

Copyright Law: Theory and Practice

Course Title: Copyright Law: Theory and Practice

Course Duration: One Semester (14 Weeks)

No. of Credit Units: 4 Credits

Level: UG / PG

Medium of Instruction: English

Pre-requisites (if applicable): Contract Law I and II, Property Laws

Equivalent Courses: N/A

Course Description

The course aims to offer a well-rounded discussion and a deeper exploration into copyright laws. The ever expansive nature of copyright law begets frequent exploration into the normative justifications for the same and whether those justifications still hold in light of how the law looks as of today. The course will discuss and explore the building blocks of copyright such as *inter alia* originality, authorship, ownership, rights, infringements and defenses. Topics covered will include the history and evolution of copyright, protected subject matter, the scope of the economic and moral rights, intermediary liability and the principles underlying copyright enforcement.

The course will primarily engage with the Indian copyright law framework but will also engage with the EU, UK and the US legal framework as and when needed. The course will discuss into settlement agreements; structuring IP Related clauses; strategies and other practice related insights that the instructor can offer basis their practice experience.

Course Aims

The objectives of this course are:

- The course explores copyright law and policy.
- The course will do a deep dive into the building blocks of copyright law and help students form their own views as to what tests, principles, justifications they align with the most.
- The course will also discuss practical issues and application of copyright laws.

Teaching Methodology

The course will start with a discussion on theories aimed to justify IPR and how they hold up currently. The course will then pick apart the building blocks of copyright and go over the same in depth. The instructor will adopt a mix of lecture based teaching and the Socratic method to impart the lecture. The readings will be shared in advanced and the more the students read beforehand the better scope of engaged discussions and debates. It will also help students form their own views and figure out the tests, principles, justifications they align with the most.

Intended Learning Outcomes

By the end of the course, students should:

- (i) Have a richer understanding of various facets of copyright law;
- (ii) Formulate their own views as to copyrightability of subject matter and exclusions to the same;
- (iii) Formulate their own views as to whether the theories used to justify IPR hold their ground; and
- (iv) Gain practical insights into application of strategies vis-a-vis IPR in the commercial law space.

| Module | Week | Module title |
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| Module 1 | 1 | Theories justifying IPR: Explanation and dissection |
| | | <i>Description: The module will discuss the theories that justify the existence of IPRs, including copyright. We also explore if the theories have merit or if we</i> |

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| | | <i>need to reconsider these justifications in the present times. We explore if copyright law promotes creativity or shackles creators, further disenfranchising them.</i> |
| Module 2 | 2 and 3 | Work and Originality: Exploring the thresholds <i>Description: The module will explore various ‘works’ protected under the copyright laws and threshold of originality. The module will also focus on protection of computer programmes and database and the issues surrounding the same.</i> |
| Module 3 | 3 and 4 | Authorship versus ownership: where does the creator stand <i>Description: The module will explore who is the author of a work and who is the first owner. We then question if the idea that copyright protects the creator stands true in light of the first owner principle. We also take in the case study of a producer of a cinematographic film vs. a director and explore the issue through that lens. The module will also discuss ‘copyright’ in the works and who can exercise the same.</i> |
| Module 4 | 5 | Idea Expression, Scene a Faire and Video Games <i>Description: The module will explore the idea expression dichotomy, various tests and exceptions – doctrine of merge, abstraction test and scene a fair with a case study on video games and the protection elements therein. We also discuss if the doctrine holds water in light of AI generated works.</i> |
| Module 5 | 6 and 7 | Moral Rights <i>Description: The module discusses moral rights, its development, enforcement; and interaction with Gen AI</i> |
| Module 6 | 8 and 9 | Intermediary Liability and the Safe harbor protection <i>Description: the module will discussion the interaction of Information Technology Act, 2000 with the Copyright Act, 1957 and explore the safe harbor protection offer to intermediaries – its coverage and limitations.</i> |
| Module 7 | 10 and 11 | Infringement and Defenses to infringement Fair dealing Fair Use: When is use transformative enough? <i>Description: This module will deal with infringement, remedies and defenses. We will also explore dynamic and superlative injunctions that the courts have been awarding and discuss contemporary issues including the SciHub Blocking Order.</i> |
| Module 8 | 12 | Technology transfers; Contracts and Conundrum <i>Description: This module will deal with FDI for technology transfers; various types of contracts involving transfer of IP and drafting IP Contracts and IP related clauses in commercial contracts.</i> |
| Module 9 | 13 | Copyright and AI: A sneak peek <i>Description: This module will provide a sneak peek into the various points of intersection of Generative AI and copyright law. We will explore how GenAI either subverts or fits into the mold of copyrightability.</i> |
| | 14 | Revision Week |

Module 1: Theories justifying IPR

- Introduction to Copyright: Theory and History (Page 1-13). Available here: https://web.law.duke.edu/cspd/papers/pdf/ipcasebook_chap-10.pdf
- Vishwas Devaiah, Theoretical Justifications for Intellectual Property
- Mark A. Lemley, 'Faith based Intellectual Property' 62 UCLA L. Rev. 1328 (2015). Available here https://www.uclalawreview.org/wpcontent/uploads/2019/09/Lemley_6.2015.pdf
- A System Out of Balance: A Critical Analysis of Philosophical Justifications for Copyright Law through the Lens of Users' Rights (Pg 24-36)

Module 2: Work and Originality: Exploring the thresholds

- Of Silos and Constellations: Comparing Notions of Originality in Copyright Law (Pg 377-394)
- Indian Copyright Act, 1957 – Sections 2(y); 2(d); 2(c); 2(h); 2(o); 2(xx); 2(f); Section 13
- Eastern Book Company v. DB Modak
- John F Hayden Copyright Protection Of Computer Databases After Feist (Pg 6 – 17)
- Estelle Derclaye and Martin Husovec, Sui Generis Database Protection 2.0: Judicial and Legislative Reforms (PG 1-10)
- Infopaq International A/S v Danske Dagblades Forening
- Aaron Perzanowski & Jason Schultz, DIGITAL EXHAUSTION
- Exhaustion, Distribution and Communication to the Public – The CJEU's Decision C-263/18 – *Tom Kabinet* on E-Books and Beyond

Module 3: Authorship versus ownership: where does the creator stand

- Navigators Logistics Ltd. vs Kashif Qureshi AIR ONLINE 2018 DEL 1483
- Section 2(d) of Indian Copyright Act, 1957; Section 9(3) - UK CDPA
- Section 17 Indian Copyright Act, 1957
- Section 14, Indian Copyright Act, 1957
- RDB and Co. HUF v. HarperCollins Publishers India Pvt. Ltd
- Jane C. Ginsburg & Luke Ali Budiardjo, Authors and Machines (Pg 404-416; 433-436)
- Fortune Films International v. Dev Anand [AIR 1979 Bom 17]

Module 4: Idea Expression, Scene a Faire and Video Games

- Baker v. Selden 101 U.S. 99 (1879)
- P. Bernt Hugenholtz, Copyright and the Expression Engine: Idea and Expression in AI Assisted Creations
- RG Anand v. Deluxe Films
- Drew S. Dean, Hitting Reset: Devising A New Video Game Copyright Regime
- Mark Lemley, HOW GENERATIVE AI TURNS COPYRIGHT UPSIDE DOWN (PG 22-33). Available here - https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4517702

Module 5: Moral Rights

- Section 57, Indian Copyright Act, 1957
- Amar Nath Sehgal v. Union of India 2005 (30) PTC 253 Del; Raj Rewal vs. Union of India
- Mira T. Sundara Rajan, Moral Rights Principles, Practice and New Technology – Chapter 1 (Pg 7-14); (Pg 19-28)
- Mira T. Sundara Rajan, The Moral Rights of Authors and Artists: From the Birth of Copyright to the Age of Artificial Intelligence (Chapter 8) (Pg 516-531)

- Mira T. Sundara Rajan, 'The Moral Rights of Authors and Artists: From the Birth of Copyright to the Age of Artificial Intelligence (Chapter 5)

Module 6: Intermediary Liability and Safe Harbour Protection

- Section 79 and 81 of the Information Technology Act, 2000
- Section 51, Copyright Act, 1957
- Indranath Gupta & Lakshmi Srinivasan, Evolving scope of intermediary liability in India
- Myspace v. SCIL
- Viacom International v. YouTube, Inc. 679 F.3d 19 (2d Cir. 2012)
- Jyoti Panday, BEYOND THE SAFE HARBOUR: Navigating the 'Fake News' Conundrum
- Kunal Kamra v. Union of India (Fact check unit case)
- YouTube/Peterson C 682/18
- The Pirate Bay C-610/15

Module 7: Infringement and Defenses to infringement

- Section 51 and 52, Copyright Act, 1957.
- Thomson Reuters Enterprise Centre Gmbh and West Publishing Corp. v. Ross Intelligence Inc No. 1:20-cv-613-SB (pg 15-24)
- Andy Warhol Foundation for the Visual Arts v. Goldsmith et al., 598 U.S. 508 (2023)
- The Chancellor, Masters & Scholars of University of Oxford and Ors. Vs. Rameshwari Photocopy Services and Ors. 235 (2016) DLT 409
- Timothy J. McFarlin, Infringing Uses, Not Works
- Star India Pvt Ltd v IPTV (Superlative injunctions)
- UTV Software Communication Ltd. and Others v. 1337x.to and Others
- Elsevier Ltd. And Ors. v. Alexandra Elbakyan and Ors (The SciHub Blocking order)

Module 8: Technology transfers, Contracts and Conundrum

- Extant FDI Policy
- Samuel Adams, Intellectual Property Rights, Investment Climate and FDI in Developing Countries
- Section 18 and 19 of Copyright Act, 1957

Module 9: Copyright and AI: A sneak peek

- Hafiz GAFFAR and Saleh ALBARASHDI, Copyright Protection for AI-Generated Works: Exploring Originality and Ownership in a Digital Landscape, Cambridge University Press (Page 13-24)
- Matthew Coulter, Aiming for Fairness: An Exploration into Getty Images v. Stability AI and its Importance in the Landscape of Modern Copyright Law (Pg 14-20)
- Arul George Scaria and Varsha Jhavar, Striking the Balance: Adapting Indian Copyright Law for GenAI and Beyond
- Cary J Craig, The AI-Copyright Trap (pg 21-34)
- Daniel J. Gervais, Artificial Intellectual Property (pg 14-16, 18-23)
- Mark Lemley, Plagiarism, Copyright, and AI (16-22)