

UNIT 3

INDUSTRIAL DESIGN

- An industrial design is the ornamental or aesthetic aspect of an article which is generally mass-produced and useful. Industrial Design generally refers to a product's overall form and function.
- It may consist of three- dimensional features such as shape or surface or two-dimensional features such as patterns, line or colours (or their combination) which can be applied on an article by any industrial process or means which in the finished article are judged solely by the eyes; it does not include any mode or principle of construction.
- An industrial design adds value to a product. It makes a product attractive and appealing to customers, and may even be its unique selling point.
- In India, the law of design protection was contained in the Designs Act.
- Need for industrial design- a) **Customize products to appeal to specific market segments** b) **Create a new niche(comfortable or suitable position in life or employment) market** c) **Strengthen brands**
- Why protect it? a) to prevent it from being copied and imitated b) to obtain a fair return on investment made in creating and marketing the relevant product c) The more successful a design, the higher is its value to the company. d) may also be licensed (or sold) to others for a fee e) fair competition and honest trade practices
- To register an industrial design you must file an application at the national intellectual property (IP) office of the country
- once the product is manufactured, designers have up to 12 months in which to register it.
- alternative ways of protecting industrial designs: a)copyright law b) if an industrial design functions as a trademark in the marketplace, then it may be protected as a three-dimensional mark. c) Laws on unfair competition
- **Industrial Design Protection-** prevent unauthorized copying or imitation by third parties. Exclude all others from making, offering, importing, exporting or selling any product.
- Properties- NEW, ORIGINAL, INDIVIDUAL CHARACTER, NOVEL, NOT CONTAIN NATIONAL SYMBOLS, SHOULD NOT BE CONTRARY TO PUBLIC ORDER OR MORALITY, some countries exclude Handicrafts as they are not "ARTICLES OF MANUFACTURE BY INDUSTRIAL MEANS" , not comprise or contain scandalous or obscene matter.
- design is required to be registered with the Controller of Designs
- For the purpose of registration, goods are divided into 32 classes.
- The names and addresses of the proprietors of registered designs, notifications of assignments and transmissions of registered designs and any other matter that may be prescribed shall be entered in a register of designs kept at the Patent Office.
- the fee for registration is Rs. 1000 and for renewal, it is Rs. 2000.
- Unregistered design- 3 years, registered- 25 years

COPYRIGHT

- Copyright is the right given by law to the creators of literary, dramatic, musical and a variety of other works. It ordinarily means the creator alone has the right to make copies of his or her works or alternatively, prevents all others from making such copies.

- Copyright recognises that innovations require incentives and gives it a legal sanction. Moreover, commercial exploitation of copyright yields income to the creators and thus making pecuniary rewards to individual's creativity
- It comprises two main sets of rights: the economic rights and the moral rights.
- Economic rights- rights of reproduction, broadcasting, public performance, adaptation, translation, public recitation, public display, distribution, and so on.
- Moral rights- right to object to any distortion, mutilation or other modification of his work that might be prejudicial to his honour or reputation.
- At the international level, the economic and moral rights are conferred by the Berne Convention for the Protection of Literary and Artistic Works, commonly known as the "Berne Convention".
- It is administered by the World Intellectual Property Organization (WIPO)
- The first law on copyright was enacted in the year 1847 by the then Governor General of India.
- The Indian Copyright Act confers copyright on (i) original literary, dramatic, musical and artistic works, (ii) cinematographic films and (iii) sound recordings.
- . In India, copyright on a literary work is provided for the lifetime of the author plus sixty years after his death.
- The enforcement is possible through **(1) The Copyright Board and (2) The courts.**
- . Under the provisions of the Act any person who knowingly infringes or abets the infringement of copyright is considered as an offender and is punishable with a minimum of **six months imprisonment which may extend to three years and a fine between fifty thousand and two lakh rupees.**
- **Related rights are the rights that belong to the performers, the producers of phonograms and broadcasting organizations in relation to their performances, phonograms and broadcasts respectively.**
- **Related rights differ from copyright in that they belong to owners regarded as intermediaries in the production, recording or diffusion of works.**
- At the international level, related rights are conferred by the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, better known as the "Rome Convention". It is jointly administered by the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Labour Organization (ILO) and WIPO.

- **RIGHTS GRANTED TO CREATOR FOR PROHIBITION OR AUTHORISATION-REPRODUCTION, PUBLIC PERFORMANCE, RECORDING, TRANSLATION, ADAPTION, BROADCASTING**
- Cinematographic works and photographic works have a minimum period of protection of 50 and 25 years upon the date of creation, respectively.

COMPUTER SOFTWARE AND IPR

- Computer programmes are basically writings, and, under Article 2(1) of the Berne Convention, the purpose for which writings are created is irrelevant from the viewpoint of their qualifying as literary works, if they are original intellectual creations. Computer programmes in object code form share the copyright status of other literary and artistic works stored in computer systems in machine-readable form. While they are unintelligible for us in object code, they can be retrieved – “decompiled” – into source code form where they are intelligible.
- The input of a protected work into a computer system includes the reproduction of the work on a machine-readable material support, and also the fixation of the work in the memory of the computer system; both these acts (i.e. reproduction and fixation) are governed by the Article 9(1) of the Berne Convention;
- The output of a protected work from a computer system should be protected under copyright law, irrespective of the form of the output, for example, as a hardcopy printout, a fixation in machine-readable form, a transmission from the database of one system into the memory of another system (with or without an intermediary fixation), or by making the work available to the public by audio or visual images presented on a screen;
- The publisher of a software generally authorises its end users through the mechanism of the shrink-wrap license contained in the package.
- The five principal types of software piracy involve:

1. **Counterfeiters**- counterfeiters produce disks, documentation and packaging that look very similar to those of the software publisher
2. **Resellers** - distributors or dealers either make copies of software onto floppy disks, or the internal storage device or the "hard disk" of computers that they are selling, without authorisation from the software publisher.
3. **Mail order houses** - unauthorised copying of software onto diskettes, CDs, or other media and distribution of such software by post
4. **Bulletin boards** - unauthorised reproduction and distribution of software via telecommunication.
5. **End-user piracy**- user copying software onto hard disks of more computers than the number authorised by the publisher
 - Highest piracy rate in VIETNAM

(a) **Super Cassettes Industries Ltd. v. Entertainment Network (India) Ltd-** The Appellant, a music company, challenged the direction of the Copyright Board directing the Registrar of Copyrights to grant a compulsory licence to the Respondent, a leading FM (Radio Mirchi) broadcaster, to broadcast the songs the copyright in which was owned by the Appellants when in a legal battle the Respondents had accepted that there was a violation on their part in broadcasting the songs. **DECISION-**Since the respondent has not obtained any authorization or licence to broadcast the songs from the appellant, it was an infringer and granting compulsory licences under Section 31 to such infringers would be like putting premium on their defaults which would also encourage others to first infringe and where **infringement** was discovered, apply for a compulsory licence. However Section 31 envisages that the decision to grant or refuse a licence should be made after holding **sufficient inquiry**. While making an order under Section 31(1) the Board has to maintain a delicate **balance between private rights of the copyright and public interest**.

(b) **Video Master v. Nishi Productions-** (plaintiff ka agreement the producer ke saath for cable tv par producer ne doosre distributor ko copy dedi jisse cassetes banke satellite tv transmission ho gaya) The Plaintiff claimed that the sole and exclusive video copyrights in a cinematographic film [Bees Saal Baad] were assigned to it under an agreement by the producer of the film i.e. the Defendant. It alleged that the Defendant had entered into an agreement with another distributor whereby a copy of the film was given to them, which in turn was used to make cassettes which were to be used for satellite TV transmission. **Decision : Copyrights in Cable TV rights and satellite broadcasting rights are two different rights under the Copyright Act, which can exist in different persons without infringing copyright of each other hence** there was no violation of the exclusive video copyright of the Plaintiff.

(c) **Garware Plastics and Polysters Ltd. v. Telelink-** The Plaintiffs claimed that they were the owners of a copyright in respect of a cinematographic film who had assigned the right of broadcasting their films to **Government of India or Doordarshan** but retained in themselves the right to telecast films by cable television. They claimed that the Defendants, cable operators, by showing the film on their cable television had violated their copyright in the film.

- “Performance” in relation to a performer’s right means any visual or acoustic presentation made live by one or more performers.

The performer has the exclusive right to do the following:

To make a sound or visual recording of the performance.

To reproduce a sound or visual recording of the performance.

To broadcast the performance.

To communicate the performance to the public other than through broadcast.

CYBER CRIME

- Cyber Law is the law governing cyber space. Cyber space is a very wide term and includes computers, networks, software, data storage devices (such as hard disks, USB disks etc), the Internet, websites, emails and even electronic devices such as cell phones, ATM machines etc.
- Cyber crimes can involve criminal activities that are traditional in nature, such as theft, fraud, forgery, defamation and mischief.
- Unauthorized access to computer systems data alteration, data destruction, theft of intellectual property. Cyber crime in the context of national security may involve hacking, traditional espionage, or information warfare and related activities.
- Pornography, Threatening Email, Assuming someone's Identity, Sexual Harassment, Defamation, Spam and Phishing are some examples where computers are used to commit crime
- Viruses, Worms and Industrial Espionage, Software Piracy and Hacking are examples where computers become target of crime.
- **CATEGORIES OF CYBER CRIME:** a) Cyber crimes against persons b) Cyber crimes against property c) Cyber crimes against government
- **Types Of Cyber Crime :** a) **Unauthorized access & Hacking** b) **Trojan Attack-** The program that act like something useful but do the things that are quiet damping. The programs of this kind are called as Trojans. Trojans come in two parts, a Client part and a Server part. c) **Virus and Worm attack** d) **E-mail related crimes** (Email spoofing, Email Spamming, Email bombing, Email frauds) e) **Internet Relay Chat (IRC) related crimes** f) **Sale of illegal articles** g) **Online gambling**
- The primary source of cyber law in India is the Information Technology Act- imprisonment terms upto 10 years and compensation up to Rs 1 crore