



INTRODUCTION TO INTELLECTUAL PROPERTY RIGHTS (IPR)

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ABSTRACT

*Intellectual property rights are like any other property rights – they allow the creator, or owner, of a patent, trademark, or copyright to benefit from his or her own work or investment. These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which sets forth the right to benefit from the protection of moral and material interests resulting from authorship of any scientific, literary, or artistic production. The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property in 1883 and the Berne Convention for the Protection of Literary and Artistic Works in 1886. Both treaties are administered by the World Intellectual Property Organization (WIPO). Intellectual property refers to creations of the mind: inventions, literary and artistic works, and symbols, names, and images used in commerce. Intellectual property is divided into two categories: **Industrial Property** includes patents for inventions, trademarks, industrial designs and geographical indications. **Copyright** includes literary works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms, and those of broadcasters in their radio and television programs.*

Keywords: Intellectual Property Rights, Patents, Copyright, trademark etc.

INTRODUCTION

Intellectual Property Rights is the recent branch of law and with the growth of ICT in recent days, IPR and library study have gained more importance. Knowing the basics of intellectual property rights before discussing on the implications of intellectual property rights on library services is felt necessary. This chapter discusses on the basics of Intellectual Property Rights.

INTELLECTUAL PROPERTY

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Society values the creative fruits of the human mind, believing that they enrich the fabric of life for all of its members. Thus, a system of laws has been developed that confers rights on the creators of these fruits. These rights are collectively known as intellectual property rights, which is commonly abbreviated to 'IPRs' (Edenborough, 1997). A category of intangible rights are protecting commercially valuable products of the human intellect (Garner, 2009). Intellectual property is all about the results of human creativity. Its subject matter is formed by new ideas generated by man. Their application to human needs and desires can be of considerable benefit to mankind. New ideas can be embodied in familiar things such as books, music and art, in technical machinery and processes, in designs for household objects and for commercial ventures, and in all other sources of information (Colston, 1999).

TRIPS define intellectual property rights as, the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time (WTO, 2017) The subject matter of intellectual property is very wide and includes literary and artistic works, films, computer programs, inventions, designs and marks used by traders for their goods or services (Bainbridge, 2015)

Intellectual property is explained by many theories over a time. The first is a natural theory of property which defends the claims that natural facts determine what is property and who owns what. The second approach is in fact a broad class of theories that understand property as a social construction validated in terms of its instrumental capacity to produce or secure other ethical goals. The third approach is a labour theory that grounds property claims in productive activity (Das, 2008)

Primary understanding of the development of intellectual property rights is very important to have basic knowledge on the evolution of intellectual property at the international level. International conventions on different categories of intellectual property give the uniform international standards.

Brief History of IPR

Paris Convention is an International Convention, which provides the common platform for protection of industrial property in various countries of the world. Prior to the existence of any international convention in the field of industrial property, seeking protection for industrial property in various countries was difficult due to diversity of their laws.

Paris convention for the protection of Industrial property was convened in Paris in 1883 and was initially signed by 11 states (WIPO, 2017) Convention was revised at Brussels in 1900, at Washington in 1911, at The Hague in 1925, at London in 1934, at Lisbon in 1958 and at Stockholm in 1967 and was amended in 1979 (WIPO, 2017).



The Paris Convention addresses patents, industrial design rights, trademarks, well known marks, names and unfair competition (Colston, 1999). The Republic of India is a member of Paris Convention since December 7, 1998. At present total 177 member countries are part of the Paris Convention.

Berne Convention protects literary works, artistic works, dramatic works, musical works and cinematographic works and it also protects derivative works based on other pre-existing works, such as translation, adaptations, arrangements of music and other alterations of a literary or artistic work. Berne Convention states the duration of the copyright protection as 50 years after the author's death. The Berne Convention was revised several times to cope up with the technological challenges that is, first revision took place in Berlin in 1908, followed by the revision in Rome in 1928, in Brussels in 1948, in Stockholm in 1967, and in Paris in 1971 (Ahuja, 2015).

World Intellectual Property Organization (WIPO)

WIPO is the global forum for intellectual property services, policy, information and cooperation, which was established in the year 1967. Mission of the WIPO is to lead the development of a balanced and effective international intellectual property (IP) system that enables innovation and creativity for the benefit of all. WIPO has 191 member states and headquarters is at Geneva, Switzerland. WIPO administers conventions namely, PCT-The International Patent System, Madrid-The International Trademark System, Hague- The International Design System, Lisbon- The International system of Appellations of Origins , and Budapest-The International Microorganism Deposit System (WIPO, 2017).

TYPES OF IPR

According to WIPO, Intellectual property is divided into two categories that is, Industrial Property and Copyright. Industrial property includes patents for inventions, trademarks, industrial designs and geographical indications. Copyright covers literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their performances, producers of phonogram their recordings, and broadcasters in their radio and television programs (WIPO, 2017).

Patents



Patents are granted in respect of inventions, i.e. technological improvements, great and small, which contain at least some scintilla of inventiveness over what is previously known (Cornish, et.al.,2010). As per WIPO, A Patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. According to Halsbury's Laws of England, the word patent is used denoting a monopoly right in respect of an invention.

Patent is a monopoly right conferred by Patent Office on an inventor to exploit his invention subject to the provisions of Patents Act for a limited period of time (Ahuja, 2015). Patents are territorial rights and the exclusive rights are only applicable in the country or region in which a patent has been filed and granted, in accordance with the law of that country or region (Patents-WIPO, 2017).

Invention means a new product or process involving an inventive step and capable of industrial application (The Patents Act of 1970). Novelty, inventive step, lack of obviousness and sufficiency of description are the essential ingredients for patents (Narayana, 2013). The term of validity for every patent under Patent(Amendment) Act, 2002, shall be twenty years from the date of filing of the application for the patent. The term of patent in case of International applications filed under the Patent Cooperation Treaty designating India, shall be twenty years from the international filing date accorded under the Patent Cooperation Treaty. In India patents are governed by Patents Act, 1970 and the act is amended by the Patent (Amendment) Act, 2002.

Trademarks

According to WIPO, a trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. A product can be copied by a competitor and can become outdated by the introduction of new products, but a trade mark is unique. A successful trade mark is timeless and the most important source of market power and enables its owner to diversify in products and geographical markets (Bansal, 2014).

Internationally trademark is observed under Madrid protocol. Duration of International registration of trademark is valid for ten years and it can be renewed for ten years from the expiry of preceding period. Protection of trademarks in India is governed by The Trademarks Acts, 1999, which is amended in the year 2010 i.e., Trademarks (Amendment) Act, 2010. Registration in India is also valid for ten years and can be renewed time to time in accordance with the provisions of the Act.

Trademark is a mark which includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any



combination thereof (The Trade Marks Act of 1999). Trade mark performs four functions, namely identifying the product and its origin, it guarantees its unchanged quality, advertising the product and creating the image of the product. The function of Service mark in relation to services is same to that of a trade mark in relation to goods (Narayana, 2013).

Copyright

Copyright was recognized only after invention of printing in the 15th century, which enabled the reproduction of books in large numbers. Before that, creative writers, musicians, artists wrote, composed or made their works for fame and recognition rather than to earn a living and question of copyright never arose because copying was a laborious and expensive process (Narayana, 2013).

WIPO defines, Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works commonly protected by copyright throughout the world include:

- literary works such as novels, poems, plays, reference works, newspaper articles;
- computer programs, databases;
- films, musical compositions, and choreography;
- artistic works such as paintings, drawings, photographs, and sculpture;
- architecture; and advertisements, maps, and technical drawings (WIPO, 2017)

COPYRIGHT LAW OF INDIA

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, *inter alia*, rights of reproduction, communication to the public, adaptation and translation of the work (Handbook of Copyright Law).

"Copyright" means to do or authorise the doing of any of the following acts in respect of a work, such as literary, dramatic or musical work, not being a computer programme, computer programme, an artistic work, cinematograph film, sound recording (Indian Copyright Act of 1957).

Copyright in India is governed by the Copyright Act, 1957, which was came into effect from January 1958. Further, the act was revised and amended time to time in the years, 1983, 1984, 1991, 1994, 1999, and 2012.

CONCLUSION

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In this way Intellectual Property Rights empowers creator or researcher through giving their rights through laws of Intellectual Property Law. Copyright is the law which is basically related to libraries among intellectual property rights laws, which protects author rights. Library is the store house of knowledge viz., books, journals, manuscripts etc. which are protected by copyright and providing access through various means, to provide such knowledge is the primary service of libraries. Fair use is the exception to the copyright law. It is analysed that exception to the libraries under the law is not clear and there is a need for proper interpretation of the law, in relation to libraries. It is observed, The Copyright law of India related to libraries is very vague and there is a need for clear provisions regarding libraries.

REFERENCES

1. Narayana, P. (2013). Intellectual Property Law. p 11. New Delhi: Eastern Law House.
2. Narayana, P. (2013). Intellectual Property Law. p 147. New Delhi: Eastern Law House
3. Narayana, P. (2013). Intellectual Property Law. p 5. New Delhi: Eastern Law House
4. Patent Cooperation Treaty.(August 12, 2017). Retrieved August 20, 2017, from WIPO-World Intellectual Property Organization: <http://www.wipo.int/pct/en/texts/articles/atoc.html>.
5. Patents. (September 12, 2017). Retrieved September 19, 2017 from WIPO-World Intellectual Property Organization: <http://www.wipo.int/patents/en/>
6. Schlosser, Melanie. (2006). Fair use in the Digital Environment: A Research Guide. Reference & User Services Quarterly, 46(1), 11.
7. Summary of the Paris Convention for the Protection of Industrial Property (1883). (August 12, 2017). Retrieved August 20, 2017, from WIPO-World Intellectual Property Organization: http://www.wipo.int/treaties/en/ip/paris/summary_paris.html.
8. The Copyright (Amendment) Act, 2012, section 52(1)(n).
9. The Designs Act, 2000, section 11(1).
10. The Designs Act, 2000, Section 11(2).
11. The Designs Act, 2000, section 2(d).
12. The Designs Act, 2000, Section 4.
13. The Geographical Indications of Goods (Registration and Protection) Act, 1999, section 1(3)(e).
14. The Patents Act, 1970, section 2 (1)(j).
15. The Trade Marks Act, 1999, section 2(1)(m).
16. Inside WIPO. (September 12, 2017). Retrieved September 19, 2017 from WIPO-World Intellectual Property Organization: <http://www.wipo.int/about-wipo/en/>.