

Intellectual Property Rights, and Competition Law
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Lecture - 04
Copyright

Dear students, we will continue with the next category of Intellectual Property Rights that is Copyright. As you know this is one of the important intellectual property right in writings, books. And also a series of rights are bundled in copyrights.

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And copyright is one of the important intellectual property law in the recent times in the sense that now everything is digitalised. So, in the digital era, copyright is very important as far as all the information and databases are concerned.

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So, earlier it will be considered as the author's rights or performers rights. And you can see this is the book which I recently published on intellectual property rights and competition law. The copyright is with me, but in most of the cases the copyright owner may be somebody else, the publisher can be the copyright owner. So, in this case, I am the author and the copyright owner as well.

So, what are the differences between these author's rights, the performer's rights? The paid person who is writing a song, a person who is singing a song, the person who is giving music, all these are very important to look into, because mostly the violations are happening in the copyright.

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So, we will see one by one. So, you can see the pictures, on the left side is a poet and right side is a college lecturer. And recently there was a controversy that the professor has copied the poem of the author. And then later on she said that yes I copied. And some time back the Delhi University Vice Chancellor was jailed for violation of copyright.

So, the allegation was that he copied some of the parts of his student's thesis. So, what I want to say is: copyright is not the right to copy. So, copyright may end you up in jail. And copyright is another intellectual property law where the imprisonment is prescribed. So, it is very important to look into these copyrights.

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Copyright

- Right to copy a piece of work
- Comes into existence once it has been recorded or written down
- No need to register!
- Automatic!

The slide features a purple header with the word 'Copyright' in white. Below the header is a list of four bullet points. In the bottom right corner, there is a small video inset of a man in a white shirt. At the bottom of the slide, there are logos for IIT KGP and NPTEL, along with the text '© KDR/IT KGP/RGSOIPL/IPR-2019'.

And copyright is not a right to copy. So, it is a bundle of rights. And you can see that it is in different formats. It can be: the works in recorded format; it can be in a written format. And you need not even register the copyright, once you have written it down, the copyright is with you. And it means that the copyright is *automatic* when you create a piece of poem or when once you write down a book, once you write down an article.

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Copyright

- Copyright provides free and automatic protection for an author's original expression of ideas and information captured in a specific medium.
- The most common works protected by copyright are books, films, music, sound recordings, newspapers, magazines and artwork.
- Copyright also protects originally created typographical arrangements, databases, media broadcasts, computer programs and even compositions of other people's work such as academic journals or CD compilations.

The slide features a purple header with the word 'Copyright' in white. Below the header is a list of three bullet points. In the bottom right corner, there is a small video inset of a man in a white shirt. At the bottom of the slide, there are logos for IIT KGP and NPTEL, along with the text '© KDR/IT KGP/RGSOIPL/IPR-2019'.

So you can see that the copyright gives automatic protection to specifically the “authors” and *the original expression* of ideas and also the information which is captured in different medium. The medium can be even digital medium like whether it is pen-drive or it is in a computer disk or in any other format. So, you can see it is copyright which protects books, films, music, any sound recordings, newspapers, magazine, artwork etc. That means once you put the idea onto the paper, it can be protected as a copyright.

And also it protects the originality created i.e. typographical arrangements, databases, media broadcast, computer programs, and even compositions of other peoples work such as academic journals or CDs and compilations. So, the copyright protects a different kind of intellectual property works or different kind of the literary and artistic works. All are covered by the copyright.

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The slide features a purple header with the word 'Copyright' in white. Below it, a bullet point states 'Copyright protects literary and artistic works', followed by a list of examples: 'e.g. Books, lectures, dramatic and musical works, choreography, cinematography, drawings, paintings, architecture, sculpture, photographs, illustrations, maps, plans sketches etc.' A pink text box below the list reads 'This is automatic right created with the creation of work and no registration is required'. At the bottom, there are logos for IIT Bombay and NPTEL, along with a copyright notice '© KDR/IT KGP/RGSOIPL/IPR-2019'. A small video inset of a man in a white shirt is visible in the bottom right corner.

As I told you, it covers literary and artistic works. So, in different formats, it can be in the format of photographs, it can be in the format of books, it can be any other literature. Illustrations, maps or even plans and sketches can be copyrighted. That means, that the automatic right is created once you complete the work.

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The slide features a light green background with a white title 'Things can be copyrighted' at the top. Below the title is a bulleted list of eight categories of works. At the bottom of the slide, there is a dark green banner containing three logos: the Indian Institute of Technology (IIT) logo on the left, the NPTEL logo in the center, and a small portrait of a man in a white shirt on the right. The NPTEL logo includes the text '© KDR/IT KGP/RGSOIPL/PR 2019'.

Things can be copyrighted

- literary works
- musical works, including any accompanying words
- dramatic works, including any accompanying music
- pantomimes and choreographic works
- pictorial, graphic, and sculptural works
- motion pictures and other audiovisual works;
- sound recordings; and
- architectural works

And what are the things that can be copyrighted? Basically all literary works can be copyrighted if it is *original* and musical works including any accompanying words. So, musical works, musical works includes poems, it can be the songs of cinemas, the songs for the film industry or in any other format. The musical works can be included.

Then it is the dramatic work, dramas. And also the dramatic works plus music can also be protected; then the pantomimes and the pictorial graphic and sculptural works can also be protected under the copyright. Then motion pictures and all other audio visual works can be copyrighted, even architectural works also can be copyrighted. So, copyright protects a wide variety of works. The works can be included for copyright.

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Rights covered under
CR

- Moral Rights : Author's right of paternity. Non-alienable.
- Economic Rights : Rights to exploit the work. e.g. Rights of translation, rights of performance, rights of reproduction etc. These rights can be transferred, assigned, licensed for economic benefits.

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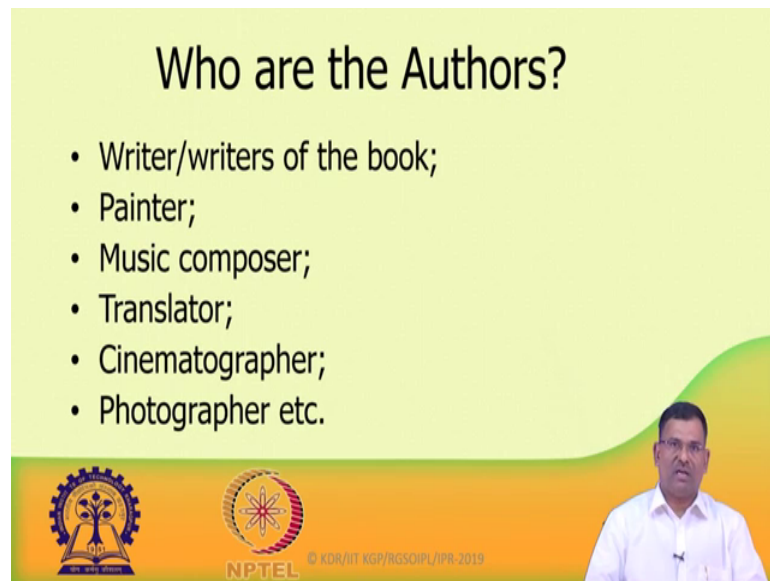
Then what are the rights covered? Not only the rights covered are the original rights, the moral rights are also covered. So, you can see that the author's rights or the paternity of the author is inalienable, non-alienable. What does it mean? It means that you can assign the copyright to the publisher, but you will continue to be the author of that particular work. The owner may be the publisher, but you continue to be the author of that particular book. Then economic rights, always the economic rights are with the owner of the copyright. It is the right to exploit the work; the economic exploitation.

So, the rights of translation, and rights of performance for e.g., in the case of dramas, the rights of performance. And then right of reproduction, etc., all these are with the economic rights, all these will come under the category of economic rights. So, these rights can be transferred like any other property, it can be assigned, it can be licensed absolutely for economic benefits. Because we know that the music industry, if you take the film industry or the music industry is surviving mainly because of the stronger protection of copyright in these industries.

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Who are the Authors?

- Writer/writers of the book;
- Painter;
- Music composer;
- Translator;
- Cinematographer;
- Photographer etc.



And who is the author? It is a very pertinent question with regard to the copyright is concerned. Usually as I told you as far as book is concerned, the writer or writers of the book, or the authors, the painter if you take the question of a picture, it is the painter, he is the author. And the music composer is the author, translator is the author; and cinematographer is the author, and photographer is the author as far as the copyright law is concerned.

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Duration of Protection

- For books and other works of arts it is 50 to 70 years after the death of the author (the laws of different countries vary);
- For photographic work 25 years from making the work;
- For cinematic works 50 years after making the work available to public.



And, what is the duration of the protection? And the duration of the protection as prescribed in the TRIPS agreement is the life of the author plus 50 years. But the Indian law which gives a longer protection i.e. the life of the author plus 60 years that means, these rights can be even transferable or to the successors. So, as I told you basically in some of the countries it is 50 years to 70 years. So, the TRIPS agreement prescribes only the minimum period of 50 years. And for photographic works it is 25 years from making the works. So, you can see there is a difference in the case of books and other works of arts and photographs.

And for cinematographic works also, it is 50 years after making the works available to the public, that is the duration of protection. So, when compared to other intellectual property like patents, in patents it is 20 years, in trademarks it is 10 years, in geographical indications it is 10 years which can be renewed successfully from years to years. Here the duration of protection is much, much longer than when compared to other intellectual property rights.

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Permission of copyright owner required

- Permission of copyright owner is required to Make copies
- Downloading Web pages (even without saving)
- Copying on RAM
- Give copies to the public (free or not)
- Adapt a work including translation to another language
- Permission is generally implicit rather than explicit

The slide features a green and yellow background. At the bottom, there are logos for IIT Kharagpur and NPTEL, along with the text '© KDR/IT KGP/RGSOIPL/IPR-2019'. A small inset video of a man in a white shirt is visible in the bottom right corner of the slide.

And if you want to sell your work, you require the permission of the copyright owner. It is mandatorily required to make copies. So, it is in this background, it is very pertinent to mentioned here one of the Indian case i.e. *Rameshwari Photocopy Services & Ors. vs.*

The Chancellor, Masters & Scholars of the University of Oxford & Ors. (DU Photocopying Case)

In this particular case, these well known multinational publishers sued a small photocopy centre in the Delhi University premises which used to make study materials.

And these study materials are prescribed by the teachers of the Delhi University from time to time, and these materials are taken from different books and other journals. And, the photocopy centre which photocopies these materials and compiles it together and sells it to the students for a minimum price. So, these publishers argued that it is the violation of their copyright, but ultimately Delhi High Court said that the extent of copying for educational purposes is not the violation of copyright.

So, in India to what extent you can copy from a particular copyrighted work is not mentioned within the Act or there isn't any policies of the government which shows. In other countries each and every educational institution has a policy of how much you can copy, whether it is 10 words or 10 pages or it is 10 percent of the work or 5 percent of the work.

But India still is in the developing stage, and there is no hard and fast rule for how much you can copy. But one thing is very clear; under the Act you require a permission from the copyright owner for copying the works, whether it is copying in any format whether it is digital format or in the hard format or copies to the public, whether it is free or not.

So, the question of whether you are charging or not is not important. But the question is whether you are copying it or not? And then also you require the permission of the copyright owner in order to translate the work to another language, that is also is a part and parcel of the copyright. The permission can generally be implicit, and it may be explicit. The implicit permission is not considered. It must be an explicit permission in the particular agreement for transfer of copyright, required from the owner of the copyright.

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The slide features a light green background with a yellow-to-orange gradient at the bottom. The title 'Exceptions to Protection (Free Use or Fair Deal)' is centered at the top in a large, black, sans-serif font. Below the title is a bulleted list of three items: 'Quotations for commentary;', 'Illustration for Teaching;', and 'Current News Reporting etc.'. A purple text box contains the statement: 'Free Use is decided by amount of work used and its economic implications to the right holder. The mention of original author/source is must.' In the bottom right corner, there is a small video inset of a man in a white shirt. The bottom of the slide contains three logos: the Indian Institute of Technology (IIT) logo on the left, the NPTEL logo in the center, and a copyright notice '© KDR/IT KGP/RGSOIPL/PR 2019' on the right.

And The only exception which is mentioned in the Copyright Act/Copyright law are the *fair deal*. What do you mean by fair deal? I just mentioned about the *Rameshwari Photocopy Case* in the Delhi University. The fair trial is discussed by the Delhi High Court at length, and they said that educational purposes is a fair deal. And to what extent you have copied is not the question, but for what purpose it is copied is the question to be answered.

For example, if you are quoting for commentary. So, if you are writing a commentary for a particular copyrighted work, again it can be copyrighted. And also illustration for teaching is also exempted. And also the news reporting are also exempted. So, it means that if you are quoting from a particular book or a somebody's work you can acknowledge that particular work. It is an exception to the protection, exception to the copyright or the rights which are embedded in that particular work whether it is a book or an article.

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The slide features a purple header with the word "Ownership" in white. Below the header is a list of six bullet points. At the bottom of the slide, there are three logos: the Indian Institute of Technology (IIT) logo on the left, the NPTEL logo in the center, and a small video feed of a man in a white shirt on the right. The background of the slide is a gradient of light green and yellow.

Ownership

- Copyright generally goes to the author, unless
- The author has produced the product as part of his works as an employee of a company
- The employer then owns the copyright of work carried out by employees
- If work is done by independent contractor (freelance)
- The independent contractor is the copyright owner
- Important: to have a formal agreement about the copyright ownership of work

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And ownership rights are something different from authorship rights. As I told you in the beginning itself the ownership rights, the copyrights generally goes to the author, but the author can assign to the owner which may be another person. So, the product or the copyrighted works can be given to another person. If an employee works in a company, the employee may assign it to the employer i.e. to the company.

And it depends upon what kind of agreement between the employer and employee exists. So, it means that if somebody is working upon something the ownership of the copyright will depend upon what type of contract between the employer and the employee exists on the intellectual property produced by the employee. So, the employer may earn the copyright of the work, but still the employee is the author.

But in the case of freelance works or the independent contractor, the ownership differs. And in the usual course of contracts, usually it is with the person who is hired in the contract, that means, who is hired for the work for money, who is supposed to engage, who is engaging the work will be the owner of the copyright. In the case of independent contractor usually independent contractor is copyright owner.

But this will depend upon the agreement between the parties: who owns, who authored. And when you publish with the publishers, there is a publishing agreement which clearly talks about who owns the copyright.

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Another subcategory of copyright is the related rights. As I mentioned you in the beginning that a person, a composer of song composes the song and he directs the song, but somebody else is singing the song for example, most of the songs in Philips the singers are different. So, what are their rights? They also have some kind of rights which are a bundle of rights which are known as the related rights.

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**Related Rights
(Neighboring Rights)**
Rights related to dissemination of copyrighted work

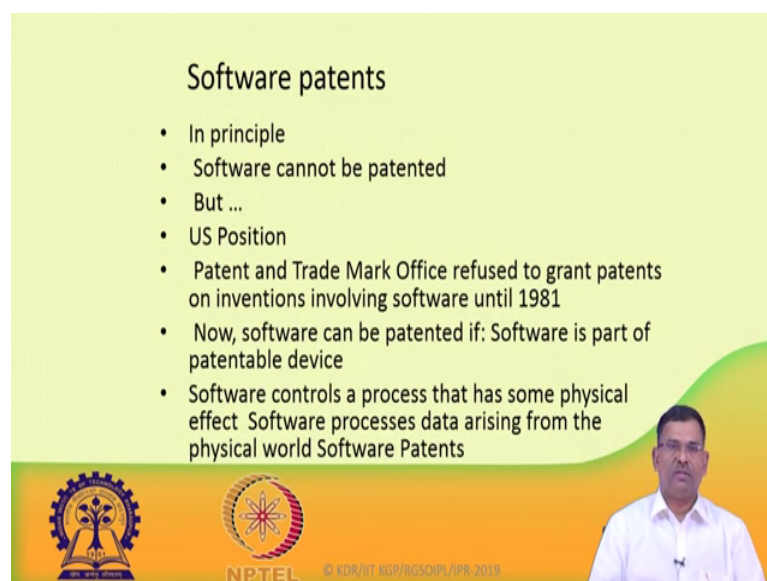
They protect:

- Performers of Work
- Producers of Phonograms
- Broadcasting Organizations

The slide features a green and yellow background with a white speaker's video inset in the bottom right corner. At the bottom, there are logos for IIT KGP and NPTEL, along with the copyright notice: © KDR/IT KGP/RGSOIPL/IPR 2019.

And related rights are known as the neighboring rights. Neighboring rights are always rights related with the copyrights. This protect the performers those who do the performance of work, and the producers of phonograms and the broadcasting organizations. So, it means that the related work or neighboring rights are related to these copyrights, I mean they also have some kind of rights.

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Software patents

- In principle
- Software cannot be patented
- But ...
- US Position
- Patent and Trade Mark Office refused to grant patents on inventions involving software until 1981
- Now, software can be patented if: Software is part of patentable device
- Software controls a process that has some physical effect Software processes data arising from the physical world Software Patents

The slide features a green and yellow background with a white speaker's video inset in the bottom right corner. At the bottom, there are logos for IIT KGP and NPTEL, along with the copyright notice: © KDR/IT KGP/RGSOIPL/IPR 2019.

Once it comes to the software patents because it is very important to discuss the copyright in the digital era. India never provides software patents and software per se is not patentable in India. The software must be attached with hardware, then only it is patentable in India. So, software can get only a copyright in India. In most of the jurisdictions it is not software patents it is copyright in softwares.

So, softwares in India cannot be patentable, but the US position is that they give the software patents. So, in the digital era, the patenting of software is very important in the sense. So, there are two side arguments, some scholars argue that it is not required, software cannot be patentable and only copyright is required.

And another group of scholars argue that, you must provide patent to software because it will come under the purview of very strict implementation of the patent implementation. So, the softwares can be protected which will very quickly change from time to time with the change of technologies.

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So, this is one of the markets. And India and China is in the radar of the US. And very recently the US have released their 301 list. The 301 list, watch list, is nothing but the list which US will prepare every year of the countries those who are not implementing the intellectual property rights honestly or completely at the domestic level. So, we are in the

list. India is in the list of 301 list of the US from the very beginning of WTO from 1995 onwards.

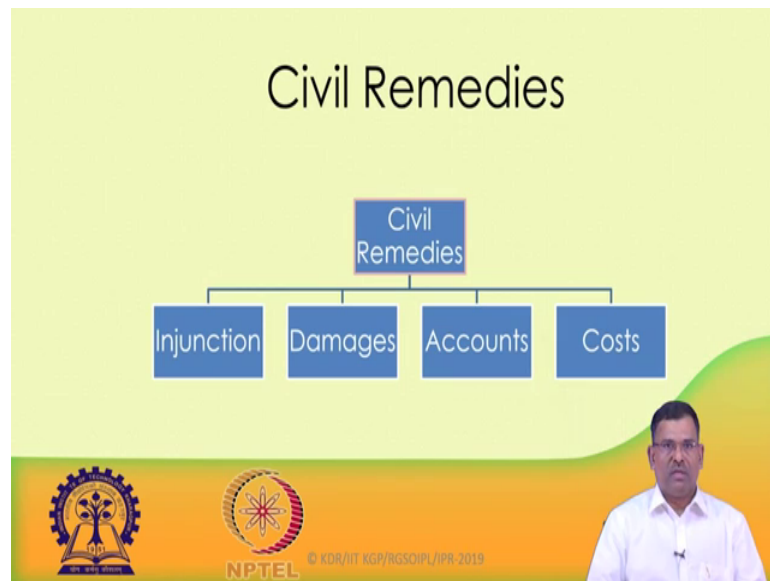
And in 2019 also they put us under the 301 watch list for not implementing or honestly implementing the intellectual property obligations at the domestic level. So, if you go to some of the markets you can get the pirated, the so called “the pirated CDs”. So, it is the duty of the implementing authorities or enforcement officers to implement the intellectual copyright in toto. So, copyright has to be implemented under the WTO TRIPS obligations.

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And remedies as I told you in the beginning that copyright is one of the law where there is the punishments both type: damages as well as the jail time is prescribed. So, the civil remedies, criminal remedies and administrative remedies are available for the infringement of copyright.

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And civil remedies include injunction, damages and accounts and also cost. So, this can be claimed by the copyright owner from the infringer.

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And the criminal remedies as I already mentioned that even a Vice-Chancellor can be sent to jail for a period of 3 years. So, it is a cognizable offence and any person who is infringing copyright can be sent to jail, and also there is a fine of up to two lakh rupees.

So, it is a serious offence in India. Also it is considered a serious offence of copyright violation.

So, we have to be very careful about when we are taking materials from others, whether it is from books or whether we are dealing with CDs or whether we are dealing with even teaching materials. We have to be careful when we are taking the materials from other sources.

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The slide features a light green background with a yellow-to-orange gradient at the bottom. At the top center, the text 'S.63' is displayed in a large, bold, black font. Below this, a bulleted list contains a single item: '• Offence of infringement of copyright or other rights conferred by this Act - shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:'. The bottom of the slide contains three logos: the Indian National Emblem on the left, the NPTEL logo in the center, and a small portrait of a man in a white shirt on the right. Below the NPTEL logo, the text '© IQR/IT KGP/RGSOIPL/IPR 2019' is visible.

So, as I already mentioned the offence of the infringement of copyright has a very stringent punishment, but the question is how many people are punished under the copyright act or sent to jail under these particular provisions. But it is very clear that under the TRIPS obligations, the copyright provisions, it is the duty of the Government of India to implement the provisions at the domestic level in its toto.

As it is WTO obligation, otherwise other members can take India to the WTO dispute settlement body for non-implementation, as accused by the United States. But India always claims that India honestly implements the TRIPS obligations at the domestic level and has passed appropriate legislations from time to time and the enforcement authorities enforces, and they conduct raids at different places every year for implementing these intellectual property rights.

So, I already told you that the copyright is one of the important intellectual property law and not only it affects the ordinary people, affects intellectuals, affects students, affects teachers. So, everybody has to understand that copyright is not the right to copy, you require the permission from the copyright owner for copying anything.

And we will wind up and we will go to the next category in the next class.

Thank you.