

LL. B. V Term

Paper – LB – 5034 - Intellectual Property Law –II

Introduction

Introduction to Copyright, Patents, Plant Varieties & Berne Convention, Rome Convention, Paris Convention, TRIPs Agreement, WCT, WPPT and, PCT

I. Copyright Law - The Copyright Act, 1957 as amended upto June 2012

Doctrine of Labour, Skill and Effort – sweat of the brow and its critical analysis
Necessity of Minimal Creativity, Concept Notes.

1. Subject Matter of Copyright

Copyright only in expression No copyright in Ideas

No copyright in any work except in accordance with the provisions of the Act(s.16); Work S 2 (y),

Definitions of various works: Artistic work 2(c), dramatic work 2(h), Literary work 2(o), musical work 2(p), computer programmes 2(ffc), cinematograph films 2(f), sound recordings 2(xx), Meaning of ‘Original’ – a prefix to S.13(1)(a)

Classes of Works in which copyright subsists – S.13

Donoghue v Allied Newspapers Ltd., (1937) 3 All ER 503 1

University of London Press Ltd. v. University Tutorial Press Ltd, (1916) 2 Ch. D 601 6

Eastern Book Company v. D.B. Modhak, 2008 (36) PTC 1 (SC) 10

Urmi Juvekar v. Global Broadcast News Ltd, 2008 (36) PTC 377 (Bom) 35

[Illustrative cases:*Barbara Taylor Bradford v. Sahara Media Entertainment Ltd*, 2004 (28) PTC 474 (Cal); *Anil Gupta v. Kunal Dasgupta*, 2002 (25) PTC 1 (Del)
Zee Telefilms Ltd. v. Sundial Communications, 2003 (27) PTC 457 (Bom) (DB);
Zee Entertainment Enterprises Ltd. v. Gajendra Singh, 2008 (36) PTC 53(Bom)]

2. Rights of copyright owners and Infringement

Rights

Meaning of Copyright – S.14 – Bundle of Rights

Enumeration of rights in S. 14 –

Reproduction

Right to Issue of copies	
<i>John Wiley and Inc v. Prabhat Chander</i> , 2010(44) PTC 675 (Del)	50
A Case Comment - <i>John Wiley Case in relation S.14(a)(ii)</i>	
Ashwani Kumar Bansal, “Intellectual Property Rights: Judicial Law Making with Foreign Bias” - Some excerpts from paper published in Journal of Law Teachers of India Volume II Issue 1 & 2 page numbers 1-31	64
Right to Perform and Communication to public – domestic circle To make cinematograph film and sound recording	
<i>R G Anand v. Deluxe Films</i> , AIR 1978 SC 1613	77
Translation	
Publication and reproduction meaning thereof in relation to all works S.14(a)(iii)- Domestic Circle v Public Other important rights of Computer programmes, cinematograph film, sound recordings with special reference to rental rights, Meaning of Commercial Rental (S.2(fa))	
<i>Warner Bros. Entertainment Inc. and Ors. v. Mr. Santosh V.G.</i> , MANU/DE/0406/2009; MIPR2009(2)175 (Rental Rights)	
Adaptation/Abridgement of the work	
S. 14(a)(vi), 2(a) adaptation, meaning of abridgement, Copyright in abridged work	
<i>Macmillan v. K J Cooper</i> , AIR 1924 PC 75	90
Author’s Special (Moral) Rights – S.57	
<i>AmarNath Sehgal v. Union of India</i> , (2005) 30 PTC 253	
Ownership of copyright	
The first owner – S.17; Who is an author – S. 2(d) and s 2 (g) (s), S.2(uu), authorship of computer generated works,2(d) (vi), Proviso (c) to s 17 employment; Joint authorship; Definition of Producer; Term of Copyright (S.22 to 29)	
Contract of service vs. Contract for service (See Indian Cases on the subject and <i>University of London Press Ltd. v. University Tutorial Press Ltd</i> , (1916) 2 Ch. D 601)	
<i>Gee Pee Films Pvt. Ltd. v. Pratik Chowdhury</i> , 2002(24) PTC 392 (Cal) (Meaning of producer)	99

Assignment of Copyright – S. 18-19A**Licenses**

Licences by owners of copyright (S.30)

Statutory licences for cover versions (S.31C)

The Gramophone Company of India Ltd. v. Super Cassette Industries Ltd.,
2010 (44) PTC 541 (Del) 106

Compulsory Licences (S.31, S.31B)

Entertainment Network (India) Limited v. Super Cassette Industries Limited,
(2008) 13 SCC 30; MANU/DE/2243/2011

Event and Entertainment Management Association v. Union of India,
MIPR2011(2)107; MANU/DE/2006/2011

Collective Management of Copyright by Copyright Societies (S.2(ffd), S.33 –
S.36A)

Infringement – S. 51

Relationship with s 14;

Circumvention of technological measures S.65A.

Rights Management Information S. 2(v) and S. 65B

R G Anand v. Deluxe Films, AIR 1978 SC 1613

International Copyright Order

Sap Aktiengesellschaft & Anr. vs Mr. Sadiq Pasha, Proprietor,
2011 (46) PTC 335 (Del) 134

3. Neighbouring/Related rights

Rights of Broadcasting Organizations (s.37)

Performers Rights (S. 38, S.38A (S.2(xxa)- Meaning of visual recording)

Exceptions (s 39)

4. Acts not amounting to Infringement or permitted Acts

S.52(Rights of Public)

In all 32 exceptions in s 52, Some of the important exceptions are - Fair Dealing, News and current events, incidental and transient storage in electronic transmission; Teaching and Research, making of sound recording and Communication to the public of sound recording in religious ceremonies, to facilitate persons with disability –

S.52 (1) (a); s.52(1) (b) and (c), S.52 (1) (i), S.52(1)(za) , S.52(1)(zb)

<i>Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd.</i> , 2011(45)PTC70(Del)– S.52(1)(a)	141
<i>Devendrakumar Ramchandra Dwivedi v. State Of Gujarat</i> , 2010(43)PTC303(Guj) Guj(DB)-s.52(1)(za)	

II. Patent Law [The Patents Act, 1970 as amended in April 2005]

- 1. Object of Patent System** – Encouraging Inventions and local working of patents
After TRIPs Agreement Imports suffice as working. Use for Research.
- 2. Patentable Inventions (S.2(1)(j), S.2(1)(ja)) and Non Patentable Inventions(S.3)**
Tests for Novelty, Inventive Step, Industrial application –What is Mosaicing
Canadian General Electric Co. Ltd. v. Fada Radio Ltd., AIR 1930 PC 1 166
Dhanpat Seth v. Nil Kamal Plastic Crates Ltd, 2008 (36) PTC 123 (HP) (DB) 171
- 3. Procedure for filing Patent Application**
Specifications – Provisional and Complete & importance of claims in infringement, Request for examinations 11A and 11B
Opposition of Patent– S.25 – Pre-grant, post –grant and their basis
Neon Laboratories Pvt.Ltd v. Troikaa Pharma Limited,
2011(45)PTC357(Bom)
J.Mitra & Co. Pvt. Ltd. v. Assistant Controller of Patents & Design,
2008(38)PTC6(SC); (2008 (11) SCALE 524)
Indian Network for People living with HIV/AIDS v. Union of India,
MANU/TN/1217/2008 Mad(DB)
M/S UCB Farchim Sa v. M/S Cipla Ltd., MANU/DE/0297/2010; 167(2010)DLT459
- 4. Licensing of Patents – Special reference to public health issues (S. 92 and 92A) and parallel imports (S.107A); Compulsory and Voluntary Licences**
Bayer Corporation v. Natco Pharma Limited
2014(60) PTC 277 (BOM) 77
- 5. Rigths of Patentee and Patent Infringement(S.47, S.48,S.104), Defences (S.107 and S.107A dealing with parallel imports), Gillete Defence**
F.Hoffmann-La Roche Ltd. v. Cipla Ltd., 2009(40)PTC125(Del) (DB) 203

III. Law of Plant Varieties and Farmers' Rights

[The Plant Variety Protection and Farmers' Rights Act, 2001]

1. Definitions
(S.2)- breeder, farmer, variety, essentially derived variety, extant variety, farmer's variety, essential characteristics, denomination, propagating material, seed
2. Registrable varieties(S. 15)
3. Rights of Breeders, Farmers and Communities(Ss.28,39, and S.41) and Researchers' Rights (S.29 and S.30); benefit sharing
4. Introduction to UPOV- 1976, 1991

IV. Confidential Information/Trade Secret Law

1. Legal Framework of Trade Secret Protection in India
2. Subject Matter of Trade Secret Protection
3. Trade Secret Licenses
4. International System of Trade Secret Protection

V. Introduction to:

1. Traditional knowledge and Folklore (TCE)
2. Integrated Circuits [The Semiconductor Integrated Circuits Layout-Design Act, 2000]
Meaning, Registration, Rights

Recommended Books

Ashwani Kumar Bansal, **Materials on Copyright**, (2004)

V.K. Ahuja, **Intellectual Property Laws** (2009)

V.K. Ahuja, **Law of Copyright and Neighbouring Rights: National and International Perspectives** (2007)

Alka Chawla, **Copyright and Related rights, National and International Perspectives** (2007)

P. Narayanan, **Copyright and Industrial Designs** (2007)

Raman Mittal, **Licencing Intellectual Property** (2011)

K C Kankanala, A. K. Narasani, and V. Radha Krishna, **Indian Patent Law and Practice**, Oxford University Press (2010)

Copinger and Skomnes James on Copyright by Gillian Davies, Kevin Garnett, and Gwilym Harbottle(15th ed. 2005) Indian Reprint 2008

W.R. Cornish, and David Liewelyn, **Intellectual property: Patents, Copyright, Trademarks and Allied Rights** (5th Ed. 2004)

Note: For Patents, books published after the year 2005 are to be consulted.

The question papers set for the academic years 2011-12 and 2012 are given below for guidance of the students.