

IPR Certificate Course

(Free Reading Material)

Background of Property

Intellectual property can be described as an extension of the concept of property. So, before understanding intellectual property rights (IPR), we need to make sure that our ideas about the concept of ‘property’ are clear.

In simple terms, property can be described as something that we can own and / or possess. A person’s property can be described as the rights that he or she has over the object of the property. For example, if I have a table in my property, I have the rights to use it however I like, to destroy it, or to give it away to someone else. This concept of rights can also be described as *Jura in Re Propria*, which means the rights a person has over his own property. The subjects of these rights can be both material or immaterial objects, which we will now study in detail:

- **Corporeal Property / Tangible property / Material Objects:** This section of the property deals with real or tangible objects, like those we can see and touch. The ownership and trade of these properties is an age-old practice, almost as old as the human civilization itself. Mainly land and chattels are considered to be under this kind of property, and based on their nature, it can be further divided into

moveable and immovable property. There are various laws dealing with corporeal property, like the Sale of Goods Act, 1930, the Transfer of Property Act, 1882, the Indian Contract Act, 1872, etc.

- **Incorporeal Property / Intangible property / Immaterial Objects:** This is the type of property, where the object cannot be perceived by the external senses of vision or touch. The subject matter of this kind of property is intangible, like patents, copyrights, trademarks, etc., and the rights over them fall under the category of intellectual property rights. The various laws dealing with this section are the Copyright Act, 1957, the Patents Act, 1970, etc.

Intellectual Property Rights

As we read before, intellectual property rights are the rights over an intangible object. It can be said that the objects of intellectual property rights are the creation of the intellectual capabilities of a person, which then becomes his intellectual property. Thus, the types of these properties are somewhat different from other properties like lands or cars, however, the rights concerning them behave in a similar manner to tangible properties¹. For example, if you are an expert woodcarver and create a memento by carving wood, that is your property.

¹ WIPO What is Intellectual Property, *available at:* https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf (last visited on June 5, 2020).

At the same time, if you write a poem to impress a friend, that is also your intellectual property.

However, ownership regarding intellectual properties also becomes somewhat more complex than tangible properties. We can say that the creator of any intellectual property would be its owner. For example, J. K. Rowling holds the IPR for the Harry Potter books. When you buy the books, the tangible book is your property, but not the story itself. In a similar way, the rights of a painting rests in the painter, of a patent in the designer, etc. We will study more about the different types of intellectual property in the subsequent sections.

In the age that we live in, you can observe multiple examples of intellectual property in your daily life. From the books you read to the software you work with, from the Netflix shows that you binge to the songs you unwind to, all of these are intellectual properties of their creators. So, it is crucial that as vigilant members of society, you learn more about how these rights operate.

Types of IPR

Now that we know the basics of intellectual property rights, you may be wondering, what types of works would come under IPR. There are different laws that deal with IPR in India, which we will discuss later in detail. But first, it is

important to know which types of works would come under their protection.

Some of those would be²:

- **Literary works:** This category would include things like books, magazines, journals, newspapers, articles, leaflets, etc.
- **Paintings:** The different types of paintings like sketch, oil painting, charcoal drawing, digital paintings, and also various maps, charts, and plans would fall under this category.
- **Photographs:** Photos taken used any kind of digital or non-digital camera would be protected under IPR as well.
- **Films and TV:** Films, TV series, web series, documentaries, short films, etc. would come under this category.
- **Sound recordings and radio broadcasts:** The recording of any song, speech, or any sound recording, whether or not they are broadcasted at the radio, would be protected in this category.
- **Architectural works:** This category contains architectural designs and other such innovative works.
- **Scientific works:** Scientific works, formulas, designs, theories, etc. are protected under this branch of IPR.

² Shah Ishfaq, "Intellectual Property and Its Various Types", Legal Service India, *available at*: <http://www.legalserviceindia.com/legal/article-681-intellectual-property-law-and-its-various-types.html> (last visited on June 5, 2020).

This list is by no means exhaustive, and there are a number of objects which can entail IPR, but do not fall under any of these categories. Plus, there may also be some areas which fall under a combination of two or more of these categories. For example, a song may have different IPR owners for its lyrics, melody, and sound recording.

Significance of Protection

Now, you may be wondering why do we need to go through so much hassle to design laws related to IPR protection? Surely, movies, books, games, etc. should be free for everyone to access and enjoy, and in this way, people would have access to a tremendous amount of free knowledge. But there are a number of reasons why it is important to protect IPR, and without those protections in place, the world may lose out on a significant amount of intellectual property altogether.

- **Economic gain:** One of the most important reasons behind IPR protection is that it allows for economic gain. While the owner of the property surely benefits from the protection, it is also the society and the world at large who benefit from the same. For example, Stephen King is the author of a number of best-selling novels. By ensuring the copyright of those books, he has a way of being paid for his work, and can maintain his livelihood while solely focusing on writing. At the same time, it is not only he who

monetarily benefits from his work, but his publishers, illustrators, distributors, book sellers, etc. a number of people can earn via the same. If there was no compensation, surely Mr. King would not have continued to write so many books.

- **Expansion of knowledge:** Another important factor is that due to being motivated by the name and fame that come with IPR, a number of people tend to work harder to invent, write, and create new things. Without such incentives, there would be no motive for people to work on intellectual property creation, and they might be busier in doing something to support their daily lives. As a result, we would miss out on a number of wonderful books, paintings, songs, films, software, etc.
- **Advancement of society:** As a result of the intellectual property that are being invented, there has been a great deal of development in the overall society. In the short amount of time since the twentieth century itself, there have been so many amazing inventions which we use today for almost everything. The cell phone, television, computer, internet, etc., all of these are recent examples of intellectual property, which have changed the world. It is scary to think where the world would be right now, without the support of so many wonderful examples of intellectual property.

Origin and Development of IPR Laws

Even though laws related to IPR are a fairly recent development, that does not mean that people did not have a concept of intellectual property before that. Even in the ancient Greece, you can see examples of monopoly rights. When a cook of ancient Greece would invent a new recipe, he or she would be given monopoly rights to cook, sell, and distribute based on that for one year. This is somewhat same to the modern concept of IPR, where the owner would have exclusive rights over the intellectual property for a certain amount of time.

In both Greek and Roman empires, craftsmen would also leave a mark on their creations. These marks would act to signify that the item was made by the concerned craftsman, who would usually have a reputation among the customers. The current idea of trademark also acts in the same way.

The ideas related to IPR took on a global level primarily through the Paris Convention and the Berne Convention. The first Paris Convention was conducted in 1883, and was signed by 11 states. There have been many revisions from then on, and in its current form, Paris Convention encompasses various intellectual properties like patents, trademarks, industrial design, etc. Currently, it has 177 countries as members. The Berne Convention was also conducted around the

same time, in the year 1886, and deals with literary and artistic works and their alterations. So, books, songs, movies, etc. all come under this Convention³.

In India, the concept of IPR was introduced by the British⁴. The various English laws related to them, like the English Copyright Act, 1872, the Patent and Design Protection Act, 1872, etc. were all made applicable to India. But the intention behind enacting those was to ensure that the intellectual property of the British was secured, and there was not much emphasis on providing IPR to the Indians' creations⁵. However, India has come a long way since those legislations, with there currently being a number of Acts dealing with various components of Intellectual Property. These Acts are:

- The Copyright Act, 1957
- The Trade Mark Act, 1999
- The Patents Act, 1970
- The Designs Act, 2000
- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- The Semi-Conductor Integrated Circuits Layout Design Act, 2000
- The Protection of Plant Varieties and Farmers' Rights Act, 2001

³ WIPO International Treaties and Conventions on Intellectual Property, *available at*: <http://www.wipo.int/export/sites/www/aboutip/en/iprm/pdf/ch5.pdf> (Last Modified August 12, 2017).

⁴ Fa-Chang Cheng, "Legal Protection of Intellectual Property: The Changing Attitude of US and its Influence on Taiwan", 18 *Journal of Intellectual Property Rights* (2013).

⁵ S. R. Myneni, *Law of Intellectual Property* (Asia Law House, Hyderabad, 6th edn., 2012).

Scope

As we have read before, the concept of intellectual property is very broad, and almost anything that is born of a person's intellectual capabilities, can be considered as an intellectual property. Still, because we have to classify them under various heads to create efficient laws, there are some specific heads that fall under the concept of intellectual property. You may be wondering what those are, and how you would classify various types of intellectual property. That is what we will read under this section, as it will discuss the scope of IPR.

- **Copyright:** Most of you may already know the basics of copyright, and we discussed it in brief in the previous module as well. Once the creator makes an expression of his or her ideas, that can be in many kinds of forms, that would be covered under copyright. The various kinds of works covered under copyright are literary works (books, articles, reports, etc.), dramatic works (theatres and plays), musical works (music, sound recording, etc.), artistic works (paintings, photographs, and so on). This list is by no means exclusive, and a number of other kinds of works may also come under this head.
- **Trademark:** Trademark is that symbol of authenticity, that is primarily used for business purposes. The provider of certain goods or services can choose to put a trademark to distinguish those from other similar goods and services, and to ascertain that they are at a certain level of quality. So, you

can say that the purposes of trademark are manifold. It identifies and distinguishes the product, and at the same time, for a number of brands, also acts as a kind of advertisement. Once a business has gained a certain amount of fame and goodwill, its trademark becomes something that brings in loyal customers. For example, many of you might be reliant to a number of brands – like, GAP for clothes, Apple for technological needs, etc. Their trademarks act as points of attraction in these cases.

- **Patent:** Patents mostly relate to inventions, and allow the inventors to gain monetary benefits for their works. The holder of the patent can manufacture, use, and license his or her invention in any way, given that it is in accordance to law. This is also an exclusive right, and no person other than the holder of patent would have the rights to take any of these actions. But there is a test of patentability which we will learn more about later, that is needed be fulfilled to patent any product. Also, not only scientific inventions such as objects, but scientific processes can also be patented under this sector of IPR⁶.
- **Geographical Indication:** This is a rather new variant under intellectual property law, but it is gaining popularity very rapidly. Under this section, the geographic location of a certain product or service acts as an intellectual property, because of its special qualities. For example, most of you have

⁶ Beatrice Dumont and Peter Holmes, “The Scope of Intellectual Property Rights and their Interface with Competition Law and Policy: Divergent Paths to the Same Goal?”, 11 *Economics of Innovation and New Technology*, 149 (2010).

probably used or heard about Darjeeling Tea, which comes under GI. Any tea marketed under the name of Darjeeling Tea has to originate in that location exclusively, because there are some special properties and qualities that are found in the tea that is grown in the Darjeeling region. As you can see, the GI tag acts as an advertisement about the product's quality and reputation as well.

- **Plant Variety:** Many of you may not have heard about this particular intellectual property, because it is still in its developing stages. In the era of rising population, it is necessary that new varieties of plants are bred and carefully cultivated, so that they can provide for higher yielding or better quality produce. For that reason, plant breeders work in producing new and innovative kinds of plants. To ensure that such breeders are provided protection and compensation regarding their works, this brand of intellectual property is fast becoming popular.

Salient Features

Intellectual property rights have certain characteristics or features, that are somewhat different from the rights related to tangible property. These exclusive characteristics happen due to the unique nature of intellectual property. As you have already read, from its origin to its subject matter, almost everything is different from the physical kinds of properties that are used to. We will now discuss in detail some of these features.

- **Negative rights:** IPR is more of a negative right or a series of negative rights, than it is a positive right. The owner of the IP, while he or she has the right to use the property itself, IPR finds fruitfulness in its negative aspect, which is the inability of other people to use the concerned property. For example, the author of the popular book *The Lowlands*, Jhumpa Lahiri herself, would not need any particular recognition or assertion to read, distribute, or otherwise use the book that she wrote. However, her copyright is used to prevent other people from doing the same.
- **Exclusive rights of owner:** Complimentary to the previous point, IPR also provides exclusive rights to the owner to do certain acts related to the property. These rights are available only to the owner, and no one else, if the owner does not license the rights to other people. For example, in terms of copyright, the exclusive rights include the right to make copies (reproduction), distribute, to make further works based on it (derivative works), etc.⁷.
- **Assigning or Licensing:** We have read in the previous points that the owner has exclusive rights over the IPR, and he or she exercises negative rights over all other people. But what happens when the owner wants other people to manufacture and sell the product? In these situations, licensing or assigning of copyrights can be utilized. For patents, trademarks,

⁷ The Copyright Act, 1957 (Act 14 of 1957), s. 14.

copyrights, etc., the owner can assign his or her rights to other people. However, there are certain rights (economic and moral rights in copyright, for example) which can not be assigned. Licensing works in a similar way, except it allows the licensee more rights than an assignee. Essentially, the licensee has the same footing as the original owner for the license period.

- **Validity:** All intellectual property rights operate for a certain amount of time. Otherwise, if the creators were allowed to benefit from their IPR for eternity, new knowledge and technology would turn out to be extremely expensive in the society. For example, copyright operates for the lifetime of the author, and for 60 years after his or her death⁸. Other intellectual properties also have such set boundaries.
- **Principle of exhaustion:** Think about this for a second. You have bought the latest Game of Thrones book from the shop, and once you are finished reading it, you lent it to a friend. Can George R. R. Martin sue you in that case for copyright violation? The answer is no, because of the principle of exhaustion. This principle essentially states that once a product is put in the market, the IPR owner loses certain rights related to the product⁹. A similar concept would apply to if you want to re-sell a hand book that you have, which allows the second hand book market to thrive in India.

⁸ The Copyright Act, 1957 (Act 14 of 1957), s. 22.

⁹ Exhaustion of Intellectual Property Rights, *available at*: <https://synchlaw.se/exhaustion-of-intellectual-property-rights> (last visited on June 11, 2020).

Purposes

Now, you may be wondering what are the actual purposes of IPR, that can benefit a common person such as you and I. We have read about the benefits of IPR in the previous module, but those mainly talked about the benefits on a broader scale, that a society as a whole may receive. But, efficient IPR laws are also immensely beneficial for the citizens, which we will now learn more about.

- Value of ideas: IPR laws ensure that for the valuable ideas that a person might have, he or she is properly rewarded for the execution. This is essentially the concept based upon which so many start-ups are thriving in the modern Indian economy. If anyone was allowed to use the products or services that a start-up offers based on the novel idea of its creators, no one would invest in inventing new things. Thus, IPR can allow your idea to turn into an asset.
- Creation of market: For particular kinds IPR, like trademark, they can also help in the marketing and advertising of the product, and in this way, create a loyal customer base. Imagine for a second that you went to the supermarket, and none of the jars and boxes on the aisles have any distinctive packaging, mark, or logo. The contents of the packs might be the same, but in this way, brand loyalty cannot be formulated. For generations, we have associated certain products with their logos, marks,

fonts, and sometimes even the advertising jingles – all of which comes under IPR.

- **Business purposes:** IPR does not only provide benefits in terms of customers buying the products, but the owner can also benefit from several features of the IPR – like assigning, selling, licensing, etc. related to the rights. In the modern days, you will see a number of examples where TV shows and movies have been adapted from various books. The producers of these shows, in exchange of using the storyline and the characters, have to pay the author handsomely. In this way, IPR generates revenue in a number of ways.
- **Export opportunities:** Particularly in the context of the modern global market, where products and services are not bound by their geographical barriers anymore, IPR becomes a very important aspect. On one hand, registered and famous intellectual properties would have a broader scope of gaining a foreign customer base. Plus, they would be protected from exploitation on an international level as well.