

### The Copyright-Design Conundrum: When Does Art Become a Design?

The overlap between copyright and design law has long remained one of the more intricate areas of Indian intellectual property jurisprudence. Businesses routinely commercialise original artistic works by reproducing them across apparel, accessories, home decor, packaging and countless other products. Yet, a deceptively simple question often arises: *Does copyright continue to protect an artistic work once it finds industrial application, or does the law require the owner to seek protection under the **Indian Designs Act, 2000** instead?*

This debate lies at the heart of **Section 15 of the Indian Copyright Act, 1957**, a provision that has repeatedly engaged Indian courts and continues to shape the manner in which creative works are commercially exploited.

#### The Copyright-Design Divide

At first glance, copyright and design protection appear to overlap. Both are capable of protecting visual creations, yet they serve fundamentally different legislative objectives.

Copyright protects original artistic expression and ordinarily subsists for the lifetime of the author plus sixty years thereafter. Design protection, on the other hand, safeguards the visual features of articles intended for industrial application for a comparatively limited period under the Designs Act, 2000.

Section 15 seeks to preserve this legislative balance. It prevents the substantially longer duration of copyright protection from being used as a substitute for the limited monopoly available under design law. Broadly speaking, where an artistic work is applied to an article through an industrial process and qualifies as a "design" capable of registration under the Designs Act, copyright protection may cease once that design has been reproduced more than fifty times without obtaining design registration.

While the statutory principle appears straightforward; its application, however, is anything but. The real difficulty lies in determining when an artistic work ceases to remain merely an artistic work and becomes a design. Over the years, Indian courts have adopted varying approaches to answer this question, resulting in considerable uncertainty for rights holders.

#### Judicial Evolution

The jurisprudence surrounding Section 15 has evolved through a series of important decisions, including ***Microfibres Inc. v. Girdhar & Co. (2009)***<sup>1</sup>, ***Mattel Inc. v. Jayant Agarwalla (2008)***<sup>2</sup>, ***Dart Industries Inc. and Anr. v. Vijay Kumar Bansal and Ors. (2019)***<sup>3</sup>, and the line of authorities

---

<sup>1</sup> 2009(40)PTC519(Del)

<sup>2</sup> 2008(38)PTC416(Del)

<sup>3</sup> 2019 SCC OnLine Del 12601



concerning the doctrine of "functional utility", beginning with *Smithkline Beecham v. Hindustan Lever (2002)*<sup>4</sup> and subsequently followed in *Mohan Lal v. Sona Paint & Hardwares (2013)*<sup>5</sup>.

The uncertainty was substantially addressed by the Supreme Court in *Cryogas Equipment Private Limited v. Inox India Limited (2025)*<sup>6</sup>, where the Court sought to harmonise these strands of jurisprudence by laying down a structured analytical framework.

The Supreme Court proposed a two-step inquiry:

- First, determine whether the work in question is an original artistic work entitled to protection under the Copyright Act or whether it is a design derived from such artistic work and subjected to industrial application within the meaning of Section 15(2).
- Secondly, if the work does not qualify for copyright protection, determine whether it satisfies the test of functional utility so as to qualify for protection under the Designs Act.

The decision undoubtedly provides welcome clarity. However, it is equally significant for another reason, that it reinforces that the threshold enquiry remains the nature of the work itself.

This approach also finds support in the Bombay High Court's decision in *Photoquip India Ltd. v. Delhi Photo Store (2014)*<sup>7</sup>, where the Court observed that an artistic work is expressly excluded from the statutory definition of a "design" under the Designs Act. Consequently, where a work genuinely qualifies as an artistic work, the enquiry does not immediately shift to design law merely because it is subsequently reproduced commercially. The first question must therefore always be whether one is dealing with an artistic work in its own right or a design derived therefrom.

### Functional Utility: An Important Limiting Principle

The second limb of the *Cryogas* framework is the doctrine of **functional utility**, which serves as an equally important filter.

Not every visually appealing article qualifies for design protection, nor does every drawing automatically become a design merely because it depicts a functional object. Courts have consistently examined whether the visual features sought to be protected are primarily aesthetic in nature or whether they are dictated entirely by functionality.

A useful illustration is that of an engineering blueprint. Although such a drawing may qualify as an artistic work under the Copyright Act, it may not necessarily qualify as a design under the Designs Act where its visual features are entirely functional rather than ornamental. Copyright may therefore protect the drawing itself, even though it does not necessarily confer exclusive rights over the manufacture of the functional article represented in that drawing.

---

<sup>4</sup> 2002 SCC OnLine Bom 1337

<sup>5</sup> 2013(55)PTC61(Del)

<sup>6</sup> (2025)10SCC317

<sup>7</sup> 2014(60)PTC563(Bom)



The doctrine of functional utility thus ensures that copyright and design law continue to operate within their respective legislative spheres.

### **Is the Creator's Intention Really Irrelevant?**

One of the more significant observations in *Cryogas* is that the creator's intention at the time of creating the work is not determinative. A work created with eventual industrial application in mind may nevertheless continue to qualify as an artistic work. While this proposition appears logical after all, subjective intention is often impossible to prove and it may not entirely resolve the real issue.

The more relevant enquiry, arguably, is how the work was originally characterised and protected.

Consider an artwork registered as an independent two-dimensional artistic work. Years later, the same artwork is reproduced on mugs, bags, apparel or phone covers. These are subsequent commercial applications. They do not necessarily alter the essential character of the underlying artwork.

Conversely, where the work is conceived from inception as a textile print, wallpaper pattern or surface ornamentation specifically intended for industrial manufacture, industrial application is no longer merely incidental; rather, it is the very reason the work was created. This distinction formed an important part of the reasoning adopted by the Delhi High Court in *Microfibres*.

The Supreme Court's framework implicitly recognises this distinction, although it stops short of expressly incorporating it into the test.

### **Why Original Characterisation Matters**

The distinction becomes particularly significant in commercial practice. An artistic work can naturally find expression across numerous products apparel, handbags, watch dials, home décor, packaging or accessories. These downstream commercial uses do not necessarily transform the original artwork into a design.

Indeed, Indian jurisprudence has consistently recognised that copyright in the underlying artistic work may continue to subsist even where a derivative application of that work attracts the provisions of the Designs Act.

The classic illustration is simple. A painting enjoys copyright protection as an artistic work. If that painting is reproduced on a coffee mug, the mug may constitute a design for the purposes of Section 15. Should the design be industrially reproduced beyond the statutory threshold without registration, copyright protection over the mug design may cease. The original painting, however, continues to remain protected under Copyright Act. It is therefore important to distinguish between the underlying artistic work and its industrial application.





## A Practical Illustration

The significance of this distinction becomes even more apparent in the context of cross-border intellectual property portfolios.

Consider an artwork that is registered with the United States Copyright Office as a standalone "**2D artwork**." The artwork is subsequently licensed for use on apparel, handbags and accessories.

Can it automatically be said that copyright protection in India stands extinguished under Section 15 merely because the artwork has found commercial application?

Not necessarily. Unlike the factual position in *Microfibres*, where the work before the Court was characterised as a **fabric design** intended for industrial application, an artwork that has been registered and recognised independently as a standalone artistic work arguably occupies a different legal footing.

Accordingly, where protection was originally sought for the artwork itself and not for a textile or industrial design, a credible argument remains available that copyright continues to subsist in the underlying artistic work notwithstanding its subsequent commercial exploitation across different products.

However, where the work was originally conceived, characterised or registered specifically as a fabric or textile design intended for industrial application, the position becomes considerably more difficult, particularly where the statutory threshold contemplated under Section 15 has been crossed.

While every case will ultimately turn on its own facts, the distinction illustrates why the manner in which protection is originally sought may, in practice, assume considerable significance.

## Conclusion

The Supreme Court's decision in *Cryogas* marks an important step towards bringing greater certainty to the long-standing overlap between copyright and design protection. Its two-stage framework undoubtedly provides much-needed guidance and harmonises the principles emerging from earlier judicial authorities.

At the same time, the decision also highlights that the enquiry under Section 15 cannot be answered by applying rigid formulae alone. The distinction between an artistic work and a design continues to depend upon the nature of the work, its industrial application and the factual context in which protection is claimed.

It is clear, that an artistic work that is later commercialised across multiple products may stand on a materially different footing from a work conceived and protected from inception as a design intended for industrial production. Commercial realities need to be aware of this subtle distinction and while copyrightable work creators often do not look or examine this nuance, this



requires a much more applied understanding at the time of the work creation as well as its application under copyright.

As creative businesses increasingly monetise intellectual property across multiple product categories and jurisdictions, this distinction is no longer merely academic. It may well determine whether valuable intellectual property rights continue to subsist or quietly disappear under the operation of Section 15.

For businesses and rights holders alike, the lesson is clear: an effective intellectual property strategy begins not at the stage of enforcement, but at the stage of creation itself.

\*\*\*\*\*

