# LAW 706 (IPR) STUDY MATERIALS

## BY ABHISHEK KUMAR

## UNIT 1

## INTRODUCTION

### 1. ORIGIN AND GENESIS OF IPR

Intellectual Property; sounds like a very complex and complicated idea, but is something that we come across a lot of times in our daily life. Intellectual property means creation/innovation by men and the thought to protect them was since medieval period. In the 19th century, various IP laws were enacted to protect the rights of the people.

Tangible properties, be, movable or immovable, have a physical structure and presence. They have been recognized as goods since time immemorial. Conversely, intangible properties have only been recognized as properties in the recent past, let alone affording protection to them under IP Rights. A brand has a plethora of Intellectual Property Rights (IPR) built around it. Let's take an example of the most common necessity nowadays- a smartphone. It is protected by layers and layers of IP rights. The brand name, the logo of a brand, words associated with the logo, color combination used or the shape and size of the logo, these are all protected as Trademarks. Similarly, the technologies inside a phone are protected by patents. The case of a phone, its water proof materials, its networking and data storage technologies, the sensors, and the electromagnetic applications are all protected as Patents. Further, the source codes underlying programs in a phone are protected by Copyrights.

Thus, Intellectual Property is something that always surrounds us, something which is internal and external to us, something that we live on.

What Is An Intellectual Property:

Intellectual Property refers to:

a. Inventions,
b. Innovative designs,
c. Products of human creativity,
d. Identifiers of organizations or their products and services or
e. Unique products that have a geographical attribute.


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As per Oxford Dictionary: An Intellectual Property is an intangible property that is the result of creativity.

According to World Intellectual Property Organization (WIPO), the global forum for intellectual property, 'Intellectual Property (IP) refers to the creations of mind, such as inventions; literary and artistic works; designs; and symbols, names, and images used in commerce'.

What Are Intellectual Property Rights:

As per World Trade Organisation (WTO):

Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.

However, an IPR is not just a right to exclude others from using, selling or producing the protected asset. It is also designated to provide the holder with the right to assign or license the rights for commercial or other bonafide uses. This includes the right to reproduce, distribute and sell the asset.

**Intellectual Property Rights are of various types, but the three most important ones are as follows:**

1. **Patent:** A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.
2. **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, databases, advertisements, maps, and technical drawings.
3. **Trademark:** Trademark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours.

## History Of IPR:

Intellectual Property law dates at least as far back as medieval Europe. The first known use of the term Intellectual Property dates back to the time, when an article published in

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the Monthly Review in 1769 used it as a phrase.

**The history and origin of patents, copyrights, trademark and its emergence at global level have been explained further:**

1. *Origin And History Of Patents:*

The origin of patents can be dated back to the year 1331. On 16th July, 1331, King Edward III of England created history by providing King's protection through a letter's patent. It was given to a Flemish weaver of woolen clothes by the name John Kemp. Kemp was allowed by the monarch to exploit his invention and conduct trade on woolen clothes made by his craft in England.

Besides, he also got the right to teach his weaving technique to people he chose to. Thus, the protection gave Kemp exclusive rights to work and disseminate his knowledge and skills. In many ways, this case lies at the root of the present day patents.

Patents evolved from letters patent which were given by the monarchs that granted monopoly over particular industries with new techniques. This power was used mostly for raising money for the crown and was abused most of the times. Elizabeth I used this system on a large scale, issuing patents even for common commodities like salt, starch, etc. These odious monopolies led to a conflict between the Parliament and the Crown, which was finally settled in 1601. It was decided that the power to administer patents would be turned over to the common law courts.

At the same time, Elizabeth I revoked many other restrictive and damaging monopolies. However, James I, Elizabeth's first successor continued using patents to create monopolies. But, after public outcry, James I of England was forced to revoke all existing monopolies. This was incorporated into the Statute of Monopolies in which the Parliament restricted the power of the Crown explicitly so that letter patents could be introduced to the inventors of original inventions for a fixed number of years.

**Origin In India:**

The 1st legislation in India relating to patents was the Act VI of 1856. The objective was to encourage inventions and to induce inventors to disclose secret of their inventions. Later, to grant exclusive privilege, a fresh legislation was introduced as Act XV of 1859. However, in 1872, the act was renamed as The Patterns and Designs Protection Act. The act remained in force for 30 years with only 1 amendment in the year 1883.

The Indian Patents and Design Act replaced all the previous laws in India. In this act, provisions relating to grant of secret patents, patent of addition, and increase of term of patent from 14 years to 16 years were made. Later, after independence, various


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committees were made to examine the revisions in the law and thus a bill was introduced in the Lok Sabha in 1965 which however lapsed. Though it lapsed in 1965, in 1967, an amended bill was introduced and then on the final recommendation of the committee, the Patents Act, 1970 was passed which is presently used in India.

### *2. Origin And History Of Copyright:*

Copyright developed quite similarly as the patents, by which certain authors and printers were given exclusive rights to publish books and other materials. The motive behind this was not to protect the author's right but to raise the revenues of the government and to give control to the government for controlling publications.

For example, in the year 1556, the establishment of the Stationers' Company's monopoly in England was intended solely to help limit the Protestant Reformation movement's power. The entire printing industry was put in the control of the company and thus the government and the church could prevent the dissemination of ideas.

The Statute of Anne which was passed in 1710 was a milestone in the history of copyright law. It recognized that it is the authors who should be primary beneficiaries of the copyright law and also recognized that such copyright ideas should have limited duration (then set at 28 years), after which the work would pass into public domain. Similar laws were enacted in United States in 1790 and in France in 1793.

#### Origin In India:

Copyright law entered in the year 1847 in India through an enactment during the regime of the East India Company. At that time, the term of the copyright was for 42 years plus 7 years post-mortem. The government could grant a compulsory license for publishing a book if the owner of the copyright, upon the death of the author, denied its publication. Registration of Copyright was mandatory to enforce rights under this act.

In 1914, the then Indian legislature enacted a new Copyright Law under the British Raj which was quite similar to United Kingdom Copyright Act, 1911. However, there were few major differences. The most important one being- it introduced criminal sanctions for copyright infringement under sections 7 to 12. The 1911 Act was amended many times until 1957 and thus, in the year 1957 the Copyright Act was enacted by independent India in order to suit to the provisions of the Berne Convention. This 1957 Act has been amended many times, the latest being in the year 2012.

### *3. Origin And History Of Trademark:*

Trademarks have been used since the 13th century in England. Bakers were the first ones to take advantage of trademark. In the year 1266, under the reign of King Henry III, Trademark legislation was passed in England. Bakers in England used a distinctive mark of their own to distinguish their products.

However, the origin of the first modern trademark legislation is dated by in the year


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1857 in France, followed by the Merchandise Act in England in 1862. The oldest registered trademark in UK was in the year 1876- The Bass Brewery's label which had three triangles logo for ale.

The dictum **nobody has any right to represent his goods as the goods of somebody else** and **nobody has the right to pass off his goods as the goods of somebody else** were established where a clothier who had gained great reputation by putting his marks on clothes made by him was used by another to deceive and make profits. The Courts thereafter followed these principles as the law. They recognized such disputes and gave remedies as 'passing off'.[8]

### Origin In India:

India prepared the first act related to trademarks as Trademark Act, 1940 which was borrowed from British Trademark Act, 1938. Further, post independence the Trade and Merchandise Act, 1958 was enacted. Various amendments were made until 30th December 1999, when the Trade Mark Act, 1999 was enacted which is presently used in India.

The two key needs fulfilled under this act are- a) protect the owner from disorder and duplicity of marks by competitors. b) secure trademark owner's business and trade and also goodwill which is added to the trademark.

## 2. INTERNATIONALIZATION OF IP PROTECTION

In the year 1873, there was an event called 'The World Exposition' in Vienna. The idea behind it was to promote exchange of education, knowledge and culture. However, the American inventors announced their boycott of this event. During the 18th and the 19th century, technology in its modern form did not exist and rights of an inventor were confined to his/her country. Many budding inventors who desired to participate in the event felt that their novel inventions would be copied by onlookers, who would commercialize them without any regard to their interest.

Thus, there was a need to have an international legal regime that would provide protection for an invention across countries. The incident associated with the exposition led to the passage of a special law to provide provisional protection to the objects that were being exhibited in the exposition. This also led to the idea of creating a universal law for the international protection of inventions.

The origin of international IP regime was the Paris Convention for the protection of industrial property and inventions in 1883.

Further, following a campaign by French writer Victor Hugo and his Association Littéraire et Artistique Internationale, the Berne Convention for the Protection of Literary and Artistic Works was agreed in the year 1886. The aim was to give creators the right

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to control and receive payment for their creative works on an international level.[9]

With the adoption of the Madrid Agreement, the first international IP filing service was launched in 1891: the Madrid System for the international registration of marks.[10]

Eventually, in 1893, the United International Bureau for the Protection of Intellectual Property was constituted. Their organization was a common platform to administer both the Paris and the Berne Conventions. It was popularly known by its French acronym BIPRI.

In 1970, BIPRI turned into the World Intellectual Property Organization, which is referred as WIPO. The World Intellectual Property Organization was established through a convention which was signed in the year 1967. In 1974, The WIPO became part of the United Nations as a specialized agency to promote intellectual activities, stimulate creativity, and facilitate technology transfer for accelerating economic development all over the world. Presently, the WIPO has 193 member states. It administers 26 treaties including the WIPO convention.

## 2.1 Paris Convention, 1883

The Paris Convention covers all forms of industrial property, such as patents, trademarks, industrial designs, utility models, geographical indications, service marks, trade names, and the prevention of unfair competition.

The Paris Convention was created with two goals, which are-

- first, to prevent the unforeseen loss of patent protection eligibility by publishing 81 patent applications and taking part in international exhibitions before submitting national patent applications; and
- second, to some extent, harmonise the various patent laws of the various countries.

The substantive provisions of the Paris Convention can be divided into three main categories-

1. **National treatment–** As per the terms and conditions of the convention, every secretary state must ensure that the citizens of their nation and the citizens of other contracting states have an equivalent degree of protection regarding industrial property. Citizens of non-contracting states shall be entitled to national treatment under the convention in the same manner as in their own state if they reside in the contracting state or have a lawful and functioning industrial or commercial presence there.


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2. **Priority rights–** It covers within its ambit industrial designs, trademarks, and utility models. This right gives the holder the ability to file an application for protection in any other contracting state within a certain amount of time, that is, 6 months for industrial designs and trademarks and 12 months for patents and utility models, based on a standard initial application that was filed in one of the contracting states. It would be assumed that these additional applications were filed on the same day as the first application. To state it otherwise, it means that they will supersede any application filed by third parties for the same invention, utility model, trademark or industrial design during the previously indicated term.

The subsequent applications would not be influenced by any subsequent event, including the publication of an invention or the sale of items bearing an industrial design or mark, because they have their foundation in the original application.

### 2.2. Berne Convention, 1886

States began to become more interested in the potential for international cooperation on intellectual property during the nineteenth century because of increased literacy piracy. Literary pirates misrepresent someone else's ideas as their own. This desire of such cooperation initially showed itself through bilateral agreements. Most country copyright laws were only a few decades old in 1886. The only protection offered was that provided by monopolies, or privileges granted for the publication of specific works.

Eight countries ratified the Berne Convention for the first time in 1886, namely- Belgium, France, Germany, Italy, Spain, Switzerland, Tunisia, and the United Kingdom. India has been a member of the Berne Convention since April 1928.

The Berne Convention, like the Paris Convention, was based on the idea of national treatment and stipulated a set of basic rights that all nations had to uphold. The multilateral age of global intellectual property cooperation began with the Paris and Berne Conventions.

The Berne Convention covers the rights of authors as well as the preservation of works. The treaty is founded on the below-mentioned fundamental principles and includes a number of provisions that specify the minimum level of protection that must be provided, as well as exceptional measures that developing nations may apply.

*Principles Enshrined*

The principles which got enshrined in the Berne Convention of 1886 and form the bedrock of intellectual property laws today are-

- **Principle of national treatment**– According to the principle of national treatment, treatment is no less favourable than that provided to people belonging to other member countries as people of one's own country. This principle is enshrined very much in general agreements regarding tariffs and trade. It forms one of the most important principles of the World Trade Organization structure.


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The works of authors who are citizens of such States, or works first published in such States, should be accorded in each of the other Contracting States the same protection as such other Contracting States provide to the works of their own citizens.

- **Principle of automatic protection**– The principle of automatic protection provides unconditional protection which does not require any compliance with any formalities in all the member countries.
- **Principle of independence of protection**– This principle provides for intellectual Property Rights protection, specifically for copyright protection, to be affordable irrespective of whether the protection is given in the country of origin or not.

Protection is provided in accordance with the convention, regardless of whether there is protection in the nation where the work was created. However, if a Contracting State grants a longer period of protection than the minimum period required by the Convention and the work loses its protection in the place of origin, protection may be withdrawn.

The works and rights that must be protected, as well as the length of the protection, are addressed by the minimum requirements of protection. Each production in the literary, scientific, and creative fields must be protected, regardless of how it is expressed.

- **Principle of minimum standard protection**– This principle concerns original works and rights to be protected. For example, for copyright, the different rights protected are transaction, adaptation and arrangement of work, performance in public, citation, communication, broadcast, reproductions, and basis of audio-visual works.
- **Principle of moral rights of authors**– The Convention also establishes the rights pertaining to morals, i.e., “moral rights”. The moral rights include the right to claim authorship of a work as well as the right to object to any alteration of the work, mutilation, deformation, or modification. It also contains the right against derogatory actions that would be detrimental to the honour or reputation of the author.

The rights recognised as exclusive rights of permission include the following, subject to any permissible reservations, restrictions, or exceptions:

- The right to translate;
- the right to adapt and arrange the work;
- the right to perform musical, theatrical, and dramatical-musical works in public;
- the freedom to do literary readings in public;
- being able to publicise the performance of such works;
- the privilege of broadcasting; and


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- the freedom to create copies in any way or form, with the potential for a contracting State to allow copies without permission in specific circumstances as long as they don't interfere with the work's regular exploitation or unfairly damage the author's legitimate interests; and the potential for a Contracting State to grant the right to just compensation for music sound recordings.

## 2.3. The Madrid Agreement

In 1891, the Madrid Agreement for the International Registration of Marks and the Protocol of 1989 thereto were concluded. It was adopted in Madrid, Spain. It had 55 members as a party to it when it was stated, which currently reached 114 members. By acquiring an international registration that is valid in all specified Contracting Parties, this procedure enables the protection of a mark in various nations. The agreement provides for the cases and the manner in which seizure may be requested and affected in the case of goods bearing a false or deceptive indication of the source. It prohibits the use, in connection with the sale, display or offering for sale of any goods, of all indications in the nature of publicity capable of deceiving the public as to the source of the goods. However, the agreement does not provide for the establishment of a union, governing body or budget.

*Application for trademark registration in Madrid Agreement*

A natural person or legal entity with an affiliation to a Contracting Party to the Agreement or the Protocol by establishment, domicile, or nationality may only submit an international application for international registration of a mark.

Only marks that have already been registered with the trademark office of the contracting member country with which the applicant has the required links, referred to as the **'office of origin',** are eligible to be the subject of international applications. The international application may, however, be based solely on a registration application submitted to the office of origin in cases where all designations are implemented in accordance with the Protocol.

The World Intellectual Property Organization's Overseas Bureau must receive an overseas application through the office of origin.

One or more Contracting Parties in which protection is desired must be specified in an application for international registration. Later, more designations may be made. Only Contracting Parties that are signatories to the same treaty as the Contracting Party whose office serves as the office of origin may be named. The International Bureau conducts an examination after receiving an international application to see whether it complies with the Agreement, the Protocol, and its Common Regulations.

An international registration, from the date of the international registration, has the same consequences for each designated Contracting Party as if the mark had been


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registered directly with that Contracting Party's office.

### 2.4. Stockholm convention (WIPO)

The World Intellectual Property Organization Convention, which serves as the organisation governing document, was signed in Stockholm on July 14, 1967. It went into effect in 1970 and underwent an amendment in 1979. The World Intellectual Property Organisation is an intergovernmental organisation that joined the United Nations system of organisations' specialised agencies in 1974.

The World Intellectual Property Organization is an agency of the United Nations that specialises in the promotion and protection of intellectual property rights throughout the world. It was established in 1967, with its headquarters in Geneva, Switzerland. It carries or mandates poster innovation economic development and creativity by providing a framework for the protection of intellectual property globally.

The primary mission of the World Intellectual Property Organisation is to encourage the use and protection of intellectual property with the aim of creating a balanced and effective international intellectual property system which facilitates innovation investment as well as technology advancement. It is one of the largest specialised agencies within the United Nations system, and its membership is open to any UN member state. It administers various International treaties and agreements which are related to intellectual property. It provides a platform on an international level for the filing of patterns, making it easy for investors as well as companies to see protection of patterns in multiple countries with just a single application.

Its Madrid system simplifies the registration and management of trademarks across multiple jurisdictions. It also supports the protection of copyright and other related rights. Furthermore, it offers various services relating to intellectual property information and capacity building, including various training programs.

The World Intellectual Property Organisation conducts research and analysis on intellectual property trends and policies across the world and publishes its report along with various valuable insights worldwide.

It offers arbitration and mediation services as a form of dispute resolution between parties without the need for costly and time-consuming litigation. It takes the initiative in bringing about development programmes across countries to build their capacity in intellectual property protection and management. It also encourages the transfer of knowledge and technology from developed to developing countries in order to promote economic growth and development, considering the development of the world as a whole.

It plays a crucial role in harmonising the facilities for global protection of intellectual property rights.


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World Intellectual Property Organization's Development

The Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works, respectively, were the founding documents of the World Intellectual Property Organisation. An "International Bureau" was to be established under both Conventions. Due to the World Intellectual Property Organisation Convention, the two bureaus were combined in 1893 and replaced by the World Intellectual Property Organisation in 1970.

The goals of the World Intellectual Property Organisation

The two main goals of the World Intellectual Property Organisation are-

1. to encourage the protection of intellectual property around the world; and
2. to ensure administrative cooperation between the intellectual property Associations established by the treaties that the World Intellectual Property Organisation oversees.

In addition to carrying out the administrative duties of the Unions, the World Intellectual Property Organisation engages in a number of activities to achieve these goals, such as

- normative activities, which encompass the formation of international trees to create norms and standards for the protection and enforcement of intellectual property rights.,
- programme activities, involving legal and technical assistance to States in the area of intellectual property,
- international classification and standardisation activities; and
- trademark and industrial design registration, as well as filing and registration services relating to foreign applications for patents on inventions.

Membership in the World Intellectual Property Organisation

Any country that satisfies the following requirements is eligible to join the World Intellectual Property Organisation-

- Must be a member of the United Nations, any of the specialised agencies associated with the United Nations, or the International Atomic Energy Agency,
- Must be a party to the Statute of the International Court of Justice; or
- Must have received an invitation from the General Assembly.

Membership in the World Intellectual Property Organisation does not impose any duties on a party with regard to other treaties that it manages. To become a member of the World Intellectual Property Organisation, an instrument of admission to the convention must be filed with the director general of the organisation.


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## TRIPS AGREEMENT

The TRIPS Agreement (forthwith referred to as 'the Agreement') is an International agreement administered by WTO and it sets down the minimum standard for many forms of intellectual property regulations. The Agreement is till date the most comprehensive agreement of a multilateral nature on IP. Following areas of Intellectual Property are covered under the Agreement:

- *Copyrights and Related rights (like the rights of performers, producers of sound recordings and broadcasting organizations)*
- *Trademarks (also service marks)*
- *Geographical Indications (including appellations of origin)*
- *Industrial Designs*
- *Patents (including protection of new variety of plants)*
- *Layout-designs of Integrated Circuits*
- *Undisclosed Information (Trade secrets and Test data)*

The Agreement is a seven-part document containing complex provisions with respect to Intellectual Property rights. Following is a brief description of the structure of the Agreement:

Part I: The general provisions and the basic principles of National Treatment and Most Favoured Nation are covered under this part. (*Article1 to Article8)*

Part II: The standards concerning availability, scope and use of Intellectual Property Rights is covered under this part. *(Article9 to Article40)*

Part III: This part deals with the enforcement of IPRs. (*Article41 to Article61)*

Part IV: This part addresses the provisions for acquiring and maintaining IPR. (*Article62*)

Part V: This part deals with prevention and settlement of disputes arising out of the provisions of the Agreement. *(Article63 to Artcile64)*

Part VI: Part VI is concerned with transitional agreements. *(Article65 to Article67)*

Part VII: This part of the Agreement concerns various institutional agreements. *(Article68 to Article73)*

### The Issues Governed By The Agreement?

With respect to the aforementioned intellectual property areas, the Agreement governs issues like application of international IP agreements and basic principles of the trading system, adequate protection to IPRs, adequate enforcement of IPR by member nations


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in their territories, settlement of disputes on IP between the members of WTO, special transitional arrangements during the period when the new system is being introduced. The Agreement is the first agreement under WTO which requires member nations to establish relatively detailed norms within their respective legal frameworks, as well as to establish such measures of enforcement and such procedures which meet the minimum standards. The three important features of this agreement are:

- *Standards* – In respect of each of the IP areas covered by the Agreement, all member nations are obliged to provide a minimum set of standards for the protection of IPRs. Each area of IP is covered such that it clearly describes the main elements of protection i.e. the subject matter which seeks protection, rights which are to be conferred and permissible exceptions to such rights and also the minimum duration of protection.
- *Enforcement* – Each member nation is obliged to provide domestic procedures and remedies with respect to protection of IPR. Further, the agreement lays down certain other provisions so that right holders can effectively enforce their rights. These provisions relate to civil and administrative procedures and remedies and detailed specifications as to special requirements related to border measures and criminal procedures.
- *Dispute Settlement* – All the disputes arising between members of WTO with respect to the obligations arising out of the TRIPS Agreement are subject to WTO's dispute settlement procedures.

## UNIT 2

## COPYRIGHT

### 1. Copyright protection with reference to performer's rights and artist rights

When the copyright law was introduced during the British rule then at that time there was no recognition given to the performer's rights. When post-independence, the Copyright Act, 1957 was introduced then also there was no mention of performer's rights. In the case of Fortune Films v. Dev Anand in 1979, the Bombay High Court held that performer's rights do not have any copyright as their rights are not recognized under the Copyright Act. After this judgement, the need was felt to insert the performer's right in copyright act. In 1994, the copyright amendment was made and Section 38, 39 and 39A were introduced to recognize the performer's rights. Indian Copyright Act recognizes the ambit of performers beyond what is actually the minimum requirement, as specified in Rome convention and TRIPS. Section 2(qq) defines the term 'performer', which includes actor, dancer, musician, singer, acrobat, conjurer, snake charmer, juggler, a person delivering a lecture or any other person who makes a


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performance. However, in case of sports, the players cannot be termed as performers as sports is competitive and its outcome is not certain and also sportsmen are bound to play within the rules and creativity is not allowed. Hence sports persons cannot come under the ambit of performers.

### *Origin and Development of Performer's Rights*

Earlier the work of the individual, who helped the creators of intellectual property in communicating their work to the public, was not recognized. When any song is written by a lyricist then unless it is sung by the singer, it has no value or the play script written by the author is of no use unless it is performed by the actor. So, in case, the author or lyricist wants to enhance the value of their work then they need the help of the performers. The International Convention for the protection of performers, producers of phonograms and broadcasting organizations generally known as Rome Convention, 1961, was the first convention recognizing the rights of performers. International Labour Organization (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO) and World Intellectual Property Organization (WIPO) are together responsible for the administration of the Rome Convention.

The intergovernmental committee secretariat consists of members from 12 contracting states constituted by these three organizations. This committee is concerned with questions that are considered in Rome convention. In this convention, the duration of the performer's rights was protected for at least 20 years from the end of the year in which the performance took place. Article 19 of the Rome Convention states that when the performer has consented for the incorporation of his performance in any audio-visual or visual mode then these provisions will not be applicable. In India, protection is given to performer's rights for the term of 50 years. Article 7 of the Rome Convention gives protection to the rights of performers:

- Performers have the right to prevent others from broadcasting or communicating to the public by means other than broadcasting without their consent.
- They have the right to prevent others from fixation of their unfixed live performance without taking their consent.
- They have the right to prevent others from reproduction of their live performance without their consent.
- They have the right to prevent the commercial exploitation of their performance for any other purpose, for which the consent is not obtained.

The provisions of this convention are further strengthened by the TRIPS agreement, which is administered by WTO. Article 14 of the TRIPS agreement states that:

- They have the right to protect their work from broadcast and communication to the public by wireless means.


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- They have the right to prevent reproduction of their live performances.
- They have the right to prevent the fixation of their live performance on phonograms. In the Rome Convention, such performances were not restricted to phonograms but here the narrow approach has been adopted.

The protection of performer's rights is 50 years from the end of the year in which the performance was fixed or it took place.

In 1996, WIPO Performance and phonogram Treaty (WPPT) came into existence. In this treaty, moral rights of the performers were recognized for the first time in any international treaty. It also discusses the economic rights of the performers. Performers should receive monetary compensation for their performance and if the work is exploited for any other purpose than for which, consent is given then performers are eligible to receive the royalties.

In 2012, Beijing Treaty on Audio-Visual Performance was adopted by WIPO in which the performers in the audio-visual domain were discussed elaborately. Contracting states discussed protecting the rights of the performers working in films, tv shows or short videos etc. WPPT did not discuss the performer working in the tv or films but in the Beijing Treaty, all these rights were discussed and it also laid down provisions for the transfer of performer's rights to producers of films.

*What are the rights of Performer under the Copyright Act?*

- **Performer has right to make sound or visual recording:** A performer has the right to make the sound or visual recording. He can also give consent to other people to record the live performance. Without the consent of the performer, no other person can make use of that sound recording. But, in case, their performance is for the cinematograph film and the written agreement is made consenting the incorporation of his performance in such film then all the rights will, therefore, be enjoyed by the producer of such film irrespective of whether the performer is a singer or actor.
- **Performer has the right to produce the sound or visual recording:** A performer may also become producer of the sound or visual recording and can enjoy all the rights that a producer enjoys such as reproducing a number of copies, giving the copies for commercial rental, communicating the work to the public etc. But for that purpose, the performer must have the prior permission from the individual copyright owner like lyricist and music composer and should have the certificate related to the sound or visual recording by the competent authority.
- **Performer has the right to broadcast performance:** Performers can prevent others from broadcasting their live performance. In case the consent of the performer is not taken and any other individual is broadcasting his performance


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then it will amount to copyright infringement. But, if the performance is for the cinematograph film and then rights will be enjoyed by the producer of the cinematograph film but if the performance is commercially exploited for other purposes than such film then the performer has the right to claim the royalties.

- **Performer has the right to communicate the work other than by broadcast:** Performer can use other means to communicate with the public than by means of broadcast. Broadcast means communication to the public either by means of wireless diffusion or by wire.

Acts that constitute the infringement of performer's rights

- Reproduction of the work of performer without his consent.
- Use of performer's work without his consent.
- Use of performer's work for any other purpose for which the consent is not obtained from performer.
- Broadcast of the work of performer other than the one mentioned in Section 39 of the Copyright Act.
- Communication of the performance without the consent of performer to the public other than by broadcast.

Acts that do not constitute infringement of performer's rights

- The act of reproducing any sound or visual recording either for the purpose of private use or for teaching and research work only.
- In case the work is reproduced for the purpose of judicial proceeding.
- Reproduction for the purpose of reporting, reviewing or other things that come under fair dealing.
- In case the work is reproduced for the purpose of use by members of legislature.
- Some other uses that are not considered infringement under Section 52 of the Copyright Act.

### *Moral Rights of the Performer*

The performer has the right to be identified for his work even though he has given all his rights to the producer of the cinematograph film. The performer, even after giving up their rights over the work, have the right to be recognized for their work. They also have the right to object, in case any alteration is made in the work performed by them. In case, the producer of the cinematograph film shortens the length of the performance or removes some portion of the work because of some technical issues or time


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constraints then the moral right of the performer is not said to be prejudiced. Moral rights of the legal representatives of the performer and legal representatives of copyright owners are different and cannot be exercised in the same manner.

*Remedies against Performer's Rights Infringement*

The remedies are available against the infringer of performer's right in Section 55 and also from Section 63 to 70 of the Copyright Act. The following remedies may be availed:

- Civil Remedies: The owner of the performer's right or his exclusive licensee may go to the court and obtain the injunction either temporary or permanent or they may also claim damages.
- Criminal Remedies: Not only civil remedy but criminal remedy is also available against the infringer. The infringer may be sentenced for six months which may extend up to three years or may be liable to pay a fine of Rs. 50,000 to Rs. 2,00,000 or both.
- Anton Pillar Order: Sometimes the court gives permission to the plaintiff, on an application by him, to enter into the defendant's place along with the attorney and inspect the relevant documents. This is necessary because the defendant may remove the documents from his premises if he knows beforehand that the inspection is going to happen or any search warrant is released by the court.

## 2. RIGHTS OF BROADCASTING ORGANISATIONS UNDER INDIAN COPYRIGHT LAW

The emergence of technology has revolutionized the world of broadcasting, presenting a multitude of opportunities and challenges for both content creators and distributors alike. In India, broadcasting organizations are protected by copyright law, which provides a comprehensive framework that aims to strike a balance between the interests of creators and broadcasters. This article delves into the rights that are granted to broadcasting organizations in India, as well as the legal landscape that governs them, offering an in-depth analysis of the subject matter.

### Legal Framework

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In India, the Copyright Act of 1957 is the main legal framework that provides for the safeguarding of intellectual property rights. This includes the protection of broadcasting organizations' rights. Section 37 of the Act is a provision that deals with the specific rights of broadcasting organizations in this regard.

Rights of Broadcasting Organizations

1. **Rebroadcasting Right:** In order to safeguard their creative output and maintain control over the dissemination of their content, broadcasting organizations are granted the exclusive right to permit or prohibit the rebroadcasting of their broadcasts. This ensures that the original broadcaster has full authority over their content and prevents any unauthorized rebroadcasts from taking place.
2. **Communication to the Public:** Organizations that produce and distribute media content are vested with exclusive rights to transmit their content to the general public. This includes not only the initial broadcast, but also any subsequent communication of the content to the public through various mediums such as cable, satellite, or online platforms. These organizations have the power to authorize or prohibit the use of their content by other parties and can take legal action against those who infringe upon their rights. The exclusive rights granted to media organizations are aimed at safeguarding their creative works and ensuring they have control over the distribution and use of their content.
3. **Fixation and Reproduction:** Broadcasting organizations are granted certain rights that allow them to create sound or visual recordings of their broadcasts. These recordings can be reproduced and stored, which enables broadcasters to preserve and archive their content for future use. In other words, this right provides broadcasters with the ability to retain a permanent record of their broadcasts, which can be accessed and used at a later time. This is particularly important for historical purposes, as well as for maintaining a comprehensive record of significant events and developments. Overall, this right is crucial for ensuring that broadcasting organizations can maintain the integrity of their content and preserve it for future generations.
4. **Distribution Right:** The distribution right is a legal concept that provides broadcasting organizations with the sole authority to control the distribution of copies of their broadcasts. This exclusive right guarantees that the original broadcaster retains the power to determine how and where their content is disseminated, preventing others from reproducing or distributing their content without permission. The distribution right is essential for broadcasters to maintain control over their intellectual property and to monetize their content effectively. This right applies to various forms of broadcasting, including radio, television, and streaming services, and has become increasingly important in the digital age, where content piracy and unauthorized distribution are prevalent.
5. **Commercial Rental Right:** Broadcasting organizations play a crucial role in


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producing and distributing content to a wide audience. They invest significant resources and creative efforts in developing high-quality programming that entertains, informs, and educates viewers. To protect their investment and preserve the value of their content, broadcasting organizations hold a unique and exclusive right to determine whether the commercial rental of copies of their broadcasts should be allowed or prohibited.

This right gives broadcasting organizations greater control over the commercial exploitation of their content, enabling them to exercise greater autonomy and ensure fair compensation for their creative efforts and investments. By prohibiting unauthorized rental and distribution of their broadcasts, broadcasting organizations can prevent competitors from profiting off their content without permission and protect their economic interests.

In practical terms, this right allows broadcasting organizations to license their content to third-party distributors, such as cable and satellite companies, streaming services, and other media outlets. By negotiating licensing agreements, broadcasting organizations can ensure that they receive fair compensation for the use of their content and retain control over its distribution and commercial exploitation.

Overall, the exclusive right of broadcasting organizations to determine the rental and distribution of their content serves as an essential tool for preserving the economic value of broadcast content while providing broadcasters with the necessary control over its commercial exploitation. It ensures that broadcasting organizations can continue to invest in high-quality programming and remain competitive in a rapidly evolving media landscape.

6. Moral Rights: Broadcasting organizations are granted not only economic rights but also moral rights to safeguard the quality and credibility of their broadcasts. These moral rights serve as a crucial mechanism to ensure proper attribution and protect against any derogatory treatment or misuse of the broadcast that may harm the reputation of the broadcaster. The purpose of granting moral rights is to protect the interests of broadcast organizations and maintain the integrity of their content by preventing any unauthorized or unethical use of their broadcasts. Thus, these rights serve as a vital tool in promoting fairness, accuracy, and accountability in the broadcasting industry.

*Enforcement and Remedies:*

When broadcasting organizations face infringement issues, they have legal options available to protect their rights. These options may include seeking injunctions from the court to prevent further infringement, which is a legal order that prohibits the infringing party from continuing the infringing activity. Additionally, they may also seek damages or an account of profits to compensate for the losses incurred due to the infringement. Damages refer to the monetary compensation that the infringing party is required to pay to the broadcasting organization, while an account of profits refers to the monetary


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value of the profits that the infringing party has earned through the use of the unlawfully copied material. Finally, the broadcasting organization may also request the delivery-up or destruction of infringing copies to prevent any further dissemination of the infringing material.

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