

**Intellectual Property Rights**  
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**Lecture – 51**  
**Criteria for Protection**

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## Criteria for Protection

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Now, let us look at the Criteria for Protection of a copyright.

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## Introduction

- Work should be protected by the Copyright Act, 1957
  - Certain other requirements
    - Recorded in a material form
    - Originality
      - Exceptions: Cinematograph films, sound recordings
    - Work sufficiently connected to India
    - Not excluded on public policy grounds
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The work should be protected by the copyright Act, 1957, it should fall within the category of works as defined under the copyright act and they are also certain other requirements for a copyright to subsist. It should be recorded in a material form as we said the copy should be created on a material form. And it requires to be original and we already mentioned that the originality is required only for literally, dramatic and artistic works, it is not required for cinematograph films and sound recording and the work should be sufficiently connected to India.

So, copyright can subsist in a work in India if it has a connection to India what we call it should be a qualified work. And it should not be excluded on public policy ground, it should not be something which the act cannot protect or will not protect.

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## Fixation



- Recorded in Material Form
  - Subject matter requires to exist in some permanent form before it gains copyright
- Idea-expression dichotomy
  - No © in idea but in expression of idea
  - Idea given embodiment in tangible form

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We look at fixation, fixation refers to the fact that the material or the product on which the copyright exist should be recorded in a material form, it should be capable of being fixed to something. Subject matter requires to exist in some permanent form before it can gain a copyright. So, the fact that the copyrighted material is fixed to some form refers to the fixation, for instance murder mystery story is fixed in the paper or in the print form there can be no copyright in an idea, but only in the expression of an idea and the idea is given an embodiment in a tangible form.

So, again coming back to the murder mystery novel, the novel gets an embodiment in a tangible form of a book. So, the book is the tangible embodiment of the idea and the

letters and the prints that convey the idea is protected by means of a copyright which is the expression.

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## Originality



- Independent creation
  - Relationship between the creator and work
    - Not same as the novelty requirement in patents
    - Author's intellectual qualities in creating the work
  - Originality of expression
    - Manner of expression of ideas
    - Not originality of ideas
  - Derivative works can be original
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Originality is another requirement; it goes to show that the work is an independent creation. When we say work is original we refer to the fact that it is an independent creation, it also signifies the relationship between the creator and the work it is not the same as a novelty requirement and patents we had mentioned that and the it refers to the authors intellectual ability or the qualities in creating the work.

And the originality is with regard to originality of expression. So, the manner of expression of ideas is what is protected not the originality of ideas themselves. And derivative works which are derived from existing original works can also be regarded as original.

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## Originality



- Requires a modest amount of creativity
- Intent to be original not required under ©
- Artistic: Aesthetic neutrality
- Need not be necessarily lawful content
  - Lawfulness of a content is not governed by copyright law

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Originality is an easy requirement to fulfil it requires a modest amount of creativity the intent is to be original is not required under copyright law. So, a person may make a work without the intention of making it an original work and yet it can have a protection under the law and copyright law does not get into the artistic merit of the work.

So, it has this principle of aesthetic neutrality the lord does not get into whether the work involves an artistic merit or not. And the content also the lord does not scrutinize the content of the copyrighted material, though there are republic policy grounds on what can be copyrighted or not for example something that is immoral or blasphemous can be rejected or can be denied a copyright protection.

But, it is not the function of the law to look into the merit of the copyright. So, if something has illegal content, content that is not allowed by the law then, the copyright regime will not check it. So, the lawfulness of content is not governed by copyright law.

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## Qualified Work



- Work sufficiently connected to India
  - Qualification by first publication }
  - Qualification by authorship (published outside:  
citizen)
  - Qualification by authorship (unpublished work:  
citizen or domicile)
  - Qualification by location: Architectural works }

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Then the work has to be qualified work in the sense that it has a connection with India. So, the work has to be sufficiently connected to India, so the connection can come in the case of published works it has to be first published in India. So, the first publication has to happen in India with regard to published works, with regard to works published outside India then if the author is an Indian citizen, then again it can be copyrighted in India.

So, for works published outside the author has to be a citizen and with regard to unpublished work works that have not yet been published, then again we go by the authorship. If the author is a citizen or if the author is domiciled in India it can be subject matter of copyright protection in India.

And in some cases we also go by location for architectural works the work has to be located in India. So, only for architectural works we go by location, for normally we go by publication and the publication should be within India. If it is not published in India if it is unpublished or published outside India we go by authorship.