

INTELLECTUAL PROPERTY RIGHTS

LL.B. (Hons.) & LL.B. (3 years)

Intellectual Property Rights in general refers to the set of intangible assets including invention, creation, and contribution to the contemporaneous field of knowledge which is owned and legally protected by an individual or company from the outside use or implementation without approved consent. The economic growth, financial incentive and motivation for advanced innovations imbedded in the balanced legal protection of Intellectual Property Rights entails proficient, directed and timely updated guidance in the field of Intellectual Property Rights. Intellectual property has increasingly assumed a vital role with the rapid pace of technological, scientific and medical innovation that we are witnessing today. Moreover, changes in the global economic environment have influenced the development of business models where intellectual property is a central element establishing value and potential growth. In India several new legislations for the protection of intellectual property rights (IPRs) have been passed to meet the international obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Intellectual property has therefore grown into one of the world's biggest and fastest-growing fields of law thereby necessitating the demand for IP professionals well versed in this area to deal with (IPRs) across the national and international borders. Over the decades, the scope of the subject of Intellectual Property Rights (IPR) has been expanded and grown to a great extent and has risen to a stature wherein it plays a major role in the development of the Global Economy. Since the early 1990s, many developed countries unilaterally strengthened their laws and regulations in this area, and many others were poised to do likewise.

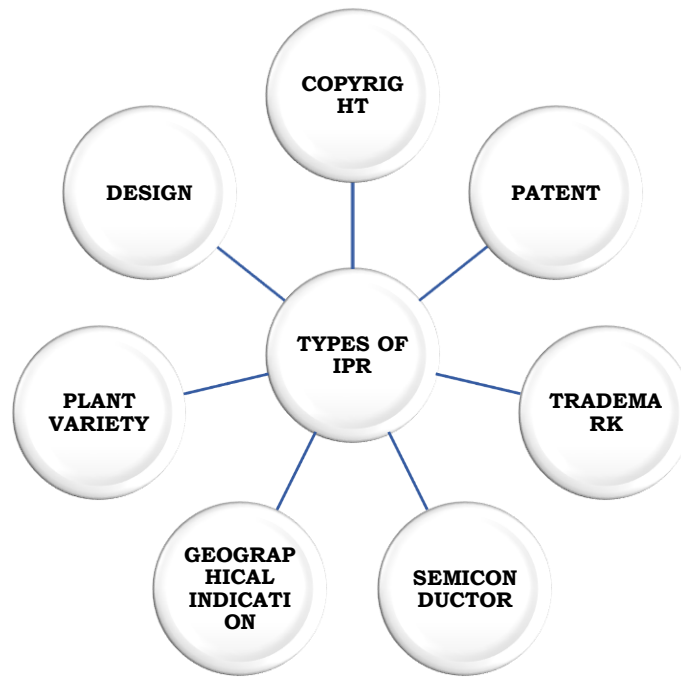


Figure: BROAD CLASSIFICATION OF IPR

COPYRIGHT

The Copyright Act of 1957 is a comprehensive Indian law that governs copyright protection for various forms of creative work, including literary, dramatic, musical, and artistic creations, as well as cinematographic films and sound recordings. Enacted to safeguard the rights of creators and promote the dissemination of knowledge and culture, the Act grants authors exclusive rights to reproduce, distribute, and adapt their works. It also provides for moral rights, ensuring authors can protect their honor and reputation. The Act has been amended multiple times to address emerging technological advancements and to align with international treaties like the Berne Convention. It establishes the framework for copyright registration, enforcement, and penalties for infringement. By balancing the interests of creators and the public, the Copyright Act of 1957 plays a crucial role in fostering creativity and innovation while ensuring that the creators receive due recognition and financial benefits from their work.

Several **major international instruments govern copyright laws**, providing a framework for the protection of intellectual property across different jurisdictions. These international instruments work collectively to ensure that copyright protections are harmonized and respected across different countries, promoting the global dissemination of creative works while safeguarding the rights of creators. These include:

1. **Berne Convention for the Protection of Literary and Artistic Works:** Adopted in 1886, this convention is the cornerstone of international copyright law. It ensures that works originating in one of the member countries are given the same protection in all other member countries. The Berne Convention also established the principle of "automatic" protection, meaning that copyright protection does not require formal registration.
2. **Universal Copyright Convention (UCC):** Established in 1952 by UNESCO, the UCC provides an alternative to the Berne Convention for countries that are not parties to it, ensuring a minimum standard of copyright protection. It was particularly important during the mid-20th century as a bridge between countries with differing copyright philosophies.
3. **World Intellectual Property Organization (WIPO) Copyright Treaty:** Adopted in 1996, this treaty updates the international copyright framework to address issues arising from digital technologies and the internet. It clarifies the rights of creators in the digital environment and includes provisions for the protection of technological measures used to safeguard copyrighted works.
4. **WIPO Performances and Phonograms Treaty (WPPT):** Also adopted in 1996, this treaty complements the WIPO Copyright Treaty by providing international protection for the rights of performers and producers of phonograms (sound recordings). It addresses the digital transmission of performances and recordings.
5. **Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement:** Part of the World Trade Organization (WTO) agreements, TRIPS, adopted in 1994, sets minimum standards for various forms of intellectual property regulation, including copyright. It incorporates many principles from the Berne Convention and requires WTO members to adhere to these standards.

Owner Of Copyright

The author of a work shall be the first owner of the copyright provided that -

- a. in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as

the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

- b. subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;
- c. in the case of a work made in the course of the authors employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;
- d. in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;
- e. in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;
- f. in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

Explanation - For the purpose of this clause and section 28A, public undertaking means -

- i. an undertaking owned or controlled by Government;
 - ii. a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);
 - iii. a body corporate established by or under any Central, Provincial or State Act;
- g. in the case of a work to which the provisions of section 41 apply, the international organisation concerned shall be the first owner of the copyright therein.

Provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) shall affect the right of the author in the work referred to in clause (a) of sub - section (1) of section 13.

Infringement of Copyright:

Section 52 of the Act provides that the following acts shall not constitute an infringement of copyright, namely: (a) a fair dealing with any work, not being a computer programme, for the purposes of—(i) private or personal use, including research; (ii) criticism or review, whether of that work or of any other work; (iii) the reporting of current events and current affairs, including the reporting of a lecture delivered in public. Explanation.—The storing of any work in any electronic medium for the purposes mentioned in this clause, including the incidental storage of any computer programme which is not itself an infringing copy for the said purposes, shall not constitute infringement of copyright. (aa) the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme from such copy—(i) in order to utilise the computer programme for the purpose for which it was supplied; or (ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied; (ab) the doing of any act necessary to obtain information essential for operating inter-operability of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available; (ac) the observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied; (ad) the making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use; (b) the transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public; (c) transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy: Provided that if the person responsible for the storage of the copy has received a written complaint from the owner of copyright in the work, complaining that such transient or incidental storage is an infringement, such person responsible for the

storage shall refrain from facilitating such access for a period of twenty-one days or till he receives an order from the competent court refraining from facilitating access and in case no such order is received before the expiry of such period of twenty-one days, he may continue to provide the facility of such access;(d)the reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;(e)the reproduction or publication of any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature;(f)the reproduction of any work in a certified copy made or supplied in accordance with any law for the time being in force;(g)the reading or recitation in public of reasonable extracts from a published literary or dramatic work;(h)the publication in a collection, mainly composed of non-copyright matter, bona fide intended for instructional use, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for such use in which copyright subsists: Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years. Example- in the case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more of those authors in collaboration with any other person;(i)the reproduction of any work—(i)by a teacher or a pupil in the course of instruction; or(ii)as part of the questions to be answered in an examination; or(iii)in answers to such questions;(j)the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a sound recording if the audience is limited to such staff and students, the parents and guardians of the students and persons connected with the activities of the institution or the communication to such an audience of a cinematograph film or sound recording;(k)the causing of a recording to be heard in public by utilising it,—(i)in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein; or(ii)as part of the activities of a club or similar organisation which is not established or conducted for profit;(l)the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution;(m)the reproduction in a newspaper, magazine or other periodical of an article on current economic, political,

social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction;(n)the storing of a work in any medium by electronic means by a non-commercial public library, for preservation if the library already possesses a non-digital copy of the work;(o)the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a non-commercial public library for the use of the library if such book is not available for sale in India;(p)the reproduction, for the purpose of research or private study, or with a view to publication, of an unpublished literary, dramatic or musical works kept in a library, museum or other institution to which the public has access. For example, the identity of the author of any such work or, in the case of a work of joint authorship, of any of the authors is known to the library, museum or other institution, as the case may be, the provisions of this clause shall apply only if such reproduction is made at a time more than sixty years from the date of the death of the author or, in the case of a work of joint authorship, from the death of the author whose identity is known or, if the identity of more authors than one is known from the death of such of those authors who died last;(q)the reproduction or publication of—(i)any matter which has been published in any Official Gazette except an Act of a Legislature;(ii)any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter;(iii)the report of any committee, commission, council, board or other like body appointed by the Legislature, unless the reproduction or publication of such report is prohibited by the Government;(iv)any judgment or order of a court, Tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the court, the Tribunal or other judicial authority, as the case may be;(r)the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made thereunder—(i)if no translation of such Act or rules or orders in that language has previously been produced or published by the Government; or(ii)where a translation of such Act or rules or orders in that language has been produced or published by the Government, if the translation is not available for sale to the public: Provided that such translation contains a statement at a prominent place to the effect that the translation has not been authorised or accepted as authentic by the Government;(s)the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture;(t)the making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work falling under sub-clause (iii) of clause (c) of section 2, if such work is permanently situate in a

public place or any premises to which the public has access;(u)the inclusion in a cinematograph film of—(i)any artistic work permanently situate in a public place or any premises to which the public has access; or(ii)any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film;(v)the use by the author of an artistic work, where the author of such work is not the owner of the copyright therein, of any would, cast, sketch, plan, model or study made by him for the purpose of the work:Provided that he does not thereby repeat or imitate the main design of the work;(w)the making of a three-dimensional object from a two-dimensional artistic work, such as a technical drawing, for the purposes of industrial application of any purely functional part of a useful device;(x)the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed:Provided that the original construction was made with the consent or licence of the owner of the copyright in such drawings and plans;(y)in relation to a literary, dramatic, artistic or musical work recorded or reproduced in any cinematograph film, the exhibition of such film after the expiration of the term of copyright therein: Provided that the provisions of sub-clause (ii) of clause (a), sub-clause (i) of clause (b) and clauses (d), (f), (g), (m) and (p) shall not apply as respects any act unless that act is accompanied by an acknowledgement—(i)identifying the work by its title or other description; and(ii)unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgement of his name should be made, also identifying the author;(z)the making of an ephemeral recording, by a broadcasting organisation using its own facilities for its own broadcast by a broadcasting organisation of a work which it has the right to broadcast; and the retention of such recording for archival purposes on the ground of its exceptional documentary character;(za)the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority. Explanation.—For the purpose of this clause, religious ceremony including a marriage procession and other social festivities associated with a marriage.(zb)the adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format, by—(i)any person to facilitate persons with disability to access to works including sharing with any person with disability of such accessible format for private or personal use, educational purpose or research; or(ii)any organisation working for the benefit of the persons with disabilities in case the normal format prevents the enjoyment of such works

by such persons. the copies of the works in such accessible format are made available to the persons with disabilities on a non-profit basis but to recover only the cost of production. further that the organization shall ensure that the copies of works in such accessible format are used only by persons with disabilities and takes reasonable steps to prevent its entry into ordinary channels of business.