


Intellectual Property
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Lecture-52
Subject Matter

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Introduction

- All subject matter protected by © are called "works"
- The list of subject matter not exhaustive
 - Intellectual creations that fall outside the subject categories must be protected
- Understand if material attracts ©
 - Duration, ownership, infringement
- Author: person who creates the work

The Subject Matter of copyright to denote that something is a subject matter of copyright, we use the symbol C within a circle. And all subject matters that are protected by copyright are called works protected works. So, anything that is protected by a copyright is called works. The list of subject matter is not exhaustive. They could be intellectual creations that fall outside the scope of the categories, but still which can be protected.

To see whether something qualifies for copyright protection, we need to see whether what is the duration of the work, and who is the owner and also determine how it can be infringed. The author normally refers to the person who creates the work.

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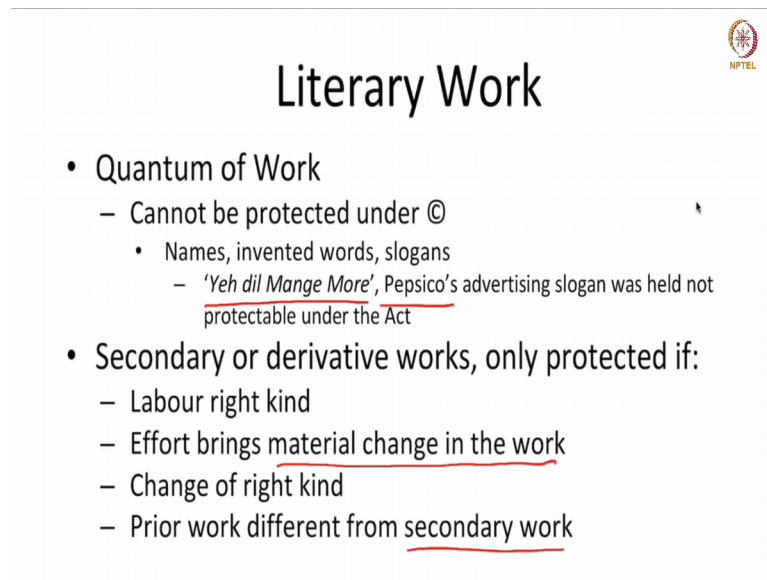
Literary Work

- Indian Act doesn't define literary work
 - *"It includes computer programmes, tables and compilations including computer databases."*
- Need not necessarily have literary merit
 - Courts have included football fixture lists, mathematical tables, tambola tickets etc.
- Quantum of Work
 - Number of words not quality
- Author: Author of the work

Now, there are different types of works that can be protected by copyright. Literary work refers to works that are in writing. The act does not define literary work, but we understand that as works that are captured in writing. The act says that literary work includes computer programmes, tables, compilations including computer databases. So, computer programme the code, the source code and computer databases are protected by within the definition of a literary work.

The literary work need not have any literary merit. And it is not the job of the courts to look into the literary merit of copyrighted work. So, courts have found that football fixture lists, mathematical tables, tambala tickets etcetera are capable of copyright protection. The number of words in a copyrighted material is not an indicator of quality. And the author of a copyrighted work is the author who makes the work or who creates the work.

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Literary Work

- Quantum of Work
 - Cannot be protected under ©
 - Names, invented words, slogans
 - 'Yeh dil Mange More', Pepsico's advertising slogan was held not protectable under the Act
- Secondary or derivative works, only protected if:
 - Labour right kind
 - Effort brings material change in the work
 - Change of right kind
 - Prior work different from secondary work

There are certain things that cannot be protected under a copyright. For instance, phrases, names, invented words, and slogans cannot form a part of copyright protections. Names especially ones used in commerce or in trade are protected by trademarks and invented words and slogans, for instance like the slogan which Pepsico used a while ago Yeh dil Mange More, which is an advertising slogan was held something that cannot be protected under the copyrights act.

Secondary or derivative works can also be protected. They can be protected only if, it involves the right kind of labour, it should be of such a nature that the effort brings a material change in the work. So, the work should get changed based on the effort that change should be of the right kind. And the prior work should be different from the secondary work. The work secondary work should be distinct and different from the earlier work.

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Literary Work

- Original author assigns copyright then, new work will be entitled to a copyright
 - Adaptations and abridgement
 - Translations
- Compilations and collective works
 - © subsists in individual items and collection as a whole
- Computer programmes
 - Protection of source codes

When the author assigns the copyright to another person, the new work will be entitled to a copyright as well. Now, adaptations and abridgement of existing works can have a copyright. Translations can also be entitled to a copyright. Compilations and collective works can have copyrights. A copyright can subsist in the individual item as well as in the collection as a whole.

So, if it is a book, which collects essays written over a period of time by different authors. When they essays were published initially, they would be a copyright that subsists in those essays, as and when they were published. When the book is published as a collection of essays, there will be a separate copyright in the book as it is published as well. For computer programs the source codes can be protected as a literary work.

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Dramatic Work

- *“..includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting, form of which is fixed in writing or otherwise but does not include a cinematograph film.”*
 - literary and dramatic used together, principles applicable to literary work will be applicable here
- Author: Author of the work

For dramatic work, dramatic works as defined as including any piece of recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting, form of which is fixed in writing or otherwise but does not include a cinematograph film. So, dramatic work excludes cinematographic film. The terms literary and dramatic are used together, and the principle applicable to literary work will be applicable to dramatic works as well. Again the author of a dramatic work is the person who authors the work.

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Musical Work

- *“..means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music.”*
 - 2012 amendment, grant of statutory license for cover versions

Musical work means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music. So, it excludes the lyrics. In 2012 amendment, there was a grant of statutory licence for cover versions. This was introduced by the 2012 amendment.

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Musical Work

- Song contains both literary and musical work
 - Tune and lyrics
- Lyrics of the song is literary work
 - Author: Writer of the lyrics
- Music accompanying the song musical work
 - Author: Composer of musical work

Songs typically contain both literary and musical work. So, the tune and the lyrics together forms the song. Lyrics of the song is the literary part, and it is protected as a literary work. And the author is the owner or the writer of the lyrics is the author of the work. Music accompanying the song is treated as a musical work and the author of the musical work is the composer of the musical work. So, in a song there can be two rights set of rights in the literary work, and rights in the musical work, and they are owned by different people. And the author of these rights are different people.

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Artistic Work

- Meaning
 - A painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality
 - A work of architecture
 - Any work of artistic craftsmanship
- Author
 - Artist, for artistic work other than photograph
 - Photograph, person taking the photograph
 - Monkey selfie

An artistic work is mentioned in the act. A painting, a sculpture, a drawing includes a diagram map, chart or plan, an engraving or a photograph, whether or not any such work possesses artistic quality. A work of architecture is included as an artistic work. And any work of artistic craftsmanship can also come under the ambit of an artistic work.

The author of an artistic work is the artist of the artistic work other than an photograph. For a photograph, it is the person who takes the photograph, who is regarded as the author. Recently there was an issue with regard to a selfie taken by a monkey. The courts in the United States have held that, the person who is entitled as the copyright holder cannot be the animal itself. That is largely because of the way in which statutes are written. Rights with regard to copyright can only be held by a person and a person is defined in the act, especially in the Indian laws as a human being. So, a person has to be a human being and so far intellectual property rights have only covered intellectual work of humans.

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Cinematograph Films

- *“..means any work of visual recording and includes a sound recording accompanying such visual recording and “cinematograph” shall be construed as including any work produced by any process analogous to cinematography including video films.”*
- Author: the producer of the film

Cinematograph films, means any work of visual recording and includes a sound recording accompanying such visual recording and cinematograph shall be construed as including any work produced by any process analogous to cinematography including video films. The author of cinematograph films is the producer of the film. It is not the director, it is not the people, who the technical people who involved rather it is the producer.

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Sound recording

- *“.. means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced.”*
- Author: the producer of the sound recording

Sound recording, means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced. The author of a sound recording is again the producer of the sound recording. The sound recording may involve musicians, it may involve a singers, but the author is the producer.

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Term of ©

- Literary, musical, dramatic, and artistic work
 - Life of author plus 60 years
- Posthumous work
 - 60 years from work first published
- Cinematograph films, sound recording, government work, works of international organizations
 - 60 years from work first published

life of author + 60 yrs
publication death

The term of a copyright varies depending on the work kind of a work that is protected. Literary, musical, dramatic, and artistic works are protected For the life of the author plus 60 years. So, the year in which the author dies, the following year there will be a protection for 60 more years, after the year in which the author dies. So, this part of copyright protection pertaining to literary, musical, dramatic, and artistic works there is an variable component, which is the age of the author.

For posthumous works published, after the death of the author. It is 60 years from the time the work is first published. So, these are the two things that we need to bear in mind. One copyright protection there is 60 years that comes. But, when does the 60 year start, the 60 year starts after the life of the author in case of works published during the life of the author.

For posthumous works published, after the death of the author. It will be 60 years from the time it is first published so, we recon the 60 years from either publication or from death. So, the 60 year starts either from the publication, when it is first published or it

starts from if there is an author, especially for literary, musical, dramatic, and artistic work. It includes the life of the author and the 60 year starts, after the death of the author.

So, cinematograph films, sound recording, government works, works of international organisations are all protected for 60 years from the work first published. Now, there are some works which an author may create, but the author may use pseudonym, not his actual name or they may be published as anonymous works. Now, anonymous works are treated just like posthumous works. From the time it is first published, they get a 60 year protection.

Photographs were treated like cinematograph films earlier, the it used to be protected for 60 years from the date it is first published. But, now photographs are included like an artistic work. So, you have the photographs are protected for life of the photographer that is life of the author plus 60 years. So, this change was brought about by the 2012 amendment to the copyrights act.

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Ownership

- First owner of copyright is author
- Contract of service v. contract for service
 - Cases of commissioned work
 - Works made by employee
- Rights of lyricist, composer in films
 - Commissioned work, producer of film has ©
 - Composer and lyricist first owner and author of their work for purposes other than showing in cinema halls

Ownership; the first owner of the copyright is the author. Copyrighted works can be created as a contract of service or a contract for service. If it is a contract of service, the service provider is engaged for the service whereas, if it is a contract for service, the service provider and the products that comes through the engagement are also covered. So, for what we call a contract for hire. A person is hired to do something.

So, it is regarded as a commissioned work. And all commissioned work the right will vest with the person who paid for the work. So, commissioned work for instance, when we saw the right of cinematograph films, the right existed with the producer. So, producer there acts as a person who commissions the work. So, it is a contract for service. Every person who engages gets their wages or their fees or their salary. And the producer becomes the right holder. So, in case of commissioned work, the person who commission the work, and who remunerated the people who worked for him will be the owner of the copyright.

In case of an employer employee relationship in most cases the terms of employment will governed, the ownership of intellectual property in general. So, the works made by an employee during the course of employment, which pertains to the line of employment will belong to the employer. Rights of lyricist, composers, in films because, it is regarded as a commissioned work, it belongs to the producer of the film. The composer and lyricist is the first owner, and the author of their work for the purposes other than showing in cinema halls.