Intellectual Property
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Lecture – 21
Origin and Evolution

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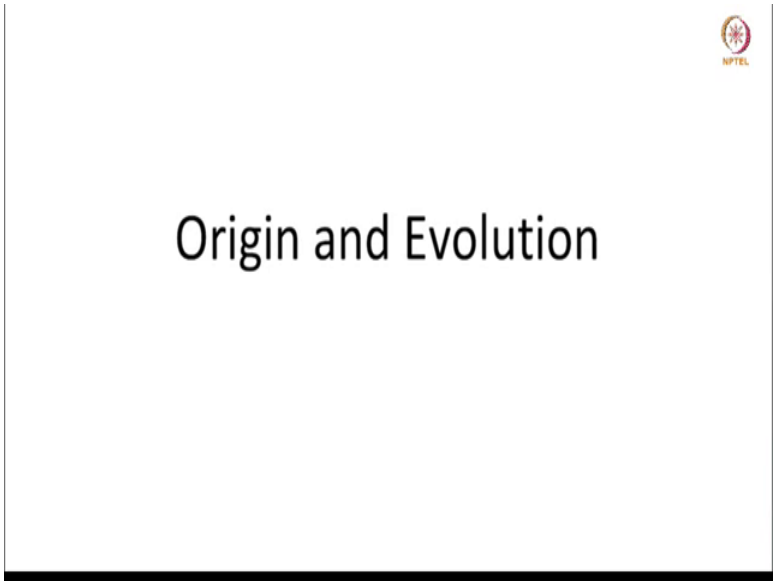

Now, let us look at the Origin and Evolution of Copyright.

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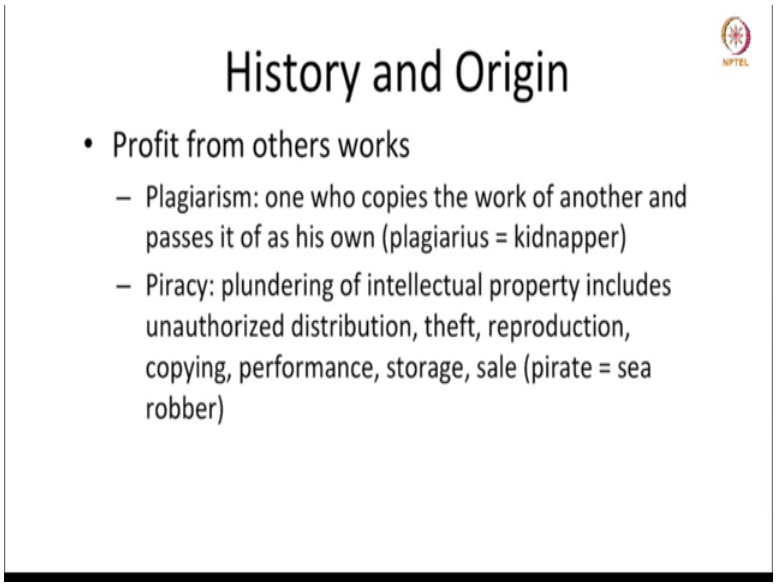

Copyright came out of the necessity for creators to profit from their work. Copyright came into picture because there were instances of others profiting from these works for instance the first few instances of the need for a copyright regime came largely through plagiarism where one copies the work of another and passes it off as his own work. Now this comes from Latin word plagiaries, which stands for kidnappers somebody who took somebody else's things. Piracy also played a role in having the copyright laws in place. Piracy was regarded as plundering of intellectual property.

And it included unauthorised distribution, theft, reproduction, copying, performance, storage and sale of the product. Now piracy comes from the word pirate which stood for a sea robber. Again you will find that piracy and plagiarism as the broad themes that led to the creation of the copyright regime. There existed piracy with regard to works creative works and also plagiarism.

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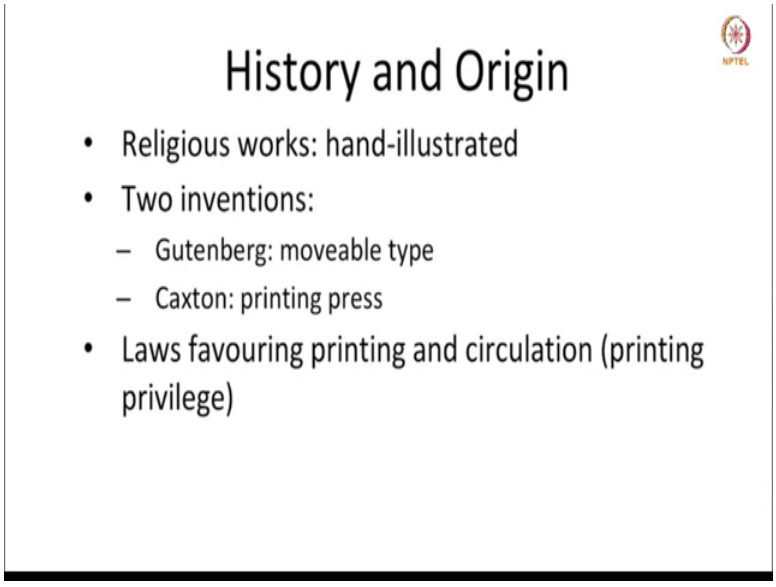

If you look at this history of copyright law and its quite a fascinating history depending on how we look at it if you are interested in the cultural development you can look at the history in a different perspective, if you look at legal protection of intellectual works again there is an aspect which you can look at.

So, there are different histories in copyright and the broad agreement is that the origin of copyright came from United Kingdom and the things and the events that happened in United Kingdom led to the creation of norms for copyright law.

In the initial years in United Kingdom religious works were made by hand they were hand illustrated and they was enormous amount of effort that went into creating these works that itself made them difficult to copy because if somebody had to make a copy of this work then it had to be a person who could create the or match the artistic splendour in these works and religious works were meant for a small audience people who were involved in religious teaching and in propagation of the religion.

So, it was it had it pertained to a small audience who use these works. And these works were anyway protected by the design or by the illustrations that they carry. Since literacy was not widespread as it is now, the need for protecting copyrighted works was not there in the initial years and the largely the works that were circulated were of religious nature. But two things changed this; one was the invention of the movable type by Gutenberg and two the printing press by Caxton. Now these two inventions lead to printing becoming a mass activity. For instance, you can say that printing got democratized with these two inventions.

So, we had also various laws favouring printing and circulation. A printing became slowly a privilege because of the two issues that we mentioned piracy and plagiarism and this privilege was conferred to a selected group of people.

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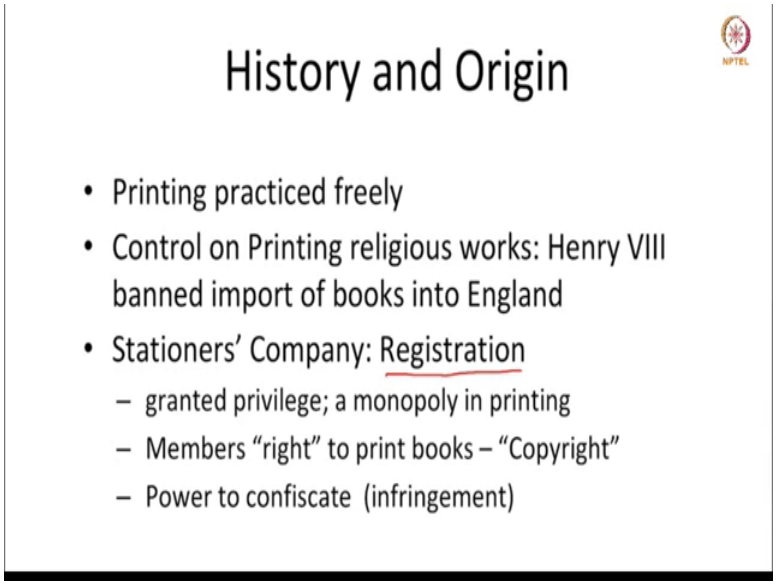

Now when these two technologies came into being printing began to be practiced very freely and it lead to creation of works which without any control. So, to control the

printing of religious works because religious works if it is not approved by the religious rights then that could lead to either could be regarded as apocryphal works and Oregon blasphemous works. So, that led to Henry the VIII leading passing a law, banning the imports of books into England because printing technology was practiced everywhere.

This led to copies of books being created and to ensure some kind of authenticity there was a ban on printing religious works and the right to print was given to the stationers company and stationers company was a group it was initially a guild, but later on it took up the job of printing books. Now, the king granted the privilege to this company and this company had a monopoly in printing. The company will maintain a register as to all the books that it has printed and it would be on record as to what was printed. So, anything that was printed other than by this company would be regarded as an infringing work or that will be regarded as something that was done without authorisation.

So, the first evidence of registration we find it in this instance where the stationers company had a register of the books that it printed and members had almost a perpetual right to print the books. So, when the members of the stationers company had the right to print the book, the word copyright evolved as a right to make further copies. So, the evolution of the word copyright also can be tied to the right of the members to print books and it was initially a perpetual right. The stationers company also had the power to confiscate books that were illegally or printed without their authorisation.

So, we can see some amount of enforcement also evolving in the copyright regime in the sense that books that were printed without authorisation could be confiscated. So, seashore of goods is again a modern day remedy where a copyright holder has the right to seize the infringing works.

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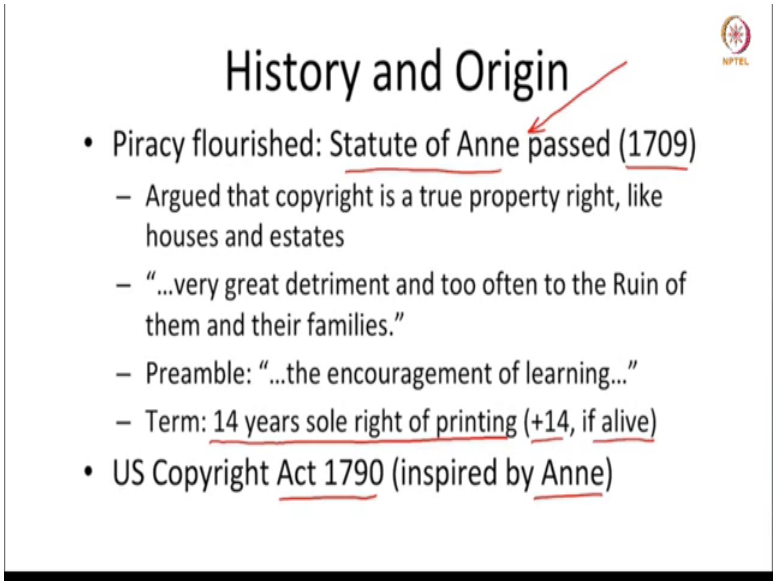

Despite passing this law piracy flourished there were instances because of the technology that allowed people to print easily piracy flourished. And we find that the statute of Anne was passed in 1709 to tackle the issue of piracy. So, this was the first statute passed in England which was the precursor of modern copyright laws. Now, in the statute of Anne it was argued that copyright was a true property right and the right in a creative work was compared to houses and estates and it was also mentioned that the authors or creators of the work would stand to suffer the most if their rights were not protected.

And it was mentioned in the statute of Anne very great detriment and too often to the ruin of them and their families stating that if copyright is not protected if the stating that if the works of authors are not protected by regime, it would lead to the detriment of them and their families. The preamble of the statute of Anne also had something on dissemination of information. It stated that there has to be encouragement of learning. So, we find the copyright the initial copyright law that came into being in the 18th century.

Not only was concerned with protecting the rights of the creators, but it was also tried to the dissemination of information, it the preamble mentioned the encouragement of learning. The term of the copyright was 14 years, where the copyright owner had the soul right of printing and it could be extended by another 14 years if the copyright owner was alive at the end of the 14 years.

So, the initial term was 14 years which could be extended to another 14 years. Now, you will also see that over the period of time since the 18th century the copyright term has extended to accommodate different kinds of works and it has also expanded increasing the term of the exclusivity.

The US Copyright Act of 1790 was inspired by the statute of Anne and you can almost find some Verbatim reproduction of the statute of Anne. So, the law originated in England and it was followed around the world similar versions of the law.

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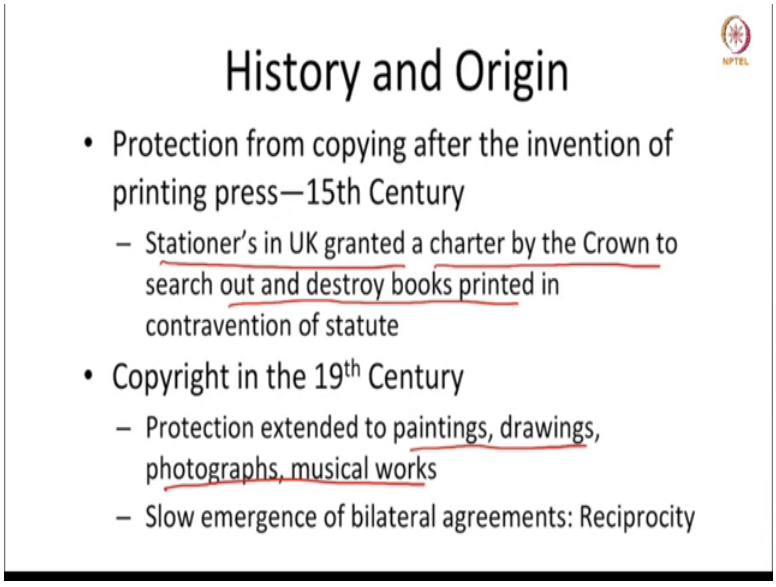

So, copyright became a necessity to protect original works from copying after the invention of the printing press and we saw that the stationers were granted the exclusive right by way of a charter by the Crown to print and also to search out and destroy the books printed in contravention of the statue what we refer to as the power of confiscation.

The slow emergence of copyright as a international right started off with bilateral arrangements; two countries will have an arrangement of based on reciprocity to respect copyrighted works of each other; this slowly became an international arrangement.

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The first international arrangement on copyright was the Berne Convention in 1886. The Berne conventions primary focus was on having uniformity amongst the different members. The Berne convention just limited to artistic and literary work initially, but the Berne convention was amended and new forms of copyrighted works were included in the subsequent years. The convention was based on the national treatment principle which is a treatment principle in international law that stating that you have to extend equal treatment for foreigners, in other words you would treat foreigners as you would treat your own nationals.

So, national treatment principle ensured that creators of copyrighted work in foreign countries got symbol of protection as a protection would be offered to a citizen of a particular country. So, foreign works had to be treated at par like domestic works. So, the Berne convention fixed the minimum duration of copyright for most works as life of the author plus 50 years. So, the 50 years; so, the copyright term of a work extended throughout the life of the author and for an additional 50 years.

So, the year on which the author died plus 50 years. And copyright also subsisted automatically, the protection was automatic. The fact that the work was created granted protection to the work. Now this could normally be signified by a copyright notice that is aduced along with the work. The second major international arrangement on copyright is what we call the Rome convention of 1961. While the focus of the Berne convention was

rights of the authors the people who created the work, the Rome convention pertain to neighbouring rights; neighbouring rights meaning the rights of those other than the authors say the performer's rights.

So, this convention considered the rights of phonogram producers of sound recordings performers and broadcasters which was not covered by the Berne convention. So, we slowly see the expansion of copyright, copyright was traditionally understood as rights of the authors and creators and now we see the right extending to producers of sound recordings, phonograms, performers of existing copyrighted works and broadcasters. So, the right got extended to producers of phonograms, performers and broadcasters.

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Then in 1994 we had the TRIPS agreement. Now the TRIPS agreement brought in the most favoured nation principle and it also had the national treatment principle in it which said that you cannot discriminate between nations. If country A offers a preferential treatment to country B then that treatment has to be extended to country C or country D as well. So, the most favoured nation principle brought in a way in which countries could not discriminate other countries or countries could not have a special treatment for one country alone. So, the most favoured nation principal allowed countries to be treated equally and to have a similar regime on copyright across nations. And the TRIPS agreement also gives effect to the idea expression distinction. Now after this TRIPS

agreement we had two WIPO treaties, the WIPO copyright treaty and the WIPO performances and phonogram treaty called the WPPT1996.

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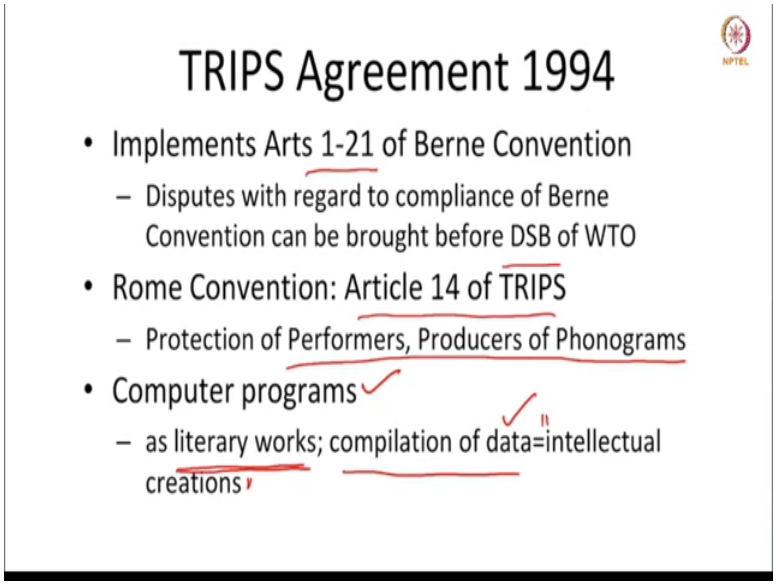

Now, the TRIPS agreement which came in 1994 implemented articles 1 to 21 of the Berne convention; it just adopted what was there in the Berne convention. One advantage of this was their countries which were not parties to the Berne convention because they had signed the WTO and became members of the TRIPS agreement would now be following the Berne convention because it adopted those articles. And also disputes with regard to compliance of Berne convention could now be brought before the WTO because the WTO had a dispute settlement body and it had an effective dispute settlement mechanism.

So, earlier if a country did not comply with the Berne convention there was no way in which you can raise that as a dispute, but now this arrangement of incorporating Berne convention provisions or the Berne convention into the TRIPS agreement brought in countries the ability to raise a WTO dispute. The TRIPS agreement also incorporated the Rome convention, but indirectly through Article 14. So, the gist of the Rome convention which dealt with protection of performers, producers, rights of performers and producers of phonograms was also brought in through Article 14 of the TRIPS. And the TRIPS agreement also recognised computer programs as products that can be protected by copyright. It required that computer programs should be treated as literary works and

compilation of data or databases should also be treated as intellectual creations. So, intellectual creations refer to both computer programs and data bases.

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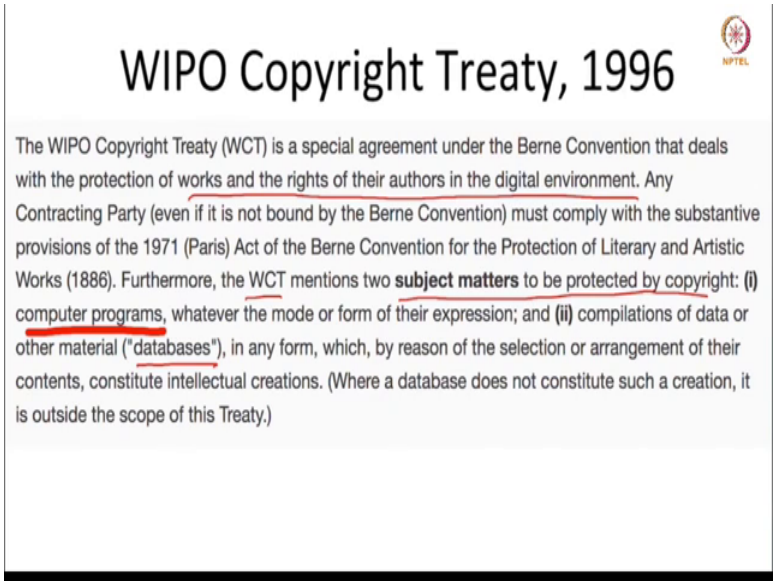

The WIPO copyright treaty was a special arrangement under the Berne convention which protected works and rights of authors in the digital environment. Now this treaty also called as the WCT mentions two subject matters to be protected by copyright. The first one is computer programs and the second one is data bases compilation of database. So, the 1996 WCT extended the protection of copyright to two subject matters computer programs and data bases.

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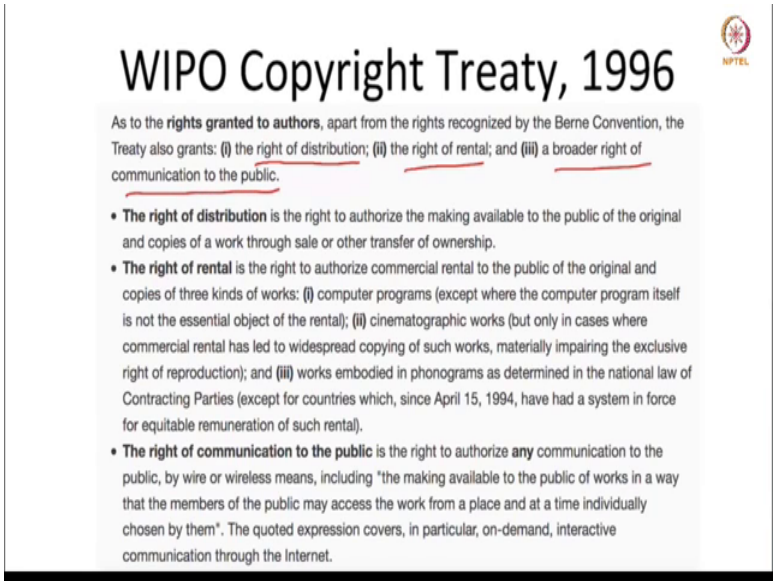

Apart from the rights granted to authors which were recognised by the Berne convention, the WIPO copyright treaty also introduced three different sets of rights. It introduced the right of distribution, it introduced the right of rental and a broader right of communication to the public.

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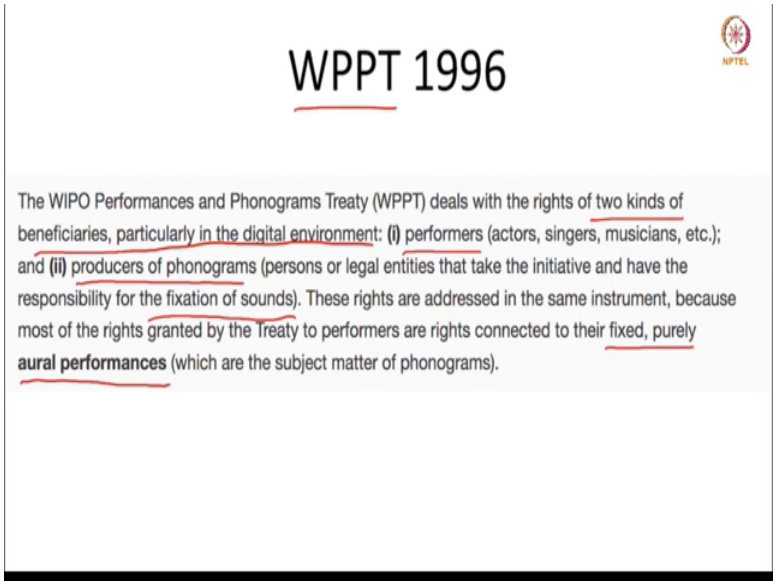

The WIPO performances and phonograms treaty the WPPT 1996 deals with two kinds of beneficiaries in the digital environment. The first type referred to performers; actors, singers and musicians and the second type refer to producers of phonograms; persons or

legal entities that take the initiative and have the responsibility for the fixation of sounds. The treaty govern the right of performers which were connected to their fixed purely aural performances.

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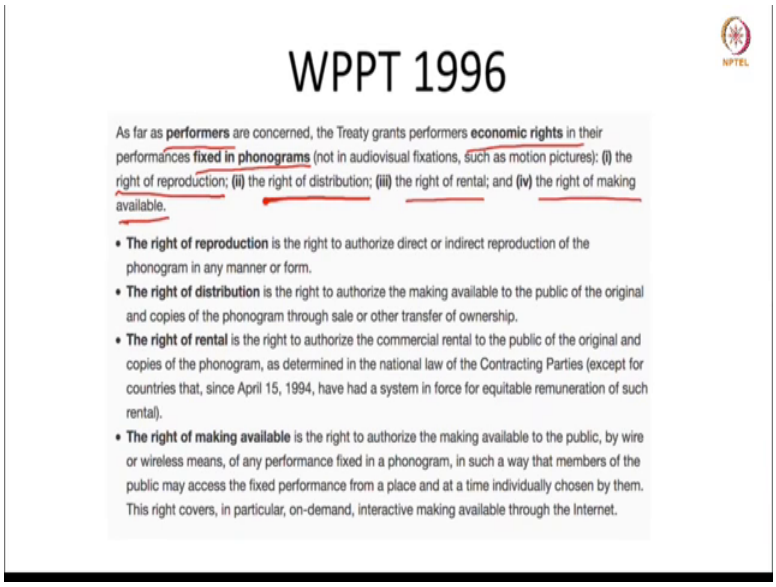

With regard to the right of performers the treaty grants performers economic rights in their performances fixed in phonograms. So, which means it does not cover audio visual fixations such as motion pictures and they have a right of reproduction, right of a distribution, right of rental and right of making available.

The producers of phonograms also had certain economic rights in their phonograms. They have the right of reproduction, right of distribution, right of rental and right of making available.

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The rationale of copyright: Why should we protect copyrights? The works on which copyright subsists are regarded as intellectual production which need to be protected because they come out of a creative or intellectual effort.

So, the fact that these products resulted from an intellectual effort needed some kind of a protection. We had protection for goods and services, but there was no protection for the intangibles like creative labour. So, that itself triggered the emergence of copyright as a right to protect the products of creative labour. Another rationale for having copyright is that copying is treated as an equivalent of theft.

Now, we saw that when plagiarism and piracy was mentioned it was the language used to refer to plagiarism was kidnapping or the word had a meaning of kidnapping and piracy had the meaning of robbery. So, copying somebody else's work was equated to stealing or equated to the crime or theft.

So, that is another rationale for having a regime because you had to protect the expression of ideas from being stolen. The third rationale for having copyrights is that the fruits of labour need to be protected. So, the labour theory which states that if a person expense time in creating a work for instance writing a book then it should not be that the labour that was spent in creating the book goes unrewarded. So, rewarding the author for the creating creation of the work was essential for promoting human creativity.

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Copyright protection is also believed to incentivize creation of further works and it also has the economical and social development of a society which the creative work could contribute to.

However, if copyright protection is applied rigidly it could hamper progress of the society. So, that is the reason why we have various exceptions and limitations included in the law. We found that in the statute of Anne though they have mentioned that there is a need to protect the rights of the creators they are also carefully worded the need to disseminate information as well. So, copyright regime can be seen as a balance where the rights of the protect can be seen as a balance where the rights of the creators have to be balanced with the rights of the users.