

CITY ACADEMY LAW COLLEGE
SUBJECT: INTELLECTUAL PROPERTY LAW
SEMESTER: LL.B (HONS) VIIth SEMESTER.

Unit – 1 Intellectual property Rights & Copyrights

Syllabus:- Meaning of intellectual Property, International Instruments : paris Union, Berne Convention TRIPS, WIPO, WPPT, VIP, Theory of IPR, The Copyright Act: Historical Background, Copyright Act, 1957 Copyright in Literary, Dramatic and Musical, Works, Sound Recording, Cinematograph Films, Copyright in Computer Programme, Author Special Rights, Moral & Economic Rights, Right of Broadcasting and Performers, Terms of Copyright, International Copyright , Copyright Registrar and Copyright Board-Power and Procedure. Copyright Societies, Ownership, Assignment, License, Translation of Copyright, Compulsory Licences, Infringement-Criteria of Infringement, Infringement of Copyright-Films, Literary and Dramatic works, Importation and Infringement, Fair use provisions, Piracy in Internet, Remedies- especially

UNIT: 1

LECTURE: 1

TOPIC: MEANING OF INTELLECTUAL PROPERTY & THEORIES OF IPR.

NOTE:

Concept of Property

Properties are of two types, either Tangible or intangible.
(Ex) touchable or Non – touchable

Meaning of Intellectual Property

Intellectual property (IP) refers to creation of the mind, such as inventions, literary and artistic works, design and, symbol names and images used.

Intellectual property is the product of the human intellect including creativity concepts, inventions, industrial models, trademark, songs literature, symbols, name brands, etc.

THEORIES OF IPR :

1. NATURAL RIGHTS THEORY (LABOUR THEORY)

In order to justify intellectual property, the natural rights theory considers that everyone has a natural property right on his ideas. As a matter of fact, the creation comes from the effort and creativity of its author. The essence of this theory is mainly from John Lock's idea that an author has a natural right over the productions of their intellectual labour, anyone who violates the intellectual right of an author, creator or inventor is considered to commit a theft.

2. THE UTILITARIAN THEORY

Intellectual rights represent an artificial encouragement from the State for the production. In short, the UTILITARIAN theory justifies the intellectual rights because of the profit they bring for the whole society. However, we could question the idea that it is indispensable to have an incentive to encourage the production.

3. THE ETHIC AND REWARD THEORY

This theory justifies the exclusive rights of intellectual property with some moral and ethical aspect. Indeed, the ethic requires a fair and proportional contribution for the effort that the creator has made for the social utility. The exclusive rights are "an expression of gratitude to an author for doing more than society expects or feels that they are obliged to do".

4. PERSONHOOD THEORY

According to this theory, the personality of everyone builds itself in work and creation. The developing of the personality is inherent to the property right we have. Hegel, who is the main source of this theory, claims that intellectual rights permit and protect the developing of the personality, which extends to the material things. In the same way, the copier is considered as a thief who offers to the public someone else's spirit.

ASSIGNMENT:

1. Write the concept of property under IPR.
2. Difference between tangible and intangible property?
3. Intellectual property refers to what?
4. Which theory has been given by John Locke?
5. Which theory has been given by Hegel?

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LECTURE : 2

TOPIC: International INSTRUMENT.

PREVIOUS YEAR QUESTIONS :

1. Berne convention. 2017
2. Universal copyright convention. 2019
3. World intellectual property organization. 2021

NOTE :

Paris Convention for the Protection of Industrial Property (1883)

The Paris Convention, adopted in 1883, applies to industrial property in the widest sense, including patents, trademarks, industrial designs, utility models, service marks, trade names, geographical indications and the repression of unfair competition. This international agreement was the first major step taken to help creators ensure that their intellectual works were protected in other countries.

BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORK (1886)

The Berne Convention for the Protection of Literary and Artistic Works, usually known as the Berne Convention, is an international agreement governing copyright, which was first accepted in Berne, Switzerland, in 1886. The Berne Convention deals with the protection of works and the rights of their authors. The provisions of the Berne Convention may be sub-divided into three main categories: Protection for every production in the literary, scientific and artistic domain in any form .

TRIPS (TRADE RELATED INTELLECTUAL PROPERTY RIGHTS AGREEMENT) 1994.

One of the most important agreements of WTO is the TRIPS Agreement. The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international legal agreement between all the member nations of the World Trade Organisation (WTO).

WIPO (WORLD INTELLECTUAL PROPERTY ORGANIZATION)

The WIPO Convention is the multilateral treaty that established the World Intellectual Property Organisation (WIPO). The Convention was signed at Stockholm, Sweden, on 14th July, 1967 and entered into force on 26th April, 1970. WIPO's two main objectives are: To promote the protection of intellectual property worldwide and To ensure administrative cooperation among the intellectual property Unions established by the treaties that WIPO administers.

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LECTURE : 3

TOPIC : THE COPYRIGHT ACT.

PREVIOUS YEAR QUESTION :

1. Define literary work and give some examples of literary work. 2019

NOTE : HISTORICAL BACKGROUND.

The real need of copyright law was felt only after the invention of printers and copiers. Prior to the invention of printers, writing could be created only once. It was highly laborious and risk of errors was involved in the manual process of copying by a scribe..It is believed that the evolution of Copyright law in India has been in three phases. The law of copyright was introduced in India only when the British East India Company was established in 1847.

LITERARY, DRAMATIC, AND ARTISTIC WORKS .

Literary work: Copyright subsists in original literary works and relates to the expression of thought, but the expression need not be original or novel. The work must not be copied from another work but must originate from the author.

Artistic work means

A painting, a sculpture,
to reproduce the work in any material form;
to publish the work;
to perform the work in public;
to produce ,reproduce ,perform or publish any translation of the work.
to make any cinematographic film or a record in respect of work .
A drawing including a diagram, map, chart.

Cinematography Films :

A Cinematograph film can be defined as any work of visual or video recording on any sort of medium produced through a process from which a moving image may be unfolded. As said,it can be made by any means and carries a sound recording accompanying such visual recording as well. To be very precise and understandable, a cinematograph film is considered to be one, when any realistic order work has moving images or visuals.

BROADCASTING :

Copyright in sound recordings is generally owned by the 'maker' of the sound recording. The term 'maker' usually refers to the person who owns the equipment the recording was made on, such as the production company, studio, or record label. Copyright can subsist in: Original literary, dramatic,

musical and artistic works. Sound recordings, films and broadcasts.

COPYRIGHT IN COMPUTER PROGRAMME.

Computer program are literary works under the definition in the Copyright Act. A “computer program” is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result. Copyright for computer programs prohibits copying of program structure and design.

ASSIGNMENT:

1. The law of copyright was introduced in India only when?

2. What is literary work?

3. What is artistic work?

4. Copyright law in India has been in how many phases?

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LECTURE : 4

TOPIC : RIGHTS, TERM OF COPYRIGHT & INTERNATIONAL COPYRIGHT.

PREVIOUS YEAR QUESTION :

1. Performer's right. 2017

NOTE :

1. **AUTHORS RIGHT**

When an artist creates, he expresses an opinion, that opinion is of the artist and by the artist and must be protected .

Section 57 of the Act states that the author has the following rights granted to the author:

The right to claim authorship of work ,

The right to restrain, or claim damages in case of distortion, modification, or other act about the said work which is done before the expiration of the term of copyright .

2. **MORAL RIGHTS**

Moral rights find expression in Section 57 of the Copyright Act, 1957 which is in accordance of the Berne Convention. They are the author's or creator's special right which includes the right to paternity and the right to integrity.

3. **Economic Rights**

Economic rights allow right owners to derive financial reward from the use of their works by others.

Moral rights allow authors and creators to take certain actions to preserve and protect their link with

their work. Copyright law protects creators of original works by granting creators the sole right to

produce or reproduce any substantial part of the work in any form, to perform the work in public or, if the work is unpublished, to publish the work or any substantial part of it.

4. **RIGHTS OF BROADCASTING**

Broadcasting rights (often also called media rights) are rights which a broadcasting organization

negotiates with a commercial concern - such as a sports governing body or film distributor - in order to show that company's products on television or radio, either live, delayed or highlights.

5. PERFORMERS RIGHTS

PERFORMERS rights are a type of intellectual property right. They are related to copyright but are independent from the copyright that may exist in a work that may be performed. The Copyright Act defines protected performances by reference to the main categories of works. It is protected for a limited period of time.

6. TERM OF COPYRIGHT

What is the term of protection of copyright? The general rule is that copyright lasts for **60 years**. In the case of original literary, dramatic, musical and artistic works the 60-year period is counted from the year following the death of the author.

7. INTERNATIONAL COPYRIGHT.

Ordinarily, the rights in intellectual property are granted to the citizen of a country under its own laws, however due to expansion in the intellectual property beyond territorial boundary of nations the rights of owners of such property can be protected through international copyright. International copyright, allows creators and content owners around the world and citizens of many countries to enjoy copyright protection in countries other than their own Copyright.

ASSIGNMENT :

1. What is the term of copyright?
2. Economic rights allow right owners to derive _____ from the use of their works by others?
3. What is moral right?
4. What is economic right?
5. What is performers right?

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LECTURE : 5

TOPIC : COPYRIGHT REGISTRAR, COPYRIGHT BOARD, AND IT'S POWER AND PROCEDURE.

PREVIOUS YEAR QUESTION :

1. Discuss the composition and functions of copyright board . 2017

NOTE:

Registrar and Deputy Registrars of Copyrights.— SECTION 10

(1) The Central Government shall appoint a Registrar of Copyrights and may appoint one or more Deputy Registrars of Copyrights.

(2) A Deputy Registrar of Copyrights shall discharge under the superintendence and direction of the Registrar of Copyrights such functions of the Registrar under this Act as the Registrar may, from time to time, assign to him; and any reference in this Act to the Registrar of Copyrights shall include a reference to a Deputy Registrar of Copyrights when so discharging any such functions.

Copyright Board.— SECTION 11

(1) As soon as may be after the commencement of this Act, the Central Government shall constitute a Board to be called the Copyright Board which shall consist of a Chairman and not less than two or more than fourteen other members.

2. Copyright Board shall consist of a Chairman and not less than two or more than fourteen other members."

Powers and procedure of Copyright Board.— SECTION 12

(1) The Copyright Board shall, have power to regulate its own procedure, including the fixing of places and times of its sittings

(2) The Copyright Board may exercise and discharge its powers and functions through Benches constituted by the Chairman of the Copyright Board from amongst its members, each Bench consisting of not less than three members.

(3) The Chairman may authorize any of its members to exercise any of the powers conferred on it by section 74 and any order made or act done in exercise of those powers by the member so authorized shall be deemed to be the order or act, as the case may be, of the Board.

(5) No member of the Copyright Board shall take part in any proceedings before the Board in respect of any matter in which he has a personal interest.

(6) No act done or proceeding taken by the Copyright Board under this Act shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Board.

(7) The Copyright Board shall be deemed to be a Civil Court for the purposes of [sections 345 and 346 of the Code of Criminal Procedure, 1973 and all proceedings before the Board shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 .

ASSIGNMENT:

1. Which government appoints the registrar of copyright _____
 2. The Copyright Board which shall consist of a _____
 3. No member of the Copyright Board shall take part in any proceedings before the Board in
respect of any matter in which he has a _____
 4. The Copyright Board shall be deemed to be a _____
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TOPIC : COPYRIGHT SOCIETIES, OWNERSHIP, ASSIGNMENT, COMPULSORY LICENCE, DIGITAL RIGHTS.

NOTE : COPYRIGHT SOCIETY.

- The Copyright Society is a legal body that protects or safeguards the interest of the owner in the product in which copyright subsists. Copyright societies give assurance to the creative author of the commercial management of their works. It can also be described as a registered collective administration society for the management and protection of copyright.
- Authors of creative works give a publisher a license to publish the work on a royalty basis. This leads to infringement of work anywhere globally.
- The functions of a copyright society are to grant a license of the copyright in original work for the reproduction, performance, issuing copies of the work to the public, locate infringement of the copyright, and initiate any legal proceedings if required.

- **Ownership of copyright**

The provisions of acquiring copyright ownership are defined under Section 17 of the Act. The right of ownership is available only if one qualifies the provision of this Act. There is no other remedy in other laws prevailing in India to counter the violation of copyright ownership.

The nationality of the person is the important factor to get the right of the copyright.

- **ASSIGNMENT :**

- In an assignment of copyright rights, the owner sells his or her ownership rights to another party and has no control over how the third party uses those rights. A copyright assignment is sometimes referred to as a sales agreement for copyright.
- Nobody is entitled to copy, reproduce, publish or sell an original writing, painting, dramatic production, sculpture, etc. without the permission of the creator. Thus, law provides a right to the owner of the copyright (i.e. the creator) to transfer the ownership of the copyright to a third party. For instance, in the case of making a complete movie – all the creative persons with their idea turned into relevant works come to a producer, assign their rights that subsist in their work in return for a royalty.

- **Compulsory Licensing:**
- Compulsory license is an authorization granted by the Government to someone else i.e., a third party to produce a patented product without the consent of the patent owner who has been taking undue advantage of exclusive rights.
- A compulsory license is covered under Section 31 to 31B of Indian Copyright Act.
- **DIGITAL RIGHTS** : Digital rights refers to the relationship between copyrighted digital works (such as film, music and art) and user permissions and rights related to computers, networks and electronic.

The electronic world has with time become a nexus of violation of copyright laws. Crimes such as downloading and uploading of a copyrighted material without proper consent, derivative works, hotlinking and software piracy are only a few examples of how infringement of copyright is carried out in the digital Devices. Digital rights also refers to the access and control of digital information.

ASSIGNMENT:

1. The Copyright Society is _____ that protects or safeguards the interest of the owner in the product in which copyright subsists.
2. Authors of creative works give a publisher a license to publish the work on a _____
3. The functions of a copyright society are to grant a license of the copyright in _____
4. A copyright assignment is sometimes referred to as a _____ for copyright.
5. Compulsory license is an authorization granted by the _____
6. Digital rights also refers to the access and _____

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LECTURE : 7

TOPIC : COPYRIGHT INFRINGEMENT & IT'S REMEDIES

PREVIOUS YEAR QUESTION :

1. Discuss the remedies available against infringement of copyright? 2017
2. Discuss the composition and functions of copyright board? 2017
3. What do you mean by infringement of copyright? 2019

NOTE:

- **What is infringement :**
- ***“Infringement refers to the unauthorized use of protected material under intellectual property laws. Infringement can be termed as unauthorized use or violation of others right.”***
- Use of any copyrighted work without the permission of the owner amounts to copyright infringement. Infringement occurs when a person intentionally or unintentionally copies/uses the work of another without credit. Infringement is usually classified into two categories- primary infringement and secondary infringement.
- Primary infringement is the actual act of copying, while secondary infringement includes unauthorized dealings like selling the pirated books, importing, etc. In the case of secondary infringement, knowledge of infringement is present with the infringer while in the case of primary infringement, knowledge may or may not be present.
- **What does not amount to infringement?**
- There are certain acts that do not amount to copyright infringement :
 1. Copyrighted work for research, study, criticism, review, news reporting, use in a library, schools, and legislations. Such uses of copyrighted work are permitted without the need to obtain permission from the copyright owner.
 2. Fair use: An important defense against copyright infringement, defined under Section 53 of the Copyright Act. The burden of proof of an act of copyright infringement is on the owner
 3. Connected judicial proceeding
 4. Performance by an amateur club or society, if the performance is in front of a non-paying audience
 5. Making sound recordings of literary, dramatic, or musical works under certain conditions.

- **Remedies against Infringement**
- There are three kinds of remedies against infringement of copyright, namely:
 - **Civil remedies**
- Injunction damages or account of profit, delivery of infringing copy and damages for conversion.
 - **Criminal remedies**
- Imprisonment of the accused or imposition of fine or both. Seizure of infringing copies
- **Administrative remedies**
- Administrative remedies consist of moving the Registrar of copyrights to ban the import of infringing copies into India when the infringement is by way of such importation and the delivery of the confiscated infringing copies to the owner of the copyright and seeking the delivery.
- **Jurisdiction of Courts**
- A suit or other civil proceedings relating to infringement of copyright is filed in the District Court or High Court within whose jurisdiction the plaintiff resides or carries on business or where the cause of action arose irrespective of the place of residence or place of business of the defendant.
- **Limitation**
- The period of limitation for filing the suit is three years from the date of infringement.

ASSIGNMENT:

1. What is infringement of copyright?
2. Kinds of remedies available against infringement?
3. What is civil remedy?
4. What is criminal remedy?
5. What is administrative remedy?

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LECTURE : 8

TOPIC : FAIR USE PROVISION & PIRACY IN INTERNET

NOTE :

FAIR USE PROVISION :

- Fair Use is an exception to the rights of a creator which allows limited use of copyrighted material without the creator's permission.
- The fair use or fair dealing provision extends to the reproduction of literary, dramatic, musical or artistic work for the purpose of reporting current events in a newspaper, magazine or similar periodical or by broadcast or in a cinematograph film or by means of photographs or using excerpts of a performance or of a broadcast in the reporting of current events or for bonafide review, teaching or research.
- **Examples of fair use in copyright law include:**
 1. Criticism and commentary,
 2. News reporting,
 3. Research,
- **The fair nature of the dealing depends on the following four factors:**
 1. the purpose of use;
 2. the nature of the work;
 3. the amount of the work used, and
 4. The effect of use of the work on the original.
- **PIRACY IN INTERNET :**
- A person's possession, be it his work or belongings, is his ultimate brainchild, and the last thing he wants to happen to it is for it to be stolen and misappropriated by someone else.
- in today's world piracy is a more relevant and commonly used term, which constitutes theft on copyrighted and trademarked grounds i.e. unlawfully stealing and infringing someone else's work and produce it as one's own.
- Piracy can be compared to physical theft and piracy, because when a person illegally distributes a digital file on the internet or locally for free, he prevents the profit from the purchase of that item from going to the creator, creating an economic impact .

Types of piracy

1. **Counterfeiting:** It is the illegal acquisition, duplication, and distribution of any copyrighted material, which directly imitates the copyrighted product. The nature of the distribution of the said product may be a sale, or not. The most common way of distributing such pirated works is through compact discs.
2. **Internet Piracy:** Internet piracy is the act of downloading a file from the internet, or by procuring online software through a compact disc. Methods of conducting internet piracy are websites offering free downloads of software, auctions selling illegally obtained software or P2P servers which transfer programs.
3. **End-User Piracy:** This form of piracy involves the user illegally reproducing software which he isn't authorized to do.
4. **Client-Server Overuse:** In a computer network, when the number of clients exceeded the number prescribed in the server license, then it is termed as overuse piracy.
5. **Hard-Disk Loading:** This occurs when a business sells new computers with illegal copies of software loaded onto the hard disks to make the purchase of the machines more attractive.

ASSIGNMENT:

1. What is fair use provision?
2. Example of fair use in copyright?
3. Write four factors of fair dealing?
4. What is piracy in internet?
5. Write five types of internet piracy?