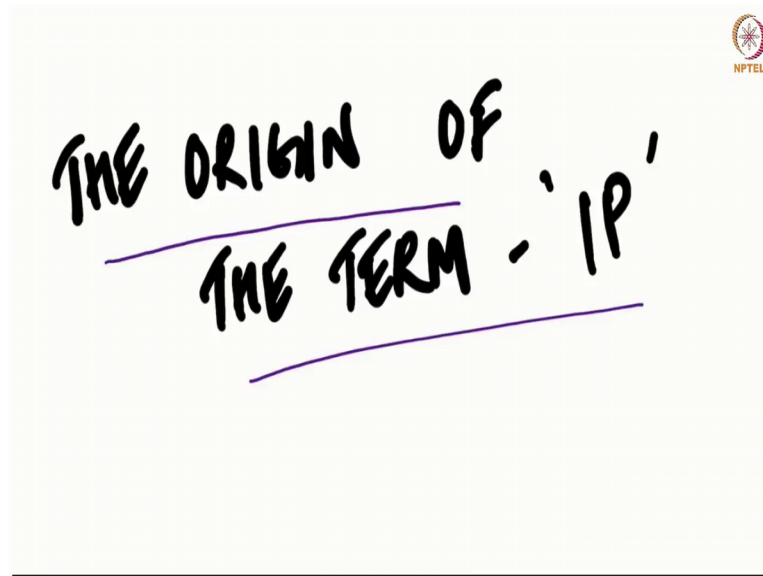


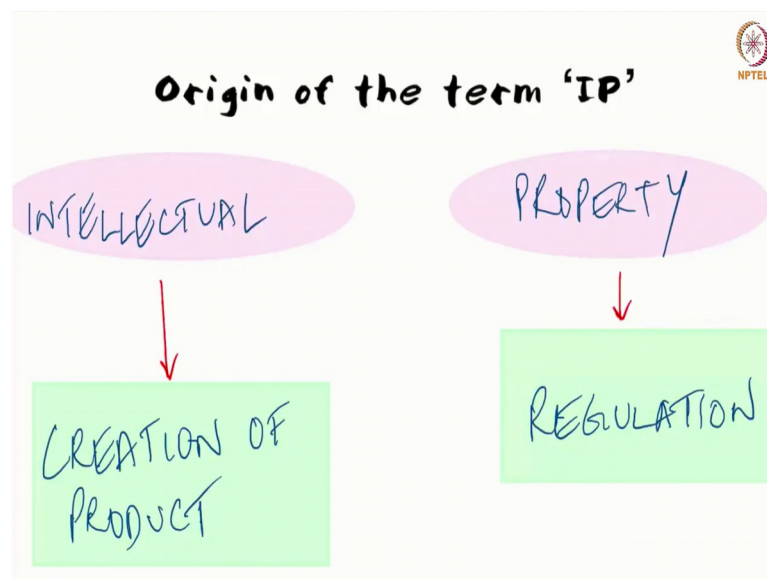
Intellectual Property
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Lecture - 10
The Origin of Intellectual Property Part II

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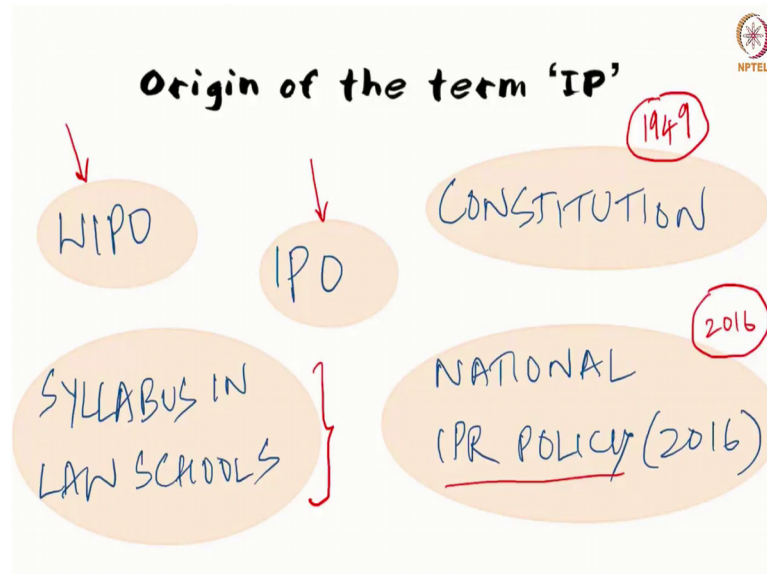
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Origin of the term IP or intellectual property; Intellectual property comprises of two words intellectual and property. The intellectual part refers to the creation of the product

the way in which the product the resultant product was created which was through an intellectual or a creative effort. The property part of the phrase tells us about regulation that it is treated like property in the sense that you can have rights associated with property, you can have rights to alienated, you can have rights to enjoy it, you can have rights to exclusivity over it. So, the term intellectual property has been of a recent origin.

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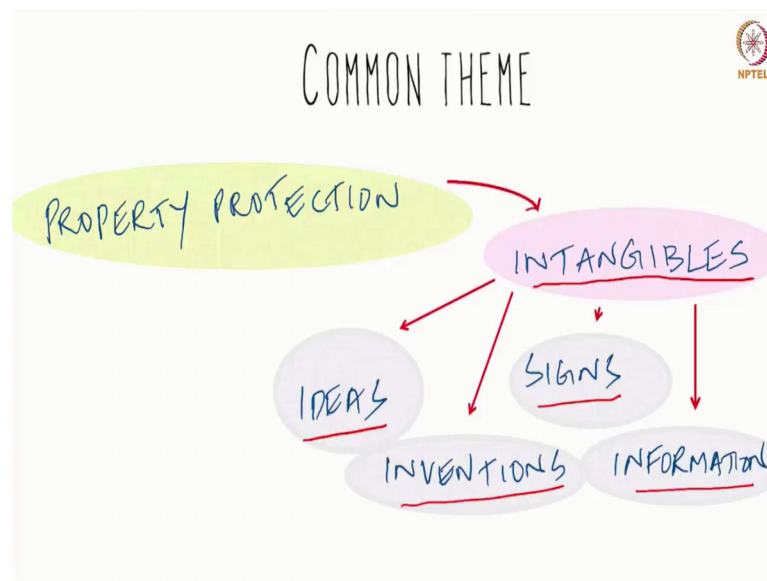
Now if we look at the term itself in 1949, we had the Constitution of India. And the Constitution of India does mention about the different types of intellectual property rights without using the phrase intellectual property itself. It talks about patents; it talks about copyright; it talks about trademarks, but the Constitution of India does not talk about intellectual property as a phrase itself.

So, we know that around 1949 the time when the constitution was came into effect; the term was not in popular usage. The term came to popular usage because of the creation of the World Intellectual Property Organization or the WIPO, W I P O. Now, WIPO when it came WIPO had a definition of intellectual property; it defined intellectual property as a collection of things or rights that manifest over different types of things. When we started off, we created a patent office and the patent office also acted as the trademark office.

So, we it used to be called the patent and trademark office. But recently the patent office was rebranded into the intellectual property office, now so that is one official instance where we found the term intellectual property getting into current usage. Intellectual property also was introduced as a syllabus in law schools that happened in the 1990s. And recently in 2016, we had the National IRP policy, we had for the first time we had a policy on intellectual property rights.

So, you can see starting from 1949 onwards how till 2016 how the term has been used in India, and how it has now been accepted as one of one of the terms with common use. Now, what is it that covers? All the different types of intellectual property we had already talked about patents, copyrights, trademarks, geographical indications, designs. Is there a common theme over it?

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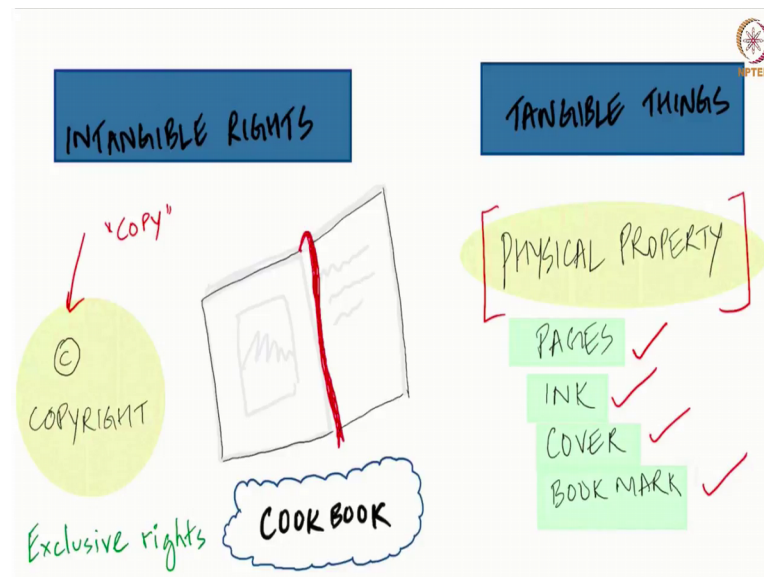


Now, scholars are in agreement that the property protection, when we talk about the property part of intellectual property, the property protection manifests on intangibles. Now, because it manifests on intangibles this they say is the common theme. You have intangibles and you have some kind of a property protection over this intangibles, that is the common theme as some scholars say of intellectual property.

Now, intangibles itself could mean it could it could amount to ideas, it could mean signs as in the case of trademarks, it could be inventions the subject matter of protection when

it comes to patent law or it could be information, literary artistic works or any form of communication of information which is protected by the copyright regime. So, the common theme if you have to find a common theme for intellectual property is the fact that it confers property protection on intangibles.

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Now, intangibles have to be understood in the context of tangible things. Now, intangible rights and tangible things are connected. For instance, if you look at a book that has been authored by a writer a person, then the right of the author is what we call a set of intangible rights which exist in the matter that he created which is the intellectual content. The book also manifests as a physical object, a collection of printed pages which is bounded in a particular fashion. So, the book in itself is the tangible thing and the rights of the author the fact that he created an intellectual work that would be the intangible part of the book. So, in many cases that tangible and the intangible parts are connected.

For instance a carpenter who is assigned to make a chair; Now, the carpenter is mandated to make a chair. So, he exercises his physical labor in creating the chair, but at some point there is also a creative labor that goes in designing the chair and it constituting the parts, bringing them together and making it into an aesthetically pleasing and a functional chair. So, all that goes into you may not be able to see it in you may not be

able to see it, but nevertheless you can say that there are intangible things that have gone into the creation of the tangible output which is the chair.

So, coming back to the book example a book the written part of the book or the creative endeavor that goes into writing a book is protected by copyright. Whereas, the physical property in the book itself says the pages, the ink used in printing, the cover and the bookmark are all physical goods which are not protected by the copyright regime. The copyright regime protects the intangible right in the literary work or artistic work or creative work.

So, what does this regime do? This regime acts along with the intangible things and only then intellectual property rights make sense. So, to understand into intellectual property rights, we will have to look at intellectual property rights as a set of intangible rights which manifest on real world physical tangible goods. Now, intangible, by the phrase intangible rights we refer to rights that cannot be touched and felt in the fact that things that we cannot feel.

So, for instance if I tell you that there is a medicine - a tablet, then you can see the tablet perceive the tablet probably crush it, powder it, and it is something that can be felt. If I tell you that the tablet is covered by a patent the product that is in the tablet is covered by a patent that is something which you cannot analyze unless you go and look at the patent number and I direct you to something else where you get an information about the kind of right that is covered. So, we always understand as intangible things and the tangible things together in such a way that the intangible rights manifest over tangible things.

So, a copyright would confer an exclusive right to do certain set of things. For instance, if you have a copyright then you simply have the right to make further copies now that is a simple explanation of what a copyright is. So, if you have the right to make further copies, any other person who does this, making further copies of your book without your approval or your consent is said to be infringing your right that person is violating a right that you have.

So, let us come back to the book analogy. If there is a book which is copyrighted book, the physical property in the book as I said manifests in the pages, in the ink, in the cover, in the gum or the glue adhesive that is used to bind it and in the bookmark of the book

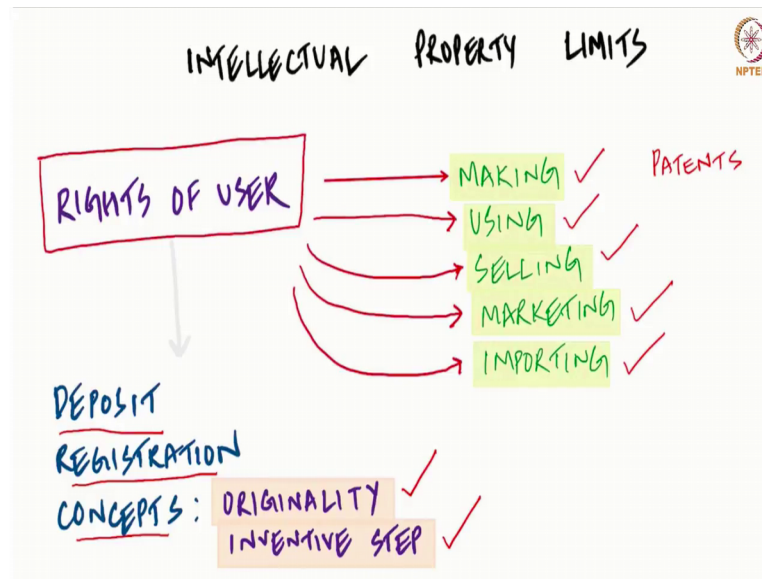
has one. The physical property is completely transferred to the to the person who acquires it at the point of sale. There is a complete transfer. So, you pay money for the book. You purchased the book the physical property fully vests with you. Now, you can do whatever you want with the book you can. If you do not like the book, you can keep it away. If you want to show it as a way of demonstration you can burn it, you can tear it apart, you can shred it, you could do anything that is possibly you can do when it comes to the physical aspects of the book. You can even keep the book under your pillow and not read it at all perfectly fine.

But when it comes to the intellectual part of the book, for instance, content that is in chapter one there are limitations put upon you by the intellectual property rights regime as to what you can do with that content. You cannot take a photograph of the chapter and post it on the internet. You cannot make multiple copies of the chapter and sell it for a price. You cannot have a live streaming of the book in such a way that somebody who has access to your live streaming say on YouTube is watching the book and you are just letting them read the book through your computer and flipping pages for them to read the complete book. All these are restrictions that the owner of the copyright can impose on a person who has purchased the book.

So, the intangible part of the work which is the book allows the owner of the intellectual property right, in this case the copyright owner to impose restrictions on further use. And we do not find those restrictions on further use when it comes to the physical property itself. So, we understand intellectual property rights as exclusive rights in the creative content, then manifests in a physical product.

Now, we can look at an instance of a written work for instance a cookbook. Now, some people find it counterintuitive that in a cookbook what is prevented by way of a copyright is making multiple copies of the recipe you cannot make copies of the recipe and you cannot share it with people. But nothing stops a person from understanding the import of the recipe and creating the end product which is the food itself the recipe itself on their own. So, some people have found this to be counterintuitive in the sense that though intellectual property only stops people from making copies of the work, it does not actually stop them from doing the real work which is making the recipe of a food item.

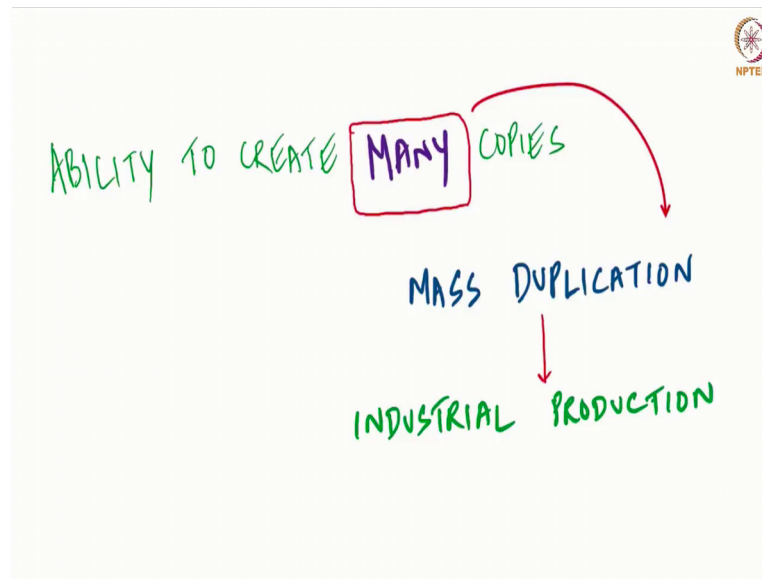
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Now, there are certain limits that are posed by intellectual property rights. As we said these are rights of the user and there are certain restrictions on those rights. Now, normally an intellectual property right will confer the right with regard to making, using, selling, marketing, importing the product or in case the processes involved it will cover that as well. Anything beyond this is not the subject purview of an intellectual property right. Now, this we are referring to these rights especially in the context of patents.

Now, patents offer all these sets of rights. Now, the right itself is created in different ways it could be by deposit, it could be by registration, it could be by certain concepts which the law requires you to prove. For instance, in the case of copyright you need to prove originality; in the case of patents you need to show inventive step. So, these are some of the restrictions on the rights that have been conferred by intellectual property; rights we will be looking at this in greater detail in these specific lectures

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Now, we found that the distinguishing feature of intellectual property is that it offers property protection over intangibles. And intangibles by themselves offer us a way to create multiple copies of the created product. For instance, if it is a book written by an author the fact that the author wrote the book allows the author to make multiple copies of it. If it is a pharmaceutical drug the fact that the company came up with the first version of the drug allows it to make or mass produce or duplicate multiple copies. If it is a copyrighted software program say Windows 10, it allows Microsoft to make multiple copies of it.

So, the ability to create multiple copies allows the intellectual property right owner to commercialize and to exploit the subject matter covered by intellectual property. And this also is it looks like a boon, but it is also something which is disadvantageous to the owner. The fact that his property can be copied and duplicated in mass can be copied and duplicated in mass numbers is itself a potential threat for infringement. The fact that others who do not have as consent can make copies of the book or an invention would itself result to what we call infringement.

So, there is in intellectual property rights, an enforcement regime which protects others from using a person's intellectual property rights. So, intellectual property rights we understand them as intangibles property rights in intangibles; and intangibles that are capable of mass duplication or industrial production if you want to use that word.