

Copyright and Related Rights Law

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WEEK - 01

LECTURE - 01

Subject Matter, Incorporeal Property and Literary Work Definitions

Welcome to this course on copyright and related rights law. In this first session, we are going to understand what constitutes subject matter of copyright. In other words, what is it that copyright attaches to? In that context, we will also understand the nature of incorporeal property; And then we will look at certain definitions of literary work; Which is a category of copyrightable subject matter. In doing so, we will lay the foundation for a broad discussion on the subject matter of literary work this week. In order to understand subject matter of copyright let us imagine subject matter as a complex product. A complex product is formed of many independent components that come together to make that product whole.

Let us consider an example of a complex product: Many of us own a smartphone. Many of us have operated a smartphone. A smartphone is a good example of what a complex product is. As there are many different independent components which are working interoperably in order to make the smartphone function in a particular manner.

The question is Is every component simply because it is part of the smartphone to be called as a subject matter of this complex product? Or are we going to compartmentalize products in such a way that these compartments share a particular characteristic within itself? You must have noted that these would be two different ways in which we could understand what constitutes subject matter. Let us consider this kind of constitution through a standard of listing. If we say that we can split subject matter constitution into two parts. One called open list and second called closed list. An open list system would follow a format wherein simply because a component is part of the smartphone it is automatically a subject matter.

You can see the first point that I have mentioned on the screen. Every component that is contributing to the working of the smartphone is a subject matter. Let us distinguish this kind of listing of components as subject matter with a kind of listing mechanism which is

based on compartments. Consider the two examples that I have stated. Every component that can lead to dynamic interaction with the user is screen subject matter.

Every component that is capable of being touched by user but does not lead to dynamic interaction with the user is external support subject matter. You can see in this second kind of listing system. I have created compartments in such a way that components within a particular compartment are going to have a shared characteristic. In their individuality, they might be distinct. But that doesn't take away the fact that they have a common characteristic.

And so we can say that a screen subject matter is a category of subject matter. And external support subject matter is a category of subject matter. I'm sure now you understand how we could approach subject matter systems in two different ways. In terms of understanding open list systems better, let us consider the French IP code. The French intellectual property code in the provision L111 states.

That the author of a work of the mind shall enjoy in that work by the mere fact of its creation an exclusive incorporeal property right which shall be enforceable against all persons. This provision can be split into two components. The first component which talks about subject matters to which copyright attaches as works of mind. According to this provision, works of mind are works of creation. Because these are works of creation, there is perceptibility to such a creation.

In other words, it is not simply a figment of somebody's imagination. That person has expressed his idea in a particular manner. And because this is a work of the mind, it would be considered as a subject matter. The second component speaks of what kind of right would extend to such a subject matter. According to this provision, this is an incorporeal property right.

Copyright as we all know, is a type of intellectual property right. We will look at these two components in their own term. Let us focus first on the first component. Take a look at this image. Focus on the books that are on the desk, and the notepad or a diary if you wish. What is the difference between a book and a notepad? When we consider the reason why a consumer would purchase a book as against a notepad. You would realize that a book is bought for the content that is present in the book. In other words, a work of mind has been expressed. In this book, there is a written content inside.

Whereas the notepad is bought for the purpose of writing. Such writing may or may not be a work of the mind. In other words, such writing may not be a creative expression, but it could be. And if we had to make a distinction between a work of mind consideration with respect to a notepad and a book. we can say that the work of mind is present in the form of content in the book and in a notepad it can be created through the mode of writing.

What this simple example helps us understand is. That we can make a distinction between the content to which copyright would attach as distinct from the physical element that helps carry the content. We can make a distinction between the book and its content. In other words, copyright is aimed at protecting the content. What if we consider a thousand units of a particular book? You would note that because these units are carrying the same content, copyright is attaching to the content in all of these books.

But in terms of ownership, every book has its own owner. We can say that while there can be a distinct owner for each unit of the book. For the content there will be only one owner and that owner is going to be the copyright holder. We can understand this distinction also in terms of an explicit distinction that is made within the French IP code itself. In another provision L111-3, the code says that the incorporeal property right set out in article L111 shall be independent of any property right in the physical object. In other words, a book is different from its content. Let us then look at this second component more closely. How is it that a person gains copyright over a content in books that are within the ownership of many different people? It is by way of gaining an incorporeal property right.

To understand the nature of incorporeal property right, let us understand the way an owner can exert his property right over physical property such as land. In this image, you can see fencing that has been done on a piece of land. What fencing symbolizes is a clear exposition of the copyright holders hold over the land. In the sense that any entry onto that land can only happen with the authorization of the property owner. Can we consider a similar kind of control that a copyright holder can vest on content? You would immediately be reflecting on the kind of problems this poses.

Because there is no physical fencing, access to a work where it is had cannot be removed from the mind of a particular person. What can be done is that certain actions with respect to that particular content. Such as reproduction or creation of more copies, unauthorized copies, placing of such copies on the market for sale, so as to cause commercial injury to the copyright holder. This is something which the law can provide as a kind of control mechanism. And therefore we can consider incorporeal property right as a kind of artificial fencing.

I hope with this example, you are able to appreciate how copyright can extend to content that is present in books which are otherwise being owned by many different people. You would also then appreciate that copyright is an exclusive right which vests against the public at large. In legal terms, we say that this is a right in rem. Let us look at another provision within the French IP code. This provision provides certain illustrative examples of what could be works of mind under L111-1.

We have seen that the French IP code provides a general understanding of what would be subject matter of copyright. And in this provision, it provides certain examples. As you can

see, the provision reads. The following in particular shall be considered works of the mind. Such as books, pamphlets and other literary, artistic and scientific writings, lectures, addresses, sermons, pleadings and other works of such nature.

This is a part of a broader list of examples that is provided within this provision. But this is simply illustrative. The attempt is not to create categories of subject matter. Let us then make a comparison between the French IP code and the Indian Copyright Act. We see that in section 2 clause Y of the Indian Copyright Act.

A work is interpreted as a literary, dramatic, musical or artistic work, cinematograph, film and sound recording. These individual works have been interpreted or defined independently within Section 2. Similar to how we were understanding how compartments in complex products can be made such that individual components within such compartments share a common characteristic. And that is how the Indian Copyright Act approaches subject matter. With this, I'm sure we are able to appreciate the distinction between open list and closed list subject matter systems.

Now we will move to understand definitions of the first category of subject matter literary work. Let us first look at the US Copyright Act. In Section 101 It is defined as works other than audiovisual works expressed in words, numbers or other verbal or numerical symbols or indicia regardless of the nature of the material objects such as books, periodicals, manuscripts, phonorecords, film, tapes, discs or cards in which they are embodied. You can see that this provision tells us that literary works are composed in a particular manner. According to this provision, such a literary composition occurs through words, numbers or other such symbols.

This provision also makes a distinction between the literary composition and The embodiment which is carrying it such as the book. Let us look at another definition of literary work from a different copyright act. This is from the UK. Section 3 clause 1 of this act states, literary work means any work other than a dramatic or musical work which is written, spoken or sung. and accordingly includes a table or compilation other than a database, a computer program, a preparatory design material for a computer program, and a database.

We can see that this provision tells us the manner in which literary work can be composed. Similar to the US copyright act except In this provision we see that literary work can be composed through speaking and singing as well. After all, when a person speaks, the person speaks words. And if words are what constitutes literary subject matter, then the mode of such expression could very well be writing or speaking. This provision also provides certain types of literary work subject matter.

What this suggests is that these types share a common characteristic within the compartment of literary work. Let us look at another definition of literary work. This one

is from Canada. Under Section 2 of the Canadian Copyright Act, literary work includes tables, computer programs and compilations of literary works. Unlike the definition in US and in UK, this particular definition doesn't tell us in what manner literary works can be composed.

Rather it gives us illustrative examples of the types of subject matter which would fall within this category. Very similarly, literary work has also been defined within the Indian Copyright Act. As you can see, this provision section 2 clause O is very similar to the Canadian Copyright Act. There is something peculiar about these definitions. While they tell us in what manner literary work can be composed and certain types of literary work subject matter.

They don't tell us whether qualitative considerations play any part in considering whether a literary work subject matter exists. Why is this relevant? When we consider literary works, certain kinds of works immediately pop in our mind. These works are having certain literary quality. We are thinking of Authors such as Ramachandra Guha, expert authors who have brought out a work which is satisfying literary pleasure. But these definitions are silent on any qualitative consideration.

In fact, they seem to suggest that literary works could be tables, could be computer programs. Therefore, it becomes important for us to understand whether qualitative considerations play any role in the determination of literary work. And in that sense we are going to understand what could constitute literary within literary work and in doing so we will also understand idea and expression. Thank you for joining me. See you all in the next session. Thank You.