

**LL.M./M.C.L., 2/3 Year Course I Term Course
[2021-23]**

Paper: LM – 1018

**Intellectual and Industrial Property Law – I
(Copyright, Neighbouring Rights and Industrial Designs)**

Note :

- 1. The following course content should not be treated as exhaustive. The questions may be set from any topic which the examiner feels relevant to the subject.*
- 2. There shall be one written examination of three hours' duration in each subject at the end of each Term. One question paper shall be set in each of the subjects prescribed for study and examination. Each paper shall carry 100 marks. The minimum pass marks in each subject shall be 50%.*
- 3. Every student of this course is required to present a paper in the class for discussion on a topic assigned by the concerned teacher. No student shall be permitted to appear in the examination unless a certificate is issued by the teacher that the paper presented by the student was to his satisfaction.*
- 4. All the recent cases need to be studied.*

TOPIC – I: INTRODUCTION

1. Introduction of Intellectual Property Rights
 - WTO – TRIPs Agreement
 - World Intellectual Property Organization (WIPO)
 - Enforcement and Abuse
 - Control of Abuse by Competition Law
2. Meaning of Intellectual Property
 - Eight types of Intellectual Property
3. Nature of Copyright, Prevalent from 15th Century,
 - Features of Copyright
 - Berne Convention,
 - UCC
 - TRIPS Agreement
 - WCT
 - WPPT

Copyright Legislation (The Copyright Act, 1957 as amended upto June, 2012)

TOPIC – II: MATTER OF COPYRIGHT (Section 2 and 13)

1. Idea v. Expression Dichotomy,
 - Originality,
 - Meaning of work, Definitions
 - Sweat of the Brow Doctrine,

Minimal Creativity Doctrine
Works in Public Domain

2. Subject matter of Copyright: Literary, musical, artistic, dramatic, Computer programmes
Value addition to open works – When copyright would vest
3. Derived Works – Cinematograph films and Sound Recordings
4. Multiple copyrights in some Products/works
5. Publication and its meaning – Domestic Circle v. Public

TOPIC – III: OWNERSHIP, TERM AND RIGHTS (Sections 14, 17, 22-29)

1. First Owner of Copyright – Author
 - 1.1 Ownership – different yardsticks
 - 1.2 Ownership of Computer generated works
2. Term of Copyright – Berne Convention, UCC, TRIPs Agreement, India and other countries
3. Economic Rights – Special emphasis on:
 1. Rights of Reproduction of Storing of work
 2. Rights to Issue Copies of the Work
 3. Right to Perform the Work
 4. Right to Communicate the Work
 5. Right to make Cinematograph Film or Sound Recording
 6. Right to make Adaptation of the Work – also see S 2(a)
 - a) Copyright in resultant work
 - b) Adaptation of open works
 7. Right to Rental and definition of commercial rental S.2(fa)
- 3.1. Right in Cinematograph Films
- 3.2. Right in Sound Recordings
4. Moral Rights - Sec. 57, the Copyright Act 1957 [TRIPs Agreement does not incorporate moral rights]

TOPIC – IV: EXPLOITATION OF RIGHTS (Section 18-21, 30-32B, 33-36A)

1. Assignment of Copyright
2. Licensing of Copyright
 - Voluntary Licencing
 - Statutory Licencing
 - Compulsory Licensing
5. Role of Copyright Societies in the Administration of Copyright
Method of Distribution of collected royalties

TOPIC – V: INFRINGEMENT OF COPYRIGHT AND REMEDIES AND RIGHTS OF PUBLIC (Section 51, 52, 53, 55, 63-70)

1. Infringement of Copyright
2. Circumvention of technological measures and Rights Management Information
3. International Copyright Order
4. Acts not Constituting Infringement of Copyright
5. Remedies for Infringement
 - a. Civil Remedies
 - (i) Preventive Civil Remedies
 - (ii) Compensatory Remedies
 - b. Administrative Remedies
 - c. Criminal Remedies

TOPIC –VI: NEIGHBOURING RIGHTS

1. Introduction to Neighbouring Rights – Phonograms, Performers Rights, Rights of Broadcasting Organizations.
2. Performers Rights (Section 38-38B, 39-39A)

Who is a performer – Assignment and waiver of performer's rights
3. Rights of Broadcasting Organizations (Section 37, 39-39A)
4. Acts not constituting infringement of performer's rights and Rights of Broadcasting organizations

TOPIC –VII: INTERNATIONAL REGIME OF COPYRIGHT

1. Agreement on Trade – Related Aspects of Intellectual Property Rights including Trade in Counterfeit Goods (TRIPs Agreement)
2. Berne Convention For the Protection of Library and Artistic Works (Paris Act, 1971) – Minimum Standards
 - (a) National Treatment
 - (b) Subject-matter
 - (c) Rights of the Author – Economic and Moral
 - (d) Special Provisions for Developing Countries
3. WIPO Copyright Treaty (WCT), 1996, WIPO Performances and Phonograms Treaty (WPPT), 1996 (Internet Treaties)

See also (For all topics):

1. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961 (Rome Convention).
2. Convention for the protection of producers of Phonograms Against Unauthorized Duplication of Their Phonograms, 1971 (Phonograms Convention).
3. WIPO Copyright Treaty, 1996; and WIPO Performances and Phonograms Treaty, 1996 (Internet Treaties).
4. Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, 1974 (Satellite Convention).
5. TRIPs Agreement

TOPIC –VIII: INDUSTRIAL DESIGNS (The Designs Act, 2000)

- (i) Introduction of Designs Law in India
- (ii) Meaning of “Design”, “Article”, “Copyright”, “Proprietor of a New or Original Design” (Section 2).
Section 15 of Copyright Act – conflict with designs
- (iii) Registration of Designs (Sections 3-10), Cancellation of Registration
- (iv) Copyright in Registered Designs (Section 11-20)
- (v) Piracy of Registered Designs, Pleading invalidity of registration without application for cancellation and Remedies (Section 22)

- 1. Refer TRIPs Agreement (Articles 25 and 26)
- 2. Paris Convention
- 3. Hague Agreement
- 4. Locarno Agreement

Prescribed Readings:

Books

- Alka Chawla, Law Of Copyright-Comparative Perspectives, LexisNexis (2013)
- Ashwani K Bansal, Designs Law in India, (2012)
- Ashwani K. Bansal, Materials on Copyright Law, (2004).
- WIPO Intellectual Property Handbook: Policy, Law and Use (2004)
- K.M. Garnett, J.E. Rayner James and G. Davis, Copinger and Skone James on Copyright (2005, 15th ed.). Indian Reprint 2008
- Narayanan, P., Law of Copyright and Industrial Designs (2007).
- V.K. Ahuja, Intellectual Property Laws (2009).
- V.K. Ahuja, Law of Copyright and Neighbouring Rights: National and International Perspectives (2007)
- Cornish William, Cases and Materials on Intellectual Property (2006).
- Russel Clarke, Industrial Designs (2005, 7th ed.).
- David I. Bainbridge, Intellectual Property, Longman, 9th Edition (2012)
- Peter Groves, Sourcebook on Intellectual Property Law, Routledge-Cavendish (1997).
- N.S. Gopalakrishnan & T.G. Ajitha, Principles of Intellectual Property, Eastern Book Company, 2nd Edition (2014).
- Paul Goldstein, International Copyright: Principles, Law, and Practice, Oxford University Press (2012)
- Mira Sundara Rajan, Moral Rights: Principles, Practice, and New Technology, Oxford University Press (2011).
- S. Sivakumar & Lisa P. Lukose, Broadcasting Reproduction Right in India: Copyright and Neighbouring Right Issues, ILI, New Delhi, (2013)
- David Nimmer, Nimmer on Copyright, Lexis Nexis (2010)

- Adeney, Elizabeth. *The Moral Rights of Authors and Performers: An International Comparative Analysis*. London: Oxford University Press (2006)
- Garnett, K.M., Copinger and Skone James on copyright, 14th Ed. London: Sweet & Maxwell, 1999

Articles

1. Lawrence Liang (2017) Paternal and defiant access: copyright and the politics of access to knowledge in the Delhi University photocopy case, *Indian Law Review*, 1:1, 36-55.
2. Trevor Cook, “The restricted acts of reproduction and distribution in EU Copyright Law”, *JIPR*, Vol. 20, Mar 2015, Pg 122-126
3. V.K. Unni, “Exploring sovereign immunity in copyright infringement”, *JIPR*, Vol. 19, Sep 2014, Pg 307-314
4. Juhi Gupta, “John Doe Copyright Injunctions in India”, *JIPR*, Vol. 18, July 2013, Pg 351-359
5. Ashwani K Bansal, *Intellectual Property Rights: Judicial Law Making with Foreign Bias*, *Journal of Law Teachers of India*, (JOLT-I) 2012, Volume II Page numbers 1-31
6. Basheer, Khetry, Nandy and Sreemitra, “Exhausting Copyrights and promoting access to education”, *JIPR*, Vol. 17, July 2012, Pg 335-347
7. Arathi Ashok, “Technology Protection Measures and the Indian Copyright (Amendment) Act 2012: A comment”, *JIPR*, Vol. 17, Sep 2012, Pg 521-531
8. Arunabha Banerjee, “Morality of Copyright- A critique in the view of the 3 idiots controversy”, *JIPR*, Vol. 16, Sep 2011, Pg 394-401
9. *Licensing Chapters on Copyright and Designs in Raman Mittal, Licensing*, Satyam Law International (2011) (Chapters 5, 9, 13-17)
10. Arathi Ashok, “Economic Rights of authors under copyright law”, *JIPR*, Vol. 15, Jan 2010, Pg 46-54
11. Ashwani K Bansal, *Economics v Morality of IPRs: Strengthen Competition Act*, 2002, 2006 Volume 40 *Journal of Constitutional and Parliamentary Studies*, page 235
12. V.K. Ahuja, *Role of Copyright Societies in the Administration of Copyright*, XXXIII *Chartered Secretary*, 2003, p. 145.
13. WIPO, *The WIPO Copyright Treaty (WCT) (1996)*, 55 *Intellectual Property in Asia and the Pacific*, October-December, 1997, p. 23.
14. WIPO, *the WIPO Performances and Phonograms Treaty (WPPT) (1996)*. 55 *Intellectual Property in Asia and the Pacific*, October-December, 1997, p. 36.
15. *Annual Survey of Indian Laws (Intellectual Property Section) upto date.*