

Lecture 24: Copyright, Industrial Design and Integrated Circuits

Dear students, in this class today, we are going to discuss one of the most important intellectual property rights protection, which is copyright, industrial design, and integrated circuits. So, three topics are included in this particular class.

CONCEPTS COVERED

- **Copyright**
- **Berne Convention**
- **Term of Protection**
- **Basic Requirements of Design Protection**
- **Industrial Design**
- **Integrated Circuits**

And we will see basically what are the TRIPS obligations with regard to copyright and what are the other obligations which are coming through the TRIPS Agreement. So, in the last class and previous classes, we explained that the other international Agreements came through a back door entry to the TRIPS Agreement. One such Agreement is the Berne Convention and we will see some of the provisions of these and the terms of protection, then design protection, the basic requirements and the term of protection under the TRIPS Agreement and small provisions with regard to the integrated circuits and we will see these provisions elaborately.



COPYRIGHT



So, we first start with copyright. So, everybody has heard about copyright, but exactly what are the rights and obligations? This is the one intellectual property law, where right's violation can send you to jail. So, what are the punishments? Whether it is only civil or criminal punishments or penalties as well? So, what is copyright?

Copyright

- **Copyright or author's right is a legal term used to describe the rights that creators have over their literary and artistic works.**
- **Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, database, advertisements, maps, and technical drawings.**



So, copyright is considered, WIPO gives the definition which says that it is a right, it is a legal term used to describe the rights that creators have over their literary and artistic works. So, copyright is more leaning towards literary and artistic works. So, what is this literary work? Literary work includes books, music, paintings, sculptures, films, computer programs, databases, advertisements, maps, technical drawings, and I would say that simply whatever you write, you have a copyright. Whatever you have written with regard to music and other things, there are many people involved in a song, for

example, a film song. So, there are distinct rights with the musician, distinct rights with the singer of the song, and distinct rights with the owner of that particular song who owns the copyright. So, the author and owner may not be the same person. It can be two different people as well. So, all these are included under the copyright.

Copyright Infringement

- The Delhi High Court has issued summons to an Instagram account called **People of India (POI)**, in a copyright infringement suit filed by the storytelling platform **Humans of Bombay (HOB)**.
- POI tells stories of common people in a similar way to HOB, whose Instagram account has over 2.7 million followers.
- Observing that there was “substantial imitation” of HOB’s storytelling by POI and that, in some cases the photographs or images used on the two digital platforms were “identical or imitative”,



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So, this is a 2023 case, and there is a storytelling platform, which is a platform on YouTube and other places: Humans of Bombay. This Humans of Bombay platform has sued another storytelling platform, which is known as People of India. And Humans of Bombay filed a copyright infringement suit. So, when you look into this, nowadays everything is online in the digital world. So, we talk about books and story books, academic books and other books, now everything is in the digital world. So, then, when it comes to the digital world, copyright infringement becomes more important. So, this is basically, these platforms basically tell the stories of common people. So, both these companies, the People of India and Humans of Bombay, have similar interests. And for example, this one company have 2.7 million followers. So, this particular storytelling platform does not have a small number of followers. So, here the court’s initial observations are very important. The court observed that there is a substantial imitation of the HOB storytelling platform by the People of India platform, POI platform. So, this is a clear cut violation of copyright. So, the court observed that even the photographs images are identical or imitative. So, these are the very initial observations of the court, there is a prima facie case of violation of copyright. So, violation of copyright is a civil offence as well as a criminal offence. So, you have to pay millions of rupees as compensation as well as you may go to jail as well.

Delhi: Court orders former DU VC's arrest, issues warrant against post-doctoral student

Nov 25, 2014 at 04:18pm IST

Delhi: A Delhi court on Tuesday directed former Delhi University vice chancellor Deepak

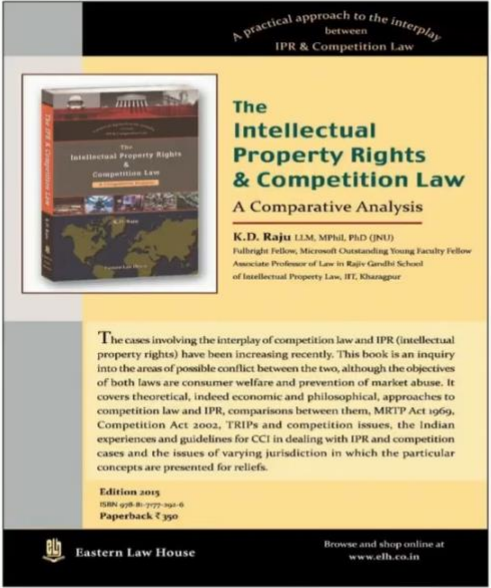
So, another news item you can see. So, once upon a time, in 2015, the Delhi High Court ordered the arrest of Delhi University's Vice-Chancellor and another student, for violation of copyright. So, we call it plagiarism, but plagiarism is nothing but copyright violation. So, you may end up in jail.

What can be protected using Copyright?

- **Literary works – novels, poems, plays, reference works, newspaper articles;**
- **Computer programs, database;**
- **Films, musical compositions, and choreography;**
- **Artistic works such as paintings, drawings, photographs, and sculpture;**
- **Architecture; and**
- **Advertisements, maps, and technical drawings.**

So, in this particular background, we can see what this copyright is. So, what are the ingredients of the copyright? What are the consequences of its violation? Literary works, novels, poems, plays, books, newspaper articles and now the entire digital world is protected by copyright, databases, computer programs and for computer programs per se, there is no patent protection in India. So, computer programs are protected under copyright. Films, musical compositions, any kind of artistic work, it can be painting, it can be drawing, it can be sculptures, it can be photographs, even architecture,

advertisements, maps, technical drawings and also databases, including even compilations of copyrights. So, even in a famous case, it was asked whether the Supreme Court judgments are copyrightable. So, the Supreme Court said that the Supreme Court judgments per se are not copyrightable, but if you add some value to it – value addition, you put ‘headings’, ‘analysis’, then it can be copyrighted.



A practical approach to the interplay between IPR & Competition Law


The Intellectual Property Rights & Competition Law
A Comparative Analysis

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The cases involving the interplay of competition law and IPR (intellectual property rights) have been increasing recently. This book is an inquiry into the areas of possible conflict between the two, although the objectives of both laws are consumer welfare and prevention of market abuse. It covers theoretical, indeed economic and philosophical, approaches to competition law and IPR, comparisons between them, MRTP Act 1969, Competition Act 2002, TRIPs and competition issues, the Indian experiences and guidelines for CCI in dealing with IPR and competition cases and the issues of varying jurisdiction in which the particular concepts are presented for reliefs.



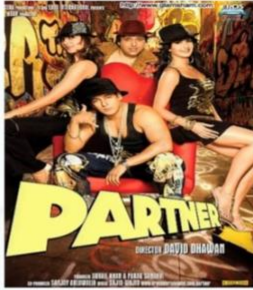
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So, this is my book on IP and competition law, and I am the owner of the copyright and as well as the co-author of the copyright. That means the copyright is with me. So, I have written this book. So, I am the author of this book, and the copyright is also with me. So, I am the owner of this particular book. I have 6-7 books, and in some of the cases, I am not the owner, I have given the copyright to the publishers, and I am only the author. So, there is a difference between the owner of the copyright and the author of the copyright.

- **Partner:** Govinda-Salman Khan-Katrina Kaif starrer *Partner* was a scene-to-scene copy of the Hollywood film *Hitch*.
- It was reported that Sony Pictures, copyright owners of the Will Smith starrer film, had sued the producers of *Partner* for **30 million dollars!**



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So, we can see some of the famous cases. So, as I already told you, copyright violations may end up in millions of compensations which you are supposed to pay. Here is one movie that is the the famous movie 'Partner'. So, ultimately, it was found that it was a scene-to-scene copy of the Hollywood movie 'Hitch'. So, Sony Pictures filed a copyright violation case and then the producers of Partner had to pay 30 million dollars. So, you have to pay a huge amount of compensation in violation of copyrights. So you may be inspired. So, usually, the film industry says that we are inspired by that particular story. You can definitely be inspired by the story, but you do not have any right to copy that story scene by scene. You cannot violate the copyright of other movies.

TRIPs and Berne Convention - 1886

- **The obligations of members with respect to standards concerning the availability,**
- **scope and use of copyright are given in Articles 9 to 13 of Section 1 of Part II of the TRIPs Agreement, including in the substantive provisions of the Berne Convention incorporated into the Agreement by the reference in Article 9.1.**



So, there is a connection, as I told you, many other agreements entered into the TRIPs Agreement, and one such Agreement is the Berne Convention of 1886. So, the Berne Convention's obligations are now incorporated into the TRIPs Agreement. So, the TRIPs Agreement says that the copyright obligations are given in Article 9 to Article 13 of Section 1 of Part 2 of the TRIPs Agreement and also the substantive provisions of the Berne convention. This means that most countries have not ratified the Berne Convention, but the Berne Convention has a backdoor entry into the TRIPs Agreement through these particular provisions. So, now, the Berne Convention 1886 is a part of the TRIPs Agreement, and we will see what those obligations are.

Berne Convention for the Protection of Literary and Artistic Works

- This Convention was adopted in 1886, deals with the protection of works and the rights of their authors.
- Under Berne Convention, creators such as authors, musicians, poets, painters, etc has been provided with the means of control on how their works are used, by whom, and on what terms.
- This Convention has been based on three basic principles, that determine the minimum protection to be granted and special provisions available to developing countries that want to make use of them.



So, here you can see that the Berne Convention was basically adopted for the protect of the works and rights of their authors. So, here, mainly, as I told you, the focus was on authors, musicians, poets, painters, etcetera. So, they have control over their works, whether to sell or license, and they have control over their works on what terms and conditions they want to sell it. So, the Berne Convention provided minimum protection. Which are the minimum protections granted? Special provisions are also available to developing countries that want to make use of them.

Basic Principles of Berne Convention. 1886

- **Principle of “National Treatment”** – works originating in one of the Contracting States must be given the same protection in each of the other Contracting States as the latter grants to the works of its own nationals.
- **Principle of “Automatic” protection** – protection must not be compliance with any formality.
- **Principle of “Independence” of protection** – protection is independent of the existence of protection in the country of origin of the work. If, however, a Contracting State provides for a longer term of protection than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ceases.



We can also see the basic principle in the Berne Convention. So, the national treatment principle is now applicable. So, that means, the same level of protection to be given to all member countries. So, that means, if India is providing a special treatment to any of the authors, then you have to give the same treatment to the foreign authors as well. Also, the

principle of automatic protection is that you need not register a copyright; the moment you have written something, the copyright is with you, and registration is required in order to prove in Courts. So, strong protection is required in the case of copyright through registration, but actually, there is an automatic protection. There is no need to register a copyright. The moment you have written something, you have the copyright with you. And also the principle of independence of protection, that is, the origin of the work, whether the protection is independent of the existence of protection in the country of origin of the work. So, now, all the member countries, all the 164 WTO member countries have to implement the minimum protection which is prescribed under the TRIPS Agreement and not the Berne convention, but the Berne convention provisions are entered through the TRIPS provisions, and in reality, the members now have to implement the Berne convention through the TRIPS Agreement.

Copyright

- **Art.9 - Berne Convention (1971).**
- **Computer programmes**
- **Art. 9.2 confirms that copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.**
- **Art.10.2 - Compilations of data or other material, whether in machine-readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such**



And some of the provisions, that you can see, of the Berne convention of 1971. Article 9 provides for the registration of computer programs. So, as I said, in countries like India, computer programs cannot be patented, but they can be copyrighted, and also the idea-expression dichotomy in copyright: copyright can be extended only to the expressions of ideas and not ideas per se that means, an idea cannot be copyrighted, only the expression of ideas can be copyrighted. In certain cases, the combinations of data, the combinations of materials, whether it is machine-readable or in another form, that means, databases in the digital form: this provision is applicable, that means a compilation of data also can be considered as an intellectual creation and the Article 10.2 gives protection to such combinations of databases as well.

Term of Protection

- Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the **life of a natural person, such term shall be no less than 50 years** from the end of the calendar year of authorized publication,
- or, failing such authorized publication within 50 years from the making of the work,
- **50 years from the end of the calendar year of making.**



The term of protection of copyright is provided in the TRIPS Agreement is the life of a natural person plus another; such term shall not be less than 50 years from the end of the calendar year of the authorised publication. That means a full lifetime of the author plus 50 years is provided in the TRIPS Agreement, and then again, you can see that countries like India provide 60 years. So, the life of the author plus 60 years. So, it is a TRIPS-plus obligation, protection is provided in India.

Exclusive rights of the Copyright holder under Berne Convention

- The right to translate;
- The right to **make adaptations** and arrangements of the work;
- The right to **perform in public** dramatic, dramatic-musical and musical works;
- The **right to recite** literary works in public;
- The **right to communicate to the public** the performance of such works;
- The **right to broadcast** (with the possibility that a Contracting State may provide for a mere right to equitable remuneration instead of a right of authorization)
- The **right to make reproductions** in any manner or form, as may be prescribed.
- The **right to use the work as a basis for an audiovisual work.**
- **Moral Rights**



And what are the rights under the copyright? So, the copyright owner gets the copyright, the right to translate, and the work right to make adaptations: adaptations to drama or music or whatever it is. So, the right of adaptation is with the copyright owner and right to perform in public, whether it is dramatic or musical works or performing rights, then right to recite literary works in public, right to communicate to the public, right to

broadcast and right to make reproductions and right to use the work as a basis for an audiovisual work, most importantly the moral rights. So, usually, we say that copyright is a bundle of rights; what is this bundle of rights? So, many rights are with the copyright. So, these bundles of rights are with the copyright owners.

Protection

- **The TRIPS Agreement ensures that computer programs will be protected as literary works under the Berne Convention and outlines how databases must be protected under copyright;**
- **It also expands international copyright rules to cover rental rights. Authors of computer programs and producers of sound recordings must have the right to prohibit the commercial rental of their works to the public.**
- **A similar exclusive right applies to films where commercial rental has led to widespread copying, affecting copyright-owners' potential earnings from their films; and**



And what is the protection? So, you can see that, for example, the TRIPS Agreement considers computer programs as literary works and the Berne convention also approved this. And also, Rental rights are another right with the copyright owner, for example, in the case of software or in the case of sound recordings. So, the right to prohibit the commercial rental of their works to the public. So, you cannot publicly play music which belongs to somebody else. So, in India, there are a lot of cases. Can you put these music or music albums in public meetings? So, and also you can see commercial rights, rental rights. So, all these are with the copyright owner.

Protection

- It says performers must also have the right to prevent unauthorized recording, reproduction and broadcast of live performances (bootlegging) for no less than 50 years.
- Producers of sound recordings must have the right to prevent the unauthorized reproduction of recordings for a period of 50 years.

And also we can see the protection, we already said that, it is the life plus 50 years which is provided under the TRIPS Agreement and the unauthorized productions for a period of 50 years, recordings and music, unauthorized reproduction for 50 years is prohibited. So, the life of the author plus 50 years is the period of protection.

Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations. Art. 14

- **Without authorization** - fixation of performance on a phonogram.
- **Reproduction**
- **Without authorisation** – broadcasting by wireless means and the communication to the public of their live performance.
- **Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.**

And then you can see neighbouring rights. So far, we have talked about the copyright, and now we are going to talk about the neighboring rights, the neighboring rights of people those who are associated. So, who are these person associated with the neighbouring rights? Performers, musicians, singers, producers of phonograms, that are, sound recordings, and broadcasting organizations. So, it means that a performance of phonograms without authorisation is a copyright violation – it is a reproduction. The term “without authorization” is very clear that by any means, including now broadcasting,

everybody knows that is through the satellites or up to the life of performances. So, phonograms and indirect reproduction of their phonograms are also a violation of copyright.

Copyright Provision under Indian Law

- **Copyright and related rights (Section 1)**
- **Provisions of Berne Convention incorporated**
- **Computer programs** are protected as literary works (art.10)
- **Data compilations** are protected as such (art.10)
- **Minimum 50-year term for copyrighted works after the death of the author (art.12)**
- **India – 60 years**



So, if you take the Indian provisions: yes, we have a copyright law and now the provisions of Berne convention are incorporated in it. Computer programs are protected, data combinations are also protected, and India provides a TRIPS-plus protection to copyright and life of the author plus 60 years, whereas 50 years is provided under the TRIPS Agreement. So, in short, I would say that we have given a few examples. Copyright protection is a very strong tool to protect the intellectual property of every author on literary and artistic works and which gives a bundle of rights. Copyright is a bundle of rights, and the remedies and enforcement are also very strict. Remedies and enforcement are also harsh when compared to patent enforcement. Here are civil remedies as well as criminal remedies, and the person will go to jail. So, we saw some of the examples. So, for violation, we simply say that it is plagiarism, it is not plagiarism, and people have to be very careful, and the TRIPS Agreement gives the minimum protection. The TRIPS Agreement gives the minimum standard of protection of copyright. Now, we go to industrial design and what do you mean by industrial design? What are the designs? Whether every design can be registered. What are the prerequisites for registration of design? What kind of designs can be registered and what are the advantages of design registration?

Industrial Design



So, here, mainly is the industrial design, the focus is on their aesthetical shape or look or ornamental aspects. So, it can include 3-dimensional features or 2-dimensional features, or it can be the shape of articles and patterns, lines, colours, and even packaging, shape, textile designs. So, we can see that a design can be in different ways.



Tricycle prototype designed for disabled children would be fun and functional for any child. (Photo courtesy medgadget.com)



Few new designs on the market are truly exceptional in form. Unlike this extraordinary evening gown by Pierre Cardin, 1988.



So, here you can see two examples of design registration. So, one is a prototype of a tricycle and another is a design of a dress. So, both are registerable; the complete design of a product, a tricycle and the design of a dress material can be registered. So, here you saw, the difference between these two. So, it can be an industrial product or a textile product. So, the market is always looking into this kind of new design.

Design

- a design means the overall appearance of a product. This includes the shape, configuration, pattern and ornamentation which, when applied to a product, give it a unique visual appearance.
- A product is anything that is manufactured or handmade.
- Importantly the mechanics of how a product works or operates is not protected by design law, but may be protectable as a patent.



So, if you look at the design, you can see the overall appearance of the product. So, this can be shape, configuration, pattern, or ornamentation when it is specifically applied to a product. So, that means it should give a unique visual appearance. So, if something is new, aesthetic, or giving a new visual appearance, then it can be registered as an industrial design, and the categories can be either it can be manufactured, even handmade or any product. So, we can see that, we are not looking into how that particular product is working, but we are only looking into the design of that particular product. So, the product as such may be registered as a patent, but the design can be separately registered as an industrial design as well. That means multiple intellectual property protection can be on the same product.

What is an Industrial Design?

- The **ornamental or aesthetic features of a product**. In other words, it refers only to the appearance of a product and **NOT** the technical or functional aspects.
- Any composition of **lines or colour or any three dimensional form** whether or not associated with lines or colours; provided that such forms or composition **gives a special appearance** to a **product of industry or handicraft** and can serve as a pattern for a product of industry or handicraft



And you can see very clearly, the industrial design's focus is on ornamental, aesthetic features of a product or the very simple appearance of a product. So, the design registration does not focus on the technical aspects or the functional aspects. It only looks at the ornamental or the aesthetic features. So, it can be simple colours, it can be a 3-dimensional form, it can be a 2-dimensional form, and it can be patterns or lines, colours, or a combination of these, or a combination or compositions giving a special appearance. So, for example, if the shape gives a handicraft product a new look, new ornamentation, or a new aesthetic look, then that handicraft can be registered as an industrial design.

TRIPs Obligation – A.25

- **Members shall provide for the protection of independently created industrial designs that are new or original.**
- **Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features.**
- **Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.**



And also, you can see the TRIPS Obligations are provided in Article 25, which is the standard of industrial design protection. So, it says: independently created industrial designs that are new or original. That is, the condition provided in the TRIPS Agreement. Very simple: new or original independently created. But if you have independently created from an already existing one, then also it is registerable. That means you may not have referred to the earlier creation; independently created new designs can also be registered. Also, you can see if it significantly differs from non-designs; if it does not significantly differ, then there is no registration. It must be a significant difference and also independently created. Then only you get a design registration. Also, the technical or functional considerations are not the concern of design registration. So, design registration is basically looking into the aesthetic aspect.

Three Dimensional Design



So, you can see the various 3-Dimensional designs, it can be a car design, it can be a chappal(sandal) design, it can be a bottle design, even a small clip. The shape of the clip is not the functional aspect, but the shape the shape of the chappel, the shape of a small stool. So, you can see the shape, it can be registered. So, even though they may be highly different from each other, the aesthetic aspect, the visual appearance, if it is new, then it can be registered as an industrial design.

What kind of products can benefit from industrial design protection

- **Industrial designs are applicable to a wide variety of products of industry and handicraft items:**
 - **From packages and containers to furnishing and household goods;**
 - **From lighting equipment to jewelry; and**
 - **From electronic devices to textiles.**

So, industry design protection basically provides these shapes, patterns, packages, containers, furnishings, household goods and I would say even textured products. So, we have registered three textile designs from the state of Odisha, in the Kolkata design office. So, the textile designs can also be registered. And jewellery, electronic devices, textiles - I have already said that all these designs can get benefit out of registrations.

Protection of Industrial Designs

- These industrial design laws grant – without registration/ time/ scope limited protection to so-called “unregistered industrial design.”
- Moreover, under WIPO, depending on the particular national law and the kind of design, industrial designs may also be protected as works of art under copyright law.

And also, you can see that there can be unregistered industrial designs. Then, all these protection is not available. So, it depends upon the national law, India also enacted a new law, a new design law. So, whether this is protected under copyright law or design law, the domestic laws will decide. For example, this particular design is put on a paper: whether it can be copyrighted or not, it is always copyrightable, and it will depend upon the law, in accordance with the domestic law of the country. So, there can be copyright, there can be design as well, and design registration as well, but a paper design cannot get a design registration. So, you get only a copyright.

Indian Designs Law – (Designs Act, 2000)

- Design is not the article.
- **Article:** an article of manufacture and any substance
 - wholly natural or artificial or partly so,
 - capable of being made and sold separately
- Design is not a trademark
 - design is integral to the article; trademark is not necessarily so.

Also, there is a minimum of 50 industrial productions needed, a minimum of 50 copies to be made for getting registration for industrial designs. So, here it is natural products, artificial products. And it says that the design is not the article, the article is different

from the design, and the design is not a trademark, and the trademark is different from the design. Design is an integral part of the particular shape, and appearance of a particular product and has nothing to do with the patent, the technical functions, or, you can say the trademark.

Design Registration

- **Design must be**

- **new or original**

- **original means originating from the authors; include old designs with new applications**
- **novelty judged on world wide basis**
- **design must not**
 - **be contrary to public order or morality**
 - **contain scandalous/obscene matter.**



So, regarding design registration, as I told you, India also adopted the same qualifications: new, original and substantial changes from the old designs. Novelty: now the novelty criteria is applicable to designs as well. So, the only exception is contrary to public order or morality, scandalous, obscene matter cannot be registered as a design. Otherwise if you comply with the basic obligations, it can be registered.

Designs - Infringement

- **Others prohibited from using the design without permission of the proprietor, or his licensee or assignee.**

- **applying a design by a person when the design has lapsed, **even temporarily, is not infringement.****



Then, design infringement. So, you cannot violate the design of others without permission, license, or purchase in case of assignment. So, you cannot copy somebody

else's design. If the design has expired temporarily, it is not an infringement. That means, once it expires, it is in the public domain. So, if you do not renew the registration of designs there is no violation.

Designs – Infringement (Contd.)

- **Activities amounting to infringement**
 - **applying the design or any fraudulent imitation of it to any article, in any class in which the design is registered for sale;**
 - **importing for sale any article belonging to the class in which the design is registered and applying to it the design or its fraudulent imitation;**
 - **to publish or to expose for sale any article in any class in which the design is registered, knowing that the design or any fraudulent imitation of it has been applied to the article.**

So, in the infringement, you can see that fraudulent imitation. So, you can see the first one that is imitation, deception, imitation of the article, imitation of the registered design amounts to infringement. Then again, the sale of that particular article belonging to the same class. So, fraudulent imitation, publishing and exposing for sale any article in the class in which that particular design is registered, knowing the design or any other product, again fraudulent imitation. All these will be considered as fraudulent imitation.

Designs – Penalties for Infringement

- **Damages and injunction as decided by the competent Court in a Civil suit;**
- **Up to Rs.25,000/- recoverable as a contract debt for every contravention, subject to a maximum of Rs.50,000/- in respect of any one design.**

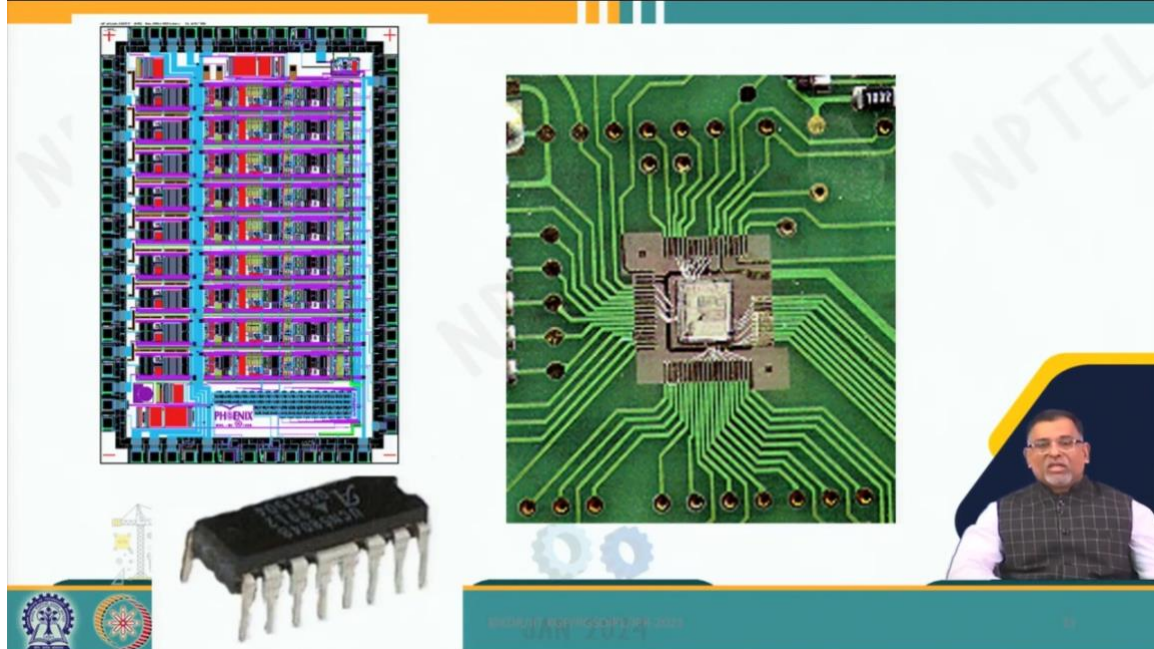
Then you can see the damages: civil suit. You can also see the fine of up to 25,000 recoverable as contract debt for every contravention and a maximum of 50,000 with

respect to any one design. So, a civil suit can be filed for compensation and damages in case of the violation of designs.

layout-designs (topographies) of integrated circuits



So, I would say that design registration has nothing to do with patents, copyright, or trademarks. So, it is an independent category of intellectual property rights. So, it basically focuses on the aesthetic aspect of the appearance of the design and the TRIPS Agreement puts very minimum conditions. Next are the layout designs and topographies of integrated circuits, another category of intellectual property law protected under the TRIPS Agreement. What are layout designs?



Layout designs are of different types. Now, there are no electronic goods without integrated circuits. So, these layout designs are to be protected; otherwise, the imitation

will be there, fraudulent imitation will be there, and the people who invented them have no incentive to make them.

Circuit layout rights

- **Circuit layouts are the layout designs or plans (topographies) of integrated circuits used in computer-generated equipment. They are sometimes referred to as computer chip or semi-conductor chip designs.**
- **A circuit layout is a two-dimensional representation of the three-dimensional location of electronic components in an integrated circuit.**
- **Circuit layouts are usually highly complex and the intellectual effort in creating them is considerable and may be of great value. An integrated circuit or chip made from a layout is vital in all kinds of electronic devices, from pacemakers to personal computers.**



So, layout design rights or circuit layouts. So, these are basically topographies of integrated circuits, and every computer-generated piece of equipment uses them. So, you can call it a computer chip, you can call it a semiconductor chip design, or it can be a layout design as well. So, it is a two-dimensional representation of the three-dimensional location of electronic components in an integrated circuit. So, it is a board, and the various materials on that particular board connect each other. So, it is the circuit layout. So, the circuit layout determines the functions, which is of great value for electronic equipment, whether mobile, laptop, or electronic good. So, an integrated circuit or that particular chip layout design is very important for electronic devices. So, all electronic goods work with these layout designs and computer chips. So, without this, they cannot work.

Protection to Layout Designs of Integrated Circuits

- **An integrated circuits is an electronic device that incorporates individual electronic components within a single “integrated” platform configured to perform an electronic function.**
- **The protection of layout designs of integrated circuits (“topographies”) in the TRIPS Agreement is provided through the incorporation of the Washington Treaty on Intellectual Property in respect of Integrated Circuits.**
- **But, in general, layout designs of integrated circuits are commonly protected under patents.**



So, the protection is given to the topographies in the TRIPS Agreement and the integrated circuits. So, it incorporates individual electronic components within a single integrated platform, so many electronic goods are in a single integrated platform, and that is the integrated circuit, and it definitely performs an electronic function. So, topographies in the TRIPS Agreement are provided incorporating following the Washington treaty, the Washington treaty on intellectual property in respect of integrated circuits. So, this International Agreement, the Washington Treaty on intellectual property in respect of integrated circuits, is also a backdoor entry through the TRIPS Agreement. So, otherwise, the entire equipment in a layout design, which leads to a function such as hardware and with software or the entire board, is protected under patents in many countries. So, the topographies and layout designs are protected as a category of intellectual property law under the TRIPS Agreement.

A.35- Obligations

- **Members agree to provide protection to the layout-designs (topographies) of integrated circuits (referred to in this Agreement as “layout-designs”) in accordance with Articles 2 through 7 (other than paragraph 3 of Article 6),**
- **Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits**



So, Article 35 very clearly says, the members to provide protection to the layout designs that is the layout designs of integrated circuits, layout designs and in accordance with the so and so provisions. Article 16 of the treaty on intellectual property in respect of integrated circuits is a part of the TRIPS Agreement to provide protections which are provided in that Agreement to all the providers of that particular Agreement as well.

Protection is against...

- **importing,**
- **selling,**
- **or otherwise distributing for commercial purposes a protected layout-design,**
- **an integrated circuit in which a protected layout-design is incorporated,**
- **or an article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout-design.**

But identical design created independently by third party is not prohibited.



Here, we can see that the protection is mainly against importing, selling, and distributing for commercial purposes and protected layout design. In integrated circuits, the protected layout design is particularly incorporated. The article that incorporates such an integrated circuit and that continues to contain an unlawfully reproduced layout design. So, the action can be against any kind of reproduction without permission. But another provision says that an identical design can be created independently by a third party, which is not

prohibited. So, that means identical creation of any layout design independently. If you create, it is not a violation, it is not an infringement of the layout design; otherwise, it is a violation or an infringement of the design. So, this layout design is one of the least protected intellectual property in many of the places because most of the countries do not pay much attention to the protection of layout designs. Because every country purchases these layout designs, maybe from China and other places, they import them, and they incorporate the electronic things, and they make the board according to their functions and incorporate them into other hardware. It can be a machine, it can be a vehicle, it can be so and so forth. So, the protection is mainly against importing, selling, distributing, and reproducing layout design.

Protection under India (Layout Designs)

- **In India, original layout-designs of semi-conductor Integrated Circuits (Ics) are protected under the provisions of the Semi-conductor Integrated Circuits Layout- Designs Act (SICLDA) 2000.**
- **The objective of this Act, is to fulfil India's obligations with respect to the TRIPs Agreement (Art. 35 to 38) regarding the protection of Semi-conductor integrated circuits layout-designs.**



India also passed an Act in 2000, the Semiconductor Integrated Circuit Layout Designs Act of 2000, which completely incorporates the provisions of the TRIPS Agreement. And now semiconductor and layout designs are also protected in India as well under this particular legislation.

S.6, layout designs, A.35

- **In Members requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of **10 years** counted from the date of filing an application for registration or from the first commercial exploitation.**

Members can go to the layout designs office and register their layout designs, and the protection term is 10 years. So, 10 years, which can be renewed. Most of the intellectual properties can be renewed from time to time, other than patents, patent is fixed for 20 years. Otherwise, it can be renewed from time to time. So, layout design protection is available in India as well.

Conclusion

- **Intellectual Property rights is a monopoly right, which is circumscribed by limited duration.**
- **The concept of IPR is socially useful activity, that needs State's encouragement to spur:**
 - Creativity
 - Social Welfare

So, in conclusion, I will say that these three categories of intellectual property law, one is copyright, copyright is the most important and a very strict implementation is provided under the copyright. And it protects all kinds of artistic literary and artistic works. That gives a complete monopoly comparatively compared to all other intellectual property; copyright has the longest protection given that is the lifetime of the author plus 50 years prescribed under the TRIPS Agreement and countries like India give 60 years. There are

civil remedies as well as there are criminal remedies, and we saw examples where people can be sent to jail for the violation of copyright.

Secondly, industrial designs: industrial designs are basically focusing on an independent category of intellectual property, looking at the appearance, the aesthetic aspects, the patterns, colours, and combinations, and it is not looking into the function. It is looking into the aesthetic aspect or ornamental aspect of a particular product, which can be a handicraft and an industrial product as well. So, the industrial designs protection is also available, as I already said that it is available to the textile designs as well. And violation: theft of film stories, theft of dissertations, theft of designs, textile designs, you may end up paying in millions, millions of compensation.

Then layout designs: the minimum provisions are provided under the TRIPS Agreement. So, intellectual property, even though it is a monopoly right and definitely the minimum rules, minimum term of protection is prescribed under the TRIPS Agreement. So, this is mainly for social welfare, societal welfare and societal good; the concept of societal good is to encourage society for other innovations. I would say that all these three categories of intellectual property law help the creator innovator to keep up with his innovative work for a limited period of time, and copyright is the longest-term protection provided. And in the next class, we will see the other categories of intellectual property law that is geographic indications and trade secrets.

Thank you.