


**Intellectual Property Rights**  
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**Lecture – 48**  
**Copyright**

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**“Copyright”**

- Literally construed as the ‘right to copy’
  - Right to produce copies (presupposes a medium)
- What is a copyright?
  - Exclusive rights given by law for a period of time
  - Authors, composers, artists, etc. (or their assignees)
  - To print, publish, sell copies of original “works”

Copyright: Copyright can literally be construed as the right to make further copies. So, when we say that a person has a right to make further copies it presupposes the existence of a medium. Now, we can think about copy is being made on a medium or we can think of copy is being transmitted through a medium. So, the right to make copies this distinction is important because, you will see that copyright manifest itself on works and works have been largely defined as products that come from some kind of an intellectual or a creative effort.

So, what is a copyright? The copyright is an exclusive right which is given by the law which extends to a period of time, like any other intellectual property right this is a right that is this is a right that is granted by the law and it exist for a period of time. So, it is the time bound right and copyright will fall within the category of limited life intellectual property, a concept which will be seen in our forthcoming lectures.

Now, who can have a copyright? Copyright can vest on the authors, composers, artists or creators of artistic literary, dramatic or any form of creative work. People who create or

who come up with creative work can be the owners of copyright. It can also fall on their assignees.

So, an author writes a book and assign its to the publisher. So, the publisher becomes the copyright owner; now the right pertains to printing, publishing, selling of copies of the original work. Now, original work now you saw the word works here now this is what we had mentioned would require some kind of a medium. So, work is understood as something that comes on a medium and copy again it is tied to the fact that you can make a further copy of a work. So, these two concepts are important to understand the scope of copyright the fact that you can make more copies and it subsists in works creative works.

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The slide is titled "The Right to Copy" and features a list of rights and handwritten annotations. The list includes:

- Right: Literary/Artistic, film, sound recordings
  - Making copies, broadcasting, selling
  - Exploit (granting permission or sale)
    - Publish a book (anyone, easiest IP to create)
  - Without permission: Infringement
    - Injunction; damages

Handwritten annotations in red include:

- A box containing "© Author, 2016" with a circled "C" to its left.
- A box containing "© Publisher, 2018" with an arrow pointing to it from the left.

The slide also has a small logo in the top right corner that says "NPTEL".

The right to copy or make for the copies exists in literary or artistic works, it exists in films, in sound recordings as well. Now by this we referred to the right to make copies if it is a literary or an artistic work. We also referred to the right to broadcast and also the right to sell the copies. The right to copy in itself is not an end because why do you make these copies the copies are largely made to exploit for profit. So, exploitation by giving permission to somebody to use it what we call a granting permission is called as a licence or by a sale. So, the sale of a copyrighted work can result in remuneration for the creator similarly licence of copyrighted work can also result in a gain or a remuneration for the copyright holder. So, this is what we mean by exploitation.

So, the reason fundamental reason why the right to copy is granted by the law is to allow the owners to exploit their work. For instance a person publishes the book when he publishes a book he becomes the copyright owner of the book by a mere act of adding the copyright claim on his book he just puts the copyright symbol which is a small c within a circle and writes his name the authors name and followed its by the year in which he writes the book.

Now this is what we call a copyright notice which you will find in almost every book that you would come across, either there is the name of the author as the copyright owner or you will find the name of the publisher as the copyright owner. So, when it is the publisher who is the copyright owner then we understand that as a case of the author having written the book and having assigned the copyright to the publisher or the publisher had a team of people under his employment who wrote the book and the publishers name figures in the copyright notice. So, an copyright is the easiest form of IP that you can create because, we are just mentioned that copyright can exist in any literary work and literary work includes bestselling books as well as the letter that you write to your friend or an email that you compose and send it to your colleague.

Now, any written work is construed as a literary work and literary work as I just mentioned is the one of the easiest things that we can create, almost every person who is literate can create a literary work. Now, the literary work need not be something that has value or something that has literally merit copyright law does not consider or does not get into the details of the literary merit of a work. As long as it is created, it is original and it is attributed to an author it can qualify as a work. So, an SMS or a text message that you sent is potentially a literary work an email you sent to your colleague is a literary work. So, that makes copyright one of the easiest intellectual property rights to create and to own.

To create because you can sit and create it on your own, any literate person can compose a few lines and it becomes a potential subject matter for copyright. And it is easy to own because the formality of owning is just adding this to the work adding a copyright notice to the work which again does not require filing before up a office like what we saw in the case of patterns or even in the case of trademarks. So, this is something that accrues immediately on the creator and it does not cost anything to display the fact of ownership.

A copyright notice which an author can put in his or her book qualifies as a notice of copyright or notice of ownership.

Now, why does this right exist? The right we just mentioned exist to protect the authors and creators of the work to exploit and to make money out of their work to commercially exploit their work, what happens if this right then exist for instant an author writes her book and the book is immediately copied by others in the market. Now that would amount when infringement of her right.

So, infringement of a copyright is understood as a use without permission, somebody uses the work uses can be making copies making a play out of the book, it can be translating the book, it can be selling the book; any of the acts that are protected under the copyright law if a person does that without the permission of the copyright owner then we call that an infringement. The relief of infringement can be injunction getting a court order against the infringer and stopping the activities the infringing activities or it could also be damages pertains to compensation in lieu of the loss suffered by the infringement.

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## The Right to Copy


- **Right: Literary/Artistic, film, sound recordings**
  - Making copies, broadcasting, selling
  - Exploit (granting permission or sale)
    - Publish a book (anyone, easiest IP to create)
  - Without permission: Infringement
    - Injunction; damages
- **Exceptions: Fair use or fair dealing**
  - few pages, education, lending

As a right copyright is not without exceptions and limitations; there are certain exceptions and limitations to the use of a copyright. Now, fair use or fair dealing is one such exception which allows people to use copyrighted work. For instance if a person who has purchased a book which is the subject matter of a copyright wants to copy a few

pages or a few paragraphs from though copying would amount to an infringement, a few paragraphs or a few pages from a book is allowed under certain statutes.

The law allows you to copy few pages provided there are certain restrictions to it for instance it is for personal use. So, that is something which is allowed for or it is for the purpose of education for teaching or imparting education to students again that is allowed for, the copyrighted work is kept in a library and it is the copyrighted work is kept in a lending library and the members of the library borrow the book that is again something that is permissible. So, fair use or fair dealing is something that is seen as an exception to the right of the copyright holder.

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## Original Works

- Originality:
  - Literary, dramatic, musical, artistic
    - Easily satisfied not unique; originated from author; his  
intellectual creation (not like novelty in Patent Law)
    - Quality not an issue: Tagore's poetry and poems written by  
school kid; judges/courts will become art critics
  - Sound recordings, broadcast, typographical arrangements
    - Derivative works need not be original
    - Repeat broadcasts, each will have a copyright
    - Films treated like original works

Copyright subsists in original works. Now, originality is a requirement in copyright now it is a requirement when it comes to literary, dramatic, musical or artistic work whereas, originality is not a requirement when it comes to sound recordings broadcast typographical arrangements.

Now, we will see how this has evolved and what originality is unlike originality in the context of patent law and in pattern law originality we do not use the word originality we say the invention has to be novel in a sense that it should not have been anticipated by the prior art the knowledge that went before.

In copyright law originality refers to the fact that it is unique in the sense that it originated from the author. So, that is all that is required to be shown if a work should be regarded as original, it should have emanated from an author. And by extension it should have been the authors intellectual creation.

So, these two things, one it originated from the author and it is his or her intellectual creation is all that is required to show that a work is an original work. So, this requirement in copyright law is easily satisfied. In fact, the originality requirement is not something which a any organisation or office would even test for a copyright for the grant of a copyright.

Copyrights are granted by the mere fact that they are created and originality questions on originality would arise only when there is an infringement and there are challenges made to the copyright. So, in determining originality quality is not an issue for instance Rabindranath Tagore's poetry has copyright over it. And similarly poems written by an school kid would have similar protection copyright protection over the work. So, the protection over the work is not dependent on the quality now had it been the case that the copyright regime would look into the quality of the work.

Then we would create an unfair situation where quotes and judges will now act as art critics in the sense that they would now be given the right to judge the merit of an artistic work. So, thankfully we do not have that arrangement what we have is the fact that the courts will look into factors whether a work is being infringed or not and the court will not look into the quality of a work when it comes to determining disputes on copyright.

So, the originality requirement as we just mentioned does not fall on sound recordings broadcast typographical arrangements. These are called derivative works because, sound recordings broadcast and typographical arrangements could have come from other works that already existed literary dramatic musical or artistic works. So, because they are regarded as derivative works derivative works do not need to be original. When a broadcast is made every broadcast has a separate copyright vested on it.

For instance a life event is broadcasted there is a copyright on it and there is a repeat broadcast the next day that has a separate copyright over it or to put it in another way if there is a book that has gone into seventeen editions the book will have seventeen copyrights over it each one different from the other. Films tend to be regarded as original

works though they involve sound recording and some kind of broadcasting. Now they are treated as original works over the course of the evolution of copyright law they tend to be created as original works.

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## Scope of Right

- Extends beyond copying:
  - Covers translation of literary works
  - Public performances
  - Technological developments (broadcasting, storing on computer, electronic transmission, hosting on website)
- Overlapping rights:
  - Simultaneous creation (two photos of moon)
- Does not protect ideas, only expressions
  - Murder mystery; Agatha Christie *idea/expression*

Scope of the right copyright extends beyond mere copy it can extend to translation of literary works, it can extend to public performances for instance there is a play a copyrighted play the public performance of the play could also be covered, it could also covered technological developments. For instance broadcasting the play which happens on a stage or storing information about a literary work on a computer or electronic transmission or hosting the work on a website all these things are regarded as technological developments of an existing work they are also covered by copyright.

They can be overlapping rights with regard to a artistic creation. Simultaneous creation we had mentioned this in the context of patent law if two people invent a patent if two people invent an invention at the same time law settles dispute with regard to creation by looking at the person who created it the first time.

So, the person who law settles dispute with regard to creation by evolving a concept called true and first inventor and evolving a method of approaching the patent office call the first file principle. So, the world today follows the first to file principle regardless of who invented the invention first. The person who approaches the patent office first gets the invention.

So, this is how priority is determined in patent law which means if two people simultaneously came up with an invention say on the same day the person who approached first the patent office will get the ownership over the invention. Copyright is slightly different you can have simultaneous creations and you can have overlapping rights over similar works. For instance two photographers photograph the moon at the same time and their photographs look almost identical they use the same equipment. And let us also assume that they shoot the photograph from similar location as well without knowledge of each other and at the same time.

In copyright law there will be two copyrights over each of their work one work will not be recorded as a prior work as we would do in patent law rather both the works will exist as simultaneous creations. So, copyright law does not have the issue of priority with regard to creative works which patent law has.

And because it is not dependent on registration you can just create a copy right by just creating it or by adding a copyright notice to it to inform the world about the creation of the right it is again not hit by the issues of registration which patent law has. So, you could have simultaneous creation in corporate law and you could have overlapping or simultaneous rights over the similar creations. The scope of the copyright protects only expressions of idea and it does not protect the ideas themselves. So, this is an key principle to understand. This is called the idea expression dichotomy in corporate law.

Now, this tells us that there could be ideas, but the scope of the copyright is only for the protection of the idea. This is a good thing because, if you look at various genres of novels say for instance murder mystery almost all murder mysteries have a similar theme to follow. There is an event and there is doubt with regard to who committed that murder and there is an investigator who comes in and there are clues all over the place which are largely misleading and at the end the least expected person is found to have committed the murder, I mean it is a typical in a typical murder mystery.

So, Agatha Christie is known to have written many murder mysteries. And almost all her works are entirely different though they all fall within the same genre. So, if protection of ideas was the scope of copyright then copyright law would only be allowing the first murder mystery. Because, that is an idea of a murder being solved by an investigator was



is if that is protected then there cannot be any further murder mystery novels in that genres.

So, the law does not protect the ideas themselves rather the expression of the ideas which means you can have an entire genres of murder mysteries written by different authors setting the murder in different locations with the different characters with different plots and with different ways of solving the mystery. So, this is a key distinction to understand that the scope of the right is not on the ideas, but on the expression.

There are also certain disadvantages in protection of expression and not in protection of ideas. Someone comes with an idea for a quiz competition and the quiz competition which is meant to be a broadcasted event over the television is now been devised by this author. And, he captures all the details of the quiz competition how it has to be conducted how the candidates will move to the next level how to choose how to give them options to come up with the answers various details with regard to this quizzing event is developed by the author.

It is still in the stage of an idea because that itself cannot be a product somebody will have to conduct a quiz competition, broadcast it over the TV channels, make means by which the public can participate and make it into a event; because copyright does not protect ideas if the concept or the idea of a quizzing event in itself cannot be protected because, the law protects only the expression.

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## Term and Subject Matter



- Limited Life: Life of author + 60 years
- Owner: Author; employer
- Assignment: Will, licences
- Moral Rights:
  - Right to be recognized as author
  - Right to object to derogatory treatment (defamation)
- Not based on merit:
  - Bills, coupons, telephone directories, databases
  - Value (investment); incentive for investment (intangibles)

Term and subject matter: the term of a copyright is a limited term, the copyright extends to the life of the author plus 60 years. In India the owner of the copyright is usually the creator that is the author or in some cases it could be the employer, if the employer as employed is employees to create the copyright. And, as a part of the terms of employment the copyrighted work would vest with the employer the creation would vest with the employer. Now, copyrights can be assigned it can be a subject matter of assignment, it can be assigned through the will from a person to his offsprings it can also be assigned while the person is alive by way of licences.

There are also certain moral rights that vest in a copyright. Now we mention that copyright largely is the right to prevent others from copying, prevent others from broadcasting or selling the copyrighted work, but there are certain moral rights that could exist in a copyright. The right to be recognized as the author is a moral right and also the right to object to derogatory treatment of the work is again a moral right that vests with the author.

Now, a paralleled and patent law will be the right to be mentioned as the inventor, a person who is an inventor has the right to be mentioned even if he is not the owner of the invention say he created the invention being an employee. So, he is not the owner of the invention or he created the invention and assigned the invention to another person again he ceases to be the owner, but even if it ceases to be the owner he has the right to be recognized as the inventor.

Similarly, an author who creates the work has a right to be recognised as the author even if he is not the copyright owner. In other words the copyright exists in another person by transmission by assignment or the work was commissioned for another person as a work for hire, a person created this for another person.

So, you can the authors name can still be mentioned as or the author should has a right to be recognized. What would happen if there is derogatory treatment of a copyrighted work? Traditionally, the relief would lie in the law of defamation. There are provisions in tort law where you could file a case for defamation, but since the moral rights are now recognized under the copyright regime this is now the most, but since moral rights have now been recognized under the copyright regime an author can take action against any intrusion of his moral rights.

Again the subject matter of copyright is not based on its intellectual merit; you can have a copyright on bills, coupons, telephone directories databases. However, the value in a copyrighted work is regarded as an investment because, there is some amount of effort in time and material that goes into creation of these works. So, copyrighted works are expected to protect works that have value and the value is regarded as an investment. And, we had already mentioned that a intellectual property gives incentives for investing into the creative works and intangibles are created by investments made in intangible assets.