

Intellectual Property
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Lecture - 05
Characteristics of IP

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Common Characteristics of IP

- Protectable by law i.e. enforceable right
- Intangible
- Capable of being described and registered (copyright does not require compulsory registration).



Now, that we have understanding of these 3 terms, what rights are, what property is, and what we mean by the term intellectual. We should be in a position to move forward and give a definition for intellectual property rights. Intellectual property rights generally protect applications of idea and information that are of commercial value.

Now, this branch intellectual property rights generally protects applications of ideas, they do not protect ideas per se. This is something which we need to understand. Ideas in themselves by themselves cannot be protected; but applications and expressions of ideas can be protected. Now the best instance would be or 1 illustration would be the genre in literary works crime fiction.

You would have seen that almost every novel in crime could either be a whodunit or how somebody did something. So, this is the genre there is a plot there is an event that happens and there are a set of characters all looking suspicious and there is a person who would come to solve that thing and eventually they could be some twist in the tale,

eventually the crime is solved or at least the person who reads the novel is given an impression that he got he was a part of a process of solving something.

Now, this genre has been in existence for a long time, people of different calibers have written crime novels and they all follow the same plot. There is an event which has to be solved and somebody solves it there is a suspicion on the most possible characters and somebody else turns out to be the person who actually did the crime. So, that is the whodunit part. The how he did it part is the crime is there and then somebody explains or tells the readers how this crime was done.

So, these are the; I mean there could be other ways of this, but it is this genre this group of fiction is predictable by its nature because, the setting is always a crime and there is an explanation of why the crime happened or how the crime happened or who did the crime. But look at the number of books that has come out of this genre and look at the number of authors some authors like Agatha Christie she has written most of her books on this genre and still each book is different.

It could be the same idea it could be the same main character who solves these plots, nevertheless each idea is expressed in a different format and because it is expressed in a different form each idea as it is expressed in a different form can have a separate right. So, copyright subsist in all the books of Agatha Christie and they cannot be an objection that they are all crime novels or they are all works of fiction. So they are all, the whodunit model in some cases it is the same protagonists to solve these problems. So, that cannot be a reason to say that the idea is the same as long as the expression is different you can have different rights substituting in those ideas.

Now, having said that now we can venture to look at the nature of intellectual property, right. Now we have analyzed these terms and these terms have actually thrown up certain traits which we can identify as traits that are common for intellectual property rights, if not common traits which actually characterize this group of rights.

The first thing is that they are protectable by law that is the first thing, because there are they could be very valuable information and idea which the law does not protect. But when we talk about intellectual property rights we are talking about a specific right be it a patent be it copyright trademark design there are a list of rights which are granted

protection. So, the first thing is that these are enforceable, so when we say right we mean enforceable. So, that is the first thing for something to qualify as an intellectual property right it should be enforceable, it should be in the nature of a right they should be an entitlement some somebody can claim something used on it, and if there is a violation of that right there should be a remedy.

So, patents offer protection if there is infringement or violation of a patent, there is a remedy you can stop the person from asking him not to do that thing or you can claim what we call monetary compensation or damages. So, the first thing is they are enforceable, the second trait is that they are different from normal property we can use the word intangible these rights are intangible. You cannot touch and feel them, but they manifest in the end product in some way and because they are intangible they need to be described by some means.

So, the description part has led to various forms of recognizing the descriptive part, in a patent it is described in writing by something called a patent specification. And this patent specification under grows a process what we call patent prosecution within the patent office and it emanates as a patent right this entire process in a very simple language we can call it registration.

So, rights they are enforceable and they are capable of being registered the same is for design, designs can be described and they can be registered; trademarks, trademarks can be described and they can be registered; copyrights, copyrights can be described and they can be registered. But because of an international arrangement called the Berne convention it is not necessary to get a registration of a copyright to enforce it. Publication you would have seen in many books there is a copyright notice in the initial pages where the copyright is held by the author or by the publisher. You might find in various websites in the footer there is a copyright notice, the fact that you have put a copyright notice and most likely with an entity is name and the year in which it was published and the fact that you are published is good enough for you to say that you are the owner of the right.

So, copyright is an exception where you need not need to register it for enforcing it, but registration this there is a possibility there is a way in which you can register it. So, that is the second part the first thing about intellectual property rights is that they are

enforceable the second thing they are capable of being described and concomitantly being registered so that is the second part. They can be registered which brings a whole lot of things there is an office there is an authority which analyzes the right and gives and scrutinizes it, and then verifies it with other things and then grants you a title. So, the process of registration in patent law is called patent prosecution, it happens at the patent office only when the written part that is a patent specification go through the process of prosecution there is a person get a grant right; when we mean by a grant you mean a title of patent, so enforcement registration.

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The third thing about an intellectual property right is the fact that you can easily replicate it. Now I asked this question how much does it cost Microsoft to come up with a first copy of windows say windows 7, it will be a few million dollars because you look at their R and D their investment their staff salaries a whole lot of things would have gone into creating the first copy of windows 7. How much does it cost anyone to make another copy of windows 7? Next to nothing, you can just copy it whatever is there in a CD onto a hard drive or to a pen drive if it has the capacity to do it, so the cost of making the second copy is next to nothing.

So, this defines yet another trait of intellectual property right it is difficult to get the first copy out, but once the first copy is out it is easily replicable. Now this is also true for

books, books may take an author may take years to write the book it does not take much to scan the book and put the copy of the entire pirated book somewhere in the cloud.

Similarly, a movie may take months or years of effort to complete, but we hear constantly about pirated versions coming out within just few days of screening of the movie in the theaters; all these things tell us that though it is hard to create an intellectual property it is easy to replicate. Now this is another trait that it can be reproduced easily, yet another trait which is not common, but nevertheless it is a trait is the fact that it requires effort to create intellectual property. As we said there is intellectual effort involved in it. But in today's the world in a modern world sometimes this effort comes from research and development sometimes and sometimes it requires many people coming together to create intellectual property right, specially when we are talking about inventions and today gone are the days where an inventor could be in his garage and come up with something new.

Today the sciences and technology has progressed to such a level that most of the inventions and this is also true about academic writing in the scientific in science and technology; most of the time they are coauthor we would very rarely find papers written by a single person. So, this is true for patenting too many of the patents are group efforts done sometimes by teams that are spread across in different countries they put their efforts together and they come up with an invention, so they are group effort.

So, the fourth point is the fact that it requires an intellectual effort to create these rights. So, they are creations of the mind, but it requires an effort to create these rights. Another trait or something inherent in the nature of intellectual property right is that, these rights once they are created they are valuable. There is commercial value or the fact that these rights can be used in trade and in business makes them some makes them valuable. So, they are capable of being enforced they can be registered they can be duplicated reproduced in many numbers, it involves effort to create them a creative effort sometime by many people put together and it has commercial value.

Now, these are 5 points which we have we have tried to cull out which define the nature of the intellectual property, economists have also used 2 more terms to understand intellectual property. They say intellectual property by it is nature is non rivalrous and it is non excludable, non rivalrous means the use of intellectual property by 1 person does

not cause rivalry or does not take away the enjoyment of the same intellectual property by another person.

Now, to understand non rivalrous nature of intellectual property, let us look imagine empty room an empty room which is in the size of a normal classroom, you just imagine an empty room and imagine that you own this empty room you have complete power over this empty room. Now if there is an entrepreneurial spirit in you and you want to make some money with this room, there are multiple ways in which you can use this room to make money. You could rent this room out for a couple of people to sleep you can have some bunkers and you can make some money off of it. Now if you want to stretch it a bit more further you can convert the room into a classroom by which you can make more people sit to then sleep and you can make some more money or you can change your enterprise into a different 1.

Now, if you get more enterprising and if you want to get in more people into it you can remove all furniture and make it into a place where people come and generally socialize with each other, for whatever reason you could they could eat they could talk to each other and if you really want to stretch this forward you could have some kind of a party where people do not mind being at close proximity with each other.

Now, these are things which you could do to use or maximize the use of your real property which is your room. Now at best and depending on the tolerance level of people you could cram enclose to 100 people into that room yes it gets tough the air gets hot ventilation becomes a problem, but still if people tolerance limit this high you may be able to push in 100 people into a room of average size.

Now, if you try to put the 500 people into that room they could be police at your doorsteps because that is simply not possible. So, that tells us real property has its limits on enjoyment, these limits are not there when it comes to intellectual property right. Imagine a bestselling book how many people can read that book at 1 time; yes the person whose reading it the another person who is sitting next to the person who is also reading it yes.

There could be a group of people around that person say it is a new book which has been released for the first time somebody stood in the queue for 12 hours and got the book

assume it is a very popular book, you could have a group of friends who do not mind being pushed around looking into the page and reading it. If you are more creative you could scan the page and put it on a computer screen or project it on a computer screen and whole lot of people can read.

If you even stretch it further you could scan the page put it on cloud and anybody who has access to that document could see it and that could run into millions are as many devices you have you could to see that. So, this is a trade of intellectual property which distinguishes it from real property, real property has limits in enjoyment there are no limits in enjoying an intellectual property right. This is what we mean by non rivalrous used by 1 does not take away the enjoyment by another.

So, all the people who crowded around a person what a copy of a bestselling book equally enjoy the intellectual property right, they were able to use it without affecting the right or without affecting the enjoyment quotient of the other person to use it at the same time; which would have been different if people were crammed into a room. There are limits to which people can use a room, whereas there are no limits to how an intellectual property can be used, so this is what is referred as the non rivalrous nature of intellectual property.

Intellectual property also becomes non excludable this is another trait which they see it is non excludable the fact that intellectual property can be used by some you cannot stop others from using it for instance; somebody scans a book and chooses to put it on a live telecast on you tube. So, what he is doing is he is just holding a page and giving sufficient time for people to read the page, then he is moving to the next page and he is just holding it in front of a camera and he is life streaming this on you tube.

So, the book is available for live viewing for any number of people, now the fact that he has already put it on you tube there is no way you can exclude a person who has got access to you tube from enjoying it. So, there is once it is put in a way in which others can see it there is no way you can stop others from or exclude others. So, this is again a trait which intellectual property enjoys, once a medicine say it is a lifesaving medicine is out in the market it is possible for the competitors of the manufacturer who manufactured this medicine.

To take the medicine analyze it and even without going back to the manufacturer to create a copy of it. So, once it is out there is no way you can exclude people from taking effect of it or in understanding how that particular thing was done. These two traits non rivalrous and non excludable nature is something that is shared by what economy is called public goods. Public goods by definition are non excludable and non rivalrous for instance national security, you cannot exclude people from national security everybody gets it and you cannot specifically say that national security is only for few people; because, if the countries boundaries are bordered everybody in inside gets to gets the benefit of it.

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Definition of IPR

- Rights which protect application/ expression of ideas & information which are of commercial value
- Rights which protect products of human creative labour (E.g.: patents, copyright)
- Inclusive definition given by WIPO
- Patents protect technological inventions



Now definition of intellectual property rights there is no agreed definition of intellectual property right, we do not have an agreed definition. In fact, as I mentioned if you look a dictionary meaning intellectual property rights can be defined as rights that protect applications of ideas and information that are of commercial value.

So, one definition the rights that protect the products of creative Labour that is another definition you will find multiple definitions around this and some definitions would actually give you a list of things it is more like a grocery list; a list of things and say that these are all intellectual property rights for instance. The WIPO, which stands for World Intellectual Property Organization, which is an international organization under the United Nations which deals with intellectual property rights.

The WIPO has a definition on it is an expansive definition or which is more like a grocery list, it includes many things under the ambit of intellectual property rights. It talks about the things on which the rights are manifested and it also talks about the actual rights. Now you will find in the WIPOs definition that they talk about patents they talk about copyrights they talk about trademarks designs and similar rights.

The problem with the WIPOs definition is the WIPOs definition does not take care of the new and emerging intellectual property rights, there are some intellectual property rights that are emerging as we speak it does not take that into factor. Secondly, there is no yardstick by which you can understand intellectual property rights, it is simply not there.

So, we could come up with the definition of intellectual property right either as rights which belong to a particular nature which protects creative and intellectual products that come out of human labour or you could have a list of things on which an intellectual property right may manifest. But so the WIPOs definition is the definition which is an inclusive list and they could be new things that come into the list, but there WIPO definition does not offer apart from referring to it as products of creative labour it does not give us anything more for us to have a uniform definition for defining intellectual property rights.

Types of intellectual property rights intellectual property rights, there are many different varieties of intellectual property rights and they are distinguished by the nature of the product on which they manifested or the end product that comes out of human creative effort. When we pick the definition of intellectual property right to human creative Labour that itself creates some problems because, we have today something called geographical indications where no human creative effort is technically involved.

So, so but nevertheless when we talk about when we put the emphasis on human creative labour we are referring to the origin of intellectual property, because intellectual property originated through copyrights and patents that was the two initial rights that emerged. So, there are different types and each type refers to a different category of products, patterns are used for protecting inventions and when we talk about inventions we are referring to technological inventions.

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Definition of IPR

- Copyrights protect creative works (e.g. literary & artistic works)
- Designs protect visually appealing works & not their functional aspect
- Trademarks protect works/symbols which act as source indicator of goods/services
- Geographical indicators (GI) protect source of goods
- Trade secrets protect secret information related to trade.



Copyrights: copyrights are used to protect literary and creative works, literary artistic works soundtracks videos cinematography computer programs and a whole lot of things. Designs, designs are used to protect what can be distinguished by the eye for instance, the law of designs different from the law of patents, because designs are not used to protect something that is functional.

Designs are used to protect something that appeals to the eye something that is visually appealing to the eye, but does not have a function behind it. Trademarks, trademarks are used to protect words symbols that can be attributed to trade, geographical indications can be used to indicate the origin of certain goods trade secrets can be used to protect information relating to trade which the owner of the information wants to keep as a secret. And there are other intellectual property rights which we will discuss in some detail as we go by.