

**Intellectual Property**  
**Prof. Feroz Ali**  
**Department of Humanities and Social Sciences**  
**Indian Institute of Technology, Madras**

**Lecture - 74**  
**IP in Creative and Entertainment Industries**

(Refer Slide Time: 00:15)



In today's session we will be looking at what was meant to be how Intellectual Property rights operate in Creative and Entertainment Industries. Apart from that we will also look at intellectual property rights, the policy the Indian government has on it and how teaching intellectual property rights would be significant. Especially, in the light of the thermal policy promote intellectual property rights.

So, what we plan to do this week this in this session is to cover how intellectual property operates in creative industries and also to look at IPR, the national policy on IPR and teaching intellectual property rights as a subject in various institutes and in the over the next week, we would like to keep it open for some general discussions and also look at case laws.

Case laws are important because intellectual property right is predominantly a legal subject and whenever a case is decided by the court that (Refer Time: 01:20) or it describes the law. To understand the law it is important even for non lawyers to be familiar with case laws. So, over the next week, we will be looking at some landmark

cases affecting intellectual property rights like most of you might have heard about the Novartis case which was decided recently by the Supreme Court and there are other interesting cases as well.

So, we would look at case laws as a tool of learning and we would also give you an heads up on how to look at case laws because as non lawyers, some of you may find it difficult to go through case laws. So, we will look at that and we will also summarize the key findings and we will also prepare you for how you should be looking at case laws in the future. So, they are legal documents written by judges and there are quite lot of pleadings that go into preparation of these case laws, but there are ways in which you can quickly traverse through a case law and understand it is just.

So, coming back to our subject matter today; so, we are here to look at intellectual property in creative and entertainment industries.

(Refer Slide Time: 02:34)



The slide features a light blue background with a faint 'Coursera' logo in the top left corner. The main title 'Creative Industries' is centered in a large, bold, black font. Below the title is a bulleted list with three items. The first item is a main bullet point, and the next two are sub-bullet points. At the bottom left of the slide is the NPTEL logo, and at the bottom center is a small Google search bar.

## Creative Industries

- What are creative industries?
  - Sectors that focus substantially on creating and exploiting intellectual property products
  - Music, books, film and games, but also sectors that focus on providing business-to-business creative services

Now, creative industries are sectors that focus substantially on creating and exploiting intellectual property right products. Now, this could be with regard to movie making, it could be regard to music, it could be regard to books and books is a big critic category in itself because almost all the books that we purchase would come under the ambit of the creative industry.

We are not only talking about works of fiction, but also works of nonfiction and importantly even books that cover education, see textbooks could also come under this category. So, creation of textbooks is an inherently creative process and especially, in the light of what we saw at the (Refer Time: 03:25) photocopy case in the session on copyright.

The question still remains there how do you protect textbooks in this country because protection of textbook may not directly come out of the finding in that case and how will text book manufacturers invest in creation of these textbooks in such a way that their investment can be recouped?

Now, going by the (Refer Time: 03:54) photo copy case. The court actually allows for copying of quotients of textbook if it is for educational purposes. And soon after the case they were some reshuffling, so to say in the publishing industry with some publishers actually pulling out or telling that they would soon be pulling out because it would not be feasible for them to get into or remain in this (Refer Time: 04:22). Because, the moment you create a textbook and publish it, if the law allows people to make copies for educational purposes because here for a textbook, the educational institutions and the students are the primary market.

So, once you say that the primary market would have an exception to use it and to make copies, then the question that would arise is how do you incentivize creation in this video. There are some models that have been proposed as to how you can make textbooks free and still make quite a lot of money in the process, but anyway that will be beyond the scope of our discussion. But just to bring to your notice that when we talk about books, we are also looking at both nonfiction and fiction works and more importantly we also should be looking at how the creation of textbooks can also be protected in such a way that it can be incentivized.

Now, the public sector may be interested in creating textbooks say like, the NCERT may produce some textbook and they may even offer it on a open license. Now, that is something which we are not worried about because there the textbook itself is funded by the government, the creation and the dissemination part of it. Most of the or all the lectures on NPTEL is again funded by the government.

So, creation of intellectual property when it is through publicly funded resources then the further dissemination can also be controlled by the person who is in charge of creating them. But the more important point with regard to creation of textbook is in the light of the (Refer Time: 06:08) to copy case, (Refer Time: 06:09) photocopy cases how do you incentivize the private sector to come up with new business models such that we get new textbooks created rather than relying on textbooks that are created in other places and copying them all using copies of them. There law also need to focus on how new textbooks in our country can be incentivized within the private sector.

So, creative industries coming back to the point covers music, books, films, games, but also sectors that focus on providing business to business creative services.

(Refer Slide Time: 06:49)



Creative

## Creative Industries

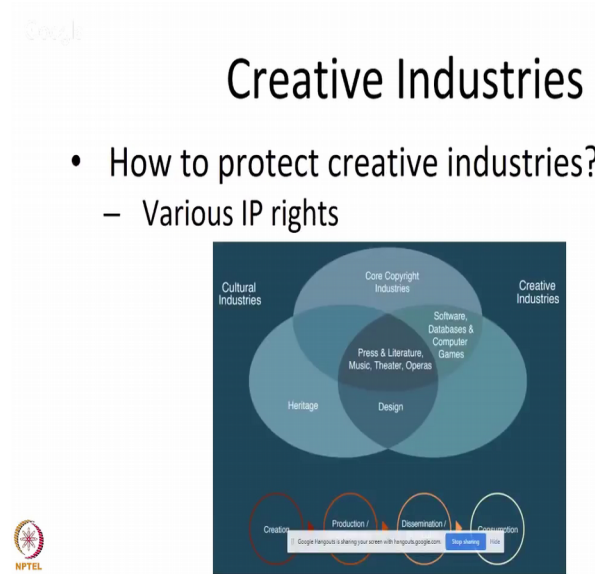
- Why protect products of creative industries?
  - Substantial contributions towards economic growth
  - Important for knowledge based economy

HPTCL

Google Translate is sharing your screen with translate.google.com Stop sharing Close

Now, why do we need to protect these industries? Now, there is enough material to show that they make substantial contribution towards economic growth and they are important for knowledge based economy. And especially in a country like ours where the biggest strength is human capital then the focus has to be on knowledge based industries.

(Refer Slide Time: 07:10)



Now, there are different ways in which you can protect creative industries and they could be also different types of rights and we have seen that copyright becomes the key form of right by which you to protect the rights of the creative industries.

Now, copyright is actually a right at one extreme of the spectrum and the other extreme you could say that you have works in the public domain which means, anybody can use those works without getting the constraint or the permission of the creator. In between in between what is available in the public domain and that is at one extreme and the other extreme of copyright you have various different kinds of arrangements licensing arrangements like a creative problems which would help both in monetizing the creative works as well as in allowing for a wider and a better dissemination.

So, if you look at creative industries, creative industries at some point also overlap with cultural industries. So, you can see the core copyright industries like press, literature, music, theatre, operas can be protected by copyright and you can also see software database and computer games which could partially be protected by copyright because there is some of the software's are best protected by business model innovative business models rather than just by protecting the book. Almost all the apps that you know today which you are using say let it be Uber or any of the other apps they are protected by strong business model than by protecting the code itself.

So, and you also have design protection for these works and the subject matter could be something that is created by the private sector and it could also be something that is created by communities. So, the creation would lead to production and manufacturing then that could lead to dissemination and distribution and finally, to consumption. So, protection could extend to all these parts and you will see the issue with creative industries is that at the point of consumption there seems to be issues with regard to protection itself and piracy which you will see soon is one of the issues that happens at the point of dissemination and consumption.

(Refer Slide Time: 09:44)

09:44

## Creative Industries

- Global value of creative industries
  - 4 - 6.5 percent contribution to the GDP
  - Countries, rapid economic growth, attributed to creative industries
- Employment in creative industries
  - Protection of IP, extended opportunity to many more individuals



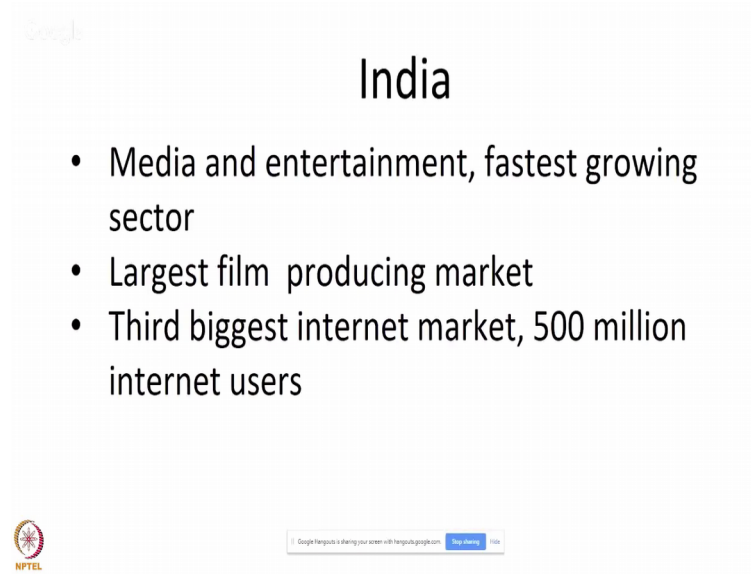
Google Translate is sharing your screen with translate.google.com

Now, the global value of these industries have been, I mean there are different accounts they say that between 4 to 6.5 percent of the contribution to GDP is largely because of creative industries. And sometimes creative industries go beyond just books and films and music. It could also be design elements that you sometimes find in products. You see shoe apparel company like Nike is predominantly a design company and they are the way they monetize their work is by designing cutting edge products which are produced in different parts of the world.

Similarly, Apple could also be seen as a design and a marketing company. So, this leads to the rapid economic growth and sometimes with the economic growth would be attributed to the creative industries themselves and it also creates employment. And

employment in as I said in economies which are more centered on human capital, it would be a way for massive growth.

(Refer Slide Time: 11:04)



India

- Media and entertainment, fastest growing sector
- Largest film producing market
- Third biggest internet market, 500 million internet users

NPTEL

Google has your IP address. [View details](#)

Now, in India media and entertainment are one of the fastest growing sectors and we have the largest film producing market and India is also the third biggest internet market with more than 500 million internet users.

(Refer Slide Time: 11:22)



Rights: Protect and Exploit

- Managing IP in creative sector
  - What rights you own in your original work
  - Identify yourself as creator and right holder
  - Plan for exploitation of your IP; licensing and assignment
  - Enforcement of your IP

NPTEL

Google has your IP address. [View details](#)

Now, the rights of creative industries would pertain to protection and exploitation of the right. Now, managing IP would involve what rights you own in your original work,

identifying yourself as a creator and the right holder, then exploitation of the IP by licensing and enforcement and by enforcement.

Now, if you look at this actually covers the creation till dissemination and exploitation of the work. Now, the rights can get affected at each one of these stages. They could be disputes with regard to the work itself as to host the owner of the work, there could be issues with regard to exploitation when it is licensed and also issues when it comes to enforcement.

(Refer Slide Time: 12:16)



Now, the creative sectors include advertising film and televisions, sports, music, publishing, wherein where we can cover both academic and nonacademic works and fiction and nonfiction then also video games.



(Refer Slide Time: 12:35)

Copyright

- © protects written, theatrical, musical and artistic works
  - Protects creative or artistic expression of idea
  - Author of work owns the ©
- Term: Lifetime of author + 60 years
- Royalty payments for licensing of work

NPTEL

Google has your IP address and may use your IP address for site usage, site analysis, and site improvement. [Privacy Policy](#)

Usually, we have a copyright notice and you if you write seen YouTube videos you can see copyright notice at the end. For theatrical musical and artistic works, this is to show that the work was protected and also that to show that the author owns the copyright and the copyright as we have already covered the term of the copyright is life of the author plus a 60 years and copyright regime also allows for royalty payment for licensing the works.

(Refer Slide Time: 13:15)

Copyright

- Internet and growing digital connectivity:  
new forms of creative work, new distribution system
- Digital Rights Management
  - Napster Case

NPTEL

Google has your IP address and may use your IP address for site usage, site analysis, and site improvement. [Privacy Policy](#)

Now, copyright some of the scholars have said the copyright regime itself would be irrelevant when it comes to the internet. Now, there are reasons where they say this. Normally, if you need to copy somebody else's work, one way to do that is to quote portions of it and give a reference to the attribute the source. And again there are in traditional copyright, there are limits as to what you can show. For instance, you cannot port an entire chapter of a book in your work, whereas, you can only quote parts of it and you may have to (Refer Time: 13:53) to proper reference.

Now, internet brings in an another dimension to this. Now, on the internet there is no need for you to even produce or reproduce any other persons book. You can simply give a hyperlink to the work and the entire work will be available for the person who is viewing it.

So, rather than giving a footnote you could also give a hyperlink. And if the source that is hyperlink is available as in open source, in the sense that it is freely available for a person who accesses it then that would mean that the copyright regime in itself which ordinarily protects people from making copies of the work would be irrelevant because the source can be hyperlinked and be made available to the viewer.

So, copyright has certain issues some scholars have said that it is time that the copyright laws are amended especially, when it comes to the internet. And there are also been new models of protection that are been advocated and one of the things is with regard to digital rights management. Copies of digital works which can easily be copied on the internet and we had a case pertaining to peer to peer sharing which is all the Napster Case. Napster used to be software tool that was used for peer to peer sharing of largely musical works and at one point there were 6 million Napster uses and that was largely illegal in the sense that the sharing happened without being any royalty to the creator.

But then law came around and they created digital management rights by various statutes and enactments which largely did three things. One: There was a code in the file which made it difficult for people to copy. Two: It brought a restriction on the use itself the time period within which you could use was restricted and the number of devices on which you can use the copy of the file was also restricted.

So, a digital management rights evolved as a way to protect coping or peer to peer sharing on the internet and that was seen as a Nike. Now, soon after the Napster which

was a website which allowed for a software which allowed for peer to peer sharing, soon after it was declared illegal you had certain other forms coming up business models coming up which allowed for easy purchase of a audio file. For instance, the MP3 players were in (Refer Time: 16:41) since the 1990's, there were different manufacturers who were manufacturing MP3 players and MP3 players were one of the means by which you could easily copy and share files.

But when Apple came up with it is iPod, Apple also tied the gadget which is iPod and Apple was not it is the first person or the first company to come with come up with an MP3 player. They smartly tied with their iTunes software which allowed a person to buy a single track at an affordable price. Now, this was a remarkable change in the way in which the music business work because earlier the only way you could buy work or musical work was by buying the entire albums whether you wanted the entire thing or not, you have to buy that (Refer Time: 17:34). Apple revolutionized the business process by allowing people to fight by individual tracks and they price it at less than 1 dollar aspects.

So, Apple not only brought this entire range of musical works through a forum by which you could legally purchase it. It also combined it with a nicely designed gadget for consumption. So, there was a business model which was largely iTunes allowing you to buy individual tracks at an affordable price coupled with a sleek design and nicely design gadget. So, this led to opening up a new market which was earlier not there and before that we had Napster wherein we had 60 million users sharing files without paying any royalties.

So, we see a shift in the market, we also see a shift in the way in which law perceived digital rights management. They said that peer to peer copying will be allowed only in the limited purposes say you had the two gadgets you want to make copies of it and retain that or you could have backup copies, but it would not allow you to share it with others without paying (Refer Time: 18:51). So, these new model ensure that there was some kind of protection for digital books.

(Refer Slide Time: 19:01)

Copyright

- Copyright and Mickey Mouse
  - Earlier duration of © in US, 14 years
  - Now, up to 120 years from creation

Copyright Duration and the Mickey Mouse Curve

Year Copyright Term Began	Duration of Basic Copyright Term (years)	Act
1790	14	1790 Act
1831	28	1831 Act
1909	56	1909 Act
1962-74	70	1962-74 Acts
1976	95	1976 Act
2023	95	Sonny Bono Act
2023	unlimited (perpetual)	unlimited (perpetual)

Now, while this was happening, creative industries were also interested in protecting the term of copyright. So, the term of copyright is largely fixed, but in some countries especially in the United States, we see a tendency for the creative industries specially this Disney to lobby with the government in such a way that they could extend the term of the copyright itself.

Now, there is there is enough material to say that this was largely done to keep Mickey Mouse from falling into the public domain. And if the US, initially the copyright term used to be for 14 years, but then over a period of time it became similar to what was an India, life of the author plus 50 or 60 years.

Now, it is reached a point where the copyright would extend up to 120 years from the date of creation. Now, you can see this chart and you will see that the Sonny Bono act actually extended the right of creative works up to 120 years. And this is attributed to Disney's lobbying to protect Mickey Mouse, the copyright over Mickey Mouse.

(Refer Slide Time: 20:30)



Search

# Marketing

- Marketing: Directing the flow of goods and services from producers to users
- IP instrumental in building a company's brand—competitive advantage
- Marketing of ideas
  - Apple's marketing strategy: Market Hype
  - Harry Potter Books



Google has good & identity your screen with <https://www.google.com> [Try it now](#) [Help](#)

Now, creative works also could have an impact on how they are marketed. Now, marketing is a significant way in which creative industries can recoup their investment and also allow users to keep purchasing their goods. And intellectual property instrumental in building the companies brand or maybe seeing the role that copyright can play in the creative industries.

But trademarks also be a significant role. In fact, any of the products that Apple comes out with. It is largely because of the brand value of the company and the fact that users attribute valuable a product there is some kind of a hike around the products. In fact, the same can be said for certain kinds of works of fiction. Let us say the Harry Potter series and for one thing that is common for both Apple products and Harry Potter books is that people queue up before the product is recently released in long lines, so that it came to be the first purchases.

So, this is nothing to do though they are all creative works, this is nothing to these are nothing to do with the copyright protection in itself. This is largely because of what the brands have grown to be. So, the brand Harry Potter and Apples products they have boom to be attributed with particular type of quality and because the brands are protected all over the world, you can now see that they could be they could be marketed in a smart way in such a way that people have a following for.

(Refer Slide Time: 22:19)

Google

## Ambush Marketing

- Advertiser "ambushes" an event to compete for exposure against competing advertisers

Now, marketing could also result in others capitalizing on your marketing moves. Now, there is something called ambush marketing, where an advertiser ambushes an event to compete for exposure against competing advertisers. Now, every time there is a grant or a mega sale by one person, you could find other stepping in and capitalizing on that. One of the best instances of ambush marketing in India happened a few years ago when the Cricket World Cup was conducted in India.

For the event, Coca Cola was successful in getting the official sponsorship. So, Coca Cola literally became the official drink of the Cricket World Cup. Pepsi loosed out on the contract, but Pepsi came up with a smart campaign all nothing official about it and they ran a campaign with different cricket players, in such a way that they were lastly seen as having a bigger impact than the official sponsor itself.

So, they ran a series of ad which with the campaign that nothing official about it and that got quite a lot of traction for Pepsi. Now, soon after this they were regulations that came in saying that you know the team players there are themselves bound by advertising worried for this sponsors of the event and they cannot do it for others who are not sponsors of the event. And we also found the logos, the name of the event itself being a proprietary thing there were restrictions on the use.

So, even if a newspaper was covering an event, the newspaper had to had to get a license from the event organizer to use the name, say it OS the ICC World Cup or the FIFA

World Cup. So, they were all branded and protected words. So, you could not do any kind of ambush marketing and the event organizers themselves were willing to give this on a license.

So, here you have the ambush marketing between where Snapdeal uses Flipkart's greatest sale ever and you can see that when Flipkart adverse races for a sale, Snapdeal comes out by saying that for others it is a big day for us it is not different. Just making use of the fact that there is a sale happening with a competitor by coming up with something as a parallel agent.

(Refer Slide Time: 25:08)



## Licensing

- Sells authority for a third party to use owner's rights, certain conditions
- IP Licensing
  - Roger Federer dispute with Nike over 'RF' logo
    - Dispute highlights the importance of clarifying IP ownership as part of partnership agreement

Now, creative industries also have issues with regard to licensing. Now, it you could you could sell the authority for a third party to use the owners right and you could also stipulate certain conditions on the same. Now, in IP licensing recently we had the case where the tennis player Roger Federer disputed with Nike, Nike was the sponsor of for Federer for a long time. And Nike also developed the RF logo along with Roger Federer.

They dispute arose because Federer moved to a new sponsor this year for Wimbledon, he moved with the new sponsor and he also made a statement that he should be entitled to use the logo RF. RF is actually a abbreviation of Federer's name but RF logo was protected by trademark and the trademark was owned by 98 sense.

So, sometimes when owners of the trademark may give up the right without knowing the consequences of it. So, there is still a dispute pending and Federer has made it clear that he would like to use the abbreviation of his name, but the law is in Nikes favor because Nike owns the abbreviation.

(Refer Slide Time: 26:44)

Google

## Merchandising

- Promotion of a product through its association with a famous or popular person or object
  - Trade marks, copyrights



NPTEL

Google has your screen with language.google.com Stop sharing

Now, merchandising as you had seen specially in the case of Disney's works is a way in which creative industries can protect their creative works. Now, merchandising would involve protection by way of trademarks and copyright and that is one of the reasons why Disney had lobbied to extend the term of the copyright for Mickey Mouse because they becomes more effective to protect these creative works by way of copyright and trademark.



(Refer Slide Time: 27:19)



The slide features a light blue background with a faint grid pattern. At the top left is the NPTEL logo. The title 'Broadcasting Rights' is centered in a large, bold, black font. Below the title is a bulleted list of three main points, with the first point having a sub-point. At the bottom left is the NPTEL logo, and at the bottom center is a small Google search bar.

- Rights a broadcasting organization negotiates with a commercial concern
  - Sports body, film distributor
- Sports, billion dollar industry
- More sophisticated communication technologies, increased signal theft

Now, creative industries are also protected by broadcasting rights. Broadcastings rights are also referred to as neighboring rights because they are rights that are the ancillary to copyright. So, the rights abroad cutting organization negotiates with the commercial concern. So, with regard to mostly this could be with regard to a sporting event, where it could be a sporting body or it could be with regard to motion picture where it has to negotiate with the film distributor.

Now, sports assistance is a million dollar industry and we find that there been issues with regard to what amount of sporting event can be then information of sporting even can be disseminated. There were issues in our country with regard to whether live scores can be shared and the event organizers claim that more live scores are a proprietary material that is generated in the sport and hence it should not be shared. Whereas, news channels said that lives scores is of a live event amongst to hot news then they say that that is something that should be covered by the freedom of press to disseminate news.

So, again the key point to note here is that there is quite a lot of value that comes out of these industries and there is a constant struggle to see how that value can be capitalized. Signal theft is another issue and you would constantly see cable channels relaying certain numbers and which is a way in which they can detect signal test.