

Professional Practice and Ethics

Lecture 2

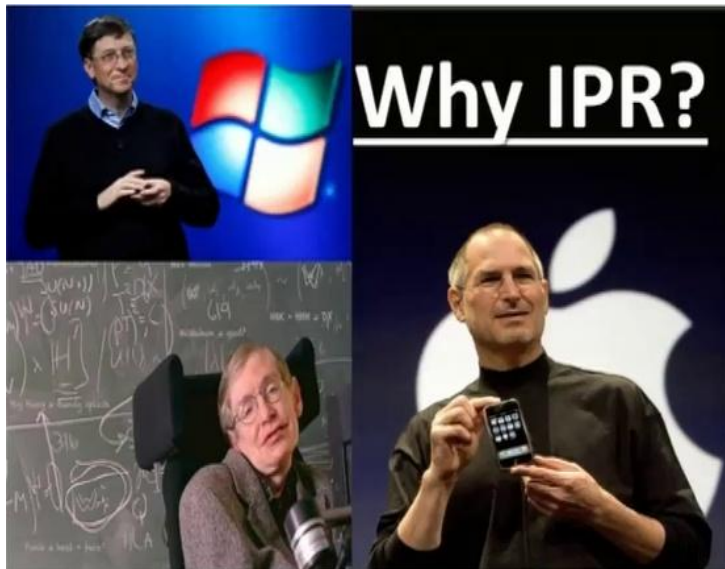
Welcome to the UGC lecture series on Architecture. In this session, let us deal with The Copyright Act, 1957, particularly with regard to the Work of Architecture, professional practice and the unique legal aspects.

Contents:

- What is Intellectual Property Rights (IPR)?
- The Copyright Act
- Moral Rights
- Exceptions to infringement
- Remedies if there is an infringement

Importance of IPR:

The three people in the picture below - Bill Gates, Stephen Hawking and Steve Jobs - knew the importance of IPR and that is why they are what they are today. Bill Gates knew the importance of IPR the minute IBM wanted to purchase his program, but he refused to do so and that is why Microsoft made him one of the world's richest people. Stephen Hawking owns a trademark in his name which is worth millions. Finally, the late Steve Jobs' patent continues to survive even today. IPR helps one's creation, name, etc to exist even after one's death.



What is IPR?

IPR is nothing but the creation of the human mind, a human intellect. It is an intangible property, i.e. one cannot see or feel it. However, IPR holds more value than that of tangible properties. That 'Every man owns what he creates' is the basic concept of IPR. IPR, in the traditional sense, deals with three important types:

- > **Patent** – The Patents Act was enacted in the year 1970. This provides protection to one's invention. For instance, Steve Jobs' invention - 'Apple'.
- > **Copyright** - The Copyrights Act, 1957, helps give protection to one's artistic work, literary work, architectural work, etc.
- > **Trademark** - The Trademarks Act came into being in the year 1999. The main aim of such an Act is to protect the consumer's interests.

The recently introduced IPRs are Geographical Indication and Biological Diversity Act.

What is the need to know about IPR?

The two important aspects of IPR are -- Others do not infringe upon your right and you do not infringe upon others' rights. In the architectural field, there is a perception that imitation is prohibited, while a popular adage says that imitation is the highest form of flattery. Suppose, if you are inspired by a well known architect, will that come under infringement? The Copyrights Act answers such questions.

The Copyrights Act, 1957:

Certain myths exist with regard to this right, the foremost being that one has to register to claim copyright protection. One infringes upon other's rights when one paints/draws/engraves a work of architecture of the other person and copyrights die along with the author are some of the other myths related to copyrights. These are simply myths as the Copyrights Act protects the copyright of an author even if he does not register under the Act. As soon as one executes a work of architecture or any such creation, he/she is conferred with the copyright of the work. Hence, it is not necessary that one should compulsorily register under the Copyrights Act to claim protection. However, registration helps you to have a presumption that the copyright is yours. This helps to solve problems with regard to infringement of copyrights. So, it is always wise to register, but it doesn't mean that those who do not register have no copyrights over his work.

For instance, if you go to a temple and draw the outline/whole layout of the temple, is it infringement of the Copyrights Act? No, this is not

considered to be an infringement according to the Copyrights Act. Even clicking a photograph can be considered an infringement, but not under the Copyrights Act.

There is another perception that one can claim copyright protection only as long as one lives, but the Copyrights Act protects the work of architecture for 60 years even after one's death. The creator's legal heirs can claim copyright protection if there is any kind of infringement for 60 years after his death.

The Copyright Act - Work of Architecture:

According to the Copyrights Act, a work of architecture means any building or structure having any artistic character. The Act not only protects the building, but also any design or model for such buildings or structures. The copyright shall subsist only in the artistic character and design and not extend to the process or methods of construction (Section 13 (5)).

What is Copyright?

It is the innate power of the owner of the work, in this case an architect, to reproduce according to his own wish and transfer it to others by means of license or assignment. However, even after transfer, the copyright owner is listed with one right, which he can claim even after having received money for the transfer. For instance, one constructs a building for his client and the client, without the former's license, rebuilds the building according to his own wish. Here, the architect can assert his right, stating that he cannot modify the building since it is his own copyright and it cannot be relinquished by taking money for having delivered the service. This peculiar moral right exists even after one's

death, i.e. one's legal heirs can initiate copyright infringement if there is any violation of this moral right. Moral right exists even if one parts with economic rights, i.e. even if one has acquired money for licensing architect work, one can still claim protection for it. So, even if one transfers the right of the work to another person, one will still continue to be the owner of the work of architecture. Nobody can stake claim to it since it is the architect's brainchild. The main feature of moral right is that it helps protect one's reputation and honour.

When can you commit infringement?

If you are hired to remodel a house, it will be considered an infringement if you remodel the house without the permission of the original architect. However, the Copyrights Act states that if you acquire license from the original architect who constructed the building, then there is no copyright infringement. But, please note that this specific provision is valid only when you rebuild a building with the same plan as it existed initially. This is the protection provided by the Copyrights Act in cases of rebuilding or remodeling a building.

Some of the exceptions to copyright infringement, as guaranteed under the Copyrights Act, are painting, drawing, engraving, photography and reconstruction of a building, provided the work was done with consent or license from the owner of the copyright.

Remedies that you can claim under the Copyrights Act:

For instance, if a client employs you, gets the design from you and actually implements the design, but does not provide you with economic rights and moral rights, it is a case of copyright infringement. However, what is your remedy? In the case of works where Copyrights Act

extends like artistic works or literary works, there can be an injunction. Injunction is a legal remedy wherein you get a court order to stop the work from being carried out, or in the case of a literary work, the work from being published. But, in Indian Copyrights Act, there is no such remedy like injunction exclusively for the works of an architect. So, the remedy is you can claim damages with regard to your reputation and honour and also the amount you ought to have received had you been the original architect who worked on the project. Unlike literary works where imposing penal liability is possible, there is no such thing for the works of an architect.

CONSUMER PROTECTION ACT

The structure of the presentation is

- > Aim of the Legislation
- > Necessity
- > Liability incurred by an architect under the Act
- > Responsibility conferred on the architect under the Act
- > Defenses which one can claim

Aim of the Consumer Protection Act

- > Aims to protect the interests of the consumer

> Provides a mechanism for redressal of consumers' grievances. The consumer can basically initiate complaints based on two kinds of defects -- defects in goods and defects in services.

> Provides for imprisonment and fine if the complainant is found to be true and the service provider is found guilty in accordance with the Act.

Why should an architect be aware of consumer protection laws?

Housing is a service that falls under the purview of the Consumer Protection Act. A consumer can initiate proceedings against the architect if he/she finds that there is any deficiency in the service provided. Besides, the Council of Architecture (COA) website provides two other guidelines relating to the construction aspect -- Architects (Professional Conduct) Regulation, 1989, and Architects Professional Liability.

Architect's responsibility towards his clients:

> General expectations like reasonable care, skill and due diligence

> **Under law** – For example, the Consumer Protection Act, the professional liability regulations as provided in the COA.

> **Under contract** – even if there aren't any explicit terms in the contract for the architect's liability towards his client, there are some implied terms of contract. For example, the architect's liability to ensure that his service does not delay the client's expectations is one such implied term. One should be very careful about an architect's liability, as one can be subjected to fine or imprisonment.

The liability of an architect arises under many circumstances such as

- Ignorance of relevant laws
- Pending litigation - i.e. if the architect fails to check whether the house is under any pending litigation.
- Delay in work - if he fails to execute his work in the promised time period.
- Duty of supervision - when the architect fails to supervise his work or even design of the building.
- Faulty design.
- Improper estimation of cost
- No adherence with terms of contract
- Failing to examine the site
- Failure to disclose risk: The architect must brief the consumer about all the risks involved in taking up the project. For instance, before building a house by a river bank or the beach, the architect must disclose the risks involved.
- Unauthorized constructions
- Sub standard materials

- Building purpose ignored
- Incorrect certification: Upon completion of the building, certain laws ensure that the architect's signature must be present. This implies that the architect has exercised his knowledge and the particular building is in compliance with the laws, rules and regulations. Yet, if the building undergoes any trauma in future, it will be regarded as an incorrect certification and the architect is thereby held liable.

Defence mechanisms that an architect can employ against such liabilities:

- Any compromise with the safety norms is the client's responsibility and not the architect's
- Illegal/unauthorized changes/alteration/renovations/modifications carried out in the absence of or knowledge of the architect
- Distress that affects the strength/stability of the structure
- Services for any commercial purpose
- Specialized consultants performing deficient services
- Certain circumstances beyond the control of the architect as in the case of natural disasters like earthquakes.
- Misuse of the building - if the building was proposed for commercial purpose, but was used for personal purpose and vice versa, it falls out of the architect's control.

- Intervention of third party factors
- No proper maintenance is not the architect's fault, but the client's.

SUMMARY

> Copyrights protection extends only to the works of architecture and not the method or the process of construction.

> The Act extends protection up to 60 years after the author's life.

> The Act also imposes liabilities and provides remedies.

> The Consumer Protection Act enables a client of an architect to file a complaint if there is any deficiency in his service, i.e. if the client finds any service provided by the architect falling short of what was promised to him, the architect then becomes liable. However, he has certain factors that can be employed as defence against such claims.

QUESTIONS

- Can an architect sue his client if he makes any changes with regard to his work without prior permission?
- Can an architect save himself from legal action if a contract exists absolving his liability?
- If an architect is working under an employer, what is the nature of his liability?