

IPR issues in digital environment: Meeting the challenges



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Intellectual Property Rights

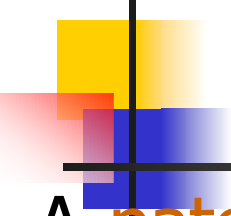
- **IP:** Creation of human mind
- **IPR:** Legal rights to protect artistic or commercial interests
- **But**

Knowledge has to be widespread for benefit of the society and further research



Intellectual Property Rights (IPR)


Intellectual property laws confer a bundle of exclusive rights in relation to the particular form or manner in which ideas or information are expressed or manifested. The term "intellectual property" denotes the specific legal rights which authors, inventors and other IP holders may hold and exercise, and not the intellectual work itself.



A **patent** may be granted for a new, useful, and non-obvious invention, and gives the patent holder a right to prevent others from practicing the invention without a license from the inventor for a certain period of time (typically 20 years from the filing date of a patent application).

An **industrial design** protects the form of appearance, style or design of an industrial object (e.g. spare parts, furniture, or textiles).

A **trademark** is a distinctive sign which is used to distinguish the products or services of different businesses.



A **trade secret** (which is sometimes either equated with, or a subset of, "confidential information") is secret, non-public information concerning the commercial practices or proprietary knowledge of a business, public disclosure of which may sometimes be illegal.

Copyright may subsist in creative and artistic works (e.g. books, movies, music, paintings, photographs, and software) and give a copyright holder the exclusive right to control reproduction or adaptation of such works for a certain period of time (life of the author plus several decades).



Copyright

Copyright is a property right which subsists in accordance with this Part in the following descriptions of work –

- (a) original literary, dramatic, musical or artistic works,
- (b) sound recordings, films or broadcasts,
- (c) the typographical arrangement of published editions.



Copyright

"literary work" means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes

- (a) a table or compilation other than a database,
- (b) a computer program,
- (c) preparatory design material for a computer program, and
- (d) a database;



Copyright Laws don't cover

- Ideas
- Facts, titles, phrases, Short titles, slogans,
- Extemporaneous speech that remains unrecorded
- Works whose copyright have expired



Stakeholders

- Authors
- Publishers
 - Commercial, for-profit
 - Academic or not-for-profit
- Universities
- Librarians
- Scholars
- Public

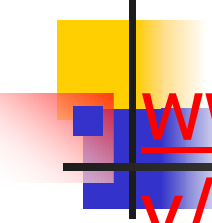
Websites Advising on Copyright Issues

- The National Library of Australia hosts the website named Preservation Access to Digital Information (PADI) having extremely extensive section on copyright www.nla.gov.au/padi/topics/28.html
- Another site www.unc.edu/~uncclng/public-d.htm developed by Laura N. Gassaway, Director of the Law Library and Prof. Of Law, University of North Carolina



Websites Advising on Copyright Issues

- The Library of Congress
www.loc.gov/copyright/
- The British Library maintains a copyright website containing this information
www.bl.uk/services/information/copyright.html



[www.chin.gc.ca/English/Intellectual Property/Copyright Guide/index.html](http://www.chin.gc.ca/English/Intellectual_Property/Copyright_Guide/index.html). 'Copyright guide for Museums and other Cultural Organisations' a guide to copyright law in Canada

- www.WIPO.int - World Intellectual Property Organisation
- The UK's Technical Advisory Service on Images - maintains web pages devoted to legal questions (www.tasi.ac.uk/)



Berne Convention

- Basic rule: “national treatment” (treat foreign nationals no worse than do own)
- Berne has some minimum standards (duration, exclusive rights, no formalities)
- As of 2008, there are 164 countries that are parties to the Berne Convention.

As a specialized agency of the United Nations, WIPO administers treaties, hosts meetings to create and harmonize rules update, revise, or adopt new treaties

WIPO Copyright Treaty (WCT) “special agreement” of the Berne Convention, offered on 20December 1996 for adoption by the member states of Berne



Article 10(1) of the WCT reaffirms the **authority of countries to develop exceptions to the rights of copyright owners**

Article 11 of the WCT introduced an entirely new concept in international copyright law, the **prohibition against circumvention of technological measures**



Other Conventions

- Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite
- Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
- WIPO Performances and Phonograms Treaty (WPPT)



Copyright Laws in Pre-Digital Environment

- Books: Authors holds the copyright till **50 / 70 years after his / her** death with rights for reprints with publisher.
- Authors get royalty for his work for copies printed in first lot with provision of additional % on each additional sales
- Journals: Authors transfer all his rights for use, copy and distribution to the publisher

United Kingdom



The owner of the copyright in a work has, the exclusive right to do the following acts in the

(a) to copy the work (section 17);

(b) to issue copies of the work to the public (section 18);

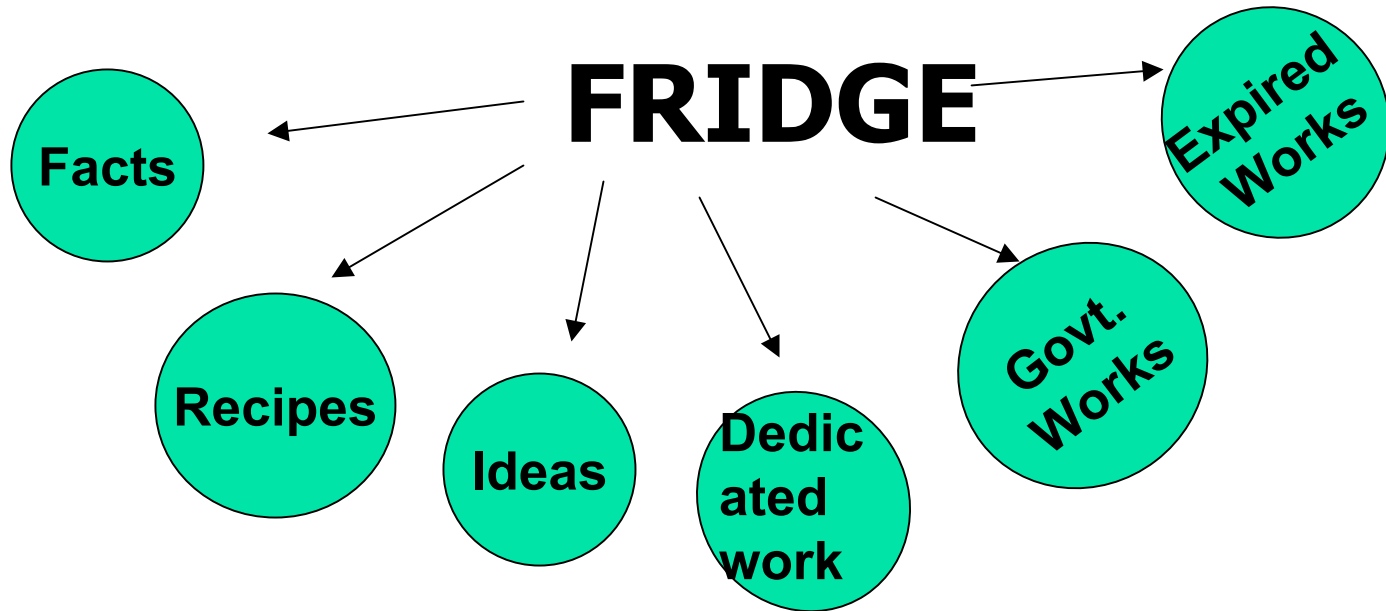
- to rent or lend the work to the public (section 18A);

(c) to perform, show or play the work in public (section 19);

(d) to communicate the work to the public (section 20);

(e) to make an adaptation of the work or do any of the above in relation to an adaptation (section 21);

Free use





Free Use

- Quoting from a protected work, provided that the source of the quotation and the name of the author is mentioned, and that the extent of the quotation is compatible with fair practice;
- Use of works by way of illustration for teaching purposes; and
- Use of works for the purpose of news reporting/ Current events

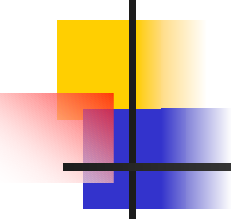
Fair Use of Copyrighted Materials



- Fair Use is a provision that allows comment, organizations to reproduce copyrighted materials, under certain circumstances, without receiving permission from the author/owner
- **Under Section 107 of the 1976 US Copyright Act -** copying for purposes such as:
 - ✓ criticism,
 - ✓ news reporting,
 - ✓ teaching (including multiple copies for classroom use),
 - ✓ scholarship, or
 - ✓ research

is not an infringement of copyright

Consumer: Fair Use



Research and private study Fair dealing with a literary, dramatic, musical or artistic work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.

- Copying for purpose of research or private study
- Copying for purpose of criticism or review.
- Copying for non-profit educational purposes

Factors to be considered in determining whether the use made of a work is a fair use or not include:



- The ***purpose*** and the character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- The ***nature*** of the copyrighted work;
- The ***amount and substantially*** of the portion used in relation to the copyrighted work as a whole; and
- The ***effect of the use*** upon the potential market for or value of the copyrighted work.
(www.loc.gov/copyright/title17/92chap1.html#107)
- Any kind of commercial exploitation of copyrighted works in this case is strictly prohibited
www.copyright.inpui.edu/sec108.html

Berne Convention: Three Steps test



The following provisions permit countries to enact statutory exceptions:

- i. Certain special cases;
- ii. No conflict with normal exploitation of the work; and
- iii. Cannot unreasonably prejudice the author's interests.



Issues and Challenges

- Maximize access to scholarly information
- Balance rights between authors, publishers, and universities
- Educate academic community to the need to manage copyright
- Increased use of electronic technology and dissemination of information over the internet
- This demanded changes in Copyright Legislations around the world

Recent Copyright Changes

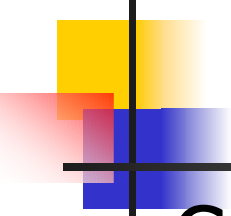


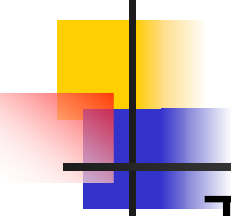
Many countries amended Copyright Act - for extending privilege to allow digital copying and limited distribution

- Australian Copyright Act (1968) amended in 1990 allow digital copying of materials held in libraries & archives for

- internal use
- Reproduction or
- Digital production

provided original work is deteriorated

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- Canadian Copyright Act was amended in 1997 to allow copying to 'an alternative format if the original is currently in obsolete format or the technology required to use the original is unavailable'
 - But France, the Netherlands and Germany do not allow any such copying

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- The Indian Copyright Act -originally enacted in 1957- amended in 1994 also makes a distinction between reproduction for public use and private use
 - Reproduction for public use can be done only with the right holder's permission
 - Law allows a fair dealing for the purpose of
 - **Private use**
 - **Research**
 - **Criticism or**
 - **review**



Section 108 of US Copyright Law as modified by Digital Millennium Copyright Act of 1998 -has a provision which allows libraries and archives to


- Copy
- Digitise and
- Make accessible published documents in their collections

Even if the work in question is in copyright



THE DIGITAL MILLENNIUM COPYRIGHT ACT OF 1998

Nonprofit library, archive and educational institution exception (section 1201(d)). The prohibition on the act of circumvention of access control measures is subject to an exception that permits nonprofit libraries, archives and educational institutions to circumvent solely for the purpose of making a good faith determination as to whether they wish to obtain authorized access to the work.

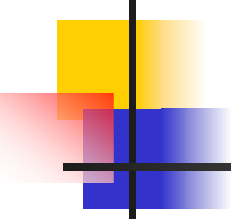


Section 404 of the DMCA amends the exemption for nonprofit libraries and archives in section 108 of the Copyright Act **to accommodate digital technologies and evolving preservation practices.** Prior to enactment of the DMCA, section 108 permitted such libraries and archives to make a single facsimile (i.e., not digital) copy of a work for purposes of preservation or interlibrary loan.



amended, section 108 permits up to **3 digital copies of unpublished and damaged works for preservation of copyrighted material**

- provided that digital copies are not made available to the public outside the library premises or put on the Internet.
- Also permits a library to copy a work into a new format if the original format becomes obsolete—that is, the machine or device used to render the work perceptible is no longer manufactured or is no longer reasonably available in the commercial marketplace.
- These copies to be used by
 - ✓ library users within the library and
 - ✓ inter-library loan purposes



Legal issues. Libraries, particularly at universities without law schools, are often the source of legal information about copyright law, mainly *U.S. Code Title 17* (especially sections 107-108). In addition to providing guidance to students and faculty about using copyrighted works appropriately and about their rights as authors, Library activities conform to copyright law in terms of preservation copies.



Recent Copyright Changes

Changes in 2003 to the UK Copyright Law work to bring UK laws into closer harmony with EU copyright law. The most notable changes affect the definition of 'fair dealing' and libraries' ability to make copies for entities conducting commercial research. Such research is no longer covered as an exemption from copyright law.

Recent Copyright Changes

The following cases would clearly count as **commercial copying**:

- Research relevant to R&D in a commercial company
- Market research or competitor intelligence in all organisations
- Searching for legislation and regulations for a commercial company
- Research relevant to R&D where results will be passed to a commercial company for commercial use
- Work done by an information broker for clients



Recent Copyright Changes

The following examples would certainly be viewed as copying which does not have a commercial purpose:

- R&D in educational establishments which is not related to any commercial venture
- Individuals' own private research or study, unrelated to any commercial venture
- Research on a genuinely pro-bono basis



Digital Copying Technology

- File sharing on Internet is easy
- A single digital copy can be used for worldwide distribution inspite of copyright laws
- Any one with access to Internet and scanner can now copy a work and make it available to millions of users for download and print.
- Publishers are increasing using the Internet as a global way to offer their publications to the users community.

Copyright and Universities



- Who Should Own the Copyright?
 - Policy Position – faculty owns vs. institution owns
 - Principled Negotiation – focus on interests
- Issues for Policy Clarification
 - Distance Education
 - Scholarly Communication
 - Commercialization of Research/Tech Transfer
- Copyright Policies
 - Intellectual Property Policies
 - Copyright Policies
- Other Policy Issues
 - Conflict of Interest/Commitment, Use of University Name, Use of Resources, Student Works



Content Licenses

Legal agreements by which content can be distributed. Typically, an institutional repository might have these two licenses:

- **Deposit license:** An agreement between the creator (or copyright holder) and the institution giving the repository the right to distribute and preserve the work.
- **Distribution license:** An agreement between the author or creator or copyright holder and the end user governing the uses that can be made of the work.



Copyright Guidelines for Scholars

Publishers usually will agree to an author's request to retain rights to post content to a website or institutional repository.

Faculty should be encouraged to retain these rights before and after publishing their work so they can contribute their content to online repositories



IPR issues in digital world

- IPR and copyright issues are manifested in terms of licenses in digital world
- A license is an agreement between the publisher and the user wherein the publisher transfers the non-exclusive and non transferable right to use materials to the user or licensee.
- License agreements are used by the publishers as legal method for controlling the use of their e-resources.



E-resource Licensing . . .

The licenses for electronic resources impose two types of restrictions on its usage, namely

- i) who can use these resources; and
- ii) how the resources can be used.



E-resource Licensing . . .

- ~~The first restriction defines authorized users for e-resources, which generally includes students, faculty, staff and onsite visitors of a subscribing institution.~~

- The second restriction deals with how these resources can be used. It is the responsibility of individual users to ensure that e-resources are used for personal, educational and research purposes only.

E-resource Licensing . . .

- Systematic or programmatic downloading, retention, and printing are prohibited. For example, you cannot download entire issue of a journal or print out several copies of the same article.
- Electronic distribution of content is generally restricted.
- Multiple copies of digital documents and their circulation is prohibited. Copyright laws protect published material in any format so that it cannot be copied except in accordance with fair use.

Permitted

Not Permitted

➤ Viewing, downloading, copying, printing and saving a copy of search results

➤ Viewing, downloading, copying, printing and saving individual articles

➤ Using e-resources for scholarly, educational or scientific research, teaching, private study and clinical purposes

➤ Sending a copy of an article to another authorized user (i.e. current faculty, students or staff)

➤ Posting the URL to the publisher's version of the article on a class website (publisher links will allow only authorized users access)

➤ Use of robots or intelligent agents to do systematic, bulk or automatic downloading is not permitted

➤ Systematic downloading or printing of entire journal issues or large portions of other e-resources is not permitted

➤ Using e-resources for commercial gain is not permitted (i.e. reselling, redistributing or republishing.)

➤ Transmitting, disseminating or otherwise making online content available to unauthorized users (i.e. sending to mailing lists or electronic bulletin boards) is not permitted

➤ Posting the publisher's version or PDF of an article to an open class website is not permitted (instead, post the URL to the article which will allow only authorized users access)



Copy Protection Solutions

- Water-marking
 - Watermarking embeds a digital signal in text, image, audio or video files, which may contain information and proof of rights to a product's owner or publisher.



Copy Protection Solutions

- Digital Signature
 - Digital signature is an electronic rather than a written signature that can be used to authenticate the identity of the sender of a message or a document. It can also be used to ensure that the original content of the message or document has not been changed.

Copyright Enforcement

- Essentially a private matter within civil law
- No Govt. agency has a responsibility to check potential copyright infringements
- Berne Convention serves as worldwide framework for international copyright protection.
- Law suits filed by copyright holders
- US Digital Millennium Copyright Act 1998 made it a criminal offence to violate copyright law for purpose of “commercial advantage or private financial gain”



Copyright Enforcement

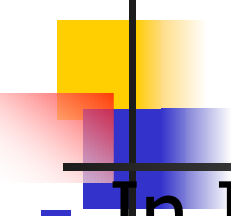
The existing copyright provisions are inadequate to tackle issues involved in electronic access


Technology and legislation pertaining to IPR issues are still evolving



Challenges to Copyrightable Work in Digital Environment in India

- Enforcement of Liability – Fixation of Liability- **Who is to be held responsible?**
 - **The party who dispatches the work**
 - **The party who receives it or**
 - **The Internet service provider- if on the Net**

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- In India the laws to consider- about the use of Electronic Data Interchange (EDI), e-commerce, copyright, IPR etc.
 - Although provisions in IT Act, 2000- still need to change the Evidence Act to recognise digital signatures
 - Changes required in Indian Penal Code , 1860, Evidence Act, 1872, Indian Patents Act- to recognise emerging technologies towards

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- Section 62 of the Indian Copyright Act, 1957 provides for jurisdiction to any court having a direct jurisdiction over the matter
 - The IT Act provides for extra-territorial jurisdiction to cyber crime cases
 - Section 74 provides that where any offence involves a computer or computer resource in India , it can be taken note of under Indian laws



Questions Regarding Copyright

- Negotiation with rights holders (Who & How)
- Decision regarding fees
- Whether institution can afford legal expenses
- If risk occurs- How will it be addressed by the institution
- Consequences-if material used without permission

The future of Copyright



- Copyright is not meant to grant to its holders exclusive control of their works; rather, it is a very specific bundle of rights designed to foster creativity for the public interest
- a more palatable alternative would be to interpret fair use broadly to preclude infringement by unharmed, noncommercial uses

Questions and Discussion

Thanks for your kind
Co-operation & Patience

Dr Ravinder Kr Chadha

