

Session 3: Copyrights and its Application in Different Industries

(Dec. 27, 11:30 Hrs. – 13:00 Hrs.)

Speaker, **Mr. Shourabh Banerjee**, Head-Strategic IP Consulting IIPRD, Khurana & Khurana Advocates and IP Attorneys, delivered a talk on the substance of Copyrights and its applications in different domains. The key points highlighted in his talk were:

- Definition of a copyright and its nuances under the **Indian Copyright Act 1957**. Vide the Act, protection through means of **Copyright** is conferred on literary works, dramatic works, musical works, artistic works, cinematograph films and sound recording, etc. **Copyright** protection is conferred on all original literary, artistic, musical or dramatic, cinematograph and sound recording works.
- **Copyright** refers to a bundle of exclusive rights vested in the owner of copyright by virtue of Section 14 of the Act. These rights can be exercised only by the owner of copyright or by any other person who is duly licensed in this regard by the owner of copyright. These rights include the right of adaptation, right of reproduction, right of publication, right to make translations, communication to the public, etc.
- Copyright protection commences the moment a work is created, and its registration is optional. A better protection, is however, obtained through registering the copyright.
- Copyright registration does not confer any rights and is merely a prima facie proof of an entry in respect of the work in the Copyright Register maintained by the Registrar of Copyrights.
- Further the conundrum of softwares being protected under Copyright Registration or Patent Registration was discussed. Until 2015 the Indian industry was not very open to patenting softwares.
- As per the revised section 3 (k) of the Indian Patent Act, any software based on mathematical algorithms is patentable contrary to what had been held all these years.
- As long as there is a technical effect of the software it is patentable. The individual software is still not patentable under section 3 (k) however the technical effect/enhancement in the technical advancement leads it to have an industrial applicability and therefore patentable.
- The Indian Copyright Act, 1957 works and lays down its statutes in conjunction with international treaties and conventions such as Berne Convention, 1896. India is a signatory to Berne Convention and it lays the rules of what falls under the ambit of copyrights and what all is protectable.
- Berne Convention, global facilitating and regulatory convention laying down the statute of copyrights and fosters international copyright protection, registration and trade. It also covers the global business regime as far as related to copyrights. It manages the applicability of copyright mandate.

- All the contracting states provide protection to copyrights.
- Broadcasting and reproducing original literary or cinematographic works globally, are in conjunction with the Berne Convention.
- Copyright Registration process is a 4 step process for which one requires original piece of work, a power of attorney (if through an attorney), forms duly filled, and if filed on behalf of the author then a No Objection Certificate.
- The prices of registering literary/artistic works varies from the form of work to be protected. Only the expression of an idea is protected and not the idea.
- Copyright protection is provided for the lifetime of author/owner plus 60 years after.
- Copyrights can be assigned and licensed under different modles. A copyright assignment is quite similar to trademark or other IP assignment wherein the owner can assign their work to a third person/party for use. In licensing the authorship lies exclusively with the author. The shift of transfer of rights is assignmnet.
- Even if a copyright is assigned the assignee does not have the right to abstain the moral rights of the original author. They are still answerable to the original author. The original piece cannot be molded and reproduced in a different form for monetary benefits.
- Royalties and licensing fees are payable to the original author. All transfers and licenses should be well documented and the terms of licensing should be drafted carefully and are pivotal for apt repayment.
- Researchers and students should be extremely careful while transferring copyright to the publishing houses/journals while submitting their manuscripts.
- Section 33 of Indian Copyright Act mandates non violation with the rights of the original author/creator through the establishment of the Copyright Society.
- Cases of copyright infringement were discussed through examples of scripts of movies, television series, etc. It was elaborated that in case of infringement, the burden of proof lies on the plaintiff and there are very thin lines.
- Emerging areas in which copyrights can be secured include artwork such as Tattoos, Superheroes/Cartoons/Animated Characters, Murals, Street Art, Graffiti, etc.
- The US and Europe follow the law of *de minimis*, which alludes to the fact that there should be a minimum amount of overlap/congruence to establish infringement in cases of copyright and again the burden of proof lies on the plaintiff. In case of tattoos, when it is embossed on an individual's body then it becomes a part of his/her body.
- Discussions related to understanding and identifying the difference between plagiarism and copyright infringement especially by students and researchers.
- At the end of the talk, Mr. Shourabh reiterated the importance of clearly reading and understanding the terms of copyright assignment and licensing, and the fact that the ramifications of not protecting the expression of an idea can be huge.