

Professional Ethics: Unit 2 - Part 2 of 3

INTELLECTUAL PROPERTY

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What is Intellectual Property?

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Intellectual property is a term used to describe works of the mind, such as, art, books, films, formulas, inventions, music, and processes that are distinct and owned or created by a single person or group.



Protection of Intellectual Property

Protection of Intellectual Property

- Intellectual property is protected through copyright, patent, and trade secret laws.
- Copyright law protects authored works, such as art, books, film, and music
- Patent law protects inventions
- Trade secret law helps safeguard information that is critical to an organization's success
- Together, copyright, patent, and trade secret legislation form a complex body of law that addresses the ownership of intellectual property.



Potential Ethical Problems

Potential Ethical Problems

- These laws can also present potential ethical problems for IT companies and users
- For example, some innovators believe that copyrights, patents, and trade secrets stifle creativity by making it harder to build on the ideas of others.
- Meanwhile, the owners of intellectual property want to control and receive compensation for the use of their intellectual property.
- Should the need for ongoing innovation or the rights of property owners govern how intellectual property is used?



Potential Ethical Problems

Potential Ethical Problems

- Defining and controlling the appropriate level of access to intellectual property are complex tasks
- For example, protecting computer software has proven to be difficult because it has not been well categorized under the law
- Software has sometimes been treated as the expression of an idea, which can be protected under copyright law
- In other cases, software has been treated as a process for changing a computer's internal structure, making it eligible for protection under patent law
- At one time, software was even judged to be a series of mental steps, making it inappropriate for ownership and ineligible for any form of protection



Copyright

- A copyright is the exclusive right to distribute, display, perform, or reproduce an original work in copies or to prepare derivative works based on the work.
- Copyright protection is granted to the creators of “original works of authorship in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device” .
- The author may grant this exclusive right to others.



What is copyright?

Copyright is a right given by the law to creators of:

- literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings
- it is a bundle of rights including rights of reproduction, communication to the public, adaptation and translation of the work



Why should copyright be protected?

- Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity.
- Creativity being the keystone of progress, no civilized society can afford to ignore the basic requirement of encouraging the same.
- Economic and social development of a society is dependent on creativity.
- The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more and motivates others to create.



Is it not true that strict application of the principle of protection of copyright hampers economic and cultural development of the society?

- Yes.
- If copyright protection is applied rigidly, it can hamper progress of the society.
- However, copyright laws are enacted with necessary exceptions and limitations to ensure that a balance is maintained between the interests of the creators and of the community.



- To strike an appropriate and viable balance between the rights of the copyright owners and the interests of the society as a whole, there are exceptions in the law.
- Many types of exploitation of work which are for social purposes such as education, religious ceremonies, and so on are exempted from the operation of the rights granted in the Act.



- Copyright in a work is considered as infringed only if a substantial part is made use of unauthorizedly.
- What is 'substantial' varies from case to case.
- More often than not, it is a matter of quality rather than quantity.
- For example, if a lyricist copy a very catching phrase from another lyricist's song, there is likely to be infringement even if that phrase is very short.



Does the law allow any use of a work without permission of the owner of the copyright, and, if so, which are they?

Subject to certain conditions:

- a fair deal for research
- study, criticism, review and news reporting
- use of works in library and schools
- in the legislatures

is permitted without specific permission of the copyright owners.



What is the scope of protection in the Copyright Act, 1957?

The Copyright Act, 1957 protects original:

- literary
- dramatic
- musical and artistic works
- cinematograph films and sound recordings

from unauthorized uses.

- Copyright protects the expressions and not the ideas
- There is no copyright in an idea



Does copyright apply to titles and names?

Copyright does not ordinarily protect titles by themselves or names, short word combinations, slogans, short phrases, methods, plots or factual information. Copyright does not protect ideas or concepts. To get the protection of copyright a work must be original.

Work of joint authorship

"Work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.





An artistic work means:

- a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality
- a work of architecture
- any other work of artistic craftsmanship



Authorship and Ownership

- Copyright protects the rights of authors, i.e., creators of intellectual property in the form of literary, musical, dramatic and artistic works and cinematograph films and sound recordings.
- Ordinarily the author is the first owner of copyright in a work.
- In the case of a government work, government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

Who is an author?

- In the case of a literary or dramatic work the author, i.e., the person who creates the work
- In the case of a musical work, the composer; In the case of a cinematograph film, the producer
- In the case of a sound recording, the producer;

Owner of copyright in the work of a public undertaking

In the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein

owner of a work produced during the course of the author's employment

In the case of a work made in the course of the author's employment under a contract of service or apprenticeship, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.



owner of copyright in works by journalists during the course of their employment

In the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work.



Is copyright assignable?

- Yes
- The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof.



Mode of assigning copyright

- It shall be in writing signed by the assignor or by his duly authorised agent.
- It shall identify the specific works and specify the rights assigned and the duration and territorial extent of such assignment.
- It shall also specify the amount of royalty payable, if any, to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.



The rights vary according to the class of work.

rights in the case of a literary work

In the case of a literary work (except computer programme), copyright means the exclusive right

- To reproduce the work
- To issue copies of the work to the public
- To perform the work in public
- To communicate the work to the public
- To make cinematograph film or sound recording in respect of the work
- To make any translation of the work
- To make any adaptation of the work





Computer Program

- Computer programs are protected under the Copyright Act
- They are treated as literary works



Right of reproduction

- The right of reproduction commonly means that no person shall make one or more copies of a work or of a substantial part of it in any material form including sound and film recording without the permission of the copyright owner.
- The most common kind of reproduction is printing an edition of a work.
- Reproduction occurs in storing of a work in the computer memory.

Right of communication to the public

- Communication to the public means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion.
- The fact that the work in question is accessible to the public is enough to say that the work is communicated to the public.

Registration of Copyright

Is it necessary to register a work to claim copyright?

- No
- Acquisition of copyright is automatic and it does not require any formality
- However, certificate of registration of copyright and the entries made therein serve as prima facie evidence in a court of law with reference to dispute relating to ownership of copyright



Procedure for registration of a work under the Copyright Act,1957

- Copyright comes into existence as soon as a work is created and no formality is required to be completed for acquiring copyright.
- However, facilities exist for having the work registered in the Register of Copyrights maintained in the Copyright Office.
- The Copyright Office has been set up to provide registration facilities to all types of works and is headed by a Registrar of Copyrights and is located at New Delhi.



Application for Registration of Copyright

Copyright Rules, 2013 consists of following point in regard of registration:

- Every application for registration of copyright shall be made in Form-XIV and every application for registration of changes in the particulars of copyright entered in the Register of Copyright shall be made in Form-XV.
- Every such application shall be in respect of one work only, and shall be accompanied by the fee.
- Every application should be signed only by the applicant, who may be an author or owner of right. If the application is submitted by the owner of copyright, it shall be enclosed with an original copy of no objection certificate issued by the author in his favour.
- Every application for registration of a computer programme shall be accompanied by the source and object code.

Application for Registration of Copyright

Copyright Rules, 2013 consists of following point in regard of registration:

- Every application for registration in respect of an artistic work which is used or is capable of being used [in relation to any goods or services], such application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trade Marks referred to in section 3 of the Trade Marks Act, 1999, to the effect that no trade mark identical with or deceptively similar to such artistic work has been registered under that Act in the name of, or that no application has been made under that Act for such registration by, any person other than the applicant.
- Every such application can be filed in the Copyright Office by person or by post or by online filing facility as provided on the website of the Copyright Office.

Application for Registration of Copyright

Copyright Rules, 2013 consists of following point in regard of registration:

- The person applying for registration shall give notice of his application to every person who claims or has any interest in the subject-matter of the copyright or disputes the rights of the applicant to it.
- If no objection to such registration is received by the Registrar of Copyrights within thirty days of the receipt of the application, the Registrar of Copyrights shall, if satisfied about the correctness of the particulars given in the application, enter such particulars in the Register of Copyrights.



Term of protection of copyright

- Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work published within the lifetime of the author until sixty years from the beginning of the calendar year next following the year in which the author dies.
- In the case of literary, dramatic, musical or artistic work (other than a photograph), which is published anonymously or pseudonymously, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published.



Copyright Board

- The Copyright Act provides for a quasi-judicial body called the Copyright Board consisting of a Chairman and two or more, but not exceeding fourteen, other members for adjudicating certain kinds of copyright cases.
- The Chairman of the Board is of the level of a judge of a High Court. The Board has the power to:
 - hear appeals against the orders of the Registrar of Copyright;
 - hear applications for rectification of entries in the Register of Copyrights;
 - adjudicate upon disputes on assignment of copyright;



Copyright Board

The Board has the power to: (cont'd)

- grant compulsory licences to publish or republish works (in certain circumstances);
- grant compulsory licence to produce and publish a translation of a literary or dramatic work in any language after a period of seven years from the first publication of the work;
- hear and decide disputes as to whether a work has been published or about the date of publication or about the term of copyright of a work in another country;
- fix rates of royalties in respect of sound recordings under the cover-version provision; and
- fix the resale share right in original copies of a painting, a sculpture or a drawing and of original manuscripts of a literary or dramatic or musical work.

Registrar of Copyright

The Registrar of Copyrights has the powers of a civil court when trying a suit under the Code of Civil Procedure in respect of the following matters, namely,

- summoning and enforcing the attendance of any person and examining him on oath;
- requiring the discovery and production of any document;
- receiving evidence on affidavit;
- issuing commissions for the examination of witnesses or documents;
- requisitioning any public record or copy thereof from any court or office.



Collective administration of copyright

- Collective administration of copyright is a concept where management and protection of copyright in works are undertaken by a society of owners of such works.
- Obviously no owner of copyright in any work can keep track of all the uses others make of his work.
- When he becomes a member of a national copyright society, that society, because of its organisational facilities and strength, is able to keep a better vigil over the uses made of that work throughout the country and collect due royalties from the users of those works.



Collective administration of copyright

- Because of the country's membership in international conventions, the copyright societies are able to have reciprocal agreements with similar societies in other countries for collecting royalties for the uses of Indian works in those countries.
- From this it can automatically be inferred that it will be in the interests of copyright owners to join a collective administration organisation to ensure better protection to the copyright in their works and for reaping optimum economic benefits from their creations.
- Users of different types of works also find it easy to obtain licences for legal exploitation of the works in question, though the collective administrative society.



Copyright society

- A copyright society is a registered collective administration society.
- Such a society is formed by copyright owners.
- The minimum membership required for registration of a society is seven.
- Ordinarily, only one society is registered to do business in respect of the same class of work.
- A copyright society can issue or grant licences in respect of any work in which copyright subsists or in respect of any other right given by the Copyright Act.



Some of the Copyright Societies

- Society for Copyright Regulation of Indian Producers for Film and Television (SCRIPT) 135 Continental Building, Dr. A.B. Road, Worli, Mumbai 400 018, (for cinematograph and television films).
- The Indian Performing Right Society Limited (IPRS), 208, Golden Chambers, 2nd Floor, New Andheri Link Road, Andheri (W), Mumbai- 400 058 (for musical works).
- Phonographic Performance Limited (PPL) Flame Proof Equipment Building, B.39, Off New Link Road, Andheri (West), Mumbai 400 053 (for sound recordings).



Patent in India

- The Patents Act, 1970
- Patents (Amendment) Rules, 2016



INVENTIONS NOT PATENTABLE

- an invention which is frivolous or which claims anything obviously contrary to well established natural laws;
- an invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;
- the mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature;



INVENTIONS NOT PATENTABLE

- the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant;
- Explanation.—For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy;



INVENTIONS NOT PATENTABLE

- a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;
- the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- a method of agriculture or horticulture;
- any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic, or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products.



INVENTIONS NOT PATENTABLE

- plants and animals in whole or any part thereof other than micro organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
- a mathematical or business method or a computer programme per se or algorithms;
- a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- a mere scheme or rule or method of performing mental act or method of playing game;



INVENTIONS NOT PATENTABLE

- a presentation of information;
- topography of integrated circuits;
- an invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.
- Inventions relating to atomic energy not patentable: No patent shall be granted in respect of an invention relating to atomic energy



Compulsory licences

At any time after the expiration of three years from the date of the grant of a patent, any person interested may make an application to the Controller for grant of compulsory licence on patent on any of the following grounds, namely:

- that the reasonable requirements of the public with respect to the patented invention have not been satisfied, or
- that the patented invention is not available to the public at a reasonably affordable price, or
- that the patented invention is not worked in the territory of India



Term of Patent

- The term of Patent is 20 years from the date of filing of application

Information available at the Website

Indian Patent Information Retrieval System (IPIRS) provides information on:

- Granted Patents;
- Published Patent Applications;
- Controller's decisions; and
- Patent Application status



Trademark

- Trade Marks Act, 1999
- A trademark is a sign capable of distinguishing the goods or services of one enterprises from others
- A word, combination of words, letters, and numerals can constitute a trademark.
- It may consists of drawing and symbol.
- Its term is 10 years normally and renewed indefinitely.



Geographical Indications

- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- Sign used on products: specific geographical origin and possess qualities or a reputation that are due to that origin

