

Intellectual Property
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Lecture - 03
What are Rights

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Meaning of 'right' in IPR

- What is a 'right':

“A **legal entitlement** which is **recognized** and can be **protected** and the **violation** of which is deemed as '**unlawful**' and leaves the right-holder with a **remedy**.”



What do we mean when we say we have a right? A right refers to a legal entitlement, something which you are entitled to get legally. It is something that can be justified, that can be recognized, and that can be protected. The violation of which is deemed as unlawful, and the violation of which leaves the person whose right is violated with a remedy.

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Meaning of 'right' in IPR

- Rights can be used in 2 ways:
 - as a liberty (gives the right-holder freedom to do certain acts)
 - as a licence (right to do something because someone has given you the consent)



Rights can be used in 2 broad senses. It could be used in the sense of a liberty, your ability or freedom to do something, it could also be used in the sense of a license, your right to do something because somebody has given a consent, or somebody has been allowed to do certain things.

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Meaning of 'right' in IPR

- Certain rights manifest are inherent in a human being (Eg: human rights, right to vote, right to privacy), while certain rights manifest themselves outside human beings (Eg: rights in property)
- A right must be recognized by law.
- Rights can be **general** i.e. claimed by every citizen (e.g. right to protection by the State) or **exclusive** i.e. the right-holder can stop others from doing certain acts without his consent (e.g. right to property)



Rights may express itself, inherently in a human being like what we say about human rights, your right to vote, your right to be, your right to privacy these are things which are inherent in a human being.

There are also rights that manifest in things beyond the human being; with in for example, property. So, we have a set of rights that manifest in a human being because of his character of being a human being those who are what we call inherent rights. And we also have rights that express on things because human beings can possess own transfer things. In that sense rights are created by the law, in fact, you need a legal recognition for something to be regarded as a right.

Rights can be of a general nature which are shared by people; like, the right of protection a citizen expects from the government is a; general right which every citizen can claim and every citizen will get, whereas there are certain rights that could be operated, or that could be exercised in an exclusive manner.

Now, rights offer you when rights offer you exclusivity; it means that you have a right to stop people from doing certain acts. For instance, if you own a property, then you have a right to exclude people from getting into the property or enjoying that property. If you own a book, you have the right to exclude people from reading that book or from looking into that book, or from using that book in any way.

So, exclusive rights are rights which confer the ability on a person to stop others from doing things without his consent.

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Meaning of 'right' in IPR

- IPR refers to rights which emanate from IP which are capable of being protected (Eg: copyright, patent).
- Violation of IPR refers to 'infringement'.
- Patent law protects the right to use/make/sell/import the invention.



In that sense when we talk about rights, when in connection with intellectual property, we are talking about rights that emanate from the intellectual property which are capable of being protected. For instance, if there is an artistic work in the form of a book, then the creator of the book or the person who owns the book or who created the book could stop other people from using that book from making copies of that book from disseminating information from the book by different ways, because he has an exclusive right over it, in this case we call that right of copyright.

If the exclusive right waste in an invention, we would waste in an invention we would call that right a patent right, and the patent right gives a person the liberty to make or manufacture to sell to offer for sale, to import, and to use the right in that invention. And any person who does these things without the consent of the right owner we would say that that person has violated the right of the right owner.

A violation of a right of right owner is what is called an intellectual property law as infringement. Infringement technically means trespass; trespass is getting into the property of someone else. So, when you, you would have read you would have seen these notices in in front of some private property, trespassers will be prosecuted. It simply means that, if somebody intrudes into the property that is an violation of that person's right. You could have civil remedies to trespass, you could also have criminal remedies to trespass.

When trespass happens on an intellectual property then we call that by the word infringement. Infringement is nothing but trespass into the intellectual property owned by a person. Now this could relate to a set of rights that come out of the intellectual property.

As I said in the case of an invention, patent law, protects the right to make the right to use, the right to sell, the right to offer for sale, and the right to import the invention. So, if there is intrusion into any of these rights, visa v the invention, then we would say that there is an infringement of the intellectual property right.