector development SMEDA reorganized its operations in January 2001 with the task of SME development at a broader scale and enhanced outreach in terms of SMEDA's areas of operation. Currently, SMEDA along with sectoral focus offers a range of services to SMEs including over the counter support systems, exclusive business development facilities, training and development and information dissemination through a wide range of publications. SMEDA's activities can now be classified into the three following broad areas:

1. *Creating a Conducive Environment*; includes collaboration with policy makers to devise facilitating mechanisms for SMEs by removing regulatory impediments across numerous policy areas
2. *Cluster/Sector Development*; comprises formulation and implementation of projects for SME clusters/sectors in collaboration with industry/trade associations and chambers
3. *Enhancing Access to Business Development Services*; development and provision of services to meet the business management, strategic and operational requirements of SMEs.

SMEDA has so far successfully formulated strategies for sectors, including fruits and vegetables, marble and granite, gems and jewellery, marine fisheries, leather and footwear, textiles, surgical instruments, transport and dairy. Whereas the task of SME development at a broader scale still requires more coverage and enhanced reach in terms of SMEDA's areas of operation.

Along with the sectoral focus a broad spectrum of services are now being offered to the SMEs by SMEDA, which are driven by factors like enhanced interaction amongst the stakeholders, need based sectoral research, over the counter support systems, exclusive business development facilities, training and development for SMEs and information dissemination through wide range of publications.

ROLE OF SMEDA LEGAL SERVICES CELL

The Legal Services Cell (LSC) is a part of Business Development Division of SMEDA and plays a key role in providing an overall facilitation and support to SMEs. The LSC provides guidance based on field realities pertaining to SMEs in Pakistan and other parts of the world.

LSC believes that information dissemination among the SMEs on the existing regulatory environment is of paramount importance and it can play a pivotal role in their sustainable development.

In order to facilitate SMEs at the Micro Level LSC has developed user-friendly systems, which provide them detail description of the Laws, and Regulations including the process and steps required for compliance.

The purpose of this document is to provide SMEs either individuals or companies with information pertaining to copyright of computer software. Entrepreneurs interested in enhancing their understanding about the procedures and rights can also use the document. For convenience of the readers sample of various forms, instructions how fill up the forms and important addresses are also included.

DISCLAIMER

Information in this document is provided only for general information purpose and on an "as is" basis without any warranties of any kind . Use of this information is at the user's sole risk. SMEDA assume no responsibility for the accuracy or completeness of this information and shall not be liable for any damages arising from its uses."

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What is copyright?

Copyright protects the original work of authorship fixed in any tangible medium of expression. Original work means the work which is not copied of any existing work. Copyright is a legal right to prevent others making copies, publish, reproduce, distribute etc. of your work without your permission. Copyright gives protection only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts. It means that copyright does not give protection to idea only but it gives protection to expression of idea.

In Pakistan, the Copyright Ordinance, 1962 (hereinafter referred as "the Ordinance") is the law which deals with the copyright protection. The ordinance gives the exclusive right to the owner of copyright to do and authorize the doing to reproduce, publish, copy, broadcast etc. of copyrighted work. Pakistan is also a member of Berne Convention 1886, Universal Copyright Convention 1948 and the Trade Related Intellectual Property Rights (TRIPS) Agreement 1994 under the World Trade Organization (WTO).

Works in which copyright subsists

Section 10 of the ordinance provides that the copyright shall subsist throughout Pakistan in the following classes of works, that is to say,

- (a) original literary, dramatic, musical, and artistic works,
- (b) cinematographic works; and
- (c) records

Is computer software protected by copyright?

In 1970s and 1980s there were many conflict regarding computer software protection. Some experts were in the opinion that the computer software should be protected under the copyright system and some were in the opinion that it should be protected under the patent system. Finally they reached to consensus that computer software should be protected by copyright, whereas apparatus using computer software or software-related inventions should be protected by patent. The reasons behind this consensus was that the Copyright system gives protection only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts as such, whereas a patent system gives an exclusive right for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem.

In Pakistan the computer program has been protected under the copyright domain. For this purpose, the definition of 'literary work' is amended by the Copyright (Amendment) Act, 1992 to include computer programmes under the copyright regime. The ordinance defines literary work to include work, on computer programmes *"that is to say programmes recorded on any disc, tape, perforated media or other information storage devices, which, if fed into or located in a computer or computer based equipment is capable of reproducing any information"*.

The function of a computer program or what the program does is not protectable under the copyright regime, instead it gives the owner only the right to prevent anybody else from duplicating the expression or manner of presentation of the set of instructions that constitute the program.

Who is the first owner of copyright?

Section 13 of the ordinance provides that the author of a work shall be the first owner of the copyright. Authorship applies to either the individual creator or to a "work for hire". When an independent individual creates an original work he will be the first owner of copyright. Where a work is made by an employee in the course of employment and as part of the employee's usual duties, the employer will be the first owner of copyright.

Is copyright registration necessary for protection?

The ordinance does not require mandatory registration of copyright but registration does provide certain rights and is highly recommended. Copyright rights are obtained automatically without its registration or other formalities. The rights under copyright law arise as soon as the author creates the work in any tangible medium. A computer program is protected from the moment it is fixed in a "material form" for example, on a hard disk or on paper. It is very useful to put, upon creation of software, the copyright notice consists of the symbol © (or the word "Copyright"), additionally, "All rights reserved" may be added so that an infringer can not claim he did not know the work was copyrighted. As it has been specified above that Pakistan is a member of Berne Convention 1886 for the Protection of Literary and Artistic Works, according to the Berne Convention, literary and artistic works are protected without any formalities in the countries party to that Convention.

Procedure for registration of copyright for software

The author or publisher or any other person interested in copyright in any work may make an application in prescribed form accompanied by the prescribed fee to the Registrar for entering particulars of the work in Register of Copyrights. For each work separate application has to be filed by the applicant. For registration of copyright for software, the following documents are required to be submitted to the Concerned Registrar: --

- Application for registration in triplicate in **Form-II** (Form-II alongwith instructions how to filling the Form annexed herewith). The person applying for registration shall simultaneously send a copy of the application to every other person interested in the copyright of the work.
- Application for registration must be accompanied by Statement of Particulars and Statement of Further Particulars (annexed herewith). Both the said statements are required to be submitted in triplicate. (Filling of statement of particulars is not an easy task for a person who does not have considerable knowledge of copyright law and rules thereunder. It requires different types of input for different classes of works. The column-wise instructions on how to fill in the statements of particulars for computer software are given at the page#12 of this document.
- Two copies of the actual work to be copyrighted.
- Registration fee of Rs. 500/- by challan paid into the State Bank of Pakistan/ National Bank of Pakistan or by bank draft/pay order in favour of Registrar of copyrights.

On receipt of application, the Registrar shall enter the particulars of the work in the Register of Copyrights and issue a certificate of such registration to the applicant unless, for reason to be recorded in writing, he considers that such entry should not be made in respect of any work. A certificate of registration of copyright in a work shall be prima facie evidence that copyrights subsists in the work and that the person shown in the certificate as the owner of the copyright is the owner of such copyright.

Duration of Copyrights

Section 18 of the ordinance provides that in published literary (including computer program), dramatic, musical and artistic work copyright shall subsist within the lifetime of the author until fifty years after the death of the author.

Infringement of copyright

A person is a infringer of copyright if he deals with protected material in one of the ways exclusively controlled by the copyright owner without permission. For computer programs, the uses which require permission include making a reproduction and making an "adaptation" (such as an object code version of a program in source code). If the computer program has been made commercially available, the relevant licensing agreement may set out what permissions the copyright owner has given in relation to the way that program and any accompanying material (such as text or graphics, including typeface designs) is used.

Pursuant to the restrictions imposed under the Ordinance, even the purchasers of computer programmes may not copy, adapt or develop copies of adapted programmes for their own use or their employees. The unauthorised use of a computer programme in a computer is also an infringement of the copyright. Accordingly, if someone who has no licence to use it acquires a duplicate of a computer programme, the copyright owner has the right to prevent him from using it. The Ordinance also restricts renting out of computer programmes to unauthorised users. Intention to copy computer programmes is not an essential ingredient of infringement; nor is it essential that the copying be in the same medium. Thus, a computer programme stored on diskettes (or any other magnetic media) can be infringed by copying the same on paper, or taking a printout of the same.

Remedies for Infringement of copyright

There are two remedies for breach of copyright in Pakistan; civil proceedings and criminal proceedings. Accordingly, a person whose copyright has been infringed may sue for damages, claim an injunction, claim account of the profits gained by the defendants as a result of the infringement, confiscate infringed articles etc. Recently added section of the Ordinance provides that all offences under the Ordinance are cognizable and non-bailable. The Ordinance provides that the original owner of the copyright may bring an action, which includes the person to whom an exclusive licence has been granted. Amended Section of the Ordinance provides that every suit or other civil proceedings regarding infringement, at the discretion of the applicant, should be instituted and tried in the Court of the District Judge.

The Ordinance, as amended by the Amendment Act, provides that any person who knowingly infringes or facilitates the infringement of the copyright in a work (defined to include computer programmes), or any other right conferred by the Ordinance will be punishable. The punishment may be in the form of

imprisonment extended to three (3) years, or fine upto to Rs. 100,000, or both. Additionally, the Ordinance provides that where any person convicted for an offence punishable under this law is again convicted for the same offence, he shall in such event be imposed with a fine (beside the imprisonment upto 3 years) of upto Rs. 200,000. Recently amended section of the Ordinance now gives additional powers to the police to seize infringing copies of the work wherever found, without warrant, and all copies, plates and recording equipment seized shall, as soon as possible, be produced before a Magistrate.

ADDRESSES OF COPYRIGHT OFFICES

REGISTRAR OF COPYRIGHTS

Mr. Shakeel Ahmad Abbasi –
Registrar Central Copyright Office,
Government of Pakistan
Ground Floor, Liaquat Memorial Library Building,
Adjacent T.V. Station, National Stadium Road,
Karachi.
Tel: 021-9230140
Fax: 021-9230140

DEPUTY REGISTRAR of COPYRIGHTS

Mr. Imtiaz Ali
Deputy Registrar
3rd Floor, Farid Tower, 19 Temple Road,
Lahore.
Tel: 042-7224395
Fax: 042-7224396

FORM-II
APPLICATION FOR REGISTRATION OF COPYRIGHTS
 (See rule 4(1))

To,
 The Registrar of Copyrights,
 Copyright Office,
 Karachi

Sir,

In accordance with section 39 of the Copyright Ordinance, 1962 (XXXIV of 1962), I hereby apply for registration of copyright and request that entries may be made in the Register of Copyrights as in the enclosed statement of particulars sent herewith in triplicate.

I also send herewith duly completed the statement of further particulars relating to my work

2. In accordance with sub-rule (3) of rule 4 of the Copyright Rules, 1967, I have sent by hand/pre-paid registered post copies of this letter and of the enclosed statement(s) to the other parties concerned, as shown below: --

Name and address of the parties	Date of Dispatch
1	2

3. The prescribed fee has been paid, as per details below: -

4. Communication on the subject may be addressed to: _____

Yours faithfully,

.....
 (Signature)

List of enclosures
 Place.....
 Date.....



INSTRUCTIONS FOR FILLING FORM - II
APPLICATION FOR REGISTRATION OF COPYRIGHT

The para-wise instructions for filling of registration application are given below:

- Para 2: As it is mentioned above that under the Copyright Rules the person applying for registration shall simultaneously send a copy of the application to every other person interested in the copyright of the work. In the table given in para 2 the names of all the affected parties to whom notice has been sent is to be included. While entering the details in this table applicant should ensure that information as sought at columns 7,11,12 and 13 of the Statement of particulars and party referred to at column 2 (e) of "Statement of Further Particulars" corroborate.
- Para 3: In para 3 applicant should give the detail regarding mode of registration fee payment. Give challan No. and the name of bank/branch in which the fee has been deposited by the applicant.
- Para 4: Give complete name and address of the applicant at which address communication regarding registration procedure may be addressed by the Registrar.

STATEMENT OF PARTICULARS

(To be sent in triplicate)

1. Registration Number (to be filled in the Copyright Office)
2. Name, address and nationality of the applicant.
3. Nature of the applicant's interest in the copyright of the work.
4. Class and description of the work and the year of creation.
5. Title of the work.
6. Language of the work.
7. Name, address and nationality of the author and if the author is dead, the date of his death.
8. Whether work is published or unpublished.
9. Year and country of first publication and name, address and nationality of the publisher.
10. Year and countries of subsequent publications, if any and names, addresses and nationalities of the publishers.
11. Names, addresses and nationalities of the owners of the various rights comprising the copyright in the work and the extent of rights held by each, together with particulars of assignments and licenses, if any.
12. Names, addresses and nationalities of other persons, if any, authorised to assign or license the rights comprising the copyright.
13. If the work is an "Artistic Work", the location of the original work, including name, address and nationality of the person in possession of the work. (In the case of an architectural work, the year of completion of the work should also be mentioned).
14. Remarks, if any

Place.....

Date.....

.....
(Signature)



**INSTRUCTIONS FOR FILLING OF STATEMENT OF PARTICULAR FOR
COPYRIGHT OF COMPUTER SOFTWARE**

Filling of statement of particulars is not an easy task for a person who does not have considerable knowledge of copyright law and rules thereunder. It requires different types of input for different classes of works. The column-wise instructions on how to fill in the statements of particulars for computer software are given hereunder: --

Column:

1. Does not require to be filled by the applicant. It should be left blank and will be filled by the Copyright Office.
2. Provide complete name and address of the applicant. Give details of the country of which the applicant is a citizen or the country in which he is domiciled. In the case of unpublished work, nationality of the author/owner, where the making of unpublished work is extended over considerable period, shall be deemed to be a citizen of, or domiciled in, the country of which he was a citizen or wherein he was domiciled during the major part of that period.
3. The applicant may be the author, publisher, assignee of the work or the owner of the work. The applicant should right in this column his nature of interest in the work. Where a work is made by an employee in the course of employment and as part of the employee's usual duties, the employer will be the first owner of copyright. If work is created by a third party after entering into a contract with him the application for registration should preferably indicate a brief statement of how the applicant obtained the ownership of the copyright e.g. "by written contract", "transfer of all rights by the author", "by assignment", "by will" etc.
4. Copyright subsists in the classes of works which are given in the Copyright Ordinance i.e. original literary, dramatic, musical, artistic works, cinematographic works; and records. Computer program falls in the definition of "Literary Work". In view of the above column 4 should be filled as "Computer Program/Literary work".
5. State the title of the work to identify that particular work. If computer program bear a title or an identifying phrase that could serve as a title, write the wording of the title or phrase completely and exactly on the application.
6. Provide the software programming language (source code) like VB, Java, C+ etc.. If the work is created in more than one languages, all the languages should be given.
7. Give complete name and address of the applicant. Usually an independent individual computer programmer who creates an original work will be the author but where a work is made by an employee in the course of employment and as part of the employee's usual duties, the employer is considered as author. Also give the country of which the author is a citizen, or the country in which the author is domiciled. If the author is dead also provide the date of his date.

8. In the case of a literary (including computer program) dramatic, musical or artistic work, the issue of copies of the work to the public in sufficient quantities shall be deemed to be published work. A work is not deemed to be published (except in relation to infringement of copyright) without the license of the owner of the copyright.
9. This column will only be filled if the work is published and if the work is unpublished to be left it blank. As stated above publication means issuance of copies to the public in sufficient quantities. There is a slight difference between creation and publication of a work. A work is "created" when it is fixed upon any tangible medium and "Publication" means making a work available to public (i) by issuance of copies, or (ii) by communicating the work, to the public. Issue of copies could be by sale or other transfer of ownership or by rental, lease or lending. It is recommended that the applicant should give his details as the publisher.

The date of first publication, and the country where, publication first occurred should also be provided. According to the Copyright Ordinance, 1962 a work published in Pakistan shall be deemed to be first published in Pakistan. If publication first took place simultaneously in Pakistan and also in some other countries it will also be deemed to be first published in Pakistan in that case it is sufficient to state Pakistan. A work shall be deemed to be published simultaneously in Pakistan and in another country if the time between the publication in both countries does not exceed thirty days.

10. Provide full details of subsequent publications, if any, year and countries of subsequent publications and names, addresses and nationalities of the publishers
11. As stated above the author of the work is the owner of copyright. The rights conferred in the Copyright Ordinance are vested to the owner of the copyright. The ordinance permits the owner to give license of his work to any person and assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for whole of the copyright or part thereof. If the rights are owned separately by different persons, the rights of each person should be stated separately, including the extent of rights held by each person.
12. If the owner of copyright has given authorization to his duly authorised agent or any other person to assign or license the rights comprising the copyright, in such case provide name, address and nationalities of such authorized persons.
13. Not applicable for software registration

STATEMENT OF FURTHER PARTICULARS

(For Literary, Dramatic, Musical and Artistic Works Only)
(To be Sent in Triplicate)

1. If the work to be registered, whether the work is: --
 - (a) an original work?
 - (b) a translation of a work in the public domain?
 - (c) a translation of a work in which copyright subsists?
 - (d) an adaptation of a work in public domain?
 - (e) an adaptation of work in which copyright subsists?

2. If the work is a translation or adaptation of a work in which copyright subsists: --
 - (a) title of the original work;
 - (b) language of the original work;
 - (c) name, address and nationality of the author of this original work and if the author is dead, the date of his death;
 - (d) name, address and nationality of the publisher, if any, of the work;
 - (e) particulars of the authorization for a translation or adaptation including the name, address and nationality of the party authorizing.

3. Remarks, if any.

Place.....

Date.....

.....
(Signature)

