

Intellectual Property
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Lecture - 06
Defining IPR

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Defining IPR

- Subject matter
 - Invention – Protected by Patent
 - Expression – Copyright
 - Aesthetic Design – Registered Design
- Registration (Government)
- Exclusive Set of Rights
- Duration



We had seen that there are certain elements that together constitute the concept of intellectual property right, we saw the fact that the subject matter can be replicated it can be repeated; the fact that the right grants the right holder the option of enforcing it against others and we also saw other characteristics or traits of intellectual property right.

Now, one of the things in understanding or in defining intellectual property right, is to first understand the subject matter on which the intellectual property right will manifest itself on. Because, as I said earlier intellectual property rights are a group of rights which manifest on different expressions of ideas that is one definition of it. It also manifests itself on the new rights are not actually on ideas like a geographical indication is not actually on some idea, it is the fact that there are certain products that come out of a particular geography which are valuable and it is an attribution to the origin of from that place. That place may have certain special weather or it could have some climatic

conditions which makes the product or contributes the geography contributes to the product, so you identify the product with a particular place. Now, there is not much idea in what.

Student: Who will be the beneficiary of a geographical indication?

The beneficiary of a geographical indication does of the people are the community which uses it is right, the producers from that place the other they are the people who can use that Right for instance Darjeeling tea. The people who are having plantations in Darjeeling and who are actually in the manufacturing and production of the tea they can use that label to say that this tea is from Darjeeling, because the Darjeeling tea it has been found out that has certain properties which is not there for tree that is grown in core or in some part of Sri Lanka it is not there.

So, the people who are able to manufacture from that particular region can claim a GI a geographical indication. Now coming back to our definition, so we know an intellectual property by the subject matter on which it manifests itself. If an idea manifests itself in the form of an invention then that is protected by a patent, if the idea manifest itself in the form of an expression a literary work or an artistic work or a cinematographic work then that is protected by a copyright.

If the idea is an aesthetic design a design that pleases the eye with no functional component to it, it is just that it pleases the eye then we say that subject matter can be protected by a register design. Now to understand a register design I will give you this example, a shoe that is designed by a company like Nike or Adidas will have certain design elements which also contribute to the functionality, it makes it cut the air faster it grows it grip it gives certain support in certain parts of the foot, so those design elements have also a functional component.

So, we do not say such design should be the subject matter of a registered design because, they could be an aesthetic part to it, but if there is a functional part right holders will not go for a registered design. Whereas, if a shoe is designed to look like a bunny or a rabbit you know many children shoes are designed like a rabbit or like a character in a cartoon. In such cases we do not say that that design has a functional element we try to understand the scope of a registered design is for things that are aesthetically pleasing to

the eye and the test is what the eye can see. So, when functional elements are tied to the design Right holders normally do not go and get a registered design for it.

Student: (Refer time: 04:20).

They have multiple Rights first it is a trademark, then the thing can also be copyrighted the way it looks because, almost all Disney characters were at some point subject matters of copyright. So, you cannot create that image in any other form and that violates our copyright and copyright as you know is a life of the author plus 60 years in India. So, it is quite a substantial Right in defining intellectual property we first look at the subject matter. Then we look at the form by which it is protected. Now we said that intellectual property rights are intangible rights and it is sometimes difficult for us to ascertain the contours of this right the boundaries of this right.

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Registration

- Form by which IP is protected
- What the right holder has claimed
- Process by which IPR is recognised
- Backed by law
- Done by the Government



Registration is a way in which we can understand what the right holder has claimed, registration could be a registration of a patent specification by which a patent is granted. Registration could be registration of a literary work literary works can be registered though it is not mandatory for enforcement purposes, software code gets registered by way of a copyright trademarks are registered. So, registration is the process by which these rights become quote unquote official, it is recognized people can verify it and it is also because, it is backed by a law the trade marks act of 1999 is what gives the

trademark holder a right to enforce it the patents act 1970 gives the patent holder a right to enforce a granted patent against others.

So, registration is done by the government by or by the state, so registration confers sanctity over the intellectual property right. So, subject matter can vary and depending on the subject matter you can have different rights, kind type of registration the details of registration also varies because if you are filing a design a register design or a registered trademark; you are just filing forms and figures you know you are just filing some papers with some marks in it and the registry does a check and the registry if the check is cleared then you get your right.

It is more like matching what has gone before are there similar terms, then the registry may raise an objection if there are no similar terms you invented or you coined a word for the first time nobody else has done, it before most likely you will get the mark it is a straightforward process. Design again the design looks unique it is original and you are the first person to file that design it gets a registration.

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Patents Specification

- Has to explain the entire invention in detail including:
 - Working of the invention
 - Features
 - Advantages
 - Variations
 - What went before the invention
 - Illustration
 - Claims



But patents follow a different path the patent specification will have to explain in detail the entire invention and it is not just the invention the working of the invention the features of the inventions the advantages, the various variations in the invention and the right holder will also have to explain what went before the invention.

So, it is a narrative he explains his invention and he also before that he explains the background of the invention; what were the technologies before him and how it was not possible for a person skilled in the art which is his sphere to come up with this invention. But he with his inventive effort was able to come up with it, so it is a narrative which starts with the background art, then it goes towards describing the invention the purposes of the invention what are the problems the invention solves various other things and it also has embodiments illustration; how the invention works or what are the parts of an invention if the invention is a mechanical invention. And finally, it ends with the claims.

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Scrutiny by Patent Office

- Done in great detail
- First Examination Report
- Right holder is asked to justify his invention.
- Two types of Objections - Technical or Substantial
- E.g. of substantial objection:
 - Not patentable
 - Preceded in the art
 - Obvious for a person skilled in the art to do



So, this entire process of explaining the invention when it is captured in what we call a patent specification, the patent office does the job of not just registering it. It also scrutinizes the details in great depth now the scrutiny is done by giving a report to the right holder in India, we call it the first examination report the first examination report is given where the right holder is asked how he can justify his invention in the light of if there are any objections. But most likely there are if there are any objections either it could be technical objections or it could be some substantial objection.

If the patent covers a subject matter which is not patentable under the Indian law there will be an objection, if the patent covers something which is already preceded it in the art it is preceded, it is already come or the patent covers something which is obvious for everybody to do. In all these cases the office is going to raise these substantial objections

and these substantial objections it takes time to get over them. And this process of the office raising objections over a patent application is what we called patent prosecution and patent prosecution is a very detail and sometimes complicated processes.

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Patent Prosecution

- Process of raising an objection over a patent
- Different from other IP prosecution
- There is a lot of analysis is involved



Patent prosecution actually is different from a trademark prosecution or design right prosecution. In the sense that there is quite a lot of details involved, there is quite a lot of analysis of what the person says which goes into it before the right is granted.

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Copyright

- Right to print, publish, perform or record the subject matter
- Expression of idea
- Forms of expression be captured in a medium
- Right to make copies
- Copyright regime requires the work to be recorded or copied to some medium



So, registration is one of the key elements by which we can define intellectual property rights and registration itself varies just how the subject matter varies when it comes to different types of intellectual property rights. The registration process also varies when it comes to different types of intellectual property rights.

Then these rights offer a set of Rights intellectual property Rights be it patents trademarks copyright designs, they offer a set of rights it is actually a bundle of rights to the right holder and these bundle of rights also varies in the case of a literary work. The right may involve the right to print the right to publish the right to perform film or record the subject matter because, here is an expression of an idea and the all the forms of expression most likely which can be captured in a medium this is critical when you understand copyright.

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Set of exclusive rights

- Making copies implies a medium being there
- E.g. print is recorded on paper, films on tape
- IP rights first came up in the industrial revolution
- IP rights are commercially valuable
- Tied to an idea that can be shared, expressed or have an application out of it
- Industrial revolution was tied to ideas and dissemination of ideas



Because copyright is the right to make copies and when you are talking about the right to make copies where are you making those copies there is always a medium right. So, before copyright came I mean this is just before the industrial revolution, the world followed a means of transmitting knowledge what we commonly called the oral formulaic tradition.

Now if your children are studying nursery rhymes which you studied and which probably your parents studied in school, that is because of the oral formulaic tradition they are the

same ones which gets repeated over the years and this used to be a just before I mean the industrial revolution which is seen as a point in history where these rights came into being.

They were I would say remote instances of rights even existing before that some kings granting these rights, but the rights attained international recognition with the advent of the industrial revolution, there are reasons for that historical reasons we will get into it soon. So, before copyright actually came into existence or before copyright became a recognizable right, there was the oral formulaic tradition. The overall formulaic tradition was a tradition by which people just memorized things and passed it on to the next generation. Now if you do that technically are you violating a copyright because, now the medium is your mind you remember things in your mind and you pass it on to the next generation and the next generation or the person who (Refer Time: 12:45) from you he or she remembers in her mind memorizes it and passes it on.

So, the oral formulaic tradition unless the substance is captured in some medium can remain outside the purview of the copyright regime, because the copyright regime requires things to be recorded or expressed on some medium. So, print the medium is paper if it is film it is recorded on tapes or now it is digital, so you will understand that whenever we are talking about making copies it implies a medium being there.

We do not say that if you hurt somebody reciting a poem to you. And you if you memorized it you do not say that I made a copy of it, you do not use that even in common parlance we have different terms for that we would just say that I memorized it or I learned it by heart. So, this is a critical point that you need to understand and it has some history behind it.

In the sense that copyright when it evolved as a right if you look behind it or before it you will find that Europe especially had an oral formulaic tradition and there are enough number of studies which some of it say that 1 of the biggest beneficiaries of the oral formulaic tradition was Shakespeare. You know just before Shakespeare came in he actually inherited from a oral formulaic tradition and there are studies which say that some of the things that he wrote were already there in the oral formulaic tradition.

So, that was a point in history where the right became recognized and because of the industrial revolution it spread far and wide and the interesting revolution also contributed to it because, all the things that we were talking about intellectual property Rights or first emanated in the industrial revolution. We said these rights are duplicitous you can make multiple you can reproduce them if you have the first copy you can make multiple copies of it.

Industrial revolution actually mechanized manufacturing; it made producing many copies of products easier. Industrial revolution gave value to things because, they were manufactured in large numbers and entire industry of marketing came with the industrial revolution, before that people were not marketing the way or the scale in which they were doing.

This again is similar to what we discussed about intellectual property Rights, we say that intellectual property Rights are valuable Rights they are commercially valuable and intellectual property Right is tied to an idea which can be shared to others or which can be expressed or which can or you can have an application out of it.

If you just see the advent of industrial revolution, there are certain things that contributed to the growth of industrial revolution itself; 1 of the things include the advancement in printing technology. Now this lead to the quick spread of ideas because printing technology advanced and you could make copies of; what was disseminated big ideas great works could now be copied and it could be sent to other places and because of the invention of steel and our ability to cross the seas using ships which could withstand long voyages. We also found that people were meeting each other or crossing borders much at a much greater pace than they ever did in history and at a much bigger number and in Europe this actually led to the need to translate works.

So, when you found a new German philosopher coming up with his work or a German artist coming up with this work, you found quickly people translating them and that idea spreading in England. So, when people started moving that also contributed to them understanding each other and the entire the entire field of translation or interpreting other languages came up which also led to the quick spread of ideas. So, the reason why we take the industrial revolution as the point where in intellectual property rights, actually took off is it was tied to idea and it was tied to dissemination of ideas.