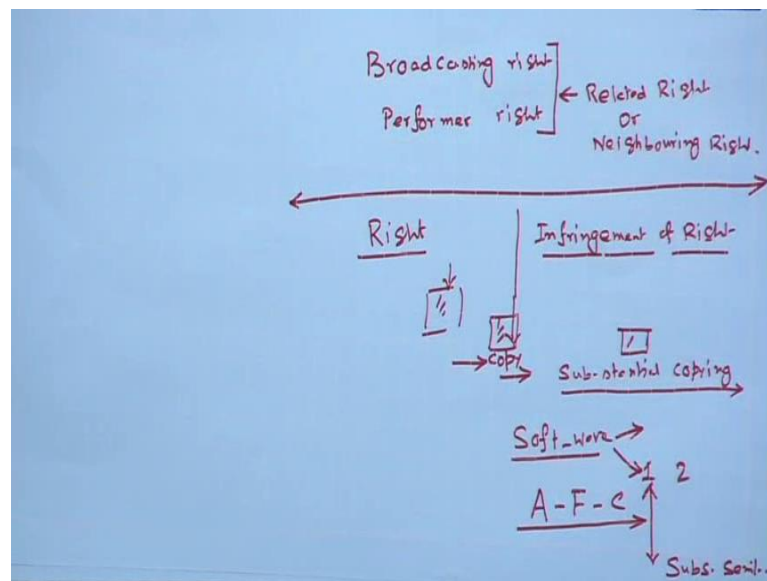


Introduction on Intellectual Property to Engineers and Technologists
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Lecture - 19
Copyright Infringement and Fair Use

So last class we discussed about the authors owners copyright in the form of security right and the registration procedure and we are aware of the base right of copyright owners. There is another part that I have not kept within the purview of the copyright modules just like say another rights let us discuss little bit on that part, sometime we call related rights or neighboring rights, what is that?

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Just like say broadcasting right, I have not kept it broadcasting and the performer right, broadcasting right and performers right now that will come within the purview of related right or neighboring right neighboring right. So, what is that let see say some games one entity is being broadcasting operation. So, they have the right with reference to the broadcasting, similarly that acrobat, musician or singer, dancer they all performing with reference to some song or some cinematographic team or some dramatic work. So, they have the rights also, they rights called performers rights and these are created as neighboring rights or related rights. So, their also right like the copyright their also right

just like that in the form of positive rights they want to reproduce their performance, to copy their performance and to transmit their performance and just about to transmit in order to the transmit all source of rights have been provided to them in the form of related rights.

So this is sometime called copyright and related rights. So, if I ask what is the right of e s p n which reference to that IPL or sonymax? So, they have the rights for broadcasting. So, taken about if some other person, try to use that thing they have to take licenses and permission from that organization. Similarly that if I ask that you know that Kaun Banega Crorepati, Amitabh Bachchan that performing that part, somebody try to copy this performance he is consider to be a infringer with reference to the performance rights of Amitabh Bachchan's. So, this is the coming within the purview of related rights. So, what I try to mention here used two words you are ready discussed in the respect of the things also - one is right another is infringement of right. The owner has the right the infringer means who without permission and authorization of the owners violate the exclusive rights of the owners. So, if somebody violates the exclusive right of the owner he will be a targeted as treated as infringer and his acts will be considers infringement of right of the copy rights owner.

So, now, see I discussed all ready the infringement of copy infringement is different to the patent just like direct infringement then indirect infringement just I say in copyright context also infringement occur directly or indirectly what do mean by direct infringement, all ready referred if you copy or somebody who are the infringement direct infringement or if you induced infringement just like say sony beta (Refer Time: 05:54) if you analyze that just like say that sony created a device by virtue of the device somebody may copy some copyrighted work. So, that device is facilitating the infringer to do infringement to perform infringement. So, then sony is treated as facilitator for infringement. So, in that case the sony whether sony will be liable for infringement. So, in that contest we may consider secondary copyright infringement or see another part we called (Refer Time: 06:46) liability.

Inducement or procurement by virtue of that that so secondary, so primary infringer means who is just like who is the device is downloading or copying the cooperate protected work of others is the direct infringer or primary infringer and sony is facilitating to perform that infringement sony will be liable for that term called secondary

infringement. So, that lies the is called primary infringement secondary infringement, similarly you may consider that Google is let say putting lot of cooperated work in their sides or in service provider they are putting in their websites. Now if somebody just like if I consider whether Google is facilitating or YouTube is facilitating (Refer Time: 08:00) somebody to commit infringement in that case I may put the Google or Youtube is liable for infringement under the purview of secondary copyright infringement. If somebody facilitating inducing infringement will be treated as secondary copyright infringement.

In respect of (Refer Time: 08:26) I am discussing any within a short time before going to discuss about another important issue for your the student that is fair use, but before fair use if should you do not know what is not fair use. Just like say for the reason I am discussing with reference to the term called infringement and that infringement and within the infringement fair use may come as a defense. So, where is not per say your right, but we are use you may consider defense, but situation to situations specify. So, now, that infringement means violation of the statutory rights of the copyright owners here also two types of infringement primary infringement. Secondary infringement nowadays starts study about all sorts of things coming up based on that inducement theory or facilitating theories of infringement. So, primary infringement, secondary infringement plus p two p sharing you understood pear to pear sharing I will discuss that part in respect of digital media and copyright elements specifically, so understood that infringement is coming by virtue of violation of the statutory rights.

Now, how the infringement will be judged? So, there test adopted for infringement. So, one is somebody is coping or copy part should be considered substantial coping, substantial copying that would be decided case to case basis substantial whether the infringement is they say coping two way is in coping infringing the work of the secondary or the owners is copying, let us copy means exactly coping or he is substantial coping let us substantial coping. So, if he copied or substantial copied the copyright protected work he will be consider infringers. So, substantial would be decided based on the situation to situation and he should if he copied the idea or some elements some time you called since of theory since of theory or sense of theory or idea expression identity kind of situation, just like say temple can be expressed in similar way. So, those kinds of situation will not come within the purview of copyright or copied the method just I say

(Refer Time: 11:25) case somebody has written the book process for bookkeeping and somebody utilize reading that book he kept the book in the library. So, he has performed the work what have been stated in the book. So, that procedure is not come in the purview of cooperates, so he will not be (Refer Time: 11:44) and infringer.

So, that copyright part infringement if copy and substantial copy or copyright and the digital world lead to the infringement of copyright, the copy and substantial copy will be decided based on the case to case basis. So, you understood we should not copy substantially depending upon the situation to situation.

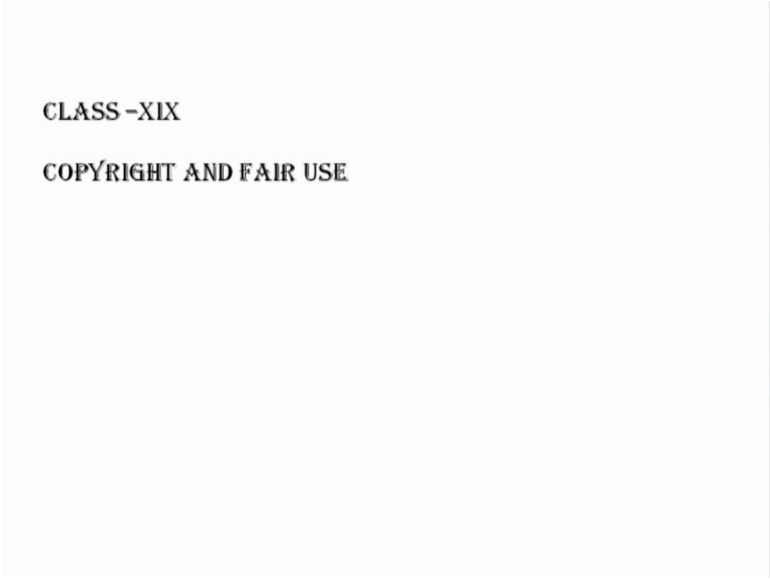
Now, let us discuss about your technical edge that the software copyright and software copyright infringement. Software says that source code and the say structure sequencing say software source will come within the purview of copyright let us say come to the software source code is coming within the purview of copyrights. So, copy of the source code if I presume the software source code is only coping when the further copyright coping in the source code lead to the violation of the copyrights. So, in that respect of copyright infringement one important case is there in us jurisdiction we call its computer associate versus (Refer Time: 13:05) computer case, here the situation is in very interesting situation he employee was initially working in one company later on he is walking particularly perform for development to the software later on he shifted the organization and working another company that another company also created software similar to for his current company then they try to investigate to based on the that found out the computer person is one in that company then this varies reference to that cooperate infringement, in that case they came up with a case call A-F-C Abstraction Filtration and Comparison test.

So, they try to find abstract different elements on the software, they filter the non cooperated elements of the software then they try to compare the software of the (Refer Time: 14:01) in company one or company two if they found substantial similarity, substantial similarity between the software's of plaintiff depends plaintiff means the person who find the suit defendant means against whom we file the suit. If they found substantial similarity after comparison of those elements then it will be treated as a software infringement of the software copyrights. So, what is the test? Abstraction filtration comprising test abstraction of that software into defined element, element some elements; then filtration, filtration means which are the not copyrighted protected

element may be structure sequencing in of the software (Refer Time: 14:55) of the software.

So, if something is coming in the form of idea or expression identity, something is coming in the form of sense of theory those are not come within the purview of cooperate elements so non cooperative elements will be filter out, from that then the filter on that sometime you call filtered or filtrate is coming with the purview of copyright protected protection. The filtrate will be compared to judge the subsequent similarity then substantial similarity will if judge, then it would be consider copyright infringement and will judge the substantial similarity then sometime you call lay observer testing, lay observer (Refer Time: 15:42) will judge the substantial similarity, lay observer will judge the substantial similarity of the two work.

(Refer Slide Time: 15:53)



CLASS -XIX
COPYRIGHT AND FAIR USE

So, now before discussing of the actual content of this mode this class, I have discussed with you that one and important parameter you are suppose to miss that worrying rights and another important parameter that is coming within the scope of this class specifically because I am the (Refer Time: 16:12) copyright and fair use, but before learning the fair use you should know what is the unfair use, what is a unfair means that coming up in the form of infringement of rights.

So, in infringement rights that violation of the statutory rights of the copyright owners will be consider the infringement, infringement may occurs by virtue of let us say in the

form of primary infringement, infringement may occur by virtue of say secondary or (Refer Time: 16:44) liabilities situation and so inducement and procurement kinds of situation, and also we have discussed in the infringement is just based on copy or substantial copy and that is adopted is called substantial similarity and substantial similarity is judged by the early observer and with reference to the computer program is that is adopted called that adopted in America called Abstraction Filtration Comparison test and for musical world they adopted test called melody deduction test to judge the substantial similarity between the two works to judge the infringement.

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✓ COPYRIGHT INFRINGEMENT-----USE OF COPYRIGHT WORK WITHOUT PERMISSION OF OWNER

✓ FAIR USE—PRIVATE, RESEARCH, NON COMMERCIAL USE, CRITICISM, REVIEW


FOR COMPUTER PROGRAM

FOR MAKING COPIES OR ADOPTION BY COPIES PURELY AS A TEMPORARY DESTRUCTION OR DAMAGE COMPUTER OF INFORMATION FOR INTER-OPERABILITY

USE BY TEACHER OR A PUPIL IN THE COURSE OF INSTRUCTION

USA
THE STATUTE DOES NOT CLEARLY DEFINE FAIR USE, BUT INSTEAD GIVES FOUR NON-EXCLUSIVE FACTORS TO CONSIDER IN A FAIR USE ANALYSIS. THOSE FACTORS ARE:

- THE PURPOSE AND CHARACTER OF THE USE;
- THE NATURE OF THE COPYRIGHTED WORK;
- THE AMOUNT AND SUBSTANTIALITY OF THE PORTION 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



So, now what you understood now what is let see unfair in respect of copyright that lead to the violation of the statutory rights of their copyright owners. Now unless copyright is somehow been say created creating with respect to literary work in knowledge domain. So, copyright is providing knowledge to the different person. So, in that case copyright have created a provision called a fair use. So, fair use, if you use the work protected by copyright in some cases that will not be considered as infringement of the copyright work. So, act has created provision for that, that something will be considered cum within the purview of fair use, for use in the purview of infringement in that case this kind of use even you do not required permission from the authors.

So, the (Refer Time: 18:50) is fair sub in provided in our copyright act by virtue of 6 in 52s, 52 that fair use they have provided the different kinds of use that form of purview of

fair use. Just like a use for private use, what do you mean by private use? Something is not public, what is public? Communication to the public, some cases may create that say you are using some copyrighted work for private use means I can give the example let say television channel is, just like say television channel everyday there a just like a particular serial they telecast time to time telecast and you are recording those a serial and ultimately out of the you have created a CD and if you use that CD out of the most television serial and use those CD only for your home purpose you may consider the use as private use.

You should not use that CD in a club in a fair and you should not if you copy that CD in multiple ways than your intention should be not private. So, if you use that CD made a copy of, make a one CD out of that may be you will be you will be consider may be the private use. Then use of some copyrighted product were research purposes or non commercial purposes it is use in are the review purposes have been considered as fair use if you use somebody copyrighted work and criticize use it for criticism purposes and review purpose then will be consider as fair use if you use somebody copyrighted work and critic and use it criticism purposes or review purposes then will be consider as fair use.

Sometime somebody ask that I have say use some copyrighted work and given the reference of that source whether I will escape the liability of copyright infringement, some cases they referred that mere acknowledgement is not sufficient you should take permission from the owner of the copyrights. So, understood if you, there is another concept called (Refer Time: 21:45) in academy contest, sometime you call academy contest (Refer Time: 21:49) or (Refer Time: 21:50). So, if you copied some work and create that as your own work. So, you are treated as an abductor or (Refer Time: 22:01) or (Refer Time: 22:02) or plagiarizing, this is also considered serious academy offence. You should remember this is taken that serious academy's honest or academic offence, so who escape liability of this academic offence you should keep the source from where you are using that particular expression that is called to avoid plagiarism.

Now, for copyright infringement you should take permission from the owners of that copyrights. So, sometime people ask that if I copied only three page or four page whether I will be liable for the copyright infringement or fair use and so prospective. So, in respect of say jurisdiction they referred as 20 percent copy use something, but now if you

come to US part how they consider the a fair use concept let us read that. The US statute, the statute does not clearly define fair use just like India they referred the source of use is taken as fair use, but in US they have not told that the what will come in the fair use, but they have created the few factors to consider the fair use analysis.

The factors are the purpose and character of the use, the purpose and is the character of the use and the nature of the copyrighted work what the nature of the copyrighted work the amount and substantially of the portion, amount and substantiality of the portion copy, the effect of the use upon the potential market for or value of the copyrighted work you understood, what I was to trying to mention where the 20 percent 40 percent now if you analyzed with reference to the US copyrighted law the effect of the use upon potential market. So, you understood if you copied may be a small portion that is a effecting the potential market means it is a primary market and secondary market that is defined as a potential market or iterating the value of the copyrighted work understood that may not be treated as fair use. So, fair use is not a like a specific use in USA they will be decided based on the factors like purpose factors of the use, nature of the copyrighted work, amount and substantiality of the portion 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.

So, you understood that what will be considered as fair use in respect of copyright specifically for the students and the researcher, let us analyze that taking few examples. So, let say you have say created a folder, the folder contain new song new movie song and if that folder is only available your personal computers for your personal use then that may be treated as private use, but now if your computer or pc if you shared in a network and now that everybody can access that folder also folder is not protected by in security key then it is not treated as a private use. So, you may be liable under copyright infringement. Similarly, let say you have created something downloading different software from different component. So, now, if you create if you just now create a folder to keep that software when if you now sharing that folder means of Facebook, Whatsapp, mobile app or some other ways, then you are not doing the act whatever you called a fair use. So, you will be liable under copyright infringement.

So, now with respect of computer program what is fair use as stated in the Indian copyright act; let us read that provision. So, for making copies or adoption by copies

purely as a temporary basis let us say, if you create the one copy for in respect of damage and destruction, considering that part for taking for inter ability purpose in other. So that sorts of things you know copy you should not be consider copy by on the purview of infringement. So, in a research analysis purposes making a copy for recording purposes or respect of storing that thing for recording purposes, for that purposes may not be consider infringement for infringement of copyright computer program. For you can so you can make a copy of to the computer proprietary computer software, for let us say from protecting from damage destruction or repairing purposes then that will be come within the purview of fair use.

Similarly that say respect of teachers or a pupil in the course of instruction and just like say teaching purposes I am using some material may come within the purview of fair use in the course of instruction may be come up within the purview of fair use, so private use fair use, research use fair use, instruction for the instructional purposes use may be treated as fair use, non commercial use definitely treated common in the purview of fair use.

So, I if I now ask a question to you like say more orchestra party is performing some songs that song musical composition particularly musical composer protected by copy right then whether that will be come up in the purview of fair use or copyright infringement. Just like say Persian recording, some time you say Persian recording, Persian recording copyright infringement or fair use. So, just analyze that type of situation with respect in the context of copyrights. So, therefore, the student learning copyright infringement what may come within the purview of fair use, what is plagiarism? All those elements are the learning point for you is very important for the students specifically.

Thank you.