Introduction to Research
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Part - 02
Defining IPR

Speaker 1: Defining IPR, we had seen that there are certain elements that together constitute the concept of Intellectual Property Rights.

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Defining IPR

- Subject matter
  - Invention – Protected by Patent
  - Expression – Copyright
  - Aesthetic Design – Registered Design
- Registration (Government)
- Exclusive Set of Rights
- Duration

We saw the fact that the subject matter can be replicated, it can be repeated. The fact that the right krance, the right holder, the option of enforcing it against others. And we also saw the other characteristics or traits of intellectual property right. Now, one of things in understanding or in defining intellectual property right is to first understand the subject matter on which the intellectual property right will manifest itself on. Because, as I said earlier, intellectual property rights are a group of rights, which manifest on different

expressions of ideas - that is one definition of it. It also manifests itself on… the new rights are not actually on ideas; like a geographical indication is not actually on some idea; it's the fact that there are certain products that come of a particular geography, which are valuable and it's an attribution to the origin from that place. That place may have certain special weather or it could have some climatic conditions which makes the product or contributes - the geography contributes - to the product, so you identify the product with a particular place. Now, there is not much idea involved.

Speaker 2: Who will be the beneficiary of this geographical indication?

The beneficiary of a geographical indication are the people, are the community which uses its right; the producers from that place, they are the the people who can use that right. For instance, Darjeeling tea - the people who are having plantations in Darjeeling, and who are actually in the manufacturing and production of the tea, they can use that label to say that this tea is from Darjeeling, because the Darjeeling tea, it has been found out that has certain properties which is not there for tea that is grown in Coorg or in some part of Srilanka; it's not there. The people who are able to manufacture from that particular region can claim a GI – A Geographical Indication.

Now, coming back to our definition. So, we know an intellectual property by the subject matter on which it manifests itself. If an idea manifests itself in the form of an invention, then that is protected by a patent. If the idea manifests itself in the form of an expression - a literary work or an artistic work or a cinematographic work - then that is protected by a copyright. If the idea is an aesthetic design - a design that pleases the eye with no functional component to it, it's just that it pleases the eye – then, we say that subject matter can be protected by a registered design. Now, to understand a registered design, I will give you this example - a shoe that is designed by a company like Nike or Adidas will have certain design elements which also contribute to the functionality. It makes it cut the air faster, it gives it grip, it gives certain support in certain parts of the foot. So, those design elements have also a functional component. So we do not say such design should be the subject matter of a registered design, because they could be an aesthetic part to it, but if there is a functional part right holders will not go for a registered design. Whereas, if a shoe is designed to look like a bunny or a rabbit, you know many children's shoes are designed like a rabbit or like a character in a cartoon, in such cases, we do not say that design has a functional element. Try to understand; the scope of a

registered design is for things that are aesthetically pleasing to the eye and the test is - what the eye can see. So, when functional elements are tied to the design, right holders normally do not go and get a registered design for it. They have multiple rights, first it is a trade mark; and then the thing can also be copyrighted the way it looks, because almost all Disney characters where at some point subject matters of copyright. So you cannot create that image in any other form. And that violates a copyright, and copyright, as you know, is it is life of the authors plus 60 years in India; so, it is quite a substantial right.

In defining intellectual property we first look at the subject matter. Then, we look at the form by which it is protected. Now, we said that intellectual property rights are intangible rights, and it is sometimes difficult for us to ascertain the contours of this right, the boundaries of this right.

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Registration

- Form by which IP is protected
- What the right holder has claimed
- Process by which IPR is recognised
- Backed by law
- Done by the Government

Registration, is a way in which we can understand what the right holder has claimed. Registration could be registration of a patent specification by which a patent is granted. Registration could be registration of a literary work; literary works can be registered

though it's not mandatory for enforcement purposes. Software code gets registered by way of a copyright. Trademarks are registered. So, registration is the process by which these right become court and court official; it's recognized; people can verify it; and it is also, because it is backed by a law - the Trademarks Act of 1999, is what gives the trademark holder a right to enforce it. The Patents Act 1970 gives the patent holder a right to enforce a granted patent against others. So, registration is done by the government or by the state.

So registration confers sanctity over the intellectual property right. So subject matter can vary, and depending on the subject matter, you can have different rights; kind, type of registration, the details of registration also varies because if you are filing a design – a registered design - or a registered trademark, you are just filing forms and figures, you know, you are just filing some papers with some marks in it, and the registry does a check, and the registry… if the check is cleared, then you get your right. It's more like matching what has gone before, - are they similar terms, then the registry may raise an objection; if there are no similar terms you invented or you coined a word for the first time, nobody else has done it before, most slightly you will get the mark. It's a straight forward process. Design, again, the design looks unique, it is original, and you are the first person to file that design, it gets a registration.

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Patents Specification

- Has to explain the entire invention in detail including:
  - Working of the invention
  - Features
  - Advantages
  - Variations
  - What went before the invention
  - Illustration
  - Claims

But patents follow a different path. The patents specification will have to explain, in detail, the entire invention. And it is not just the invention, the working of the invention, the features of the inventions, the advantages, the various variations in the invention. And the right holder will also have to explain what went before the invention. So it is a narrative, he explains his invention, and he also before that, he explains the background of the invention - what were the technologies before him and how it was not possible for a person skilled in the art, which is his sphere, to come up with this invention, but he with his inventive effort was able come up with it.

So, it's a narrative which starts with the background art, then it goes towards describing the invention, the purposes of the invention, what are the problems the invention solves, various other things, and it also has embodiments, illustrations - how the invention works or what are the parts of an invention, if the invention has a mechanical invention. And finally, it ends with the claims.

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Scrutiny by Patent Office

- Done in great detail
- First Examination Report
- Right holder is asked to justify his invention.
- Two types of Objections - Technical or Substantial
- E.g. of substantial objection:
  - Not patentable
  - Preceded in the art
  - Obvious for a person skilled in the art to do

So, this entire process of explaining the invention when it is captured in what we called a Patent specification. The Patent Office does the job of not just registering it. It also scrutinizes the details in great depth.

Now, the scrutiny is done by giving a report to the right holder; in India, we call it the first examination report. The first examination report is given where the right holder is asked how he can justify his invention in the light of, if there are any objections, but most likely there are, if there are any objections either it could be technical objections or it could be some substantial objection. If the patent covers a subject matter which is not patentable under the Indian law, there will be an objection. If the patent covers something which is already preceded it in the art, it is preceded, it’s already come or the patent covers something which is obvious for everybody to do. In all these cases, the office is going to raise these substantial objections, and these substantial objections, and these substantial objections takes time to get over them.

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Patent Prosecution

- Process of raising an objection over a patent
- Different from other IP prosecution
- There is a lot of analysis is involved

And this process of the office raising objections over a patent application is what you called patent prosecution. And Patent prosecution, is a very detailed and sometimes a complicated process. Patent prosecution actually is different from a trademark prosecution or a design right prosecution in the sense that there is quite a lot of details involved, there is a quite a lot of analysis of what the person says which goes into it before the right is granted. So, registration is one of the key elements by which we can define intellectual property rights.

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Copyright

- Right to print, publish, perform or record the subject matter
- Expression of idea
- Forms of expression be captured in a medium
- Right to make copies
- Copyright regime requires the work to be recorded or copied to some medium

And registration itself varies, just how the subject matter varies when it comes to different types of intellectual property rights, the registration process also varies when it comes to different types of intellectual property rights. Then, these rights offer a set of rights; intellectual property rights be it patents, trademarks, copyright, designs - they offer a set of rights, it is actually a bundle of rights to the right holder. And these bundles of rights also varies. In the case of a literary work, the right may involve the right to print, the right to publish, the right to perform, film or record the subject matter. Because, here is an expression of an idea, and all the forms of expression - most likely which can be captured in a medium - this is critical when you understand copyright, because copyright is the right to make copies.

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Set of exclusive rights

- Making copies implies a medium being there
- E.g. print is recorded on paper, films on tape
- IP rights first came up in the industrial revolution
- IP rights are commercially valuable
- Tied to an idea that can be shared, expressed or have an application out of it
- Industrial revolution was tied to ideas and dissemination of ideas

And when you are talking about the right to make copies, where are you making those copies? There is always a medium right. So, before copyright came - I mean this is just before industrial revolution - the world followed a means of transmitting knowledge what we commonly call the oral formulaic tradition.

Now, if your children are studying nursery rhymes, which you studied, and which probably your parents studied in school, that's because of the oral formulaic tradition. They are the same ones which get repeated over the years, and this used to be… just before I mean the industrial revolution, which is seen as a point in history where these rights come into being. They were, I would say, remote instances of rights even existing before that, some kings granting these rights, but the rights attained international recognition with the advent of the industrial revolution. There are reasons for that, historical reasons, we will get into it soon.

So, before copyright actually came into existence or before copyright became a recognizable right, there was the oral formulaic tradition. The oral-formulaic tradition was a tradition by which people just memorized things and passed it on to the next

generation. Now, if you do that, technically, are you violating a copyright? Because now the medium is your mind. You remember things in your mind, and you pass it on to the next generation, and the next generation or the person who hears from you he or she remembers in her mind, memorizes it, and passes it on.

So the oral formulaic tradition, unless the substance is captured in some medium, can remain outside the purview of the copyright regime. Because the copyright regime requires things to be recorded or expressed on some medium. So, print, the medium is paper. If it is a film, it is recorded on tapes or now it's digital. You will understand that whenever we are talking about making copies, it implies a medium being there. We don't not say that if you heard somebody reciting a poem to you, and if you memorize it, you say that I made a copy of it; you do not use that even in common parlance. We have different terms for that, we would just say that I memorized it or I learnt it by heart. So, this is a critical point that you need to understand and it has some history behind it. In the sense that copyright, when it evolved as a right, if you look behind it or before it, you will find that, Europe especially, had an oral-formulaic tradition. And there are enough number of studies, which some of which is say that one of the biggest beneficiaries of the oral-formulaic tradition was Shakespeare, you know, just before Shakespeare came in he actually inherited from a oral-formulaic tradition. And there are studies which say that some of the things that he wrote were already there in the oral-formulaic tradition.

So, that was a point in history where the right became recognized, and because of the industrial revolution, it spread far and wide. And the industrial revolution also contributed to it, because all the things that we were talking about intellectual property rights are first emanated in the industrial revolution. We said these rights are duplicable; you can make multiple, you can reproduce them; if you have the first copy, you can make multiple copies of it. Industrial revolution actually mechanized manufacturing; it made producing many copies of products easier.

Industrial revolution gave value to things because they were manufactured in large numbers; an entire industry of marketing came with the industrial revolution. Before that people were not marketing the way or the scale in which they were doing. This, again, is similar to what we discussed about intellectual property right. We say that intellectual property rights are valuable rights, they are commercially valuable. And intellectual property right is tied to an idea which can be shared to others or which can be expressed

or which can or you can have an application out of it. If you just see the advent of industrial revolution, there are certain things that contributed to the growth of industrial revolution itself. One of the things includes the advancement in printing technology. Now, this led to the quick spread of ideas, because printing technology advanced, and you could make copies of what was disseminated; big ideas, great works could now be copied and it could be sent to other places. And because of the invention of steel and our ability to cross the seas using ships which could withstand long voyages, we also found that people were meeting each other or crossing borders at a much greater pace than they ever did in history and at a much bigger number. And in Europe, this actually lead to the need to translate works. So, when you found new a German philosopher coming out with his work or a German artist coming up with his work you found quickly people translating them and that ideas spreading in England.

So, when people started moving that also contributed to them understanding each other and the entire field of translation or interpreting other languages came up, which also lead to the quick spread of ideas. So the reason why we take the industrial revolution as the point where intellectual property rights actually took off, is it was tied to idea, and it was tied to dissemination of ideas.

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Kind of IPRs

- Copyright gives the creator the right to make more copies in different forms
- Trademark – using a symbol or word legally registered or established by use
- Patent – right to make, sell, use, offer for sale or import an invention

Now, we were mentioning that the exclusive set of rights that an intellectual property right encompasses would also vary depending on the kind of intellectual property right. And we were saying that is if it is a copyright, then the copyright gives the creator a fixed number of years to print, to publish, to perform, to film or to record, literary, artistic, musical or other cinematographic works. So, the set of exclusive right in copyright pertain to making more copies in different forms. The set of rights - exclusive rights - in trademark pertain to using a symbol or a word that is legally registered or established by use as representing a company or it's products; could be products or even services. In trademark, the right is for you to ascribe a symbol or a set of words - the Nike mark or the Mercedes Benz logo or any of these things - to a manufacturer or to a company which owns it. So, this attribution gives you a set of rights that are different.

Now, you could use this right for all your products; you could use this right for if you enter new industries in which you were not there before; you could stop people from using it, even if you do not have products, because your rights have goodwill. Now, there

was a case where someone used the Benz mark - the Benz Tristar logo - for selling undergarments in India. The court came Benz had no idea, as far as I know, of entering into the garment business, but still they stopped it, because that was the right holder has the right to use the mark in the way he or she wants. It need not be if the business is that in which you are, where you can stop other from using it, you could also preempt people from using it if the mark is well known, if it's a reputed mark. The exclusive set of rights, when it comes patent law on a patent, pertain to the right to make, the right to sell, the right to use, the right to offer for sale and the right to import an invention.

Now, look at that. In patent law, we are talking about rights relating to manufacture, marketing, sale, and in some cases importation. So the nature the subject matter - we are trying to define intellectual property right and we are trying to understand that the subject matter can be different for different rights; the registration process is different for different rights; the exclusive set of rights that patents and trademarks and copyright encompasses - they themselves can be different, because of the subject matter being different.

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Duration

- Can be for a fixed term or renewed
- In trademarks a right that has not been renewed or used it cannot be enforced
- Right as long as right holder wants to keep it alive
  - Pay official fee
  - Needs to take action against people who are using it
- Trademark is an unlimited life IP

And the duration can also be different. Trademarks are for a fixed term, but they can be renewed as long as the right holder pleases. Some of the trademarks that are in operation like the Coca Cola mark are very old - close to a 100 years or more. Some of the trademarks, trademarks can be situations where if the right is not renewed or if the right is not used, then that marks cannot be enforced. But if you look at a business that has survived for 100 years, then you would actually see that the marks have been kept alive, they have payed the charges, official fees for keeping the marks alive, and you will find that it can be. The trademarks, in business parlance, we say these are kind of unlimited life intellectual property. There is no limit to this category of intellectual property, because their life is as long as the right holder wants to keep them alive; he just needs to pay money to the government, as a official fee, and he also needs to take action against people who may use this right. So there are two things the right holder needs to do: 1. pay the official charges, 2. he needs to be vigilant and needs to take action against people who are using the right without his consent. Otherwise, it could be assumed that he has given up his right.

Speaker 2: In case, if you see Coco Cola, it has large number of design rights; right from 1900 to 2000 (Refer Time: 21:57). It has changed it's design for a quite a period of times; I mean every 10 years, every 5 years it changes its design. Say for example, in 1910, if there is one design for Coco Cola, then that is not been renewed. The trade mark for the design has not been renewed. Can they be used by some other party?

Speaker 1: Okay See Coca Cola has designs on it is bottle. Coca Cola has copyright protection in the way in which it is products are displayed; it is an artistic work. Coca Cola has trademark on the word. The trademark without doubt is an unlimited life IP - Intellectual Property - it is unlimited; there is no limit to it. The other rights come and go. If they had assumed that they had registered a design, and there was a limited life for it, it would come and go, but the mark can always and only be used by the right holder. So, it is combination, there are multiple rights, you will see that there will be multiple rights, but the way in which they take it forward is to get an unlimited life IP.

Trade secrets - they are, again, a category of intellectual property right which fall with in the unlimited life IP; they are not limited by, if you can keep the trade secret

confidential, then you can enforce it as long as they are kept confidential.

Speaker 2: (Refer Time: 23:24) This is also valid internationally right not only to specific countries. Also In Germany, United States

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Two types of IP

- Limited life IP - can go to public domain
- Unlimited life IP - subject to renewal

- Duration of patent 20 years from the date of Application
  - By virtue of TRIPS Agreement
  - A Patent is not technology specific
  - Originally the patent term was 14 years
  - It was an exclusive privilege

Speaker 1: Yes. Yes. Yes Yeah The duration is true for all the countries. So, you could classify the entire lot of IP into two categories from a business perspective. You have the limited life IP, where the duration is limited, after which it falls into the public domain and people can use it. And you have the unlimited life IP, where subject to renewal; it can be kept alive forever. So this is true across the globe.

Now, let us look at duration. Just a few examples - Today, across the globe, duration of a patent is 20 years from the date of application. Now, we have this uniform system, thanks to the TRIPS agreement; the trade agreement on the trade related aspects of intellectual property rights, which is TRIPS, which is an agreement under the World Trade Organization WTO. WTO is an organization and it is also a list of agreements. So,

the TRIPS agreement, is the agreement which covers intellectual property rights, and every WTO member is bound to implement that agreement, because it was an international arrangement. And most countries, who are all members of the WTO, have across the board 20-year term for patent. This was not so before; the duration of a patent was not 20 years. In India, it used to be 14 years, and for pharmaceuticals in India, the term used to be upto 7 years; it was a flexible term; it used to be different; for pharmaceutical, food, and agricultural products the term use to be even lesser.

Now, you may ask why 20 years? I mean, where did we get the 20 years from? I mean there should be some logic behind 20 years. Because we know that 20 years is not only true or not only applicable for all countries, it is applicable it is technology agnostic. Every technology is now protectable by virtue of the TRIPS agreement; every technology, even if the technology has a life span of 3 years, it still gets a 20-year term. So, patents or the patent term as we understand it today, internationally, is not technology specific. Whether it is pharmaceuticals, aeronautics, biotechnology, software - for countries which grant patents on software – it's a 20-year period. And you and I know that a 20-year period does not make sense for all technology. Some technologies are so quick, they are, and you know, 20 years may be many generations, for all you know, it could be many generations.

So, how do we understand this 20 year period. 20-year period came in because of some international lobbying because WTO, before it came into being, there were 8 years of negotiations, what we call the Uruguay rounds, you know, countries participated in it, and it was a long drawn process after which the World Trade Organization was formed. And in that time, there were stake holders putting up their interest and pushing things to it and some how we had this agreement on 20 years. Now, mind you, the predominant time period before this 20 year across the globe used to be 14. And there is a small explanation - historical explanation - as to how it came to be 14 years. In England, it is said that it took 7 years to train an apprentice; that was time of an apprentices under a master or a person with whom he learnt was 7 years. Initially, the British kings when they started granting patents, and they did not actually grant patents, in the initial years they granted exclusive privileges.

Now exclusive privileges were granted by the King or the Queen to enable craftsman, very talented craftsman, to come from Continental Europe and to set up their businesses

here. Now, imagine, if these craftsman - some of them made soap, some of them made glassware, some of them on perfumes, playing cards, n number of things. If these craftsman, were asked to come without the protection of an exclusive privilege, then they come in here and immediately their trade gets copied, isn't? This is the historical part of patent law. These exclusive privileges actually came in a way in which some protection was granted to people with special skills.

Now, at that point, we were not even talking about inventions, we were not even talking about technologies, some people had these exclusive privileges to import playing cards, and it was a royal privilege, the King or the Queen could give a royal privilege for any thing. Sometimes the royal privileges could be given for exploration of minerals - privileges were given. In fact, this country was ruled by the British for a long time, because one company - the East India Company - came with a patent charter, they came with a charter and that was an exclusive privilege that the Queen gave to that company to explore business opportunities here, and they came, and we know rest is history; you know they colonized, they came here and they colonized. But this, the origin of their charter was an exclusive privilege given by the ruler.

So, exclusive privileges were there at all times. In the early days, we find we do not find patent grants, we find exclusive privileges. So, when a technician or a craftsman was given an exclusive privilege to manufacture soaps, for instance, the King or the Queen would ask the craftsman to train two British nationals, because if you train to British nationals eventually they will learn the trade, they will set up shop, and this was a way in which technology transfer or rather let us call it skill transfer happened in those days. So the privilege would be given in return of training two apprentices. So, apprentices normally take 7 years, 7 plus 7 14, that is how we came with the first term. This one explanation given as to why we had a 14-year patent term before the TRIPS agreement; so this is one explanation.

So, patents have a 20 year term which is universally applicable across the board, all the WTO member countries have to honor that commitment, and grant patents for 20 years, regardless of the field of technology. It is 20 years from the date of application. Copyright in India has a term which is computed as life of the author plus 60 years.

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- Copyright – Life of author + 60 years
- If institution – from date of publication + 60 years
- Trademarks – granted for 10 years can be renewed thereafter

If the author writes a book very early in his life, and if he gets to live long, then the books get a longer right. In fact, I think it was in 2009, all the works of Mohandas Karamchand Gandhi, Gandhiji, they came into the public domain, because his life plus 60 years I think it expired in 2009; I can check and tell you the date. So, the duration of a copyright is life of the author plus 60 years. If it's not an author, if the author or the creator is in institution, then the institution from the date of the publication or from the date it is for another term, I think it is 60 years.

Trademarks, as I said, trademarks the duration is it is granted for 10 years; it can be renewed every 5 years.

This makes intellectual property rights; it puts intellectual property rights into two broad categories: one as I said is the limited life IP - copyrights and patents. The other will be the unlimited life IP - trade secrets, trademarks. Now just a quick run through on what these rights are, what they manifest. Patents grant exclusive right; they are conferred by the government.

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Patent

- Exclusive Right
- Conferred by government
- Ability to stop others
- Make, sell, use, offer for sale, import
- Duration – 20 years from date of application

As I said, exclusivity means it gives the ability to stop others, and the right pertains to making, selling, using, offering for sale, and importing. And the right exists for a time period, as I said is 20 years from the date of application, after which it falls into the public domain. So, whatever was covered by the subject matter of a patent will then be free for everybody to use it.

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Copyright

- Exclusive Right
- Conferred by the Government/upon creation
- Print, Publish, Perform, film, record etc.
- Duration: Life of Author + 60 years
- No separate registration needed for enforcement

Copyright, again it's an exclusive right. It is conferred by the government in cases where you seek a registration or upon creation - I have mentioned this before, if you are publishing something, all you need to do is put the copy right notice, which is the C within a circle, your name, and the year on which it was published. You would see a copyright notice on most works. That itself gives you a right and that is done because of an arrangement where you can just publish it and claim to be the creator. So, copyright comes into effect either upon registration by the government or upon creation, creation with the notice.

Speaker 2: I don't even have to register.

Speaker 1: No, no need; for enforcement it's not required. In fact, all the books that are there in our library just the copyright note is the sufficient; there is no need to separately register.

Speaker 2: Notice in the sense C copyright.

Speaker 1: Yes. C copyright almost most websites today have it, if you go to the bottom, privately held websites, company corporate websites they will say copyright from this year to year in the name of the company. So which means every thing that was put on the website is copyrighted and reproduction should be done only technically with permission. But the point with the website is I need not copy or paste anything. I can give a hyper link directly to that website. So, in that sense it is irrelevant; copyright is irrelevant on the internet, because I could give a an hyper link from my website and take to that person's page.

Speaker 2: But still in that page that the other persons logo or whatever.

Speaker 1: Logo is protected by trademark, but the point is the copyright notice is put so that people don't enmasse copy things, and put it, and pass it off as somebody else's website; that's objective of it. But if I need to refer to something, say Mercedes Benz's website or Tata motors website, something, I can just hyperlink and people can read from that page.

Speaker 2: Films like let us say Tamil, suppose they have taken a film or in Hindi let's say Don is the name of the film the taken. Now, what is the duration that they cannot take Don in that same name.

Speaker 1: That does not come under copyright. It's a separate registration, like registering a company's name does not come under the copyright law. The Companies Act has a norm for it. Registering a domain name does not come under copyright law. There is a domain registration service, where you can go like privately godaddy manages it, you can get it, as long as you keep renewing the name, you can have it. So, those things are it's not of subject matter of copyright. There may be some industry arrangement, there may be some other statutes like the Companies Act by which you can register company names.

Now, these rights pertain to multiple things - you can print, as I said, publish, perform, record, and depending on what the subject matter is and the duration of the life is life of the author and plus 60 years. So, from the date of creation till the author dies and 60 years from there on.

Speaker 2: In case of an institution?

Speaker 1: Institution, the date of creation plus 60 years. In some places, in some countries it’s 50, in some countries it’s more than 60, in America it’s more than that, so universally you will see that there is some leeway as to what could be. The copyright term can vary if you create a copyrighted product and have copyrights in multiple jurisdictions. It can vary because the countries have, we don’t have something like your TRIPS mandate that the copyright term has to be same across all the countries; we don’t have that.

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Trade Mark

- Exclusive Right
- Conferred by Government/Established by use
- Symbol, word, mark etc.
- Marks help to identify the company
- Duration: Unlimited; subject to renewal

For trademarks, trademarks are exclusive rights, they are conferred by the government, possible for you to register them or it is established by use. Now, establishing by use is if there is a mark that is used in Europe like Ikea, Ikea they are slowly coming here, but Ikea has been used in Europe and assume that Ikea did not sell anything in India. If someone, an Indian manufacture, start using Ikea, Ikea could still come and stop that person, because their right to the mark is established by use - international use. And they have a reputation, and there is another branch of law, as I mentioned earlier, a law of

passing off can come to Ikea's rescue to stop people from using it, though they may not have business here and they may not have registered it in India. So it's possible. So, that is why we say the trademarks, when we say trademarks in that sense we also include the right to use, which comes by way of, you know, you can protect your right by way of the law of passing off.

Speaker 2: With law will be applicable if I don't register the trademark in India and still using for a prolonged time it may be like 20 years or 30 years can I use it now.

Speaker 1: Yes. The law of passing off will still come to your help, because you have been using it in trade, though you have not registered it, and you have some kind of reputation that has come out of it. So, we know some cases were people involved in old businesses, they do not register their mark for whatever reason either the business was too small then or whatever. Then, the next generation takes the business and they are able to broaden it and take it to all places. At that point they go in for a registration, because the next generation - the new generation - they are aware of these rights and they go in for a registration. But still, as they enjoy the mark, they would have been able to stop any person who would have intervened even without registration. That is the fact that you have been using something, and people know you by that, and you can stop people from using it, so even without registration. The right expresses itself in the form of a symbols, words, and marks. So the trademark is something, it is a mark by which your products and services are identified by the world. When we see the Tata mark on a packet of common salt we know who created it.

When we see the same mark on an automobile we know who created it. We see the same mark on IT company – TCS - you know the Tata mark, we know that it belongs to a conglomerate. So, marks helps us to identify the producer or to know more about the origin of goods and services. In a world where marks are not respected, they will be rampant piracy and counterfeit happening all over the place, because people would now pass off cars as Tata cars or they will pass of products as Tata's products. So there will be issues with regard to reliability of those products, and also the company's reputation can get affected, because if you see businesses are run on reputation, and a reputation is built over years; sometimes it it takes many years for somebody to build a reputation. And the marks become some kind of an ambassadors for a business.

So, when they see the mark, there is so much of reputation that is attributed to the mark, because this mark is how the company identifies itself. When others use the mark, and they are not able to give the quality, even if they give the quality still the mark holder can come and stop others from using it.

Now branding, it also has certain issues. Sometimes, a mark that is well known and well established may go for a re-branding; they may decide to change the way they look and that has whole lot of trademark issues, because the existing mark is still held by the company. Because, they don't want others, when a mark like that is discontinued, it will not be open for others to use that mark, unlike a patent which expires and comes into the public domain, because still this company would want others not to use the mark. They will still keep it alive. For instance, I don't know whether you noticed, Airtel used to be known by a different logo, few years back, Airtel used to be written. Now they have a symbol. Yeah now they have a symbol. Now, they made this transition, obviously, it was an a transition done for business reasons, but just because Airtel made the transition, Airtel will not allow people to use it's old mark. Yeah and Airtel can stop others from using its old mark. This is not the case with the patent, if the patent is expired or revoked for whatever reason, then everybody can use that technology.

Speaker 2: Airtel paid for the renewal of the old mark?

Speaker 1: Yes, if it is keeping it alive, and I would guess that they are keeping it alive, I would guess that because if they don't keep it alive, then there could be a reason for others to use it for what ever. But it's difficult, because Airtel, not just the mark, the word itself is a subject matter of trademark. So anybody who uses Airtel in any font can still be caught by their trademark. But but the symbol you know it underwent a transformation.

Speaker 2: Can the medical therapies or processes or procedures can be protected by intellectual property right?

Speaker 1: There is Medical methods of treatment are exempted from protection under the Indian Act. Section 3 does not allow methods of treatment to be protected. And there are some sound reasons for that, when we come to the issue of patents in detail we can discuss that.

(Refer Slide Time: 42:12)

Design

- Exclusive Right
- Conferred by Government
- Shape, configuration, pattern etc. (aesthetic)
- No functional element
- Not protected by Copyright
- Duration: 15 years

Design. Again, it is an exclusive right; it is conferred by government which means it involves registration. This right pertains to shape, configuration, pattern, etcetera, which are aesthetic in nature, which has pleasing to the eye. Which does not involve functional element, because if there is a functional element, then it goes to the domain of another right - patterns. These rights are not rights which can be protected by copyright, because if something can be protected by copyright, then that's a subject matter of copyright; nobody will go for a lesser term, look at the duration of this.

So, if you have a design, and if by some means you can protect it by a copyright, then you can stop people from using that design through your copyright, because it's an artistic work; you can say that there is infringment of your artistic work, then the protection is your life plus 60 years.

Speaker 2: Then why is that there is separate entity for design?

Speaker 1: This is for another purpose industrial designs; we are not talking about artistic

works, industrial like interlocking tiles ok or TMT steel bars, there were some novel designs over them. Engineering again aesthetic. Shape of a bottle for instance okay. You may argue that the shape of the bottle has a functional element, but we are looking at all bottles have function in that sense, but we are looking at some kind of a design which makes a bottle look unique. This is largely mass produced goods which come under this category. And and, again, this is the weakest of intellectual property rights, because there are restrictions on enforcing it, you cannot stop people from doing things, and your damages are also limited; we will get to it.

Speaker 2: Dresses.

Speaker 1: Yeah; mass produced dresses, anything that is aesthetically appealing, anything can be done. Jewellery.

Speaker 2: Somebody says blouse is my design nobody told … (Refer Time: 44:03)

Speaker 1: Yes, jewelery. Yeah mass produced; anything that is mass produced in a particular thing can come under this.